

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

Arizona State University

Center for Law, Science and Innovation



**11th Annual**

**ASU-Arkfeld eDiscovery,  
Law and Technology Conference**

**Phoenix | Oct. 11 & 12, 2022**



# 11th Annual ASU-Arkfeld eDiscovery, Law and Technology Conference

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## Day 1: Tuesday, Oct. 11

**8:00 – 8:30 a.m.**

**Check-in and light breakfast**

**8:30 – 8:50 a.m.**

**Welcome and Introductory Remarks:**

The New Chaos — Surveillance of Jurors, Judges, Clients and Attorneys

**Michael Arkfeld**

**8:50 – 9:30 a.m.**

**Keynote Address:** The Utah Legal Regulatory Sandbox:  
A Case Study in Advancing Innovation in the Law

**Hon. Constandinos “Deno” Himonas**

The Utah Legal Regulatory Sandbox is a pioneering attempt to harness the market and technology to address the growing access-to-justice crisis. This address will employ the Utah case study to explain how a regulatory sandbox creates space for digital platforms and entrepreneurship in the law.

**9:30 – 10:30 a.m.**

**Session 1:** Cybersecurity 360 — Addressing the Threat Landscape with Key Players, Including Regulators, Insurers, Customers and Remote Workers

**Robert Brownstone, Shawn Cheadle, Martin Tully**

The ever-changing cybersecurity environment requires lawyers and technologists to be more agile than ever, both proactively and reactively. Now, with so many employees working from home since the onset of the pandemic, data security must address an even greater range of issues.

This dynamic session will address many of the modern risks from the perspective of clients and lawyers alike. The covered topics are anticipated to include: litigation liability; regulators' current focuses; cyber-insurance; incident-response preparation and execution; customer notifications; and working-from-home (WFH) risks.

**10:30 – 11:00 a.m.**

**Networking Break**

**11:00 a.m. – 12:00 p.m.**

**Session 2:** Vendors: When You Need 'Em and How To Find the Right One

**Alex Goth, Kelly Griffith, Thomas Peistrup, Amy Sellars**

With e-discovery requiring attention in every matter, law firms and legal departments must determine how to best meet their needs for technological services. The good news and the bad news: there are many options! Join in-house and law firm technologists and counsel to discuss the pros and cons of various approaches, including:

- Bringing e-discovery technologists and tools in-house vs. retaining an outside vendor.
- Issuing a request for proposal to potential vendors vs. other vendor selection processes.

**12:00 – 1:00 p.m.**

**Lunch break (Lunch will be provided)**

**1:00 – 2:00 p.m.**

**Session 3:** Rule 37(e). Establishing Spoliation and Appropriate Remedies

**Jeannine Kenney, Hon. Xavier Rodriguez, Joy Woller**

After great deliberation, Fed.R.Civ.P. 37 was amended in 2015 to address the preservation of Electronically Stored Information. According to the Advisory Committee Notes that accompanied that amendment, the prior version of Rule 37 had not adequately addressed the serious problems resulting from the exponential growth of ESI. Does the current version address that concern, maintain appropriate incentives to preserve, and provide adequate remedies? This panel will examine the elements of Fed.R.Civ.P. 37(e)(1) and (e)(2), recent case law interpreting those rules, and key questions that remain unanswered seven years after the amendment.

**2:00 – 3:00 p.m.**

**Session 4:** Technology Toolbox: Tackling Common Challenges in Search and Production

**Alex Goth, Kelly Griffith, Christine Milliron, Brian Morrison**

Move beyond the 10,000-foot view and hone in on technological solutions to some of those discrete issues that regularly crop up in e-discovery projects. For example, have you struggled to:

- craft the perfect search to locate those critical, emotionally-charged documents that can unlock a case?
- effectively redact personally identifiable information (PII) (and other protected content) in common file types?
- minimize the labor involved in preparing an adequate privilege log?

Experienced attorneys and technologists will discuss their experiences with these issues and, most importantly, the specific (and accessible!) tools they use to tackle these obstacles in their practice.

