Corporate Counsel Business Journal

January ▪ February 2019
VOLUME 27, NUMBER 1

CCBJ

4th ANNUAL

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TRENDS IN E-DISCOVERY

ADAM KUHN
OPENTEXT DISCOVERY

▸OpenText's Adam Kuhn talks about the growing relationships between law, IT and AI.

CCBJ: Tell us about some of the new trends that you're seeing in e-discovery.

Adam Kuhn: Three trends I'm seeing in e-discovery include a bigger appetite for analytics and AI, simplified and consolidated procurement, and technology integrations.

Across the board, we're seeing a growing appetite for much more sophisticated use of analytics and machine learning. We have clients that are using AI on every single project, either for prioritization, QC, culling or some other fact-finding or data reduction workflow. We're having much more advanced conversations around workflows and capabilities than ever before, with clients being much bolder in pursuing innovative technology applications.

A new buying trend that we're seeing at OpenText and responding to is the demand for a streamlined purchasing process with shorter contracts, a faster time to value and the ability to maintain flexibility with add-on capacity, services, etc. There's an appetite for multi-matter packaging that strikes a balance between transactional and long-term subscription commitment, and we've recently rolled out a new package to address that.

Finally, there is a renewed emphasis on seamless enterprise discovery in regard to integration, both on premise and in the cloud. For most corporate e-discovery teams, their primary target data now lives in Office 365. This, in turn, is driving an integration strategy to connect e-discovery solutions with enterprise content management (ECM) solutions.

How are you seeing in-house law departments adjusting to the new technology and data sets that are available?

Corporate law departments are so much more sophisticated today, and they really have to be in light of the massive volumes, complex data formats and high pressure. Looking back just a few years ago, I think AI and advanced analytics were viewed with some healthy skepticism, either as a "We don't need this" or "We can't afford this." But that's definitely not the case anymore. The variety of data and the complexity of communications and language have really forced the issue on need. And the issue of cost has apparently taken a back seat, at least according to our 2018 Corporate Legal Operations survey that we conducted with Ari Kaplan. This year, only 63 percent of respondents indicated that they would use discovery analytics more if cost were not an issue (down from 92 percent in 2015). Respondents explained that more e-discovery tools are integrating analytics at no extra cost and also that the value is simply so plain – if not a necessity – that cost isn't really a barrier.

What's the role of AI in e-discovery and how has it evolved in recent years?

One of the most exciting parts of the e-discovery world is how the role of AI has grown and really enabled the legal profession to excel. Like I said earlier, there's definitely an evolving approach and appetite when it comes to new technology. Back in 2012, the big question was, "Can I use artificial intelligence/predictive coding in e-discovery?" Now, in 2018, we're asking more nuanced questions, like, "What's the impact of a failed protocol on transparency obligations?" I think it's a

direct outgrowth of the enhanced sophistication of corporate clients.

The role of AI has changed as well. It's evolved from the TAR 1.0 workflow that was very much a stabilization model. The TAR 2.0 workflows are generally more flexible and intuitive, and we see them used widely as a prioritization tool. Contemporary approaches to machine learning in e-discovery are able to learn continually from documents and decisions, constantly refining the model in step with the case team's understanding.

We're seeing clients use this technology on every matter because it's now integrated and available to them at no additional cost. If for nothing else, they're using it as a quality control check. And on top of that, I feel like the e-discovery "secret" is out – other departments and use cases are using these tools for due diligence, HR and privacy impact assessments, and internal investigations. As in-house law departments are able to insource a better technology like this – one that integrates all these tools – they're able to add value across the board.

Let's talk about AI in a different context. What do in-house law departments need to know about the different types of AI available to them?

AI is a big umbrella term. It encompasses several different technologies. Machine learning, for example, is a subset of AI and predictive coding or TAR is just a type of machine learning. That being said, there're a few different flavors and they have different strengths and weaknesses.

At a high level, there's supervised machine learning and unsupervised machine learning. The latter doesn't rely on human feedback and can be used in-house to automatically categorize, organize and label large amounts of unstructured data into related concept groups, aka clusters. Not sure where to start an investigation? Concept grouping can be a helpful way to start slicing and profiling data beyond keywords. The other form of AI, supervised machine learning, is the more traditional predictive coding or TAR approach, and it leverages a human feedback loop. A person looks at a document and says, "Yes, that's relevant. No, that's not relevant," and the machine looks at those documents to build a data model. It's not unlike Pandora or Netflix. I like James Bond movies and I like Jason Bourne movies, so Netflix might recommend "Mission Impossible" as the next movie to watch. We're looking not just at individual words in a document, but phrases too, which is an important advantage when discerning meaning. For instance, the word "wind" in isolation could mean a lot of different things, but "wind power" is very different from "wind up" or even "wind down."

How do you see IT and law departments collaborating on discovery and compliance initiatives?

In the past, IT and legal had somewhat of an adversarial or perhaps antagonistic relationship. Legal didn't have the tools necessary to pull custodian laptops, collect the data and then process it, and so had to beg, borrow and steal

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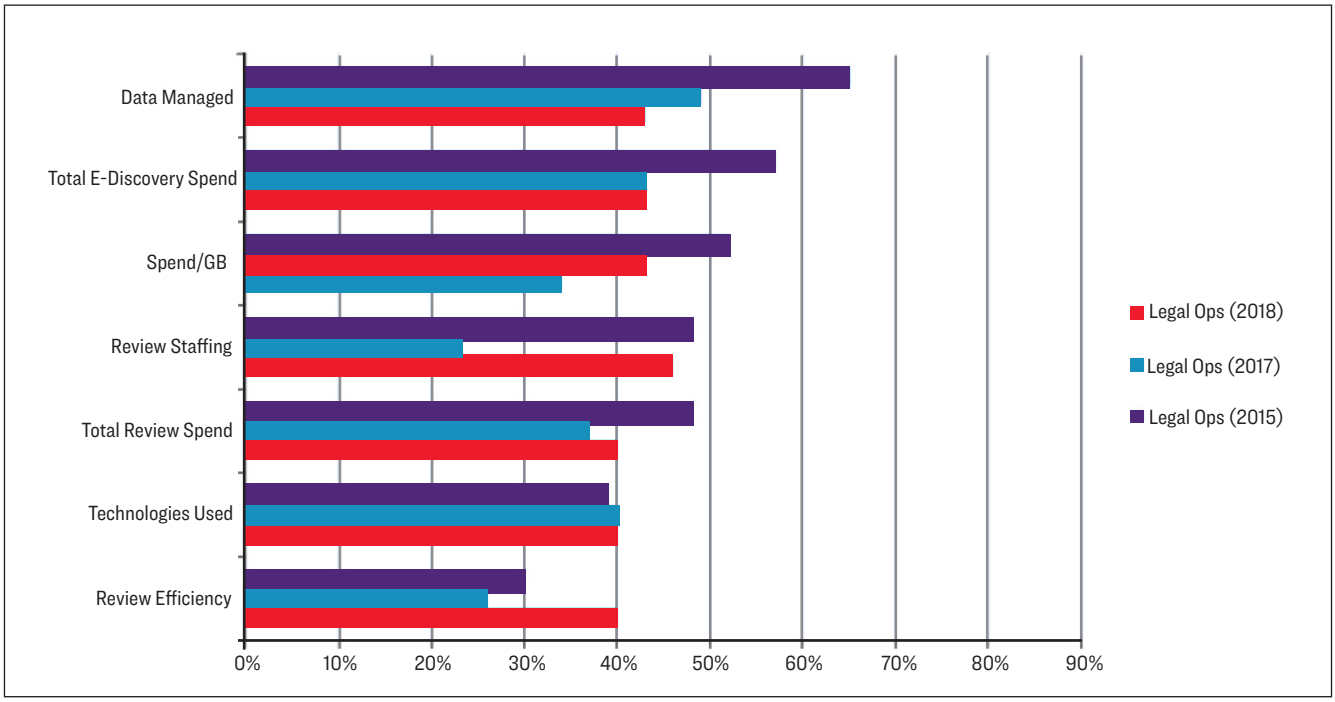

