

Eighth Annual ASU-Arkfeld

# eDiscovery and Digital Evidence Conference

March 6-8, 2019 | Sandra Day O'Connor College of Law  
Beus Center for Law and Society | Phoenix, AZ

# Keynote Speakers



## **Maura R. Grossman, J.D., Ph.D**

*Research Professor and Director of Women in Computer Science, University of Waterloo*

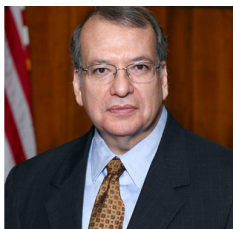
Maura is a Research Professor and Director of Women in Computer Science in the David R. Cheriton School of Computer Science at the University of Waterloo, an Adjunct Professor at Osgoode Hall Law School of York University, and a faculty affiliate of the Vector Institute. She also is Principal at Maura Grossman Law, an eDiscovery law and consulting firm in Buffalo, New York. Previously, Maura was Of Counsel at Wachtell, Lipton, Rosen & Katz, where, for 17 years, she advised the firm's lawyers and clients on legal, technical, and strategic issues involving eDiscovery and information governance, both domestically and abroad. Maura's scholarly work on TAR, most notably, Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review, published in the RICHMOND JOURNAL OF LAW AND TECHNOLOGY in 2011, has been widely cited in case law, both in the U.S. and abroad. Her longstanding contributions to eDiscovery technology and process were featured in the February 2016 issue of THE AMERICAN LAWYER and the September 2016 issue of the ABA JOURNAL, where she was recognized as a "Legal Rebel." Maura has served as a court-appointed special master, mediator, and eDiscovery expert to the court in multiple high-profile U.S. federal cases, and has also taught courses in eDiscovery at Columbia, Georgetown, Pace, and Rutgers–Newark law schools. In addition to her J.D. from Georgetown, Maura also holds M.A. and Ph.D. degrees in Psychology from the Derner Institute at Adelphi University.



## **Shawna Hoffman-Childress**

*Global Co-Leader of the IBM Cognitive Legal Practice*

Ms. Hoffman serves as the Global Co-Leader of the IBM Cognitive Legal Practice. She is also an Automotive, Aerospace & Defense Client Partner and was certified as an IBM Thought Leader in 2015. She has one published patent for Detecting Clusters and Relationships in Large Data Sets and one pending patent for Method and System for Pattern-based Home Network Configuration. She also co-authored the book "eDiscovery Plain & Simple", is the Co-Founder of Women in eDiscovery and the Co-Founder of Diversity in Blockchain. In 2017, Ms. Hoffman became an Advisory Board Member for Integra Ledger and became a pioneering member of the Global Legal Blockchain Consortium and the MIT Legal Forum for AI & Blockchain. Recently, she spoke at the United Nations at the Blockchain for Impact Summit and GlobalMinded on the subject "Blockchain, Financial Fuel for Sustainable Development". In September 2018, she was appointed as Chair of the U.S. Commodity Futures Trading Commission's Distributed Ledger Technology and Market Infrastructure Subcommittee for the 2018 - 2020 term.



## **Hon. Xavier Rodriguez**

*U.S. District Court, Western District of Texas*

Born in San Antonio, Texas, Judge Rodriguez 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 re-garding employment law, discovery and arbitration issues. Judge Rodriguez is the editor of Essentials of E-Discovery. 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 Judge Rodriguez was awarded the Rosewood Gavel Award for outstanding judicial service from the St. Mary's University School of Law.



