ASU | Sandra Day O'Connor
College of Law
Arizona State University

Sixth Annual ASU-Arkfeld

eDiscovery and Digital Evidence Conference

The New Normal:
Law, Technology, and Innovation

March 8-10, 2017 | Sandra Day O'Connor
Beus Center for Law and Society | Phoenix, AZ

Featured Speakers

Hon. Mitchell D. Dembin

U.S. Magistrate Judge,
Southern District of California

Judge Dembin was sworn in as a United States Magistrate Judge for the Southern District of California on March 18, 2011. Prior to his appointment, he was an Assistant U.S. Attorney in San Diego and served as the Cybercrime Coordinator for the office. Before that, he was the Chief Security Advisor for Microsoft Corporation assisting Microsoft's business customers in creating and implementing strategic security plans. Prior to joining Microsoft, Judge Dembin was the president of EvidentData, Inc., a firm specializing in computer forensics, digital evidence and computer security. Judge Dembin served four different terms as an AUSA over 20 years in San Diego and in Boston including 6 years as a supervisor. Beginning in 1991, Judge Dembin specialized in investigating and prosecuting high technology crimes.

Daniel Martin Katz

Illinois Tech - Chicago Kent School of Law

Professor Katz is a scientist, technologist and law professor who applies an innovative polytechnic approach to teaching law, meshing litigation and transactional knowledge with emerging software and other efficiency-enhancing technologies to help create lawyers for today's challenging legal job market. Both his scholarship and teaching integrate science, technology, engineering, and mathematics. Professor Katz's forward-thinking ideas helped to earn him acknowledgement in the 2013 Fastcase 50, an award which "recognizes 50 of the smartest, most courageous innovators, techies, visionaries, and leaders in the law." He was also named to the American Bar Association Journal's 2013 Class of "Legal Rebels," a prestigious group of change leaders in the legal profession.

Hon. Xavier Rodriguez

U.S. District Court,
Western District of Texas

Judge Rodriguez is a former Texas Supreme Court Justice and currently sits on the bench as a United States District Judge for the Western District of Texas. Born in San Antonio, Texas, he received his bachelor's degree from Harvard University, a master's degree from the University of Texas LBJ School of Public Affairs and a doctor of jurisprudence degree from the University of Texas Law School. Prior to assuming the bench, he was a partner in the international law firm of Fulbright & Jaworski (now known as Norton Rose Fulbright). Judge Rodriguez is a frequent speaker on continuing legal education seminars and has authored numerous articles regarding employment law, discovery and arbitration issues. He is the editor of Essentials of E-Discovery (TexasBarBooks 2014). He serves as an adjunct professor of law at the St. Mary's University School of Law. He was elected to membership in the American Law Institute, and is a Fellow of the American Bar Foundation and the Texas Bar Foundation. In 2011 he was awarded the Rosewood Gavel Award for outstanding judicial service from the St. Mary's University School of Law.

Hon. Craig B. Shaffer

U.S. Magistrate Judge,
District of Colorado

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.

Conference Faculty

Founding Director

Michael Arkfeld
ASU-Arkfeld eDiscovery, Digital Evidence & Data Analytics Program

