

New Law Leverages Nontraditional Approaches to Improve Outcomes

► **Robin Snasdell, managing director at Consilio, discusses the concept of “new law,” how technology is transforming various legal processes, and where improvements can still be made in the future.**

CCBJ: Consilio defines “new law” as the delivery of legal services in nontraditional ways that offer greater value to the buyer. Can you describe some of the evolving new law solutions that you are developing?

Robin Snasdell: When we’re looking at opportunities that would fall under “new law,” we tend to focus on legal service delivery models that have not been improved in years – ones that still rely on human muscle and labor but where there’s actually something about the process that lends itself to technological enablement. As an example, we’re seeing many clients needing to repaper old agreements and legacy contracts. There are a number of reasons why they have to repaper them, but one of the biggest right now is that many financial institutions have their loan agreements tied to one of the interbank offered rates – the London Interbank Offered Rate (LIBOR) being the most common. LIBOR has come under incredible scrutiny over the years for fraud and rate fixing, so the powers that be have decided it should cease to exist. Originally, the cessation date was December 2021. It’s recently been changed to June 2023, because everybody realized that the banks and other financial companies had no way of completing this project by the end of this year. Essentially they have to take all of their loan agreements and financial instruments, find the LIBOR language or the index language in it, amend it, and then have it executed with the borrowers. It’s a big mess.

The banks are thinking about how to do this, and the process is really ripe for technological enablement. Usually, it would involve reviewing these heavily papered loan agreements, anywhere from 100 to 400 pages in length. Those agreements would have to be poured over by a human lawyer, and it would take hours just to find the appropriate language that’s necessary for the repapering process. Then the repapering process itself involves typing up new paperwork, etc., which is also a huge deal. But now the artificial intelligence (AI) / machine learning technologies in the marketplace have come such a long way that they’re actually highly effective in terms of going through a review process like that. To begin with, they’re able to find the appropriate terms and clauses that should be used in the repapering process, and if you’re able to use AI in that capacity, you’ve basically taken a multi-hour task and condensed it to minutes.

The next step is understanding the language that is being extracted, making sure it’s all correct. AI can help with that part too, though obviously there’s human quality control in place. Then it’s handed to the lawyers to actually do the repapering, and those activities can also be accelerated by technology, since now we can rapidly assemble documents based on templates and fallback language that is appropriate for each scenario. That can all be built into the technology. And then from there, it can be sent off for the necessary e-signatures.

So what we’re trying to do with new law is to take a process like that and condense the amount of time it takes and increase the accuracy and quality of the resultant work product. And because it takes less time, and because the technology costs less than the human cost would be, now you’ve got a process that is technologically enabled, with superior quality and accuracy, for a lower price.



How are new law solutions identifying contracts containing outdated language?

There are a number of AI tools in the marketplace at this point, and many of them have success stories associated with them. Several years ago, in 2013 or 2014, AI that is specifically designed for contract review and contract data extraction really started hitting the market. Since then, more and more new players have entered, and there are lots of variations on what AI can do now, not only as far as how it looks for the clauses and terms that you've instructed it to look for but also how it learns.

AI's ability to learn in a feedback loop from the humans that are quality controlling the extraction has really improved. It used to be that you couldn't necessarily rely on the AI, and the amount of effort needed to train

it was so large in terms of the number of hours, it was usually cost-prohibitive to even use AI. But now, since it's been on the market for a while, there are a lot of different use cases that have been established as normal for AI as relates to contracts. Things along the lines of M&A due diligence, for instance, as well as other types of repapering exercises, such as LIBOR, which we already discussed. There are also numerous new regulations around privacy, like the General Data Protection Regulation and the California Consumer Privacy Act, and many companies are seeing that their legacy privacy agreements need to be updated as a result.

