

E-DISCOVERY IN LAW FIRMS AND LAW DEPARTMENTS

LLAGNY 75th Anniversary
Education Conference

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Agenda

- Overview of e-discovery
- E-discovery in law firms
- Law firm 2020: Opportunities for librarians and knowledge management professionals

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E-discovery

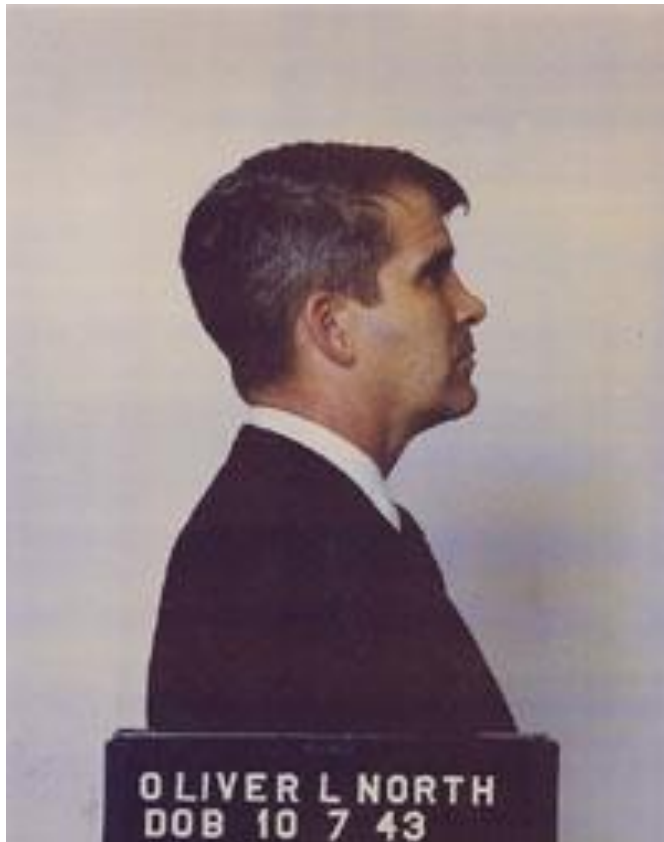
The identification, collection and production of electronically stored information (ESI) in response to a civil litigation or investigation.

Electronically stored information

- email
- word processing documents
- databases
- web pages
- spreadsheets
- image files
- text messages
- instant message conversations
- social media
- audio files
- voice mail

