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FEBRUARY 2016

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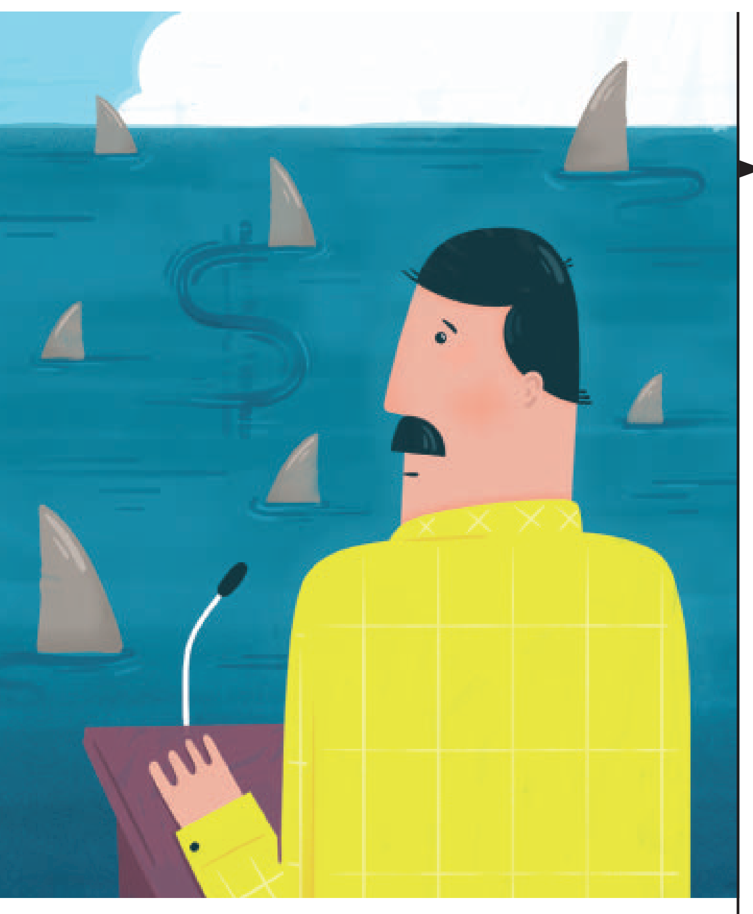

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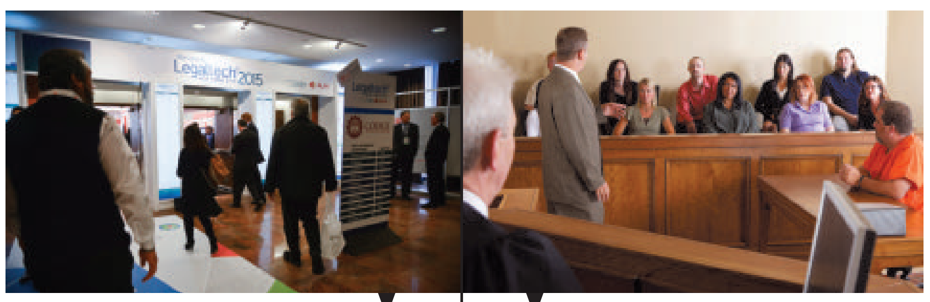

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Missed this year's New York show, or simply want to remember the highlights all over again? Follow our ongoing coverage on e-discovery, cybersecurity and more.

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Robins Kaplan's Rick Martinez explores the issues that arise from applying emotion analytics in the courtroom: http://at.law.com/emotionanalytics

INSIDE THE M&A INCREASE

As legal tech's biggest companies make acquisitions, we'll talk with the parties involved and have the full scoop on the move in an instant: http://at.law.com/legaltechacquisitions

A HANDS-ON APPROACH

UF Law faculty member William Hamilton explains why students today need to go to the data itself in e-discovery, which includes hands-on experience: http://at.law.com/ediscoverylearning

BUYING A PLATFORM?

Before buying an e-discovery platform, e-discovery attorneys reveal the eight questions law firms should ask before investing: http://at.law.com/platforminvestment

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PLACE YOUR BETS

PERHAPS THE BIGGEST paradox in the legal technology space is the slow uptake of technology juxtaposed against the speed with which new entrants pop up in the market.

Historically, law firms have been behind the times when it comes to realizing how technology can allow lawyers to boost efficiency and improve outcomes—all in the name of providing clients with the highest quality service, of course. Corporate clients are driving this sea change in the market, demanding more for less, greater security and less risk.

Investors certainly have their pick when it comes to placing their bets on the next big startup to hold long-term promise in the less-than-mature legal tech market.

One area that is gaining traction (likely to no one's surprise) in the investor arena is the e-discovery segment. Although the market is less than two decades old, its reliability, focus on acquisitions, and global expansion explain why many investors view its lack of maturity as an opportunity (page 44).

Arguably, e-discovery touches on all aspects of litigation and concurrently intersects with critical issues including info governance, data security and compliance. In fact, over one-third of Legaltech New York sessions are focused on this very broad but important topic, with some of the best and brightest minds in the industry coming together to explore the most disruptive areas impacting the practice of law today.

On the flip side, there are droves of startups in other areas of the legal tech market hungry for investors, nine of which will be on display at Legaltech New York 2016. These early-stage legal tech companies have been selected by Stanford's CodeX network to demonstrate how new technologies can help legal professionals enhance their work and ultimately create a better outcome for their clients (page 54).

Technology has advanced to the point where not using the right tools increases a firm's risk, and lawyers must adapt—some have done so successfully, and those stories are likely to be more prolific in the years to come. There is no better time than Legaltech New York to consider how legal and technology impact the way in which you work—after all, law is a business.

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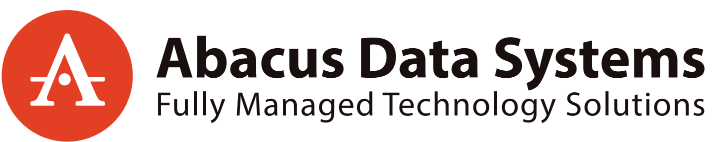


ATTORNEYS AND THE CLOUD: HOW ADOPTION REDUCES RISK, INCREASES PRODUCTIVITY

Attorneys and firms traditionally have been considered late adopters of new technology. Taking a conservative approach defines the practice of law, and for many firms that means sticking with legacy IT infrastructure and eschewing trends like The Cloud.

Now, however, a new trend is emerging—one of increasingly rapid adoption of the technologies that have swept through other industries including Cloud computing and mobile devices used for creation and consumption of matter and client information.

This whitepaper discusses what is driving these changes, and suggests what firms and inside counsel both should be doing now to ensure they are getting the most out of today's technology while meeting demanding governance, regulatory and security mandates.

LAW FIRMS AND LATE ADOPTION

Businesses of all kinds are taking advantage of the latest technology trends including Big Data analytics, mobile devices, the Internet of Things and the Cloud computing. When it comes to the business of the law however, things are somewhat different.

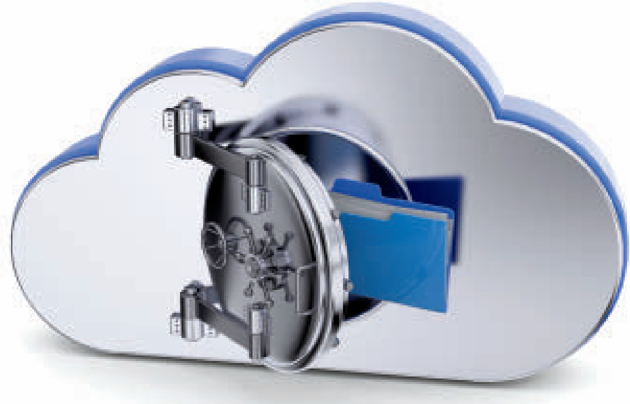
Although many law firms have jumped on the mobile bandwagon, taking advantage of mobile devices everywhere from board rooms to courtrooms, adoption of Cloud computing has lagged further behind adoption rates in other types of business. Why have law firms lagged in this area? Geoffrey Moore's famous treatise on marketing, "Crossing the Chasm" discussed the four types of tech adopters, namely Innovators, Early Adopters, Early and Late Majority and finally Laggards. Up till now, when it comes to the Cloud you can count law firms amongst the laggards—or at best the late majority. Simply put, most firms abhor risk, and therefore want to ensure that any new technology

trend or service they adopt not only works well, but that it works well for law firms like theirs. Traditionally, large firms would lead the way, and after a significant percentage adopt some new technology, only then will smaller firms and practices follow suit. Not very surprising in an industry focused on risk, governance and litigation.

SHIFTING WINDS PUSH CLOUDS FORWARD

The New Year brings with it the promise of major changes in cloud adoption, especially for law firms, according to a recent survey highlighted in Legaltech News that indicated that over half the responding firms already using Cloud services for e-billing, matter management, contract management or eDiscovery. What's driving this sudden shift in sentiment? For many firms it's a new understanding of risks—and rewards that come with Cloud adoption. One respondent notes the growing implementation of Cloud technology has less to do with IT team acceptance than a consensus among company attorneys that Cloud software provides "a more responsible risk" than on-premises alternatives.

For some, the decision to migrate to the Cloud can be driven by necessity. The recent end of support (EOS) for Windows Server 2003 had a great impact on smaller firms without in-house IT expertise. Many of these firms have been using the same hardware and software for a decade or more, taking an "if it ain't broke, don't fix it" attitude toward a migration or upgrade of any kind. Unfortunately, these older servers and applications were designed long before today's mobile device trends, and often lacked secure support for mobile devices or web-connected remote users. When faced with the need to migrate



to newer technology, many of these smaller firms with limited resources have opted to completely replace aging on-premises infrastructure and tools with Cloud services designed with the firm—and its new, more mobile workforce—in mind.

As firms of all sizes struggle with IT security issues thanks to leaks and breaches that continue to splash across headlines, many are coming to the realization that Cloud services are often inherently more secure than the firm's on-premises infrastructure. Leading Cloud providers utilize state of the art data centers that have multi-factor physical security including biometrics, and utilize teams of security professionals who are constantly scanning the threat landscape for new attack vectors and malware to ensure their Cloud services are inoculated before any damage is done or data exposed. Conversely, malware can often exist undetected in a firm's on-premises systems for months or years before being detected, allowing the exfiltration of client and matter information that could violate government regulations, wreck client relationships and ruin the firm's goodwill.

Security of data includes backup and recovery as well as disaster preparedness and business continuity issues. Previously, this generally meant firms needed to keep an off-site copy of important files and data that could be retrieved in case of hardware failure or site disaster. Often, this required all-night backups of on-premises systems and shipping physical backup media to a secure location far enough away from the data center to ensure a regional disaster such as earthquake or tornado doesn't mean a loss of both primary and backup data. When migrating to the Cloud, the burden of backup, recovery and remote-site replication shifts from the firm to the cloud provider. Solving this major IT headache alone can be the impetus for a Cloud migration.

And then, there is the issue of cost. When a firm adopts a Cloud computing model, they in return get a predictable monthly usage bill. Gone are the days of running on the technology treadmill, trying to keep up with the latest in hardware and software by refreshing infrastructure every few years. Gone too are the up-front costs involved in purchasing new technologies. Also gone—maintenance and repair expenditures. When migrating to a Cloud Software-as-a-Service (SaaS) model, many firms choose to shift their IT spend from capital to operating expense,

preserving capital for other more pressing needs.

For some firms the need to support the growing range of mobile devices has led to a Cloud migration. SaaS offerings are typically designed with a broad range of mobile clients in mind, whether Windows, Mac, iOS or Android. The combination of new web-based tools like HTML5 and the "mobile-first" philosophy that is pervasive amongst application developers has led to the emergence of a broad range of Cloud-based legal, business and productivity applications that let attorneys, paralegals and staff securely handle client, matter and billing functions from virtually any device, anywhere.

Here again, smaller firms may lead the way, as the availability of such a broad range of Cloud-based tools on a subscription basis can level the playing field for firms with fewer resources, enabling them to handle complex matters and discovery processes with more automation and less manpower than ever before. In essence, when it comes to Cloud adoption for law firms, it appears that the big firms need to have a range of Cloud tools at their disposal to keep up with the rapid advances their smaller brethren are taking advantage of.

BOTTOM-LINE BENEFITS

Most firms are already utilizing Cloud services in some form or other such as file-sharing and cloud-based email services, and outsource other key services such as payroll and Human Resources. However that is just the tip of the iceberg.

There is great upside potential that can be realized by migrating to the Cloud. First is the scalability and elasticity that Cloud adoption brings. As the firm adds new attorneys or other users, provisioning IT services for these new hires can happen in minutes, rather than days or weeks. Cloud platforms can enable a bring-your-own-device (BYOD) strategy that allows the firm to enable users to gain safe and secure access to the firm's applications and data from their personally owned devices, which can have a new attorney up to speed virtually instantly. Firms that have seasonal spikes or who bring together teams for large projects can provision matter management, office productivity, eDiscovery and billing applications to users on demand, pay only for the months that those users require access to those programs, and decommission

those seats when the project is fulfilled. Otherwise, without the Cloud firms would have to overprovision to handle unanticipated peaks in demand.

Then, there is the issue of internal IT support. Most small to midsized firms don't have on-site IT staff, but rather rely on consultants, IT resellers or system integrators to provide support for hardware, software and network issues that may bubble to the surface. Worse yet, some firms rely on the most tech-savvy attorney in the firm to fix problems as they occur. Larger firms often find that internal IT staff spend more time firefighting—addressing urgent problems—than they do proactively working on new functionality or processes that have bottom line impact by making the firm more productive. Since SaaS Cloud services eliminate on-site hardware and software, attorneys can spend more time on billable activities while in-house IT work to increase staff effectiveness and speed processes of all kinds.

CHOOSING YOUR CLOUD

When deciding to begin a path to Cloud migration, there are some key considerations to take into account. Keep these in mind as you evaluate potential Cloud providers

Seek domain expertise. Although most Cloud providers utilize similar infrastructure, a select few maintain a legal industry focus. A Cloud provider who knows the challenges that law firms and legal departments must deal with can help you choose the exact solutions to meet the demands of your firm.

Don't panic, pilot! Firms don't have to move everything to the cloud at once. Work with providers to determine which applications—and which users—you want to pilot a proof-of-concept and ensure the Cloud services work as advertised. Then, you can roll out additional apps and users for a smooth transition.

Knowledge defeats fears. Many businesses of all kinds believe that corporate spies, cyberthieves and foreign governments will all have access to your client and matter data once it is in the cloud. Chances are, your data is much safer at your cloud provider than it is in your server room. However, it is prudent to ensure that your firm owns data stored in the cloud, and has the right to take that data back should either party terminate the hosting relationship. Additionally, ensure that physical, logical and audit controls are in place to ensure your data is safe—and that data that should only be stored within the US is in fact not duplicated to servers in Europe or Asia.

Prepare for performance. Chances are that your Cloud provider will have much more internet bandwidth than your old on-premises infrastructure offered. As a result, many firms will find that when they have migrated their applications to the Cloud, performance for business-critical applications actually improves, and that any fears of latency issues evaporates quickly. Although the *firm* doesn't have to continually upgrade its servers, the Cloud *providers* do, and the latest high-performance servers, solid-state storage, and high-speed networking typical of Cloud datacenters frequently translates into better than 'native' performance for productivity, billing, matter management and other legal applications.

The Cloud on your terms. Your firm is probably already using a number of legal and business applications day-to-day. Choosing a Cloud provider should not mean having to adopt new tools for accounting, matter management or eDiscovery unless you want to. Be sure to choose a Cloud provider that is application agnostic, and who has the resources and manpower to help integrate your applications into their Cloud infrastructure

NEXT STEPS

It's no surprise that the majority of CIOs of all kinds plan to adopt a "cloud-first" strategy for enterprise applications during the coming year, according to a just-completed Gartner Symposium study. Will this be the year your firm joins the fold?

The Abacus Private Cloud (APC) from Abacus Data Systems was developed by the legal software company that brought you Abacus Law case management and billing software. APC offers a cloud environment created specifically for the demanding needs of legal practices, offering the kind of reliability and accountability that your firm demands.

