



# Top 10 Mistakes to Avoid When Creating Productions

*Steer Clear of Common Pitfalls and Flawlessly Execute Productions*

October 30, 2014

**eDiscovery  
Webinar Series**

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Principal, Lexbe LC

# eDiscovery Webinar Series

## Info

- **Takes Place Monthly**
- **Cover a Variety of Relevant eDiscovery Topics**
- **Presentations Available for Download by Registrants.**

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# eDiscovery Webinar Series

## 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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# eDiscovery Webinar Series

## Questions & Technical Issues

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

[webinars@lexbe.com](mailto:webinars@lexbe.com)

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

# eDiscovery Webinar Series

## Gene Albert bio

- **Current**
  - Principal of Lexbe LC, a developer and provider of cloud-based litigation review and document management software & eDiscovery and litigation support services
  - Planning Committee, State Bar of Texas Electronic Discovery Institute
- **Selected Publications**
  - Technology, Ethics and eDiscovery, University of Texas School of Law (May 22, 2014)
  - Keep eDiscovery Costs Under Control, 26th Annual Technology Law Conference, University of Texas at Austin (May 24, 2013)
- **Prior Experience**
  - In-house counsel and in private practice
  - Executive in software, medical services and internet-based businesses
- **Education**
  - MBA, University of Texas (2005)
  - JD, Southern Methodist University (1983)
  - MBA & BA, University of Texas (1979)

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# eDiscovery Webinar Series

## Agenda

### *Top 10 Mistakes to Avoid When Creating Productions*

1. Being unaware of the rules (FRCP/state/local)
2. Neglecting to match review requests with your review approach
3. Not knowing the common file deliverables in productions
4. Missing the opportunity to use 'Meet & Confer' (Rule 26) to your advantage
5. Failing to Request specific file types & metadata as needed
6. No custodian tracking causing deduplication nightmares
7. Not Addressing placeholders, databases, and unusual file types
8. Negotiating incomplete discovery orders in complicated cases
9. Stepping into redactions traps
10. Decreasing privilege review accuracy by failing to apply Near dup checks

# Top 10 Production Mistakes to Avoid

## 1. Unaware of the rules (FRCP/state/local)

### 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.



# Top 10 Production Mistakes to Avoid

## 2. Neglecting to match review requests with your review approach

### 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.



# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### 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



# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### 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"><li>● Usually needs to be converted by specialists with case subject matter expertise</li><li>● Relatively expensive</li></ul>
Notes	<ul style="list-style-type: none"><li>● Usually 'as needed' only</li><li>● Rare/special file types may be reviewed in original application without conversion</li></ul>

# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### 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

# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### PDF

What is it?

Natives converted to PDF from native or scanned and OCR'd

Advantages

- Familiar & easy to use
- Does not require review platform
- Page-level Bates stamping; Retains color
- Size expansion less than images (TIFFs)

Disadvantages

- Some review platforms may not support well
- A complex format which can present corruption issues downstream in review

Notes

- Different types of PDFs:
  - 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)



# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### 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

# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### Blended Productions

What is it?

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

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


 Enron Production 2014-01-15

 IMAGES

 LOAD FILES

 NATIVES

 PDFS

 TEXT

# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### 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



# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### Load File in Excel (Lexbe) Format

```

From: John J Lavorato
Sent: Friday, May 26, 2000 10:19:00 AM
To: John ZufferliJohn 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	\\PDF\0001\ENRON 0000005.pdf





# Top 10 Production Mistakes to Avoid

## 3. Not knowing the common file deliverables in productions

### Load File in DII (Summation) Format

```
From: John J Lavorato
Sent: Friday, May 26, 2000 10:19:00 AM
To: John ZufferliJohn 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
```



# Top 10 Production Mistakes to Avoid

## 4. Missing the opportunity to use 'Meet & Confer' (Rule 26) 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

# Top 10 Production Mistakes to Avoid

## 4. Missing the opportunity to use 'Meet & Confer' (Rule 26) 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

# Top 10 Production Mistakes to Avoid

## 4. Missing the opportunity to use 'Meet & Confer' (Rule 26) 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

# Top 10 Production Mistakes to Avoid

## 5. Failing to Request specific file types & metadata as needed

### 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
  - Many 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



# Top 10 Production Mistakes to Avoid

## 6. No custodian tracking causing deduplication nightmares

### ○ **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.

# Top 10 Production Mistakes to Avoid

## 7. Not Addressing placeholders, databases, and unusual 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





# Top 10 Production Mistakes to Avoid

## 8. No or incomplete 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>



# Top 10 Production Mistakes to Avoid

## 9. Stepping into 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

# Top 10 Production Mistakes to Avoid

## 9. Stepping into 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 navigation tabs: Hits, Original, Html, Page, Pdf, Text, and Redacted. The 'Redacted' tab is selected. Below the tabs, the document text is displayed. The first line reads 'heavily on this document to corroborate Fastow's testimony that he discussed'. The second line reads '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 above the 'X'.

# Top 10 Production Mistakes to Avoid

## 10. Failing to apply Near dup checks

- **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

# Top 10 Production Mistakes to Avoid

## 10. Failing to apply Near dup checks

### Privilege Secure+

Case Name  
Enron

Total # Groups 310

#### Privilege Grouping

Consistent	294
Inconsistent	16
Total	310

#### Work Product Grouping

Consistent	301
Inconsistent	9
Total	310

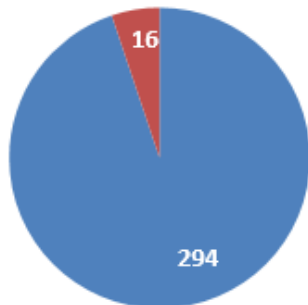
### Feature Description

Report identifies inconsistently coded privilege and work product codings

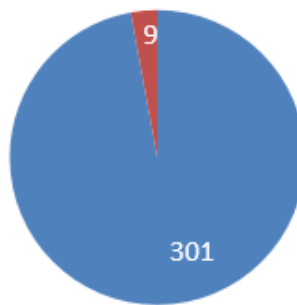
### Benefits

- Reduce privilege errors
- Avoid sole reliance on human coding consistency
- Establish safeguards to help maintain privilege

Privilege  
NearDup Groups



Work Product  
NearDup Groups



# Thank You

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