# 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

**Maura R. Grossman**, University of Waterloo

**Shawna Hoffman-Childress**, IBM Watson Legal

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

## Judicial Faculty

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

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

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

## Speakers

**Michael Arkfeld**, Arkfeld & Associates, LLC

**Lea Bays**, Robbins Geller Rudman & Dowd LLP

**Brandon Boulware**, Boulware Law

**Robert D. Brownstone**, Fenwick & West LLP

**Michael Burg**, DISH Network

**Jay Carpenter**, Desert Blockchain

**Daniel Christensen**, Intel Corporation

**John Collins**, Options Clearing Corporation

**Eric Flerro**, Keller Rohrback

**Joe Gervais**, Symantec

**Alex Goth**, Squire Patton Boggs

**Kelly Griffith**, Thomson Reuters

**Maura R. Grossman**, University of Waterloo

**Brad Harris**, Zapproved

**Shawna Hoffman-Childress**, IBM Watson Legal

**Tessa K. Jacob**, Husch Blackwell

**William Kellermann**, Hanson Bridgett LLP

**Jeannine Kenney**, Hausfeld

**Anne Kershaw**, Reasonable Discovery, LLC

**Lidia Koelbel**, Ryley Carlock & Applewhite

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

**Paul Madrid**, PayPal

**Gary Marchant**, Arizona State University

**David McCarville**, Ryley Carlock & Applewhite

**Isis Miranda**, London Fischer LLP

**Kevin Moore**, Fenwick & West LLP

**Tom Morrissey**, Purdue Pharma LP

**Niloy Ray**, Littler Mendelson P.C.

**Dan Regard**, iDiscovery Solutions

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

**K Royal**, TrustArc Inc.

**Mark Sidoti**, Gibbons P.C.

**Robert Singleton**, Squire Patton Boggs

**David Stauss**, Ballard Spahr

**Hon. Peter Swann**, Arizona Court of Appeals

**Brett Tarr**, Caesars Entertainment

**Matthew Todd**, Full Scope Consulting LLC

**Steve Watson**, VTO Labs

**Joy Allen Woller**, Lewis Roca Rothgerber Christie LLP

# 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

12:30–1:20 p.m.

Keynote Address: Shawwna Hoffman-Childress /Room 644

The Future is Now: the Convergence of AI, Blockchain and the Law

1:30–2:30 p.m.

Concurrent Sessions

So You Wanna IG: Building an in-House Information Governance Program /Room 650

International Privacy Laws' Impacts on Day-to-Day Information Management and on eDiscovery / Room 550

3:00–4:00 p.m.

Concurrent Sessions

A New Approach to E-Discovery – Not a New Technology /Room 650

AI Update: What Works, What Doesn't, Questions to Ask, and Thorny Legal Issues /Room 550

4:15–5:15 p.m.

Plenary

Legal Blockchain for Bright Beginners /Room 644

## Day 2

8:00–8:45 a.m.

Continental Breakfast /Room 544

8:45–9:35 a.m.

Keynote Address: Maura Grossman /Room 644

Artificial Intelligence and the Law: Real Benefits and Challenges

9:45–10:45 a.m.

Concurrent Sessions

From Haystack to the Pincushion: The Life Cycle of a Relevant Document /Room 650

More than Meets the Eye: Spotting (and Exposing) Fabricated Evidence /Room 550

11:00–12:00 p.m.

Concurrent Sessions

TAR Unstuck: Choosing the Right Tool, Using It Wisely, and Negotiating an Effective TAR Protocol / Room 650

Everyday Devices and the Internet of Things: Working with ESI in the Forest of Smart Devices / Room 550

12:00–1:00 p.m.

Lunch /Room 544

1:00–2:00 p.m.

Plenary /Room 644

Office 365: Nuts & Bolts



2:15–3:15 p.m.

#### Concurrent Sessions

Getting A Head Start: Using Forms, Templates and Checklists to Gain an Edge in ESI Discovery/  
Room 650

Cybersecurity Hot Topics /Room 550

3:30–4:30 p.m.

#### Special Topics /Room 644

The Challenges of Bringing New Technology Data into the Courtroom /Steve Watson

In the Future, We'll All Be Hacked for 15 Minutes /Joe Gervais

4:30–5:30 p.m.

#### Plenary: /Room 644

U.S. Data Privacy Laws – Expanding Universe of Legislation and Resulting Diverse, Divergent Duties

5:45–7:00 p.m.

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

## Day 3

8:00–8:30 a.m.

#### Continental Breakfast /Room 544

8:30–9:20 a.m.

#### Judicial Keynote: Hon. Xavier Rodriguez /Room 644

The Demise of Civil Jury Trials. Is Ediscovery Really the Culprit or Merely The Fall Guy?

9:30–10:30 a.m.

#### Concurrent Sessions

A Deep Dive Into the Basics: Addressing ESI in Written Discovery-/Room 650

Do You Know Where Your Documents Are? Or Who's Touching Your Documents Today?  
Room 550

10:40–11:40 a.m.

#### Judicial Panel /Room 644

You May Be Seated - A Judicial Roundtable

11:40–12:40 p.m.

#### 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.

# Day One

Wednesday, March 6, 2019

12:00-12:30 p.m.      Welcome and Introduction – Michael Arkfeld /Room 644

12:30-1:20 p.m.      Keynote Address – Shawwna Hoffman-Childress

## **The Future is Now: the Convergence of AI, Blockchain and the Law**

**Room 644**

It is undeniable that AI and blockchain are two of the major technologies that are catalyzing the pace of innovation and introducing radical shifts in every industry. When one takes a look at the research and financial resources that are being invested in AI and blockchain, it is evident that many innovators in the legal technology space believe that they have tremendous promise within the industry. This keynote will take a look at these emerging technologies and provide insight into current trends.

