

## Negotiating a state-of-the-art eDiscovery protocol

Crafting Effective ESI Agreements to  
Successfully Navigate Today's Complex  
Cases

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## 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"*

## 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

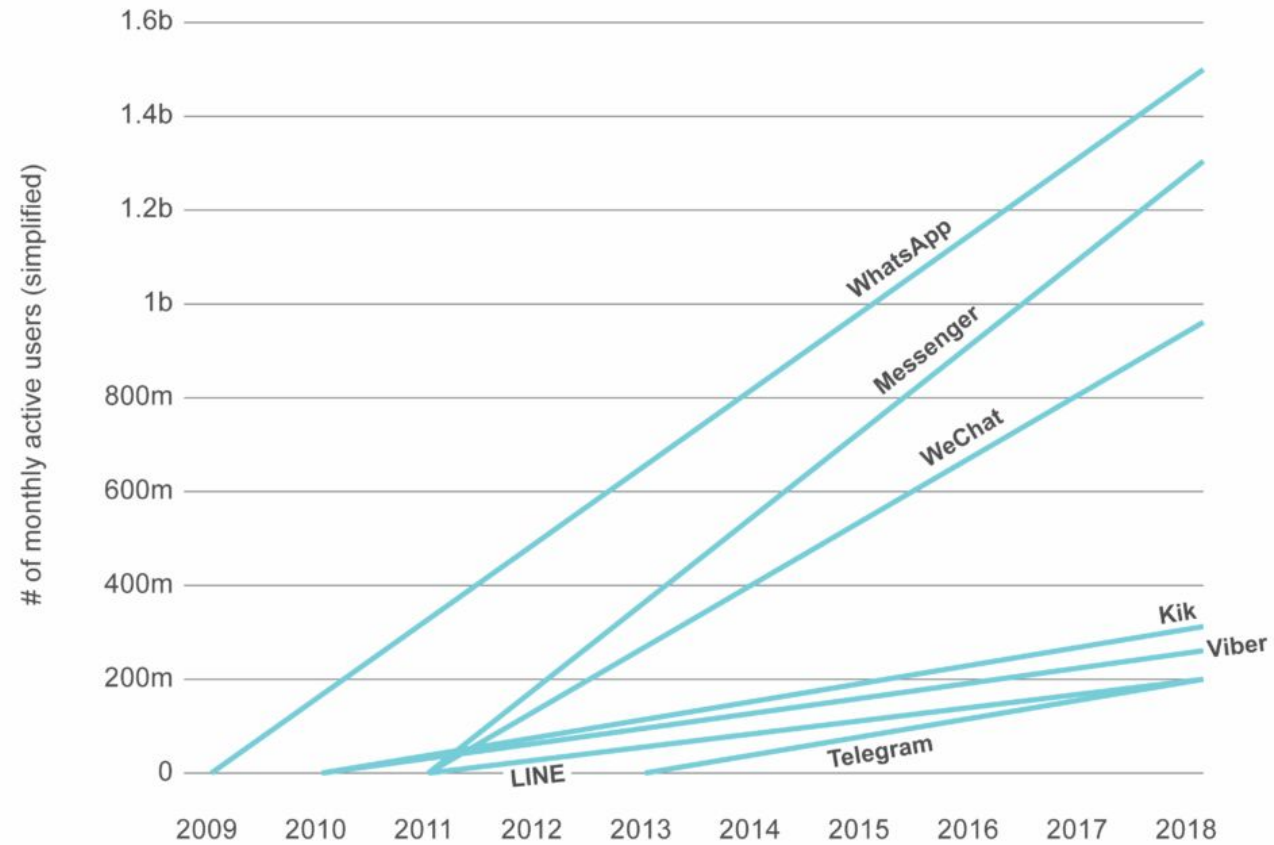


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## GROWTH IN NON-ESI EVIDENCE



Data source: [www.statista.com](http://www.statista.com)

## AGENDA

- Why Negotiate an ESI Protocol
- Legal Requirements
- ESI Protocol Negotiation Points
  - a. Preservation & Custodians
  - b. Collection activities and Data Mapping
  - c. Review procedures; Search keywords, TAR
  - d. Production Format
  - e. Native files; redactions
  - f. Privilege logs
  - g. Miscellaneous items
- Sample ESI Protocol

## WHAT IS AN ESI PROTOCOL?

- Governs the who, what, when and how of Electronic Discovery activities and electronically stored information (ESI)
- Sets out the expectations for both sides and is binding
- With or without Court/magistrate participation

<b>IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION</b>	
<b>IN RE: WRIGHT MEDICAL TECHNOLOGY, INC., CONSERVE HIP IMPLANT PRODUCTS LIABILITY LITIGATION</b>	<b>MDL DOCKET NO. 2329  1:12-MD-2329-WSD</b>
<b>This Document Relates To:</b>	
<b>ALL CASES</b>	
<b>STIPULATED ORDER RE: FORMAT OF PRODUCTION OF ELECTRONICALLY STORED INFORMATION</b>	
<b>I. <u>SCOPE OF THE ORDER</u></b>	
Pursuant to agreement of counsel in this Multidistrict Litigation ("MDL"), this Order shall apply to all actions currently pending in MDL NO. 2329, the Wright Conserve Hip Implant Products Liability Litigation, and all future actions transferred to MDL NO. 2329. This Order governs the Defendants' production of all electronic information in MDL NO. 2329 consistent with the Federal Rules of Civil Procedure and any local rules governing the production of electronically stored information and supersedes any order that may have been entered in any case that is or becomes part of this MDL.	

## WHY NEGOTIATE ESI PROTOCOL?

- Massive proliferation of workplace and personal electronically stored information (“ESI”) in cases.
- Challenging proposition to competently deal with preservation, collection, review, and production of this information for a lawsuit.
  - Data types include multiple emails, user-created documents, structured data (like finance or CRM systems), instant messages, chats, texts messages, etc.
  - Data sources that can include work computers, personal computers, network, shared drives, cloud storage, smart phones, tablets, social media accounts, cameras, or other electronic devices.

