

Third Annual
ASU-Arkfeld
eDiscovery and
Digital Evidence
Conference

March 12-14, 2014

Sandra Day O'Connor College of Law / Armstrong Hall
Arizona State University / Tempe campus

11:30 a.m.–12 p.m.

Check In

12–12:30 p.m.

Welcome and Introduction

10 Years Later – The Next Frontier: Data Analytics

Michael Arkfeld, Founding Director, ASU-Arkfeld eDiscovery Program

In 2003, the Zubulake decision set the stage for the acquisition of digital information. Now that you have the gigabytes or terabytes of data, what technological techniques, methods and software are available to analyze your electronically stored information (ESI)? What relationships among people, events, and critical time periods can be determined to support your cases? How do we harness “big” data to reduce the cost, but discover the key themes and patterns of conduct to support your cases?



Michael Arkfeld

12:30–1:30 p.m.

Keynote Address: Hon. Shira A. Scheindlin, U.S. District Judge, Southern District of New York

A Conversation with Judge Shira A. Scheindlin on the Hottest Topics in eDiscovery

Hon. Shira A. Scheindlin, U.S. District Judge, Southern District of New York |
Maura R. Grossman (Moderator), Of Counsel, Wachtell, Lipton, Rosen & Katz

This keynote address will take the form of a wide-ranging dialogue with Judge Scheindlin on the issues that have dominated the eDiscovery world in the past year. Our moderator, Maura R. Grossman, will pose a series of thought-provoking questions about proposed amendments to the Federal Rules of Civil Procedure; proportionality; cost-shifting and sharing; new sources of ESI, including social media, BYOD, and the cloud; new challenges in eDiscovery including technology-assisted review, competence, and data privacy; and other topics of interest.



Hon. Shira A. Scheindlin

1:35–2:30 p.m.

Concurrent Sessions

Disposing of Zombie Data – Information Management Strategies that Really Work

Blake Richardson (Moderator), Manager of Records, Safeway Inc. | Tom Morrissey, Sr. Director, IT Legal Operations & eDiscovery, Purdue Pharma LP | Lorrie Luellig, Attorney, Ryley Carlock & Applewhite | Anne Kershaw, Founder, Managing Director, Knowledge Strategy Solutions, LLC

We all have it – legacy data that we do not need to keep, increasing cost and risk. Management knows storage is cheap, but should you fill storage units with “stuff” that will one day come back to stalk you? It's time to dispose of this “Zombie Data,” but how? What are the strategies and techniques for properly finishing off the mobs of undead data? Once you know the data you need is safe and accessible, you can hit delete on everything else with confidence. Learn sensible, doable, and inexpensive approaches for disposing of unneeded data and implementing policies that will prevent future outbreaks.

Cloudy Skies Ahead? Practical Approaches to the Uncertainties and Risks of Cloud Computing

Caroline Mankey (Moderator), Partner, Cypress LLP | William Kellermann Jr., Wilson Sonsini Goodrich & Rosati | PCMary Mack, Enterprise Technology Counsel, ZyLAB

With the ever-increasing demand for immediate and remote access to large volumes of data, cloud computing is a fundamental component of corporate infrastructure for businesses of every size. This session addresses the inherent uncertainties and risks associated with a cloud-based format, how uncertainties can be minimized through contracts and corporate policies, and how risks can be controlled through BYOD policies and security procedures, as well as the ethical implications and sparse legal framework governing these issues.

2:30–2:45 p.m.

Networking Break

2:45–3:45 p.m.

Plenary Session

Apples, Oranges, Bananas, Carrots . . . What Should This All Cost?

Brandon Colburn (Moderator), Vice President - eDiscovery Development, TERIS | Kathryn (Kit) Goetz, VP Litigation Discovery, Qualcomm | Robert E. Singleton, Principal, Director of eDiscovery, Squire Sanders | Vincent Catanzaro, Senior Counsel, Global Discovery Manager, E. I. du Pont de Nemours and Company

Whether large corporation, mom or pop shop, or bankrupt government entity, controlling the costs of eDiscovery is a priority in litigation – so what can be done? Listen as representatives from the various sectors discuss avoiding unnecessary costs in discovery; leveling the playing field in asymmetrical litigation; educating opposing counsel and the bench as to the realities of discovery costs; working with scarce resources in a defensible way; and the pros and cons of flat fee agreements.

