

ALI-ABA Video Law Review  
**Electronic Discovery for Employment Lawyers**

December 10, 2008  
Live Video Webcast

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**PROGRAM SCHEDULE**  
**for December 10, 2008**

Program Schedule	Eastern	Central	Mountain	Pacific	Alaska	Hawaii
National Teleseminar/Webcast	1:00 pm	12:00 pm	11:00 am	10:00 am	9:00 am	8:00 am
Adjournment	4:15 pm	3:15 pm	2:15 pm	1:15 pm	12:15 pm	11:15 pm

*(Includes a 15 minute break)*

## **Scope and Purpose**

Employment lawyers & in house counsel experience problems unique to the workplace & the employer/employee relationship. In this live videocast, electronic records will be discussed in the context of individual termination cases, retaliation cases, harassment cases, and reductions in work force.

Most workplace documents today don't exist in paper form. Traces of electronic data, the ease of multiplying it, & the possibility of identifying its flow have made the law of discovery complex. The corpus of case law changes with every passing month as important new decisions are made. How well do you know the law & the trends?

Electronic discovery costs are skyrocketing, forcing employers to spend billions of dollars. How can you assist your clients? How can you prepare them for success and reduce their costs while winning?

National experts from intertwining disciplines – employment litigators, technical gurus & a magistrate – will analyze the issues most important to you against the backdrop of quickly emerging case law.

## **Agenda**

Introduction

Preservation Obligations for Employees and Employers

Layoffs – Preservation Obligations and Practicalities – A Hypo

Early Case Assessment

*15 Minute Break*

E-Discovery of E-Mail

Harassment Cases – A Hypo

Accidental Spoliation – Tips

Corporate Web Sites, Social Network Sites, Blogs – Preservation and Authentication

**Total 60-minute hours of instruction: 3; Total 50-minute hours: 3.6.**

**Suggested Prerequisite:** Significant experience in employment litigation.

**Educational Objective:** This 3 hour video webcast is designed to teach sophisticated employment lawyers & general counsels how to prepare for & handle requests for digital evidence in the workplace.

**Level of Instruction:** Intermediate to Advance.

## **DISCLAIMER OF ALL LIABILITY AND RESPONSIBILITY<sup>1</sup>**

**THE INFORMATION CONTAINED HEREIN IS BASED UPON SOURCES BELIEVED TO BE ACCURATE AND RELIABLE—INCLUDING SECONDARY SOURCES. DILIGENT EFFORT WAS MADE TO INSURE THE ACCURACY OF THESE MATERIALS, BUT THE AUTHORS ASSUME NO RESPONSIBILITY FOR ANY READER'S RELIANCE ON THEM AND ENCOURAGE READERS TO VERIFY ALL ITEMS BY REVIEWING PRIMARY SOURCES WHEN APPROPRIATE AND USING TRADITIONAL LEGAL RESEARCH TECHNIQUES TO MAKE SURE THAT THE INFORMATION HAS NOT BEEN AFFECTED OR CHANGED BY RECENT DEVELOPMENTS.**

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<sup>1</sup> All contributions by the planning chairs and faculty members of this program and all other content in this publication is subject to this disclaimer.



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**The Honorable Andrew J. Peck**

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**The Honorable John L. Carroll**

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## FACULTY BIOGRAPHIES

### Planning Co-Chairs

**Robert B. Fitzpatrick**, Washington, D.C.

Robert B. Fitzpatrick, PLLC

Robert Brian Fitzpatrick is the principal in the law firm of Robert B. Fitzpatrick, PLLC in Washington, D.C. where he represents clients in employment law and employee benefits matters. Mr. Fitzpatrick has concentrated his practice in employment law disputes for over thirty-five years and has been described by the National Law Journal as being among the top employment lawyers in the country and by Washingtonian Magazine as "tops in employment law" in the Washington, D.C. area. He was also included in the 2006 edition of The Best Lawyers in America.

