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Distinguishing Data That Matter Most

Survey says: Users want easily accessible metrics

By **Shamir B. Colloff** / **FRONTEO USA**

When you are looking for a needle in a haystack, the addition of more hay does not alter your objective, only your approach. The same is true when searching for relevant information. Although we live in an era of exponentially increasing data volumes, the reality is that the material that matters most remains constant. This was true 10 years ago, when the FRCP changed to include electronically stored information as a codified information source, and it's true today: Just because you have more documents doesn't mean you have more *relevant* documents. Those with the tools to sort, compile, analyze and apply the details they gather, rather than simply review them, have a valuable competitive advantage.

For that reason, dynamic dashboards should be an essential component of any legal team's arsenal. From actionable data that reveals utilization rates to key statistics that highlight review patterns, interacting with information on a centralized platform can help support and even define your strategy. It can also aid in assessing strengths or weaknesses to easily navigate between success and failure. Litigation support leaders who quickly identify which reviewers have logged in or tagged relevant documents, and at what rate, can make predictions on spend, provide completion estimates and advise client contacts with unprecedented speed and accuracy.

The Value of Visibility

A common challenge for law firm leaders is the need to compare the performance on a specific client matter with an entire portfolio of clients. Similarly, corporate legal department operations directors who are interested in identifying the average cost of a particular law firm handling a certain type of case want to do so seamlessly. The value of that visibility can differentiate a sufficient team from a successful one.

After all, analytics are important, but the application of those insights to identifiable challenges is what creates trust, enhances loyalty and enables organizations to exceed expectations, which are all essential in a competitive market. We have a vast amount of data at our disposal – we create it and store it every day in our normal course of business – and e-discovery, data processing and review activities are particularly rich in meaningful information. Extracting meaning and value from the vast amount of data is where the real work begins.

In a recent independent study conducted by FRONTEO, only 25 percent of responders said that they had been using analytic reporting applications for more than five years. That number moves to 47 percent for three years or more. This highlights the nascent stage of analytics in the legal market and the opportunity to gain further efficiencies through business intelligence.

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The Power of Meaningful Project Management

Legal teams that interact with data can conduct a financial analysis to draft robust budgets that predict spending. Others can produce usage reports to support staffing changes. While too many legal professionals track a limited set of metrics, such as documents reviewed or total number of reviewers, and do so on Excel spreadsheets, those using a comprehensive dashboard employ these details as actionable intelligence. They apply these observations to heighten their project management skills to make better decisions, provide thorough advice and draw more logical conclusions that improve results, faster. Faster legal teams can identify what their goals are, and how they are moving toward – or away from – those goals. They can more quickly course correct, realize inefficiencies, and fundamentally save time and money.

The FRONTEO study also revealed that 63 percent of law firms were still using manual entries into spreadsheets to collect data and produce e-discovery metrics. Only 44 percent of responders leveraged a business intelligence tool, however, 91 percent of those that did were using standard reporting in law firms, and only 65 percent of corporations. Inversely, 70 percent of corporations were using dashboarding capabilities versus just 40 percent of law firms.

The Drive Toward Dashboards

It is those results that are fueling interest in the expanded use of information to enhance efficiency. As in-house legal teams assume greater responsibility for their dockets and remove that authority from their outside counsel, they need to find faster ways to improve their judgment. While data sets have risen dramatically in terms of size and volume, the value of that information is not contingent on its size or volume.

Dashboards provide insight into what is not readily available in an easily consumable format by aggregating databases, triangulating data points and summarizing an array of records to generate reports. A pricing calculator that spotlights spending offers more than simply financial figures. A pie chart indicating how much time users with a certain domain spend on each matter can reveal staffing inefficiencies at a single glance. Often, the decision makers on large legal projects are overwhelmed with information – so the work of consolidating a vast amount of data into a consumable metric, graphic or indicator is critical to get the buy-in and action from the relevant parties.

The FRONTEO study also revealed that 72 percent of responders ranked presentation or visualization of metrics as important or very important, though law firms stopped short of enabling their workforces with mobile-friendly dashboards. Of those surveyed,



Dynamic dashboards are an essential component of any legal team's arsenal.

95 percent of them said that they didn't have mobile access to visualize e-discovery metrics and business intelligence from smartphones and tablet computers. That figure for corporations was 46 percent.

Data and Dashboard Best Practices

Take advantage of this process by adopting the following best practices:

- Centralize your data with a single discovery provider to optimize utilization. Those using a variety of vendors receive random reports and erratic tracking, rather than seamless support.
- Customize your data with a dashboard designed specifically to address the questions to which you want answers.
- Translate your data so it is portable, downloadable and even mobile. While few end users will access the technology directly, every member of the legal team will want to review summaries of its contents in PDF or Excel, as well as on a wide variety of devices.
- Interact with your data by manipulating its contents for planning and budgeting.
- Integrate your data by importing information from different systems within your organization. With files typically stored in a myriad of systems, it is imperative to integrate and access them on a universal scale.

Everybody wants dashboards, but the FRONTEO study shows that the top three departments in an organization that would want to review dashboards to visualize business intelligence and e-discovery metrics are the IT department, executive officers and the litigation department. The e-discovery department was closer to fourth place.

Ultimately, using a dashboard for your data is like searching for a needle in a haystack with a metal detector that can immediately identify its size, weight and location. And that can only be a win for you!

MCC Interview: Sean King / RVM Enterprises, Inc.

E-Discovery Stays Unique As It Goes Mainstream

Managing projects today means managing heightened client expectations

As technologies and workflows have evolved, e-discovery has become less arduous – if no less important. To e-discovery veteran Sean King, that means there’s even more pressure on project managers to understand and tailor solutions based on the inherent uniqueness of every engagement. Below he discusses the mainstreaming of e-discovery and what that means given the unique character of each project. His remarks have been edited for length and style.