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E-DISCOVERY MARKET HITS $10B

The global e-discovery market is projected to increase at a 10 percent CAGR.

BY ED SILVERSTEIN

ISTOCK/TIERO

THE WORLDWIDE e-discovery market surpassed $10 billion during 2015, according to a new study from the International Data Corporation (IDC). That breaks down with e-discovery services being $8.2 billion at the end of 2015. Moreover, the e-discovery software market was over $2 billion in the past year.

In addition, the study, called "Worldwide E-Discovery Services Forecast 2014-2019," projects that the total e-discovery market will increase at a 9.8 percent compound annual growth rate (CAGR). Services and software will total over $14.7 billion by 2019, and by 2019, Europe will be almost 23 percent of the market, and Asia will be over 7 percent.

Sean Pike, a program director with IDC, explains, "Market growth is driven by increased regulation, litigation and data governance concerns." He says that software and services are both "growing in similar ways."

"Increased regulation and litigation lead to a buy vs. outsource decision for just about every company," Pike says. "If you have litigation, you will need to collect data, and there are two ways you can do that: through software, or by hiring someone else to do it. That is fairly obvious. As the previously less regulated regions begin to regulate and litigate more, software and services growth has expanded outside of the U.S. and UK."

Pike adds that, "While we haven't seen as much software purchasing in developing markets, services continue to be very strong. The reason for this is likely that companies have not yet reached a level of litigation where they feel software is the right answer."

Also, e-discovery software and services are being used by companies to gain better insight into their data, Pike says. That is part of an overall information governance strategy.

"Along with enhanced search (analytics) capabilities, there has been a lot of improvement in process and workflow for e-discovery," he explains. "Companies have used these tools (and the tackling of an e-discovery project) to jump-start overall information governance practices." ■

FTC CAUTIONS BUSINESSES ON 'EXCLUSIONARY' BIG DATA USE

Analytics has opened doors for many, but is it adversely affecting others?

A NEW REPORT from the Federal Trade Commission (FTC) reminds business to avoid "exclusionary" or "discriminatory" uses of Big Data analysis. Listing many sample questions, the report, "Big Data: A Tool for Inclusion or Exclusion? Understanding the Issues," looks at how Big Data is used after being collected and analyzed. The study was released this month, and comments are being made in response.

The study looks at risks that "could result from biases or inaccuracies about certain groups, including more individuals mistakenly denied opportunities based on the actions of others, exposing sensitive information, creating or reinforcing existing disparities, assisting in the targeting of vulnerable consumers for fraud, creating higher prices for goods and services in lower-income communities and weakening the effectiveness of consumer choice," according to an FTC statement.

The study also includes several questions companies should be asking themselves. Ones on legal compliance include:

- If you use Big Data analytics in a way that might adversely affect people in their ability to obtain credit, housing, or employment, are you treating people differently based on a prohibited basis, such as race or national origin?
- Are you maintaining reasonable security over consumer data?
- Are you undertaking reasonable measures to know the purposes for which your customers are using your data?

"The FTC has delivered a sweeping review on how today's data-driven marketplace poses serious risks to consumers," Jeffrey Chester, executive director of the Center for Digital Democracy, tells Legaltech News. He adds, "The commission's message is clear—companies must proceed with caution as they use consumer surveillance tools made possible in today's 'Big Data' era. Every consumer should be alarmed about the host of little publicly- known practices that can harm our credit, employment and privacy."

—Ed Silverstein

NEXT-GENERATION LAWYERS NEED TO BE TECH-SAVVY, TOO

More law schools are rolling out formal legal technology programs.

IT IS CLEAR that a robot will never be able to represent a client in court—let alone take on the role of a judge—but many sector-watchers predict a legal world where computers can do many legal-related tasks now done by lawyers. Law schools are noticing the changing environment. In one case, the University of Pennsylvania's Law School has heard the call to action and responded via its Center on Professionalism (COP), which is now offering programs throughout the year for students to learn how to use the latest legal technologies.

In a statement on Penn Law's website, the school says that the programs, offered throughout the course of the year, are to "ensure that graduates have a mastery of executive technology," undertaken in effort to prepare students for "their first legal work experiences."

"Many of our students report and exhibit comfort and savvy when it comes to newer technologies, such as social media, Google applications and other cloud-based computing solutions. In practice, though, our graduates will also use more established technologies they may not use as frequently in their role as students as the generations that came before them, including the Microsoft Suite of Professional Applications and Adobe," explains Jennifer Leonard, director of Penn Law's center of professionalism. Elsewhere, students at Columbia Law School have been taking part in its "Lawyering in the Digital Age Clinic," where students get experience using digital technology while assisting public interest organizations, jurists and others. And the Justice & Technology Practicum, a course at IIT Chicago-Kent College of Law, lets students create interactive tools for legal aid organizations or people who otherwise cannot get an attorney.

—Ian Lopez & Ed Silverstein

ISTOCK/ERHUI1979

ON THE MOVE

The latest legal tech career moves.

MICHAEL CONNER | ADVANCED DISCOVERY

Advanced Discovery, an e-discovery services and software provider for law firms and corporations globally, has appointed Michael Conner as managing director. Conner previously helped found the company in 2002.

Conner will lead key Advanced Discovery customer-facing organizations, including business development, marketing and solutions and services. His previous experience includes delivering advice and services to global clients challenged with managing massive volumes of electronically stored information (ESI) during discovery. Conner joins Advanced Discovery from Alvarez & Marsal, where he served as managing director, leading complex litigation and regulatory client engagements worldwide.

PHILIP FAVRO | DRIVEN

Driven, Inc. has augmented its ONE e-discovery platform through increasingly providing resources such as white-papers and the education-focused Driven University.

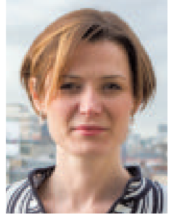
On Dec. 7, Philip Favro joined Driven as a consultant, with a focus on the firm's e-discovery and info gov consulting practice. Favro most recently served as senior discovery counsel at Recommind. "Driven is such an attractive company given its reputation for offering excellent service to clients for their complete e-discovery needs," Favro says to LTN. "From developing information governance programs and offering pre-litigation consulting services to providing strategic review expertise, forensic services, and managed review through its ONE e-discovery platform, Driven has fantastic offerings.".

JOHN HARRIS | SIGNIX

SIGNiX, a provider of independent e-signatures, cloud-based digital signatures and authentication services, has promoted John Harris to chief technology officer. Harris joined the SIGNiX team as director of product management in 2012, and by the summer of 2014 he was promoted to senior vice president of product management.

Harris will be responsible for SIGNiX's technology mission, including driving business goals by developing strategic direction, managing IT assets and motivating his team towards solutions. Before joining the SIGNiX team, Harris managed Adobe Systems' broad electronic signature and approval capabilities across a range of client and server-side products, from click-through approvals to complex digital and certification signatures. He is credited for broadening Adobe's digital certificate trust programs in Adobe Acrobat and Reader to include commercial and government certificates from around the world.

SARA MORGAN | AXIOM



Legal services provider Axiom has followed the current by employing tech for tasks such as major transactions and managed services work, and with the recent appointment of Sara Morgan as general manager of the firm's London Office, it will look to meet growingly complex legal challenges with innovative solutions.

In her new role, Morgan will head Axiom's growth in the UK, where the company assists clients in their responses to the challenges they face in the "rapidly evolving legal, regulatory and compliance landscape," Axiom officials said. "Technology and a new industrialized approach to legal is now, the new frontier," Morgan added to LTN.

LIZA PESTILLOS-OCAT | OPUS 2

The evolution of the legal technology industry has been a swift one over the past 10 years, and those companies in legal tech are seeing expansion and unprecedented change. In order to keep up and develop new strategies, worldwide litigation services and software development company Opus 2 International has appointed Liza Pestillos-Ocat as head of the company's U.S. operations.

Pestillos-Ocat is based in San Francisco and is responsible for ensuring that the U.S. business has the appropriate resources and processes to deliver on its growth strategies. Pestillos-Ocat was previously with Thomson Reuters, where she served as senior director of software operations.

WILLIAM WALTMAN | DOELEGAL

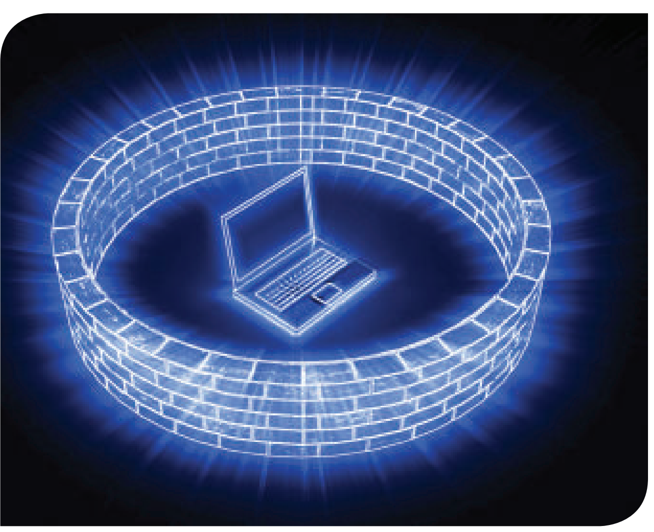
E-discovery solutions provider doeLEGAL has announced the appointment of William "Biff" Waltman to the firm's doeDISCOVERY sales team as e-discovery and litigation solution manager. Waltman will lead the firm's sales efforts and spearhead the new initiatives being introduced in 2016.

The industry veteran joins doeLEGAL from Ipro Tech. Waltman will focus on driving awareness of the new legal solutions available to law firms and corporate legal departments.

THE TRENDS DRIVING the legal technology space evolve quickly, and as a result, keeping abreast of the latest developments can be a difficult prospect. A single case, technological advancement or cresting trend has the capacity to disrupt not only the way law is practiced, but also the effectiveness of tools developed to support it. While predicting the next big shake-up is a bit of a guessing game, no group is better prepared to give context to the space than the attorneys, vendors and analysts that live at the crossroads of technology and law.

Legaltech News' Techology Digest brings together the voices of these professionals, offering an uneditorialized view into their top-of-mind thoughts and concerns. Our goal is to give deeper context to the industry, coloring our original content with the (sometimes conflicting) voices of those with boots on the ground.

If you're interested in submitting a quote for consideration, contact Associate Editor Zach Warren at zwarren@alm.com or tweet us @Legaltech_news.



THE TALKTALK OF THE DATA PROTECTION TOWN

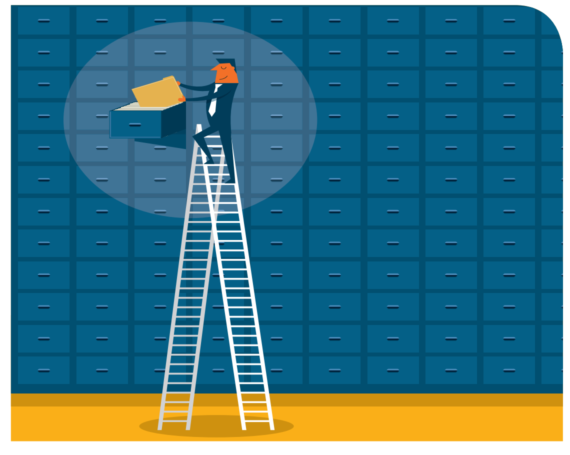
"TalkTalk's 2015 travails have already propelled cyber and data protection issues up most boards' agenda. But the new year will see the finalization of two major new laws which will accelerate that process. The General Data Protection Regulation (GDPR) and the Cyber Directive contain some eye-catching provisions, not least: a dramatic increase in fines (in some instances potentially to 4 percent of a business's worldwide turnover); an obligation to confess to regulators and affected individuals if a breach has been suffered; a revamp of existing opt-in/opt-out consent laws; and the introduction of the adoption of data governance measures. It will be crucial for businesses to be aware of the impact of these changes, in particular the implications for their approach to data governance. Adopting processes without introducing unnecessary extra risk (e.g. by taking full advantage of legal privilege) will be important. Compliance preparation will likely include preparing new cyber/data breach reaction processes, running privacy impact assessments and health checks and, quite possibly, appointing a data protection officer with a reporting line to the board."

—James Mullock, partner (London), Bird & Bird

A PATH TO ANALYTICS ENLIGHTENMENT

"Law firms have volumes of data arrayed in dozens of different sources but lack a single source of truth. For example, large law firms may use one tool for HR, another for expense management and a third for reporting or analytics. Aggregating, synthesizing and transforming this data into actionable information is a clear path for greater efficiency. Taking it a step further and marrying information with predictive analytics to understand how best to staff a new matter and with what level experience yields the possibility of a competitive advantages both in law firm business development and superior client service. No legal technology vendor has accomplished this yet."

—James Paterson, vice president, LexisNexis Large Law Practice Management Solutions



ISTOCK: ALEXSL; SORBETTO

SHARING IS CARING (ABOUT GOVERNMENT COMPLIANCE)

"Information sharing is an issue that has global implications, particularly for technology companies. In the U.S., the Cybersecurity Information Sharing Act was recently enacted, a law that encourages information sharing and provides some form of liability protection for companies that meet the criteria of the law. However, on a global basis, information sharing, particularly with the U.S. government, continues to be a hot button issue—one that has, at least in part, caused some of the issues in the EU, including the invalidation of Safe Harbor. These issues are likely to come to a head in 2016, and hopefully companies will have a clearer path forward."

—Andrew Serwin, partner (San Diego), Morrison & Foerster

GOOD RISK MANAGEMENT MEANS A GOOD CRYSTAL BALL

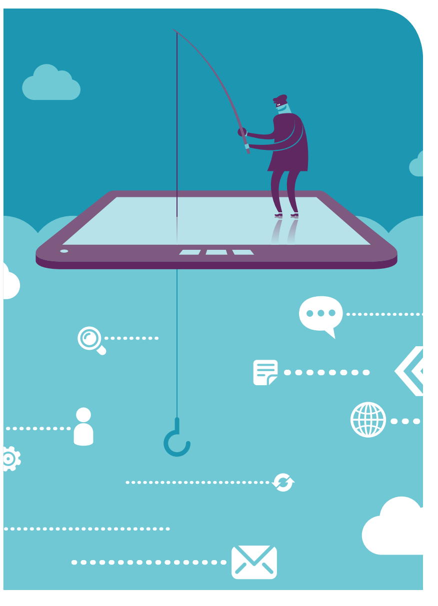
"Recent major cybersecurity breaches highlight the need for companies to not only enhance their cybersecurity to defend against an attack, but also to plan for the legal fallout from an intrusion. Through both the courts and regulatory action, companies face monetary and reputational losses from a cyberbreach. For example, for the 2015 bank stress testing exercise, the Federal Reserve required banks to improve operational risk planning for cybersecurity-related losses, including related legal losses.

Legal departments can and should be part of planning for a cybersecurity situation, including identifying the applicable law and regulatory body. Departments in industries with well-defined regulatory schemes should also consider modeling for legal losses or regulatory fines. Determining possible outcomes leads to better risk/reward decisions for cyberdefense investments. Reasonable models can be built by analyzing cybersecurity breach survey data, assessing pending litigation against peers and applying expert legal judgment."

—Ed O'Keefe, partner (Charlotte), Moore & Van Allen

ISTOCK: KAAN TANMAN; THEMACX; AKINDO

AUTOMATIC SAVING CAN CREATE AUTOMATIC HEADACHES



"Unfortunately, many companies' technology policies do not adequately address one of the greatest security and regulatory threats: data downloaded and stored on employee's personal devices (phones, tablets, etc.), including confidential medical or personal identifying information. When the phones are then stolen, sold to others, or accessed or used by spouses or children, this sensitive information can be improperly accessed or shared in violation of governing privacy laws. While certain third party applications can 'erase' a phone if lost or stolen, policies need to address personal device access, password protection, and device disposal in keeping with all governing laws and privacy standards.

