

Seventh Annual ASU-Arkfeld

eDiscovery and Digital Evidence Conference

Gaining An Edge: Law, Technology, and Analytics

March 6-8, 2018 | Sandra Day O'Connor College of Law
Beus Center for Law and Society | Phoenix, AZ

Keynote Speakers



Joe Gervais

Principal Cybersecurity Researcher and Red Team Member at Symantec

Joe Gervais is Principal Cybersecurity Researcher and Red Team member at Symantec. Previous roles have included Principal InfoSec Engineer and Lead Penetration Tester. He has 25+ years of security- and software engineering experience, mostly working with US government/DoD, and served as an Intelligence Analyst and Counterintelligence Specialist in the United States Marine Corps. Joe has been breaking into systems (and helping to secure them) since the early 1980s. More recently, in 2013 he took 1st place in the Lockheed Martin Cyber Challenge. Joe's education includes a bachelors degree in Cognitive Science, and a masters degree in Information Assurance.



Gary Marchant

Faculty Director, Center for Law, Science & Innovation, ASU

Gary Marchant is Regents Professor and the Lincoln Professor for Emerging Technologies, Law & Ethics at the Sandra Day O'Connor College of Law at Arizona State University. He has been Faculty Director of the Center for Law, Science & Innovation since 2001, and is also affiliated with the School of Life Sciences, The Global Institute of Sustainability, the Lincoln Center for Applied Ethics, the School for the Future of Innovation in Society, and the Global Security Initiative's Center for Cybersecurity and Digital Forensics (CDF) and Center for Human, Artificial Intelligence, and Robot Teaming (CHART), all at ASU. His training includes a Ph.D. from the University of British Columbia, a J.D. from Harvard Law School, and a M.P.P. from the Kennedy School of Government.



Hon. Andrew J. Peck

U.S. District Court, Southern District of New York (ret.)

Magistrate Judge Andrew J. Peck was appointed United States Magistrate Judge for the Southern District of New York on February 27, 1995, and served as Chief Magistrate Judge in 2004-2005. Judge Peck is co-chair of the S.D.N.Y.-E.D.N.Y. Local Rules Committee, and a member of the Second Circuit Federal-State Judicial Council. Judge Peck graduated with honors from Cornell University in 1974 and from Duke University School of Law in 1977, where he was an Editor of the Duke Law Journal. Judge Peck is a member of the Duke Law School Board of Visitors (2012 to Present). Judge Peck served as law clerk to Judge Paul Roney of the United States Court of Appeals for the Eleventh (then-Fifth) Circuit, during the 1977-1978 term.

Conference Faculty

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

Joe Gervais, Symatec

Gary Marchant, Center for Law, Science & Innovation, ASU

Hon. Andrew J. Peck, U.S. District Court Southern District of New York (ret.)

Judicial Faculty

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

Hon. Judge Andrew J. Peck, U.S. District Court, Southern District of New York (ret.)

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

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

Hon. Christopher Whitten, Maricopa County Superior Court

Speakers

Thomas Barnett, Paul Hastings LLP

Stuart Bartow, Lewis Roca Rothgerber Christie LLP

Lea Bays, Robbins Geller Rudman & Dowd LLP

Douglas Bean, Ryley Carlock & Applewhite

William Belt, CDS

Robert D. Brownstone, Fenwick & West LLP

Michael Burg, DISH Network

Shawn Cheadle, Lockheed Martin Space

Daniel Christensen, Intel Corporation

Brandon Colburn, Teris

John Collins, Options Clearing Corporation

Andrea L. D'Ambra, Norton Rose Fulbright

Jennifer Feldman, DLA Piper US LLP

Alex Goth, Squire Patton Boggs

Kelly Griffith, Thomson Reuters (Practical Law)

Maura R. Grossman, University of Waterloo & Maura Grossman Law

Aaron Harder, Deputy County Attorney at Maricopa County Attorney Office

Brad Harris, Zapproved

Bruce Hedin, H5

Tessa K. Jacob, Husch Blackwell

William Kellermann, Hanson Bridgett

Anne Kershaw, Reasonable Discovery, LLC

Warren Kruse, Altep Advanced Discovery

Paul Madrid, PayPal

Hilda Ortiz, PayPal

Dan Oseran, eBay

Karen Painter Randall, Connell Foley LLP

Niloy Ray, Littler Mendelson

Tony Reichenberger, KLDDiscovery

Linda Sharp, ZL Technologies, Inc

Jamie Sheppard, Perkins Coie, LLP

Mark Sidoti, Gibbons PC

George Socha, BDO Consulting

Jim Sullivan, KLDDiscovery

Jared Suttan, Lewis Roca Rothgerber Christie LLP

John Tredennick, Catalyst Repository Systems

Schedule

Day 1

11:30 a.m.–12:00 p.m.

