

FINAL TRANSCRIPT

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****ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program**

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PRESENTATION

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Good afternoon, everyone, and welcome to the ACC webcast, Leveraging Benchmarks to Build a Defensible Corporate Records Program. My name is John Roberts and I'm the moderator for today's webcast. I'm also acting as in-house counsel for Advanta Corp. Advanta Corp. is a highly focused financial services company, which has provided innovative financial services since 1951. Today, Advanta is a leading issuer of MasterCards to over 1.4 million small businesses.

Today's program will last approximately 50 minutes. At the conclusion, our presenters will answer as many questions as we have time for. I encourage you to submit questions to questions@jlggroup.com. Any questions we receive, but not answer live today, will be answered via return e-mail. Our first speaker is Ron Levine. Ron is a partner to Herrick, Feinstein. He concentrates his practice on complex litigation, especially multiparty actions. During the past 25 years, Ron has represented major corporate clients in highly visible matters in diverse fields including product liability, environmental law and employment discrimination. He is regularly called upon to counsel clients on crisis management and prevention. He is a sustaining member of the product liability advisory counsel. He is the former chair of the committee on legal education and admission to the bar of the New York State Bar Association.

Our second speaker is Jeff Hatfield. Jeff is a senior vice president at Jordan Lawrence and plays a key role in helping companies establish and enforce legally defensible corporate records programs covering all records platforms. He is an accomplished speaker, has been published in numerous trade publications and conducts seminars for general counsel, information management, audit and compliance groups. Jeff is an industry expert in banking, the legal community and web services. He is also a member of the Sedona Conference, a nonprofit research and educational institute, dedicated to the advanced study of electronic document retention and production.

Before we get started, I'd like to set the stage for the material you'll be hearing. At Advanta, prior to working with Jordan Lawrence, we had what are probably the typical policies and retention schedules of comparable financial institutions. However, it was difficult for us to get our arms around developing a single control point that would ensure we were applying the necessary standards, rules and controls for sound records management. Jordan Lawrence is helping us improve upon our policies and processes through their use of benchmarking and best practices.

I shudder to think of the resources that would be involved to create a program such as this on our own. By working with Jordan Lawrence, we have the comfort of knowing that the standards that we chose for our company are the same standards utilized by some of the biggest companies in the world. Therefore, please listen to the information you receive today. It reflects best practices that can help you get control of your records.

With that, I'll turn the program over to Ron Levine from Herrick, Feinstein.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

Ron Levine - *Herrick, Feinstein - Partner*

Thank you, John. I really appreciate the opportunity to speak with you today and I hopefully will be able to set the stage properly for Jeff. A few years ago, I would never have imagined that we would spend significant time in a corporate counsel presentation talking about records retention. The world has certainly changed. I know that, for most of you, docking and retention is just one of those headaches that you wish would go away.

This headache of sorts is not going away and only seems to be becoming a larger problem for corporate counsel. With the growing proliferation of e-mails combined with the increasingly aggressive plaintiffs bar with all kinds of government investigations, almost every corporate counsel we speak with has this topic of document retention on his or her short list of major problems that need to be addressed. Indeed, we have developed a subspecialty at our law firm in advising clients about the handling of documents. Today, we are advising our clients to make sure that they have enforced document retention programs. It's in the interest of everyone participating in this program today that a proper retention plan is followed.

I'm going to be going through my PowerPoint slides that hopefully you have access to. And please turn now to the fourth slide, which is entitled Duty of Counsel. Corporate counsel has four major responsibilities when it comes to a records retention program. Counsel has to assist in writing or constructing the policy along with all other key department information technology personnel, communicating the policy to all employees, assisting in coordinating the policy and monitoring compliance with the policy.

Compliance is probably the most important of the four key responsibilities, but the one which, unfortunately, is the most often overlooked. If you take nothing else away from my remarks today, please note that your company cannot claim that you have a records retention program if it sits on the shelf and it's not routinely enforced. I would like to briefly discuss my wish list in dealing with documents and then I will review some basic legal rules for you involving document retention. Many of these rules have developed very recently.

