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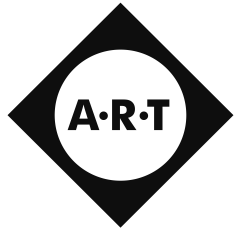
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# Judicial Records Forum

Fordham Law School  
James McNally Amphitheatre  
June 4, 2014

## Welcome!



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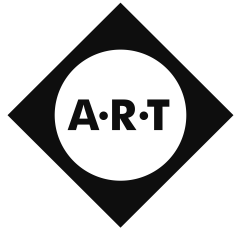
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# Opening Remarks

- Daniel J. Capra, Reed Professor of Law, Fordham Law School
- Pamela Cruz, President, Archivists Round Table of Metropolitan New York, Inc. (A.R.T.)
- Ron Hedges, Ronald J. Hedges, LLC
- Kenneth J. Withers, Deputy Executive Director, The Sedona Conference®



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# Judicial Records Forum

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Panel One:  
Creation & Acquisition of Electronic Records



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# Panelists

- Anita Castora, CRM, IGP, CBCP  
American Eagle Federal Credit Union
- Rick Hogan, Chief Records Manager  
for the Office of Court Administration,  
State of New York
- James J. Waldron, Clerk, United States  
Bankruptcy Court for the District of  
New Jersey
- Kenneth J. Withers, Deputy Executive  
Director, The Sedona Conference®

# What is a “record”?

“[I]nformation created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business ...”

- ISO 15489-1:2001

# Why are “records” important?

- Record decisions and actions
- Define rights and responsibilities
- Enforce obligations
- Provide accountability
- Plan for future activities
- Provide historical record

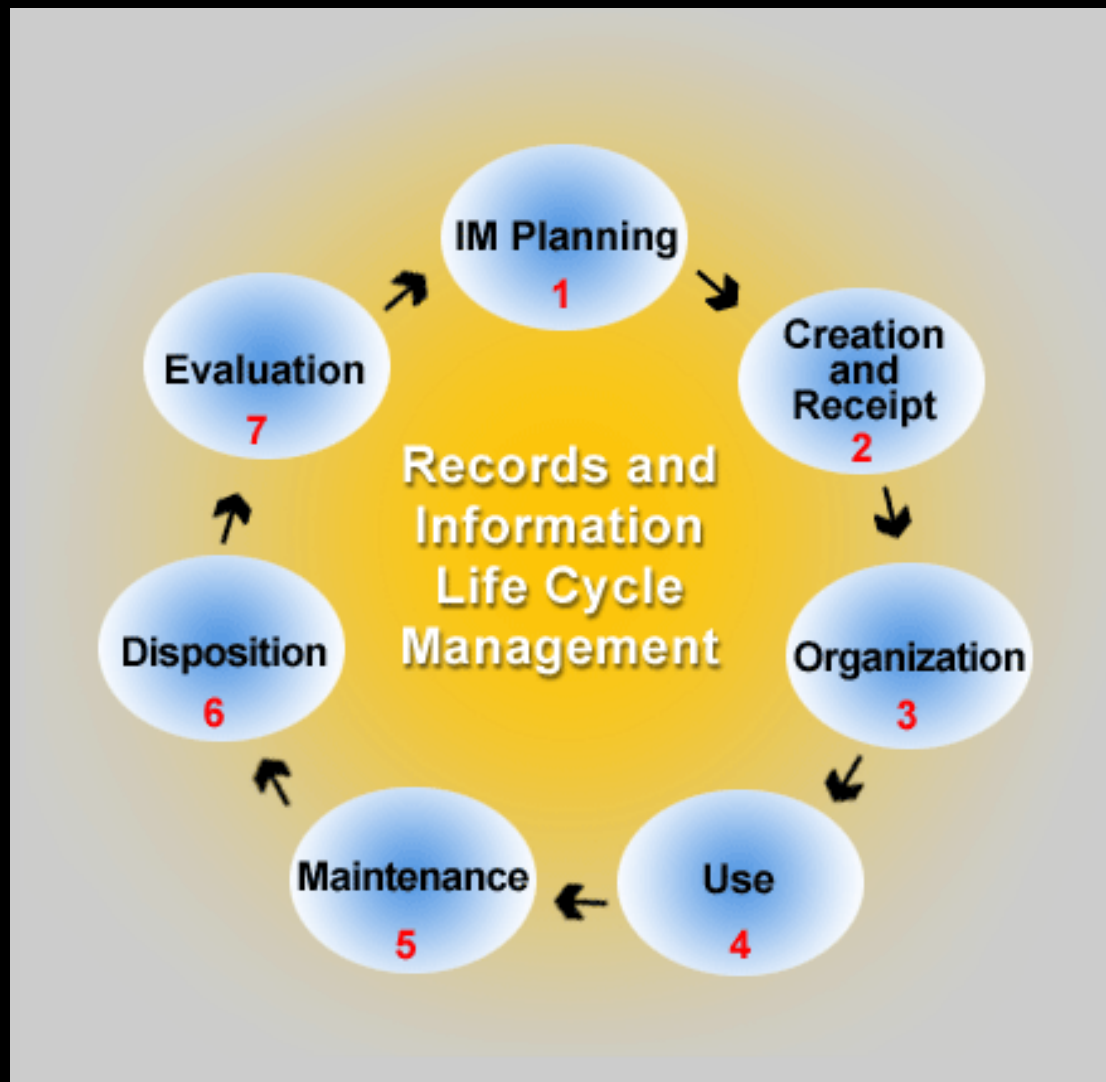
# Why are *judicial* records particularly important?

