



White Paper

A PUBLICATION FROM THE INTERNATIONAL LEGAL TECHNOLOGY ASSOCIATION

NOVEMBER 2019

Corporate Legal Departments

Introduction

In the ever-changing world of e-Discovery, corporations need to be innovative more than ever before. To keep knowledge current, law departments must understand the landscape of privacy laws, changes in e-Discovery law, and emerging technologies. Included are four white papers that will help you navigate these complex topics.

With new privacy laws like CCPA and GDPR, corporations should know what data they have and where to find it. In the article, “How Counsel Can Find Solid Footing in the E-Discovery, Privacy Balancing Act”, you can find some steps you can take to be proactive. Developing a strong data map is a great first step to help mitigate future risk. In addition, educating your employees about these new privacy laws is key.

Data consumption is at unparalleled levels. In the not so distant past, a terabyte seemed like such a large data volume. Now, a petabyte is the new normal. Therefore, how do you know the valuable data and the junk data? Corporations need to throw out a raft and stop drowning in their Data Oceans. Minimizing the data is key. In the article “De-Risking e-Discovery for Corporations”, Federal Rule of Civil Procedure 37(e)

Amendment is discussed in detail. Are corporations embracing information governance or are they still too risk adverse to delete any data?

Finally, new emerging technologies may help corporations manage their data. The article “Closing the Skills Gap: AI, Analytics and the Legal Profession” will give corporate legal departments an idea of how to manage their data by using data analytics and artificial intelligence. There is a trend in the legal community to take advantage of AI tools and technologies. Perhaps AI is the raft to help corporations from drowning in their “Data Oceans”. **ILTA**



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About ILTA

Technology solutions for law organizations and legal departments gets more complex every day. Connecting with your peers to exchange ideas with those who have “been there done that” has never been more valuable. For over three decades, the International Legal Technology Association (ILTA) has led the way in sharing knowledge and experience for those faced with challenges in their organizations and legal departments. ILTA members include organizations of all sizes and all areas of practice, all sharing a common need to have access to the latest information about products and support services that impact the legal profession. Learn more at iltanet.org.

Statement of Purpose

ILTA provides the premier environment for peer connections, education and collective intelligence to leverage the strategic advantages of technology in the legal profession.

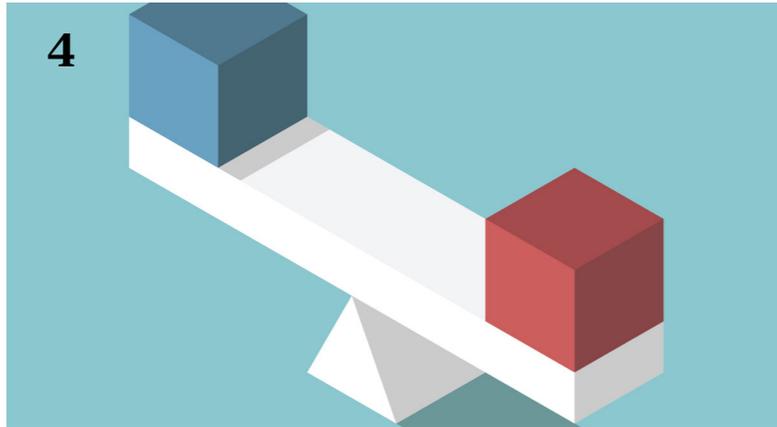
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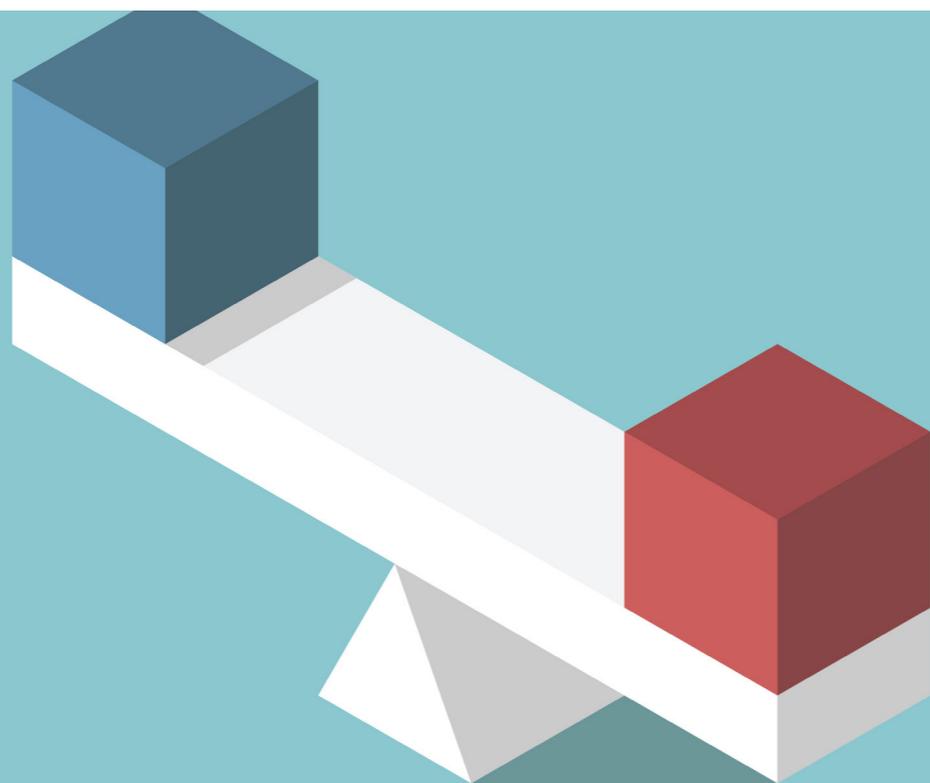
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How Counsel Can Find Solid Footing in the E-Discovery, Privacy Balancing Act