Registration & Lunch /Room 544

12:00–12:30 p.m.

Welcome and Introduction – Michael Arkfeld /Room 644
Proliferation of Big Data and Legal and Technology Control Mechanisms

12:30–1:15 p.m.

Keynote Address – Gary Merchant /Room 644
The Quant Crunch: How Big Data and Data Analytics are Revolutionizing Law

1:30–2:30 p.m.

Concurrent Sessions

Robotics, AI and the Internet of Things /Room 650

Realizing the Benefits of Effective Early Case Assessment /Room 550

3:00–4:00 p.m.

Concurrent Sessions

Information Governance: Challenges and Opportunities /Room 650

The Rules /Room 550

4:15–5:15 p.m.

Plenary Session

Algorithms, Machine Learning and Artificial Intelligence - the Myth and the Hype! /Room 644

5:30–6:45 p.m.

Conference Reception: hosted by Lewis Roca Rothgerber Christie,
201 E. Washington St., Suite 1200, Phoenix, AZ

Day 2

7:45–8:30 a.m.

Continental Breakfast /Room 544

8:30–9:15 a.m.

Keynote Address – Joe Gervais /Room 644
Staying Secure in the Era of Big Data & Big Breaches

9:20–10:30 a.m.

Plenary Presentations /Room 644

Social Media Discovery: Taming the Dragons

Search Tips and Tricks

Presentation of Winning Paper: CAL vs SAL

10:45–11:45 a.m.

Concurrent Sessions

Employees' Mobile Devices: An Employer's Right to Content & Practical Obstacles to Collection /
Room 650

The Good, the Bad and the Ugly: Addressing Cyber Risk Across the Legal Services Supply Chain /
Room 550

11:45 a.m.–12:45p.m.

Lunch /Room 544



12:45–1:45 p.m.

Concurrent Sessions

Searching for Perfection - Finding Reasonableness /Room 650

Hold the Phone! (*or at least what's on it!*) - ESI Preservation Pitfalls /Room 550

1:50–2:50 p.m.

Concurrent Sessions

The Nuts and Bolts of Negotiating a Technology-Assisted Review (TAR) Protocol /Room 650

Urgency, Secrecy, Transparency – Oh My!: eDiscovery in Investigations /Room 550

3:10–4:10 p.m.

Plenary Presentations /Room 644

TAR for Smart People, How it Works and Why it Matters

Proliferation of Messaging Applications and the Expectation of Availability

Office 365

4:15–5:15 p.m.

Plenary Session

The International Data Game /Room 644

5:30–6:45 p.m.

Conference Reception: hosted by Squire Patton Boggs, 1E. Washington St. #2700, Phoenix, AZ

Day 3

7:45–8:30 a.m.

Continental Breakfast /Room 544

8:30–9:15 a.m.

Judicial Keynote Address /Room 644

Q&A with Hon. Andrew J. Peck

9:20–10:05 a.m.

Concurrent Sessions

Arizona's Look at Court Management of Truly Digital Evidence /Room 650

Using Forms and Checklists to Simplify Your ESI Review and Production /Room 550

10:20–11:05 a.m.

Judicial Panel: Case Updates /Room 644

11:10–12:10 p.m.

Ethics Jeopardy!



Day One

Tuesday, March 6, 2018

12:00-12:30 p.m.

Welcome and Introduction – Michael Arkfeld

Proliferation of Big Data and Legal and Technology Control Mechanisms /Room 644

12:30-1:15 p.m.

Keynote Address – Gary Marchant

The Quant Crunch: How Big Data and Data Analytics are Revolutionizing Law /Room 644

Big data and data analytics are rapidly infusing and transforming both the practice and substance of law. This presentation describes this trend, illustrates the quantification of the practice and substance of law with specific examples, and explores the implications of this trend for the business models, future, training and education of legal professionals.

1:30-2:30 p.m.

Robotics, AI and the Internet of Things /Room 650

William Kellermann, Niloy Ray, Gary Marchant (moderator)

This panel will discuss the holistic social tipping point represented by Artificial Intelligence, Robotics & Automation and the Internet of Things as emerging technologies, devices and processes. Panelists will discuss legal, privacy and security issues represented by the various technologies, combinations of technology and related processes found in real world products and services. Panelists will address specific issues of preservation, discovery, forensic integrity and presentation along with the development of new or novel legal theories making their way to the courts within five broad classes ranging from dumb, but interconnected devices to wholly autonomous and disconnected devices.

