



# Who's On First?

*Organizing & Managing Deponents, Custodians,  
Cast of Characters & other Case Participants*

August 31, 2015

**eDiscovery  
WebinarSeries**

Gene Albert  
Lexbe LC

# eDiscovery Webinar Series

## Info & Future

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

# eDiscovery Webinar Series

## About Lexbe

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

*At Lexbe, we develop and implement technology that helps small and medium-size law firms, corporations, and advocacy groups cost effectively manage increasingly data intensive discovery. We do this via our web-based document review software, Lexbe eDiscovery Platform, high speed ESI processing and conversion services, and a team of experienced technical specialists and expert consultants.*



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*Lexbe is recognized as a 'Top 100' eDiscovery Provider by ComplexDiscovery, a leading electronic discovery and information governance firm.*



*Lexbe infrastructure provider AWS recognized as the Leader in Cloud Security by Forrester Research*

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# eDiscovery Webinar Series

## Gene Albert bio

- CEO of Lexbe LC, a provider of cloud-based litigation processing, review and document management software & eDiscovery services
- Frequent speaker/author on eDiscovery and legal technology issues
- Planning Committee, Electronic Discovery Institute, State Bar of Texas
- eDiscovery consultant & expert
- Education  
MBA, University of Texas  
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**eDiscovery**  
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# Managing & Organizing Key Case Participants

## Agenda

- Who's on First? Why Bother Organizing & Mapping Early
- Defining Terms
- Conflict of Interest Checks
- Data Custodians - Map & Preserve Your Case Data
- Early Case Assessment - Know your case strength
- Build Out Evidence Timelines
- Be Proactive in Depositions & Motion Practice
- Summary



# Managing & Organizing Key Case Participants

## Case Participants Can Include (these overlap)

- The Parties
- Organization's Officers, Key Employees involved
- Custodian's of Electronic Stored Information (ESI)
- Impersonal Data Stores
- Third party witnesses
- Subpoena targets
- Cast of Characters

# Managing & Organizing Key Case Participants

## Dangers of Not Doing

- Conflict Problems / Disqualification
- Failure to Preserve Evidence / Spoliation
- Failure to Select Optimal Custodians, Deponents & Witnesses
- Failure to Understand/Value your Case Early
- Errors in Depos Caused by not Timelining
- Inability to Handle Dispositive Motions Well

# Managing & Organizing Key Case Participants

## Why is This Often Done in Haphazard Manner?

### Changing Cases

- More ESI/Evidence Every Year
- Attorneys not involved in early document collection and review
- Many Cases Getting More Complex, More International

### Case Organization & Timeline Delegation

- Left to junior associates or paralegals
- Delegation important and beneficial, but can lead to senior attorney ignorance of key facts

### Inadequate Tools

- Often done in Word (WordPerfect) or on a legal pad
- Limited searching and no dynamic updating
- Limited or no document linking
- Leads to 'always out-of-date' Case Participant listings, timelines of limited usage and confidence

# Managing & Organizing Key Case Participants

## Conflict of Interest Checking

### **Failure to Do Conflict of Interest Checking Adequately**

- Disqualification
- Ethical sanctions
- Inability to collect fees
- Professionals embarrassment
- Professional insurance claims

### **Problems with Many Existing Systems**

- Haphazard use of conflict memos, no centralized database
- Time-consuming and error-prone


### **Better System with Case Participant Identification**

- Identify all Case Participants in all cases and include in database
- For each new matter update and search


# Managing & Organizing Key Case Participants


## Case Participant Record


| Analysis | Case Participants


Show Case Participants For 


Current Case  
 All Cases In Account








Keyword Search 

Create 

Delete 

Export 


Import 

Edit Case Participants	
<a href="#">Update</a> <a href="#">Cancel</a>	
Type	<input type="radio"/> Organization   <input checked="" type="radio"/> Person 
Name	Skilling, Jeffrey 
Title	President, NA Operations
Memo	Former CEO (2000) 
Role	Executive 
Address	1400 Smith Street Houston, TX 77002 
Phone	713-538-5000
Fax	713-538-5010
Cell	713-429-4170