MCC: Please describe your background and experience in project management and hosting support?

King: I’ve been providing discovery management and consultation services, especially related to project management and hosting support, for more than 15 years. The most important thing I’ve learned in my career is the uniqueness of every client, especially with their projects. I’ve spent much of my career in Am Law 100 law firms as a litigation support professional providing consultation and best practices in managing discovery with a variety of technology solutions.

I used to joke that when I was on the law firm side, it was as if I was working for 200 firms because every partner I worked for approached their matters differently, with varied concerns and expectations. Those partners, and the firm’s associates, were my direct clients. While I had standards and best practices that I had developed over time, there were always modifications I needed to make – small things like how I communicated, how I tracked budgets, how I organized information. My approach to them individually made a difference in their satisfaction and in the overall value in the service I provided.

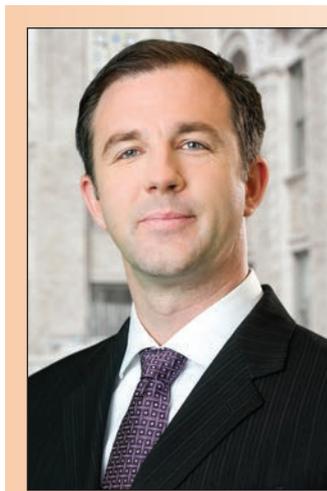
When I came to RVM in 2014, I wanted more direct interaction with our clients, and I wanted to have a more direct impact on how they approached their discovery needs. As my career has evolved, and I’ve worked with managing partners, associates, corporate counsel, and a variety of law firms, big and small, I’ve continued to learn even more that every client is different and sees value in different ways. Project Management is the means by which they see the value of the workflow and solutions we put in place. My experience has allowed me to manage and consult on government enforcement and investigations, handling SEC and DOJ subpoena responses as well as civil litigations for large pharmaceutical and other international companies in the U.S., UK and Asia. Those matters, in combination with the client expectations, require different solutions and project management is how they ultimately get the best value for that solution.

MCC: With the December 2015 changes to the Federal Rules of Civil Procedure, and the regulatory environment shifting constantly, how do you advise clients on best practices for information governance and data retention?

King: The idea of reasonableness under the Federal Rules of Civil Procedure continues to evolve. At the end of the day, no matter what the federal rules currently are, I always advise my clients to have a solid, defensible workflow related to their discovery obligations. I strongly encourage them to invest the time and effort needed to create a document retention policy and consistent practices to adhere to that policy.

That’s not always practical, especially on the cusp of a subpoena or complaint. We manage the lemons we have and we make lemonade by ensuring that we outlined how we went about identifying the relevant information, how we prepared a good preservation practice, how we leveraged the rules to manage the scope and effort, and how we deployed technology to assess the data for a more competent culling and filtering experience. We go beyond keyword searches whenever possible and

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If you’re the CLO or General Counsel, make sure the IT director is your best friend.

focus more on data assessment and how to reduce the effort required for review and production.

MCC: How can corporate law departments best prepare for discovery and investigations? What is the role of technology in the preparation?

King: First, have a really good sense of your network infrastructure and document retention practices and policies. Know what you have, know what you don’t have, and know what would be really hard to get. Next, make sure your IT director, or the equivalent position, is your best friend. If you’re the CLO or General Counsel, or a partner or senior associate involved in managing discovery, somebody with a strong IT background is a really good tool to have in your toolbox. That person can help you get organized and advise you on the best ways to manage data. That will put you in a better position to respond to discovery requests. If you know what you have from a data retention perspective, and if you know what your policies are, it becomes a lot easier to figure out how you should respond to a document request. Which custodians are relevant? Which data sources are relevant? What should you negotiate out of the potential scope of discovery?

If you’re involved in several litigations or investigations, then a consultant or service provider can help you organize and navigate your way through it. Build a relationship with someone who has your back and will do the work efficiently, as well as provide the best options for newer technologies and workflows, which are important.

MCC: Tell us a bit about hosted litigation solutions. What are the benefits and drawbacks of a hosted solution relative to security, cost, convenience and risk management?

King: That’s a broad question. Hosted litigation solutions are systems that allow you to do a myriad of functions from data assessments early on, all the way through to document review and eventually production, as well as assist with further fact management if you are responding to or preparing for depositions. These tools include Eclipse, Relativity and other proprietary solutions on the market. They save clients tons of time and effort trying to organize documents, easily track document-level decisions like Privilege and Relevance, and provide greater flexibility in using advanced culling solutions like clustering, email threading or communication analysis – trying to figure out who’s talking to whom and who might be the relevant custodians. They absolutely cost something, usually in the form of a monthly hosting or user fee, but you can reduce the impact on your legal team, IT team or your own network infrastructure by not having to manage and back up all of the data, which costs a lot for a corporate IT or legal department group to handle.

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MCC Interview: David Moran & Bill Sowinski / Wolters Kluwer ELM Solutions

Legal Bill Reviewers Pay Off – Big Time

Specialists can free up staff time and law department dollars

Legal bill reviewers are specialists who can help in-house counsel keep a close eye on the bottom line without spending all day poring over detailed invoice line items. Below, two legal billing and technology veterans, David Moran and Bill Sowinski of ELM Solutions, discuss the obvious, and not so obvious, advantages of third-party legal bill review. Their remarks have been edited for length and style.

MCC: *You've both been working in the legal industry for quite some time. Can you tell our readers about your experience?*

Moran: I've been with Wolters Kluwer ELM Solutions for nine years, mostly working with corporate legal departments to help them get the most out of the information they provide to our platforms, TyMetrix 360° and Passport. We help them enhance their internal process or their process with their law firms, analyze the information, including how well are they controlling their spending, and present that to various segments in their organizations. That's been my experience over the last few years.

