




SANDRA DAY O'CONNOR  
COLLEGE of LAW

ARIZONA STATE UNIVERSITY

The background of the top half of the page features a green-tinted globe of the Earth, showing the continents of North and South America. The globe is set against a dark green background with a pattern of binary code (0s and 1s) and glowing lines, suggesting a digital or technological theme.

# Fourth Annual ASU-Arkfeld eDiscovery and Digital Evidence Conference

## Know the Law, Know the Technology

Exploring the legal and technological aspects of the discovery and admission of electronic information with the fields' leading experts and innovators.

**March 11-13, 2015 | Arizona State University**

Sandra Day O'Connor College of Law | Armstrong Hall | Tempe campus



# featured speakers

# planning committee and presenters

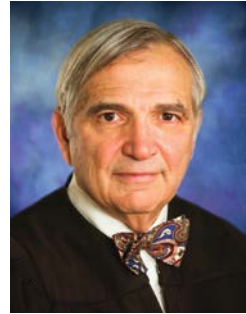


## Hon. Shira A. Scheindlin

U.S. District Judge,  
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.

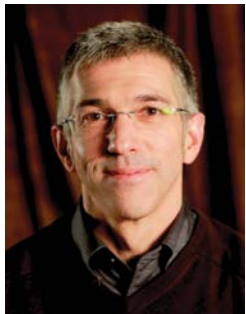


## Hon. John M. Facciola

U.S. Magistrate Judge (ret.),  
District of Columbia

Judge Facciola is the author of several heralded opinions including *Peskoff v. Faber*, *United States v. O'Keefe*, and *Equity Analytics, LLC v. Lundin*. He served as an Assistant District Attorney in Manhattan, and was in private practice in the District

of Columbia. He is a member of the Sedona Conference Advisory Board and the Georgetown Advanced E-Discovery Institute Advisory Board. His most recent publication, with Jonathan M. Redgrave, is *Asserting and Challenging Privilege Claims in Modern Litigation: The Facciola-Redgrave Framework*, 2009 Fed. Cts. L. Rev. 19 (2009). He received his bachelor's degree from the College of the Holy Cross and his juris doctorate from the Georgetown University Law Center.



## Tony Salvador

Intel Corporation

Dr. Tony Salvador, Senior Principal Engineer, currently directs research in the Experience Insights Lab within Intel Corporation. His team's role is to identify new, strategic opportunities for technology based on an understanding of fluctuating,

global socio-cultural values. Tony leads a team of social scientists and business analysts to look for, find and develop viable opportunities to create local, sustainable value with new high tech products, services and infrastructures. His ongoing research interests concern disruptive innovation practice, development and new market creation with an ethnographic perspective. Previously, he directed research for the Emerging Markets Platforms Group and was instrumental in the research and design of the Intel powered classmate PC. Prior to that he was a research scientist and co-founder of Intel's People & Practices Group. Tony received his bachelor's degree in Experimental Psychology from Franklin & Marshall College in Lancaster, Pennsylvania. He earned a Ph.D. in Human Factors and Experimental Psychology at Tufts University in Boston. He has over 50 published papers and patents in academic journals as well as more popular venues.



## Hon. Craig B. Shaffer

U.S. Magistrate Judge,  
District of Colorado

Magistrate Judge Shaffer graduated from the College of William and Mary in 1976 and received his juris doctor cum laude from Tulane University's School of Law in 1979. Judge Shaffer is a member of the Judicial Conference Advisory

Committee on Civil Rules. He has been an adjunct faculty member with the University of Denver's Sturm College of Law for the past twelve years, teaching courses on pretrial practice and electronic discovery, and is a long-time member of the faculty of the Annual ALI/ABA Environmental Litigation Seminar. Judge Shaffer has served on the Local Rules Committee for the District of Colorado and the ABA Task Force on Criminal E-Discovery, and currently is a member of the Judicial Advisory Board for the Sedona Conference, the Advisory Board for the Georgetown University Law Center's Advanced eDiscovery Institute, and the Board of Governors for the Colorado Bar Association. Judge Shaffer is a frequent presenter at conferences and seminars dealing with electronic discovery in both civil and criminal litigation.

