ACEDS | NY Metro Chapter

ASSOCIATION OF CERTIFIED E-DISCOVERY SPECIALISTS

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Issue 1

ACEDS NY METRO QUARTERLY NEWSLETTER

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We are always looking for interesting articles and information about eDiscovery, Information Governance, Data Privacy, Cyber Security and other data management related topics. Whether you are a member, Affiliate Partner or non-member, this may be just the place for you.

Contact us if you are interested in submitting a story or article.

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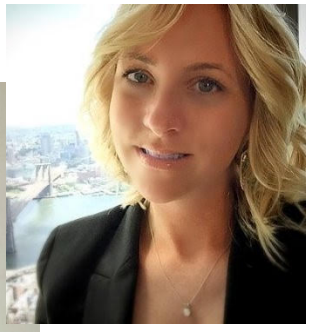
In This Issue



04 From the Chapter President

05 AI & Ethics: The Roundtable and the Rule of Law
by Cat Casey & James A. Sherer

08 Separate Yourself from the Pack: 6 Tools for Building a Strong Interview
by Nikki MacCallum

10 New Certified eDiscovery Specialists

10 New Member Announcements

11 Upcoming Events

12 Here's What You Missed at the TAR Roundtable
by Peter Borella

From Chapter President's Desk

We welcome you to read this first edition of the ACEDS New York Metro Chapter Magazine. We plan to release new issues on a quarterly schedule. If you would like to submit articles or if you have ideas for future content, please email us at acedsnymetro@gmail.com.

This month, we are thankful to Cat Casey, James Sherer, Nikki MacCallum, and Peter Borella for contributing timely and informative articles.

This is a time of change and excitement at ACEDS. Earlier this month, we were excited to welcome a new president overseeing ACEDS International. Mike Quartararo has been a long-time member of our chapter and he currently sits on our board. We are looking forward to working with Mike on many joint ventures during the coming years and we know that he will do a great job in his new role. We also are thankful for all that Mary Mack and Kaylee Walstad contributed to the ACEDS organization over the last few years. We will miss them and we wish them the best in their new roles.

The ACEDS New York Metro chapter is growing and we encourage you to become more involved. I believe that although the New York Metro area is likely home to the highest number of eDiscovery professionals in the world there are few if any other organizations that provide regular events where eDiscovery professionals (including attorneys, litigation support staff, vendors, consultants, and paralegals) can come together to discuss issues and developments in the world of eDiscovery.

We were excited to hold our second ACEDS New York Metro Roundtable at Simpson Thacher's offices on October 30th where we had a lively discussion on the "Practical Challenges in Using TAR and Strategies to Encourage its Use." We are looking forward to our next roundtable in early 2020.

I recently was in Chicago attending Relativity Fest and was struck by the number and the diversity of eDiscovery professionals in attendance. Technology is having a growing impact on the practice of law, and it is becoming more important than ever for anyone dealing with eDiscovery to keep up on current issues and to obtain certifications, such as the CEDS or eDeX certification. If you have any questions about our chapter or if you want to get more involved, don't hesitate reaching out by emailing us at acedsnymetro@gmail.com.

Best regards,
Ignatius Grande
President, ACEDS New York Metro Chapter

AI & Ethics: The Roundtable and the Rule of Law

by Cat Casey & James A. Sherer

Why Meet and Confer on AI?

Rapid technological innovation—and in particular, the adoption and use of artificial intelligence (AI and specifically machine learning or ML), has fundamentally changed both daily life and business practices across a wide spectrum of industries. While the practice of law was arguably later to the party than most (although part of that may be legal practitioners' reluctance to trust the validity of advertising and marketing campaigns) there is no denying that AI is now firmly entrenched in legal practice considerations.

This includes AI-optimized practice management for law firm operations; continuous active learning (CAL) powered by ML or neural networks that reduce time to insight and evidence in eDiscovery; and advanced AI suggesting or predicting the merits of appeals and case outcomes. But it also includes the uses of AI in client activities and strategies, where attorneys, paralegals, and support staff must have the requisite understanding of just what AI means to their clients—or understand enough to know what they don't know, and then find a way to learn or to get assistance in supporting the practice of law on those clients' behalf.

