



Podcast Interview:

David Worth, CIO, Nelson Mullins
Darrell Mervau, President, FileTrail

Highlights from an interview conducted by Ari Kaplan,
December 2020. [Listen to the complete recording.](#)



The Impact of Information Governance on Your Law Practice:

How the role of the CIO and technology leaders has evolved in law firms, the increased interest in information governance, what to expect from an IG solution, and where the sector is headed.

This is Ari Kaplan and I'm speaking today with Darrell Mervau, President of FileTrail, and David Worth, CIO of Nelson Mullins. Darrell, can we start by hearing a bit about the history of FileTrail?

Darrell Mervau: We started the company 20 years ago, seeing a great opportunity to innovate. We had built a 100% browser-based product for records management. This was before the cloud was called "the cloud." Back then we called it "hosted" and "internet-based."

We were slightly ahead of the times in 2000, but had the right vision and the world caught up. Over the past two decades we've experienced tremendous growth and adoption, and extended the product to focus more on information governance more broadly, including addressing policy enforcement for both physical and electronic assets.

And today, as new regulations and client guidelines play an increasing role in driving law firm IG and compliance investments, we're being kept quite busy.

David, you've been on the other side of this relationship, in leadership roles at Nelson Mullins for 30 years. How have you seen the role of law firm IT management and technology evolve?

David Worth: In my case the role has definitely expanded over time. I started with a pure focus on technology and that grew to include responsibility for library services and then records management.

That's what brought me to connect with FileTrail — this was part of a broader shift in IT to be more strategic and to put the right assets in place within the firm to more effectively address these issues.

And Darrell, you're seeing more law firm expressing interest in information governance in this way?

Darrell: Absolutely. Our growth and adoption by law firms has close to tripled in the last few years. The real drivers have been not only improving IG in general to better manage internal policies against data, but also those external factors I noted — including outside counsel guidelines and tougher regulations for data privacy and data movement. All of that has just highlighted the urgent need for more modern tools to enable effective compliance.

David, would you agree? Did these factors prompt your investment in IG? And how did that play out?

David: Yes. And I'd note that this is really a journey you have to pursue over time. You can't just put records management as one project and you're done in one year and everything is good.

It takes generally years and years of hard work — creating and editing policies, making your policies simple enough to be understood and followed by everyone, having internal meetings and training to get everyone on board and compliant.

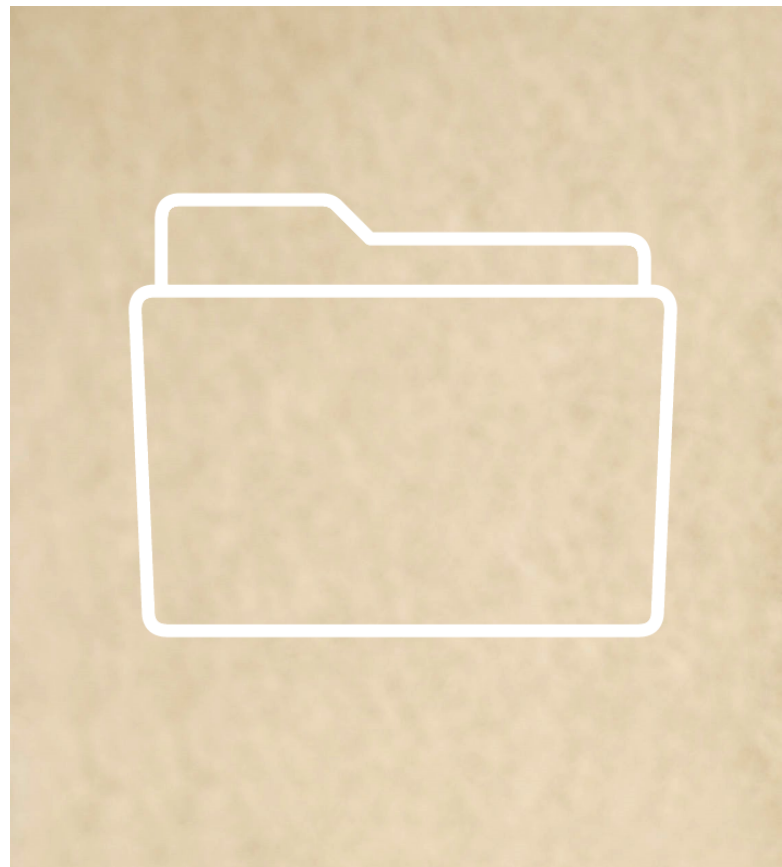
When we started this journey we were using LegalKEY for records. And we quickly realized that governance was not something that software could handle. We were maintaining data on spreadsheets and it was just overwhelming us, so we had to have a better system in place to keep up — not only with our data volume but also the physical space we were accumulating across all of our offices — or else we were just going to fail.

It can feel like trying to get control over what can be uncontrollable monster if you let it get that way.