Landmark e-discovery cases

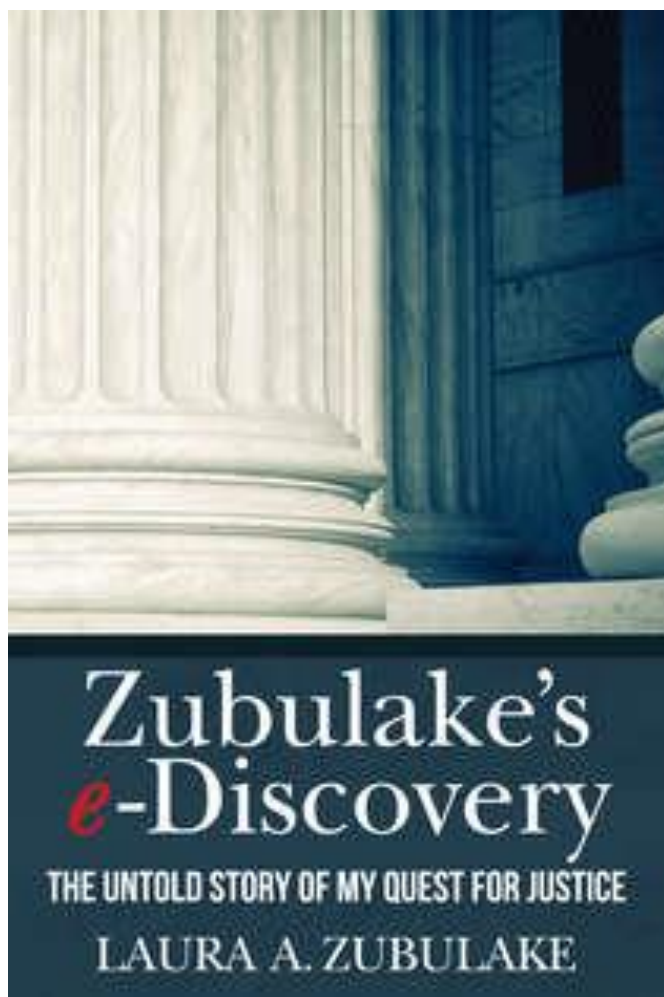
Landmark e-discovery cases



Oliver North

- Email documenting of meetings with Manuel Noriega

Landmark e-discovery cases



Zubulake v. UBS
Warburg (2003-2005)

- Gender discrimination case
- Jury instructed to “infer that the [missing] evidence would have been unfavorable to UBS”

Landmark e-discovery cases



Lorraine v. Markel
American Insurance
Company (2007)

- Insurance arbitration agreement
- 100-page opinion establishing baseline for admissibility of ESI

Landmark e-discovery cases

Qualcomm (2008-2010)

- Patent infringement, duty to disclose patents
- Qualcomm had hidden over 46,000 emails
- “Monumental” discovery violations
- Six attorneys sanctioned

Landmark e-discovery cases



Victor Stanley, Inc. v.
Creative Pipe, Inc.
(2010)

- Unfair competition
- Defendant president attempted to delete over 5,000 files

Landmark e-discovery cases

Green v. Blitz (2011)

- Product liability/wrongful death
- ‘Dangers of self collection’

Landmark e-discovery cases

Moore v. CITGO (2013)

- Plaintiffs sued for overtime pay under Fair Labor Standards Act
- Plaintiffs defied the judge's order by destroying or failing to preserve materials detailing their job duties and work hours

Rules and concepts

Rules and concepts

Federal Rules of Civil Procedure (FRCP)

- Rules 26 through 37 generally govern e-discovery
- Most states have rules based on FRCP
- A dozen states have or are developing own models for e-discovery

Rules and concepts

Proportionality

- “Parties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense and **proportional** to the needs of the case considering the amount in controversy, the importance of the issues at stake in the action, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” FRCP Rule 26(b)(1)