Sowinski: My responsibility is to help our clients utilize the tools and information that we provide to enhance their management processes, improve results and control costs. My background includes managing large corporate legal departments on the litigation side and providing governance for a major insurer's entire organization.

MCC: *Enterprise legal management (ELM) technology has had a huge impact on how legal departments work. How are legal departments using ELM to improve their operations?*

Moran: There are two main pieces to it. We provide transparency. With ELM platforms, you can get a sense of what is going on throughout the entire legal department – what your caseloads look like and where potentially your spending is going up. It allows insight at a high level because you can aggregate up but also delve at a granular level into areas that could be a concern. That transparency allows for communication with the law firms and collaboration to ensure that you're resolving cases as quickly as you can with the best possible outcomes. The second component is the containment of costs. It really looks at the underlying base functionality of the system by getting those invoices from your law firms into this system to assure that if work being billed is reasonable and to keep your costs under control. Just as importantly, it helps users achieve some predictability that can be forecast into the budget.

Sowinski: When our clients have the opportunity to marry management metadata and invoicing information, they have an extraordinarily rich set of information that results in business intelligence. Once you have business intelligence, you can perform all sorts of metrics and evaluations necessary to be best in class, to avoid surprises, to identify best performers and practices, to leverage appropriate resources and so on. You can manage your legal business extraordinarily well and keep your inside counsel, outside counsel, business partners and senior management fully informed.

The tool supports collaboration, both within the organization and with your outside counsel. You have information with which you can drive strategy and improve results. It's a dynamic process that allows you to stay ahead of the competition and do a very, very good job.

MCC: *How can a legal department that has already implemented e-billing take their program to the next level? What would you say is the next logical step in the evolution of this process?*

Moran: The next place where they can make progress would be the legal bill review process. It's a great way to ensure that you're getting the maximum value out of e-billing. What you get with legal bill review (LBR) is a better understanding of the work your law firms are doing for you, whether the work is reasonable, and if the right person did it. You are enforcing basic guidelines and digging deeper to make sure that you're getting value from your firms and that they are in compliance with your guidelines. The challenge we see for corporate legal



The better LBR teams make certain that every adjustment is documented, right to the specific billing guideline that was violated.

– Bill Sowinski

departments is one of resources. What legal bill review services allow for is more focus on your own issues. Legal bill reviewers can scrutinize invoices and bring issues to the forefront quicker because they're specialists used to the language and the way information is presented within an invoice. It releases the legal department staff to focus more on the matter itself and the legal issues at hand.

Sowinski: LBR professionals develop true technical expertise that drives efficiency, accuracy and consistency. Reviewers are focused on review and review only; they don't have other legal management responsibilities. Their only task is to ensure that the invoice reviews are correct, accurate and consistent. The better LBR teams make absolutely certain that every adjustment they make is documented, right to the specific billing guideline that was violated, so that it informs the law firms precisely as to where they failed to comply with the billing guidelines.

MCC: *How do clients reduce their legal spend by using the LBR process, and do you have any anecdotes you can share?*

Sowinski: Clients that have a dedicated in-house person generate more consistent and effective adjustments and have much better relationships with their outside counsel. The same is true relative to those clients who have third-party billing invoice reviewers. When we look at the results of invoice review for clients that have their managing attorneys reviewing invoices, we usually see two things. First, that some folks don't adjust anything at all. Ever. Second, that a relatively small number of people account for a large number of the adjustments, but there isn't commonality or level-setting across those reviewers. That sends inconsistent messages to the law firms.

Moran: What they're being allowed to do now is marry the LBR adjustments that Bill is talking about with business intelligence. They have a way to show that value to their corporate legal department. We can do that by delving in and pulling that information out with the appropriate business intelligence tool, allowing for some commonality, too, to compare one firm to another. Now you're comparing firms – who's doing what, how well they're doing it and making sure that everybody is in compliance. You're putting everybody on a level playing field.

Sowinski: When you impose discipline within legal bill review units, you just don't review invoices. You impose compliance with billing guidelines, identify where non-compliance occurs, and allow the client and the law firms to review that information necessary to change practices.

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Bill Sowinski, Director of Decision Support Services for ELM Solutions, leads an expert team in the design of client legal spend analyses and benchmarking disciplines. He can be reached at Bill.Sowinski@wolterskluwer.com.



Bill reviewers are specialists who free legal department staff to focus more on managing the matters and the legal issues at hand.

– David Moran

MCC: What benefits can a legal department expect from LBR in addition to controlling costs?

Sowinski: There are at least three big benefits. One, many in-house reviewers don't like to review invoices. They don't have time, and they're being asked to critique their colleagues, which can interfere with outside counsel relationships. If you have an internal or a third-party group performing this service on a very principled basis, that friction goes away. Counsel can focus on collaboration, not billing issues. The second thing is that individuals who review invoices for several different corporations develop expertise relative to the types of guidelines that are most efficient and effective and can help clients structure billing guidelines to accomplish their objectives. This fosters better compliance and communication. The third thing is that a bill review unit can help the client enforce provisions of the guidelines such as prior approval or touch points before the law firms

E-Discovery Goes Mainstream

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With regard to security, most of these systems and service providers have a variety of security mechanisms and certifications. Because of the nature of the work performed, it is seen as a basic requirement to have strong security to protect hosted data. As a consumer, you should know what the security protocol is from your hosted solution vendor.

In addition to being secure, these solutions are convenient. They have efficient work flows and searching mechanisms and they can be accessed with a variety of web browsers. So, if you use Internet Explorer, Chrome, Safari or Firefox, most of these solutions will support it. There's a tremendous convenience to being able to access these hosted solutions from any internet browser.

Finally, there are the risk management considerations. Most risk is minimized with defined and consistent workflows. If you have a good project manager, and if you have a good service provider that has experience with the technologies they're offering, your risk should be limited.