## FORM OF PROTOCOL

- Form of Protocol
  - Should it be an Order or an Agreement?
  - Relation to Case Management Order
  - Relation to and Protective Orders
- Court Standing Protocols
  - Increasingly used
- Often by Case Type (e.g., IP litigation)

## LEGAL REQUIREMENTS

- Subject to standing orders and form protocols, no specific legal requirement per se for having an e-Discovery order, agreement, protocol, etc. in FRCP and most state laws.
- FRCP obligations come from 'Meet and Confer' requirements
  - Parties must meet & confer 21 days before the scheduling conference or when a scheduling order is due (FRCP 26(f))
  - Scheduling conference must occur within 90 days of filing (FRCP 16)
- FRCP 26 'Meet & Confer' Requirements:
  - Discuss ESI preservation, form of production
  - Develop a proposed discovery plan
  - Submitting to the court a written report outlining the plan
- Meet & Confer can lead to an ESI agreement, order, etc.

## ESI PROTOCOL NEGOTIATION POINTS

### *Preservation:*

- ESI Agreements may specify preservation activities. FRCP 26(f) includes requirement for discovery plan to address preservation of ESI.
- Narrowing the scope of preservation can significantly reduce time and cost. This can be achieved with a combination of subject matter limitations, specifying the relevant time frame, carving out identifying non-relevant or duplicative data sources, and excluding data sources that are not reasonably accessible.
- Hold Status - May address when a hold was issued, who received it, what subjects and data sources are covered and auditing procedures.
- Other issues: preservation of time-sensitive sources, metadata, employee changes, document preservation/deletion policies

## ESI PROTOCOL NEGOTIATION POINTS

### *Collection Methodologies:*

- ESI agreements may specify acceptable collection methodologies.
- FRCP amendments emphasize that eDiscovery in general should be 'proportional' to the case. 'Reasonably calculated to lead to discoverable information' language removed. FRCP 26(b)
- Directed vs. Imaged
  - Imaged collection is a bit-by-bit forensic copy of Custodian drives. Replicates all data, including deleted files and fragments and information in the slack or unallocated space of the drive. This is the safest approach, but can be overkill.
  - A directed collection is more cost-effective and targets sources likely to result in discoverable ESI.
- Who collects? Company IT vs. outside vendor/eDiscovery expert vs. individual custodians.



## ESI PROTOCOL NEGOTIATION POINTS

### Collection- Custodians:

- A 'Custodian' is a person who has possession or control of discoverable ESI or other evidence.
- ESI agreements/orders may tie down who are the Custodians in the case.
- Shared drives, databases and other data sources can be an issue of custodian identification.
- Major cost implications of custodians and data sources. Limiting the number of people whose data must be collected and reviewed can be the single biggest cost savings in e-discovery.

### Custodian Record

Edit Custodians

Type	<input type="radio"/> Organization  <input checked="" type="radio"/> 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

## ESI PROTOCOL NEGOTIATION POINTS

### *Collection Scope - Culling & Deduplication:*

- Most important when a broad collection has been undertaken, e.g., imaging custodian drives
- Date Limitations - ESI agreements may specify dates that ESI was collected (e.g. 1/1/2012 - 6/30/2015)
- File types - May specify file types that are searched, particularly if unusual file types will be important.
- Dedupe methodology may be specified. Horizontal Deduplication: Identification and removal of duplicate emails across all of the custodians within a case. Vertical Deduplication: The identification and removal of duplicate emails within each custodian's collection. Vertical DeDupe maintains associations between emails and all relevant custodians.

## ESI PROTOCOL NEGOTIATION POINTS

### *Specify Custodian Collection Procedures:*

- Email (work vs personal)
- All computers (workstations, laptops, etc.)
- Tablet computers, smartphones, other mobile phones
- Cloud-based accounts
- Chat or messaging applications
- Custodian contacts
- Work vs personal
- Present vs. past
- Lost or destroyed

## ESI PROTOCOL NEGOTIATION POINTS

### *Collection - Not Reasonably Accessible Data:*

- FRCP 26 provides that parties are not obligated to produce ESI that is “not reasonably accessible.” E.g., Presumed non-proportional. Application to particular ESI depends on particular case circumstances.
- Most Accessible: Active online data, such as email accounts, computer hard drives in use, portable devices and cloud storage. Nearline data in storage systems and offline storage and archives may be reasonably accessible, depending on the circumstances.
- Less Accessible: Backup tapes, erased, fragmented or damaged data, system files that log user activity, temporary files, cache files.
- Agreement or court may provide for discovery of ESI not reasonably accessible with cost-shifting or cost-sharing.

# ESI PROTOCOL NEGOTIATION POINTS

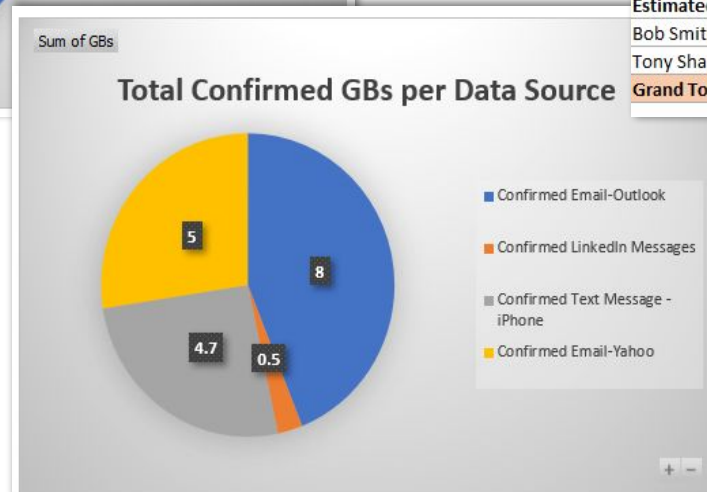
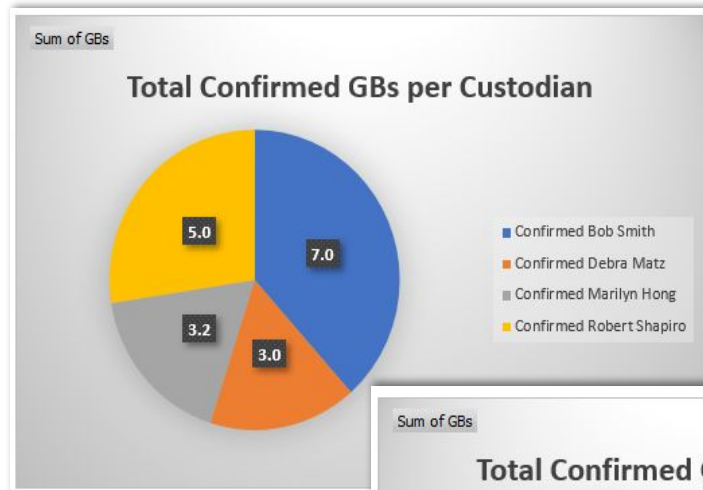
## Data Mapping Log

