The Legal Intelligencer

E-Data Attorneys Should Be the Foundation of Firm Innovation, Not the Capstone

In this installment, our final one of the year, we recommend strategies the e-data attorney can use to leverage her experience and skills to lead a rapidly changing legal profession.

By Tess Blair, Charles Imohiosen and William Childress | December 29, 2020 at 11:02 AM

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In the third installment of this four-part series, we discussed how the e-data attorney can deliver "holistic services" to her clients by combining her background in process re-engineering with her mastery of new technologies. In this installment, our final one of the year, we recommend strategies the e-data attorney can use to leverage her experience and skills to lead a rapidly changing legal profession.

We've woven two themes through our articles this year. First, we described the e-data attorney as the consummate learner. As e-discovery grew from an administrative support function into a specialized practice, we observed the e-data attorney learning to use her experience as a litigator to become a skilled tactician and technologist. The e-data attorney evolved further by adapting business processes, such as Six Sigma, Lean and Agile Project Management, to the practice of law. She was an early adopter of data analytics, operational discipline, data-driven decision-making, and performance management. The results of these activities brought efficiencies to discovery, while delivering significant benefits to clients.

The second theme running through our articles is the recognition that the legal industry is in the midst of a period of disruptive change. This year alone illustrates how rapid and unexpected change can lead to both new challenges and opportunities in the delivery of legal services. As we turned the page on 2019, for example, none of us anticipated we would spend most of the upcoming year physically distant from our clients and colleagues. Yet, this same remoteness also expedited the legal profession's broad adoption of new technologies like videoconferencing to take depositions or hold hearings. "In times of change," Eric Hoffer once observed, "the

learners inherit the earth; while the learned find themselves beautifully equipped to deal with a world that no longer exists." In light of this prescient observation, the themes we have written about are instructive for any attorney attempting to succeed in the practice of law.

This brings us to the key for future success in our profession: the e-data attorney must continue to innovate. Indeed, she should lead the profession's coming metamorphosis. After years of pioneering work, the temptation may be strong to rest on her present expertise and knowledge, but this is a failing strategy in a dynamic legal industry. An active learner prepares for change rather than reacts to it. This means we should not just look to solve our clients' present problems but anticipate their future ones. In our practice group, we approach innovation by challenging our team with this question: We've built a huge toolbox of resources—people, process, technology, data, relationships, skill, experience and community—what else can we do with the toolbox we've built to serve our clients, solve their problems, and deliver unique value? Answering that question requires relentless focus on and engagement with our clients, listening to and talking with peers and vigilantly studying their business, industry and goals as well as the larger economic trends impacting both industry and the legal profession.

The skills and experience acquired by the e-data attorney cannot be a capstone, but should be used as a foundation for leading further innovation across practices. The e-data attorney should search for opportunities to innovate and drive efficiencies beyond litigation into transactional practice. In her conversations with the in-house attorneys responsible for the negotiation, execution and management of a corporation's contracts, she discovered that transactional attorneys face many of the same data collection, curation, and processing challenges encountered by litigators. She realized that many technologies already in use by transactional attorneys, such as contract lifecycle management (CLM), could be re-deployed not only to create, warehouse and organize commercial contracts into repositories of searchable metadata (i.e., terms, clauses and dates), but also to mine contractual data for value using artificial intelligence. And she was just warming up.

Having now incorporated contract analytics into her ever-expanding toolbox, the e-data attorney prepared herself to meet with a group of corporate stakeholders she had previously engaged only in passing, including sales, procurement and finance. Each conversation enabled her to demonstrate the breadth of her new capabilities in a different way. She helped the sales team negotiate better contracts more quickly by creating playbooks with standard terms and quarterly reports highlighting numbers of completed contracts, timeframes for completion and number of nonstandard terms accepted. She worked with procurement to identify savings opportunities such as volume discounts, rebates and supplier obligations in existing vendor contracts by analyzing performance and spend data. Finally, she assisted finance in increasing service revenues by identify missed billing opportunities.

Another arena where e-data attorneys can lead innovation is client billing. The billable hour was once the unquestioned standard by which law firms charged clients for services rendered. Under the billable hour model, attorneys and clients can struggle to manage legal costs, unless a legal problem is discrete or repeatable. Many aspects of litigation, however, are neither discrete nor repeatable. As a result, clients frequently confront engagements with unpredictable legal costs caused by any number of known and unknown factors, including the

ability of one's adversary to drive fees higher, with no mechanism easily available for managing those costs.

E-discovery practitioners were among the first to offer alternative fee arrangements (AFAs) to clients who no longer believed the billable hour was the right "one size fits all" option for all legal services. AFAs can take the form of risk-based and value-based models, the very structure of which can encourage strong partnerships between clients and their counsel. As the major consumer of law firm services, corporate legal departments have driven the growth of AFAs. In an age where corporations manage legal budgets as closely as other line items, AFAs have allowed in-house attorneys to rein in costs. In some instances, these arrangements have even helped general counsel demonstrate they can be cost-neutral or even revenue-producing departments in their companies. With ever-increasing client demand, law firms now offer an array of AFA options that can provide clients with better cost predictability and, in some areas, enhanced value.

E-data attorneys should be mindful of innovative pricing trends emerging in other industries and adopt those that are mutually beneficial to our clients and our practice. For example, one leading agrochemical company is now testing a new data-driven pricing model for selling seeds to commercial farmers. In this model, the agrochemical company predicts an expected crop yield for a particular farm by analyzing an array of data about the seeds being planted and the farm's historical crop yields. If the farm does not meet the expected crop yield for that growing season, the company refunds a portion of the seeds' cost to the farm. If, however, the farm exceeds the yield forecasts, it shares a portion of additional profits with the company. Similarly, the e-data attorney can use data to set the value for the delivery of legal services—at least in certain circumstances. As clients and e-data attorneys continue to use and better understand data, legal services pricing models will continue to evolve and improve. An outcome-based fee model has long been a staple of the plaintiffs bar through contingency fee arrangements with their clients, but today an e-data attorney can use data to make costs more predictable for clients who are defending against litigation, conducting an internal investigation or complying with a regulatory request.

We anticipate the most successful legal service models of the future will be those that focus on the "full picture" of a client's legal challenges and business objectives. To state it simply, clients will want to work with those attorneys who bring them solutions, help them realize cost savings, and advance their business interests. To this end, the e-data attorney can collaborate with legal departments to change perceptions and help transform the legal department into a "line of business" within a company.

The e-data attorney has a diverse set of skills, collaborative relationships with other experts, and a diverse practice group filled with a range of skilled professionals. This pool of talent coupled with experience in process re-engineering enables the e-data attorney to offer creative and efficient solutions for clients who find their business needs intertwined with legal challenges. At her core, the e-data attorney is an expert problem solver who can use all of the tools in her toolbox to meet her client's challenges and unlock value in creative ways. This trait will enable success no matter how the legal industry changes. And, we predict, those innovations will seem both obvious and fundamental years from now, in the same way we reflect on the innovations wrought in eDiscovery.

This concludes our series for the year. In 2021, we will return with a series of new articles that explore specific e-data use cases and answer the question: what else can we do? To be continued …

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