MCC: What are some of the fundamentals of project management that guide your collaboration with clients?

King: The work of project management in the e-discovery space has become much less unique than it once was. In the early part of my career, I was introduced as an e-discovery expert because I had knowledge that lawyers and others didn't necessarily have. And that was enough as a "project manager". Since then, the work we do has become a lot more mainstream. Clients have been using these services for decades, instead of just several years. We are now dealing with a market of educated consumers.

As a result, clients have higher expectations of their project managers. It's not necessarily about having the best knowledge. It's about how comfortable a project manager makes a client feel during the engagement. How responsive were they to my needs? Did they match my level of urgency? Do they really understand what I'm trying to do? At the end of the day, we sometimes forget that clients are not looking to process data and do all the fancy technology work. What they really want to do is review the documents and produce what they absolutely need to. The technology is a means to an end, and that the end (i.e. review and production) are what is important. And they need to know that you see the end result the same way that they do.

Many times service providers, or other folks in our industry, get caught up in the selling of technology services and ensuring that clients are using the best technology or workflows when all they really want is to know that they are

undertake certain activities or tasks. This forces communication between the law firm and the client, and all of the research suggests that good communication shortens the life of cases and drives better results.

Moran: It's amazing how explaining your expectations to the law firms opens up your communications and drives the value that you get from them. They feel comfortable and they know where they stand. A good bill review team spurs open communication and keeps everybody aware of where they stand.

Sowinski: That's why we suggest that clients require prior approval before law firms undertake, for instance, extraordinary research of a legal issue, or prior to beginning trial prep. Touching base allows the client to evaluate the likely outcome and the value of the work being performed. On many occasions, it results in honing a strategy for disposition of a case.

MCC: When should GCs and other legal department leaders consider engaging a legal bill review service?

Moran: If you are growing as a legal department and you have a number of law firms that are providing invoices with a significant number of detailed line items, that's when you consider an LBR service. Ask: Are my personnel in the legal department doing the work I hired them for? Can I get better value if I give this to a legal bill review team so I don't have to shift my resources?

Sowinski: Virtually any insurance company or other corporate legal department would benefit from the use of a third-party bill review organization simply because of the expertise and benefits they provide, including improving the guidelines, and freeing up the internal organization to focus on matter management. If you have a relatively large legal expense, the return on that investment is so extraordinary that it's likely you'd want to continue the relationship indefinitely.

To the extent a legal department wants to perform excellently, you want to leverage the expertise – the technical expertise, the practical expertise – that a legal bill review team can bring.

doing what they absolutely need to, cost-effectively and accurately. A good PM ensures that the client understands the value of the work being performed and shares the client's expectations regarding the end result – rather than executing elegant workflows or pushing technology for the sake of technology.

MCC: Please discuss some of the differences between discovery related to government investigations and litigation.

King: As noted earlier, I've learned in my career that every discovery project is unique. That might be because of the clients, the law firm and the experience that they bring to the table, or the type of matter. Government investigations, I have found, tend to be broad. They can also be very fast. I've worked on several second requests, for example, where we've had to get through millions of documents – review and production – in less than 60 days. Civil litigation tends to have a schedule laid out by the judge or agreed to by the parties. And, the FRCP or other jurisdictional rules allow discovery scope to be negotiated. In government investigations, that narrowing doesn't always happen. Instead, with less time to find information, you have to leverage technology to get right to the point.

In the end, though, both government investigations and civil litigation can leverage the same technologies. They allow you to produce a richer, more accurate and more concise data set and reduce document review costs and time, rather than having to quickly turn over a bunch of material without proper due diligence and review. The reasons you use the technology might be different for government enforcement and civil litigations, but the value is still the same.

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Will 2017 Be the Year of the GC As Mega-Risk Officer?

As new threats loom, companies are more dependent than ever on the legal department's risk oversight

By Carolyn Casey / AccessData

Ninety-three percent of companies consider their general counsel a member of the executive management, up from 55 percent in 2010, according to Equilar's General Counsel Pay Trends 2016. GCs have moved beyond solely advising on technical legal issues in large-scale organizations. GCs have long been at the table for strategic planning, compliance, risk management and cyber concerns. The more strategic influence of the chief legal officer is reflected in a median total direct compensation of \$2.1 million at S&P 500 companies, per the Equilar 2016 study.

Advisen's Sixth Annual Information Security and Cyber Risk Management Survey observes that as cyber risk is increasingly seen as an enterprise-wide issue, "departments such as general counsel and risk management are now taking on larger roles." The Equilar analysis goes further, reporting that over the next three years, 31 percent of New York Stock Exchange-traded companies expect to add a chief risk officer role to their general counsel's responsibilities. The risk responsibility would be in addition to the corporate secretary and chief compliance officer roles that many GCs hold today.

Are GCs on a path to becoming the mega-risk officer in 2017 and beyond? If so, here are some key risk areas that GC-risk officers will have on their radar screen.

Cyber risks Loom Large

Certainly cybersecurity threats will continue to be a major risk for organizations in 2017. Not a week goes by without a headline on a major bank or corporation cyber breach. A 2016 Cisco Security Report showed 65 percent of organizations feel they face a significant level of security risk. When hackers leak sensitive customer and corporate data or employee personal information, you can bet there are mega-risks and costs to be managed. Ransomware shutdown of corporate and healthcare systems can quickly wreak operational havoc.

Post-breach, brands take hits as customers back away, feeling the company is no longer a safe place to have their data. Crisis management and legal fees skyrocket as notice requirements, potential liabilities and risk management strategies are assessed. Incident response costs can include "help desk activities, inbound communications, special investigative activities, remediation, legal expenditures, product discounts, identity protection services and regulatory interventions", says the Ponemon Institute. Ponemon estimates the average consolidated cost of a breach last year was \$4M.