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/Uncc
Bob Smith	Nabisco	Finance	CFO	<a href="mailto:bob@gmail.com">bob@gmail.com</a>	555-555-5555	Cleveland	OH	9/1/2018	Email-Outlook	5.0	Confirmed
Bob Smith	Nabisco	Finance	CFO	<a href="mailto:bob@gmail.com">bob@gmail.com</a>	555-555-5555	Cleveland	OH	9/1/2018	Text Message -iPhone	1.5	Confirmed
Bob Smith	Nabisco	Finance	CFO	<a href="mailto:bob@gmail.com">bob@gmail.com</a>	555-555-5555	Cleveland	OH	9/1/2018	LinkedIn Messages	0.5	Confirmed
Marilyn Hong	Kellogg's	Marketing	Director	<a href="mailto:mhong@msn.com">mhong@msn.com</a>	555-555-5555	Orlando	FL	9/3/2018	Email-Outlook	4.0	Unconfirmed
Marilyn Hong	Kellogg's	Marketing	Director	<a href="mailto:mhong@msn.com">mhong@msn.com</a>	555-555-5555	Orlando	FL	9/3/2018	Text Message -iPhone	3.2	Confirmed
Robert Shapiro	Kellogg's	Finance	CFO	<a href="mailto:rshapiro@kellogg.com">rshapiro@kellogg.com</a>	555-555-5555	Orlando	FL	9/3/2018	Email-Outlook	6.5	Unconfirmed
Robert Shapiro	Kellogg's	Finance	CFO	<a href="mailto:rshapiro@kellogg.com">rshapiro@kellogg.com</a>	555-555-5555	Orlando	FL	9/3/2018	Email-Yahoo	5.0	Confirmed
Debra Matz	Kellogg's	Finance	Auditor	<a href="mailto:dmatz@kelloggs.com">dmatz@kelloggs.com</a>	555-555-5555	Orlando	FL	9/4/2018	Email-Outlook	3.0	Confirmed
Debra Matz	Kellogg's	Finance	Auditor	<a href="mailto:dmatz@kelloggs.com">dmatz@kelloggs.com</a>	555-555-5555	Orlando	FL	9/4/2018	Text Message-Android	2.0	Unconfirmed

# ESI PROTOCOL NEGOTIATION POINTS

## Data Mapping Reports



Report Status: Draft  
 Prepared By: Lexbe Staff  
 Email: [lexbe@lexbe.com](mailto:lexbe@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	<b>Grand Total</b>	<b>1</b>
<b>Grand Total</b>	<b>9.0</b>	<b>Grand Total</b>	<b>9.0</b>		

# ESI PROTOCOL NEGOTIATION POINTS

## Processing Selects

- de-NISTing
- Deduplication
  - Vertical
  - Horizontally
- Time-zone used
  - Custodian usual
  - GMT
- Email threading
- Metadata fields preserved

## Appendix A: Metadata Fields to be Included in Load Files

Field Name	Data Example	Field Description
BEGDOC	XYZ 00000178	Bates number of first page.
ENDDOC	XYZ 00000178	Bates number of last page.
BEGATT	XYZ 00000177	Bates number of first page of attachment range. Blank if no attachments.
ENDATT	XYZ 00000179	Bates number of last page of attachment range. Blank if no attachments.
ATTACHMENT	XYZ 00000178; XYZ 00000179	Semicolon separated list of Bates number of first page of each attachment.
PARENTID	XYZ 00000177	It refers to the main email body that the attachments belong to. Bates number of first page of parent. Only populated for attachments.
RECORDTYPE	eEmail	Possible values include eEmail (Email body), Attachment (Email Attachment), EDoc (Native file).
DATESENT	04/15/2012	Date email was sent in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMESENT	02:45:22 PM	Time email was sent in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.

# ESI PROTOCOL NEGOTIATION POINTS

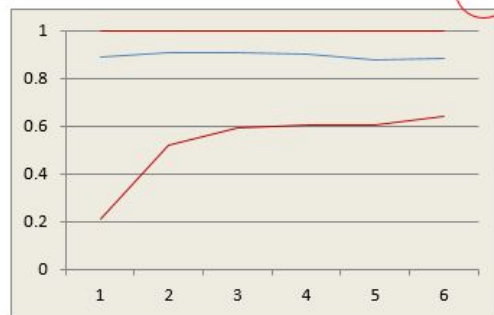


## Assisted Review Report

1

Case Name:	Assisted Review +
Title:	Lexbe
Date Completed:	10/13/2014 4:19:15 PM
Run By:	<a href="mailto:assistedreview@lexbe.com">assistedreview@lexbe.com</a>
Comments:	

2



3

Predictive Coding	Seed Set		Control Set		Predicted Set		Total	
	#	%	#	%	#	%	#	%
Responsive:	753	30%	1,242	50%	785,005	30%	787,000	30%
Non-responsive:	1,747	70%	1,258	50%	1,822,995	70%	1,826,000	70%
Total:	2,500	100%	2,500	100%	2,608,000	100%	2,613,000	100%

4

Statistics		
Final F:		88%
Precision Percent		90%
Recall Percent		87%
Margin of Error (%):		+/- 24%

- ESI Protocol may address use of technology assisted review aka predictive coding
- Transparency could include:
  - TAR algorithm used
  - Seed set size & contents
  - How seed set chosen
  - Control set size
  - F score (precision & recall)

