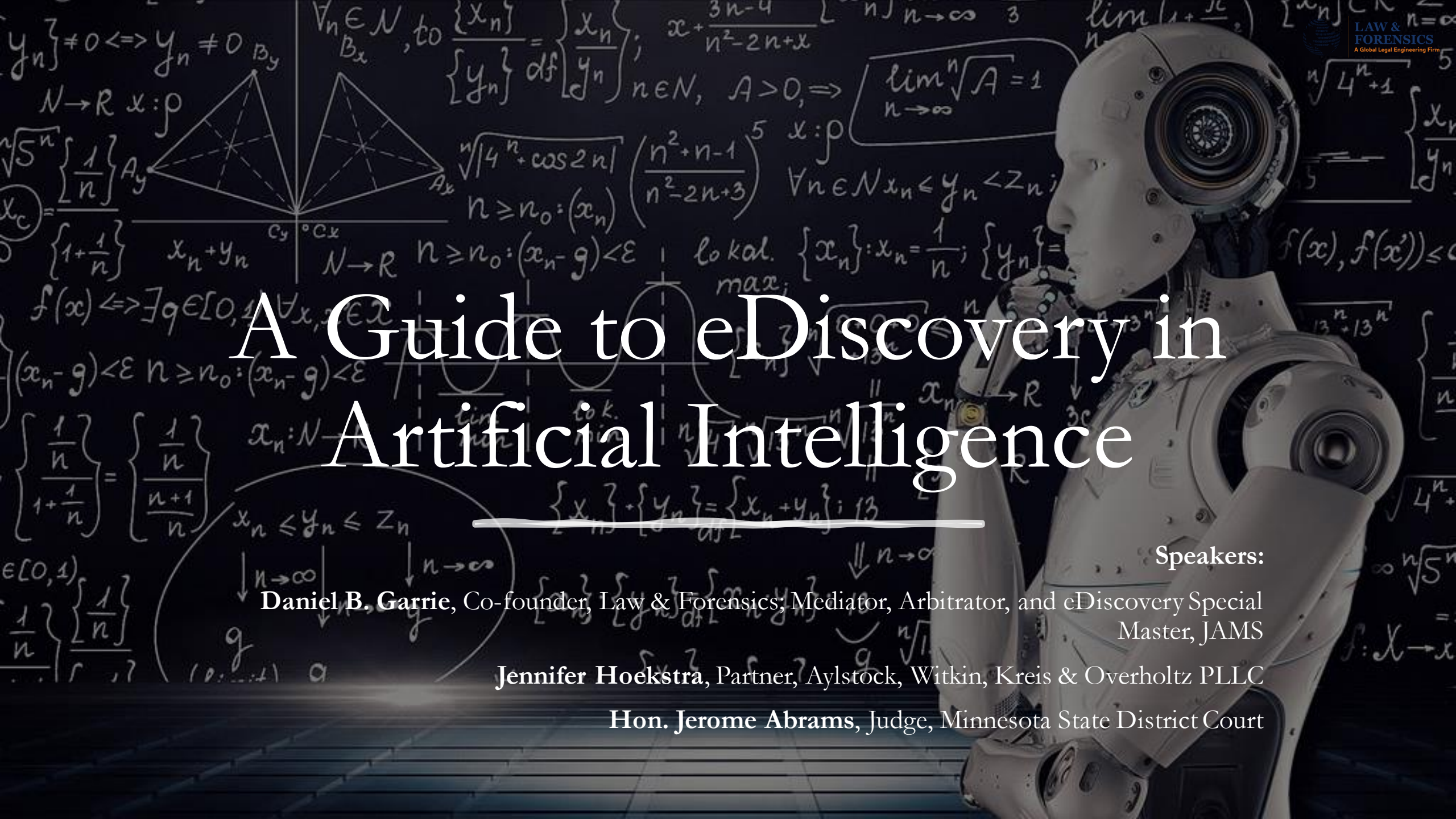


A Guide to eDiscovery in Artificial Intelligence

Speakers:

Daniel B. Garrie, Co-founder, Law & Forensics; Mediator, Arbitrator, and eDiscovery Special Master, JAMS