## Director

**Michael Arkfeld**, Founding Director,  
ASU-Arkfeld eDiscovery and Digital  
Evidence Program

## Conference Co-Chairs

**Robert Singleton**, Squire Patton  
Boggs

**Joy Woller**, Lewis Roca Rothgerber

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**Erich Cress**, California State Lands  
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**Lorrie Luellig**, Ryley, Carlock &  
Applewhite

**Cecil Lynn**, eBay Inc.

**Caroline Mankey**, Cypress LLP

**Tom Morrissey**, Purdue Pharma LP

**Tom O'Connor**, Advanced Discovery

**Niloy Ray**, Littler Mendelson

**Mark Sidoti**, Gibbons PC

**George Socha**, Socha Consulting LLC

**Wendy Zerr-Jackson**, Banner Health

## Judicial Faculty

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

**Hon. John M. Facciola**, Magistrate  
Judge, District of Columbia (ret.)

**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

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

## Presenters

**Joseph S. Abrenio**, Delta Risk LLC

**Gail-Joon Ahn**, Arizona State  
University

**Bob Amicone**, Office Depot, Inc.

**Monica Bay**, CodeX: Stanford Center  
for Legal Informatics

**Sean Broderick**, Office of Defender  
Services

**Michael Burg**, DISH Network LLC

**William Butterfield**, Hausfeld

**Shawn Cheadle**, Lockheed Martin  
Space Systems Co.

**Dan Christensen**, Intel Corporation

**Kevin Day**, Teris

**Jim Donahue**, Hanzo Archives

**Meredith Dugan**, Southwest Airlines

**Casey Flaherty**, Consultant

**Alex Goth**, Squire Patton Boggs

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

**Brad Harris**, Zapproved

**Charlotte Harris**, Hess Corporation

**Tessa Jacob**, Husch Blackwell LLP

**Edward Jacobs**, BakerHostetler LLP

**Scott Kane**, Squire Patton Boggs

**Daniel Katz**, Michigan State University

**Anne Kershaw**, Knowledge Strategy  
Solutions

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

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**Mark MacFarlane**, Apollo Education  
Group Inc.

**Hunter McMahon**, Altep, Inc.

**Nick Piscopo**, Apollo Education Group  
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**Danny Richardson**, Richardson Law  
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**Richard Saldivar**, Teris

**Tony Salvador**, Intel Corporation

**Stephanie Sodorff**, Lewis Roca  
Rothgerber

**Jennifer Swanton**, Medtronic

**Arianna Tadler**, Milberg LLP

**John Tredennick**, Catalyst Repository  
Systems

**Kelly Twigger**, ESI Attorneys LLC

## Paper Presentations

**Joel Henry**, University of Montana

**Maureen O'Neill**, DiscoverReady

**James Shook**, EMC Corporation

# program

## Day 1

11:30 a.m.–12 p.m.	Check-In
12–12:30 p.m.	Welcome and Introduction – Michael Arkfeld
12:30–1:30 p.m.	Keynote Address – Hon. Shira A. Scheindlin Welcome to Tomorrow
1:30–2:30 p.m.	Concurrent Sessions Left of the Dial (Information Management) The 99% - eDiscovery Beyond Large Commercial Cases
2:30–2:45 p.m.	Networking Break
2:45–3:45 p.m.	Plenary Session I Feel the Need, the Need for Speed (TAR)
3:45–4:30 p.m.	Concurrent Sessions Pay Me Now or Pay Me Later 60% of the Time, It Works Every Time (Search tips & tricks)
4:30–5:30 p.m.	Plenary Session: Judges Panel Into the Great Wide Open