# Managing & Organizing Key Case Participants

## Conflict of Interest Checking


| Analysis | Case Participants

Show Case Participants For 

Current Case


All Cases In Account

---


Keyword Search 


Skilling


---

Create 

---

Delete 

Export 

Import 

### Using Case Participants

- Set up all clients and key personnel in Case participant database
- Include organizational associations, email, other names, etc.
- Search across all cases
- Fast, easy and accurate

# Managing & Organizing Key Case Participants

## Zubulake Obligations

- Duty Arises when litigation 'Reasonably Anticipated'
- Holds must be issued to Data Custodians
- Counsel should identify potentially relevant ESI and preserve
- Counsel should interview key Data Custodians
- Counsel should take affirmative steps to assure compliance
- Risk of adverse inferences, spoliation sanctions if not done

Zubulake IV, 220 FRD 216 (SDNY 2003)

- Not possible to do well if Case Participants are not identified early or adequately

# Managing & Organizing Key Case Participants

## Data Mapping Database

### ESI Content Map

Repository Name	<input type="text" value="Main Office Exchange Server"/>	ID	<input type="text" value="IIEN-036"/>
Repository Type	<input type="text" value="Email"/>	Location	<input type="text" value="Main Office"/>
Content Description	<input type="text" value="Exchange email server. MS Exchange 2007. Appr. 20 GB of email on server (more in local PST files on client CPUs)."/>		
Governance Policies	<input type="text" value="Users generally limited to 200MB on server, but exceptions allowed on case-by-case basis. Local PSTs allowed."/>		
Backup Policy	<input type="text" value="Daily full backup, with tapes retained for 30 days. Monthly backup tape retained for 6 month."/>		
Business Owner	<input type="text" value="Bill Henderson"/>		
IT Primary	<input type="text" value="James Robertson"/>		
When Setup	<input type="text" value="2005"/>		
When Discontinued	<input type="text" value="N/A"/>		
Size (GB)	<input type="text" value="21.00"/>		
Not Reasonably Accessible	<input type="checkbox"/>		
Record Last Updated	<input type="text"/>		
Last Updated By	<input type="text"/>		

Record:   23    of 57

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LITIGATION UNLEASHED<sup>SM</sup>

# Managing & Organizing Key Case Participants

## Case Participant Mapping Example

Case Participants						
Name	Title	Memo	Role	Address	Map	Affiliation
Chewco Investments L. P.	Organization	Limited partnership associated with the Enron. Created to hide losses from the Joint Energy Development Investment Limited, known by its acronym "JEDI".	Investment Partnership	1400 Smith Street Houston, TX 77002	<a href="#">Map</a>	
Albert Meyers	Executive		Enron Executive			Defendant
Enron	Organization	American energy, commodities, and services company based in Houston, Texas. Filed for bankruptcy on December 2, 2001. Employed approximately 20,000 staff. Claimed revenues of nearly \$101 billion during 2000.	Company	1400 Smith Street Houston, TX 77002	<a href="#">Map</a>	Defendant
Fastow, Andrew	CFO	Enron CFO. Key person behind off balance sheet special purpose entities (Chewco, JEDI, Raptor I,II,III)	Executive	1400 Smith Street Houston, TX 77002	<a href="#">Map</a>	Chewco Investments L. P.
Lay, Kenneth	CEO	Enron CEO and Chairman from 1985.	Executive	1400 Smith Street Houston, TX 77002	<a href="#">Map</a>	Defendant
Skilling, Jeffrey	President, NA Operations	Former CEO (2000)	Executive	1400 Smith Street Houston, TX 77002	<a href="#">Map</a>	Defendant