Jennifer Hoekstra, Partner, Aylstock, Witkin, Kreis & Overholtz PLLC

Hon. Jerome Abrams, Judge, Minnesota State District Court

Disclaimer

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Speakers



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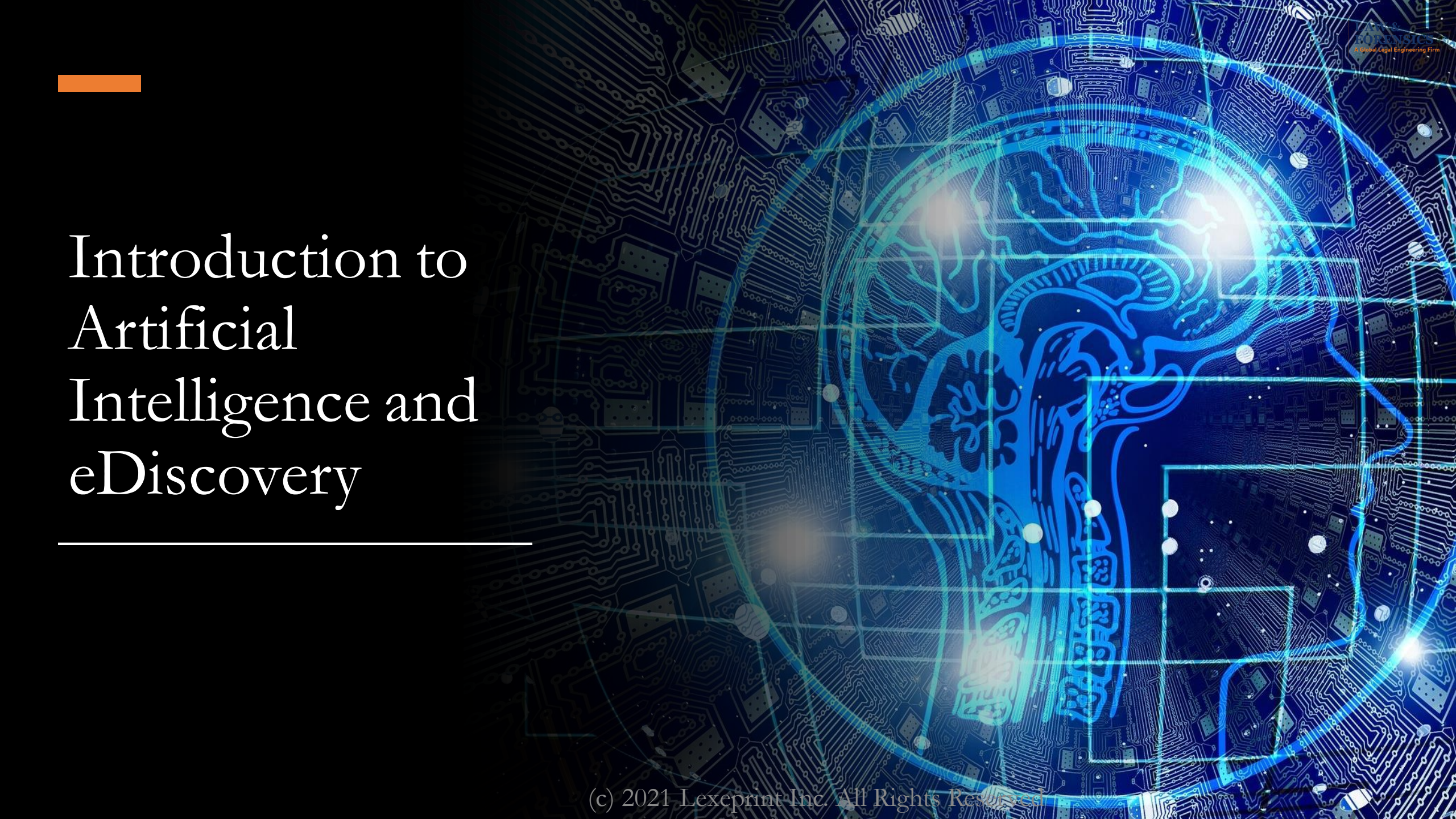
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Agenda

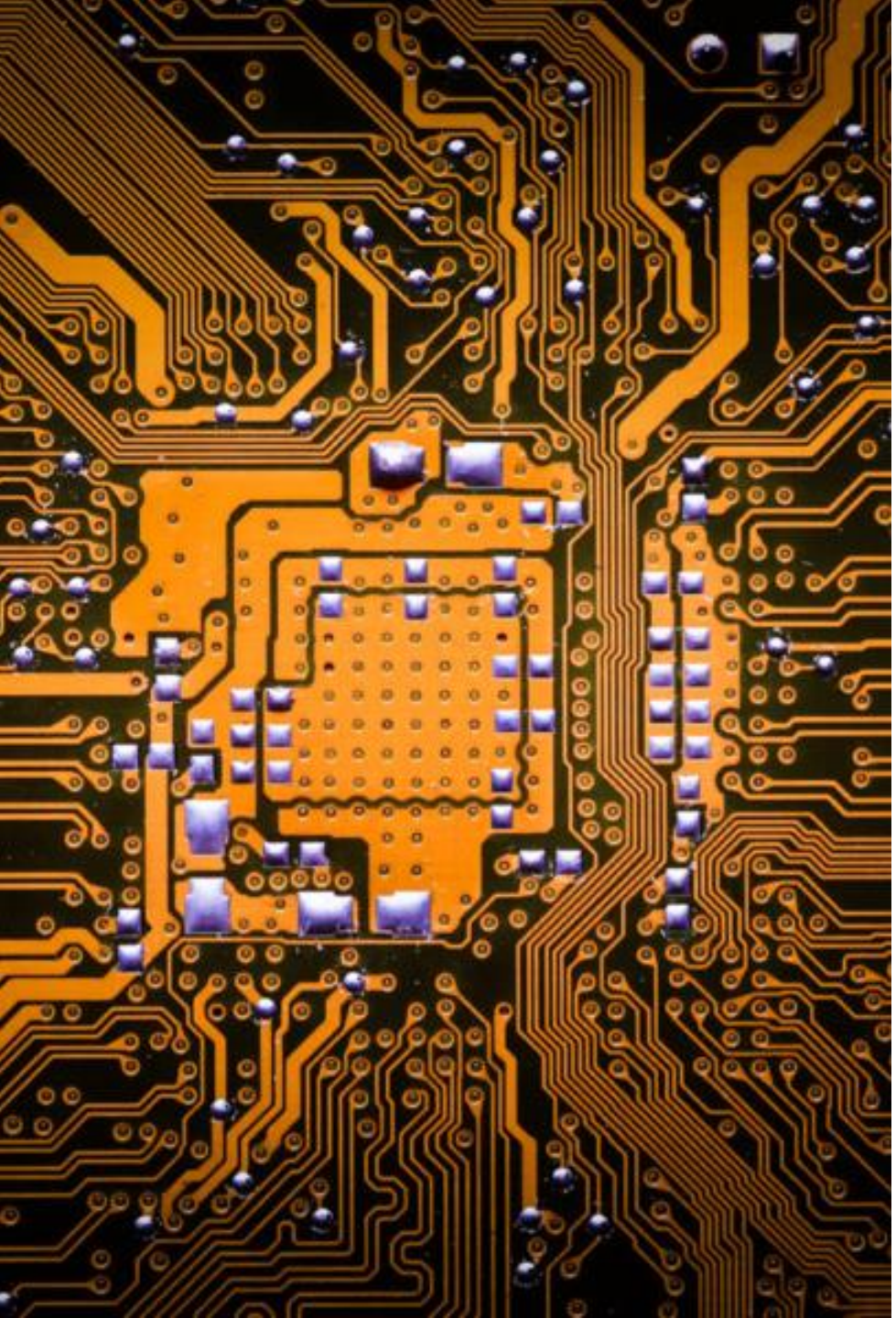
- Introduction to Artificial Intelligence and eDiscovery
- Artificial Intelligence's Impact on the eDiscovery Process
- What is the Future of Legal Artificial Intelligence