Realizing the Benefits of Effective Early Case Assessment /Room 550

Hon. Kristen Mix, Lea Bays, Alex Goth, George Socha (moderator)

From the inception of a matter, a proper assessment of data relevant to litigation is critical in order to understand the data you have and how to efficiently and effectively identify the relevant data from the corpus of data held by the corporation. Hear as industry experts share practical tips on how to assess the volumes of data, cull out the irrelevant data, negotiation strategies, and how to make a persuasive presentation to a judge.

3:00-4:00 p.m.

Information Governance: Challenges and Opportunities /Room 650

Michael Burg, Linda Sharp, Shawn Cheadle, Daniel K. Christensen (moderator)

Please join us for a practical session regarding information governance (IG). We will address how the definition of IG is currently morphing and expanding, and how IG relates to data security, cybersecurity and risk in our changing world. We will discuss eDiscovery and Legal Hold, as well as records and information management (RIM). We will conclude with audit and compliance, including international requirements, and prognosticate about what the future holds for IG. Don't miss this important, and interactive, session on IG!



The “Rules” in Practice /Room 550

Mark S. Sidoti, Hon. Christopher Whitten, William Belt, Joy Allen Woller (moderator)

Recent amendments to the Federal Rules of Civil Procedure prompted considerable debate and attention to the subject of eDiscovery. Similar provisions have been adopted by several state courts. This panel will address how those amendments have been implemented by parties and their counsel, strategic considerations for counsel practicing under our current rules, and how the amendments are being interpreted by courts.

4:15-5:15 p.m.

Algorithms, Machine Learning and Artificial Intelligence – the Myth and the Hype! /Room 644

Maura R. Grossman, Tom Barnett, Michael Arkfeld (moderator)

We have heard many times that machines and artificial intelligence will replace lawyers! Hear from the experts about the present and future state of the practice of law and algorithms, machine learning and artificial intelligence. Hear how it will affect your management of the practice of law, and its effect on litigation, including searching for critical electronically stored information, and predictive tools. On this esteemed panel are some of the top experts in the world who will describe and discuss with you the near future practice of law.

5:30-6:45 p.m.

Reception: Lewis Roca Rothgerber Christie, 201 E. Washington St., Suite 1200, Phoenix, AZ

Day Two

Wednesday, March 7, 2018

8:30-9:15 a.m.

Keynote Address – Joe Gervais

Staying Secure in the Era of Big Data & Big Breaches /Room 644

Never before has so much of your sensitive data been collected and distributed, and never before has so much of it been readily available to anyone interested, often at the expense of your own security and privacy. From marketers to organized criminal gangs to harassers, the combination of data breaches, data spills, social media, and public records provide a vast trove of easily accessible material to target you and your organization. Meanwhile, sophisticated hackers are directly targeting legal departments and law offices with increasing frequency. Despite the doom and gloom of this new reality, there are effective, practical steps that you can take to protect yourself and your organization. This presentation will use real-world scenarios, giving you a solid understanding of common attack techniques, and how simple steps can stop them. Together we'll cut through the hype and empower you to stay secure.

9:20-10:30 a.m.

Social Media Discovery: Taming the Dragons /Room 644

Hon. Kristen Mix

Discovery of social media can involve confrontations with multiple fire-breathers: the technology itself, your client, opposing counsel, opposing parties and the Court, just to mention a few. Planning and organization are the keys to efficient and ethical discovery practices that tame the dragons. This session will discuss tools to plan and organize thinking about social media discovery, calm the fire-breather(s) and emerge with the information you need

Search Tips and Tricks /Room 644

Niloy Ray

Learn about counter-intuitive tactics that will boost the effectiveness of your ESI searches.

Presentation of Winning Paper: CAL vs. SAL

Anthony Reichenberger, KLDISCOVERY, Jim Sullivan, KLDISCOVERY

10:45-11:45 a.m.

Employees' Mobile Devices: An Employer's Right to Content & Practical Obstacles to Collection /Room 650

Lea Malani Bays, Paul Madrid, George Socha, Brandon Colburn, Kelly Griffith (moderator)

Join the panelists as they discuss the always-thorny issue of an employer's right to ESI stored on an employee's personal mobile device. You'll learn about the essential components of a "Bring Your Own Device" (BYOD) policy and the access limitations inherent in many BYOD policies. After discussing common right-of-access issues, the panelists will address some practical obstacles that counsel face when trying to collect ESI from mobile devices.

