



Best Practices: Managed Review

Control, Efficiency, and Defensibility

December 4, 2014

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WebinarSeries

Bob Roberts, Esq.
Black Letter Discovery

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About Black Letter Discovery



- Black Letter Discovery, Inc. ("BLD") is a leading provider of discovery and document review solutions to law firms and corporate legal departments.
- BLD is one of the nation's fastest growing discovery solutions providers.
- Offices in San Francisco, Columbus, Cleveland and Cincinnati.
- BLD is led by professionals who have designed, managed, and staffed large-scale litigation, M&A, antitrust, and compliance projects.

Black Letter Discovery
www.blackletterdiscovery.com
800.210.7710



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About Lexbe



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

- **Lexbe eDiscovery Platform**

The Lexbe eDiscovery Platform 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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Bob Roberts Bio



- Responsible for leading BLDs Cincinnati office and manages all aspects of the managed document review process.
- Prior to joining BLD, Bob's experience included managing a portion of the civil division of the Prosecutor's Office for one of Ohio's largest counties.
- Bob also had several years experience representing private clients in state and federal courts throughout Ohio.
- Education: J.D., University of Cincinnati College of Law
B.A., University of Dayton (cum laude).

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Best Practices: Managed Review

Agenda



- About Managed Review
- Importance of Efficient Review
- Traditional Staffing v. Managed Review
- Project Management
- Leadership & Staffing
- Review Process Design
- Quality Control
- Integration With Outside Counsel
- Reporting
- Privilege Review and Logging



Best Practices: Managed Review

About Managed Review



What is Managed Review?

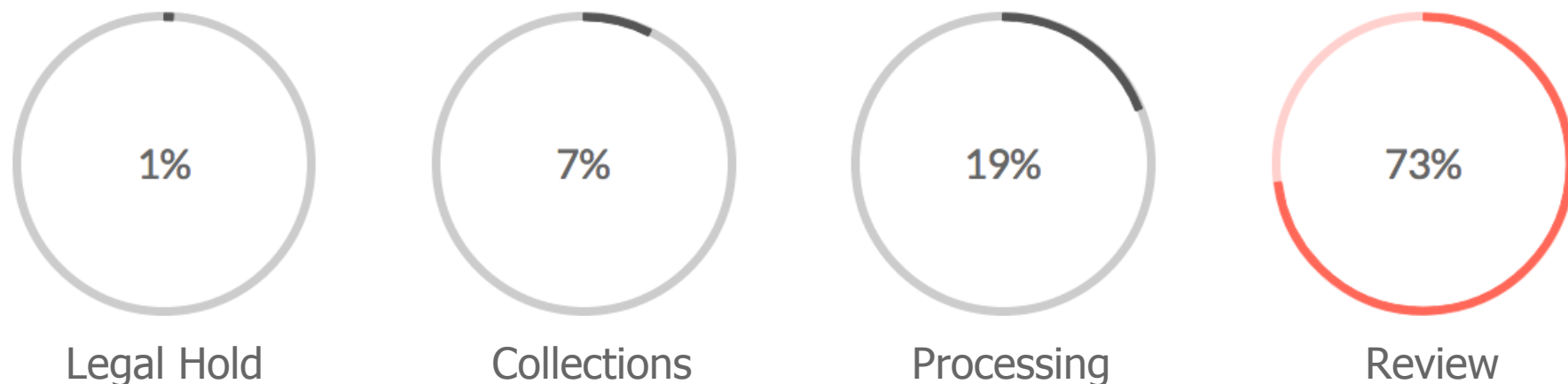
- Managed Review involves sourcing external facilities, resources, and legal personnel to staff and manage large-scale document reviews.
- Managed Review allows law firm and corporate clients to take advantage of on-demand facilities, expert project managers, and highly efficient review teams to deliver high quality, defensible, and cost-effective document reviews.

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The Importance of Efficient Review

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The Cost of eDiscovery By Phase*



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* RAND Corporation 2013

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Best Practices: Managed Review

Traditional Staffing



Uses and Applications

- Small teams with basic tasks
- Linear workflows
- Robust (and available) firm resources

Inefficiencies and Pitfalls

- Reporting structure ambiguity
- Difficult to internally scale up and deploy quickly
- Less specialized/efficient QC processes in place
- Little or no communication between reviewers

These issues can lead to inefficient and expensive engagements.



