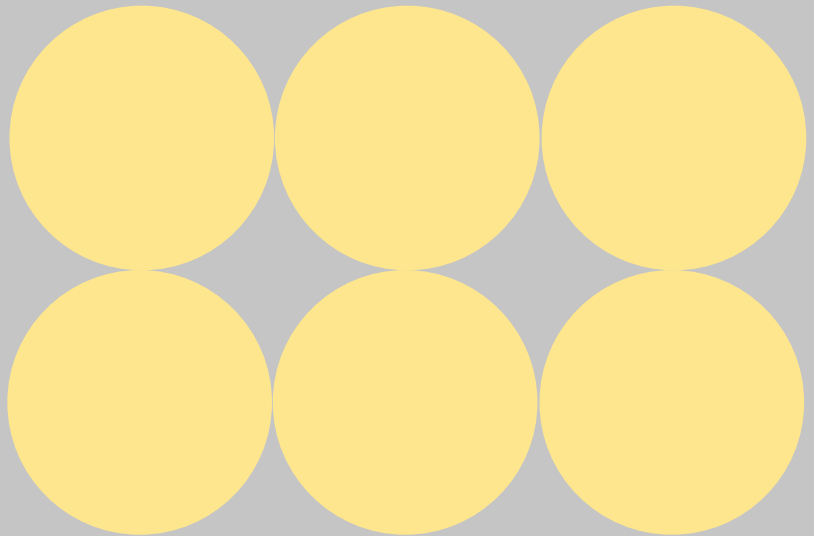




Legal Data
Intelligence™

Building Bridges in the Disputes Space with Legal Data Intelligence

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We are drowning in information, while starving for wisdom. The world henceforth will be run by synthesizers, people able to put together the right information at the right time, think critically about it, and make important choices wisely.

Professor E. O. Wilson made this statement in his 1998 book “Consilience: The Unity of Knowledge.” While Professor Wilson was talking about the need to bridge gaps between specialised disciplines such as biology, social sciences, and the humanities, he was quite prescient in describing a major challenge faced by today’s professionals in the disputes and investigations space.

Whenever distinct groups of specialists are working on a project, communication is key. Good communication means ensuring that all groups are aligned on strategy and understand their roles and responsibilities, as well as the roles and responsibilities of the other groups. Without such understanding and knowledge sharing in place, gaps between the groups can cause challenges down the line or lead to lost opportunities to perform better.

There are many subject matter, process, and technical experts that must work together to properly manage a dispute or investigation, but too often these professionals work in silos. In today’s data intensive environment, we need critical and creative thinkers—Professor Wilson’s “synthesizers”—who can work across multiple disciplines to solve problems efficiently and cost-effectively. In the disputes and investigations context, Legal Data Intelligence (LDI) professionals can fill this important role and work across departments and silos, thinking creatively and critically to help clients find the wisdom in their data.

In this article, we discuss the origin and nature of silos and how LDI professionals can use their knowledge and experience to fill in gaps between different specialties, thereby avoiding potentially dangerous disconnects in projects. We also look at how they can effectively work across different areas of the business to improve efficiency, communication, and collaboration, and how companies can successfully integrate LDI professionals into their teams.

The Silo Problem

There are many reasons why a silo mentality may exist in different organisations. One reason is that people tend to work well with other people who think and work like them. Ron Ashkenas, co-author of The Harvard Business Review Leader’s Handbook, is credited with explaining this as follows: “Working in silos is more natural than working collaboratively. It’s a tribal mentality.” There are also organizational reasons for silos. As the article “Silo-Busting: Overcoming the Greatest Threat to Organizational Performance” explains, “Silos can offer a practical way for organizations to operate efficiently in managing large numbers of people and allocating accountabilities and responsibilities within a hierarchy.”¹

In fact, there are many different types of silos that can exist. Examples include:



The information that is not readily shared between silos may be electronic data, knowledge and expertise in specific areas, or even existing relationships—for example, with third parties or clients. Some silos have obvious origins, such as different geographical regions. The basis of other silos, such as structural silos, may not be as obvious, but there are examples across law firms, service providers, and corporations alike.