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Introduction to Artificial Intelligence and eDiscovery



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eDiscovery Artificial Intelligence

Artificial Intelligence (AI) in the context of eDiscovery can improve…

- collection,
- review,
- processing, and
- analysis of data

AI systems learn which words, terms, and phrases may be of interest, identifies documents that share that language, and floats them to the top of the pile for the human reviewer to evaluate.

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ABA Model Rules of Professional Conduct

ABA Model Rule of Professional Conduct 1.1 includes:	ABA and most states find that lawyers have an ethical obligation to:
• Technologies as an ethical obligation. • Attorneys in almost every state have a duty to stay abreast of how technology can assist and harm clients.	• Understand the risks created by the technology. • Knowledgeable of technology that may benefit their practice.

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AI in eDiscovery: Expectations vs. Reality

Reality

AI has been used in the eDiscovery industry for the last decade.

Expectations

Removes the need for lawyers to be involved in the review process.

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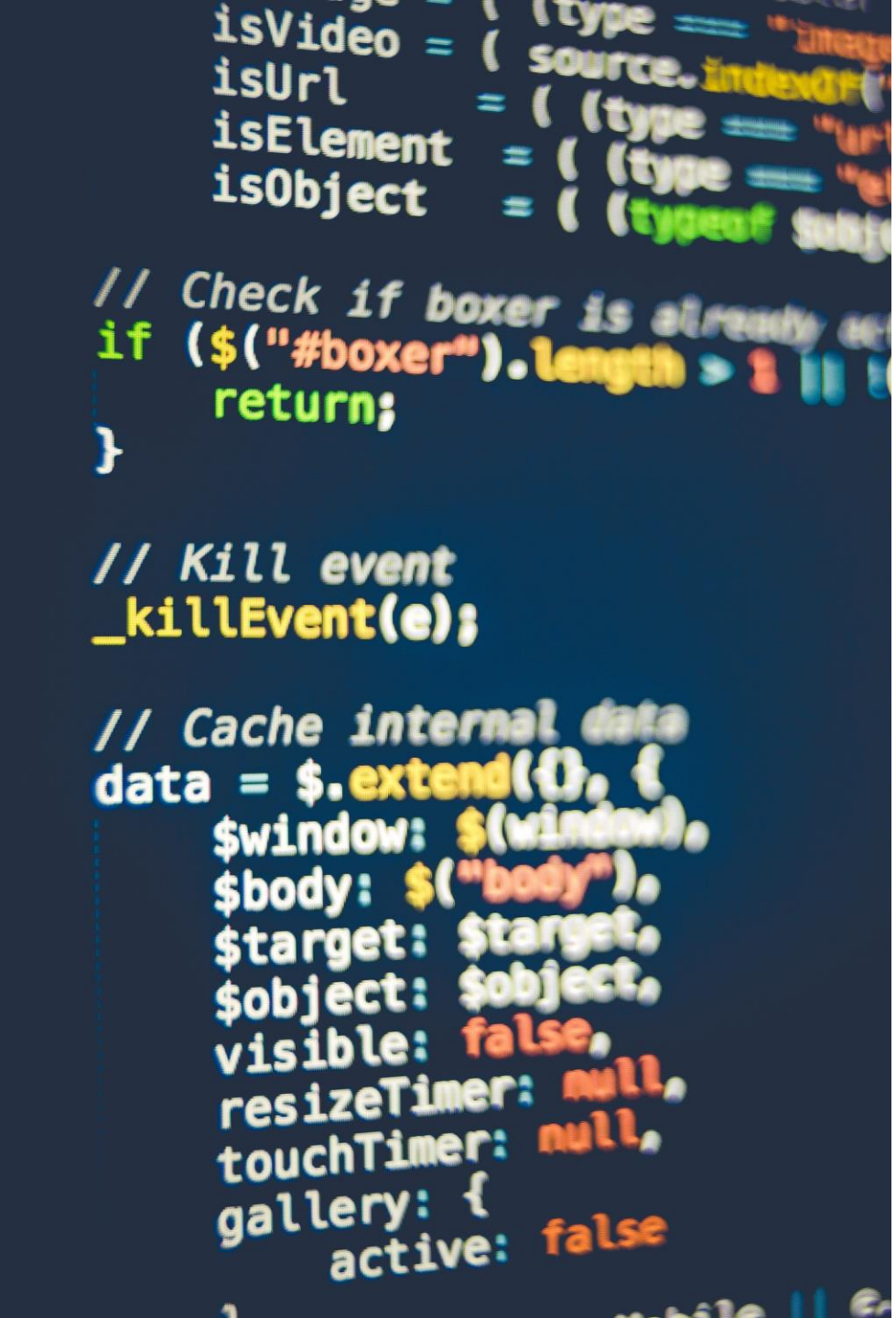