3:45–4:30 p.m.

Concurrent Sessions

To Preserve or Not to Preserve – That Is the Question

Tom Morrissey, Sr. Director, IT Legal Operations & eDiscovery, Purdue Pharma | Robert Amicone, Assistant General Counsel, Litigation & Ediscovery, Office Depot, Inc. | Erich Cress, Chief Technology Officer, California State Lands Commission | Joy Woller (Moderator), eDiscovery Counsel, Partner, Lewis Roca Rothgerber

After the duty to preserve arises, do you over-preserve to minimize your risk of spoliation or do you focus on a targeted preservation to reduce your costs? Should you send a preservation letter to the opposing party? Should you respond to this type of letter? Should you seek a preservation order from the Court? Hear the technological and legal issues that arise in your quest to fulfill your legal obligations, without breaking the bank.

Too Big for Your Britches? Applying the Principle of Proportionality in E-Discovery

Ariana Tadler, Partner, Milberg LLP | Hon. John M. Facciola, U.S. Magistrate Judge, District of Columbia | Sean Gallagher (Moderator), Shareholder, Polsinelli

Litigation matters (like people) come in all shapes and sizes. You do not want to conduct discovery in a manner disproportionate to your case, any more than you'd take a pea shooter on an elephant hunt or a bazooka to shoot squirrels. Yet when parties differ in size and ability to pay legal fees and costs, and search technologies and costs keep changing, you need ways to determine—for your client and the court—just what is proportional. Attendees will come away with practical tips and solutions on how to comply with the principle of proportionality, how to get the best results out of meet and confers, and how to enforce proportionality rules against a recalcitrant opposing party.

4:30-5:30 p.m.

Plenary Session

Is This a Hold-up? Don't Let a Poorly Implemented Legal Hold Rob You of Defensibility

William Butterfield, Hausfeld LLP | Wendy Zerr-Jackson, eDiscovery Program Manager, Banner Health | Mark Sidoti (Moderator), Director, Chair of the E-Discovery Task Force, Gibbons P.C. | Hon. Craig B. Shaffer, U.S. Magistrate Judge, District of Colorado | Brad Harris, VP of Legal Products, Zapproved Legal

Hold Pro What are the critical steps of implementing a legal hold? After determining the triggering event, what is your checklist for implementing a legal hold? What should be in a litigation hold letter? What sources of ESI should you think about? Are there automated processes to implement a legal hold? When can you release a legal hold? Learn how to avoid getting mugged by future sanctions by implementing a defensible legal hold today.

7:30–8 a.m.

Continental Breakfast and Check In

8–8:30 a.m.

Paper Presentations

Dr. Joel Henry, Esq., Agile Legal Technology, *Predictive Coding Is So Yesterday: An Innovative Approach to eDiscovery for Tomorrow* (published in Law Technology News, Feb. 18, 2014).

Maureen O'Neill, SVP, Discovery Strategy, DiscoverReady, *Yes, Counselor, There Will Be Math: Why Knowledge of Statistics Is an Essential Skill in e-Discovery* (published in Law Technology News, Feb. 12, 2014).

8:30–9:15 a.m.

Plenary Session

Meet and Confer: Wear Your Boy Scout Uniform or Go Home!

Scott Kane, Partner, Squire Sanders (US) LLP | Ariana Tadler, Partner, Milberg LLP | Hon. Craig B. Shaffer (Moderator), U.S. Magistrate Judge, District of Colorado

Whenever conducting a Meet and Confer, you must follow the Boy Scout motto – “Be Prepared.” Judge whether nationally renowned litigation counsel have satisfied this motto in a mock Meet and Confer, moderated by one of our renowned jurists. Also gain valuable insight by hearing the bench’s assessment of the performances.

9:20–10:20 a.m.

Concurrent Sessions

Collecting ESI – Because “How” Matters

Mark Sidoti (Moderator), Director, Chair of the E-Discovery Task Force, Gibbons P.C. | Hon. Shira A. Scheindlin, U.S. District Judge, Southern District of New York | Vincent Catanzaro, Senior Counsel, Global Discovery Manager, E. I. du Pont de Nemours and Company | Brandon Colburn, Vice President - eDiscovery Development, TERIS

Before ESI can be searched, reviewed, or produced, it must be collected – and it must be collected properly. This session will address key issues that counsel and clients must address while collecting ESI and the risk associated with improper collection and self-collection. This practical session will also examine new technologies and trends for collection of ESI – including remote collection tools and collection of social media.