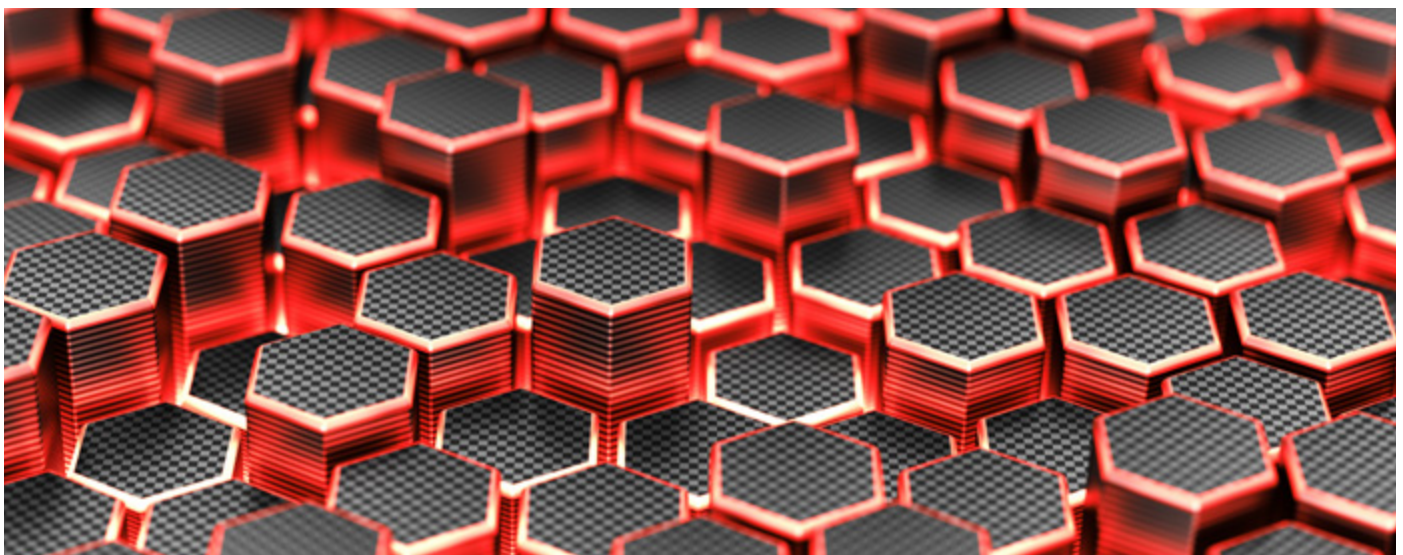
Another big area where we're seeing AI being used in the contracts process is pre-execution review. Let's say two companies want to do business together, and they exchange contracts and make an agreement, there's a

whole new set of tools that will analyze that pre-executed contract and compare it to the company's identified standards, which helps the review process because the technology allows the lawyers involved to be drawn directly to the language that is a problem, as opposed to having to review the whole thing.

How are new solutions working to ensure compliance within the regulatory landscape?

As we look at our clients, law firms and corporate legal departments, there are a lot of compliance processes that are still typically done over email. Let's say that your current Sarbanes-Oxley compliance or workflow is such that accountants come in and audit the numbers, and then the numbers need to be reviewed by the executives, and then those communications need to be reviewed by

the Board, and then it comes back down to the auditors and accountants to make sure everything is in line with Sarbanes-Oxley. That whole process is often handled in a cumbersome way, usually over email. There's an opportunity in those types of scenarios to utilize process automation tools, where the entire process gets captured in a structured environment and is more transparent. All of the boxes that need to be checked are coded into the platform, and you either can't get around them or there are plan B's that are built in. So now people feel more comfortable that all of the boxes are being checked, that the right people are involved, that there's audit capability in terms of who touched what, in terms of the data. The digitization of the process leads to high-quality results, better compliance with regulatory requirements, more transparency into the process, and more capabilities for reporting and analytics, which feeds into improvement of the process.



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How is Consilio specifically leveraging AI and advanced analytics to create technology-driven workflows?