The same is true of home computers, where another significant problem is the automatic saving of passwords by Web browsers such that anyone then having access to the computer can potentially access an otherwise secure intranet or website and have full access to both confidential and proprietary information. In business entities such as medical offices, law firms, and accounting firms, where patient/client confidential communications can also be exposed, this risk presents both civil and regulatory/licensing concerns."

—Robert Cutbirth, partner (San Francisco), Tucker Ellis

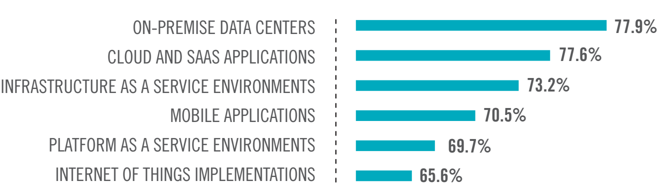
STATS AND FIGURES DEFINING THE LEGAL TECH SPACE

DATA PRIVACY

New privacy regulations are coming into direct conflict with many organizations' current methods of storing personally identifiable information, a report from Ovum commissioned by Intralinks found. Of the 366 respondents from across the globe, more than three-quarters will be utilizing cloud and SaaS applications within the next three years, while 70 percent said they will be using mobile applications over the same time frame.

SOURCE: OVUM

WHERE IS YOUR REGULATED AND SENSITIVE DATA GOING TO BE PRESENT WITHIN THE NEXT THREE YEARS?

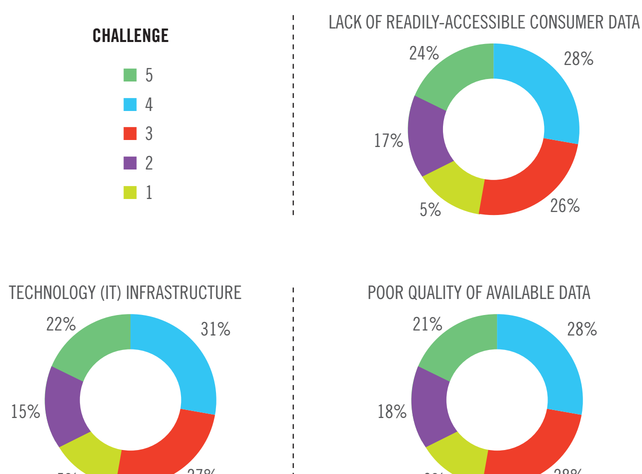


ANTI-MONEY LAUNDERING

When trying to defend a financial institution against money laundering—and complying with a growing list of financial regulations—IT and data issues are top of mind for anti-money laundering (AML), a survey from LexisNexis Risk Solutions and AML industry group ACAMS found. When it comes to AML risk assessments, meanwhile, 24 percent of AML officers said that lack of readily-available consumer data is an "extreme challenge," rating it a five on a five-point scale.

SOURCE: LEXISNEXIS AND ACAMS

HOW WOULD YOU RATE THE FOLLOWING IN TERMS OF BEING AN OPERATIONAL CHALLENGE FACED BY YOUR ORGANIZATION IN COMPLYING WITH AML REGULATIONS?



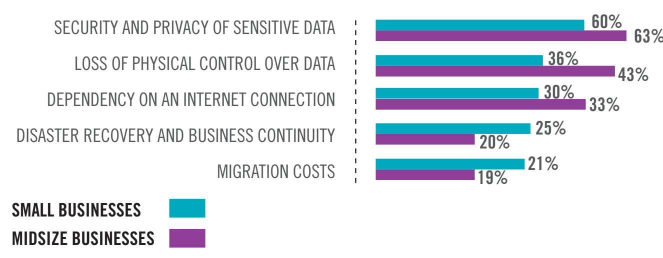
Scale: 1 is the least challenging, 5 is an extreme challenge.

CLOUD COMPUTING

Regardless of size, companies are worried about the same things when it comes to adopting cloud computing—namely security and privacy. A Netwrix survey of small and midsized businesses found that security and privacy of sensitive data is the greatest inhibitor to cloud computing, followed by a loss of physical control over the data.

SOURCE: NETWRIX

WHAT ARE YOUR GREATEST CONCERNS FOR CLOUD COMPUTING?



FIRM OPERATIONS

The amount that Bloomberg BNA is charging the DC Affordable Law Firm for its technology platform. The DCALF, a collaborative effort between firms Arent Fox and DLA Piper and the Georgetown University Law Center, provides legal representation for the underserved population that falls in between free legal aid and being able to afford most firms.

M&A

$112 MILLION

The price upon closing Consilio to purchase Huron Consulting Group's legal function, pending an additional payment upon 2015 closing financials. The combined company is now one of the largest global e-discovery, document review and legal consulting service providers. Consilio CEO Andy Macdonald told Legaltech News that Huron Legal's U.S. focus, especially when compared with Consilio's global focus, was a "critical" impetus for the move.

E-DISCOVERY

The global e-discovery market has reached a new milestone: $10 billion, according to research from the International Data Corporation (IDC). In addition, the study, "Worldwide eDiscovery Services Forecast 2014–2019," projects that the total e-discovery market will increase at a 9.8 percent compound annual growth rate (CAGR). That means services and software will total over $14.7 billion by 2019.

SOURCE: IDC

TOTAL E-DISCOVERY MARKET

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DATA THEFT

Just because a departing employee will not be working for you any longer does not mean that they can no longer cause harm. According to a study from secure communications solutions provider Biscom, more than **25%** of respondents said they took data when leaving a company. And of those who take company data, **85%** report they take material they have created themselves and don't feel this is wrong. SOURCE: BISCOM

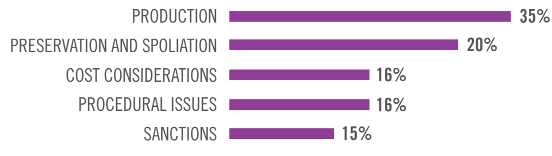
CYBERSECURITY

The number of people possibly impacted by the U.S. Office of Personnel Management (OPM) data breach that had not been contacted as of mid-December. Although the government began to notify people about their involvement on Sept. 30, a process that was supposed to take 12 weeks, it could not obtain correct contact information (normally a mailing address) for roughly 7 percent of people that may have been affected. SOURCE: OPM

E-DISCOVERY

Throughout 2015, Kroll Ontrack experts picked out five federal and state cases for its e-discovery blog that had relevance to the legal tech community. When analyzing those cases for the first 11 months of the year, it found that the most notable cases were fairly evenly split between five major categories of e-discovery, though production seemed to be the most contentious issue. SOURCE: KROLL ONTRACK

WHERE DID THE MOST NOTABLE E-DISCOVERY DECISIONS OF 2015 FOCUS?



IT SPENDING

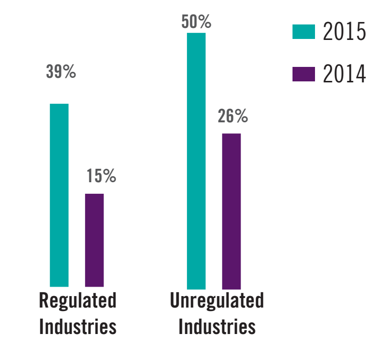
Law firms are among the businesses–along with accountants and marketing specialists–that can provide business opportunities for IT enterprises, according to a CompTIA (The Computing Technology Industry Association) study. Tim Herbert, senior vice president, research and market intelligence at CompTIA, told Legaltech News, "The research indicates one in five law firms definitely plan to hire additional IT staff over the next 12 months. This reflects the recognition technology can be leveraged to improve both the value and experience for clients, as well as addressing internal needs to positively impact the bottom line." SOURCE: COMPTIA

ARE YOU LOOKING TO INCREASE IT SPENDING BY 10 PERCENT OR MORE IN THE NEXT YEAR?

CLOUD ADOPTION

Despite security risks, cloud adoption continues to grow, no matter the industry. A survey from data security firm Bitglass in December found that nearly three times as many organizations in regulated industries utilized the cloud in 2015 as compared to the year before, while the percentage nearly doubled in regulated industries. SOURCE: BITGLASS

HAS YOUR ORGANIZATION ADOPTED CLOUD COMPUTING?



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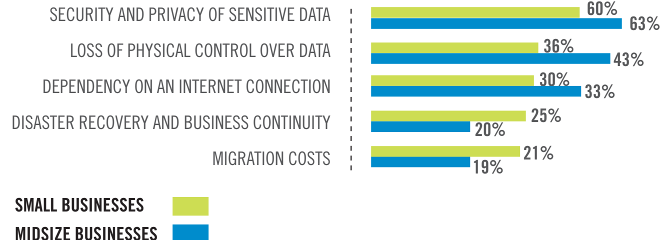
WHAT ARE YOUR GREATEST CONCERNS FOR CLOUD COMPUTING?



DATA SECURITY

What measures are your company taking to protect its data security? According to an Ovum report commissioned by Intralinks, many organizations aren't taking basic steps to protect against the theft of data. In fact, just **44%** monitor user activity and have policy-based triggers and alerts, and only **62%** have adopted role-based access controls. SOURCE: OVUM

CALLING FOR A CYBER ASSIST

Does the federal government spend enough time prosecuting data breaches?

BY ED SILVERSTEIN

BRIAN STAUFFER

THERE IS AN ONGOING DEBATE OVER the adequacy of resources spent by the federal government to investigate and prosecute those responsible for data breaches. Some say more staff is needed as cyberattacks and other technology-related cases skyrocket. Others want current resources to be used more wisely.

"The numbers of people are just too small to deal with this adequately," contends Michael Vatis, an attorney at Steptoe & Johnson who was the founding director of the National Infrastructure Protection Center at the FBI. "You can't do anything about hackers without law enforcement."

To understand the needs, the number of law enforcement pros has to be put into context. One estimate from Edward McAndrew, who formerly prosecuted cybercrimes at two U.S. Attorneys' offices and now works for Ballard Spahr, says that approximately 350 to 400 federal prosecutors focus on cybercrimes. These can relate to national security cyberthreats and/or more traditional technology-facilitated crimes, according to McAndrew.

Given the needs and these numbers, the government is "under-resourced," he explains. He also says there is insufficient appreciation of the cybercrime "epidemic." One example

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is found with computer forensic examinations, where the typical search of a residence may reveal a van filled with digital devices and containers.

"If a suspect is arrested, he or she has the right, under federal law, to be indicted within 30 days of an initial court appearance," McAndrew says. "I haven't seen an agency at any level with sufficient resources to forensically analyze the volume of digital evidence being collected on a timely basis for use in a courtroom."

The need for more resources has been articulated by those in the government, too. "Government officials at the federal, state and local levels have largely acknowledged that our law enforcement resources trained and dedicated to fighting technology-facilitated crimes are insufficient," McAndrew says. "In part, this is due to the explosion of cybercrime during a period of budget freezes and cuts that followed the 2008 financial crisis. We are now playing catch up, but it is a real challenge to find—and retain—highly qualified investigators and attorneys who really understand both the law and the technology necessary to do the work."

It is also important that recently "nearly everything that federal law enforcement pursues has become a 'cyber' crime," McAndrew says. "Just as daily life and activities for most people have become more digitized, so too have the investigation and prosecution of criminal conduct. Even street-level crimes, such as narcotics trafficking, assault, murder and firearms offenses, now often involve significant amounts of digital evidence."

This means that many prosecutors and agents who have never investigated traditional computer crimes are involved daily with the collection, analysis and use of digital evidence, according to McAndrew.

Moreover, Allison Berke, executive director of the Stanford Cyber Initiative, says, "Cybersecurity continues to be a growth area for hiring, and both the breadth and the rate of change of the threat landscape—the number of data breaches and companies using inadequate security protections, combined with the motivation and creativity of cyberadversaries—means that continuing education and training are required even assuming the nation's best graduating mathematicians and computer scientists can be hired away from Google and the like," she explains.

She also adds that the "government as a whole does have adequate financial resources to investigate breaches, but individual agencies may find themselves understaffed."

AN ADEQUATE ASSIST?

Another issue is whether companies and even law firms now receive sufficient help from the U.S. government on data breaches. McAndrew's point of view is "yes and no. Cybercrime—in a variety of forms—has exploded exponentially in a relatively short period of time. Within the limits of its allocated resources, I think the federal law enforcement community (investigating agencies and the Department of Justice) have done an excellent job of prioritizing the crimes and ongoing cyberthreats to which they respond."

"Although data breaches are among the most significant cybercrimes, they are far from alone," he continues. "Organizations also must deal with other cyberthreats directed at their facilities, business operations, personnel, partners and customers. In recent years, this includes threats to disrupt and destroy digital assets, including networks and infrastructure, in an effort to impact ongoing business operations. The government also must address technology-facilitated crimes targeting individuals, such as terrorism, stalking, threats, extortion, the exploitation of vulnerable populations ... just to name a few. Unlike more traditional crimes, cybercrimes are seldom completed acts at the point of initial contact for law enforcement. Instead, many present an ongoing, highly dynamic, globally diffuse and complex course of conduct with additional victimization and evidence dissipation as constant concerns."

> "I HAVEN'T SEEN AN AGENCY AT ANY LEVEL WITH SUFFICIENT RESOURCES TO FORENSICALLY ANALYZE THE VOLUME OF DIGITAL EVIDENCE BEING COLLECTED ON A TIMELY BASIS FOR USE IN A COURTROOM." **—EDWARD MCANDREW, PARTNER, BALLARD SPAHR AND FORMER FEDERAL CYBERCRIME PROSECUTOR**

Law enforcement agencies also now have responsibilities beyond the traditional roles of investigation and prosecution, McAndrew explains. They assist organizations and individuals with ongoing cyberthreats through digital risk management planning, threat mitigation, incident containment, remediation and recovery.

But when asked about the level of government spending on cyber prosecutions or investigations, Christina Ayiotis, co-chair of the Georgetown Cybersecurity Law Institute, called it a "cop-out" to say that the government is not investing enough resources. It is also questionable what the impact would be by hiring many more prosecutors.

"Could they use more resources—probably," she adds. But there needs to be risk mitigation on the front-end," she advises.

"It's not just a matter of spending more money," Ayiotis says. She points out how billions of dollars can be spent on cybersecurity, "but we're still so insecure." Another problem

is that a lot of money is being spent to "maintain old, insecure systems," she explains.

A COLLABORATION CONUNDRUM

Ayiotis also adds that collaboration with the government is critical for businesses. For example, consider what the Department of Homeland Security (DHS) now offers companies.

For company use, the DHS's Cybersecurity Framework is a collection of standards, guidelines and best practices which promote the protection of critical infrastructure through cyber-risk management. It helps companies assess vulnerabilities of their networks and understand what is needed to strengthen them.

To encourage use of the framework, DHS developed the Critical Infrastructure Cyber Community Voluntary Program, which lets businesses improve cyber risk management and take advantage of government resources. It facilitates access to free technical assistance, tools and other resources.

"GOVERNMENT AS A WHOLE DOES HAVE ADEQUATE FINANCIAL RESOURCES TO INVESTIGATE BREACHES, BUT INDIVIDUAL AGENCIES MAY FIND THEMSELVES UNDERSTAFFED." **—ALLISON BERKE, EXECUTIVE DIRECTOR, STANFORD CYBER INITIATIVE**

Moreover, various efforts at threat information sharing and outreach are more services provided to businesses by the government.

"The [Obama] Administration's executive actions and the recently passed Cybersecurity Information Sharing Act [CISA] of 2015 are steps in the right direction, but much remains to be done on the legislative front," McAndrew says. "A big part of doing that is building relationships of trust at the individual and organizational levels. I think a growing number of people in the government understand this, but I also think that the private sector is reasonably concerned about the potential ramifications in other areas that may come from working proactively with the government."

"Organizations that encounter cybercrime are often cast into the simultaneous role of crime victim, target of regulatory or other government inquiry or enforcement action, and potential private litigant—here at home and potentially around the world," he explains. McAndrew also recognizes the potential for reputational harm.

David O'Brien, senior researcher at Harvard's Berkman Center for Internet & Society, agrees that sharing information with the government may lead to "companies' concerns about how that might lead to a regulatory enforcement action." Vatis also notes that in particular, the Federal Trade Commission (FTC) is "very aggressive" in going after companies to see if adequate security was in place during a breach or if the company was somehow responsible.

