

Micro Strategies Inc. Offers Matter Management Solutions For Legal Compliance

The Editor interviews David P. Gaines, Vice President of Security and Compliance, Micro Strategies Inc.

Micro Strategies' Corporate Solution for Legal Compliance offers a platform offering all functions (from corporate legal support to ESI / e-mail archiving to ESI / e-mail search, discovery and production) that are fully integrated. It is integrated with IBM Enterprise Content Management suite of products.

Editor: What are the biggest challenges in-house legal departments can expect to face with respect to e-discovery?

Gaines: Companies must implement a reasonable, defensible, auditable and cost-effective system for producing all relevant records. The common model has been to collect electronically stored information (ESI) utilizing in-house resources, and then pass the "raw" records to service bureaus or outside counsel for record restoration, preservation, indexing, de-duplicating, searching, filtering, analysis and production.

With the burgeoning volumes of ESI, and eDiscovery becoming a pivotal force in litigation, the cost of contracting eDiscovery services to outside organizations is having an ever increasing impact on the bottom line.

Advancements in technology offer substantial ROI to organizations who bring contracted services in house. For example, bringing the restoration, preservation, indexing, de-duplicating, searching, and initial filtering of the ESI (data flattening) in house can save an organization \$1,000 or more per GB in contract costs associated with processing the raw records. Hundreds of GB's and even TB's of raw data are not uncommon in relatively simple cases. Organizations that have not faced litigation in several years are shocked when they real-

David Gaines joined Micro Strategies in 1994. Over the years, David has helped clients improve their business processes and integrate computerized applications into those business processes. He is responsible for working with clients to help achieve compliance in regulatory matters and to ensure acceptable levels of IT compliance, including FRCP (Federal Rules for Civil Procedures), SOX (Sarbanes-Oxley), Health Insurance Portability and Accountability Act of 1996 (HIPAA), Gramm-Leach-Bliley Act of 1999 (GLBA), National Association Of Securities Dealers (NASD) regulations, and the Securities and Exchange Commission (SEC) regulations. David has attained the CISSP (Certified Information Systems Security Professional) credential, which is an industry accepted measure of competence in the IT security field, as well as a globally recognized standard of achievement. Successful completion of this rigorous certification program attests that the individual has satisfied the established standard of security knowledge, experience and ethical behavior.

Prior to joining Micro Strategies, David was with the Indus Group, where he supported their Enterprise Resource Planning (ERP) system. He has experience designing and marketing electronic document management systems as Executive Vice President at Scangraphics; extensive nuclear and utility knowledge as President of Siemens Energy and Automation/UTL; and has managed training, quality assurance, engineering and maintenance organizations at GPU Corporation.

ize how much a single eDiscovery can cost.

For companies supporting multiple litigations on an ongoing basis, the ability to leverage data flattening from previous cases substantially improves ROI for the technology required to bring data flattening in house. Emerging technologies reduce the need to utilize service bureaus and outside counsel to manage eDiscovery and perform eDiscovery analytics. Larger organizations are already looking at implementing these technologies in house to further reduce eDiscovery costs.

Editor: It sounds as though new and improved technology is the answer to reducing eDiscovery costs.

Gaines: Not completely. The landscape has been forever changed and cases are being won and lost on issues related to ESI. Certainly, technology is an essential element of the solution, but it will not take you out of harm's way without a business process that may have a profound impact on the manner in which you manage and control the capture/creation, use, preservation and destruction of information.

This is a corporate cultural issue and not a technology issue.

The tendency of many organizations is to retain ESI "forever." After all, ESI storage space is cheap – and it seems easier to simply retain everything and avoid the risk of exposure to spoliation sanctions than to implement a retention/destruction policy.

The practice of retaining obsolete records is fraught with high risks and unnecessary expenses. Typically, 50-75 percent of all records retained by an organization are not required to be kept. Once preservation is required for litigation, potentially relevant records that are obsolete cannot be destroyed as long as the preservation requirement is in place. During eDiscovery, this can double or triple your production costs. With eDiscovery running into the high six figure range on relatively small cases and into the high seven figure range in large cases, this is not a trivial expense.

The probability of finding a "smoking gun" in unnecessary records presents a huge risk. In fact, cases have been lost when a smoking gun is found in records that should and could have been destroyed.

Editor: In-house legal departments must mitigate litigation risk through comprehensive matter information management, and evidence preservation and production. What steps should an in-house legal department take to ensure it is exposed to only the lowest level of risk?

Gaines: Address your vulnerabilities through effective planning and process implementation.

My concern is that many organizations do not realize that they face serious litigation risks because they are far too vulnerable.

Risk is measured by the financial impact an event has on an organization. Financial settlements, court imposed financial penalties, adverse inference rulings, protracted eDiscovery, unreasonable eDiscovery demands, and court imposed eDiscovery cost sharing are a few of the litigation risks.