Law Firms

Within law firms, one of the more obvious origins for different silos is the partnership structure. Typically, in a law firm partnership, at the end of the financial year, the profits are split between the partners using some methodology. Regardless of the methodology at play, the unintended consequence is that collaboration can be stifled because of the potential financial implications of sharing knowledge and clients with other partners.

Practice group structures can also be problematic. Statistics on performance are often used to decide how profits should be split between the various practice groups, which means that collaborating across practice groups could also have financial implications.

Mergers and acquisitions also have a part to play. We see an increasing number of mergers and acquisitions in the law firm space. Some firms deal with integration far better than others, but a lack of good integration can be another cause for silos being created. In recent years, we have seen an increasing number of mergers across different jurisdictions, for example the 2012 merger between Herbert Smith (based in the UK) and Freehills (based in Australia) to form Herbert Smith Freehills, or the 2017 merger between Womble Carlyle Sandridge and Rice (based in the US) and Bond Dickinson (based in the UK) to form Womble Bond Dickinson. These types of mergers can lead to silos being formed in the various jurisdictions. There are usually cultural differences, on top of the different rules and regulations, that may be at play in different jurisdictions, producing siloed thinking and approaches.

Service Providers

Organizational structures in service providers also lead to siloed thinking. Splitting different functions into different areas is a common approach to management and can be seen as a way to grow a business. However, this can lead to an increased siloed structure and approaches such as “pigeonholing,” where staff are only given specific repeated tasks and different teams are treated almost as a production line. While some argue this approach improves scalability, it can lead to deskilling, loss of staff, and a lack of ability to provide more technical solutions which do not fit within the exact parameters of the defined process.

Mergers and acquisitions can also be a key reason for the formation of silos in service providers. The ediscovery sector specifically has seen a large amount of consolidation in the last few years. Mergers and acquisitions often take place across borders, and different geographical areas can also lead to silos in the service provider space, with time zones, cultural differences, and different rules and regulations having an impact.

Corporations

The biggest cause of silos in corporations is departmental structures. Different departments may have different goals and incentives, which can lead to challenges to collaboration across different teams. As with any entity, mergers and acquisitions can also play a large part in the generation of silos if integration is not handled well. Depending on the type of corporation, there may be many offices across different geographies, in which case geographical silos can form, exacerbated by cultural and jurisdictional differences.

With this background on the types and origins of silos, we turn to examples of the problems they cause and how they can be fixed.

Building Bridges

The importance of synthesizers who can build bridges between groups has long been recognized by sociologists. Ronald Stuart Burt, in his publication, “Structural Holes: The Social Structure of Competition,” identifies the gaps between social groups or networks. Burt’s underlying research highlights that “brokers”—individuals who can bridge those gaps—have the ability to access a unique combination of information and resources from multiple disparate groups. Burt’s follow-up work, “Brokerage and Closure,” emphasised that brokers create value because they are able to synthesise ideas and identify opportunities across disconnected groups. Similarly, Long, Cunningham, and Braithwaite, in their work “Bridges, brokers and boundary spanners in collaborative networks,” stated the problem and solution as follows:

Bridges, brokers and boundary spanners facilitate transactions and the flow of information between people or groups separated or hindered by some gap or barrier. This may be a physical gap such as geographic location, cognitive or cultural gap such as differing disciplines or professions or alternatively, the gap may be that members of one party have no basis on which to trust the other.²

The value provided by “brokers,” as discussed by Burt, and “boundary spanners,” as discussed by Long, Cunningham, and Braithwaite, is precisely the value we see generated when LDI professionals work with and across multiple specialist groups in the disputes and investigations space.

Bridging Gaps in Disputes and Investigations

The impact of gaps between specialist areas is often present when ediscovery workflows are used for disclosure for litigation or regulatory matters.

There are typically three main groups involved: the end-client, an external law firm, and an ediscovery services provider. The law firm has the legal subject matter and strategy expertise and experience in terms of what the client must disclose to best meet its legal obligations. The end-client will be in possession of most of the data that will be subject to disclosure, and employ custodians of the data who have knowledge of the subject matter of the dispute or investigation and individuals who understand how the systems that store relevant data are used in practice. The ediscovery services provider has expertise and technology to assist the client and law firm with locating, preserving, collecting, and disclosing the documents that are required. The success of the project is often directly linked to successful communication and collaboration between these three groups.

