ASU **Sandra Day O'Connor College of Law**

Arizona State University

Center for Law, Science and Innovation

Ninth Annual ASU-Arkfeld

eDiscovery, Law and Technology Conference

March 11-12, 2020

Sandra Day O'Connor College of Law

Beus Center for Law and Society | Phoenix, AZ

Schedule at a Glance

Wednesday, March 11

8:00–8:30	**Registration & Continental Breakfast/**Room 544
8:30–9:00	**Welcome and Introductions, Michael Arkfeld/**Room 644
9:00-9:50	**Keynote: Joel Wallenstrom**/Room 644 Do Your Employees Trust You? Should They? Do you Care?
10:00-11:00	**Concurrent Sessions** eWork Place / **Room 650** Challenges and Approaches in Information Governance/**Room 550** How Emerging Technologies Are Disrupting eDiscovery/**Room 442** (*Special Session Sponsored by Ipro*)
11:30-12:30	**Concurrent Sessions** Yours, Mine or Ours?: Understanding Possession, Custody, and Control of Electronic Data/**Room 650** eDiscovery Special Masters: The Good, the Bad, and the Ugly/**Room 550**
12:30–1:30	**Lunch/**Room 544
1:45-2:45	**Plenary**/Room 644 U.S. Privacy Law: An Amazing Technicolor Dreamcoat
3:00-4:00	**Concurrent Sessions** Forms, Checklists, and Documentation…Oh My! /**Room 650** Ethics in eDiscovery/**Room 550**
4:30-5:30	**Plenary/**Room 644 Emerging ESI: Focus on the Content, Not the Container
5:30-7:30	**Reception/**First Floor Plaza Area, BCLS

Schedule at a Glance

Thursday, March 12

8:30–9:00   **Registration & Continental Breakfast/**Room 544

9:00-9:50   **Keynote: Hon. Joy Conti/**Room 644
Looking into a Crystal Ball—Future Challenges for Judges in E-discovery Disputes

10:00-11:00   **Concurrent Sessions**
ESI Search Strategies: Determining What's Right for Your Case/**Room 650**
Data Security Best Practices Throughout the eDiscovery Process/**Room 550**
Beyond TAR: How New Forms of AI are Tackling Sensitive Data, from Privilege Review to PII and DSARs/**Room 442** *(Special Session Sponsored by Text IQ)*

11:30-12:30   **Judicial Panel/**Room 644

12:30–1:30   **Lunch/**Room 544

1:45-2:45   **Concurrent Sessions**
ESI Protocols – What Are They Good For? /**Room 650**
Cybersecurity: Legal, Technical, and Practical Considerations /**Room 550**
Build a Blockchain/**Room 442** *(Special Session Sponsored by Text IQ)*

3:00-4:00   **Concurrent Sessions**
Evidentiary Issues – Authentication and New Rules/**Room 650**
Artificial Intelligence's (AI's) Potential for Misuses, Flaws, etc./**Room 550**
Financials and eDiscovery: A Primer for Non-Accountants/**Room 442** *(Special Session Sponsored by Ipro)*

4:30-5:15   **Ethics Jeopardy!/**Room 644

Hon. Joy Flowers Conti
Senior U.S. District Judge

Judge Conti is a senior judge of the United States District Court for the Western District of Pennsylvania. Prior to her appointment, she was a shareholder with the Pittsburgh office of Buchanan Ingersoll, (now Buchanan Ingersoll Rooney), prior to which she was a partner with Kirkpatrick, Lockhart, Johnson & Hutchison, now known as K&L Gates LLP. Judge Conti was a Professor of Law at Duquesne University and taught courses on civil procedure, corporations, corporate finance, corporate reorganizations, and bankruptcy. She has written and lectured on eDiscovery and is a member of the prestigious American Law Institute and the American College of Bankruptcy.

