The internet hath no fury like a lawyer impugned. In my last column, I introduced the Suffolk/Flaherty Legal Tech Audit. In general, the Audit is treated as a positive development: another mechanism for enhancing transparency and accountability in order to help the profession catch up to the present. But like anything that challenges the status quo, the Audit has its critics. Since you will encounter them if you decide to deploy the Audit, I thought it best to prepare you in advance.

To recap: When I moved in-house, I developed a tech competence assessment to address one facet of the endemic waste I observed during my time in BigLaw. I tested outside counsel, their staff and, eventually, law students on utilization of basic timesaving features of common software (e.g., Word, Outlook, Adobe). As expected, they did not fare well. I mandated training and cut fees until efficiency improved.

I wrote about my findings. The reaction to my articles was strong and sustained (indeed, it helped me land this column). I was able to bring together a group spearheaded by Professor Andrew Perlman of Suffolk University Law School that is currently revising, expanding and automating my original assessment. The Audit is being beta tested. Upon launch, it will be made available to you and your department for free. You can get more information by emailing Professor Perlman at aperlman@suffolk.edu.

Few disagree with the abstract call for lawyers to become more conversant with technology — the ABA has gone so far as to add this necessity to the comments to Model Rule 1.1 on Competence. But more than a few lawyers seem offended that this abstraction may soon assume a corporeal form. Importantly, their arguments are intended to persuade that legal professionals should not be required to be competent with technology. Of course, their arguments implicitly credit my hypothesis that, in general, we aren’t.

The critics and I actually share a premise: Lawyers’ greatest value add comes from creative problem-solving rooted in deep experience. Admittedly, the Audit does not test domain expertise. Rather, the Audit’s objective is to reduce the time and mental energy unnecessarily devoted to low-value added work in order to create more space for “real” lawyering. Lawyers and their staff spend far too much time with their computers to use them so poorly.

The Audit is not some quixotic quest to turn every lawyer into a technology expert. More than mastering the exact skills being tested, most lawyers really need to develop the meta-skills to identify where and how technology can save time and/or improve quality. There is no shame in needing a refresher — via your preferred search engine — in how to use a particular function. But the lawyer does have to know enough to recognize that time can be saved and have a general sense of how to look up the specifics. Preparing for and passing the Audit is meant only to lay a foundation. If learning to use a computer properly is like acquiring a foreign language, the Audit tests basic greetings, asking for the bathroom and inquiring whether the person speaks your native tongue. A modicum of effort should be sufficient.

This need to acquire a general framework is also why the argument that lawyers should just delegate the laborious stuff is also not compelling. First, if you know how and when to delegate to the machine, much of the human labor proves unnecessary. Second, lawyers have a duty to provide proper oversight when delegating to staff. Under Model Rule 5.3, the lawyer remains responsible for the manner in which the legal work is performed under the lawyer’s supervision. My assessment of staff suggests there is no reason to assume that they are more technically savvy than the lawyers.

The most compelling critique of the Audit is that it does not go far enough. While the Audit increases transparency, it does not fundamentally realign incentives like, say, the death of the billable hour. This is true enough and very much the point. The Audit is focused on improvement at the margins and should not get subsumed by a decades-long debate — important though it is — about the fundamental structure of the legal market. The Audit is only one piece of a much larger puzzle that we are collectively trying to solve. But it is one more piece than we had before.
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