

# The Evolution Of The E-Discovery Service Provider As Managed Services Partner

*The Editor interviews Gabriela P. Baron, Esq., Vice President of Business Development with Xerox Litigation Services.*

**Editor:** Please tell us about Xerox Litigation Services and your role.

**Baron:** Xerox Litigation Services is the e-discovery division of Xerox, a global leader in technology-driven business process management. We help in-house counsel and outside law firms manage e-discovery processes (in particular document review) more efficiently and cost-effectively by leveraging a range of services, technology and consulting expertise. As vice president of business development, I oversee global business development activities and assist our largest clients with e-discovery projects related to investigations, major class actions, employment and commercial matters in both the U.S. and the UK.

**Editor:** How do you see the e-discovery market advancing to better assist corporations manage costs?

**Baron:** We're seeing a paradigm shift in how corporations, especially those that are heavily regulated or frequently involved in litigation, are thinking about cost structure optimization. They want to know what model will maximize benefits for their corporation. What will improve processes without additional capital or operating expenses? How can they improve the efficiency of labor?

To address these challenges, legal departments are adopting creative business models to manage costs and realize strategic and operational benefits. In recent years, much of the decision making has been taken in-house to create greater economies of scale and reduce costs. We're seeing service provider relationships evolve into strategic partnerships whereby the vendor helps optimize the corporation's internal processes, capabilities and technologies.

One prevalent model among companies with complex litigation landscapes is the "shared services" approach. This is a hybrid of insourcing and outsourcing and resembles the IT managed-services model where the IT team transfers parts, or all, of the day-to-day management of IT operations as a strategic method for improving operations.

In an e-discovery context, this means outsourcing repetitive day-to-day tasks, processes, workflow, project management – and, often, the technology itself – to providers that serve as an extension of the legal department. Under this model, the legal department maintains management responsibility for the e-discovery function, but the use of internal resources, including personnel and technology already in place, is maximized. This model also enables the corporation to scale quickly without making permanent investments in resources.

**Editor:** What else is driving this shared services trend?

**Baron:** The weak economy over the last several years has created a focus on cost cutting, cost awareness and optimization of resources. Predictability of e-discovery costs, budget control and value are top of mind for our clients. This has led to an in-house migration of processes and tools for parts of the process, especially pre-collection activities. However, many clients are avoiding capital and operating expenditures wherever possible – they don't want to invest in people, hardware, software and support for every part of the e-discovery

process when it makes better business sense to partner with a provider with broad core competencies and technology.

Clients also cite inefficiencies caused by lack of centralized e-discovery processes. Traditionally, e-discovery decisions have been made by the particular law firm handling the matter, with each firm using its own processes and technology. Increasingly, clients are recognizing that this model makes e-discovery even more inefficient and costly and makes it harder to create and implement replicable discovery processes. Consistency is critical for defensibility; doing it the same way, every time, regardless of the case or the firm handling the matter, is a must if potential pitfalls are to be avoided. Given that many corporations rely on hundreds of outside law firms, in order to ensure a consistent approach across matters, the processes themselves – the e-discovery "rules of engagement" – should be driven from within the corporation.

**Editor:** What does this shared services model look like?

**Baron:** There isn't a one-size-fits-all approach to strategically leveraging the right combination of insourcing and outsourcing. In some situations, our clients maintain upstream parts of e-discovery in-house, such as legal hold, data identification, preservation, collection and early case assessment activities, relying on their technology and our e-discovery consulting expertise to support the process. In this scenario, we assist with the design and implementation of replicable e-discovery response plans. Some clients prefer to handle day-to-day case work themselves using their own tools and people, and outsource the more voluminous, complex matters to us for processing, hosting and production. This approach allows clients to avoid the costs and time associated with adding the infrastructure and internal resources necessary to handle these data- and work-intensive projects.

Some clients prefer a full-service approach, where we take the entire process, from pre-collection through production, off their hands. Then, there are clients that need just "on demand" support – additional people, expertise and sometimes technology on the ground quickly for a particular project. We frequently encounter this scenario with clients that have less complex litigation landscapes.

**Editor:** What do your clients cite as some of the advantages of a shared services model?

**Baron:** For legal departments that outsource some or all of their e-discovery technology, avoiding costs associated with on-premise tools and the resources to manage and scale them can be significant. Leveraging the same tool set across multiple matters can also offer economies of scale, and the cost advantages go beyond providing the technology. Our team serves on the frontlines of a project, working closely with in-house and outside counsel and document review service providers to reduce document volumes early on, applying pre-culling and filtering strategies, advanced analytics and other methods to reduce data volumes and the costs incurred during



**Gabriela P. Baron**

review as much as possible.