Machine Learning

Machine learning (ML) refers to software that automatically improves as it is used.

- It relies on previously processed data to make predictions about data or classify the data.
- ML can be used to predict the correct classification of an individual document, so there is no need to pore over each email and word document individually.

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Technology Assisted Review (TAR)/Predictive Coding

- TAR/predictive coding is a technology and a process that involves a subject matter expert (i.e., a human) coding documents as responsive or non-responsive. These determinations used to enable the software to determine the responsiveness level of the remaining documents.
- Proven to be more efficient and effective at identifying and producing relevant documents when compared to key terms, but it depends on the facts and datasets at issue.
- As the review proceeds, the TAR software continues to learn and becomes more accurate in its assessments, limiting the number of documents that the human reviewer must examine.

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What is TAR 1.0?

- Subject matter expert (SME) codes a control set for relevance and then trains against that control set.
- When the training is done, the system ranks the remaining documents and orders them by the likelihood of relevance.

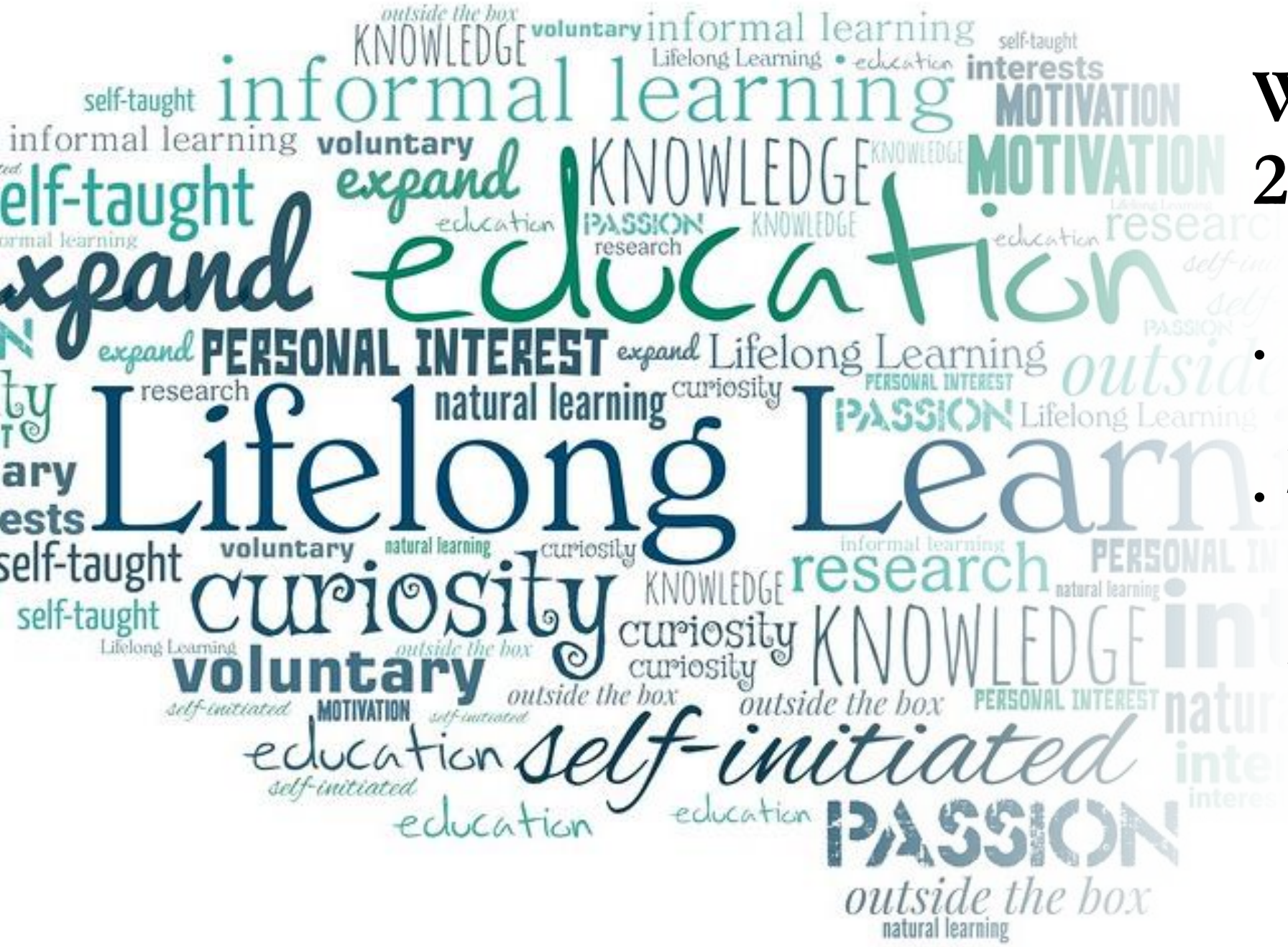
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Details to consider when using TAR 1.0

TAR 1.0

- TAR 1.0 uses a sample, or control set, to estimate performance metrics.
- Can be used when parties seek to produce information without an eyes-on review of all documents in the production set.
- Result of a TAR 1.0 workflow is usually a production of documents that were largely unreviewed by the producing party.

