CCBJ

SPECIAL

3rd Annual In-House Tech Guide

FEATURING:

DocsCorp

Effacts

FTI Consulting

iDiscovery Solutions

Inventus

LexisNexis CounselLink

LockPath

Neota Logic

OpenText

QDiscovery

Wolters Kluwer's ELM Solutions
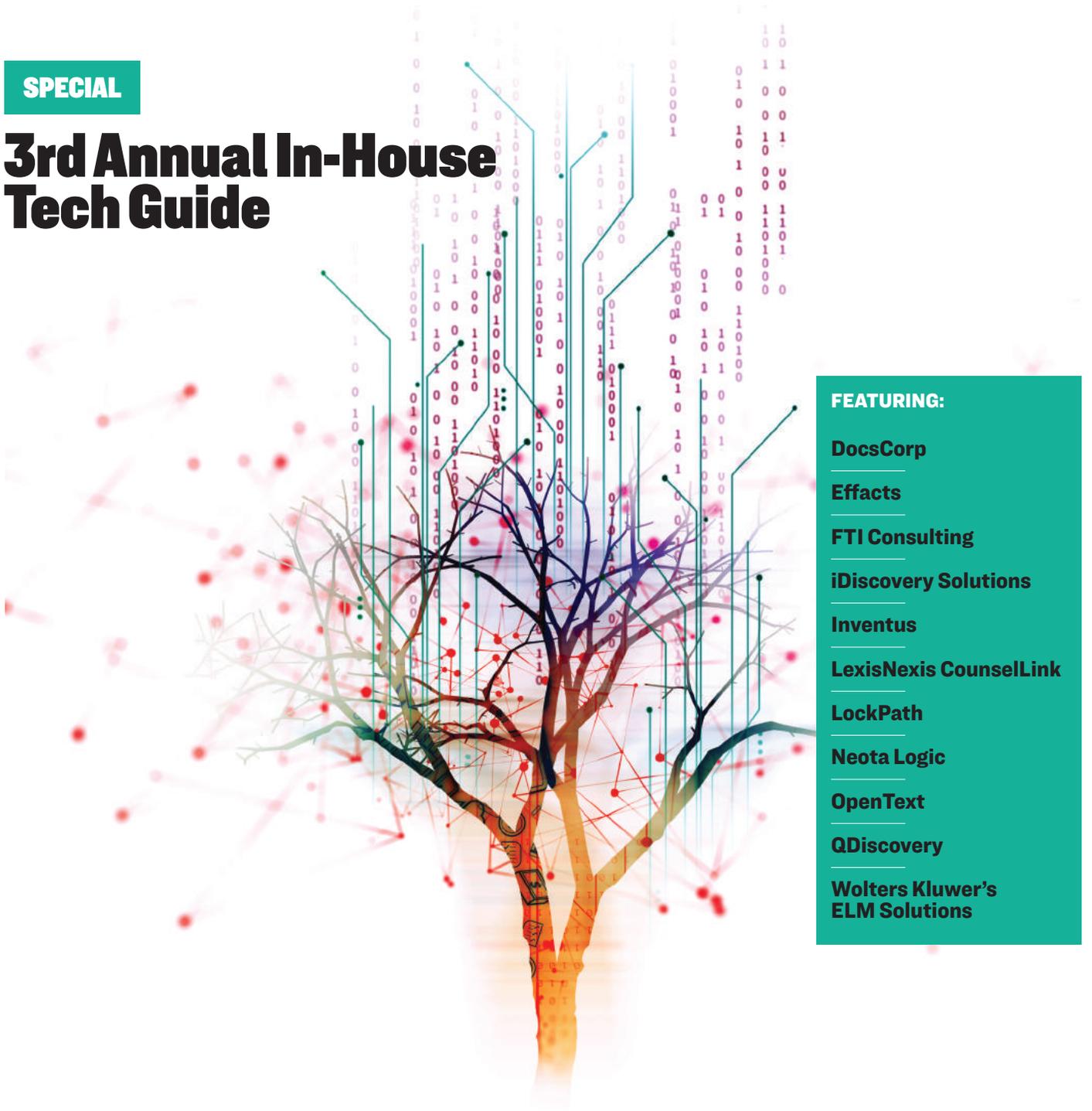
Legal Technology to Adopt in 2018

BARRY ADER
WOLTERS KLUWER'S ELM SOLUTIONS

▶ **There are four aspects of matter and spend management technology that legal department leaders should take a fresh look at.**

SPEND AND MATTER management technology is a core part of many legal department operations and is not new to most larger companies. But the fact that these tools are an established part of legal processes doesn't mean that you should "set it and forget it." Technological advancements in the business software world are impacting matter and spend solutions in a positive way. Many of the technologies that have been part of enterprise legal management (ELM) for years are now being used in new, and newly productive, ways.

As technology providers continue to find new ways to improve efficiency – as well as legal and financial outcomes – legal operations professionals seek to realize all of the benefits these advances offer.

As I see it, there are four aspects of matter and spend management technology that legal department leaders should take a fresh look

at in 2018. If you haven't yet incorporated these into your operations, consider doing so to avoid the risk of falling behind.

ARTIFICIAL INTELLIGENCE

▶ **WHERE IT'S BEEN:** Artificial intelligence (AI) is a broad term that encompasses several types of technology, such as machine learning, natural language processing and robotic process automation. These varying types are used to accomplish different goals, but they all empower people to do their jobs more efficiently and effectively.

Over the past few years, most legal operations professionals have probably heard AI talked about most often with respect to e-discovery. Because of the vol-

ume of data that is usually involved and the time-consuming nature of scrutinizing documents, e-discovery is a natural fit for AI tools that can simulate simple human judgments about relevance and process data quickly. But e-discovery isn't the only area where AI offers that advantage to legal departments.

▶ **WHERE IT'S GOING:** For these reasons, applications for AI will quickly spread to additional facets of legal operations. One major area of focus for Wolters Kluwer's ELM Solutions is bill review. This is a use well suited to AI because it's both time-consuming and data-heavy. Some invoices from larger firms can have thousands of line items, each specifying a task, timekeeper, rate, amount of time spent, etc.

AI can analyze line items and rank them according to the likelihood that they will need adjustment.

This is the role played by machine learning in the LegalVIEW® BillAnalyzer offering from ELM Solutions. Thanks to the AI ranking, our expert analysts can concentrate their efforts on the items that are most in need of attention. And because it leverages machine learning, the software gets better at ranking over time. Results are fed back into the database and the AI learns from any past misses. The result is a more accurate bill review process, with more savings identified more efficiently than could be done by expert reviewers alone.

BENCHMARK DATA

▶ **WHERE IT'S BEEN:** Benchmark data has been an important part of many legal departments' operations for years. The Real Rate Report, ELM Solutions' annual report on lawyer rates, provides very specific data about the actual hourly rates charged by law firms and how those rates are affected by factors such as geographic location, practice area and years of experience.

Many legal departments obtain the report every year and use the information to inform their negotiations with firms. This data is a powerful tool that helps companies ensure that the rates they pay for specific types of work in specific metropolitan areas are fair and aligned with industry norms.

