

Custodian Interviews & ESI Data Mapping

Best Practices in Building Your Case and Locating Key Case Evidence

ABOUT LEXBE

- Serving boutique law firms for more than 15 years
- Based in Austin TX
- Developed a Native End-to-End eDiscovery Application Hosted at Amazon Web Services
- Lightning Fast, Feature Rich & Highly Affordable
- Purpose-Built for DIY eDiscovery for Boutique Law Firms

Gartner Reviews:

Lexbe eDiscovery Platform

by Lexbe



“Cost-effective eDiscovery”



“Secure, easy-to-use and a great review tool for consideration”



“A powerful litigation document management service”

ABOUT OUR WEBINARS

- Webinars take place monthly and cover a variety of relevant eDiscovery topics
- If you have technical issues or questions, please email webinars@lexbe.com
- Lexbe webinars are available for viewing (streaming video), and downloadable as a PDF Presentation or an MP3 podcast.
- This Webinar and a complete listing of other on-demand webinars is part of the: [Lexbe eDiscovery Webinar Series](#)
- For notices of future live and on-Demand webinars as part of this series please email us at webinars@lexbe.com or: [Follow us on LinkedIn](#)

GUEST SPEAKER

- CEO of Lexbe, 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
JD, Southern Methodist University
BA, University of Texas