Joel Wallenstrom
CEO and President of Wickr

Joel Wallenstrom is the CEO & President of Wickr and a world-renowned information security expert. Joel has led top white hat hacker teams responding to some of the most high profile incidents in the past 20 years. Under his executive guidance, Wickr has pivoted the company from solely offering a free consumer product to a robust enterprise compliance-ready, secure collaboration platform used by the Fortune 500 and top federal organizations. Prior to joining Wickr, Joel co-founded iSEC Partners, one of the world's leading information security research teams, later acquired by the NCC Group.

8:30-9:00am **Welcome and Introduction, Michael Arkfeld/**Room 644

9:00-9:50 **Keynote Address: Joel Wallenstron/**Room 644
**Do Your Employees Trust You? Should They?
Do you Care?**

End-to-end encryption is a powerful tool that can be leveraged to build next generation products that provide security, compliance and control like never before. But as more and more employees opt for consumer messaging over corporate systems, IT and legal departments face loss of control. Trust within organizations can be built and managed, but only if organizations are prepared to innovate.

10:00-11:00 **eWork Place/**Room 650
Michael Burg, Aneesh Mehta, Adam Platt /Tessa Jacob (moderator)

New technology platforms are transforming how we work. But how do these new technologies impact security, information governance, privacy, and discovery? This panel will discuss how their companies evaluate new technologies, establish new policies, and enforce proper use when faced with fast-paced changes in technologies. We will also learn how the panelists educate their in-house and outside legal teams on these changing technologies.

**Challenges and Approaches in Information Governance/
Room 550**
Mira Edelman, Tom Morrissey, Lisa Ripley /Brett Tarr (moderator)

This session will address the practical challenges and best-practice approaches for Information Governance (IG), including how to achieve buy-in for implementing effective IG practices across your organization. We'll discuss how to form and manage IG committees, manage data across large numbers of repositories, and navigate the growing and complex regulatory environment.

Special Session Sponsored by Ipro
**How Emerging Technologies Are Disrupting eDiscovery/
Room 442**
Gary Marchant
This session will provide an overview of new technologies that are being introduced as different industries continue to innovate. Learn how some of these technologies are starting to be introduced in Litigation and ultimately disrupting eDiscovery.

11:30-12:30pm

Yours, Mine or Ours?: Understanding Possession, Custody, and Control of Electronic Data/Room 650

Lea Bays, Daniel Christensen, Hon. Xavier Rodriguez /Mark Sidoti (moderator)

This panel will discuss some of the challenges presented by third party data, including the various definitions of "possession, custody and control" across jurisdictions, litigation hold approaches with third parties, and meet and confer strategies that target these issues. control" across jurisdictions, litigation hold approaches with third parties, and meet and confer strategies that target these issues.

eDiscovery Special Masters: The Good, the Bad, and the Ugly/Room 550

Jeannine Kenney, Hon. Kristen L. Mix /Maura Grossman (moderator)

An eDiscovery special master can be a valuable asset to litigants and the court in resolving disputes and avoiding the costs and delays in discovery-related motions practice. Yet there are can be also be drawbacks in using them. Join this interactive discussion about strategies and best practices for employing an eDiscovery Special Master in your cases.

12:30-1:30

LUNCH/Room 544

1:45-2:45

U.S. Privacy Law: An Amazing Technicolor Dreamcoat/Room 644

Michael Burg, K Royal, Scott Uthe /Daniel Christensen (moderator)

The US faces a patchwork of legal paradigms governing the privacy of personal information. While some states have enacted more comprehensive data protection legislation, critics argue that state privacy laws will create overlapping and uneven regulations. And any federal efforts will likely implicate legal concerns such as preemption and standing. What will this Amazing Technicolor Dreamcoat of US privacy end up looking like?

