

**CGOC 2006 SUMMIT**

From Retention to Preservation: **Soup to Nuts**

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# Process Integrity & Efficiency

**Gideon Schor**

Partner

**W&R**

Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

# Gideon Schor, Partner

Gideon Schor is a partner in the firm's New York office, where his practice focuses on securities litigation, compliance matters, white collar crime, and internal investigations. Gideon joined Wilson Sonsini Goodrich & Rosati from Credit Suisse First Boston (CSFB), where he served as director of litigation for the Americas. During his tenure, he was responsible for the company's civil litigation docket in North and South America, specializing in securities underwriting, investment banking, derivatives, asset management, and real estate. As chair of CSFB's e-discovery project, he designed Web-based workflow software for tracking large-scale corporate discovery, and developed deep expertise in document retention and data storage media.

Prior to CSFB, Gideon spent 13 years in the civil division of the U.S. Attorney's Office for the Southern District of New York, where he was appointed chief appellate attorney in 1999. He supervised all of the federal government's civil appellate litigation in the U.S. Court of Appeals for the Second Circuit, including recommendations to the U.S. Solicitor General concerning Supreme Court review. Besides litigating more than 200 appeals, he maintained a steady trial practice, representing dozens of federal agencies in complex regulatory and constitutional matters and focusing on commercial fraud, the False Claims Act, and civil RICO. In 2001, he received the Justice Department's Director's Award. His work has resulted in 99 reported decisions and 50 other Web-accessible decisions.

A frequent lecturer on electronic discovery, Gideon has been an adjunct professor at New York Law School and Fordham Law School, where he taught conflict of laws and legal writing, respectively. He is a member of the Association of Corporate Counsel and served on the Amicus Committee of the Securities Industry Association.

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# Process Integrity & Efficiency

**Deidre Paknad**

President & CEO

PSS Systems

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# Deidre Paknad, President & CEO

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Deidre is a seasoned entrepreneur and software industry veteran with over 20 years experience including developing software solutions for SEC and FDA regulated markets. She founded the CGOC in early 2004 and assembled an ecosystem of domain experts as a resource to executives who seek advice, guidance and insight on critical compliance and oversight challenges.

Deidre joined PSS from Certus, where she launched the company's Sarbanes Oxley compliance strategy and solution. Prior to Certus, Deidre founded and was CEO of CoVia Technologies, a company that was inducted into the Smithsonian Institution for its innovation. Deidre has held numerous marketing and operations management positions in the software, consumer and healthcare industries.

# Many Challenges

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- **COMPLEXITY**
  - Business, people, data
- **RESPONSIBILITY WITHOUT CONTROL**
  - You don't author or own the data
- **COMMUNICATIONS WEAKNESSES**
  - Legal and IT
  - Records and legal
  - Legal and the business
  - Relevance and form

