

# LEGAL OPERATORS

• Magazine for Legal Ops Experts & Professionals • No.3 • 2022

## ALEXANDRA GUAJARDO ON LEGAL OPERATIONS

WILL EY LAW CHANGE  
THE LEGAL DELIVERY  
PARADIGM

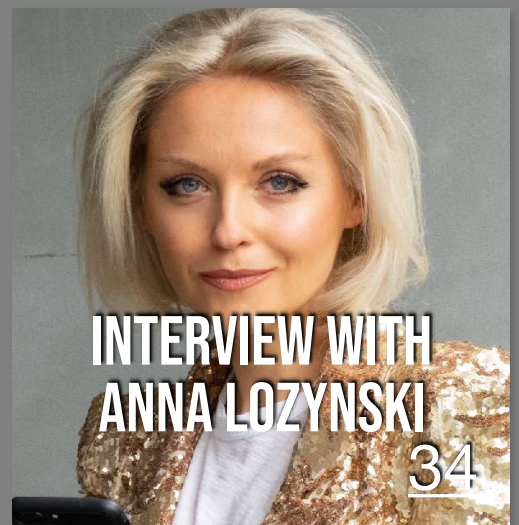
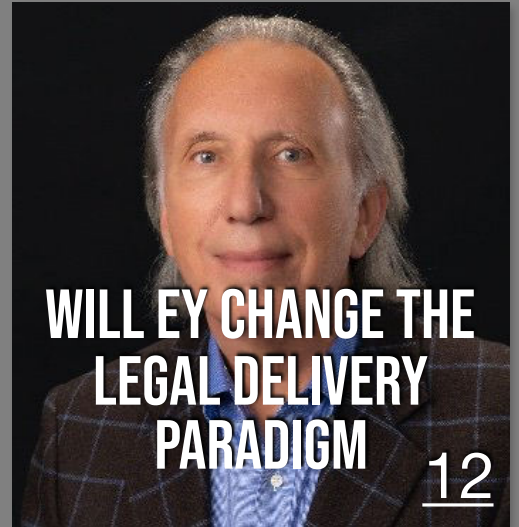
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*A special thanks goes out to Alexandra Guajardo, Mark A. Cohen, Jelle Oorebeek, Patrick Mckenna, Richard G. Stock, Anna Lozynski, Fatima Hussain, and Anne Graue for their excellent contributions.*

# EDITORIAL

**T**his is the third issue of the Legal Operators Magazine. In this magazine we share insights, information and knowledge from experts, thought leaders and connoisseurs from around the world.

## **This issue**

In this issue Alexandra Guajardo talks about Legal Operations, shares here experience of being a woman in the legal segment and more. Renowned Industry Expert Mark Cohen discusses change of the legal delivery paradigm. Jelle Oorebeek talks about how to leverage e-Discovery and Digital Forensics and how to achieve greater efficiency. Thought leader Patrick McKenna asks the question ‘Do You Know How to Bring About Change’ and shares insights in the change process. Richard Stock takes you through the seven critical steps you take before closing a new deal, and in the series Women and Innovation Fatima Hussain and Anne Graue speak with Anna Lozynski. This month's company in the picture is Lattitude. A legal services company that specializes in employing and providing former in-house counsel and Big Law attorneys to legal departments and leading law firms nationwide.

## **Become a household name in the industry**

With its backbone in the Legal Operators Community the magazine is a perfect medium to share your expertise, claim leadership, and increase your brand-awareness throughout the industry. Make yourself heard, increase engagement and let us help you to share your message through eZines, eBooks, Whitepapers, Webinars, and events.

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Mr. Colin McCarthy

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## The Community

If you're interested to learn more about Legal Operations I'd like to invite you to join the [Legal Operators community](#). In this community you can connect with your peers across the legal industry, discover innovative solutions, learn about upcoming events, etc.

Furthermore your feedback, suggestions, and ideas are warmly welcomed as we build specials and future editions of the magazine that are tailored to the topics and people you want to read about. Please send me a message at [colin@legaloperators.com](mailto:colin@legaloperators.com) to let me know what you think.

I hope you enjoy this third edition!

In community spirit,  
Kind Regards,  
Colin McCarthy, CEO



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# ALEXANDRA GUAJARDO

## on Legal Operations, Women working in the Legal Market, Pricing, and more

**Can you tell us a little bit more about who you are, and your career so far?**

I am a child of immigrants born and raised in Houston, Texas, and a first-generation college student in my family. I was always told education was not only important but necessary to succeed. I've worked at some high-caliber law firms with inspiring mentors along the way that guided my path and taught me not to be afraid of constructive criticism if I wanted to be better. My roles through the years have flourished from that belief. I have always strived to do better and

look at things with a critical lens. I have been in Legal for over 20 years and moved up through various operations roles that cannot be simply explained based on the title, the roles changed from me jumping at the chance to work on new projects and so did I.

A little over 5 years ago, I had the opportunity to step into the corporate side when Shell came knocking on the door. I've learned that regardless of what side we are on, we have to understand the priorities of the company and our roles to seek action

and results based on those priorities. What is important for my role now is to achieve value on behalf of Shell, and that doesn't mean just money and savings. Value also means time, successful outcomes, helping others grow and develop and so many other things based on what is critical at this moment in time and what is planned for the future. There's nothing more valuable than time, what can I do to utilize it wisely?

**You are working in legal and technology for a long time. Do you think that all legal operation professionals have to be legal and tech-savvy?**

Absolutely not! We all need to be outside-of-the-box thinkers. Legal operations is a continuously evolving industry, so although it's great to have a legal and technology background, it doesn't necessarily make you better. There's not a one size fits all type of person for legal ops and through the years I have met many great minds that come from very varied backgrounds. There are people with different levels of expertise in differ-

ent functions not only legal but from the business side. Legal operations is so exciting because it is a melting pot of ideas, and it's the people that speak up and take calculated risks that really excel in this area.

**Working in the field of legal operations made you an expert in understanding the need of embedding legal ops in daily business. Besides an increase in efficiency in work processes, what are the benefits to be made for a company that invests in legal operations?**

We're always trying to increase the value of our legal departments and to do that, we have to take a look around at what is already happening in the company and how we can centralize and streamline processes or make improvements to those already in place. Although we are always working on improving efficiency, we also have to be strategic in what we work on and to achieve to make sure we do not overpromise and underdeliver. Having the right people working at the right level increases

the value of the legal department. We should not only be asking why something is being done but also be looking at by whom it's being done. This approach will allow us to maximize value and continue to provide impactful results.