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Managed Review Benefits



- On-demand, scalable attorney review teams
- Expert Project Management
- Secure state-of-the-art review facilities
- High performance computers
- Payroll
- HR issue resolution



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Project Management



Goals

- Create and implement a review plan that conforms to the needs of counsel and the client
- Streamline communication between service providers, counsel, and the review team
- Maximize quality and defensibility
- Minimize Costs

Best Practices

- Identify review scope, project timelines, budget, quality control plans, communication schedule, reporting frequency, and privilege protocols
- Create Review Process Team (RPT) early in the process.
- Adhere to QC and review best practices
- Manage and optimize reviewer accuracy and productivity



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Leadership & Staffing



Goals

- Leverage expertise of experienced project managers and reviewers
- Implement appropriate staffing levels based on project needs, budget, and timelines
- Assemble and maintain an appropriately trained and qualified review team

Best Practices

- Deploy great reviewers v. great resumes
- Maintain access to large network of skilled document review professionals.
- Be able to quickly scale up review teams and centers regardless of location.

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Review Process Design



Goals

- Design a workflow process that optimizes the quality and efficiency of the review

Best Practices

- Organize custodians, date or other relevant factors
- Apply privilege filters
- Identify near duplicate or conceptual document groupings
- Review emails by thread
- Keyword highlighting
- Parallel privilege review and redaction pass to save time

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Review Process Design



Coding By Document

The screenshot displays a managed review interface. On the left, a 'Full Document View' window shows an email from sherri.sera@enron.com to sanjay.bhatnagar@enron.com and others, with the subject 'Harvard Business School Club of Houston'. Below this, a 'Full Text View' window shows a snippet of the email content. On the right, a 'Disc' panel is visible, containing document metadata and coding options. A red circle highlights the coding section, which includes radio buttons for 'Not Specified', 'Responsive', 'Non-Responsive', and 'Needs Further Review', along with checkboxes for 'Confidential', 'Attorney-Client Privilege', 'Attorney Work Product', and 'Document Reviewed By Me'. The 'Document Reviewed By Others' checkbox is checked. Metadata includes Doc Id, Control Number, Bates Prefix, Bates Start, Doc Source, Custodian, Title, Master Date, and Date.

- The physical layout of review platforms should support reviewer efficiency and a linear workflow

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Quality Control



Goals

- Deliver work product that is accurate and consistent across the collection
- Create procedures that minimize potential errors and coding inconsistencies
- Retain Privilege Claims

Best Practices

- Establish, follow, and document quality control protocols that conform to counsel's needs early on
- Identify questions for resolution by outside counsel
- Focused removal of all privileged documents from production sets
- Sample presumptively NR documents to validate assumptions

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Quality Control



Privilege Waived: Process Failure

Privilege Waived is an indicator of improper process.

- Thorncreek Apartments III, LLC v. Village of Park Forest, 2011 WL 3489828 (N. D. Ill. Aug. 9, 2011) (*Privilege Waived Due to Lack of Reasonable Process; All 154 Privileged Docs Produced*)
- Amobi v. D.C. Dep't of Corrs., 262 F.R.D. 45 (D.D.C. 2009) (*Judge Facciola Found Privilege Waived due to Lack of Methodology*)
- Kmart Corp. v. Footstar, Inc., No. 09 C 3607, 2010 WL 4512337 at *4 (N.D. Ill. Nov. 2, 2010) (*Privilege Waived; One attorney Review for Privilege Alone Insufficient*)

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Quality Control



Privilege Preserved: Process Matters

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- Amobi v. D.C. Dep't of Corrs., 262 F.R.D. 45 (D.D.C. 2009) (*Judge Facciola Found Privilege Waived due to Lack of Methodology*)
- Kmart Corp. v. Footstar, Inc., No. 09 C 3607, 2010 WL 4512337 at *4 (N.D. Ill. Nov. 2, 2010) (*Privilege Waived; Review Alone Insufficient*)
- Coburn Group v. Whitecap Advisors, 2009 WL 2424079 (N.D. Ill. Aug. 7, 2009) (*Privilege Not Waived; Detailed Protocol and Six Step Review Process*)

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Integration With Outside Counsel



Goals

- Maintain consistent, open and direct communication channels with counsel
- Provide clear instructions for review team as guidance evolves

Best Practices

- Adhere to a communication schedule/timeline with counsel
- Test early stage review results -- with counsel's input -- to confirm or adjust review protocols
- Document evolving guidance and decisions made through the review.
- Document and identify points of contact, acceptable communication mediums, and conflict resolution procedures



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Reporting



Goals

- Support counsel's need for up-to-date, consistent, and immediately available progress and quality control reports
- Track budget goals to ensure consistency with estimates