Let's start with an all-to-common situation. A very broad subpoena has been served on your company by a government agency and you have a short time in which to respond. This is the first notice of this investigation and you ask me to come over to your office to talk about the subpoena. I am sitting with any of the corporate counsel listening to this webcast and we are trying to scope out how we are going to pull together and how to respond.

As an outside litigation counsel, what is my initial wish list when it comes to pulling together the requested information? First, I would hope that the company will be in a position to send out a hold notice that can be sent out to the employees who may have relevant documents of data in order to instruct them to preserve documents and records until they are gathered up. Hopefully, the company has a list of the employees who need to be contacted, including their addresses, so we can send out the hold notice. We will, of course, have to work on the language of the notice, but I hope we will not have to start from scratch in figuring out who needs to get the notice. And when the hold notice tells them to stop following the normal records retention schedule, they will have some clue as to what we're talking about.

Secondly, I would hope that there are custodians of records throughout the company who can guide us to the documents and records. What do I not want to hear? Well, I don't want to sit with the head of information technology and get this speech. Ron, we have hundreds of servers all over the world. Everyone has laptops and they have all kinds of other stuff. 75% of our records are stored in electronic format. 30% of the information has never been printed to paper. The general counsel asked me before you arrived if I can search for anything having to do with the X company.

Are you kidding? I don't have a clue as to what kinds of service we have. I don't have a clue as to who has a laptop. Everyone here does his own thing. Hey, do we have 10 years for this project? Well, I'm not kidding. We had probably 10 days, if any, to pull this stuff together. And it's my hope that my client has a policy that gets us access to its documents and which have been enforced on a regular and systematic basis. Now, please turn to slide five, Choosing Retention Periods. And it is my hope that the policy is defensible and the company will have access to the documents and other records which it should have kept.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

If those documents are no longer available, we will want to be able to tell the government agency that there is a good and valid reason why those records were disposed of. Hopefully, there are benchmarks the company has used in setting the retention periods for this document, which may have included their business value, their historic value, regulatory requirements, statutes of limitations and possible litigation needs. Whatever the retention period, they should have been realistic, practical and tailored to the needs of the company.

Now, please turn to slide six entitled ISO 15489-1. I would note that there are general guidelines out there for choosing retention periods. But one of the gold standards for writing retention schedules can be found in what's called the International Standards Organization publication 15489. And the ISO directs the company to look as well at regulatory environment, business requirements and accountability requirements. And of course, the standard states that the decision should not be made intentionally to circumvent any rights of access.

Now, please turn to slide 7, Benefits of the Benchmarks. You're going to be hearing much more from Jeff about the use of benchmarks. But from my vantage point, as an outside counsel, I would strongly endorse their use. They, of course, would assist me in any challenge to the decisions made in connection with the durations used for the retention of documents. They would provide industry reference points and the beauty of consistency in the application of choices.

Now, please turn to slide 8, Writing the Policy. Now to return for a moment to the drafting of the overall policy, what would I recommend it cover? My ideal retention policy would have five major components. Number one - state its purpose. Explain why the company has a policy in place. The policy should briefly state that adherence to the established retention schedule ensures maintenance of viewer (ph) corporate records, protection of vital records and reduction of maintenance and records storage cost.

Number two - the policy should explain how it will be implemented. The policy might state that each department will be responsible for maintaining its own records. That the legal department and the corporate audit depart will be responsible for establishing schedules. If there's a conflict, select the longer period and contact the person in the legal department with any questions. Number three - define what a record is. For example, it might say that a record is correspondence of documents, any media in electronic form or any other material generated, distributed or maintained by anyone in the performance of his or her duties. Number four - it would set retention periods. This would be the bulk of the policy. Here, you would use your benchmarks. You may include citations, the statutes and regulations. Number five - it would detail situations in which destruction is prohibited, such as legal investigations.

To return to the hold notice for a moment, I want to change the hypothetical slightly. A subpoena is easy. A hold notice that is the suspension of document destruction is, of course, the proper course of action when a subpoena comes in. But your company could be on notice of potential litigation months, even years before you receive a subpoena or a pleading from an adversary. When does the duty to preserve begin?