Mr. Fitzpatrick is an active member of the American Bar Association (ABA) and the District of Columbia Bar, being a frequent speaker at Bar meetings and a participant in the activities of several sections of the ABA and the D.C. Bar. He has been Co-Chairman of the ABA's Committee on Individual Employee Rights and Responsibilities of the Labor and Employment Law Section; Co-Chairman of the Steering Committee of the Labor Relations Section of the D.C. Bar; Chairman and founder of the D.C. Bar's Committee on Individual Employee Rights and Responsibilities; Chairman of the Federal Bar Association's Labor Law and Labor Relations Section; Chairman of the FBA's Committee on Equal Employment Opportunity; and Chair of the Employer-Employee Relations Committee of the Torts and Insurance Practice Section of the ABA. He has been a member of the Class Action Task Force of the Torts & Insurance Practice Section of the ABA and served as a member of the Long Range Planning Committee of ABA's Torts and Insurance Practice Section from 1993 to 1996. He is an active member of the Section of Dispute Resolution of the ABA and of the International Employment Law Committee of the International Law & Practice Section of the ABA. He has been the Chair of the Alternative Dispute Resolution Committee of the ABA's Section of Individual Rights and Responsibilities.

**Frank C. Morris, Jr.**, Washington, D.C.

Epstein Becker & Green, PC

Frank C. Morris, Jr. is a member of the firm in the Litigation practice and heads the Labor and Employment practice in the Washington, D.C. office, and is the co-chair of the firm's Disability Law Group.

Mr. Morris' experience includes:

- Advising clients on and litigating employment, labor, disabilities, non-compete, confidentiality, benefits, information access and privacy law, wage and hour and general litigation matters in the state and federal courts and administrative agencies
- Representing and advising clients, including Audit Committees, in Sarbanes-Oxley and other whistleblower litigation and conducting investigations
- Representing clients in negotiations, arbitrations and mediations
- Mediations - serving as a mediator in various disputes
- Successfully trying various jury and bench trials, including particular expertise in handling expert witnesses and class and collective action litigation

- Electronic platform, Internet, Wireless and E-mail policy and litigation
- Representing builders, owners, managers, architects and lenders in fair housing, fair credit, and ADA matters
- Litigating Supreme Court and Court of Appeals cases raising issues under Title VII, the ADEA, ERISA, Executive Order 11246, the National Labor Relations Act, the Freedom of Information Act, the Privacy Act, the ADA and the Rehabilitation Act.

After law school, Mr. Morris joined the National Labor Relations Board in Washington, D.C., in the appellate branch of the Division of Enforcement Litigation, and handled cases in all of the United States Courts of Appeals as well as NLRB Supreme Court matters. He later entered private practice in Washington, representing private and public employers in EEO, disability, labor and general litigation matters. He also served as counsel for an employer's group, the Equal Employment Advisory Council.

Mr. Morris writes, speaks and teaches regularly on various litigation topics. He is regularly asked to share his trial expertise in various ALI-ABA programs and in the annual Georgetown University Employment Law and Litigation Update. Mr. Morris recently joined ten Federal judges on the faculty for a Georgetown-sponsored program "Litigating Employment Cases: Views from the Bench." He also co-chaired the ALI-ABA Video Law Review "How to Present and Challenge Experts: Persuading the Jury."

Mr. Morris authored the book *Current Trends in the Use (and Misuse) of Statistics in Employment Discrimination Litigation*, as well as articles on disability, equal employment, Sarbanes-Oxley, benefits and labor topics for journals, including *Employee Relations Law Journal*, *The National Law Journal* and *The Practical Litigator*. He co-chaired the Federal Judicial Center and the American Law Institute-American Bar Association Video Law Review Program on the ADA, which included over 150 federal judges among the participants. He also co-chairs the annual ALI-ABA course "Current Developments in Employment Law," 1994-present, where among other topics, he presents the Electric Platform, ADA and FMLA updates and analysis. He co-chairs ALI-ABA's new and acclaimed monthly teleseminar/webinar series on current employment law and litigation topics. He is a member of the Editorial Advisory Boards of *National Disability Law Reporter* (LRP Publications) and the *Corporate Counsel's Guide to the Americans with Disabilities Act* (Business Laws, Inc.). He has addressed the trial and appellate judges of the Judicial Conferences for the Third, Fourth, Sixth, Seventh, Eighth and Eleventh Circuits on disability law and developments under the ADA and employment law.

Mr. Morris has been an adjunct professor of law since 1984 at George Washington University Law School where he teaches *Discrimination Law and Claims and Litigation*. He also served as a faculty member of the Cornell University of New York State School of Industrial and Labor Relations EEO Studies Program, as well as a frequent lecturer on equal employment, disabilities law, benefits, Sarbanes-Oxley and whistleblower issues, affirmative action, family and medical leave, labor relations, ADR and litigation topics for various associations, business, educational, and other groups.

## **Faculty**

**Craig D. Ball** , Austin, Texas

Attorney & Technologist, Certified Computer Forensic Examiner, Law Offices of Craig D. Ball, P.C.