The Good, the Bad and the Ugly: Addressing Cyber Risk Across the Legal Services Supply Chain /Room 550

Andrea L. D'Ambra, Karen Painter Randall, William Kellermann (moderator)

This panel will discuss novel information security issues from the perspective of finding and protecting the weakest link in legal services collaboration between client, law firm and alternative legal services provider.

11:45-12:45 p.m.

Lunch /Room 544



12:45-1:45 p.m.

Searching for Perfection - Finding Reasonableness /Room 650

Michael Burg, Hilda Ortiz, Douglas Bean, Tessa Jacob (moderator)

A decade after Judge Facciola wrote that keyword search analysis is an area of e-discovery “where angels fear to tread,” this methodology still hasn’t gone away. Why do “key word searches” get such a bad rap when most of us still are using them? When is it appropriate to use key word searching? How do you craft and test search terms? Learn from experienced attorneys who make an old methodology defensible in a new age. We’ll also talk about how things such as analytics and concept searching can enhance your key word searches. This expert panel will share various strategic decisions that go into developing a search plan that is reasonable and proportional for your case. And then, the panel will end with a discussion on tools to make your review more efficient. From e-mail threading, propagation, to skin tone analysis and regular expressions ---make sure you’re capitalizing on these tools to make your reviews as cost efficient as possible.

Hold the Phone! (or at least what’s on it!) – ESI Preservation Pitfalls / Room 550

Brad Harris, Jennifer Feldman, Mark S. Sidoti (moderator)

Now almost 15 years since the Zubulake decisions, most practitioners and companies are aware of the obligation to preserve electronically stored information when litigation arises. Despite this general awareness – and recent rule changes that were designed to better define the parameters of this obligation and the penalties for failing to abide it – pitfalls in the preservation process abound. This panel will illustrate some of these pitfalls through real world situations derived from recent court decisions and their own extensive experience in this area, and will discuss how to address and, ultimately, avoid these challenging situations.

1:50-2:50 p.m.

The Nuts and Bolts of Negotiating a Technology-Assisted Review (TAR) Protocol /Room 650

Maura R. Grossman, Hon. Andrew J. Peck, Bruce Hedin, Robert Brownstone (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.

Urgency, Secrecy, Transparency – Oh My!: eDiscovery in Investigations /Room 550

Anne Kershaw, Warren Kruse, John Collins, Robert Singleton (moderator)

When handling eDiscovery processes in an investigation context, the standard playbook rarely applies. Investigations are typically time sensitive, highly confidential matters and require special handling and expertise. Leveraging advanced technology can be even more critical in these scenarios, and staying up to date on the latest technological offers is essential for practitioners. This panel will address the key distinctions between eDiscovery processes and strategies in the investigation context, and how to explore practical and innovative solutions for managing the investigative process.



3:10-4:10 p.m.

TAR for Smart People; How it Works and Why it Matters /Room 644

John Tredennick

If someone created a process that could reduce review costs by 80 percent, with improved quality to boot, would you get excited? Someone did. It's called Technology Assisted Review and is a powerful use of Machine Learning, a form of Artificial Intelligence. Why aren't more lawyers using it? We'll focus on how TAR works and how Continuous Active Learning makes TAR even more compelling. This talk is for smart people who want to cut discovery costs, find what matters, and still make it home on time for dinner.

Proliferation of messaging applications and the expectation of availability/ Room 644

Warren Kruse

Encrypted, easy to use and free, why do people want to use MS-DOS Forensic methods in a mobile world? As conversations can bounce between e-mail, SMS, MMS, iMessage, Snapchat, Instagram, Twitter and many others, independently they can be confusing and unsearchable. There are just too many messaging apps to just say I want to review the text messages and we will talk about why and what you can do about it.

Office 365 /Room 644

Tessa Jacob, John Collins

Office 365 has taken over the corporate world. This talk will get you ready! John Collins is such an expert on Office 365 that Microsoft often engages John to teach its customers about the ins and outs of its cloud-based platform. Tessa Jacob is a practicing eDiscovery attorney and has been using Office 365's eDiscovery platform successfully and strategically for many years. John and Tessa will maneuver us through the current eDiscovery features in Office 365, showing us how to use Office 365 to do defensible and cost effective legal holds, collections, and reviews. They will also give us a glimpse at what the future of eDiscovery will look like for Office 365 customers and attorneys who represent them.

4:15-5:15 p.m.

