

Is Your Early Case Assessment Process Hurting Your Case

► **Early case assessment (ECA) is crucial to developing a winning strategy. Wendy Cole, product marketing director, legal tech with OpenText, explains how Axcelerate Investigation is helping organizations regain control of their ECA process and quickly assess the merits of their case.**

CCBJ: ECA is a nebulous term that has been widely used to describe certain early-stage challenges and processes in e-discovery and investigations. Please describe those processes.

Wendy Cole: The term ECA, or early case assessment, refers to the process of collecting and culling data and then taking a quick dive into that data to gain an understanding of the facts and evidence that will inform the case strategy. Ideally, you want to assess the strengths and weaknesses of the case quickly and decide how to proceed, whether the matter is related to a civil proceeding, or assessing potential liability related to a regulatory or other type of investigation.

In any early case assessment project or investigation, time is of the essence. But many projects, due to issues I'll talk about next, take many weeks if not months to get to the key facts that can inform case strategy or drive resolution.

How have legal teams typically tackled challenges such as traditional approaches to ECA and investigations?

Fundamentally, unlike a litigation document review, where critical facts are known and issues defined, in ECA or an investigation often there is little information to go on or none at all. Corporate legal teams facing massive volumes of electronically stored information and unknown unknowns are tasked with finding the key

evidence and getting to the truth of a matter under tight deadlines. More often than not, legal teams struggle to execute the right strategy and tools to zero in on key information quickly.

Many legal departments take a patchwork or ad hoc approach. Some use numerous point solutions for distinct parts of the process: one tool for collecting data, one for processing and culling, and a third for analytics. Those using a first-generation ECA platform for basic culling then need to use a separate analytics tool or import the data into an e-discovery review platform for analytics capabilities before they can gain any real insight into the data. There are a lot of steps involved, a lot of hands on the data and a lot handoff points. When multiple solutions and people are involved to "get the job done," this introduces delays, inefficiencies, risks and additional costs into the equation.

Other teams rely on their information technology (IT) teams to search for and send them personal storage table (PST) files for manual review, only to find they need more emails or data from other custodians. This is a slow and laborious process, and it risks missing potential evidence in other data sources within the organization.

Finally, to "get the job done," others gather PSTs and simply send them to a third-party vendor for the data to be processed for a full production-style review that is designed solely to separate the potentially responsive from the nonresponsive data. This can be unnecessarily time-consuming and drive up costs.

How is today's environment driving trends that are pointing to new approaches?

The salient theme of the past year is how to do more with less while optimizing results. Since the pandemic, legal

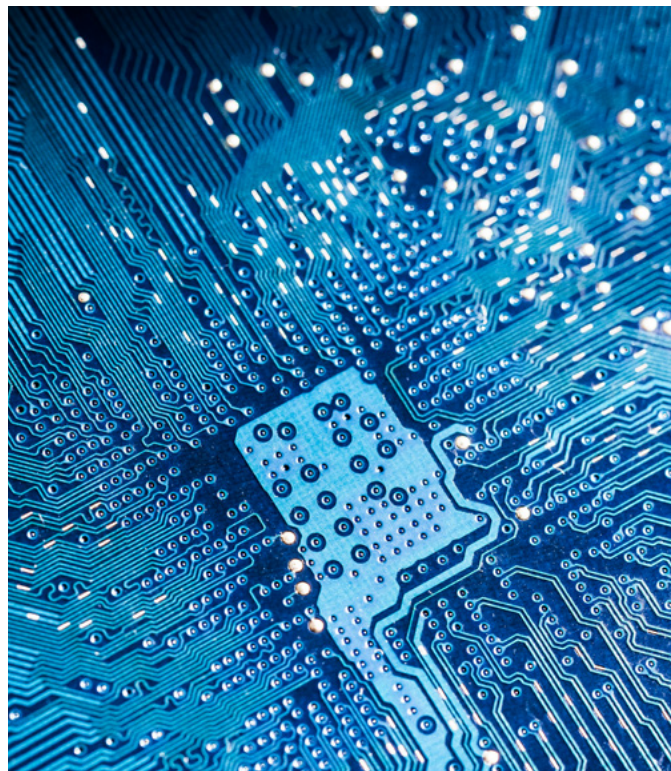
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teams have been struggling with an increase in workload – especially “unplanned work” like investigations – while having access to fewer resources. At the same time, data volumes are growing, exacerbated by a largely remote workforce relying more heavily on chat, ephemeral messaging and other types of communications to do their work. And there’s the intermingling of work and personal data, challenges related to bring your own device (BYOD) and growing data security concerns. So, you’ve got more data, greater risk, less time, fewer resources, and more work to be done. There are new challenges and there’s a learning curve.