Forensics and eDiscovery – Connects and Disconnects

Dan Kinney (Moderator), Vice President, ProSearch Strategies, Inc. | Marrick Bernstein, Senior Manager, Legal Discovery Operations, Pfizer Inc. | Alex Ahmadian, Senior Staff IT Security Engineer, Qualcomm Inc.

Forensics can seem like a foreign language to legal professionals; terms such as allocated space, tracks, sectors, FAT, registry, carving, and metadata can make your head spin. In this session, you will learn about the intersections and divergences between computer forensics and eDiscovery, and what skills you need to navigate between the two. Panelists will discuss when the use of forensics is necessary or required, the different uses of metadata, the information available from cell phones, iPads, and other media sources through a forensic examination, and anti-computer forensic techniques.

10:20–10:40 a.m.

Networking Break

10:40–11:40 a.m.

Concurrent Sessions

The Zen of eDiscovery Project Management

Stephen Goldstein (Moderator), Director of Practice Support, Squire Sanders | Charlotte Harris, Manager, Practice Support, Hess Corporation | Dan Kinney, Vice President, ProSearch Strategies, Inc.

To become a project management Ninja, you must learn to master complex discovery workflows and technology. Can or should the litigation attorney be responsible for both case management and eDiscovery project management? This session will explore the role of effective project management and the roles each person plays in the discovery process. Hear from industry-leading experts on their experience in handling eDiscovery review projects of high profile/complex litigation and how those experiences have helped develop their best practices for projects of all size.

Review “TARTARe” – Cutting-Edge Use of Data Analytics to Get More from Raw Data

Michael R. Arkfeld (Moderator), Founding Director, ASU-Arkfeld eDiscovery Program | David D. Lewis, Esq., Ph.D., Consultant | William Kellermann Jr., Wilson Sonsini Goodrich & Rosati PC | Dr. Joel Henry, Esq., Agile Legal Technology

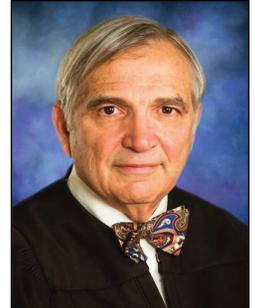
While some consider TAR the equivalent of Predictive Coding, there is much more to Technology Assisted Review. Hear how experts use various technologies to inspect, filter, and model data, enabling them to discover useful information, suggest conclusions, and support decision making in the most cost effective and defensible way.

11:40 a.m.–12:30 p.m. Plenary Session

The Ultimate 30(b)(6) “Free Fight” Challenge

Brad Holm, Holm, Wright, Hyde & Hays | Hon. John M. Facciola (Moderator), U.S. Magistrate Judge, District of Columbia | Niloy Ray, eDiscovery Counsel, Littler Mendelson P.C.

Watch two of the country's top eDiscovery Luchadores face off in this mock 30(b)(6). Learn tips and tricks for prepping, defending, and taking a 30(b)(6) of a corporate representative on issues relating to IT structure, document retention policies, and litigation holds.



Hon. John M. Facciola

12:30–1:30 p.m. Lunch

1:30–1:45 p.m. Paper Presentation

Marc Jenkins, VP-Knowledge Strategy, Cicayda, LLC, *From Socrates to Augmented Intelligence: Finding Litigation Knowledge in a Sea of Noise* (published in Law Technology News, Feb. 21, 2014)

1:45–2:45 p.m. Concurrent Sessions

TAR – A Key Ingredient in Your Highway to eDiscovery Success

Scott Kane, Partner, Squire Sanders (US) LLP | Kathryn (Kit) Goetz, VP Litigation Discovery, Qualcomm | William Butterfield, Hausfeld LLP | Hon. Craig B. Shaffer, U.S. Magistrate Judge, District of Colorado | Paul Neale (Moderator), Chief Executive Officer, DOAR Litigation Consulting

Hear from litigants who have practical, every day experience using the latest technology assisted review techniques to retrieve responsive documents and defensibly reduce data sets. What situations/volumes justify the use of the different technologies? How do you make apple-to-apple comparisons when considering vendor pricing options? How much should you tell the other side about your process (short of a court order)? How do you avoid getting that order? Get answers to these and many more of your TAR questions.