Gene Albert

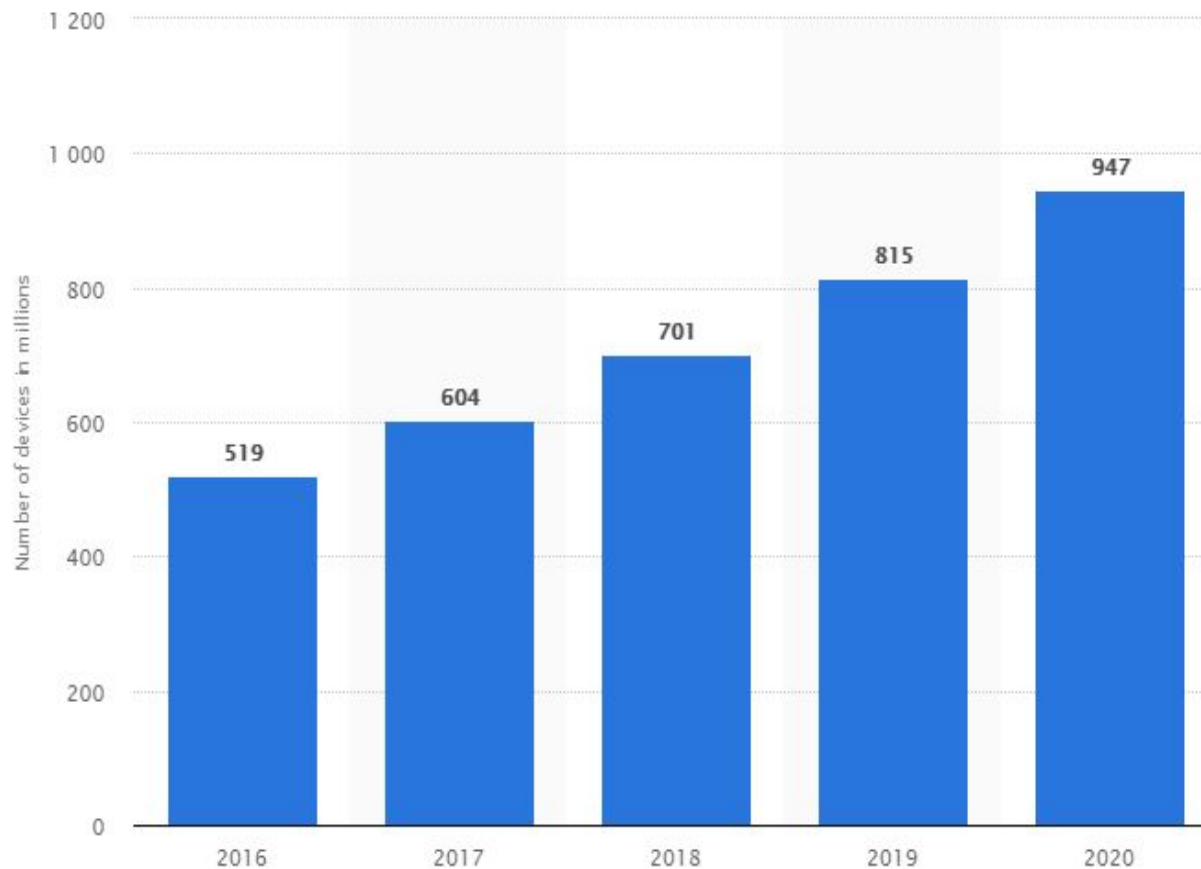
512-686-3460

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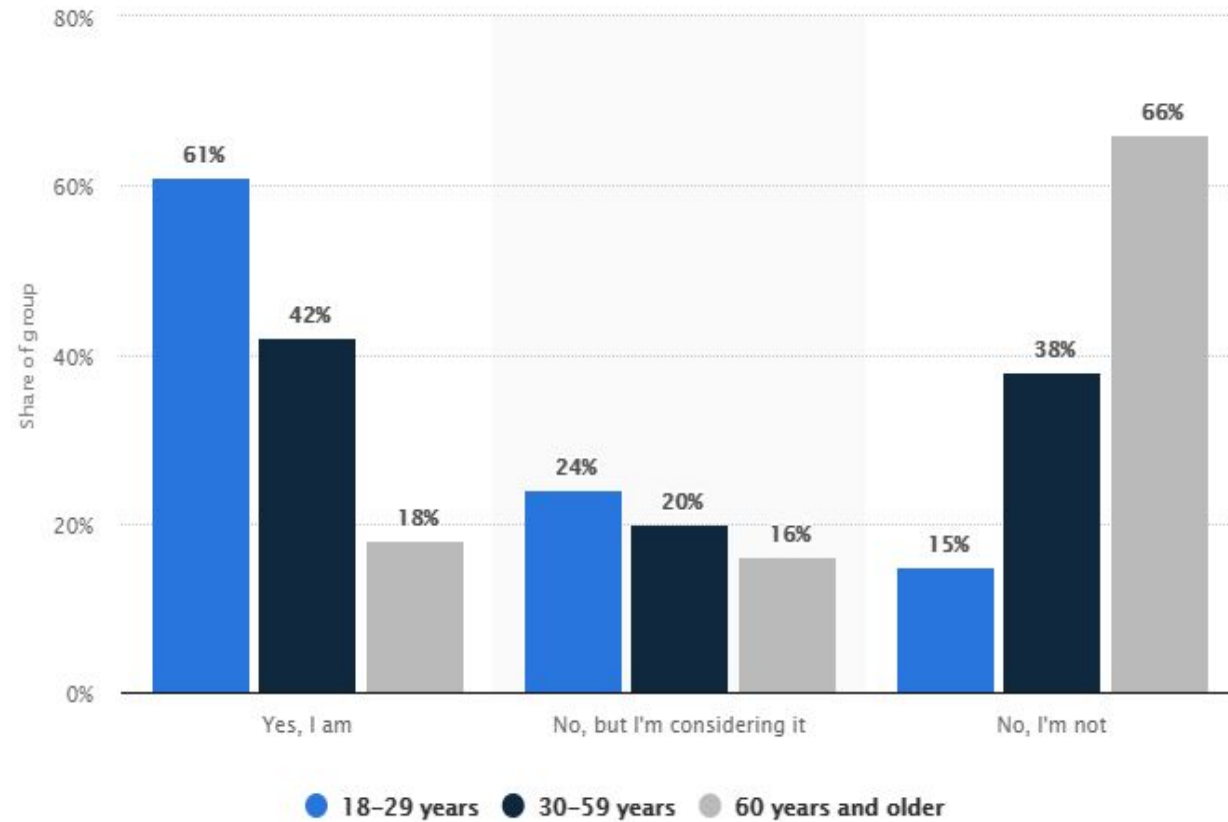
UNDERSTANDING THE ESI LANDSCAPE

Estimated Number of Mobile Connected Devices in the United States



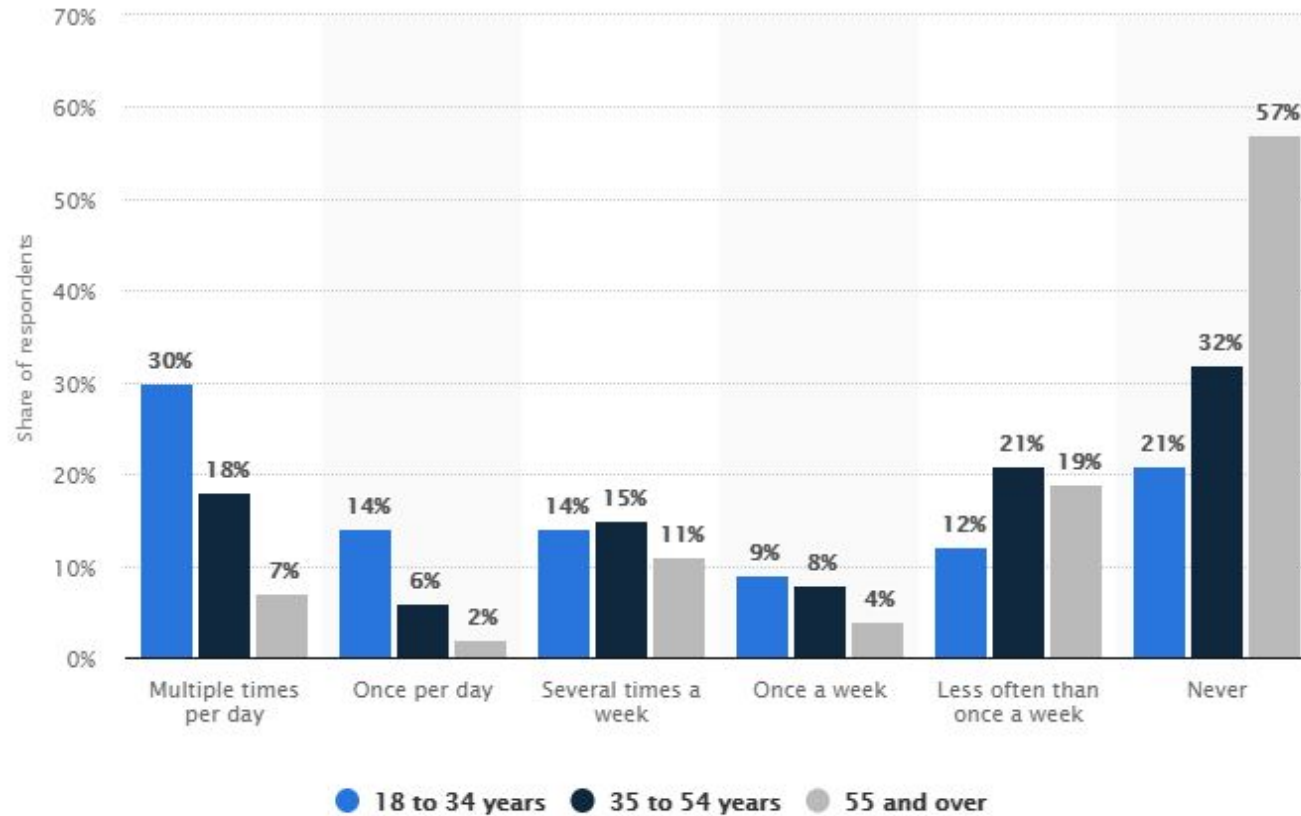
UNDERSTANDING THE ESI LANDSCAPE

Cloud Storage Usage by Age Group (2017)