# Connected Processes

## Retention Disposition

### Prescriptive Strategic

Retain what you need –  
Nothing more, nothing less

**What data?**

**What kind of data?**

**Where is it physically?**

**Who is responsible for it?**

**What processes apply?**

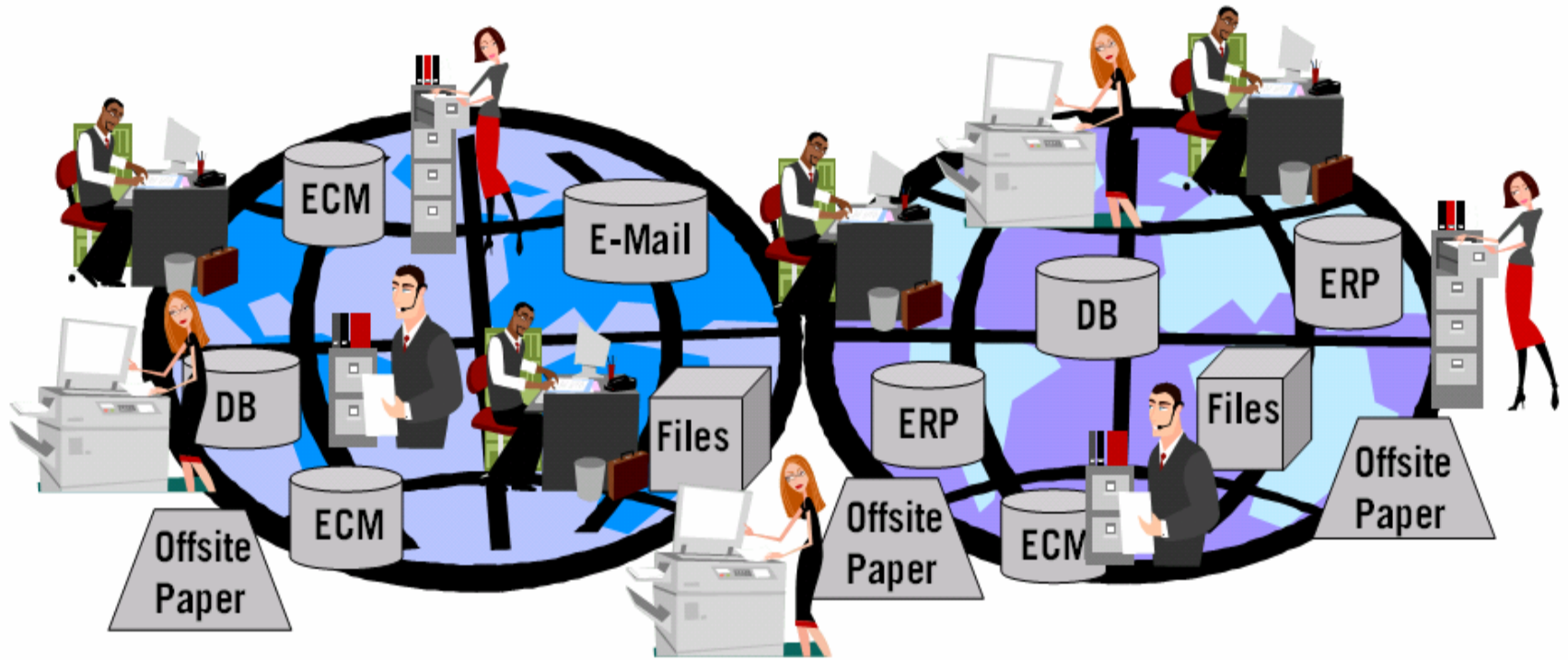
## Preservation Production

### Descriptive Tactical

Notify, collect as req'd  
Nothing more, nothing less

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# It's an Arms Race – and You're Losing!



**Tens of thousands of employees**  
**Hundreds of millions of IT dollars**  
**Thousands of business systems**



**More types of data every day**  
**Doubling the data annually**  
**Storing in more places**

*10 people and a spreadsheet!?*

# It's Irrational and Expensive

## Without a map and oversight framework, you can't keep up with the world:

### In Records

- No coherence; can't reconcile disparate needs
- Different retention schedules for paper, electronic, systems
- Poor compliance and no ability to audit, improve
- Data managed without awareness of policy
- Policy, but no procedures
- Big overhead, small result

### In Litigation

- No coordination between records and litigation weakens position, 30(b)6 testimony
- Can't rely on policy
- Can't trust disposal suspension, no assurance data owner knows what to do
- Bigger collection effort
- No defensive value of policy; easily challenged
- Potential challenge to digital record authenticity or integrity