► **WHERE IT'S GOING:** While access to benchmarking data was a huge leap forward, the next step is integration of this information into the tools that corporate legal professionals use to get their daily work done. This means incorporating industry data into reporting and dashboards that are used to manage legal operations and to report to senior leadership.

It is also important to have access to benchmarks at the point of decision making, where the information is most useful. For example, when choosing which outside counsel to assign to a new matter, it is helpful to compare firms to each other and against industry standards to make sure the right resources are doing the right work. ELM Solutions recently released Law Firm Smart Select functionality that does this within Passport Claims Defense, and we have plans to expand the feature to our corporate legal offerings.

USER EXPERIENCE

► **WHERE IT'S BEEN:** Enterprise software across all industries has undergone significant user experience improvements, and ELM systems are no exception. Just a decade ago, ELM tools were often a challenge to navigate and didn't mirror advances in consumer software products. As providers evolved and sought to improve the user experience, more intuitive UIs emerged and clicks were reduced, providing

> While access to benchmarking data was a huge leap forward, the next step is integration of this information into the tools that corporate legal professionals use to get their daily work done.

Barry Ader is vice president of product management and marketing for Wolters Kluwer's ELM Solutions. In this role, Ader is responsible for analyzing and understanding the enterprise legal management market, managing the product portfolio, creating a compelling road map and driving new business opportunities. He is responsible for leading and developing the marketing strategy establishing the company as the premier services and technology provider in the global corporate legal market. Reach him at Barry. Ader@wolterskluwer.com.

more efficient, streamlined workflows.

► **WHERE IT'S GOING:** Users expect the same flexibility with their ELM tools as with other software products they use. This flexibility includes mobile access, which is available with Passport® and TyMetrix® 360°, including responsive design that detects the size of the device's screen and adjusts accordingly. A positive user experience isn't just a nice-to-have; without it, user adoption suffers and companies have difficulty achieving their expected ROI.

One of the best ways to drive adoption is to minimize the need for users to switch from system to system during their workday. ELM tools can now come to users wherever it is most convenient and most comfortable for them. Our Office Companion, for example, allows users to manage matters and spend from their familiar Microsoft Office applications without the need to log into the ELM tool to do most of their work.

DATA SECURITY

► **WHERE IT'S BEEN:** Until recently, many legal departments focused their cybersecurity efforts on the data residing on their own systems without giving as much thought to information held by their law firms. In the past few years, however, high-profile data breaches and ransomware attacks involving law firms have driven legal departments to secure the sensi-

tive data they share with their firms. The majority of these efforts have taken the form of email exchanges tracked in manually maintained spreadsheets. This is not suitable as a long-term solution.

► **WHERE IT'S GOING:** The improved approach is to automate the assessment and management of law firm performance against the department's specific cybersecurity policies. Customizable law firm surveys should be integrated into an ELM system for full law firm performance visibility.

ELM Solutions' Cybersecurity Risk Assessment application offers a secure portal for collaboration between legal departments and law firms. Importantly, this includes the ability to capture remediation plans and track actions. It is critical to make sure that your requirements are clear and that you have details about where each firm stands with respect to those requirements. Automation will ensure this data is always up to date, while ELM integration provides insight where it's most needed.

Technological improvements are coming at a fast pace within the legal operations sphere, but these are not just great tech ideas looking for a practical application. Rather, they are proven tools that are already paying dividends for those legal departments that have invested in them and are ushering legal departments into a future of more efficient and successful operations. ■

Managing the Life Cycle of Information

▶ **OpenText's Hal Marcus and Anthony Di Bello discuss how to make sure e-discovery is a part of an organization's overall information governance and management program.**

CCBJ: Over the past five years, OpenText has made a number of acquisitions, the most recent being Guidance Software last August. What has been the strategy behind these acquisitions?

Hal Marcus: OpenText is a leader in enterprise information management, and that means the entire life cycle of information for corporate, government and other customers. A key need in the life cycle is around insight, understanding what's in the information. And that leads us to the legal process of discovery, to collection and analysis, and to the securing and protection of that information.

Anthony Di Bello: Customers are turning to OpenText to provide other required capabilities around sensitive data management, including machine learning and AI capabilities, to deliver deeper insight and meaning.

How do you differentiate yourself with your combined offerings?

Marcus: We provide unparalleled coverage of the EDRM (Electronic Discovery Reference Model) from the identification of critical content, through preservation and collection, and through all the processes, including production. We're now both a best-of-breed and a combined, unified offering.

Di Bello: We're now elevating this by leveraging our discovery capabilities into information governance and information life cycle management as a whole. In this context, e-discovery is part of an organization's overall information governance and management program.

What does a typical client look like, and what problems are they trying to solve?

Di Bello: For Guidance, that's really a strong corporate and government customer base. Our focus is on visibility and collection, including searching and culling at the point of collection – things that are important to the corporate counsel controlling how much data they're sending out to review.

Marcus: Historically, Recommind's discovery opportunity would arise when a corporation or a law firm had a substantial amount of data they needed to get through, as quickly and as efficiently as possible, both to inform their case strategy and to keep costs low and get to the production stage.

Guidance's reputation was built around its forensic collections technology. How have clients leveraged this technology?

Di Bello: The Guidance EnCase suite of products has become the most widely deployed search and collection technology within corporations. That's because there's a high bar of entry to agent-based collection solutions, given the complexity of maintaining support for different file and operating systems in a manner that ensures confidence of findings and the ability to gather up all relevant ESI.

Marcus: Seventy percent of the cost of litigation in the U.S. goes to discovery. And 70 percent of the cost of discovery goes to the review process. If you can cull your data intelligently right at the source, in a forensically sound way, then you can reduce those volumes. And if you can apply the best technology to get you through that review process efficiently, then you have a huge impact on your discovery cost and much faster access to the facts you need to inform your case.

Recommind built a reputation around its legal analytics and machine learning, including predictive coding. What's your secret sauce, and how have your clients used this technology? Are they using it outside of traditional litigation contexts?

Marcus: The genesis of Recommind was not actually discovery or document review. The company was founded based on unstructured data analytics technology, a form of AI. It looks at the interrelationship of text within documents and across databases and performs a statistical analysis. From that context, it can derive meaning. And it does it in a language-agnostic way, without relying on taxonomies. The effect is that we can create concept groups, enable phrase analysis, and leverage metadata to search, filter and cull data.

Applying that to the discovery challenge is what led us to develop Open-

Text Axcelerate, which embeds these capabilities throughout the process. The infusion of AI creates huge efficiencies and brings the insights out earlier. That's our secret sauce.

Di Bello: I've talked to a couple of customers, and one of the comments I've heard was that between the ability to cull at the point of collection with EnCase and the analytic insights provided by Recommind, they're reducing their ESI volume by about 97 percent before sending it out.

Do you think that advanced analytics and machine learning are living up to their potential?

Marcus: In a word, no. And the reason is that the predominant approach to machine learning in the legal industry requires a detailed protocol and a lot of advanced setup to implement.