"Privacy advocates and some companies are concerned that privacy of consumers may be compromised when companies decide to voluntarily share information with the government," O'Brien adds. "It could, potentially, lead to the users filing a lawsuit against the company under a federal or state privacy regulation, or a common law theory. I think it would take a unique set of circumstances, but it's plausible and companies have flagged it as an issue."

The recently enacted CISA nevertheless "provides companies a strong liability shield against private rights of action and regulatory enforcement actions that arise from certain types of sharing," O'Brien says. "The immunity provision was very controversial. Privacy advocates generally think it shortchanges the privacy interests of individuals, particularly when information is shared without their consent. Because the information sharing in this context is voluntary, companies might still wish to be mindful of these interests as they consider what information to share—or in how this fact is communicated—in the spirit maintaining trust with their users."

Similarly, Berke confirms that "there can be a reluctance to notify the government before conducting an internal audit to determine the extent of the incident and its damage (e.g., what assets were potentially exposed) because as we've seen with many breaches, initial estimates of the number of records exposed are nearly always too low, and initial reports that seem misinformed can damage a company's credibility as they work to repair their systems."

Ayiotis points out that if breaches do occur, companies may be given credit by prosecutors for doing the right things, as is often the case with inquiries into violations of the anti-bribery Foreign Corrupt Practices Act. Companies need to "do all of the right things on the front end," she says. "There's a lot of hard work to do."

But many companies, and even government agencies, are not always doing the hard work. For instance, the Government Accountability Office (GAO) recommends that government agencies fix security problems, but many choose not to.

Given that a new administration will be coming in after the 2016 presidential election, the new administration "certainly should take it [cybersecurity] very seriously," O'Brien says. "This is a long-term problem."

There already have been many large-scale breaches. More are likely. O'Brien says, "The next big one is just around the corner." ■

ATTORNEY IN THE MIDDLE

Lawyer-led proactive IG projects can preserve the attorney-client privilege.

BY JUDY SELBY AND MELISSA KOSACK

ISTOCK/VECTORAART

GIVEN THE EXPONENTIAL growth of information and the data-dependent nature of companies, there is a corresponding urgency for companies to implement information governance practices to get their "data houses in order." Retaining outside counsel to coordinate the preemptive institution of strategic information governance projects can help create the attorney-client privilege and prevent the discovery of potentially harmful corporate communications.

Companies frequently look to specialized third-party consultants to investigate and comprehend the complex intricacies of their computer networks, data privacy, network security, and information management practices. Outside counsel's direct retention of these consultants makes it more likely that communications between the consultants, the company, and outside counsel are protected by privilege.

The role of outside counsel in structuring this tripartite relationship can assist in the development of a "cone of protection" around the implementation of information governance policies, strategic planning for data privacy and security protocols, and information management technology and solutions. This can help the company avoid the production of highly-sensitive communications and potentially harmful data privacy and/or security controls in eventual litigation and/or regulatory investigations.

ATTORNEY-CLIENT PRIVILEGE

The attorney-client privilege—the most sacred tenet of litigation—serves "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice," says the Supreme Court's *Upjohn Co. v. United States* ruling. The 2nd Circuit in 2011 ruled that it shields from disclosure "communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice."

While the golden rule of the attorney-client privilege prohibits disclosure to third-parties for fear of waiver, the Second Circuit has recognized an excep-

tion known as the *Kovel* doctrine, from a 1961 ruling in *United States v. Kovel*. The attorney-client privilege is not abrogated if the party claiming the privilege possesses a reasonable expectation of confidentiality and the involvement of the third party in these communications was "necessary" for the provision of informed legal advice from counsel. As the U.S. District Court for the Southern District of New York wrote in last year's *Cohen v. Cohen,* "The necessity element goes beyond mere convenience and 'requires [that] the involvement [of the third party] be indispensable or serve some specialized purpose in facilitating the attorney client communications.'"

Notably, *Kovel* cautioned, "What is vital to the privilege is that the communication be made in confidence for the purpose of obtaining legal advice from the lawyer. If what is sought is not legal advice but only [non-legal services] … or if the advice sought is the [consultant's] rather than the lawyer's, no privilege exists." The *Kovel* court analogized attorney comprehension of the accounting field with translators for foreign language-speaking clients, because accountants and translators serve similar functions for the "effective consultation between the client and the lawyer which the privilege is designed to permit."

The case of *In re Target Corp. Customer Data Security Breach Litigation* is instructive with regard to proactive measures, even though that case concerned reactive measures taken after Target's 2013 data breach. In response to the plaintiffs' motion to compel production of documents, Target propounded their development of a "two-track" investigation. The first "ordinary course" track involved a non-privileged investigation by Target's incident response team and an outside consultant team from Verizon. For the second track, Target hired outside counsel, who, along with in-house counsel, formed a Data Breach Task Force. To understand Target's complex computer systems and provide informed legal advice on potential litigations and regulatory inquiries, outside counsel retained a second consultant team from Verizon. The retention letters noted the scope of Verizon's engagement and specified that its services and communications were to be treated as confidential and performed at the direction of outside counsel. Outside counsel had its imprimatur on all aspects of this relationship by participating in virtually every communication. The court held that almost all of the second track communications were protected from disclosure by the attorney-client privilege and the work-product doctrine.

> "THE ROLE OF OUTSIDE COUNSEL … CAN ASSIST IN THE DEVELOPMENT OF A 'CONE OF PROTECTION.'"

Two recent Southern District of New York cases demonstrate the perils of companies failing to meet the *Kovel* criteria. In *Scott v. Chipotle Mexican Grill, Inc.* and *Church & Dwight Co., Inc. v. SPD Swiss Precision Diag.*, the courts concluded that communications with third-party human resources and marketing consultants did not qualify for protection because they failed to "clarif[y] or facilitat[e] communication between attorney and client in confidence for the purpose of obtaining legal advice from the attorney."

Critically, the invocation of privilege may not be on as solid footing when in-house counsel retains consultants directly. Since many proactive projects, such as security assessments and information management, pre-date litigation and/or regulatory investigations, in-house counsel's activities arguably may be perceived as ordinary business advice, as opposed to legal advice.

STRUCTURING RETENTION OF ATTORNEYS AND CONSULTANTS

Companies can help to preserve the privilege by engaging outside counsel to provide legal guidance regarding the prospective development of enterprise-wide information governance architecture and risk assessments associated with data privacy and security in connection with compliance, potential litigation or regulatory requirements.

To fall within the *Kovel* doctrine and protect the confidentiality of communications among the client, outside counsel, and consultants, outside counsel should document in the consultant's engagement letter that the consultant's services are being povided to assist counsel with comprehending the client's information practices. The letter should also indicate that these services, in addition to all corresponding communications, including the receipt and provision of information, are to be treated as confidential and privileged. Further, the letter should set forth the reasons why counsel is seeking "translation" of complex data into a "usable form" to deliver informed legal advice.

Moreover, during the course of this tripartite relationship, clients should contemporaneously memorialize that the consultant was retained to facilitate outside counsel's understanding of complex technical issues and the provision of competent legal advice.

Affording outside counsel-consultant communications the protections of the attorney-client privilege helps preclude the waiver of sensitive security issues and questionable data practices, and avoid reputational damage.

Judy Selby is a partner at Baker & Hostetler in New York and co-chair of the firm's information governance team. Melissa Kosack, a commercial litigator, is a counsel at Baker & Hostetler in New York and a member of the firm's information governance team.

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PROACTIVE PRIVACY

Lawyers are some of the most susceptible targets to getting hacked.

BY JONATHAN PARKER-BRAY

ISTOCK/JESUSSANZ

GROWING CONCERN AROUND data protection, privacy, and hacking means there has never been a more appropriate time for lawyers to ensure all communication with colleagues and clients is secure.

A recent survey by Pryvate found that 29 percent of respondents share sensitive work information through their mobile phones at least once per week, and 21 percent believe that stolen information taken through a hack of their mobile phone would harm their professional reputation.

This is especially important in the legal world, where professionals have both ethical and legal responsibilities to protect their clients' data. Many states in the U.S. have enacted statutes that protect their citizens' personally identifiable information (PII) and specifically require any firm that does business in the state to, in certain circumstances, encrypt that PII. Lawyers should be free to take all reasonable steps to ensure their clients are safe from cybercrime and surveillance, using whatever tools are at their disposal to achieve encryption.

Given the sensitivity of the information held by legal firms, lawyers are some of the most susceptible targets to getting hacked or having their digital communications intercepted. Even back in 2009, the FBI issued an alert that advised legal firms they were being specifically targeted by cybercriminals through email phishing campaigns, and the situation has snowballed as hacking techniques have become increasingly sophisticated. A few years later, the FBI held a meeting with 200 of the largest law firms to specifically discuss cyberattacks targeting a gold mine of information held by legal organizations, and to educate them on how to better protect their data.

The amount of foreign travel that legal professionals often do has put modern legal professionals at greater risk than most. However, it is not just while traveling that lawyers need to be aware of this threat, as the prevalence of surveillance technology is a growing concern as well. Anyone who doesn't want their conversations to be listened in on—or to risk their data being stolen—must begin taking the mobile hacking threat seriously.

It's widely commonplace to download anti-virus and other programs to protect laptops and desktop computers. However, the same security consciousness is rarely applied to protecting mobile devices. Given the amount of personal information that lawyers share through their phone or tablet, it's naive to think that a hacker wouldn't want to access it. Therefore, it's increasingly imperative that legal firms take responsibility for securing their mobile devices, and the client data they store and share on them. Using services that encrypt email, texts and IMs to ensure they can't be intercepted or traced, and to ensure calls can't be listened in on should be one of the first actions taken by a legal company's IT team before handing out corporate devices.

Jonathan Parker-Bray is CEO and founder of Pryvate.

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THE RISE OF THE CHIEF DATA SCIENTIST

Big Data drives the need for data experts that can interpret results and apply them to law firms and their clients, but are firms ready to get on board?

BY IAN LOPEZ

TODAY, DATA HELPS ENTERPRISES glean insights with an accuracy once thought impossible, allowing them to tailor offerings to reveal cost savings and discover opportunities previously unavailable. Law firms are no differently seated for these revelations, but the industry is considered to be slow in taking the steps necessary to reap the benefits offered via Big Data.

Some law firms have taken more concrete steps to better utilize the mass of data at their disposal. In a step unprecedented by firms among the Am Law 100, Drinker Biddle & Reath named Bennett Borden its first chief data scientist (CDS). In this role, Borden has a bird's-eye view over the implications of data both within the firm's practices—on efficiency, case analysis, and client representation—as well as for those of Drinker Biddle's clients, whom he helps leverage information for desired results.

Borden tells Legaltech News that the need for a chief data scientist in the legal space comes from a need to get at more specific answers.

"If you look at what lawyers do, fundamentally, they answer questions—usually what happened and why, or what the best

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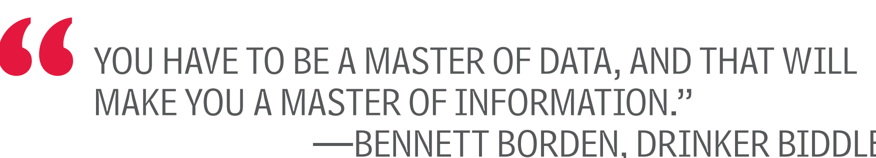

DIEGO M. RADZINSCHI

way forward is," he says. "Regardless of area of law, they are figuring out answers to questions, and most of those questions involve human conduct —who did what, or what happened—and in the information age, direct human conduct is unparalleled in the history of our species."

Consider how during our everyday lives, professionally and personally, we leave "little bits and traces of what we're doing, and what we're thinking, and where we are, what we're buying and selling, and the decisions we make," Borden adds.

"We leave this record of human conduct behind us. And so it is much easier now in the information age to get at very accurate, very quick answers because this trail is left. [Getting at] that information is really what the chief data scientist is about. It's understanding what information exists; how to get at it; and how to pile it all together to come up with an answer."

Borden contends there is no area of law where analytics doesn't help. He notes how analytics allowed a client to act on an M&A agreement's purchase price adjustment provision within the allotted time frame and get $20 million back on a purchase price. The information used to draw this conclusion—quotes from emails, auditors and the company CFO revealing issues with financial conditions and risks associated—was all within the purchased company's system.

To peruse mass quantities of documents, Borden assembled Drinker Biddle's fact development team, a group of data analysts that he oversees. He likens their role to those tasked with document review, though notes, "We don't review documents; we develop facts."

"With the use of our analytics and our fact development team, I can get through a million documents a week in looking at an investigation or a litigation," Borden says. "For our clients, they understand what their position is, and what their opponent's position is, literally within days, whereas for the other side it takes months to figure out the same facts. We get through litigation much quicker, much more powerfully, because we absolutely know what happened with certainty." He adds that with a regulator, his team can shut down a case by going to them and proving what happened and what didn't happen.

"The impact on our clients is immensely significant for them," he says.

WESLEY BEDROSIAN

A WIDENING LENS ON ANALYTICS

Drinker Biddle isn't alone in realizing the benefits accessible through big data. In 2015, Littler Mendleson appointed Zev Eigen as its first national director of data analytics. Eigen tells LTN that prior to joining Littler, he spoke to many firms about the role of analytics in law departments.

"I think firms are becoming more aware of the value of using data and analytics to improve decision making," Eigen says. "Some of that comes from their clients, because clients are using it to inform strategic decision making of all levels of the organization. And then some of it comes from paying attention to how other firms are starting to incorporate analytics into their service offerings."

Eigen notes that firms with data scientists can better serve clients in "traditional law practice endeavors" and "performing data scientific services" on their behalf. He notes, however, that this approach has issues.

"A lot of firms don't really either see how that goal can fit in to their existing infrastructure," Eigen says. "Or, the other issue is there's a real talent gap. It's really hard to find people in this space. And it depends on how you define that space, but it's tricky, because it's hard enough to find talented data scientists, and it's even harder to find talented data scientists who also can interface with clients effectively, who can also understand law practice, and perhaps also understand an area or two of law. That subject matter expertise may be useful or necessary for clients."

Regarding firms incorporating analytics into service offerings, Eigen says: "I feel like there are a lot of opportunities for firms to do this better, and it's a challenge because ... it's difficult for firms to understand how to use the information effectively."

While having chief data officers isn't the status quo among law firms, more are investing in analytics. LTN spoke with Mark Yacano, global practice leader, managed legal solutions at Major, Lindsey & Africa, about this trend, which he says is driven by both clients and firms.

"The use of analytics and the use of data to identify a risk, to isolate the source of and define risk to detect patterns of behavior and patterns of conduct is becoming more and more essential, especially as clients want to proactively identify trends," Yacano says. "[Firms] want to use and have to use analytics to begin to dig deep in any disputes in legal bills. At the same time, firms want to know better what their clients need ... and they want to be able to use data that they have in order to target their own business strategy with respect to things like practice development or emerging trends. And they want to be able to take amalgam of data they collect for a client and analyze it to see a cross-series of events, transactions or cases—patterns that client may have. It's not a common thing right now, but it is emerging as an important, legitimate function."

Yacano adds, "Law is starting to enter an interesting phase where there is, on both the client side and the law firm provider side, a growing empiric element as to how it looks at its work and how it delivers its service or receives and buys its service.

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And I think that's going to make this data officer position gain increasing acceptance."

Despite this emerging empiricism, some feel firms aren't fully open to the idea of implementing CDSs or roles with similar oversight.

"Law firms have not been the most progressive when it comes to, really, anything, but certainly technology," Borden says. "Because there's a natural kind of conflict between efficiency and how law firms make money at the billable hour model. The less time it takes a lawyer to do something is not necessarily good for the lawyer if he's billed by the hour."

Yacano agrees, attributing reluctance to analytics' undoing of the lifecycle of the delivery service.

"Law has traditionally lagged behind in terms of the application of technology," he says. "I think that the climate is softening, but it's not like in a year or two years it's going to have fully softened, and that's why I think the whole data officer, what I would call immersion, will continue to emerge but not be a component of every firm's DNA."

