ELECTRONIC DISCOVERY SEMINAR

Professor Andrew Pardieck
Fall 2013, SIU Law 590-3 §001
Mon/Wed 1:00 to 2:15 p.m., Rm. 104I

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 estimate that less than one percent of all communications will ever appear in paper form.³ Only the ill advised ignores 99% of the potential evidence.

It is a “brave new world” for those that litigate, and this course is an introduction to that world. We will research, write on, and discuss issues ranging from preservation and production requirements for electronic information to spoliation and sanctions. The goals for this senior writing seminar are that those who participate leave with (a) better research and writing skills, and (b) an ability to spot the issues and identify the relevant legal standards and tools for dealing with electronically stored information.

II. COURSE MATERIALS

A. Required Texts

1. SCHEINDLIN ET AL., ELECTRONIC DISCOVERY AND DIGITAL EVIDENCE: CASES AND MATERIALS (2nd ed. 2012)

¹ SCHEINDLIN ET AL., SUPPLEMENTARY MATERIALS ON ELECTRONIC DISCOVERY iii (2009).
B. **Recommended Reading**

1. **Arkfeld on Electronic Discovery and Evidence** (2013);
2. **Tom O’Connor & Bruce Olson, Electronic Discovery For Small Cases** (2012);
3. **John Hardin Young et al., Written Electronic Discovery: Theory & Practice** (5th ed. NITA 2009);
4. **Marean Browning et al., Electronic Discovery and Records Management Guide: Rules, Checklists and Forms** (2012-2013);

C. **TWEN**

The TWEN page for this course contains a current copy of the syllabus and additional writing instructions. Sign-up sheets for the writing, presentation assignments, 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 series of writing assignments due during the semester: eight (8) short assignments, as well as a final memorandum of law with three (3) separate deadlines at the end of the semester. Due dates for each are set out in the Course Outline below.

The short assignments will count for forty percent (40%) of your total grade; each will be given equal weight. 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%).

Additional instructions regarding individual assignments will be posted to TWEN and discussed in class.

B. **Class Presentations (10% total)**
Each student will present their research for the final legal memorandum in class during the last two weeks of class. Specific requirements for the presentations will be posted to TWEN and discussed in class.

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 the ten (10) class attendance & participation points; those who do not will receive fewer or no points.

For the purposes of the participation grade, I will take other work commitments and any health issues explained in advance into consideration in evaluating lack of preparation. Students who attend but are not prepared for class and have not provided a valid reason in advance will be counted absent.

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

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.

Please note there are no “excused absences” for the purposes of SIU’s rule, or the ABA’s attendance requirement. In counting absences to determine compliance, you either attended or you didn’t.

IV. CONTACT INFORMATION

I encourage you to contact me with any questions you might have. After class, rather than before, is usually a good time. Feel free to drop by my office, Room 214, or email to set up a time.

I will check email sent to apardieck@siu.edu and respond as soon as I can. My response may not come immediately and it may be brief. The ulnar nerve in my left hand periodically objects to typing.
IV. INITIAL READING ASSIGNMENTS

Reading assignments for the first three weeks follow. Additional reading and writing assignments will be posted to TWEN.

<table>
<thead>
<tr>
<th>Week</th>
<th>Date</th>
<th>Subject</th>
<th>Reading</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>19-Aug</td>
<td>INTRO &amp; EFFECTS OF ESI ON DISCOVERY</td>
<td>Introduction, pp. 1-17; A. Explosion &amp; Sources of Information, pp. 40-56.</td>
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<tr>
<td></td>
<td>22-Aug</td>
<td>I. EFFECT OF ESI ON DISCOVERY</td>
<td>A. Explosion &amp; Sources of Information, pp. 57-64; B. Backup Information, pp. 64-74</td>
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<td>2</td>
<td>26-Aug</td>
<td>II. PRESERVATION OF ESI</td>
<td>B. Implementing the Duty to Preserve, pp. 90-112; C. Trigger Dates, pp. 112-131</td>
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<td>3</td>
<td>2-Sep</td>
<td>No Class</td>
<td>Labor Day Holiday</td>
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<tr>
<td></td>
<td>4-Sep</td>
<td>II. PRESERVATION OF ESI</td>
<td>H. Possession, Custody, or Control, pp. 210-236; I. Discovery of Social Media, pp. 237-252.</td>
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VI. FINAL NOTES

Make-Up Classes: We are required to make up a class for the Labor Day and Veteran’s Day holidays. At this point, I would anticipate making up the classes by meeting individually with students to discuss the memoranda outlined above.

Disability Disclosure Statement: Students with disabilities are entitled to reasonable accommodations and academic adjustments. See http://disabilityservices.siu.edu/. Any student requiring accommodation because of a disability should contact the Associate Dean’s Office at the law school.

Class Recordings: The Law School may record class sessions; however, absent a request in advance for accommodation, class recordings will not be provided to students. Audio or video recording by any student of any class sessions, absent advance approval of the instructor, is prohibited.
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.