### The eDiscovery Training Academy: The Intersection of Law and Technology

**Sunday, June 5**

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<td>12:30–1:00 pm</td>
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<td>1:00–1:30 pm</td>
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<td>Tiffany Joly, Georgetown University Law Center</td>
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<td><strong>Academy Overview</strong></td>
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<td>Larry Center, Georgetown University Law Center</td>
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<td>1:30–2:45 pm</td>
<td>History of eDiscovery and the New Rules</td>
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<td>Hon. John M. Facciola (Ret.), Craig D. Ball</td>
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It became clear by the late 1990’s that electronically stored information was to become the main, if not exclusive source, of the information that would be demanded and produced in civil litigation. This session will provide the subsequent history of the impact that development had in shaping the 2006 and 2015 amendments to the Federal Rules of Civil Procedure and the enactment of Rule 502 of the Federal Rules of Evidence. It will then turn to the practical implications of these changes on how lawyers and those who work with them must now conduct discovery in a digital world.

| 2:45–3:00 pm | Networking Break                          |
| 3:00–4:15 pm | Practicum on eDiscovery Planning         |
|            | All Faculty                               |

The faculty has created a difficult and demanding scenario to explore how the differing goals of the parties, their counsel and the court where litigation is pending inform how they perceive the obligations of discovery and try to respond to them in an efficient and cost-conscious manner. The discussion will be enlivened by recognizing that not all parties, even on the same side of the litigation, share purposes and goals.

| 4:15–4:30 pm | Networking Break                          |
| 4:30–5:15 pm | Realizing Your Goals for the Academy      |

Students will be invited to introduce themselves, explain their experience in this area, and share their goals for the week.

| 5:15–6:30 pm | Networking Reception                      |
Monday, June 6

8:00–8:30 am  
Continental Breakfast

8:30–9:15 am  
Academy Pretest

9:15–10:45 am  
Introduction to Electronically Stored Information  
Craig D. Ball

In this session you will learn how data is encoded and stored, the terminology used to describe storage, the essential functions of computer file systems, and why deleted data is not gone. Hands-on exercises will help you understand how tech devices and systems operate, and how unique characteristics of electronic information impact the complexity and cost of electronic discovery. The faculty will also discuss data mapping, cryptographic hashing, binary file signatures, computer forensics, forensically sound preservation and deduplication, de-NISTing, and near-deduplication of ESI. You will emerge with an appreciation of the variety and variability of electronic evidence and digital storage media.

10:45–11:00 am  
Networking Break

11:00 am–12:00 pm  
Introduction to Electronically Stored Information (Continued)  
Craig D. Ball

12:00–1:00 pm  
Lunch (on your own)

1:00–2:00 pm  
Horizons: Fresh Perspectives on a Wired World  
Hon. John M. Facciola (Ret.).

Judge Facciola will analyze how the technical issues presented Mr. Ball directly impact discovery in civil litigation and what can be expected from the future technology.

2:00–2:45 pm  
Introduction to Electronically Stored Information (Continued)  
Craig D. Ball

2:45–3:00 pm  
Networking Break

3:00–3:50 pm  
Introduction to Electronically Stored Information (Continued)  
Craig D. Ball
3:50–4:15 pm  Judicial Perspective
Hon. John M. Facciola (Ret.)

Judge Facciola will explain how judges, usually the persons least familiar with the technology, attempt to understand that technology and manage the discovery process to keep costs down and the case moving forward.

4:15–5:00 pm  Coach’s Corner: Meet and Confer Strategies

5:00–5:45 pm  “Meet and Confer” Team Meetings

“Meet and Confer” teams will meet one another and begin preparing for Friday’s mock 26(f) conference. Throughout the week, the team meetings will serve as an opportunity to collaborate with your group and receive advice from experts in the field. The Academy faculty and visiting practitioners will highlight important lessons and help your team achieve success.

Tuesday, June 7

8:00–8:30 am  Continental Breakfast

8:30–9:00 am  Review

You will start the day with further points on IT and the discovery process, then wrap up the initial discussion on ESI. The group will then consider primary sources of responsive ESI, including understanding the “Big Four Sources of Enterprise ESI” and metadata.

9:00–10:30 am  Technological Issues: Forms of Production
Craig D. Ball

During this session, you will review forms of production and the suitability of native forms and imaged forms, including discussion of the purposes and limitations of load files and cost considerations in selecting forms of production.

10:30–10:45 am  Networking Break

10:45 am–12:00 pm  Mail Systems, Backup Systems, and Databases
Craig D. Ball

You will examine the anatomy of an email and how that structure impacts issues of search and forms of production. You will also explore principal email methodologies and protocols such as SMTP, POP, and webmail, and their role in eDiscovery, as well as analyze container file
formats. Popular email software programs will be discussed and the different considerations for identifying, collecting, and processing email will be assessed.

The conversation will then focus on backup methods and media, and rotation, as well as management and restoration of backup media.

Databases, the third topic to be covered in the session, are one of the most frequently sought-after and disclosed sources of electronic information. You will learn how they are structured, what query language is, and what the eDiscovery considerations are, including data dictionaries, schemata, report generation, direct access, and export formats.