**3:00 – 3:30 p.m.**

**Networking Break**

**3:30 – 4:30 p.m.**

**Session 5:** Information Governance (IG) — Projects, Prioritization, Platforms, Processes and Paper

**Robert Brownstone, Elizabeth Carrera, Shawn Cheadle, Thomas Peistrup**

Modern entities of all shapes and size have to get their arms around their information and its myriad locations. A tailored step-by-step approach will reap many benefits for lawyers, techies, records-managers and service providers. This interactive session will focus on many practical tips to assess various environments, address the obstacles each one presents and position one's (client's) organization to best meet the interlocking challenges of the three-headed monster of: ongoing retention/disposition; privacy/cyber compliance; and litigation/eDiscovery preparedness.

**4:30 – 5:30 p.m.**

**Session 6:** Don't Slack Off! Addressing eDiscovery Challenges with Workplace Collaboration Tools and Other New ESI Sources

**Lea Bays, Phil Favro, Brian Morrison, Amy Sellars**

Online chat and collaboration tools like Microsoft Teams, Slack, and the Google suite of products present several complex eDiscovery challenges for clients, counsel, and the courts. From issues with retention settings and account types to embedded document links and export formats, collection and production difficulties abound. Fold in conflicting court decisions, along with questions looming on the horizon with the metaverse, and it becomes readily apparent why these and other new data sources present unique discovery challenges even for experienced eDiscovery practitioners. Come listen to a panel of experts who will analyze the issues and offer practical insights on a particularly compelling discovery practice area.

**5:30 – 7:30 p.m.**

**Conference Reception**

## **Day 2: Wednesday, Oct. 12**

**8:00 – 9:00 a.m.**

**Check-in and light breakfast**

**9:00 – 10:00 a.m.**

**Session 7:** Judicial Roundtable

**Maura Grossman (moderator), Hon. Allison Goddard, Hon. Deno Himonas, Hon. Michael Liburdi, Hon. Xavier Rodriguez**

In this perennial favorite, leading jurists will discuss changes they have seen in courtrooms across the U.S. since the start of the pandemic. Hear their invaluable perspectives on such topics as when and how to seek judicial relief in eDiscovery disputes, adequacy of production, proportionality, preservation, cooperation, sanctions, and more. Come prepared with the questions you've always wanted to ask a judge; this could be your opportunity.

**10:00 – 11:00 a.m.**

**Session 8:** Privacy Soup:  
CCPA, CPA, ADPPA, GDPR, etc. — Where Do U and I Fit In?

**Hon. Allison Goddard, K Royal, Martin Tully**

Privacy and data protection law is an ever-changing field whether looking through a global lens or a US one. Join us as we walk through the latest key developments in both law and enforcement. We'll address this wildly exciting time in personal data management from the perspective of a federal judge, a law firm partner, and an in-house counsel.

**11:00 a.m.– 12:00 p.m.**

**Lunch break (Lunch will be provided)**

**12:00 – 1:00 p.m.**

**Session 9:** Trust But Verify, But How?

**Maura Grossman, Jeannine Kenney, Hon. Xavier Rodriguez, Joy Woller**

Discovery obligations include an obligation to conduct a reasonable inquiry to locate responsive documents. But, the \$64,000 question is does a party or its counsel have a duty to validate the search methodology used in litigation? If so, when does that duty arise and does that validation need to be statistical or can it be qualitative in nature? Must all phases of the eDiscovery process be validated, or only some? Does outside counsel have an obligation to validate a collection or search done by their client? This panel will examine the possible sources of a duty to validate a party's search, common questions and disputes arising during the search validation process, and some metrics commonly used (or perhaps misused) to validate search processes.

**1:00 pm – 2:00 p.m.**

**Session 10:** Blockchain Data: Evidence and Discovery

**Joshua Boehm, Gary Marchant, Bryce Suzuki**

Blockchain technologies have expanded well beyond cryptocurrencies, becoming an integral part of major industry sectors. Practitioners today are expected to understand what a blockchain is, how clients and their opponents are using it, and why it's becoming one of the most disruptive technologies in decades, including for legal services. Leading experts will walk you through "smart contracts," discovery of blockchain data, admissibility of blockchain evidence, legal-practice use cases, and more.