Yacano puts the struggle for acceptance into perspective by likening the chief data scientist's ascent to those made by CIOs, COOs, and CSOs.

"A certain subset of lawyers within a firm are always going to look at any administrative and C-level people and executive level people as costs," he says, "until they get an understanding that having those people ... allows the firm to execute a network in a way that increases profitability, which I think will happen."

THE DAWN OF A NEW ERA

Though data utilization alters business models reliant on billing time, the economic downturn of 2008 forced businesses to be more efficient. Borden says, for law firms, this meant billing differently as well as being "more creative" in improving efficiency, leading to changes like fixed fees. This, he says, occurred simultaneously with the proliferation of data.

"Companies [were] just being drowned in information, including law firms," Borden says. "The impact of so much so many different kinds of information was really bogging down business processes and legal processes. That put pressure to try to solve that problem, so that's really where using data analytics to solve these problems started to come about."

Yacano says companies aren't returning to pre-recession models, instead opting to stay lean. As for utilizing data for efficient legal practices, he says, "This is the maturation of the legal business into the community of practices used by their clients."

"Being able to do client work at a price the client wants to pay is key," he explains. "In order to do that, you need something else besides the human capital model. You need some qualitative empiric information in which to make some intelligent decisions about how you put together your service delivery team."

THE FUTURE

As time goes on, data's influence on businesses increases. Borden says that firms without people like CDSs are at a competitive disadvantage, and when more law firms adopt the role, the current will put pressure on those that don't follow.

"You have to be a master of data, and that will make you a master of information," Borden says. "Law firms that get that will absolutely move this way. It's not just, 'Gosh, I've got to keep up with the Joneses.' Law firms that understand that in the information age, information is all that matters, are the ones that will take that step."

LAW HAS TRADITIONALLY LAGGED BEHIND IN TERMS OF THE APPLICATION OF TECHNOLOGY."
—MARK YACANO, MAJOR, LINDSEY & AFRICA

Borden foresees more Am Law 200 firms going this route sooner than later. However, he notes that firms closer to the top of the Am Law will have a more difficult time seeing the value of a CDS.

"There are a lot of good firms with very entrenched ways," he says.

Yacano says acceptance among major firms is slowly emerging, and that it will start with firms in the lower Am Law 100 and upper Am Law 200. However, he says, it's important to consider that some firms want to be innovators, while others want to execute well in their current business models, which for many are already successful.

Eigen doesn't think that executives overseeing data pose a threat to the old legal model. On how the new model can be profitable over the old, he says, "I think there's a lot of value for firms who can figure this out and solve the riddle of how to incorporate a data science role at the top of the organization, because it will impact other strategic decisions the firm makes, I think for the better." ■

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YOU GET WHAT YOU PAY FOR

A solid data model and data storage strategy will yield myriad benefits.

BY KENNETH E. JONES

ISTOCK/ADVENTTR

LIKE MANY WHO manage software development, I'm often asked to quote a cost for a new system. To massively oversimplify the topic for the purpose of this article, cost is essentially a function of project complexity, scope, volume and service requirements. But there are always some clients who don't understand this and want to move forward on an alternative exclusively based on price. In their minds, they think, "the lower the better."

That's all well and good; most of us have expense constraints and wise consumers shop for value, myself included. Many common shopping services—such as StubHub, one of my favorites for tickets—now have mechanisms to identify "best value" tickets, those sold at the largest discount below face value.

However, one can easily take this concept to a dangerous extreme. Systems that do things like storing a U.S. state in a text field or in a large text block (rather than a pick list), have no documentation, run well only with a small number of users or amount of data, store sensitive information such as an SSN in a non-encrypted manner, or do not enforce data integrity (ensuring that only an actual valid state should be entered in a state field) actually can be more harmful than helpful. I've spent enough time over the years "bringing in slop" for new clients to understand the cheapest path is often not the path of "best value" in the software field.

What does this all mean? Clearly, a project manager should strive to get some core project basics in place before moving forward on an initiative. Here are just a few of what are far too many "rules of the road" to write in a short article.

CREATE A DIVERSE PROJECT TEAM

One great rule is to ensure both the legal and technology function are participating in a software selection or development effort, in essence creating a cross-functional team. A group comprised of legal/businesspeople only might end up picking the system, which "looks neat" in a demo, without really inquiring about some of the technical questions captured above.

Conversely, a unit that is totally technical in nature is also flawed, for they could easily select an operationally superior system which is totally misaligned with the business need and utterly worthless at the end of the day.

Mixing and matching employees at different functional levels—a smattering of management and worker bees so to speak—is a good idea too. Computer systems that generate beautiful reports that are hard to use, and vice versa, will never cut the mustard. Engaging both those who enter data and those who use data is a solid practice.

CREATE A PROJECT BUDGET

Try to avoid the scenario where one is attempting to address a business need without financial support. Surely, the targeting system has some value (e.g. client service, elimination of cost, streamlining a function, improvement of cash flow), so try to plan funding to support the effort. Failure to do so very often leads to employees selecting less than ideal tools, to put it mildly, to deploy on an project.

If you are "lucky," any mistakes made might "only" be mistakes such, as creating poorly constructed databases. I offer into evidence on this front the ubiquitous MS Access database designed by an attorney, paralegal or local technology person who is 100 percent well meaning, but not a professional in the field of database design. Amateurs hired to do a professional's job rarely works out well.

And, as bad as a poorly designed system is, that's not the worst of it. The storage of sensitive or confidential information on insecure platforms, someone choosing to install unauthorized or supported software within your network as a basis for the new system, or other shadow IT sorts of activities can all be Excedrin moments.

Creating a budget for approved efforts is a good way to steer folks towards a more profession path.

BE SURE TO STORE DATA APPROPRIATELY

In this case, the phrase "last but not least" is particularly apropos. Storing data in the correct manner is of vital importance.

Fields like a case status, state, law firm, etc., are the types of fields that should be single-select or multi-select pick lists. Date fields should always be valid dates. Numerical or currency fields should be in the proper format. Some fields should be checkboxes or yes/no fields.

None of those types should be text fields. Users do not need to type "Peru" in as a state or enter "Sometime in April" as a valid date. Those types of entries are not correct; require your users to conform to the appropriate standard for a field.

Additionally, some fields should be mandatory, others optional. Incomplete data is just as bad as poorly populated data. Also, fields should be appropriately named and labeled so users understand the precise meaning of a field. For example, a "state" field could be the state of residence for a plaintiff, the state where a suit was filed, or the state of an accident or occurrence. Make it abundantly clear to users so the data which is entered is consistent. Inconsistent data is just as bad as incomplete or poorly populated data.

All of these rules, to the extent possible, should be enforced with hard, unbreakable logical controls. Do not rely on users to enter data to the standard you know is required. I hate to say it, but it will not happen.

Concepts like this should be applied both in the application code (the GUI/screens visible to the system users) and within the database itself (via placing primary/foreign keys in tables and referential integrity between tables). This is necessary to avoid a situation where bad data enters the system via some sort of "back door," such as a "mass update" of data executed directly into or against a database like Oracle or SQL Server by a technician.

SUMMARY

The more a technical professional pushes back against these various types of poor practices, within the bounds of reasonability of course, the better the overall quality of data in a system will be. A solid data model and data storage strategy is an essential foundational element of a strong computer system and will yield a myriad of benefits—the most important being cleaner, more accurate reports and a system your clients will grow to trust and rely on to support their business needs.

Kenneth E. Jones is chief operating officer of Xerdict, a subsidiary of Sedgwick.

TECH SPENDING PLANS

A recent survey reveals that tech spending is likely to rise at many law firms in 2016. Some 18 percent of surveyed firms plan to increase IT spending by 10 percent or more over the next year, according to the CompTIA study.

To come up with an effective tech strategy, Steve Falkin, managing director at HBR Consulting, says the strategy should meet "current and future requirements of the firm" and "positions the firm to meet its business objectives."

Falkin identified some of the tech strategy's key elements:

■ A statement of objectives, tied back to specific business requirements.

■ Specific initiatives required to deliver on the strategy, including timelines, resources, priorities, interdependencies and budgets.

■ Use of a "holistic" perspective with well-documented and well-communicated strategies.

■ Inclusion of new and emerging IT operational models, such as the cloud, hosted and managed services—where they can provide advantages at the cost, risk or service level. *—Ed Silverstein*

NOT ANOTHER APP!

A platform that solves half of a problem is not one you can build success on.

BY BEN WEINBERGER

ISTOCK/WARCHI

SOFTWARE VENDORS SERVING the legal industry have gotten giddy: so many problems to solve, so little time.

They've created numerous applications, each of which purports to address a specific market need. Yet vendors in our industry consistently deliver very limited solutions that solve only part of a problem. Although I now work as part of that vendor ecosystem, I am a former law firm CIO, and I've dealt with this situation firsthand. I've seen how the proliferation of point solutions—limited apps that focus on single problems—quickly crosses the line from useful to burdensome and costly. Does a general counsel want to see his outside counsel's time-entry data every 60 days? Let's get an app for that! Does the firm need to simplify matter file transfers? Let's get an app for that! Proper information governance requires automated ethical walls. Well, there's an app for that, too!

Suddenly, the firm finds itself bearing the cost and the headache of managing hundreds of applications.

I'm not kidding. I've worked with firms that owned and managed as many as 300 distinct applications. Think of the staff needed and costs involved to license, deploy, and maintain that number of applications, not to mention the cost of integrating them. Add to that the training and handholding all those apps require, because no interface is the same. Worse yet, some of those apps were sold to fix a problem that, in reality, they only partially address. Firms spend a pile of money on a pile of disparate apps that, in essence, aren't even "fit for purpose." This leaves the firm with the rest of the problem to solve, which means buying and managing another app!

WHAT'S THE ALTERNATIVE?

Firms need to invest in systems that go beyond solving individual technical problems and offer more comprehensive solutions to business problems. You wouldn't buy a car one part at a time to solve your transportation needs, would you? The analogy to legal technology might seem like a stretch, but it's not much of one. Firms haven't bought separate word processing, spreadsheet, presentation, and database programs since Microsoft released its Office application suite. Instead of buying point solutions for other needs, firms should focus on comparably integrated solutions when possible.

Let's explore the information governance (IG) use case, a top-of-mind issue today for many firms. It's no longer just about ethical walls: IG has evolved and become much more complex. With the constant lateral movement of lawyers, proper IG now includes matter file transfers, importing, and exporting. Well, there are apps for those processes, too! And, there are point solutions for file reviews, litigation holds, data loss prevention ... the list goes on: an endless array of apps focuses on narrow, individual components of info gov.

A platform that only solves 25 percent to 50 percent of your business problem is not one you can build success on.

IT'S TIME FOR A VENDOR WAKE-UP CALL

It's time to stop accepting half-baked solutions and yell out to your vendors: "We're not gonna take it!" (I'm showing my age and quoting Twisted Sister.)

So what's the solution? Without getting too technical, we as an industry need to transition from technical point solutions based on old paradigms to software platforms based on technology that completely addresses business challenges. In other words, vendors need to provide flexible software solutions that offer an integrated suite of products for solving broad issues like IG and all the processes related to it, on one platform with one operating system and interface. That will go a long way toward helping firms right-size their technology and stop the suffering and expense of managing hundreds of apps.

Continuing with the IG use case, a product would need to address more than creating and managing ethical walls. A true solution would address the challenges of onboarding and offboarding and offer a form of confidentiality management that enables firms to implement a least-privilege access mode for client and matter files. A true solution would also address the full information governance lifecycle and include retention, destruction, and archiving.

Taking this broad approach will give firms many advantages, including:

- Quicker implementations, simpler administration, and reduced administrative overhead;
- Minimal "integration fatigue" because integrations are embedded within complete solutions;
- Global user interfaces to improve usability and drive adoption; and
- Lower costs to support and maintain software.

Best of all, you're buying a solution that addresses all the components of a specific business problem, one that will be capable of filling gaps you may only recognize in the future. That's money in your pocket.

Ben Weinberger is vice president of solutions for Prosperoware. He can be reached at ben.weinberger@prosperoware.com.

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BY ZACH WARREN

ON JAN. 6, D.C. INVESTMENT FIRMS The Carlyle Group and Revolution Growth acquired Virginia-based e-discovery solutions provider LDiscovery. On its face, this is nothing new—outside financing occurs all the time in business. But the price tag—a reported $150 million—perhaps is.

Perhaps that figure shouldn't be too surprising, though. The International Data Corporation (IDC) found that the global e-discovery market surpassed $10 billion for the first time in 2015, with more than $2 billion of that total coming from e-discovery software alone. Moreover, IDC estimated a 9.8 percent compound annual growth rate, meaning that services and software will total over $14.7 billion by 2019.

It's safe to say that those numbers are attracting the sharks. "How many 10 billion dollar, growing markets are there? Very few," says Andy Howard, a partner at Shamrock Capital Advisors and lead advisor on the firm's investment in e-discovery provider Consilio. "That's why there's money being attracted to the vendors, but you've got to play it in a smart way."

So what constitutes a smart investment in the current e-discovery market? The Carlyle Group's reasoning for the LDiscovery acquisition is instructive.

William Darman, managing director of the U.S. middle markets group at Carlyle, explains, "The management team is tremendously strong; the industry macrodynamics are certainly attractive; the company offers a service model that is differentiated from its peers and very much enabled by a world class technology platform; and significantly, this is a business that we think has tremendous growth potential organically but also as an acquisition platform."

THE ACQUISITION SITUATION

While discovery has been a part of the American legal system since its inception, the concept of e-discovery as a business is less than two decades old. From an outside perspective, one may think that this means e-discovery businesses are inherently more risky because they haven't had enough time to stabilize. However, many investors instead view the market's lack of maturity as an opportunity.

"That's right up the alley of private equity and professional investors," says Andy Macdonald, CEO of Consilio. "It gives them a chance to buy organizations, consolidate, pick up scale which should juice margins, and deliver pretty good returns from an equity investor standpoint."

Consilio has put this action plan to work. In August 2015, it closed a deal to be funded by Shamrock rather than the operationally-focused Vista Capital Partners. By December, it had already made a number of acquisitions, most notably the $112 million purchase of Huron Legal from Huron Consulting Group.

"We went out and spoke to about a dozen PE firms, with the thought process of, the e-discovery business itself on a macro level is growing ridiculously fast. It's about a $10 billion marketplace, growth is above 10 percent, with no real dominant player, and a lot of smaller or medium-sized companies that are getting squeezed from the standpoint of compliance and infrastructure where it's ripe for consolidation," Macdonald explains. "Our thesis was, pick a platform like Consilio, put some capital behind it, let's get four, five, six investments, consolidate, pick up some synergies, and it should be a wonderful return for the shareholders."

In October 2015, Mitratech received a strategic investment from TA Associates, a move which the company said at the time was primarily to further future acquisitions and global expansion. Looking back, Mitratech CEO Jason Parkman tells Legaltech News that TA Associates had been pursuing Mitratech for an extended period of time, specifically looking for a legal technology company that had "very clear growth paths and growth expectations."

"The business has been running really well, and TA was really looking to say, 'We see a business that can really be not just a strong and growing business, but can really be a continued area of investment in this growing area of legal technology for the future,'" Parkman says.

And these acquisitions aren't likely to slow down, Macdonald adds: "The consolidation opportunities will begin to accelerate, because as more people like Shamrock and Carlyle and Revolution and others enter the space, they have money that they need to put to work from an investment standpoint. So these will drive acquisitions."

BECOMING OL' RELIABLE

Investors and e-discovery executives also note that the legal department is becoming increasingly integral to the success of the business as a whole. And when added to the fact that new technologies are being added to business functions with increasing

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regularity, the business prospects for legal technology companies are compounded.

"The legal aspect of the business world today has become so material to even the survival of a company. There's so much risk, so much litigation spend, so much regulatory and compliance pressure that the legal area within a corporation and relationships with outside counsel have become absolutely material to the survival of companies," Parkman explains. "So all those things that software does in general become that much more important when you look at it through a legal lens."