# Managing & Organizing Key Case Participants

## Tying Case Participants into Timelines

Facts			
Title	Docs		
Mr. Lay becomes client of NationsBank	<a href="#">Ken Lay Transcript Trial Transcript</a> <a href="#">Transcript US vs. Lay 5-18-2006</a>		
Jeff Skilling, who has been a consultant for McKinsey & Co., joins Enron.	<a href="#">0000 AAA Dynegy-ICE VOL May30 ..</a> <a href="#">15282375-skilling-supreme-ct-cert-petition1 Accounting-Scandal-Enron</a>		
Q. It looks like in December of '98 that you borrowed \$80		<b>Case Participants</b>	<b>8/1/1990</b>   <b>TimeLine</b>   <b>12/1/2001</b>
The magical word of the day is "Burn Baby Burn."		<a href="#">Enron</a> <a href="#">Skilling, Jeffrey</a>	■
Trading starts		<a href="#">Lay, Kenneth</a> <a href="#">Albert Meyers</a> <a href="#">Lay, Kenneth</a>	■ ■ ■
		<a href="#">Lay, Kenneth</a> <a href="#">Enron</a> <a href="#">Lay, Kenneth</a>	■ ■ ■

Full Document View

051806 us v lay bench v1

18 Q Okay. And do you recall when Mr. Lay became a client of NationsBank?

19 A It would have been around about the summer of 1993.

20 Q Shortly thereafter, did you have a meeting with Mr. Lay?

21 A I did.

22 Q And what was the purpose of that meeting?

23 A The purpose of that meeting was to go over a line of credit that he had requested to be secured by Enron stock.

0017

1 Q And so did you meet with him?

2 A I did.

3 Q Can you describe what was discussed at that meeting.

4 A We just discussed the purpose of the loan, the collateral that we would be taking, and also what his future plans were in terms of a relationship with the bank.

5 Q All right. And did you inquire about the -- Mr. Lay's intentions for the use of the loan?

6 A Yes.

7 Q And why did you do that?

8 A Because when we -- when we extend a loan to a borrower secured by stock, there is a question as to how much we can actually advance against the value of the stock based on the

# Managing & Organizing Key Case Participants

## Opening Documents from Timelines

Select Facts: [All](#) [None](#) Page: [Prev](#) [Next](#)

Total Facts: 4				
Title	Start	End	Docs	
<input type="checkbox"/> Jeff Skilling, who has been a consultant for McKinsey & Co., joins Enron.	08/01/1990	10/05/1990	<a href="#">Accounting-Scandal-Enron (p.0)</a> <a href="#">enron-248 (p.0)</a>	
<input type="checkbox"/> The magical word of the day is "Burn Baby Burn."	04/03/1997	04/03/1997	<a href="#">enron-203 (p.1)</a>	

Link in Timeline opens document in Doc Viewer

Hits Original **Html** Page Pdf Text

Disc Doc **Notes** Facts

Full Document View

Page: 1 of 2 Automatic Zoom

1 15-20000805-16381023-16395877 (1:48)  
2 [dialing/ ringing]  
3 PERSON 1: Yeah.  
4 PERSON 2: The magical word of the day is "Burn Baby Burn."  
5 PERSON 1: What's happening?  
6 PERSON 2: There's a fire under the core line it's been derated from 45 to 21  
7 PERSON 1: Really?  
8 PERSON 2: Yup.  
9 TOGETHER: Burn baby, burn.  
10 PERSON 1: How long are we?