These were the issues raised during a set of discussions and teaching sessions this September 20th and 21st, when 80 thought leaders in the AI space (including members of parliament, heads of state, legal scholars, ethicists, and legal technologists developing legal solutions powered by AI) gathered in Athens, Greece at the "Athens Roundtable on AI and the Rule of Law." There, this diverse group analyzed and debated how to develop an ethical framework that would direct the use of AI in support of legal endeavors; how to educate practitioners and users; and how to further, intelligently consider how an understanding of AI is key to the future of the rule of law and related practice.

Hosted by the Institute of Electrical and Electronics Engineers (IEEE), global law firm Covington & Burling LLP, The Future Society, and the European Law Observatory on New Technologies (ELON), the roundtable aimed to move from a diffuse discussion of nascent and existing principles occurring around the globe, and to focus instead on practice and practical implications that could form a middle ground for consensus and understanding. The roundtable further sought to bring together a variety of different stakeholders focused on the ethics of AI development and application to law, and admirably succeeded in creating a diverse group of invested participants.

The Rule of Law

This conference focused on the application of AI in support of (or at least preventing AI from impeding) the rule of law, a diffuse concept that is summed up by the World Justice Project as four universal principles:

- Accountability – Both the government and private actors are accountable under the law, and no one is above it
- Just Laws – Laws are clear, publicized, stable, applied evenly, and protect fundamental human rights (such as safety, contracts, property)
- Open Government – The enactment and enforcement of laws are accessible, fair, and efficient
- Accessible & Impartial Dispute Resolution – Justice is delivered timely by competent, ethical, and independent representatives who are accessible, possess adequate resources, and reflect the communities they serve

So, the rule of law as discussed at the roundtable focused on what it takes for justice to be equal, and an overriding concern was whether AI and its application could—or would by its very nature—negatively affect that aspiration.

Current AI Ethical Standards

The roundtable first discussed recently adopted ethical standards in AI, and how those standards might apply to other realms, including the law. Specifically, the Roundtable presented the EU's "Ethics Guidelines for Trustworthy AI," the OECD Principles on Artificial Intelligence, and the G20 human-centered AI Principles drawn from the OECD to foster debate and consensus on the key components of ethical or trustworthy AI. But while these proposed standards varied, they shared many common themes and concerns, such as ideas on transparency and accountability; disparate impact and non-discrimination; and human-centered agency and oversight ideals.

In particular, the proposed EU ethical standard presented seven key requirements that served as overall themes for much of the continued discussion: human agency and oversight; technical robustness and safety; privacy and data governance; transparency; diversity and fairness; societal and governmental wellbeing; and accountability. The G20 and OECD recommendations likewise focused on

Cat Casey serves as the Chief Innovation Officer and Ediscovery Evangelist at DISCO, and James A. Sherer serves as a partner and chair of the Information Governance and Artificial Intelligence Teams at BakerHostetler. The views expressed herein are solely those of the authors; they should not be attributed to their places of employment, colleagues, or clients; and they do not constitute solicitation or the provision of legal advice.

human centricity (the idea that humanity should be at the center of AI approach); inclusivity; transparency; robustness; and accountability.

Again, as part of the level-setting process, a good portion of the first day was spent unpacking these objectives and reviewing the standards from an insider's point of view, where participants in the drafting teams or supporting agencies shared unattributed stories and detail regarding the principles' drafting processes. Some principles were more self-explanatory than others—such as human agency and centricity; diversity and fairness, social wellbeing; and data privacy. But a number of the remainder deserved a more thorough discussion and explanation from the participants.

Discussions involving standards related by the IEEE, the Council of Europe, the OECD, and the EU seemed to address the considerable, potential risks and benefits of AI for the rule of law, and conveyed a sense of urgency in developing ethical and functional standards and certifications. These standards centered on the robustness and effectiveness of the technology; transparency and accountability for the technology's operation; and the added factor of practitioner competence when deploying an AI-powered solution. Each of those deserve a closer look:

Figure 2: Interrelationship of the seven requirements: all are of equal importance, support each other, and should be implemented and evaluated throughout the AI system's lifecycle

Robustness

In the context of trustworthy AI, robustness refers to resiliency and security. AI systems must be safe, with an available fallback plan in case something goes wrong; and should be accurate, reliable, and reproducible according to standards proposed by the EU. This should be familiar to eDiscovery practitioners, as discussions regarding IEEE guidance considered NIST standards of "precision" and "recall" to determine the effectiveness or robustness of a given AI solution, and NIST's own mandate to develop AI standards generally.