Darrell what do firms typically expect from an information governance solution today?

Darrell: Much of that is really what David just mentioned. What's critical is the ability to take the policies of the firm and actually apply them to the data so firms can actually look at what's really happening and then gain greater control of that.

And that holds for not only physical paper records but also electronic information, particularly as firms further embrace paper-lite and digital approaches. I'd also say David's experience isn't unusual. Organizations often find themselves struggling with manual processes and spreadsheets. But facing serious challenges, the operational leaders at firms are finding it far easier to get buy-in for more serious investments in information governance from firm management, especially given the stakes.



Firms have invested significant time and money in developing compliance policies. And they realize that it's critical to make sure they're executing against them — just achieving that visibility can be a huge win and demonstration of ROI.

Technology now makes that visibility possible and efficient. And it provides a record of compliance so firms can demonstrate defensible disposition and destruction of records tied to those policies.

So that you can see what your policies look like, not only today, but out into the future. And that includes addressing variations. For example firms may have retention policies set for matter close plus seven or ten years. But often there are sub-categories of records managed within those matters on different schedules.

So for matters closing this year we can show firms what their data looks like now, and what it will look like over time based on their specific IG policies.

David, what do firms typically expect from an information governance solution and how it will impact on their practices?

David: It's super important to have the automation Darrell described, with built-in governance around it. A generation ago, we managed process via paper and it was extremely inefficient, sending documents to attorneys for them to review and sign off on.

Automation means putting all of that online and making things simple and easy for the lawyers. With FileTrail, that review and approval workflow is handled by the software, so we in IT don't have to get developers involved, developing code.

Instead, attorneys get an email, see a dashboard and go through a report, clicking what needs to be retention eligible. That's much simpler. We give them the opportunity to confirm disposition of materials or to request that we keep it. And if they want to keep something that's met a retention deadline, that request is valid for a year and then they get another email reminder to re-evaluate it.

All of this gives us the visibility and ability to forecast in the ways that Darrell described. Seeing the future is very important for things like physical files, because we have to account for storage space and literally make sure we have space for boxes.

With this improved system we can actually be more aggressive about eliminating files and boxes. And with the improved visibility we can generate better forecasts about the space we have and need five



years out. And that ability was highly critical for us. We picked FileTrail as our solution because it could address all of the areas we were struggling with.

Prior to that, our processes were so complex and paper-based we could only undertake a disposition review once or twice a year. Now with automated software, retention schedules and governance reviews are always going out, attorneys are hitting their buttons, and we're purging things all the time. And that's keeping our records staff quite busy.

Do you see other firms interested in a simplified solution for this?

David: In terms of the discussions I've had with peers at other firms, certainly. Everyone wants to do this. But there is some concern about getting attorneys on board and willing to see actual materials disposed of. I have been told that we're ahead of curve in terms of where others want to be.

I tell those colleagues that getting buy-in is really about making the case for doing what's right for the firm and its clients. And that it really is really a journey. If you think you can pull off a sophisticated records and governance program without having good policies, good hygiene in place, it's going to be a difficult road. But if you tackle that, you can move forward quickly and get to where you want to be.

In our case, with physical and electronic IG in place, we're at the point where we're starting to extend things, applying policies to repositories like document shares on file servers, which is a common challenge for many firms. If those are not getting cleaned out, now that will be part of governance as well.



As we get grow the scope of IG at our firm, we're able to take better advantage of what FileTrail can do for us. We just open up that box of tools and use them to make things even better over time.

Darrell, can you share a bit about where do you see information governance headed?

There are a few themes I'd note. One is that as David said IG really is a journey. And we're seeing more firms pursue that journey with greater focus, and working with those organizations.

Another is that we're seeing increasing focus on extending governance to other repositories — because there really is data everywhere across most firms. Clients are really driving firms to do more and do better with IG. And that makes sense, as clients themselves already have sophisticated IG in place.

Clients are issuing more detailed and demanding Outside Counsel Guidelines and hitting firms on both ends of the engagement lifecycle. What I mean by that is they're incorporating IG response criteria into RFPs on the front end, and conducting audits on the back end.

We've worked with firms to prepare for and respond to both. And because we work not only with law firms but also clients in highly regulated industries like financial services, energy and pharmaceuticals, we are able to bring a lot of perspective and understanding to the equation, along with the actual tools we've built.

Finally, I think data privacy regulation continues to grow in importance and scope. And we'll see more of those. A good example is the CCPA out of California. That took effect mid-2020, but was followed by a state referendum, Proposition 24, which expands data privacy laws even further and establishes a new state agency responsible for enforcement. I believe we'll see similar rules and regulations emerge across the country.

Darrell and David, thank you both for speaking with me today on the Reinventing Professionals podcast.



Reinventingprofessionals.com



Ari Kaplan

Host, Reinventing Professionals



David Worth

CIO, Nelson Mullins



Darrell Mervau

President, FileTrail