**Shell is a large international company; do you have legal ops departments in all countries? And how do you ensure correct coordination of legal operations throughout the company?**

We support legal across many countries here at Shell, but we do not have legal operations in all countries. Instead, we have a global support structure with team members strategically placed in different Shell hubs. We work very closely together to ensure that everyone is getting consistent support. We've had to establish best practices and processes that allow our team members to have the tools and ability to deliver. It's important that regardless of who gets called, the answers are consistent and the support is seamless when interacting with any member of the team. I get pulled in for more complex and high-risk, high-value work while other members of the team focus on tasks they are better suited for. We are a work in progress so we are always looking for constructive feedback and ways to improve our ways of working.

**You're also responsible for pricing and analytics at Shell, different countries, dif-**

**ferent currencies, and different cultures. How do you make sure that, for instance, pricing policies throughout the company are aligned?**

For pricing, we use the same approach which is establishing expectations and agreeing on terms but we've also learned that not everything needs to be so complicated. In certain jurisdictions, we have to be a little bit more flexible for instance, if a global firm (used by us) is partnering with a local firm, we want to make sure that approach is the most practical since sometimes going directly to the local firm may make more sense. When it comes to pricing structures, it's not determined by the country or the place but instead, it is based on the complexity, the risk factors, exposure, and the details of the actual case.

**Did launching, or having a legal operations department at Shell also change the way you work with outside counsel and law firms?**

We do have a formal legal operations team and because of it, we do have more consistency in our process and the way we work with our firms. One of the challenges for our law firms is attorneys on both sides make connections. When the attorneys move to new roles or a different company, those connections can be lost. Legal operations can not only help establish the connection but ensure that it remains, and then it can



be passed through to the other groups within the legal department. As law firms are investing in acquiring clients, we're also investing time and effort into getting to learn about the firms that represent us and what they have to offer. We've also identified a new tool that will help us provide more detailed data to our attorneys regarding law firm capabilities, attorney successes, and the diversity of their teams.

**Do you think it's more beneficial for companies to work with law firms that also have a legal ops department in terms of connecting and communicating?**

Yes, of course! Companies and law firms that have legal operation professionals benefit from having subject matter experts handling the non-legal work while the cases are moving forward sometimes at very fast speeds. We know when you're looking at M&A deals, or at certain litigation cases, the lawyers do not have time to slow down and say, "Hey, wait, did the case get set up in our billing system under the right conditions? Or is the legal project management piece completed? Or did the pricing get negotiated?". It becomes a collaborative effort between the practicing lawyer (legal knowledge) and the legal ops professional (business/IT knowledge) but with each person involved focusing on their specific roles and responsibilities so we have business continuity.

**Another important topic is diversity and**

**inclusion. How far or in what way do you benefit from diversity programs in your role or the legal operations team?**

We've been talking about diversity and inclusion for a very long time. but what are we doing that actually can impact change? For us at Shell, diversity of thought, people, cultures, and of backgrounds bring better ideas and superior results. It has been proven time and time again.

Diversity & inclusion is not just a "hot topic" we should be talking about. Change has to happen. My contribution in this space is really how do we make this happen? What data are we looking at? For a long time, we were capturing a lot of diversity data but not doing anything with it. We have to take a step back and ask what is the data telling us and whether are we processing it. The data not only tells us a story but also allows us to make data-driven decisions, apply changes or adjust actions. Diversity is vital to great business outcomes and requires us to all have a dynamic approach.

**As a woman working in legal tech and business; Was it hard for you to be heard or get noticed throughout your career? And do you have any advice for other women?**

At the very beginning of my career, I was probably one of the only women in the room, although not a big deal to me or

something I noticed, yet others would point it out. Although speaking to people has never been intimidating I've been in situations where I was not quite sure how I should respond. I once had a manager tell me I was too young to want a career, an education, and a family. My immediate reaction was horror and disbelief. Was she trying to talk me out of my goals and ambitions or getting me to not address any of my concerns? On the flip side and luckily for me, I have been fortunate to have really strong individuals (both men and women) that have mentored me and cultivated my passionate side while pushing me to not only speak up but also be self-aware. So it's not talking just for the sake of talking, but really advocating for myself in a way that builds credibility and allows others to understand why they should work with me. Whether in a positive or negative situation, I look at everything as a lesson to be learned. I want to continue to do what others have done for me by choosing to lead by influence and example and not just because someone works with me, or for me.

**You mentioned billing. There is a lot said and written about billable hours as a business model from the past. Did you see a shift from billable hours to AFAs? And is the billable hours still a valid pricing model?**

I may be unpopular by saying this but I do not believe the billable hour as a pricing

model is obsolete BUT it is not AND cannot be the only model anymore. For a long time firms were hesitant the use AFA's because they felt that the client was trying to get a win over them when that is not the reality. I don't want the cheapest, I want the best at the right price with the right experts involved. I've seen it from both sides now and it doesn't mean the client is trying to shortchange the firm or the firms are trying to get paid more than the case would be worth. The reality is, how do both sides align on expectations of what is being provided. Establishing what success is for the case early on and what is the intended outcome is imperative. It allows for the overall risk to be reduced by providing both sides with established guidelines and predictability of costs and payments. Blank checks and infinite budgets are fiction and we need to have discussions about how much things cost based on the deliverables and who is handling the work. AFA's and billable hours are here to stay but I believe we will see more hybrids of them. It all starts with communication on what those involved are trying to accomplish.

**Legal Operations is evolving at a fast pace. Is it hard to keep up with new and innovative developments, and how do you do that?**

Well, because legal ops is constantly evolving, there's no way I can know everything that's out there. There's a lot of new technology

that is being developed by people on a daily basis and there is a high grade of innovation. My role is to stay open-minded and think outside the box. All of us in legal operations have the responsibility to do that. Of course, I read about new developments, but the only way to ‘kind of stay up to date’ with what's going on is to consider options that align with my priorities and connect with peers. Organizations like Legal Operators, Legal Value Network, and CLOC are so important. They allow us legal ops professionals to connect, have discussions, mentor each other and really get into the details of what is working, and what is not working. There's no way any one of us could know everything that's happening in the legal ops field, but the least we could and should do is make time and put the effort into staying connected with our peers, our colleagues, and even our competitors.