1:30-2:30 p.m.

## **So You Wanna IG: Building an in-House Information Governance Program** **Room 650**

Michael Burg, Brett Tarr, Robert Singleton, / (moderator)

This session will discuss ideas for planning, building, and executing an enterprise Information Governance program. Panelists will share ideas on reporting structure, personnel, stakeholders, and making the business case for proactive management of information assets. Topics of discussion will include: executive buy in; options for reporting structure and the makeup of an IG team; developing relationships with stakeholders in the business; considerations in making your business case; and techniques for identifying and remediating redundant, obsolete, and trivial (ROT) information.

## **International Privacy Laws' Impacts on Day-to-Day Information Management and on eDiscovery /Room 550**

Daniel Christensen, K. Royal, /Robert D. Brownstone (moderator)

Thus far this century, a number of countries worldwide have passed legislation layering greater protections on individuals' private information. This panel examines the impacts of laws such as the EU General Data Protection Regulation (eff. May 25, 2018) as well as data protection laws elsewhere around the globe, such as Argentina, Australia, Canada and China. Now more than ever, U.S. companies and their users must be able to address legally compliant and technologically sound classification, anonymization, encryption, identification, collection, deletion and/or cross-border transfer of personal data. Join our panel in discussing practical tips as we explore not only ongoing proactive measures but also necessary reactive decisions to be made downstream in the throes of eDiscovery.



3:00-4:00 p.m.

### **A New Approach to E-Discovery – Not a New Technology /Room 650**

Brandon Boulware, Brad Harris, /Anne Kershaw (moderator)

E-discovery service providers are now collecting and processing documents for free – and when you remove the costs associated with getting the documents and use lawyers who are skilled in performing document analytics, you have a powerful new approach to e-discovery. Using the advantages of cloud computing, SAAS, screen-sharing, and analytics software, litigants can now scope and learn from their documents as soon as the litigation, or potential litigation, hits. As this panel of seasoned litigators will explain, this new approach provides enormous advantages through early determination of the facts and case strategy, achieving proportionality and eliminating discovery disputes.

### **AI Update: What Works, What Doesn't, Questions to Ask, and Thorny Legal Issues /Room 550**

Maura Grossman, William "Bil" Kellermann, /Gary Marchant (moderator)

Our panelists will explore the use of artificial intelligence in law firms and other legal organizations. They will share their experiences with various implementations of AI and address some questions to ask and issues to raise when considering an AI solution. Finally, the panel will explore some of the difficult, unanswered legal questions raised by the use of AI tools in law firms, including ownership of the data, legal ethics, and intellectual property.

4:15-5:15 p.m.

### **Legal Blockchain for Bright Beginners /Room 644**

Jay Carpenter, David McCarville, /Gary Marchant (moderator)

If you've heard the term, 'blockchain,' but you're not sure what it is or why so many people make such a big deal about it, then you may have had a vague sense that (1) it might be important and (2) you should probably know something about it. You would be right on both counts, and this session is for you. You will finally understand what a blockchain is, how your 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 step-by-step through Smart Contracts, discovery of blockchain data, admissibility of blockchain evidence, legal-practice use cases, and more. After this one-hour session, you will probably know more about blockchain than ninety-nine percent of all lawyers.



# Day Two

## Thursday, March 7, 2019

8:45-9:35 a.m.

**Keynote Address – Maura Grossman**

**Artificial Intelligence and the Law: Real Benefits and Challenges**

**Room 644**

A demonstration on how machine learning and deep learning work, will provide an overview of the range of legal AI products currently on the market, and will discuss some of the benefits and challenges lawyers and others can expect to face as AI applications continue to proliferate.

9:45-10:45 a.m.

**From Haystack to the Pincushion: The Life Cycle of a Relevant Document  
(aka the 'Needle') /Room 650**

Alex Goth, Lidia Koelbel, /Lea Bays (moderator)

Discovery obligations require producing parties to identify, collect, search, and produce relevant information to the requesting party. Once the relevant information is produced, requesting parties must sift through the production in order to identify the gaps, efficiently analyze the facts presented, create a narrative, and find the best evidence to support their claims. This panel will discuss the steps both producing and receiving parties can take to satisfy their discovery obligations and efficiently uncover the evidence necessary to present their best case.