## ESI PROTOCOL NEGOTIATION POINTS

### *Form of Production - Requirements - FRCP 34(b)*

- If No Agreement - Requires that ESI 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.
- Specifics of ESI delivery of delivery formats is the meat of many ESI Agreements or orders. *Note: No right under FRCP to have the common TIFF/loadfile delivery, absent an agreement or an unobjected request.*

## ESI PROTOCOL NEGOTIATION POINTS

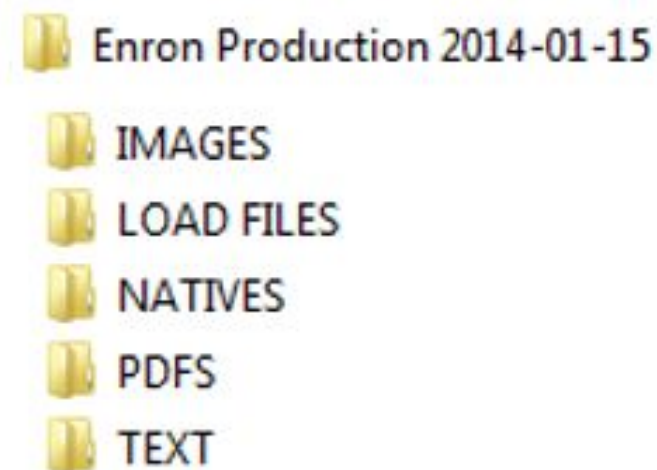
### *Form of Production - Requirements - FRCP 34(b)*

- Review Software Used. It's important to know what document review technology/software will each party be using? This will drive what the form of production will be for that party.
- Litigation eDiscovery Document Review Applications - 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/cloud-based.
- Options for Small Document Sets - Some review small email data sets directly in Outlook. Other native files may simply be reviewed on a local computer. Some convert everything to PDF and review on computer without a Litigation Review Application.

# ESI PROTOCOL NEGOTIATION POINTS

## *Form of Production - Requirements - FRCP 34(b)*

- |             |   |
|-------------|---|
| What is it? | Delivery in multiple formats as needed:<br>Native, PDF & TIFF/text, with multiple load file formats   |
| Advantages  | <ul style="list-style-type: none"><li>• Lessens format discussions/delays</li><li>• Flexible for multiple platforms</li><li>• PDFs available for easy transfer; Natives for backup and review; TIFFs for review systems that require it (if needed)</li><li>• Versions linked for easy comparison</li></ul> |
| Notes       | <ul style="list-style-type: none"><li>• Multiple version of load files provided for system flexibility</li></ul>  |



