Akin Gump
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STEPPING UP SERVICE WITH CUSTOMIZED TECH TOOLS FOR COMPLIANCE & INVESTIGATIONS

An interview with Akin Gump's Thomas McCarthy, Jaelyn Judelson and Anne Borkovic.

CCBJ: Akin Gump has been recognized by the *Financial Times* for its work in compliance and technology. What led to that recognition?

Thomas McCarthy: Beginning over a decade ago, there was an upswing in enforcement trends by the U.S. government in areas that affected our clients – particularly export controls, sanctions and anti-corruption. At the same time, the regulatory environment was becoming more complex, and U.S. companies were continuing to expand their supply chains and customer bases outside the country. This convergence accelerated complexity, uncertainty and risk for a lot of our clients. It was clear to us that the old models involving the delivery of legal services – for example, memos, procedure drafting and investigations – were not sufficient to address the range of needs in this changing environment. In-house lawyers also didn't have the time to read long memoranda on every topic – they wanted practical solutions to address immediate operational problems.

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Jaelyn Judelson: Some of the largest problems involve managing large data-driven investigations, internal reviews and assessments of specialized trade topics. At first, our efforts focused on using traditional tools, such as eRooms and SharePoint sites, to track and share information. We later worked with our in-house IT team to develop a tailored questionnaire and assessment tool, based on an SQL database that gathered information on a complex ITAR investigation involving hundreds of internal and external users. The tool was used over a two-year period and allowed us to manage the process, track the data and report out on metrics to management and the U.S. government. The evolution from SharePoint-based processes to this tool was what led to the recognition in 2015 by the *Financial Times*.

Anne Borkovic: Building on that experience, we transitioned to using .net applications that our in-house team built to allow even more external and internal users to deal with complex issues, and to improve the reliability, the speed and the user interface for those tools.

What are some of the other ways you have developed innovative solutions to assist organizations in managing legal requirements?

McCarthy: We've developed investigation management and corrective-action tracking tools that allow cradle-to-grave management of compliance incidents tailored to aerospace and defense clients. We created an anti-boycott decision and tracking tool for a company in the medical devices industry. We helped one company create a system using Microsoft Visio and Access for managing country-of-origin rules under the U.S.-Korea Free Trade Agreement, saving the company and its Korean customer $5 million in the first year of its use. That was one of my favorites, be-

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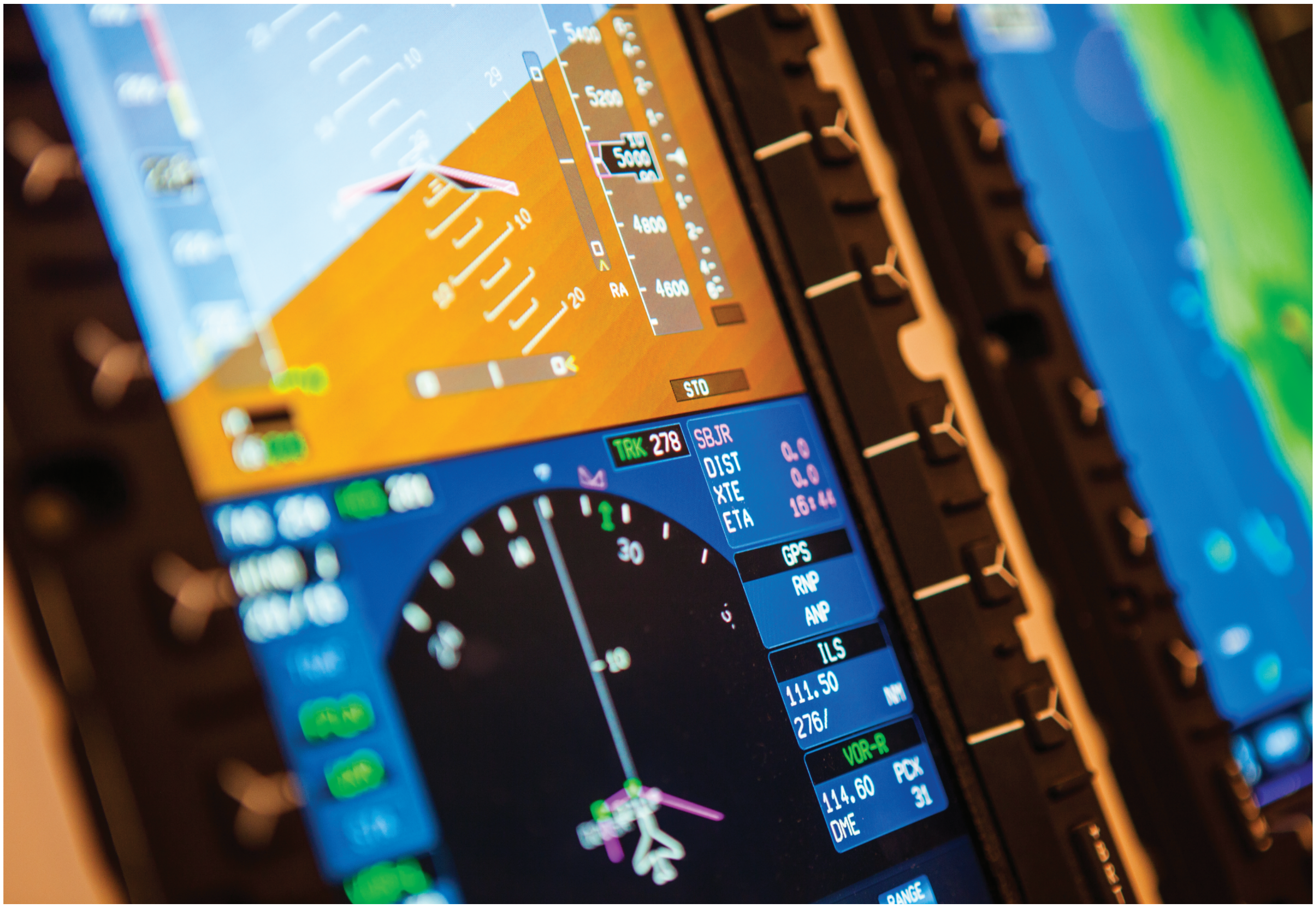
> —THOMAS MCCARTHY



