

Technology – Legal Service Providers

Keeping Up With The Ever Growing Demands Of In-House Practice

The Editor interviews Afshin Behnia, President and Chief Executive Officer, Mitrstech, Inc.; Blane Erwin, Vice President, Strategic Initiatives, Bridge-way Software, Inc.; Jeffery C. Fehrman, Director, Electronic Evidence Labs; Sean M. Foley, Director, E-Discovery Consulting, On Site E-Discovery; Rob Kleeger, Senior Partner, P.G. Lewis & Associates LLC, and Barry Seidner, VP of Product Management and Marketing, Syngence LLC.

Editor: How is technology helping in-house attorneys to keep up with the ever growing demands of their day-to-day practice?

Foley: With the \$1.5 billion verdict against Morgan Stanley and other high profile cases involving the loss or mismanagement of electronic data, electronic discovery is an issue on the radar screens of most corporate counsel every day. In-house attorneys, especially at larger organizations, face a barrage of discovery requests from litigants and regulatory agencies. The latest electronic discovery technologies allow in-house counsel to keep up with the ever growing demand for data and manage that data in a way that will avoid missteps in litigation.

Kleeger: At the three-year anniversary of the Sarbanes-Oxley Act, the government is putting increasing pressure on companies to focus on corporate governance and investigation of irregularities. Technology assists in-house counsel in the fast and cost-effective recovery of information, whether active or deleted, in current computers, servers and databases, on backup tapes or from restored emails.

Erwin: Technology allows in-house counsel to reuse work, whether model agreements, litigation plans, or patent and trademark applications. It cuts days and dollars from their workload.

Editor: What technology solutions are helping law departments to improve their responsiveness to their client's needs?

Kleeger: With today's portable electronic tools, experts can go on site to make an exact forensic image of a computer system. By gathering information clandestinely, outside normal business hours, portable imaging does not disrupt the company's workflow. Responsiveness to clients' needs is enhanced because case assessment can begin immediately and further analysis can be performed down the road as other facts related to the matter unfold.

Behnia: A legal service module that enables the client to request legal services, monitor progress, and collaborate on the iterative tasks gives the legal department the opportunity to provide an unparalleled level of service to the corporation.

Editor: How does technology help a law department manage its relationships with outside counsel?

Behnia: Technology should support both inside and outside counsel in a mutually beneficial relationship. In addition to finding the right attorney and measuring results, it provides the platform for increased collaboration – from documents and real-time matter status updates to electronic budget submission and approval through to e-billing. It supports the entire process of engagement.

Erwin: Technology helps in-house counsel to (1) identify their primary outside economic drain – a case, law firm, area of law, product line, or business unit, (2) recognize high burn rate matters that consume budget much faster than work getting done, (3) compile cost and scorecard history on all outside lawyers for use when selecting counsel for a new matter; and (4) prioritize workload based on risk, cost and business impact.

Fehrman: Having the hard-to-find information at the legal team's finger tips can be invaluable to in-house counsel early in the case to determine if outside counsel is needed, as well as throughout the case to facilitate communication when collaborating on legal strategies.

Editor: How does technology help to decrease costs and increase efficiencies in litigation management?

Seidner: Electronic evidence is already becoming the most difficult challenge for both the defendant and the plaintiff. We have seen that deduplication (which means identifying exact copies of an e-file and abstracting the copies so that they only need to be reviewed once) has gained great acceptance in reducing the amount of data that firms have to review. Being able to review email in the context of a conversation appears to be the next trend to speed accurate production. Technologies that group email into conversations allow reviewers to avoid the parallel of eavesdropping on a single point of view in a conversation. The review process allows one reviewer to be responsible for the whole conversation, now and as more data is delivered to the client. This radically increases effectiveness because the process includes the entire conversation, not random records of evidence.