Rules and concepts

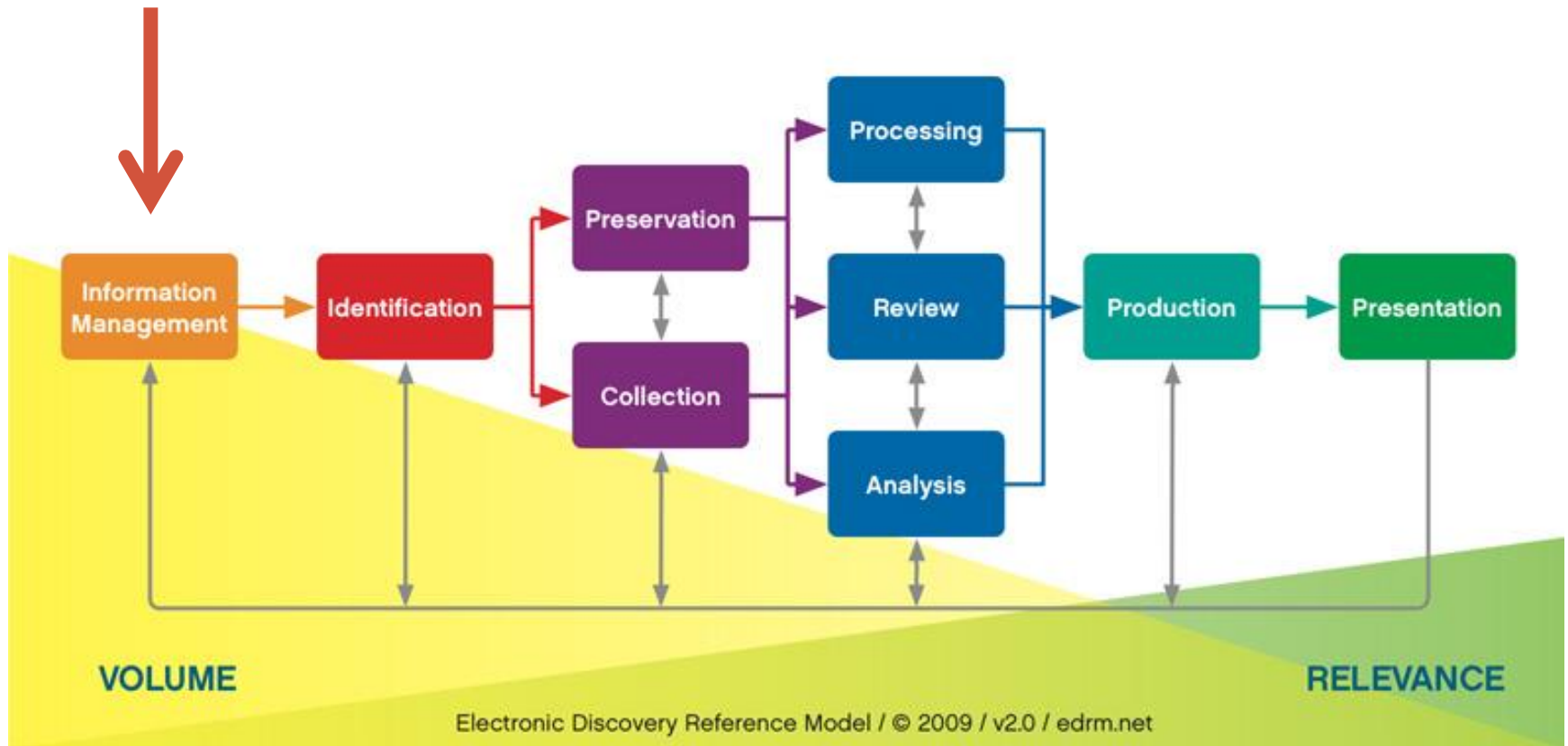
Cooperation

- “secure the just, speedy, and inexpensive determination of every action and proceeding.” FRCP Rule 1