Conference Co-Chairs

Robert E. Singleton, Squire Patton Boggs

Joy Allen Woller, Lewis Roca Rothgerber Christie LLP

Keynote Speakers

Hon. Mitchell D. Dembin, U.S. Magistrate Judge, Southern District of California

Daniel Martin Katz, Illinois Tech – Chicago Kent College of Law

Judicial Faculty

Hon. Mitchell D. Dembin, U.S. Magistrate Judge, Southern District of California

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

Hon. Shira A. Scheindlin (ret.) Stroock, Stroock & Lavan

Hon. Craig B. Shaffer, U.S. Magistrate Judge, District of Colorado

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

Hon. Samuel A. Thumma, Arizona Court of Appeals, Divison One

Speakers

Lea Bays, Robbins Geller Rudman & Dowd LLP

Michael Burg, DISH Network

Daniel Christensen, Intel Corporation

John P. Collins, DTI

Andre L. D'Ambra, Norton Rose Fulbright

Alex Goth, Squire Patton Boggs

Kelly Griffith, Thomson Reuters

Maura R. Grossman, University of Waterloo

Brad Harris, Zapproved

Jeff Hewett, Granite Legal Systems

Tessa K. Jacob, Husch Blackwell

William Kellermann, Hanson Bridgett

Anne Kershaw, Reasonable Discovery, LLC

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

Julie Lewis, Digital Mountain

Hal Marcus, OpenText Discovery

Mark Michels, Deloitte

Tom Morrissey, Purdue Pharma LP

Justin P. Murphy, U.S. Department of Justice

Dan Oseran, eBay

Karen Painter Randall, Connell Foley LLP

Donald Pierson, Altep

Niloy Ray, Littler Mendelson PC

Damon Reissman, Deloitte

K Royal, Global Privacy Consultant

James Shook, Dell EMC

Mark Sidoti, Gibbons PC

Leon Silver, Gordon & Rees

Bill Speros, Speros & Associates LLC

Jennifer Swanton, Medtronic

Schedule

Day 1

11:30 a.m.–12:30 p.m.	Check-In & Lunch
12:30–1:00 p.m.	Welcome and Introduction – Michael Arkfeld
	The New Normal: Are You Prepared? The Disconnect Widens!
1:00–2:00 p.m.	Keynote Address – Hon. Mitchell D. Dembin
	Looking for Data in All the Wrong Places: The Interdependence of Information Governance, Network Security, and eDiscovery
2:15–3:15 p.m.	Concurrent Sessions
	Search I - How to Search Well (Enough) *Foundations Track*
	EDiscovery "Tail" Wagging the Information Governance "Dog"
3:30–4:30 p.m.	Concurrent Sessions
	Search II - Starting Off on the Right Foot with Technology-Assisted Review ("TAR")
	Building Your ESI Toolkit *Foundations Track*
4:30-6:30 p.m.	Reception: hosted by Lewis Roca Rothgerber Christie 5th Floor Conference Center & Fort McDowell Yavapai Nation Courtyard
5:00–6:00 p.m.	Reception Session
	Cybersecurity and Data Incident Response

Day 2

8:00–9 a.m.	Continental Breakfast and Check-in
9:00–10:00 a.m.	Keynote Address – Daniel Martin Katz
	Fin (Legal) Tech: Law's Future from Finance's Past
10:00–10:30 a.m.	Call for Papers: Winning Author Presentations
	The eDiscovery Bots are Coming!
	Enterprise Systems Discovery Management
10:45–11:45 a.m.	Concurrent Sessions
	The Impact of Technology on the Fourth Amendment and the Right to Digital Privacy
	Mock Hearing: Production Under the New Federal Rules

11:45 a.m.–1:00 p.m.	Lunch
1:00–2:00 p.m.	Concurrent Sessions
	Reducing E-Discovery Costs with Early Analysis, Proactive Lawyering, and Transparence
	The New Normal - Always Changing? (Developing Technologies)
2:30–3:30 p.m.	Concurrent Sessions
	What's More Normal Than a Mobile Device?
	Who Wants to be a Multi-National Corporation?
	Tweets, Posts and Pins: Discovery in the Age of the Social Media Explosion
3:45–4:45 p.m.	Plenary Session
	What Exactly is the "New Normal"?
5–6:30 p.m.	Reception: Hosted at the offices of Squire Patton Boggs 1 E Washington St. #2700, Phoenix AZ

Day 3

8–9:00 a.m.	Continental Breakfast
9:00–10:00 a.m.	Keynote Judicial Panel
	What's Normal When You Are Sitting On The Bench?
10:00–11:00 a.m.	Plenary Session
	Are Robots About to Eat Lawyers for Lunch? – Separating Fact from Fiction
11:15–12:15 p.m.	Ethics Jeopardy!
12:15–12:30 p.m.	Closing Remarks

12:30–1:00 p.m.