Foley: Managing the discovery process with electronic discovery technologies and processes is one of the best ways to decrease costs and increase efficiencies in litigation management. In most cases, 90 percent of the client's costs are incurred in the discovery phase. Much of the expenditure comes from managing and reviewing large amounts of documents, both paper and electronic. Electronic discovery filtering technologies empower counsel to limit

the amount of documents for review by date range, key word, file type, and by eliminating duplicative documents from the review set. Counsel also has the option of reviewing the data in advanced review systems, such as online review tools, streamlining document management with advanced searching, coding, reports, and redaction capabilities.

For in-house counsel who must deal with discovery requests on a regular basis, electronic discovery technologies are more than a tool for reducing costs and increasing efficiency, they are an indispensable part of the discovery process.

Erwin: An on-line early case assessment (ECA) system lets the defense team move faster than the other side. The result? They optimize their pre-trial options, including motion for summary judgment, which judges are increasingly willing to support. Studies show litigation costs can be cut by more than 20 percent as a result.

Kleeger: A proactive approach can be very helpful. For example, by imaging a computing system as an employee leaves a company, a forensic expert can identify whether intellectual property or commercial information has been copied or deleted. For this small expenditure, the company can determine whether immediate action is needed and avoid costly litigation.

Behnia: Efficiencies can be gained when the matter management system acts as a central hub for disparate information related to documents, intellectual property, financial and other records, while supporting the e-billing and discovery processes. This in turn provides visibility to trends, early case assessment, and ultimately more strategic management of litigation.

Editor: What are the critical factors to help ensure that the law department will achieve the results desired from its technology solutions?

Erwin: Training is hands down the most critical success factor when using technology. Technology makes a rich video training library available on-demand – 24/7 over the Internet. Customers love it.

Behnia: Direct involvement of the general counsel is critical at each phase of the implementation: at the beginning to provide forward-thinking vision and sponsorship, during the installation to be the project champion, and once the system is deployed to ensure its use and adoption.

Kleeger: Education is critical. All decision makers should understand the capabilities of the technology and their responsibilities in choosing to use it. Document as much as you can in layman's terms, so others can save time in learning the 80 percent that matters to most people in the department.

Fehrman: One-stop shopping for e-discovery, computer forensics, scanning, coding, online review and digital printing can give a litigation team the confidence that the chain of custody will be maintained in a consistent manner without extensive re-training that would be required if independent providers were retained for each function.

Seidner: We believe working with vendors that provide project management is critical to understanding common objectives. Having field based project managers is a clear requirement to improve the possibility of success. Project managers drive meetings that close the gap between client desires and vendors capabilities. Meetings that gain alignment on overall goals, schedule, deliverables, exceptions processes, contact points and escalation procedures maintain a well understood balance on goals and objectives vs. capabilities.

Editor: What technology solutions to the challenges of law department management do you see on the horizon?

Fehrman: The automated archiving of email and other data will dramatically decrease the time required for data collection and volume of data required to be reviewed because the archived email will be available to be searched when the case comes up. The savings in time and cost will encourage everybody to rework how they are managing their electronic records.

Erwin: Technology will bring improvements to e-budgeting and process management. We are part of the profession-wide effort to extend electronic billing standards so law firms can electronically deliver budget plans to in-house clients. We also foresee using on-line systems to guide the team step-by-step during routine in-house processes, such as engaging outside counsel, preparing a corporate filing, or forming a new entity.

Behnia: The legal department of the future will use an enterprise risk monitor that gathers enterprise data to allow proactive and strategic management of litigation, compliance, and asset risks. With the legal system at the hub, integrated with other systems such as HR, manufacturing, accounting and customer service, a dashboard provides an analytical, collective view of trending data for product defect rates, security incidents, claims, customer complaints, fraud, and IP license infringement.

Kleeger: The bottom line is that those who don't take advantage of practical, efficient technologies will find themselves in an increasingly difficult position in today's fast-paced and increasingly complex legal and regulatory environment.