BY RENA VERMA

E discovery counsel understand the importance of balance. They are experts at walking a tightrope, simultaneously managing cost, large data volumes, complexity, risk, case strategy, deadlines, conflict with opposing counsel, technology needs, workflow and multi-jurisdictional laws. With the emergence of stringent data privacy legislation in Europe (GDPR), Brazil (LGPD), California (CCPA) and other regions, the already daunting tightrope is shrinking. New requirements and limitations around personal data and how it is stored, processed and transferred, is presenting e-discovery counsel with an even more challenging balancing act to maintain.

While data privacy considerations are not novel concepts in e-discovery, the stakes are higher today than ever before. Since GDPR enforcement began earlier this year, hundreds of millions in fines have been either issued or proposed for non-compliance. Awareness in the U.S. is on the rise as well, with the enactment of the CCPA on the horizon and dozens of other strict privacy laws making the rounds through state legislatures. Compliance with these laws typically fall under the purview of attorneys and privacy professionals in an organization's data privacy office, leaving e-discovery counsel and litigators somewhat or wholly removed from its impact on e-discovery.

Yet data privacy laws are affecting numerous facets of e-discovery. For many organizations, the most glaring burden will be on e-discovery costs. Below are five steps e-discovery and litigation teams

can take to balance conflicts between e-discovery and privacy needs, and mitigate the cost of complying with data protection laws while collecting and processing personal data of citizens in Europe, California and other governed jurisdictions.

- **Understand the Data Map:** In operationalizing for compliance, the data privacy office will have completed an inventory of the organization's structured and unstructured data sources and personal data stores. E-discovery practitioners must work with the company's data privacy office and leverage the data map to navigate any special handling certain data may require during preservation, collection, processing, review and production, to remain in accordance with regulations. If a formal data map does not exist, organizations should secure necessary resources and buy-in from senior management to invest in creating one. Having a readily available data map will help achieve compliance as well as time and cost savings of identifying data sources for future matters.
- **Get a Grip on Legal Holds:** A great deal of enterprise data on legal hold resides in structured business systems. Historically, it was easiest for the legal team to take a broad approach and put entire systems on hold, rather than parse the data within them. Now, many systems are in the cloud, and records

for U.S. and European citizens are often co-mingled in global databases. From a legal hold perspective, this means that the legal team must take a targeted approach to identifying the specific data within those systems that must be preserved. While it is easier to take a targeted approach towards preservation of email, doing so for structured business systems requires teams to work with various business unit owners and the data privacy office to separate legal hold records from the rest, and ensure that records for anyone protected by privacy laws are preserved in a compliant way. This may include obtaining valid consent from custodians under the GDPR for processing (which includes placing on legal hold) an employee's personal data.

Any necessary exceptions to this approach must be addressed in close collaboration with

the chief data privacy officer. More, teams in the U.S. should examine their existing legal holds and assess if they are overly broad and need to be right-sized to strengthen the organization's privacy posture. They might also consider updating their legal hold policy to include the procedures the teams will employ when implementing a cross-border legal hold.

- **Be Prepared for DSARs:** GDPR introduced extensive data subject rights, including the right to be forgotten and rights for citizens to demand information about the scope of their personal data an organization is storing and how it is protected, processed, etc. Data subject access requests (DSARs) require extensive workflows to operationalize, and in certain circumstances, may impact e-discovery. For example, a custodian whose data is in scope for

Data subject access requests (DSARs) require extensive workflows to operationalize, and in certain circumstances, may impact e-discovery.

a case may issue an ad-hoc request to review the personally identifiable information (PII) included. This could range across structured and unstructured systems, creating a heavy lift for the discovery team to provide a complete set of PII in scope. The custodian may also request that his personal data be redacted before it goes through production. Any of these steps can add significant cost and delays to e-discovery processes. For such scenarios, litigators should consult with their outside counsel, the data privacy office and their e-discovery provider to create a workflow for document processing and review. For consistency of approach across matters, they might also consider updating their e-discovery playbook with the process steps that the teams will follow to address DSAR requests in discovery.