## Day 2

7:30–8 a.m.	Continental Breakfast and Check-in
8–8:30 a.m.	Call for Papers: Winning Paper Presentations
8:30–9:15 a.m.	Technology Keynote Address – Tony Salvador, Intel Corporation The Digocene Era / Fasten Your Seatbelt, It's Going to Be a Bumpy Ride
9:20–10:20 a.m.	Concurrent Sessions Welcome to the Machine - The Brave New World of Litigation To Have and To Hold - Bringing Discovery and Cost to the Altar
10:20–10:40 a.m.	Networking Break
10:40–11:40 a.m.	Concurrent Sessions You've Got a Friend in Me (Data Analytics) We Don't Need No Stinkin' Badges (Criminal Cases)

11:40 a.m.–12:30 p.m.

Plenary Session

Highway to the Danger Zone (Security)

12:30–1:30 p.m.

Lunch

1:30–1:45 p.m.

Call for Papers: Winning Paper Presentation

1:45–2:45 p.m.

Concurrent Sessions

For Your Eyes Only (International Perspectives & Privacy)

What's Yours is Mine (BYOD)

2:45–3:45 p.m.

Concurrent Sessions

I Can See Clearly Now (IT/Legal Department Integration)

Life is a Highway (Social Media)

3:45–4 p.m.

Networking Break

4–5 p.m.

Concurrent Sessions

Internal Affairs

Uncovering Footprints (Forensic Investigations)

5–6:30 p.m.

Reception

## Day 3

8–8:30 a.m.

Continental Breakfast and Check-in

8:30–9:45 a.m.

Plenary Session – Hon. Craig B. Shaffer

Litigating Effectively After the 2015 Amendments

9:45–10:45 a.m.

Concurrent Sessions

Well, Who's Gonna Monitor the Monitors of the Monitors? (Government Investigations)

When Form Trumps Substance (Forms of Production, Meet & Confer)

10:45–11 a.m.

Networking Break

11 a.m.–12 p.m.

Plenary Session – Ethics

THIS IS JEOPARDY!

12–12:30 p.m.

Farewell Address – Hon. John M. Facciola (ret.)

Can the Adversary System Survive E-Discovery...and Should It?



# day one

Wednesday, March 11, 2015

12–12:30 p.m.

Welcome and Introduction – Michael Arkfeld

## Upcoming Disruption of eDiscovery and Accessing the Justice System - Will it Happen?

Most professional service areas have been forever disrupted by the Internet, mobile devices and other changes. This presentation will explore whether this disruption will occur in the eDiscovery and legal analytics area and what this means for accessing our justice system.

12:30–1:30 p.m.

Keynote Address – Hon. Shira A. Scheindlin

## Welcome to Tomorrow

Maura R. Grossman, Wachtell, Lipton, Rosen & Katz / Joy Woller, Lewis Roca Rothgerber

Listen as one of the nation's foremost jurists and eDiscovery counsel discuss the law surrounding electronic data and how emerging technology may influence the legal field in years to come.

1:30–2:30 p.m.

Concurrent Sessions

## Left of the Dial

Mike Burg, DISH Network LLC / Lorrie Luellig, Ryley, Carlock & Applewhite / Mark MacFarlane, Apollo Education Group, Inc. / Robert Singleton, Squire Patton Boggs / George Socha, Socha Consulting LLC (moderator)

Effective cost control starts well to the 'left' of the litigation cycle, and well before preservation obligations are triggered. In this session, experts share practical tips and larger strategies for corporate information governance that will help you achieve a lean data profile while lowering litigation risks and costs.

## The 99% – eDiscovery Beyond Large Commercial Cases

Kelly Griffith, Spilman Thomas & Battle, PLLC (moderator) / Danny Richardson, The Richardson Law Firm / Stephanie Sodorff, Lewis Roca Rothgerber / Kelly Twigger, ESI Attorneys LLC

Learn how traditional eDiscovery practices and strategies that were typically reserved for the "1%" are being applied in all your cases. The panel will discuss how cutting-edge technology and changes in the law can be used in cases of all sizes and types in a cost effective and efficient way.

