



Unifying Discovery

Driving Value and Success with a Singular Mission,
Tech-Centric Vision, and Client-Focused Approach

AUTHORED BY:

Elie Francis, Jeff Nace, Lana Schell

Introduction

Throughout the legal industry, organizational dynamics are supplementing talent and technology to fuel future progress, which makes leadership and corporate culture critical factors in supporting a company's strength. In an analysis of data collected from various US-based law firms and conversations with their leaders, the Citi Private Bank 2018 Client Advisory concluded:

Success in this market will likely come to firms who are most nimble in their response to client demands for a more efficient delivery of legal services. In the long term, success will likely come to firms who adjust their talent models to market forces and who focus on building a robust growth model that attracts, develops, and retains the best legal talent... We [also] believe that the firms who harness the emerging technologies ... will be even stronger in the future.¹

This is particularly important because the report also notes that Citi previously highlighted that firm leaders were focusing their interest in 2018 on e-discovery, specifically predictive coding and large document reviews.² With increasing competition from capable in-house counsel who are managing their litigation support practices internally, success favors those who holistically approach challenges with creativity, deep technical understanding, and experience.

I. Solving Problems with Savvy Leadership and Data Science

In an era of consolidation (in 2017, for example, Lighthouse eDiscovery merged with Discovia, Advanced Discovery acquired Altep, OpenText acquired Guidance Software, Ipro acquired inData, and Integreon acquired Allegory), a strong corporate culture and a history of organic growth are the leading hallmarks of longevity.³

Company founders are often driving that culture and maintain a passion for the business, its overarching mission, and its evolution. They effectively empathize with the buyer of software or

¹ Citi Private Bank and Hildebrandt Consulting LLC, 2018 Client Advisory, 2, 15. (Results are based on conversations with law firm leaders and (1) the "Citi Annual Survey Database" of 193 US-headquartered firms, including 44 Am Law 1-50 firms, 34 Am Law 51-100 firms, 47 Am Law 2nd 100 firms, and 68 additional firms; (2) the "Citi Flash Survey", including 40 Am Law 1-50 firms, 29 Am Law 51-100 firms, 47 Am Law 2nd 100 firms and 45 additional firms; (3) the "Citi Law Firm Leaders Survey" of 55 large firms headquartered in the US, UK, Australia, China and India; and (4) the "Law Firm Leaders Confidence Index," which reports the forward-looking opinions of law firm leaders from 154 U.S.-headquartered firms.) <https://www.privatebank.citibank.com/home/fresh-insight/citi-hildebrandt-client-advisory.html>.

² Id.

³ See, e.g., *eDiscovery: A Race to Consolidate*, Legal IT Insider, February 3, 2016, <https://www.legaltechnology.com/latest-news/ediscovery-a-race-to-consolidate/>; Gabe Friedman, *The Latest Major e-Discovery Acquisition*, Bloomberg Big Law Business, January 7, 2016, <https://biglawbusiness.com/the-latest-major-e-discovery-acquisition/>.

services and, therefore, more easily appreciate their key concerns. According to Entrepreneur magazine: “The culture of your company not only sets the tone for your own employees, but it also shapes the way consumers interact with you, how they perceive your brand and ultimately, your company’s capacity for sustainable growth.”⁴

When combined with litigation support software engineered from its foundation to right-size, rather than simply redistribute data, dynamic leadership teams create a singular approach to solving traditional discovery problems in a non-traditional era. Building software that performs the job you need, as opposed to any job one could need, is increasingly rare in the current market.

Too many companies strive for sufficiency, rather than excellence. They apply a “good enough” approach to their work, but there are too many quality options for a litigant to settle for average support. Instead, look for best-of-breed technology that is created at its core to address the most complex investigative issues. Using deficient technology can be an ethical violation in this era.⁵ After all, speed, accuracy, and analytics are only a baseline in 2018.

Proper platform design can marry different use cases and permit greater control and efficiency. While many organizations think that functionality is paramount, design often drives innovation. The combination of the two enhances the user experience while empowering the ability to solve problems. Modern litigation now requires both form and function to ensure the productivity that most cases require.