Electronic Discovery Reference Model

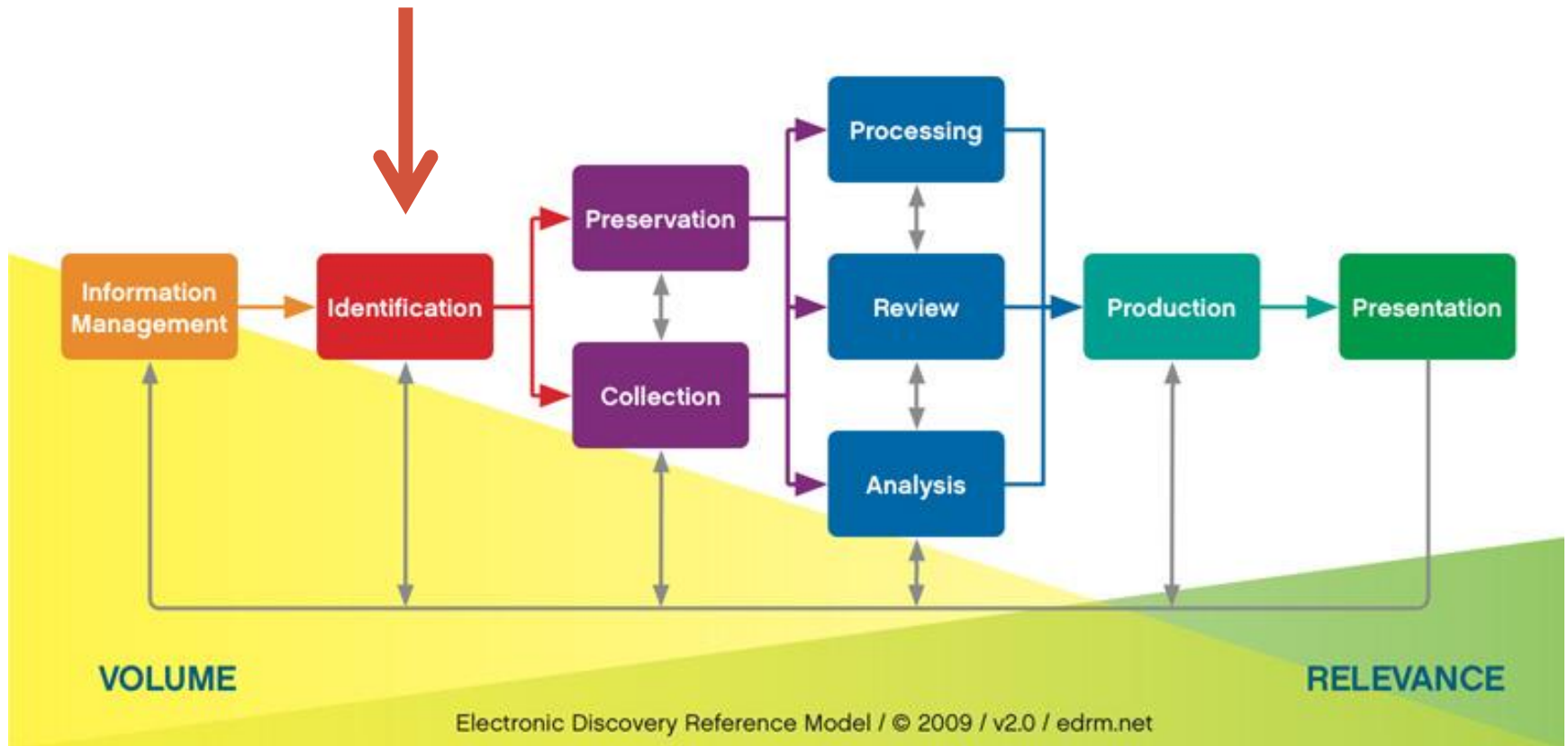
Electronic Discovery Reference Model

Electronic Discovery Reference Model



