



Monday, October 20
4:30 pm-6:00 pm

309 A Practical Approach to Records Management

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General Counsel, Missile Defense Systems
Lockheed Martin Space Systems Company

Alice Lawrence

Principal
Jordan Lawrence

Andrew Rudd

Group Vice President and General Counsel
Newell Rubbermaid, Inc.

Robert Talley

President - Corporate, General Counsel, and Secretary
Johnson Matthey

Faculty Biographies

Shawn Cheadle

Shawn Cheadle serves in a dual role as general counsel to Surveillance & Navigation Systems, a Lockheed Martin Space Systems Company business unit, and as associate general counsel to Lockheed Martin Space Systems Company in Bethesda, MD. Lockheed Martin has a revenue base of over \$40 billion and 140,000 employees in 50 states, Washington, DC, and 30 countries.

As general counsel to Surveillance & Navigation Systems, Mr. Cheadle's charter is to advise line and senior management on all legal issues, including issues involving government contracts and subcontracts in major space and ground systems from the bid-no bid determination through bid and proposal, performance and close-out. Legal issues range from compliance to ITAR, FOIA, OCI, FCPA and hospitality, and control of proprietary data, and drafting and negotiating terms and conditions, teaming agreements, MOU/MOAs, nondisclosure agreements, and international contracts. Prior to this role, he served as general counsel to Space Systems' Missile Defense Systems business unit. As associate GC to Space Systems, Mr. Cheadle's primary responsibility entails providing counsel on internal policies, central procurement, real estate and facilities matters, eDiscovery and records management, and general legal matters to the LM Colorado campuses.

Mr. Cheadle serves on the Board of Directors for ACC's Colorado Chapter, where he is President and Chair of the Board. He is a member of the ABA, public contract section and ARMA International.

Mr. Cheadle received his BA from San Jose State University and is a graduate of the University of Denver College of Law.

Alice Lawrence

Alice Lawrence is a principal of Jordan Lawrence in St. Louis. Her firm focuses on assessing, developing, and enforcing corporate records policies and practices. With 18 years of experience at Jordan Lawrence, Ms. Lawrence is responsible for the executive strategies and implementation process necessary to connect policy to practice. She frequently speaks to the legal and IT communities on managing records to mitigate risks while improving efficiency. Additionally, Ms. Lawrence pioneered the development effort of the company's web-based enforcement tool, Enforcement Solutions.

Andrew Rudd

Andrew Rudd is the group vice president and general counsel for Newell Rubbermaid in Atlanta, where he is responsible for all legal aspects of three subsidiary companies: Graco Children's Products, Calphalon, and Goody Products.

Prior to joining Newell Rubbermaid, Mr. Rudd worked in a diverse group of legal areas, including mergers and acquisitions, litigation, government contracts, commercial contracts (both domestic and international), advertising, regulatory (government agencies such as FTC and CPSC), and compliance.

Mr. Rudd received a BS from the University of Akron, and is a graduate of the University of Akron School of Law.

Robert M. Talley

Robert M. Talley is president – corporate, general counsel, and secretary with Johnson Matthey Inc., based at the Johnson Matthey North American Corporate offices located near Philadelphia. Nearly 200 years in existence, the Johnson Matthey group's principal activities are the manufacture of autocatalysts and pollution control systems; catalysts and components for fuel cells; pharmaceutical materials and services; process catalysts and fine chemicals; the refining, fabrication and marketing of precious metals; and the manufacture of colors and coatings for the glass and ceramics industries. In addition to being responsible for the legal affairs of Johnson Matthey's North American operations, Mr. Talley also holds other executive positions and serves as a director on the boards of Johnson Matthey's US legal entities, serves on the North America compliance committee, group corporate social responsibility committee, and is responsible for the US anti-money laundering program.

Mr. Talley was previously with US Steel in senior human resources management positions and the legal department based in Pittsburgh.

He has been an active member of ACC and ACC's Delaware Valley (DELVACCA) chapter. He has been a member of the DELVACCA Board of Directors, 1st Vice President, President, and immediate past President. Mr. Talley served on the 2008 ACC nominating committee.

Mr. Talley graduated from the College of New Jersey (formerly Trenton State College) and received his JD, cum laude, from Temple University School of Law.