- Allow meaningful public access to the courts
- Provide transparency in court proceedings
- Allow for public and political evaluation of justice system
- Allow for development of common law

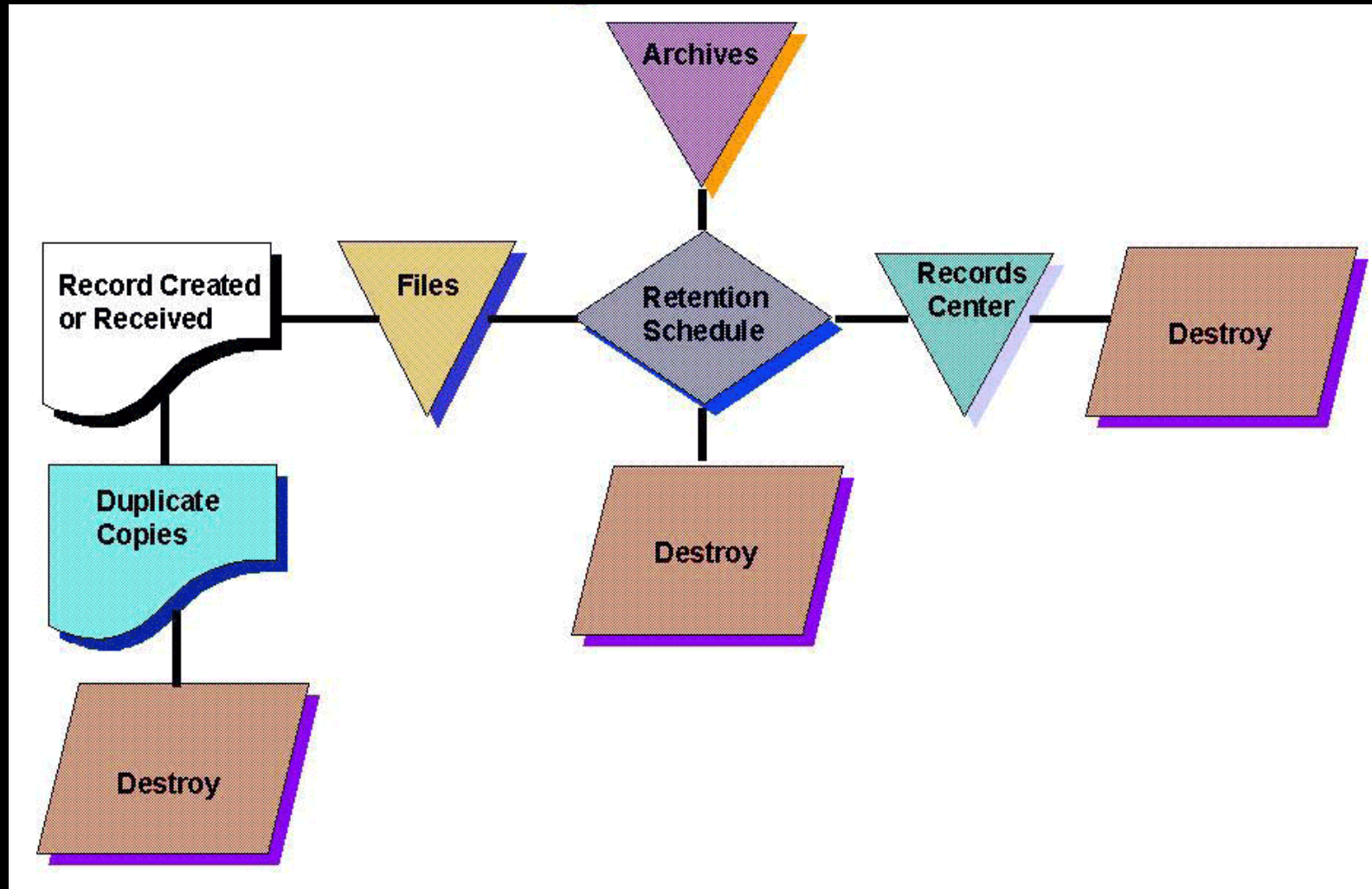
# Attributes of a “record”



