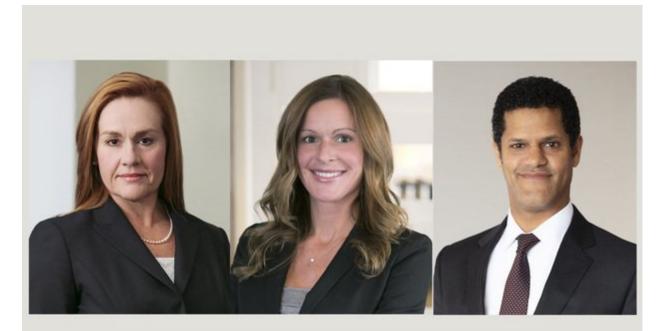# The Legal Intelligencer

How E-Data Lawyers Leverage Process Engineering, Technology to Optimize Client Service

In this installment, we focus on the ways an e-data lawyer uses technology and process engineering to optimize client service across the law firm ecosystem.

By **Tess Blair, Tara Lawler and Charles Imohiosen** | October 14, 2020

L-R:Tess Blair, Tara Lawler, and Charles Imohiosen of Morgan Lewis & Bockius. Courtesy Photos

In the first installment of this four-part series, we traced the evolution of the "e-discovery" lawyer following the first landmark opinion on e-discovery, *Zubulake v. UBS Warburg*, 217 F.R.D. 309 (S.D.N.Y. 2003). We noted that the e-discovery lawyer is the proverbial Jill of all trades—tactician, technologist and litigator. We proposed that the insights, skills and experience the e-discovery lawyer has gained over the years have facilitated her transformation into the "e-data lawyer"—a practitioner uniquely positioned to drive innovation in the practice of law.

The second installment, published in June, explored tactics the e-data lawyer can use to shape the new legal economy driven by data. We likened the e-data lawyer to a general contractor who oversees the design and construction of a modern skyscraper. A versatile practitioner, the e-data lawyer could very likely become the nerve center of her law firm by showing how to unlock new value by using data intelligently, collaborating with subject matter experts across practices, developing repeatable processes, and introducing multidisciplinary teams to the law firm ecosystem.

As she built her e-discovery practice, the e-data attorney introduced new technologies and processes to her firm and clients. She is now poised to go even further. In today's legal market, clients seeking legal services are increasingly searching for more than "just" legal advice. Clients want trusted advisors who will not only help them solve legal problems, but also work with them to identify risk and anticipate potential problems before they occur. This is the e-data lawyer's raison d'être. She is primed and ready

to offer transparent, efficient solutions leveraging process and technology, and to deliver insight and analysis before problems occur, as well as better, faster, lower cost solutions to problems when they occur. In this installment, we focus on the ways an e-data lawyer uses technology and process engineering to optimize client service across the law firm ecosystem.

In the days before discovery became "e-discovery," paper dominated. Businesses stored documents in offices and warehouses and measured document volume by bankers' boxes and filing cabinets. Document review consisted of a heavily manual, and at times uneven, process managed and carried out almost exclusively by attorneys and paralegals. As companies broadly adopted email as their primary mode of communication, lawyers and technologists responded by developing new discovery tools and platforms to collect, store, organize, and review massive amounts of electronically stored information (ESI). Today, mobility, a plethora of messaging services, social media and collaborative applications that track every keystroke and eyeball, have emerged as the favored platforms for consumers and businesses, ushering in the era of "Big Data." The proliferation of data and sources creates constant hurdles for litigants in discovery, as well as the need for more robust technologies and strategies to manage and analyze it all.

The e-data attorney stands ready to tackle clients' Big Data challenges because she has ample experience working with new data formats and leveraging new technologies as they emerge. She's already done it. By 2010, as data volumes grew exponentially she mastered a process called technology-assisted review (TAR) that replaced page-by-page human review by mining data, including email, social media, contracts, and documents for potentially relevant or privileged content based on use of computer generated categorization and feedback from manual coding of sample documents. By 2012, courts began to recognize the impact this would have on discovery. The e-data attorney's experience, and the metrics revealing the superiority of TAR to human review that she was quietly accumulating, bore this out.

The savvy e-data lawyer did not stop there. Instead, she teamed up with technologists and data scientists to explore increasingly sophisticated technology tools including continuous active learning, machine learning, sentiment analysis, anomaly detection, multidimensional analysis and predictive analytics, to curate and analyze her clients' data and importantly, surface new insight and actionable intelligence from client data. In the early days, those insights may have been single dimensional (e.g., data aging reports for insight into record retention compliance). Over time, the insights have become more nuanced, complex and useful well beyond discovery and information governance (e.g., sentiment analysis for insight into workplace cultural issues). Integrating these new tools with advanced business intelligence and data visualization software, she now provides her clients a means to meaningfully, predict and avoid legal risk.

None of this happens without process discipline. And thus, the critical element that the e-data lawyer has adapted to Big Data is her experience in process engineering. By necessity or otherwise, the e-data lawyer was an early adopter of legal project management to bring sanity to the discovery process. She later adapted well-known process methodologies that her clients use in business to the legal profession. For example, though initially developed to support mass production of automobiles and other manufactured goods, the e-data lawyer (in the guise of a legal operations professional) aggressively adopted "Six Sigma," "Kaizen" and "Lean" business process re-engineering methodologies to eliminate waste, increase efficiency and ensure consistent quality in the delivery of legal services to her clients.

More recently, she has borrowed problem solving techniques from *client-focused*, user experience-based methods such as "design thinking." Finally, she knows that the issues her clients have asked her to anticipate or solve may be dynamic and path dependent, so she applies to many of her client engagements the pragmatic, flexible and iterative techniques of the "agile" methodology so familiar to software engineers.

Some might reasonably question this article's premise—whether clients actually expect or even *want* their attorneys to deliver holistic services that go beyond providing legal advice. We consider this objection against the backdrop of wider trends influencing the development of global markets, including the market for legal services, all of which suggest that clients want multidisciplinary teams delivering complete solutions. This demand cries out for leaders with a specific combination of skills: legal, technical, people, and process management. No one is better positioned to take the lead than the e-data attorney. As we have witnessed, innovation has instigated a relentless march toward greater automation across all industry sectors, which started with manufacturing, but more recently has disrupted service sectors such as retail, media, food and beverage, hospitality, and transportation. Second, and as a direct result of the increasing prevalence of digital transformation in consumer markets, all consumers—including corporate managers responsible for procuring legal services—are coming to expect professional services to be able to deliver the same quality, speed, price transparency and flexibility of consumer experience they have become accustomed to receiving from fully digitized businesses. Finally, technological advancement has begun to erode many of the regulatory and nonregulatory barriers to the fragmented delivery of professional services in nearly every industry, from accounting to banking to health care. The legal profession is not immune.

The e-data attorney has the opportunity to take on an increasingly central role in the delivery of legal services. Her experience, skills and tools uniquely position her to help her firm align its practice with increasingly sophisticated client needs and expectations and a legal services market that some say is on the verge of disruption. In our last installment, we will explore the business of law and the strategies that the e-data attorney can use to compete successfully in the fast-changing market for legal services.

Morgan, Lewis & Bockius partners **Tess Blair** *and* **Tara Lawler***, and of counsel* **Charles Imohiosen***, focus their practices on e-discovery, information management and data privacy.*