Transparency

For transparency, the EU considers systems and system decisions that are explicable in a manner that makes sense to the stakeholder concerned. For example, humans should be aware when they are interacting with an AI system; should be informed of the system's capabilities and limitations; and should be given enough information to appeal decisions rendered by the system. The IEEE in particular evaluated this component, and acknowledged the inherent potential conflict between the need to safeguard intellectual property rights for purveyors of AI weighed against the need to enable AI consumers to make informed decisions, and sought to determine what insights into the underlying algorithms and data sets would meet that balance.

Competence

As AI-enabled solutions already impact access to justice, provide key evidence, and even forecast case outcomes, the IEEE recognized that the concept of competence would be a key tenet of AI trustworthiness—that is, the tools are too powerful to be used irresponsibly or unknowingly. As AI tools can (and should) effectively augment and amplify legal practitioner intelligence, this requires a level of operator proficiency and understanding of the AI-powered technology. The thought was that the best AI-powered tool is only ethically and effectively deployed when the practitioner operating it has a basic level of competence.

Accountability

People trust computers, sometimes even to their detriment. With the potentially disproportionate weight people ascribe to the efficacy of computer/AI-generated suggestions and proscriptions, nearly all of the entities participating in the roundtable highlighted the need to hold purveyors and operators of AI-powered tools in the legal space accountable for that vast source of power and influence. The EU guidance in particular required mechanisms in place to ensure responsibility and accountability for AI systems and their outcomes. This included audit-ability, which enables the assessment of algorithms, data, and design processes, especially when critical applications were considered. If the possibility of an issue arose, the EU required an accessible means of fixing the issue.

Application of Ethical Frameworks for AI to Legal Applications

The roundtable also addressed the question: "Should practitioners be intimidated or inspired by AI?" After two days of lively debate and deep synthesis, the clear (if not universal) trend among participants was towards an inspired future, with the caveat that practitioners had much work ahead to ensure that outcome.

Nicolas Economou, Chair of The Future Society's Law Initiative and of the IEEE Law Committee, summed the challenges facing legal in ethical adoption to AI:

> *The trustworthy adoption of AI in legal systems can support the functions of the law and the values that animate it. The likes of the Council of Europe and the IEEE have now published principles in pursuit of that vision. Their application in practice by lawyers, judges, technology specialists, private entities, and institutions of state is a challenge of the "what" and the "how" to develop appropriate protocols, metrics, standards, supporting policies, and to upgrade the education infrastructure accordingly – for judges, lawyers, technical professionals, and many other stakeholders.*

Simply stated, there were concerns that the legal system has substantial educational, regulatory, and application gaps that must be addressed to ensure that AI is a net positive. In order to maximize the benefit of applying AI to the practice of law (while containing and mitigating risk), education across a myriad of stakeholders is key. Without basic AI literacy, therefore, regulating and developing ethical AI is almost impossible.

Legal Education For –Not By– AI

It seemed that the creators of AI technology might require a baseline of legal and ethical education to shepherd their development process—especially when access to justice or case outcomes was at stake, or if the technology could be misused to the detriment of society. Likewise, it was also likely that legal practitioners, regulators, and citizens generally would require some kind of AI fluency to understand the potential risks and benefits of AI, especially in the context of law.

In order to ethically develop AI and create a marketplace where informed trust and consent could be developed, some roundtable members supported the introduction of technical and AI literacy in primary schools, subsequently refined in university and law schools, and fully realized within the judiciary and the body of practicing attorneys worldwide. And at the most basic level, the roundtable's consensus was the approach taken to teach citizens and legal practitioners must adapt to both changes in AI as well as the surrounding digitally powered world.

And Do it Now

While participants were actively concerned with regulating too early and perhaps stifling the development of AI, they certainly acknowledged that a wait-and-see approach left too much in the hands of self-interested technologists, corporations, and undereducated practitioners.