There may also be various teams involved within each of the groups. For example, the end-client may have an in-house legal team and an IT team in addition to the various custodians of relevant data and knowledge. The law firm may involve teams at different levels, for instance, there may be a partner overseeing the work with associates performing the day-to-day work. The ediscovery services provider may have a project management team, a digital forensics team, and a processing or operations team.

In her article “The eDiscovery Disconnect,” Kelly Twigger from eDiscovery Assistant (now Minerva26), wrote about gaps that result from bringing together these disparate groups.³ Twigger highlights the potential liability when lawyers responsible for the legal strategy of a case hand off potentially significant disclosure decisions to the ediscovery services provider, leading to a gap between the legal strategy and the analysis and review of the underlying data. As Twigger points out, this is not just a knowledge or communication gap, but a gap in strategy alignment between the specialist teams working on the project. The ediscovery vendor will know and understand the tools and data they are working on but may not be privy to the legal strategy. Without guidance, the ediscovery vendor is forced to make assumptions that could possibly weaken the legal strategy. Furthermore, this gap can result in missed opportunities to make the most of the data from a strategic perspective, as well as the potential for wasted resources. As George Bernard Shaw once said, “The single biggest problem in communication is the illusion that it has taken place.” Good communication and collaboration between specialist teams in the disputes and investigations space are not always easy, but they can be very successful, with benefits for everyone involved.

In a follow-up to the Twigger article, Dr. Tristan Jenkinson (an LDI Architect) extended some of the points with respect to silos in the ediscovery space.⁴ Dr. Jenkinson discusses the dynamic in the ediscovery services industry between ‘consultative’ and ‘transactional’ approaches and the impact that this dynamic can have on the ediscovery disconnect. The article explains these two different approaches to ediscovery as follows:

Consultative eDiscovery vendors will usually take an informed approach with teams who understand the potential issues at play in a case and can provide technical advice so that the legal team can make an informed decision on how they want to move forward.

Transactional eDiscovery vendors tend to take a “cookie-cutter” (or “sausage machine”) approach. They have developed a single approach to ediscovery, trained their staff to use the tools to complete work in line with this approach, and treat cases in the same way.

In cases where responsibility for the day-to-day running of a project is in the hands of lawyers without a great deal of ediscovery experience, consultative providers may offer the pros and cons of a specific approach, raising risks that the client should be aware of before they make a particular decision, whereas a transactional provider may simply do what they have been requested to do. Accordingly, there tends to be fewer disconnects when a consultative ediscovery vendor is involved in a project. Dr. Jenkinson notes that, with the growing complexity of ediscovery projects over time, there is likely to be a widening of the disconnect between transactional service providers and law firms.

Kelly Twigger points out that when lawyers engage fully with technology, the gap narrows between them and the ediscovery vendors. The problem, however, is that many lawyers do not have the time or the inclination to develop the requisite technological expertise, and so the knowledge and information gaps remain. Enter the LDI professional. As Dr. Jenkinson points out, LDI professionals are in the perfect position to help bridge those gaps between specialist teams. Such an LDI role could sit on either the law firm side or the ediscovery services provider's side, acting as a translator between the legal strategy and data aspects of the matter.

There are specific gaps that an LDI professional can bridge, such as scoping gaps and collection gaps.

Gaps During Scoping

When seeking to identify locations where electronic data relevant to a matter may be located to ensure that it is preserved (often referred to as “scoping”), different team members will often have different priorities and approaches. In-house or external legal teams may be focused on data types that they are more experienced with, for example, email data from Microsoft 365 and typical Microsoft Office files from custodian machines. Custodians may have a view on where the most relevant data may sit, say in a project folder or a specific network location, but would typically have no visibility on how or where this data is actually stored and any retention or destruction policies that may be applied to the data. The IT team may have more of an understanding of the underlying technology, storage, and policies, but would likely have little appreciation of the legal requirements regarding locating potentially relevant data. This means that they may not provide pertinent information, such as partial migrations to new systems, or the existence of back-up tapes, unless prompted.

