

# E-Disclosure in UK

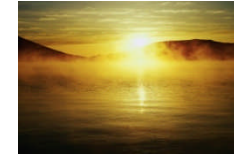
「英国eディスクロージャの理解のために」

Ikuo Takahashi  
Bengoshi-BLT Legal Chambers



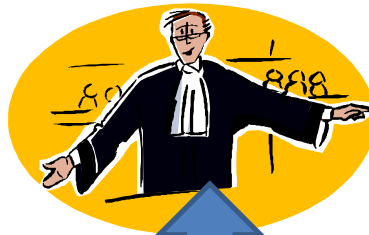
# Structure of Litigation

## 訴訟の構造



Truth

No Jury -Civil



evidence

This block represents the evidence phase of a civil case. It features a blue rounded rectangle containing the word "evidence" at the top. Below the text are three icons: a laptop with a red arrow indicating data flow, a white document with a red checkmark, and a person's head with a glowing green chip inside, symbolizing digital evidence or a witness.

evidence

This block represents the evidence phase of a civil case, identical to the one on the left. It features a blue rounded rectangle containing the word "evidence" at the top. Below the text are three icons: a laptop with a red arrow indicating data flow, a white document with a red checkmark, and a person's head with a glowing green chip inside, symbolizing digital evidence or a witness.

# Common Law Country

## (Comparison of basic concept)

- “Cards face up on the table”
  - “In plain language, litigation in this country ‘ cards face up on the table’(..)It is design to do real justice(..)” Sir John Donaldson M.R.in Davis v Eli Lilly & co.[1987]
  - “There shall be full disclosure of all evidence material and necessary in the prosecution or defense of action”(CPLR3101(a))
- Civil Procedure Law in Japan
  - No automatic discovery
    - No exchange of list of documents.
    - Interrogatory is not so popular.
    - Requesting party should specify the documents.
  - Broad exceptions
  - Misunderstanding – Adversarial system(当事者主義)
    - “wild west shooting”

# Legal issues

- e-disclosure
  - Effective to data all over the world ?
- Difference of Civil Procedure law
- Conflict
- Japanese companies
  - Not accustomed to e-discovery
    - Many weak points

# Effective to data all over the world(?)

- Strauss v. Credit Lyonnais SA, 242 F.R.D 199 (E.D.N.Y. 2007)
  - Judge Kiyoko Matsumoto
    - “Lawyers are now responsible for litigation without borders and discovery without language barriers.”

# Difference of Civil Procedure law-- Broad protection “for private use”

- CPL Article 220  
(Obligation to Submit Document)
- Protection
  - (d) A document prepared exclusively for use by the holder thereof (excluding a document held by the State or a local public entity, which is used by a public officer for an organizational purpose).

- “Ringi” document is usually protected from production

稟議 No.  
起案日:平成 22 年 11 月 12 日

稟 議 書

	本部長	経理部

送部署名:例)情報システム部

名:(氏名) ㊟

名	例)PC サーバ 1 台新規購入の件
案理由	例) 現在使用中の PC サーバは、処理能力に限界が近づいていることに加え、年間保守コストが 20 万円かかっている。そのサービス内容においては 24 時間 365 日の対応が実現されておらず、サーバの安定的な運用が困難な状況にある。そこで今月、保守契約の更新時期にあたり、PC サーバの処理能力向上と安定的な保守サービスの確保、さらに保守コストの低減を図るため、新規に PC サーバ 1 台を購入し、現在の PC サーバの入れ替えを行いたい。現在購入希望の

# Conflict of Civil procedure

- Data protection
  - Online review "Transfer" or not
- Hague Convention
  - Hague Convention(CP 1954 ,service 1965,Evidence 1971 (Japan x) more)
    - Exclusive or not
- Sovereign
  - Marc Rich
- Blocking Statute
  - France, UK, China, Australia, South Africa
  - MAAF case
    - French lawyer was sentenced guilty to pay Ten Thousand Euros- Obstructing Justice
      - Cour de Cassation Chambre Criminelle [Cass. Crim.], Paris, Dec. 12, 2007, Juris-Data no. 2007-332254