**That’s a very clear answer. Thank you very much. Is there something else you want to share with our readers?**

I meet a lot of new people that are coming into the field of legal operations and I’ve noticed that this area of expertise sometimes can be a little overwhelming or discouraging. There is a lot of knowledge and insights to be gathered, and sometimes it feels like when you walk into the room, you have to establish credibility, showcase a success, and tell a story of what the data is showing or what can be done every single

time. This is not (always) the case. But at times especially when in a new role, it is necessary. Persistence and consistency are key if we're going to continue to make a difference and demonstrate why we should have a seat at the table. It is an exciting and innovative industry to work in and one that I love to be a part of.

*The Legal Operators team thanks Alexandra for sharing her knowledge, insights and opinion.*

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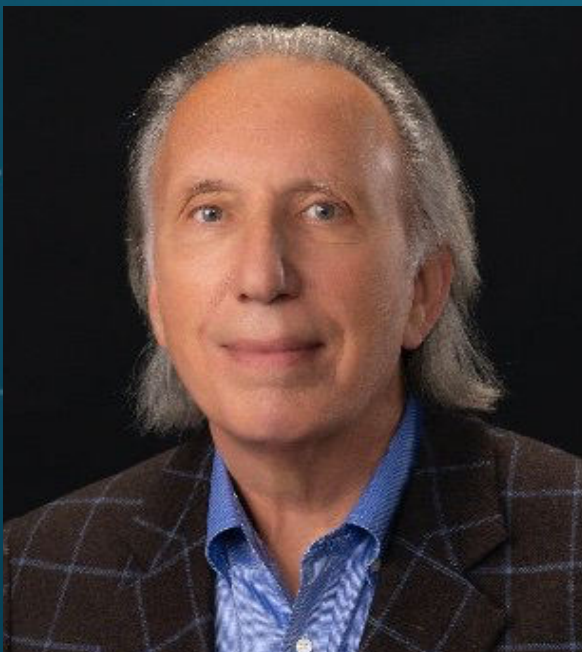
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# WILL EY LAW CHANGE THE LEGAL DELIVERY PARADIGM?

*By Mark A. Cohen*



EY's leadership recently [green lighted](#) a major restructuring, ending months of heated speculation. The plan has two key prongs: (1) EY's audit and advisory businesses will split; and (2) the advisory business will replace its partnership model with a publicly traded corporate structure.

The restructuring presents a unique [opportunity](#) for EY Law to expand the scope and meaning of "[legal services](#)," [reinvent how they are delivered](#), [broaden the range of legal careers for licensed attorneys](#) and [allied legal professionals](#), and extract greater [value](#) from the legal function by aligning and integrating it with business. EY has



the potential to change the [legal delivery paradigm](#) by providing multidisciplinary, vertically-integrated business, technology, and legal solutions. This will benefit its customers as well as the broader business community. It will also offer new career options for licensed attorneys, allied professionals, and paraprofessionals.

Cornelius Grossmann, EY Global Law Leader, shared: “The transition away from the partnership model and the removal of audit independence restrictions are fundamental to our vision to create the world’s leading

[enterprise legal services provider.](#)” The opportunity to achieve this bold vision is real, but so too are a host of challenges. This article will examine both.

## **EY’s Structural Transition Unlocks Several Opportunities**

The two-pronged structural transition will unlock several opportunities for EY Law and the advisory business of which it is a part. Separation from the audit business will remove independence restrictions that have prevented it from performing legal work for audit clients. This expands EY law’s market

about 20%, its share of Global 2000 audits. A substantially expanded market will justify greater investment to scale existing services more quickly and to develop new offerings useful to customers. Independence from audit restrictions will also reduce the substantial administrative burden on EY and, sometimes, its clients.

The spin-off will also allow EY Law to develop relationships with audit clients. This will open up partnering arrangements that produce new products and services helpful to customers. For example, EY Law can soon engage with several leading technology companies it audits. The list includes Google, Amazon, and Apple. EY already has a [deep partnership with Microsoft](#), and its ability to expand its tech ties will open the door to new services, products, and opportunities.

Synergy between the legal and tech spheres at this elite global level is a natural market progression. It will help to eliminate anachronistic barriers separating the two industries. Their linkage will benefit customers and expand the parameters of existing legal careers fostering engagement in cross-industry collaboration. It will accelerate [law's transition](#) from a lawyer-centric vertical to [multidisciplinary horizontal function](#). This will inure to the benefit of business, the workforce, and society.

Law, technology, and business have become the three key components of legal delivery. Fusion has thus far been largely *ad hoc*,

lacking scale, integration, and a common goal. EY Law is positioned to meld these three delivery components at scale. Partnerships with other industries will accelerate EY Law's internal integration with other advisory business service lines— IT, data analytics, risk management, process and project management, to cite a few. It will also present customers with a holistic, multidisciplinary, integrated data-backed, process-driven solution to complex business challenges. Whether this is categorized "[legal services](#)" or something different, it is a giant step forward for [customers](#).

EY Law's ability to integrate with the wider advisory business—and vice versa—is central to achieving its vision. The same [integration](#) applies to customers and the workforce. The connective tissue binding them is shared [purpose](#). A customer-centric, multidisciplinary, collaborative, [team-oriented delivery capability](#) would set a new standard for the legal industry. It would [elevate the legal function's impact on business](#) by extracting its latent potential to proactively identify, mitigate, and extinguish [risk](#) as well as to collaborate in value creation.

EY Law's [structural reboot](#) provides an opportunity to create a flatter, more nimble, customer-centric, data-backed, capitalized, collaborative, integrated, and merit-based organization than [the partnership model](#) it will replace. It will have access to [institutional capital](#) to fund long-term investments in technology, process improvement, new

services, collaborative ventures, acquisition (including law firms where regulatory permitted), and talent.

This contrasts with the partnership model where decision-making is slow and often driven by how close a partner is to retirement. Resistance to long-term investment, likewise, is linked to the absence of a residual economic interest in the business. This promotes stasis, a short-term horizon, and discourages creativity and innovation.

EY Law's corporate structure will enable it to reward a broader segment of the workforce with equity-based compensation, something it plans to do. This will promote loyalty, retention, and collaboration. Other residual benefits of equity include: teamwork, a stake in the long-term success of the enterprise, the potential for wealth accumulation, and a clearer sense of purpose. Wider ownership interest will also help eliminate law's hierarchical culture of partners and associates, lawyers and "non-lawyers," and fee earners and staff. That will foster teamwork, elevate morale, and serve as a beacon for talent seeking a different "legal" environment.