An LDI professional can assist in such situations. The LDI professional can work with the custodians to identify data sources and ask the right follow-up questions to identify areas that they might not have thought about, for example, by querying if they have discussed the matter on Teams as well as through email. This can lead to additional potential data sources which were not previously considered. The LDI professional can then check with the legal team as to which of the sources identified are in scope and which should be ignored. This expert can also raise alternative data locations for consideration. For example, older data may have been deleted or not migrated to the current systems. The LDI professional can consider old servers or drives used to migrate data from which they can recover information. The LDI expert can also help identify the differences between policy and what custodians actually do. For example, an IT policy may state that no project data is to be stored on network shares and should be stored on a dedicated system. Often custodians will work around policy, such as in a situation where the dedicated system was down for some time, and the only way to share files was via the network share. Identifying these differences between policy and real life can be very helpful in dispute and investigation matters.

To bridge gaps that might arise during scoping, the LDI professional can bring together information on the relevant data sets available, the underlying systems and technology that have to be considered, the day-to-day habits of custodians, and the legal strategy. Getting this right can be hugely beneficial by

helping to ensure that the right information is located and preserved. In some cases, bridging the gap may lead to locating and preserving a “smoking gun” or crucial document or data point that may otherwise have been lost, or could prevent the end-client from being attacked for alleged failings in disclosure further down the line.

Gaps During Collection

A common problem that occurs in disputes and investigation cases is the use of self-collection by end-clients. This is where an end-client’s own IT team collects the data that will be reviewed for disclosure. In some cases, this may not be an issue, but typically data needs to be preserved and collected in a specific manner. Having an internal team collect the data can lead to some serious issues, such as the loss of metadata or claims of cherry picking or that data has been manipulated. Such instances can lead to evidence being excluded from a proceeding or investigation and perhaps having to get an external expert to reperform the collection. For example, in the UK case of *Cabo Concepts Ltd. v. MGA Entertainment (UK) Ltd. & Anor*⁵, 800,000 documents were identified as having been missed by the client’s collection and the trial had to be postponed. In the US case *DR Distributors, LLC v. Century 21 Smoking, Inc.*⁶, the court found that missteps during disclosure, including self-collection, were so serious that the client and their legal counsel were jointly fined over \$2.5 million!

Self-collection often comes about where the client is seeking to minimize costs and avoid hiring an external expert. Key decisions are then made by the end-client and the legal team, who may not be fully aware of the data issues that can arise. Note that problematic data issues can emerge during collection even when there is an in-house ediscovery function, as there was in the Cabo Concepts case. LDI professionals can advise on the potential risks (and benefits) of various collection decisions, allowing the end-client and legal team to make an informed decision by combining an understanding of the data with the legal strategy.

The Importance of Working Across Silos: Case Studies from LDI Practitioners

Having provided examples of silos and how they can be bridged in the disputes and investigations space, we now turn to some success stories from LDI practitioners that have built effective bridges in their organisations.

Spanning the Gaps Between Legal and IT

When working at AstraZeneca, LDI Architect Josh Kreamer had a position as manager in Legal IT, spanning the gaps between the legal and IT teams. In this role, Josh identified that there would be significant benefits to building out a full in-house ediscovery team that could work across departments. Building that group and working across multiple internal specialist teams, Josh was able to realise over \$20 million in savings over the first three years.

Broadening the Scope of the Discovery Team

When approached by Marsh McLennan to build and run their discovery program, LDI founding member Farrah Pepper suggested an alternative—rather than a team based purely in discovery, Farrah pitched the concept of a legal innovation and technology team. While discovery would be part of the scope for that team, they would also work on a variety of topics across various specialist teams in place

at the firm, including data subject access requests, investigations, merger and acquisition due diligence, and internal technology and data analysis.

Farrah discussed this and her title, Chief Legal Innovation Counsel, with David Cowen on his podcast, “Careers and the Business of Law: The Legal Data Intelligence Series.”⁷ In the interview, Farrah explains that:

... when you are excellent at ediscovery, you are excellent at a lot of things. You can identify and solve problems. You're great with tech. You're great with people. You're basically a Swiss Army Knife of skills that can solve problems for a corporation.