The International Data Game /Room 644

Daniel Christensen, Stuart Bartow, Dan Oseran, Andrea D'Ambra (moderator)

When a lonely US Company is looking to expand its horizons and grow abroad, it has numerous options. But in every region of the world there are data protection rules and regulations that can seriously impact a Company's ability to manage and move its data for both business and litigation reasons. In this panel, our beleaguered US Company will conduct a blind interview of three international "contestants" (representing either Europe, Asia, or Latin America) to determine where the best fit would be for a new international headquarters. Will our US Company find the perfect match? Join us for the International Data Game and find out.

5:30-6:45 p.m.

Reception: Squire Patton Boggs, 201 E. Washington St., Suite 1200, Phoenix, AZ

Day Three

Thursday, March 8, 2018

8:30-9:15 a.m.

Judicial Keynote Address: Q&A with Judge Andrew Peck /Room 644

Robert Singleton (moderator)

Come hear one of the thought leaders in eDiscovery discuss the edge to be gained (and how to gain it) in topics including Rule 502, Rule 34, and cooperation/transparency. As an added bonus, ever have an eDiscovery questions you've wanted to ask a judge "off the record," now is your chance. Come prepared to discuss your burning questions with Judge Peck:

9:20-10:05 a.m.

Arizona's Look at Court Management of Truly Digital Evidence /Room 650

Hon. Samuel A. Thumma, Jamie Sheppard, Aaron Harder

This panel will highlight the work, and October 2017 recommendations, of the Arizona Task Force on Court Management of Digital Evidence. Building on the Joint Technology Committee Resource Bulletin: Managing Digital Evidence in the Courts, the Task Force identified ten recommendations for court management of truly digital evidence. Driven by the almost algebraic expansion of body-worn camera evidence, the Task Force addressed issues surrounding the submission, use and retention of digital exhibits in purely digital form, where exhibits cross the threshold from party to the court in digital form and then are used and retained in digital form by the court. Panel members will discuss Task Force recommendations to address this truly digital evidence concept, in the context of (1) digital formats; (2) storage and management and (3) court rules.

Using Forms and Checklists to Simplify Your ESI Review and Production / Room 550

Kelly Griffith, Alex Goth, Jared Sutton (moderator)

Receiving, producing, and reviewing ESI can be a dizzying process. Every day ESI discovery becomes more important to the litigation process, and the variables attorneys and litigation support staff face become more numerous. Join our panel to discuss ways you can assess and control for some of those variables in the review and production process by using forms and checklists that can be tailored to the needs of your practice.

10:20-11:05 a.m.

Judge Panel: Case Updates /Room 644

Hon. Samuel A. Thumma, Hon. Kristen Mix, Hon. Andrew J. Peck, Hon. Peter Swann, Michael Arkfeld (moderator)

Join us to hear and debate the thorny issues from the latest case updates, procedural rules affecting eDiscovery and admission of digital evidence. This esteemed panel will also provide a comparison between the federal rules and Arizona eDiscovery rules, which have been critically praised by litigants around the country. Here about eDiscovery versus E-disclosure, the new federal pilot program, as well as many other eDiscovery topics.

11:10-12:10 p.m.

Ethics Jeopardy!

Thank you!

Advisory Committee

Michael Arkfeld (Founding Director)
Robert E. Singleton (Co-Chair)
Joy Allen Woller (Co-Chair)
Jason R. Baron
Michael Burg
Shawn Cheadle

Daniel Christensen
Kelly Griffith
Maura R. Grossman
Tessa K. Jacob
William Kellermann
Tom Morrissey

Niloy Ray
Hon. Xavier Rodriguez
Hon. Craig B. Shaffer
Mark Sidoti
George Socha

Program Partners

Lewis Roca
ROTHGERBER CHRISTIE

SQUIRE
PATTON BOGGS

Tera Level Sponsors

Altep
AN ADVANCED DISCOVERY COMPANY


ZAPPROVED

RYLEY CARLOCK
& APPLEWHITE
The Business of Solutions
70 YEARS

H5

revealTM

 **TERIS**

 **CDS** COMPLETE
DISCOVER
SOURCE

AFFILIATES

BDO

LTN
Law Technology News

 **WOMEN IN eDISCOVERY**
— WOMEN EMPOWERING WOMEN —

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

Center for Law, Science & Innovation

MC 9520 • Phoenix, AZ 85004-4467 • 480.965.6181 • law.asu.edu

Information is subject to change. ASU is an affirmative action/equal opportunity institution. For ASU's non-discrimination policy, visit www.asu.edu/titleIX.
©2015 Arizona Board of Regents for the Sandra Day O'Connor College of Law. Published March 2015. 1.75C