# Calls for Process Coherence

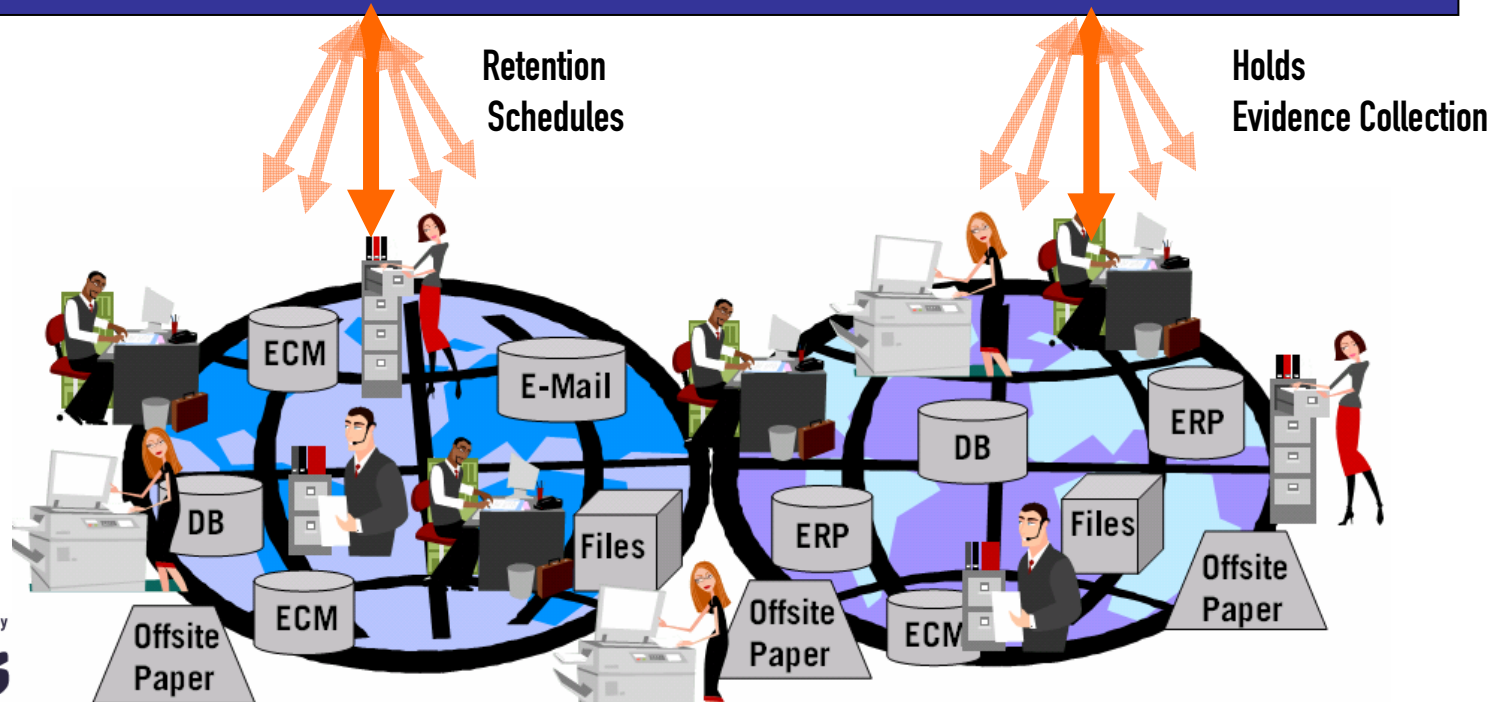
Unified Policy & Process Management

Diverse Data Creation & Management World

## Synchronized Process Framework

Legal & Compliance Process:  
Retention Policy & Schedule Management

Litigation Process:  
Hold Communications & Evidence Collections



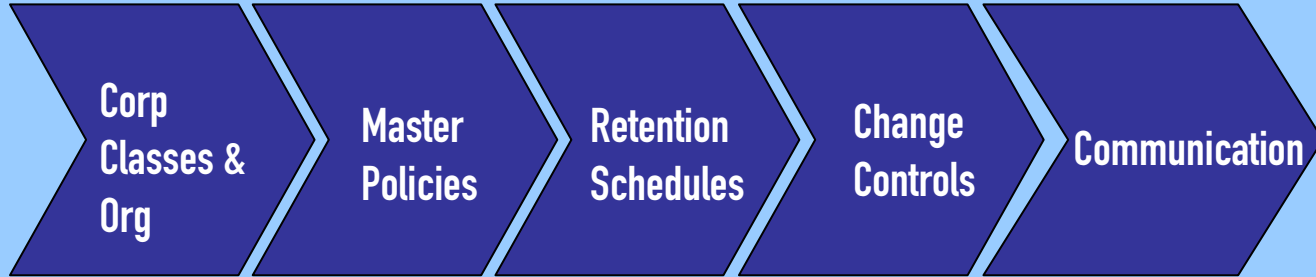
# Zoom In: Coherent ERM Process

## Retention Policy Administration & Management

Across Various Systems & Orgs

Disparate  
schedules,  
disparate  
approaches

Excel  
spreadsheets,  
Access databases



Records  
Coordinators  
Records Storage  
Vendors  
Content & Data  
Systems

Current retention  
schedules

- Corporate information classes and structure
- Maintain unified schema
- Business structure (orgs and geos)
- Records management model
- Retention periods for draft, copies, and finals
- Across all data types and all business processes
- Legal research and references
- Policy details
- Apply policies, proceduralize for business
- Detail retention procedures – custodial systems, coordinators, local rules
- Copy master policy and adjust as necessary
- Real-time synchronization with legal holds
- Change initiation from across the org
- Automatic routing for proper local and corporate approvals
- Change history for all policies and schedules
- Look back in time as needed in litigation
- Easy audit management
- Search and look up via web – by class, procedure, business unit, etc
- Automatic distribution of retention schedules to other systems and service providers
- Automatic change alerts across the enterprise

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# Drives Benefit & Value for the Company

## Now you can ...

- Have a corporate framework that supports business/legal diversity
- Distribute responsibilities to the business while retaining corporate control
- Understand records universe
- Be more precise about legal holds
- Have a reliable “policy master” for legal, business, and IT
- Sustain an accurate retention program and follow it!