He adds, "All those things are coming together so that people who may not have paid much attention to legal from an outside investment standpoint before are realizing now that it's actually a pretty exciting place."

With this increased reliance on legal software comes increased reliability for investors, Macdonald says. He notes that the first wave of e-discovery investment happened between 2005 and 2007, but investors may not have seen the returns they were looking for. When Consilio was previously part of a larger company as First Advantage Litigation Services, for example, the team would receive a massive influx of funds for one quarter (such as working discovery on the Siemens FCPA case) that it could not subsequently maintain.

Given the current legal climate, however, Consilio now has agreements directly with many corporations rather than individual law firms on an as-needed basis. And that change has made all the difference when talking with investors.

"The world of e-discovery has changed a bit where the revenue sources are now coming from corporations where we have master service agreements in place. While it's not a guarantee of a constant stream of revenue, it creates a vision of a bit more predictability. I think that allows the professional investor to be willing to place a bet," Macdonald says.

"People who may not have paid much attention to legal from an outside investment standpoint before are realizing now that it's actually a pretty exciting place." *—Jason Parkman, CEO, Mitratech*

With Consilio's investor Shamrock, Howard agrees: "Smaller companies, when I look at it, can have one or two or three big clients which is fantastic, but you run a lot of risk with them, because you're dependent upon those big companies." He also adds that although these companies often come with a smaller price tag for investors, "It's not about pricing at the end of the day. It's about providing the best services and enabling us to get the best resolutions."

GOING GLOBAL

The next wave of investment cash may not be headed to companies that exclusively work the American market, though. Howard says that when striking a deal with Consilio, he looked at three main attributes: the management team, the growing e-discovery market as a whole, and finally, international expertise.

"There are a lot of players here, but only a few have the international capabilities with global corporations handling their most sensitive matters. ... It's one thing to have expats in a market; it's another to actually have in-market personnel who know the laws, who know the people, who know the matters," Howard says.

The IDC e-discovery figures back up this assertion. By 2019, Europe will be almost 23 percent of the global e-discovery market, the study found, and Asia will be over 7 percent.

And don't think this fact is lost on investors. Evan Morgan, a partner at Revolution, told Legaltech News that one of the firm's motivations for the LDiscovery acquisition is "expanding the current customer base both domestically and internationally." Similarly, Parkman says that international expansion was a consideration as well for TA Associates' acquisition of Mitratech as well.

"What we're seeing now though is not just the importance of litigation, but the importance of the broader legal environment, including compliance and regulatory issues," Parkman says. "Those are global issues that could exist for companies anywhere in the world, regardless of how litigious their particular country is. Because of that, that's one reason you're seeing the expansion of technologies globally, because these issues are truly global in their scope."

"When folks look at where the e-discovery market is going today, certainly there's a growth in stored information, but we see significant growth that is outpacing U.S. growth outside the country," Macdonald adds. "The growth of opportunities and the growth of revenue in Europe and Asia far outstrips the growth rate in the U.S."

These factors mean that, moving forward, investors will likely continue to flock to the e-discovery space. "It's still not 100 percent a business where you can sit back and say, 'I know what's going to happen a year from now,'" Macdonald says. "But as we get bigger and other companies get bigger and there's a bit more scale and a little more diversity of client types, I do think private equity investors have enough of a sense of where revenue is coming from that they can actually put their money to work." ■

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LEAN JUSTICE

A lawyer's guide to a lean justice system and proportional discovery.

BY PATRICK OOT

JOHN S. DYKES

CORPORATE AMERICA HAS often complained, "Our general counsel's office is the only one with an unlimited budget—and it has already exceeded it!"

This is supported by the fact that most lawyers have never been to business school and, in turn, most lawyers have never heard of Lean Six Sigma or similar methodologies used in the business world to manage workflows, improve efficiency, reduce costs and deliver added value.

However, clients are increasingly demanding what previously were considered "business-only" strategies from the law firms they hire as they look to avoid paying for unnecessary work and remaining within the bounds of their seemingly ever-shrinking budget. And quite honestly, it is not unreasonable to expect them to demand such strategies. Legal process improvements benefit not only the traditional client and hired firm but the U.S. civil justice system as a whole, which has been skewed by the high costs and burdens of discovery. Now, the court system might consider its just, speedy and inexpensive goals—and perhaps start down the road to Lean Six Sigma. Perhaps it already has with the rulemaking process.

ORIGINS OF LEAN SIX SIGMA

Lean thinking is a philosophy of continuous improvement, which originated in the Japanese automobile manufacturing industry. Toyota began developing it in the 1940s after having studied the strengths and weaknesses of Henry Ford's continuous flow assembly line. Lean organizations focus on the elimination of wasteful processes, leaving only the processes that increase customer value and optimize operations.

Borrowing its name from a statistical term, Six Sigma is an improvement methodology developed by Motorola in the mid-1980s to reduce errors, waste and variations, and increase quality and efficiency in manufacturing. Six Sigma has since been widely adopted in some of the top companies around the world, including General Electric, Boeing, Samsung and Xerox.

The Greek letter "Sigma" refers to how a given process deviates from perfection ("zero defects" state). A Six Sigma process is accurate 99.9997 percent of the time, meaning a process must produce no more

than 3.4 defects per million opportunities (of nonconformance).

Although having originated in manufacturing industries, Six Sigma is equally applicable in service industries (i.e., legal) as today's competitive environment leaves no room for error. Anything that can be tracked and measured can be subject to continuous improvement, thereby achieving as close to "zero defects" as possible within a specific process (i.e., a lawsuit).

THE 2015 AMENDMENTS

While far from lean, the 80-year old federal rulemaking process is our court system's lengthy method to develop a more efficient and meaningful justice delivery system—the judiciary's very own version of process improvement. Justice Stephen Breyer noted this almost a decade ago at a Georgetown Law H5 e-discovery forum when he opined, "If it really costs millions of dollars to do [e-discovery on a single large-scale matter], then you're going to drive out of the litigation system a lot of people who ought to be there. They'll go to arbitration. ... They will go somewhere where they will write their own discovery rules, and I think that is unfortunate in many ways." The court system must provide value to its users.

Up until recently, the U.S. civil justice system allowed for seemingly unrestrained and disproportionate discovery, resulting in perverse costs, which in turn routinely forced unfair settlements for reasons other than a lack of merits. However, the 2015 Amendments to the Federal Rules of Civil Procedure (FRCP), if implemented by judges and lawyers in the manner intended by the Rules Committee, will work to "balance the scales" and promote over-discovery prevention.

With the 2015 Amendments, the Judicial Conference has done a thoughtful job of balancing the discovery diet of the chubby data glutton that has had just-too-much to eat at the discovery table. Moreover, the 2015 amendments might just provide the tools we need to return to goal oriented, outcome-driven and merits-focused litigation.

In the Supreme Court's 2015 Year-End Report, Chief Justice Roberts propounded the importance of the 2015 Amendments and the path to resolution-driven dispute.

"I cannot believe that many members of the bar went to law school because of a burning desire to spend their professional life wearing down opponents with creatively burdensome discovery requests or evading legitimate requests through dilatory tactics," Chief Justice Roberts wrote.

THE PHILOSOPHY FORCES PRACTITIONERS AND COURTS TO LOOK AT THE BIGGER PICTURE.

THE LAWYERS GUIDE

Operations professionals see Lean Six Sigma as a methodology of defining, measuring, analyzing, improving and controlling (DMAIC) a process or workflow with the goal of enhanced efficiency. Rule 26(b)(1) sets out six proportionality requirements for litigants in the federal court system. Parties must adhere to these discovery limitations if hoping to operate under the rules of the court. Attorneys and judges now act as stewards to these limitations and now must define how discovery is proportional to the needs of the case. Litigants might consider arming themselves with DMAIC data in litigation when analyzing Rule 26(b)(1) proportionality factors, and to prepare for Rule 26(f) meet and confer conferences. Sample lean preparations a party might undertake for a proportionality factor analysis might include:

1. Considering the importance of the issues at stake in the action;

2. The amount in controversy;

3. The parties' relative access to relevant information;

4. The parties' resources;

5. The importance of the discovery in resolving the issues; and

6. Whether the burden or expense of the proposed discovery outweighs its likely benefit.

LOOKING FORWARD

Lean Six Sigma defines critical success factors to include engagement, management involvement, communications, resources, projects, discipline and consequences. While at the time of this article, the 2015 amendments are just over two months old, practitioners should develop plans on how they will commit to engage and educate their colleagues and leadership in training programs around the Rules (like Legaltech New York and EDI's Summit).

Lean Six Sigma, applied to the U.S. civil justice system, might seem strange at first, but the concept is right at "home" when discussing discovery. Applying Lean Six Sigma to discovery can assist in improving the primary review of documents and reduce overall costs, as the philosophy forces practitioners and courts to look at the bigger picture and ask—why is this discovery task done this way (or at all)? Why does the cost of collecting and storing data exceed "X" amount? Is this a value adding step that benefits the client, or the business or is it non-value added?

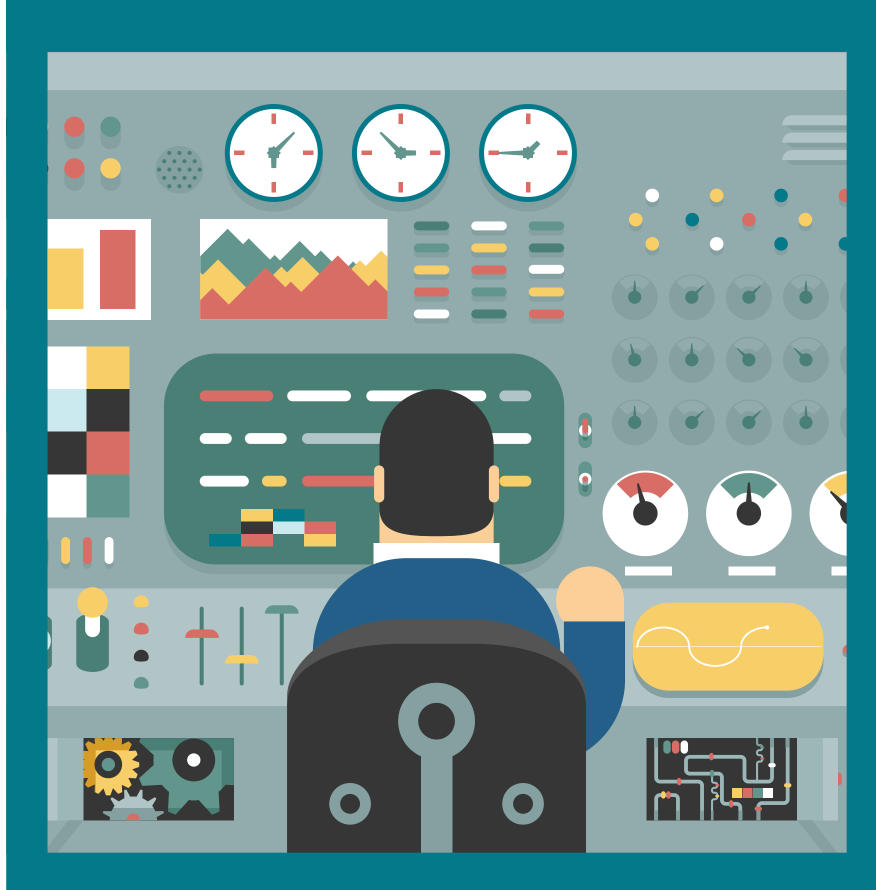
Counsel should consider all these questions when developing his or her proportionality arguments if he or she expects to succeed in practice under the 2015 amendments. It is up to practitioners to seek out education, make the proportionality arguments, and teach clients. If the 2006 amendments are any indication of the learning curve, we have our work set out for us.

Patrick Oot is a partner at Shook, Hardy & Bacon and is a member of the Legaltech News Advisory Board.

TAKING CONTROL

Four platform components that allow users to control the e-discovery process.

BY ERIC LAUGHLIN



DURING THE PAST year, Thomson Reuters has talked to a large number of e-discovery users about what they like and don't like in their current e-discovery solutions. Here's the type of story we hear nearly every day: A litigator is in the middle of a critical e-discovery search. Her screen says, "Total elapsed time: 3 hours, 3 seconds." She sighs in frustration, watching the hourglass tip over and over. She does not know whether the platform is actually searching or crashing. Panic is creeping closer—what will the client think?

We also heard concerns that e-discovery technology needs to be easier to use and there are issues around unpredictable pricing that lead to unnecessary strain on client relationships. We have identified four key components of reliable e-discovery platforms that allow users to act with confidence and take control of the e-discovery process. It is time for litigators to take control of that hourglass.

1. EASE-OF-USE

Our recent survey asked e-discovery users about the greatest sources of their frustrations with current e-discovery solutions. More than one-quarter (26 percent) of respondents noted that their current platforms are confusing and difficult to work with. Not surprisingly, the majority – 84 percent – reported an e-discovery platform's "ease-of-use" is "very important" to them.

It is critical that today's solutions be intuitive and built on the most modern technology available. The platform should provide legal professionals an easy-to-use interface and state-of-the-art capabilities that cannot be matched by older technologies, as well as a comprehensive and seamless e-discovery solution for a single, streamlined experience. Platforms that support a variety of operating systems and browsers can also give users flexibility to work from their chosen devices, a critical advantage.

2. SPEED AND ACCURACY

Law firms and legal professionals put their reputations on the line with every discovery production, and the e-discovery process has never been as complex, costly and critical as it is today. Unfortunately, the high volume of data can often mean system crashes when using legacy discovery platforms built on old technology. In fact, 42 percent of survey partici-

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pants reported issues with slow document load times, and 39 percent said they have problems loading documents. Some existing solutions also often prioritize speed over comprehensive and accurate search results. When results are not complete or accurate, there is significant extra work that needs to be done by the professionals running the search, or they risk missing key documents.

Today's platforms should provide users with both speed and accuracy without sacrificing either. Modern platforms backed by a robust infrastructure can ensure that searches return all of the relevant results quickly—no matter the size of the data or the number of concurrent users.

3. RATIONAL PRICING

More than ever, law firms and in-house legal teams are experiencing growing pressure to contain costs, yet today's e-discovery solutions utilize complex pricing structures that charge users piecemeal for common tasks or additional users, resulting in unpredictability.

High-quality, scalable and reliable e-discovery platforms should be paired with predictable and transparent pricing models. The platforms should enable legal professionals to control their e-discovery costs and budget more accurately from the start. Furthermore, today's powerful data assessment technologies can give users control to further filter data early on at no extra cost, which increases efficiency from both a speed and budget perspective. These are not nice-to-haves; they are must-haves in the legal industry's "new normal."

4. DATA SECURITY AND INFRASTRUCTURE

Legal professionals need to be confident in their e-discovery system's infrastructure. A trusted, robust system built on the latest technology platform will be backed by data centers with state-of-the-art physical and application security, such as a secure sign-in and two-factor authentication, giving users peace of mind that their data is protected and confidential. This is even more critical in a world where e-discovery projects often consist of between 300 gigabytes to 1 terabyte of data per average-sized matter.

Ultimately, e-discovery technology should be reliable and consistent during each and every matter. As more legal and business professionals depend on e-discovery as a critical tool, the next-generation of e-discovery needs to provide users control of and restore confidence in the discovery process. By partnering with a provider that understands how valuable your time and budget is, users can take back control over the discovery process without sacrificing data accuracy, speed or power.

Eric Laughlin is managing director of Thomson Reuters Legal Managed Services.

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EYES AND EARS

Mitratech's Lawtrac offers legal departments a UI to manage matters and cost.

BY SEAN DOHERTY

LAW DEPARTMENTS ARE at once charged with providing better services and to do more with less. In response, in-house counsel looks to enterprise legal management (ELM) software like Lawtrac, by Mitratech Holdings Inc., to manage legal departments as service points, not cost centers.

Over the last two years, Mitratech has acquired law department technology products like hot properties in a Monopoly game. The Austin, Texas-based company acquired Lawtrac in 2014 and Bridgeway Software and CaseTrack in 2015. Besides customer lists, the acquisitions have brought the company mature technologies, such as Lawtrac, which Mitratech has enhanced and returned to the legal market under its brand.