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What is TAR 2.0?

- Continuous active learning or CAL, is a form of supervised machine learning.
- The computer uses a search engine and relevance ranking to select documents for review, coding, and continued training until it can no longer find relevant documents.

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Details to considering when using TAR 2.0

TAR 2.0 – Continuous Learning

- Training the predictive model and review of documents is performed simultaneously.
- Focus on reviewing all responsive documents and avoid the review of non-responsive documents.

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What is the Difference Between TAR 1.0 v. 2.0?

TAR 2.0 unlike TAR 1.0, which relies on a control set to estimate how the model performs, TAR 2.0 generally measures performance by how well TAR is finding responsive documents, though some samples are still used.

One of the main advantages of TAR 2.0 is that it gives the end-user more control over the process and the ability to run multiple sessions simultaneously/at once. This alone makes the decision for many organizations an easy one.

However, TAR 2.0 or TAR 1.0 depends on the facts and the comfort level of Counsel and the Parties.

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AI's Impact on the eDiscovery Process

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Early Case Assessment

Gain rapid insight into the validity of a claim and its potential ramifications.

Quickly assess the entire universe of data and home in on what really matters.

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Early Case Assessment

CUT THROUGH THAT MASS OF DATA TO IDENTIFY "HOT DOCUMENTS".

QUICKLY ASSESS THE SERIOUSNESS AND WORTH OF THE CLAIM.

AI DOES NOT TAKE THE PLACE OF LAWYERS, IT INCREASES EFFICIENCY.

AI CAN HELP THE LEGAL TEAM QUICKLY MAKE SENSE OF THE CORPUS OF INFORMATION.

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AI/TAR is Court Approved

- It has been well accepted by the courts since two significant rulings in 2012 and 2015.
- In 2012, Judge Andrew Peck ruled in *Da Silva Moore v. Publicis Groupe & MSL Group* No. 11 Civ. 1279 (ALC) (AJP) approving the use of "computer-assisted review."
- In 2015, U.S. Magistrate Judge Andrew J. Peck noted in *Rio Tinto PLC v. Vale S.A.*, 306 F.R.D. 125(S.D.N.Y. 2015), that "the case law has developed to the point that it is now black letter law that where the producing party wants to utilize TAR for document review, courts will permit it."

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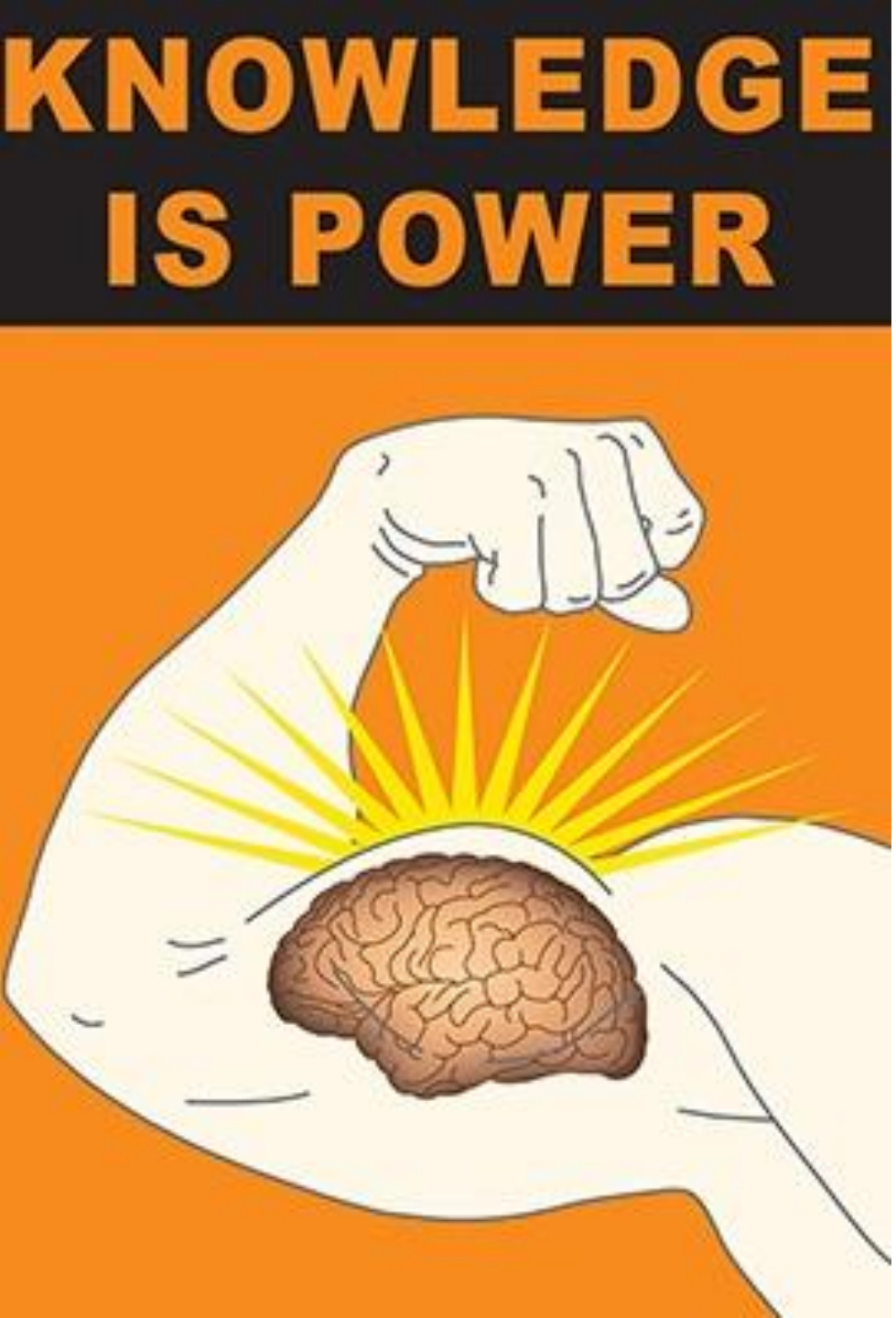