Well, courts have said that if a litigation is reasonably foreseeable, a party may be under duty to preserve evidence. Courts have found that a mere telephone call from a potential claimant attempting to determine the facts surrounding and incident may be sufficient to place a defendant company on notice that litigation can ensue. In one case, a hotel was found liable for the wrongful death of one of its guests after the hotel allegedly waited 14 minutes to call an ambulance after one had been requested. The hotels destroyed its phone log in the normal course of business approximately 30 days after the incident. However, during that initial 30-day period, guest's wife had tried to find out when the call for emergency aid had been placed.

On appeal, the hotel objected to use by the plaintiff at trial the fact that the logs had been destroyed. The hotel argued that the log had been discarded pursuant to established practices, not a part of any effort to destroy unfavorable evidence. The court found that although no suit had yet begun when the defendant hotel destroyed the document, it knew of both the guest's death and his wife's persistent attempts to discover the logs - when the call for emergency aid had been placed. The court stated that when the evidence indicates that a party is aware of circumstances that are likely to give rise to future litigation and

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

yet destroyed potentially relevant records without particularized inquiry, a fact finder may reasonable infer that the party probably did so because the records would harm its case.

Please turn to slide nine - Benefits of the Policy. So, what are the benefits to the company of the policy? I can easily note at least five benefits. First, the reduction of legal risks. Second, the reduction of cost for searches and storage. Third, an improvement in internal knowledge management with ability to access information. Fourth, the elimination of employee discretion. And fifth, the comfort in knowing that all records are being addressed.

Please turn to slide 10 - Key Legal Principles. Now, you must be thinking what use is a document retention program if I'm only going to have to stop the - if I'm going to have to stop destruction of all records every time we even suspect we are going to be sued? Now, you're not under an obligation to preserve every document. Rather, the duty of preservation generally extends only to three categories of documents. First, what the party knew or recently should know is relevant in the action. Second, what is reasonably calculated to lead to the discovery of admissible evidence. Or third, what is reasonable likely to be requested during discovery.

Any legal discussion on document preservation of hold notices would not be complete without mentioning the obstruction of justice statutes. The obstruction of justice laws are rather straightforward. The government could choose to pursue those charges because the prosecutors do not have to prove that a defendant was involved in any underlying crime. The prosecutors only have to show that the defendant lied, destroyed evidence or hindered the government's case. The courts have found that the statutes can kick in and the obligation to preserve records can arise before any formal order of investigation.

The obligation can arise during the pre-investigation period and during an informal inquiry. Indeed, 18 USC, Section 1512, the witness tampering statute, expressly provides that an official proceeding need not be pending or about to be instituted at the time of the offense. Thus, an instruction by a manager, for example, to an employee to destroy documents concerning a potential price fixing scheme, realizing that a federal proceeding could be commenced in the future, could be a violation of this statute. The Sarbanes-Oxley Act added a new anti-shredding statute at Section 1519, as a sort of catchall to close all the loopholes in the obstruction of justice laws and to answer questions as to when the obligation of reserve kicks in.

1519 provides that whoever knowingly alters or destroys any record or document with the intent to impede or obstruct the investigation of a proper administration of any matter within the jurisdiction of any department or agency in the United States or in relation to or constellation of an such matter or case shall be fined or imprisoned not more than 20 years or both. Senator Leahy, the drafter of the statute said the intent of this provision is simple. People should not be destroying, altering or falsifying documents to obstruct any government function.

As we move ahead with this program and discuss records retention, I want to throw out a question and suggest some answers. We often get asked this question. Why don't we just save everything forever? Why get bogged down with five years or 10 years? Why worry about obstruction of justice charges at all? Why don't we just save everything? Wouldn't that be easier? Not exactly. I have come up with five reasons why we don't want to save everything. First, obviously, it's impossible to save everything and even if the company had a policy that everything got saved, some employees would invariably throw something out.

Second, I am sure some of you have had to pay for a room with 10 or paralegals sifting through boxes of documents day after day. Imagine paying for a room full of 100 paralegals, going through all of those permanently saved documents. Third, consider the storage bills. Even if a paralegal never touches the boxes, does the company want to pay for storage cost of boxes of documents going back to 1904? Fourth, how are you going to feel with ancient documents? The employees who might be able to explain the documents probably are long gone. And finally, fifth, as far as computers are concerned, companies are constantly changing software and hardware. Imagine the headaches involved and expense in trying to read old disks and tapes.