2:30–2:45 p.m.

Networking Break

2:45–3:45 p.m.

Plenary Session

## I Feel the Need, the Need for Speed

Hon. John M. Facciola / Maura R. Grossman, Wachtell, Lipton, Rosen & Katz (moderator) / Scott Kane, Squire Patton Boggs / Ariana Tadler, Milberg LLP / John Tredennick, Catalyst Repository Systems

TAR was expected to revolutionize eDiscovery. Three years after Da Silva Moore, how is TAR working in the real world? Is it making discovery better, faster, cheaper? Experienced practitioners will share their stories about how TAR has improved the eDiscovery experience and where it has crashed and burned.

3:45–4:30 p.m.

Concurrent Sessions

## Pay Me Now or Pay Me Later

Alex Goth, Squire Patton Boggs / Tessa Jacob, Husch Blackwell, LLP / Hunter McMahon, Altep, Inc. / Tom Morrissey, Purdue Pharma LP / Kelly Twigger, ESI Attorneys LLC (moderator)

Real ECA (Early Case Assessment) is critical to properly defining scope, assessing risk, and setting strategy in any matter. In this session, learn how properly conducted ECA and other techniques avoid unnecessary expenses and headaches.

## 60% of the Time, It Works Every Time

William Butterfield, Hausfeld / Hon. David G. Campbell / Nick Piscopo, Apollo Education Group, Inc. / Mark Sidoti, Gibbons PC / Robert Singleton, Squire Patton Boggs (moderator)

Although many denounce the use of keywords, the fact is that most cases use keywords to some extent and it works most of the time. This session will look at the various ways keywords are used and pitfalls practitioners need to be aware of when using keywords. The panelists will examine strategies when drafting, negotiating, and utilizing keyword searches.

4:30–5:30 p.m.

Plenary Session – Judges Panel

## Into the Great Wide Open

Hon. David G. Campbell / Hon. John M. Facciola / Hon. Shira A. Scheindlin / Hon. Craig B. Shaffer (moderator) / Hon. Peter B. Swann / Hon. Samuel A. Thumma

A distinguished panel of judges shares their perspective on everything from legal trends to emerging technologies.

# day two

## Thursday, March 12, 2015

8–8:30 a.m.

### Call for Papers: Winning Paper Presentations

*Don't Be Afraid to Be Smart: Select While You Collect* – Joel Henry, University of Montana

*eDiscovery and the Internet of Things* – Maureen O'Neill, DiscoverReady

8:30–9:15 a.m.

### Technology Keynote Address – Tony Salvador, Intel Corporation

#### Fasten Your Seatbelt, It's Going to Be a Bumpy Ride: The Digocene Era

We're entering a new era of social experience: the Digocene Era. This era is marked by the transposition of "all things analog" to "all things digital". The digitization of movies, music, books is obvious. But the ongoing digitization of many – many – more things like journalism, credit, education, science, therapy, relationships, love, etc. is changing how we live and how we value things like accountability, transparency, participation, conversation, etc. Moreover, our institutions, not least of which is the law, are unfortunately bound to the analogue and only slowly evolving to catch up. The transition over the next decade will present threats and opportunities to things like power, equality, democracy, our institutions, and even the nation state. We will discuss how this is happening, what we must recognize and actions we must take now to prevent irreparable harm to our way of life.

9:20–10:20 a.m.

### Concurrent Sessions

#### Welcome to the Machine – The Brave New World of Litigation

William Kellermann, Kellermann Law Offices / David Lewis, David D. Lewis Consulting / Tony Salvador, Intel Corporation / Robert Singleton, Squire Patton Boggs (moderator)

Building off Dr. Salvador's keynote address, the panelists on this session will explore the litigation implications of emerging technology and the impact that the interconnectedness of such technology may have on everything from civil litigation to governmental investigations and criminal prosecutions.