Fact

Order Facts:  Start Date  Page  
By:  Page  
Add Doc to: --- Select Fact ---  
Existing Fact: [Edit](#) [Delete](#) [Remove](#)

Start: 04/03/97 End: 04/03/97  
The magical word of the day is "Burn Baby Burn."  
enron 0005419 (p. 1) [View Page](#)

# Managing & Organizing Key Case Participants

## Find & Filter Facts from Case Participants

**Filters**

Fact: Enron files for bankruptcy


Contested: Prospective

Material Facts: Yes

Document: Accounting-Scandal-Enron

Case Participant: Albert Meyers

**Total Facts: 2**

Title	Docs	Case Participants	6/15/1993	TimeLine	11/4/2000
Mr. Lay becomes client of NationsBank	<a href="#">Ken Lay Transcript Trial Transcript (p.0)</a>	Albert Meyers			
	<a href="#">Transcript US vs. Lay 5-18-2006 (p.0)</a>	Lay, Kenneth			
Jeff Skilling is CEO (2000)	<a href="#">skilling-supplemental-brief-on-fastow-interview-notes (p.0)</a>	Albert Meyers			
		Lay, Kenneth			
		Skilling, Jeffrey			

# Managing & Organizing Key Case Participants

## Extract Key Facts by Case Participants

Full Document View

051806 us v lay bench v1

18 Q Okay. And do you recall when Mr. Lay became a client of  
19 NationsBank?  
20 A It would have been around about the summer of 1993.  
21 Q Shortly thereafter, did you have a meeting with Mr. Lay?  
22 A I did.  
23 Q And what was the purpose of that meeting?  
24 A The purpose of that meeting was to go over a line of credit  
25 that he had requested to be secured by Enron stock.  
0017  
1 Q And so did you meet with him?  
2 A I did.  
3 Q Can you describe what was discussed at that meeting.  
4 A We just discussed the purpose of the loan, the collateral  
5 that we would be taking, and also what his future plans were in  
6 terms of a relationship with the bank.  
7 Q All right. And did you inquire about the -- Mr. Lay's  
8 intentions for the use of the loan?  
9 A Yes.  
10 Q And why did you do that?  
11 A Because when we -- when we extend a loan to a borrower  
12 secured by stock, there is a question as to how much we can  
13 actually advance against the value of the stock based on the  
14

Doc Disc Notes Facts

New Fact

Fact

Order Facts By:  Start Date  Page

Add Doc To Existing Fact:  
--- Select Fact ---







Not contested [Edit Delete](#)  
Start: 01/01/93 End: 12/31/93 [Remove](#)  
Mr. Lay becomes client of NationsBank

Not contested [Edit Delete](#)  
Start: 01/01/95 End: 12/31/96 [Remove](#)  
Family investment partnerships established in  
1995-96 time frame. ENRONPROD1 0005690 (p.  
102) [Link](#)

Not contested [Edit Delete](#)  
Start: 12/01/98 End: 12/31/98 [Remove](#)  
Q. It looks like in December of '98 that you

# Managing & Organizing Key Case Participants

## Fast Motion Practice following Depos

Total Facts: 7					
Title		Contested	Material	Docs	
<input type="checkbox"/> Jeff Skilling, who has been a consultant for McKinsey & Co., joins Enron.		Yes, by us		<a href="#">15282375-skilling-supreme-ct-c</a>	<a href="#">Accounting-Scandal-Enron (p.0)</a> <a href="#">enron-240 (p.0)</a>
<input type="checkbox"/> Family investment partnerships established in 1995-96 time frame.		No	Yes	<a href="#">Transcript US vs. Lay 5-18-2006</a>	
<input type="checkbox"/> Q. It looks like in December of '98 that you borrowed \$800,000 from th...		No	Yes	<a href="#">Transcript US vs. Lay 5-18-2006</a>	
<input type="checkbox"/> The magical word of the day is "Burn Baby Burn."			Yes	<a href="#">enron-203 (p.1)</a>	
<input type="checkbox"/> Trading starts				<a href="#">Enron the Scandal (p.0)</a> <a href="#">enron-227 (p.3)</a>	