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AI can Deal with Privacy More Effectively

- AI systems never get bored, tired, or distracted—and they can be trained to identify all types of personal information with tremendous accuracy, flagging those fields for redaction or anonymization.
- AI systems enable greater compliance with privacy laws, such as the EU's General Data Protection Regulation (GDPR) or the California Consumer Privacy Act (CCPA).

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AI Can Deliver Insights

Discover	Address	Increase
Discover patterns in your cases or in your costs.	Address recurring problems at the source.	Increase efficency by assigning matters to the most capable and cost-effective outside counsel.

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AI can Help CLOs Substantially Save on their eDiscovery Spending

- Enable earlier and more precise assessment of potential matters so that small matters can be resolved before considerable resources are invested.
- Speed up evaluating docs via clustering → save on review.
- Limit the number of documents that human reviewers must evaluate
- More accurately flag information for redaction
- Understand patterns and case outcomes to identify areas for improvement.

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What is the Future of Legal AI?

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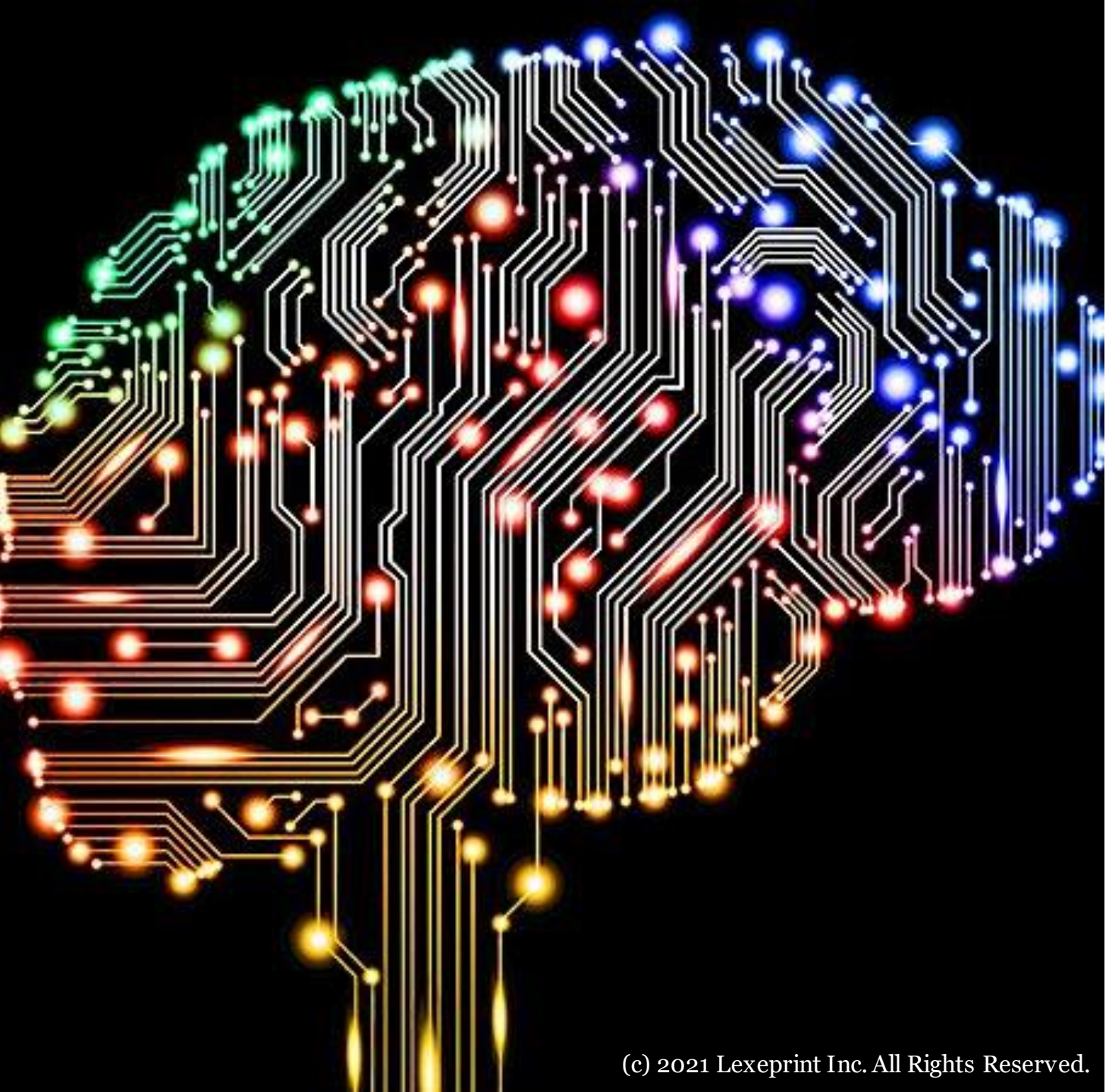