#### To Have and To Hold – Bringing Discovery and Cost to the Altar

Brad Harris, Zapproved / Charlotte Harris, Hess Corporation / Hon. Shira A. Scheindlin / Mark Sidoti, Gibbons PC (moderator) / Ariana Tadler, Milberg LLP

Listen as practitioners discuss the current state of the law of proportionality and learn practical approaches to striking that crucial balance between the cost of collecting/preserving everything and the risk of missing a key document in a collection/preservation.

10:20–10:40 a.m.

### Networking Break

10:40–11:40 a.m.

### Concurrent Sessions

#### You've Got a Friend in Me

Michael Arkfeld (moderator) / Alex Goth, Squire Patton Boggs / Daniel Katz, Michigan State University / Tom O'Connor, Advanced Discovery / Hon. Peter B. Swann

The term data analytics may strike fear in the hearts of many attorneys, but it can be one's key ally in litigation. Learn how to use data analytics to test ESI received in litigation, for quality control of your own productions, and in developing your own case strategy.

### We Don't Need No Stinkin' Badges

Sean Broderick, Office of Defender Services (moderator) / Hon. John M. Facciola / Dominic Lanza, U.S. Attorney's Office, District of Arizona

From search warrants to social media to the Internet of Things, eDiscovery has become a more prominent component of criminal investigation and prosecutions. This session will consider the evolving state of case law and its impact on civil liberties in this digital age.

### Plenary Session

#### Highway to the Danger Zone

Gail-Joon Ahn, Arizona State University / Michael Arkfeld (moderator) / Dan Christensen, Intel Corporation / Kelly Griffith, Spilman Thomas & Battle PLLC

Corporate and law-firm ESI is under continual threat of attack. This panel will address attorneys' obligations to protect client and client-related ESI and discuss strategies and practical tips for protecting ESI in the possession of clients, law firms, and vendors.

11:40 a.m.–

12:30 p.m.

12:30–1:30 p.m.

### Lunch

1:30–1:45 p.m.

### Call for Papers: Winning Paper Presentation

*Will Big Data Eat Proportionality?* – James Shook, EMC Corporation

1:45–2:45 p.m.

### Concurrent Sessions

#### For Your Eyes Only

Jamie Brown, UBS Warburg / Scott Kane, Squire Patton Boggs / Cecil Lynn, eBay, Inc. (moderator) / Hon. Craig B. Shaffer

There are widely differing standards regarding international data collection/review, including prohibitions against reading a document in a country and then flying to the US (without even taking the document). Complying with those requirements, or avoiding those requirements, have driven some to interesting means of data collection from sneaking it out in your luggage to only sending junior associates into "hostile" territories. Listen to real-world advice on how to negotiate the various jurisdictional requirements (and conflicts) implicated by cross-border discovery.

#### What's Yours is Mine

Bob Amicone, Office Depot, Inc. / Kevin Day, Teris / Casey Flaherty, Consultant / George Socha, Socha Consulting LLC (moderator) / Joy Woller, Lewis Roca Rothgerber

Panelists will examine collection issues faced in a BYOD environment and the privacy concerns related thereto. Come learn tips and tricks for collecting data in a e-workplace, how technology can help streamline the collection process, and steps employers should take to ensure its data can be collected from an employee's device while respecting the employee's privacy demands.



2:45–3:45 p.m.

### Concurrent Sessions

#### I Can See Clearly Now

Michael Arkfeld (moderator) / Meredith Dugan, Southwest Airlines / Charlotte Harris, Hess Corporation / Anne Kershaw, Knowledge Strategy Solutions / George Socha, Socha Consulting LLC

The panel of experts will demystify eDiscovery parlance, such as de-duplication; deNISTing; hash values; load files; OCR v. extracted text, and explain the importance of interaction between IT and Legal. Come prepared with your questions because these experts are at your service to discuss those question you have always wanted know but were afraid to ask.

