

H5

Quality in E-Discovery: Measuring *and* Achieving It

E-Discovery Webinar

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- Definitions
- View from the bench
- Challenges
- Developing a quality assurance framework + case study
- Tips for measuring and achieving quality

- Meets legal and compliance requirements
- Defensible
- Proportional
- Adaptable
- Tailored

Definitions: Quality Control and Quality Assurance

- **Quality control:** a method for screening out defective outcomes of a deficient process
- **Quality assurance:** a scientific methodology including measurement, implemented to ensure that a process generates quality results

- *McPeck v. Ashcroft*
202 F.R.D. 31 (D.D.C. 2001)
- *Rowe Entertainment v. William Morris Agency*
205 F.R.D. 421 (S.D.N.Y. 2002)
- *In re Seroquel Products Liability Litigation*
244 F.R.D. 650 (M.D. Fla. 2007)
- *PSEG Power v. Alberici Constructors*
2007 WL 2687670 (D.D.C. Sept. 7, 2007)
- *U.S. v. O'Keefe*
537 F. Supp. 2d 14 (D.D.C. 2008)
- *Equity Analytics v. Lundin*
248 F.R.D. 331 (D.D.C. 2008)
- *Heriot v. Byrne*
2009 WL 742769 (N.D. Ill. Mar. 20, 2009)
- *The Sedona Conference® Commentary on Achieving Quality in the E-Discovery Process*, <http://www.thesedonaconference.org>

Clawback of privileged documents denied:

- Vagueness about
 - Description of 70 keywords
 - How they were developed
 - How search was conducted
 - Quality assurance procedures
- Lack of sampling/quality testing of privileged set

*250 F.R.D. 251 (D. Md. 2008)

William A. Gross Construction v. American Manufacturers Mutual Ins.*

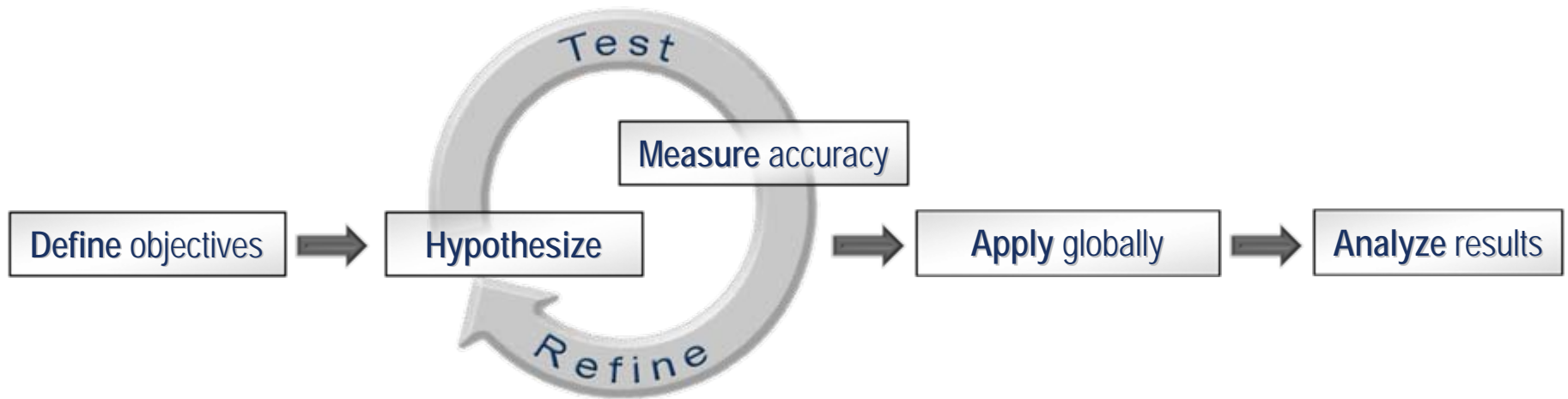
“This Opinion should serve as a wake-up call ... for careful thought, quality control, testing, and cooperation with opposing counsel in designing search terms or ‘keywords’ ...”