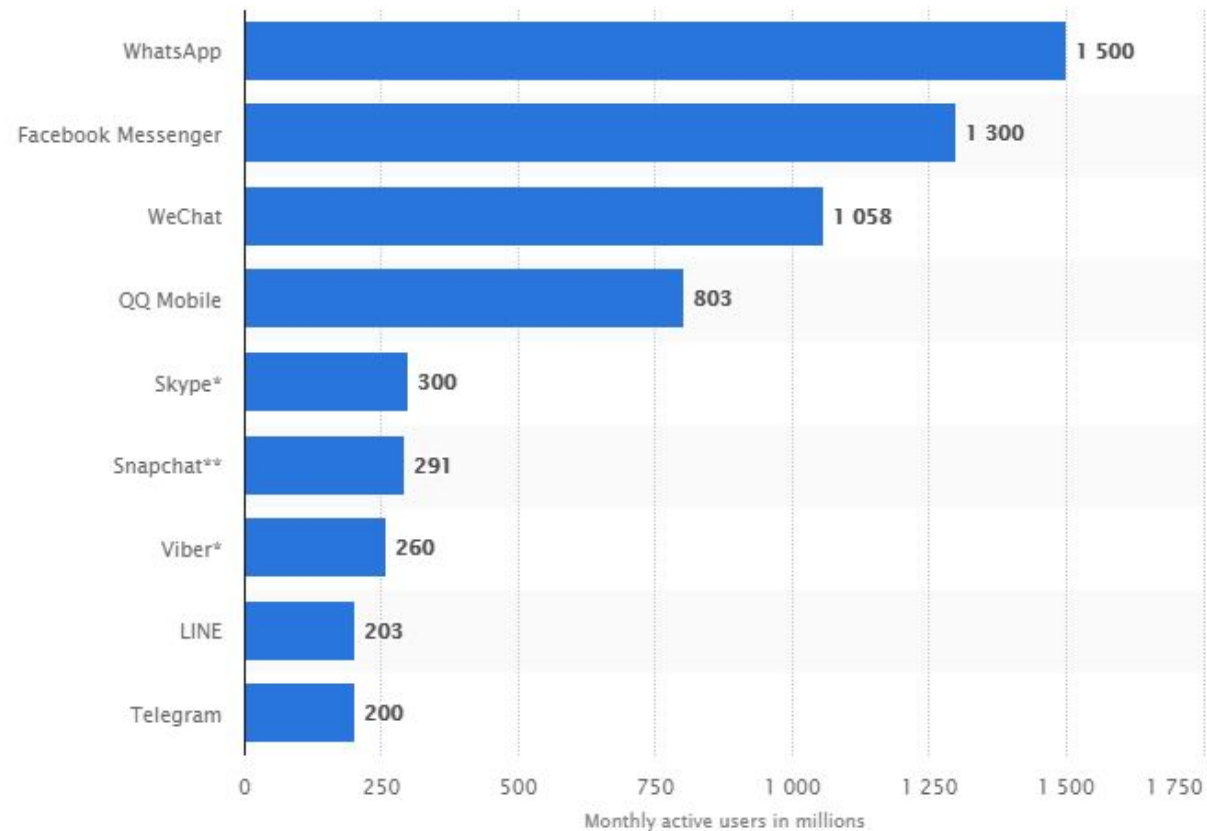
UNDERSTANDING THE ESI LANDSCAPE

Group Chat/Instant Messaging Usage by Age Group (2017)



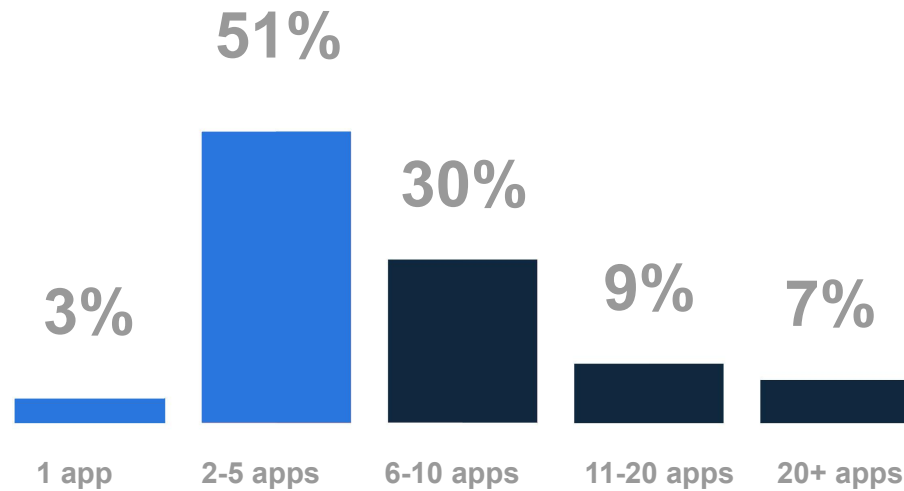
UNDERSTANDING THE ESI LANDSCAPE

Mobile Messaging Apps Monthly Active Users - Oct. 2018



UNDERSTANDING THE ESI LANDSCAPE

The Number of Collaboration Apps Used Across Organizations



Source: Statista

UNDERSTANDING THE ESI LANDSCAPE

Internet of Things (IoT) & Mobile Devices Generating ESI

- 50M Amazon Echo devices sold as of August of 2018
- “Judge orders Amazon to turn over Echo recordings in double murder case.”
- Location-based data
- Video & audio recordings
- 31 billion IoT devices by 2020