- **Champion a Data Minimization and Remediation Initiative:** Many organizations still retain excess legacy hard drives, email archives and other backup stores. E-discovery counsel can significantly reduce costs by conducting an assessment of these stores and remediating data that no longer needs to be preserved for legal, compliance or business purposes. The benefits of such an activity are widespread. Remediation reduces the size of the data footprint that may come into scope for a matter and mitigates the complexity of working

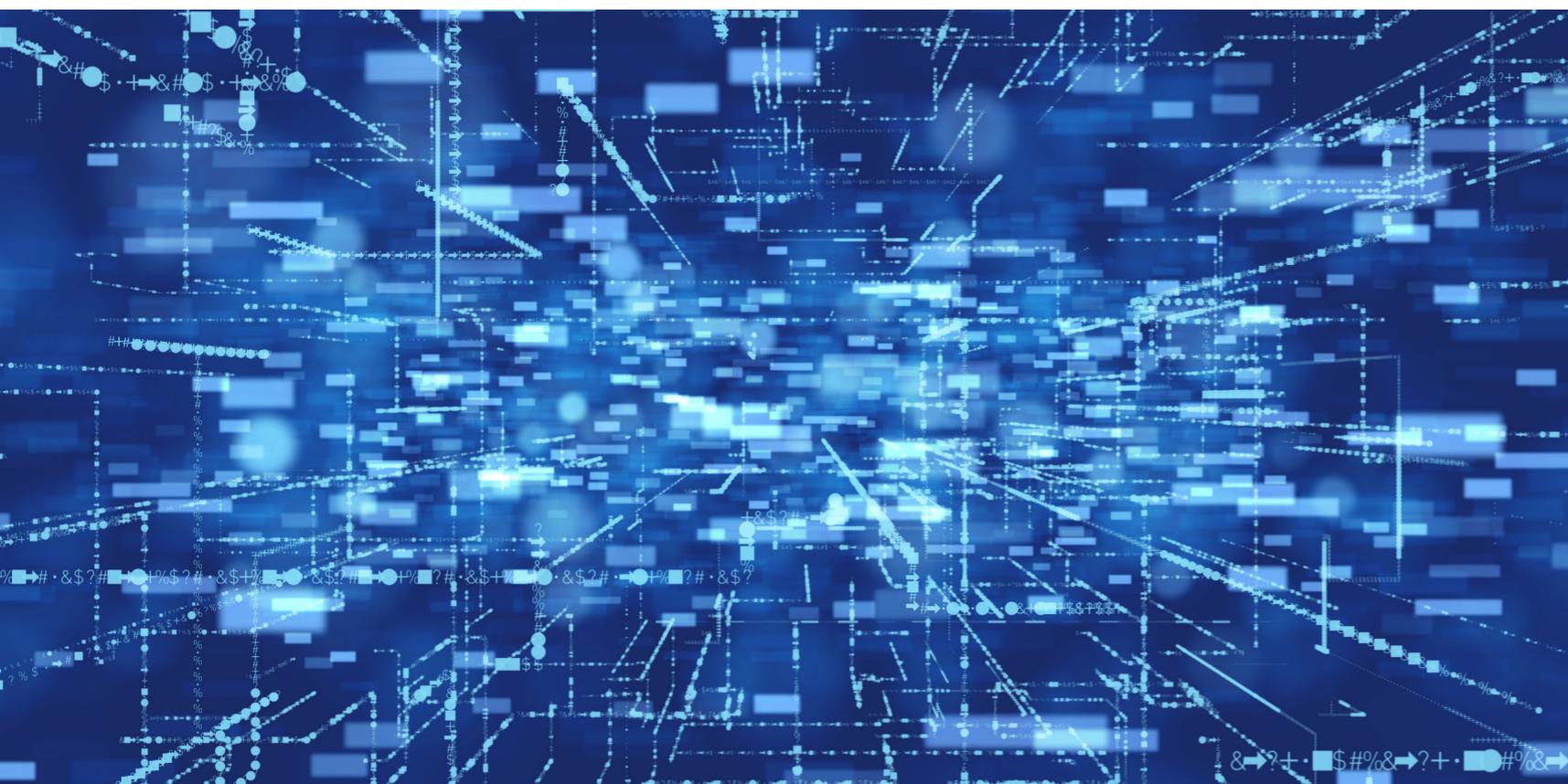
with the data privacy office during e-discovery. More, it improves data privacy practices by reducing the volume of personal data being held within the organization and providing transparency into backups and instances of co-mingled data.

- **Train and Educate:** Any practitioners involved in legal hold decisions, data collection and e-discovery for litigation and government investigations must be educated about data privacy and trained on new workflows. When teams have the ability to recognize privacy sensitivities, they can pause before missteps are taken, and ensure their activities are both streamlined and aligned with the data privacy office's policies.

Data privacy is a complex and multi-faceted issue, fraught with risk. Counsel facing new challenges stemming from data privacy may benefit from the support of third-party experts experienced in achieving the balancing act between e-discovery and data privacy demands. This can provide teams with much needed support to review and rework standard e-discovery operating procedures and implement training programs so teams can appropriately navigate new processes and reduce costs. **ILTA**



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Federal Rule of Civil Procedure 37(e) Amendment

De-Risking e-Discovery for Corporations

BY KATHLEEN E. RATCLIFFE

DISCLAIMER: THIS ARTICLE WAS WRITTEN AS AN ILTA MEMBER, AND NOT AS A REPRESENTATIVE OF THE OFFICE OF THE OHIO ATTORNEY GENERAL.