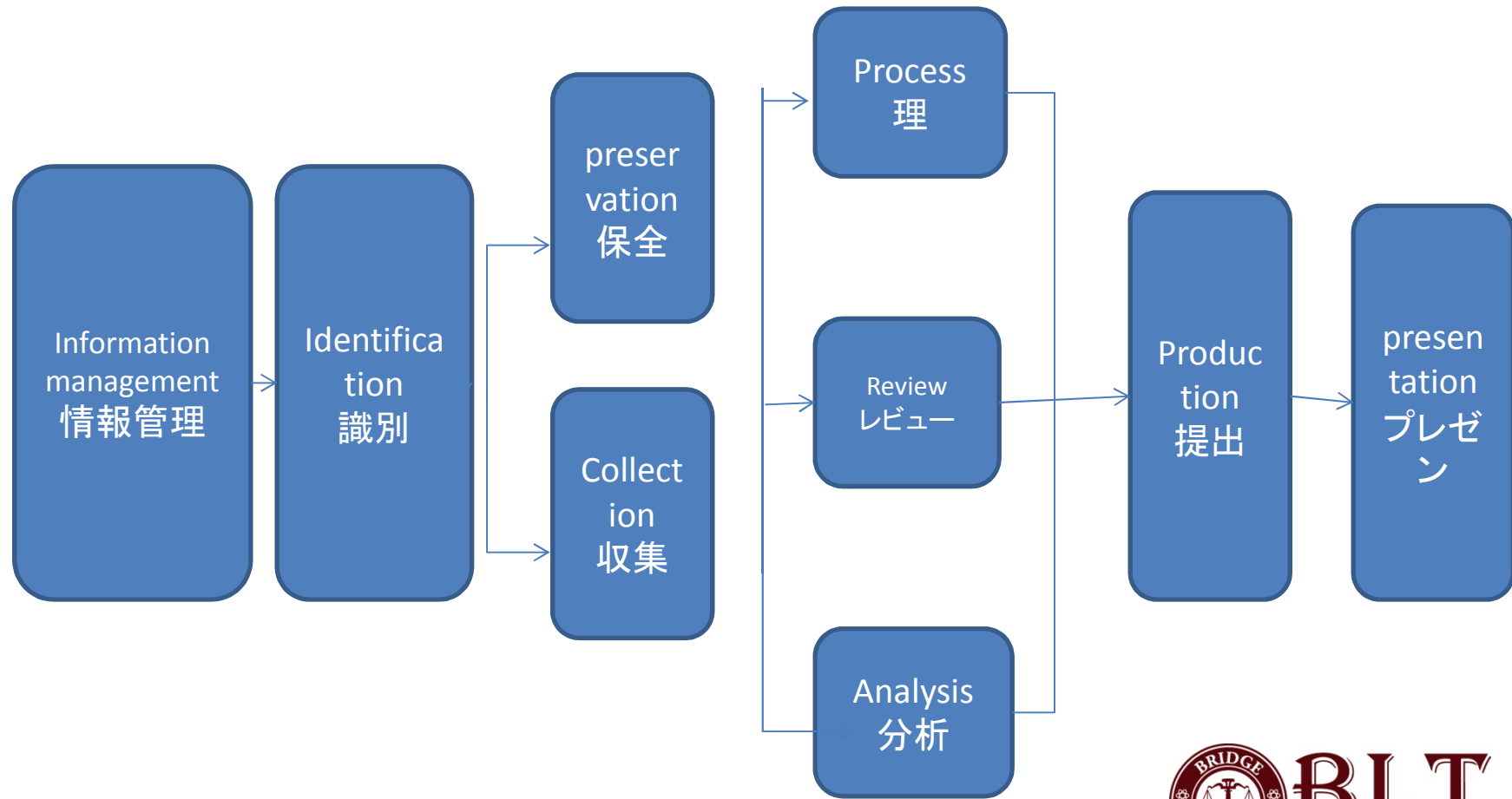


# Not accustomed to e-discovery

- Many weak points
  - Retention policy does not develop so well
    - JP-No discovery rule as US
    - Cannot respond litigation hold so well
  - Cultural(?) points
    - Do not know how rigid e-discovery rule.
      - Erase private e-mails
    - Japanese Executives do not like depositions.
    - Prefer settlement-“Cooperation culture”. Do not strategic perspective
      - not early case assessment
    - No systematic information cooperation between IT department and Legal department
    - Japanese people like to take notes. write unnecessary personal impression.



# E-Discovery reference Model (Eディスカバリ参照モデル)



# Differences between US and UK



- Scope?
- Procedure ?
- Decisions?

# References

- Sedona WG6 “Framework for Analysis of Cross-Border Discovery Conflicts: A Practical Guide to Navigating the Competing Currents of International Data Privacy and e-Discovery”
  - [http://www.thesedonaconference.org/content/miscFiles/publications\\_html?grp=wgs160](http://www.thesedonaconference.org/content/miscFiles/publications_html?grp=wgs160)

One more thing



# BLT legal Chambers

- Team BLT
  - Younger lawyers for digital ages
  - Team of resident lawyers & contract lawyers
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- 1-15-3,Dougenzaka Shibuya,Tokyo
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- Facebook