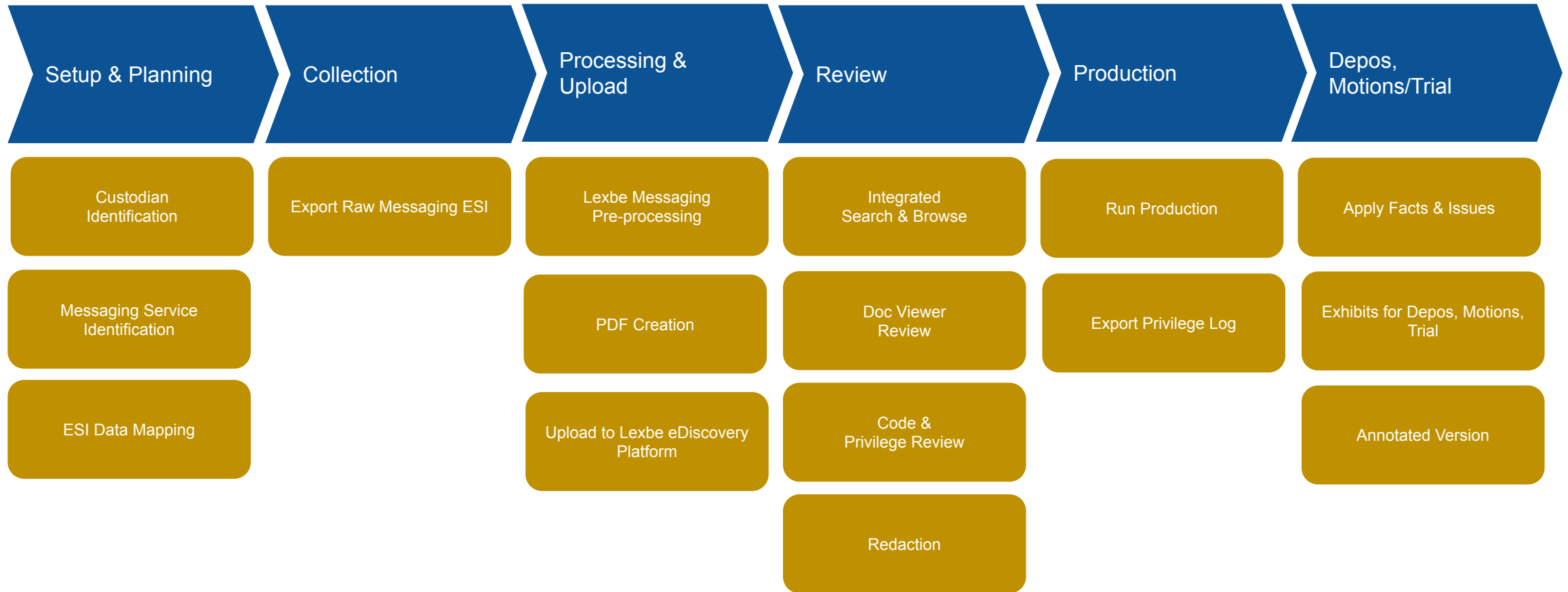
AGENDA

Custodian Interviews & ESI Data Mapping

- Workflow and Case Development
- Why Interview Custodians?
- Custodian Identification
- Conducting Custodian Interviews
- What is Data Mapping?
- Benefits of Data Mapping
- Data Mapping log
- Data Mapping reports
- Integrate Data Mapping Log & LEP
- Take-Aways

WORKFLOW

Litigation Discovery Workflow



CUSTODIAN INTERVIEWS

Identify Custodians

- **Who Are Custodians** - Individuals possessing data or documents potentially relevant to the matter. Direct knowledge of facts related to dispute.
- **Types of Custodians**
 - **Key** - deponents, witnesses, individual parties, subpoena subjects
 - **Departmental** - individuals responsible for departmental documents
 - **Representative** - in larger cases, sample of group
- **'Shares'**
- **Email Example:** 1-1-19 Email from Bob to Sally represented by Outlook MSG file.
MSG in Bob and Jim's possession, but not Sally.

WHY INTERVIEW CUSTODIANS

- **Locate Relevant ESI**
- **Preservation Obligation**
- **Legal Hold Obligation**
- **Meet Zubulake Obligations**
- **Address Custodian anxiety, control the narrative, explain the process**
- **Gather key facts and begin case assessment and valuation, story, timelining**
- **Identify data stores for data mapping**
- **Prepare for collection of ESI**
- **Plan ahead for discovery obligations**
- **Prepare for Meet and Confer**

GIGO

ZUBULAKE OBLIGATIONS

Zubulake Obligations

- Landmark case heard 2003-5 that defines a lawyer's duty to monitor their clients' compliance with electronic data preservation and production (litigation hold)
- 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 Custodians/Case Participants are not identified early or adequately

CUSTODIAN INTERVIEWS

Downside to Not Interviewing Early and Completely

- **Failure to Preserve Evidence / Spoliation**
- **Failure to Select Optimal Custodians, Deponents & Witnesses**
- **Failure to Understand/Value your Case Early and Accurately**
- **Errors in Depos Caused by not Timelining**
- **Conflict Problems / Disqualification**
- **Miss Key Evidence in Your Case**

CUSTODIAN INTERVIEWS

Why Can this be Done Poorly?

- **Larger Cases (more ESI, documents)**
- **Cases more Complicated with many participants; International**
- **Changing Case Representation**
- **Improper Delegation**
- **Not Having a Good System**

CUSTODIAN INTERVIEWS

Record of Custodians



GENERAL INFORMATION	
Case Name:	Skilling v. US
Company/Organization:	Enron
Date Range of Relevant Events:	4/5/2001 - 11/30/2002
Date of Litigation Hold, if applicable:	

NAME	TITLE & DEPT	PHONE	EMAIL
Albert Meyers	Former Executive, Enron	354-555-1212	malbert@company.net
Andrew Fastow	CFO, Enron	222-555-6918	Andrew.Fastow@ENRON.com
Jeff Skilling	President, Enron	222-555-9141	jeffrey_skilling@ENRON.com

CUSTODIAN INTERVIEWS

Define the Cast of Characters

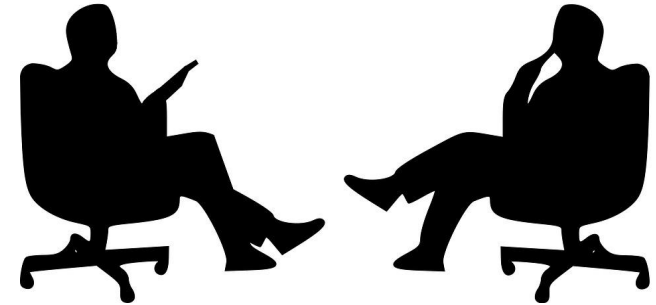
- The Parties
- Organization's Officers
- Key Employees involved
- Custodian's of ESI
- Impersonal Data Stores
- Third party witnesses
- Subpoena targets

Total Custodians: 12						
Select	Type	Name	Title	Memo	Role	Address
<input type="checkbox"/>		Chewco Investments ...	Organizat...	Limited partnership associated...	Investment Partnership	1400 Smith Street Houston, TX 77002
<input type="checkbox"/>		Enron	Organizat...	American energy, commodities...	Company	1400 Smith Street Houston, TX 77002
<input type="checkbox"/>		Albert Meyers	Executive	Former Enron executive prior t...	Enron Executive	1400 Smith Street Houston, TX 77002
<input type="checkbox"/>		Dean Smith				
<input type="checkbox"/>		Dr. Miller				
<input type="checkbox"/>		Fastow, Andrew	CFO	Enron CFO. Key person behin...	Executive	1400 Smith Street Houston, TX 77002

CUSTODIAN INTERVIEWS

Approaches to Custodian Interviews

- **Conversational Approach:**
 - One-on-one meeting/conference
 - Allows for questions, clarity and reassurance
 - Drawback: can be time-consuming for large organizations
 - May lead to inconsistencies custodian focus
- **Formal Approach:**
 - Standardized interview process
 - Multiple interviewers can conduct interviews consistently
 - Highly defensible
 - Drawback: may require modification
- **Survey Approach:**
 - Custodian self-report on fillable form without a dialogue
 - Generally much faster than sit-down interviews
 - Decrease cost and attorney time involved with conducting the interviews
 - Drawback: being impersonal and missing out on direct impressions



