




Fifth Annual ASU-Arkfeld
**eDiscovery and
Digital Evidence
Conference**

Respect the Past. Understand the Present. Shape the Future!

**March 9-11, 2016 | Sandra Day O'Connor College of Law
Arizona State University | Tempe, Arizona**



keynote speakers



The Honorable Shira A. Scheindlin

U.S. District Judge
U.S. District Court for the Southern District of New York

Before taking her current seat on the Southern District bench, Judge Scheindlin worked as a prosecutor (Assistant United States Attorney for the Eastern District of New York), commercial lawyer (General Counsel for the New York City Department of Investigation and partner at Herzfeld & Rubin), and Judge (Magistrate Judge in the Eastern District

of New York 1982-1986 and Special Master in the Agent Orange mass tort litigation). Judge Scheindlin is known for her intellectual acumen, demanding courtroom demeanor, aggressive interpretations of the law, and expertise in mass torts, electronic discovery, and complex litigation.



Steve Watson

Technologist - eDiscovery, Forensics, Risk and Compliance
Sr. Technical Lead, Intel Corporation

Steve Watson is a digital forensic researcher working in the areas of data recovery from emerging technologies and damaged devices. He is working on a PhD in Digital Forensics from Glasgow Caledonian University in Glasgow, Scotland. When he's not destroying devices for damaged devices research or taking apart the new technologies we see on the internet, he works for Intel Corporation

as a Senior Technical Lead focused in the areas of data recovery for litigation and investigations. He is a Task Group Chair for mobile and embedded device forensics for a NIST subcommittee on digital evidence (OSAC). He also serves on the Scientific Working Group on Digital Evidence (SWGDE) with expertise in mobile devices, emerging technologies & damaged devices.



Michael Goul

Associate Dean for Research
W.P. Carey School of Business, ASU

Michael Goul was appointed in July of 2015 to serve as Associate Dean for Research at the W. P. Carey School of Business at Arizona State University. Among other duties, he works with the School's portfolio of research centers, and he is the lead on a cross-university big data and analytics research collaboration. For the six years prior, he served as chair of the school's department of information systems. Goul spearheaded the development of the nine-month Master of Science in Business Analytics program that is a collaboration of the School's information systems and supply chain management departments. In addition, he administered the launch of the School's undergraduate Bachelor of Science

in Business Data Analytics degree. He also administered the launch of the online version of Carey's highly successful Master's of Science in Information Management program. Goul is passionate about how the concomitant explosion of big data, the shift to cloud computing and the emergence of the mobile/social web does and will impact the global economy. His most recent research efforts are in the area of big data and data science governance. He has published over one hundred articles and has authored cases and conducted analytics research at companies including American Express, eBay, Teradata and Intel.



