



An interview with Virginia Henschel and Rob Robinson of Applied Discovery: a worldwide electronic discovery provider

Jan 26th, 2010 | By Gregory P. Bufithis, Esq.

This interview is part of our new series “Data! Data! Data!” — Cures for a General Counsel’s ESI Nightmares”. For our introduction to the series [click here](#).



Virginia P. Henschel, Esq. is Vice President of E-Discovery Affairs for Applied Discovery and in this role, she works with law firms, government organizations, corporations and industry leaders to educate the legal community on the continually evolving law and technology of electronic discovery. She has very specialized knowledge gained while managing complex litigation as a former e-discovery counsel at Sunoco where she managed all facets of ESI for litigation, including designing and managing defensible data collection and production for large, complex legal matters. She now draws upon her experience to help clients develop processes and cost-saving strategies in matters involving the collection, processing and review of large amounts of email and other electronic data.

In addition to her broad market and client education roles, she leads the company’s Financial Crisis Response Team. As a steward and driver of the company’s thought leadership vision, Virginia’s highly relevant corporate and legal background has served to uniquely groom her for these critical company roles.

Among her professional affiliations: admitted to practice before the Pennsylvania Supreme Court and the U.S. District Court for the Eastern and Middle Districts of PA, and a member of various e-discovery organizations. She is a recognized legal panelist and speaker on e-discovery topics.

Rob Robinson, Senior Director of Worldwide Marketing for Applied Discovery is one of the leading lights in e-discovery marketing. Before Applied Discovery, Rob has held senior leadership positions with several top tier providers to include roles as the Vice President of Marketing at Orange Legal Technologies and ONSITE3 and Senior Director of Marketing at

RenewData. He has also had senior level managerial leadership positions in technology-centric organizations to include Crossroads Systems (Director of Marketing – Storage Area Networking), Azurix (Director of Procurement Services – B2B Online Marketplace) and Compaq Computer (Product Manager – Deskpro and Prosignia Product Lines).

But it is probably as an avid blogger (InfoGovernance Engagement Area) and “Twitterer” (@complexd) that he is best known. He is the master of social networking and Web 2.0 marketing talents and for those of us in the e-discovery world he is THE source to keep abreast of the dizzying EDD world –absolutely one of the premier sources of up-to-date information.

We caught up with both at The Masters Conference and in the offices of Applied Discovery.

TPL: First of all, thanks for your time. Based on the recent news activity (you have swamped our staff), it seems that there is a lot going on at Applied Discovery, so we appreciate your sharing a few moments out of your busy schedule with TPL and our audience.

RR: We thank you for the opportunity and you are absolutely right, there are some new announcements centered around Applied Discovery programs and services – programs and services that we trust will help expand our ability to meet client needs worldwide.

TPL: I want to ask you about those announcements and programs, but first can you give a quick overview of exactly how Applied Discovery supports electronic discovery?

RR: Absolutely. Simply put, Applied Discovery is a worldwide electronic discovery provider that offers multi-national collection, analytics, processing, review, and production services for law firms, corporations, and governmental entities engaged in audits, investigations, and litigation. Our company is based in Bellevue, WA, with East Coast headquarters in New York City and regional offices in Washington, D.C., Chicago, Dallas, Houston, San Francisco, Los Angeles, and Toronto.

VH: We were founded in 1998 and have had the opportunity to operate as part of LexisNexis since 2003. While part of the LexisNexis portfolio of legal services, we actually provide and support distinct electronic discovery services under the Applied Discovery brand.

TPL: I noticed you said worldwide Rob. I guess that explains the recent announcement of your Global Alliance Partner Program.

RR: Yes, the Global Alliance Partner Program is just that, Global. Our desire with this program is to bring together the best in electronic discovery technology and expertise and provide it to those who need it most – regardless of where they are located globally. To quote our Vice President of Client Development and Field Operations (Jon Resnick), “we believe that by augmenting our services with capabilities that are not part of our core offerings, and allowing partners to deliver our services to complete their service offerings, we collectively can deliver complete and cost effective services to clients – both directly from Applied Discovery or through members of the Global Alliance Program.”