EY Law's structural transformation is built on a solid foundation. It has the provenance of a top global brand (the advisory business will operate under a new name but retain ties to the audit function); deep C-Suite relationships; access to capital; multidisciplinary expertise that cuts across areas that intersect

with law; and enlightened leadership that oversees 4,500 attorneys across 90 countries.

Transformation offers opportunity but comes with challenges. Here are some key ones that EY Law can expect to encounter.

### **Change Management Is EY's Law's Biggest Challenge**

The greatest challenge confronting EY Law is, paradoxically, a prized asset: its workforce. Morphing from a partnership model to a corporate one necessitates a change of mindset, culture, metrics, organizational structure, and economic model. It requires a shift from input to output; individuals to team; and legal opinions to business solutions. Sharing institutional knowledge, data, and other institutional knowledge/intellectual capital with colleagues must be the norm, not the exception. Likewise, sharing must occur across the legal function, as well as with allied service lines, strategic partners, and clients. Legal providers, especially lawyers, are not accustomed to this.

How might EY Law leadership encourage its workforce to embrace these and other changes? Laying out the opportunity is a good place to start. So too is providing context- the "why"— of change. Change is neither "change for change's sake" nor punitive. Rather, it is an ongoing response to meet the shifting demands of its customers, business, society, and the environment.

Law can no longer be misaligned with the macroeconomic forces reshaping our world. Most in the workforce do not realize they have already bridged the digital divide as consumers. They buy online; embrace technology; rely on data to make rapid, informed buying decisions; and value accessibility, transparency, choice, and customer service. They favor providers that make the buying process easier, faster, and more pleasurable.

If legal professionals have navigated the digital divide as customers, why not as providers? They should consider their role from the customer/end-user perspective—how can they improve their individual and team performance to produce better outcomes and experience for customers?

It is not enough that leadership and/or a fraction of the workforce commits to a new mindset. Organizational success requires broad adoption and a team orientation. That means interdependence, collaboration, sharing, and relentless customer focus. The emphasis is on ongoing improvement, not precedent; diversity, not homogeneity; output not input; and the team, not the individual. These are not the cultural touchstones of most legal organizations, but they must become so.

### Market Challenges

EY's ability to navigate internal change management challenges is foundational to its success tackling external ones. Here is a rep-

resentative list of market challenges it will confront.

- Can EY Law convince GC's to embrace vertical integration and move away from longstanding buying decisions?
- Can its C-Suite/Board ties be leveraged to advocate for a fresh look at the professional services procurement process?
- Can EY Law leverage structural transformation and successful change management to create and deliver a fit-for-purpose legal function?
- Can it convince customers and the workforce that it offers a safe, viable, scalable alternative to the incumbent binary process of outsourcing to law firms (and law companies) or insourcing to corporate legal teams?
- How effectively can EY Law integrate with other business advisory services, especially those that intersect with law. A partial list includes: management, regulatory, technology, compliance, tax, and data analytics?
- Will it acquire or collaborate with a top-tier global law firm to enhance its "legal" brand/credentials?
- Will EY Law, presently a relatively small contributor to advisory's revenues, secure the commitment of the advisory business leadership to maintain necessary investment and promote internal collaboration and cross-selling?
- Will EY overcome the lingering perception of many legal buyers that the



Big Four remain, at their core, accounting firms, not legal providers?

- Will it be able to communicate to the legal industry—notably to GC's—that it possesses “legal chops” to take on a broader, increasingly complex set of legal work?

### Conclusion

The significance of EY's vision “to create the world's leading enterprise legal services provider” extends beyond economic success. Odds are it will expand its market share and revenues. What matters most is whether EY Law can reinvent the way legal services are delivered for the benefit of customers and expand legal industry career paths. If its workforce can adapt, it's got a good shot.

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### About the Author

Mark Cohen is CEO of Legal Mosaic, a legal business consultancy. He serves as Executive Chairman of the Digital Legal Exchange, a global not-for-profit organization created to teach, apply, and scale digital principles to the legal function, and as the Singapore Academy of Law LIFTED Catalyst-in-Residence. He has held Distinguished Fellow and Distinguished Lecturer appointments at Northwestern University Pritzker School of Law, and Georgetown Law as well as at numerous foreign law schools including IE (Spain), Bucerius (Germany), and the College of Law (Australia).

The first thirty years of his professional career were spent as a "bet the company" civil trial lawyer--decorated Assistant U.S. Attorney, BigLaw partner, founder/managing partner of a multi-city litigation boutique, outside General Counsel, and federally-appointed Receiver of an international company conducting business across four continents. He pivoted from the representation of clients to 'the business of law' approximately fifteen years ago.

Mark co-founded and managed Clearspire, a groundbreaking 'two-company model' law firm and service company. The Clearspire model and lessons learned from it are the foundation upon which my current activities are fused with the practice portion of my career. And Last but not least: Marc is a renowned speaker and shares his insights in the Global Legal Market.

Follow Mark on [Twitter](#) or [LinkedIn](#), or visit his [website](#) Legal Mosaic

*All Articles by Mark are also published at Forbes.*

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# EDISCOVERY VS DIGITAL FORENSICS: HOW TO LEVERAGE BOTH TO ACHIEVE GREATER EFFICIENCY

*By Jelle Oorebeek*



eDiscovery and the digital forensics methods used in investigations are generally considered to be two distinct approaches that, like oil and water, don't always mix well. But while each process does have its own unique characteristics and goals, they're surprisingly complementary to one another, making them more like oil and vinegar. When combined, the whole is greater than the sum of its parts, leading to higher efficiency and better results.

If your organization conducts both eDiscovery and forensic investigations in house, learning how to blend

the two and leverage each at the appropriate time can save you valuable time and money.

In this article, we'll discuss the basics of eDiscovery and digital forensics, pointing out their similarities and differences. We'll then give you the run-down of best practices for taking a combined approach to these two processes.

### **eDiscovery and Digital Forensics basics and use cases**

Before we get into the interplay between eDiscovery and digital forensics, let's define each term and go over use cases for each.

#### **What is eDiscovery?**

eDiscovery is the process of seeking, locating, securing, and searching electronically stored information (ESI) for use in a legal case. Under the Electronic Discovery Reference Model (EDRM), the stages of eDiscovery are information governance, identification, preservation, collection, processing, review, analysis, production, and presentation.