Please turn to slide 11 - Risks in Not Having a Program. To summarize, there are significant risks in not having program. There are increased costs in retaining records that should have been discarded and there are all the legal risks involved in not having an enforced program, including fines, adverse inference instructions and possible fines in the default judgment.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

Now, please turn to slide 12 - Pop Quiz. I thought I'd leave you with a pop quiz to see how well you think your company is prepared. I would urge you to read them and any of these items if you answer no. Quickly, to go through the - one, the company has a written retention - records retention program - yes or no. Two, the program was created with input from all department leaders - yes or no. Three, the program is reviewed at least once a year to make sure that it's up to date - yes or no. Four, the program includes provisions for managing electronic mail - yes or no. Five, the employees who are responsible for implementing the program are trained - yes or no. Six, the program is regularly enforced by following up with all employees to make sure that they are complying with the program - yes or no. Seven, the program provides for the handling of files created by retiring and its parting employees - a very important consideration - yes or no. When new personnel are hired, they are trained in how to comply with the records retention program - yes or no. Nine, the law department is notified immediately when the company learns of a civil, regulatory or criminal investigation proceeding - yes or no. Ten, the program is immediately modified to assist in the internal notifications to make sure that no document subject to an investigation or proceedings are destroyed - yes or no.

I want to thank you and I'm now going to turn the program over to Jeff Hatfield of Jordan Lawrence, who's going to focus in on the use of benchmarks in this all important document retention policy. Thank you.

Jeff Hatfield - Jordan Lawrence - SVP

Thanks, Ron. And thanks to everyone for attending today. Let's move onto the next slide and my portion of the presentation about Jordan Lawrence. Jordan Lawrence has been an ACC alliance partner for several years and it's always a pleasure to speak to the ACC membership and provide insights into ways to address the records control issues so many companies are facing today. We've been in business for nearly 20 years and we've always helped companies develop, implement and manage corporate-wide records control and compliance programs.

We've worked with over 800 companies of all sizes and industries, both public and private, and our focus has always been on enforcement. We help them set the standards, the rules and the requirements needed for companies to actually enforce records controls. And we make that critical connection between policy and practice and we've learned that enforcement is the only way to ensure risks are reduced, to ensure costs are minimized and compliance is maintained. And during the course of our experienced, we've actually gathered benchmark statistics and best practices details related to records.

And this is what I want to spend some time reviewing with you today. Applying national and industry benchmark data and best practices is process that produces industry-leading results, which are becoming widely accepted by companies for many of the compliance related categories. Today we're going to address the value of the best practice approach for record management that will enable your company to comply with records-related regulations.

Now, this strategic approach is critical for ensuring that corporate records policies are kept up to date and are consistently enforced. And with this approach, you will be able to realize a substantial reduction in cost, mitigation of related legal risks and have the ability to make informed decisions regarding your corporate records program. But first, however, I'm going to put some framework around the importance of records control enforcement.

Next slide. We've all been painfully made aware of the damages caused by a lack of enforcing records policies and requirements. Companies like Arthur Andersen, UBS Warburg, Microsoft, PWC, Morgan Stanley and hundreds more have each suffered from fines, sanctions and loss litigation directly related to records mismanagement. Now, these companies have all had well-written policies and extensive technologies in place. None of them, however, actually enforce their policies or their retention schedules or their requirements. And this situation, unfortunately, is very common. In fact, last year, we conducted a survey of ACC members regarding records control practices. 80% of the nearly 400 respondents said they have a records policy in place. Only 17%, however, said they actually enforce the policy.

And the companies we hear about in the news and the media could not locate needed records. They could not protect needed records and they were not able to eliminate records when they became obsolete. But today, records control is even bigger than

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

most people think. It goes far beyond simply knowing how long to keep records. Today companies must be focused on things like e-mail and legal hold processes. They must adhere to privacy and rapid production, secure destruction and similar requirements. And they must closely examine the operating cost and the cost of discovery. These are all factors that can quickly increase your risks, your cost and your compliance issues.