# Life cycle of records

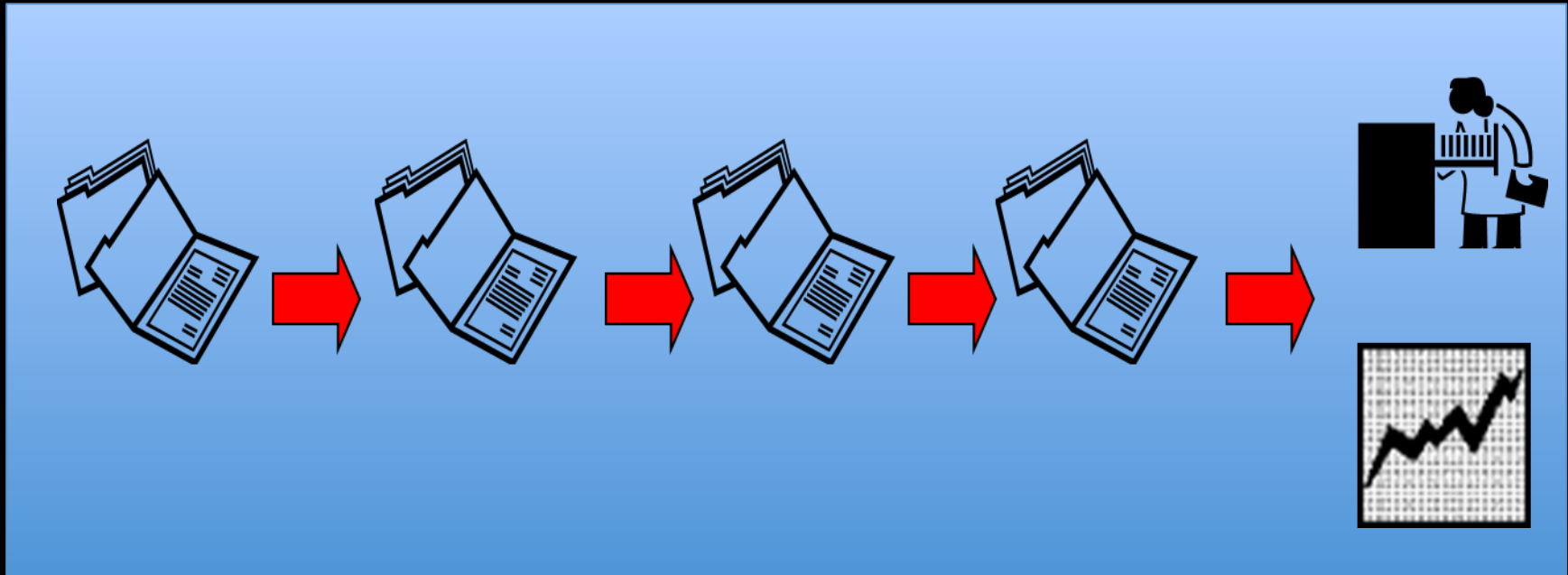


# Life cycle of records



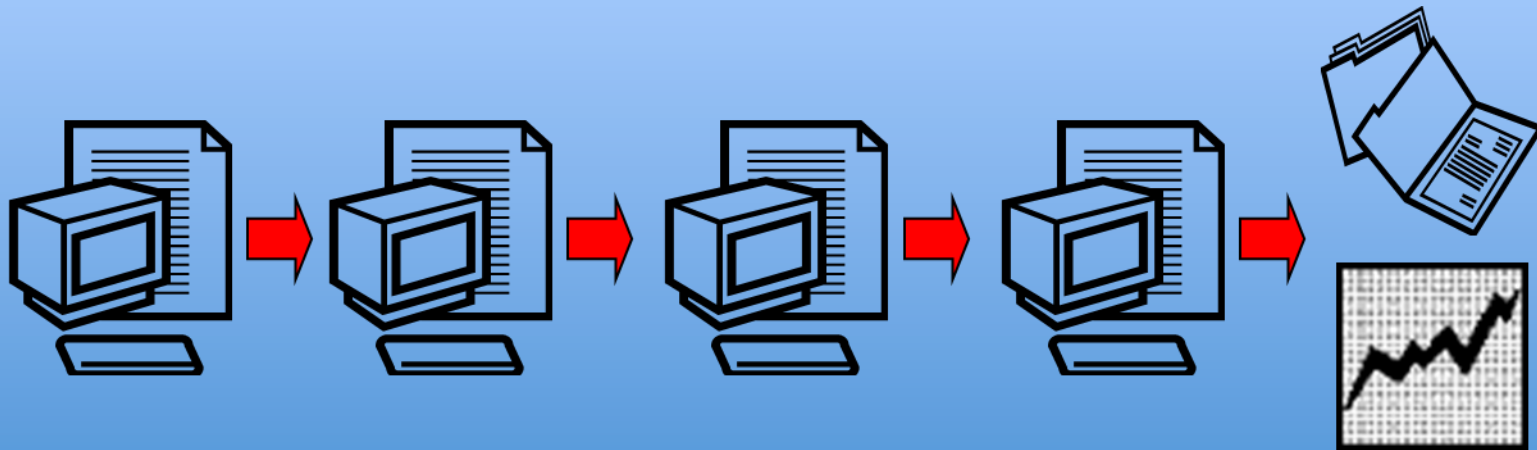
What makes  
“digital”  
different?