Welcome and Introduction – Michael Arkfeld
(W. P. Carey Foundation Armstrong Great Hall)

The New Normal: Are You Prepared? The Disconnect Widens!

Aren't you tired of hearing about email, texts, social media content, predictive coding, BYOD, databases and other digital evidence? Better not be. The identification and disclosure of electronically stored information is just starting for most practitioners, and the next stage is rapidly emerging. Next stage - Internet of Things (IOT), big data, privacy, cybersecurity, and analytics will test practitioners and legal professionals and subject them to risks for which, today, they are ill-prepared. Now is the time to jump on board this digital train and learn how to apply the many technological concepts to both substantive and procedural law.

1:00–2:00 p.m.

Keynote Address – Hon. Mitchell D. Dembin
(W. P. Carey Foundation Armstrong Great Hall)

Looking for Data in All the Wrong Places: The Interdependence of Information Governance, Network Security, and eDiscovery.

Computer and network security, information governance and eDiscovery are not silos. Weakness in any of those disciplines causes weakness in the others. The modern practitioner must be a hybrid and have a level of proficiency in technology, policy and law. As Yoda would say, "there is no try."

2:00–2:15 p.m.

Networking Break

2:15–3:15 p.m.

Search I - How to Search Well (Enough) *Foundations Track
Room: 240

Tessa Jacob, Bill Speros, Donald Pierson
Hon. Craig B. Shaffer (moderator)

If the goal of e-discovery is to identify, collect, search for and produce relevant, responsive and non-privileged ESI from a larger data universe, then parties and their counsel must make strategic decisions about how to comply with their discovery obligations in a way that is reasonable and proportional under the circumstances of a particular case. This panel will discuss the challenges associated with the search and retrieval of EIS and consider how parties can most effectively approach the search process to achieve a result that is consistent with the Federal Rules of Civil Procedure. This panel of e-discovery experts will provide practical advice on how to evaluate the strengths and weaknesses of different search methods, and then implement those methodologies before and throughout the pretrial process.

EDiscovery "Tail" Wagging the Information Governance "Dog"
Room: 250

Jennifer Swanton, Tom Morrissey
Michael Burg (moderator)

Many times it seems like the only time IG is a company's focus is when the costs associated with discovery become large enough to attract attention. This session will examine the benefits that can

be had in the discovery process through effective Information Governance. Hear industry experts discuss the types of IG policies that can/should be used, who should be involved in IG, how to implement an IG policy in the face of mountains of data, how to change company culture and bring everyone into compliance with IG policies, how technology can be used to manage the data, and the intersection between IG and eDiscovery – including the impact on IG by the revised FRCP.

3:15-3:30 p.m.	**Networking Break**
3:30–4:30 p.m.	**Search II - Starting Off on the Right Foot with Technology-Assisted Review ("TAR")**

Room: 240

Maura Grossman, Alex Goth, Hal Marcus
Andrea L. D'Ambra (moderator)

Join our panel of knowledgeable and experienced TAR users to get a description of what TAR is and is not, the different types of TAR on the market, potential use cases for TAR, its strengths and limitations, and an overview of process and workflow considerations when using TAR. Our panelists will outline questions you will definitely want to ask your TAR provider, and might want to ask your adversary, and will engage in a lively discussion about how much the latter has to answer!

Building Your ESI Toolkit *Foundations Track*
Room: 250

Kelly Griffith, Mark Sidoti
Robert Singleton (moderator)

Knowing the rules is only half the battle - counsel must also know how to comply with those rules when directing the nuts and bolts of e-discovery. Incorporating templates, guidelines, and checklists into your organization's workflow is an effective way to make sure that you (and your colleagues) are consistently approaching e-discovery in a defensible, efficient manner. This panel will identify e-discovery-related tasks that lend themselves to a systematic approach and provide sample resources that you can use to get a jumpstart on building your organization's ESI toolkit.