IT resources wherever they could. In turn, those IT resources had to work even harder to complete their own projects. One of my favorite responses in our Corporate Legal Ops survey came from a director at a life sciences company saying: "We spend more time working with IT than anything on the planet, but it is the single worst experience of my life in terms of productivity."

But that relationship is absolutely evolving now, with more understanding and collaboration between IT and law departments. Part of this is that many corporate legal operations groups have more of their own IT resources now. But equal is the shared understanding that designing and implementing integrated systems that enable self-service, seamless collections is a win-win.

With the growth of legal operations, we're seeing more of a focus on data and metrics. What are some of the key metrics that legal operations professionals are focusing on and how are outside counsel responding to the new demands for these metrics?

We've been asking this question in our Corporate Legal Operations survey since 2015, and the first time we asked it the most tracked metric was data volume, followed by total e-discovery spend, and the least tracked metric was review efficiency. In our most recent legal ops survey, however, review efficiency tracking nearly doubled – 40 percent of our respondents are now tracking review efficiency. Interestingly enough, data volume dropped down in the rankings.

We also ask if corporate legal professionals feel comfortable with the level of e-discovery transparency and reporting provided by their outside counsel. In 2015, the results were dismal – only 28 percent felt that they had enough visibility. But this year there is a significant shift in sentiment: Forty-three percent now feel that they have enough insight into their outside counsel's e-discovery processes.

I think this is a really positive movement forward and also emblematic of the cultural change that corporate counsel are driving, not only in their own departments through the rise of corporate legal ops and process optimization, but with their outside counsel too through additional reporting and a heightened emphasis on technology use and efficiency. ■

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Managing Data-Privacy Risk And Compliance in a Hyperconnected World

▶Andrew Shaxted of FTI Consulting is a global data-privacy expert with a background in technology and global risk-management program implementation. We talked to him about what companies can do to manage data-privacy risk and compliance, both from a business standpoint and a technical one.

CCBJ: What is your advice for clients who are concerned about their company's privacy policies and their current technical solutions? What are some best practices?

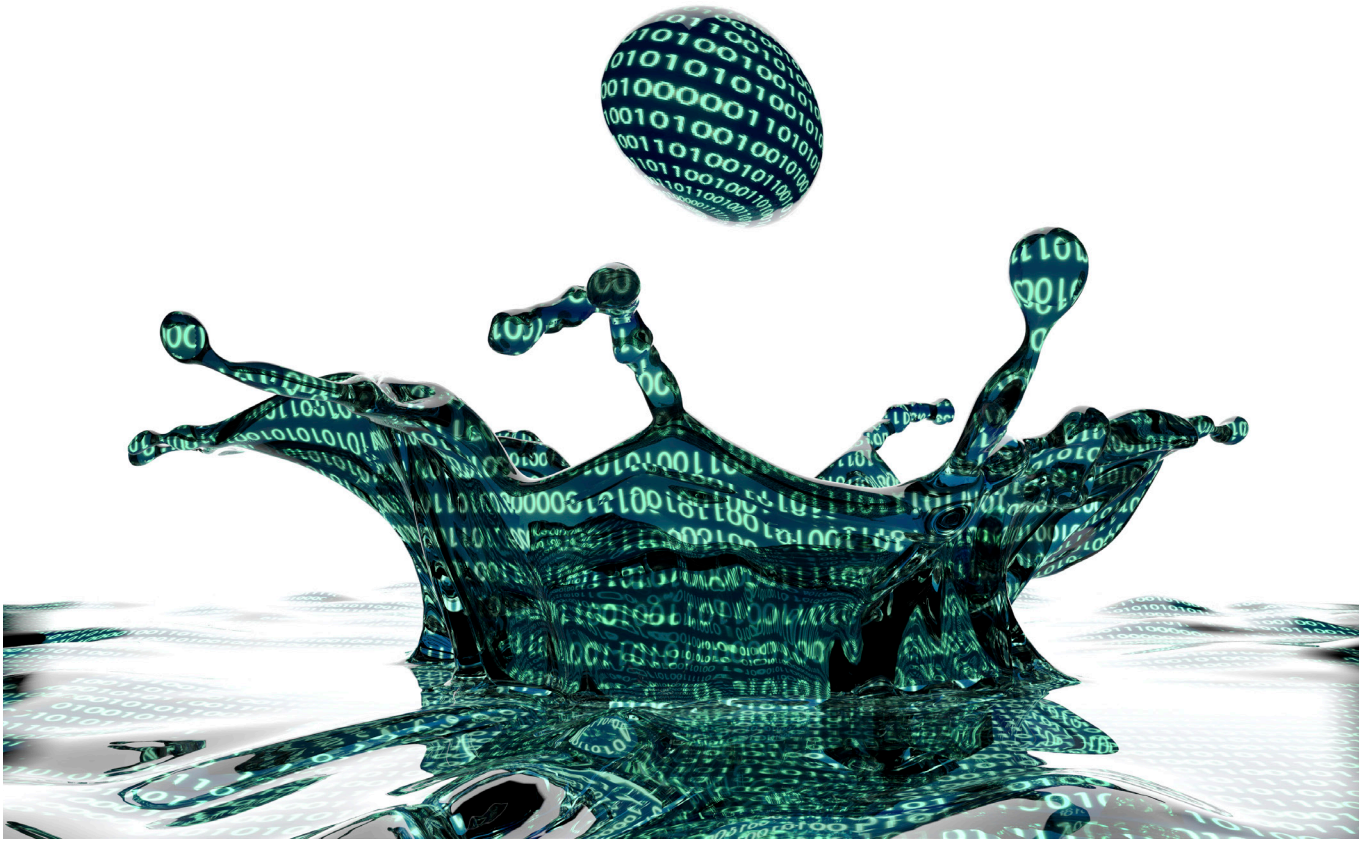
Andrew Shaxted: The privacy policy is just the starting point. It's the documented, defensible position that an organization takes concerning its personal data handling practices and commitment to data privacy compliance. But what's more important to consider is how the policy is being lived out and operationalized at the business level. At the end of the day, the client's concern about the policy may be symptomatic of a general lack of clarity around how the organization actually handles personal data to begin with. Tossing a policy document over the fence for customers to understand or employees to follow is asking for failure. A great tool that I have used in the past and something that has gained more traction since GDPR's effective date is "wikis" and blogs that supplement the policy, providing more clarification and real-world examples. This is especially useful for customer communications but is also helpful for internal employee communications. Going a step further, internal policies and communications must be backed up by a robust training and awareness campaign commensurate to your organization's data privacy risk footprint. Privacy policies are important, but effective privacy risk management is a full change and awareness exercise.

