



epio depth

The Impact of People,
Process and Technology on
eDiscovery

People. Partnership. Performance.



Executive Summary

Are you accountable for managing the burden of discovery? Certainly you're very familiar with juggling the costs and benefits of people, process, and technology? Are you a chief operating officer in a law firm, general counsel, eDiscovery practice manager, litigation support manager, vice president of legal operations, or a direct-report to one of these positions? Then "people, process and technology" is core to your day-to-day accountabilities.

Below are the highly relevant questions related to discovery that you should be prepared to address, and it is not a matter of if, but when, you will be held accountable for them. If you properly utilize people, process, and technology, you'll answer them confidently.

1. How and why has your headcount changed in the past 12 months? The litigation support job market has become extremely competitive. Recruiting, retaining, and developing talent is challenging, and the need for labor is inconsistent.

2. What is the current utilization of your team? Case deadlines vary, data volumes are unpredictable, and utilization of a good team varies day by day.

3. Do you have a plan to scale your team to meet the demands of my cases? Discovery creates unpredictability, the best eDiscovery practitioners have flexible plans to utilize their employees during peaks and valleys.)

4. Where does documentation of our standard operating procedures (SOPs) reside and how often

is it refreshed? Accessible, documented SOPs must be refreshed regularly. This creates a solid defense against claims that evidence has been mishandled.

5. Is there an initiative to build best practices across our case load? A good eDiscovery team uses SOPs to benchmark staffing needs and set appropriate expectations for phases of discovery.

6. What is being done to make discovery management more efficient? Repeatable best practices should account for 80-90% of your discovery. This allows you to create efficient, defensible templates for responding to discovery requests. This is especially true in areas like data collection, processing and review, quality control, and production.

7. Is the ESI that we host secure? Litigation frequently involves a company's most sensitive and confidential information; best practices must include comprehensive privacy strategies by all parties who touch your data.

8. Our tools are outdated and our support is very limited. How are you addressing this? Litigation technologies are being developed and improved at a very fast pace, and eDiscovery teams should be prepared for the continued growth of data used in the normal course of business.

If you've been asked any of the above questions, this white paper is for you.

Legal Operations

While many businesses wrote off legal expenses as “overhead” in the past, they are now far more likely to scrutinize the costs of litigation. The emergence of the great recession, market consolidation, price pressure, and the availability of real-time data have all contributed to increased accountability. Companies are eager to define key performance indicators (KPIs) and scorecards as critically important guides to determine whether their strategies are effective.

Corporate legal departments and law firms have created critical positions to account for the quality of their legal operations. These positions involve competencies such as:

- Strategy
- Financial analysis
- Vendor management
- Data analytics
- Technology support
- Legal support models
- Knowledge management
- Professional development and team building
- Communications
- Data governance/records management
- Litigation support
- Cross-functional alignment

To effectively create and measure value for an organization, it is crucial to divide its accountabilities into the three key realms of people, process and technology.

People

Recruit, train, and retain top talent. Sounds easy ... right?

The reality is that today's highly competitive job market presents numerous obstacles to hiring and keeping talent. These include compensation restrictions, limited career paths, training budgets, shared IT resources, unpredictable work volumes, aging technology, team utilization expectations,

and global around-the-clock support.

In order to build an ideal team and keep your employees happily engaged, you must build a business case to justify your hiring choices, staff to the median hours required to exceed expectations, and develop a plan to rapidly scale your resources, if necessary. But what, exactly, does that mean in the world of eDiscovery?

To document the current state of your eDiscovery team, you should evaluate:

- Team headcount, tenure, and utilization
- Roles & responsibilities
- Scheduling restrictions
- Geographic limitations
- Annual turnover ratio
- Employee onboarding process and timelines to be fully functional in their role
- Skill gap assessment
- Current process to augment team during volume peaks
- Quality-of-service grades from internal and external clients
- Annual fully-burdened cost of team

You can use your findings to build a personnel framework that considers managing in-house, outsourcing, labor costs, scalability, global needs, retention, and satisfaction of the client(s) you support.

Process

The best way to build efficiencies across your litigation portfolio is to develop, document, and most importantly, ensure compliance with standard operating procedures (SOPs). Developing SOPs is not a project, but a commitment to excellence, and an organizational commitment to continuous improvement paramount to success. SOPs help you achieve efficiency, quality output, and consistency, while avoiding disconnects in communication and suboptimal service levels.