Our clients also realize substantial efficiency gains in the form of more closely aligned business processes and collaboration on the establishment of best practices across matters. E-discovery matters can start up quickly, and we are poised to expedite the launch of new projects. Our client services and project management teams know our review platform inside and out and can help drive review workflow efficiencies.

The shared services model also addresses the inefficiencies inherent in clients' use of numerous law firms to handle their dockets. Many clients have hundreds of different law firms working on active litigation and investigations, since they need firms with specialized expertise in a number of specific areas. While clients will, and should, continue to rely on multiple law firms, we can integrate their repeatable e-discovery processes with their various outside law firms across matters, eliminating redundancy in processes, people and technology. We can roll out clients' policies and procedures quickly to any law firm handling one of their matters – leveraging customized best practices we have helped design and implement – to get matters up and running quickly. It becomes very easy to get a new firm working with a corporation for the first time up to speed with the client's e-discovery protocols.

**Editor:** What does the shared services model mean in practice?

**Baron:** Our clients have varying levels of e-discovery support needs, so we work with them in different ways. For example, we manage a majority of the day-to-day review tasks for one of our more sophisticated, longstanding clients, a global financial institution. We provide the document review platform, hosted in our data centers and accessible to authorized users via the Internet, and coordinate and support all pre-review, review and production activities by in-house counsel, review vendors and law firms. We have collaborated with the client to design and implement repeatable processes, from post-collection workflow, data deliveries, pre-processing and processing and design of optimal workflow for each type of reviewer, to reporting, audit and production services. We also coordinate all activities associated with review vendor management and outside counsel review, following jointly developed protocols for client approvals at various stages of the process. By partnering with us, the client has avoided significant investments in infrastructure and people, realized efficiencies across all matters and leveraged its internal team for higher value legal work.

**Editor:** What should legal departments look for in a strategic partner?

**Baron:** The right combination of people, process and technology is critical. Strong service delivery must be at the core of this model for it to be successful. These services require domain expertise and the skills required to perform them, including technical expertise, e-discovery knowledge, project management, litigation support, process design and experienced client services managers. Many clients want more specialized support to fill competency gaps, including, for example, search expertise – linguists and statisticians who can help guide a more informed process for technology-assisted review, early data assessment, culling, strategic search, case preparation and defensible data reduction.

While this sounds obvious, technology is a critical component as well. When utilized as part of a repeatable best practice approach, technology can make delivery of services more accurate, cost-effective and efficient. The volume and types of data corporations and counsel must address is ever-growing, and it is increasingly difficult to find the proverbial needle in a haystack in today's super-sized data sets. Cutting-edge analytical tools that allow lawyers to slice and dice enormous volumes of data and quickly understand communication trends among key players are therefore vital.

I believe innovative technology is the only solution to this new challenge. There was a time when "litigation technology" just meant using a review platform instead of tape flags and coding sheets; those days are gone. Now, clients need robust analytical tools to efficiently find the data they most care about.

Clients also need powerful technology to help perform mundane legal review tasks in a more efficient and automated fashion – for instance, creating privilege logs, deposition designations and redactions. We offer clients a suite of tools, including inverse and automated redaction capabilities and an automated privilege log tool, that streamline tasks so that lawyers can spend more time focusing on analysis. There is the expectation that these standard tasks need to be handled quickly, cheaply and painlessly.

Clients also look for hosting, processing and production expertise and capacity, along with robust physical and application security infrastructure. Security must be looked at critically given the highly confidential nature of the data that is handled by e-discovery providers, and it is essential for clients to understand how their data is handled at each step in the process, from receipt through production. Documentation, detailed reporting and certifications should be a requirement for all corporations on any project, regardless of its size or scale. Defensibility doesn't apply to just large or complex matters.

Finally, flexibility is critical. Client requirements vary depending on numerous factors, including litigation profile, in-house resources and capabilities, existing tools and budget. Providers should be able to quickly assemble the right team and tools, working closely with the client to design processes that can be implemented consistently across matters. Providers should be able to customize tools based on client-specific needs – an advantage when the vendor has developed the review tool itself and manages all related R&D.

**Editor:** How do you see the shared services model evolving?

**Baron:** Clients are expecting more from our partnership as their needs evolve. We're seeing new challenges in a number of areas that clients are asking us to take on, notably support for upstream e-discovery processes such as legal hold management, collections and early case and data assessment activities. If you look back to where the e-discovery industry was ten years ago and where it is today, and then think ahead to where we will be ten years from now, it is mind boggling. Corporations have come a very long way in thinking about e-discovery and have fundamentally changed their approach in a relatively short period of time. As the e-discovery market continues to mature, and our modes of communication continue to evolve, the shared services model will also change, and I believe that a provider's ability to be flexible and innovative will win the day.

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