#### **What are the eDiscovery use cases?**

eDiscovery generally involves investigating data and reviewing a large volume of documents or other types of data. But the exact

process and goals of eDiscovery vary with each case. eDiscovery may involve a wide variety of matters, from corporate investigations into money laundering or fraud to litigation matters involving intellectual property disputes, employment claims, or commercial and shareholder disputes. eDiscovery approaches are also used in compliance matters concerning anti-trust, environmental, and privacy regulations, among others. Finally, an eDiscovery process is also commonly used during mergers and acquisitions as companies review documents during due diligence.

Each of these types of cases comes with its own challenges and demands. When it comes to internal investigations, for example, an organization must prioritize fact-finding as the primary goal. On the other hand, data subject access requests (DSAR) require organizations to rapidly identify relevant documents and prepare them for disclosure by removing sensitive or confidential details.

#### **What is Digital Forensics?**

Digital forensics, on the other hand, is the use of scientific methods for preserving, collecting, validating, identifying, analyzing, interpreting, documenting, and presenting ESI as part of an investigation, usually into unlawful activity. The stages of a

digital forensics investigation are preparation, identification, preservation, collection, examination, analysis, and presentation.

### **What are the Digital Forensics use cases?**

Digital forensics requires broad knowledge of various investigative techniques. Digital investigators typically aim to:

- find deleted files;
- reconstruct timelines using artifacts such as operating system and web histories; and
- analyze operating systems and metadata to draw conclusions.

Imagine that your organization suspects an employee of unlawfully retrieving information from a company computer and saving it to a USB drive. If your organization uses Microsoft Windows, your forensic investigator would need to access the Windows Registry, a collection of databases that stores information and settings for Windows operating systems. Your investigator would then analyze the Registry to see whether a USB drive was present in the suspect's laptop at a given time.

But digital forensics isn't just about understanding computers and data. Depending on the nature of the investigation, digital forensics can also require specific subject matter expertise, such as automotive or heavy machinery forensics. For example, your company may own a piece of equipment like an elevator or forklift that is alleged to be the source of a devastating fire. A heavy equip-

ment forensic investigator can use their expertise to determine whether the fire can be linked back to your equipment.

Where do eDiscovery and digital forensics overlap and where do they differ? Let's go over their key differences and similarities.

### **eDiscovery vs Digital Forensics: Differences & similarities**

eDiscovery and digital forensics have some overlap, but they are not entirely the same.

Understanding the differences between eDiscovery and forensic challenges is paramount to leveraging each and performing effective and comprehensive investigations. By the same token, understanding the similarities between eDiscovery and digital forensics can help you understand how to take a strategic, combined approach that incorporates each at the appropriate time.

Here are some of the key differences and similarities between the two processes.

#### ***Key differences***

eDiscovery is about gathering relevant ESI and combing it for evidence. Unlike digital forensics, eDiscovery does not directly contemplate ESI that has been deleted, tampered with, or hidden.

Digital forensics, on the other hand, often comes into play when ESI is unavailable or inaccessible, such as when a bad actor has deleted files or falsified information.

Put simply, digital forensics is all about finding and uncovering ESI. As such, digital forensics tends to be a more technical task than eDiscovery and requires different tools, training, and experience.

## Similarities

While the aims and approaches are different, both eDiscovery and digital forensics involve preserving, collecting, analyzing, and presenting large amounts of ESI.

Further, eDiscovery teams and forensic inves-

tigators both use case information to refine their searches and process the material they find to ensure it is reviewable by users. They also share many of the same goals, including making the best use of valuable resources, sharing their workloads, and automating their processes wherever possible.

The following table outlines the differences and similarities described above plus a few additional details to provide a complete picture of eDiscovery versus digital forensics.

*(Table continues on next page)*

	eDiscovery	Digital Forensics	Both
Stages	Information governance, identification, processing, review, and production	Preparation, identification, and examination	Preservation, collection, analysis, and presentation
Volume of material	-	-	Large volumes
Content focus	Text itself	Broad range, including metadata and deleted data	-
Primary interest	Matters of record	How activities were conducted	-
Efficiency goals	-	-	Trying to make the best use of valuable resources
Key driver	Managing costs	Locating evidence	-
Search strategy	-	-	Using case information to refine searches
Organization of information	By owner	By source	-

	eDiscovery	Digital Forensics	Both
Reviewability requirements	-	-	Need to make material reviewable
Type of proceeding	Primarily civil	Primarily criminal	-
Workload allocation	-	-	Need to share the workload
Automation	-	-	Use of automation where possible
Attribution of docs and devices	Typically not an issue	Necessary to maintain evidential chain	-

Now that we've covered the key differences and similarities between eDiscovery and digital forensics, let's discuss best practices for taking a combined approach.

### 3 best practices for combining eDiscovery and digital forensics

While eDiscovery relates to and overlaps with digital forensics, both processes are necessary parts of performing a comprehensive investigation. Here are three ways to combine eDiscovery and digital forensics practices for greater efficiency and effectiveness.

#### 1. Avoid using only readily available and extractable ESI

When it comes to internal investigations in particular, it can be tempting to assume that all of the information you need is readily

available and extractable and therefore to focus only on the ESI that is right in front of you. However, this can jeopardize your investigation if there is important data that has been removed or hidden, leading to inadequate eDiscovery and potential liability. When performing an investigation, leave room for the possibility that evidence may have been accidentally or deliberately hidden, modified, or deleted.

#### 2. Use digital forensics results to aid your eDiscovery process

As explained above, digital forensics may reveal evidence that has been hidden, tampered with, and deleted. In addition to being collected as part of eDiscovery, this evidence can also be used to inform the search process and point to other data that should be assessed for eDiscovery purposes.

### 3. Employ the right technology

Technology plays an increasingly major role in both eDiscovery and digital forensics practices.

To perform in-house investigations to the best of your ability, you can use a combination of tools that assist with both eDiscovery and digital forensics. These tools can help you adapt to the ever-expanding amount and types of data your organization must deal with. By investing in the right technology, your organization can perform comprehensive investigations more efficiently than ever.

#### **Deliver repeatable, defensible results by combining eDiscovery and digital forensics**

When you combine eDiscovery and digital forensics practices, you can achieve results that are comprehensive, defensible in court, and easy to replicate during future investigations.

As noted before, combining eDiscovery with digital forensics can help ensure that you collect all of the ESI that is relevant to the case at hand. Digital forensics can also help inform the eDiscovery process.