### Education

Rice University (B.A., triple major, English, Managerial Studies, Political Science, 1979); University of Texas (J.D., with honors, 1982); Oregon State University (Computer Forensics certification, 2003); EnCase Intermediate Reporting and Analysis Course (Guidance Software 2004); WinHex Forensics Certification Course (X-Ways Software Technology AG 2005); numerous other classes on computer forensics and electronic discovery.

### Selected Professional Activities

Law Offices of Craig D. Ball, P.C.; Licensed in Texas since 1982. Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization Certified Computer Forensic Examiner, Oregon State University and NTI Certified Computer Examiner (CCE), International Society of Forensic Computer Examiners Admitted to practice U.S. Court of Appeals, Fifth Circuit; U.S.D.C., Southern, Northern and Western Dist. TX. Member, Editorial Advisory Board, Law Technology News and Law.com (Incisive Media) Special Master, Electronic Discovery, Federal and Harris County (Texas) District Courts Board Member, Georgetown University Law School Advanced E-Discovery Institute and E-Discovery Academy Member, Sedona Conference WG1 on Electronic Document Retention and Production Member, Educational Advisory Board for LegalTech (largest annual legal technology event) Member, High Technology Crime Investigation Assn and International Information Systems Forensics Assn Special Master, Electronic Discovery, Federal and Texas District Courts Instructor in Computer Forensics, United States Department of Justice Lecturer/Author on Electronic Discovery for Federal Judicial Center (Redondo Beach, Boston, San Antonio 2008) Instructor, Cybercrime Summit, 2006, 2007 Special Prosecutor, Texas Commission for Lawyer Discipline, 1995-96 Council Member, Computer and Technology Section of the State Bar of Texas, 2003- Chairman: Technology Advisory Committee, State Bar of Texas, 2000-02 President, Houston Trial Lawyers Association (2000-01); President, Houston Trial Lawyers Foundation (2001-02) Director, Texas Trial Lawyers Association (1995-2003); Chairman, Technology Task Force (1995-97) Member, Texas State Bar College Member, Continuing Legal Education Comm., 2000-, Civil Pattern Jury Charge Comm., 1983-94, State Bar of Texas Life Fellow, Texas and Houston Bar Foundations CLE Course Director: Electronic Discovery from A to Z, 2004-2007; Electronic Evidence and Digital Discovery Institute, 2004-2008; University of Texas School of Law Electronic Discovery Symposium 2007; Advanced Evidence and Discovery Course, 2003; Enron—The Legal Issues, 2002; Internet and Computers for Lawyers, 2001-02; Advanced Personal Injury Law Course, 1999, 2000; Preparing, Trying and Settling Auto Collision Cases, 1998. Member, State Bar of Texas President's "Vision Council" on Technology, 1999-2000; Strategic Planning Committee Liaison, 2001-02; Corporate Counsel Task Force 2001-02

#### Academic Appointments and Honors

2006 Recipient of the State Bar of Texas CTS Lifetime Achievement Award for Law and Technology The March 2002 CLE program planned by Mr. Ball and Richard Orsinger entitled, "Enron—The Legal Issues" received the Best CLE of 2002 award from the Association for Legal Education National Planning Committee, Legal Works 2004 (San Francisco) Recipient, State Bar of Texas Presidents' Award (bar's highest honor), 2001 Faculty, Texas College of Trial Advocacy, 1992 and 1993 Adjunct Professor, South Texas College of Law, 1983-88 Listed in "Best Lawyers in America" and Selected as a "Texas Super Lawyer," 2003 and 2004 Rated AV by Martindale-Hubbell

#### Law Related Publications and Presentations

Craig Ball is a prolific contributor to continuing legal and professional education programs throughout the United States, having delivered over 500 presentations and papers. Craig's articles on forensic technology and electronic discovery frequently appear in the national media, including in American Bar Association, ATLA and American Lawyer Media print and online publications. He also writes a monthly column on computer forensics and e-discovery for Law Technology News called "Ball in your Court," honored as both the 2007 and 2008 Gold Medal honoree as "Best Regular Column" as awarded by Trade Association Business Publications International. It's also the 2007 Silver Medalist honoree of the American Society of Business Publication Editors as "Best Contributed Column" and their 2006 Silver Medalist honoree as "Best Feature Series" and "Best Contributed Column." The presentation, "PowerPersuasion: Craig Ball on PowerPoint," is consistently among the top rated continuing legal educational programs from coast-to-coast.