Prior to the 2015 amendment to Federal Rule of Civil Procedure 37(e), the rule provided no guidance as to the level of fault required to warrant the imposition of sanctions. The courts were split and applied varying approaches to enforcing sanctions from gross negligence to mere negligence. This ended up with many corporations over preserving data to avoid Zubulake-like sanctions. In 2015 Federal Rule of Civil Procedure 37(e) was amended to “provide a uniform standard in federal court for use of these serious measures when addressing failure to preserve electronically stored information”¹. In essence, rather than impose case ending sanctions, it was decided that if and once a finding of prejudice is made, “the court is authorized to employ measures ‘no greater than necessary to cure the prejudice’”². Or in other words, the courts want to find a way to fix the issue and carry on rather than decide the merits of the case on discovery abuses.

The new rule applies a logic-based test meant to uniformly inform the courts and parties when and how sanctions may be imposed.

37(e) Failure to Preserve Electronically Stored Information

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

The amended rule also forecloses reliance on inherent authority; it recognizes the ever-emerging sources of ESI; and that ESI often exists in multiple locations. And, importantly, the rule “recognizes that ‘reasonable steps’ to preserve suffice; it does not call for perfection.”³

Now that all sounds nice and good, right: a legal standard that the courts may all enforce uniformly. But it is not exactly working out that way. Perhaps that is because the law seems to lag far behind the technology and data explosion happening now—one with no end in sight to boot. Perhaps it is because courts are still grappling with how to interpret prejudice, or more importantly, how to prove intent. Courts are even contending with the question of inherent authority.

So, the question begs, where are we now? Spoliation sanctions have declined by 33%.⁴ The most severe sanctions are denied, and less than one out of five motions for sanctions is granted.⁵ Is this the end of sanctions? And if so, how does this advance the amended rule's stated purpose?

While tasked to write this article, every bone in my body screamed NO! I can't! What about the bad actors out there (and we know there still are some), what about incompetent tech players, and even the lawyers out there who are still, somehow, wrestling with this brave new (old) world of ESI?

And then hope sprung. I stumbled across an insightful article written by Daniel Gold, *The Next Era of E-Discovery is Already Here*⁶. The author paints the picture of the evolution of the E-Discovery world: from the start of in-house platforms such as Concordance and Summation to the world where law firms and corporations now employ E-Discovery managed services in SaaS or IaaS environments with fancy tools like computer assisted learning! And thinking about Mr. Gold's article about the evolution of the

E-Discovery world made me think how that evolution has closely followed the rule amendment—and past and emerging case law. No longer do lawyers have to act as IT personnel. Litigation support services are in more demand than ever. Now, “62% of attorneys prioritize tech savvy over “soft skills” when hiring.”⁷ We can also look to the new technology competence rules to say that we have come a long way from where we once were.

But Mr. Gold takes it a step further, arguing that the next era of e-discovery is already here – and it is in the hands of corporate legal departments. He writes, “E-Discovery is no longer a mystical and disparate part of the corporate data's lifecycle, but rather an extension of the desire to manage enterprise information so that by the time litigation does ensue, there is no longer any question about where the data is, who has the data, and the types of data. Corporate legal departments want to know they can search, collect, actively crawl, preserve, process and sift through information.”⁸ The new privacy laws cropping up all over the country, and the world, will advance this cause, because, well, it must. There is no other choice.

Well that cheered me up. Are we there yet though? I am not sure, but I hope that we are on the right road. ESI is exploding at alarming rates, and mere data mapping might not be the best tool going forward anymore. O365 is an advancement, but key word searching just doesn't cut it anymore. ESI is everywhere, and we need the tools to do exactly what Mr. Gold proposes. So, I remain hopeful.

I was also pleasantly surprised and pleased while at the Ohio Annual ILTA conference, where a panel of expert witnesses, including a District Court Judge and two distinguished attorneys pondered these exact same questions. The Judge made clear he does not allow discovery shenanigans and in doing so, heads off most discovery disputes before they even become one. Sigh, if all judges could be like him. But I remain encouraged that we are heading in that direction.

As one of my personal idols, Ralph Losey, recently wrote in his post, *Cautionary Tale from Brooklyn: Search Terms ‘Designed to Fail’*, “E-Discovery is about evidence. About truth. You cannot play games. Either take it seriously and do it right, do it ethically, do it competently; or go home and get out. Retire already. Discovery gamesmanship and lawyer bumbling are no longer tolerated in federal court. The legal profession has no room for dinosaurs like that.”⁹

Mr. Losey is right. And I think everyone is recognizing that, including the courts and the parties. While we may still be grappling with how the courts interpret the amended rule, it will iron itself out. And when it does, both plaintiffs and defendants will be better suited to quickly and competently identify the relevant data. In the meantime, let’s look to corporate legal departments and root them on. **ILTA**



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1. See FRCP 37(e) committee notes

2. Id.

3. Id.

4. <https://www.logikcull.com/sanctions> (download the report here)