This also led to an issue that cut across the debate: collaboration among the stakeholders. Legal practitioners, ethicists, and the bench agreed that they needed to (better) understand what AI is, in order to communicate with AI developers and providers. Involvement of all parties in bridging the knowledge gap and developing ethical frameworks for the future of AI in the law was therefore mission-critical.

The Future

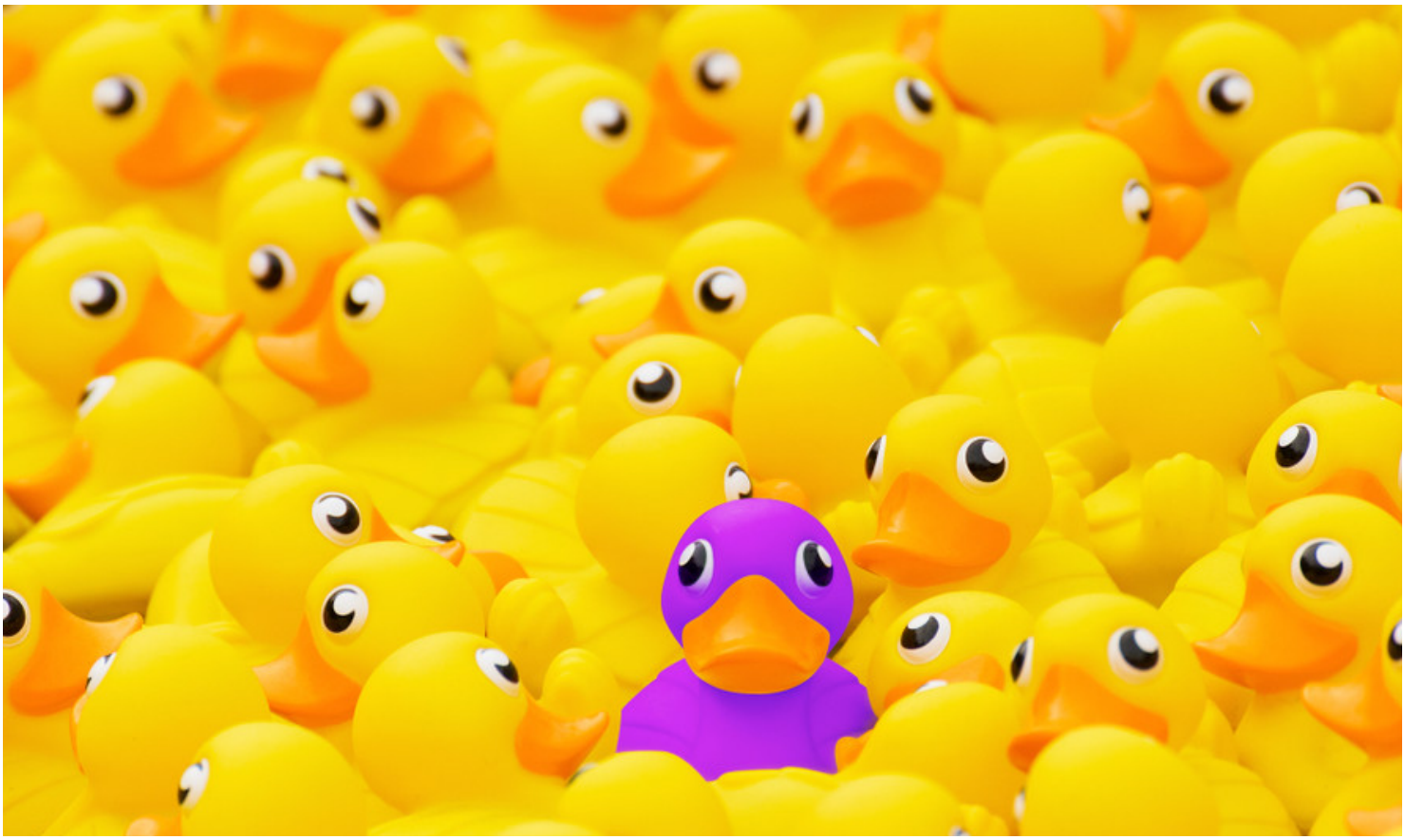
Once the 48 hours of rigorous discussion and debate ended and after the leading minds from the over 20 countries participating in the roundtable stepped away, several additional thoughts remained. The impact of AI is already being felt in law, and it is likely that practitioners require more meetings like the roundtable to address the impact of AI and how it can be beneficial to the practice of law while practitioners can help mitigate the risks of bias, malfeasance, and incompetence.

