



An interview with Adam Cohen of FTI Technology: Attenex and Ringtail functionality, predictive coding algorithms, and more

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This interview is part of our new series “Data! Data! Data!” — Cures for a General Counsel’s ESI Nightmares”. For our introduction to the series [click here](#).



*Adam Cohen, Senior Managing Director at FTI Technology is a nationally recognized expert in electronic discovery and electronic information management policy issues. He is the co-author of two books on electronic discovery: *Electronic Discovery: Law and Practice*, a legal treatise which has been cited in several landmark federal court opinions, including *Zubulake* and *Lorraine v. Markel*, and the recently published *ESI Handbook*.*

Prior to joining FTI, Adam was a litigation partner at Weil, Gotshal & Manges. He teaches electronic discovery at Fordham and Rutgers law schools, and co-chairs the Electronic Discovery committee of the New York State Bar Association’s Federal and Commercial Litigation Section.

We caught up with Adam in FTI’s New York offices.

TPL: First of all, congratulations on the silver award to Ringtail by Law Technology News readers in the category of case management software for large law firms.

AC: Thank you. As a bit of background for your readers who don't know the process, in 2009 the editors of Law Technology News asked the publication's more than 40,000 subscribers to identify products and vendors that represented outstanding achievement in legal technology in 25 categories for its seventh annual awards program. The awards, selected based on subscriber online voting, will be presented at LegalTech New York on February 1, 2010.

TPL: **Well, among our contract attorney base there aren't too many who don't know or have not worked with Ringtail or Attenex. But if you want to get a plug, now is the time.**

AC: We're proud of this award because it recognizes the integration of Attenex and Ringtail functionality, now available on one platform. So, Ringtail users will benefit from the visual analysis and rapid review capabilities of Attenex, and Attenex users will benefit from the enterprise-class case management, redaction and production features of Ringtail Legal. So this single solution combines two market-leading applications. It is available both on-premise and on-demand, and provides significant advancements in the speed, flexibility and cost-effectiveness of e-discovery and document review. With these productivity improvements, Ringtail offers corporations and their trusted advisors the ability to control more of the e-discovery process with fewer tools and at a lower total cost.

TPL: **You said "market-leading". I know many of our contract attorney members have used it. Can you give us an idea of market share or your definition of "market-leading"?**

AC: You can look at this two ways. In terms of market adoption, you touch upon how many review attorneys have used Attenex and Ringtail. The two key reports within the industry that gauge user adoption of software tools – the AmLaw Tech survey and the Socha-Gelbmann annual e-discovery report – have recognized both Attenex and Ringtail as among the top e-discovery tools used by corporations and law firms. If you look at market-leading as exhibiting thought leadership and delivering strategic offerings for clients, we've been recognized by Gartner as a "strong positive" provider of e-discovery software – one of only five software providers to earn that rating. That said, we remain humble with respect to our achievements and look to our users' feedback as one of the best ways to validate our decisions and help inform future choices.

TPL: **Last year — for obvious reasons — corporations and their law firms were searching for and selecting more cost-effective e-discovery processes and technology. How does Ringtail and/or Attenex fit in the "cost-effective" bucket?**

AC: FTI conducted a study recently of Fortune 1000 GCs and 72% cited legal review as the most expensive phase of e-discovery. (A full copy of the report is available for download at [FTI Technology's website](#).) The combined Attenex and Ringtail software allows corporations and their law firms to dramatically reduce the cost of e-discovery by speeding up the review process on one platform, from processing through production. Our software has been purpose-built specifically to reduce the cost of legal review, and we have a proven record of delivering measurable results for clients.

TPL: Ok, news flash. There is a myriad of software out there — review software, early case assessment software, ESI management software, etc. How do you distinguish FTI from the pack?

AC: Good question. The most recent Socha-Gelbmann study estimates that there are over 600 companies offering some kind of e-discovery software or service. That's an incredibly crowded market and may be confusing for legal teams to navigate. We believe that FTI has a few key differentiators.

First, we believe our software is foremost in its ability to reduce the total cost of e-discovery. Measures such as document decisions per hour, search speed and ability to handle very large data sets all translate into direct cost savings for corporate customers paying for e-discovery services. Our products excel along all three of these measurements.

Second, our software can be deployed at the corporation or law firm, or we can host the software. This provides clients with flexibility if they need to outsource legal review today, but want to keep control of their data and possibly move review tools in-house in the future. They won't have to change their software or workflow.