conference speakers

Director

Michael Arkfeld, *Arkfeld & Associates*

Conference Co-Chairs

Robert E. Singleton, *Squire Patton Boggs*

Joy Allen Woller, *Lewis Roca Rothgerber Christie LLP*

Judicial Faculty

Hon. David G. Campbell, *U.S. District Court, District of Arizona*

Hon. Xavier Rodriguez, *U.S. District Court, Western District of Texas*

Hon. Shira A. Scheindlin, *U.S. District Court, Southern District of New York*

Hon. Craig B. Shaffer, *Magistrate Judge, District of Colorado*

Hon. Peter B. Swann, *Arizona Court of Appeals, Division One*

Hon. Samuel A. Thumma, *Arizona Court of Appeals, Division One*

Speakers

Alexander Arato, *Las Vegas Sands Corp.*

Jason R. Baron, *Drinker Biddle & Reath LLP*

Lea Bays, *Robbins Geller Rudman & Dowd LLP*

Fredric Bellamy, *Ryley Carlock & Applewhite, DCG*

Kevin F. Brady, *Redgrave LLP*

Mike Burg, *DISH Network LLC*

Bill Butterfield, *Hausfeld LLP*

Shawn Cheadle, *Lockheed Martin Space Systems Co.*

Daniel K. Christensen, *Intel Corporation*

Brandon Colburn, *TERIS*

John P. Collins, *DTI*

Gordon D. Cruse, *Gordon D. Cruse, APLC*

Meredith Dugan, *Southwest Airlines Co.*

Sean Gallagher, *Polsinelli PC*

Josh Gilliland, *Majority Opinion LLC*

Stephen Goldstein, *Squire Patton Boggs*

Alex Goth, *Squire Patton Boggs*

Michael Goul, *W.P. Carey School of Business, ASU*

Tracy Greer, *U.S. Department of Justice, Antitrust Division*

Kelly Griffith, *Practical Law (Thomson Reuters)*

Maura R. Grossman, *Wachtell, Lipton, Rosen & Katz*

Brad Harris, *Zapproved*

James Hennenhoefler, *James A. Hennenhoefler, APC*

Michelle D. Hess, *Lewis Roca Rothgerber Christie LLP*

Jennifer Hradil, *Gibbons PC*

Tessa K. Jacob, *Husch Blackwell*

William Kellermann, *Hanson Bridgett LLP*

Anne Kershaw, *Knowledge Strategy Solutions, LLC*

Rita Byrnes Kittle, *U.S. EEOC*

Dominic Lanza, *U.S. Attorney's Office, District of Arizona*

Vincent Liu, *Bishop Fox*

Mark A. MacFarlane, *Apollo Education Group*

Karen McGee, *Intel Corporation*

Hunter McMahon, *Altep*

Mark Michels, *Deloitte*

Steve Moore, *iPro Tech*

Tom Morrissey, *Purdue Pharma LP*

Tom O'Connor, *Advanced Discovery*

Karen Painter Randall, *Connell Foley LLP*

Niloy Ray, *Littler Mendelson*

Danny Richardson, *The Richardson Law Firm*

Karlana Schwing, *Dentons US LLP*

Linda Sharp, *ZL Technologies, Inc.*

Mark Sidoti, *Gibbons PC*

George Socha, *Socha Consulting LLC*

John Tredennick, *Catalyst Repository Systems*

Martin Tully, *Akerman LLP*

Kelly Twigger, *ESI Attorneys LLC*

Steve Watson, *Intel Corporation*

Paper Presentations

Jonathan Kiang, *DTI*

Regina Ames Sandler, *FDIC Office of the Inspector General*

Jim Shook, *EMC Corporation*

J. William Speros, *Speros & Assoc., LLC*

Don Swanson, *Five Star Legal and Compliance Systems, Inc.*

schedule

Wednesday, March 9

11:30-12:30		Check-In & Lunch
12:30-1:00	Plenary Session	Welcome Address - Litigation Readiness, Big Data and the Internet of Things
1:00-2:00		Keynote Address - The New Rules in Action
2:00-2:15		Networking Break
2:15-3:05	Concurrent Sessions	<ul style="list-style-type: none">• HACKED! Not When, But If...• Anatomy of the Legal Hold and Monitoring Compliance (Foundations Track, Part I)
3:05-3:20		Networking Break
3:20-4:10	Concurrent Sessions	<ul style="list-style-type: none">• Herding Cats: A Case for Effective Project Management• Negotiating at a Meet and Confer - the Technological Issues and the Legal Issues (Foundations Track, Part II)
4:10-4:25		Networking Break
4:25-4:40		Call for Papers Winner: J. William Speros
4:40-5:40	Plenary Session	The Business Case for Information Governance and What It Means to eDiscovery Lawyers