Before leaving, the roundtable participants committed to investing time, mental capital, and resources into the development of a set of legal-focused AI Ethics for Law principles, and to develop a curriculum focused on upskilling legal practitioners, the judiciary, and the next generations of law students. The aim is to educate and advise legal practitioners and supporting third parties who are engaging with AI, providing the tools that can distinguish sound and appropriate innovation from marketing slicks, and can apply the same rigors to legal technology that we currently see in medicine and other high-human-impact industries.

About the Authors

Cat Casey is Chief Innovation Officer (CINO) for the leading AI powered cloud enabled legal technology company, DISCO, where she drives innovation and provides direction for legal technology solutions. Casey is a global thought leader on the application of AI and advanced technology to the practice of law and and outspoken advocate of legal professionals embracing technology to deliver better legal outcomes. Prior to DISCO, Casey was the global director of eDiscovery and Technology for Gibson Dunn a leader in the Forensic Technology Practice for both PwC and KPMG.

James A. Sherer is a Partner in the New York office of BakerHostetler, where he chairs the Information Governance and Artificial Intelligence practice teams and serves as part of the eDiscovery and Management and Privacy and Data Protection groups. James's work and scholarship focuses on litigation; discovery management processes; enterprise risk; records and information governance; data privacy, security, and bank secrecy; technology integration issues; artificial intelligence; social media and the Internet of Things, and related merger and acquisition diligence.



Separate Yourself from the Pack: 6 Tools for Building a Strong Interview

by Nikki MacCallum

There is more top talent in today's eDiscovery market than ever before. As a result, acing an interview is even more pivotal in order to separate yourself from the pack. In 2006, if you had a JD and/or some semblance of a technical background you could likely find a job in eDiscovery fairly easily. Now in 2019, the industry has matured and is no longer in its infancy. Everyone has access to different training grounds, organizations like Association of Certified E-Discovery Specialists (ACEDS) are building a cross-functional community of e-discovery specialists for the exchange of ideas, guidance, training and best practices. Even law schools have started incorporating eDiscovery education into their curriculum. Just being a technically savvy lawyer or picking up skills in eDiscovery, Cyber Security or Information Governance will no longer distinguish you from your competition. Even for niche roles, the talent pool is strong. Accordingly, it's become more critical than ever to hit a homerun on your interview.

As a career development specialist in eDiscovery for the past fifteen years, I've watched interview trends evolve dramatically. Having coached both interviewers as well interviewees, I've seen underqualified candidates employ tactics during interviews that landed them the job and also witnessed extremely seasoned professionals with a proven track record of success make missteps on the interview that have cost them the job. This article will address best practices in interviewing and hopefully, leave you with six tips to implement on your next interview regardless of where you're at in your career.

About the Author

Nikki MacCallum (Strategic Talent Manager, Lighthouse eDiscovery) brings to the table thirteen years in the executive search space, specifically in litigation technology. She's spoken at conferences world-wide (ABC News, American Express, ILTA, Women in eDiscovery, ILEA, eCALSM, LegalTech NY, ARIAS-US) and has authored articles for multiple legal publications. She's also a resident speaker and career coach at NYC's Coalition for the Homeless where she mentors underprivileged women looking to enter the work force. When she's not engulfed in eDiscovery, she can be seen as a performer and Standup Comedian in New York City (Caroline's on Broadway, Lincoln Center, Birdland). Her memoir Dry Run was released by Auctus Publishers in May, 2019.