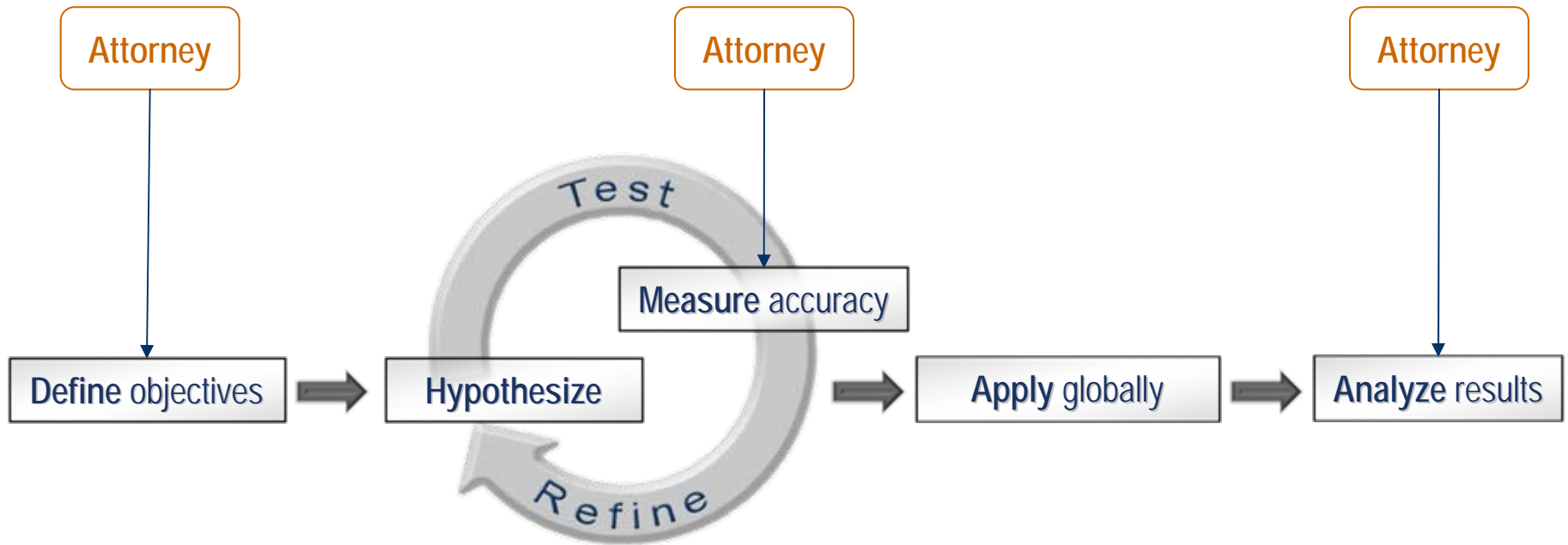
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC# DATE FILED: 3/19/09
----- x	
WILLIAM A. GROSS CONSTRUCTION ASSOCIATES, INC.,	:
Plaintiff,	: 07 Civ. 10639 (LAK) (AJP)
-against-	: <u>OPINION AND ORDER</u>
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY,	:
Defendant.	:
----- x	
ANDREW J. PECK, United States Magistrate Judge:	
<p>This Opinion should serve as a wake-up call to the Bar in this District about the need for careful thought, quality control, testing, and cooperation with opposing counsel in designing search terms or “keywords” to be used to produce emails or other electronically stored information (“ESI”). While this message has appeared in several cases from outside this Circuit, it appears that the message has not reached many members of our Bar.</p>	
FACTS	
<p>This case involves a multi-million dollar dispute over alleged defects and delay in the construction of the Bronx County Hall of Justice, also known as the Bronx Criminal Court Complex. See <i>William A. Gross Constr. Assocs., Inc. v. American Mfgs. Mut. Ins. Co.</i>, 07 Civ. 10639, 2009 WL 427280 (S.D.N.Y. Feb. 23, 2009) (Peck, M.J.). The Dormitory Authority of the State of New York (“DASNY”) was the “owner” of the project. Non-party IED International is DASNY’s current</p>	
e-2010005400	