5. Id.

6. <https://www.jdsupra.com/legalnews/the-next-era-of-e-discovery-is-already-49185/>

7. <https://www.law360.com/articles/1210065/why-technical-skills-can-help-land-your-legal-dream-job>

8. <https://www.jdsupra.com/legalnews/the-next-era-of-e-discovery-is-already-49185/>

9. <https://e-discoveryteam.com/2019/10/20/cautionary-tale-from-brooklyn-search-terms-designed-to-fail/>



Corporate KM

BY JACK THOMPSON

Law firms (regardless of size) build KM programs to better suit client needs and have industry tools and techniques designed specifically for this purpose. While Knowledge Management (KM) professionals at law firms are client facing both internal and external – KM in a law department is equated to programs dealing with Information Governance, Records Management, Security and Risk management, document management, and overall litigation or case related governance for evidence or support. In some cases, a law department KM manager is not an attorney working on a case – the role is assigned to a legal operations professional or other law department staff being the all in one Knowledge Master for anything related to the governance of information, how it is used, and what it should be used for.

There are distinct factors which make the law department KM manager different from the law firm KM manager. Notably are the challenges which law department KM managers or (as legal operations information governance managers – IG Managers) face to drive how information is managed, paid for, and deliver value back to the organization. This discussion will focus on the key challenges of proposing law department internal budgets for program and support building of knowledge management/Information governance programs as well as sponsoring professionals to support and run its operations.

Program and Professionals building and master KM programs within law departments are part of a

larger ecosystem which support the legal function in the organization. The framing and build of this type of program within a law department is not instinctual as it would be in a law firm as a core function. In fact, depending upon the size, volume, and scope of a law department, there may be no requirement at the immediate moment. However, for established organizations or larger law departments (15+ attorneys or spanning 5 to 10 legal matter types), the necessity of having a professional manage an information governance program for the law department as well as be an integral part of the organization is paramount. The importance is born reactively in most cases or evolved from a situation where an external influence required the organization to produce facts concerning how information is managed, what information is managed, and who are the key organizational players to ensure it is legally and compliantly preserved.

Case in point – eDiscovery is a primary catalyst for organizations to develop an information governance program and dedicate a manager to the program. Mid-size to larger organizations amasses exceptional amounts of data for various purposes. Most organizations collect but do not utilize such data, however is there a purpose or legal requirement to dispose of or continually preserve such information for a period. Legal information governance program managers are facilitators on the rules of legal interpretation on how best to proceed with management of data.

The next logical step here is how is knowledge of the information leveraged in ongoing legal matters and how best can it be utilized for the defense of the organization. When considering the scope of this concept there are several ways in which a professional or program can dictate small or large directional steps forward.

- A key concept is the development of a mission statement or charter for impact of the Legal information governance as well as clear hard line deliverables which arrive from the position (i.e. discovery playbooks, information governance white papers for internal reference and external education, internal legal data mapping structures, etc.).

The concept is progressive and innovative, however there are internal roadblocks which potentially inhibit or delay a program, are the interactions and controls from other business units which impact the deliverable – Information & Technology (IT), business areas within the organization (Finance, Marketing, Sales, Regulatory, Tax, etc.), and/or management of the General Counsel with executive committees. Most notable roadblock is budget or funding for such a program. The following are key argument perspectives from a law department which support the cause:

KEY ARGUMENT - determining the value not in monetary ways. Use qualitative figures and avoidance of immediate and future risks:

- prove it is easier to reduce risk (how much is it to keep vs destroy? What is typically always being sought after in cases? What is the liability for the organization?) by committing to a dedicated program and tool to manage it.

KEY ARGUMENT - form the scope is how to leverage “unused data” for future protection and usage:

- Analytics with context and future uses in putting together knowledge management in future cases
- Streamline usage of information for efficiency in process (determining privilege calls for litigation, outlining pathways for in-house work resources to look up historically, leverage the beginning of a process playbook, etc.)

KEY ARGUMENT - security and protection of information when discovering potential risks of theft and loss:

- Align with corporate security/information security to assess threat analysis and what typical information would require legal action or adjustment in the event of breach or theft.

KEY ARGUMENT - self reliance and reduction of cost on outside parties to manage information.

- Cost benefit analysis of having a dedicated program and professional management of such a program internally deconstructs reliance on outside counsel spend
- Objective results are to reduce outside counsel spend on learning time and billable hours on established organizational processes using in-house resource experts and program controllers (collections, narrative briefs, 30 (b) (6) witnesses, etc.).

Building the business case is the first step for building and supporting an information governance program. Added incentive is positioning tools for the organization's investment. Artificial Intelligence programs and services are heavily invested in building knowledge management programs specifically for law firm KM programs. The result and future growth for law firm professionals as well as end products for value add to internal and external clients. In the same instance, law departments are appropriating AI tools, services, and efficiencies where AI is a useful tool in managing information governance as well as reducing overall operating costs in knowledge management for legal matters. AI is one added advantage tool, with consistent investment in time from a law department would enhance overall performance and ability.

