

Message ESI in Many Single-Plaintiff Employment Cases and Comparable Cases: Harnessing the Search and Automation Capabilities of Microsoft Outlook and Low-Cost Add-ins

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The book co-authored by Tom O'Connor with Bruce A. Olson, "Electronic Discovery for Small Cases,"¹ is a valuable reference for understanding and addressing what the authors' term "the small case dilemma." For many if not most single plaintiff employment cases and other cases where the stakes are comparatively small and which do not involved large data volumes (about 60GB is the most I have worked with), Microsoft Outlook as augmented by low-cost add-ins should be considered as a potential resource.

Overview:

Augmented by inexpensive add-ins, Outlook versions 2007 and later can be used to analyze and produce messaging ESI that can be collected in PST files. Multiple PST stores (including searchable attachment content) can be reviewed, with the aid of reasonably sophisticated Boolean keyword searches, to identify and designate items and/or attachments for production or to withhold based on privilege. Designated items can be produced in PST files or, using inexpensive add-ins, in MSG , EML or MHT format with metadata-based files names, or in searchable PDF format with metadata-based files names within a mirror folder structure, while recording core item properties and the folder structures.² Efficiency can be enhanced using simply constructed macros to automate some analysis, search and production processes. Metadata impact in minimal and insubstantial, and is addressed by preserving the original PST files and recording core metadata before moves or classification.

Process description:³

1. Initial Screening And Analysis:

¹ Available at

<http://apps.americanbar.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5110738>.

² Export in PDF format can make through the inexpensive "PST Viewer Pro." See <http://www.encryptomatic.com/pstviewer/>.

³ All work is performed on a copy of the source PST folders, to allow for review in the original PST store, where necessary.

- a. De-duplication can be performed across multiple stores, using MAPILab's Duplicate Email Remover.⁴
- b. Exploratory analysis is performed using the Lookeen⁵ add-in and/or Outlook's (slower) Instant Search Method, both capable of reasonable sophisticated Boolean searches.
- c. Non-searchable PDF attachments can be identified using the Outlook Restrict search method and macro automation, so that, as appropriate, they can be exported and made searchable.
- d. Select items can be exported in MSG and/or PDF format for "off-system" review, using the MessageSave⁶ add-in, and attachments can be separately exported using EZDetach.⁷ Using macro automation, key metadata of those items can be recorded in excel sheets and corresponding word tables to allow for markup in Word and sorting operations in Excel.

2. Identification of items to protect privilege

- a. If privileged items can be isolated using relatively simple Boolean keyword searches on core item properties⁸ (including attachment content), Outlook's Restrict filtering method can be used via macro to move search results to a mirror folder structure after recording core item properties in an excel sheet or sheets, to form the basis for a privilege log.
- b. For more complex searches and to facilitate individualized adjustments, Lookeen and Outlook's Instant Search Method can be used to identify and assign a User Defined Category or Property value to potentially privileged items, after first recording core item properties in excel sheets by macro automation. The final item set can be moved manually to a single folder, or Restrict Method macro automation can use the item category/property value(s) to move items to a mirror folder structure.

3. Identification of items for production

- a. If items to be produced can be identified using relatively simple Boolean keyword-like searches on core item properties (including attachment content), the Restrict Method macro automation can be used to moved items to a mirror folder structure, with the key metadata of the items automatically saved to an excel sheet or sheets prior to moving the items.
- b. For more complex searches and to facilitate individualized adjustments, Lookeen and Instant Search be used, with items assigned a Category or Property value en mass using macro automation, after key metadata is saved to an excel sheet or

⁴ http://www.mapilab.com/outlook/duplicate_remover/, single user license for \$24.

⁵ <http://www.lookeen.net/>, standard edition costs \$69.80, and business edition costs \$99.80.

⁶ <http://www.techhit.com/messagesave/> costs \$49.95 per license.

⁷ <http://www.techhit.com/ezdetach/reg.html>, costs \$49.95 per license.

⁸ Item "properties" are the "standard and user-defined properties associated with [an] Outlook item." http://msdn.microsoft.com/en-us/library/microsoft.office.interop.outlook.mailitem_properties.aspx

sheets by macro automation. The Restrict Method can be used to either move the results to a mirror folder structure or to move or delete the non-classified items.

4. Production

- a. The folder(s) holding the items identified for production can be exported to one or more PST files, or the non-responsive items stores can be removed leaving PST file(s) to contain only the items to be produced.
- b. The folder(s) holding the items identified for production can be exported in MSG, EML or MHT format to a mirror drive folder structure using the MessageSave add-on, with items named based on key item properties to facility organization and review.
- c. Item attachments can be exported independently using the EZDetach add-on, into the same mirror folder structure, and named so they are readily associated with their source items.
- d. Items can also be exported in searchable PDF format, optionally with imbedded attachments in native format, into the same mirror folder structure, using PST Viewer Pro,⁹ or using Acrobat versions 9 and higher to create an Acrobat Email Portfolio.
- e. The files to be produced can be named by macro automation using a “Bates” label, and their authenticity can be guaranteed by macro automation to record their hash values to an excel file.¹⁰

Conclusions:

Over time, the costs of sophisticated ESI discovery software tools will fall, and sophistication levels will increase. In the meantime, for many if not most single plaintiff employment cases and other cases where the stakes are comparatively small and which do not involved large data volumes, Outlook may form a viable foundation for handling message ESI.

⁹ See <http://www.encryptomatic.com/> -- single user license \$69.99.

¹⁰ See Craig Ball, “*The Case for Native*,” in *Musings on Electronic Discovery* “*Ball in Your Court*,” April 2005 – February 2013, p. 265, <http://www.craigball.com/BIYC.pdf>.