Target's gross costs were \$252M, reduced to \$105M after insurance payments and tax deductions. Yahoo can attest to the impacts of breach incidents, as their massive breach thrust Verizon's purchase of the platform into question. Post-breach announcements also ignite shareholder and customer lawsuits, igniting large legal bills and settlements or judgments.

General Counsels and their teams are already very involved in cybersecurity risk management. The Ninth Annual Law Department Operations Survey reports that more than 75 percent of law departments have responsibility or meaningful influence on their companies' cybersecurity. So, taking on broader cyber risk management duties may be right in the GC wheelhouse.

Cyber Regulatory Environment

Cyber regulations are bound to be a fact of life for GCs over the coming years. Barring last-minute changes, in January GCs at New York financial organizations must contend with new cybersecurity regulations.

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Companies across the globe are striving to cope and create a mind-set of resiliency as they operate in a world full of data breach threats.

The groundbreaking cybersecurity regulation from the Department of Financial Services imposes cyber standards, including 72-hour breach notice, incident response plans and annual audits, for starters.

The Securities and Exchange Commission has fined investment advisors under the "safeguards rule" for inadequate cyberprotection of customer records. The SEC commented that "firms must adopt written policies to protect their clients' private information, and they need to anticipate potential cybersecurity events and have clear procedures in place rather than waiting to react once a breach occurs."

Experts do not predict national cybersecurity legislation will pass in 2017. Yet certainly the government will continue to press critical infrastructure industries to share information on cyberbreaches. Cyber standards legislation is expected at the state level. The New York cyber regulation is an example of this trend.

More Intellectual Property Theft in 2017

Data leaks and systems hostage taking are not the only cyber and breach risks the uber GC-risk officer must watch. Deloitte's Retail Cyber Risk Survey finds that 58 percent of respondents expect IP cyberthreats to increase in 2017, while 35 percent of the respondents in the 2016 SANS Incident Response Survey cite intellectual property as a data type that had been exfiltrated from their organization over the last year. In 2016, IP replaced customer data as the second most targeted data type, after employee information. SANS suggests that this reflects attackers' shifting motivations to sell data on the lucrative dark web.

A company's IP can include such assets as R&D, source code and manufacturing plans – not things you want in the hands of competitors, hackers or some nation-states. With 87 percent of S&P 500 companies' total value consisting of intellectual property, risk managers must focus on IP cyberthreats. Of course, insider threats to IP also exist. Good practice is to have IT/infosec monitor unusual download activity to catch intruders exfiltrating data, or even employees planning to take IP with them to a new job.

Interestingly, the SANS study shows that 12 percent of organizations have seen legal data stolen via cyberattacks. Law departments, like law firms, are treasure troves of sensitive data and IP data for bad actors. One of the earliest FBI-reported law firm cyberattacks involved Chinese actors hacking into a law firm to gain an advantage in a merger and acquisition transaction. While law firms step up prevention and incident response capabilities post-Panama Papers, law departments need to do the same as they likely have the same

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MCC INTERVIEW: Brandon Leatha / iDiscovery Solutions, Inc.

BYOD Brings Both Risks & Rewards

Considering the information governance implications of BYOD programs

As companies work to control costs and mitigate risk, bring your own device (BYOD) programs create as many questions as solutions. Employees are looking for faster and more fully integrated mobile devices – while corporate law and IT departments work to control costs, mitigate risk and to control the flow of information to and from those devices. We asked iDS' BYOD expert, Brandon Leatha, to discuss the types of issues that BYOD programs could present for a company facing an investigation or litigation. His responses have been edited for length and style.

MCC: Why have companies moved from company-owned devices to BYOD programs?

Leatha: Employees have been the primary driver behind BYOD programs. Demand for the latest and greatest devices that support audio, video, social media, games and the ever increasing variety of mobile apps has prompted companies to allow employees to use personal devices for business purposes. The BlackBerry and other outdated corporate-issued devices are just no longer cutting it and carrying two devices is just not an appealing option.

As companies have evaluated the risks and the benefits, many have made the decision to fully adopt BYOD programs. Significant cost savings can be realized by shifting the cost of the device to the employee, reducing or eliminating user training, and minimizing the time spent on managing and deploying corporate-owned devices. Companies such as Intel and VMWare have conducted studies that have also shown significant productivity and efficiency gains when employees use their own devices. Intel concluded that employees saved an average of almost one hour per day by using their own devices and VMWare estimated an annual savings of \$2 million.

MCC: Are there solutions to help manage the risks inherent with BYOD programs?

Leatha: A combination of policy, training, and technology can help mitigate the risks associated with a BYOD program. First, organizations must have a strong BYOD policy that covers all aspects of personal device usage, including password and security requirements, acceptable use, continuous monitoring, data ownership, and separation procedures. In addition to a well-written policy, employees must also be educated and trained on the policy. It is not enough to receive a signature at the time of hiring, a strong training program is essential to employee compliance.

Fortunately, several technology solutions have emerged that can manage, monitor, and even enforce the corporate-defined BYOD policies. These technologies fall into a category of software and services called enterprise mobility management (EMM) and they can significantly reduce the risks introduced by the use of employee's personal devices. EMM software offers a range of solutions from device configuration and software updating to policy monitoring and enforcement. Strong password policies and data encryption can be centrally managed and devices can be partitioned to separate personal and business use. Monitoring solutions can help detect and even prevent intentional, or even unintentional data sharing or leakage. At the time of separation, EMM software can be used to securely wipe or eliminate corporate-owned information from the device while leaving personal data intact. EMM software can even be used to locate or wipe a lost or stolen mobile device.

MCC: Has the shift to bring your own device paid off, and relative to this answer, is there either data-based or even anecdotal information to back up this perception?