When it comes to technical solutions, it's a similar discussion. While assessment tools, monitoring technologies and automated controls are important for many privacy programs, pain points may quickly surface if the process is poorly understood and improperly executed. Rushing to technology may cause more problems than it solves, so be diligent in developing the strongest processes possible before relying too heavily on technical solutions.

How can companies evaluate their technology and make purchasing decisions that best support their individual privacy needs? Who are the key players in the process?

The privacy-enabling technology market is growing up fast and I expect it will continue to grow and consolidate in the years to come. Even still, like any other enterprise technology, there's no single silver bullet that's going to solve all your company's data-privacy compliance challenges. Taking a step back and having a realistic understanding of what these technologies and tools are capable of doing is an important first step.

The second step is really digging in and working to identify the organization's priority requirements. It can become very confusing if you start having discussions with vendors before truly appreciating and understanding the risks your company is exposed to. If you try to remedy those risks with specific technologies and tools before you've documented – or at least understood and articulated among your key stakeholders – what exactly the risks are, you may end



up buying technology that the company ultimately doesn't have a strategic purpose for.

The stakeholders brought to the table may depend on the organization's size and tech maturity, but the primary factor in determining who the key players are is where the actual privacy risk resides in the organization. Privacy touches so many different areas of a company that it becomes a real challenge to allocate tool investment and ownership to any single function. Privacy enabling technology implementation activities must be cross functional. For companies with significant risk exposure, I would expect to see the Chief Information Officer, Chief Technology Officer, and the Chief Compliance Officer – and where the role exists, the Chief Privacy Officer or equivalent privacy risk owner – sharing executive-level ownership of the requirements gathering, development prioritization and implementation. Additionally, where the business model dictates special technology use cases aligned to a particular function – say marketing or records management – I would expect to see executive-level representation from those areas as well. This is a lot of hands in the pot, but it pays dividends down the road when all critical voices have ownership stake in a successful privacy tool implementation. Understandably, this cross-functional approach may be more easily achieved with smaller organizations but may over-complicate the discussion. The smaller organizations may benefit from a lighter touch approach assuming that their size is indicative of risk posture, which may not always be the case.

How does the growing bring your own device (BYOD) culture play into privacy concerns?

Many applications nowadays allow access to documents and other pieces of information on mobile platforms, which presents numerous risks, simply because those devices may not have the full breadth of security controls that devices located on an organization's security domain would have.

Anytime it's possible to use personal devices to access corporate client data, there needs to be a strategy and policy in place that either allows those devices to

be included on the security domain or else doesn't allow access to corporate information or data if a device is not on the domain.

There are obvious complexities to think about when implementing a policy that permits a BYOD-type situation, especially given the rise of new cloud storage and collaboration tools like Box, Office 365 and others. At the end of the day, BYOD policies create inherent complexity for IT and InfoSec departments. Different device manufacturers have different vulnerabilities that are identified at different times, different operating systems have different vulnerabilities that are identified at different times, and so on. It becomes a very difficult proposition, for larger organizations especially, to enable a BYOD policy without negatively impacting security.

With so much information being shifted to the cloud, what are companies doing to ensure they're compliant with privacy regulations in that area?

When we talk about the cloud, we could be referring to either could-based platforms, applications or system infrastructure tools delivered over the internet. Depending on the specific cloud use case, a company's privacy and information security compliance requirements may vary. Most use cases, however, do share the common risk of transmitting the company's personal data assets to a third party. It is one of the largest sources of anxiety in most cloud arrangements.

Andrew Shaxted is senior director of data privacy at FTI Consulting. He has a background in information security, data-privacy compliance and cloud system implementation. He is a licensed attorney and focuses on management of data-privacy risk and compliance across large enterprises. Reach him at Andrew.Shaxted@fticonsulting.com.

Typically, there are specific things that need to be done in order to comply with the various global data-privacy requirements around third-party collection, storage and management. For example, clearly indicate in the external privacy notice that the company transmits personal data to third parties to carry out standard data management and storage activities. If the company uses cloud systems for its internal HR applications, payroll or benefits administration, the company should also include similar language in the internal privacy policy for employees.

It's important to ensure that the company has appropriate contractual language in place with third-party cloud providers. And just from an operational standpoint, it's important to clearly define the specific points of contact with a vendor, including the specific roles and responsibilities that apply if any sort of incident or issues were to take place. It's also important to have discussions with these cloud service providers, to really understand their system functionality with respect to data-privacy compliance. For example, under GDPR, there's this concept of data subject rights. An individual should be able to pick up a phone and ask an organization to provide access to their personal data, or to stop processing their data or to delete it entirely – "the right to be forgotten" is what it's called. But in order to be able to do that, the organization needs to have perfect command and control over that data, and they need to have the technical capabilities to actually conduct and execute a delete script, or extract a data file that would permit the data subject to have access to their data, for example.

So, it's crucially important for organizations to have these discussions with their third-party cloud vendors, to understand what they are and are not capable of doing.

With GDPR front of mind, how can multinational companies achieve compliance?

The realistic approach isn't so much to march headfirst toward 100 percent compliance. Instead, we recommend taking a risk-based approach, one where organizations consider and understand where the highest risk exists, and where consumer or employee privacy rights are the most exposed. We immediately address those issues first and then navigate through lower-risk items. The order of operation will inform spend and dictate program build and integration priorities. It will also inform technology investments, business process re-engineering and potential program right sizing later down the road. ■