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The Future

- Technology is evolving rapidly so it is hard to say what the future will hold except that it will be different.
- Technology may be available, but lawyers may not use it, so it may take more time.

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eDiscovery Changes on the Horizon

1. Using AI will become "frictionless," meaning that it will be ever more seamlessly integrated into the eDiscovery process.
2. AI will move out of the review phase, earlier in the EDRM, helping legal teams get to the facts of the matter faster, cheaper, and smarter than ever before.
3. AI will play an increasing role in orchestrating the eDiscovery process, streamlining the process and improving efficiency.

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Questions?

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B.A., Computer Science, Brandeis Uni.
M.A., Computer Science Brandies Uni.
J.D., Rutgers School of Law

Daniel Garrie is the Co-Founder of Law & Forensics LLC, Head of Computer Forensics and Cyber Security Practice Groups and has been a dominant voice in the computer forensic and cybersecurity space for over 20 years. Prior to Daniel's legal career, he successfully built and sold several technology start-up companies. Since co-founding Law & Forensics LLC in 2008, Daniel has built it into one of the leading boutique cybersecurity forensic engineering firms in the industry. Daniel has both a Bachelor's and a Master's Degree in computer science from Brandeis University, as well as a J.D. degree from Rutgers Law School. Daniel has led forensic teams in some of the most visible and sensitive cyber incidents in the United States. In particular, Daniel recently located and recovered deleted files in both private and public cloud computing environments using his patented software, Forensic Scan. This investigation took less than forty-eight hours to clean and recover the data from the servers of a cloud-hosting provider that was compromised by a malicious cyber-attack. Thanks to the Forensic Scan technology, that Daniel co-invented and patented (US9990498B2 and US9990497B2), and his own expertise, Daniel and his team was able to identify the source of the breach and remediate the problem in record time.

Daniel regularly testifies as an e-discovery, cybersecurity and computer forensic expert witness, authoring forensic expert reports on multi-million-dollar disputes. His ability to perform complex investigations and effectively communicate the results to a jury has made him one of the most sought-after experts in the country. His testimony has been pivotal in a number of cases, including one involving the embezzlement of millions of dollars from a large non-profit. Daniel was able to perform a thorough analysis of the alleged embezzlers' phone and computer, despite the embezzlers' attempts to wipe them, and identify concrete evidence of the embezzlement to a jury. Since 2008, Daniel has served as a Neutral and Special Master and in 2016, he joined JAMS as one of the organization's youngest Neutrals. At JAMS, Daniel serves as an Arbitrator, Forensic Neutral, and technical Special Master with a focus on cybersecurity, cyrptocurrency, and complex software and technology related disputes. Some of the major cases for which he has served as an e-discovery special master, or forensic neutral include: *Hougan vs. City of Newport Beach, No.* *30-2012-00582855* (Super. Ct. Cal. 2014)*; Small v. University Medical Center of Southern Nevada, 2014 WL 4079507*(D. Nev. 2014)*; C.D.S. Inc. v. Zelter and Amazon Web Services, Inc.*, (S.D.N.Y. 2016); *Jawbone, Inc. v. Fitbit Inc.* et al (Super. Cal., S.F. County 2018). In addition to his vast litigious experience, Daniel is well-published in the cybersecurity space, Editor-in-Chief of the Journal of Law & Cyberwarfare, author of more than 200 articles and books including, "Understanding Software, the Internet, Mobile Computing, and the Cloud. A guide for Judges", published by the Federal Judicial Center. He has been recognized by several United States Supreme Court Justices for his legal scholarship and is a trusted source and a thought leader for cybersecurity articles and opinions, being cited over 500 times to date.

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AYLSTOCK WITKIN KREIS OVERHOLTZ PLLC

Jennifer M. Hoekstra is a partner with Aylstock, Witkin, Kreis & Overholtz, PLLC. A native of Saint Paul, Minnesota, Ms. Hoekstra boasts an impressive academic and professional record, including graduation from two of the nation's top schools. She earned her earned Bachelor of Arts in Environmental Science from Columbia College, Columbia University in the City of New York. She relocated to Louisiana to attend Tulane Law School, where she earned her J.D. while also completing a certificate in Environmental Law. During her law school career, she spent a semester studying at the University of Wisconsin School of Law and visited on their International Law Journal as a Junior Member during her Hurricane Katrina evacuation semester. While in law school, Ms. Hoekstra served as Executive Treasurer of the Student Bar Association and as a Graduate Student Association delegate.