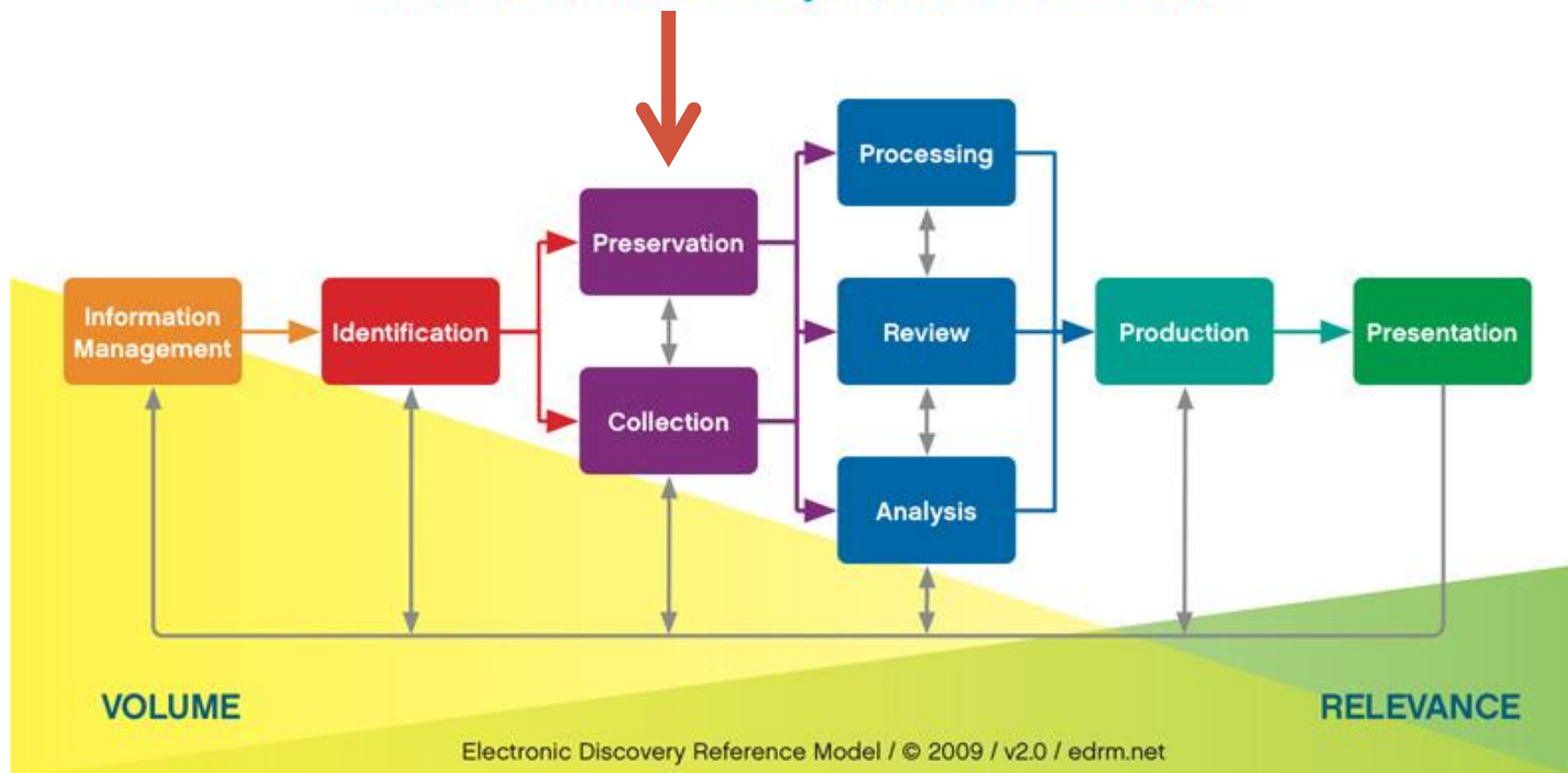
Electronic Discovery Reference Model

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