4:30-6:30 p.m.	**Reception**
5:00–6:00 p.m.	**Cybersecurity and Data Incident Response**

Room: 544

Karen Painter Randall, Daniel Christensen, K Royal, Dan Oseran
Leon Silver (moderator)

Working through a table-top breach exercise, our panel of data security and incident response experts will discuss critical steps and ethical challenges law firms face in the event of data breach.

9:00–10:00 a.m.

Keynote Address – Daniel Martin Katz
(W. P. Carey Foundation Armstrong Great Hall)

Fin (Legal) Tech - Law's Future from Finance's Past

#FinTech embraces two major themes – characterizing / pricing increasingly exotic forms of risk and removing unnecessary frictions from friction laden financial processes. #Fin (Legal) Tech is the application of those ideas and technologies to a wide range of law related spheres including litigation, transactional work and compliance. In this talk, Professor Katz will explore what he believes will be an important emerging vector in the coming decade - the financialization of the law.

10:00–10:30 a.m.

Call for Papers: Winning Paper Presentations
(W. P. Carey Foundation Armstrong Great Hall)

The eDiscovery Bots Are Coming! - Jim Shook

Enterprise Systems Discovery Management - Jeff Hewett

10:30–10:45 a.m.

Networking Break

10:45–11:45 a.m.

The Impact of Technology on the Fourth Amendment and the Right to Digital Privacy
Room: 250

Dominic Lanza, Hon. Xavier Rodriguez
Hon. Craig B. Shaffer (moderator)

With the explosion of electronically stored information and proliferation of digital storage devices, courts and the criminal justice community are confronting new and increasingly complex challenges in attempting to balance privacy interests and society's interest in effective law enforcement. This panel of jurists and experienced criminal litigators will explore the question of whether or to what extent ESI presents discrete issues that do not fall within established Fourth Amendment principals and will consider what reasonable expectations of privacy attach to computers, cellphones and other electronic devices.

Mock Hearing: Production Under the New Federal Rules
Room: 240

Niloy Ray, Lea Bays
Hon. Shira Scheindlin (ret.) (moderator)

This session will use spirited mock arguments to explore various discovery issues that often arise during the life cycle of an RFP. How specific do grounds for objection really have to be? What should a statement that you are withholding documents look like? Is there a difference between what rules apply to ESI versus documents under Rule 34? How does a proportionality argument work in practice? Come watch what it looks like in court when attorneys clash over how to apply the new rules with The Honorable Shira Scheindlin presiding.

11:45–1:00 p.m.	Lunch

1:00–2:00 p.m.

Reducing E-Discovery Costs with Early Analysis, Proactive Lawyering and Transparency
Room: 250

Anne Kershaw, William Kellermann, Tom Morrissey
Kelly Griffith (moderator)

It's no secret that e-discovery can be costly, and its reputation as a budget-killer makes many clients (and counsel) reluctant to engage in the process. Overcoming this perception is difficult, but it is made easier by coming into the discussion armed with specific strategies that lead to a less costly, more efficient approach. This panel will share tips on how to predict and control e-discovery costs through matter analytics, budgeting, strategic and iterative search, anticipating (and planning for) the aspects of the process that most often lead to unexpected expenses, alternative pricing arrangements, and cooperative dialogue with opposing parties.

1:00–2:00 p.m.