#### Life is a Highway

William Butterfield, Hausfeld / Jim Donahue, Hanzo Archives / Niloy Ray, Littler Mendelson (moderator) / Hon. Samuel A. Thumma

The Information Superhighway is littered with large and small pieces of social-media data, and particular skill is needed to scoop these up and work them into discovery effectively. This session will cover practical approaches to working with Internet data, and point out potholes and detours to avoid while driving the Highway.

3:45–4 p.m.

### Networking Break

4–5 p.m.

### Concurrent Sessions

#### Internal Affairs

Michael Arkfeld / Casey Flaherty, Consultant / Robert Singleton, Squire Patton Boggs / Joy Woller, Lewis Roca Rothgerber (moderator)

A recent survey conducted of firms around the country looked at how the firms set up their eDiscovery practice, managed the eDiscovery process in their firm, and the use of outside vendors versus internalizing the process. Hear the results of the survey and see how your firm (or your representative) stack up against others involved in the industry.

#### Uncovering Footprints: Working with a Forensic Expert in an Internal Investigation

Joseph S. Abrenio, Delta Risk / Shawn Cheadle, Lockheed Martin Space Systems Co. / Tom Morrissey, Purdue Pharma LP (moderator)

Corporations and Law Firms are at risk on a daily basis from hackers and thieves. Some are intruders trying to come in through an open window...others are already in the organization. Organizations with assets to protect tend to keep a watchful eye. Hear from the guardians of the gates who are proactive in security and have the tools to conduct forensic investigations in the aftermath.

5–6:30 p.m.

### Conference Reception

8:30–9:45 a.m.

### Plenary Session – Hon. Craig B. Shaffer

#### Litigating Effectively After the 2015 Amendments

The new amendments to the Federal Rules of Civil Procedure are poised to take effect as early as December 2015. Join one of the nation's leading jurists in a practical and engaging discussion of how those proposed changes will affect the daily practice of law in our country.

9:45–10:45 a.m.

### Concurrent Sessions

#### Well, Who's Gonna Monitor the Monitors of the Monitors?

Monica Bay, Stanford Center for Legal Informatics (moderator) / Jamie Brown, UBS Warburg / Shawn Cheadle, Lockheed Martin Space Systems Co. / Hon. John M. Facciola / Edward Jacobs, BakerHostetler LLP

Courts encourage parties to negotiate and cooperate with respect to eDiscovery, but in a governmental investigation the government seems to demand everything – regardless of cost, confidentiality, or privilege. Listen as practitioners examine the current state of the law with respect to governmental investigation, provide practical experience in negotiating with governmental agencies, and holding the government to account for its own discovery duties.

#### When Form Trumps Substance

Michael Arkfeld (moderator) / Niloy Ray, Littler Mendelson / Hon. Shira A. Scheindlin / Wendy Zerr-Jackson, Banner Health / Richard Saldivar, Teris

A session that delves into the intricacies of R. 34(b), including production as kept in the ordinary course vs. a reasonably usable form, the need for a form-of-production counter-proposal, the risks of producing in counter-form without agreement, compelling third-party production, and the key interpretive question: why did the drafters separate ESI from Document?

10:45–11 a.m.

### Networking Break

11 a.m.–12 p.m.

### Plenary Session – Ethics

#### THIS IS JEOPARDY!

Moderators: Michael Arkfeld / Hon. John M. Facciola / Team Leaders: Monica Bay / Hon. Craig B. Shaffer

Back by popular demand, get your ethics credit in a lively session of Jeopardy that will examine the pressing ethical issues faced by attorneys around the country on a daily basis.

12–12:30 p.m.

### Farewell Address – Hon. John M. Facciola (ret.)

#### Can the Adversary System Survive E-Discovery... and Should It?

Judge Facciola, who recently retired, will reflect on the extraordinary changes he saw in his 17 years as a judge as information technology transformed discovery as no other force or development. He will ask some challenging questions about this change tested the adversary system, why it was often found wanting, and whether an adversary system of discovery, with all its expensive battles, should survive. Put another way, how many more \$300,000 emails can we afford before the cost of litigation finally closes the courthouse door to all but the Fortune 100?

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