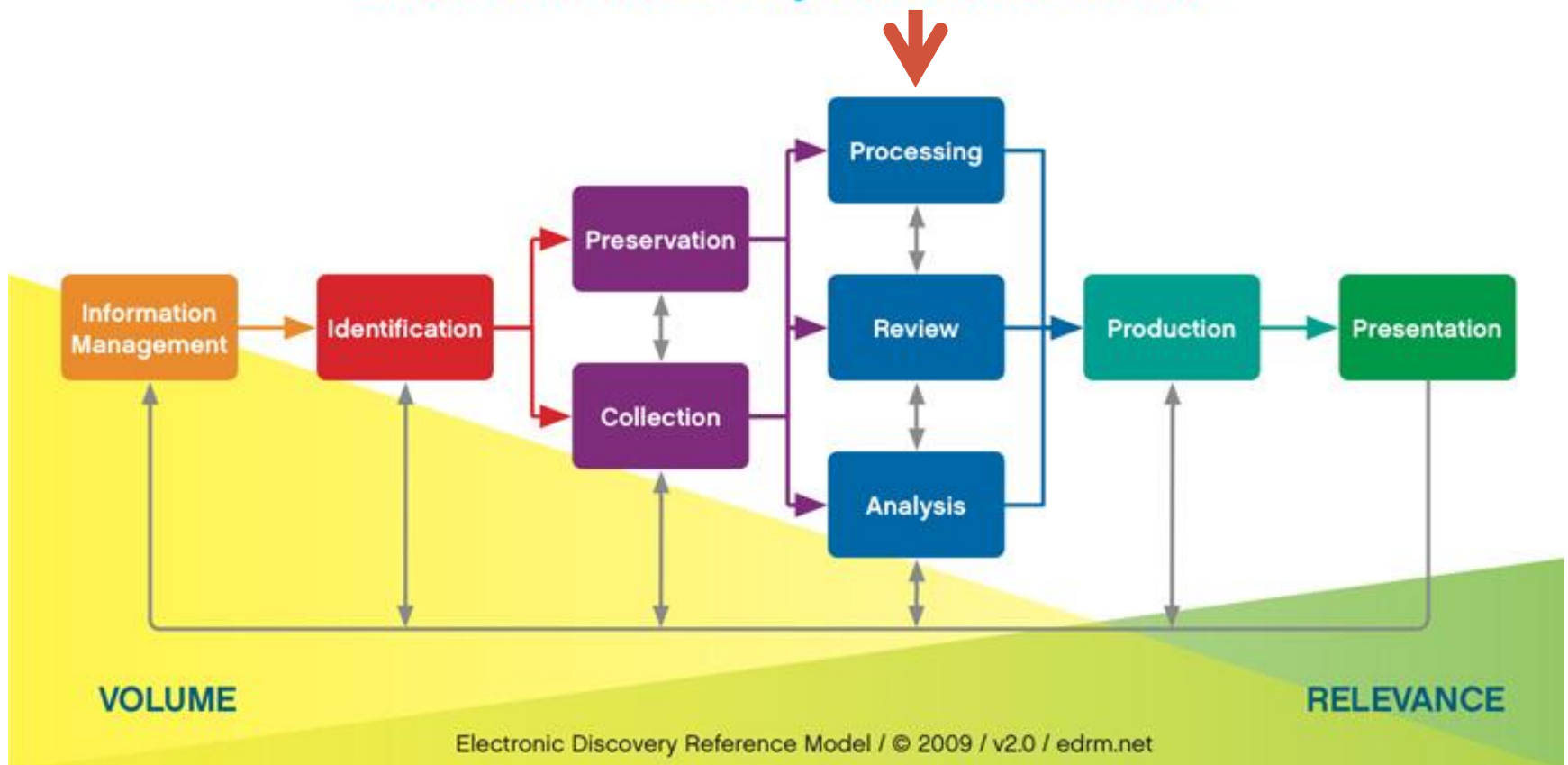
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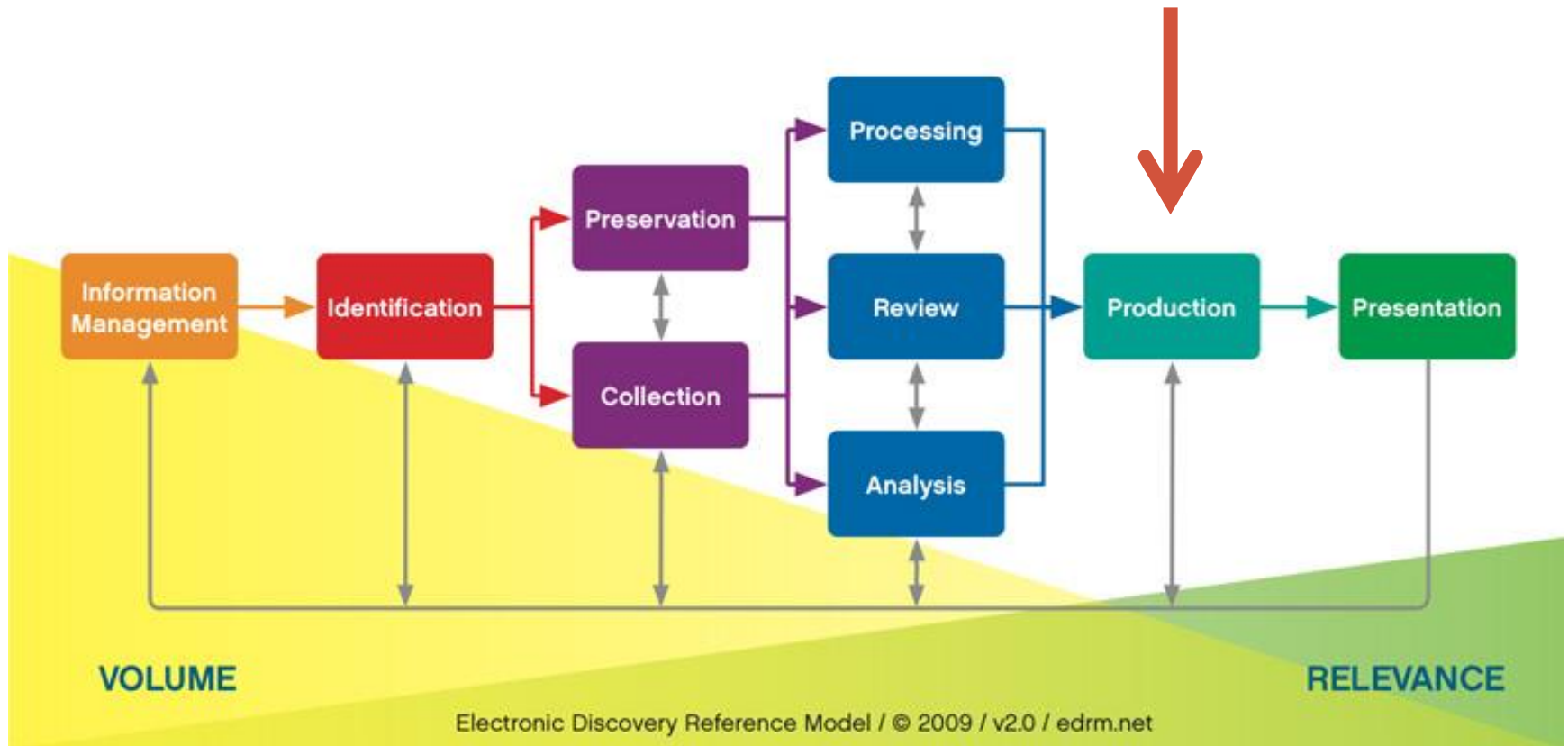
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