**More than Meets the Eye: Spotting (and Exposing) Fabricated Evidence/  
Room 550**

Niloy Ray, David Regard

Digital tools have made the manufacture and alteration of digital evidence facile, leading desperate plaintiffs to try their hand at faking key e-mails, documents and other electronic records to bolster their claims. As Bench and Bar strive to maintain and improve technological competence, knowing how to spot ESI red flags is critical -- so join digital sleuths Dan Regard and Niloy Ray on an entertaining journey as they investigate a raft of real-life cases, and learn techniques to expose would-be fraudsters every time!

11:00-12:00 p.m.

**TAR Unstuck: Choosing the Right Tool, Using It Wisely, and Negotiating an  
Effective TAR Protocol /Room 650**

Maura Grossman, Jeannine Kenney, /Tessa Jacob (moderator)

This panel will take your understanding of TAR to the next level. Our experts will offer tips on how to select and evaluate TAR tools. They will demystify TAR 1.0, 2.0, and other jargon so you can figure out what's right for your case. They will also discuss potential use cases for TAR, including those that do not implicate defensibility issues. Finally, they will debate and dissect TAR protocols. What are they? Are they necessary? If not necessary, what are the pros and cons of having one? What goes into a TAR protocol? Learn how effective TAR protocols can protect your client regardless of whether they are the producing or receiving party. Join us for an interesting twist on the usual TAR panel. You'll leave more confident about choosing a TAR tool, knowing when and how to use it, and whether and how to negotiate a TAR protocol.





## **Everyday Devices and the Internet of Things: Working with ESI in the Forest of Smart Devices/Room 550**

Eric Fierro, William "Bil" Kellermann, Steven Watson, /Gary Marchant (moderator)

The network of internet connected devices known as the Internet of Things (IoT) compiles a vast amount of electronically stored information (ESI). The ESI generated from IoT triggers many security, privacy, discovery, and criminal evidentiary issues. Our expert panelists will discuss the issues, rewards, and dangers that await you and your clients in the IoT, will help you navigate this new frontier of data collection, and highlight evidentiary considerations for IoT. Increase your awareness of discoverable ESI available from vehicles, wearables, home monitoring systems, appliances, public networks and more. Avoid having to learn the hard way that inattention to these sources may create a cause of action or discovery nightmare.

12:00-1:00p.m.

**Lunch / Room**

1:00-2:00 p.m.

## **Office 365: Nuts & Bolts/Room 644**

John Collins, Tessa Jacob

Office365 has changed the landscape for eDiscovery attorneys. Chances are one or more of your clients are using Office 365. Are you ready? Come learn the nuts and bolts of using the eDiscovery features in O365. We'll address the capabilities (and drawbacks) of O365. Then we'll walk you through how to turn on a legal hold, run searches, read reports, and export files. We will also discuss tips and strategies for leveraging O365's eDiscovery features, and review the latest improvements and newest features. Come learn from leading O365 experts.

2:15-3:15 p.m.

## **Getting A Head Start: Using Forms, Templates and Checklists to Gain an Edge in ESI Discovery/Room 650**

Alex Goth, Kelly Griffith, Paul Madrid, /Mark Sidoti (moderator)

Managing ESI discovery in litigation has been the new normal for many years. While the old challenges persist and new ones emerge, the good news is that templates, guidelines, and checklists are available to streamline and standardize ESI processes and workflows, and assure that your management of ESI is consistent, defensible and efficient. Join us for a discussion of these helpful resources and how they can be adopted and customized to give you a head start in this complex race.

## **Cybersecurity Hot Topics /Room 550**

Daniel Christensen, Joe Gervais, Matthew Todd, /Robert D. Brownstone (moderator)

Individuals, organizations, governments and even critical infrastructures all confront an increasingly challenging cybersecurity environment. From AI to the human factor, new cybersecurity threats and the tools used to combat them are evolving exponentially. Many experts believe that with nation-state actors, organized crime, hackers, and even insiders involved, we are simply not making enough positive progress in cybersecurity. Our panel will address hot topics in cybersecurity, including predictions for 2019 and beyond, and we will discuss how technology, policy, process and law must change to improve cybersecurity. Join our panel as we address the evolving cybersecurity landscape and answer questions ranging from the latest cybersecurity trends to incident response and data breach.



3:30-4:30 p.m.

### **Special Topics /Room 644**

#### **The Challenges of Bringing New Technology Data into the Courtroom / Steve Watson**

Technology pushes forward and changes our world at an ever increasing pace. As consumers and companies rapidly adopt new technologies, those of us who discover data for legal processes face ever increasing challenges. What questions and challenges can we anticipate near-term and mid-term as we grapple with how to litigate data coming from these new technologies? What questions can we use to guide those assisting us?