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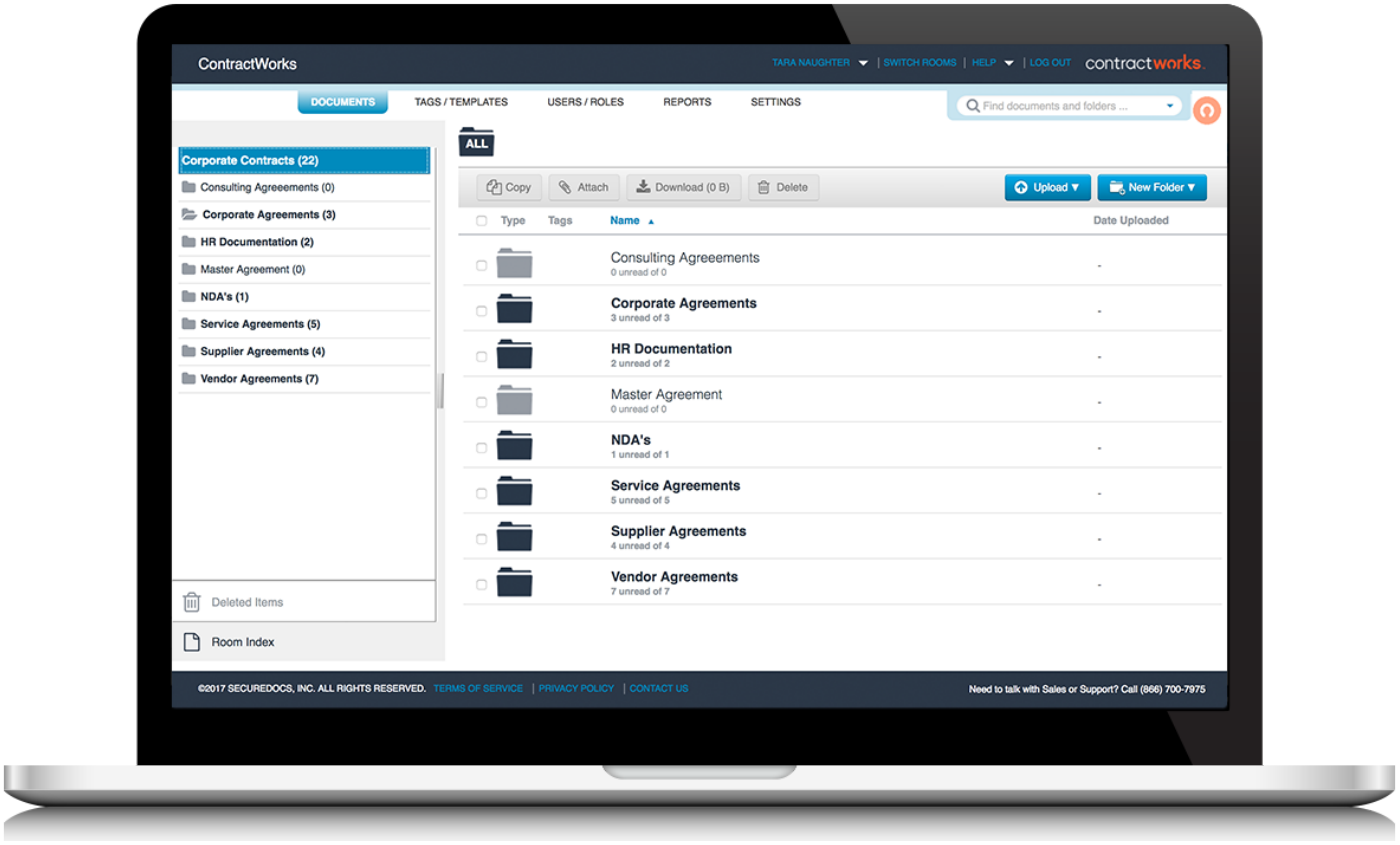

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Streamlining the E-Discovery Process

▶Zapproved co-founder and CEO Monica Enand discusses the strategies and tactics that in-house law departments can use to transform their litigation response from a reactive situation into a routine business process.

CCBJ: Many organizations are looking to move more of their e-discovery work in-house – what are some opportunities and risks to making this shift?

Monica Enand: It all comes down to three components: control, security and cost.

First, having a system that the entire legal team feels confident using provides a level of control that is empowering. Being able to perform tasks accurately and immediately is game-changing for in-house professionals by letting them do more for the organization, which is good for their careers as well.

Second, cybersecurity is a major concern for corporations today. Reducing the number of copies of sensitive information is critical – and there is not much information that is more sensitive than what is involved in litigation. If you keep your data in-house, you reduce risk and have a tighter control on security.

Finally, reducing spend is a major priority for most legal teams, especially at a time when e-discovery costs have hit an all-time high. Our clients have seen dramatic reductions in costs typically associated with discovery by moving portions of e-discovery in-house and reducing external spend on routine work, saving their expertise for high-value work.

How do you advise clients who are shifting their e-discovery work in-house?

From my observation, this shift is inevitable, so getting ahead of it is critical. To start on this journey, they usually begin by moving the functions on the "left side" of the EDRM, such as legal holds and data preservations, in-house. From there they move to the right to bring on collections, data processing and culling, ECA and review for smaller matters.

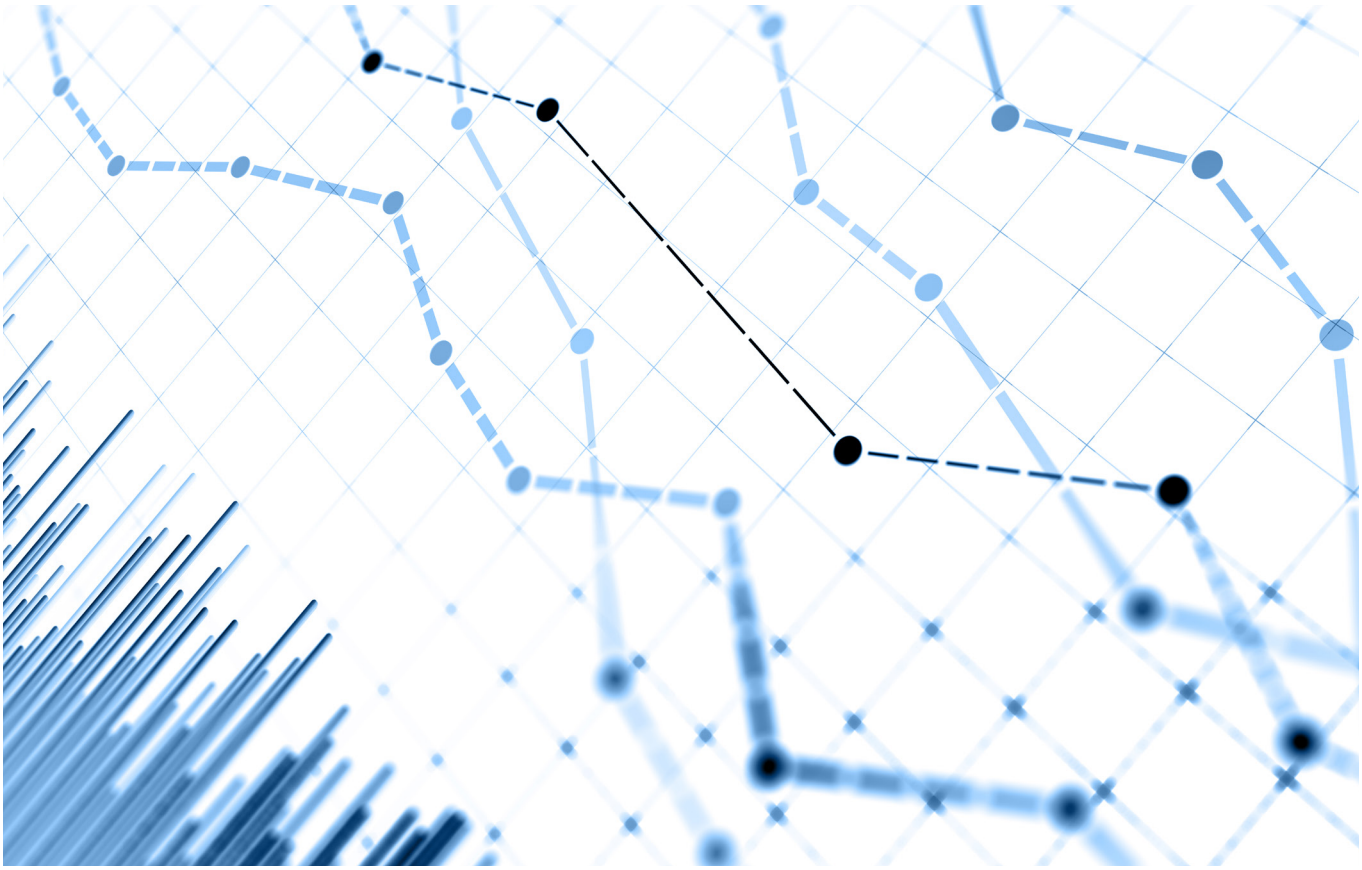
Keep in mind that many, many teams, from Fortune 100 organizations to companies a fraction of that size, have already successfully navigated this path. Tap into your peer network and the variety of resources that are available.