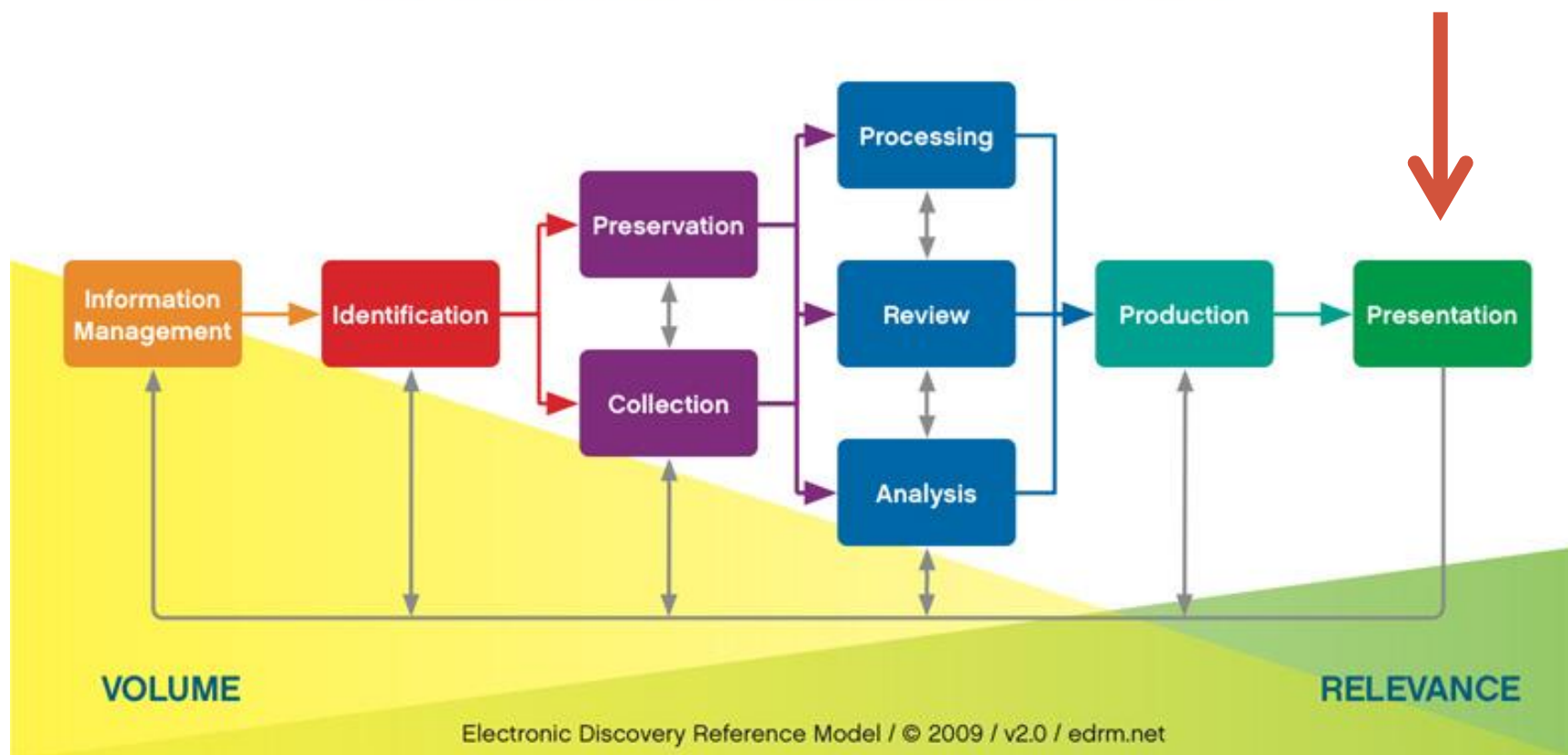
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E-discovery market and trends