# Paper-based business process



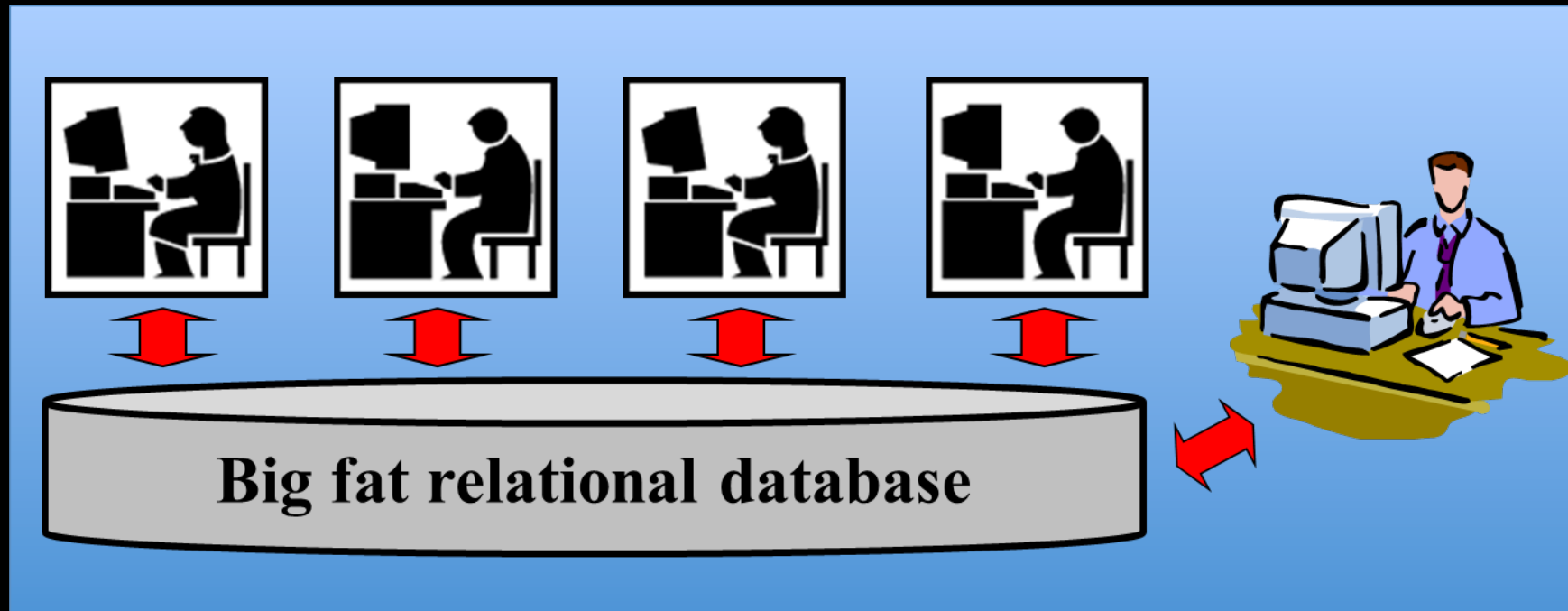
Each stage of the process generates an artifact, and together the artifacts constitute a “record”

# “Protodigital” business process



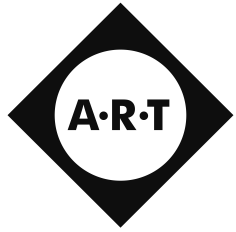
Computers replace typewriters and pens, but are used to create artifacts, either paper or digital, which are saved as the “record”

# True digital business process



No artifacts are generated; each stage of the process modifies the big fat relational database

What makes  
“digital”  
different?



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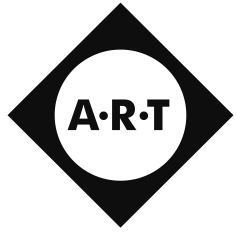
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Panel Two:  
Records Integrity & Accessibility of  
Electronic Records Over the Long Term



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# Panelists

- Jason R. Baron, Of Counsel, Drinker Biddle, Washington DC
- Doug Reside, Digital Curator, New York Public Library for the Performing Arts
- Prof. Greg Hunter, Archives and Records Management Program, Palmer School of Library and Information Science
- Kenneth J. Withers, Deputy Executive Director, The Sedona Conference®