**12:00–1:00 pm**  
Lunch (on your own)

**1:00–1:30 pm**  
Horizons: Fresh Perspectives on a Wired World (Continued)  
Hon. John M. Facciola

Judge Facciola will present a hypothetical for discussion. What happens when a company, tired of the costs of eDiscovery, adopts a draconian policy for its records and demands that a vendor take entire control of all collection and management of data sought in discovery? How should counsel respond?

**1:30–2:30 pm**  
Spoiled and Deluded: Ugly Truths about Electronic Search  
Craig D. Ball

**2:30–2:45 pm**  
Networking Break

**2:45–4:45 pm**  
Law of Collections and Forms of Production  
Mark S. Sidoti

The process of collecting the electronically stored information that may need to be produced is complicated by the number of persons who may have it, the devices in which it is kept, including the “cloud.” This session will focus on the process of collection and how it is to be produced in accordance with legal requirements.

**5:00–5:45 pm**  
Coach’s Corner: “Meet and Confer” Strategies

**5:45–7:00 pm**  
“Meet and Confer” Coaching Session

*Please note that dinner will be served.*
Wednesday, June 8

8:00–8:30 am  Continental Breakfast

8:30–9:00 am  Review

9:00–10:30 am  Technology-Assisted Review and Enhanced Search
Maura R. Grossman

The impact of automated searching of information produced or to be produced has been profound. The session devoted to it will first explain the science behind this form of review and then explain how this form of review works. You will also consider how efficiency and cost effectiveness can be judged by scientific means.

10:30–10:45 am  Networking Break

10:45–11:30  The Courts and Predictive Coding: Where Are They and Where They Are Going
Hon. John M. Facciola, Craig D. Ball, Maura R. Grossman, and Mark S. Sidoti

The courts have now been required to learn how predictive coding works and to regulate the parties’ use of it. This session will provide a realistic assessment of how well the courts understand the science and how they have approached the legal and practical questions presented by the parties’ use of predictive coding.

11:30 am- 12:00 pm  Instructions for Group Exercise

12:00–1:00 pm  Lunch (on your own)

1:00–1:45 pm  Group Exercise

1:45–2:45 pm  Preservation and Sanctions
Mark S. Sidoti, Hon. John M. Facciola

There have been dramatic consequences from a party’s failure to preserve electronically stored information, culminating in the adoption of new national rules as to when sanctions are appropriate for such a failure. You will hear an overview of the history of the courts’ exercise of its sanctioning power, emphasizing how the new rules will dictate sanctions and the practical consequences for preservation.

2:45–3:00 pm  Networking Break
3:00-4:00 pm  Preservation and Sanctions (Continued)  
Mark S. Sidoti, Hon. John M. Facciola

4:00–4:15 pm  Networking Break

4:15–5:00 pm  Coach’s Corner: Meet and Confer Strategies

5:00–6:15 pm  “Meet and Confer” Team Meetings

Thursday, June 9

8:00–8:30 am  Continental Breakfast

8:30–9:00 am  Review

9:00–9:45 am  Authentication and Admissibility  
Hon. John M. Facciola

Discovery is intended to produce relevant evidence but the nature of digital evidence has challenged traditional concepts such as authenticity and hearsay. Judge Facciola will explain how the courts have taken the existing rules and applied them to electronically stored information, even where the rules were designed to deal with evidence in a material rather than a digital universe.

9:45–10:45 am  502(d)  
Hon. John M. Facciola, Mark S. Sidoti, Maura R. Grossman

10:45–11:00 am  Networking Break

11:00 am - 12:00 pm  eDiscovery: Small Cases and Small Budgets  
Craig D. Ball, Tom O’Connor

A common misperception is that eDiscovery is only for “big” cases. In fact, the smaller cases may present greater challenges because the ultimate value of the case may be dwarfed by the costs of e-discovery. Mr. Ball and Mr. O’Connor will explain how a creative lawyer can accomplish effective e-discovery with a limited budget.

12:00–1:00 pm  Lunch (on your own)
All governments regulate the collection of data that may yield private information and are themselves often demanding the production of data in response to government investigations. This session will focus on the obligations of those who collect personal data during the discovery process and how best to respond to governmental demands for information in, for example, an administrative investigation.

While ethical rules are by their nature universal in their application, the dramatic demands placed on lawyers, and those who work with them, as a result of the volume and complexity of discovery data have led to the creation of new ethical rules pertaining to attorney competence, protection of client secrets and confidences, and the use of non-lawyer professionals. This session will explore the new ethical rules and the nature of the obligations they impose.

*Please note that dinner will be served.*

**Friday, June 10**

8:00–8:30 am  Continental Breakfast
8:30–9:00 am  Review
9:00–9:45 am  Final Examination
9:45–10:00 am Networking Break
Teams will take part in a mock 26(f) conference held before judicial faculty. Each team is given responsibility for one aspect of a hypothetical case. Judicial faculty will moderate the conferences and afterward provide substantive feedback to each team. This hypothetical exercise brings together the knowledge and skills acquired during your six days at the Academy.

A recurring favorite, the judges sit down with the class to talk about what they would expect of you in court, or in a case, now that you have finished this course. In turn, you can ask the judges questions about what you have learned, including tough questions on how to handle judicial responses to counsel that may display indifference or a lack of understanding of the issues.