

# **Equivio Themes: Shifting the eDiscovery Focus Back to Lawyers Looking for Evidence**

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*White Paper*

*by*

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zoom in. find out



*This paper is written by Chris Dale of the UK-based eDisclosure Information Project in conjunction with Equivio. Equivio develops software for eliminating data redundancy and for helping lawyers and investigators to cut through large volumes of documents quickly and efficiently to find the few which matter.*

The emphasis in eDiscovery / eDisclosure in recent years has been on mechanics and process, as ever-increasing volumes, tighter restrictions on time and cost, and fear of sanctions have relegated the lawyers' investigative role behind that of IT specialists and data analysts. Attention is shifting, in many jurisdictions, to finding what really matters, and to the role of senior lawyers and case strategists and in achieving that quickly. Equivio Themes is designed for just that purpose.

The benefits go beyond the case-by-case advantages of evidence-finding, budgets, strategy and tactics. Lawyers prefer being lawyers to being merely part of a process, and software designed to maximize human input restores the lawyers' traditional role in C21st guise.

## EQUIVIO THEMES

Equivio Themes is the latest addition to Equivio Zoom, a platform which includes Equivio's tools Near-Duplicates, Email Threads, the predictive coding tool Relevance, and other applications for grouping, refining and reducing document volumes. Underlying these applications are sophisticated text analytical tools: for example, one document is a near-duplicate of others because it has the requisite degree of similarity in its content, and the predictive coding algorithms in Equivio Relevance analyse the attributes which distinguish relevant from non-relevant documents. Equivio Themes carries this to the next level, bringing software analysis closer to the way humans think.

One of the recurring features in Equivio's applications is that their names clearly relate to their functions, and Equivio Themes is no different. A "theme" is a central topic which runs through a narrative - what it is about; in music, it is a melodic subject which is developed with variations. A document collection will have many themes, and any one document may touch on multiple themes and variations on those themes. A document is not just a single entity, nor is it merely a collection of potential keywords - it may be "about" subjects without referring directly to them and multiple documents may, perhaps subliminally, have more than one topic in common with others. Few conspirators describe their activities in terms as a "conspiracy", anti-competitive behaviour is rarely described as such, and instructions to delete or shred documents are usually couched in indirect terms; one needs sophisticated tools to flush out things of this kind.

Equivio Themes can be used at any point in a case, but its greatest value comes at the beginning. Its first stage is one of computer analysis of semantic content, identifying salient themes and giving them meaningful labels.



Having built a vocabulary of themes, the application then uncovers the network of relationships between them and the documents, displaying the results in graphical form or as lists according to the user's choice. Just this step alone is valuable: one of the characteristics of a discovery collection is that the user does not know what is in there, and anything which makes it easy to understand - or just see - this is valuable.

The collection of themes provides a high-level view of the content, something which it would take weeks of work to produce by conventional means. The user – the senior lawyer, subject-matter expert or case strategist -- can pick a theme and explore it, navigating laterally to related themes, and drilling downwards for more detail with a “find similar” documents function. Because Themes is part of Equivio Zoom, the other tools are immediately to hand, allowing different ways of slicing and dicing the data without leaving the application.

## APPLYING EQUIVIO THEMES TO EDISCOVERY AND INVESTIGATIONS

There is an obvious level at which it is beneficial to be able to identify key documents quickly. Time and cost are saved if one can eliminate, or at least relegate, documents of little or no significance and focus on those which are important. Civil jurisdictions are increasingly requiring parties to define the scope of proposed discovery / disclosure exercises at an early stage. In particular, the procedure rules of England and Wales now require parties to lodge a Disclosure Report 14 days before the first case management conference, which broadly identifies documents and estimates the costs of managing them; some cases require formal budgets. The test of proportionality, which is gaining significance in many jurisdictions, is not met by a prolonged and expensive-information gathering exercise, even if the timescales allowed it.

There are three other levels, however, at which the early acquisition of knowledge about the document population becomes significant, one strategic, one tactical and one to do with the basis for charging for the discovery / disclosure exercise.

The strategic objective is what is commonly known as early case assessment. Clients do not want to spend money fighting hopeless cases and, as with any other project on which they embark, want to know both their prospects and the likely costs – these two components are the key elements of a risk analysis. If this matters in civil litigation, it potentially matters more for a regulatory investigation, when a client wants to know how strong his negotiating position is, and to identify the ramifications of the enquiry - not just “Do we have a problem?” but “How wide does this problem go?”. The same applies to internal investigations, where the security of the business, its reputation and its share price may depend on getting quickly to the facts.