# ESI PROTOCOL NEGOTIATION POINTS

## Form of Production - DAT Loadfile Details

### Loadfile 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
    
```

<b>Field Token</b>	;Record 1 @T ENRON 0000001 @MEDIA eEmail @C ENDDOC# ENRON 0000001 @C PGCOUNT 1 @D @\IMAGES\0001\ ENRON 0000001.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
<b>Record Token</b>	;Record 2 @T ENRON 1000 0000002 @PARENTID ENRON 0000001 @MEDIA Attachment @C ENDDOC# ENRON 0000002 @C PGCOUNT 1 @D @\IMAGES\0001\ ENRON 0000002.tiff	

# ESI PROTOCOL NEGOTIATION POINTS

## Production - Sample Metadata Requirements for Loadfiles

Field Name	Data Example	Field Description
BEGDOC	XYZ 00000178	Bates number of first page.
ENDDOC	XYZ 00000178	Bates number of last page.
BEGATT	XYZ 00000177	Bates number of first page of attachment range. Blank if no attachments.
DATESENT	04/15/2012	Date email was sent in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMESENT	02:45:22 PM	Time email was sent in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATERECEIVED	04/15/2012	Date email was received in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMERECEIVED	02:45:22 PM	Time email was received in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATECREATED	04/15/2012	It will show the date that the native file is stored in the properties of the file, when it was first created.
TIMECREATED	02:45:22 PM	Time native file was created in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
DATEMODIFIED	04/15/2012	Date Last Modified for native files in the format MM/DD/YYYY using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
TIMEMODIFIED	02:45:22 PM	Time native file was modified in the format HH:MM:SS XM using local time zone provided. If no local time is provided, Universal Time (formerly GMT) is used.
LASTMODIFIEDBY	Alex Murphy	The name of the author who was the last person to make changes to the native file(s).
AUTHOR	Jacob Brown	Author for Native files.

FROM	Adam Brooks	Author for Native files. Sender for Emails.
TO	John Doe (jdoe@domain.com);	Semicolon separated list of Recipients for Email. The exact value depends on the multiple factors including the email client address book. This includes name, email address, and/or Moniker.
CC	John Junior (jjunior@domain.com);	Semicolon separated list of Carbon Copy Recipients for Email. The exact value depends on the multiple factors including the email client address book. This includes name, email address, and/or Moniker.
BCC	Sarah Smith (ssmith@domain.com)	Semicolon separated list of Blank Carbon Copy Recipients for Email. The exact value depends on the multiple factors including the email client address book. This includes name, email address, and/or Moniker.
SUBJECT	Meeting time changed	Subject of the email.
FILENAME	Proposed Retainer - clean copy	Filename without extension of the native file.
FILEEXTENSION	.doc	File extension of native file.
VOLUME	PROD_IMG001	Fixed.
ORIGINALSPATH	\ORIGINALS\001\XYZ 00000177.xlsx	Relative file path of Native files.
PAGES	20	Number of pages if file was converted to PDF or TIFF.
SOURCEFILEPATH	ORIGINALS\001\XYZ 00000177.xlsx	Relative file path of Native files. It refers to the Folder Path within Microsoft Outlook and keeping folders and subfolders information.
TEXTPATH	\TEXT\001\XYZ 00000177.TXT	Relative file path of Extracted / OCR text.
PDFPATH	\PDF\0001\TEST 0000001.pdf	Relative file path of PDF files.
CUSTODIAN	Malta	Custodian associated with Original (native) file.
MD5	C8054025235FBRA26E4BC242A EF543B6	Incoming MD5 of Original (native) file.

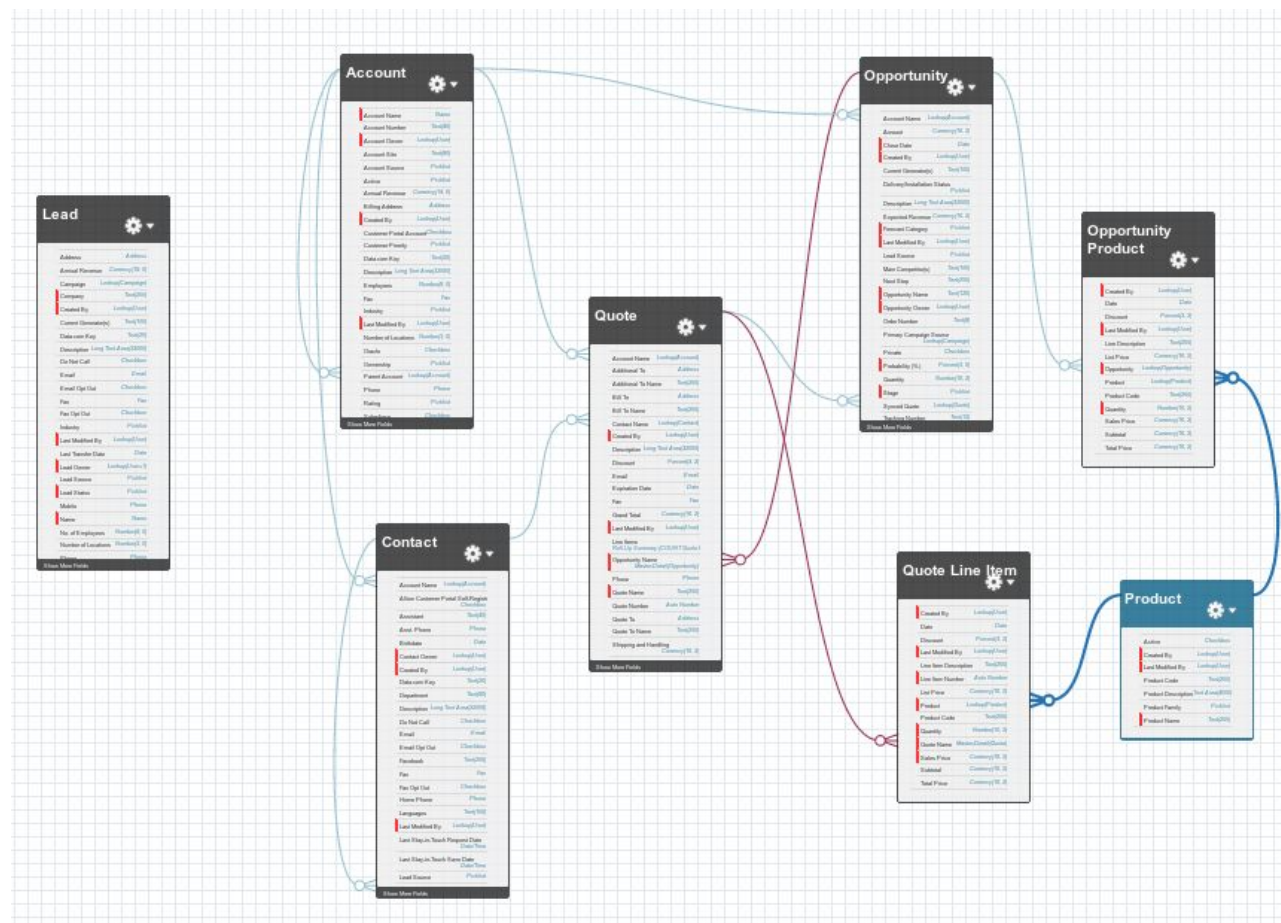
