

Taming Technology

Welcome to the inaugural column of Tech Toolbox. I am D. Casey Flaherty, corporate counsel at Kia Motors America, and I am an unrepentant legal technology evangelist.

Despite my techno-evangelism, I do not believe in magic. One conceit of science fiction is that any sufficiently advanced technology is indistinguishable from magic. The technology should seem autonomous — imbued with agency and animated by mysterious forces that effortlessly meet our needs. We're not there yet. Technology remains limited in function and dependent upon non-intuitive user input.

As for those users, I don't believe in the myth of the digital native. Kids these days are immersed in technology, but their screen time is largely passive consumption. The content they do create — texts, tweets, posts, photos — is rudimentary and has minimal application to the demands of a professional environment.

Indeed, I garnered ACC's attention by developing a basic tech competency audit that I administer to my outside counsel. I will write more about the audit in a future column. In brief, I created mock assignments based on my time in Big Law. The assignments test for the utilization of basic software features and functions — e.g., word processing, PDF creation. I complete the four mock assignments in 30 minutes. The associates, paralegals and law students I have audited require an average of five hours. The reason: the software isn't intuitive, and they have never learned how to use it properly.

I am currently in the process of automating the audit and making it available for free to other in-house counsel. I invite other in-house counsel to join me in pressuring outside counsel to improve their technological competence. This training deficit is a massive source of waste — time billed unnecessarily. It is also a problem that is easily solved. The training required is nominal and widely available. Lawyers simply don't take advantage of it because baseline proficiency is not something their clients have demanded. I aim to alter this dynamic and render my audit obsolete within a few years.

Client collective action will be at the heart of my message in this column. Many of the excesses of the legal profession are attributable to the lack of

market discipline. The market is not some indifferent deity that intervenes at random. We, the clients, make the market. When the recession hit, we collectively established the new normal. Our actions were not coordinated so much as harmonized by a singular, external stimulus. But we don't need crises to drive incremental improvement. We don't need to act uniformly or in unison. All we need is a critical mass — say 10 percent of the Fortune 500 — loudly moving in a similar direction. I want to be part of that movement.

Still, I don't believe that technology will solve all our problems. Rather, technology is necessary to help us deal with the problems associated with, well, technology. Technological progress, for example, means that lawyers have the ability — but not the capacity — to review every decision at every level in every jurisdiction. This, given their hatred of leaving stones unturned, lawyers are inclined to do, at great expense. Begotten by technology, the problem demands technology-based solutions such as advanced search algorithms and improved knowledge management. Likewise, the world of Big Data is a world of pain for transactional attorneys performing due diligence or litigators conducting discovery. The quick fix was to throw expensive bodies at the problem. But data multiplied faster than budgets. Thus, predictive coding, due diligence engines, and other forms of technology-aided review are now a necessity.

Finally, I don't believe that technology is a substitute for lawyers in their role as trusted advisors. I believe that technology can assist in leveraging the wisdom of those trusted advisors and promoting economies of scale; that technology can free young attorneys from low-value-added tasks that occupies so much of their time; that technology can facilitate disaggregation so that the remaining labor-intensive drudgery is completed at a cost commensurate with the value provided. In short, I believe that technology is a necessary, though not sufficient, condition to letting lawyers be lawyers. Specific technologies, practices and processes will be topics for future columns. **ACC**



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