A scenario to consider for usage of AI and support of an information governance program would be when deciding what to do with the unused data which has

not been classified or abandoned. Typically, the question of legal value comes up when looking through sources of information – the question is what is to be done with this and is it under legal hold, preservation or retention hold, or will the business use this moving forward. The answer lies in an information governance perspective providing insight with internal business units to make the decision make the decision legally viable – also what type of tool/system/service/workflow is manageable and implementable for this scenario.

Another scenario for information governance program and usage of tools such as AI, are the importance of opportunities to build collaboration internally and externally for the organization's law department. Internally, client groups such as IT, Security, Records Management turn to the Law Department for guidance on what to do with information and usage of an AI or IG tool enhance the capability of making informed decisions and effective use of technology for data classification. Externally facing, the information governance program ascends collaboration with outside counsel by providing the “know thy data” mentality with defense and actions of information directly from the organization.

There are notable differences between KM Managers in law firms and law departments, however the building of such programs, support and maintenance, as well as opportunities remain consistently the same. As law departments continue to grow with data, change technology landscapes, and encounter more changes in law, the role of a law department information governance program and in-house knowledge management professional will become a greater asset for the organization. **ILTA**



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How the Future of AI, Automation and Data Will Impact General Counsels

BY RYAN STEADMAN

Artificial intelligence (AI) will continue to enhance (not replace) the work of GCs and legal departments. According to the **2019 ILTA Technology Survey**, advances in AI will begin to shift technology from performing tasks that replace the workforce to performing tasks that enhance the workforce.

For legal departments, the biggest gains from automating legal practices will be time saved and improved workflow efficiencies. AI will accomplish this by taking over the most laborious tasks, including litigation support, email, eDiscovery and the use of databases for case management. When we automate tasks like these, we actually unlock human creativity and allow the mind to apply its critical thinking faculties to things that are more important, less mundane and less administratively burdensome.

When a person has to work on multiple tasks at the same time and ends up switching between various tasks throughout the day, something called “attention residue” – which is inherited from the previous sequence of tasks that you’ve been doing – starts to reduce our productivity. This is closely related to another phenomenon called “context switching,” which happens when we transition between settings (say, home or office) or roles (parent or employee). Think about how many times during the work day you see a pop-up notifying you about a new email or a Slack or text message on your cell phone. Unless you are extremely well-disciplined, you are going to be drawn to what is going on somewhere else on your

screen. It's a lot like having a slot machine in front of you. Behavioral scientists and researchers tell us it takes around 20 to 25 minutes to re-engage with a task that we were previously involved with after being distracted by another task or another process.

Smarter automation using AI is already being implemented to minimize these distractions and is allowing knowledge workers and other professionals to focus on the most substantive tasks before them. At home, we outsource dishes and laundry to the dishwasher and the washing machine, because all of these little chores can cause us to neglect activities that genuinely matter to us, like spending time with family. Why not at work? In our jobs, we spend so much time performing mundane tasks, we lack the proper focus to engage deeply with colleagues or carefully work through the ideal outcomes of a legal transaction. Automation that works "intelligently" in the background and learns from our behavior without requiring our intervention will allow us to refocus on important tasks and eliminate the cognitive deficits caused by attention residue and context switching.

AI is poised to make law firms and legal departments more efficient and achieve better legal outcomes by making the "small" decisions for us and allowing lawyers to bring more focus to the complex, higher-value work we do. Think of how Amazon makes informed product recommendations that improve incrementally over time. In much the same way, lawyers will begin to trust technology to take over

basic tasks such as auto-filing of documents and email for compliance.

The goal is to arrive at a form of "augmented" intelligence that combines targeted technology with the best of human critical thinking. Deploying AI doesn't mean technology will be replacing human beings. Instead, it will enrich their capabilities and capacities to get on with more deliberate and value-based activities and processes.

AI will help us mine the data generated in the process of doing everyday work, to provide enhanced business intelligence that inform better decisions-making across operations. AI technologies like machine learning improve as they are exposed to more data. The precision with which they produce predictive insights (related to costs, workflows and operations) will continue to increase dramatically as more data continues to flow in.

For example, legal departments may be struggling to make accurate predictions of legal spend and to plan accordingly. Powerful AI technologies can analyze a large body of relevant historical data and quickly yield meaningful insights. It can predict the amount of time a particular matter or project is likely to take, for example, and then help leadership make better decisions regarding the allocation of staffing resources. AI can also help us better understand workflow and operational bottlenecks, shedding light on which tasks create the most administrative drag, for instance, or which matter types or practice areas are eroding the department's bottom line. It can even assist in discovery of compliance matters.

When we start collecting legal department or a law firm data in a near-autonomous, automatic way, we suddenly have the ability to present to various stakeholders (at both the enterprise level and the

AI can also help us better understand workflow and operational bottlenecks, shedding light on which tasks create the most administrative drag.

law firm level) a range of ideas, based on relevant historical information, for new service delivery models. That can be an enormous opportunity for law firms in particular to start figuring things that were previously difficult to understand: What are the win/loss ratios of our lawyers or teams? Which of our practices are doing exceptionally well and which ones are not? Which client relationships are ultimately the most valuable?