Third, have expert services and consulting that can wrap around the software, whether it's a discrete process like collection, or developing a holistic and defensible information management process. We're also global, with offices in every major business center in the world, so if you need help collecting data in Europe or Asia, we can assist in compliance with local data privacy requirements.

And, perhaps most importantly, we're a public company with a proven track record in this industry, and the stability our customers prefer.

TPL: You mentioned that FTI is pretty global. Are there versions of Ringtail and/or Attenex for other languages or is it Unicode?

AC: Yes, including support for right to left languages, and character sets without spaces. These are critical to supporting Arabic, Hebrew and certain Chinese languages, and distinguish our products beyond simple Unicode compliance. It is one reason our products are in regular use around the world. And like I mentioned, with 3,500 employees located in most major business centers in the world, we have significant expertise in multi-national litigation and e-discovery. As an example, we have extensive experience "parachuting in" to particular countries and conducting on-site reviews for corporations or their outside counsel, because the local data privacy requirements won't allow data outside of the country, or in some extreme cases, that data can't leave a certain building.

TPL: We have seen a here are a lot of document reviews going on in Europe, and the pace is increasing. Have you seen an uptick?

AC: Absolutely. Although there isn't as much e-discovery in European courts as in the U.S., the trend of increasing data volumes and e-discovery is global. Also, where U.S. attorneys

need to review documents held by clients in Europe, they are increasingly choosing to do the review on site to mitigate the risk arising from EU data transfer and privacy laws. This is especially true with investigations in the EU, where we are able to dispatch our e-discovery professionals with mobile units containing critical software applications.

TPL: FTI has published a number of white papers on controlling electronic discovery using in-house resources. Can you give us an overview on what FTI is doing for in-house law departments?

AC: Certainly. Let's start from this premise: rather than relinquish control of e-discovery to these experts and their firms, in-house legal teams and their executives are trending toward retaining control of decision-making and acting as collaborative partners throughout the life cycle of a particular matter.

It is this equilibrium that will dictate the growth and development of electronic discovery in the years to come, and not simply technology or regulatory guidelines. Those who embrace the internal/external partnership will streamline progression and enhance their readiness for favorable outcomes.

At FTI we work with corporate clients to understand and evaluate their IT environments and the systems, policies and procedures they use to carry out e-discovery obligations. We facilitate a process where technology and policy are balanced for optimal efficiency and e-discovery compliance. Really what in-house law departments need is a program because the expectations of courts are increasing just as fast as the volumes of data. In the end, litigation can and should be treated as a dynamic business process.

TPL: Ok, bingo. You have hit on the purpose of this series of interviews. The “tsunami of data” as Ralph Losey says. A volume of data (and cost of discovery) which seems to be exponentially greater by the minute. In a nutshell, how do you help clients cope, get organized?

AC: It's a very logical process built on understanding the sources of ESI and developing a plan to address them that is practical and actually capable of implementation. The reality is that the corporate culture and the budgetary and personnel resources that are available will influence the shape of the customized approach that is optimal. We believe that it is a mistake to look for easy answers in one-size-fits-all technology solutions and “best practices” that are preached in the abstract.

TPL: So, we now have a new lexicon, funky technology — and not necessarily technologically astute lawyers. Are most lawyers technophobic or perhaps they don't see technology like those of us in the industry?

AC: I think there are lawyers who simply have not taken the time to become educated about technology, largely because they have not yet felt such learning to be critical for their particular practice of law. There has been a tremendous increase in awareness over the past few years however, and especially with the 2006 amendments to the Federal Rules of Civil Procedure,

lawyers need to have some rudimentary understanding of computers. Unfortunately many still don't know where to turn for help.

TPL: So it's really a lack of knowledge, a lack of familiarity? How do you help?

AC: We are heavily involved in educating clients about what we do and how the choices they make regarding technology impact their litigation costs and outcomes. Rather than sell a technology and run off to the next sales pitch, if clients desire, we can also provide expert consulting to facilitate their understanding and systematic implementation of defensible-e-discovery processes. Lawyers need that expert advice and understanding in order to defend their conduct of e-discovery.

TPL: And your technology works no matter what — potential litigation, government investigation, internal investigation, whatever?

AC: We have purposefully set out to develop technology that is flexible and scalable so that we can recommend solutions that make sense in any given legal scenario. We advise clients to be wary of those vendors who tell clients that their product is an "easy button" that will take care of any situation "automagically." E-discovery is about more than software; it's about a defensible legal process.