Leatha: It really depends on the type of company, the company's appetite for risk, the types and sensitivity of data that it works with, and the policies and solutions put in place to manage the BYOD program. Companies that work with highly sensitive data or those with a low appetite for risk will need to invest more in policy, training, and technology solutions. In some cases, the



Information recorded by the mobile device applications and sensors can have a considerable impact on investigations.

investment required for a strong BYOD program can exceed the cost savings and thus it is ultimately a financial decision.

For those companies that adopt a BYOD program without taking the appropriate steps of policy development, training, and technology implementation, BYOD can backfire and incur unexpected costs. For example, a BYOD program could have a significant and quantifiable cost if it were to be responsible for the loss or breach of data such as personally identifiable information (PII) or other sensitive information. According to the 2016 Ponemon Institute study, the average cost of a data breach was \$4 million or \$158 per record.

Another potential financial impact of a BYOD program is the risk of having unique data on a wide variety of personally owned and managed devices. If a company needs to respond to a discovery demand, the unique and unmanaged data from personal devices may be relevant and require forensic collection that can cost several hundred dollars per device. Adding to this challenge is the fact that devices in a BYOD program typically vary significantly in make, model, size, and functionality. This variation, along with the fact that passcodes are typically managed by the users, may cause additional challenges in collecting data from individual devices.

MCC: What new types of data are created by mobile devices?

Leatha: Mobile devices today are collecting a substantial amount of data, a lot more than just call logs, text messages, and emails. Modern mobile devices have many sensors built in – GPS, barometer, accelerometer, gyroscope, compass, thermometer, to name a few – that can constantly record information such as location, speed, ambient noise and light, the temperature, and much more. In addition, mobile device applications track and store most aspects of a user's activity, including browsing the internet, posting on social media, communicating by chat and voice, and even game play.

This information recorded by the mobile device applications and sensors can have a considerable impact on investigations, especially when an employee's location or activities become important. Knowing if an employee is at a specific job site when they are billing the customer or if they are posting on Facebook while driving a company-owned vehicle can be significant. This information can become very valuable in wrongful termination matters, wage and hour disputes, and other types of litigation.

MCC: How has the cloud impacted these programs?

Leatha: The cloud is one key innovation that has enabled mobile devices to become so useful. Applications that allow instant communication with colleagues, access to corporate data, industry specific tools, and other productivity solutions are made possible by the public and private cloud. If a BYOD program is not properly implemented, it is very likely that sensitive corporate information is being stored or synchronized to non-sanctioned cloud accounts that are managed by the employee

Brandon Leatha is a Director with iDiscovery Solutions (iDS). Mr. Leatha has over 15 years of experience consulting with corporations and clients throughout the information lifecycle, providing guidance on e-discovery, digital forensics, data preservation, document review methodology, document production, and information governance. He can be reached at bleatha@idiscoversolutions.com.

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MCC INTERVIEW: Noel Kilby & Rebecca Fennessy / Inventus

Spotlight Shines on Data Analytics

The ability to easily access data around key features of a legal department's activity is a crucial element to making informed decisions about cases, including time and costs spent. Legal technology industry leaders and members of the development team of Spotlight for Inventus, Noel Kilby and Rebecca Fennessy, explained the systems and functionality at the heart of those needs for in-house legal departments. Their responses have been edited for length and style.

MCC: Noel, you've been a leader in the legal technology industry for more than 20 years, including as a founding member of the legal services team with Xerox Business Services. Tell us how your background informs your current work with Inventus.

Kilby: In my years working with litigation, regulatory and compliance teams, I have seen a number of technology cycles. The complexity of data structures and disparate sources continues to grow, pushing the boundaries of the technology required to regulate and collect that data. I have seen the movement from behind firewall-thick client installs through the first generation of browser-based products, the rise of SAAS (software as a service) and now the advance of automated coding in various iterations. At Inventus, having worked through all these changes, we try to ensure that everything we develop is extensible. We are constantly seeing the world become more connected and the advantages of this connectivity. Designing products that can connect and evolve is key to our strategy and road map for products. Spotlight is a perfect example, the extensible framework already connects to numerous database engines and consumes data from a variety of sources.

MCC: Rebecca, you are one of very few Relativity masters worldwide and your background includes a stint with KPMG, bringing unique qualifications to your role. Tell us how your e-discovery and legal tech background benefit your in-house clients.

Fennessy: Having a diverse range of experiences allows me to think outside the box and develop new solutions for my clients' challenges. I can pull from different experiences and apply techniques from other industries to ensure my clients are getting the best results for their unique situation. Being in-house, you don't always get a lot of exposure to new developments or ways of thinking; I try to adapt what I've seen in one industry to others so that everyone gets the benefits. Data is data, regardless of whether it comes from email, phone records or chats, or what it's to be used for – litigation, compliance, investigation, record management. So I can use all of my prior experiences to devise the best possible strategy in each new case.

MCC: Inventus launched Spotlight in January of 2016, a dashboard specifically designed for corporate legal departments. Remind our readers less familiar with Spotlight of the key benefits, and tell us what you've learned in working with corporate users, including the features they find most valuable.

Kilby: Spotlight is a business analytics platform, a kind of management information reporting for GCs that puts cost predictability and cost management at their fingertips. It provides instant insight into a company's litigation portfolio: data volumes, legal spend, cost savings, outsourcing provider comparisons and other key metrics.

The key features revolve around speed of access, insight and reporting. It's interactive and user-friendly and makes charts with all data metrics available in an instant. Those charts are customizable and update in real time with functionality for different layouts for different users. You can drag and rearrange charts on the screen and click in to drill down. Files automatically export to Excel and PDF, making them perfect for board briefing packs or budget applications. The software is mobile-friendly and accessible from any device at any time. It works well for quick display in meetings.