#### **In the Future, We'll All Be Hacked for 15 Minutes / Joe Gervais**

Hacking techniques that were once considered advanced are increasingly commonplace. Their use in targeting of organizations and individuals is no longer limited to nation-states. What happens when advanced attack services are available to whoever is willing to pay the price?

4:30-5:30 p.m.

### **U.S. Data Privacy Laws – Expanding Universe of Legislation and Resulting Diverse, Divergent Duties /Room 644**

Michael Burg, Isis Miranda, David Stauss, /Robert D. Brownstone (moderator)

The big bang generated by the California legislature's passage of the Cal. Consumer Privacy Act (CCPA) of 2018 (eff. January 1, 2020) is but one of a group of pertinent regulatory regimes. This panel will compare and contrast CCPA as to not only the EU General Data Protection Regulation (GDPR) but also regarding legislation proposed and/or passed in each of the U.S. Congress and in 10 states (California, Colorado, Connecticut, Illinois, Massachusetts, New Jersey, New Mexico, North Dakota, Ohio and Vermont). Also addressed will be various states' administrative agencies' cybersecurity promulgations, including sector-focused regulations being enforced by the N.Y. State Department of Financial Services (DFS), the Colorado Division of Securities and the Vermont Department of Financial Regulation. We will discuss the substance, implementation and timing of compliance regimes in the face of known unknowns in this transitional period of intensified focus on data protection.

5:45-7:00 p.m.

**Reception:**

Hosted by, Squire Patton Boggs / 1 E Washington St #2700, Phoenix, 85004

# Day Three

## Friday, March 8, 2019

8:30-9:20 a.m.

### Judicial Keynote: Xavier Rodriguez

#### **The Demise of Civil Jury Trials. Is Ediscovery Really The Culprit or Merely The Fall Guy?/Room 644**

It's uncontested that the percentage of civil cases resolved by a jury trial is at historic low levels - hovering at 1%. This presentation will detail all the factors that impact this phenomenon and propose concepts that may help to reverse this trend.

9:30-10:30 a.m.

### **A Deep Dive Into the Basics: Addressing ESI in Written Discovery**

#### **Room 650**

Lea Bays, Mark Sidoti, /Kelly Griffith (moderator)

For all of the focus on early discovery planning and ESI preservation, the e-discovery rubber often meets the road when litigants begin serving and responding to written discovery. The associated tasks often become so familiar to counsel that they may rush through the process without stopping to carefully consider how to best approach each phase. This panel will walk through the e-discovery issues that counsel should consider when drafting written discovery (both requests for the production of documents and subpoenas), preparing written responses to written discovery, and producing ESI. Panelists will also share best practices for producing ESI when the FRCP do not provide guidance, such as ESI that a party produces in response to interrogatories.

### **Do You Know Where Your Documents Are? Or Who's Touching Your Documents Today? /Room 550**

Tom Morrissey, Niloy Ray, /Anne Kershaw (moderator)

Everyone is talking about data security but how do you know who is "walking the walk"? Does your law firm have procedures and checks in place to make sure that your documents are protected after they are collected and processed? What about your service provider? What sort of training do their employees need and what questions should you ask? This panel has given these questions a lot of thought and will share their learnings with you, and will role-play a typical "document safety audit" with a law firm.

10:40-11:40 a.m.

### **You May Be Seated - A Judicial Roundtable /Room 644**

Hon. Dominic Lanza, Hon. Xavier Rodriguez, Hon. Peter B. Swann, /Michael Arkfeld (moderator)

Hear jurists discuss eDiscovery trends and changes they are seeing in courtrooms across the country. Get their perspective on sanctions, preservation, privacy, cooperation, adequacy of production, and when and how to seek judicial relief in an eDiscovery dispute. In this judicial roundtable, you ask the questions and the judges give answers. Time permitting, come prepared with questions and war stories that have impacted your practice.

11:40-12:40 p.m.

### **Ethics Jeopardy! /Room 644**

Robert Singleton

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.





# Thank you!

## Advisory Committee

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Michael Arkfeld (Founding Director)  
Robert E. Singleton (Co-Chair)  
Joy Allen Woller (Co-Chair)  
Andrea D'Ambra  
Lea Bays  
Robert D. Brownstone  
Michael Burg  
Shawn Cheadle

Daniel Christensen  
Kelly Griffith  
Maura R. Grossman  
Tessa K. Jacob  
William "Bil" Kellermann  
Anne Kershaw  
Gary Marchant

Hon. Kristen L. Mix  
Tom Morrissey  
Hon. Xavier Rodriguez  
Mark Sidoti

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