Today, there are more than 10,000 laws and regulations in the United States alone governed by federal and state legislation which address records information on all media, including paper, electronic records, image records and e-mail. Now, some of these regulations set standards as to how records are created, how they're stored and accessed, how they should be maintained and destroyed. But most will only provide a guideline. So, this requires you to make decisions on records retention without any basis on which to do so. And basing your decisions on peer-accepted benchmark standards will save you time and money and will give you the confidence that your program is based on best-in-class standards.

Next slide, Active Benchmarking. To properly account for these issues, you must have an enforceable records program and it starts with best practices and benchmark information. When we work with a client, for example, we look at their specific situation and their records across all media types. Our goal is to develop and set the standards, rules and requirements that will enable them to enforce their records programs, to make that connection between policy and practice. And we compare this situation and record-related information to dozens of national and industry benchmark data. And these are some of the most common benchmarking areas we track for our clients.

Most people are surprised to learn that less than 40% of the types of records retained actually fall under any regulatory requirements. So, in absence of regulatory retention requirements, for example, you must look to other requirements, like your tax needs, your tax consideration, your legal or risk consideration. You also need to look at industry standards or the basic business and operational needs within your company. As I've already mentioned, regulatory requirements today go far beyond retention. You must be concerned about things such as privacy requirements and rapid production requirements. With this information, you can tag the appropriate record types to ensure compliance. And there are also many destruction requirements that must be considered. And the appropriate record types must also be (inaudible) to ensure appropriate protection and consistent practices.

On average, companies retain records on 120 different platforms. These are e-mail archiving and management systems, content management systems, servers, applications, your backups, offsite warehouses and so on. And it's not uncommon to find record types retained in six to eight or even more different media types. Now, not all media types are the most appropriate, given certain factors such as cost, volumes, usage patterns and so on. By reviewing this type of information and comparing it to best practices, you can improve the use of your existing technologies and eliminate costly, dangerous redundancies and so on.

The cost related to retaining records is widespread. It's never a single line item on the budget because it goes far beyond what you're paying to your outside storage vendors. It includes systems and server maintenance, software licenses, hardware maintenance, conversion cost and all the legal and discovery costs that go into that as well. And all these areas should be reviewed and compared in order to determine the full impact of your records program. This is also the case for volumes of records retained.

On average, 58% of the records retained by a company are obsolete and should be systematically eliminated. In the banking industry, for example, banks with five billion or more in assets should only be retaining 1,500 boxes of records in offsite storage for every billion in assets. And there's similar benchmarked data for other industries. Through our work with Ron Levine and his firm, we're now learning that, depending on the types of litigation your company might be involved in, there might also be consistent patterns in the type of records requested.

And on average, most clients - most companies are now requiring regularly scheduled employee training and communication of the records policies and related responsibilities and accountabilities. And the trend now is to include this as part of the overall corporate governance initiatives. Now, these types of best practices and benchmarking allow you to systematically get your arms around your records. This information will help you make better decisions throughout the company. It helps you develop

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

policies and controls that can actually be enforced. And it helps you make better use of your existing technologies and make better decisions for future technologies.

Next slide, Starting Point. So this information provides you with a very solid starting point. And you will know the critical knowledge about your company's records. And the best practices - these benchmarks and best practices that we go through roll up into four primary categories that you should always have standardized. And these include things like what are your records. It's rare that we find companies in which they have clear standard classifications of records across the enterprise. In fact, only 14% of our survey respondents said they have classified their records into meaningful standards.

Who owns and controls records? What types of records does each area of your company create and maintain? You must know who owns and controls records in order to ensure they can be protected, that they can be produced when needed and destroyed as needed. This includes not only the official owner of the records, but also any owners of copies of records or different versions of records. Only 3% of our survey said they can easily identify who owns and controls their records.

Where are records located and on what media types? This includes knowing where they are physically and on what media types, but also what other locations they're in, such as your IT managed systems. Only 20% of the survey said they know where their records are located. And finally, when can records be destroyed after they've fulfilled any regulatory or valid business needs? And it's critical to systematically and non-selectively destroy records in accordance with your retention schedule. 72% of our survey said they keep records longer than necessary because they don't know when they can be destroyed.

