

Filling the Gap between IT and Legal

Bob Gillespie and Dan Junk from eTERA Consulting, a solution provider at the marcus evans Chief Litigation Officer Summit Fall 2010, on e-discovery data management best practices.

Interview with: Bob Gillespie, Vice President - ESI Consulting & Dan Junk, Esq., Vice President - Legal Solutions, eTERA Consulting

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Companies need to fill the gap between Information Technology (IT) and legal, says Bob Gillespie, Vice President - ESI Consulting at eTERA Consulting. Many corporations are trying to take control over their litigation and legal spending but are not finding those capabilities in house. The Early Information Assessment (EIA) methodology allows them to take control over data before it has been requested, as well as giving a consistent legal strategy across different matters, highlights Dan Junk, Esq., Vice President - Legal Solutions.

From a solution provider company at the marcus evans Chief Litigation Officer Summit Fall 2010, Gillespie and Junk share their e-discovery management strategies and discuss how the EIA methodology can help Chief Litigation Officers (CLOs) close the gap between IT and legal.

What are some of the issues challenging CLOs right now?

Bob Gillespie: We are seeing many corporations wanting to take control of their litigation and their legal spending, thus pulling back responsibilities from their outside to inside counsel. In doing so, they are looking for resources internally but they are not finding what they need. They are turning to their IT departments for assistance with technology, which is just as strapped for resources as others.

There is a need for companies to come in and fill the gap between IT and legal, to help them work more efficiently with each other. They have to be shown how to leverage technology to achieve their goals of reducing costs and having more control over data, to make better informed decisions. And perhaps most importantly, allowing them to do it in a legal defensive matter, because the last thing that a CLO wants to deal with is a discovery sanction because data was not properly collected, processed or produced. Often times those sanctions can be pretty significant and in some cases there is more money involved in the sanction than there is in the actual matter that is being contested.

How does the EIA methodology help CLOs reduce costs?

Dan Junk: EIA is a combination of managed services and technology being brought to bear in a certain way in order to give litigation officers the knowledge of what they have before the need to discover it. This reduces costs for those facing multiple litigation, which is a normal part of business, as it allows the re-use of data.

Many organizations do not have much command or control over their data if a vendor is processing it; by understanding what information they have and analyzing how it is being used from a litigation, regulatory, audit and client standpoint, they will be able to control how their data goes out. This allows them to have a consistent legal strategy across different matters and gives them the ability to have control over their information before it has been requested.

Bob Gillespie: There are three components of the EIA: people, process and technology. We look at how these three areas are being leveraged in a corporation, and what efficiencies can be achieved by adjusting them. Corporations are sending data out all the time without looking at it from a 50,000 foot level; they simply react to being sued or they are suing themselves.

What best practices for implementing EIA would you recommend? What should CLOs be careful of?

Bob Gillespie: We focus a lot of attention on litigation holds and how they are being implemented and enforced in the corporation. We often find that companies have overlapping technologies, which may not be the most efficient. When litigation holds are in place, the same custodians are called up to retrieve data, so the organization ends up with a significant volume of data which needs to be held for a long period of time. We look for ways to

streamline that process by creating repositories for responding to discovery, compliance and regulatory requests. Re-purposing data avoids the expense of repeating the process.

We also look at information management and how it is being done internally, and if there are indexing technologies that can help the proactive management of data as opposed to reactively managing to discovery requests.

Dan Junk: It is important to keep the companys record retention and legal policies in sync, whether it is an internal or external regulation. We would recommend systems that allow the tracking of data that is outside the regular retention policy and allows for deletion at the end of its legal hold lifecycle. This is one of the biggest challenges for corporations today. A legal hold throws their record retentions policy out of whack because they might have to keep it for one or three years. They have no way of managing this, but they do have a duty of preserving it. Once they are allowed to delete it, they have no way of feeling confident of doing so because they had not been able to manage its lifecycle.

How should CLOs be preparing for the future?

Dan Junk: The courts are getting much more sophisticated and aware of the technologies that are available; they are no longer buying the stonewall argument of not being able to produce the required data because of the volumes involved. They expect litigators to know what their data set contains as they go to meet and confers in federal courts. More and more states are now adopting very similar rules to the federal courts when it comes to ESI, therefore CLOs are going to have to change their methodologies on identifying and producing data, and preparing for meet and confers.

Bob Gillespie: The courts expect parties to go out to get the expertise or technology they need, if they do not have those capabilities internally. Lawyers are not technology experts and they are not expected to be. But they have to get help from people who are, in order to do things right from the start.

What long-term strategies or best practices would you suggest?

Bob Gillespie: Litigation officers need to give careful and close attention to data management, data retention and the enforcement of their policies, so that deletions are sensible, that they can defend data that is no longer available, and manage it properly and efficiently manage when it is.

Dan Junk: They need to start planning, preparing and building business processes and methodologies around new technologies that are allowing a virtual workforce. For example, the iPad and the iPhone devices. It is no longer just about an exchange server, Word documents and Excel spreadsheets. There are new media and file types that contain data the CLO is responsible for producing and understanding. There are very few corporations that have set up business legal processes to capture that in their litigation response program.

Contact: Sarin Kouyoumdjian-Gurunlian, Press Manager, marcus evans, Summits Division

Tel: + 357 22 849 313

Email: press@marcusevanscy.com

About the Chief Litigation Officer Summit Fall 2010

This unique forum will take place at the Red Rock Casino Resort & Spa, Las Vegas, Nevada, September 12-14, 2010. Offering much more than any conference, exhibition or trade show, this exclusive meeting will bring together esteemed industry thought leaders and solution providers to a highly focused and interactive networking event. The summit includes presentations on addressing the complexities of e-Discovery, maximizing relations with outside counsel and Alternative Dispute Resolution strategies.

For more information please send an email to info@marcusevanscy.com or visit the event website at <http://www.chief litigation officers summit.com/BobGillespieandDanJunkInterview>

Please note that the summit is a closed business event and the number of participants strictly limited.

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Contacts

Sarin Kouyoumdjian-Gurunlian
+ 357 22 849 313
[mailto: press@marcusevanscy.com](mailto:press@marcusevanscy.com)