Thursday, March 10

8:00-8:30		Check-In & Breakfast
8:30-9:25	Plenary Session	Keynote Address - "Yes, But What Do We Do About Smart Watches, IoT and Connected Cars!" Preservation of New Technologies
9:25-9:40		Call for Papers Winner: Jim Shook
9:40-9:55		Networking Break
9:55-10:45	Concurrent Sessions	<ul style="list-style-type: none">• Big Brother is Always Watching, But What Do You Do When They Actually Knock? (Government Investigations)• The Impact of Data Analytics on Litigation – It's Not Just TAR Anymore• eDiscovery: Not One Size Fits All (Small Cases)
10:45-11:00		Networking Break
11:00-11:50	Concurrent Sessions	<ul style="list-style-type: none">• TAR Wars: Debating the Sticking Points• An Interactive IG Workshop: Getting to Work on Information Governance
11:50-1:00		Lunch



schedule

Thursday, March 10

1:00-1:15		Call for Papers Winners: Don Swanson & Regina Ames Sandler
1:15-2:15	Plenary Session	New Rules: Tweaks or Game-Changers? How to Make Sure You Don't Get Tweaked, and Maximizing the Amendments to Your Benefit
2:15-2:30		Networking Break
2:30-3:20	Concurrent Sessions	<ul style="list-style-type: none">• The Search Continues: the Nitty-Gritty of Selecting, Tuning, and Implementing Electronic Search Parameters and Protocols• We Fought About It, I Got It, How Do I Use It? - Evidentiary Issues with ESI
3:20-3:35		Networking Break
3:35-4:25	Concurrent Sessions	<ul style="list-style-type: none">• But We Aren't Even IN This Case! How to Make Civil Subpoenas as Effective (and Painless) as Possible• The First 72 Hours: Responding to a Data Breach Quickly and Effectively to Minimize Risk and Get Back to Business
4:25-4:45		Networking Break
4:45-5:45	Plenary Session	A Judicial Perspective: Judges Panel
5:45-7:00		Conference Reception

Friday, March 11

8:00-8:30		Check-In & Breakfast
8:30-9:30	Plenary Session	Keynote Address - Welcome to Today's Wild West of Data Science and Big Data
9:30-9:45		Call for Papers Winner: Jonathan Kiang
9:45-10:00		Networking Break
10:00-10:50	Concurrent Sessions	<ul style="list-style-type: none">• Behind Closed Doors• Welcome to the eMachine: the Evolving Terrain of the Modern "eWorkplace"
10:50-11:05		Networking Break
11:05-12:05	Plenary Session	Change in Competency Standards - The Ethics of eDiscovery (Jeopardy!)
12:05-12:30		Thank You & Closing Remarks



sessions day one

12:30-1:00
plenary session

Litigation Readiness, Big Data, and the Internet of Things

Michael Arkfeld

Has your litigation readiness program kept up with Big Data and the Internet of Things? Hear how the sharing of data, the interconnectiveness of devices and data analytics will impact your practice.

1:00-2:00
plenary session

KEYNOTE ADDRESS: The New Rules in Action

Hon. Shira A. Scheindlin / Lea Bays / Kevin F. Brady / Maura R. Grossman (moderator)

How will it look in Court? The rules have been passed; what do they mean and how will it look in Court? Hear as Judge Scheindlin explains the rules and then see a mock hearing applying them.

2:15-3:05
concurrent
sessions

HACKED! Not When, But If...

Alexander Arato / Fredric Bellamy / Vincent Liu / William Kellermann (moderator)

With several of the most notable data breaches resulting from attacks on supply chain partners (Target via an HVAC contractor, T-Mobile via Experian), a client is only as strong as its weakest partner. Nonetheless, efforts to secure IP and other valuable data inflict casualties on the electronic discovery process, introducing difficulties that increase cost and threaten deadlines. This session will explore risks and concerns surrounding information security for corporate legal departments, law firms and the third-party service providers that assist both as well as how to balance those risks with accessibility, efficiency and productivity.