## ESI PROTOCOL NEGOTIATION POINTS

### *Databases:*

- Databases increasingly important, or even critical
- Types
  - CRMs (e.g., Salesforce)
  - Accounting (e.g., Quickbooks)
  - Operational or custom
- May be highly evidentiality
- Sometimes highly proprietary
- Fields and commonly used, queries and reports
- Important to know who maintained and how used
- Often produced as reports or Excel spreadsheets

# ESI PROTOCOL NEGOTIATION POINTS

Databases- Salesforce.com data model:



# ESI PROTOCOL NEGOTIATION POINTS

## Native Production

- Usually in addition to Paginated versions: TIFF and/or PDF
- Options:
  - Produce all Natives too unless redacted or privileged,
  - Produce only Excels and Powerpoints
  - No Natives unless case shown
- In any case may be additional on cause shown
- Container files (Zip, RAR, etc.)
- Native redaction tools

# ESI PROTOCOL NEGOTIATION POINTS

## Redactions

- Increasing responsibility under privacy laws and initiatives
- Redaction Uses
  - PII
  - Confidentiality under Protective Orders
  - Relation to AEO
  - Redaction to remove privilege
  - Redaction for relevance (??)
- Redaction procedures for PDFs and images
  - Need to remove underlying text layer of PDFs
  - Re-OCRing
- Redaction tools
  - Inline in eDiscovery tools
  - Acrobat Pro for PDFs
  - Native redaction tools

# ESI PROTOCOL NEGOTIATION POINTS

## Privileged Information-Privileged and Work Product Documents

- FRCP 26(b) requires privilege log preparation and case law traditionally has required specific logging requirements that can be burdensome in complex cases.
- An ESI agreement or order can define and narrow the privilege logging requirements, including:
  - Schedule of log delivery
  - Limiting dates of logging (e.g., once litigation commences) or with particular counsel (e.g., litigation counsel)
  - Automate creation with document management software from metadata
  - Logging email by thread group
  - Categorical logs that describe withheld categories instead of listing withheld records

# ESI PROTOCOL NEGOTIATION POINTS

## Privileged Log from Metadata Using Software

### 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

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

Doc	Bates	Doc Date	From	To	Subject Matter
<a href="#">Link</a>	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

## ESI PROTOCOL NEGOTIATION POINTS

- Lexbe has a model ESI Protocol at Lexbe.com website for download, or on request from a Lexbe staff member
- A link will be included with Webinar link following webinar and with on-demand version
- Addresses subjects discussed today and more.
- Includes alternative provisions to meet specific case or negotiation requirements

### Lexbe Sample ESI Discovery Protocol<sup>1</sup>

This stipulated agreement<sup>2</sup> regarding discovery and production of electronically stored information (“ESI Discovery Protocol”) governs discovery of electronically stored information (“ESI”) in this case. Consistent with the provisions of this ESI Discovery Protocol, each party shall preserve, collect and produce responsive ESI to other party or parties as provided herein.