CUSTODIAN INTERVIEWS

Custodian Interview Form - General Info

GENERAL INFORMATION	
Case Name:	
Date of Interview:	
Interviewee Name:	
Company/Organization:	
Current Title and Department:	
Location:	
Contact Phone & Email:	
Date Range of Relevant Events:	
Date of Litigation Hold, if applicable:	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Background

BACKGROUND INFORMATION	
Length of Employment (years):	
Previous positions/departments with Company/Organization:	
Direct Supervisor(s):	
Names of Direct Reporting Employees:	
Current Job Responsibilities:	
Name and current location of person in role at Company/Organization prior to Interviewee:	
Were files (electronic or paper) inherited from prior employee in role?	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Email Info

EMAIL INFORMATION	
Identify all relevant email addresses and passwords for collection.	
Identify email folders that contain relevant information.	
Have you changed your email configuration from company default? How have you changed it?	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Location

LOCATION OF MATERIALS	
Do you have any files (electronic or paper) relevant to this case?	
Where are the relevant hard copy files maintained? (Ex: In storage, on-site)	
Do you use a desktop computer, laptop or both? Windows, Macintosh, Chromebook, other?	
Identify all file paths for locations where you save documents locally on the desktop and/or laptop computers (Ex: C:\drive).	
Identify any external storage devices used to store information (Ex: CD, flash drive).	
Identify software applications that you use (Ex: PowerPoint, Word) that may contain information relevant to this case.	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Location Continued

LOCATION OF MATERIALS	
What types of documents do you most often generate or receive (Ex: Word, Excel, Photos, Other)?	
Where do you store your documents such as Microsoft Word and Excel?	
Identify all company-issued laptop, cellular or tablet devices.	
Identify any non-company issued devices used for work. Has the device been set up/approved by the Company?	
Do you have any relevant data ESI stored on a Smartphone, iPhone, Android, Blackberry, tablet, cloud storage, home computer or external device?	
Do you use any cloud-based applications, such as Google Apps, iCloud, Microsoft, other?	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Location Continued

LOCATION OF MATERIALS	
Identify social media platforms or messaging applications you use for work (Ex: Apple iChat, Cisco Jabber, Facebook, Google Hangouts, LinkedIn, Skype, Slack, Twitter).	
Identify the locations or folders where you save electronic documents, including network personal directory, network department directory or other network shares/folders.	
Do you have any personal folders on a shared drive or network where you store data or information? Identify any folders that may contain relevant files.	
Do you move messages to personal folders within your email?	
Have you moved email messages to an external storage device (ex: CD, flash drive)?	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Location Continued

LOCATION OF MATERIALS	
Do you have any saved voicemails that contain relevant information?	
Do you keep notes or calendar entries that contain any information relevant to the case (hard copy or electronic)?	
Identify any instances where data was collected in the past that could relate to this case.	
Identify any other information that could assist with locating relevant file materials.	
Identify the names and contact information for anyone you believe may have access to or knowledge of information relevant to this case.	

CUSTODIAN INTERVIEWS

Custodian Interview Form - Duty to Preserve

REMINDERS TO INTERVIEWEE:

- You should not delete or in any way destroy any paper or electronic files that may be relevant to this matter.
- Sources of potentially relevant ESI can include: email servers, Blackberry devices, smartphones, CDs, DVDs, flash drives, external hard drives, voicemails, databases, backup tapes, file servers, websites, instant messages, home computers, workstation/laptops and social media sites.



CUSTODIAN INTERVIEWS

Custodian Interview Form - Interviewer Info

INTERVIEWER	
Interviewer Name:	
Interviewer Organization:	
Interviewer Email and Phone Contact:	
Interview Date(s):	
Interviewer Additional Comments, if any (below):	

CUSTODIAN FORMS

Lexbe Provides sample custodian Interview Forms

- Go to Lexbe.com
- Click on Log-in on upper-right
- Click on 'Help'
- Search on Custodian Interviews'
- Forms attached to bottom

eDiscovery Platform Help

Custodian Interviews

General

Custodian interviews are conducted with individuals from an organization having direct access to files and programs that may be relevant to a litigation process can prove critical to the case for the purposes of identifying potential custodians and data collection. The interview process is a ready the case for the discovery phase.

Why Interview Custodians

Cooperation - Once a lawsuit is reasonably anticipated, members of



[W Custodian Interview Contact List.docx \(749k\)](#)

[W Custodian Interview.docx \(17k\)](#)

ESI DATA MAPPING

What is Data Mapping?

Organized map of potentially relevant data sources. Contains information about custodians and corresponding data sources, and is maintained for planning purposes and defensibility.

Why Data Map?

