



# Is Your Discovery Strategy Trapped in 2005? Here's a Time Machine

# Is Your Discovery Strategy Trapped in 2005? Here's a Time Machine

By: Derek Duarte (SVP of Business Development - UnitedLex), Kyle Kelly (Sr. Technical Program Manager - Coinbase), and Misha De Larkin (Sr. Director of IT Legal - Flex)

Corporations are in-sourcing eDiscovery technology and talent at record rates. According to an [Altman Weil](#) survey, 54.8 percent of legal departments say they are willing to pull work in-house. Legal is on a mission to consolidate their law firm partners and unify their data to minimize costs, mitigate risk and manage widening workloads, but they are slamming into roadblocks. Why?

In-sourcing alone isn't nearly enough to reap returns from eDiscovery investments. eDiscovery demands change across multiple dimensions: the skills that are needed, how to assess the value of services, and even what constitutes a document. Most corporations adopt eDiscovery technology, but maintain an analog mindset pulled from 2005's playbook.

To sidestep setbacks, corporations should revisit their entire approach to eDiscovery from who is charged with driving change to technology's role in the process to the importance of storytelling, inside and outside of the organization. Following, I address some of the challenges corporations are facing, why they are arising and offer specific tips to break through barriers to bring discovery fully into the digital age.

## 1. Build a multi-dimensional team

E-discovery requires multi-dimensional skills. Law, finance, technology and data are all critical. Lawyers can't go it alone, but often do. Corporations expect technology to pick up the slack, but technology is only as good as the people and processes you put in place to support it.

In other cases, paralegals are the ones charged with overseeing the effort. While they excel at the financial aspects of the process, litigation strategy is usually less in their purview. One way or another, eDiscovery teams typically lack the full breadth and depth of skills needed to drive significant change.

Tip: Set up your eDiscovery program for success by having the right people and partners in place for the right reasons aligned with your strategy. Maybe build a team comprised of a partner and paralegal and augment the technology and data expertise to outside support. Even with an exhaustive list of keywords, eDiscovery technology can't fly solo. No matter the shape of the org chart, it takes a team with a range of talent to harness the full potential of digital to modernize discovery.

## 2. Don't lengthen to do lists, cultivate consensus

Dictating changes to law firms, paralegals and IT will only lead to stalemates. They'll see eDiscovery as another frustrating addition to their already long to-do lists.

Tip: Make a compelling case for change by explaining how this is going to take work off their plate, not add more. For example, how many times has IT gotten a frantic Friday night phone call for attorneys seeking access to data? Explain how embracing eDiscovery will mean the end of those days. Ask IT if they are having trouble getting budget through on data governance software. Propose sharing budget to help them achieve their similar goals. Same with law firms that are tired of busy work of submitting invoices and financial analysis. Position it as an issue of greater efficiency, not lack of trust.

## 3. Focus on Total Project Cost to assess value: Hare vs. Turtle

Law departments are putting too much emphasis on creating a common data denominator. Sometimes you can compare apples to apples and oranges to oranges, but sometimes those comparisons are not apt. The race between the hare and the turtle is more representative.

For example, consider these two scenarios: One person is reviewing all documents available in a case, responsive and not, and they are using automation and going fast. In a different situation, another counsel is reviewing documents and being methodical and moving slow. The second reviewer finds the key piece of evidence at the start of the case, while the first doesn't until 1.5 years in. Who outperformed? Who won the race?

Tip: Don't overly fixate on traditional discovery metrics. Look at the total cost of projects instead. How did the law firm approach your case? Is the law firm spending time on the front end to build a case strategy? Are you seeing phased discovery? Or, are they ignoring important steps and rushing at the last minute and racking up a big bill, trying to throw everything against the wall in a race against time?

Remember that the unit price can be higher but total cost can be cheaper. Beware of advice to invest in storing a terabyte of data when it would be more cost-effective to employ a thoughtful approach. Sloppy discovery strategy can yield highest costs and mounting risk.

## 4. Tell a clear digital data story

Businesses believe they can throw big data at the eDiscovery problem. The philosophy is to upload a massive amount of data and hope the technology will strategize for you. But, when it comes to setting a eDiscovery strategy, you drive the data, the data shouldn't drive you and that takes looking at data differently.

In the digital age, what is a document? For example, say we have been texting for two years, is the "document" our entire text history? Is it a single day of texting? An hour? I can tell the judge I have to search a million entries in single database or

I can describe the database as a huge office building that is organized into floors and searchable by departments. We don't need to search the entire office building corner by corner.

Tip: Don't spend a fortune storing data and creating a mile-long list of keywords in an attempt to strike gold. Instead, narrow the field of discovery by telling a compelling story to the judge and opposing counsel about what facts are important and why and where they lie. Chances are opposing counsel doesn't want to search a million pieces of data either. Think strategically about your cases and customize data searches in alignment with your goals for positive outcomes. Ultimately, eDiscovery isn't about documents or tech, it's about story telling. What's important is fact development not doc location.

Corporations have adopted eDiscovery technology, but their approach to leveraging it is stuck in the past. You can't apply a 2005 mindset in today's digital world and expect innovative results. eDiscovery is not about combing every piece of data. eDiscovery is the art of mixing human and technology to find the facts and to tell a compelling story in the most efficient way possible and to propel positive outcomes. If you want a best-in-class eDiscovery program, build a diverse team across technology, data, legal and finance. With the right people, processes and technologies working in concert, you can fulfill eDiscovery's potential.



**want you first.  
We second that.**

We don't have a one size fits all approach, because clients are like cases. No two are alike.

Learn more at  
[Unitedlex.com/litigation](https://www.unitedlex.com/litigation)