3:00-4:00

Forms, Checklists, and Documentation…Oh My! /Room 650

Alex Goth, Adam Platt, Mark Sidoti /Kelly Griffith (moderator)

While it's true that e-discovery processes are rarely (if ever) "one size fits all," that doesn't mean that counsel and clients must start from scratch in each case. Thoughtfully developing standard, customizable processes can go a long way toward minimizing costs and maximizing the efficiency (and quality) of your e-discovery process. This panel will discuss several areas in which forms, checklists, and other SOPs can benefit organizational clients and counsel.

3:00 - 4:00 **Ethics in eDiscovery/**Room 550
Anne Kershaw /Ronald Hedges (moderator)

It has been eight years since the comments to the ABA Model Rules of Professional Conduct were revised to require attorney competence regarding the benefits and risks of technology. But what does it mean to be a competent attorney with respect to electronic discovery today? This session will explore this important question and some of the many ethical dilemmas facing litigators today.

4:30-5:30 **Emerging ESI: Focus on the Content, Not the Container/**Room 644
Tom Morrissey, Alex Ponce de Leon, Joel Wallenstrom /Mira Edelman (moderator)

Innovation in workplace technology is constantly evolving to provide new platforms for companies to run day-to-day business operations. What are the implications to legal departments when it comes time to identify, preserve, collect and produce sources of relevant ESI in novel environments? What can legal departments do when critical business functions and confidential workflows exist outside the control of their IT department and outside their capability to monitor and/or discover?

5:30-7:30pm **Reception Hosted by Ipro/**1st Floor Plaza Area, BCLS

9:00-9:50am

Keynote Address: Hon. Joy Conti
Looking into a Crystal Ball—Future Challenges for Judges in E-discovery Disputes/Room 644

Difficult issues a judge may encounter in the near future when disputes arise about AI, ephemeral apps, blockchain, the Internet of Things, changes in data privacy laws, proportionality, and more.

10:00-11:00

ESI Search Strategies: Determining What's Right for Your Case /Room 650
Maura Grossman, Tessa Jacob, Anne Kershaw /Kelly Griffith (moderator)

Like most eDiscovery issues, search is not a one-size-fits all task, and the tools available to counsel are, at times, marketed as limitless. From keyword search to TAR, and in situ search and analysis, the panelists will discuss various search tools and the contexts in which each strategy may be most effective. Along the way, the panelists will demystify some of the terms surrounding search to help counsel better understand the search options available to them and to their clients.

Data Security Best Practices Throughout the eDiscovery Process/Room 550
Christopher Almaraz, Robert Brownstone, Hon. Xavier Rodriguez /Niloy Ray (moderator)

This session will address many of the best practices in securing sensitive data collected, ingested, produced and received in eDiscovery. Takeaways will include practical tips as to identifying potentially affected entities in the event of a breach; key provisions in protective orders, case management orders and eDiscovery protocols; how to avoid potential waivers of attorney-client privilege, attorney work-product protection, other privileges and privacy rights; and much more.

Special Session Sponsored by Text IQ
Beyond TAR: How New Forms of AI are Tackling Sensitive Data, from Privilege Review to PII and DSARs/ Room 442
Richard Lutkus, Brett Tarr /Omar Haroun (moderator)

Legal privilege, access to one's data, and the expectation of privacy: these are the three rights consumers have come to expect as the information economy explodes. In this discussion, a panel of AI innovators and expert litigators examine the close links between all three rights, and how technology designed for privilege review could be a major breakthrough for access and privacy.

11:30-12:30 **The Judicial Perspective on Electronic Discovery!**
/Room 644

Hon. Joy Conti, Hon. Dominic Lanza, Hon. Kristen L. Mix, Hon. Xavier Rodriguez /Michael Arkfeld (moderator)

The judges will address the following questions: Is the typical attorney able to competently handle the discovery matter? What is the state of practice in the federal court courts regarding eDiscovery? Are there any recent federal or state court decisions that significantly affect the handling of eDiscovery matters? Have we advanced enough that sanctions are rarely imposed on counsel? Is the judiciary and attorneys ready for the immense impact of abusive artificial intelligence in our society?