*256 F.R.D. 134 (S.D.N.Y. 2009)

- Baseline challenges
 - Ever-changing types of ESI
 - Global distribution
- Process and technology challenges
 - Developing cost-effective, transparent process, including measurement
 - Documenting and being able to explain your process
 - Choosing appropriate, scalable technology
 - Using the right team
 - Tailoring the approach to each matter

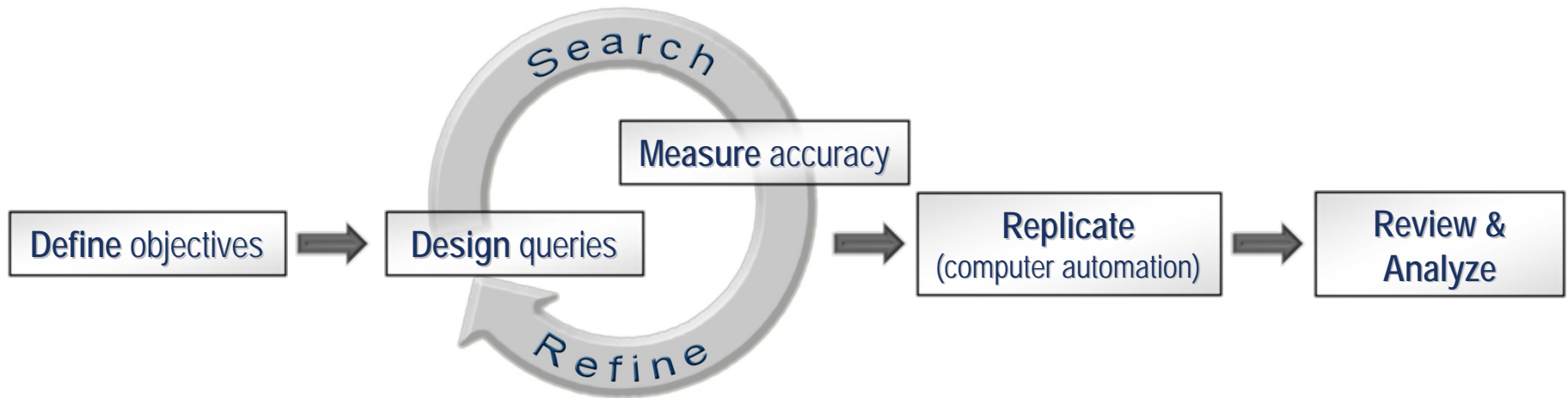
- Execution challenges
 - Deficient knowledge transfer
 - Lack of consistency
 - Lack of quality assurance





