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Strengthening The Corporate-Law Firm-Service Provider Dynamic For E-Discovery

The Editor interviews Jessica Block, Senior Managing Director, FTI Consulting, Inc.

Editor: Strong working relationships between companies, law firms and service providers are essential to the success of e-discovery projects. Why is this challenging?

Block: A lot of different factors can play into this – budgets, internal staffing levels, past working experiences and communications are typical examples. At the end of the day, e-discovery is a large and complex process with high stakes, and it requires expert project management. The good news is that collaboration is improving as more corporations take greater control of their e-discovery.

Editor: Legal teams are always aiming to improve their e-discovery processes. What are some of the best practices you're seeing implemented within corporations?

Block: Given that e-discovery issues are far-reaching throughout the enterprise, best practices involve a collaboration across disciplines: legal, compliance and records management, among others. Even corporations without centralized governance are bringing together stakeholders to advise on processes and procedures that relate to the data life cycle, resulting in more effective and practically actionable solutions.

The best scenarios involve a working partnership with internal and external stakeholders, such as outside law firms and e-discovery vendors. Increasingly, corporations are recognizing that teaming with vendors is a core business process that merits the same rigor applied in making decisions about outsourcing or implementing key internal systems.

Editor: Will this work be repeatable across different matter types?

Block: Repeatability depends primarily on establishing a framework for initiating a discovery request, collecting data, exercising searches and exporting results to external personnel. Having the steps clearly laid out creates efficiencies that tie directly to repeatability. While each matter has its own nuances, there is no need to reinvent the wheel in terms of forms and documentation or the general approval process around the collection and export of data. These are not matter-specific issues.

Editor: Does corporate culture play a role in designing effective repeatable processes?

Block: Yes. Having a standard set of processes avoids insensitivity to a company's culture, for instance in comprehending the challenges of doing business internationally and, therefore, in meeting the discovery needs of U.S. and foreign stakeholders. Institutionalizing the requisite sensitivity will relieve business people of their biggest e-discovery burden and ease communications as a matter of course.

As an example, a client in the pharmaceutical industry is frequently asked to produce documents relating to regulatory submissions around new drug applications. The process of abstracting the information and recompiling it is complex, and data requests normally trigger time-consuming investigations and the disruptive need to interview business personnel. To ease this burden, the corporation established steps to standardize the handling of data requests.



Jessica Block

Now, everyone understands how to collect data, and the procedures are efficient and customized to the company and industry.

Editor: How does technology fit into the framework?

Block: It's a big question because technology has many uses. In a project management context, technology organizes the moving pieces and ongoing e-discovery across all matters. In a related context, we leverage technology to host the infrastructure for internal teaming sites, meaning repositories for standard forms, documentation and billing metrics. For our clients, the experience of working with outside partners, meaning law firms and vendors, begins on this site and enables centralized access to information about matters.

Having an established platform substantially reduces matter startup costs, which relate primarily to formatting information for the selected discovery technology, and it creates efficiencies when stakeholders understand common discovery processes, also technology based.

Editor: What role does the law firm play in this process?

Block: As trusted advisor, the law firm shapes the substantive defense of matters, including specific goals with respect to e-discovery. Tension may arise when the firm's immediate objectives face off against larger corporate budget concerns, which is no surprise considering the immense pressure for favorable outcomes. Increasingly, corporations are engaging their key firms early to establish discovery-related standards in advance so their law firms aren't creating process in the moment. This forethought relieves those faced with day-to-day execution of the design burden because they can look to an existing struc-

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ture. In that sense, the firms are not trying to map the course and build the road at the same time.

We work with corporate clients to develop a standard playbook that creates a framework to encourage efficiency, repeatability and, more broadly, choices that make sense. We promote three-way communication among clients, outside counsel and FTI as the technology provider so we can speak for ourselves and cooperate in making decisions that everyone can buy into.

Editor: How can the e-discovery provider add value?

Block: First and foremost, we are there to facilitate the development and implementation of standards that clients want to establish. We help with defining the standards as well as enforcing and executing against them. Also, we provide a deep bench of professionals with a global reach plus nuanced expertise in the areas of technology and e-discovery practices – resources that neither corporate clients nor law firms might otherwise be able to maintain in-house.