cause the in-house compliance team literally hugged our IT team when it was implemented because of how it was going to increase efficiency and make their jobs easier.

Let me be clear: We are not a software development company, nor do we want to be one. Generally, any idea we present to the client that involves technology is time-limited in the sense that it is project-specific or intended as a bridge solution until the client can install a permanent fix. Technology is used solely in the service of the better delivery of legal services. Not all compliance issues lend themselves to a

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technology-based solution. Sometimes we've looked at a problem and said, "You should consider a software vendor," or "Let's consider an easier, shorter path to completion on this issue." When we do propose a technology-based solution, the advantages to the client are that we can respond quickly to crisis situations with that tailored solution and we don't charge companies for software license fees. Our model is different from and complementary to larger, long-term software service providers.

How should law department leaders be looking to devise and implement solutions to assist with legal and compliance issues?

Borkovic: I would encourage in-house attorneys to push their outside legal service providers to innovate in the way that they solve problems. I also think that many legal departments that have figured out a way to add an IT resource to their team have forged ahead in this area, giving them more options and insight.

One of the things that IT tools can do is create reliable, efficient projects. They help manage the budget, ultimately, because they reduce costs on projects with repeat tasks,

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or even on repeat projects through economies of scale. While the start-up costs may be higher at the very beginning, the long-term savings are significant. It also helps if you educate teams on how these solutions can make their lives easier.

How are regulators reacting to the increased use of technology in regulated industries, and how are they using technology themselves?

Borkovic: Regulators expect the increased use of technology. For example, if you look at export control enforcement actions over the past several years, they include requirements to describe automation that's used in compliance functions.

McCarthy: In terms of the way they're using technology themselves, I think many of the agencies in the areas of sanctions, export controls, foreign investment in the United States and anti-corruption are all using the various tools at their disposal in the intelligence community, as well as search functions on publicly available and non-publicly available websites, to gather information and proceed with enforcement actions.

The U.S. government is investing in technology and making an effort to transition and consolidate its technology and management, so they're proceeding apace. At times, however, implementation is challenged by budget constraints and changes in priorities within the different agencies and the executive and legislative branches.

Jaelyn Edwards Judelson is counsel with Akin Gump. She advises clients on various aspects of regulatory compliance affecting international business, with a particular emphasis on regulations applicable to technology and encryption items. Judelson additionally focuses her practice on global investigations and compliance, including export controls, economic sanctions, anti-corruption and anti-bribery. She can be reached at jjudelson@akingump.com.

What does the future hold in this area for both companies and law firms?

Borkovic: I think there'll be a lot of activity and focus on cryptocurrency – on using blockchain security to help further the currency itself and the acceptance of different formats of currency, and then applying those concepts in other compliance efforts such as managing the supply chain, tracing where things came from and demonstrating compliance with regulations.

Judelson: I think there will continue to be a focus at law firms and in the private sector on big data. There's an expectation on the part of regulators that companies understand the data they have, where it's located and the regulations that may apply to that data. There's also an expectation that companies can forensically answer questions about that data, wherever it's located.

McCarthy: It's a fascinating time to be considering all of these issues. Engaging with blockchain, crypto issues, big data management and artificial intelligence keeps the practice of law very exciting. We can't predict what's going to happen in five years. We're trying to keep up with developments in this area and figure out how we can continue to improve the delivery of legal services and help clients run their businesses effectively and guard against risk.

One of my favorite new books is called *Life 3.0*, by MIT professor Max Tegmark. It talks about the future of artificial intelligence and tries to sort through a lot of the hype around the topic – he allays fears of killer robot anxiety in the first several pages – and provides a vernacular and a framework in which to discuss the real issues and possible outcomes. He does not, by the way, put to rest concerns about the implications of technology on the changing nature of our jobs, but suggests some ways to consider and prepare for that issue.

It's amazing that we are now having these conversations, and law firms, like our clients, are grappling with them in a fundamental way: How do we leverage this technology? How do we incorporate it into what we do and make sure that we're doing things efficiently and effectively to meet new challenges? What will we look like in the years ahead? ■