AI and Litigation Strategies

Compressed Course Syllabus

Levin College of Law

University of Florida

Spring Semester 2021

January 10th—14th

*The exabytes of digital information streaming about us today are rich rivers of evidence that will help us find the truth and move us to do justice more swiftly, more economically and more honorably than ever before. It will require every litigator to master new skills and tools and alter the approaches and attitudes we bring to the adversarial process. We must reinvent ourselves to master modern evidence or be content with a justice system that best serves the well-heeled and the corrupt. The path to justice is paved with competent evidence and trod by counsel competent in its use.*

 *Craig Ball, www.craigball.com*

***Course Description:***

Artificial Intelligence has emerged as a critical tool in the litigation process to achieve outstanding client service and litigation results.

This course will explore the contemporary utilization of artificial intelligence within the litigation process focusing on conducting early and pre-litigation investigations, preparing to take and defend Rule 30 depositions, culling data sets for privilege and work product documents, preparing for the Rule 26(f) case conferences and Rule 26(a) disclosures, and responding to Rule 34 requests for production.

The learning objectives of the course are to provide you with an understanding of, and experience with, the most advanced data technology utilized contemporary litigation.

The course will include an analysis and discussion of contemporary case law and seminal secondary sources regarding the utilization of artificial intelligence in the litigation process. Additionally, throughout the course each student will work hands-on with Reveal®, one of the nation’s most advanced data analytical platforms, performing data analytic litigation activities utilizing a database of actual documents from the Enron litigation.

The course will be taught by William Hamilton, Senior Legal

Skills Professor with 30 years of litigation experience, and George Socha, Senior Vice President of Brand Awareness for Reveal Brainspace and the co-founder of Electronic Discovery Reference Model (“EDRM”). You should know that your instructors working with others at Reveal, principally Strategic Sales Engineer [Charles Duff](https://www.linkedin.com/in/charles-duff-757a2273), have worked hard to design and create the Reveal exercises, videos, and materials for this new course. Mr. Duff will periodically visit our class by Zoom.

***Class time:*** Monday, Tuesday, Wednesday, and Thursday:

 10:00 Am – 11:50 PM, and 1:00 PM – 1:50 PM

 Friday: 1:00 PM – 1:50 PM

***Class Location*:** Holland Hall, UF Law

***I’m not a Computer Geek. Is This Course Over My Head?***

This course does not require any advanced or specialized computer knowledge. The course will cover some very basic computer and computer network operations. As with any course, there will be some new vocabulary. This course is about how advanced litigators use data analytics to obtain the best possible results for their clients.

***Will I Need to Become an Expert in Technology?***

The short answer is “No.” This is a litigation course. However, you will need to commit to learning a modest new “technical vocabulary” and some basic technology concepts and computer operations so you can “walk the walk” while “talking the talk.” The course assumes no prior technical or computer knowledge.

***Will I Need to Master Complicated E-Discovery Software?***

We will be working with one of the nation’s premier data analytic platforms. The course will teach you everything you need to know.

You will find the Reveal platform exciting to work with and through that experience you will gain skills and a perspective that will enhance your career. Each student will receive an ID and Passcode for access to Reveal. The company has established a database for us just for this course.

***How Much Reading and Work Will This Course Require?***

The American Bar Association requires two hours of outside work for each hour of class. This course involves several activities in addition to reading cases and articles. We will endeavor to make sure that the total time demanded by this course does not exceed the ABA requirements considering both the reading and the exercises.

***Who Are Your Professors?***

**Bill Hamilton**

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I joined the UF Law faculty as a time full Legal Skills Professor in 2017 after 30 years practicing complex civil litigation with Holland & Knight in Miami (1983 – 2000) and Tampa (2000 – 2010) and with Quarles & Brady in Tampa (2010 – 2016). Data analytics changed my career when I realized data was a rich source of information that would win cases for my clients. Before leaving the practice of law, I was a UF Law adjunct professor for 10 years and established the UF E-Discovery Project and the UF Law E-Discovery Conference.

While I consider myself a “native” Floridian having spent my entire adult life in Florida, I am originally from Philadelphia. (Yes, you will hear my Philadelphia accent). I earned my undergraduate degree from Lehigh University in Bethlehem, Pennsylvania, and an MA in philosophy from Washington University in St. Louis, Mo. where I focused on 20th century French existentialism. Prior to law school, I worked as was a high school mathematics teacher in Daytona Beach and a community relations specialist for the US Justice Department monitoring Florida school desegregation. I graduated from UF Law in 1983.