1. Research whom you're meeting with ahead of time. This is particularly important in a niche space like eDiscovery. Often times there will be a mutual connection between you and your prospective employer which can always be leveraged. Even if there is a negative connotation around that connection, common ground brings humans together. Researching someone's background also allows you to uncover other types of common ground such as interests, place you grew up, education, etc. Any information you can use to amplify common ground is going to make someone develop more of an investment in your success. Displaying knowledge about someone's background is also an opportunity for you to show that you've done your due diligence. And as cliché as it is, flattery will get you everywhere. Whenever a candidate I'm interviewing mentions something to me about my background that I hadn't volunteered, my mentality automatically shifts to wanting them to succeed.

2. Dress to impress. Wear a suit even if you're interviewing at a McDonald's (no offense to McDonald's). There's a school of thought that if you're interviewing for a technology company that has a more casual work environment, then it is appropriate to dress business casual to showcase that you understand the work culture. I completely disagree. Not once have I ever heard a company say "we're going to pass on this person because they wore a suit." I have absolutely heard of individuals not getting a job because they were underdressed. Why run the risk? Unless the company specifically says "do not wear a suit to the interview" you should always wear a suit. And if you feel uncomfortable showing up overdressed you can make a joke about it. When it comes to attire, always play it safe.

3. Listen to the questions you're being asked and answer with concise and relevant information. My number one pet peeve in terms of interviewing is when I ask a candidate a question, and they respond with an answer that is completely unrelated to the question being asked. It is critical to listen what is being asked of you. One of the reasons this is so important is because listening is a transferable skill. Your ability to listen during an interview informs your ability to listen to clients and understand their pain points. Sometimes when people get nervous, there is a natural tendency to ramble and provide excess information. When it comes to answering questions on an interview, less is more. Answer the question that is being asked of you. Nothing more, nothing less. Often times when I ask a question, I'm evaluating how the person answers not what they answer.

4. How you frame your information is critical. If a company is hiring that means there's a need and ultimately your main objective on an interview is to demonstrate to a company how you can add value. In order to do so it is imperative that you understand their pain points. I swear by entrepreneur Avinash Kaushik who led the charge at Google with the story telling methodology, "Care, do, impact." Whenever you're providing information on an interview you should ask yourself three questions. Why should the person I'm talking to care about what I'm saying? What action items am I going to do to address the issue? And what is the impact of those actions going to be?

5. Be honest about what you don't know. When interviewing for a position it's extremely rare that you'd be a total subject matter expert on every facet of the role. That said, you're likely interviewing with individuals who are. For this reason, be honest about your background. If you don't have experience working with the back end of Relativity, for example, and you're interviewing with a Certified Relativity Master, don't try to fake your way through that. The approach that I've seen to be most effective is when a candidate is up front about what they don't know, lists some skills that are relevant, and then provides examples of either a transferable skillset, or demonstrates how they've ramped up and learned a parallel skill in the past.

6. The questions you ask your potential employer are often a litmus test. When interviewing candidates, it's extremely easy to tell how well someone understands the role at hand by the questions they ask during the interview. It is excellent to have questions prepared ahead of time, but I also encourage folks to ask questions that genuinely come up during the interview process. This showcases your ability to listen and be flexible. If you are going to stick to questions prepared ahead of time, make sure they're smart, and unique to the role and/or company at hand. There's a set of questions I refer to as "stock questions" which are questions that are vague, unoriginal, and can be asked about any job that exists. Examples of stock questions are: "How many employees does your company have?" or "where are your offices located?" If you have a burning desire to know the answer to one of those questions, at least frame it in a way that displays the reason you're asking. For example: "I know that you recently merged with X company and I'm wondering how many employees you have now?" or "I saw on your website that your headquarters are in X, I just wanted to confirm that your other offices are in XYZ?" When people ask stock questions, I assume they did not do their due diligence and are simply following the golden rule of asking questions at an interview because you're supposed to. That isn't going to cut it in today's climate. Employers want to see intellectual curiosity.

Researching your interviewers ahead of time, dressing to impress, listening, being strategic about framing information, being honest about what you don't know, and asking thoughtful questions are the six tactics I've found to be the most significant in laying the foundation for a strong interview. If you can master these six tips, you are setting yourself up for success and are on track to separating yourself from the pack!

Congratulations!

Please join us in congratulating the following NY Chapter members on achieving their CEDS certification.