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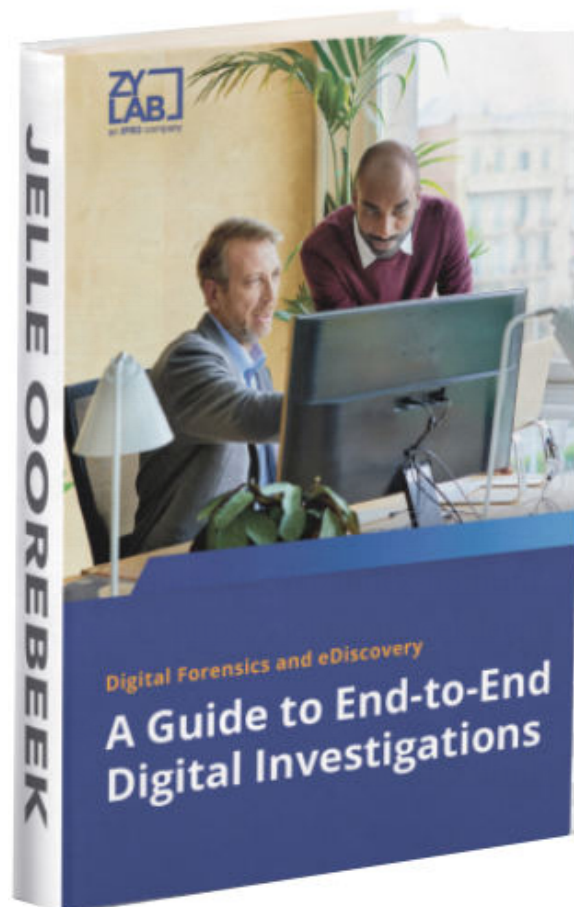
#### **About the Author**

As an experienced forensic investigator and former eDiscovery case manager with one of the largest banks in the Netherlands, Jelle now helps other companies to optimize their

Investigation and eDiscovery processes. Whether it is a fraud investigation, litigation or regulatory request, he can help select and implement the most effective solution for every case.

Jelle's expertise lies in the fraud and investigations area's related to financial crime, and he's working with a wide range of organizations in the European, Middel-East and African markets.

Jelle also wrote a Whitepaper/eBook on digital investigations that was published by Zylab. You can download your copy by clicking the cover (below)



# DO YOU KNOW HOW TO BRING ABOUT CHANGE?

*By Patrick Mckenna*



Why do you think, organizations like yours, and the people who populate them, find change to be so difficult? I have a very profound answer to that question . . . Because change is SO bloody difficult!

Now I appreciate that that sounds flippant, but I see many of us underestimating just how challenging it really is to bring about change. In particular, I see leaders thinking that they can easily change the culture, or get their groups operating more collaboratively, or introducing a new level of efficiency – and then going forth and operating as though just willing it to happen should be sufficient.





We even have a best-selling Harvard Business School published book out there that prescribes the eight simple rules you need follow to bring about change. Now that sounds easy, doesn't it? Only problem, according to the most recent research from McKinsey & Company, is that in the subsequent decades (first published January 1996) since Professor Kotter's book has been out, the success rate for bringing about change has improved . . . NOT one little bit. 70 percent of all change initiatives still fail - and by the way that's in the

traditional top-down corporate "do as I say or you're history" type environment.

Meanwhile, in professional service environments, we continue to see all these articles that proclaim things like, "*Change or Die*" as though these brain-dead authors all think that that is supposed to be some kind of personal motivator.

Let's see if I can offer one simple example of the enormity of this change challenge.

Imagine with me for a moment as you are reading this, that heaven forbid, you develop pains in your chest and you have a mild heart attack . . . but we quickly get you to a world-class cardiac specialist and you undergo a coronary bypass. Not quite as scary as it once was, as I'm told that over 1.5 million Americans have this surgical procedure safely undertaken every year.

Following your surgery, your doctor tells you that in order for you to prevent pain, avoid a repeat of the surgery, and essentially to prolong your life, you have to adopt a healthier lifestyle: which essentially means no smoking, drinking, over-eating, or stress and you must start exercising.

Follow me?

I've related this same scenario to some large audiences that I've had the honor of speaking to, and asked for a show of hands: *"How many of you could faithfully follow your doctor's directions?"*

Keep in mind, this really is a matter of change or die! And at least 95 percent (if not all) of the hands go up.

But . . . unfortunately according to Ed Miller, retired CEO at John Hopkins, less than 3 percent of those 1.5 million Americans can sustain the change and therefore live beyond a few more years. In most cases less than five years. And notice that is not a 70 percent failure rate for change. That is a 97 percent failure rate!

Now, I have surveyed large groups on this question: *"think back to some important initiative that didn't quite turn out to be the roaring success that leadership had hoped. What were the primary obstacles your group faced as it tried to implement the new strategic initiative?"* And to help, everyone was given 17 different choices.

The most popular response coming from 94 percent of the respondents was that: *"They involved changes that some professionals were just not motivated to make."* For example: they required a generous amount of time to be invested without any guarantee of results; or they took the professional out of their comfort zone perhaps engaged in doing things that they were not proficient in executing; or they threatened to change the status quo within the organization.

Charles Darwin had this famous saying that I think needs to be posted on the wall of every boardroom – *"It is not the strongest of the species that survives, nor the most intelligent; it is the one that is most adaptable to change."*

### **So, What Is Our Usual Course of Action?**

I was reading a piece the other day wherein the author lamented that lawyers have a lack of interest in change. While I won't take issue with the validity of that statement, I do find it fascinating how we continue to subscribe to a model for leading change that simply does not work.

What model? Well, it goes something like this...

We begin by (unconsciously) trying to overwhelm our colleagues with data – facts, statistics, figures, flowcharts in amongst our rousing speeches to let them know why we must, as a successful organization, adapt to new market disruptions. We like to think that the facts (as we perceive them) will convince our colleagues to change – that these colleagues are essentially rational if given accurate information. We believe that if we provide relevant data about the issue, make a sound business case for what needs to be done and present our recommendations, everyone will take action quickly and forcefully.

Now if anyone should have doubts or disagree (and you can be assured that they will), we take that as a clear sign that we haven't yet done a good job of presenting the evidence. So, when people don't immediately get on-board with any of our suggested courses of action, we push the idea. We try harder to persuade them. We try to give them stronger data. We keep doing the same thing only more of it. And we TURN UP the volume. We explain it over and over again (after all, the communications experts tell us that you can never over-communicate your message!)

In escalating our efforts, we take more and more ownership of the problem. To get people on-board, we are told that we need to “create a burning platform” – a sense of urgency, so that our colleagues will take the need to change seriously. We therefore, present our facts with an emphasis on the dire consequences for everyone in not doing what we want them to do.