Anatomy of the Legal Hold and Monitoring Compliance

Mike Burg / Brad Harris / Tessa K. Jacob / Hon. Xavier Rodriguez / Mark Sidoti (moderator)

You know the legal issues; now confront the technological issues that you must address in any case involving ESI. We have all received a boilerplate demand to preserve every bit and byte of data. This session will help you understand the technical concepts and technology found in those legal hold letters, prepare you to respond, and then delve into step-by-step methodologies to ensure your legal holds are effective

3:20 -4:10
concurrent
sessions

Herding Cats: A Case for Effective Project Management

Stephen Goldstein / Anne Kershaw / Tom Morrissey / Kelly Twigger (moderator)

It is not always clear who is doing what in a case, and the more complicated the case the less clear it can be. What is clear, is that proper project management can save time and money both long term and short term in a case. In this session, battle-tested project managers will share their thoughts on the DO's and DON'T's of effective project management, war stories from the trenches, the benefits of doing it right and costs of doing it wrong, and tools helpful in managing projects from the most complicated to the most simple.

Negotiating at a Meet and Confer – the Technological Issues and the Legal Issues

Bill Butterfield / Brandon Colburn / Tessa K. Jacob / Hon. Craig B. Shaffer / Mark Sidoti (moderator)

Armed with an understanding of your client's legal hold efforts and IT structure, negotiate during a meet and confer an appropriate preservation agreement, ESI production and form protocol, and other technological issues with the opposing party.



sessions day one & two

4:40-5:40

plenary session

The Business Case for Information Governance and What It Means to eDiscovery Lawyers

Jason R. Baron / John P. Collins / Mark A. MacFarlane / Linda Sharp / Shawn Cheadle (moderator)

In recent years, companies have spent more time and resources on Information Governance (IG); to the point that IG is rapidly becoming a key organizing principle for companies thinking about how to manage the increasingly big data sets they possess and control. This session will cover the fundamentals of practicing IG; how IG leaders are breaking down walls between various departments that manage information and championing IG ideas/projects within their organizations, and how it relates to the cares and concerns of eDiscovery lawyers.

Day Two

8:30-9:25

plenary session

KEYNOTE ADDRESS: "Yes, But What Do We Do About Smart Watches, IoT and Connected Cars!" – Data Preservation of New Technologies

Steve Watson

Technology is changing our world at a blistering pace. Today our businesses and lives rely on devices that are barely a decade old. What technology advances and changes can we anticipate in the next five years? And how will we make use of this data for electronic discovery? Our Thursday keynote presenter is a veteran technologist and digital forensics futurist with experience from startups to Fortune 50 companies. He supports large-scale litigation as an eDiscovery Architect and lead eDiscovery technologist at Intel Corporation. He is a PhD researcher focused on new and emerging technologies and sits on two Federal committees related to digital evidence policy, standards and techniques.

9:55-10:45

concurrent
sessions

Big Brother is Always Watching, But What Do You Do When They Actually Knock?

Shawn Cheadle / Tracy Greer / Dominic Lanza / Robert E. Singleton (moderator)

This session examines the differences between an investigation (either governmental or internal) and civil litigation. Hear from experienced practitioners from the private sector and the government as they provide tips based in real-world experience about how to deal with discovery in those investigations.

The Impact of Data Analytics on Litigation – It's Not Just TAR Anymore

William Kellermann / Steve Moore / Hon. Craig B. Shaffer / Michael Arkfeld (moderator)

Much is discussed about using analytics to classify documents in electronic discovery or information governance. But what do you do when data analytics are inextricably intertwined with your case-in-chief, or the primary evidence in support of the claims and defenses? Using a hypothetical crafted from today's headlines, this session will explore how the information explosion, where the customer is the product, effects matters, electronic discovery and evidence in new and challenging ways.



sessions day two

9:55-10:45

concurrent
sessions
(continued)

eDiscovery: Not One Size Fits All

Gordon D. Cruse / James Hennenhoefer / Kelly Twigger / Joy Allen Woller (moderator)

We have moved past the point when counsel can simply bury their heads and pretend that eDiscovery does not exist. Courts are becoming more involved and local rules require that eDiscovery be addressed in all matters, regardless of the size of the firm, company, or case. This session will examine the intricacies of conducting eDiscovery in cases where the parties/firms are not multi-national conglomerates, including software to use, vendor options, proper preparation for the e-discovery meet & confer, and using the Person Most Knowledgeable deposition to your benefit.