- Thomas Cantwell, CVP-information Systems at New York Life Insurance Co
- Patricia Chew, Project Manager at DLA Piper
- Gary Swenson, Senior Discovery Consultant at Liquid Litigation Management

Welcome to the Chapter!

Join us in welcoming the following new members to our chapter.

- Erika Terencio
- Jim Vazquez, CEDS
- George Farrall
- Thomas Cantwell, CEDS
- Rafael Guthartz
- Sagarika Mudunuri
- Raymond Torres
- Chetan Jagtap, CEDS
- Wayne Walther, CEDS
- George Swoyer
- Sarah Dudley
- Rebecca DaPron
- Lilith Bat-Leah

Welcome to the NY Metro chapter of ACEDS! We are delighted that you have joined us and trust that the benefits of membership will meet your expectations.

Upcoming Events

Here's What You Missed at the TAR Roundtable

by Peter Borella

On Wednesday, October 30, 2019, the New York Metro Chapter of the Association of Certified eDiscovery Specialists ("NY ACEDS"), in conjunction with Simpson Thacher & Bartlett LLP, hosted a lively roundtable discussion on the Practical Challenges in Using TAR and Strategies to Encourage its Use. In attendance were some of the leading eDiscovery professionals in the country – from project managers to attorneys and from law firms to in-house legal departments and vendors.

For those unfamiliar with the terminology, "TAR" stands for Technology Assisted Review. The discussion centered around TAR 1.0 (aka predictive coding) and TAR 2.0 (aka continuous active learning or "CAL"). As was noted during the discussion, Federal Magistrate Judge Andrew Peck's decision in Da Silva Moore v. Publicis Groupe, provided judicial acceptance of computer-assisted review as early as 2012. It is also well settled that TAR is an effective, defensible technology and in the appropriate situation, more cost effective than traditional manual review. You may ask yourself, why is there a TAR challenge or need to encourage its use?

In short, attorneys are skeptical of what they're not familiar with. However, and in fairness, many of today's attorneys attended law school and were trained in an era where technology in the discovery process was virtually non-existent – this would include an attorney like myself, who is 40 years old. Where does that leave us?

Fortunately, today, most law firms and in-house legal departments have individuals with the requisite technology – TAR acumen. These professionals should make themselves accessible to those in the organization and consult with those in the need. Remember to keep the talk in Plain English and leave out all the technical lingo. Find your champions within the organization who have had success with you/technology/TAR and reference these individuals – have them advocate for you – start small, it doesn't have to be all or nothing.

The biggest driver of change is going to be the corporate end-client – corporate clients who understand the role of technology in the discovery process and its benefits such as cost savings and the effectiveness of the review. It will be these corporations who continue to drive their outside law firms to have the technological know-how to meet their discovery demands.

It is also important to report on a frequent basis to stakeholders of a TAR project and to closely monitor not only project status but most importantly technique value. Documentation of the TAR process is also crucial to allow mapping out, measuring, and validating successful outcomes in a matter, and for future reference on other matters. Continuous training of case teams for the purposes of reliability and knowledge of the different types of TAR and how it can be applied will also be drivers for change and the continued acceptance of TAR.

Thank you, Robert Tarrab and Deborah Spellen with JP Morgan Chase; Jared Meyer and Moshe Azoulai with Simpson Thacher & Bartlett; Rahul Chhabra with Schulte Roth & Zabel; Ignatius Grande with Berkeley Research Group for moderating the roundtable and to all our NY ACEDS members and guests at the roundtable.

Special thank you to Joshua Blanthorn and Contact Discovery for sponsoring lunch.

About the Author

Peter J. Borella, Esq, CEDS, CIPP/US/E, with over 10 years' legal industry experience, consults with law firms, corporate legal departments and government agencies on all areas of the Electronic Discovery Reference Model (EDRM). He is also a member of the Executive Board for the NY Metro ACEDS Chapter and currently serves as its Vice President. Peter holds a certification in eDiscovery through ACEDS, as well as two privacy certifications through the IAPP.

The mission of ACEDS is to help professionals in various disciplines improve and certify their e-discovery knowledge and skill, advance their careers, increase their contacts, and increase overall competence in e-discovery and related fields.