David P. Gaines

They can result from something that happened years ago or just yesterday.

Risk is comprised of two elements: threats and vulnerabilities. We have limited control over threats, but substantial control over vulnerabilities. There are two vulnerabilities of particular concern.

The first is not having effectively implemented and audited records management and ECM systems and processes for the capture/creation, preservation, maintenance, search, retrieval, and life cycle management of records (including scheduled destruction of obsolete records not on hold).

The second is not having an effectively implemented and audited litigation plan that addresses the identification, preservation, collection, processing, review, analysis, production and presentation of information (Electronic Discovery Reference Model (EDRM) excluding information management; i.e. the first vulnerability).

Achieving the lowest level of risk is normally a matter of looking at the incremental cost of reducing a vulnerability to a threat versus the incremental cost of being exposed to the risk. There is no silver bullet. Each organization must address this issue by understanding and acting upon its own circumstances.

Editor: I understand that in-house legal departments may want an integrated platform that utilizes existing corporate data and presents it in a single screen dashboard to alert Corporate Legal of specific areas of risk that need action, such as a compliance event, contract expiration, or litigation deadline. Could you explain the benefits of such an integrated platform?

Gaines: There is a lot of buzz about dashboards and they can present complex and disparate information on a single screen. To date, dashboards are generally associated with a single system like CRM, ERP or ECM/RM or a company's integrated product line. GRC (Governance, Risk and Compliance) is where it is headed. GRC utilizes an integrated dashboard that can present data such as internal and external audit, litigation, regulatory compliance, and contract data. The challenge is how to display the information from very different functions. There is a lot of effort in the GRC area, but it is still in its infancy.

Editor: In-house legal departments are always looking to cut costs. How can your technology facilitate cost-cutting for in-house legal counsel?

Gaines: Micro Strategies has been supporting law firms and corporate legal departments for 25 years. This experience has been translated into our ability to design a fully integrated ECM, records management and eDiscovery solution that addresses all aspects of records creation, capture, restoration, indexing, de-duplicating, archiving, retention/destruction enforcement, search, retrieval, litigation hold, and eDiscovery record management, analytics, and production of both emails and other unstructured content.

Our solution also includes workflow and collaboration tools to enhance productivity in the workplace. Dashboards are available and can be customized as required.

In terms of deliverables, we can provide all of the necessary hardware and software technology, as well as litigation risk analysis, GAP analysis, business process design

and development, policy/procedure development, consulting services, a system implementation methodology, implementation services, training and ongoing support services.

ROI is compounded by delivering on at least four fronts.

- It increases productivity in the workplace by significantly increasing record availability, search and retrieval capabilities while providing robust information workflow and collaboration processes to knowledge workers.

- It dramatically reduces the restoration, preservation, indexing, de-duplicating, searching, and initial filtering costs of ESI related to litigation and regulatory investigations by eliminating expensive outside services.

- It reduces the costs associated with eDiscovery management, litigation holds and record analytics.

- It dramatically reduces litigation risk by having reasonable, defensible and auditable processes across the entire EDRM from record creation/capture to eDiscovery production and presentation.

To achieve satisfactory ROI, our solution can be implemented in phases as the business case dictates. We can provide all services, or focus on only those areas that the client requires within a particular timeframe.

Editor: In-house legal departments view implementation costs and ease of adoption as two important criteria when deciding whether to acquire a new technology system. How do Micro Strategies' services and solutions compare to the competition?

Gaines: Unlike most of our competitors, Micro Strategies offers one-stop shopping for software, hardware and consulting services related to eDiscovery solutions.

Our solutions address the entire Electronic Discovery Reference Model (EDRM) – from initial capture/creation of information in the Records Management element (often years before litigation is initiated) through the production and presentation of relevant documents to opposing counsel as part of a specific eDiscovery case management order.

This includes the more difficult aspects of eDiscovery such as implementing records retention and destruction policies, finding information on tens of thousands (even hundreds of thousands) of tapes, and indexing and de-duping documents in place – including information on tapes. We help clients avoid the restoration/collection of millions of duplicate and non-responsive documents in a repository for indexing and de-duping purposes.

Micro Strategies provides consulting services related to solution design and development of business processes, plans, policies, and procedures. We also provide the implementation, training and ongoing support services, as well as system audits to assure solution effectiveness and compliance. We eliminate the silos that make solution implementation and utilization difficult and expensive. Finally, we help our clients eliminate (or significantly reduce) the expensive service bureau and outside law firm models.

Rather than promoting a "one solution fits all" approach, we offer various solutions from various vendors.

Micro Strategies provides the best fit for a client's needs based on functionality, performance, and cost.

Please email the interviewee at dgaines@microstrat.com with questions about this interview.