TPL: And I see you have CPA Global onboard in the program. We have a separate interview with Brandon Daniels of CPA later in this series but what is their take on it?

VH: Well, as Brandon mentioned in our [announcement of the program](#), he believes being a member of the Global Alliance Partner Program, CPA Global has been able to leverage the complete portfolio of Applied Discovery resources to complement its core capabilities to help it meet their client's complex discovery needs. We certainly are seeing that partnering relationships are a very significant development in terms of advancing cost savings for clients; it has been proven in the reduction in costs experienced by Rio Tinto. The Rio Tinto "experience" will be fully vetted by Applied Discovery and CPA Global during the LegalTech Emerging Technology Track presented Monday during LegalTech New York.

[TPL NOTE: The Applied Discovery/CPA Global Session: Case Study: A New Model for Managing Discovery, Monday February 1, 2010, at 10:30am in the Sutton Suite of the NY Hilton OR by live video feed on the Applied Discovery Video Channel @ <http://www.livestream.com/aplieddiscovery>. And TPL will be running live video feeds all during LegalTech on its "LegalTech New York 2010" page.]

TPL: Quite a solid program. What are the partner program categories?

RR: The program has two categories right now:

Platinum Partners – Platinum Alliance partners provide services and expertise that are complimentary with Applied Discovery offerings. These partners are considered based both on Applied Discovery requirements and their ability to represent in a consultative manner their services as part of Applied Discovery led client engagements.

Select Partners – Select Alliance partners provide Applied Discovery services and expertise to their clients. These partners are considered based on their ability to integrate, sell, and support Applied Discovery services as part of their portfolio of service offerings.

We have had much interest in the program since our announcement last week – and if you have readers interested in the program, they can learn more by [clicking here](#).

TPL: I understand Applied Discovery is known for its handling of complex cases in the industry. That brings us to this "tsunami of data" we are taking about in this series of interviews. How do you help your client cope, get organized?

VH: The "tsunami of data" really requires a "tsunami of experience" to support clients throughout the electronic discovery process. And a "tsunami of experience" is one of the areas where Applied Discovery excels – especially in the area of complex discovery. If you consider Malcolm Gladwell's criteria of the need for at least 10,000 hours of practice to achieve expertise in any field, our tsunami of experience comes from the more than 10,000 hours of experience and expertise our team brings to bear in client engagements.

TPL: And that group/experience breaks out how?

VH: We have a Technical Consulting Services group that breaks out into three parts: Custom Data Gathering Strategies which develops secure, custom and comprehensive data-gathering strategies and provides tailored data-gathering solutions using forensically sound procedures that minimize cost, exposure and impact on business operations; a Technology Assessment group that assesses the technological environment to account for organizational, technical and logistical issues that impact effective data gathering; and a Remote Analysis group that provides on-site or remote analysis to estimate data production size and coordinate on-site or remote data reduction services to minimize production expense.

TPL: So, experience rules the day?

RR: Experience is certainly part of it, coupled with in-depth preparation and proven technology.

VH: We continue to see cases where significant spoliation sanctions overtake the liability issues, to the detriment of the party hoping to have the case decided on the merits. Because of these types of preparation challenges, the courts are frustrated with the perceived lack of progress on cooperation among parties in the discovery phase of trial. Our experts readily locate and preserve ESI relevant to the matter and work as a team with both in-house counsel and their law firms to ensure production occurs in accordance with the timetable for the litigation. We find that with experience-based in-depth preparation, we can help clients avoid “over” preservation and help them eliminate unnecessary review costs and delayed productions.

TPL: You mention proven technology; can you elaborate on that?

RR: Definitely. We are working hard to get the message out about our updated and integrated (application level) electronic discovery platform that allows us to provide not only expert-assisted early case assessment to clients, but also allows us to provide processing, review and production services for complex discovery worldwide. I don’t want to load up the interview space so let me give you a [link](#). Additionally, we will be highlighting and previewing some new platform capabilities and features at LegalTech NY to include our Unicode Enablement – which includes “C,J,K” – as well as ...