The most widely used platforms for technology-assisted review require a lot of heavy lifting up front, a lot of negotiation over protocols, a lot of agreement around statistics and structures. That hampers adoption significantly. We've done surveys where people are talking about the promise of predictive coding but indicating they don't get to reap the benefit all that often.

That frustrates us because our technology can be applied flexibly at no additional cost, with no additional setup. Many clients

If you can apply the best technology to get you through that review process efficiently, then you have a huge impact on your discovery cost and much faster access to the facts you need to inform your case.

Hal Marcus is an e-discovery attorney and the director of product marketing for OpenText Discovery (home of Recommind and Guidance Software). In that role, he educates corporate and law firm counsel on technology strategies for litigation, investigations, compliance and information governance. He can be reached at hms@opentext.com.

A 12-year veteran of the cybersecurity and e-discovery sector, **Anthony Di Bello** serves as senior director of market development for OpenText leading strategic planning and direction for the EnCase portfolio. He can be reached at adibello@opentext.com.

of OpenText Discovery use machine learning on every matter, on virtually every data set.

Where do you think the e-discovery industry is going?

Di Bello: On one level, I see the industry evolving into one more focused on governance and management, in which the ability to find information related to litigation is important. The market for e-discovery has become part of a bigger legal risk management operation. Technology is moving in that direction, and that's one reason OpenText is looking to ensure they have those governance capabilities around the data they're helping their customers manage.

Marcus: We're seeing a substantial breaking down of barriers around different use cases and the technologies that apply to them. This includes internal investigations, due diligence, data breach response, as well as litigation. Advanced analytics and machine learning bring similar value to all these use cases.

A related and continuing trend is greater corporate control over the data associated with discovery. There's no need for corporations to send the data anywhere, just as there's no need for them to have multiple copies of their most sensitive content floating around in different servers and among different service providers. They can keep this consol-

idated in a highly secure environment and control the access points – for outside counsel, for experts, for service providers – as needed.

Security is a broad and rapidly changing market. How will OpenText continue to address this area?

Di Bello: The acquisition of Guidance Software is really just the first entry into the security market, establishing visibility into endpoints, where sensitive information is stored. There are a couple other technologies we're starting to explore from a leverage perspective so we can expand the ability to detect threats, respond to threats and ultimately eliminate threats to sensitive data.

If you look at the security market in general, folks are looking to leverage machine learning technologies given the skill gaps and skill shortages in the space. OpenText is focused on acquisitions to fill gaps, build businesses, pull technologies together.

And while we develop our overarching security strategy, OpenText's advantage is the ability to bring security closer to the data. Most security companies are focused on putting walls and moats and barriers around an enterprise perimeter; however, remote workers, mobile devices and virtual networks have changed the perimeter. The perimeter is the data. And OpenText manages that new perimeter. ∎

COMPLIANCE AND SECURITY: BUILDING THE FRAMEWORK

▶ **LockPath's Sam Abadir says that regular communication about people's responsibilities is crically important.**

CCBJ: IT risk and information security are among the highest priorities for both in-house law departments and law firms. What steps can both take to ensure that they're securing and protecting personal and confidential data?

Sam Abadir: The first step is to create policies around how to define and manage personal and confidential data. Once you have the ground rules in place for how your organization will manage sensitive data, the next step is to identify the data, where it lives and how you are managing it. Issuing risk assessments to your attorneys, assistants, IT departments and others that manage day-to-day work helps you quickly understand the who, what, where, when and how sensitive data is used. From there, organizations can see how this adheres to the organization's desire to manage that sensitive data in a responsible way (as defined in policies). It also gives your organization the framework for what to measure to see if you are in compliance.

Organizations that do this often come to the realization they have either too much personal or confidential data, or give unnecessary access to this data at different points of the business process.

How can law firms and law departments partner to ensure both groups are maintaining the highest-quality compliance standards, and what can corporate law departments do to create policies that are easy for law firms to adhere to and update?

Abadir: Compliance does change, along with the laws and regulations with which you have to comply. However, if you look at some of the best-practice compliance and risk management frameworks out there, such as those in the ISO 27000 family, they are generally broad enough that, as new laws arise and compliance requirements change and evolve, those that are managing to the best-practice frameworks will find a low impact of change.

With any good framework, you should be able

> If you do not keep track of these metrics, you are going to run into problems trying to meet your own compliance standards.

Sam Abadir has more than 20 years of experience helping companies realize value through improving processes, identifying performance metrics and understanding risk. In the past seven years, Abadir has worked with software companies like LockPath to build tools that help companies manage risk and create value that enhances performance in a structured and efficient manner. He can be reached at info@lockpath.com.

to map organizational controls used to manage the framework to the laws and regulations you need to follow. As soon as a law comes up or changes, you can identify what those changes are and what in your framework needs to change.

When designing policies, you should create them not only for your employees, but also for all stakeholders, including third parties. Using your internal controls as a bridge between your framework, laws, risks and policies allows you to measure your compliance and risk program and policy effectiveness. You can identify key performance indicators to show that you are being effective or not. You can collect operational metrics or issue assessments to see if you are on track to achieve effectiveness. If you do not keep track of these metrics, you are going to run into problems trying to meet your own compliance standards.

Communication is a huge deal. You cannot just have a policy and a framework and throw it out there as a piece of shelfware. Regular communication about what people's responsibilities are, whether they are employees or third parties, is extremely important. That communication is two-way. Not only will the corporate legal departments you asked about be required to share with law firms what is required, but the firms must also follow agreed-upon procedures for reporting how they are actually achieving their

policy-driven mandates on a timely basis.

Third-party risk management is another high-risk area. How can law firms best demonstrate their due diligence of their vendors to clients, and how can clients ensure that their own vendors are maintaining compliance?

Abadir: Be committed to developing and maintaining a robust and agile vendor risk management program. Using your organizational risk management framework we discussed earlier, you need to structure data-driven and risk-driven processes to help you understand all the different areas of risk your third parties expose you to, including the [Foreign Corrupt Practices Act] and data risks.

Once you have your policies and processes created – using the same processes as we talked about in the last question – you will have to share your supplier code of conduct with your third parties and those responsible for managing the third parties.

Third-party management has some special challenges, mostly because you may not have all the data and information accessible to you as you might for your internal processes and employees. This makes measuring compliance and effectiveness a challenge. Issuing assessments is generally very effective and expected, but your third parties will dislike answering them. One industry

standard assessment we work with is about 1,800 questions long, and another one has about 700 or 800 questions. These are very difficult for your vendor contacts to answer, and it is not something they want to do on a monthly basis. Instead, have a mechanism that allows them to tell you what has changed, and make it easy to show this at a summary level. Some new technologies exist that continuously monitor your third parties for things like cybersecurity or financial health. They are not a substitute for issued or on-site assessments, but are very good for verifying your assessment answers and showing when changes occur with your vendors.

Ideally, you have a mechanism for dashboarding and trending all this data. The volume of assessment and continuous monitoring data increases rapidly to the point where they are too much to deal with. Having all this data automatically update your dashboards, scorecards and reports can help you demonstrate compliance to customers and internal auditors. If you do not have this type of dashboarding tool, managing the results becomes harder than managing the vendors.