A. The Advantages of a Core Technology Stack

A powerful core technology stack can transform the nature of data management and provide an unprecedented level of clarity. If properly structured to enhance the assessment of information, categorize records, and distribute the workload, it can positively influence the approach to many different matters.

1. Accelerated Processing

Processing is often about speed and an engine is frequently measured by how much data it can ingest for analysis. Muscle alone, however, cannot distinguish a processing platform. It must offer the capability to answer questions quickly, which at its core is the goal of the processing phase.

⁴Matthew Toren, *How These 8 Founders Are Innovating Company Culture*, Entrepreneur, June 30, 2016, <https://www.entrepreneur.com/article/278358>.

⁵See, e.g., Ivy Grey, *Exploring the Ethical Duty of Technology Competence, Part I*, Law Technology Today, March 8, 2017, http://www.lawtechnologytoday.org/2017/03/technology-competence-part-i/#disqus_thread.

2. Consistent File Type Treatment

The challenge with most processing platforms is that they struggle with the myriad of existing file types, as well as the ever-growing range of records that users regularly create. Dynamic systems can adapt to any piece of information and seamlessly continue their operations. Anything less produces flawed results, showcases inefficiency, and frustrates users.

3. Patented Distribution Methodology

Elegantly distributing large projects across a range of resources without supercomputing is unique, accelerates processing, and ensures consistent treatment of file types, which is crucial in a period of unparalleled data proliferation. It enhances efficiency and features horizontal scalability from a grid architecture. Most importantly, it allows organizations to maximize their infrastructure and minimize their operating costs while optimizing data distribution.

B. Redefining Usage Through Short-Term Subscriptions Instead of Long-Term Licenses

In the past few years, the growing influence of legal operations and procurement leaders has transformed the antiquated nature of enterprise pricing.⁶ The rise of the Corporate Legal Operations Consortium and the Buying Legal Council reflect an industry-wide movement to reduce, and eventually eliminate, wasteful spending by paying fair fees for appropriate work.

Until recently, companies reluctantly accepted their obligations to pay for long-term software licenses or services agreements that were inherently excessive due to a lack of options. There has been a sea change and the popularity of purchasing only what you need when you need it has increased.

Informed clients want fair pricing that supports scalability and the freedom to invest in the ideal amount of technology to accommodate new team members or to address greater volumes of content from recent document requests, internal investigations, or regulatory inquiries. As a result, organizations should demand more flexibility and refuse to sign contracts that reflect any imbalance.

II. Aligning a Tech-Centric Vision with eDiscovery Evolution

As more organizations move their corporate infrastructure to the cloud or engage managed services providers and adopt virtualization, the ability to scale computing resources is the only

⁶ Thomson Reuters, *The Evolving Role of Legal Pricing Professionals*, May 2, 2017, <https://blogs.thomsonreuters.com/answeron/legal-pricing-professionals-evolving-role/>.

viable option for addressing a growing data portfolio. While it has taken law firms and corporate legal departments time to overcome their anxiety about security and control, the industry may have finally hit a tipping point in validating the cloud.

In fact, the capacity to process terabytes of data in an instant and promote rapid development to support new file types, particularly mobile and social media content, is becoming an enterprise imperative. Managing that volume and speed, however, requires more than computing power. It needs an intuitive understanding of technology and tools built from their foundation to support this next generation approach.

Organizations must, therefore, leverage tools that react to directional shifts in the market and track communication trends to sustain their workload. As litigants continue to consolidate their technology options, service providers, and data locations, whenever feasible, they can no longer adopt a static strategy. Instead, any new protocol must be nimble enough to account for constantly changing data types, regulatory and judicial rulings, and e-discovery standards.