# Managing & Organizing Key Case Participants

## Assigning Docs for Depo Prep

**040611skillingappeal\_001** Doc Disc Notes Facts

< Viewing Doc 4 of 25: >

Save & Next Doc Save Cancel

**Enron** [v]

**IRS** [v]

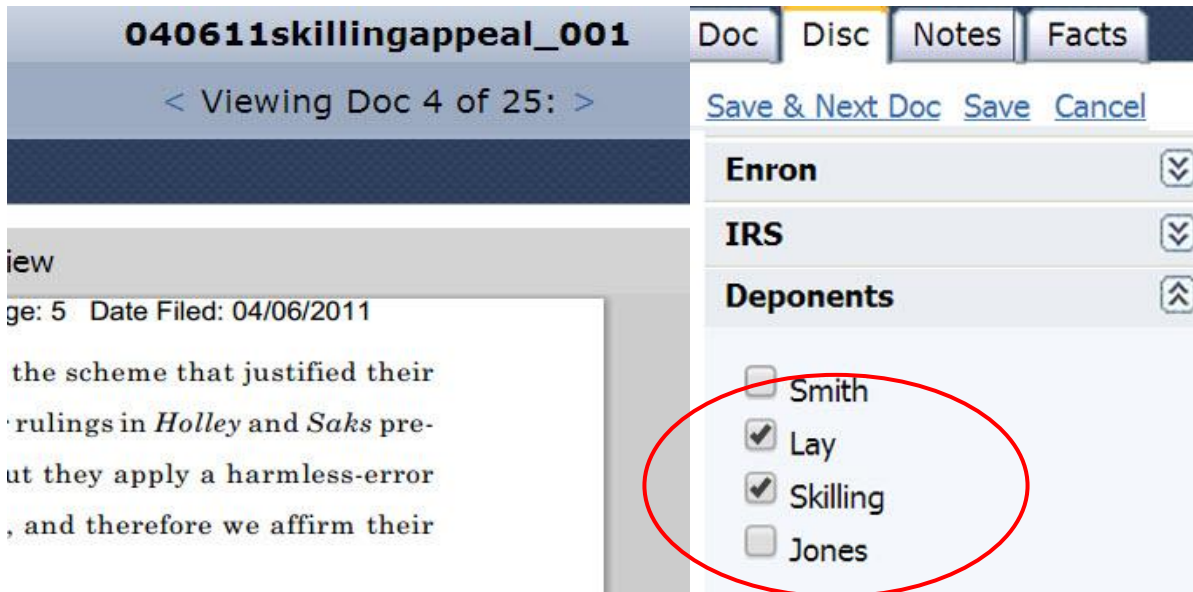
**Deponents** [^]

- Smith
- Lay
- Skilling
- Jones

iew

ge: 5 Date Filed: 04/06/2011

the scheme that justified their  
rulings in *Holley* and *Saks* pre-  
ut they apply a harmless-error  
, and therefore we affirm their



	Title	Case Participant	Responsive	Privilege	Deponents	Smith	Lay	Skilling	Jones	Edit
<input type="checkbox"/>	<a href="#">040611skillingappeal_001</a>	Lay, Kenneth	✓				✓	✓		<a href="#">Edit</a>



# Managing & Organizing Key Case Participants

## Good Litigation Software Should Be...

### **Easy to Use**

- Software-based & intuitive

### **Shared & Accessible**

- Limited value if accessible/maintained by only one person

### **Online & Secure**

- Allow access anytime and from home, on road, etc.
- Fully encrypted and secure

### **Linked to Files/Evidence**

- Close tie-in with original documents, notes and coding

### **Fully-Features to Allow Issue Coding, Filtering and Sorting**

- Organize and view by issue, date, materiality, etc



# Managing & Organizing Key Case Participants

## Summary - Benefits

- Avoid Conflict Problems
- Properly Preserve Evidence, Avoid Spoliation
- Select Optimal Custodians, Deponents & Witnesses
- Understand & Value your Case Accurately
- Handle Depos Well
- Handle Dispositive Motions & Trial Well

# Thank You

## Contact Info

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