

# Building a Great Electronic Discovery Organization

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Volumes of electronic information and the number of cases that rely on electronic discovery seem to be growing exponentially. The demand for electronic discovery services is now measured in the billions of dollars a year. New electronic discovery services seem to be sprouting almost daily. With all of this activity, however, there are few resources available to help a new provider come up to speed in this market.

### Seven rules for building a great eDiscovery organization

1. Have an effective product
2. Have sound internal processes
3. Have sound customer-facing processes
4. Hire excellent people and treat them well
5. Be prepared to cope with people's computer creativity
6. Have effective, transparent, technology
7. Engage in continuous process improvement

### Product

The most important consideration in building a great eDiscovery organization is the product or service that you offer. Just which electronic discovery services are you going to provide and which will you have to outsource? The EDRM project (<http://www.edrm.net/>) provides a nice outline of the steps in an electronic discovery project. Services could be offered to support any or all of these steps. Which ones lie in within your capabilities?

Customers appreciate a full service provider—one neck to wring—but you may not be able to do everything or not do everything all at once. It is more important to do well at the services you do offer than to offer a broad range of mediocre services. Partner with others to provide the one-

stop service menu.

If you do partner with other providers, be certain, absolutely certain, that you tell your customers what services you are outsourcing and to whom. You will be responsible for your partners' performance and if anything does go wrong, you and your customers will be much better served if your customer was already fully informed about who was doing the work. There is nothing wrong with outsourcing services, just be honest and up front about it. Be at least as rigorous in vetting your providers as your customers would be. Your reputation may depend on it. Be prepared to monitor their progress and their quality.

Take stock of the services that you are able to deliver and identify sources for the services that you will not be providing yourself.

## **Manage your processes**

Internal processes are those that you use to implement your service—to get the job done. Client-facing processes are those that your customer sees. Process management, both internal and client facing has the power to elevate commodity processes to greatness or to catapult great products to excellence. Among the first people we would hire if we were starting a new eDiscovery company would be a great Chief Operating Officer (COO).

The job of the COO in an eDiscovery organization is to establish documented, efficient, repeatable processes. These processes should work to minimize the opportunities to make mistakes and maximize the opportunities to learn from those mistakes.

Standard operating procedures make your business less dependent on any specific individuals and make it more reliable. They capture the wisdom of the work place so you don't have to keep relearning it (at your customer's expense). Standard operating procedures often seem like a pain to comply with, but they can save your organization when problems arise. And problems will inevitably arise.

Establishing these processes and keeping them up to date as more experience is gained will help you to avoid a hero culture. In a hero culture, only a few people know how to do certain things. The organization relies on them and they feel their value by coming through in a pinch. We know companies that are always feeling a pinch and are always relying on their heroes to get them through it. The heroes are the ones, for example, who are willing to stay up all night to make sure that a short deadline is met. The point is not that you should not appreciate these heroes, but if you have the right processes and procedures in place, they should not be needed, or at least not very often. Great restaurants, for example, can quickly fade to mediocrity if they lose their star chef and the recipes in his or her head. Document and spread your expertise around.

## **People**

Electronic discovery organizations never seem to have enough people, but great people are the essence of a great eDiscovery organization. Joel Spolsky, who writes about software development, described evidence that the most productive software developers can be as much as ten times more productive than the average developer. The best ones do faster, better, more reliable work, and contribute more to their projects. The same is true in eDiscovery companies. Some people argue that it is even true of busboys (or even busgirls). One excellent employee can produce more and better work than five or maybe even ten mediocre ones.

Many companies seem to believe that all it takes is a small number of heroes and a troop of soldiers to carry out the heroes' directions (thanks again to Spolsky). If eDiscovery were a true commodity business, then this might be so. It would be possible to take a Walmart approach, but the hardest thing about eDiscovery is dealing with all of the unknowns in the data. People seem to be endlessly creative in how they process, store, and organize electronic data. They use spreadsheets to write letters. They embed PST files in emails, which are then zipped and embedded in other PST files. Having people who can deal with this boundless creativity can be the difference between succeeding or

failing on a project or a business. The challenges faced by these data jockeys are not much different from those faced by developers, but the time pressure is usually much more severe when dealing with eDiscovery than with software development. Intelligence and skill may, if anything, be of higher value in eDiscovery than in software development.