Start by educating yourself about best practices. The best way is to engage your community of peers for their collective experience and wisdom. Take advantage of publicly available resources to aid your planning and implementation. We host PREX, an annual conference concerned with in-house e-discovery best practices, to connect thought leaders and showcase successful team-wide, in-house practices. Zapproved's Corporate Ediscovery resource center offers up-to-date guides and news summaries to stay on top of industry developments.

What are the steps necessary to making this shift? Who are the key players that should be involved?

First, you do your homework so that you can make a compelling case for the transition. Build an ROI model that shows the savings and risk mitigation using data-driven evidence –

Monica Enand is the CEO and co-founder of Zapproved, developer of the leading litigation response platform for corporate legal departments. Under her leadership, Zapproved has grown from start-up to success by transforming the way in-house legal departments respond to litigation. Send questions to info@zapproved.com.



Build an ROI model that shows the savings and risk mitigation using data-driven evidence – it's not a hard case to make. The savings generated from a reduction of outside services and the responding increase in efficient use of staff time create that compelling argument.

it's not a hard case to make. The savings generated from a reduction of outside services and the corresponding increase in efficient use of staff time create that compelling argument.

Now it's time to get started. You will avoid many pitfalls by engaging a trusted partner who can help guide the process; one that cares about your priorities and values your long-term success. This partnership should earn your trust and elevate your practice by delivering the tools and expertise to be independent and successful in the long run.

What is your advice to smaller teams that may not feel they have adequate resources for a shift like this, but at the same time are under pressure to reduce costs?

Smaller legal teams have the most to gain from automation – and it's much easier than you might think. We have assisted many small law departments in implementing sensible, easy-to-accomplish e-discovery management, and every one of them found the new system simpler and superior to their old one. Finding the time to make a systemic change is a challenging proposition, but the results in terms of cost-cutting and efficiency are quickly apparent. So I would say that even the smaller law firms who are struggling to stretch their resources will discover significant benefits by taking the time to invest in a sensible change. ■

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LEVERAGING TECHNOLOGY TO SUPPORT INTERNAL INVESTIGATIONS IN A DIGITAL WORLD

KEITH LOCKHART
ACCESSDATA

▸ The need for skilled electronic investigation is more important now than ever.

Corporations remain under significant pressure to conduct internal investigations for a variety of serious matters, such as alleged employee misconduct, whistleblower reports and data breach incidents. NAVEX Global's 2018 Incident Management Report found that last year the number of internal reports of potential ethics and compliance incidents hit the highest level recorded, with a median of 1.4 reports per 100 employees. This continued the trend of a significant rise in the internal reporting rate over the last eight years.

All signs point to an acceleration of the trend this year and beyond. For example, some experts argue there has been a fundamental shift in perceptions of sexual harassment and abuse in the workplace, in large part due to the #MeToo movement that began in late 2017. "The #MeToo movement has empowered more people to come forward and raise these issues at their companies or organizations," said Nancy Kestenbaum, co-chair of the white collar defense and investigations team at Covington & Burling LLP, in a story published by Law360. "And that has caused the organizations to examine those specific issues, or issues of harassment and abuse more generally, to make sure that they don't face these problems going forward."

Data security incidents resulting from insider threats represent a growing concern as well, whether from intentional malicious behavior or pure human error. According to the 2018 Verizon Data Breach Investigations Report, nearly one in five (17 percent) breaches have been the result of human error, such as misconfiguring web servers or sending an email to the wrong person. While not intentional, these incidents represent a fair number of internal investigations at an organization, as they try to piece together where the incident originated.

Internal investigations are often high-stakes undertakings for the company's finances and brand reputation, but they are also more challenging than ever to actually perform. Most evidence these days is electronic in form, which means it is often located across a variety of devices and platforms. Investigations are also complicated by the fact that numerous stakeholders across the organization must be involved to some extent, such as legal, human resources, compliance and finance – not to mention the need to conduct the investigation in a discreet manner, so as to not alert employees or interrupt business operations.

E-discovery teams need to be prepared in advance for internal investigations because their skills will be called upon to oversee the sensitive process of data collection, analysis, review and production. They must ensure the investigation is handled efficiently, cost-effectively and in a legally sound manner.

Based on our experience serving as technology providers and professional service trainers for hundreds of corporate internal investigations, here are some best practices that e-discovery teams should consider when approaching their role in an investigation:

▸ Determine what needs to be found.

This isn't as trite as it sounds. It's essential that e-discovery teams start out by having a clear understanding of the specific electronic evidence they need to locate in order to help their colleagues make a determination regarding the merits of the complaint or incident report. For example, some investigations into alleged sexual harassment have been wrapped up quickly with the discovery that the claims were false

from the outset, so a full-scale investigation is never required. A successful investigation starts with clarity of the target data at the beginning so investigators can quickly determine what they're dealing with and identify how widespread the data collection needs to be.

▸Identify the relevant data custodians.
The investigative team is going to need a clear data map so they know where the potentially relevant electronic evidence resides and how they can collect the data. E-discovery professionals should make sure they have all of their access privileges and clearances in place so investigative teams can go straight to the proper data sources.