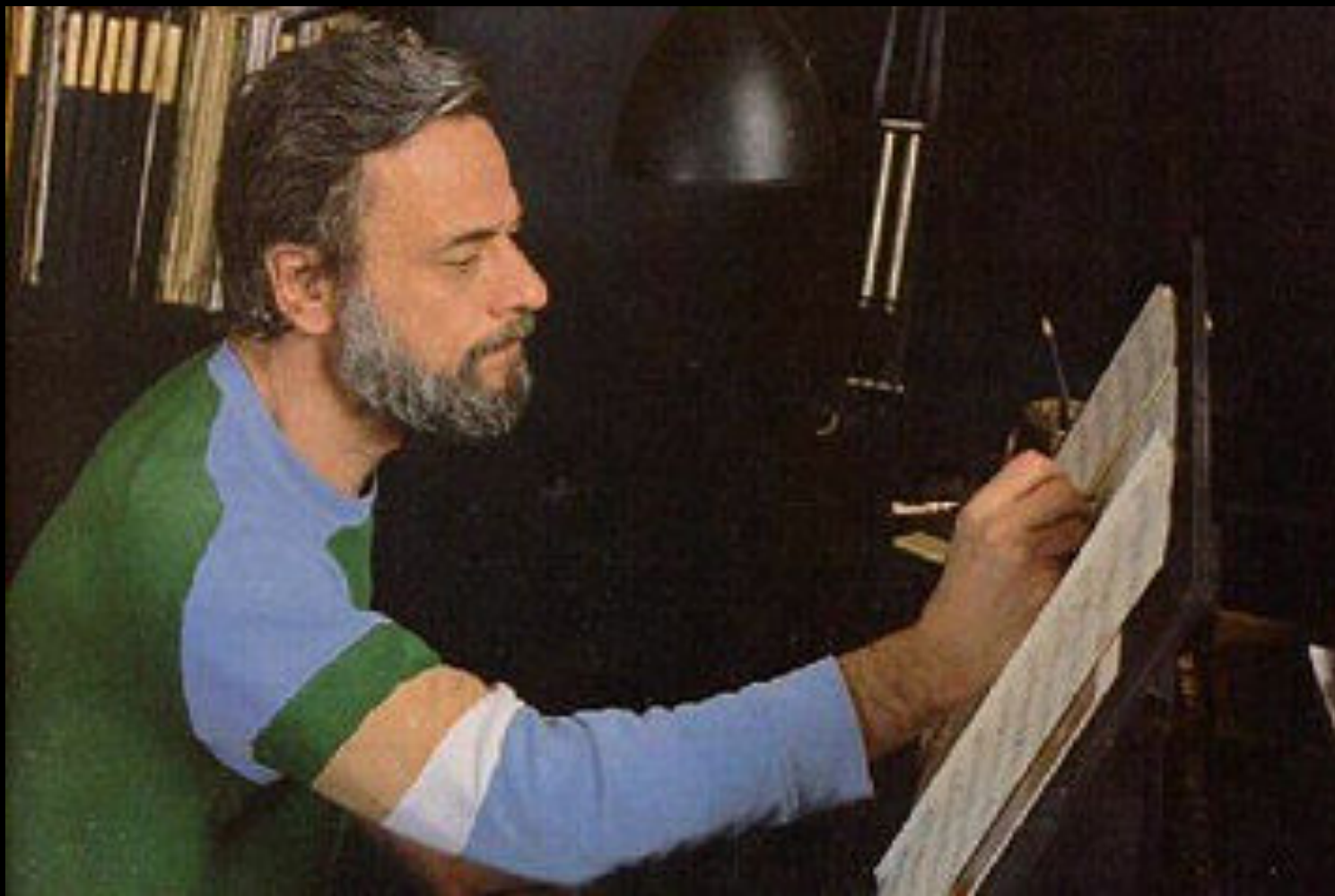
# Domesday Book, 1086



# Acorn Computer, 1986



# Researching Sondheim



Federal government retention period:

“The life of the Republic,  
plus 20 years...”

# Special concerns of the public sector

- Longer retention periods
- “Fishbowl” environment
- Managing metadata over time
- Inverse relationship between volumes and searchability
- Authentication issues

# Preservation of metadata

- Can the public sector learn from the performing arts?
- “Suitability for purpose” test for preservation of metadata
- Metadata may be as important as content (it may BE content)

# “Dark data”

“Where Light in Darkness Lies: Preservation, Access and Sensemaking Strategies for the Modern Digital Archive”

- UNESCO paper by Jason R. Baron and Simon J. Attfield

# Authentication

## **Federal Rule of Evidence 901. Authenticating or Identifying Evidence**

**(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

# Authentication

**(b) Examples.** The following are examples only – not a complete list – of evidence that satisfies the requirement:

[...]