A. Key Factors Driving Industry Change

Despite increasing competition and slowing demand for common legal services, spending in the e-discovery market for 2017 has been estimated at \$9.24 billion, with an expectation that it will increase by over a billion dollars in 2018 to \$3.17 billion for software and \$7.47 billion for services.⁷ In fact, the compound annual growth rate of the e-discovery market is expected to be about 15% through 2022, with software spending rising to \$5.71 billion and services increasing to \$13.22 billion.⁸ While spending on discovery software and services broadly, and on review-related software and services specifically, may fall, spending on processing software and services is projected to remain steady.⁹

From cloud adoption and processing enhancements to cyber security shifts and the emergence of machine learning, the legal industry is on the vanguard of a new era in which the responsibilities of a lawyer, data scientist, technologist, statistician, paralegal, and corporate executive are converging to produce a professional who understands the approach to litigating a matter as much as the underlying law itself.

⁷ Rob Robinson, *An eDiscovery Market Size Mashup 2017-2022 Worldwide Software and Services Overview*, Complex Discovery, <https://www.complexdiscovery.com/info/2017/12/22/an-ediscovery-market-size-mashup-2017-2022-worldwide-software-and-services-overview/>.

⁸ Id.

⁹ Id.

1. Cloud Empowerment

It is essential to take advantage of tools that allow users to maximize their application of the cloud because it seamlessly increases infrastructure resources. Many legal organizations, however, are often under the misimpression that their hurdle is simply incorporating the cloud into a suite of solutions. Maximizing its utility has become the challenge.

The cloud does not simply represent a larger set of servers on which to save data. It provides a platform that empowers organizations to scale up or down almost immediately without incurring the expense of new equipment or maintaining unnecessary hardware. Knowing how to harness that flexibility and use it to augment the return is ultimately the objective.

2. Processing Complexity

With an increasing number of data types and communication platforms, e.g., social media, messaging/chatting, e-discovery processing has acquired an unprecedented level of complexity. Simplifying that chaos requires talent and experience, as well as an understanding of how individuals are creating content in the current climate. It also compels the use of single instance storage, the ability to manage resources in real-time, and a talent for workflow automation.

Effective processing has become an art in e-discovery because those who can assess their data early and eliminate unnecessary material prior to ever sharing it with a human reviewer for evaluation, not only save significant resources, but are also faster, better equipped, and more confident in their approach. It is often the essential component of success in litigation or investigations. In an age where a data set contained file types with little technical variation, basic tools were adequate, but in an environment of information overload, only best-of-breed technology can harness the speed, accuracy, and stability necessary to prevail.

3. Analytics and AI

Despite their promise, legal teams still struggle with the application of analytics and artificial intelligence because of the challenges associated with incorporating them into processing and review, but as they gain acceptance, this technology will become standard in any software. In its cover story on the emergence of this technology in the legal community, the ABA Journal explained:

While AI is growing, it hasn't reached the majority of law firms yet. What will really make artificial intelligence a revolution is to change the thinking of lawyers. Perhaps real change will come with a simple recognition of the need to better serve clients.¹⁰

¹⁰ Julie Sobowale, *How Artificial Intelligence is Transforming the Legal Profession*, ABA Journal, April 2016, http://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession.

Today, despite the lingering enigmatic perception, there is an expectation that vendors, outside counsel, and in-house legal advisors will apply analytics for performance metrics and comparative statistics. Many are also sophisticated enough to initiate a conversation about the use of artificial intelligence and machine learning to simplify the process and eliminate the expense of unnecessary human support in situations where technology can offer a sufficiently defensible alternative.

4. Security

Data security is exercising tremendous influence over electronic discovery. As a result, it is essential to strengthen security protocols on both the application and infrastructure levels, including multi-factor authentication or data encryption at rest and in transit. While there may be minor performance sacrifices for enhancements to security, it is critical to adapt them to consumer behavior.