What steps should firms and law departments take if they discover a vendor has exposed them to a data breach, an FCPA violation or another risk?

Abadir: There is no single set of steps to take. Legal

departments should leverage the risk assessment information we talked about earlier and plan what to do when an incident occurs. Organizations should look at all their third parties and the data that they have and determine what it means if that data disappears or if a breach occurs.

There can be multiple scenarios, so determine which is the most likely and which is the most impactful. If an FCPA violation occurs, you should already have a plan in place for what you need to do.

Once you have your plans, you need to practice your response. Gather the parties that need to be involved for each type of incident and perform regular tabletop exercises. Also, make sure that you contract with your third parties to participate in exercises and crises. When performing your tabletop exercises for the first time, you will likely identify gaps in your steps and plans.

You also need to define exactly what an incident is. For example, the banking industry's Consumer Financial Protection Bureau requires banks to report complaints; however, if you look through some of the CFPB reporting, you will find people saying things like, "I ran out of checks, I can't pay my bills." That is an excuse, not a complaint. When you are putting together your likely scenarios, define what an actual incident or crisis is. If it is not an incident, it does not mean it is not important, it

just means it might not be reportable.

When an incident does occur, make sure you understand your external reporting responsibilities and work to meet those deadlines with accurate information. Creating confusion with incorrect information helps nobody, including your reputation.

What kinds of business intelligence protocol systems or partners should law department leaders be considering?

Abadir: There are business intelligence tools called governance, risk and compliance (GRC) and integrated risk management (IRM) platforms. These platforms help you identify your strategic goals and manage the risk that can prevent you from achieving those goals. They effectively and efficiently manage frameworks, policies, laws, vendor risks and the other things we talked about. These platforms manage the risk and incident processes, keep track of the volumes of data and provide real-time dashboards that help you understand if you are meeting your goals, if you are performing within your control thresholds, and where risk can cause issues. These platforms provide you with business intelligence tailored to your company and your role so you can ensure your management principles are followed and you are effective in managing your business. ◼

Departing Employees: When Do Investigations Become Necessary?

▶ **An interview with QDiscovery's Yaniv Schiff and Curtis Collette.**

CCBJ: Tell us about the types of situations with departing employees that warrant investigations. Do you find this is more typical in certain industries, sectors or divisions of certain companies?

Yaniv Schiff: We see investigations across the board. Every industry, every company has information that's valuable to them. Intellectual property and trade secrets, of course, or it might be the price list or a client list or some other internal documentation that makes their company unique. If somebody made off with that and if it's valuable enough, it might warrant an investigation.

There are some common situations that warrant investigations. We often get involved when an employee goes to work for a direct competitor. Sometimes that's evident because the competitor is suddenly winning bids they wouldn't typically win. Or perhaps a competitor releases a new product more quickly than expected. These are both common scenarios where our forensics group gets involved and performs an investigation.

Curtis Collette: When a group of employees, particularly a team, leaves at or near the same time, an investigation may be warranted. Unhappy employees, particularly those who have been very vocal about their unhappiness, can be another investigative trigger, primarily when the employee is not leaving voluntarily. And the most obvious trigger is employees who mention or threaten litigation.

Beyond these situations, many companies have standard investigation policies for particular roles within their company. The roles that most often warrant investigations include sales, executive-level employees, product development and other roles that have access to data the company considers essential.

What are some of the indicators that an investigation is going to become litigious?

Schiff: Probably the biggest indicator is evident after

Yaniv Schiff leads QDiscovery's Digital Forensic Investigative and Technical consulting services and is also the lead testifying expert for many cases involving trade secret theft and matters involving spoliation. He can be reached at yschiff@qdiscovery.com.

As solutions architect for QDiscovery, **Curtis Collette** partners with clients and internal teams on the efficient definition and delivery of services with the best mix of processes, people and technology. He can be reached at ccollette@qdiscovery.com.

we report our initial finding and the company attempts to get the information back from the former employee. Their success will dictate whether they need to file a temporary restraining order or an injunction of some sort. The suit might be against the individual employee or against the company the employee went to. We often see employees leaving as a group, either to form their own company or to re-create their team at a new company, in which case it might be that the other company is poaching certain groups of people and you might have a course of action against that competitor.

Collette: Some indicators are more obvious than others, such as if an employee was let go. The departure may be the final step in the HR process stemming from an incident or the result of performance concerns. The departing employee might be a member of a protected class and have a readily available course of action.

What are the risks or possible costs of not treating investigations as if they will evolve into litigation?

Schiff: One of the biggest risks is spoliation, or loss of data. It's not uncommon for a company to repurpose computers when employees leave. Six months down the road, the former employee sues or the company wants to launch an investigation. That computer has now been in use for the past six

months by a different employee, so there's the possibility that data has been lost and deleted. Not preserving the data properly, even if you're not going to perform a full-fledged investigation, is a risk. The costs involved in preserving the data are pretty negligible compared to the risks if litigation comes down the road.

Also, if you terminate an employee and the employee makes a comment during the exit interview that leads the HR person to observe,

"This might turn into a lawsuit," it's the obligation of the company to preserve certain information in response to anticipating that lawsuit.

On the other hand, if you fire somebody and you anticipate going after them because you know they're going to a competitor and you fear they stole your information, you still have a duty to preserve as long as there's that anticipation of litigation.

We treat everything as if

it's going to go to litigation. All the preservation, all the analysis we perform, all of the opinions we offer our clients are presented so they can be used in court if necessary.

Collette: If an investigation does evolve into litigation and steps were not taken during the investigation to prepare for it, then the opportunity to be proactive can be lost. By taking additional steps early on, legal teams have the time and

information needed to respond appropriately rather than reacting. For defendants, the best cost-saving opportunity in litigation is in limiting the scope as early as possible.

We treat the investigation work we do for clients as if it is part of a litigation. The individual projects define the level of activity. In some cases, we might do a collection for preservation purposes and limited, if any, analysis if the likelihood of litigation is low. On others,

we may collect everything and perform immediate in-depth analysis to confirm all of an employee's activity. Such an investigation might even come before the employee has departed. In either situation, all work is conducted in a credible and defensible manner so that it is admissible in court should litigation ensue.

What are the most important steps a team should take to prepare for possible litigation?

Schiff: From the forensic perspective, maintaining chain of custody and ensuring no data loss. That can be as simple as making sure the email account used by the departing employee doesn't get deleted. Maybe it just gets disabled and archived. It could also include creating a clone or forensic image of their computer. In more complex environments, it might include backing up certain network environments or logs of some sort.

Collette: Employers should have a consistent off-boarding process for all employees that includes a procedure to evaluate whether additional investigation is merited. Part of that evaluation might be based on role or department. Also, be on the lookout for triggers such as comments from a departing employee that indicate they're unhappy or threatening litigation. You want to make sure your process highlights the factors that increase risk of litigation and merit more in-depth action. There should be some flexibility to customize the process when there's a specific need, particularly when there are indicators that the investigation is likely to become litigious.

Just as important as having a process is following it for all employees. There has to be some sort of audit built in. How do you validate that you're following your processes? Are you checking your processes on a regular basis to make sure they are reliable and defensible?

