E-discovery has shaken up litigation across America. Judges are dealing with e-discovery issues that were unheard of ten years ago. Arbitrators are trying to figure out e-discovery’s impact in international and domestic arbitration.¹ Case law is developing in a number of areas, and conflicting decisions are not unusual. E-mail strings, backup tapes, keyword searches, production in native format, “RAM,” “cache,” inaccessibility—this is the jargon of “data,” not “documents.” Lawyers may have to associate litigation support personnel or third-party “e-discovery” vendors to generate or respond to discovery requests, or to support or contest motions for sanctions. The new world of “electronically stored information” has generated a number of questions that lawyers and judges have never had to consider or now have to consider in contexts where both large amounts of time and money may be at stake.

In this book, I synthesize the case law surrounding a number of these questions.² I will warn readers now that the answers are not necessarily clear in every context. Some decisions may seem irreconcilable; unique facts will make unique law. If readers take away any overall theme from this book it should be this: reasonableness should be the standard of discovery conduct for all litigants, and judges must stay engaged in the e-discovery arena to enforce Rule 1’s mandate that the federal rules of civil procedure “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.”

² These questions were prompted in part by the “Electronic Discovery” class I taught at the University of Miami Law School in the fall of 2007.