Lawtrac is designed for small to midsize legal departments with 10 or fewer attorneys and up to 20 total staff. The ELM software will take a law department beyond managing contracts and matters with spreadsheets and document lists into managing department activities, costs and legal spending using an SQL database manager. But don't let SQL intimidate you. Lawtrac sports an easy-to-use Web interface served up from hosted software as a service or from on-premise software.

Last year, Mitratech redesigned Lawtrac, giving it a modern user interface laid out with simple, tabbed navigation identifying dashboards and resources used to accomplish specific tasks, such as reviewing legal spending and matter reports and status, viewing upcoming events, and writing custom reports. Mitratech rebuilt Lawtrac's Quick Find and Super Search functions to home in on filtered groups of materials or search all content, respectively, and enhanced the product's SQL field interface to customize workflows and configure the system without programming support from IT.

For Legaltech 2016, Mitratech continues to offer legal departments a simplified and customizable user interface (UI) to manage matters and documents. The new version 4.1 puts eyes on legal spending, such as the top 50 invoices, the highest invoicing outside counsel, year-over-year fiscal comparisons, and the status and costs of matters by department and practice group. It also lends ears to legal departments to listen for business users requesting legal services through self-service portals.

With Lawtrac's self-service portal, an add-on module, law departments can securely receive requests for legal work from other organizational units and route items, such as contract creation or

CELIA JOHNSON

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review, to appropriate personnel based on business rules.

When forms are properly filled, requests are routed to staff to create a matter from the request without customary delays, such as exchanging telephone calls, email messages or face-to-face meetings. The legal department can grant limited or read-only access to business users to view the status of requests, matter updates, and edited documents. The self-service portal also acts as a messaging platform to send and receive messages from legal staff in Lawtrac and a mechanism to send invoices to legal for approval.

Version 4.1 introduces to Lawtrac a spending management system that supports electronic billing. The e-billing feature ingests LEDES (Legal Electronic Data Exchange Standard)-supported electronic invoices with expense documentation, time-keeper data, and rate requests from Mitratech's Collaborati product, an add-on module used by more than 11,000 law firms.

When outside counsel submits invoices, Lawtrac's e-billing system detects charges and identifies them as inside or outside predefined limits and either automatically returns the invoices to outside counsel with reason codes or routes the invoice to in-house counsel for review and approval. Invoices inherit cost allocations for charge backs, which are configured in matter details.

Legal spending features include the ability to profile outside counsel's time-keepers proposed matter budgets and support for multiple currencies, value-added tax adjustments, rate request handling and alternative fee arrangements.

DASHBOARDS AND DOCUMENT MANAGEMENT

Lawtrac 4.1 combines spending data with case management information in handy dashboard reports, which display real-time financials and trend data across departments, lines of business, practice areas and matters and more. Reports can display top matter spending, top outside counsel spending, department or division spending, and whether individual matters are falling behind or are staying ahead of their fiscal plan.

Lawtrac comes with built-in practice areas from contracts to securities; others can be customized and aligned with lines of business specific to the organization. Important tasks and key matter events or dates accrete to dashboards with calendar views, timelines and status reports. They must be exported from Lawtrac and imported to Microsoft Outlook—there is no bidirectional calendar synchronization. But Lawtrac supports a built-in mail agent to notify users via email of upcoming events and deadlines, and users can view and create matter status updates in Outlook.

THE GOOD:

- Ingests and automatically routes e-bills for approval.
- Self-service portals for business users to access legal services.
- Upload messages and attachments from Microsoft Outlook.
- View and create matter status notes in Outlook.

THE BAD:

- Key matter events do not synchronize with Outlook calendar.
- Matter audit log lacks filtering mechanism to narrow views.

THE PRICE:

Typical Lawtrac clients pay $20,000-$40,000 in annual subscription fees. Spend management (Collaborati) is an add-on module to matter management; the costs are shared across the corporate client and law firm.

Mitratech's Report Writer is used to customize reports in mouse clicks to include or exclude field output, providing staff the data they need to accomplish daily tasks. Reports can be flagged and grouped in a tabbed display in user dashboards and include budget and invoice reports by matter and law firm, personnel assignment matrix, actual and reserve budgets by fiscal year, settlements by year and more. Lawtrac rules can automatically issue reports at regular intervals and output results to HTML files that can be flagged, bookmarked and incorporated into dashboards or exported in Excel, Word or PDF format.

A document management system (DMS) is included in Lawtrac's basic offering. The DMS supports reviewing, comparing and tracking documents with rudimentary versioning.

To get documents into Lawtrac, users upload or link to them, drag-and-drop emails with attachments from Outlook, or drag-and-drop all IBM Lotus Notes files directly onto a drop box that surfaces in Lawtrac's UI. Documents uploaded to Lawtrac are immediately indexed and searchable. Users can control document versions with check-in and check-out functions and share documents.

All matters have transaction records and audit reports display who did what to matters, when. Audit reports support printable views and show all matter notes and status updates in chronological order, but the log lacks filters to narrow the view. Business rules can dictate checklists to accomplish required tasks prior to closing a matter, and matters can be linked to cross-reference parent-child or flat relationships.

For small law departments, the ELM software enables a continuity of data that mitigates staff shortages and outages and reports matter and financial status on demand. ■

SHARK BAIT

HUNGRY INVESTORS HAVE A BIG APPETITE FOR LEGAL TECHNOLOGY STARTUPS. WHICH ONES ARE READY TO JUMP INTO THE TANK?

BY MIKE SUSONG

FOR AN INDUSTRY SO MALIGNED in its pace of adoption and use of technology, the ferocious frequency with which new startups spring to life stands in stark contrast. Each of these companies are leveraging new ideas and angles, aimed at claiming their piece of the legal market's $400 billion pie, with an estimated $9 billion to $12 billion slice being spent on legal software. (For perspective, the most lucrative sports league in the world, the National Football League, will just clear $9 billion this year.)

Based on one funding site, AngelList, 28 legal technology startups popped up in 2015 alone, and a recent Forbes article notes "hundreds of legal startups popping up all over the U.S. and Europe." During Legaltech New York, nine of legal technology's budding startups are sending their chief executives and top lieutenants into the "no-safety-cage scenario" of quick, successive pitches for their products and services. To mimic the drama and suspense captured by ABC's hit show and entrepreneurial battleground known as "Shark Tank," these demonstrations are subject to the questions and whims of a panel of industry giants, potential investors and respected academics.

Who will wow the panel, win the crowd and, perhaps, the masses of the legal industry? Throw out the PowerPoints. Burn the spreadsheets. This is legal disruption in the raw.

Meet nine startups to watch:

CASETEXT

FOUNDED: 2013

WORTHY OF NOTE: "25 Hottest Startups" in the San Francisco Bay Area by Business Insider

PRESENTING: Jake Heller, CEO & Founder

GROWING TO OVER 300,000 users in just over a year, Casetext is on a mission to make the business of law less expensive and easier to understand by tapping the collective expertise of the entire legal community. The platform simplifies legal documents through an open source-style website that allows anyone to read and understand the full text of any legal case for free.

Dividing the law into 42 categories, anyone can search the Casetext website using keywords or citations. Attorneys, professors and legal professionals can annotate documents and court cases to make them easier to understand for other researchers.

JAKE HELLER: "We're developing technology similar to that of Quora or Reddit, where incentives to contribute are paired with intelligent data science to determine which contributions to highlight."

LEGAL ROBOT

FOUNDED: 2015

WORTHY OF NOTE: Capitalizing on AI's buzz, the company officially launches at Legaltech New York 2016

PRESENTING: Dan Rubins, CEO & Founder

LEGAL ROBOT helps people understand legal language by using artificial intelligence to analyze legal documents and translate them into more accessible language. The intelligent assistant flags issues and suggests improvements by considering best practices, risk factors, and jurisdictional differences.

Practical applications include instant error checks for contracts, evaluating contract standards across industries and jurisdictions, and the assessment of contract fairness or transparency.

DAN RUBINS: "Legal Robot is artificial intelligence for legal documents that helps people understand legal language by providing an instant breakdown and error check for contracts, helps people write better legal language, and lets businesses close deals faster."

ILLUSTRATION BY SHAW NIELSEN

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LIT IQ

FOUNDED: 2015

WORTHY OF NOTE: Founded by the "first serial legal tech entrepreneur"

PRESENTING: Gurinder Sangha, CEO & Founder

LIT IQ USES computational linguistics technology to aid attorneys in drafting legal documents. Research has shown that drafting errors are a major cause of litigation. Drafting oversights, like vague language, are automatically detected—limiting risk and the potential for disputes.

GURINDER SANGHA: "We wanted to solve a big issue in the legal services sector and focused on something that many lawyers don't really talk about in our profession, human error. The consequences of drafting oversights can be quite severe. For example, from the research we conducted, one in five commercial lawsuits are caused or made possible by poorly drafted contracts. We believed much of this could be avoided by great software."

CLEARSTONE IP

FOUNDED: 2013

WORTHY OF NOTE: Claims to be the first software of its kind

PRESENTING: Gabe Sukman, COO & Co-Founder

FOUNDED BY A group of patent attorneys and software developers, ClearstoneIP aims to address the significant shortcomings of existing methods in broad-based patent infringement analysis. The Clearstone Elements platform leverages a patent claim indexing system to eliminate the excessive amountof search results commonly retrieved with traditional search methods—like those based on keywords, synonyms, and concept-mapping. The result is a short, manageable list of potentially relevant patents.

CLEARSTONEIP.COM: "Through our experiences in patent law, and over several years, we envisioned a unique search platform that could take advantage of the specific nature of claims-based patent searching as opposed to description-based patent searching. After significant development and streamlining, we proudly launched ClearstoneIP to share this new way of thinking with the innovative public. Our mission is to eliminate, as a barrier to innovation, the difficulty associated with navigating large patent databases."

ARBICLAIMS

FOUNDED: 2014

WORTHY OF NOTE: Progressive idea with vast potential

PRESENTING: Stephen Kane, CEO & Founder

ARBICLAIMS IS AN online small claims court alternative using experienced attorneys and court enforceable, binding arbitration to hear cases online in 10 to 30 minutes, after prior evidence review. It is the brainchild of attorney Stephen Kane, who says he spent too many years watching too many clients waste time and money on small dollar disputes. Costing $129 per person, with a 3 percent winner's discount, ArbiClaims boasts dramatic savings, greater case-by-case scrutiny, and more expedient decisions than most congested court systems.

STEPHEN KANE: "Overall, I'm motivated by the prospect of democratizing the legal system and increasing access to quality justice. ... With Arbiclaims, you get a fair hearing very quickly, without hassle, and without having to spend money to hire an attorney."

CONCORD

FOUNDED: 2015

WORTHY OF NOTE: Up and running in one minute, for free (all basic functionality)

PRESENTING: Matt Lhoumeau, CEO & Founder

CONCORD IS A free contract lifecycle management product that provides unlimited e-signature and contract storage for an unlimited number of users. The platform also includes online collaboration, versioning, track changes and automated templates.

Company officials say the secure cloud-based environment has clients reporting signatures obtained five times faster, with contract approvals and negotiations sped up by 70 percent and compliance requirements improved by 90 percent.

MATT LHOUMEAU: "We've simplified and expedited the contract lifecycle for companies who are now finally able to collaborate and manage all parts of the contract lifecycle online, free of charge. The early adoption of Concord is a testament to the value we're bringing to companies of all sizes and we're thrilled to make contracts easy for everyone."

SMARTCONTRACT

FOUNDED: 2014

WORTHY OF NOTE: Contracts that verify their own performance and perform fully automated dispute resolution

PRESENTING: Sergey Nazarov, CEO

SMARTCONTRACT is harnessing the significant power of blockchain technology to provide substantial public proof of information in order to create contractual agreements that benefit experts and novices alike.

Compiled into an easy to understand design, these trust-based agreements can employ the available data on the Web—currency prices, Web search figures, GPS signals, etc.—to operate "computable contracts" that verify their own performance and perform fully automated dispute resolution.

SERGEY NAZAROV: "We create a substantial amount of trust by putting the documents in hashing form, by tracking external trustworthy data sources and by providing a front end where everybody can see what's going on."

QNC GMBH

123recht.net & frag-einen-anwalt.de (Translates - 123law & ask-a-lawyer)

FOUNDED: 2000

WORTHY OF NOTE: Germany's largest platforms for legal information, advice and document creation

PRESENTING: Michael Friedmann, Managing Director & Daniel Friedmann, CTO

TWO LEGAL services websites seek to provide legal documents and advice in their simplest and most accessible forms.

123law provides free forums with over a million searchable posts and answers, assistance creating basic legal documents for a little as a few euros, and tailored and complete attorney deliberations with pre-agreed, fixed pricing.

At Ask-a-lawyer, clients can: enter a question and the information you seek; an attorney replies within two hours; then ask one follow-up question free of charge.

123RECHT.NET: "We believe in free access to justice for everyone, regardless of education, money or relationships."

JURISPECT

FOUNDED: 2015

WORTHY OF NOTE: First generation of intelligence tools to position corporate legal, regulatory and policy teams as strategic business partners

PRESENTING: Catherine Hammack, CEO & Founder

INSPIRED BY Google's data-driven decision-making policies, Jurispect makes data analytics work for legal professionals, giving them more information with less searching.

Jurispect can automatically track legal and regulatory changes, along with industry and mainstream news coverage relevant to a company or industry. The results pool into user-friendly reports to highlight significant information. The goal is to identify risks earlier in hopes of avoiding future disasters.

CATHERINE HAMMACK: "Jurispect will help fundamentally transform how companies operate by providing organizations with a real-time analytical view of both exposure and opportunities to take proactive steps to manage legal and regulatory risk."

'LAWNTREPRENEURS' DRIVE INNOVATION

Roland Vogl, executive director of the Stanford Program in law, science and technology; executive director of CodeX, The Stanford Center for Legal Informatics and co-founder of Vator.tv and SIPX, Inc., will moderate as the panel attempts to separate truth from bombast.

"At CodeX, we feel that much innovation in our space is driven by creative and hardworking 'lawntrepreneurs.' In recent years, a tremendous amount of promising legal tech companies have been started that offer new solutions across the legal services arena," Vogl says. "We're excited to have been invited again to curate a CodeX Pavilion of interesting early-stage legal tech companies from the CodeX network. We selected nine companies that we think represent interesting new ideas. In sum, all the companies' solutions show how new technologies or technology-enabled processes can help legal professionals enhance their work and create better work product for their clients."

Regardless of the outcome, these entrepreneurs warrant the utmost respect for their bold tenacity in wading into the, apparently now crowded, waters of legal technology. ■

SAAS-Y SOFTWARE

A roundup of noteworthy features vendors have added to their practice management software since Legaltech New York 2015. **By Sean Doherty**

WHEN SOLO PRACTITIONERS AND SMALL LAW OFFICES DO THE MATH, they may find the accessibility, features and security of practice management software-as-a-service (SaaS) products more cost effective per attorney and staff than software packages available for on-premise use. If that has not been the case for your firm in 2015, revisit the providers regularly for updates.

Online practice management software providers frequently roll out new features that ante up to the competition or raise the stakes in the industry segment's software offerings. Here are new and noteworthy features vendors added to their software since Legaltech New York 2015.

THEMIS SOLUTIONS: CLIO

(WWW.GOCLIO.COM)

Clio's new Campaign Tracker is designed to track how much firms spend on marketing campaigns and their return on investment (ROI). Users create trackable campaigns using unique local or toll-free telephone numbers billed at $2.50 or $5 per number, respectively, and $0.07 per call. Calls forward to the firm's business line or another number to track leads, which are separately maintained from contacts in Clio until converted to clients and matters. Dashboard campaign views show the phone number answering the campaigns and amount spent. When leads are converted to matters in Clio, revenue tracks back to the Campaign Tracker to calculate ROI. The Campaign Tracker can also use uniform resource locaters (URLs) to track online campaigns.