Fun fact about me: I created the first Holland & Knight website and coined the domain name <hklaw.com>.

Here are a few links where you can learn more about me.

<https://www.law.ufl.edu/faculty/william-hamilton>

<https://www.law.ufl.edu/areas-of-study/institutes/icair>

<https://www.linkedin.com/in/williamfhamilton>

<http://www.quarles.com/william-bill-hamilton/>

**George Socha**



This is my inaugural voyage as a UF Law faculty member but certainly not my first legal technology rodeo or my first experience with UF Law, having help Bill establish the UF Law E-Discovery Conference. Like Bill, I practiced complex civil litigation, but in Minnesota rather than in Florida. I was first at Popham Haik (1986 – 1996) and then with Halleland Lewis Nilan (1996 – 2003) before leaving a law firm partnership to head out as an eDiscovery consultant. I worked as an independent consultant, expert witness, and special master until 2016 when I joined a major international consultancy, BDO. In 2020, I took my current position with Reveal, where I continue to wear perhaps too many hats, just as I always have. Most notably, in 2005, a longtime collaborator, Tom Gelbmann, and I launched EDRM (edrm.net) which we ran until Tom’s retirement in 2016.

I earned my undergraduate degree from the University of Wisconsin – Madison, a BA in political science with a heavy emphasis on political philosophy. After a stint as a Peace Corps volunteer in Burkina Faso, West Africa, where I ran a poultry project, I headed off to Cornell Law School, from which I graduated in 1987.

Fun fact about me: While in law school, I build a sneakernet, IBM PC based, matter management system for the Legal Aid Clinic, my hangout during my 2nd and 3rd law school years.

***Teaching Philosophy and Instructional Methods***

This course has a practical orientation. The emphasis of the course is on solving practical litigation problems with advanced data analytics.

Our teaching philosophy is in large part captured in ***Make It Stick: The Science of Successful Learning*** by Peter C. Brown.



This course will introduce you to a variety of career paths involving data analytic skills. ***“Designing Your Life: How to Build a Well-Lived Joyful Life,”*** by Burnett and Evans, Alfred A. Knopf (2016), contains helpful strategies to find career directions that will work for you.



***Examination and Grading Policy*:**

Your grade in this course will be determined by attendance points, Reveal data exercise points, and final examination points. The data exercises are graded on pass/fail basis and account for ¼ of your grade. The assignments for each day will be off equal value. Attendance will be ¼ of your grade. The final examination will count for ½ your grade.

***Is this Course Graded on a Curve?***

We prefer that the course not be graded on a curve. However, depending on the class enrollment, the law school may require that the course be graded on a curve. If so, the Registrar will provide your instructors with curved grade range. The class grade average must be within that range.

***Are Smartphones and Laptops Permitted in the Classroom?***

You must bring a laptop to class to participate in group assignment using the Reveal online data analytics platform. You may use digital devices in class to take notes. We will turn our phones off when in class. Please do the same. We expect your attention in class. Nothing life-changing will happen while you are offline.

***What Notes Should I Take in Class?***

We recommend that you not take word-for-word literal notes. This is not a court reporting class! Instead, think about what is happening in class and record the key ideas. Handwriting your notes is better for you than typing notes. Check out this article***:*** [***Note-Taking: Writing vs. Typing Notes***](https://studyskills.com/students/note-taking/%5D.)***.*** Beyond that, it is a good legal skill. You will need to learn to take good witness interview notes, deposition notes, and trial notes. A computer will not always be available or good to use.

***Office Hours and Professor Contacts:***

Our office hours will be Monday, Tuesday, Wednesday, and Thursday of the compressed course, January 10th to January 14th, from 2:00 PM – 3:00 PM in HH 376. You may reach Professor Hamilton by email at hamilton@law.ufl.edu and by cell phone and text at 480.993.8777. You may reach Professor Socha@ gsocha@revealdata.com and by cell phone and text at 651.336.3940.

***Attendance Policy:***

Because this is a compressed course, attendance is critically important. All students are expected to attend all class sessions.

