

10 Best Practices: Forms of Production

Understanding Key Issues and Solutions at Early Stage Discovery
January 28, 2014

eDiscovery
WebinarSeries

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About Lexbe

Lexbe is an Austin, TX based eDiscovery software and services provider.

- **Lexbe eDiscovery Suite**

The Lexbe eDiscovery Suite is a hosted eDiscovery processing and review tool. Users can load a variety of file types, process for review, OCR for search, and conduct document reviews, productions, prepare for depositions & analyze transcripts, conduct case analytics, prepare for dispositive motions, and provide litigation support during trial.

- **Lexbe eDiscovery Services**

Lexbe does large volume document culling, processing from native to PDF or TIFF, load file creation, high-volume OCR of image files, Rule 26 and project management consulting, and related eDiscovery Services.

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Questions & Technical Issues

If you have any questions or technical issues, please e-mail them to:

webinars@lexbe.com

Questions will be forwarded to Gene and answered during the webinar or via e-mail if we run out of time.

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Gene Albert bio

- **Current**

Principal of Lexbe LC, a developer and provider of cloud-based litigation review and document management software & eDiscovery services

- **Prior Experience**

-Legal experience as in-house counsel and in private practice
-Business experience in software, medical services and internet-based businesses

- **Education**

-MBA & BA, University of Texas
-JD, Southern Methodist University

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Agenda

10 Best Practices for Forms of Production

1. Know the rules (FRCP/state/local)
2. Match your review request with your review approach
3. Know the common file deliverables in productions
4. 'Meet & Confer' (Rule 26) to your advantage
5. Request specific file types & metadata as needed
6. Track custodians & handle deduplication
7. Address placeholders, databases and unusual file types
8. Negotiate a comprehensive discovery order in complicated cases
9. Watch out for redactions traps
10. Increase privilege review accuracy with near dup checks

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Best Practices for Forms of Production

1. Know the Rules and Your Options

FRCP 34(b)

- If No Agreement - Requires that ESI (electronic stored information) be provided in a form in which it is ordinarily maintained or a form that is reasonably usable. (*E.g., native format*)
- If Specific Request, No Objection - If the requesting party specifies a different form, and the receiving party does not object, the receiving party may be bound to the requested form of production.
- If Specific Request, With Objection - If the requesting party specifies a different form, the producing party can object and propose its own form.

Other Rules

- Local Rules - Specific federal courts may have local rules specifying forms of production.
- State Laws - Many states have similar rules.

Best Practices for Forms of Production

2. Match Your Approach with Your Request

Possible Review Application Options

- Litigation Review Application - Designed to organize, search, code & produce large data sets. Some work best or only with some data types (e.g., TIFF with load files); some with several or many types (natives, PDFs, TIFFs). Some can load and work with native files and some require pre-processing and conversion. Applications can be workstation, firm server or internet-based.
- Review email/files on a local computer- Some review small email data sets directly in Outlook. Other natives files may simply be reviewed on a local computer.
- Review in PDF - Some convert everything to PDF and review on computer without a Litigation Review Application.
- Consistent Request - Match your production request/form of production to your intended review application.

Best Practices for Forms of Production

3. Know the Possible Forms of Production

Native File Type

What is it?

Saved as designated by the original application used to create it (e.g. a DOC or DOCX file created by Microsoft Word)

Advantages

- Most accurate approximation of what custodian saw and used
- Minimal size expansion
- All metadata available

Disadvantages

- Need application for all file types
- Can increase attorney review time if no paginated equivalents

Notes

- Processing still needed
- Often must produce in addition to other formats
- Increased privilege issues

Best Practices for Forms of Production

3. Know the Possible Forms of Production

Near Natives

| | |
|---------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| What is it? | Saved as designated by the original application used to create it (e.g. a DOC or DOCX file created by Microsoft Word) |
| Advantages | Allows structured databases and specialty applications to be converted to reviewable types (e.g., Excel) |
| Disadvantages | <ul style="list-style-type: none">• Usually needs to be converted by specialists with case subject matter expertise• Relatively expensive |
| Notes | <ul style="list-style-type: none">• Usually 'as needed' only• Rare/special file types may be reviewed in original application without conversion |

Best Practices for Forms of Production

3. Know the Possible Forms of Production

Rendered HTML

What is it?

