I. COURSE INTRODUCTION

Judges, practitioners, and scholars have stated without equivocation “[c]ivil litigation is primarily about discovery” and “paper discovery is a thing of the past.”¹ Judges and practitioners working in the criminal justice system have suggested that law enforcement “will assert that almost every crime today involves a computer.”² Experts now estimate that less than 1% of all communications will ever appear in paper form,³ and common sense suggests that only the ill-advised ignore 99% of the potential evidence.

It is a “brave new world” for those that litigate. This course is an introduction to that world. We will discuss, research and write on issues ranging from preservation to production of electronically stored information (ESI).

As set out in the learning objectives below, the goals for this senior writing seminar are that those who participate leave with (a) an ability to spot issues and identify relevant legal standards and tools for dealing with ESI, and (b) improved research and writing skills that include an ability to produce written work product related to electronic discovery (eDiscovery).

---

¹ SCHEINDLIN ET AL., SUPPLEMENTARY MATERIALS ON ELECTRONIC DISCOVERY iii (2009).
II. COURSE MATERIALS

A. Required Texts


B. Recommended Reading

1. Craig Ball, Assorted Writings, See Ball In Your Court, available at https://ballinyourcourt.wordpress.com/
2. Arkfeld on Electronic Discovery and Evidence (most recent edition available on Lexis);
3. Marean Browning et al., Electronic Discovery and Records Management Guide: Rules, Checklists and Forms (most recent edition available on Westlaw);
4. Tom O’Connor & Bruce Olson, Electronic Discovery for Small Cases (2012);
5. John Hardin Young et al., Written Electronic Discovery: Theory & Practice (5th ed. NITA 2009);

C. TWEN

The TWEN page for this course contains a copy of the syllabus and appendices. Sign-up sheets for the writing assignments, presentation assignment, and individual meetings will also be posted.

III. GRADES

Grades are based on a series of writing assignments (80%); an in-class presentation (10%); and classroom attendance and participation (10%).

A. Writing Assignments (80% total)

There are a series of graded writing assignments during the semester: four (4) short writing assignments; and four (4) short editing assignments where you will review a colleague’s work. In addition, there is a final memorandum of law with three (3) separate deadlines at the end of the semester.
The short writing assignments will each count for eight percent (8%) of your grade, for a total of thirty-two percent (32%). The editing assignments will count for two percent (2%) each, for a total of eight percent (8%).

The final memorandum of law will count for forty percent (40%) of your grade, with the outline and draft each counting for ten percent (10%) and the final memorandum the remaining twenty percent (20%).

Due dates and additional instructions for the writing assignments are set out in appendices to this syllabus posted on TWEN.

B. Class Presentations (10% total)

Each student will present their research for the final legal memorandum in class at the end of the semester.

Additional instructions for the presentations are also set out in the appendices to this syllabus posted on TWEN.

C. Attendance & Participation (10%)

It is incumbent upon you to read the material, come to class well prepared, and participate. Every student who does so will receive all ten (10) attendance & participation points; those who do not will receive fewer or no points.

For the purposes of the participation grade, I will take illness or other work commitments explained in advance into consideration. I will also, periodically, quiz you on vocabulary from the reading. Scores from the quizzes will be considered as evidence of preparation in evaluating your participation grade.

With regard to absences, this course adheres to SIU Law’s attendance policy: attendance is required in all classes, including those during the last week of the semester when students will be presenting.

Because this is a three-credit seminar meeting only two times per week, if you accumulate more than four (4) class absences you will be
subject to the sanctions set out in the law school rules. Those sanctions include mandatory withdrawal from the course. Neither the law school nor the ABA’s attendance rules recognize “excused absences.” Save your absences for sick days and work conflicts.

If you have a disability requiring accommodation, please see Disability Support Services to make the necessary arrangements. We will follow their guidance regarding attendance and participation, as well as other course requirements. See also the Disability Statement infra.

IV. CONTACT INFORMATION

If I am in my office and the door is open, you and your questions are welcome. After class is usually a good time to catch me. Or you can email apardieck@law.siu.edu to set up a time. I will also have regular office hours on Mondays from 2 p.m. to 4 p.m.

For those emailing, please note my response may not come immediately and it may be brief. The ulnar nerve in my left hand periodically objects to typing. Email aside, you have options. If you have questions, by all means ask.

IV. LEARNING OBJECTIVES

At the end of this semester, students who do the work will be able to recognize issues that arise with the discovery of ESI and produce work product necessary to complete that discovery.

Students will understand the vocabulary of eDiscovery and be able to articulate the differences between, e.g., accessible and inaccessible ESI; key word search, data analytics, and predictive coding; and native and static image productions.

Students will understand the role of and be able to research and draft preservation letters; litigation holds; requests and responses related to discovery of ESI; and analyses of search protocols and costs.
Students will develop basic skills to meet, confer, and negotiate the identification; preservation; collection; processing; review; analysis; production; and presentation of ESI.

Finally, using software made available by widely used eDiscovery vendors, students will develop basic search skills necessary for the early case assessment that informs the identification, preservation and collection of ESI and then latter its review, analysis and production.

V. READING AND WRITING ASSIGNMENTS

For the first week, plan on the following reading and writing assignments:

- **August 22.** Read Introduction, pp. 1-23.
- **August 24.** Read Electronic Discovery: Types & Sources, 51-75. Prepare written data map for discussion in class.

Additional information regarding the data map and the reading and writing assignments for the remainder of the semester is set out in the appendices to this syllabus posted on TWEN.

Note the course outline posted is tentative and subject to change depending on how we progress and the availability of guest speakers. If you have questions about what to read or prepare for the next class, ask.

VI. FINAL NOTES

**Make-Up Classes:** Classes that meet on Mondays must hold a make-up class (or require an out-of-class assignment) for the Labor Day holiday. Details regarding the make-up will be announced in class.

**Class Recording Policy:** This class is not being recorded. Absent a disability-related accommodation arranged through Disability Support Services (see below), you will not have access to a recording of the class. Absent advance approval of the instructor, audio or video recording by any student of any class is prohibited.

**Disability Policy:** Disability Support Services (DSS) provides academic and programmatic support services to students with permanent and temporary
disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. http://disabilityservices.siu.edu/. Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

Saluki Cares. The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, http://salukicares.siu.edu/index.html. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.

Emergency Procedures: Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in the Emergency Response Guideline pamphlet. Know how to respond to each type of emergency. Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.