TPL: Hold on. For some of our readers who don’t know, “CJK” refers to “Chinese Japanese Korean” which are the languages with the biggest demand right now in e-discovery, especially at the document review stage.

RR: Exactly. To continue, we have a very innovative new service we are calling RPM. RPM, an acronym for **R**eview **P**erformance **M**etrics, will provide case administrators the ability to monitor things such as document review progress, reviewer performance, and reviewer accuracy so that they can determine the project status in relation to scheduling and budgets and/or gain more insight into reviewer activities. Those who are interested in learning more about these capabilities should come by our booth at LegalTech NY (it’s booth #334 by the way) or contact one of our team members to ask for more information. And allow me give you a [link](#) to those folks. I would also be remiss if I did not mention our multi-national collections

capability – a capability that allows us to collect ESI “from Cameroon to Canada” in support of our clients.

TPL: “From Cameroon to Canada”. Rob, I could see you have been dying to use that phrase the whole interview. But — frankly — that sounds like that comes from the marketing side of the house. Do you really have that type of international reach?

VH: [laughing] Actually, while it does sound like marketing, I think it’s a very accurate pronouncement of our experience and capability as we have actually done collections in Cameroon and are actually increasing our already strong support of Canada with the appointment of a Toronto-based Former Counsel for the Ministry of the Attorney General, Crown Law Office – Civil, to our team.

RR: Yes, the expanded Canadian presence was formally announced on January 19th and your readers can see it @JDSupra [here](#). They can also see two new Applied Discovery White Papers focused on Canada via @JDSupra [here](#) and [here](#).

TPL: Excellent. I love it when the interviewee provides links. So that all explains why you highlighted multi-national in your description of what Applied Discovery does. Now back to the “tsunami” theme. With the need to be able to deal with a “tsunami of data” – as Ralph Losey says – do we now have a new lexicon, funky technology — and not necessarily technologically astute lawyers?

VH: Initially, I think there was a bias among some lawyers who felt understanding the technical aspects of discovery and document production was a litigation support function. It may surprise you, but it is often the in-house counsel educating the law firm counsel on the technology being employed. Corporations that work closely with their electronic discovery service providers develop legal departments well versed in the technology being implemented.

The best litigation lawyers are adept at getting up to speed quickly on any topic – technology included. However, many law schools have failed to include an electronic discovery course in their curriculum; that is why many of us at Applied Discovery are invited to speak in pre-litigation classes. This lack of exposure makes it difficult for young lawyers and solo or small law firm practices to get up to speed on the technology.

TPL: And since the “tsunami” of data seems to be growing exponentially, greatly affecting the cost of discovery, how do you help your clients cope?

VH: I have said in several forums this year that I believe we are experiencing a sea change in how we conceptualize the discovery process – from a focus on ESI that is responsive to a focus on ESI that is relevant. Initially, we were beset with an overwhelming preservation obligation that often resulted in courts ordering a “snapshot” of the entire universe of corporate data; that was an excessive amount of data and extremely disruptive to corporations. Now courts are acknowledging the need for proportionality and focusing on relevant ESI for preservation. With our vast experience in defining data collection and refining ESI searches for complex discovery, we have been able to help clients understand coping is a process – not an insurmountable task.

TPL: Virginia, moving into 2010, and based on your experience as a General Counsel for a major corporation, what do you see as the biggest challenge in electronic discovery in the coming years?

VH: The biggest challenge, for corporations and law firms alike, appears to be the “mastery” of the process of ESI discovery before the judiciary takes the process away from the parties in order to eliminate discovery disputes. This lack of competency or “mastery” is reflected in case law over and over again, from spoliation to failure to timely produce privilege logs. It is the people using the tools and technology that will continue to advance the efficiencies of the process and help overcome this vexing challenge.