Native files converted or rendered to HTML equivalents for review

Advantages

- Size expansion less than images (TIFFs)
- Retains native searchability
- Fast processing for review start

Disadvantages

- May only be a rough document approximation
- Cannot be Bates/control stamped per page
- With scanned ESI can be a lot of OCR errors

Notes

- Not a production format usually
- Usually must still produce as Native, PDF and/or TIFF

Best Practices for Forms of Production

3. Know the Possible Forms of Production

PDF

| | |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| What is it? | Natives converted to PDF from native or scanned and OCR'd |
| Advantages | <ul style="list-style-type: none">● Familiar & easy to use● Does not require review platform● Page-level Bates stamping; Retains color● Size expansion less than images (TIFFs) |
| Disadvantages | <ul style="list-style-type: none">● Some review platforms may not support well● A complex format which can present corruption issues downstream in review |
| Notes | <ul style="list-style-type: none">● Different types of PDFs:<ul style="list-style-type: none">-Text-Based (converted from native)-Image-only (scanned or rasterized)-Text-under-image (OCR added as text layer)-Acrobat Portfolio (must be extracted in most platforms) |

Best Practices for Forms of Production

3. Know the Possible Forms of Production

TIFF & Text

What is it?

Natives converted to TIFF-images, usually single-paged; or scanned

Advantages

- Traditional review format (predates PDF)
- Required for some platforms
- Robust bitmapped file type (image-viewer used)

Disadvantages

- Cumbersome--requires separate text files and load file to use
- Requires review platform to pull together
- Substantial file expansion from native (3-5X)
- May lose color, hidden and other data

Notes

- Usually in the form of one image and one text file per page (older text in load file)
- Document breaks and associated metadata are stored in one or more separate 'load files', which can corrupt


Best Practices for Forms of Production


3. Know the Possible Forms of Production


Blended Productions


What is it?


Delivery in multiple formats as needed:
Native, PDF & TIFF/text, with multiple
load file formats


 Enron Production 2014-01-15

 IMAGES

 LOAD FILES

 NATIVES

 PDFS

 TEXT

Advantages

- Lessens format discussions/delays
- Flexible for multiple platforms
- PDFs available for easy transfer;
Natives for backup and review;
TIFFs for review systems that
require it (if needed)
- Versions linked for easy comparison

Disadvantages

- If TIFFs produced, larger hosting
space required

Notes

- Multiple version of load files
provided for system flexibility


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Best Practices for Forms of Production

3. Know the Possible Forms of Production

Load File

What is it?

Structured text or database type file that references document files and associates metadata and other information, for use in Litigation Review Database Systems

May Be Included

- Document and email metadata
- Document breaks (for single page TIFFs)
- Email family associations
- Map to multiple versions of files (e.g., TIFF, Text, PDF, Native)

Formats in Use

- DAT (Concordance, Ringtail, Relativity)
- DII (Summation)
- LFP (iPro)
- Excel XLSX (Lexbe)

Notes

- Production may include multiple load files formats
- Can be used in TIFF, PDF and Native productions
- Some systems can load multiple formats

Best Practices for Forms of Production

3. Know the Possible Forms of Production

Load File in Excel (Lexbe) Format

From: John J Lavorato
 Sent: Friday, May 26, 2000 10:19:00 AM
 To: John Zufferli; John Zufferli
 Subject: Molson ad
 Attachments: molson-canadian-i-am.mov.1

----- Forwarded by John J Lavorato/Corp/Enron on
 05/26/2000
 09:16 AM -----

ENRON 0000001

| | A | B | C | D | E | F |
|---|---------------|---------------|---------------|---------------|---------------|------------|
| 1 | BEGDOC | ENDDOC | BEGATT | ENDATT | PARENTID | RECORDTYPE |
| 2 | ENRON 0000001 | ENRON 0000001 | | | | eEmail |
| 3 | ENRON 0000002 | ENRON 0000002 | ENRON 0000001 | ENRON 0000002 | ENRON 0000001 | Attachment |
| 4 | ENRON 0000003 | ENRON 0000003 | | | | eEmail |
| 5 | ENRON 0000004 | ENRON 0000004 | ENRON 0000003 | ENRON 0000030 | ENRON 0000003 | Attachment |
| 6 | ENRON 0000005 | ENRON 0000030 | ENRON 0000003 | ENRON 0000030 | ENRON 0000003 | Attachment |