▸Define search parameters.
The e-discovery team is uniquely positioned to rely upon its professional experience on the litigation discovery front to establish precise and useful search terms for the investigators. For example, we were once involved in a case in which there was a relevant party who spelled her name "Page" and some members of the team wanted to search for all references to her name. Of course, due to the ubiquitous occurrence of the word "page" in electronic documents, this was too broad to be useful. Experienced investigators will say that perhaps only 5 percent of the data on a typical hard drive may actually be relevant in a case, so the e-discovery team can use its expertise to define the optimal parameters for the forensic investigation. In addition, by being more targeted in its searches up-front, the e-discovery team can reduce the amount of data for review in the event the investigation moves to litigation – which in turn saves time and cost.

Keith Lockhart is vice president of strategic programs at AccessData. Reach him at keith.accessdata.com.

▸Oversee the investigation.
The investigation itself will be conducted by forensic examiners, but they will only be as effective as the direction they receive. E-discovery teams should collaborate with these skilled technicians to conduct the actual searches of the collected data, review the preliminary results, refine the search as appropriate, etc.

▸Maintain chain of custody.
The e-discovery team should oversee the chain of custody throughout the investigation to ensure it is conducted in a forensically sound manner. For example, searches should be done in a repeatable and defensible manner that can be re-created for opposing counsel with the exact same results. This ensures they will stand up under scrutiny in the event of litigation. If the investigation is not properly handled with the right tools, processes and experienced professionals, it could be cause for it to be thrown out of court.

There are a couple of keys that will maximize the success of any internal investigation with respect to data collection and analysis. First, it's essential that the e-discovery professionals and forensic investigators have the proper training and certifications to do this highly specialized work. For example, the Certified E-Discovery Specialist (CEDS) certification, administered by ACEDS, responds to the need for professionals with diverse skills and knowledge across the e-discovery spectrum. AccessData offers the ACE® credential, a certification for forensic examiners that demonstrates proficiency with Forensic Toolkit® (FTK) technology.

Second, it's crucial to use software tools that facilitate collaboration and efficiency throughout the investigation, preferably with technology that has been recognized by courts as being forensically sound. AccessData's AD Enterprise is the only U.S.-owned solution in the marketplace that can perform comprehensive end-to-end forensic investigations within a single tool by collecting all sorts of complex data types directly at the endpoint. It is powered by forensic technology that is court-cited and has been relied upon for more than 30 years.

Finally, after an investigation is concluded, if the matter proceeds to litigation, it will be important to use tools that seamlessly connect in order to reduce data movement between platforms. AccessData's AD eDiscovery is a single, fully integrated software platform that helps organizations mitigate risk, ensure compliance and improve response efficiency. It helps legal teams manage forensically sound enterprise-wide preservation, litigation holds, search, collection, processing, data assessment and complete legal review. ■

CCBJ

Patent Searches Just Got Easier

HIDEKI TAKEDA
FRONTEO

▶FRONTEO's new AI-based Patent Explorer reduces search time and expense.

Patent analysis can be document-and-review intensive. For instance, if a company wants to invalidate another company's patent rights that are an impediment to the promotion of its own business, it must provide evidence that demonstrates its case. In doing so, it must search and identify publications that were publicly known prior to the application for such a patent from among the large volumes of patent publications. This conventional analysis is very labor intensive and requires expertise from the reviewers, making the research process very costly.

Patent Explorer is a next-generation patent search system from FRONTEO. Leveraging FRONTEO's AI engine KIBIT, the system reduces the expense and effort involved in patent searches by analyzing large volumes of patent publication and targeting key documents in order to save time and money.

KIBIT AI extracts the features and concepts related to the contents of the description of the patent rights to be invalidated, and then assigns a score indicating the respective level of proof to each piece within the enormous quantities of patent publications. Patent Explorer ranks the patent publication by score and provides the results through an easy-to-review user interface.

In many cases, the evidence is contained within the top 1 percent, so a user can simply discover documents with a high level of proof by only reviewing a small volume of documents, even when lacking specialist expertise. For example, in the case of a search of 3,000 patent publications, the appropriate evidence can be found by reviewing only a few dozen publications ranked at the highest levels.

Patent Explorer is therefore a powerful AI-based system that supports corporate patent strategies and has already been installed by 50 companies. The patent technology areas cover a wide range of industries, particularly large manufacturers for which patents are important, such as in the chemicals & materials, machinery, manufacturing and food & beverage sectors.

New Functions in Patent Explorer19

FRONTEO and KIBIT have recently released the next-generation AI engine KIBIT G2 (Generation 2). KIBIT G2, which applies the outcomes of the

The patent technology areas cover a wide range of industries, particularly large manufacturers for which patents are important.

Hideki Takeda is chief technology officer and director of behavior informatics laboratories at FRONTEO, Inc. He has held committee memberships with the Japan Economic Research Institute and the Artificial Intelligence Technology Strategy Council. Reach him at hideki_takeda@fronteo.com.

latest machine learning-related R&D and know-how fostered through the discovery support business, now enables the user to analyze the natural language of patent publications with a higher degree of accuracy than conventional KIBIT. Patent Explorer has also been reborn as Patent Explorer19 with the installation of the new KIBIT G2, and this enhanced service has been introduced to Japan.

The new technology installed in KIBIT G2 has also enhanced the functions in Patent Explorer19. For example, KIBIT G2's parallel distributed processing has drastically shortened the time needed to obtain ranking results. In addition, it enables highly precise analysis of patent publications that do not conform with the common application formats prescribed by the World Intellectual Property Organization. FRONTEO has also delivered major improvements to usability through reforms of the user environment.

Moving Forward with Patent Explorer19

FRONTEO's Patent Explorer19 solution helps to substantially reduce the time and expense involved in patent searches while enabling companies to better draft patent strategies. FRONTEO has generated significant interest from large Japanese and foreign companies who attended the 2018 Patent Information Fair & Conference held in Japan from November 7-9. Consequently, we plan to expand sales not only in Japan but also in the U.S. and other global markets.

We are now offering an inexpensive, easy-to-introduce entry plan to a small number of user accounts. This is in response to our clients wanting to improve the efficiency of their patent search operations by using AI. The plan keeps the cost to one-third of the usual monthly license fee, to cater to clients who first want to give it a try.

In addition, Patent Explorer19 technology will soon be applied beyond patent search to improve the efficiency of litigation document review, which is one of FRONTEO's strengths.

Following the major trend toward open innovation and AI, we are confident that Patent Explorer19 will continue to expand and be implemented widely and globally. ■

CCBJ

Leveraging Simplicity to Reduce Cost in Litigation & Investigations

CASEY SULLIVAN
LOGIKCULL

▸Logikcull's Casey Sullivan simplifies an often complicated process.

In the past, legal work, particularly in-house legal work, simply felt – well, simpler. Take the discovery process, for example. Before the digital era, a company involved in document discovery could simply meet with its attorney, gather physical documents and hand them over for review.