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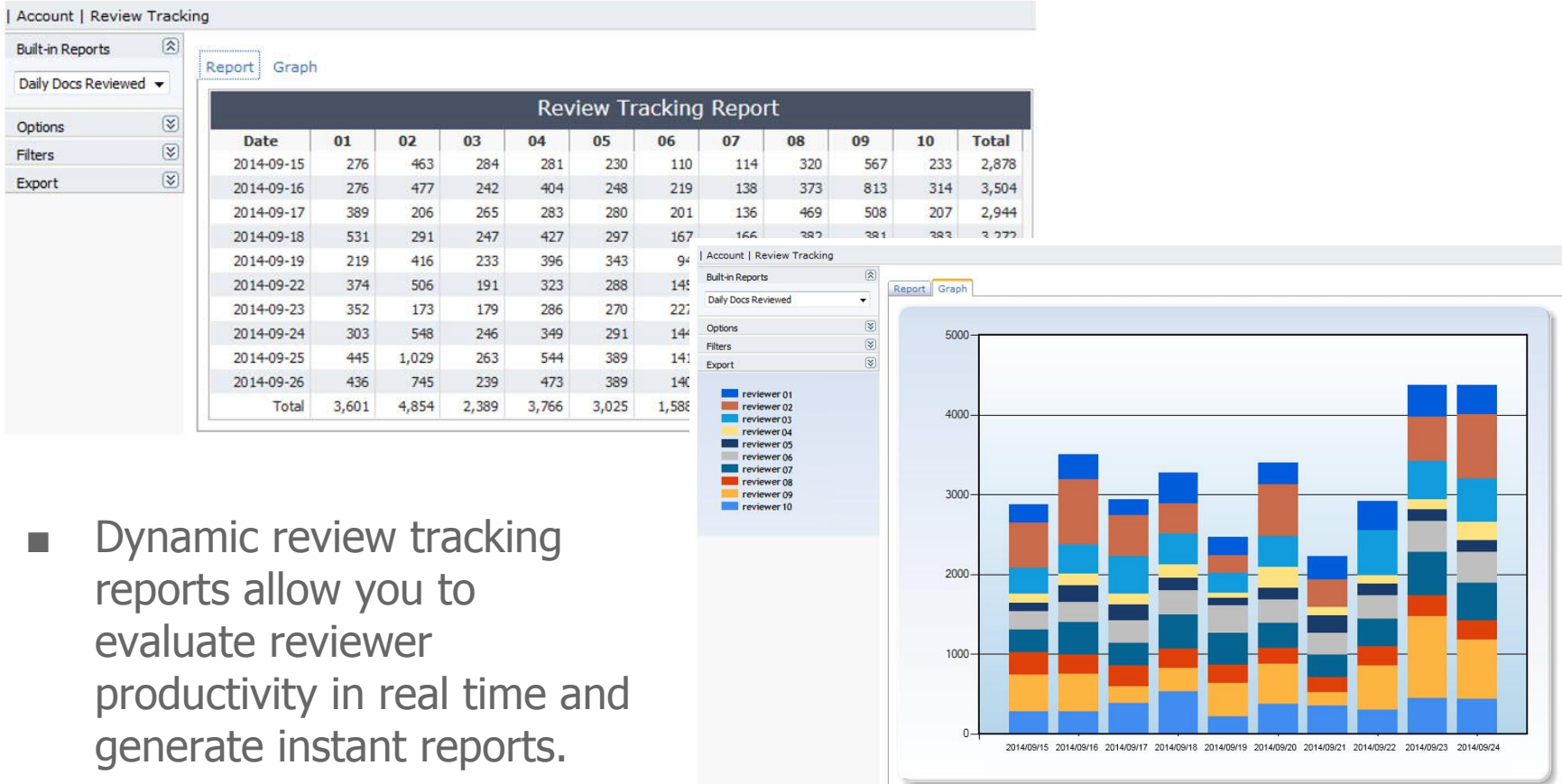
- Daily report summarizing review progress, key stats (ex. docs reviewed/hour), review completion estimates, and graphs showing review productivity trends.
- Leverage review software where possible to automatically generate progress reports.
- Final defensibility reports to summarize and document processes