Consilio has a lot of experience with AI. When it comes to something like contracts or any other workflow, the question, of course, is does the AI work? Does it help with the process? Does it achieve the goals that we're trying to achieve with better results, more efficiency, lower cost, etc.? What we've had to do, because the market is quite dynamic in terms of what solutions are available to us, is do a proof of concept internally, in order to keep track of which solutions do what, which ones are strong in certain areas and weak in others. So we have a smorgasbord of AI technology available to us. When a client comes knocking, depending on the requirements of the task that they're asking us to help with, we can bring our tool set to the table and utilize the best one for the scenario at hand.

We're constantly looking at the new vendors that are out there, what they're capable of, what they say they're capable of versus what they actually deliver, who is better under which circumstances, so that we can make sure that when our clients come through the door, we're recommending the best solutions to them.

We've got a tool here at Consilio called Sky Analytics, which was created several years ago specifically to analyze legal bills, external counsel bills that are submitted to a

particular client, in order to provide companies with a different lens as they're looking at those legal bills. There are a lot of analytics in there about things like how law firms staff their projects – what's their utilization of associates versus partners versus paralegals? What kind of rates do they have? How do those rates compare? So Sky Analytics provides great insight into the legal marketplace of law firms serving their clients. And that has benefited our clients greatly in terms of being able to negotiate with their outside counsel, have a better understanding of what their outside counsel are doing well, and what they're not doing well. And it leads to conversations about overall improved performance.

What type of solutions are available for revising budgets?

The budgeting process is universally poor, across the board, as it relates to outside counsel and the formulation of budgets from in-house counsel. Most companies are doing it in an arcane, inadequate way. Maybe with spreadsheets, maybe with email, maybe even through a conversation, which is really not helpful when it comes down to it, because one of the things that chief financial officers want to see is fewer surprises when it comes to legal spend.

I'll just give a bit more background here. There are multiple budgets when it comes to the relationship between in-house counsel and outside counsel. One budget is how much the outside counsel thinks a particular project or matter is going to take. That may differ from the budget allocated by the in-house person who, for other reasons, thinks that the budget the outside counsel has come up with is not correct. It is either too low or too ambitious or not ambitious enough, for whatever reason.

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Then there's the budget being tracked at the law department level and even the practice area level. All of those budget numbers are related in many ways, and they should be aggregated together, but legal departments typically they don't have an enterprise resource planning (ERP) system that is actually managing the complete financials of the department. They rely on their finance department to track things like that.

However, legal departments have matter management/e-billing systems that have typically been used for the management of external spend. These differ from financial management systems because they enable tracking costs using the nomenclature that lawyers and law firms use. There are some standards in the marketplace that set what terms are being used between in-house and outside counsel. And, of course, what goes along with that is a budget. Should outside counsel be billing as much as they are?

We've seen a general improvement in the way budgets are being handled in mattermanagement/e-billing systems and better collaboration between outside counsel and in-house counsel. Meaning, the technology is enabling both parties to collaborate around what those budgets should be and how frequently they

should be collected – quarterly, annually, per licensed project or licensed asset, etc. The matter management/e-billing technologies have done a good job of enabling that process. When it comes to setting budgets and revising budgets for matters in particular that involve external counsel, we recommend that clients utilize their mattermanagement e-billing tools in an effective way to get their arms around it.

Unfortunately, not enough companies we work with have done that yet, so there is definitely more opportunity for improvement. In terms of the departmental budget that goes to the in-house employees, the associations that they are paying dues for, the various other internal costs that are not associated with external spend, typically those are all tracked in the enterprise financial management system, which is a bit unfortunate, because if you're a general counsel, you have to rely on your internal finance group to tell you what your internal numbers are, and your mattermanagement/e-billing tool to tell you what your external numbers are. As of today, there's not necessarily a winning technology that helps combine all this and allows it to be managed in one place. So there are still a number of opportunities to improve the overall financial processes. ■



Robin Snasdell is a managing director with Consilio. He focuses on assisting global companies to improve their business performance by providing strategic consulting, process improvement, change management and technology-related solutions to the general counsel and chief compliance officer.