**1. ESI to be Preserved.** A party is obliged to consider for preservation, identification and production all potentially responsive information items and data sources over which the party (including its employees, officers and directors) has possession, physical custody or a right or ability to exert direction or control, so long as reasonable and proportionate. Preservation obligations include the metadata specified in Appendix A when available. The belief that an employee, agent or contractor may fail to act upon or conform to an attempted exercise of direction or control is not a justification for any party to fail to undertake an exercise of direction or control directed to preservation, identification and, as potentially responsive or relevant, production of information items and data sources.

**2. ESI that Need not be Preserved.** Absent a showing of good cause by a requesting party, the following categories of ESI need not be preserved:

- a) Deleted, slack, fragmented, or other data only accessible by forensics.
- b) Server, system or network logs.
- c) Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
- d) On-line access data such as temporary internet files, history, cache, cookies, and the like.
- e) Back-up data that are substantially duplicative of data that are more accessible elsewhere.
- f) ESI remaining from systems no longer in use that is unintelligible on the systems in use.

## The Lexbe Solution

*Boutique Firms Want to be 'Lean and Mean'*

- **Infrastructure**

Cloud-based with virtually infinite capacity with lightning-fast performance

- **Expertise**

DIY tools that equip your team with the capabilities to perform discovery workflows in-house vs. outsourcing

- **Advanced Capabilities**

Search, Email Threading, NearDup, TAR, AI

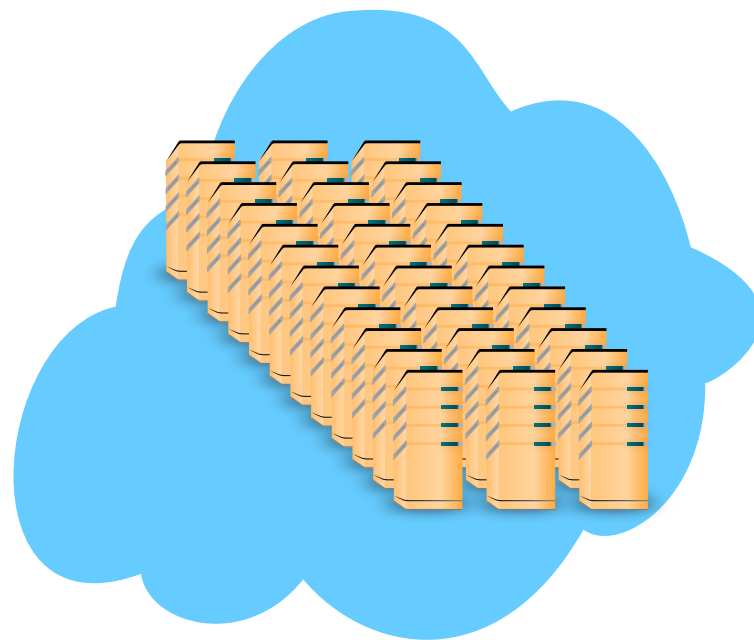
## The Lexbe Solution

*Boutique Firms Want to be 'Lean and Mean'*

- **On-Demand Cloud-Based**

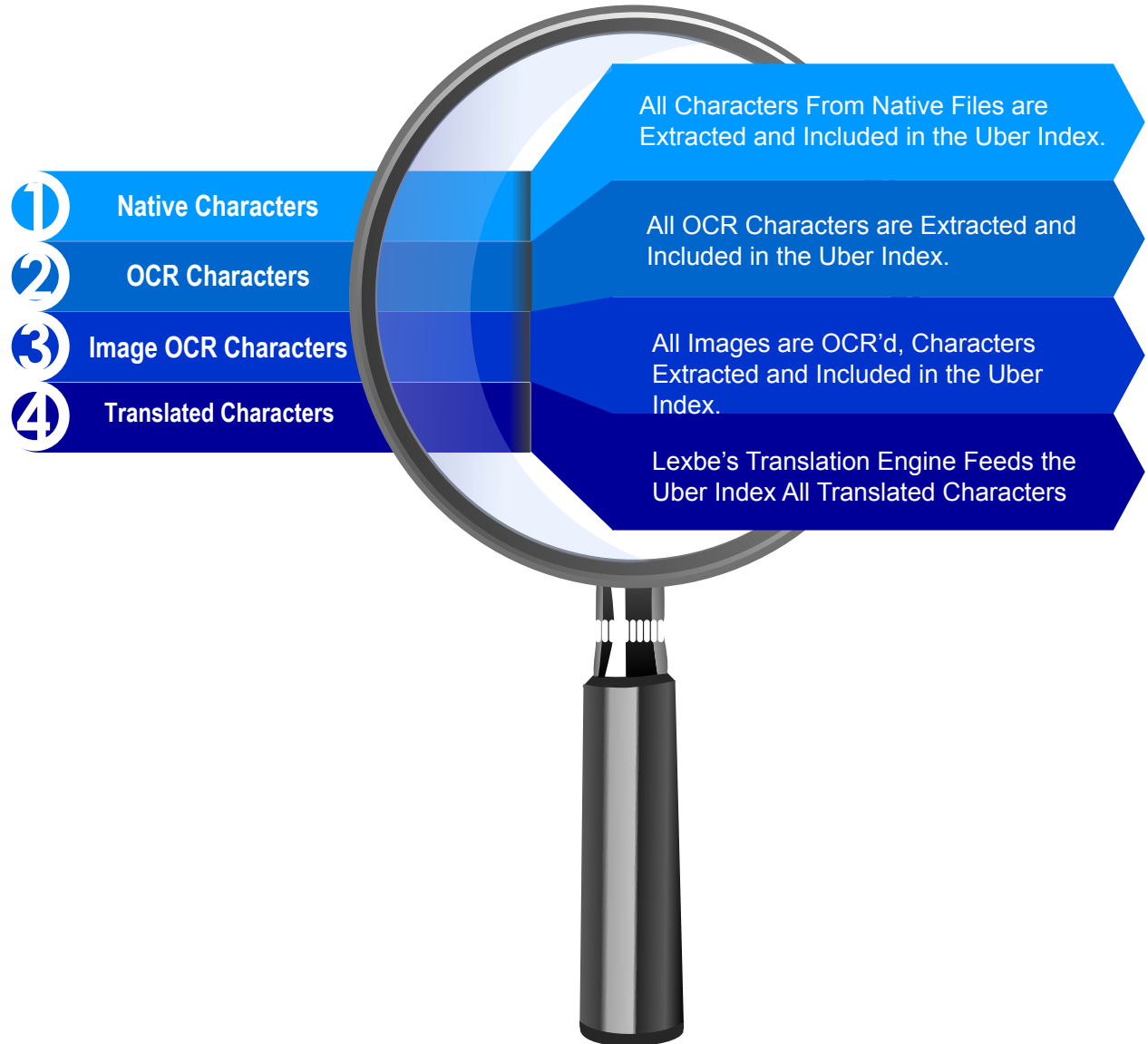
Lexbe equips you with better than Big Law infrastructure for a fraction of the price and resource requirement

- Auto-scales to efficiently meet the exact demands of your case
- Lightning-fast
- Highly secure
- Easily accessed from Internet enabled devices (PCs, Macs, iPhones, iPads and Android devices)



## THE LEXBE UBER INDEX

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



# Simple to Use, Yet Advanced Capabilities

*Creating Intelligence & Organization Out of Chaos*

## Email Threading, NearDup Groupings, Technology Assisted Review

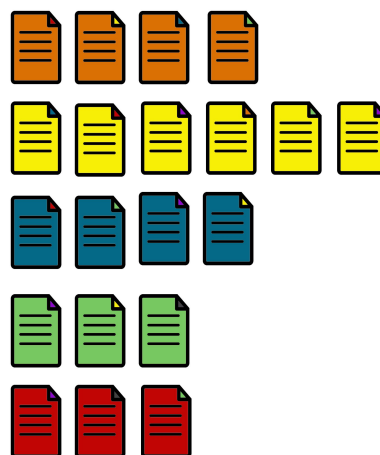
### Email Threading

Filter Applied: Email Thread Id = e1b04ea8-757d-e911-a9a1-fc647ebe87ea [RESET](#)

Browse Total: 5 VISUALIZE < Email Thread > ↻

Select	Title	Ext	Source FilePath	Date Sent
<input type="checkbox"/>	<a href="#">Re FW Test Email</a>	.msg	Re FW Test Email.msg	5/16/2019 6:27:12 PM
<input type="checkbox"/>	<a href="#">Re Test Email</a>	.msg	Re Test Email.msg	5/16/2019 6:27:06 PM
<input type="checkbox"/>	<a href="#">Re Test Email-b</a>	.msg	Re Test Email-b.msg	5/16/2019 6:26:42 PM
<input type="checkbox"/>	<a href="#">Re Test Email-c</a>	.msg	Re Test Email-c.msg	5/16/2019 6:24:22 PM
<input type="checkbox"/>	<a href="#">Re Test Email-d</a>	.msg	Re Test Email-d.msg	5/16/2019 5:36:57 PM

### NearDup Groupings



### Technology Assisted Review

**Assisted Review Report**

Case Name:	Assisted Review Test
Title:	(Best Outcome)
Date Completed:	10/29/2018 9:59:25 PM
Run By:	ebiller@lexbe.com
Comments:	

Predictive Coding	Seed Set		Control Set		Predicted Set		Total	
	#	%	#	%	#	%	#	%
Responsive:	37	37%	20	57%	162	50%	219	48%
Non-responsive:	63	63%	15	43%	160	50%	238	52%
Total:	100	100%	35	100%	322	100%	457	100%

Statistics		
Final F:		100%
Precision Percent		100%
Recall Percent		100%
Margin of Error (%):		+/- 29%

# Visual Email Threading

Easily zoom-in or pan-out to visualize all email threads or zoom into a single thread and quickly find missing emails, compare email details or drill into specific emails.

