Discovery is the inescapable, enduring feature of modern civil litigation. Since 1960, the U.S. civil justice system has witnessed a litigation explosion and trial implosion. The number of cases has skyrocketed, but the number of trials has declined—both proportionately and, in federal court, absolutely.¹ Chief Judge William G. Young of the District of Massachusetts has eloquently encapsulated the vanishing trial phenomenon: “The American jury system is withering away.”²

Putting aside all other issues raised by the vanishing trial phenomenon, it clearly accentuates the critical importance of discovery. Parties evaluate cases, and make judgments about settlement value and other disposition techniques, in light of the evidence gathered in discovery. Effective discovery is crucial.

This book teaches effective discovery. Judge Grimm and Messrs. Fax and Sandler interweave practical advice with salient case law and keen observations honed by decades of experience. They examine in detail the many nettlesome problems presented by discovery, including electronic discovery, in light of the strictures imposed by the Federal Rules of Civil Procedure.

This new edition takes into account important developments since the second edition was published in 2009, including the December 1, 2010, expert witness amendments to the Federal Rules of Civil Procedure. This edition deftly examines critical issues that have emerged concerning what these expert witness amendments now cloak with work-product protection and what they leave subject to discovery.

¹. See Am. Coll. of Trial Law., The “Vanishing Trial:” The College, the Profession, the Civil Justice System at § 1, pp. 5–10 (Oct. 2004); Marc Galanter, The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts, 1 J. EMPIRICAL LEGAL STUD., No. 3 (Nov. 2004); Thomas H. Cohen & Steven K. Smith, Civil Trial Cases and Verdicts in Large Counties, 2001, BUREAU JUST. STAT. BULL. at 9, tbl. 10 (U.S. Dep’t of Just. Apr. 2004).

This third edition also continues its keen focus on practice under the 2006 electronic discovery amendments to the Federal Rules. Electronic discovery is inherently different from other types of discovery,³ and this book insightfully takes those differences into account.⁴

H. L. Mencken once wrote, “For every complex problem there is an answer that is clear, simple, and wrong.” There is no single, clear, simple answer to the complex issues raised by discovery, especially in this era of spoliation. Parties engaged in discovery seek not merely to find documentary evidence but rather to find evidence that documents have been destroyed. But there are effective, straightforward approaches to discovery and to addressing spoliation issues. This book deftly captures them. This volume is an invaluable resource for discovery techniques and for associated motion practice.

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⁴. “[T]he burdens and costs associated with electronic discovery, such as those seeking ‘all email,’ are by now well known, and district courts are properly encouraged to weigh the expected benefits and burdens posed by particular discovery requests (electronic and otherwise) to ensure that collateral discovery disputes do not displace trial on the merits as the primary focus of the parties’ attention.” Regan-Touhy v. Walgreen Co., 526 F.3d 641 (10th Cir. 2008).