#### **The Hon. John L. Carroll**, Birmingham, Alabama

Samford University, Cumberland School of Law

The Honorable John L. Carroll (Former US Magistrate) Dean and Ethel P. Malugen Professor of Law Cumberland School of Law Samford University Birmingham, Alabama Judge Carroll is Dean and Ethel P. Malugen Professor of Law at the Cumberland School of Law, Samford University, Birmingham, Alabama where he teaches Federal Courts, Complex Litigation, Evidence and an on-line course in E-Discovery and Evidence. He received his undergraduate degree from Tufts University and holds law degrees from the Cumberland School of Law at Samford University (J.D.) (Magna Cum Laude) and Harvard University (LL.M.).

Judge Carroll served as a United States Magistrate Judge in the Middle District of Alabama for over 14 years. He is a former member of the United States Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure and is former chair of its Discovery Subcommittee. He was also the chair of the Magistrate Judges' Education Committee of the Federal Judicial Center.

Prior to becoming a judge, Judge Carroll was a Professor of Law at Mercer University School of Law in Macon, Georgia. Prior to entering academia, he was the Legal Director of the Southern Poverty Law Center in Montgomery, Alabama. His trial experience includes major civil rights class action litigation and complex criminal defense including a substantial number of death penalty cases. He has twice argued before the United States Supreme Court.

Judge Carroll is a frequent lecturer and panel member at national seminars on the subject of the discovery of information in electronic form and other topics relating to federal courts. He

is also the reporter to the Electronic Discovery Project of the National Conference of Commissioners on Uniform State Laws which is seeking to draft model electronic discovery rules for use by state courts.

His most recent publications are “Developments in the Law of Electronic Discovery”, 27 Am. J. Trial Advoc. 357 (2003) and “Preservation of Documents in the Electronic Age - What Should Courts Do?” which appears in the 2005 Federal Courts Law Review (www.fclr.org) at page 5.

**The Hon. Ronald J. Hedges**, New York, New York  
Nixon Peabody LLP  
Of Counsel Nixon Peabody, LLP

Judge Ronald J. Hedges is a member of the firm’s Business Litigation practice group. He has extensive experience in e-discovery and in management of complex civil litigation matters.

Mr. Hedges was appointed in 1986 as a United States Magistrate Judge in the United States District Court for the District of New Jersey, where he served as the Compliance Judge for the Court Mediation Program, a member of the Lawyers Advisory Committee, and both a member and reporter for the Civil Justice Reform Act Advisory Committee. From 2001 to 2005 he was a member of the Advisory Group of Magistrate Judges. Mr. Hedges has also been an adjunct professor at Seton Hall University School of Law (1993-2007) and at Georgetown University Law Center since 2006. He is also Co-Chair on the Planning Committee of Georgetown University Law Center's Advanced E-Discovery Institute since November 2007.

**Publications:**

*Litigation Lessens: U.S. Federal Rules of Civil Procedure, the Sedona Principles, and Part 31 of the English Civil Procedure Rules* co-authored with K. F. Brady, A. Esteban, and K. L. Ball. "Access or Confidentiality: The Sunshine in Litigation Act of 2008," LexisNexis Expert Commentaries, May 2008. "Hedges on Proposed Rule of Evidence 502," LexisNexis Emerging Issues Law Center, March 21, 2008. *Managing Discovery of Electronic Information; A Pocket Guide for Judges* (co-author), Federal Judicial Center: 2007.) *Discovery of Electronically Stored Information: Surveying the Legal Landscape* (2007) "Juries and Punitive Damage Awards," BNA Metropolitan Corporate Counsel 48, Nov. 2006. "The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases" (rev. Apr. 2005 public comment draft), coeditor "A View from the Bench and the Trenches: A Critical Appraisal of Some Proposed Amendments to the Federal Rules of Civil Procedure," 227 F.R.D. 123, 2005. "Proposed Rule 37(f); Safe Harbor or Unchartered Minefield?" Digital Discovery & e-Evidence, Vol. 5, No. 7, July 2005. "Introduction to the Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality, and Public Access in Civil Cases," Business Torts Journal, Vol. 13, No. 1, Fall 2005. "A Critical Appraisal of Proposed Amendment to Federal Rule of Civil Procedure 26(b)(5)(B)," Digital Discovery & e-Evidence, Vol. 5, No. 2, March 2005. "Striving for Judicial Balance During the War on Terrorism," New Jersey Reporter, Vol. 32, Issue 1, 52, December 2002–January 2003. "Outlines on Arbitration, Digital Discovery, Management of Complex Civil Cases, Mediation and Punitive Damages," published in ALI-ABA course materials. "Introduction to the Sedona Guidelines: Best Practices Addressing Protective

*Orders, Confidentiality, and Public Access in Civil Cases*, "Business Torts Journal 14, Fall 2005.