So, to have an enforced records program, this information must be captured and standardized. And it must be controlled centrally and then apply it to all the media types across the entire company. And it must be regularly updated. Next slide. Ultimately, having this information ensures you can meet these four requirements. And these are the key requirements that must be met consistently in order to protect your organization, to reduce risks and cost, to remain compliant. You must be able to demonstrate to the courts and the regulators that you are consistently adhering to these requirements.

So, first, keep records long enough to meet retention requirements. It's critical that you not only consider legal and regulatory needs as we discussed, but also the valid business requirements. 68% of our survey said they are not retaining records in accordance with their requirements. Second, you must be able to locate records quickly and effectively when needed. When records are required for examination or litigation, you must be able to produce them if you have them. And the courts and the regulators are becoming less and less tolerant of delays. Only 20% of the survey said they can find records easily.

Third, destroy records consistently and non-selectively when they become obsolete. Almost all records become obsolete at some point in time. They cease to be an asset of the organization and they become a liability. And it's in your best interest to destroy them. If the records exist and are requested, they must be produced regardless of when they could be legally destroyed. But again, when destroying records, be absolutely certain to do in a consistently, non-selective and well documented manner. 63% of our survey said they destroy records only as needed when space is a concern. 73% said they allow employees to destroy records at their own discretion.

And finally, corporate counsel must have the ability to enact immediate and verifiable holds. And this is, perhaps, the most important requirement. This is the one requirement that so many companies have been unable to meet and is the one that's caused so many of the fines and the sanctions, the obstruction charges, even adverse inference and loss litigation, as Ron described. 70% of our survey said they send notices to the affected areas of the company to make them aware that records are needed to be protected.

Only 8% said they actually require responses to these notices to validate that these hold and protection orders are being carried out. This means they have no confidence or proof that the records are actually being protected as needed. So, these are the requirements that all companies, regardless of size and industry and both public and private must be able to demonstrate consistent compliance with in order to protect itself, in order to protect its employees, in order to protect its assets and its executives.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

Next slide. We work with clients to ensure the benchmarking information and those four critical types of information about all records are systematically gathered and compared to national and industry benchmarks and best practices. And we do this through a series of profiling sessions conducted with each division, department or functional area and for all media types. This process of profiling allows you set those standards and rules and requirements that are then applied to the records to ensure and to track policy enforcement and compliance. Now, this process will allow you to ensure you're adhering to the requirements and, most importantly, the in-house counsel - you're able to quickly identify legal and regulatory hold requirements to protect needed records. You can also monitor the hold process for all records and for all areas of the company.

This - the systematic application of benchmarking and best practices also allows you to determine what records can be destroyed according to your requirements. And you'll be in a much better position what controls and tactical solutions must be implemented. The tactical solutions are the things like the storage facilities, the third party storage vendors, document management, content management, e-mail archiving and other systems that actually house the records and impact your daily workflow. Now, there's e-mail archiving and other systems that actually house the records and impact your daily workflow. Now, there's no one single tactical or technological solution available anywhere that will effectively control all record types.

These various tactical solutions will always remain independent of one another, but you must have a central hub that manages the standards, rules and requirements and allows them to consistently applied across all the tactical components. In most cases, our clients find that the technologies and the tactics they already have in place today adequately meet their needs once they have the required standards in place. So, they can thereby avoid the costly purchase of new systems. And no matter how advanced the technology, there will always be a human element to records control. You must therefore train employees and communicate specific instructions and responsibilities to them. And this must be tracked, however, with responses indicating the instructions have been carried out and the training is complete, just like any other area of corporate governance. And this is a critical piece to being able to demonstrate compliance with your policies.

Next slide. But this process is only the starting point. Records control and compliance programs are never static. They evolve as new regulations and requirements emerge, as changes occur to you company's structure and as new types of records are identified. The moment your program becomes static, it's most likely no longer in compliance. And this is a common mistake a lot of companies make. The program gets put on the shelf and is not thought about again until some sort of problem surfaces. And by then, it's too late. And simply rewriting the policy or retention schedule will not help the situation.