*“If we don't start getting very serious about (insert your favorite change issue here) developing our knowledge management capabilities, we are definitely going to fall behind . . . and we may even see a significant drop in operational efficiencies”*

While fear may occasionally serve as a short-term motivator, at an emotional level, urgency and fear are close cousins. Our colleagues may well react to our fervor by becoming even more resistant. They rarely (if ever) respond with appreciation for our tenacity. Instead, we find that a number of them are either getting angry or simply tuning out whenever we talk. As we continue to push, resistance increases in direct proportion to our actions.

Our problem is that this commonly used approach seldom works.

If you think about it, it is built upon the assumption that you are right and those of your colleagues who “*simply don't get it*” or “*don't see the light*” are wrong. Unfortunately, this approach all too often turns the exchange into a contest over whose idea or beliefs will win. And think about this . . . how often have you won and actually realized change using this approach?

The alternative? The one thing that I learned from a very wise, elder statesman many years ago, was when he counselled me that to work effectively with professionals I need only keep one essential thing in mind at all times:

“NO intelligent professional anywhere,

*EVER, gets excited, enthusiastically supports, endorses, or gets behind . . . any idea, any project, strategic plan, new direction or proposed change – that they themselves have not been a part in formulating.”*

Therefore the challenge is – how do we get these professionals, your team mates, meaningfully involved in the change that needs to happen, such that they can see their fingerprint somewhere on the final course of action that we are all about to take?

Effective leaders understand the difference between coming in with an answer and coming in with a plan for how we are going to figure out together, what the best answer might be.

**About the Author**

Patrick J. McKenna is an internationally recognized author, lecturer, strategist and seasoned advisor to the leaders of premier professional service firms; having had the honor of working with at least one of the largest firms in over a dozen different countries.

He is author/co-author of twelve books most notably his international business best seller, First Among Equals, currently in its seventh printing and translated into nine languages. His most recent work, Industry Specialization: Making Competitors Irrelevant (Legal Business World Publishing, 2022), provides in-depth guidance on building market dominance from an industry perspective.

Patrick is the recipient of an “Honorary Fellowship” from Leaders Excellence of Harvard Square and active on a number of Corporate/Advisory Boards working in AI legal tech, health care, and alternative dispute resolution. Reach him at: [patrick@patrickmckenna.com](mailto:patrick@patrickmckenna.com).

Read more by Patrick McKenna (click the cover(s) to read his eBooks).



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# SEVEN CRITICAL STEPS FOR A NEW DEAL

*By Richard G. Stock*



As the incoming CEO of an established company, what would you do with a division or department which had very little data, aside from total fees, number of items purchased for the last two years, their variety and complexity, and the relative effectiveness of each item or service purchased? What would you do with a business unit which was unable to forecast its requirements for external professional services for the next three years? And what would you do if the company failed to leverage its purchasing power by not relying on advanced strategic sourcing practices?



These are not big concerns when looking at sectors such as banking, insurance, telecom, big pharma and global manufacturing companies because they continue to refine their practices for retaining external counsel. Still, the aftertaste of cost reduction programs regarding legal fees for law departments is not pleasant. Legal procurement professionals often encounter passive resistance even when invited to team up with their legal department to introduce a new business model for retaining legal

counsel. With the possible exception of the US, the economies of most countries are unstable. Even the Chinese economy is slowing its rate of growth. Some would observe that annual rate and price increases averaging 5 % or 6 % are not sustainable for legal services in many markets. One financial institution reported increases averaging 14 % per year over the last 5 years – a rate that is 3 to 4 times higher than increases for other goods and services or of wages in the organization.

While law firms will not be enthusiastic about changes to the status quo of business arrangements with their primary clients, most will be receptive to initiatives that deepen relationships and increase market share. The most progressive firms seek out clients that are prepared to invest the time and money to innovate and to carve out new ways to package, source, deliver and price legal services.

For legal department leadership charged with reducing legal spend, the answer cannot be found in asking for bigger discounts or mounting a procurement process that targets a race to the bottom of the barrel for better hourly rates. A new business model for relationships with external counsel requires a complete re-think of traditional arrangements. Companies and their legal leadership are at a net disadvantage unless they get quite a few things right.

First, two years worth of detailed data about the number and complexity of matters should be obtained from each law firm. The data should include the number of hours for each experience level in the firm. Few companies have this information available from their matter management systems or accounting data bases even though improving law firm practice patterns represents 50 % or the savings available once discounts are exhausted.

Second, the company should forecast its requirements for legal services twinned with measures to improve productivity in legal services delivery and administration. The forecast should be quantified and converted into a scope of work that forms part of a request for proposals for legal services.

Third, the company should consider the next generation of “convergence” in the number of primary, specialist and regional law firms it retains. There are arrangements where firms are retained for legal work and to manage workflows, quality and pricing of a network of secondary firms for entire regions on behalf of the company. Increasing market share and making longer-term commitments for work to still fewer firms allows primary firms to migrate to new pricing models and to innovate with service delivery.

Fourth, the company must acquire expertise so that it can evaluate the cost-effectiveness of alternative fee arrangements (AFAs). This is particularly important when applying alternative fee arrangements to non-recurrent and complex legal work as well as to large portfolios of work. A solid understanding of law firm economics is a pre-requisite to negotiating fair, alternative pricing with law firms. Both legal and procurement professionals should be at the top of their game in this respect and avoid variations of hourly-based fees.



Fifth, getting the non-hourly price and conditions right for individual matters is a companion piece to a new business model with external counsel. Inside counsel must understand optimal staffing patterns as well as the related planning assumptions and their probabilities when budgeting individual matters in the context of a multi-year AFA program.

Sixth, the company should evaluate the performance of its primary counsel every six months. Criteria and process should be set out in the terms of engagement, even if the firm is sole-sourced, and even if fees are not tied to performance. The usual key performance indicators include results, service, innovation, and cost-management.

Finally, there should be a formal commitment by the General Counsel to a detailed, written project plan to implement each of the six elements above. Preparation and an execution strategy that is properly resourced will improve the prospect of success every time. Seven critical steps for a new deal – no margin for error.

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### About the Author

Richard G. Stock, M.A., FCG, CMC is a partner with Catalyst Consulting. The firm has been advising corporate and government law departments across North America and abroad since 1996. For law department management advice that works, Richard can be contacted at (416) 367-4447 or at [rstock@catalystlegal.com](mailto:rstock@catalystlegal.com).