Make sure different departments talk to each other. Investigations will often be initiated by a compliance group. They shouldn't conduct investigations independent of the litigation group. Similarly, the HR person handling the layoff needs to be aware of indicators the employee may sue the company and loop in the appropriate departments. It shouldn't just be attorneys talking to each other. The attorneys never

own the data. The data is almost always held by some technical person who will know where that data is and will understand what kind of retention policies exist. This discussion at the first sign of potential litigation can save your company time and greatly reduce investigation costs.

Let's talk about the evolution of employee departures over the past ten years and what you anticipate over the next five or ten years.

Schiff: From the forensic perspective, the biggest evolution has been mobile devices and cloud-based data storage. The mobile device has become a treasure trove of information: text messages, pictures, even geolocation information allowing you to see whether the employee was where they said they were. That becomes incredibly relevant in certain types of

investigations.

Almost every single investigation we work on now involves some sort of internet-based data transfer. Did the employee upload a document to Dropbox? To their personal Gmail account? Every day there are different services and applications that offer different solutions.

Collette: There is now a blurring of lines between personal and company resources that can make once-routine processes much more complicated. Think of the stereotypical "departure," with the now former employee walking out of the office with a box of personal items, leaving behind their ID badge, laptop and company phone. With the rise of "bring your own device" (BYOD) policies and enhanced telecommuting, companies must have processes that address departing employees who have never entered a company office and never had possession of a company device. A company's departing-employee processes must continue to evolve to keep pace.

Those processes also need to keep pace with the frequency of departures. There is a lot more transition in the economy with people leaving jobs more quickly. Every departure does not merit a full investigation, but you can't afford to miss the ones that do. Your processes need to be predictable and aligned so that you can do this in a cost-effective manner. ∎

The DTSA Makes Trade Secrets a Federal Matter

▶ **Trade secrets shed their stepchild image.**

SINCE IT WENT INTO effect in 2016, the Defend Trade Secrets Act has brought an upsurge in the number of trade secrets cases being brought in federal court. As **Robert Milligan**, a partner at Seyfarth Shaw, puts it, DTSA was "a real game changer in the sense that federal court was often off limits to trade secret owners." In fact, he notes, until DTSA, "Trade secrets in the world of IT were often looked at as the ugly stepchild." But now, he says, companies are focusing on them "as a way to separate themselves from competitors and really add value to their company."

Milligan, who is co-chair of his firm's national Trade Secrets, Computer Fraud & Non-Competes Group, joined **Jim Vaughn**, managing director at iDiscovery Solutions, to present the final installment in *Corporate Counsel Business Journal*'s four-part webinar series, Essential Litigation Webinars, which iDiscovery co-hosted (bit.ly/iDS_DTSA11217). Their focus: Given DTSA, what

do companies need to do to identify and protect their trade secrets—and, when they're stolen, how do they catch the thieves?

DTSA, Milligan told webinar participants, has greatly expanded the definition of trade secrets. "They use very general-type labels," he said, "but you can see how broad and elastic the things are that will qualify: plans, formulas, programs, devices, methods, techniques...."

Assessing what qualifies as a trade secret, he noted, requires that "somebody at the company has ownership," that there's "somebody who is responsible for identifying and protecting the trade secrets, someone who works with outside counsel and computer forensics professionals."

Beyond that, he added, "the owner has to make sure that there are reasonable measures in place to keep such information secret." These start with nondisclosure agreements—for employees as well as third-parties such as vendors—and include carefully orchestrated onboarding and offboarding procedures, making sure, for example, that "a departing employee can't walk off with highly

valuable information if you don't have a good exit interview." And, while Milligan stressed that "You're going to want to make sure that your nondisclosure agreements are really calling out what your bread and butter is as it relates to trade secrets," Vaughn added that companies also need to ask if "there are any implied trade secrets that would characterize as a trade secret if it's simply of a nature that would reasonably be intended to be confidential in the absence of an NDA or other confidentiality agreement."

Milligan pointed to the importance of not only doing an audit of what trade secrets your company has, but also how you're protecting that information. This includes considering, for example, how you configure your network, how you distribute laptops, whether yours is a bring-your-own-device (BYOD) house, and even whether you allow VPN.

It also, Vaughn noted, means making sure that passwords are changed regularly, and that accounts and access to certain databases as well as storage systems such as Dropbox are disabled when employees leave.

Vaughn reviewed some of the ways in which trade secrets are stolen, starting with simply copying docu-

ments ("It actually still happens," he said, "where people will print out documents and walk out with them"), and including downloading information from computers using external drives, USB devices and thumb drives; sending emails from corporate to personal email accounts; hacking into computer networks; and obtaining information directly from former or even current employees.

If a theft is suspected, Vaughn said, it's important that you "quarantine any data sources, maintain the proper chain of custody" through which you know "about dates and times of activity." But be careful, Milligan added, that you "get involved with a computer forensic investigator" who can tell you what's really going on.

Once the evidence is compiled, Milligan noted, "You need to get a handle on whether the information that was taken is actually protectable." As he said, "If you run into court and you haven't dotted your i's and crossed your t's, then you're just asking for trouble." But once you decide to take the matter to court, move quickly, because "if you wait too long, the court will point that out and deny your relief." On the other hand, "if you go in too quickly, the court may say there's nothing here." ■

Companies are focusing on trade secrets "as a way to separate themselves from competitors and really add value to their company."

FIVE IN-HOUSE LEGAL TECH TRENDS TO SEIZE IN 2018

MIKE WONG
NEOTA LOGIC
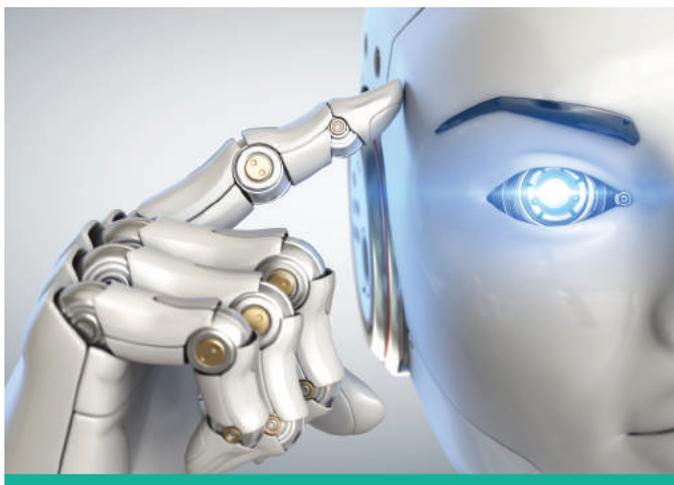
▶ **Earlier tech transformation may appear simple compared to what's around the corner for helping corporate legal innovate.**

JUST 10 YEARS AGO, while working in e-discovery at an Am Law firm, my team spent multiple days and nights on a second request challenge. We worried about whether we would have enough CD copiers, labelers and time to burn and stamp our 75-disc production. Our solution? A makeshift assembly line, where one team member manned the burners, another ran quality control, a third labeled the discs, a fourth put the discs in cases, and a fifth organized the shipment boxes. We must have billed 300 collective hours for this single request. Yet that task would take maybe 10 minutes of billable time today.