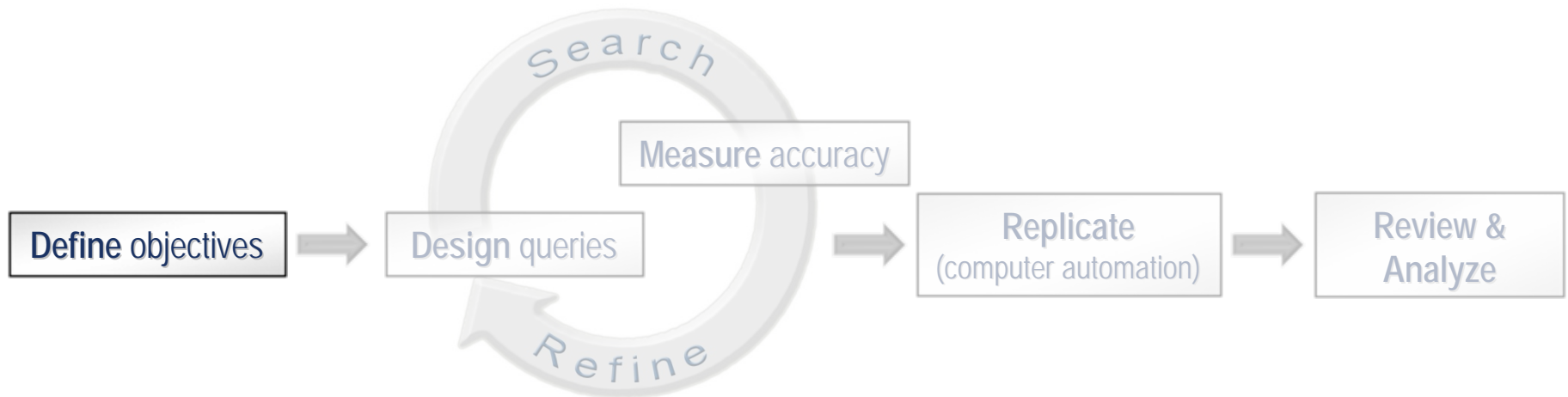
Case Study

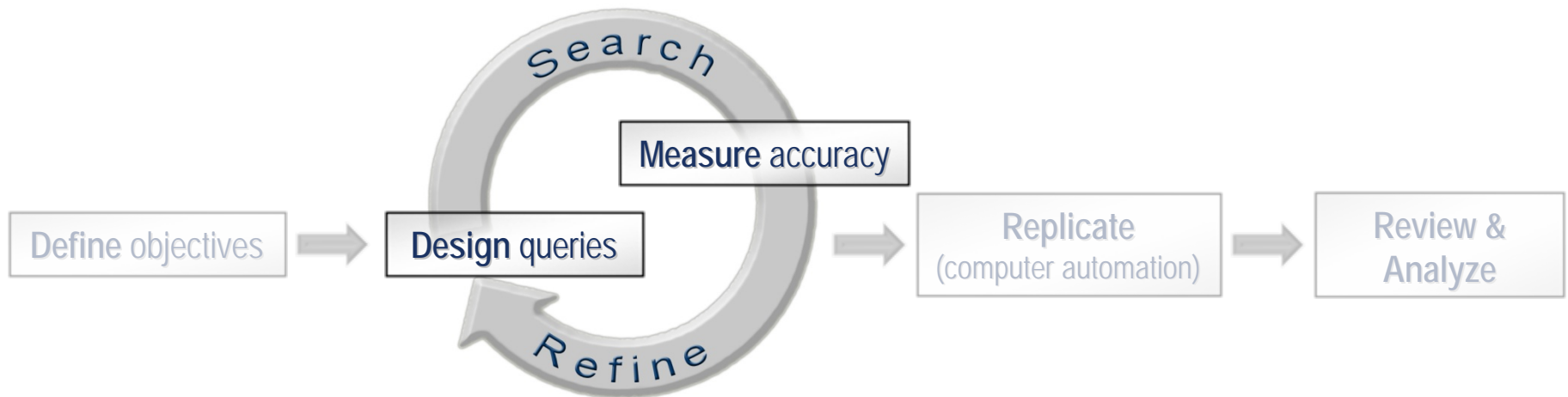
Search and Review for Production

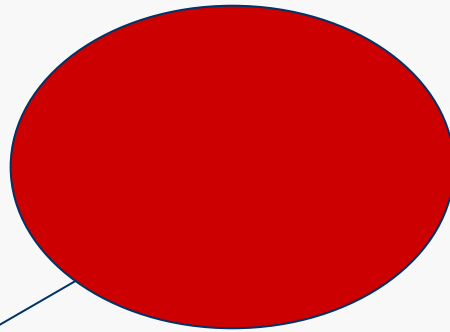


Case Study

Defining Objectives

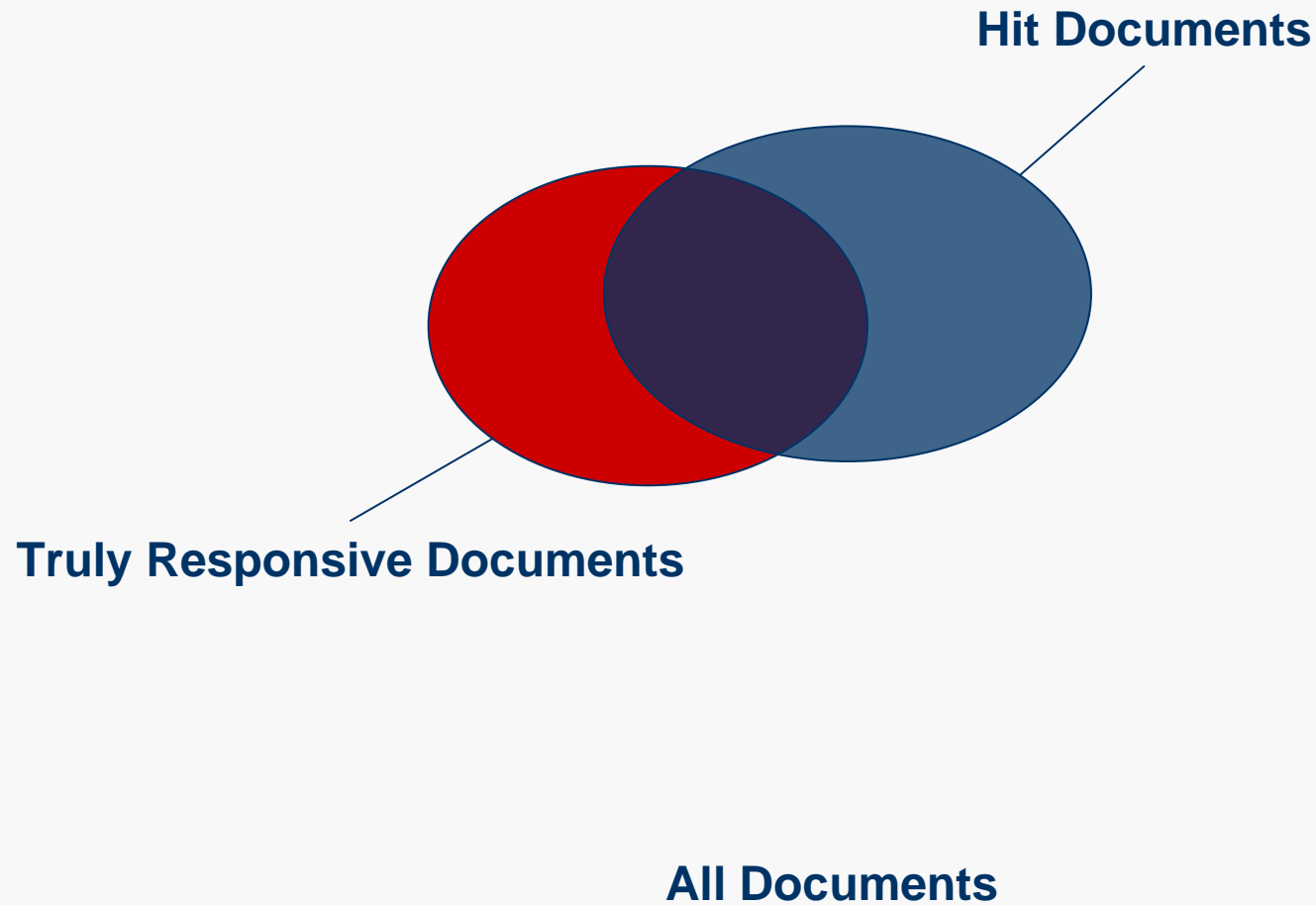


