



International
Legal Technology
Association

ILTA Radio Podcast

Interview with: Darrell Mervau
President of FileTrail



Highlights from an interview published December, 2019. To listen to the recording, via [ILTA Radio](#).

Good afternoon. My name is Beth Anne Stuebe. I'm the senior content manager for ILTA and I'm here today with Darrell Mervau, the president of FileTrail.

Welcome Darrell. Let's talk about your article for a second here.

Darrell Mervau: Thank you, Beth. So let me give you a little bit of an idea of where it all started. We've been going around the country and interviewing different law firms about how they're looking at policies around disposition for their electronic documents.

The idea of **"The Elephant in the Room"** came about as we're talking to these firms. They all said they'd like to address a mountain of data that they have in file shares, in their DM systems, and in various other repositories. But they're challenged to reduce that volume, often due to "pressures" from attorneys — there are always those that feel like they need to keep materials forever because of pride of authorship — even though those matters with that data are no longer even active.

The article is entitled **"The Elephant in the Room: The Hidden Costs and Risks of Electronic Records Retention**. And I imagine it's probably not something that most people think about on a day-to-day basis.

Not always. But when they do, it's often eye opening. We had one firm tell us that when they started looking into this, they discovered they have 300 million emails. Can you imagine? What risks lay in those 300 emails? Probably a lot...

That firm is looking at how they can address their policies to have more of an impact in controlling the growth of old data — especially with no active matter or billing activity in play.

And I have to say that firm isn't an outlier. There's data in many firms' repositories related to matters long closed and even clients that have left the firm with no relationship or interaction for years.

And you know, there's really no way of knowing what is contained in that data — it's a tremendous risk.

I had a really interesting conversation at ILTACON with someone who said their company had found a warehousing scenario in a field somewhere. That they had had tractor trailer containers that were just filled with old records. That has to make you — from a risk perspective — just panic a little bit.

Indeed. And from a risk perspective that that physical paper is really the legacy information system for most firms. It's incredibly hard to have complete visibility of what's lurking there — whether it's in a tractor trailer or even Iron Mountain. But the policy ideas about disposition in principle have been well understood, along with the risks.

Today most information is electronic. And the volume has ballooned. What we've been doing is really talking to firms about how to start applying policies to this data as well, in ways that can be effective at scale.

There are metaphorical mountains of electronic data, not hidden, but not really easily seen. And they're often distributed across repositories and file shares. It's a similar scenario, it's just electronic, and significantly more challenging and much riskier.

I think a lot of that harkens back to the idea that if it's out of sight, it's out of mind. That's not the reality of all of this, correct?

Correct. The reality today is with risks like data breaches, disgruntled employees and client guidelines, you need to be controlling data not just in terms of security but also in terms of age and disposition, as part of a unified policy and lifecycle.

Today clients are establishing stricter outside counsel guidelines. These cover how they want their data handled and stored — no more share drives

and limited internal access rights. And they also now dictate how long firms can keep that data. That's because clients know the risks of retention, but they're facing those same risks internally.

For example, financial institutions that are already highly regulated and are executing policies against their data internally want their law firms to start acting the same way. They want them addressing information lifecycle management to their exacting requirements. So when they tell the firm: "I want my data back six months after closing the matter," the firm needs to be ready to comply.

At the same time clients are more clearly designating the information they own and how different types of data should be classified and treated.

So all of this is putting pressures on the firms to start managing policies and information governance beyond just access and security to address the broader data lifecycle.

That correlation between IG and security brings us perfectly into the next question: How are we really adapting to this kind of ever-changing new legal tech world, because the security aspect really has to play into every aspect of it?

It does. Firms are definitely investing in security, creating positions like "Chief Information Security Officer" and looking to enhance their practices.

Security is a critical pillar of the Information Governance, umbrella, along with the policy piece and the lifecycle management piece. Firm culture is now starting to shift to understand how critical it is that all those pieces are working together effectively.

Some are just starting to adopt more formal policies, others are working to better manage the lifecycle and how they manage data cradle to grave.

Disposition is a key element that directly touches culture. Or rather, culture controls how and when information is destroyed. But it's critical to risk management. And if there's data with no value sitting there, and there's a breach, it can result in loss and liability that could have been easily avoided.

Here's one example — we spoke with a firm that has 21 terabytes of old data. They created a destruction policy of matter close plus seven years. But when we asked if that's being executed, we learned it isn't.

It can be hard to start and actually execute the destruction process. Some firms really struggle. Technology can help, most definitely. But there has to be a willingness internally to follow through and actually push the button. Ironic, because the rules say that disposition button must be pushed, but there can be a gulf between theory and practice.

There's also continuing pressure, as we see with GDPR and CCPA rules. These create opportunities to have more of the right internal conversations. As we head into 2020, how do you think this will evolve?

Everyone struggled with GDPR. And CCPA is very real and still taking shape. And we don't know what's coming next. All of these different regulations create the need for firms to develop policies, processes and methodologies. It's another area technology can play a major role in turning policy into practice, especially as firms need to be able to demonstrate compliance to clients and regulators. We certainly are seeing this a major driver for law firm investment in IG, going into 2020, impacting both culture and technology.

Well, I'm excited for everyone to get a hold of the "Elephant in the Room," in the ILTA IG White Paper. And I wonder what's next for you and FileTrail?

We are IG specialists. It's what we live and breathe, and our continuing focus — in fact, we're coming up on our 20 year anniversary. We continue to invest in making it easier for firms to create and manage information lifecycle policies. And at the same time, we're working to address new challenges.

A good example of this is matter mobility tied to lateral lawyer and client movement. That creates real risk, challenges and opportunities. We've been working very closely with several firms to deliver our same philosophical approach of policy integrated with technology, workflow and reporting — all focused on the mobility lifecycle.

Another great example is on the analytics front. We're investing more and delivering tools that show firms a better landscape and heat map of their information risk — broken out by matters, clients and other factors. Today it's critically important to better flag and address compliance requirements, driven by client OCGs, data privacy laws and professional rules. We're really fortunate to benefit from the input and insight from our customers, who are helping shape how these capabilities will grow and scale in 2020 and beyond.

Well. I'm excited again for everyone to read the article. Darrell, thank you so much for joining us and great things to come in both IG and FileTrail.

Thanks, Beth Anne.