Corporate users seem to concur that the instant access to financial data is the most valuable aspect of Spotlight. We are engaging on GC/head of litigation level and hear that the live updates on cost – that ability to show spend, budget, future costs and cost savings over a traditional pricing model or previous case pricing – are key.

The Holy Grail seems to be the ability to view a cost savings analysis table or chart to assess and demonstrate value for money, and to have the ability to predict and justify the following year's litigation budget. Exportable custom charts and graphs make it easy to present law department budgets at an executive level.

Noel Kilby, Chief Technology Officer in the London office of Inventus, has developed software, both personally and with leading teams of software professionals, including the creation of a suite of e-discovery applications that attracted a global client base in the legal sector. He can be reached at nk@unif-id.com.



Only through integration of workflow and deep knowledge of client environments can costs be optimized.

Spotlight offers centralization of data, a single screen overview of multiple matters that allow in-house counsel, law firms and service providers to assess data volumes, hosted volumes, cost, cost comparison, review progress, review price per doc and the like.

It is still in the early days, and we would envisage over time that case managers will be the largest user group with project dashboards focused on the specifics of their case. Dashboards will track processing volumes and cost, the number of documents promoted to review, and review charts for productivity, findings, and categorization. The visual display of data will give insight into chronological or custodian gaps in the data set. Also, they will be able to report on budget, review progress and end time.

MCC: As a stand-alone application integrating data from an array of sources, including Relativity and other third-party applications, Spotlight, in addition to cost analysis and reporting, uses visual data mapping as a pathway to even greater cost savings. Give us a few examples of the various ways in which Spotlight, tailored to a specific company's needs, can help corporate law departments and outside counsel better understand their own data without turning to costly outside assistance.

Fennessy: Spotlight offers a wide variety of insights into a client's data and the progress of the review. Dashboards are customized to the individual and/or matter so that clients can get exactly the information they need, which can be different for in-house versus outside counsel. Clients can track their data processing and costs in real time, allowing them to foresee and prevent budget over-spends. Review statistics allow them to monitor the progress of the review and extrapolate that to predict costs for the remainder of the review or the disclosure size.

For in-house teams, multiple matters can be grouped together, allowing them to compare statistics, such as cost or relevance rate, across different matters or different outside counsels. The comparative cost savings of Luminosity elements, such as inVerito or M3, are also readily available, making it easy to quantify the savings that have already been made and view them in an intuitive visual format. Data volumes can be compared year on year, allowing more accurate predictions of future volumes and costs.

All of this gives our clients better visibility into their data, more confidence in their workflows and better control over their costs.

MCC: As tech-savvy millennials continue to change today's workplaces and work habits, more and more data is coming from social media and cloud-based sources, such as Slack and WhatsApp. How are you advising your corporate clients regarding the discovery implications of these proliferating data sources?

Fennessy: Constantly there are new data types – other recent examples are Lync messages and Reuters and Bloomberg chats. The data itself we do not consider a challenge – in fact, our job is to deal with the data. The key challenges for the client are review of the data and then management of their own risk in situations where employees are potentially using nonprotected media hosted on a public cloud.

Rebecca Fennessy, Director of Technical Solutions, also out of the London office of Inventus, holds master status for Relativity software and focuses on developing custom Relativity database designs for her clients. She can be reached at rf@unif-id.com.

Review has challenges around the type of language that people use in chats – less formal and jargonistic – and search terms need to be crafted to capture the important information. We have developed a tool, Structured Data Reader (SDR), to present the data so that it can be reviewed.

We developed SDR when we first started to encounter Bloomberg messages delivered as a large and illegible single XML file. SDR creates new text files, which sit in Relativity and can be reviewed. The files look much more like the original conversations – they are easy to review, only certain parts can be disclosed, and they can be easily redacted or searched.

Inventus has worked on projects with corporate and legal clients with a requirement to migrate the data to Relativity for large-scale review. SDR allows fast validation of high record count loading of files with automated exception reporting to show missing data (natives, images or text), incorrect formats or incorrect document relationships.

Depending on the requirements of the client and case, Inventus defines workflows that allow faster access to specific functionality within Relativity. An example of this would be to expedite loading of metadata and text from the processing engine to Relativity to allow STR or analytics functionality prior to the loading of native files.

A client can also be affected by data collection difficulties. We have to advise clients on options for collection and if we do not have a password for a Windows media phone, the only way to retrieve WhatsApp data is to open the phone and solder a collections device to it. It boils down to having to be more versatile and clients needing to engage to organize efficient logistics for a collection exercise.

MCC: *The world of e-discovery, managed review and related areas is evolving very rapidly. Inventus is unusual given the depth and breadth of its capabilities in the U.S. and Europe. What's next on your horizon that will help companies searching to further drive down litigation costs without sacrificing outcomes?*

Kilby: Our focus is upon evolving integrated and optimized relationships with our clients. Only through integration of workflow and deep knowledge of client environments can costs be optimized. It's no secret, and large corporations and those with large litigation burdens know it only too well that they must manage their service provider relationships proactively and strategically in-house.

Inventus is geared up to lead the way in partnerships with our clients.



The challenge for clients is management of risk where employees are using non-protected media hosted on a public cloud.

Our Luminosity suite was the first step. It includes inVerito, Direct Link, Privilege Log and Advanced Logix, which allow clients to craft case strategy early in the litigation life cycle, access data faster and hugely reduce cost (for example, processing costs are on average 50 to 60 percent lower using inVerito).

Next came M3: Multi-Matter Management™ software, which avoids recollection, reprocessing and recoding privileged documents. This represents a huge time and cost savings – which means quicker reaction to court deadlines.

Finally, there's Spotlight, which gives full visibility to GCs and in-house managers.

All of this we are taking international – our data center is now open in Frankfurt, Germany, offering Germany's best connectivity to our German-based and European clients while complying with one of the world's most stringent data protection regimes.