Metrics like these not only have value from a profitability standpoint, but also give us a much more robust capacity for future planning. If there is a high-performing practice area that coincides with increasing activity, the firm can immediately start scaling up and search for additional talent to keep pace with the forecast growth. Whether you are analyzing practice areas or specific legal jurisdictions or specific areas within a regulatory framework, it's very difficult to map out and measure future-based performance models without having good data. Extracting and organizing that data into actionable intelligence is something AI is very, very good at.

Let me give you a specific example focused on what may seem like a very mundane activity that every lawyer is engaged in every day: email. AI now has the ability to automate email compliance, accurately filing emails into respective silos or document systems, and to perform sophisticated content analysis, determining which emails should be filed and where, and which emails shouldn't be filed at all. This is what I call the first generation of AI-enabled automation, and it's

something that can enhance operations significantly without disrupting everyday workflows.

Now consider that law firms and enterprises generate massive amounts of unstructured data that can be analyzed – not just emails, but all sorts of documents and other forms of important, subject-matter-related content that isn't typically found in an Excel file or a CSV database.

There is virtually no limit to the insights we can learn from the next generation of predictive AI. When we introduce AI to a law firm or legal department, we have an opportunity not only to help lawyers focus on more important tasks and do better creative thinking, but we can also dramatically streamline and automate the interpretation of big data in a way that stakeholders can understand and leverage. **ILTA**



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Closing the Skills Gap

AI, Analytics and the Legal Profession

BY JONATHAN REED

Artificial intelligence has been one of the biggest legal tech buzzwords of the past decade. AI, however, is far more than just a technological benchmark. AI-powered tools and platforms allow lawyers to better discover trends and answer critical questions in order to achieve better matter outcomes and run more efficient practices.

Most importantly, AI allows lawyers to do all these things without having to understand the underlying data science or write complex code. With a basic understanding of what AI is and how it works in the legal profession, law departments stand to take maximum advantage of today's technological offerings.

The Current State of AI

The term AI has been around for decades, ever since Hollywood's rise-of-the-machines scenarios tried to scare people into thinking that robots would take their jobs. In reality, we are far from that level of advancement. Nonetheless, AI is already all around us every day.

AI today exists in four main categories. The first and most basic is reactive machines, which can be programmed to perform certain actions, but are incapable of holding memory or utilizing experience to predict outcomes. One example would be sensors that know to light up when you walk through a specific area.

The next category is limited-memory AI, which is essentially the next step beyond reactive machines. Think of technologies like smart thermostats – they

can learn when you walk by and what temperature settings you like, essentially storing the patterns of your weekday and weekend routines and controlling things accordingly. These limited-memory AI tools refer to past experience and present data to make decisions, continuously and automatically adjusting as more data is introduced.

Neural networks are the third category of AI. These are machines that have some features of a human mind and the ability to interact with and execute tasks set by humans. Neural networks commonly take the form of robots or web bots. Neural networks fall within a commonly referenced form of AI called machine learning. The fourth and final category – and the ultimate goal of AI – is self-awareness. A self-aware machine would have very high-level intelligence and a consciousness of itself and its environment, being able to accomplish all the tasks encompassed by the prior three categories.

While self-aware machines are the AI that we commonly see in fiction, we're far from encountering this level of artificial intelligence in our day-to-day lives. What we see more commonly in everyday use, including in the legal industry, is machine learning.

A Look Inside Machine Learning

Machine learning tools have been revolutionizing the way the legal industry does business for the past decade. These types of AI tools are focused on discovering patterns in data and generating insights from those patterns. This pattern recognition can

advance into deep learning on the data, where the tools are mimicking human neural networks and making detailed sense of patterns by excluding noise and sources of confusion from the data. Data can often be noisy, unreliable and unpredictable, but advanced machine learning tools can scan the data and determine what is real and what likely is not.

Machine learning neural networks function like black boxes. There's an input layer where humans introduce data to help the AI parse the parameters of the problem to be resolved. Then you want the technology to reference all the data you have on a particular problem or circumstance in order to develop new inferences about it. The output layer reports back the results and conclusions of those inferences.

When it comes to training and utilizing AI, the more data you have, the better. Neural networks traditionally use historical data. If you are lacking in data or context for your data, it can be augmented by

external data sources until you achieve the results you're seeking.

AI in the Legal Profession

While any discussion of AI can start to feel overly technical, in reality AI is everywhere, and you do not need to be a data scientist to take advantage of it. AI-powered tools have already become an integral part of our day-to-day lives, and the legal practice is certainly no exception.

Today's legal industry is brimming with special-use tools and point solutions designed to make the practice of law more efficient and effective. Better yet, they are designed to be used by lawyers to discover trends and answer critical questions without having to write or even understand complex data models. The coding and programming remain the work of the data scientists, while everyone else reaps the benefits.

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The modern arsenal of today's lawyer is made up of a number of AI-powered solutions that require no technical training to use. From specialized products to platforms with AI capabilities, you are likely already employing AI in your daily legal practice.