- Growing number of published discovery decisions
- Evolving technology to collect, process, and review ESI
- Corporate efforts to manage records more effectively in response to new compliance requirements and the prior two trends.

E-discovery market and trends

- \$1.7 billion in 2013
- Projected \$2.9 billion by 2017

E-discovery market and trends



“Magic Quadrant for E-Discovery Software” - Gartner

Law firm e-discovery services

- Counseling/consultative services
 - 30% of AmLaw 200 requested to assist clients with information governance prior to discovery process
- Project management
- Case assessment
- Data storage for e-discovery data

Law firm e-discovery services

- Cross border e-discovery
 - Obtaining, reviewing and producing documents from servers across the globe
 - Remote review of foreign documents
- Collecting responsive documents from desktop computers at large organizations
- Forensic examination of laptops for evidence of intentional data erasure

Law firm e-discovery services

- Privilege review
- Document retention advice
- Compliance review
 - Sarbanes-Oxley
 - Hart-Scott-Rodino
- E-discovery attorneys

Alternative fee arrangements

- End-to-end pricing
- Incentive-based pricing

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Librarians and KM professionals

- Librarianship

- Search
- Digital archiving
- Digital resource management
- Automation
- Records management
- Project management
- Metadata
- Reporting

- E-discovery

- Review
- Retention
- Data mapping
- Production
- Records management
- Project management
- Enterprise software
- Metadata

Legal search science

- Technology-assisted review
- Multi-modal review

Information governance

- Strategic governance
 - Creation
 - Retention
 - Storage
 - ½ of Am Law 200 firms have e-discovery/information governance committee

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