Yes, it involved bankers' boxes. Yes, sometimes redactions needed to be made by hand, with a giant marker, and Bates stamps required actual stamps. Yes, it might not have been the most speedy or efficient practice. But the process was simple. It was straightforward. It made sense.

Fast-forward to today and the typical discovery process is anything but simple. For large corporations and other data-rich organizations, discovery can trigger a labyrinth of processes, as litigation holds are placed, custodians and repositories identified, vendors evaluated and procured, data analysis and culling procedures performed, etc. In such cases, it's not unusual for a "simple" process to end up in a tangle of slow, costly, Byzantine procedures.

This approach to discovery is great for vendors and experts, who have leveraged this complexity into a billion-dollar industry. For most legal professionals, though, it's miserable.

Indeed, many lawyers would prefer a return to the straightforward discovery process of an earlier era – minus today's document loads.

Of course, there's no going back to the '80s.

Many lawyers would prefer a return to the straightforward discovery process of an earlier era – minus today's document loads.

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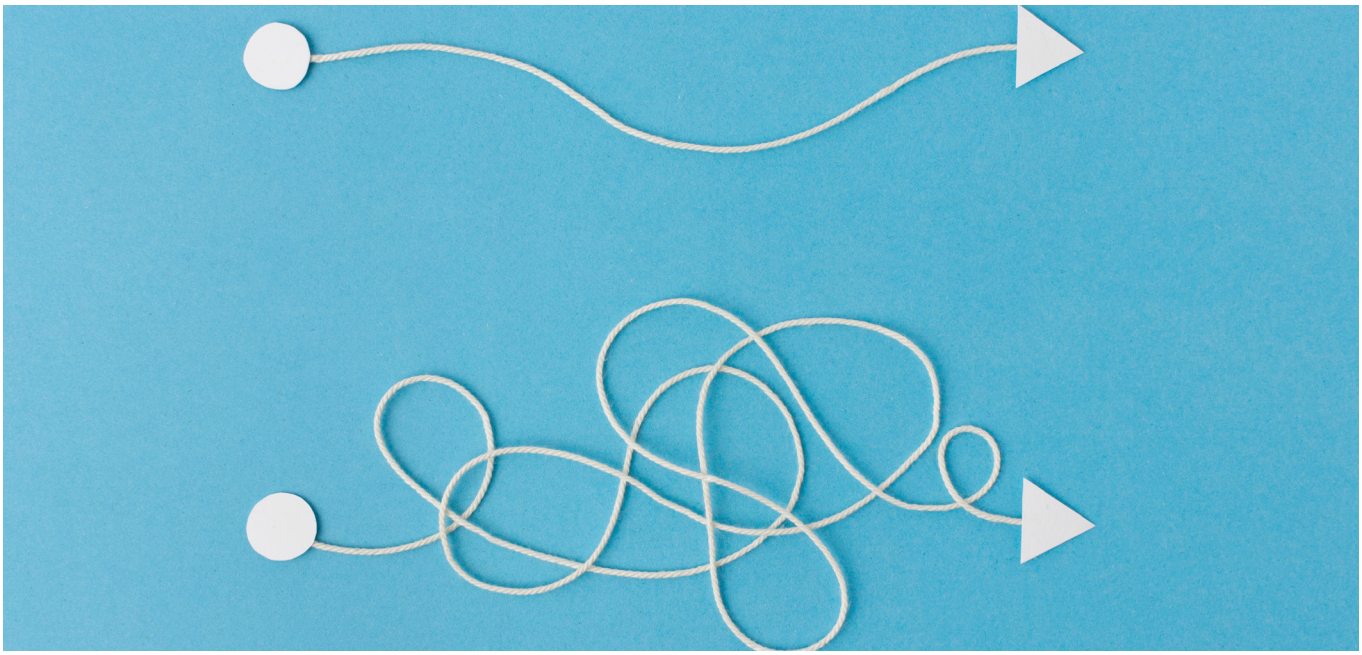
Bringing Simplicity Back To Discovery

What if we could bring that simplicity to today's overly complicated processes? What if we could cut out the middleman? What if it was so intuitive anyone could use it?

What if you empowered, rather than befuddled, reviewers?

At Logikcull, that's what we've set out to accomplish. And it's that commitment to simplicity that has led it to be embraced by corporate legal teams across the globe, including the world's largest company, Walmart.

"Logikcull is a simplicity revolution for our teams and our outside counsel," says Amy Sellars, associate general counsel at Walmart. "It allows us to conduct internal investigations, subpoena response and litigated matters in house at dramatically lower cost, and improves



collaboration and transparency with our outside law firms."

The key is simplicity – a North Star that has guided many transformative user experiences.

Take, for example, finding information on the internet. In the earlier days of the web, it could be incredibly frustrating to try to discover websites. Search engines like Lycos, AltaVista and Yahoo! were an exercise in maximalism. Cluttered, confusing imitations of the Yellow Pages, they made navigating the web much harder than it needed to be.

Google's primary innovation was stripping out all that extraneous and distracting noise by focusing on the problem the user was trying to solve: just getting information. Not building a website, not signing up for a forum, not shopping for a new computer. Just getting answers to their questions.

Consider the amount of googling you do today. Nearly all the world's public knowledge stacked up before you, a seemingly insurmountable amount of information to get through, yet accessing it is as easy as asking a simple question. It is simplicity, accomplished by powerful, complex technology that is simultaneously incredibly straightforward to use.

Now imagine an e-discovery tool that is as focused on solving the primary problem e-discovery poses – the need to, defensibly and accurately, review and produce documents – a solution so powerfully simple that it can be used by legal professionals with a wide range of experience and sophistication, from the tech-savvy lit-support guru to the family law attorney who rarely handles discovery.

That's the goal of Logikcull: to strip away overly complex processes; to remove the need for downtime, slow processing and expert services; to create an interface that makes finding, organizing and reviewing documents incredibly easy; to make discovery as easy as upload, search, download, at speeds that are virtually instant. What follows is a jump-started investigations-and-subpoena response, greater security for data, mitigation of the risk of human error – and a dramatic reduction in outside counsel spend.

Of course, not every tool is appropriate for every use. Highly complex cases may merit highly complex tools.

But for high velocity, high frequency cases, those difficult tools aren't necessary.

For the vast majority of cases, what is needed is simply simplicity. ■

CCBJ

Hitting the Mark with Your AFAs

NATHAN CEMENSKA
WOLTERS KLUWER'S ELM SOLUTIONS

▶AFAs are not necessarily the magical solution to issues with hourly billing.

"Hourly billing is dead." I've seen yellowed '90s-era newspaper clippings touting such slogans. Twenty years later, hourly billing is alive and well, and will put many lawyers' kids through college before it is finally retired, if ever. Yes, despite massive efforts to kill it, hourly billing slouches onward, like some hideous, decaying creature from an AMC television series.

Why don't people like hourly billing? They say it "creates the wrong incentives." Hourly billing, the argument goes, incentivizes unimportant work. Therefore, their lawyers must be charging for a lot of busywork.