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Reporting



Day-By-Day Reviewer Tracking Reports and Graphs



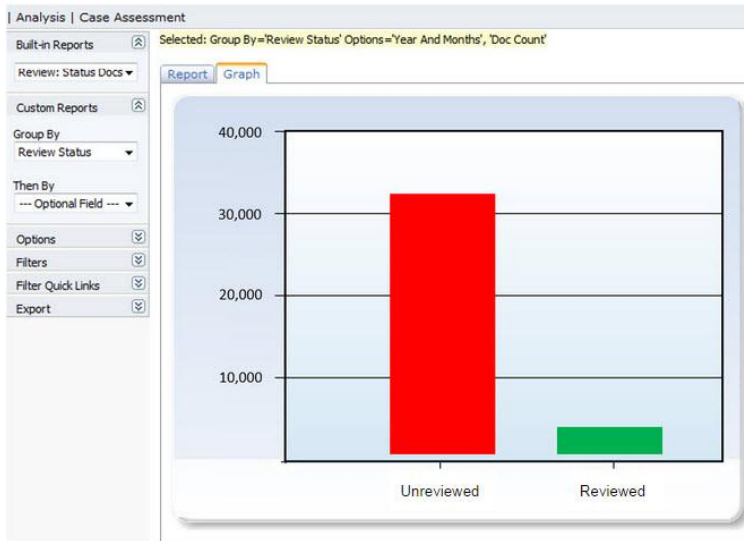
- Dynamic review tracking reports allow you to evaluate reviewer productivity in real time and generate instant reports.

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Reporting

Review Progress Reporting

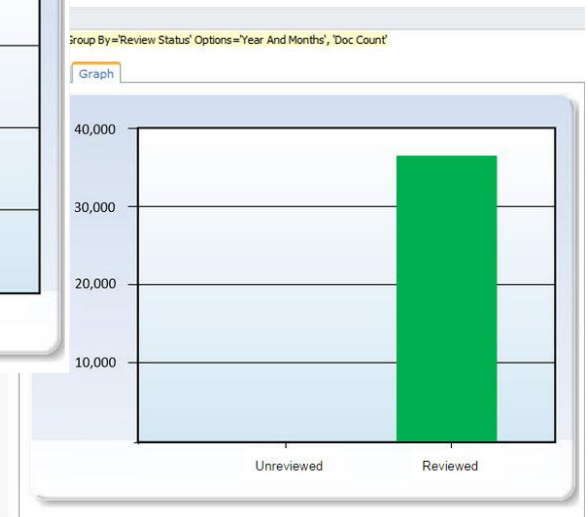
- Reports should easily and instantly identify status and progress of document review



Day 1



Day 5



Day 10

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Privilege Review and Logging



Goals

- Only include responsive and non-privileged documents in production.
- Avoid waiver

Best Practices

- Screen data early to identify groups of privileged documents
- Multi-level privilege review to promote efficiency, quality, accuracy, and defensibility
- Create privilege logs for attorney review and to ensure consistency and accuracy of privilege designation

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Two-Tiered Privilege Review

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- **First level review**
Spot Potential Privilege Issue
- **Second level review**
Specialized Training and Protocol
Final Calls and Logging
Close Calls Made by Counsel
- **Privilege logging**



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Privilege Review and Logging



From: Johnson Adam
Sent: Thursday, May 31, 2001 4:59:19 PM
To: Bridges Michael{Michael.Bridges@ENRON.com}; Denny Jennifer{Jennifer.DeBoisblanc.Denny@ENRON.com}
Subject: Dynegy-ICE VOL May30
Attachments: #1.dat; DYNEGY-ICE VOL May30.xls

General Coding

Date: 2001-05-31 04:59:19PM
Date Sent: 2001-05-31 04:59:19PM
Date Received: 2001-05-31 04:59:19PM
Doc Source: 2013-06-13
From: Johnson Adam
To: Michael Bridges, Jennifer Denny
Cc:
Bcc:
Subject: Dynegy-ICE VOL May30

Privilege Log Auto-Creation

- Metadata extracted from natives
- Email date/time, sender, receiver, subject
- Privilege and Work Product coding used
- Privilege log automatically generated for review

Doc	Bates	Doc Date	From	To	Subject Matter
Link	ENR 0000001	2001-05-31 04:59:19PM	Johnson Adam	Bridges Michael{Michael.Bridges@ENRON.com}; Denny Jennifer{Jennifer.DeBoisblanc.Denny@ENRON.com}	Dynegy-ICE VOL May30



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Summary



Managed Review allows you to leverage:

- **On-Demand People and Facilities**
- **Expert Leadership**
- **Proven Quality Control Processes**
- **Best of Breed Review Technology**
- **Defensible Workflows**

Questions and Thank You

Contact Info



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