Your customer-facing people are also critical to your success. Your project managers need not only to know their stuff, but they have to make your customers feel deep inside that they really are experts. It is not enough to be an expert, your people have to convey this expertise. They have to be therapists, friends, cheerleaders, diplomats, and generals, all rolled into one package. In eDiscovery, it is often the case that customers think that they know more than they actually do. Protecting your customers from their own ignorance is priceless.

A dedicated, motivated, effective sales and marketing team is also essential. Build a team that can bring in the business to keep your business growing. You cannot do the work if your sales team cannot bring in the jobs.

Don't cheap out on your people. They are people, not resources. Get the best people and give them the best working conditions you can. Great eDiscovery organizations have exceptional people and exceptional working conditions keep them.

## **Technology**

Technology is actually the least important part of your excellent eDiscovery organization. Customers do not buy technology, they buy the results that your service provides. They buy access to the people that they work with. Even though technology may be the least important part of the puzzle, it is still critical. Your technology has to work as advertised. It has to be reliable. Most important, it has to address the needs of the lawyers who will depend on it.

Innovative-sounding technology may be useful for opening doors. People are often eager to learn about the "latest and greatest," but what closes deals is the functionality that the technology provides. Whiz bang technology is useful when it saves time, improves accuracy, saves the client money, and helps to win cases.

With today's volume of electronic discovery, old technologies are just not enough. Lawyers need help coping with the mass of material that has to be selected and reviewed. The old fashioned methods that were adequate for paper discovery are too expensive, take too long, and are likely to be inadequately accurate for today's eDiscovery burden. Your technology has to help relieve the burden and the cost of eDiscovery.

Very often the lawyers will not understand your technology, but that is no reason to conceal it from them. You must help them to understand how your technology will help them to win cases in an expeditious manner, how it will help to satisfy their clients, and generally make eDiscovery more pleasant (or at least more tolerable). You ought to be able to explain to your customer, your neighbor, or your mother how your technology works and why it is better than the alternatives. If your sales and marketing team cannot

explain it, train them further and give them collateral material that does. Concealing your technology behind claims of proprietary black boxes will not win you business and does a disservice to your customers. You cannot be afraid of making your process transparent in the name of protecting intellectual property. That is what patents are for.

## **Execution**

The final part of your great eDiscovery organization is execution. The advice given here cannot guarantee that you will have a great eDiscovery organization, but without these things, you will very likely fail. You still have to deliver what you promise.

Part of effective execution is continuous assessment of risk and adjusting to minimize it. When things go wrong, you have to be prepared to quickly identify what happened, communicate openly with your client concerning the issue and the steps being taken to resolve it, determine what aspect of your standard operating procedures need to be improved and reinforced to prevent a recurrence. Make appropriate changes that reflect lessons learned from the experience while ensuring that your organization and employees are protected from unjustified attacks and scapegoating attempts.

Reflecting on failure can be painful and trying, but not learning from mistakes is worse. Organizations that are willing to learn and embrace change that furthers the interests of their customers can archive true greatness.

We often get asked for ideas to improve existing eDiscovery service providers' offerings or to provide advice to companies contemplating entering the eDiscovery market. This essay is, of course, just a brief overview of what we think are the most critical factors in running a great eDiscovery organization. Still, we think that people can get so entangled in the details that they fail to structure their approach to accomplish these specific goals. Or, worse, they get so busy resolving the day to day crises that they think that they don't have time to address the underlying problems that cause these crises. These simple rules can help to structure an eDiscovery organization that is effective and successful.

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OrcaTec provides a range of services and software centered on our core competence of information analysis and retrieval. OrcaTec's principals, Brian Golbère and Herbert Roitblat, have long been at the forefront of electronic discovery methods and technology. The OrcaTec Information Retrieval Toolkit provides software for near-duplicate clustering, concept searching, interesting phrase finding, and language identification. For more information, visit [www.orcatec.com](http://www.orcatec.com) or email [info@orcatec.com](mailto:info@orcatec.com).