

It's the Law: Litigation Tools for Information Governance

Gordon E.J. Hoke, IGP, CRM

Can a computer tell the difference between:

- Dear *Bill*, I hope you and *Sue* can join me and Lorraine for a *party* on our new patio. The *contractor* did a great job.

- Dear *contractor*: your work on our patio was terrible. As the *party* of the first part, we refuse to pay your *bill* and we reserve the right to *sue* you.

If so, how do those capabilities apply to the civil law and litigation?

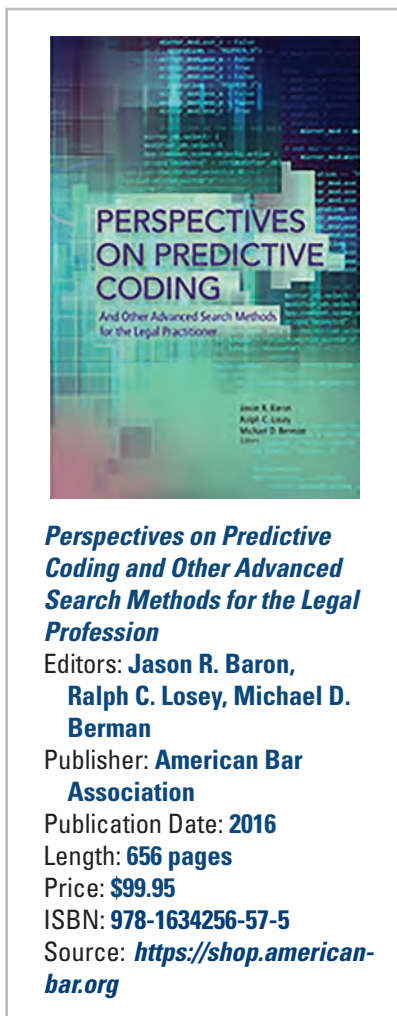
Overview of the Book

The editors of *Perspectives on Predictive Coding* present collected articles that recount how – through the push of tech-savvy judges and the pull of The Sedona Conference® – the legal profession has been forced to accept, and even practice, automated textual tools in civil litigation.

In 20 chapters, each with an introduction by one of the editors, this compendium reveals the evolution and facets of computerized e-discovery. This is laid out in relatively simple language. The target audience is the legal profession, and the editors understand that few members of the bar received education in technology.

Perspectives on Predictive Coding's forward by The Hon. Andrew Jay Peck and significant parts of the first two (of four) sections summarize the case law that justifies – if not requires – litigators to use technology to discover documentary evidence. Culturally, the legal profession has resisted employing technological assistance. Repeating the logic, justification, and benefits of automation is apparently necessary.

As editor Jason R. Baron, a lawyer at Drinker Biddle, LLP, pens in the introduction, "...there appear to be voices in the profession questioning whether predictive coding has been oversold or overhyped. [There is]



resistance...to wholesale embrace of the types of algorithmics and analytics on display throughout this volume." This book, he adds, "...represent[s] the future of e-discovery and the legal profession as it will come to be practiced into the foreseeable future, by a larger and larger contingent of lawyers."

The Evolution of Predictive Coding

Sections one and two effectively lay out the logic of predictive coding as it evolved from simple word search to ever-more sophisticated logical schema and statistical analysis. The articles reveal that predictive coding

started with key words, although limitations quickly manifested. Various logical approaches and formulae added incremental sophistication to searches for salient documents, and the usefulness of the technology improved. Vendors peddled software "solutions" under various names: predictive coding, text analytics, computer-assisted review, technology-assisted review, and others.

Standards Needed?

The third section of articles, "Information Retrieval Perspectives; E-discovery Standards," considers the need for, and possibility of, standards for the performance of predictive coding, including ISO standards. This step appears necessary 1) to pierce the marketing hype of software solution developers and 2) to raise the level of confidence of the plaintiffs, defendants, and judiciary in the employed methodologies.

Predictive Coding: In Practice

"Analytics and the Law," the final collection of articles, addresses the practical application of predictive coding and related technologies. Inevitably, this section considers the obligation of lawyers using newer/higher technology to work constructively with experts in other professional disciplines. Few attorneys are adept at harnessing and applying technologies, so a partnership with IT experts is essential. In the same way, few lawyers are practiced in the discipline of records management, including taxonomies, provenance, policies, and procedures, so they need to rely heavily on records experts for this expertise.

The ringing conclusion of this tome is that the inter-disciplinary cooperation that is essential for lawyers to succeed in this area is information governance.

A Useful Foundation

Perspectives on Predictive Coding is an engaging treatment on the need, logic, development, case law, and application of this essential technology. It is an admirable and accessible primer. Written primarily for the legal profession, it is nonetheless useful to other professional disciplines that work with lawyers and courts. This collection will last as a foundation of predictive coding. However, the field and the tools are ever-evolving. Each legal situation is unique, and each will require a talented and well-versed practitioner,

such as an information governor, to choose the “right tool for the job.”

The next evolutionary step is likely to employ context and syntax analytics to identify a document’s

intent as well as its content. This reviewer encourages the editors to provide regular editorial updates, perhaps in a blog, as the subject evolves. **E**



About the Author: Gordon E.J. Hoke, CRM, IGP, is an author/journalist focusing on information governance (IG). He is a retired consultant and practitioner, having evolved from content management and records management to IG. Hoke blogs at www.PositivelyRIM.blogspot.com. His 300 articles, white papers, and case studies have appeared in *Information Management*, *Healthcare Informatics*, and *Metropolitan Corporate Counsel*. Hoke has lectured at universities and spoken at regional, national, and international conferences. He can be reached at ghoke@mind-spring.com.