In the News! Criminal Law, Digital Information (including metadata) and the NSA

Sean Gallagher (Moderator), Shareholder, Polsinelli | Hon. John M. Facciola, U.S. Magistrate Judge, District of Columbia | Sean Broderick, National Litigation Support Administrator, Defender Services Office, U.S. Courts

Several digital issues have ripened this past year and the headlines loudly proclaim security vs. privacy arguments. Hear from leading criminal experts as they discuss limitations on the government's right to secure cell site location data in light of the conflicting NSA decisions, the propriety of the police searching and downloading the contents of a cell phone incident to an arrest. Also covered will be when is there probable cause to search a computer or a cell phone and implications of Brady and in the age of Big Data. Finally, will providing effective assistance of counsel bankrupt the CJA funds?

2:45–3:45 p.m.

Concurrent Sessions

Where Oh Where Did My Bates Stamp Go: The Production of ESI in a Digital World

Joy Woller (Moderator), eDiscovery Counsel, Partner, Lewis Roca Rothgerber | Tom O'Connor, Chief Service Aficionado, CAVO | Ariana Tadler, Milberg LLP

The Federal Rules of Civil Procedure and the Advisory Committee Notes give very specific guidance on production of ESI. But, how often is that guidance followed? How many lawyers even know this guidance exist? Are you prepared to discuss production of “native” ESI with your opposing counsel and what forms of ESI are “reasonably usable” in your case? In this session we will discuss the rules and case law governing production of ESI as well as the benefits and drawbacks to production in various forms.

Developments in Cross Border eDiscovery – Exploring the Intersection of Privacy, Data Sharing and Compelled Disclosure

Chris Dale (Moderator), e-Disclosure Information Project | Jeff Nagel, Director, Gibbons PC | Jamie Brown, eDiscovery Executive Counsel, UBS | Jerami Kemnitz, Of Counsel, Shook, Hardy & Bacon L.L.P.

No other area of eDiscovery brings into focus the conflicts between conceptions of privacy and information disclosure more than cross-border disputes. The application of U.S. discovery rules to the continued expansion of international civil disputes, the U.S. government's broad use of its powers to investigate conduct abroad, and foreign legislation enacted to protect individuals and multinational businesses have all resulted in the need for practitioners to appreciate the issues likely to arise in cross-border disputes.

3:45–4 p.m.

Networking Break

4–5 p.m.

Concurrent Sessions

Data Privacy and Security: Identifying, Preventing and Effectively Addressing Threats and Breaches

Al Gidari (Moderator), Partner, Perkins Coie | Daniel Christensen, Senior Privacy & Security Counsel, Intel Corporation | Scott Stein, Managing Director, Stroz Friedberg | Jacob Snow, Attorney, Federal Trade Commission

Data security and privacy have become pressing concerns for companies conducting business in the US and worldwide, as well as for individuals who provide personal data to their employers. Daily headlines remind us that data breaches have become all too common, and that more awareness and precautions are necessary to protect our assets and privacy. This panel will tackle these issues, including: data breach response and risk mitigation, social media guidelines and employee privacy concerns, cross border data sharing, and the must-know privacy laws and regulations.

Limited-Budget eDiscovery

Gordon D. Cruse (Moderator), Attorney & E-Discovery Consultant, E-Discovery Readiness & Response, Inc. | Jim Hennenhoefler, Lawyer, James A. Hennenhoefler, A.P.C. | Brad Holm, Holm, Wright, Hyde & Hays | Seth Blackmon, Staff Attorney, California State Lands Commission

Whether you are practicing as a solo practitioner, small medium or large firm how do you control the eDiscovery project, and most importantly, the eDiscovery cost? The management and cost challenges that face you with any e-discovery project can be overwhelming. What tools, which will not break the bank, are available to help keep things in check? Are there steps you can take to keep on top of the project and costs? Learn from a range of experts you experience these issues on a daily basis.