**Memberships:**

Mr. Hedges is a member of the American Law Institute, the American Bar Association, and the Federal Bar Association. He is a member of the Board of Directors of the Historical Society and the Lawyers Advisory Committee of the United States District Court for the District of New Jersey. Mr. Hedges was a judicial advisor to the Association of the Federal Bar of the United States District Court for the District of New Jersey.

Mr. Hedges is a member of the Sedona Conference Advisory Board; the Sedona Conference Working Group on Protective Orders, Confidentiality, and Public Access; and the Sedona Conference Working Group on Best Practices for Electronic Document Retention & Production. He is also a member of the Law Alumni Board and the E-Discovery Advisory Board of Georgetown University Law Center, and a member of the CPR E-Discovery Committee. He is also currently a Member of the ARMA Records Destruction Task Force.

**The Hon. Andrew J. Peck**, New York, New York  
United States Magistrate Judge

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. He graduated with honors from Cornell University in 1974 and from Duke University School of Law in 1977, where he was Notes & Comments Editor of the Duke Law Journal.

Judge Peck served as law clerk to Judge Paul Roney of the United States Court of Appeals for the Eleventh (then the Fifth) Circuit, during the 1977-1978 term. Judge Peck was an associate and then Counsel at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, from 1978-1995. His practice in commercial litigation emphasized entertainment and intellectual property (copyright and trademark) litigation.

Judge Peck is an adjunct professor at Cardozo Law School, where he teaches a course in Pretrial Practice.

In his spare time, Judge Peck is a member of the Baker Street Irregulars and other Sherlock Holmes societies. Judge Peck also has served as a member of the Board of Directors and as Executive Vice President of the Mystery Writers of America, Inc. ("MWA"), which awards the Edgar® Award each year for the best works in the mystery field.

Judge Peck is a frequent lecturer on issues relating to electronic discovery and is a member of the Sedona Conference Advisory Board.

**Jonathan M. Redgrave**, Washington, D.C.  
Redgrave Daley Ragan & Wagner LLP

Since the founding of Redgrave Daley Ragan & Wagner LLP in October of 2005, Jonathan has regularly addressed issues involved in the discovery of electronically stored information, as well as issues concerning records retention and privacy policies and practices for clients

Jonathan is a moving force behind, and currently Chair Emeritus of, the highly successful Sedona Conference Working Group on Electronic Document Retention and Production (WG1). He has authored or co-authored numerous publications and speaks frequently at national and international seminars on issues related to electronic information, records management and litigation.

#### Select Publications

Co-Author, "Discovery of Electronic Information", Business and Commercial Litigation in Federal Courts (West Publishing) (December 2005; rev. December 2006 and August 2007) (with Hon. Shira A. Scheindlin) Editor-in-Chief, THE SEDONA PRINCIPLES: Best Practices Recommendations & Principles for Addressing Electronic Document Production (2004; 2005; 2007) Co-Editor-in-Chief, THE SEDONA GUIDELINES: Best Practice Guidelines & Commentary for Managing Information & Records in the Electronic Age (2005)

#### Selected Activities, Accomplishments, and Memberships

Member, Advisory Board, The Sedona Conference, a nonprofit 501(c)(3) research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, intellectual property, and complex litigation (2002-present)  
Member and Chair Emeritus, The Sedona Conference WG1: Electronic Document Retention and Production (Chair 2002-2007; Chair Emeritus 2007-present)  
Member, The Sedona Conference WG6: International Electronic Information Management, Discovery and Disclosure (2005-present)  
Member, The Sedona Conference WG7: Sedona Canada (2005-present)  
Member, Advisory Committee on the Electronic Records Archives (United States National Archives and Records Administration) (2005-present)

Member and Co-Chair, Advisory Board, Georgetown University Law Centers E-Discovery Institute (2005-present)

Member, E-discovery Committee of the International Institute for Conflict Prevention and Resolution (2007-present)

State Bar Admissions  
District of Columbia; Minnesota

#### Education

J.D., cum laude, University of Minnesota Law School (1991)  
B.A., cum laude, University of Notre Dame (1988)