The leap in that argument is the assumption that just because somebody is incentivized to do unimportant work, they will do it. Hopefully you do not believe your lawyers are doing a lot of unimportant work. If they are, call them up and point out some specific examples. By discussing the specifics, you can probably stop them from engaging in these activities.

You can use AFAs too, but they are no silver bullet. They provide different incentives, not better ones.

For fun and illustration, here are some nefarious activities different kinds of commonly used AFAs incent.

FIXED FEE

▶Cut every corner. Use the extra time to pursue hourly work where you get paid for effort. If you are forced to do more work than you feel like on the matter, complain to in-house counsel and argue it should be converted to hourly.

▶The case will be resolved more quickly than anticipated. Try to make that happen as often as possible, but don't draw attention to the fact that you are getting repeated windfalls.

▶Minimize communication with in-house counsel, since you are not being paid any extra for it.

FEE CAP

▶Work the matter normally until it hits the cap. Then do the bare minimum. As above, use the extra time to pursue hourly work.

CAP AND TAIL

▶Work the matter normally until it hits the cap. Then do the bare minimum until the tail kicks in. At this point, you are basically on an hourly billing arrangement, so bill the matter up to the eyeballs.

BLENDED RATE

▶Negotiate the rate as if there will be lots of involvement from high-billing partners and senior associates on the matter. Then minimize those very same people. Staff the matter full of summer associates, first-years and other "warm bodies" who are now billing at the same rate as a partner with 20 years' experience. Pile on as many as possible, because this is the highest profit margin you will make off them in their entire careers.

VOLUME DISCOUNT

▶Start billing at your rack rate, a made-up number that usually

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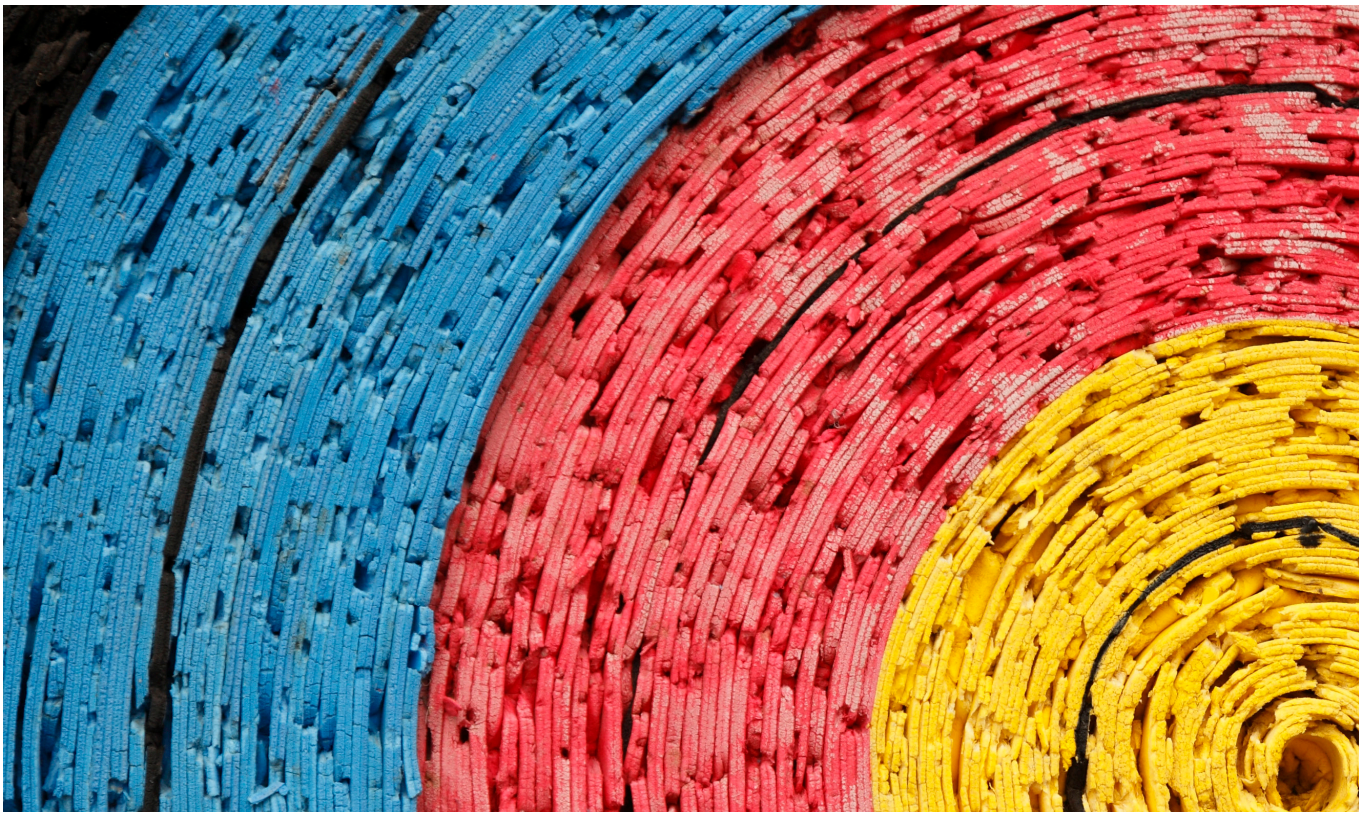

means nothing. Any "discounts" are calculated off this number, meaning they aren't "discounts."

▶Manage the matter so as to conclude the bulk of work prior to when the "discount" becomes effective. Then minimize your best people on the matter, and instead have it be an easy way for your less in-demand attorneys to meet their annual minimum billing requirements.

CONTINGENCY FEE

▶Work hard on the matter until the returns of further work seem like they are going to diminish for you. At that point, persuade your client to strike a deal, even though if you pushed you could get an even better deal for the client. There are other cases you could work on that would be more profitable for you going forward.

The point is not that lawyers exploit incentives as described above. The point is: AFAs will not save you. Like standard fee arrangements, AFAs have different pros and cons. Those are not always obvious and need to be carefully analyzed. The belief that "AFAs = cost savings" is not always true, particularly since it ignores the question of what, if any, effect switching to AFAs might have on quality and outcomes. The truth is a poorly deployed AFA program will sink your financial ship just as quickly as a poorly deployed hourly program. The overall quality of your administration and relationships with outside counsel probably have a lot bigger impact on cost and quality than the particular methods used.

Doing AFAs right is a lot of work, just like hourly billing. Extensive analysis of data pulled from different sources, like the reporting tools available in Wolters Kluwer's e-billing systems, needs to occur. Even then, you may find the data is subject to many different interpretations. And some of the most prominent experts in legal operations believe that even a well-run AFA program will save no more than 10 percent.

So why even do AFAs? The biggest benefits may not come in the form of cost savings, but in intangibles like cost predictability and simplicity of administration. Those benefits will only accrue after significant investment in pricing strategy, process and change management – and corporate law departments who don't want to put in the work won't gain any benefit at all. ■

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