That behavior is ultimately driving the security challenges themselves. In its 2017-18 Global Information Security Survey based on responses from 1,200 C-suite leaders and information security and IT executives/managers, Ernst & Young found that 77% considered a careless member of their staff as the most likely source of an attack.¹¹ Similarly, 77% worry about poor user awareness and behavior resulting in risk from a mobile device, with half expressing concern over its loss and the resulting vulnerability of information or identities.¹² In a survey of over 9,500 executives, PricewaterhouseCoopers similarly concluded that “Current employees remain the top source of security incidents.”¹³

The solution is often vigilance and education, which only succeed through oversight and enforcement.¹⁴ Although they are changing workplace culture, the effectiveness of being more proactive in security is proven and widely supported.

¹¹ Paul van Kessel, *Cybersecurity Regained: Preparing to Face Cyber Attacks*, 20th Global Information Security Survey 2017-18, <http://www.ey.com/gl/en/services/advisory/ey-global-information-security-survey-2017-18>. See, Conner Forrest, *Why 0% of US Companies Believe Their Information Security Strategy is Working*, TechRepublic, December 13, 2017, <https://www.techrepublic.com/article/why-0-of-us-companies-believe-their-information-security-strategy-is-working/>.

¹² Id at 9.

¹³ Christopher Castelli, Barbara Gabriel, Jon Yates, and Philip Booth, *Strengthening Digital Society Against Cyber Shocks: Key findings from The Global State of Information Security® Survey 2018*, PricewaterhouseCoopers, 2017, <https://www.pwc.com/us/en/cybersecurity/information-security-survey.html#insight4>.

¹⁴ See, also, Gregory Michaelidis, *Users Aren't the Weakest Link in Cybersecurity: 3 Tips for IT Leaders*, TechRepublic, October 12, 2017, <https://www.techrepublic.com/article/users-arent-the-weakest-link-in-cybersecurity-3-tips-for-it-leaders/>

B. Selecting the Right Approach

While there are hundreds of e-discovery service providers and thousands of law firms that claim to have the internal talent to provide litigation support, few offer a holistic approach and a unified technology platform. That unity is critical because the interplay between the team and the tools is often what creates friction. Haphazard data movements also raise security concerns and any lack of familiarity with software platforms fuels inefficiency so organizations must achieve equilibrium to ensure proper execution.

1. Customer Focus is Key

For some companies, the idea of focusing on the customer is more of an essential element associated with running the business, rather than a core cultural component. For the latter, it requires the leadership to encourage every employee to recognize the client, the user, and the administrator of its technology or service to be the top priority in design, strategy, and response. Customer advisory boards, client surveys, and feedback campaigns can all help a company more effectively reflect the interest of its clients in the content it produces, the updates it releases, and the service enhancements it offers.

2. Technological Efficiency is Essential

Efficiency is propelled by processing protocols, data storage practices, and seamless scalability. The benefits differ based on the audience, e.g., engineers, lawyers, or administrators, but all result in streamlining staffing and productivity. It is not simply about cost savings. Often, organizations realize efficiency in the form of familiarity with one's infrastructure or experience in a particular type of matter, while litigants do so by working with teams and technology providers that can quickly adapt and address unusual situations or complex data types. Processing strength and review prowess also yield the promise of productivity because of the ability to streamline information archives.

The ability to apply a distributed methodology offers another output advantage when assessing disparate information because it can handle an extraordinary amount of data by coordinating file and metadata extraction, imaging, endorsing, branding, and OCR across multiple machines. In fact, a distributed system is essential for most multi-million document evaluations that teams must complete within unreasonable time frames.

Conclusion: Discovering Something Different

Electronic discovery support requires highly technical services and sophisticated software, which are rarely created in unison. From exception logs to high-fidelity output of data, a lightweight approach to processing produces poor results. Litigants today recognize that leveraging a fully

unified solution in which the processing engine and review tool are integrated into a single interface offers a much greater chance of success. It also permits flexibility since it can be executed on a modular basis to scale up or down.

This simplified approach reflects a focus on client service and experience. From design to user interface, the goal is to present the most commonly used functions that positively alter the outcome. After all, the art of creating workflows from a user's perspective fuels automation and streamlines both processing and review. Ultimately, disruption in e-discovery favors a mission-driven unified approach that prioritizes performance and the client experience above any other considerations.