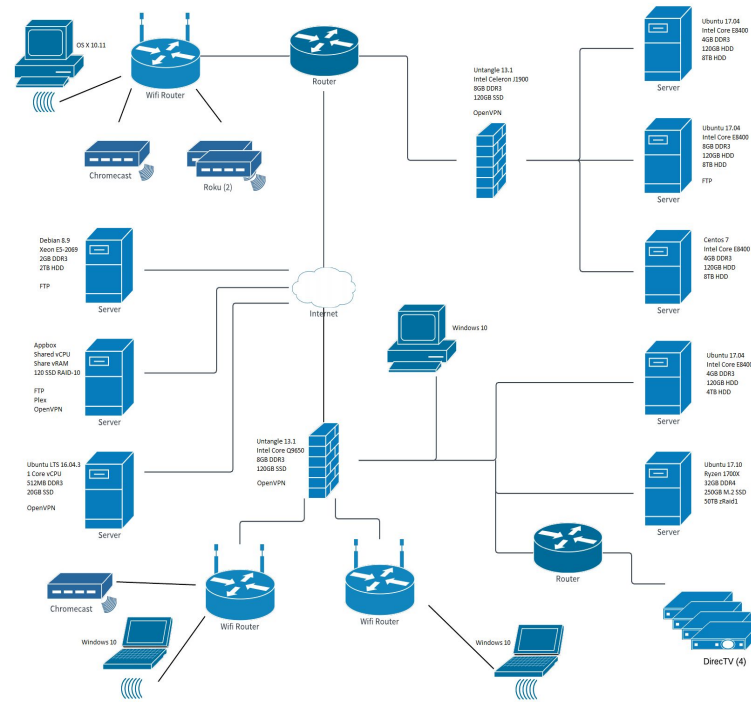
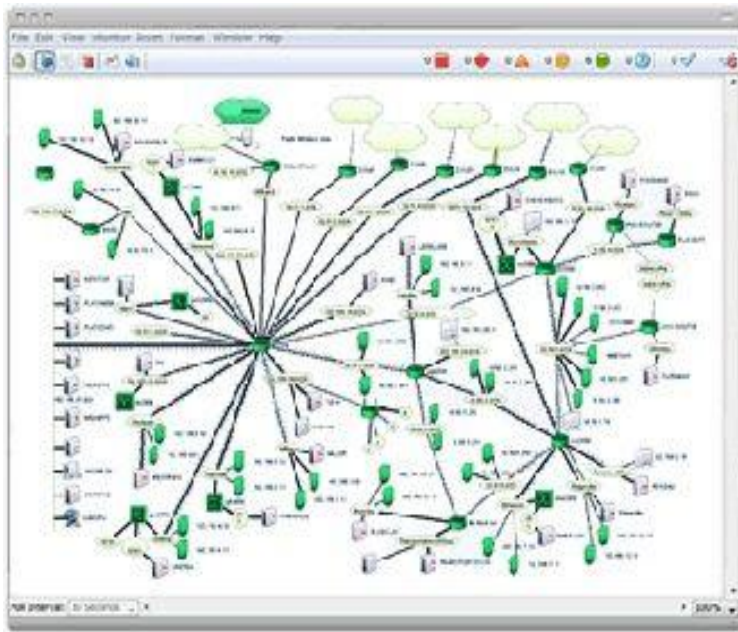
Document each source to avoid omitting potentially relevant data, determine accessibility by source, increase awareness of data, identify data that may be outlier, redundant or contain sensitive/protected information.

How to Data Map?

Develop a game plan and keep it up to date.

ESI DATA MAPPING

Legal Data Mapping is not an IT Network Map



ESI DATA MAPPING

Benefits of Data Mapping

- **Eliminate risk of omitting potentially relevant data sources**
 - Recording and maintaining log of data sources directly from custodian interviews reduces risk of a source being overlooked
- **Budget planning**
 - Knowing how much data needs to be collected allows for the opportunity to pre-plan costs and establish a collection and hosting budget
- **Timeline planning**
 - Maintaining collection status for each source will aid in setting appropriate deadlines for overall case flow

ESI DATA MAPPING TOOLS

Lexbe's Data Mapping Log

Lexbe's data mapping log is maintained in an Excel workbook using forms for data entry in conjunction with tables and charts for reporting.

Custodian	Organization	Department	Title	Contact Email	Contact Phone	City-Data I	State-	Interview Date	Data Source	GBs	Confirmed/Unc
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland	OH	9/1/2018	Email-Outlook	5.0	Confirmed
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland	OH	9/1/2018	Text Message -iPhone	1.5	Confirmed
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland	OH	9/1/2018	LinkedIn Messages	0.5	Confirmed
Marilyn Hong	Kellogg's	Marketing	Director	mhong@msn.com	555-555-5555					4.0	Unconfirmed
Marilyn Hong	Kellogg's	Marketing	Director	mhong@msn.com	555-555-5555					3.2	Confirmed
Robert Shapiro	Kellogg's	Finance	CFO	rshapiro@kellogg.com	555-555-5555					6.5	Unconfirmed
Robert Shapiro	Kellogg's	Finance	CFO	rshapiro@kellogg.com	555-555-5555					5.0	Confirmed
Debra Matz	Kellogg's	Finance	Auditor	dmatz@kelloggs.com	555-555-5555					3.0	Confirmed
Debra Matz	Kellogg's	Finance	Auditor	dmatz@kelloggs.com	555-555-5555					2.0	Unconfirmed

Data Map ? X

Custodian: 1 of 6

Department: New

Repository Type: Delete

Location: Restore

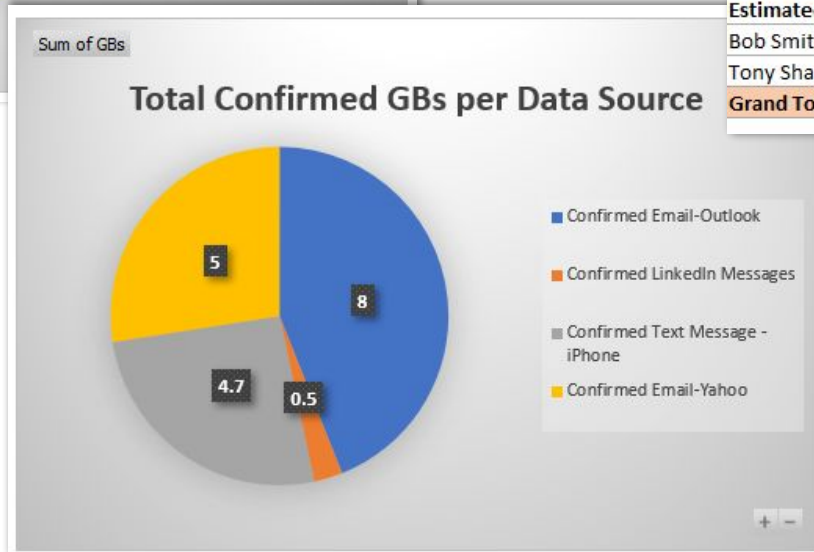
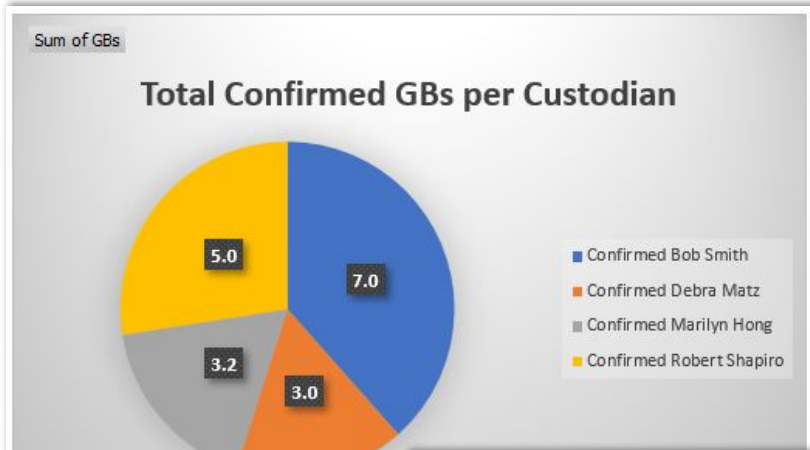
Size (GB): Find Prev