Shanghai is going live in the first quarter of 2017 and Hong Kong later in the year. We plan to roll out delivery capability to our parent company, RPX, in their Tokyo office.

As part of an integrated and optimized e-discovery and managed review engagement, Inventus is happy to shoulder commercial risk to align our interests with our client's interests. We will look at historic spend and provide a fixed price or capped agreement in which Inventus assumes the risk of a client being faced with a bet-the-company case.

Mega-Risk

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data the firms do. The GC-mega risk officer will want to invest in heightened cyber risk precautions and training in the law department.

Privacy Regulations

Privacy law is developing rapidly across U.S. states, Asia and of course in the European Union with the upgrade to the General Data Protection Regulation. Organizations house massive amounts of personal and health data on business customers, employees and consumers. It's no secret that organizations will continue to face privacy risks for the foreseeable future. Industries that collect substantial personal data – healthcare, communications, financial and banking, and retail – have a higher degree of regulatory oversight and thus face more dire risk management challenges under the growing privacy regulations.

Forty-nine percent of the risk managers surveyed in the Advisen Report rate reputation damage due to privacy violation/loss of customer records as a high or extremely high risk. The survey also finds that for the first time in six years, “general counsel has surpassed information technology as the department most frequently responsible for assuring compliance with all applicable federal, state or local privacy laws, including state breach notification laws.”

This trend supports the notion that GCs are on a path to become a GC-mega risk officer.

Though the IT team may be asked to conduct a privacy infraction investigation, or map the location and secure access controls for protected health information or personal data in organizations, regulatory compliance still requires a legal interpretation and judgment. If it wasn't there already, nesting responsibility for assuring privacy compliance in the law department seems to make sense. Of course, some organizations place this responsibility in the hands of the chief compliance and ethics officer or even the chief privacy officer. Yet all roads usually lead to legal when things go bad. Negotiating regulatory settlements and managing litigation that can follow significant transgressions will likely end up on a GC's desk.

Conclusion

Companies across the globe are striving to cope and create a mind-set of resiliency as they operate in a world full of data breach threats. As their business risks burgeon in the cyberprivacy regulatory areas, some may want to centralize where the overall risk management buck stops. Some companies may choose to place this under the care of the general counsel, the traditional guardian of the organization.

BYOD

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and not the company. Mobile devices require a user account to allow access to these cloud accounts and if the employee uses their own Apple iCloud, Google, or other service account, sensitive and protected data such as email, contacts, text communications, documents, photos, and even passwords can be backed up or synchronized to these employee-managed accounts. If the employee leaves the company or if these personal accounts are breached, this can introduce significant risk to the company.

MCC: *After all of that would you still advise embracing a BYOD program?*

Leatha: A well-managed BYOD program is a great solution for most organizations. When making the decision to move from a corporate owned to an employee owned device program, it is important to first understand the goals, the risks, and the benefits of making the change. The success of a BYOD solution depends on a thorough design, skilled management, and an equally robust information security and information governance programs. For some companies, keeping a traditional corporate owned program or even a hybrid corporate owned personally enabled (COPE) program will be the better solution.



RVM has been providing leading global corporations and law firms with state-of-the-art ediscovery management tailored to each client's specific litigation needs for over 20 years. Our experts and experienced professionals can assist across industries and in both the private and public sectors.

RVM has a strong commitment to diversity and inclusion and is proud of receiving certification as a woman-owned business.

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Managed Services

RVM Managed Services offering addresses the growing demands of litigation, the evolving need for greater IT security, budget concerns and the immense pressure eDiscovery exerts on current legal support structures.

RVM partners with you to analyze your current state, anticipate your future needs, and build an ROI profile that works with your culture, expectations and budget.

RVM's Managed Services include:

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- Cutting edge technology and advanced reporting tools;
- Certified experts for in-depth consulting;
- Project Management;
- Workflow, privacy and information governance troubleshooting;
- Supporting testimony for defensibility

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RVM's eDiscovery strategic consulting and expertise on the design and implementation of analytics technologies is geared toward defensibility and cost-savings.

- **RVM Structured Review™** (RSR) leverages advanced analytics, such as predictive coding, concept-based categorization and search to fill the gaps in current discovery practices.
- **Fact Discovery First™** is designed as a low-cost, deep knowledge triage to help you get to the information you need quickly.

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RVM has the capability to process and host the largest, most complex collections of electronic legal evidence. RVM provides unparalleled data processing services using its portfolio of eDiscovery products combined with deep technical knowledge.

- **Data Processing**
- **Data Hosting**

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RVM Certified Forensic Engineers can help your company walk through each step of forensic data collection from the initial consultation to providing expert witness testimony regarding the integrity of the collection process.

- **Data Collections**
- **Forensic Examinations**
- **Quality and Cost Control**
- **The RVM Tracer™**
- **Expert Testimony**

Managed Document Review

RVM's Managed Review and Analytics experts work together as a team of trusted advisors who will craft a customized solution to help you get to the most important data more quickly. RVM provides the guidance and training appropriate for your specific needs using our tried and true workflow models based on reliable, repeatable and defensible industry best-practices, along with your know-how about the specific matter at hand.

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RVM experts provide a broad range of consulting services. RVM's goal is to ensure that it provides the best service possible in a consistent, legally defensible, and cost-effective manner. RVM's Consulting Team helps corporate legal departments and law firms assess, plan, develop and implement information governance through trial support programs.

- **Information Governance**
- **Litigation and Investigation Projects**

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RVM's corporate enterprise solutions encompass a broad range of solutions tailored to meet the unique needs of the corporate buyer. RVM understands that in addition to state-of-the-art technologies and best practices workflows, Corporations need greater visibility into combined metrics and trends as well as proactive consulting solutions. RVM's corporate enterprise solutions include:

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