| | G | H | I | J | K | L | M | N | O |
|---|------------|-------------|--------------|--------------|-----------------|----------------------------------|----|---|------------------|
| 1 | DATESENT | TIMESENT | DATERECEIVED | TIMERECEIVED | FROM | TO | CC | B | SUBJECT |
| 2 | 05/26/2000 | 10:19:00 AM | 05/26/2000 | 10:19:00 AM | John J Lavorato | John Zufferli{John Zufferli} | | | Molson ad |
| 3 | | | | | | | | | |
| 4 | 09/20/2000 | 08:33:00 AM | 09/20/2000 | 08:33:00 AM | John J Lavorato | Beverly Stephens{Beverly Stepher | | | trading day 9/19 |
| 5 | | | | | | | | | |

| | W | X | Y | Z | AA |
|---|-------|--------|------------------------------------|-------------------------------|------------------------------|
| 1 | PAGES | VOLUME | ORIGINALSPATH | TEXTPATH | PDFPATH |
| 2 | 1 | VOL01 | \\ORIGINALS\0001\ENRON 0000001.msg | \\TEXT\0001\ENRON 0000001.txt | \\PDF\0001\ENRON 0000001.pdf |
| 3 | 1 | VOL01 | \\ORIGINALS\0001\ENRON 0000002.mov | \\TEXT\0001\ENRON 0000002.txt | \\PDF\0001\ENRON 0000002.pdf |
| 4 | 1 | VOL01 | \\ORIGINALS\0001\ENRON 0000003.msg | \\TEXT\0001\ENRON 0000003.txt | \\PDF\0001\ENRON 0000003.pdf |
| 5 | 1 | VOL01 | \\ORIGINALS\0001\ENRON 0000004.xls | \\TEXT\0001\ENRON 0000004.txt | \\PDF\0001\ENRON 0000004.pdf |
| 6 | 26 | VOL01 | \\ORIGINALS\0001\ENRON 0000005.xls | \\TEXT\0001\ENRON 0000005.txt | \\PD |



Best Practices for Forms of Production

3. Know the Possible Forms of Production

Load File in DAT (Concordance) Format

From: John J Lavorato
 Sent: Friday, May 26, 2000 10:19:00 AM
 To: John Zufferli John Zufferli
 Subject: Molson ad
 Attachments: molson-canadian-i-am.mov.1

----- Forwarded by John J Lavorato/Corp/Enron on
 05/26/2000
 09:16 AM -----

ENRON 0000001

Field Delimiter

!BEGDOC!b!BEGDOC!b!BEGATT!b!BEGATT!b!ATTACHMENT!b!PARENTID!b!RECORDTYPE!b!DATESENT!b!D!MESENT!b!
 DATERECEIVED!b!TIMERECEIVED!b!FROM!b!TO!b!CC!b!BCC!b!SUBJECT!b!DATECREATED!b!TIMECREATED!b!DATEMO
 DIFIED!b!TIMEMODIFIED!b!FILENAME!b!FILEEXTENSION!b!SOURCEFILEPATH!b!PAGES!b!VOLUME!b!ORIGINALSPATH
 !b!TEXTPATH!b!PDFPATH!b!ENRON 0000001!b!ENRON 0000001!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 Email !b!b!05/26/2000!b!10:19:00
 AM!b!b!05/26/2000!b!10:19:00 AM!b!John J Lavorato!b!John Zufferli {John Zufferli}!b!b!b!b!b!b!b!b!b!b!b!b!b!
 Molson ad!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 2000-05-26 10:19:
 00AM - Molson ad!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 documents\2000-05-26 10:19:00AM - Molson ad.msg!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 1!b!b!VOL01!b!b!ORIGINALS\0001\ENRON 0000001.
 msg!b!b!TEXT\0001\ENRON 0000001.txt!b!b!PDF\0001\ENRON 0000001.pdf!b!b!ENRON 0000002!b!b!ENRON 0000002!b!b!ENRON
 0000001!b!b!ENRON 0000002!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 Attachment !b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 molson-canadian-i-am.mov!b!b!
 mov!b!b!john_lavorato_000_1_16\Top of Outlook data file\lavorato-j\John_Lavorato_Jun2001\Notes Folders\All documents\2000-05-26
 10:19:00AM - Molson ad.msg\molson-canadian-i-am.mov.1!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 1!b!b!VOL01!b!b!ORIGINALS\0001\ENRON 0000002.
 mov!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 \TEXT\0001\ENRON 0000002.txt!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 \PDF\0001\ENRON 0000002.pdf!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 0000003!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!b!
 Email