“Records management is the only area of corporate governance where compliance and execution is routinely left to the discretion of employees”

Jordan Lawrence
ACC Annual Conference 2003

Policy ≠ Practice

“Actual” records management practice is seldom consistent with corporate records policy

Study of business representatives

- o 40% were not aware of their company’s corporate records policy
- o 62% did not know how to dispose of records appropriately

Jordan Lawrence 2008

“Data Breaches Hit Record In 2007more than 79 million records reported compromised in the United States”

The Associated Press

“The Plaintiff’s Bar is starting to recognize that *e-discovery* is a powerful litigation weapon, especially when suing companies with large IT systems and voluminous ESI storage”

Ralph E. Losey

“...why shouldn’t sanctions be imposed against any and all attorneys who signed discovery responses, pleadings and pre-trial motions!”

Qualcomm vs. Broadcom Federal Magistrate Judge Barbara Major

“Respondents indicated that records management would be the next significant issue that general counsel would tackle in 2008”

2008 ACC CLO Survey

Why? - Vague and Conflicting Policy

Email Retention Policy

Created by: IS Department
Date in effect: Immediately

Scope: Defines policy regarding retention of electronic mail

Applicable to: All Company employees

Detailed description: Employees must check email communications regularly, retain only those communications that remain appropriate for current business needs, and delete all others after sending or reading.

Long-term storage of email should be kept to a minimum.

No documents are to be saved on the C drive (local hard drive).

Consequences of violation: Space may be limited for saving emails.

Schedules don't Connect

RECORDS	RETENTION PERIOD
• Compensation Surveys	7 years
• Disability Records and Family and Medical Leave Records <ul style="list-style-type: none"> ○ Request for Leave 	3 years after termination of employee
• Disciplinary Records <ul style="list-style-type: none"> ○ Performance Counseling ○ Written or Verbal Warning 	7 years after termination of employee

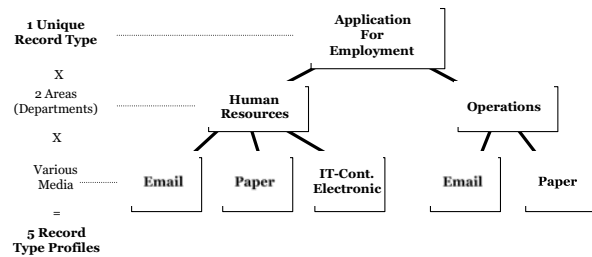
Common Myths

- Retention scheduling is a science
- Technology can save us
- It takes forever and costs a fortune
- You have to go from nothing to perfect to be effective
- When you delete it – it's gone
- IT responsibility to keep everything forever

Record Sprawl

Average Record Type Profiles: 4,100

<u>Paper</u>	<u>Emp-Cont. Elec.</u>	<u>Email</u>	<u>IT-Cont. Elec.</u>	<u>Images</u>
1,483	995	670	628	324



Getting Management Team Onboard

- Cost Reduction
 - Costs of storage (paper and electronic)
 - Litigation discovery costs
 - Nearly every civil case involves e-discovery
 - Average e-discovery costs = \$140,000/case
- Risk Reduction
 - E-discovery
 - Privacy
- It's a requirement!!

Source: John Sterlicchi, "E-trail Leads Straight to Court," *Accountancy Age*, (Mar. 2006)

Wake Up Call...

- o Zubulake v. UBS Warburg
 - o Adverse inference sanction for deletion of emails leads to \$29 M verdict in gender discrimination case. \$20M in punitive damages.
 - o Coleman Holdings v. Morgan Stanley
 - o Burden shifting sanction for failing to timely locate all backup tapes leads to \$1.54B verdict. \$850M in punitive damages.
 - o U.S. v. Philip Morris
 - o \$2.75M sanction for destruction/loss of email
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A Wake Up Call for the Bar...

- o Qualcomm Inc. v. Broadcom Corp.
 - o \$8.6M sanction against Qualcomm
 - o Qualcomm's attorneys ordered to show cause why additional sanctions shouldn't be imposed!
- The New Standard*
- o If the court grants a discovery motion and the losing party fails to comply with the order, the court may impose sanctions against the party.
 - o There is no requirement under this rule that the failure be **willful** or **reckless** – sanctions may be imposed even for **negligent** failures to provide discovery.
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What about Email? What Works and What Does Not?

- o Define how business is conducted using email
 - o Understand the email and hardware infrastructure
 - o Incorporate email into established policy
 - o 39% of business representatives think their records management policy only applies to paper
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What about Email? What Works and What Does Not?