This memory is a reminder of how swiftly change comes to the legal technology world. Whether you're a law firm, a corporate legal department or an alternative service provider, the pace and complexity of change that technology brings continues to accelerate. Make 2018 the year to embrace disruption and position yourself ahead of the curve. For in-house legal teams, technology has already transformed the way lawyers mitigate risk, evaluate outside counsel, and monitor and assess spend. These changes may appear simple compared to what's around the corner for helping corporate legal innovate.

Here are the five in-house counsel technology trends to seize as we move into 2018.

1. Data Security Solutions

While not a new focus, data security is priority one for most. More than six in ten in-house counsel identify the growing threat to cybersecurity as the number one litigation risk exposure for their organizations. Information security audits are now a daily occurrence for legal service and technology providers. The once-perceived law firm exemption is now a distant memory, with firms being screened no differently than any other provider that stores corporate data. Last year also brought the largest remediated breach today with Equifax, involving data from up to 143 million consumers.

As we move into 2018, information security is being viewed through a whole new lens as the European Union's looming General Data Protection Regulation leaves corporations around the world scrambling to raise their compliance bar.

This entails balancing the need to be prepared to deal with individual inquiries regarding the size and scope of personal information retained with the challenge of complying with an individual's request that their personal information be expunged from a corporation's data sets altogether. Assessing the cost of GDPR compliance against potentially astronomical fines of up to 4 percent of global annual revenue has cemented data security as the trend that is not going away anytime soon.

To help in-house counsel cope with the data security challenge of 2018, look for new technology offerings that will enhance mobile data management. Cloud providers also will offer better risk management strategies for moving data off corporate networks and into a secure cloud environment. Enhanced software platforms will focus on finding more efficient ways to improve corporate information governance.

2. Matter Management Platforms

Like data security, matter management is not a new topic. Yet in-house counsel are welcoming this trend as the need for help remains evident. According to Altman Weil's 2017 Chief Legal Officer Survey, 79 percent of all corporate legal departments provide guidelines for matter staffing and matter management, but only 60 percent routinely enforce those guidelines. A surge

in tech innovation, coupled with critical enterprise application integration, has transformed dormant matter management platforms into robust solutions that automate tasks like opening a new matter, providing a centralized repository for all matter data, and proactively managing costs by rightsizing workload and staffing needs.

Some of the new technology for matter management is driven by in-house corporate legal departments, but alternative service providers looking to help corporate legal teams have ramped up their focus to innovate in this space.

I recently caught up with the team at Elevate Services, a firm that is leading the charge in this area. Notes Pratik Patel, the company's VP, innovation and products: "Matter management/e-billing currently serves as the central nervous system for most law departments, but often lacks necessary features and/or workflow to capture and manage work from start to finish. This causes an incomplete picture of what the true demand is on the legal department.

"Further, the limitation of these products creates a huge opportunity for complementary entrants into the market that are designed to help law departments complete their enterprise legal management strategy. On the front end, these may include Neota Logic's AI expert systems and workflow to help intake/triage legal work.

Leveraging proof of concept is a great way to demonstrate early and fast wins to create the top-down organizational consensus required for successful deployment of an AI project.

Mike Wong is vice president, business development at Neota Logic, where he works with legal and compliance professionals to identify and develop expert system apps using the company's award-winning AI-driven platform. He can be reached at wong@ neotalogic.com.

In the middle, they may include Elevate's Cael Select or Cael Project to help select or project-manage legal work, and on the tail end, Cael Vision for roll-up analytics and dashboards."

With so many fresh approaches available through technology companies, legal services and law firms, 2018 will see a rise in corporate legal teams better managing their work and outside counsel through matter management solutions.

3. Artificial Intelligence
Just as e-discovery changed the legal industry 20 years ago, artificial intelligence is disrupting how lawyers get work done today. At a panel at the 2017 Association of Corporate Counsel annual meeting, more than 80 percent of attendees said they were looking to deploy AI-powered solutions within their company or department.

"There are two deep and abiding truths in the legal industry," writes Joe Patrice in "Above the Law." "No one knows what AI even means, and, yes, you need it." While the definition of AI remains in flux, there are a growing number of legal technologies focused on automating cognitive tasks typically thought to require human intelligence. From pattern recognition and prediction to complex decision making, AI performs these tasks in an industry requiring an understanding vast amounts of unstructured data.

Regardless of the technology type, AI boils down

to rules. Simple, or not so simple, AI is rules applied to data to offer conclusions. When applied to legal, the conclusions may take the form of:

▶ Identifying and categorizing patterns (Kira Systems, RAVN)

▶ Determining relevance, as in the case of legal research or document review (Ross Intelligence, Relativity, CS Disco, Everlaw)

▶ Scaling knowledge bases, highlighting risk, validating compliance or automating best practice recommendations, as in the case of expert systems (Neota Logic).

There are several principles to keep in mind while working with AI. Think big but start small. Focus on solving simple problems that are creating pain across broad sets of stakeholders across your organization. Leveraging proof of concept is a great way to demonstrate early and fast wins to create the top-down organizational consensus required for successful deployment of an AI project. Remember that resources are required. Stakeholder expectations must be managed carefully to ensure participants understand this is as much about people and process as it is about the technology. Simply plugging the technology into a wall does not magically make it work.

Machine learning, neural networks or natural

language process projects can require significant data sets and investments around system training before the technology can yield an effective return on investment. Expert systems require codification of institutional subject matter expertise and knowledge engineering.

That said, there are several proven use cases for these technologies that can have an immediate impact. In the realm of expert systems, legal teams are leveraging solutions like Neota Logic to automate expertise, internal/client workflows, legal process and the creation of documents.

The design, build and use of expert systems by corporate legal teams will no doubt be on the rise this year, among efforts to provide more convenient service delivery and to decrease costs. In-house legal teams are also beginning to build their own on-demand apps to deploy legal and compliance guidance across the organization.

In 2018, the ways that AI will be used to radically transform the legal industry will grow exponentially, as the traditional law firm model is increasingly pressured to find a better way to deliver legal services. Corporate legal teams are piloting the technology more every day with an eye toward quality improvement and efficiency gains.

4. Document Automation
The legal industry has been experimenting with document automation for 30 years. In 2018, watch for further innovation in the area of document lifecycle management technologies, due to an investment surge aimed at improving document automation outputs.

Recent technology advances like AI have also garnered a whole new set of solutions to automate document creation, routing and approval. Template software on the market today will continue to become more advanced, allowing for automatic updates to standard wording as law changes. And as document automation software becomes easier to use, there's less ramp-up time – users can license it today and use it tomorrow, as in Neota Logic's self-service document automation solution.

Document automation – which is also viewed as a pragmatic starting place for applying AI to solve legal work challenges – will likely see an uptick in adoption by corporate teams in the next year. To get started with document automation, or to improve what you're doing today, identify your company's largest document-related pain point. Is it the creation, routing and approval of nondisclosure agreements? Or does your company have a large employee base requiring business associate agreements? Focus in on a specific deliverable and identify the challenges. Then explore the technology options available to solve it.