If you're an eDiscovery practitioner, your business likely falls into one of the following three categories (or a combination thereof):

- Managing eDiscovery in-house
- Outsourcing to eDiscovery vendor(s) at a matter level
- An established eDiscovery managed service partnership with an outsourced service provider

You likely have processes around case design and kick-off, early case assessment, legal hold, forensic collections, electronically stored information (ESI) processing, production management, review management, trial preparation, and beyond. How often are these processes evaluated and by whom? Do you have a change management process defined? Successful execution is incumbent upon leaders in your organization if they want to champion process discipline, and clearly understand the soft cost savings, defensibility, and quality gained by way of consistency.

There are important steps to be followed at each stage of eDiscovery:

1. Case Kick-off
 - Assignment of lead project manager
 - Definition of roles and responsibilities
 - Distribution of SOPs
 - Establishment of communication cadence
 - Key deadlines and milestones
2. Early Case Assessment
 - Anticipated scope
 - Data locations
 - Tools needed
 - Key custodians
 - Budget
3. Legal Hold Notification
 - Documentation of notification protocol and accountabilities
 - Communication templates
 - Regular communication with custodians
 - Preservation/anti-spoilation measures

4. ESI Collections
 - Identification of custodians and data sources
 - Collection interviews
 - Inventory and collections tracking
 - Forensic analysis
5. ESI Processing
 - De-dupe methodology
 - ECA and Search strategy
 - Exception handling
 - QA process and expectations
6. Production management
 - Preferred form of production
 - Status and progress reporting
 - Quality Assurance best practices
7. Review management

Project management review

 - Sizing review team and team location
 - Workflow
 - Productions
 - Privilege log
 - KPIs and reporting
8. Deposition, trial prep, and beyond
 - Key document identification and chronologies
 - Key document binders and exhibit preparations
 - Court reporting
 - Matter conclusion and data disposition

Technology

The strategic use of technology is essential for driving process efficiencies, streamlining your processes, and ensuring that you stay ahead of your competitors. However, it can also be an enormous drain on your time, budget and resources when you choose your systems poorly or do not appropriately staff and budget to adequately maintain them.

A sound approach is to assess technology as it pertains to eDiscovery in three disparate categories: Security, optimization, and innovation.

Security: You are likely subject to a diverse set of state, federal and international laws and regulations regarding privacy. Certifications are available to validate that your organization is taking appropriate steps to protect data under your watch, regardless of the size and reach of your organization. Be cognizant that ignorance is not a defense for lax data security.

Investigate and validate the following issues internally and with your partners to ensure your risk is appropriately mitigated:

- Access control
- Antivirus operations
- Appropriate use of technological resources
- Change management
- Clean desk policies
- Data classification
- Disposal and destruction of sensitive equipment and information
- Encryption Incident response procedures
- Security of mobile devices
- Passwords
- Personnel issues
- Privacy
- System development and acquisition
- Supplier security
- Teleworking
- Vulnerability management policies



Optimization: Certain realities are often overlooked and/or deprioritized throughout the process of evaluating a technology investment. These include uptime expectations, troubleshooting, required infrastructure, password resets, version upgrading, remote access, connecting to existing technologies, latency, system administration, and maintenance. To reap the benefit of a tool, properly planned and scoped IT support is required to avoid buyer's remorse. Before you make a financial commitment, it's necessary to discuss its ramifications with the team that will be responsible for its administration and maintenance. Doing so will ensure that they are up to the tasks from both a skill/knowledge perspective and a resource bandwidth perspective, and understand the expectations of the internal customers.

Once you have made a commitment, align your organization's businesses priorities for the investment, document how and when success will be measured, and confirm that you have support from leadership and appropriate staff who have the capacity to take full advantage of your technology investment.

Innovation: Every day, companies issue press releases marketing innovative technologies designed to help you search and cull data faster, easier, and cheaper. When you consider new technologies, you must ask yourself if the tool will add value across cases, or only under unique circumstances.

The reality is that we all have a fiscal responsibility to invest and innovate with an eye toward maximizing ROI. Ask yourself four essential questions:

1. Will this technology attract new clients?
2. Will it create a new revenue stream for the business?
3. Will it create a material savings?
4. Will it make my processes more defensible?

If you answer yes to one or more of these questions, you should continue to assess this technology. Your next task will be determining what the appropriate ratio of return should be to justify adding an additional product to your technology stack.

Conclusion

As you wrestle with the burden of litigation and its unpredictable expenses, segment your objectives into the categories of people, process, and technology. Assess and document your current state and solicit input across functions within your organization at all levels.

Once you have alignment on your current state, you can identify and prioritize objectives to improve. Document your priorities, assign accountability, and set expectations for when you plan to complete your objectives. Once you are in agreement on what winning looks like, empower those accountable and request regular status reports. Committing to continuous improvement in the management of data related to litigation will allow the focus to remain on the dispute. Treat eDiscovery like both a science and an art, and you are sure to save money and reduce your risk.

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