A best practices approach keeps your program updated with changing standards, requirements, structures, new systems, mergers and acquisitions and so on. And a period review of your inventories, your notification responses and employees actions creates auditable events. And these audit trails then validate controls and keep compliance enforced, creating a more legally defensible records program across all media and built on active benchmark standards. So, in short, your policy remains connected to everyday practice. And you remain compliant, you avoid the related legal risk and you're able to minimize cost.

Next slide. Now, that concludes my portion of our presentation. I'd like to mention that Jordan Lawrence is currently expanding our benchmarking and best practices by working with a concentrated group of companies in certain industries. And we are taking them through our program development and implementation process and simultaneously gathering additional records-related information. And we've named this effort our Best Practices Forum and we're looking for a few more participants in the program. If you're interested in more information regarding this project, please visit us at the website here - jordanlawrence.com/bp or you can call us at 866-527-3310.

Once again, I'd like to thank everyone for your attendance today and now we'll turn the program back over to John.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

QUESTIONS AND ANSWERS

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Thank you, Jeff. Now, I'd like to present the questions we received during the webcast. You can still send questions to questions@jlggroup.com. We will try and answer your questions online, however, any questions we do not get to will be answered offline. Okay. The first question is - is there benchmarking data regarding e-mail?

Ron Levine - *Herrick, Feinstein - Partner*

Let me answer - it's Ron. Let me try to answer it, but then I'll turn it over to Jeff. One thing that concerns me is there's no one size fits all for e-mails. They have to be treated according to their records category. A policy of deleting all e-mails after 90 days is obviously not a good policy. E-mails are not a universal category. I'd be curious to know what Jeff's found at Jordan Lawrence.

Jeff Hatfield - *Jordan Lawrence - SVP*

That's right, Ron. There certainly is no one practice at all that fits all. And there is quite a bit. Surprisingly, there's quite a bit of e-mail benchmarking data available, even though this is such a difficult topic and difficult portion of records for companies to deal with. But benchmarking has been done around things like what are the types of records that are included in e-mail? Which types of e-mail are purely just communicative records that have no requirements to be retained and which ones represent true business requirements? There are benchmarking on the different types of volumes, the different control mechanisms and a lot of other information. And again, these are types of standards and best practices that companies need to be aware of when they're looking at controlling e-mail.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Okay. Here's the next question. Do you find significant variations in benchmarking data for large and small companies, public and private?

Jeff Hatfield - *Jordan Lawrence - SVP*

I'll take this. This is Jeff. And then Ron you can add to it. The things we look at, like cost and volumes - those are obviously proportionate to the size and the complexity of the organization. So, there's variation there. The things like policies, processes, standards and different types of controls, those are typically the same, regardless of the size or type of company. And even our privately-held clients have usually been applying most of the same requirements as the public companies are. I think they're looking at that as that is a very solid standard for which to build their program on. Ron?

Ron Levine - *Herrick, Feinstein - Partner*

Yes. We're finding that one of the areas where there's been major issues and problems are going companies from small to larger as they try to merge from company to company and trying to integrate their systems together. That is a major challenge for companies. And a small company could have significant issues regarding how they've been handling the documents and the computers, even if they haven't invested up until now in that system. Because it's something that often companies may not do at the front end, but may do later.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Okay. Here's an interesting question. Can a company put a program in clustering (ph) litigation?

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

Ron Levine - *Herrick, Feinstein - Partner*

That's an interesting - this is Ron - that's an interesting question, a very good question that often comes up. Companies saying well, we're in the middle litigation, so it's not the proper time to put a document retention program in place. I mean, why would we even be talking about destroying documents if we're in litigation? But most large companies or even small companies always have some sort of litigation or investigations pending. So, as long as they observe the hold notices and hold rules, they - and do not use the program as some kind of effort to destroy the discoverable (ph) documents, they can and should proceed with developing a program.

Of course, documents will be held that need to be held for the purpose of the litigation, but there are probably many categories of documents that are not covered by he need to hold and can be subject to the program in terms of starting it. But certainly, a litigation, I would say, is actually a very good time to start looking at this issue because that's really when many companies are analyzing and learning about their document systems. And it would be a mistake not to take that information and knowledge that was being pulled together with counsel and try to put it together in a formal program. Jeff?