5. Blockchain
Similar to AI last year,

> **The limitation of these products creates a huge opportunity for complementary entrants into the market that are designed to help law departments complete their Enterprise Legal Management strategy.**

blockchain is positioned to join the fold as a top-of-mind technology. While the most publicized application of the technology has been in the world of cryptocurrency – and the incredible rise of Bitcoin and Ethereum in 2017 – the legal community has started to explore and embrace methods to leverage blockchain, with early adopters implementing solutions like smart contracts in their daily operations.

When we spoke recently about what's ahead for legal tech, Danny Thankachan, director, practice technology, at Blank Rome and a frequent speaker on blockchain for legal, told me that he sees blockchain disrupting the industry in two primary ways over the next few years.

"The first is in identity validation and protection," Thankachan said, "where you will need nothing more than the ability to perform a write to the public ledger using a private key to authenticate a transaction. With this you could, for example, purchase a car without having to provide your name." Thankachan sees this public/private key application replacing, among other things, the archaic Social Security number system.

"The second area for disruption is in document security and control," he adds, "being able to control exactly where a document exists for consumption while maintaining the ability to remove it or lock all versions down."

While these use cases and their associated legal implications continue to take shape, it will be both fascinating and soon critical to embrace the technology in order to stay ahead of the curve.

2018: The Year for Action
Breakthrough technologies leveraging AI and expert systems are bringing significant efficiency gains and making all of this possible for legal teams. Despite the accelerated pace of change, the technological disruption occurring in legal is a process, not a switch. There's a growing opportunity for legal service providers to leverage tech-enabled solutions to drive efficiency, reduce risk and demonstrate immediate ROI.

In other words, explore your options, be proactive by identifying today's version of the 75-CD challenge, and look for the best solutions to align with those problems – and get building. ■

MANAGING THE TRIANGLE GLOBALLY

▶ **Don't focus on just the technology at the expense of people and processes.**

ONE OF THE KEY challenges any law department in a global corporation faces is implementing a consistent playbook across all matters from any geography. And one of the traps many people fall into, notes **Daryl Teshima**, senior managing director for FTI Consulting, is being "overly focused on the technology challenges." Technology is only one ingredient in success. "You need people who really understand," he says. "You need great process. You need something that is consistent where you can find repeatable results – and having this process locked down is even more important when you go internationally."

To demonstrate how to combine these ingredients, Teshima joined FTI's managing director, **Wendy King**, and **Shamir Colloff**, principal product manager at the software firm Relativity, to present a webinar called One Playbook, Any Country: Consistent, Repeatable Workflows

Integrating RelativityOne (bit.ly/FTI_RelativityOne 111617).

Building on Teshima's point, King told the webinar attendees that for her, "Technology may inform process, because your processes should be the driver for that use of technology, but how it's deployed and the technology should go hand in hand."

However, she added, "people are the linchpin because you need their buy-in for those processes, and you need to make them comfortable with how those processes are implemented and how the technology enables them."

What can make what King termed the "triangle" of technology, people and process work, said Colloff, is "the ability to standardize your processes." There's great value, he said, "in having those processes and those people really baked in. Being able to standardize your collections workflow, your processing workflow and your templates – and then synchronizing all of this – is important.

Relativity, he added, "has the capability to ship those various deployments with templates so that everybody is working off

the same baseline, and you don't have to worry about configuration issues on the user side."

The speakers agreed, however, that the international overlay complicates matters. King recalled a conversation with a colleague who told her, "When I go to another country, it feels like I'm working with an entirely different company, and it's not always a good experience. And I think the reason why is that I think, 'Let me just overlay everything I've done that worked well here in the U.S. onto that. It's going to work the same way.' But the reality is, it doesn't. We have to understand how to translate what we've done into that country as well."

King elaborated, stressing the importance of "understanding the culture of the country that you are rolling this out into." Otherwise, she said, "you could go back home thinking you did a really great job only to find out they didn't really understand what you were asking of them, and your users or your client have a completely different experience because they're not able to deliver."

It's critical to understand, she said, "the unique requirements of the country and be able to know where to modify them and where not to modify them."

"We've basically had to

replicate what we could do in the United States in many different countries," added Teshima, "and not just countries but cultures. We've had to assess what concepts, such as the electronic discovery process, are common or not yet ingrained in those places. In many cases we weren't aware of some of the cultural limitations of how to get things done."

Colloff addressed some limitations that go beyond culture and familiarity with concepts.

"We've seen challenges with China specifically on the appliance model," he said. "There is an upper limit to how much hardware they want to let in for a single device because they have concerns about what you may be doing with it. Even if you explain to them, 'We're doing e-discovery, so don't worry that we're going to be searching for state secrets,' they say, 'That's nice, but we don't allow more than a certain amount of processing power on machines here.'"

Sometimes, too, Colloff added, "clients have trouble assigning responsibility, but if it's a multinational project with lots of areas that are being handled, it's really important that a person or a group of people is responsible for understanding the needs and defining the results." ∎

"You could go back home thinking you did a really great job only to find out they didn't really understand what you were asking of them."

Managing Metrics for Success

KRIS SATKUNAS
LEXISNEXIS

▶ **Establishing the required processes for identifying, capturing and analyzing relevant data isn't necessarily intuitive.**

THE ROLE OF CORPO- rate legal departments is evolving rapidly. As the responsibilities of corporate legal departments become increasingly focused on providing strategic support for business goals, general counsel and legal operations leaders are relying on data to set objectives and track performance.

Successful legal departments that establish effective processes for identifying, capturing and analyzing relevant data are benefiting significantly from an investment in an enterprise legal management (ELM) solution; however, based on my experience working with hundreds of CounselLink® clients, I have learned that establishing the required processes isn't necessarily intuitive. While every legal department is unique and requires a specific set of metrics, there are seven characteristics that all successful metrics initiatives share.
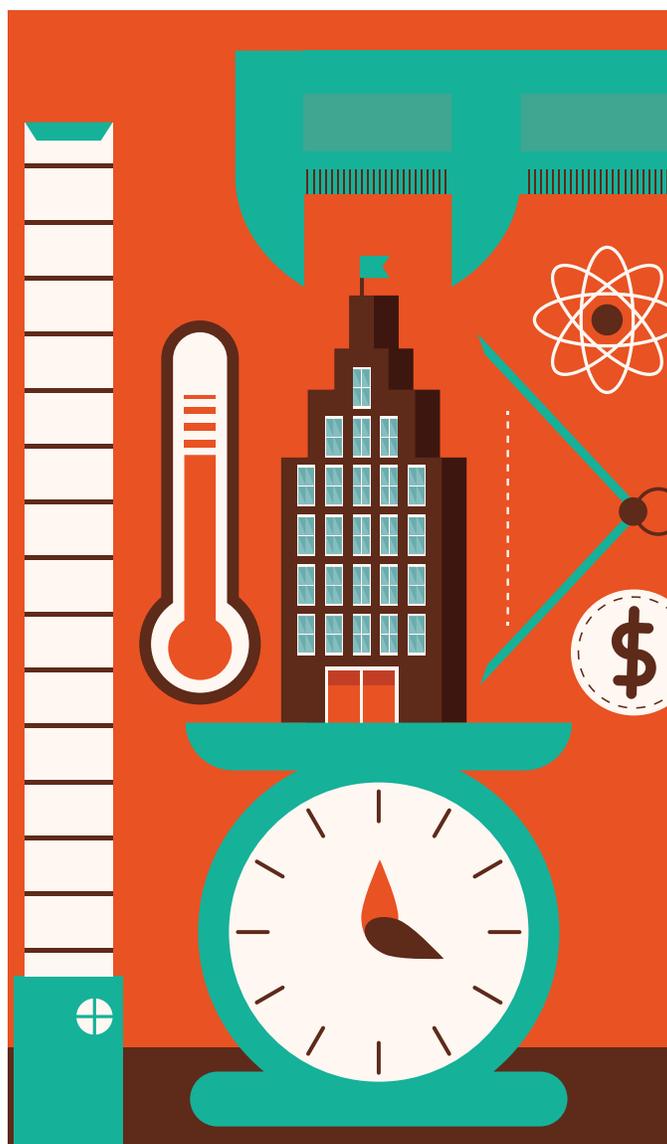
1. Metrics are linked to organizational objectives. Although metrics of any kind can be interesting, the goal should be to identify metrics that help the legal department support the company's overall business goals. In doing so, you position yourself as a strategic partner and demonstrate the department's value to the organization.