Collection Status: Find Next

Criteria

Close

Data Mapping Reports



Report Status: Draft
 Prepared By: Lexbe Staff
 Email: lexxbe@lexbe.com
 Phone: 555-555-5555

Data Mapping Tables

Case Name: Test Case v Test Case
 Company: Lexbe
 Report Date: 10/25/18
 Estimated GBs: 9

Estimated GBs per Custodian		Estimated GBs per Data Source		Data Sources with unknown GBs	
Custodian	# GBs	Data Sources	# GBs	Data Source	# Accts.
Estimated	9.0	Estimated	9.0	Unknown GBs	1
Bob Smith	5.0	Email-Outlook	5.0	Text Message- iPhone	1
Tony Shapiro	4.0	Email- Yahoo	4.0	Grand Total	1
Grand Total	9.0	Grand Total	9.0		

ESI DATA MAPPING TOOLS

Upload Custodian Details to LEP

Details maintained on Lexbe's Data Mapping Log can be uploaded to existing custodial records with an LEP database.

Edit Custodians

Custodian	Organization	Department	Title	Contact Email	Contact Phone	City-Data State-	Interview Date	Data Source
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland OH	9/1/2018	Email-Outlook
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland OH	9/1/2018	Text Message -i
Bob Smith	Nabisco	Finance	CFO	bob@gmail.com	555-555-5555	Cleveland OH	9/1/2018	LinkedIn Messa
Marilyn Hong	Kellogg's	Marketing	Director	mhong@msn.com	555-555-5555	Orlando FL	9/3/2018	Email-Outlook
Marilyn Hong	Kellogg's	Marketing	Director	mhong@msn.com	555-555-5555	Orlando FL	9/3/2018	Text Message -i
Robert Shapiro	Kellogg's	Finance	CFO	rshapiro@kellogg	555-555-5555	Orlando FL	9/3/2018	Email-Outlook
Robert Shapiro	Kellogg's	Finance	CFO	rshapiro@kellogg	555-555-5555	Orlando FL	9/3/2018	Email-Yahoo
Debra Matz	Kellogg's	Finance	Auditor	dmatz@kelloggs	555-555-5555	Orlando FL	9/4/2018	Email-Outlook
Debra Matz	Kellogg's	Finance	Auditor	dmatz@kelloggs	555-555-5555	Orlando FL	9/4/2018	Text Message-A

Type

- Organization
- Person

Name

Robert Shapiro

Title

CFO

Memo

collect: Google Hangouts, Text, LinkedIn, Facebook

Role

Address

555 Third Ave #1501
New York, NY 10017

Phone

555-555-5555

Fax

Cell

555-555-5555

Email

rshapiro@enron.com

DATA MAPPING RECAP

Data Mapping Recap

Data Mapping is a clear, organized map of potentially relevant data sources.

- **Identify Potential Data Sources**
 - Found through custodian interviews
- **Visualize Data Statistics**
 - Usings graphs, tables and charts
- **Plan Budget/Timeline**
 - Usings quantitative information regarding total GBs per data source
- **Integrate Data Map into Lexbe eDiscovery Platform (LEP)**
 - Easily upload custodial information directly into LEP database

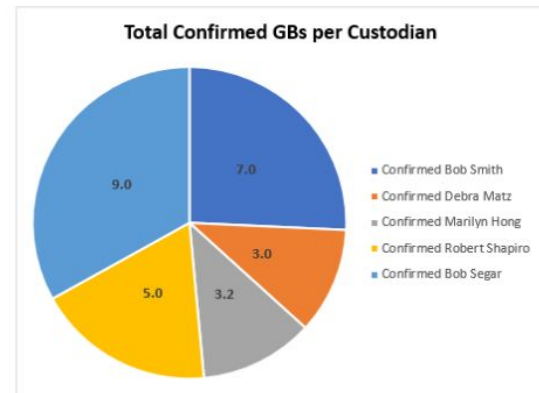
MORE ON DATA MAPPING

Lexbe Provides Additional Data Mapping resources

- Go to Lexbe.com
- Click on Log-in on upper-right
- Click on 'Help'
- Search on ESI Data Mapping

Data Mapping Reports

Case Name: Test Case
Company: Lexbe
Report Date: 10/9/2018
Confirmed GBs: 27.2



eDiscovery Platform Help

ESI Data Mapping

This technical note will discuss the process and associations of Lexbe's ESI Data Mapping.

As an extension of Lexbe-hosted [Custodian Interviews](#), Lexbe offers an extension of collected data and future data to be collected within a given case.

Benefits of ESI Data Mapping

With the increase in multiple communication tools used to conduct normal business, the amount of data collected is expanding. A clear, organized map of the potentially relevant data provides a clear collection opportunity. Having access to snapshot graphs and plan costs and establish a collection and hosting budget.

How it works

The collection specifics will be associated with each individual custodian during the custodian interview. The collection specifics include:

SUMMARY

Effective Custodian Interviews & ESI Data Mapping Takeaways

- Have a Systematic Plan of Attack
- Do Early and Have Resources to Update
- Keep an Eye on the Strategic Value
- Use Forms and Checklists
- Don't Improperly Delegate
- Watch out for the 'unknown unknowns'! (Donald Rumsfeld)

THE LEXBE SOLUTION

Infinitely Scalable eDiscovery Architecture to Meet Your Exact eDiscovery Needs

Unlike traditional In-House eDiscovery platforms, Lexbe can instantly scale capacity to complete your job on time and at a fraction of the cost of dedicated hardware and licenses.