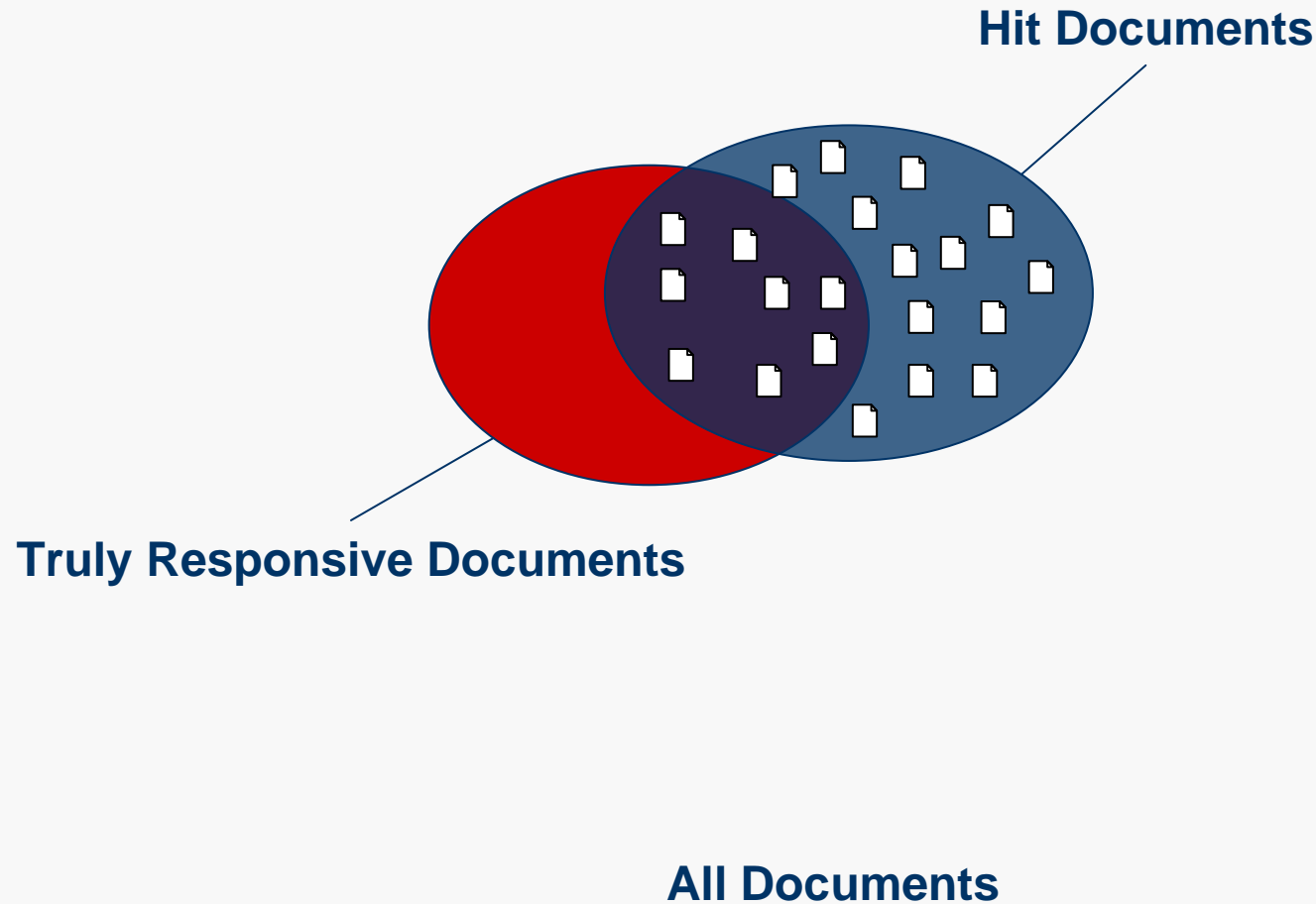


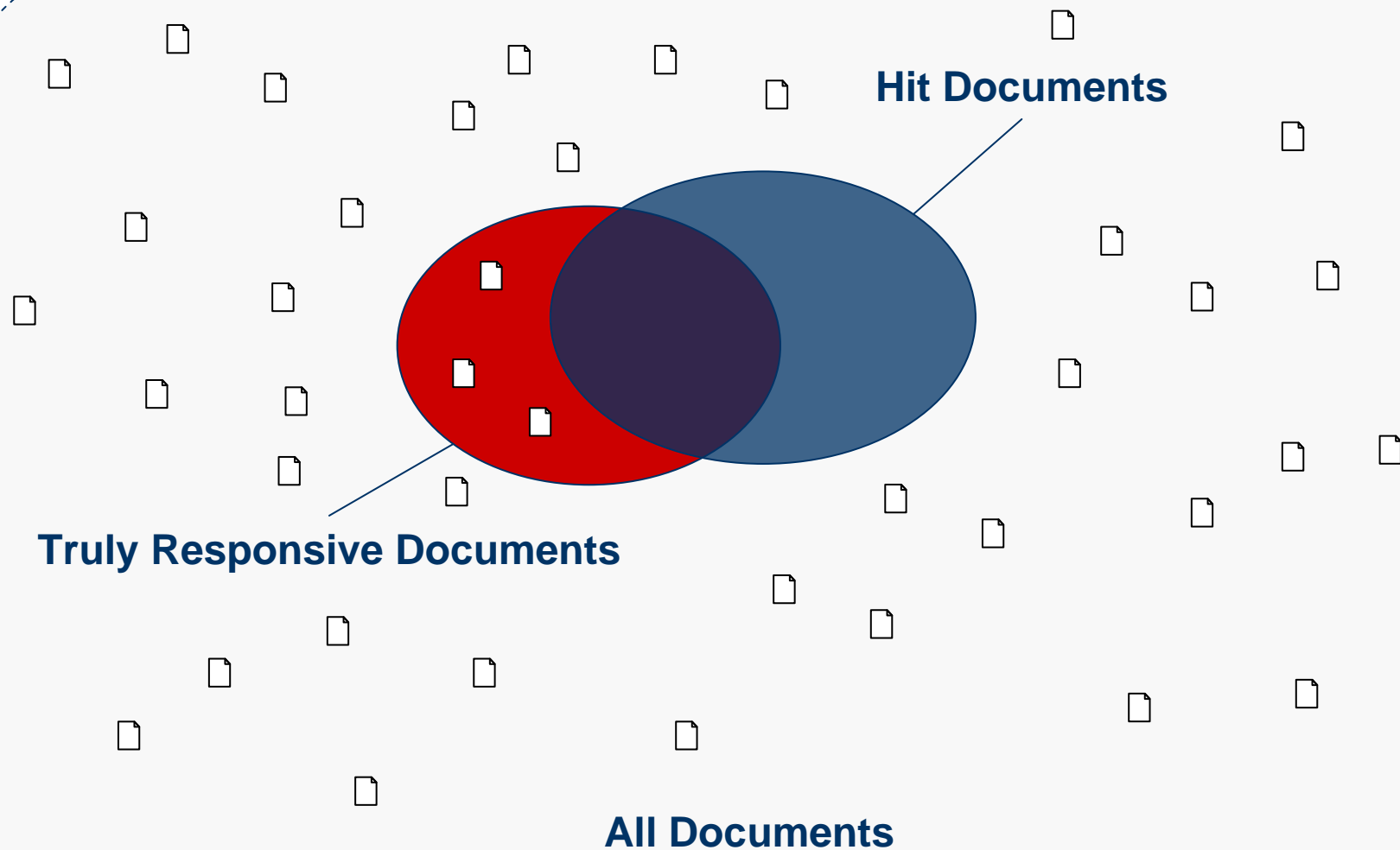


Truly Responsive Documents

All Documents

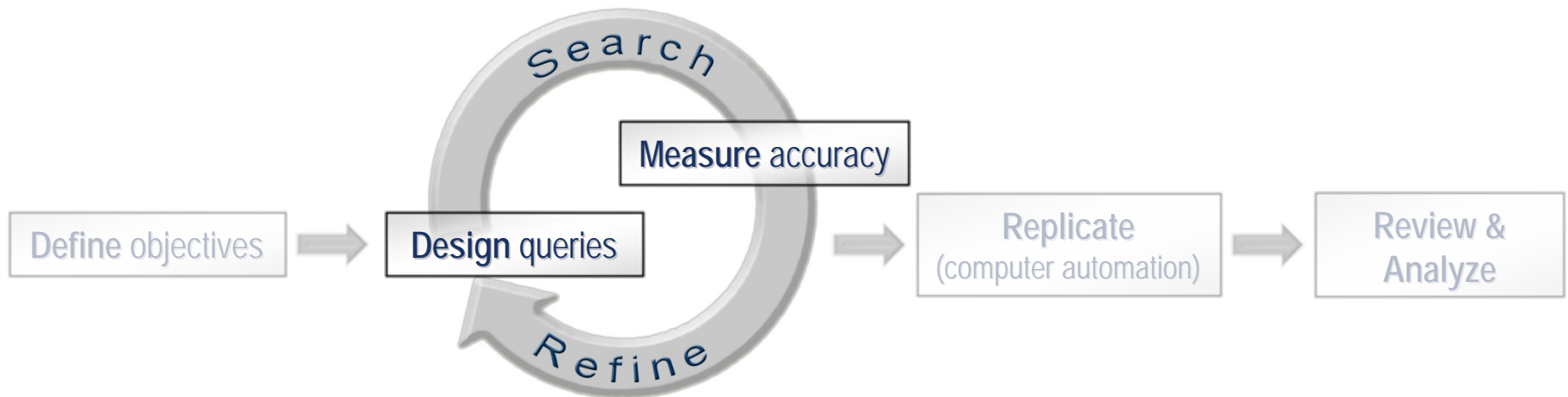






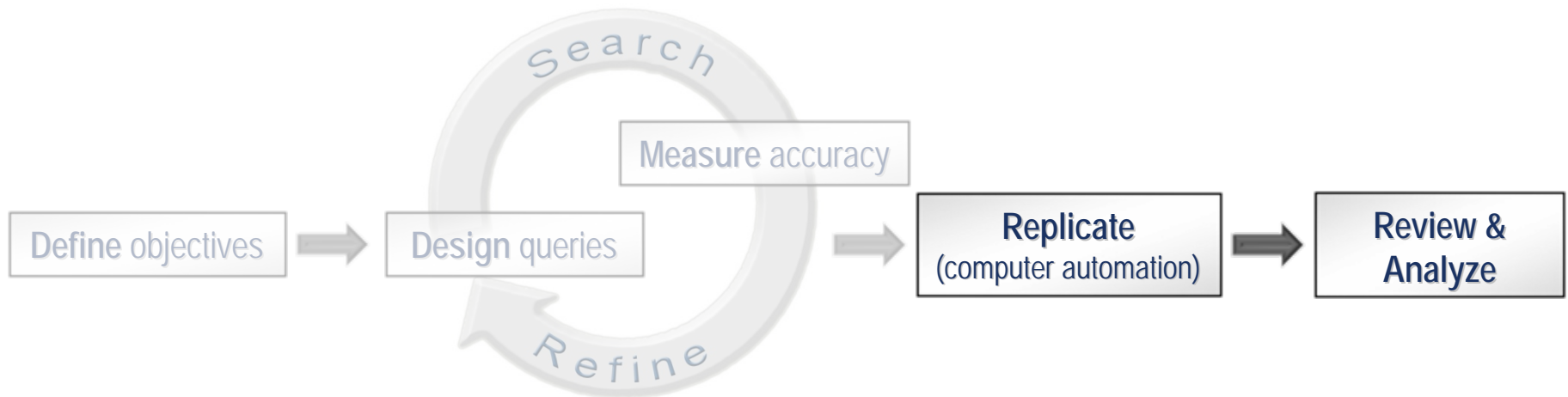
Case Study

Searching and Refining



Case Study

Replicating and Reviewing



Practical Tips for Measuring and Achieving Quality

- Inform yourself about the infrastructure and ESI-related policies of the organization
- Use scalable technology
- Build the right team, including experts as necessary
- Create a cost-effective, defensible process with a quality assurance framework
 - Define objectives
 - Iterate and refine
 - Measure as appropriate throughout the process
- Document and be able to explain your e-discovery processes

Questions

- The Sedona Conference® Website: www.thesedonaconference.org
- The TREC Legal Track Website: trec-legal.umiacs.umd.edu
- D.C. Blair and M.E. Maron. (1985) “An Evaluation of Retrieval Effectiveness for a Full-Text Document-Retrieval System.” *Communications of the ACM* 28 (3), 289-299.
- H5 Website: www.h5.com