In the midst of this pressure there’s still the tendency for a knee-jerk reaction: “We don’t have the resources to look at this data in-house. We need to get someone outside to find the critical data for us.”

The historic reliance on outside counsel for more mundane tasks such as the mechanics of ECA, investigations and document review, regardless of cost or budget, is shifting. We are seeing many legal departments increase spend on technology, amidst flat budgets, in order to reduce dependency on outside counsel and address capacity problems. This includes a focus on technology that incorporates emerging technologies such as machine learning to automate highly manual and inefficient processes.

Reliance on specialized providers won’t go away, but we’ll see better optimization of external expertise for tasks



such as managed document review and investigation SWOT teams. The key is to build a strategy incorporating technology, people and process that addresses the long-term pain points and inefficiencies to achieve better legal and business outcomes.

What are essential technology capabilities that legal teams should look for regarding ECA and investigations?

First, general ECA tools usually have collection and broad culling capabilities. These are important but are like an axe; they’re not precise, and that’s exactly what’s needed in ECA and investigations.

Ideally, you want to assess what supports your case, what doesn't support your case, and what the truth actually is.

Finding the facts to support your case requires tools that operate with precision, like a scalpel. This is where analytics (both textual and conceptual) and machine learning are critical to an efficient and effective solution for zeroing in on the evidence quickly. When combined in a single tool with collection, processing and culling, analytics will maximize efficiency and minimize delay and cost.

How are analytics being used to improve traditional approaches, and what are the benefits over traditional ways of conducting ECA and investigations?

Analytics give you the ability to shave substantial time off an ECA project or investigation so you can get to the heart of the matter faster, and make decisions faster. You can do a deep dive into the data, reveal the patterns, surface the key information, surface outliers. Many times you're not looking for the everyday communications; you're looking for an outlier. Why is this person only communicating at this time of day? Or, they haven't communicated with this person in six months and suddenly there's this barrage of communication between two parties. Why? It's those tools that help you surface the patterns and find the evidence quickly. And that's critical to early case assessment.

Using analytics way earlier in the process may even avoid costs, because the organization may settle the matter or decide not to pursue it and avoid a complete review and production process, which will save them both money and time and allow them to go forward with their business.



Tell us about OpenText's new product Accelerate Investigation, and what makes it unique.

Accelerate Investigation is a single ECA and investigations platform that includes the analytics I just described. It incorporates traditional ECA tools – data connectors, processing and culling capabilities. But then it adds broad and deep analytics and machine learning capabilities. Because all functionality is integrated, collecting and culling is more efficient, and the team has substantially earlier access to the evidence. This helps teams shave weeks or even months off the usual time it may take to get to the facts.

Accelerate Investigation is intuitive and easy to use, and its advanced analytics, machine learning and visualization tools help reveal patterns. So, legal teams can quickly get up to speed and find the key data themselves. Because Accelerate Investigation's powerful analytic tools are front-loaded, Accelerate Investigation is exceptional at ferreting out the unknown unknowns, which is critical in an investigation where facts are not developed or not known.

With automated document summaries, teams can shortcut the fact-finding process by using the summaries to help them determine which documents they need to look at. Predictive search technology means that when a team finds a really good document, they can use the “find more like this” search technology to uncover similar documents quickly. Advanced sentiment analysis helps teams by automatically categorizing documents into negative, neutral and positive sentiments.

The product also offers teams flexibility. Legal departments

can install it on premise, or they can use it in the cloud on demand. When deployed on premise, teams can create central data repositories and reuse information for multiple matters, saving costly and time-consuming rework. With on-demand cloud deployment, legal teams can use the platform on an as-needed basis, without infrastructure, operational costs or IT to support them.

Flexible deployment options give teams early access to really advanced analytics in whatever way works for their particular circumstances and priorities. And that's the key point.

And if the team's analysis reveals that a full review and production is warranted, or if regulatory authorities are requesting full production of documents, the data and all analysis and work product conducted in Accelerate Investigation moves seamlessly to the Accelerate Review and Analysis cloud platform for full review of the data set for relevance and privilege. It's a single platform for all ECA and investigation needs and takes users seamlessly to full review, including advanced technology-assisted review, and production where required. So, it's a very efficient solution. ■



Wendy Cole is director, product marketing for OpenText Legal Tech solutions. After practicing civil litigation in Toronto for seven years, her focus shifted to legal technology and e-discovery. She has been involved in the development of e-discovery in Canada from both a technology and policy perspective for over a decade. At OpenText, Wendy is responsible for strategic product marketing of e-discovery solutions, including Accelerate Investigation. Reach her at wcole@opentext.com.