TPL: There is a feeling among in-house counsel (gleaned from the ACC meetings we attended) that direct relationships with e-discovery providers is best, rather than through outside counsel. Do your law firms perceive this as a threat to their business?

VH: In my experience, litigation partners are relieved when they realize the corporation is fully competent to assess the appropriate scope of ESI data collection and review for the matter. When the corporation can lay out a defensible process for its law firm, all parties benefit from the ESI competency the corporation has developed.

TPL: E-discovery providers have also had much success the last 2 years moving into the e-discovery space across the whole EDRM model, especially in the area of document review (the “right side”) and that success is due to the continuing move by corporations to move EDD directly in-house. Document review is a nice piece of change. Is this a move you contemplate?

RR: Based on discussion with electronic discovery practitioners, it appears there may always be a limitation on the magnitude of ESI review that can be done internally by any corporation. It is important for in-house legal departments to develop the skill set for internal human resources, audit, or similar investigations of a sensitive nature. The complex matters with enormous data sets are beyond the purview of even the largest companies. With this understanding in mind, and the need for “mastery” of the electronic discovery process a major challenge – we absolutely will continue to address the importance of supporting in-house expertise with innovative expert assisted services to include early case assessment and our upcoming RPM offering. Our services can be leveraged by legal professionals without the traditional constraints of appliance and software based offerings hence providing some true time, cost, and risk benefits without sacrificing data security. And we do this from a framework of a highly secure environment centered on Applied Discovery equipment residing in both our Tier 4 rated co-location facility and at our corporate headquarters.

VH: And let me highlight that we are not a pure “software” or “appliance” company as some of the newer participants in this market are; we are a service company. For over ten years we have partnered with our clients to produce amazing results for them. Our depth of experience and expertise places us in very select company in the electronic discovery industry – a select company of proven, financially stable, and “in it for the long term” companies.

TPL: The big “new new” thing all of last year — at every event we covered — was early case assessment and winnowing relevant data down to reduce the number of documents to review. As the stats bear out, it is the most expensive part of the process. Is the technology getting to the point where we can also winnow out the eyeballs — contract attorney reviewers?

VH: Our tools continue to evolve to keep pace with the ever-increasing need for review efficiencies. The review of privilege, attorney work product, confidential and proprietary ESI will always require review attorneys and at least two levels of review. As data grows exponentially, so does this segment of ESI. Further, many of the “new” technologies only interface with email and its attachments. Complex litigation requires the review of an extensive list of file types – so there are pools of data that cannot be winnowed “up front”. Additionally, new file types are continually created, such as text messages, that don’t have the associated meta data to allow the use of certain technology.

TPL: Virginia, Rob — we greatly appreciate your time.

VH: Thank you – we certainly appreciate The Posse List as it fosters a collaborative exchange on electronic discovery issues ranging from basic primers to leading edge issues. We are always delighted to have the opportunity to talk with you and your community.

RR: As always, many thanks to the entire Posse List Team. We look forward to seeing you at LegalTech. And if there is ever anything we can do to help you as you seek to educate legal professionals, please let us know as we share that same desire.

Post Script: Applied Discovery will have a major presence at LegalTech this year. Here is where you find will them:

- *LegalTech will be in Booth #334 on Level 1 and The Applied Discovery/CPA Global Session: Case Study: A New Model for Managing Discovery is on Monday February 1, 2010, at 10:30am in the Sutton Suite of the NY Hilton OR by live video feed on the Applied Discovery Video Channel: <http://www.livestream.com/applieddiscovery>.*
- *And we recommend you follow them on their Twitter Feed which is @[discoverapplied](#), their [Facebook Fan Page](#) at and their web page – <http://www.applieddiscovery.com>*

Gregory P. Bufithis is the founder and chairman of The Posse List and its sister sites The Electronic Discovery Reading Room (<http://www.ediscoveryreadingroom.com>) and The Posse Ranch (www.theposseranch.com). He is also founder and chairman of Project Counsel (www.projectcounsel.com).