Home Case Analysis Search Browse Discovery Management Processing Admin Email Threading Display Case Support Help Log off

Email Thread Group
Compare Browse

The diagram shows an email thread with the following elements:

- Top row: "Not Available" (dashed box), "May 16, 2019 11:24 AM" (solid box), "Not Available" (dashed box), "May 16, 2019 11:27 AM" (solid box).
- Bottom row: "May 16, 2019 10:36 AM" (solid box), "Not Available" (dashed box), "May 16, 2019 11:26 AM" (solid box).
- Connections: Lines connect "Not Available" to "May 16, 2019 11:24 AM", "May 16, 2019 11:24 AM" to "Not Available", "Not Available" to "May 16, 2019 11:27 AM", "May 16, 2019 10:36 AM" to "Not Available", and "Not Available" to "May 16, 2019 11:26 AM".
- Annotations: A red circle highlights the "Not Available" email in the middle row. A red oval highlights the "Not Available" email in the bottom row.

**Email Detail** View

Title Re FW Test Email

From Jack Montagna (Jack.Montagna@lexbe.com)

To Karsten Weber (karsten@lexbe.com)

Date Sent 2019-05-16T18:27:12Z

Subject Re: FW: Test Email

---

**Email Detail** View

Title Re Test Email-b

From Jack Montagna (Jack.Montagna@lexbe.com)

To Karsten Weber (karsten@lexbe.com)

Date Sent 2019-05-16T18:26:42Z

Subject Re: Test Email

# Comparison

Compare emails side-by-side and instantly identify the differences via color coded text.

Reference Document		Primary Document	
<p>HITS ORIGINAL HTML PAGE PDF TEXT PRODUCED TRANSLATED REDACTED ANNOTATED <b>COMPARE</b></p> <p>Show Lines with Diffs (12) <span>Side by Side</span> <span>Line by Line</span></p>			
1	- From: Ashton Smith (ashtonsmith@gmail.com)	1	+ From: Jackson Bella (jack.bella@gmail.com)
2	- Sent: Monday, June 25, 2019 8:49:03 PM	2	+ Sent: Monday, June 25, 2019 8:50:16 PM
3	- To: Kim Smith (kimsmith@gmail.com)	3	+ To: Ashton Smith (ashtonsmith@gmail.com)
4	- Cc: Neil Borg (neil.borg@gmail.com); Jackson Bella (Jack.Bella@gmail.com)	4	+ Cc: Neil Borg (neil.borg@gmail.com)
5	Bcc:	5	Bcc:
6	Subject: Re: Performance Evaluations	6	Subject: Re: Performance Evaluations
		7	+ I don't have evals for these folk. Kendra Smith EID 194725
		8	+ Joseph Jackson EID 682943
		9	+ Ally Hondray EID 918427
		10	+ Please have Sandra forward them. Thanks. -km
		11	+ On Mon, Jun 25, 2019 at 3:49 PM, Ashton Smith <ashton.smith@gmail.com> wrote:
7	Please include the evals for the last 5 years for each employee. If employed for less than 5	12	Please include the evals for the last 5 years for each employee. If employed for less than 5
8	reviews. Neil	13	reviews. Neil
9	On Mon, Jun 25, 2019 at 3:48 PM, Kim Smith <kimsmith@gmail.com> wrote:	14	On Mon, Jun 25, 2019 at 3:48 PM, Kim Smith <kimsmith@gmail.com> wrote:
10	Received. Thanks -km	15	Received. Thanks -km
11	On Mon, Jun 25, 2019 at 3:48 PM, Neil Borg <neil.borg@gmail.com> wrote:	16	On Mon, Jun 25, 2019 at 3:48 PM, Neil Borg <neil.borg@gmail.com> wrote:

## Support Staff

Doesn't require IT or Litigation Support Staff to Operate

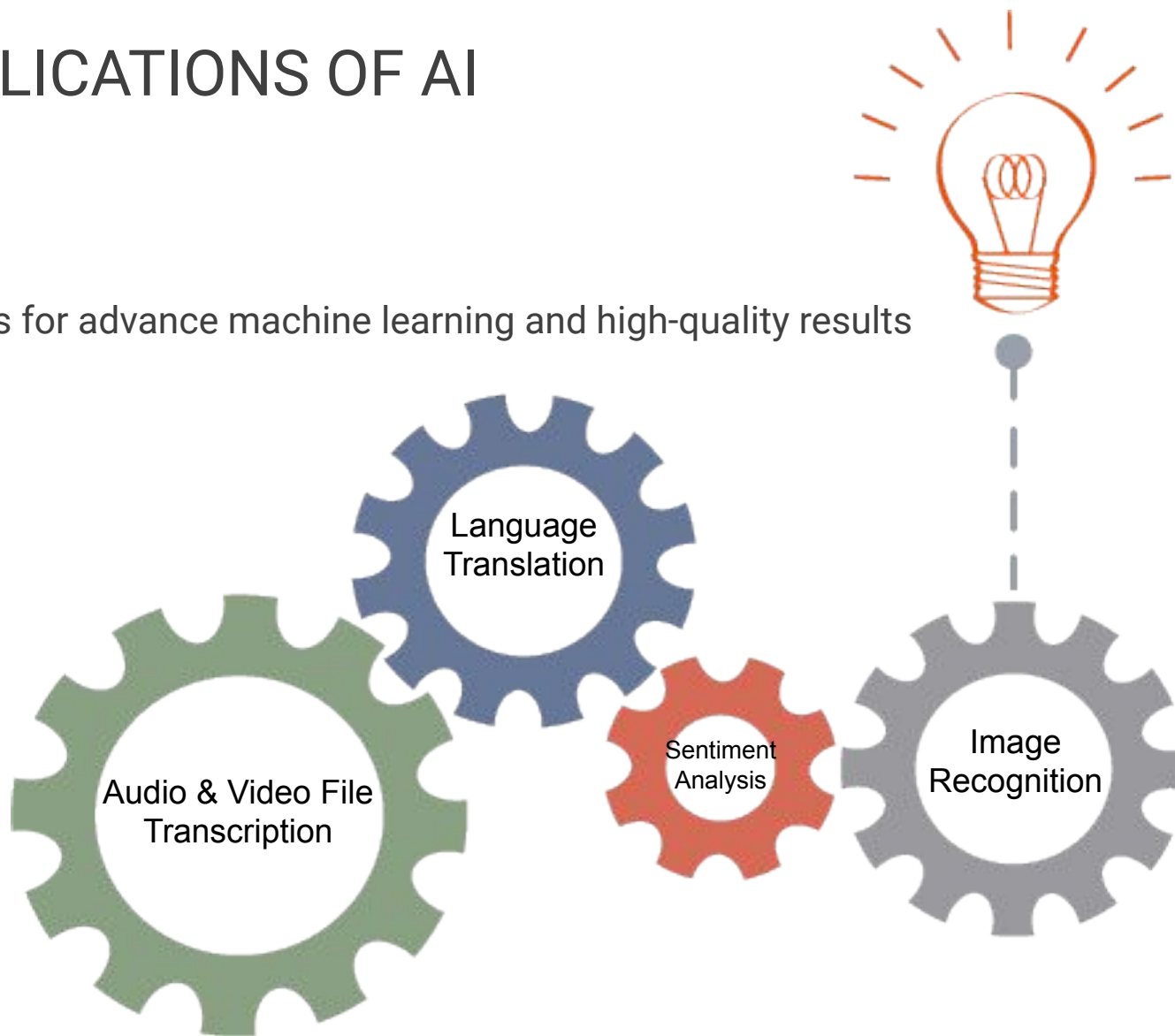
- Lexbe empowers firms without large litigation support departments to instantly increase their discovery and review capacities.
- Our 24 hour ticket system allows you to submit an IT issue to our support department.

## 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

## ADVANCED APPLICATIONS OF AI

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



## INDUSTRY LEADING SECURITY

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



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

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

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