12:30-1:30 **LUNCH/Room 544**

1:45–2:45 **ESI Protocols – What Are They Good For? /Room 650**

Lea Bays, Niloy Ray /Hon. Joy Conti (moderator)

All discovery is e-discovery these days, so parties are increasingly entering into agreements or protocols governing the production of ESI. This panel will discuss the benefits of an ESI protocol, what topics are often included in a protocol, and highlight some of the oft-disputed topics in negotiating a protocol. Via mock negotiations, the panelists will provide insight into requesting- and producing-party viewpoints along with a healthy dose of judicial intervention.

Cybersecurity: Legal, Technical, and Practical Considerations /Room 550

Jenner Holden, Tina Thorstenson /Sarah Erickson-Muschko (moderator)

Implementing and maintaining an effective cybersecurity program requires bringing together a variety of stakeholders to balance legal, technical, and practical considerations. This session will provide an interactive forum to discuss those considerations and their application to compliance, incident response, government investigations, litigation, and more.

1:45–2:45

Special Session Sponsored by Ipro
Build a Blockchain/Room 442
Jay Carpenter

Blockchain is the Internet of exchange. Join this session to get a great introduction to the realm of decentralization and blockchain technology. You will have the opportunity to be hands-on and build a blockchain during this session as you learn how this emerging technology will impact eDiscovery.

3:00- 4:00

Evidentiary Issues – Authentication and New Rules /Room 650
Hon. Dominic Lanza, Bruce Pixley, /Ronald Hedges (moderator)

New sources of electronically stored information appear on a seemingly daily basis. These new sources, alongside "traditional" sources, present challenges for attorneys and judges who must address questions of authentication and, more broadly, admissibility. This panel will discuss new or recently-adopted evidence rules, address the admissibility of social media and websites, and suggest strategies for lawyers who argue for and against admissibility of these and other sources.

Artificial Intelligences' (AI's) Potential for Misuses, Flaws, Security/ Privacy Concerns and Employees' Rights Violations? /Room 550
Daniel Christensen, Joe Gervais, Matthew Todd /Robert Brownstone (moderator)

As AI increases its role in day to day activities, a myriad of concerns has arisen, such as who should be involved in creating and auditing machine learning systems; what are some of the most dangerous unintended failures of such systems; where are AI's biggest data security risks; why does AI seem incompatible with individuals' rights granted by privacy laws such as the GDPR and CCPA; and when are employees' rights ostensibly violated by an employer's use of AI?

3:00- 4:00   *Special Session Sponsored by Ipro*
Financials and eDiscovery: A Primer for Non-Accountants/Room 442
Stanley Friedman

Finance Law does not have to be complex. In this session, you will learn the basics of how accountants think and work and where the potential evidence may be hidden.

4:15 - 5:15   **Plenary 4: Ethics Jeopardy/**Room 644
Come earn ethics credit as we learn about ethical considerations in eDiscovery in what has become an ASU-Arkfeld tradition and always a crowd favorite.

Save the Date

Mark your calendar for the 10th Annual Arkfeld eDiscovery Conference

May 10-11, 2021

Founding Director

Michael Arkfeld, Arkfeld & Associates, LLC

Conference Co-Chairs

Robert E. Singleton, Squire Patton Boggs

Joy Allen Woller, Lewis Roca Rothgerber Christie LLP

Keynote Speakers

Hon. Joy Flowers Conti, U.S. District Court, Western District of Pennsylvania

Joel Wallenstrom, CEO & President, Wickr

Judicial Faculty

Hon. Joy Flowers Conti, U.S. District Court, Western District of Pennsylvania

Hon. Dominic Lanza, U.S. District Court, District of Arizona

Hon. Kristen L. Mix, U.S. District Court, District of Colorado

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

Advisory Committee

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Brightside Benefit

Kelly Griffith
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