Dan Schiavetta, Jr.
Russo & Gould LP
33 Whitehall Street, 16th Floor
New York, NY 10004
(914) 329-7035
dschiavetta@russogould.com

How the Internet Is Making Lawyering Worse (and How to Stay Good in Spite of It)

The Analog Phone Call

- my call to Patty, 1971, on a clunky Bell System phone
- sighs, whispers, hesitations
- pregnant silences
- nuanced, subtle conversation

The Digital Telephone Call

- if it’s not loud enough for 1, it’s 0
- can’t hear sighs, mutterings
- talking over each other
- “over!” “over and out!”

voice to voice is
WORSE today than it
was in 1971

do you really want to communicate
only in writing?

Writing Briefs

- MS Word conquered WordPerfect (a better app)
- must create “styles”; can’t remove pesky codes
- greater need for the mouse
  - demise of the Model F keyboard
- no more word searches across applications
- young lawyers have no idea what I’m talking about

Word Processing is WORSE than it was in 1989

- have you tried to double indent recently?
- unnumbered paragraphs?
- flush right with dot leaders?
- as a result, we don't do those any more

Document Management Software

does your firm really need it?

- forced into inappropriate categories
- must enter garbage data just to get to next screen
- unable to store items “as is”
- poor word search capabilities
- macros get wiped

Windows Explorer + good word search app

Document Management is now WORSE than it was in 1998

effects:

- documents get lost
- hearsay exception for business records: can't do it
- faster to work offline in creating/editing documents
  - did you remember to upload when finished?

E-Discovery Software

does your firm need it?

- used to be called sloppy practice (maybe even "*mal*practice")

- items not detected
  - *Cleveland v. Behemoth*
- won't see misspellings or odd phrasings

Document Review is now WORSE than it was in 2000

effects

- less efficient review of material that does get retrieved (some of it by mistake)
- reading through mountains of trivia
- having to recategorize documents

The Worsening Culture Clash

- IT personnel → secretaries → paralegals → junior associates → senior associates → partners

- those who design vs. those who actually have to use the software
- tech ignorance as a sign of status

Representing Clients Is Worse, Too -- 1

- online proprietary software (that lawyers often can't buy – it will always be a mystery to us!)
- pdf printouts that look nothing like the original records
- witnesses can't authenticate their own entries
- search function! (but you didn't need it before)

Representing Clients Is Worse, Too -- 2

- additional hard copy records
- saving things in wrong places
- non-tech savvy personnel
- limited access to computers
- loss of functionality when job finished/case closed

Representing Clients Is Worse, Too -- 3

Electronic Medical Records (EMR or EHR)

- HITECH Act of 2009
- proprietary software
- cut and paste errors
- garbage entries to get to next screen
- different nurses/doctors on same sign-in during emergencies
- records of other providers not integrated

Representing Clients Is Worse, Too -- 4

- changing platforms
- expiring platforms
- the problems of authentication at deposition, trial
  - technicians are now almost unavoidable

Representing Clients Is Worse, Too -- 5

"The Internet of Things"

- computers, email, cloud storage
- smartphones, smarthouses, Bluetooth, GPS
- wearables (fitness trackers, medical monitors, smartwatches)
- surveillance videos

in sum: it is *impossible* to get everything

THE DARK MATTER UNIVERSE

you used to be bigger than the file

now **the file** is bigger than you

and you don't know where all of it is (or what further material it should contain)

(astronomers: 85% of everything!)

(and don't get started on dark *energy* . . .)

- spam folders?
- offline material?
- on laptops? on dead/disposed computers?
- diverted or accidentally deleted material?
- emails saved with missing parent attachments?

A Palace Built on a Foundation of Oatmeal

- the Y2K problem
- “old codes” and “dead codes” (or maybe “*un*dead”?)
- Moore’s law allowing bloatware
- can be fixed (but won’t be)

ONE KEYSTROKE FROM DISASTER

- auto-fill!
- “reply all”!
- accidental disclosure
- responding to what turned out to be phishing
- deduplicating mistakes (but I thought that was the final draft . . . ?)

The Internet Is Good (no, I mean it . . .)

- find information quickly
  - though it allows crazy people to find *each other*
- communicate around the world
- faster legal research (though there's that word search issue)
- emerging generation has good b.s. detectors
- everything that is worse does have some advantages

WORSE LAWYERING

- slower
- more mistakes
- lower expectations of what is possible
- can’t ever know the whole file
- danger of spoliation
- unpleasant surprises
- everyone in the firm uses the technology a little differently

The Problem of Waiting

- slowness in pulling things up
- slowness in saving changes
- “populating” a list
- slowness in printing
- this did *not* happen in the DOS era
- can’t use this time on something else . . . just have to wait . . .

Working with *Distractions*

- "Concentration is ravaged: the spaces dwindle to vanishing point, and we are consumed."

  John A.T. Robinson, *Honest to God*, 1963, p. 92

- "The world is too much with us; late and soon,
  Getting and spending, we lay waste our powers."

  William Wordsworth, 1807

- the most important thing to spend time on is not billable: *thinking*

Why Don't We Hear About Any of This?

- we don't *want* to use these technologies, but we *have* to
  - used by clients with different or lesser needs
- professional pressures, integration with other law firms
- clients who insist on it
- governmental requirements? (hope not . . .)

- people will not tell you anything bad
  - salespeople
  - trainers explaining their bosses' purchases
  - lawyers and IT experts who want to look up to date
    - new is not always better
    - *looking like* you're doing a good job vs. *actually* doing a good job

- software not developed by practitioners
- we are sheep and don’t think about it after a while
- we don’t *want* to think about it
- the lucky few for whom it fits their brains

How to Stay Good

- don’t let it change your brain
- note deficiencies before they slip away from you
  - notify IT and office manager
    - maybe you’re wrong?
- create running text file

- the delicate art of telling your boss he/she made a mistake (harder now)
  - don’t ever make it look like it was *your* mistake
  - make sure the client doesn’t find out
  - if impossible to fix it, think of an excuse why it was not done, or was done *that* way
  - gently letting your boss know that he/she made a mistake and you fixed it

what Dan does

- spend time away from the Internet of Things
- work offline if possible
- my little book, one page per case
- review that text file of complaints (who knows...?)

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