- o Email archiving
 - o 100% of companies consider email it – less than 50% implement
 - o Email management decision points
 - o Auto-delete timeframe
 - o Stratify user base
 - o Mailbox size limits
 - o How are you going to enforce email policy?
 - o Back-up vs. disaster recovery
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Records Management & E-discovery

- o 27% lack a formal process for managing lit holds
- o 82% have differing back-up processes across locations
- o Inconsistency can lead to “litigation inside litigation”
- o Amended Federal Rules of Civil Procedure
 - o 26 (f) Conference
 - o Be prepared to disclose the location and form of ESI
 - o Reach agreement on:
 - o scope of reasonable production / avoid broad categories
 - o preservation/non-waiver of privilege/ work product

Partnering with IT / Role of Technology

- o The challenge
 - o IT projects fail most commonly due to poor requirements definition
 - o Difficult for legal to understand and define what their requirements are of IT
- o Conflicting parallel initiatives
 - o Example: mobile computing security vs. productivity
- o Realistic expectations of technology

Regulatory and Business Considerations

- o Global / Federal / State / Business Requirements
- o Industry Specific Requirements
 - o ITAR, GLB, etc.
- o Privacy Related Requirements (State, Federal, Global)
 - o 39% that work with PII did not identify this information as being sensitive or requiring special attention
 - o 52% of business areas with paper records containing sensitive information do not have secure destruction processes

What about the large organization with multiple LOB's ?

- o Reasonable timelines and objectives
- o Example: Company with operations in 40 countries
 - o Long established culture
 - o 3 principal business divisions
 - o Decentralized organization structure
 - o Highly diverse products
 - o Multiple subsidiaries in North America
 - o Large amount of stored records, some going back over 40 years (“out of sight, out of mind” problem)
 - o IT philosophy: save all for restoration
 - o Litigation discovery lessons



What About the Small Company?

- o Reasonable timelines and objectives
 - o Benefits:
 - o Fewer Employees
 - o Simpler Infrastructure
 - o Policy & Schedule
 - o Risks:
 - o Management Philosophy
 - o Resources
 - o Implementation:
 - o Improved RIM system, legacy cleanup, savings
 - o Industry Drivers
 - o Liquid Event (IPO, merger, etc.)
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Key Considerations

- o Overhaul or enhancement of current records program?
 - o Do I have a defensible litigation hold process?
 - o Who's budget?
 - o What should be included in the budget?
 - o Who else besides legal should be involved?
 - o Do we need external help?
 - o Will this initiative have "Top Level" buy-in?
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Start with Subject Matter Experts

- Understand the corporate infrastructure and processes in relationship to policy, regulatory compliance and preservation
- o Email
 - o Content management
 - o Back-up processes
 - o Paper onsite/offsite
 - o Understand specific tax and compliance requirements
 - o Collect the necessary information to prepare for 26(f) conference
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The Information that Matters

- Business representatives have the knowledge of
- o what record types exist across the enterprise
 - o how they correlate to specific LOB / departments
 - o the media and the applications in which they reside
 - o where redundancy occurs
 - o what is the reference value and business requirement
 - o identify personally identifiable and other sensitive information
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Creating an Actionable Policy

- o Defining retention
 - o Consider regulatory versus business need
 - o Determine "official" version
 - o Eliminate creation of redundant versions
 - o Define retention of general information
 - o Create a policy that defines
 - o Ownership of the policy
 - o Responsibility of employees
 - o Consequences of non - compliance
 - o Audit process and frequency
 - o Anticipate unintended consequences
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How You Implement

- o Collaborate between Legal & IT
 - o Clearly articulate requirements definitions
 - o Ensure current infrastructure can meet the expectations of the policy
 - o Dispose of records & information you don't need
 - o Address any holds
 - o Document logic behind disposal
 - o Invest in technology when reasonable
 - o Cost vs. benefit
 - o Have realistic expectations
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Bringing the People Along

- o Tone at The Top!
 - o Do not create additional work for business representatives
 - o Training should
 - o Educate employees on expectations
 - o Document employee acknowledgement
 - o Identify support resources
 - o Be conducted annually
 - o Be part of the on-boarding process
 - o Establish and enforce appropriate consequences
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5 Things You Can Do Today

- o Map/Understand what you have, where you have it, and why you need it
 - o Partner with IT to develop your Meet & Confer plan
 - o Define "lit hold" process & discovery response plan
 - o Evaluate current policies and retention schedules
 - o Get rid of what you don't need in a defensible manner
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