AI POINT TOOLS

Many lawyers are already using targeted AI solutions to increase their efficiency and streamline their workflows. One prime example is contract analysis tools. These programs interrogate contract data and provide insights into things like positive and negative clauses or potential loopholes. These tools can automate review and analysis of contracts, finding critical clauses, areas of risk and inconsistencies in contract data. Contract analysis tools also provide the ability to assemble contracts in a more intelligent and trustworthy fashion, saving time and increasing accuracy in the process.

Documents have long been the lifeblood of legal practice, so it should come as no surprise that many of today's AI tools center around documents. AI is being deployed daily to organize, locate and search documents in order to create more efficient workflows. AI tools can contextualize key concepts and group items related to case execution, which give legal departments quick insight into actionable data.

Another popular area for AI-powered tools is legal due diligence. By harnessing the power of machine learning, these tools offer the ability to review and rationalize matter histories with a speed and

depth that was not previously possible, gleaning new insights for existing matter outcomes that might be applicable to future matters. AI tools can also analyze key data and predict the behavior of case participants, enabling legal departments to better understand potential outcomes based on behavioral strategies.

AI is also present in legal research tools, providing unprecedented efficiency and access to more case data than ever before. These tools go beyond simple search and can find highly specific case-related facts, motions and histories that can affect future outcomes.

Having AI tools is essentially like having a virtual researcher to quickly uncover vital intelligence for making strategic decisions based on potential matter outcomes.

AI-POWERED PLATFORMS

AI is not only limited to specific point tools. AI is now being embedded in platforms that capitalize on today's advanced cloud technologies. There are several sophisticated platform-as-a-service offerings available today, and each offers many useful AI capabilities. If yours is like many legal departments, you are probably already utilizing one of the top cloud-based platforms in one way or another, which means you already have AI capabilities embedded into your daily workflows.

You do not have to be a data scientist to take advantage of these capabilities. What you do need, however, is the right kind of data in the right context in order to glean the types of insights that will improve your practice.

The Importance of Data

Just because you have AI-powered tools or AI capabilities embedded in your platforms, that does not necessarily mean you will be able to use them to get answers that provide meaningful insight. The key to successfully applying AI is the right data.

The amount of data you need will ultimately depend on the tools you use, but it is safe to say that more data is better. Volume is not the only important factor, though. Your data also needs to be in context.

Most legal departments have vast amounts of data at their disposal, often dating back several decades. However, the data you have from 30 years ago may not be in the same context as the data you have from 10 years ago, which can make it impossible to reconcile and analyze. In order to have the proper context for your data, you need to have it in databases where field integrity has been maintained – meaning that the same types of data have been stored in the same fields. Your data model also needs to have been complete enough to analyze and describe the entire scenario at any given point in time.

Context can also change significantly in legal practice, as laws are constantly changing. Case outcomes from 15 years ago may be substantially different than what those outcomes would be today due to changes in the legal system or the laws themselves.

If you find that you do not have enough data or that your data lacks the necessary context, it is still possible to take advantage of AI. You can create valid context by getting all your data into a single,

uniform platform so you can analyze it better. You can also grow your volumes – there are several data augmentation firms today that exist to publish legal data for use in the types of situations where you are analyzing data and looking for insights.

When you have the right data, you have access to matter insights that help to predict successful outcomes. AI tools and platforms have insight or inference engines built in that can look through data and determine that, for matters with specified factors that match the factors in your matter, settlement rates are higher or lower than for matters without those factors. These are insights that you likely would never have recognized when reviewing your data manually.

Lawyers have long had gut feelings about pursuing specific matters, but gut feelings are no longer enough. With the prevalence of technology and data in today's legal industry, you need to be applying AI to matter data in a scientific way in order to achieve the best outcomes. AI tools give you the ability to do just that with little effort or training.

Taking Advantage of AI in Your Legal Department

While most lawyers are already reaping the benefits of AI whether they realize it or not, many legal departments are looking to make a more concerted effort to incorporate the full capabilities of AI into their practices. Getting started involves making sure your data is in order, picking your tools and educating your lawyers on the benefits of AI.

Many legal departments still operate several disparate systems for matter management. The first step is to get as much of your matter data as possible into a single comprehensive matter management system. The very exercise of merging those individual point systems will trigger a data cleansing, correlation and context process whereby all your data is brought together in a usable way.

When it comes to picking your AI applications, there is no one-size-fits-all answer. A good place to start is by determining which areas of practice are currently causing concerns or problems and then figuring out what tools might be best suited to solving those problems. If you are already using one of the popular cloud platforms, you should investigate the AI capabilities of that platform and see how you can best take advantage of them.

The point of AI is that you do not need to be a data scientist to use it. Always be looking for tools that are user-friendly and offer easy interactions. Lawyers should not have to code, so any tools you choose should have a no-code interface. When your attorneys start seeing how simple it is to use these tools and the value of the insights they generate, you'll be well on your way to incorporating AI into all aspects of your practice.

AI is not about replacing lawyers or eliminating jobs. Rather, today's AI tools exist to make lawyers more effective and efficient. AI allows you to achieve higher settlements, accomplish faster matter execution, and gain more accurate matter information, all without any scientific knowledge or understanding of data science. **ILTA**



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