The New Normal - Always Changing? (Developing Technologies)
Room: 240

John Collins, Mark Michels, Alex Goth
Joy Allen Woller (moderator)

Discovery professionals today must be prepared to identify, collect, preserve, and search information from new and ever-evolving sources of ESI. The fundamental legal and forensic ESI developments over the past decade should provide practitioners with a framework for providing practical and proactive advice and to address data demands in future litigation and disputes. Using examples such as Office 365, Google's G-Suite and the "Internet of Things" this panel will discuss the changing landscape of technology today and how that technology is impacting eDiscovery techniques and strategy.
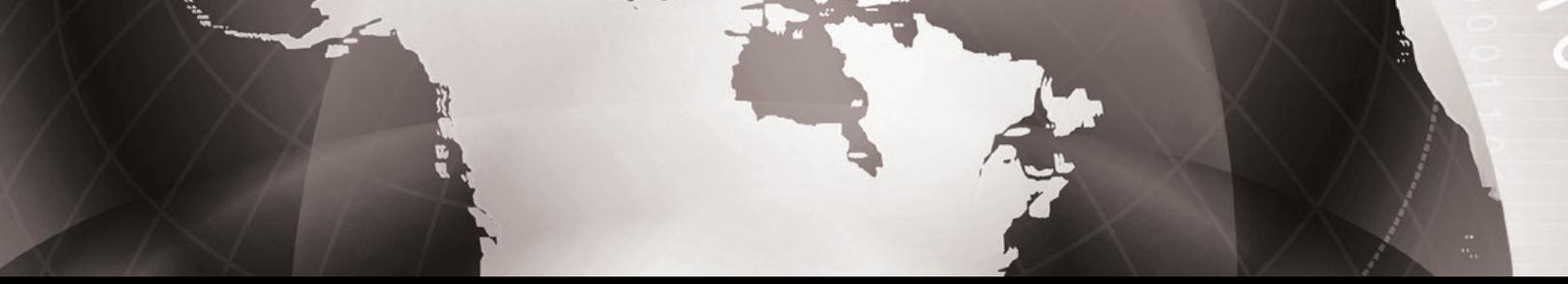
2:00–2:30 p.m.	Networking Break

2:30–3:30 p.m.

What's More Normal Than A Mobile Device?
Room: 240

Mike Burg, Damon Reissman, Niloy Ray
Cecil Lynn (moderator)

The mobile device is the icon of the 21st century – a computer in our pockets, our lives at our fingertips, wirelessly connecting us to the global circuit. But the incorporation of this 'new normal' into our professional lives precipitates new decision points and provokes new litigation and technology-usage strategies. From policy to production, smart-phones, tablets, wearables and other mobile devices transform how we create, receive, use, collect and produce data. This session will examine the impact of mobile devices on all aspects of the data life-cycle: the pros and cons of BYOD and COPE policies; practical considerations when implementing these practices; types of useful evidence available on mobile devices; privacy concerns given the inevitable blurring of the private/public/professional/personal boundaries in everyday life. Hear how industry leaders are dealing with this new normal and balancing the needs of the business with the mandates of the law.

2:30–3:30 p.m.

Who Wants to be a Multi-National Corporation?
Room: 150

Andrea L. D'Ambra, K Royal, Dan Oseran
Joy Allen Woller (moderator)

International businesses today must navigate a web of laws and regulations governing data privacy and collection of ESI. In a lively, interactive format, this panel will examine some of those challenges such as how to set a foundational baseline for your global privacy program, which countries are should be subject to individual scrutiny, key global privacy risk triggers, and strategies and best practices for addressing them.

Tweets, Posts and Pins: Discovery in the Age of the Social Media Explosion
Room: 250

Lea Bays, Tessa Jacob, Julie Lewis
Mark Sidoti (moderator)

The continued explosion of social media sites and their usage by company employees is here to stay. But challenges abound. Who owns the data when social media text and images are uploaded through a workplace mobile device? What expectation of privacy does an employee have regarding social media posts? Is your organization missing relevant communications in its discovery efforts by not evaluating social media platforms utilized in the ordinary course of business? And what are the practical and ethical implications for counsel in preserving, collecting, reviewing and using social media data in investigations and litigation? This panel offers insights on these issues and more from expert defendant and plaintiff-oriented attorneys and a leading provider of e-discovery and forensic services.