If you are not able to attend any class sessions due to an emergency or unavoidable conflict, you must contact Professor Hamilton in advance. “Attendance will be taken at each class meeting. Students are allowed a single-hour absence during the course. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies#:~:text=co%2Dcurricular%20activities.-,Attendance,regular%20and%20punctual%20class%20attendance.&text=UF%20Law%20policy%20permits%20dismissal,of%2012%20credits%20per%20semester.).”

***Accommodations for students with disabilities***

Students requesting an accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell). Students with disabilities should follow this procedure as early as possible in the semester.

***Examination Delays and Accommodation Policy:***

The law school policy on exam delays and accommodations can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

***Information on UF Law grading policies***

The law school grading policy is available at: https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies

***University policy on academic misconduct:***

Academic honesty and integrity are fundamental values of the University community. You should be sure that they understand the UF Student Honor Code at http://www.dso.ufl.edu/students.php.

***Online Course Evaluation:***

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback professionally and respectfully is available at <https://gatorevals.aa.ufl.edu/students/>.  Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via  <https://ufl.bluera.com/ufl/>.  Summaries of course evaluation results are available to students at [https://gatorevals.aa.ufl.edu/public-results](https://gatorevals.aa.ufl.edu/public-results/)

***Getting Technical help with Canvas:***

For issues with technical difficulties for E-learning in Canvas, please contact the UF Help Desk at:

● Learning-support@ufl.edu

● (352) 392-HELP - select option 2

● https://lss.at.ufl.edu/help.shtml

Other resources are available at http://www.distance.ufl.edu/getting-help for:

* Counseling and Wellness resources
* Disability resources
* Resources for handling student concerns and complaints
* Library Help Desk support

***COVID Related Safety Issues***

We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. Because we will be indoors in a classroom, we will wear face masks and request that you do as well.

***Daily Class Schedule and Assignments:***

The specific daily lessons, objectives, reading materials, assignments, and exercises are below.

We reserve the right to make reasonable adjustments and modifications to the weekly schedule as required by the pace and progress of the class, including, but not limited to additional assignments, readings, and exercises.

First Day: Overview

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# ***Hour 1***: Introduction and Overview

1. Introduction of professors
2. General description of the course and what will be covered
3. Grading rubric
	1. Attendance
	2. Assignments
	3. Final examination
4. General introduction to electronic files and storage
	1. Bits, bytes, kilobytes, gigabytes, terabytes
	2. Basic characteristics of ESI

# ***Hour 2***: Data Analytic Frameworks

1. The civil procedure discovery framework:
	1. FRCP and Florida rules governing ESI
		1. 2006 revisions
		2. 2015 revisions
			1. The Proportionality rule change to Rule 26(b)
2. Conceptual frameworks:
	1. The Sedona Principles
	2. The ERDM Model

# First Day Readings

* [United States v. O’Keefe](https://scholar.google.com/scholar_case?case=16430368982296015309&q), 537 F. Supp. 2d 14 (D.D.C. 2008).
* Victor Stanley, Inc. v. Creative Pipe, Inc., 250 F.R.D. 251 (D. Md. 2008)
* Watch movie “Decade of Discovery”
* Blair & Maron, “An Evaluation of Retrieval Effectiveness for a Full-Text Document-Retrieval System,” (1985), <https://www.eurospider.com/images/pddfs-ect/blair-maron-evaluation.pdf>
* Grossman & Cormack, “Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review,” Richmond Journal of Law & Technology, Vol VII, Issue 3. (2011), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1344&context=jolt>
* Livingston v. City of Chicago, No. 16 CV 10156, (N.D. Ill. Sept. 3, 2020)
* FRCP eDiscovery rules
1. The 80% problem: documents review
2. Keyword search:
	1. The historical approach narrowing scope and reducing costs
	2. Dissatisfaction with keyword search: the tension and dynamic between precision and recall; natural language processing