Best Practices for Forms of Production

3. Know the Possible Forms of Production

Load File in DII (Summation) Format

```
From: John J Lavorato  
Sent: Friday, May 26, 2000 10:19:00 AM  
To: John Zufferli/John Zufferli  
Subject: Molson ad  
Attachments: molson-canadian-i-am.mov.1
```

```
----- Forwarded by John J Lavorato/Corp/Enron on  
05/26/2000  
09:16 AM -----
```

ENRON 0000001

Field Token

```
;Record 1  
@T ENRON 0000001  
@MEDIA eEmail  
@C ENDDOC# ENRON 0000001  
@C PGCOUNT 1  
@D @\IMAGES\0001\  
ENRON 0000001.tiff
```

Record Token

```
;Record 2  
@T ENRON 1000 0000002  
@PARENTID ENRON 0000001  
@MEDIA Attachment  
@C ENDDOC# ENRON 0000002  
@C PGCOUNT 1  
@D @\IMAGES\0001\  
ENRON 0000002.tiff
```

```
;Record 5  
@T ENRON 0000005  
@PARENTID ENRON 0000003  
@MEDIA Attachment  
@C ENDDOC# ENRON 0000030  
@C PGCOUNT 26  
@D @\IMAGES\0001\  
ENRON 0000005.tiff  
ENRON 0000006.tiff  
ENRON 0000007.tiff  
ENRON 0000008.tiff  
ENRON 0000009.tiff  
ENRON 0000010.tiff  
ENRON 0000011.tiff  
ENRON 0000012.tiff
```

Best Practices for Forms of Production

4. 'Meet & Confer' to your Advantage

- **FRCP 26 'Meet & Confer' Timing**
 - Parties must meet & confer 21 days before the scheduling conference
 - Scheduling conference must occur within 120 days of filing (FRCP 16)
- **FRCP 26 'Meet & Confer' Requirements**
 - Discuss ESI preservation
 - Develop a proposed discovery plan
 - Submitting to the court a written report outlining the plan
 - Assumes 'collaboration' and 'good faith'
- **How helpful?**
 - Can help resolve many matters, or
 - Can be a total waste of time

Best Practices for Forms of Production

4. 'Meet & Confer' to your Advantage

- **Before the Conference**
 - Identify Custodians relevant to your production and your opponents
 - Map amount of ESI in GBs you expect to produce
 - Be ready to discuss any ESI that is not 'reasonably accessible'
 - Have proposed keyword searches if you plan to use them
 - Know what form of production you prefer and load file requirements

- **At the Conference**
 - Have a technical representative from the client or eDiscovery vendor available if needed to discuss particularities of ESI and Production issues
 - Determine what Document Review Platform/Approach your opponent will use and what Form of Production they will request

Best Practices for Forms of Production

4. 'Meet & Confer' to your Advantage

- **After the Conference**
 - Memorialize agreements in an agreed order
 - Document disagreements

- **Tips**
 - Know what you are agreeing to. Scope and cost of ESI production commitments
 - Most cases in this area involve interpreting what the parties agreed to
 - Watch time commitments as ESI technical issues can delay
 - Native production is common but can increase time for privilege review
 - Metadata production format should be understood
 - Address databases and other unstructured or unusual data that may need to be converted to Near Native for production

Best Practices for Forms of Production

5. Request Specific File Types & Metadata

File Types Requested

- TIFFs or PDFs
 - Some Review Applications require a paginated version to load (TIFF/PDF)
 - This allows for review application independence and page level Bates stamping

- Loadfiles - These usually should include
 - Some Review Applications require; good idea even if not required
 - File metadata (e.g., email date, time, sender, subject)
 - Page breaks for single paged TIFFs; email attachment associations

- Natives
 - Increasingly common to request in addition to TIFF or PDF
 - Some Review Applications allow Natives to be input directly and convert to another format (PDF, TIFF, HTML or PNG) for review, redaction and production

Best Practices for Forms of Production

6. Track Custodians & Handle Deduplication

○ Custodian Tracking

- Attributing specific files/ESI to custodians is increasingly requested
- Custodians must be associated with incoming Natives or loadfiles
- Custodian association also may be needed for chain of custody/admissibility

○ Deduplication

- Emails and other files may be deduplicated as part of a review process
- Exact copies of emails/other files may be deleted/filtered from review set
- Deduplication is usually done only within each custodian (vertical deduplication) to retain custodian associations of duplicates
- Deduplication between custodians (horizontal deduplication) may also be done, but is more complicated as custodian associations of deduped files must be retained. Also adding and removing custodians can be very complicated in a horizontal deduplication.