TPL: You have also written some white papers on the impact of e-discovery on IT operations. That was a big topic last year.

AC: Clearly it is important for IT personnel to participate actively in the discovery process. As successful e-discovery requires knowing where, when, why and how the company stores and destroys data as well as how to retrieve it, the IT team's role has to begin with information management, well before there's any hint of litigation. Successful e-discovery that minimizes costs relies on an organization's information management strategy, namely its data retention/destruction policy and data management system. Because of IT's central role in e-discovery, and because e-discovery has such broad implications for IT operations, we advise clients' IT professionals to familiarize themselves with the basics of e-discovery law and legal terms. We also recommend IT and legal departments collaborate on important policies and procedures for e-discovery, such as choosing the formats in which data should be archived or how long to store metadata.

TPL: Ah, now you are in the realm of courts who want to know about policies for data retention, litigation holds and information integrity.

AC: Exactly. So it's vital that policies are documented and systems support them. Once the e-discovery process is in motion, IT managers work with lawyers and other people in the company with knowledge of the subject of the litigation. They try to identify what requested documents exist, where they're located and who created or controls them. Then they issue the litigation hold. After that, the potentially relevant documents are copied, sorted and prioritized. Finally, the relevant documents are converted into image files and/or paper documents and given

to the other party. And then even after production in discovery, admissibility issues unique to electronic evidence may arise.

TPL: So it is critical that someone in the organization knows how to collect, process and review ESI without accidentally altering it?

AC: Because?

TPL: Wait a minute. I ask the questions! Ok, just this once. Because inadvertent alterations can result in “spoliation,” which is the destruction or alteration of information that could be used as evidence.

AC: And sanctions. As we describe in gory detail in Chapter 3 of Cohen and Lender, *Electronic Discovery: Law and Practice*, courts have issued a range of severe sanctions where parties have destroyed electronic evidence, sometimes even where there was no bad faith but only negligence. There are even criminal penalties possible under certain circumstances.

TPL: And we only have to look at Judge Scheindlin seminal decision in the very recent Pension Committee case ([link](#)) to know the consequences.

AC: That’s why IT professionals need to work with an organization’s outside counsel to help them understand the information architecture, systems and databases—so they can make informed decisions about identifying, preserving and collecting requested data.

TPL: And what do you think is at the forefront of the discovery process, the most important thing, the biggest challenge?

AC: Based on the *Pension Committee* opinion and the continuing stream of sanctions cases for spoliation, I would have to say that the biggest challenge seems to be complying with the duty to preserve electronic information. Most organizations still don’t have a written plan ahead of time to implement litigation holds smoothly, so they fumble around in reactive mode—which breeds mistakes.

TPL: There is a feeling among in-house counsel (gleaned from the ACC meetings we attended) that direct relationships with e-discovery vendors are best, rather than through outside counsel. Do your law firm clients perceive this as a threat to their business?

AC: Members of a multi-disciplinary team always need to define roles and responsibilities, but generally no – most of our law firm clients welcome the improved awareness on behalf of their corporate clients, and most of our corporate clients likewise appreciate the efficiency and benefit of interacting with us directly. When clients deal with providers directly they tend to learn more about the processes and that education makes their lawyers jobs easier. Lawyers don’t want to be the ones passing through a vendor’s e-discovery bills to a client who doesn’t understand them and “shoots the messenger”!

TPL: E-discovery vendors have also had much success the last 2 years moving into the e-discovery space across the whole EDRM model, especially in the area of document review (the “right side”) and that success is due to the continuing move by corporations to move EDD directly in-house. Document review is a nice piece of change. Is this a move you contemplate?

AC: We do observe that clients would increasingly prefer to avoid juggling multiple vendors across the spectrum of e-discovery processes. The handoffs between providers create additional layers of management, expense and risk. Instead, companies are increasingly “converging” on one or two proven providers that can address a wider spectrum of global e-discovery requirements regardless of scale. To serve a large enterprise client effectively, this means diverse global capabilities – not just for software or services or consulting — but all three. At the same time, corporations increasingly identify legal document review as the single largest opportunity for achieving sustained cost savings. We developed our latest offering, FTI Acuity, to address these issues head on. Acuity provides corporations and counsel with everything they need for e-discovery and document review—from processing through production—at a fixed per-document or per-gigabyte rate and with a single point of accountability for the entire process. This includes data processing, the hosted review platform, document review, production, project management and all of the associated consulting services.