# ***Hour 3***: Data Analytics Industry and Tools

1. Data analytics industry
	1. A brief history
	2. The respective roles of think tanks, clients, law firms, LSPs, and software platforms
2. Reveal’s platform: an introduction and overview
3. The analytical search shift beyond keywords
	1. Data volume
	2. Computer power
4. The emergence of artificial intelligence as a legal solution
	1. AI defined
	2. Explaining the use of AI in discovery
* Intelligence in eDiscovery” (2020), <https://edrm.net/wiki-category/ai-ediscovery/> (overview only)
* Socha, “After 15 Years, Has the eDiscovery EDRM Model Been Realized?” (2020), <https://resource.revealdata.com/en/blog/after-15-years-has-the-ediscovery-edrm-model-been-realized>
* Socha,“What Is Relevant Data?” (2021), <https://resource.revealdata.com/en/blog/what-is-relevant-data>
* Socha, *“What Is Document Review?” (2021)*, <https://resource.revealdata.com/en/blog/document-review>
* Socha, “Legal AI Software: Taking Document Review to the Next Level” (2020), <https://resource.revealdata.com/en/blog/legal-ai-software-document-review-next-level>
* EDRM, “The EDRM Model”, <https://edrm.net/edrm-model/>

Second Day: AI and Investigations

***Hour 1***: AI Communications Analysis

1. AI Tools: Basic conceptual framework
	1. Anomaly detection and analysis
	2. Unsupervised machine learning
	3. Supervised machine learning
	4. Natural language processing
2. AI communication analysis
	1. What it is
	2. Why it matters
	3. Demonstration
	4. Exercise: communications analysis with Reveal AI

***Hour 2***: AI Sentiment Analysis

1. AI sentiment analysis: What it is
2. Why it matters
3. Demonstration
4. Exercise: sentiment analysis with Reveal AI

***Hour 3***: Image Analysis

1. AI image analysis: what it is
2. Why it matters
3. Demonstration and Exercise

Second Day Readings

* Socha, “AI in the Legal Sector – the Obvious Choice” (2020), <https://resource.revealdata.com/en/blog/ai-in-legal-sector-obvious-choice>
* Socha, “Pattern Recognition Software for Legal Compliance” (2021), <https://resource.revealdata.com/en/blog/pattern-recognition-software-for-legal-compliance>
* Socha, “11 Reasons Lawyers Love Reveal's Brainspace Cluster Wheel” (2021)*,* <https://resource.revealdata.com/en/blog/lawyers-love-reveals-brainspace-cluster-wheel>
* Socha, “Image Recognition and Classification During Legal Review” (2020), <https://resource.revealdata.com/en/blog/image-recognition-classification-during-legal-review>
* Socha, “AI Image Recognition: The eDiscovery Feature You Didn't Know Existed” (2021), <https://resource.revealdata.com/en/blog/ediscovery-ai-image-recognition>
* Socha, “Image Recognition and Classification During Legal Review” (2020), <https://resource.revealdata.com/en/blog/image-recognition-classification-during-legal-review>
* Socha, “The Exquisite eDiscovery Magic of Data Anomaly Detection” (2021), <https://resource.revealdata.com/en/blog/exquisite-ediscovery-magic-data-anomaly-detection>

 Third Day: AI and Litigation Events

***Hour 1***: FRCP 26(f)

1. FRCP 26(f) responsibilities and obligations
2. Setting and managing 26(f) conference expectations: client, opposition, and court
3. Using AI to prepare for 26(f) conference
	1. Finding key custodians, communications, and related information
	2. Ascertaining likely amounts of relevant data, time frames, proportionality
	3. Identifying the scope of privilege and confidentiality
4. Preparing for the Rule 26(f) data disclosure and planning exercise with Reveal

***Hour 2***: AI and Deposition Preparation

1. Using AI for deposition preparation
	1. Developing deposition topics and gathering topic documents
	2. Learning more about the witnesses and witness context
	3. Developing timelines

Third Day Readings

* Socha, “What Do Data Scientists Do?” (2021), <https://resource.revealdata.com/en/blog/what-do-data-scientists-do>
* Hamilton, “Seven Deadly Sins of the Rule 26(f) Conference”
* Facciola and Redgrave, “Asserting and Challenging Privilege Claims in Modern Litigation: The Facciola-Redgrave Framework,” Federal Courts Law Review, Vol.4, Issue 1 (2009)
* Beck, Tips and Strategies to Improve Your Depositions, ABA Journal, April 9, 2019,

<https://www.americanbar.org/groups/litigation/committees/products-liability/practice/2019/tips-and-strategies-to-improve-your-depositions/>.