2. Metrics are well balanced across different types of objectives. Generally, a law department should focus on metrics that provide the information necessary to gain financial control, better manage legal outcomes and risk, and improve operational efficiency. The most commonly used metrics are financial, but it is critical to include other types of metrics programs, as well. You may also be interested in metrics that don't fall into one of the three categories. For example, if you have a strong diversity program, the legal department might choose a metric related to vendor diversity.

3. Metrics include both leading and lagging performance indicators. Some data can be used to assess your past performance, such as outside counsel spending, while other data is useful for predictive purposes, such as the number of new matters coming into the department. Ideally, a metrics tool kit should contain both kinds of data to ensure that the law department can develop a performance road map that uses historical data to influence future behaviors.

4. Metrics are limited to a manageable number. When it comes to metrics, the Goldilocks-inspired, just-right approach is best. Gather too few metrics, and

you won't have enough data available to draw conclusions. Focus on too many, and the excess "noise" will similarly obscure useful insights. Limit your metrics to a manageable number, however, and the analyses that follow will yield an abundance of valuable information you can leverage to achieve your departmental goals. Between six and 10 key performance indicators per practice area is a manageable number.

5. Metrics are controllable at the level being measured. Measuring a variable over which you have little or no control might produce an interesting piece of information, but ultimately, this practice wastes time.

6. Metrics are comparable to a baseline. A metric requires context so results can be appropriately interpreted. When considering which metrics to use, make sure that the data you generate will be compared to an existing data point, such as a relevant benchmark, a prior time period or a budget.

7. Metrics demonstrate the value added. This final characteristic is closely related to the first. One of the benefits of linking law department metrics to organizational goals is that the metrics can then be used to illustrate the department's contribution to the organization, proving that it is a valuable partner. Metrics that document cost savings in legal spend or a reduction in exposure,

> Gather too few metrics, and you won't have enough data available to draw conclusions. Focus on too many, and the excess 'noise' will similarly obscure useful insights.

As director of Strategic Consulting at LexisNexis, **Kris Satkunas** leads the team's efforts to advise corporate legal department managers on improving operations with data-driven decisions. With more than 15 years of consulting experience in the legal industry, Her areas of expertise include benchmarking, practice area metrics and scorecards, dashboard design, matter pricing and staffing, and cost management. She can be reached at kristina.satkunas@lexisnexis.com.

for example, are especially useful in this endeavor.

Good Data Is Essential to a Metrics Program

Obviously, a metrics program can't succeed without good data. In this case, "good data" means data that lends itself to meaningful analysis. There are several things to keep in mind if you want to capture data that supports rather than hinders analysis.

First of all, it's important to make sure that your matter classifications are meaningful for purposes of analysis. A best practice is to establish a matter-type hierarchy that distinguishes core matters from extraordinary matters and takes varying levels of matter complexity into consideration. Doing so facilitates an apples-to-apples analysis of similar matters that's not skewed by the unusual characteristics of the occasional outlier. Avoid the temptation to make matter types too granular. Doing so increases the likelihood of misclassified matters and can result in population sizes that are too small to provide analytic value.

A second best practice for ensuring data integrity is the enforcement of consistent billing. For example, if the law department and an outside law firm have agreed to a fixed fee to handle a matter, and the firm submits an invoice for the matter that expresses the agreed-upon fee as an hourly rate, any future analyses of hourly rates will be compromised by this drastically

skewed calculation. Similarly, it's important that you insist that a firm accurately distinguishes between fees and expenses when submitting invoices.

An additional component of consistent billing practices is ensuring that firms establish meaningful timekeeper titles. Taken together, these data hygiene practices help ensure that analyses can be performed efficiently and will yield trustworthy insights.

Mining Data to Inform Future Decisions

Once a metrics program has been established, leveraging the analytic capabilities of an ELM solution such as CounselLink can identify key drivers of metric results. It's only when the drivers of negative performance variances are clearly understood that an action plan can be developed to improve performance in the future.

Applying relevant metrics and powerful analytics to first inform and then achieve departmental and organizational goals allows legal department managers to make data-driven decisions that help increase the value of their contributions to the enterprise. With corporate legal departments under increasing pressure to maximize efficiency without sacrificing value, the importance of analytics that fuel strategic decision making cannot be understated. Legal departments that embrace the technology that makes that possible don't have difficulty proving their worth. ∎

Wolters Kluwer's ELM Solutions empowers customers to deliver higher organizational value
by becoming more productive and efficient through specialized technology solutions,
including matter and spend management and legal analytics. ELM Solutions serves the corporate legal,
insurance claims defense and law firm markets.

Wolters Kluwer

More more information:
Wolters Kluwer's ELM Solutions, 3009 Post Oak Blvd., Suite 1100, Houston, Texas 77056
1-800-963-3273 www.**wkelmsolutions.com**/

Neota Logic is inspiring a better way to deliver professional services.
Our award-winning Artificial Intelligence platform allows in-house legal and compliance
teams to rapidly automate their expertise, increasing productivity, improving client satisfaction
and creating new business opportunities.

NEOTA
LOGIC

More information is available at **(646) 402 6225**

CounselLink is a leading cloud-based Enterprise Legal Management solution designed to help legal departments efficiently manage operations while providing analytics and benchmarking tools for better decision-making. Expert services and support teams are available to help clients maximize the benefits of their investment.

LexisNexis | **CounselLink**®

More information is available at www.**counsellink**.com or **855-974-7774**

---

cleanDocs: Remove metadata. Reduce risk.
compareDocs: See the difference. Instantly.
contentCrawler: See what you're missing.
pdfDocs: Create complex PDFs. Easily.

DocsCorp

Work smart

More information is available at www.**docscorp**.com