Jeff Hatfield - *Jordan Lawrence - SVP*

Yes, I agree, Ron, completely. In our experience, it's rare that we don't find a company, like you said, that's involved in something. Maybe it's not even litigation. Maybe it's some sort of examination by a regulatory agency or different types of audits. So, there's always something that's going on and, like Ron said, you have to make sure that those requirements have been identified and the needed records are protected, but there's no reason why you couldn't go ahead proceed with getting the standards and the requirements in place for a good program.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Okay. Here's the next question. What is the typical length of time for developing a records program? And then, there's a follow-up to that. What are the typical internal resource requirements?

Jeff Hatfield - *Jordan Lawrence - SVP*

I'll take that. What we've seen is it varies to the obvious factors of what size and complexity is the company and what are their specific goals. Usually, when we go through our process and we're able to apply the different best practices and benchmarking standards, we can complete projects development and implementation in about three to four months. Now, we've had some small companies that take longer than that and we've had some very large, extremely complex companies that have taken a shorter amount of time. And it really kind of depends also on the second part of that company, if I understand it correct - the typical internal resource requirement.

In our process, we require someone from each division or department or functional area to work through, work with us and review a lot of the templated and benchmark information we bring into the project and then help maybe customize and answer some additional questions. And they usually only require about an hour or two of their time. We track that and have statistics on that, so we know exactly what the internal resources requirements are going to be. I think one of the beauties of the process that we've developed that it takes a very large, very complex effort and it disseminates that amongst each of the divisions so that no one area has much more than a few hours to actually put into this to get the program developed and implemented.

There are a few other resources. We always look to an internal advisory team made up of representatives from legal, tax, audit, some of the more regulated areas, possibly. And their job is to approve recommendations and make sure that, legally and regulatorally, the program is a good fit for the company. They also work with attorneys such as Ron. Some of our clients ask for

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

an outside counsel to take a look at the program as well. But again, no one has more than a few hours that has to be put into this.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Okay. Here's the next question. Do you keep benchmarking data updated and the companion question is how often?

Jeff Hatfield - *Jordan Lawrence - SVP*

We keep data updated continually and it comes from a lot of different sources. It comes from work with a client in different areas. It comes from sources such as Ron. Ron's an excellent source on a lot of this information. It also comes from various research that we do as well. And so, that's continually updated and then provided back to our clients so that if there are any adjustments that need to be made, they have that information almost real time. Then, we also go through, typically on an annual basis, we'll go through a larger, more concentrated effort such as the one I described earlier, the best practices forum, where we will either broaden data to cover maybe an industry we haven't been in before or we might pick up on some new trends that we've seen occur and we want to gather more information there that would be useful to the clients.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

And here's the next question. Are records retention schedules covered by the attorney-client privilege?

Ron Levine - *Herrick, Feinstein - Partner*

That's a good question - I - the end result, the policy that would be developed by the company, I would have a - I think we've have a issue or problem with trying to claim its privilege. Often, I think many of the listeners may have found that, at least recently, when they received the document request form an adversary, they're being asked to provide a copy of the records retention policy and it would be difficult to claim privileges, especially if it's not an attorney-client communication. Certainly, when we're involved in dealing with these issues and working with the clients, many of our communications would be subject to attorney-client privilege.

But the end result, the document that's created is more of a business document and it's a document that I think a company should be proud of to produce in, if it had to in a litigation, to show that it thought through all of these issues. That it was an intelligent decision made and how it chose its retention periods. If that document is somehow referenced to legal statutes in which I know that Jordan Lawrence and we can provide, that even helps further to give it back up. So, I would recommend that, in developing it, the company not view it as some kind of confidential secret document that it's going to hide, but something that it may be much more valuable to the company as an offensive document. Jeff, do you have anything to add?

Jeff Hatfield - *Jordan Lawrence - SVP*

No, I agree completely. That's been our experience.

John Roberts - *Advanta Corp. - Moderator, In-House Counsel*

Well, that's all the time we have for today's webcast. Please note that this webcast has been recorded and will be available in its entirety to ACC members from the ACC website. I would like to thank everyone for attending today's webcast and a special thank you to the ACC. Have a great day.

Sep. 28. 2005 / 1:00PM, **ACC - Leveraging Benchmarks to Build a Defensible Corporate Records Program

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