- Proceduralize the policy – go from *why* to *what* to *how*

*which ...*

- **Rationally reduces the volume of information**
- **Clarifies data locations and lifecycle for stakeholders**
- **Is defensible and demonstrable**
- **Drives down discovery and IT costs**

# Zoom In: Efficient LCC Process

## Notice & Discovery Management

All Cases & Requests

Case management software



Reviewer software

Outside counsel

Case ID  
Attorney  
Jurisdiction  
Counsel

- Key player identification & system identification
- Master list management
- Records coordinators & IT linkage
- Automate sending legal notices
- Systematic confirms & exceptions
- Systematic alerts and escalations
- Automated reminders
- Shared record of notices sent accessible to team
- Capture what is learned early in process
- Logs & notes shared by team
- Distributed work tracking
- Collect docs, emails directly from individuals directly into system
- Assign collection work to IT or discovery teams; track progress and process
- "Fingerprint" each file for CoC
- Workflow for physical items
- Total collection inventory, details
- Index docs and emails upon collection
- Search all by custodian, content of files, type, date range, etc.
- Search within matter, specific request OR across matters
- Select some or all files to be exported in native format
- Easy export

Selected files in native format

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# Drives Benefit & Value for the Company

## Now you can ...

- Send confirms and not worry about tracking them
- Escalate automatically and know that you have done what's reasonable
- Easily collect directly from employees
- Search from your desktop as soon as you've collected the data
- Cull before you review
- Feel more comfortable certifying the completeness of preservation and production

*which...*

- **Reduces litigation costs significantly**
- **Improves the likelihood of preservation**
- **Is defensible and demonstrable**
- **Improves your defense and reduces your risks**

# Holistic Strategy