TPL: E-discovery costs are skyrocketing. Yet much of EDD is now a commodity – and that has changed the structure of the market. Prices are — shall we say — more predictable and probably more realistic. E-discovery vendors have capped fees, set flat fees or worked with various forms of pricing estimators. Have you changed your pricing?

AC: The challenge in 2010 for everybody — corporate clients, providers and law firms alike — will be to find a commercial balance across the time, quality and cost dimensions. We work regularly with clients to review and adjust pricing and service levels as market indications/client requirements warrant. We also engage clients in alternative fee structures – these can be an effective way to respond to a matter or collection of matters based on their size, duration or requirements.

TPL: The big “new new” thing all of last year — at every event we covered — was early case assessment and winnowing relevant data down to reduce the number of documents to review. As the stats bear out, it is the most expensive part of the process. But now we have predictive coding plus the work being done in computer assisted review by Herb Roitblat, Anne Kershaw and Patrick Oot. Is the technology getting to the point where we can also winnow out the eyeballs — contract attorney reviewers?

AC: Predictive coding raises great promise and great concern. Promise, because as you say attorney reviewers are the most expensive and least consistent part of the process. Concern, because however flawed traditional document review may be, it is the dominant model both commercially and in the courts. It is going to take some time for the world to accept the elimination of manual labor in document review, and it is only going to do so when the technology is sufficiently mature and the quality of result is convincingly superior. Fortunately for FTI, we are well on our way to both. Attenex, which we acquired in 2008, was a pioneer in

this area, and we have continued to progress significant R&D in this area. New predictive coding algorithms lie at the heart of our Acuity Integrated Document Review offering, and even further reaching developments are in our lab. We wrap that technology in innovative workflows that permit senior lawyers to guide the review of huge volumes of documents. We test our results with statistical sampling, something rarely done in the traditional process because it tends to reveal inconsistency. And our experienced courtroom testifiers stand ready to defend our innovative process. We believe that all of these elements are necessary for market adoption of “computer-aided document review.”

TPL: Why is it that you chose to go to FTI after leaving Weil Gotshal? I would imagine that after publishing an e-discovery book that was cited in Zubulake when it was still a manuscript you must have had opportunities from a number of e-discovery businesses.

AC: FTI is different from just about every other company in the market in so many ways, but if I had to identify the factors that were most important to me in choosing FTI I would point to the professionalism of its people and the unique marriage of cutting-edge technology with deep e-discovery expertise. As a litigation partner at one of the world’s best litigation firms, I wanted to go to an organization with comparable standards of professional excellence and a similarly high level of respect among corporate clients.

TPL: What’s the scoop on your latest book, the ESI Handbook?

AC: The Handbook is meant to fill what I perceived as a gap by providing a primer to attorneys and other legal professionals on technical and process aspects of e-discovery in language they can understand. So it complements the legal treatise (Electronic Discovery: Law and Practice) nicely. It also has an appendix on CD with toolkits for constructing litigation procedures, document retention policies and other documents. The toolkits are especially valuable because they contain excerpts from real client documents and as such are different from the typical forms in the back of books that are too generic and divorced from real use to be of any utility.

TPL: Is FTI announcing anything at LegalTech?

AC: We’ll be launching FTI Acuity, which I mentioned earlier in the interview. We are excited about Acuity as we believe this addresses some of the biggest pain points in e-discovery today. We believe Acuity’s integrated document review delivers more accurate, predictable and cost-effective results than any available alternative. More valuable because Acuity is guided through collaboration with outside counsel and provides real-time intelligence from the documents to shape case strategy. More predictable because Acuity includes everything needed, from processing through production, at a single price. More cost-effective due to Acuity’s use of next-generation review technology that speeds review, and proven workflows that eliminate expense. And Acuity is defensible; backed by statistical validation and expert witnesses from FTI, a global Tier One provider with the experience and reputation you can trust.

TPL: Adam, we greatly appreciate your time.

AC: My colleagues and I enjoy reading The Posse List so it was a real pleasure talking with you.

Postscript: FTI will be demonstrating their products, including Ringtail QuickCull, Attenex Patterns and Ringtail Legal, at LegalTech booth #2100.

Gregory P. Bufithis is the founder and chairman of The Posse List and its sister sites The Electronic Discovery Reading Room (<http://www.ediscoveryreadingroom.com>) and The Posse Ranch (www.theposseranch.com). He is also founder and chairman of Project Counsel (www.projectcounsel.com).