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# ANNA LOZYSKI ON WOMEN AND INNOVATION

*Fatima Hussain and Anne Graue talk to inspiring women in their series "Women & Legal Innovation - Global Edition". The goal is to encourage young women to develop their own voice and become actively involved, through showing them different stories & potential role models.*

### About Anna Lozynski

Anna is a freelance general counsel and advisor. Starting out at a major Australian law firm, she has spent the majority of her legal career in-house working in the banking, automotive and cosmetics industries, before starting her own consulting business, “Anna Lozynski Advisory”. In addition, she sits on various Advisory Boards, as well as being a co-founder of The Mindful Lawyers. She is a Senior Attorney at inCite LegalTech: “We’re an attorney led team bolstered by tech experts to analyze a law firm’s digital infrastructure. Pulse checks are done remotely across three remote workshops in two weeks.”

As an award-winning transformer including being recognised as one of APAC’s Top 10 Innovative Lawyers by Financial Times, Anna is a sought-after commentator, speaker & brand ambassador both domestically and internationally – seeking to shift the dialogue in order to propel the corporate world forward and create lasting change.

### Legal Innovation as a daily attitude

For Anna, being legally innovative is a daily attitude and a practice: It means adopting a progressive mindset. It means being focused on the efficiency of a legal function, and running it like a business, as a matter of strategic priority. It means making consistent effort to raise one’s innovation intelligence (what I call IQ2.0) via networking, and the creation of synergies over silos. It means understanding one’s role in the legal ecosystem

– how one can inspire others to “do law” differently – and inspire our law firms, business and legal colleagues, legal tech vendors and law schools to adapt to the digital age.

### Approaching innovative projects

When approaching innovative projects, Anna has three guidelines:

1. **Be Bold** - nurture your mindset. First it is an intention, then an intention. Then a behaviour, then a habit, then a practice, then second nature. Then simply part of who you are.
2. **Be Curious** - stay abreast of who’s who in the legal zoo, online and offline. Have tech demos regularly, create connections with legal tech providers, and talk to people who make you see the world differently: *“Join my future focused virtual book club, Book Me In!”*
3. **Be Disruptive** - experiment. *“As I write in my first e-Book Legally Innovative, test and learn to rise. By way of a few examples, I started dabbling in crypto and NFTs to experience blockchain and the related technology first hand; I used a VR headset to experience this aspect of the Metaverse.”*

### Women & Legal Innovation

As Ruth Bader Ginsburg said, *“Women belong in all places where decisions are being made”*.

For Anna, Diversity is a country agnostic global issue: *“We have a long way to go. In a landscape where not all pockets of the legal profession are gender equal, it’s also telling that in-house counsel leadership over-indexes*

*on females compared to law firms. Only 30% of partners at Australia's 50 largest law firms are women, and only 16% of equity partners at Australia's 160 law firms are female. We have reached near gender parity (49%) of female General Counsel in Fortune 500 companies, but equal pay remains an issue. Globally, in the legal operations sector 59% of roles are being held by women."*

Anna is a contributor to WALTA - the women's arm of the Australia Legal Tech Association. "Our first WALTA Project, "*The WALTA ePlaybook*", a downloadable resource for women starting Legal Tech companies. In terms of tech generally, women are still in the minority. We all have some work to do to create change in this regard."

### **About Visibility**

Anna recorded a [podcast interview](#) about this very topic last year. Her view is: "*Caring is sharing, and sharing is inspiring. Start small, think big. Don't give into your self limiting beliefs that you have little to share or say. You do. It's a privilege to use my brand to help raise awareness about trends and legal tech availability to hopefully inspire others, on a one to many basis, across the globe.*"

Her advice to people struggling with finding extra motivation to stay visible is to hire a coach to support you: "*From defining your professional brand to holding you accountable with your posts. I've had some great client results in this respect.*"

### **"The CEO of myself"**

Many of Anna's biggest career moments and in fact life decisions have been made with the support of a mentor – or a set of mentors. "*As the CEO of myself, I have, over the years, formed my own Board of Directors. In this way, I have a balanced catalogue of wisdom and styles on which to draw upon to support my evolution.*"

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### **About the authors:**

#### **Anne Graue**

Anne Graue is an attorney-at-law and Legal Innovation Advisor. She works as Legal Counsel in the automotive industry in Germany. Previously, she was Associate General Counsel at TIER Mobility SE - a hyper-growth start-up in the field of e-mobility, where she drove the digitalization & development of the legal department.

Prior to this role, she worked as Legal Counsel at AUDI AG, where she was responsible for litigation in APAC & Europe and advised on e-mobility related product safety issues. Further prior experience includes working as a criminal judge and associate at Clifford Chance.

#### **Fatima Hussain, LL.M.**

Fatima Hussain is an attorney-at-law and Legal Innovation Advisor. She is a Senior Legal Counsel at Trade Republic Bank GmbH, a FinTech in Berlin. Previously, she worked as in-house counsel at Tesla Manufacturing Brandenburg SE and AUDI AG.

During her time at AUDI AG, her responsibilities included providing legal advice on product liability and safety issues in Germany and international markets, for example the U.S. and South America, and conducting national and international litigation.

Prior to joining AUDI AG, she worked as a legal assistant in the Dispute Resolution team at Freshfields Bruckhaus Deringer and in the Banking & Capital Markets team at Clifford Chance LLP in Frankfurt am Main.



Fatima Hussain (l) & Anne Graue (r)

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Other articles in the series Women & Legal Innovation are published at: [legaloperators](http://legaloperators.com)


























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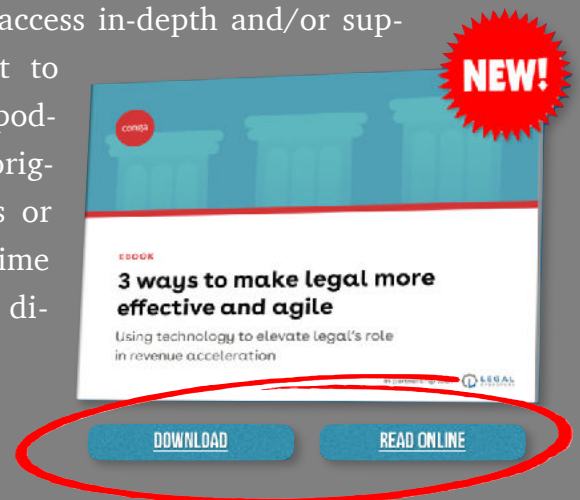
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