Best Practices for Forms of Production

7. Placeholders, Databases Other File Types

○ **Unconverted Files & Placeholders**

- When a production is being done in paginated form (TIFF or PDF), some files will not convert as corrupted, password protected, of unusual type, etc.
- These files will be produced with a placeholder file, noting the unconverted file and allowing Bates-stamping of the placeholder.
- Native versions of unconverted files can be examined as needed.

○ **Databases and Other Structured/Unstructured Data; Files**

- Databases and similar data usually is not produced natively
- Instead reports are specified and run to meet production requirements.
- Intermediate versions of database reports may also be saved into Excel files and produced natively as Excel

○ **Unusual Filetypes; Applications**

- Unusual/rare file types may be produced natively
- Alternatively they may be separately examined by an expert

Best Practices for Forms of Production

8. Comprehensive Discovery Orders

- **Comprehensive Discovery Orders**
 - In large, complex, or multi-party litigation, a comprehensive discovery order may be appropriate.
 - Special masters may handle disputes

- **Possible Items to Cover**
 - General Format of Production; How Email is Handled; Metadata
 - Database handling
 - Documents in hard copy; scanning specifications
 - Handling of Dups
 - Bates numbering protocols
 - Search term disclosure, and procedure to handle disagreements
 - Procedures for Predictive Coding, if utilized
 - Privilege logs
 - Costs of Production and any cost shifting
 - Example complex order in Deepwater Horizon litigation:
<http://www.laed.uscourts.gov/OilSpill/Orders/PTO16.pdf>

Best Practices for Forms of Production

8. Comprehensive Discovery Orders

- **Example complex order in Deepwater Horizon litigation**
<http://www.laed.uscourts.gov/OilSpill/Orders/PTO16.pdf>

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

| | | |
|---------------------------------|---|--------------------|
| IN RE: OIL SPILL by the OIL RIG | : | MDL NO. 2179 |
| “DEEPWATER HORIZON” in the | : | |
| GULF OF MEXICO, on | : | |
| APRIL 20, 2010 | : | SECTION: J |
| | : | |
| | : | |
| | : | JUDGE BARBIER |
| | : | MAG. JUDGE SHUSHAN |
| | : | |

.....

PRETRIAL ORDER NO. 16

[Regarding Production of Documents and Electronic Data]

WHEREAS, representatives of the Plaintiffs’ Steering Committee (“PSC”) and Defendants’ Steering Committee (“DSC”), have met and conferred on the procedures and format relating to the production of documents and things, and having agreed on a format for all such productions, it is SO ORDERED:

1. **General Format of Production.** The parties agree to produce documents either



Best Practices for Forms of Production

9. Watch Out for Redactions Traps

○ Redaction Issues

- Privileged and sensitive information may be redacted prior to production
- If Native docs are produced, the original natives should be withheld as they can't be directly redacted
- Redaction is done on TIFF, other imaged, or PDF converted versions
- For TIFFs, text must be re-OCRed
- PDFs must have text layer re-OCRed
- Natives including redacted data should be withheld
- Container files (e.g., MSG, ZIP) including redacted data should be withheld

Best Practices for Forms of Production

9. Watch Out for Redactions Traps

Redaction

[Open Redaction Editor](#)

[Upload Manual Redaction](#)

Delete Redacted Document

The screenshot shows a document viewer interface with a dark blue header containing tabs for 'Hits', 'Original', 'Html', 'Page', 'Pdf', 'Text', and 'Redacted'. The 'Redacted' tab is selected. Below the tabs, the document text is displayed. The visible text reads: 'heavily on this document to corroborate Fastow's testimony that he discussed Global Galactic with Skilling. *Id.*' Below this text is a large rectangular area that has been redacted, indicated by a large 'X' drawn across it and the word 'Redacted' centered within the area.

Best Practices for Forms of Production

10. Near Dup Checks for More Accuracy

- **Near Dup Identification**
 - A Near Duplicate identification groups documents that are similar but not exact duplicates
 - Near dup grouping is very helpful but processing intensive
- **Near Dup Uses**
 - Group similar documents together (e.g., versions of same doc, email threads) to allow mass tagging to speed review
 - Check near dups of privileged documents to reduce potential of inadvertent release of privileged information
 - Quickly find similar versions of key documents during review

Thank You

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Next Month's Webinar:
Best Practices in eDiscovery Search

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