11:00-11:50

concurrent
sessions

TAR Wars: Debating the Sticking Points

Lea Bays / Maura R. Grossman / John Tredennick / Martin Tully / Hon. Craig B. Shaffer (moderator)

This session will involve a spirited discussion of controversial issues surrounding the use of Technology Assisted Review ("TAR") from the perspective of requesting party, responding party, the technician, researcher, and the Court. Issues will include: What is holding back the use of TAR? Must the use of TAR be disclosed? Must the opposing party or Court pre-approve the use of TAR? May keywords be used before TAR? Must training documents be shared? What is and is not working with TAR? What is a reasonable TAR result? What does the latest research say about TAR?

An Interactive IG Workshop: Getting to Work on Information Governance

Shawn Cheadle / Tom Morrissey / Karlana Schwing / Jason R. Baron (moderator)

Dive into how IG can be implemented in an organization. Based on a hypothetical provided to participants, all will be expected to roll up their sleeves and contribute to a facilitated group discussion through table-top exercises aimed at analyzing and resolving an IG challenge. The goal of the session will be to provide hands-on training and audience participation in resolving the challenge. Time permitting, session leaders designated in advance may also participate in a brief role-playing exercise.

1:15-2:15

plenary session

New Rules: Tweaks or Game Changers? How to Make Sure You Don't Get Tweaked, and Maximizing the Amendments to Your Benefit

Bill Butterfield / Hon. David G. Campbell / Mark Michels / Hon. Xavier Rodriguez (moderator)

This session will examine the December 2015 amendments and the new cases published since the effective date. This session will also introduce what other discovery rules are being examined for possible amendment.

2:30-3:20

concurrent
sessions

The Search Continues: the Nitty-Gritty of Selecting, Tuning, and Implementing Electronic Search Parameters and Protocols

Alex Goth / Tom O'Connor / Niloy Ray / Joy Allen Woller (moderator)

This session will illustrate common assumptions and errors that lead to disproportionate discovery burdens, including: Keyword Search Nuances; Time periods, custodian-level differentiation, metadata field-based searches, etc.; Structured Data – network folders, business databases, and other non-e-mail evidence before applying keywords; The Big Picture: phased discovery, sampling, iterative review, and other approaches to stemming burden-creep, and how to set up proportionality arguments throughout.



sessions day two

2:30-3:20

concurrent
sessions

We Fought About It, I Got It, How Do I Use It? Evidentiary Issues with ESI

Sean Gallagher / Michelle D. Hess / Hon. Xavier Rodriguez / Josh Gilliland (moderator)

This session will explore how to establish a foundation for the admission of ESI in pre-trial motions and trial. This session will also introduce attendees to best methods for presenting various types of ESI in pre-trial proceedings and trial. Challenges to email authenticity: I didn't send that; Text messaging: I didn't send that either; Photographs: That is not how the scene looked; Facebook: I don't "like" that.

3:35-4:25

concurrent
sessions

But We Aren't Even IN This Case! How to Make Civil Subpoenas as Effective (and Painless) as Possible

Mike Burg / Meredith Dugan / Hon. Shira A. Scheindlin / Kelly Griffith (moderator)

Panelists will discuss ESI requests and production in the context of a civil subpoena. While traditional party-vs-party discovery involves entities who all have a "dog in the fight" (so to speak), subpoenaing ESI from a third party imposes some burden – however great or small – on a disinterested party. As you might imagine, disinterested parties are even less inclined than litigants to engage in costly or time-consuming preservation, collection, review, and production efforts. Effectively navigating this unique circumstance takes a delicate touch, and panelists will provide hard-earned insight on the applicable rules, as well as the benefits of careful planning and regular communication.