Like LexisNexis Firm Manager, some of Clio's subscribers were introduced to Office 365 for Business. The integration synchronizes Outlook calendars and contacts and supports editing and saving documents directly to OneDrive for Business. Subscribers need a business subscription to Office 365 or OneDrive to get started.

OTHER NOTABLE DEVELOPMENTS IN CLIO:

Add client photos to contact cards: Add a photo to contact cards and better remember the name with an associated face to improve client relations.

Calculate contingency fee bills: Specify an agreed upon contingency fee percentage on a matter, enter the award or settlement amount at completing the case, and generate an invoice for the client.

Plan and project matter budgets: Assign budgets to matters and track costs and budget reserves over time as expense entries reduce allocated amounts. The new matter dashboard provides visibility into productivity and profitability—notifications issue when budgets degrade to threshold amounts.

ROCKET MATTER

(WWW.ROCKETMATTER.COM)

Last year, Rocket Matter provided an advanced analytics module to subscribers. The add-on module comprises a package of standard reports designed to collect more billable time, determine the efficiency of the firm's billing process, and identify which attorneys, matters and clients return the highest revenue.

RICHARD MIA

The analytic reports include reports to: identify rain-makers who bring in firm business and the amounts collected from the new clients; project budget limits based on billed time; track performance per user with targeted hourly billing; track hours spent on matters; show which clients pay the most or least, with account discounts, write-offs and unpaid bills.

The new analytic reports follow the Boca Raton, Fla.-based vendor's "Payment by Client" standard report available to all subscribers, without more. The payment-by-client report shows payments made to the firm with a summary of clients, matters, date, description, adjustments and amount of payments.

Like Clio, Rocket Matter now integrates with third-party storage providers. Subscribers can configure Box or Dropbox as their main storage and file-sharing providers by creating matter file structures in their external storage accounts and configuring Rocket Matter's document handlers to point to the external storage via URLs. Changes to the third-party directory structures are synchronized to Rocket Matter, but if subscribers upload documents directly to the practice management system, the changes will not synchronize to Box or Dropbox.

Rocket Matter released Rocket Matter Intake to the company's existing law firm partners. The intake system works with the company's Rocket Matter Websites offering or with subscriber-owned and operated websites. Client intake forms automatically gather new client information and channel it into the Rocket Matter CRM where, at the click of a button, legal professionals can create documents, such as engagement letters, motions and wills.

LEXISNEXIS: FIRM MANAGER

(WWW.FIRMMANAGER.COM)

Firm Manager now sports a Microsoft Office 365 app that synchronizes Office 365 users' Exchange calendar with events and meeting requests in subscribers' LexisNexis Firm Manager database. The bi-directional synchronization software, still in beta, only works with one Office 365 calendar; multiple users cannot sync with the same calendar.

The company also released beta software for matter correspondence. Matters receive unique email addresses to receive messages and attachments. Firm Manager performs a virus scan on attachments, which can be opened for viewing, downloaded or saved to the documents section of matters. Messages are stored in the Correspondence tab.

OTHER NOTABLE RELEASES INCLUDE THE ABILITY TO:

Import Contacts and Matters: Firm Manager's new import contacts feature brings the software up to par with other providers, but the function is not compatible with Microsoft's or Google's contact templates. The new upload matters feature raises the ante for other providers to follow.

Export firm data: LexisNexis supports the export of all matters, contacts, tasks, time and expenses, invoices, and payments with the new Export Firm Data feature. Other providers should implement such a self-service feature for subscribers to back up data and or exit the system on demand.

APPFOLIO: MYCASE

(WWW.MYCASE.COM)

The biggest development over the last year from the San Diego-based company was the implementation of MyCase Payments, a free electronic check system, otherwise known as eCheck or Automated Clearing House (ACH). MyCase Payments enables subscribers to invoice clients with the option to pay by eCheck. No third-party integration is needed to accept online check payments directly from clients' checking accounts.

After MyCase accepts a subscriber's application for MyCase Payments, their operating and trust accounts are set up to accept eChecks. When creating a new invoice or updating unpaid invoices, subscribers check a box to allow online payments and select the bank account to receive the funds.

OTHER NEW AND NOTABLE FEATURES ADDED INCLUDE:

Add invoice after case creation: Users with flat-fee billing can immediately create an invoice after a case is added and a client is linked to the case.

Auto-save internal message drafts: To ensure subscribers don't lose work when adding messages, MyCase automatically saves the content of new messages every few seconds if the connection with MyCase is dropped. Saved drafts are recovered in the Messages tab.

Disclaimer: The author had access to trial accounts for Clio, Firm Manager and Rocket Matter and subscribes to MyCase.

THE 2015 YEAR NOTES THE VENDOR INTRODUCED THE FEATURE, WHICH IS OFFERED BY OTHER VENDORS (Y) OR NOT (N).

Noteworthy New Feature in 2015	AppFolio MyCase	LexisNexis Firm Manager	Rocketmatter	Themis Solutions Clio
Accept credit card payments	N	N	2015	2015
Accept e-check payments	2015	N	N	N
Import matters	N	2015	N	N
Integrate with Office 365	N	2015	N	2015
Integrate with third-party storage providers	N	N	2015	Y
Online client intake forms	N	Y	2015	Y
Track marketing campaigns	N	N	Y	2015

DRUVA DEPLOYS CLOUD PROTECTION SOLUTION FOR GOVERNMENT DATA

Druva provides endpoint data protection and governance solutions to customers through its inSync solution. However, government clients require more protection—particularly following a FIPS (Federal Information Processing Standards) mandate that includes U.S. government-developed security standards.

But can government clients provide increased protection with emerging technologies? According to Druva, the answer is yes, as the company recently announced that it's providing FIPS-enabled endpoint data protection in the Amazon Web Services (AWS) GovCloud.

"Government agencies often face vendor roadblocks around a lack of FIPS support when trying to move to the cloud; FIPS support must exist throughout the entire cloud environment at the infrastructure level through to the application level," says Dave Packer, vice president of product marketing at Druva. "Druva identified this federal data protection market void and is the first to market with an all-encompassing solution that tackles adoption barriers."

Druva provides FIPS-validated encryption modules for the secure transmission of data while leveraging AWS GovCloud FIPS-enabled endpoints and storage. GovCloud is an isolated AWS region for government agencies, contractors and educational institutions to run workloads in the cloud by addressing regulatory and compliance requirements.

Packer says Druva needs to abide by different government compliance requirements during the cloud's development, including ITAR (International Traffic in Arms Regulations), FedRAMP (Federal Risk and Authorization Management Program) and FISMA (Federal Information Security Act).

—Zach Warren

NUANCE RELEASES SPEECH RECOGNITION SOFTWARE FOR LAW FIRMS

Enterprise software provider Nuance Communications' new speech recognition software, Dragon Legal Group (DLG), allows litigation professionals to dictate legal documentation and other transcriptions, packing within it a specialized legal vocabulary and customization features that company officials said enables "fast, efficient and accurate" dictation.

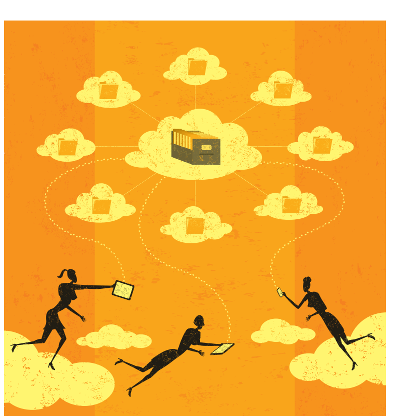
"Most legal professionals deal with a considerable amount of paperwork and administrative tasks every day," says Peter Mahoney, Nuance's chief marketing officer. "These could include typing up case notes, preparing briefs and other documents, managing email, etc. Speech can be up to five times faster than typing, so Dragon helps users complete these tasks much faster, which opens up more time for them to focus on other important responsibilities."

DLG's software has over 400 million words compiled from legal documents; the ability to transcribe recorded notes; and Citrix-virtualized environment support. DLG also has a "What can I say?" feature, which officials said "provides helpful context-sensitive suggestions for words and commands to use as a person is dictating," as well as mobile capabilities.

–Ian Lopez

SONY, CITRIX INTEGRATION ALLOWS FOR IMPROVED PAPERLESS PROCESSES

Legal has been moving from its analog paper existence towards digital document management for a couple of decades, but the evolution moves at a snail's pace. Fortunately, there are document management tools to facilitate a business's move to digital file-sharing.



Sony's Digital Paper—a device that allows users to annotate, share, and save documents in conjunction with a cloud service on one device—is one such technology, and the company improved upon its firmware by collaborating with Citrix. Sony's partnership with Citrix's ShareFile technology is a natural one as Digital Paper is a device for creating documents, and ShareFile enables secure document sharing and syncing.

"The legal profession is very paper intensive," says Bill O'Boyle, senior manager of business development for Citrix. "Many attorneys want to go paperless but have a hard time making that a reality as most new documents and notes are taken originate with paper. This combination of technologies allows users to go paperless without changing their workflows or creating new processes."

–Juliana Kenny

ISTOCK: ALASHI; VENIMO; RETROROCKET

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ENTERPRISE SOFTWARE SLIPS

How to avoid the top five mistakes people make in enterprise software decisions.

BY MARK BULLARD

BRIAN STAUFFER

OVER THE PAST 10 years, I've met with at least a couple hundred companies of all sizes that were at some stage of evaluating the licensing and implementation of an intellectual asset management (or IP management) solution. And many of them made the same mistakes for the same reasons.

The fact is that unless you're in a procurement or IT project management role, your job description probably doesn't include "purchase and implement new software." Therefore, assuming you're not a software purchasing and implementing expert (and even some of them get these wrong) I'm going to walk you through the five biggest mistakes that people make in the process, along with include a path around the obstacle so that you can get the right solution in place with the least heartache.

MISTAKE #5: OVERLOOK STAKEHOLDERS

Evaluating, selecting and implementing a new software solution is an exercise in change management. There have been shelves full of books written about change management over the years, so I won't, and couldn't, go into detail. But there are two maxims you cannot ignore: Most people don't like change, and people accept change better when they are part of the process. Therefore, when evaluating a change, be sure to include as many people as possible as early as possible. As with any rule, there is a limit, but most people error on the side of exclusion than inclusion.

Solution: Identify and include all stakeholders in a manner relevant to their stake.

MISTAKE #4: OVERLOOK WIIFM

What's in it for me? If you don't know the answer to this question for every stakeholder in the process (including your vendors and partners), you will not experience the best possible outcome. Some people talk win/win, but if you want to walk it, you have to know what each person and organization is going to "get" out of the transaction. In one group, you may have two people with the exact same role, but Jane is really looking forward to getting a new system because she hates the old one and likes the idea of increased efficiency. Meanwhile, Jill is looking forward to retiring in two years and the last thing she wants is a new system to learn

when she's been doing it the old way for 15 years.

Solution: Know the WIIFM for each stakeholder and make it attractive for a real win/win.

MISTAKE #3: KEEP SECRETS

It's been said that "knowledge is power," so some people are inclined to think that the more knowledge they have and keep from you, the more power they have over you. The problem with that view is that knowledge is like love. It actually grows the more you give it away. (Cheesy but true!) If you want to get the best possible solution to your problems, you want to share as much as you possibly can with anyone and everyone that will listen. The more you share, the more they can possibly help you. Some companies are very secretive, but I'm not talking about giving away trade secrets. I'm talking about explaining what you're struggling with and getting feedback from people who've been there before. My least favorite examples of this are these two statements: "I'm not going to tell you about my problems. I just want you to show me your solutions. Then I'll decide if they're relevant." And, "I'm not going to tell you what other solutions I'm considering, because I don't know why, but I'm not telling you."

Solution: Share as much as you possibly can with everyone that might be able to help you. (Yes, even with the salespeople!)

MISTAKE #2: START WITH A BUDGET

When you buy a car, your budget matters because more likely than not, you're going to buy a car that is nicer than you actually need. That is, you'll pay extra for luxury. Don't get me wrong. If you need four wheel drive, room for 4 people and a lot of gear, and you'll be towing a trailer, a Ford Focus is not going to cut it. But, a used Ford Explorer would do the job almost as well as the Mercedes G65 AMG though the latter will cost 10x the price. In business software, there is no room for luxury. If a product costs more, it should deliver more capability ... period. I've had people say to me, "That product is like a Rolls Royce, and I just need a Volkswagen". They are always thinking about the cost, not the capability. A more accurate statement would be, "That product is like a bus and I just need a VW."

Start with a use case. Essentially, take a step back and look at the business processes that you would like to improve. Who is involved? What are they doing? How could it be improved? And frankly, you may not know the answers to all these questions, but a good salesperson or a good consultant will help you through this process. Once you've identified the problems, you can start to evaluate the possible solutions and the costs associated with each of them. Now you have the makings of a solid return on investment (ROI) analysis.

Solution: Start with a problem, defined by a set of use cases. Then work towards a solid ROI.

MISTAKE #1: SQUIRREL!

If you've seen the fantastic movie "Up" by Disney Pixar, you know exactly what I'm talking about. But in case you haven't, I'm speaking of distractions. The number one biggest mistake in selecting and implementing enterprise software is getting distracted by matters that don't matter. How pretty is the report? How much does it cost? Can it do this one thing that one stakeholder wants but no one really needs? But if you've done the steps above, and you stick to your guns, this won't happen.

Solution: Start right and stay on target.

Mark Bullard is the vice president of product management at Lecorpio.

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CLOSING THE CONSUMPTION GAP

kCura's Dean Gonsowski talks about the evolution of the e-discovery market.

BY ERIN E. HARRISON

AS THE E-DISCOVERY space continues to mature, some of its most successful players have positioned themselves at the center of what has grown into a massive ecosystem.

At the nucleus is kCura, developer of the widely used e-discovery platform Relativity, according to Dean Gonsowski, who was recently minted as vice president of business development of the Chicago-based company. The former head of business development at Recommind and a 20-year industry veteran, Gonsowski has been around long enough to witness the early days of e-discovery and now sees it settling into a place where only the fittest have survived.

Gonsowski caught up with Legaltech News to talk about his new role and where he sees the industry moving.

LTN: In our last discussion, you mentioned a "sea change" in the e-discovery world; tell us about the maturation you've seen in the market and where you think things are headed.

DG: The last 10 to 15 years in e-discovery have been about companies trying to build best-of-breed e-discovery tools, as well as often trying to simultaneously deliver e-discovery services. For the most part, this experiment has failed. Fortunately, in the last few years, there's been a change in understanding about the capability to do both, and a delineation has emerged allowing distinct software developers to empower a robust service provider ecosystem. This clarity has helped the market stabilize—service providers are able to support different verticals/use cases with even more customization and with a focus on providing a great customer experience. Our opportunity as a pure play e-discovery software provider is to continue building a comprehensive, scalable platform that allows customization for our service provider ecosystem. This model really seems to be generating high growth for the whole sector.

LTN: The Coalition of Technology Resources for Lawyers (CTRL) group seems to be gaining momentum. What is your mission there and why do you think this group is picking up speed?

DG: CTRL really ended 2015 on a high note, driving a conversation between inside counsel about the current (and future) use of analytics in the legal arena. Our survey helped to illustrate the contrast between what people think is going to happen in the future. While 93 percent believe analytics will be critical in the practice of law over the next decade, near-term adoption is only a fraction of that right now. Solving this consumption gap in analytics and other enabling technologies is the raison d'être for CTRL. Our mission is to help practitioners understand and leverage existing technologies, driving the mass adoption that we see coming to fruition in the next ten years.

LTN: Is your new-ish role with kCura what you expected it to be? How so?

DG: I'm very pleased to say that the job has exceeded my expectations so far, both in terms of the opportunity the company has in front of it, as well as the stellar corporate culture. I've been able to work closely with corporate end users in my time here. I'm learning even more about the strength and potential in this part of our community—one-third of the Fortune 1000 use our software, including 71 of the Fortune 100, and it's a great runway to even bigger and better opportunities. It's an exciting time to be at kCura: We have a lot on the horizon for 2016, a strong community that we're working with, and a focus on innovation every day. ■

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