Farrah concludes by speaking about some of the key skills for LDI roles and how they are not necessarily typical legal team skills:

You have to be a storyteller; you have to be a connector; you have to be empathetic; you have to really listen to people to understand them. It's all the people skills—and then you wrap that within a legal container and you've got yourself some exciting legal roles.

Crossing Silos to Accelerate Regulatory Inquiry

While acting as Senior Counsel and Director of eDiscovery Operations at Walgreens, LDI founding member Adam Rouse learned the compliance team received a regulatory inquiry which required the strategic analysis of a very high volume of data. While the compliance team did not immediately think of Adam's eDiscovery Operations team as being able to assist—as they were in different departments (silos!)—Adam and his team got involved after several weeks.

The team then transformed the potentially daunting deadline and volume into a more straightforward process. As Adam says, “It was just another Tuesday for us.” Using typical ediscovery tools, such as concept analysis, concept clustering, and communication analysis, an AI-assisted workflow was developed allowing the Walgreens team to complete the work required in just a few months. Adam explains, “We now regularly assist our international compliance department in global investigations every time they come up.”

Planning for Cross-Silo Success

Working across silos leads to improved collaboration and coordination between different areas of the business, greater innovation, and can also help increase efficiencies. An SAP article⁸ quotes Tiziana Casciaro, Professor of Organisational Behavior and HR Management at the University of Toronto's Rotman School of Management, as stating, “Research reveals that companies that enable cross-silo collaboration perform far better.”

Employees who can span these structural gaps successfully can generate fantastic benefits for their employers. The work can, however, be highly demanding, both cognitively and emotionally. Recent research has suggested that spanning boundaries across groups can lead to mental and physical fatigue and could potentially lead to burnout if not handled correctly. Thankfully, research also provides methodologies for mitigating the risks of this happening, enabling companies to utilise boundary-spanning experts with the best possible setup for success.

To understand more of the potential risk, the article “Why Employees Who Work Across Silos Get Burned Out” published in Harvard Business Review, discusses the research behind exactly this point.⁹ In summary, employees working with multiple groups can face additional pressures. Each specialist group is likely to have its own identity and internal expectations. When the demands from different groups that an individual is spanning are not aligned, the individual can face pressure to meet multiple, potentially conflicting, requirements.

The Harvard Business Review article identifies a number of strategies to minimise the risk of additional stresses being placed on boundary-spanning experts. These strategies are key to help ensure that employees are protected from potential risks to their mental health while enabling benefits to be realized from cross-silo work. Proper planning involves formalising cross-silo roles, ensuring resources and recognition follow job demands, and ensuring management engagement.

In many cases where individuals perform cross-silo work, this bridging effort is not officially recognised in their job description or how they are evaluated. It is important that such work is officially recognised. This may involve updating job specifications, ensuring that responsibilities and objectives are clear, and that cross-silo work is recognised in addition to any specific departmental job requirements. Additionally, it is important that feedback is received from all of the different teams that the individual works with so that the individual’s success and impact can be properly evaluated:

Burnout often stems from a mismatch between the demands of a job and the resources available to an employee. This issue becomes more acute for those who informally take on the task of cross-silo collaboration, as they face extra cognitive and emotional burdens without necessarily receiving additional support to manage these challenges effectively.¹⁰

It is important to provide cross-silo workers with the proper resources, including essential technological tools for collaboration, comprehensive training programs in areas such as communication, negotiation, cultural sensitivity, and project management and, importantly, recognition and incentives to help offset the risk of burnout.

In addition, management should have frequent check-ins with these employees. For individuals working across silos, much of their work may not be directly visible to the manager that they report to. One-on-one discussions are crucial in such cases to make sure that managers gain good visibility into the workload being placed on their team members. It can also be important to monitor for any changes in behaviour that could indicate the early signs of fatigue or burnout. This information may be gleaned from first-hand observations or through surveys.

Key Performance Indicators

One of the best ways to mitigate the risk of burnout is to ensure that employees' roles, including their work across silos, is sufficiently formalised and evaluated. This means that the key performance indicators used to assess performance need to reflect their cross-silo work.