5–6:30 p.m.

Conference Reception

7:30–8 a.m.

Continental Breakfast and Check In

8–8:30 a.m.

Introduction and Opening Remarks

Google Glass and eDiscovery, Andy Ninh, J.D. Candidate, 2014, Michigan State University College of Law

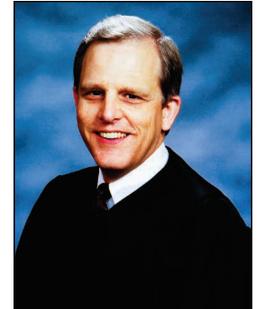
8:30–9:45 a.m.

Plenary Session

All Rise! The Ultimate eDiscovery Judicial Roundtable

Hon. Shira A. Scheindlin, U.S. District Judge, Southern District of New York | Hon. John M. Facciola, U.S. Magistrate Judge, District of Columbia | Hon. Craig B. Shaffer, U.S. Magistrate Judge, District of Colorado | Hon. Peter B. Swann, Judge, Arizona Court of Appeals

Hear top eDiscovery jurists discuss eDiscovery trends and changes they are seeing in courtrooms across the country. Get the bench's perspective on sanctions, proposed rules, preservation, cooperation, adequacy of production, and when and how to seek judicial relief in an eDiscovery dispute. In this judicial roundtable, you ask the questions and the judges give answers.



Hon. Craig Shaffer

9:45–10:45 a.m.

Concurrent Sessions

The House Holds All the Cards – eDiscovery in Government Investigations

Tracy Greer, Senior Litigation Counsel for Electronic Discovery, Antitrust Division, U.S. Department of Justice | Jennifer Feldman (Moderator), Of Counsel, DLA Piper US LLP | Jamie Brown, eDiscovery Executive Counsel, UBS

Although government investigations can feel very one-sided, savvy counsel know there are ways to get the most for your client through the process. This panel will discuss the strategies for conducting an effective eDiscovery process within the parameters laid out by various governmental agencies.

BYOD and Social Media—Can the Chaos Evolve into Order?

Wendy Zerr-Jackson, eDiscovery Program Manager, Banner Health | Caroline Mankey (Moderator), Partner, Cypress LLP | Hon. Craig B. Shaffer, U.S. Magistrate Judge, District of Colorado

Companies no longer control all their own information. Whether through BYOD or social media, employees and others now have more direct control. This session will review case law and state and federal rules of evidence in order to gain a better understanding of current challenges faced by both in-house and outside counsel pertaining to the constantly evolving world of social media and BYOD.

10:45–11 a.m.

Networking Break

11 a.m.–12 p.m.

Plenary Session

Truth be Told, 90% of Lawyers Are Likely Incompetent – Ethics 20/20

Michael R. Arkfeld (Moderator), Founding Director, ASU-Arkfeld eDiscovery Program | Lynda Shely, The Shely Firm, P.C. | Hon. John M. Facciola, U.S. Magistrate Judge, District of Columbia

The American Bar Association and several states have issued amended rules and comments regarding the technological competence of lawyers, including on eDiscovery matters. Do you measure up to the “new” technological standards? Measure your level of competence as noted experts walk you through the changing landscape of legal ethics.

12–12:30 p.m.

Concluding Remarks

Unfogging the eDiscovery Future: The Five Things You Need to Know for the Coming Year

Michael Arkfeld (Moderator), Founding Director, ASU-Arkfeld eDiscovery Program | Daniel Martin Katz, Associate Professor of Law & Co-Director – ReInvent Law, Michigan State University College of Law

What will matter most for your practice in the coming year? Will it be data analytics, TAR, proposed rules, adequacy of production, information governance, or something now unforeseen? Don't waste time with tea leaves; receive crystal clarity from oracles of eDiscovery as they unfog the mysteries of our eDiscovery future.

thanks to our sponsors

tera



giga



mega



reception



STROZ FRIEDBERG



P.O. Box 877906 • Tempe, AZ 85287-7906
480.965.6181 • law.asu.edu

Information is subject to change. ASU is an affirmative action/equal opportunity institution. For ASU's non-discrimination policy, visit www.asu.edu/titleIX.
©2014 Arizona Board of Regents for the Sandra Day O'Connor College of Law. Published March 2014.