3:30–3:45 p.m.   Networking Break

3:45–4:45 p.m.

What Exactly Is The "New Normal"?
Room: 240

Hon. Xavier Rodriguez, Brad Harris, Tom Morrissey
Maura Grossman (moderator)

Join this panel of experts from a wide range of perspectives—client, service provider, outside counsel, government regulator, and judge—as they discuss what they see (or expect to see) as the "new normal" in a post-terabyte, post-TAR, post-cloud, post-BYOD, post-vendor consolidation, post-Ashley Madison, and post-Schrems world. This panel will explore developments and trends in eDiscovery technology, process, policy, and law.

5:00–6:30 p.m.

Reception

Squire Patton Boggs
1 E Washington St. #2700,
Phoenix, AZ 85004

9:00–10:00 a.m.

Judicial Panel: What's Normal When You Are Sitting On The Bench

Hon. Samuel A. Thumma, Hon. Craig B. Shaffer, Hon. Xavier Rodriguez, Hon. Peter Swann
Hon. Shira Scheindlin (ret.) (moderator)

Noted jurists will examine what "Normal" may be in practice today. Hear how rule changes being implemented and proposed around the country may impact what "Normal" is and what recent case law says about "Normal" with respect to Proportionality, Curative Measures, Rule 34's specificity requirements, and Rule 1. Time permitting, come prepared with questions and war stories that have impacted your "Normal" practice. Time permitting, come prepared with questions and war stories that have impacted your "Normal" practice.

10:00–11:00 a.m.

Are Robots About to Eat Lawyers for Lunch? – Separating Fact from Fiction

Maura Grossman, Daniel Martin Katz, William Kellermann
Michael Arkfeld (moderator)

As data continues to proliferate, new service and software providers are touting analytics and machine-learning applications to manage and analyze this growing wealth of data. What are the latest state-of-the-art tools? Hear from world-class panelists who participated in the recent ASU - Arkfeld Legal Analytics and Big Data workshop held in December, 2016, who will discuss these technologies. For example, are you aware of analytic software to predict the outcome of a cases before your judge? Do you know which specific clauses and other content is potentially risky in your client's contracts? How are bond and other decisions being made regarding criminal defendants? What tools are available to assist you in your jury selection process? What are the ethical issues implicated by all of these analytics? Which tools are most likely to replace lawyers, and which legal skills do not lend themselves to artificial intelligence? These questions and more will be addressed by this esteemed panel.

11:00–11:15 a.m.   **Networking Break**

11:15–12:15 p.m.

Ethics Jeopardy!

An ASU-Arkfeld tradition and always a crowd favorite!

12:15–12:30 p.m.   **Closing Remarks**

Thank you!

Advisory Committee

Michael Arkfeld (Founding Director)

Robert Singleton (Co-Chair)

Joy Woller (Co-Chair)

Michael Burg

Shawn Cheadle

Daniel Christensen

Meredith Dugan

Kelly Griffith

Maura Grossman

Tessa Jacob

William Kellermann

Cecil Lynn

Caroline Mankey

Tom Morrissey

Niloy Ray

Hon. Xavier Rodriguez

Hon. Craig Shaffer

Mark Sidoti

George Socha

Program Partners

Lewis Roca ROTHGERBER CHRISTIE

SQUIRE PATTON BOGGS

Altep

Tera Level

Deloitte.

ZAPPROVED

casepoint

RECOMMIND is now OPENTEXT

RYLEY CARLOCK & APPLEWHITE — DOCUMENT CONTROL GROUP

Giga Level

SBS — Strategic Business Solutions — L-LPO Services

DTI | epiq

Mega Level

cloudnine

Lunch Level

GRANITE LEGAL SYSTEMS