Traditional In-House Setup

- 1 TB to process to TIFF (1 month timeframe)
- 10 dedicated servers operating at 2GBs/day
- 10 servers x 2 GBs/day x 30 Days = 600 GBs

The Lexbe eDiscovery Cloud

- 1 TB to process to TIFF
- 500 on-demand servers operating at 2 GBs/day
- Processing completed in 1 day



INDUSTRY LEADING SECURITY

- Passed extensive application penetration test by IBM in 2019
- United States Federal Agencies and municipalities utilize Lexbe



THE LEXBE SOLUTION

Feature Rich

- Lightning Fast Processing
- DIY Enabled
- The Uber Index
- Machine Translation
- Integrated Messaging
- Integrated Advanced Technologies
 - a. NearDup
 - b. TAR/Predictive Coding



THE LEXBE UBER INDEX

- Multi-source concatenated singular index
- Lightning fast
- Seamlessly add documents without re-indexing

①

Native Characters

②

OCR Characters

③

Image OCR Characters

④

Translated Characters

All Characters From Native Files are Extracted and Included in the Uber Index.

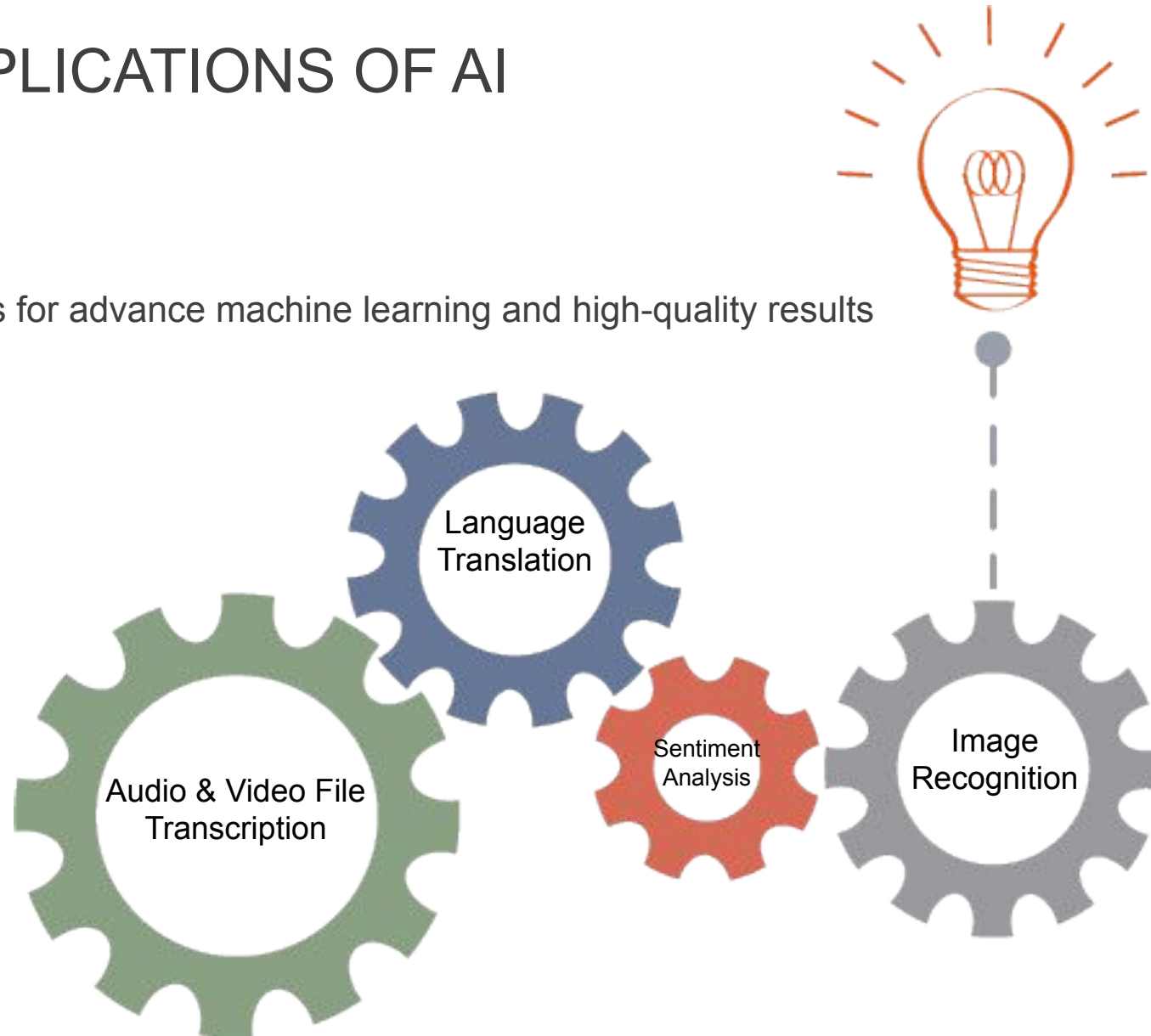
All OCR Characters are Extracted and Included in the Uber Index.

All Images are OCR'd, Characters Extracted and Included in the Uber Index.

Lexbe's Translation Engine Feeds the Uber Index All Translated Characters

ADVANCED APPLICATIONS OF AI

- Utilizing Neural Networks for advance machine learning and high-quality results



INDUSTRY LEADING PRICING

Service	Relativity	Lexbe
Processing	\$125 per GB	\$0
User Fees	\$95 per User	\$0
Technology Assisted Review	\$30 per GB*	\$0
Near Duplication	* Included with Relativity Analytics	\$0
Email Threading	* Included with Relativity Analytics	\$0
Hosting	\$8 per GB per Mo.	\$5 per GB per Mo.
AI Insights	N/A	\$0

THIRD PARTY ENHANCED ANALYTICS



LEARN MORE ABOUT LEXBE

- The Lexbe eDiscovery Platform, is our cloud-based processing, review and production tool. Designed for Attorneys/legal staff to be DIY and easy to use, with no users fees or case fees. Free standard loading with annual plans.
- Learn about our high-speed/high-capacity eDiscovery services, and expert professional services.
- **Request a personalized demo and expert consultation today!**

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'Lexbe cost advantages, SaaS convenience and search capabilities appeal to many small firms'



'Secure, easy-to-use and a great review tool for consideration'



"A powerful litigation document management service"



'Cost-effective eDiscovery'



"Because of the Lexbe software, the entire playing field has been leveled for my firm."



"Lexbe is the easiest eDiscovery software I have ever used"

THANK YOU FOR ATTENDING

We'll be making the following available to webinar attendees:

- A recorded streaming version
- MP3 podcast
- PDF

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