Within both law firms and service providers, two of the key performance indicators (KPIs) that are typically used for staff are calculations based on billable hours and revenue generation. For many boundary-spanning employees —whose work may include a lot of internal and external training, presenting to clients and understanding the issues at hand in addition to developing solutions —these metrics may not accurately reflect the success of the work that they do. Further, there may not be metrics that make it easy to compare the positive impact that a boundary-spanning employee has on the business, in comparison to another employee from another department who does not work across boundaries. The wish to compare the success of employees with different roles within a company is one of the reasons that such simplistic measurements of success have persisted in business. That they have endured for so long does not mean that they are good metrics.

Effective metrics need to be tailored to the type of work that the employee performs and reflect their cross-boundary work. Some examples of potential KPIs that could be used in different areas are included below:

Boundary-Spanning Collaboration KPIs	
Number of boundary-spanning matters worked on	Additional metrics could be weighted based on time spent working on the matter or the matter complexity to better determine value.
Number of boundary-spanning matters originating from outside the parent department	Can be used to monitor recognition of the benefit of other departments utilising the employee.
Number of boundary-spanning matters where employee identified the need to bring in additional teams	
Average number of teams involved per matter where employee worked in a cross-boundary role	
Number of cross-functional meetings attended	For example, steering committees, strategy calls, etc. Could also include meetings for non-parent departments.

<p>Satisfaction scores from other departments interacted with:</p> <ul style="list-style-type: none"> • Innovations achieved through collaboration across teams • Projects completed through collaboration across teams 	
Operational and Case Support Work KPIs	
Volume of matters supported	Additional metrics could be weighted based on time spent working on the matter or the matter complexity to better determine value.
Time saved through automation/expertise	
Average time taken to provide insights on projects	Also include the direct impact on that time from the employee, for example if they identified a more efficient approach.
Quality of deliverables	
Satisfaction score and feedback from clients (internal and external)	
Innovation and Process Improvement KPIs	
Number of process improvements implemented	Additional metric could be weighted on importance and/or adoption rate/usage.
Number of innovation tools built/completed	Additional metric could be weighted on importance and/or adoption rate/usage.
Efficiency gains generated	Measured in cost, time, or both.
User satisfaction ratings for process/innovation tools	

Knowledge Sharing and Training KPIs	
Internal training sessions run	Additional metric could be weighted on length/complexity of content covered.
External training sessions/panels/etc. run	Additional metric could be weighted on length/complexity of content covered.
Attendee feedback scores (internal and external)	
Number of training materials/playbooks/etc. produced	Additional metric could be weighted on length/complexity of content covered.
Number of articles published	
Risk Reduction KPIs	
Number and details of any potential issues detected and reported	For example, breaches of GDPR, internal policies, or regulatory requirements.
Details of impact and benefit to client/internal team	Potential value of fines avoided, deadlines which may have been missed, or potential sanctions which have been avoided.

Conclusion

The next great disruption in approaches to legal technology may not come from the technology itself, but from those that can wield it most effectively. Those with a multi-disciplinary understanding of technology and its application will have a distinct advantage in understanding how it can be most effectively actioned. Members of staff that span boundaries across gaps between specialist teams, both internally and externally, will have vital skills and knowledge enabling them to provide unique insights and innovation.

While cross-silo work can reap many rewards, both for the individual and their employers, it can be very demanding, both cognitively and emotionally. By recognising such work officially, and ensuring that management provides support, risks of potential fatigue and burnout can be mitigated.

Spanning gaps and working across silos can be used to great effect. In the current world of legal technology, LDI professionals are uniquely positioned to act as boundary-spanning employees, and most of them already do. Whether these employees work at a law firm, service provider, or corporation, they will be amongst an organization's most vital assets. If correctly encouraged and supported, they will provide amazing benefits.

Sources

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⁷ <https://open.spotify.com/episode/7xZmvt6qDsgaIksEkf56Zu>

⁸ <https://www.sap.com/france/insights/viewpoints/cross-functional-work-is-hard-what-to-do-about-it.html>

⁹ <https://hbr.org/2024/05/why-employees-who-work-across-silos-get-burned-out>. A copy is also available on archive here: <https://archive.is/iVy9s>

¹⁰ Ibid.