Knowledge of one's own document population also affects tactics. The ability to rebut an allegation promptly, to counter adverse suggestions made by opponents or regulators, or to advance arguments at an early stage which may dispose of the problem, all amply justify the detailed knowledge of the documents which Equivio Themes can bring. Knowledge of one's own evidence is like knowledge of the issues, the facts and the law – it impresses less well-prepared opponents.

The sort of analysis which Equivio Themes allows also gives the lawyer a good feel for the potential costs of giving discovery / disclosure. If, to take figures which are often used, discovery can consume 40% of a litigation budget with review costing 70% of that, then the ability to get a feel for the reviewable population is clearly an asset. Corporate clients are increasingly requiring their external lawyers to enter into alternative fee arrangements – alternative, that is, to an hourly charging rate for an unspecified number of hours. Clients are expecting their lawyers to fix or cap their fees; you cannot realistically do that without an early idea of the size of the job which confronts you.

## USING EQUIVIO THEMES TO KEEP LITIGATION DEPARTMENTS COMPETITIVE

The value of intelligent software like Equivio Themes goes beyond the ability to find evidence quickly and beyond the budgetary, strategic and tactical benefits outlined above. It enables law departments to compete with less well-equipped rivals, both to win work and to attract talent.

A combination of technology and outsourced services like managed document review pose a serious threat to law firms whose profits have depended hitherto on maximising the hours of large teams of associates. They face competition also from other business models – the major consulting firms are one example – who can capitalise on their technology skills, separating the mechanics of search from the purely legal aspects of the task. Law firms face the threat also that clients can acquire for themselves technology like Equivio Themes and do some of the heavy lifting before the lawyers ever get involved.

The corollary to that threat is opportunity for those willing to take it. You no longer need to be a big firm to manage document-heavy litigation. The use of software like Equivio Themes as described in the opening section of this paper, allows senior and well-qualified lawyers, the strategists and tacticians to get a grip on the case, to assess prospects and risks, and to decide how a case is to be run. With that stage achieved, the rest of the discovery exercise becomes a largely mechanical task performed by technology and outsourcing, requiring input from those same senior lawyers, but not needing teams of associates.

Lawyers appreciate this for more reasons than the costs savings. The use of intelligent technology like Equivio Themes is an enabler of the skill and knowledge on which



lawyers pride themselves. This has benefits extending into staff recruitment and retention – the better young lawyers are more likely to be attracted into a firm which uses such technology than into one which will waste their talents on manual review.

## CONCLUSION

Document populations continue to increase whilst lawyers, both in-house and external, are expected to contain timescales and costs. Technology has largely solved the problem of managing large volumes at a basic level, thanks to fast processing, broad Internet pipes and powerful search technology. Together, perhaps, these things allow us to keep pace with ever-larger volumes.

Equivio Themes allows a jump up from this level. It does so by a combination of very sophisticated text analytic tools and by an interface and set of functions which closely map to the thought processes of lawyers and investigators, suggesting avenues to be explored or quickly discarded, not as a substitute for their input but as an enabler of faster, more meaningful and more systematic ways to explore a document collection.



### *ABOUT CHRIS DALE OF THE EDISCULOSURE INFORMATION PROJECT*

Chris Dale qualified as an English solicitor in 1980 after reading History at Oxford. He was a litigation partner in London and then a litigation software developer and litigation support consultant before turning to commentary on electronic disclosure / discovery. He runs the e-Disclosure Information Project which disseminates information about the court rules, the problems, and the technology to lawyers and their clients, to judges, and to suppliers. He was a member of Senior Master Whitaker's Working Party which drafted Practice Direction 31B and the Electronic Documents Questionnaire. He writes an authoritative and objective web site and blog on the subject and is a well-known speaker and commentator in the UK, the US and other common law jurisdictions.

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### ABOUT EQUIVIO

Equivio develops text analysis software. It's widely used in e-discovery. Users include the DoJ, the EPA, KPMG, Deloitte, plus hundreds of law firms and corporations. Equivio offers Zoom, an integrated web platform for analytics and predictive coding. Zoom organizes collections of documents in meaningful ways. So you can zoom right in and find out what's interesting, notable and unique. Request a demo at [info@equivio.com](mailto:info@equivio.com) or visit us at [www.equivio.com](http://www.equivio.com).

Zoom in. Find out.