The First 72 Hours: Responding to a Data Breach Quickly and Effectively to Minimize Risk and Get Back to Business

Jennifer Hradil / Karen McGee / Karen Painter Randall / Daniel K. Christensen (moderator)

A data breach of any type is sudden and unexpected, and time is of the essence in responding. This session will walk through the implementation of an effective incident response plan based upon a data breach fact pattern. Panelists will discuss the roles and responsibilities of each member of the incident response team, including senior management, legal counsel, information systems personnel, privacy/security officers, compliance officers, public relations, and third party vendors/consultants. The session will include discussion of identifying and remediating the source of the data breach, minimizing legal risks, establishing and preserving the attorney-client privilege, complying with notification obligations, and preserving evidence.


4:45-5:45

plenary session

A Judicial Perspective

Hon. David G. Campbell / Hon. Xavier Rodriguez / Hon. Shira A. Scheindlin / Hon. Peter B. Swann
Hon. Samuel A. Thumma / Michael Arkfeld (moderator)

There have been notable developments in eDiscovery beyond the recent changes to the Federal Rules. Hear from noted jurists on issues faced in eDiscovery, including: phased discovery, cost shifting, privacy, triggering events, special masters, and more! Time permitting, come prepared with the questions about which you have always wanted to have an off-the-record discussion with a judge.





sessions day three

8:30-9:30

plenary session

KEYNOTE ADDRESS: Welcome to Today's Wild West of Data Science and Big Data

Michael Goul

Current methodologies, approaches and technical means to conduct data science in the emerging big data era are in a nascent stage of development in contrast with scientific methods used in many engineering, natural science and social science disciplines. We will discuss what data scientists do, what they produce, provide insights on the nature of the tool suites they rely upon, and we will examine how data science discoveries are put to use in typical business contexts. There often exists a treasure trove of discoverable data science and big data digital exhaust that can shed light on how modern business practices are being designed and implemented. We will look at how Big Data is managed and how it provides value in companies across many industries. Whether you are considering data science as an approach to support your internal e-discovery processes or you are working with a client for whom the application of data science has resulted in negative outcomes and consequences, this session will familiarize you with latest trends and current controversies.

10:00-10:50

concurrent
sessions

Behind Closed Doors

Meredith Dugan / Kelly Griffith / Danny Richardson / George Socha (moderator)

In recent years, law firms and corporations have taken different approaches to handling eDiscovery. Models range from creating fully-staffed internal litigation support departments, to outsourcing all "eDiscovery" to technology providers, and everything in between. Is there a "correct" or "best practice" model for handling eDiscovery? This panel will discuss the benefits and risks of these various approaches as well as the ethical issues inherent in each.

Welcome to the eMachine: the Evolving Terrain of the Modern "eWorkplace"

Rita Byrnes Kittle / Hunter McMahon / Niloy Ray / Joy Allen Woller (moderator)

This session addresses the key strategic shifts that savvy litigators and leading-edge businesses have made to account for this new world, including with respect to the impact of the 2015 Amendments to the FRCP. Elements of the eWorkplace: computers, cell phones, social media, cloud, Internet of Things. Litigation Strategy in the eWorkplace: Should traditional discovery practices and approaches be adjusted? Collecting ESI: How to enforce proportionality as data multiplies.

11:05-12:05

plenary session

Change in Competency Standards – the Ethics of eDiscovery (Jeopardy!)

Robert E. Singleton (moderator)

As more and more states adopt the ABA's Comment on attorney competency regarding technology, and other states (like California) issue guidance on the ethical duties of attorneys with respect to handling ESI, it is increasingly important for all attorneys to understand their obligations with respect to technology. Come learn about your obligations in this fast-paced, jeopardy-style presentation. An ASU-Arkfeld tradition and crowd favorite.

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