On a practical level, we get involved in different ways. For example, clients that choose us as a straight purveyor of technology and related services require minimal support. The most important aspect of FTI's stack of services is our robust hosting platform, a fully featured review tool that allows clients to manage their own data and routine operations with internal resources.

That said, we also can provide additional capacity when clients are facing a litigation event or a staffing situation that they cannot cover themselves. For instance, we've been working with a certain company for five years. Both the client and its law firms are very self-sufficient, with established working practices and a well-worn playbook, so FTI has been able to support their minimal needs with a team of two to three professionals. This year, however, they faced a significant event that required us to scale up to a team of 20 to 30 professionals, including those with expertise in jurisdictions as far as Asia and in services like contract review, forensic collection and e-discovery consulting. The client never could have assembled a team like this at the speed and rate we offer.

So FTI's role is really customized and often involves access to services and expertise that clients may not need on a full-time

basis. These established partnerships really become an extension of the client's business.

Editor: It sounds like that can really drive efficiencies.

Block: That's right. We're equally committed to helping clients identify areas in which they can or may want to take on additional responsibility. In fact, a client recently asked us to transfer their in-house platform to a hosted model, and after we effected the transition, they needed a lot of initial support to help various outside counsel and support teams manage the technology transition. Once we did that, we were able to scale back significantly on the compliment of resources we had been providing because the company was more self-sufficient. In that case, we were heavily involved with helping them institute standards. As that process became self-perpetuating, they were able to use our process with minimal support.

Editor: Can companies develop metrics or other measurements to track e-discovery cost and process improvements?

Block: Yes. We recognize that, as part of an ongoing partnership, our role is to help clients answer vital questions that relate to budgeting and year-over-year cost improvements resulting from investments in outside technology providers. Is the corporation better off as a result of our services? If so, how?

We focus on making process improvement transparent and really showing how our advanced technology allows companies to work better, faster and with fewer resources. Earlier, I mentioned that we provide centralized hubs, or internal teaming sites, for information, metrics and documentation, which are part and parcel of that effort. We want clients to understand the impact of our technology and service on their overall outlay against this critical business process.

In turn, these efforts enable us to understand the corporate psyche as well as our clients' specific businesses and industries, including what information is most critical and valuable, and we certainly shape our processes to be responsive. As an example, we recently integrated the ability for end users to quickly assess the data volume of specific document subsets within an e-discovery review platform. Formerly,

clients relied on us for these answers, so we developed this capability in response to frequent inquiries, and also because law firms were introducing alternative fee models for document review based on gigabytes, pages reviewed or other similar criteria. The goal of this and other development efforts is to enable clients to pull metrics from transparent data sources and get answers to practical questions.

Editor: How should companies get started in developing an e-discovery framework?

Block: The first step is to answer basic questions about current business activities and staffing – interrogate your enterprise about the patterns of company data movement and talk to key partners, beginning with outside counsel, to gain insight based on their selection of technology providers and advisors. Ask yourself, what other stakeholders are involved in making the trains run on time?

After completing this self-assessment and the data-mapping exercise, companies can articulate what works best for them in the context of their own activities. We often work with companies for which the development of processes and standards is relatively nascent, and the details of those rubrics certainly will vary based on how advanced they are in this area and how litigious they are in general. Many factors will affect the value proposition in terms of time invested and the variety of matters involved, but the key message here is to know thyself. Then you can embark on a gradual exercise of pulling people towards the center.

Editor: What does FTI bring to this process?

Block: We bring a central philosophy around enabling our clients to work more efficiently. Our approach is not prescriptive; rather, we help clients document which e-discovery processes work best and impose the least strain on their core business. Instead of ready-made solutions, our basic format offers a consistent delivery team that engages across the entire organization toward defined goals: to understand the company's personnel, desired work flows and data types; to spot pitfalls before they become issues; and to develop a centralized body of knowledge, based on actual experience, that outside counsel can both share and contribute to.