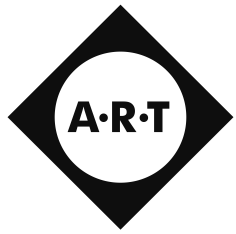
# Authentication

**(8) Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:

- A. is in a condition that creates no suspicion about its authenticity;
- B. was in a place where, if authentic, it would likely be; and
- C. is at least 20 years old when offered.

# “Ancient Document or Data Compilation”





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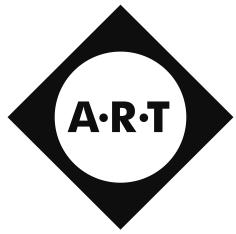
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Panel Three:  
Confidentiality, Access & Use of Electronic  
Records



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# Panelists

- Ron Hedges, Ronald J. Hedges, LLC
- David E. McCraw, Vice President & Assistant General Counsel, The New York Times Company
- Robert D. Owen, Partner-in-Charge, NY Office of Sutherland Asbill & Brennan LLP
- Kenneth J. Withers, Deputy Executive Director, The Sedona Conference®

# The Sedona Guidelines

- *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases (2007)*
- Product of Working Group 2 of The Sedona Conference®
- Published in draft in 2005
- Published in final in 2007

# The Sedona Guidelines

- Chapters
  - Pleadings, Court Orders, Substantive Motions, and Dockets
  - Discovery
  - Trials
  - Settlements
  - Privacy and Public Access to the Courts in an Electronic World
- Appendices
- 2014 Supplement

# Pleadings, Court Orders, Substantive Motions, and Dockets

- *Courtroom News Service v. Planet*, 2014 WL 1345504 (9th Cir. Apr. 7, 2014) (access to newly-filed civil complaints)
- *Company Doe v. Public Citizen*, 2014 WL 1465728 (4th Cir. Apr. 16, 2014) (access to dockets and litigating anonymously)

# Discovery

- *Fiorella v. Paxton Media Grp., LLC*, 424 S.W.3d 433 (Ky. Ct. App. Feb. 21, 2014) (access to filed discovery materials)
- *Apple, Inc. v. Samsung Electronics Co.*, No. 5:11-cv-01846 (N.D. Cal. Jan. 29, 2014) (violation of confidentiality protective order)

# Trials

- *Morris Publishing Grp. v. Florida*, 2014 WL 1665920 (Fla. 1<sup>st</sup> Dist. Ct. App. Apr. 25, 2014) (access to jury selection)
- *Los Angeles County Dept. of Children and Family Services v. J.P.*, 224 Cal.App.4th 354 (Cal. Ct. App. Mar. 3, 2014) (access to juvenile dependency proceedings)

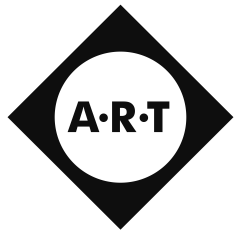
# Settlements

- *Gulliver Schools, Inc. v. Snay*, 2014 WL 769030 (Fla. 3d Dist. Ct. App. Feb. 26, 2014) (violation of confidential settlement agreement)
- *Delaware Coalition for Open Gov't v. Strine*, 733 F.3d 510 (3d Cir. 2013), *cert. denied*, 134 Sup. Ct. 1551 (2014) (access to state-sponsored arbitration program)

# Privacy and Public Access to the Courts in an Electronic World

- *City of San Jose v. Superior Court*, 225 Cal.App.4th 75 (Cal. Ct. App. Mar. 27, 2014) (access under California Public Records Act to “communications between public officials using exclusively private cell phones or e-mail accounts”)

Questions?  
Comments?  
Thank You!



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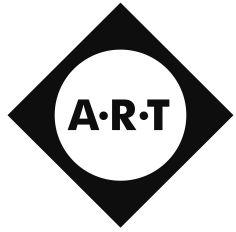
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## Concluding Thoughts



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# Thank You!