* 1. Using AI during the deposition
	2. Nuances of different deposition types
		1. Fact witnesses
		2. 30(B)(6) witnesses
		3. Expert witnesses
1. Exercise: Preparing for the witness deposition with Reveal AI

***Hour 3***: AI and Privilege Review

1. The law of privilege and privilege waiver
2. Historical challenges with privilege claims and waiver
3. Defining and identifying privileged content: the problem of overbreadth
4. Using AI to find privileged content
5. AI Exercise: efficiently identifying privileged documents with Reveal AI

 Fourth Day: Technology Assisted Review

 (TAR)

***Hour 1***: Early TAR

1. The early challenges of TAR
	1. Cost - creating the seed set
	2. Testing the seed set
	3. Transparency
	4. Proportionality
	5. Ranking concerns
	6. Defensibility
	7. The binary illusion: TAR versus keyword

***Hour 2***: The Response

1. The introduction of precision and recall
2. The emergence of TAR 2.0 / active learning
3. Differences between CAL, SPL, and SAL
4. TREC study results

***Hour 3***: TAR in Action

1. Built-in AI models (thumbs up, thumbs down)
2. In-class TAR demonstration using Reveal software
3. In-class TAR exercise using Reveal AI software
4. Challenges
	1. Negotiating TAR protocols
	2. Quality control and testing
* Grossman & Cormack, “Continuous Active Learning for TAR” (2016)(basic overview), <https://plg.uwaterloo.ca/~gvcormac/caldemo/AprMay16_EdiscoveryBulletin.pdf>
* Grossman & Cormack, “The Grossman Cormack Glossary of Technology Assisted Review” (2013)(basic overview), <https://cormack.uwaterloo.ca/targlossary/>
* Tredennick, “TAR for Smart People” (2016)(first two chapters), <https://judicialstudies.duke.edu/sites/default/files/centers/judicialstudies/TAR_conference/Panel_2_TAR_for_Smart_People.pdf>
* Kleen Prods. LLC v. Packaging Corp. of Am., 2012 WL 4498465 (N.D. Ill. 2012)
* Winfield v. City of New York, 2017 WL 5664852 (S.D.N.Y. 2017)
* EDRM, “Technology Assisted Review (TAR) Guidelines” (2019), <https://edrm.net/wiki/technology-assisted-review-tar-guidelines/>
* Socha, “What is Technology Assisted Review?”(2021), <https://resource.revealdata.com/en/blog/technology-assisted-review>
* Socha, “5 Things You Can Do with Supervised Machine Learning” (2021), <https://resource.revealdata.com/en/blog/supervised-machine-learning>
* Socha, “Layering Legal AI Models for Faster Insights”(2021), <https://resource.revealdata.com/en/blog/layering-legal-ai-models-faster-insights>
* Socha, “What Is an AI Model?” (2021), <https://resource.revealdata.com/en/blog/what-is-an-ai-model>
* Socha, “Layering Legal AI Models for Faster Insights”(2021), <https://resource.revealdata.com/en/blog/layering-legal-ai-models-faster-insights>
* Da Silva Moore v. Publicis Groupe, 287 F.R.D. 182 (S.D.N.Y. 2012)
* In re Valsartan, Losartan, and Irbesartan Prod. Liab. Litig., No. 19-2875 (RBK/JS) (D.N.J. Dec. 2, 2020)

 Fifth Day: Privacy and Course Wrap-Up

***Hour 1***: Data Privacy

1. Data privacy frameworks
	1. GDPR (European General Data Privacy Regulation)
	2. CCPA (California Consumer Privacy Act) and related state frameworks
2. Redactions and tagging/labeling documents with personal identifying information
3. DSARs (Data Subject Access Request)
	1. DSAR framework
	2. Challenges responding to DSARs
4. Using AI to identify protected information and responding to DSARs
5. Data privacy identification (DSAR) exercise with Reveal AI

***Hour 2***: Course Review, Summary, and Conclusion

1. Course summation & class discussion
2. Future direction of AI in litigation
3. Future study topics and resources

Fifth Day Readings

You are *not* expected to go through the Fifth Day Readings in depth.

* The European Union, “Complete Guide to GDPR Compliance”, <https://gdpr.eu/>
* State of California Department of Justice, “California Consumer Privacy Act (CCPA)”, <https://oag.ca.gov/privacy/ccpa>
* The European Union, “Right of access by the data subject”, <https://gdpr-info.eu/art-15-gdpr/>
* “Taming the DSAR Request Beast with eDiscovery Technology,”

<https://resource.revealdata.com/en/blog/taming-dsar-request-beast-ediscovery>.