Ms. Hoekstra has been involved in complex litigation cases of all forms since 2007. Jennifer was inspired to pursue her law degree while working as a Litigation Assistant at Cravath Swaine and Moore LLP in New York. Ms. Hoekstra has earned a solid reputation as a skilled writer and researcher and plays an integral role in several complex litigation cases, practicing in the areas of Pharmaceutical Mass Torts, Defective Device Mass Torts, and other complex litigation. Ms. Hoekstra has been involved in all aspects of MDL litigation involving Actos, Genetically Modified Rice, DePuy ASR, DePuy Pinnacle, Biomet, Plavix, NuvaRing, the BP Oil Spill, and other defective drugs or devices. She is currently a member of the DePuy Pinnacle Law and Briefing Committee as well as a member of the Biomet II PSC. Jennifer was central to the successful outcome in bellwether trials in the Genetically Modified Rice, Actos and DePuy Pinnacle Hip MDLs with more than $11 Billion in trial verdicts resulting from those cases.

She is licensed to practice before all Louisiana state and federal courts and the U.S. District Courts for the Northern District of Texas and Eastern District of Missouri as well as the 5th and 8th Circuit Courts. She is a member of the American Bar Association, the Louisiana Bar Association, the Acadiana Federal Bar Association, the Alexandria Louisiana Bar Association and the American Association for Justice. She is a member of Women En Mass and was also a member of the inaugural 2018 Board of Directors for Emerge Louisiana.

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Hon. Jerome B. Abrams
Judge – Minnesota Courts
Contact:
E: Jerome.Abrams@courts.state.mn.us

Minnesota State District Court Judge Jerome (Jerry) Abrams came on to the Bench in 2008 after 27 years of a busy civil trail practice, much of it handling a wide variety of civil litigation. As a lawyer he tried numerous cases, some enormous, some large and not so large in a number of State and Federal Courts. Judge Abrams is a member of the American Board of Trial Advocates. He is also on the Board of Directors of the National Center for State Courts and the American College of Business Court Judges.

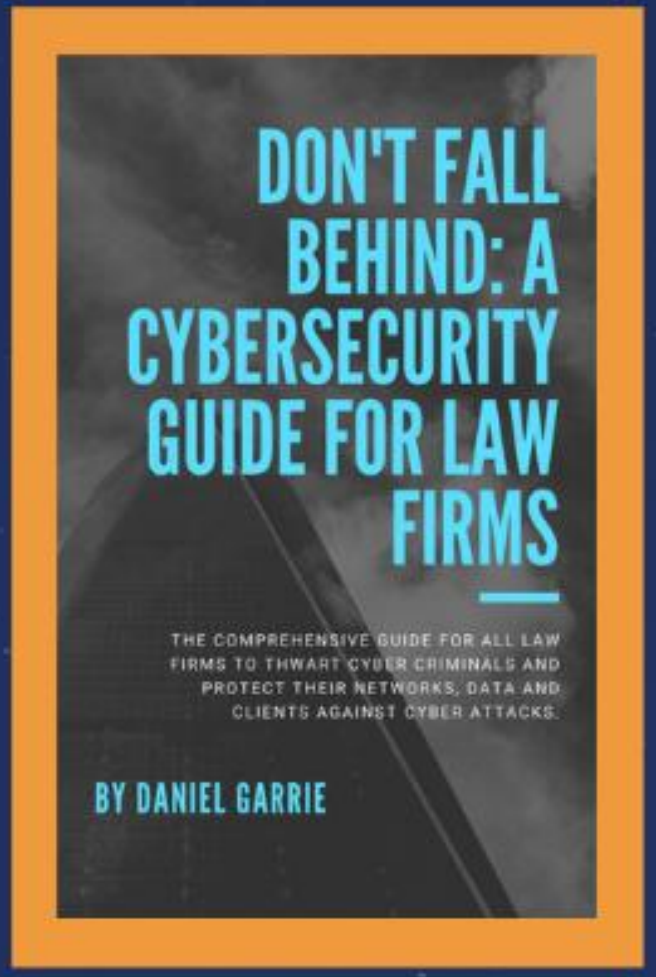
Judge Abrams serves as a regular adjunct faculty at the University of Minnesota Law School and Mitchell Hamline College of Law where he has taught Complex Litigation. He has served on the Minnesota Civil Justice Reform Task Force and its predecessor group which recommended major changes in the civil justice system recently adopted. Judge Abrams chaired a subcommittee for the National Center for State Courts, Conference of Chief Justices looking at recommendations for reducing cost and delay in civil litigation. Judge Abrams is a frequent speaker at state and national continuing education programs on Complex Case Management, Civil Justice Reform, ESI and related topics. He also serves as a Presenter and Rapporteur for the United Nations Office on Drugs and Crime Judicial integrity programs.

In the past, Judge Abrams has presided over several major state multidistrict litigations, including the statewide challenge to alcohol breath testing equipment which involved over 4,000 cases, failed real estate developer litigation, and large-scale condemnation proceedings arising from major urban development. In addition, he presently has several multidistrict cases involving environmental regulations and construction defects.

Judge Abrams has also authored several texts and books used by many experts today. Among these include a text on e-discovery "*E-Discovery Desk Book*, (Chapter Author), Minnesota CLE (2020)" and a book on guidance for Business Court Judges "*The Business Courts Benchbook: Procedures and Best Practices in Business and Commercial Cases*, (Contributing Author), ABA (2019)."

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