

The Graying of the Bar

Paper and the Older Lawyer – Both Are Here to Stay

BY ED POLL

How old can a lawyer be and still practice effectively? Two news stories published last year addressed that question. An article in *The Seattle Times* about the “graying of the bar” noted that 66 percent of the members of the Washington State Bar were age 41 or older, and that 10 percent were age 60 or older. It subsequently declared that “incompetence due to declining skills, failure to keep pace, or dwindling mental acuity may soon rise in the legal profession.”

That seems overblown enough, but a second item described a new regulation in India (where legal work is increasingly being outsourced) stating that if you are not licensed by age 45, you cannot become an advocate. “We don’t want the Bar to become parking lots for retirees,” one official was quoted as saying.

TECHNOLOGY AND OBSOLESCENCE

The idea that age equals incompetence is prevalent in many professions, but historically the law has been immune. The concept of the wise, experienced counselor has long been considered a role model. One thing, however, has changed the equation dramatically: the integration of technology into the practice of law. Wireless communication devices and word processing and billing software have made once-common law office tools like dictating machines and letterpresses virtually extinct. Next to go, some pundits contend, will be paper. Textbooks, law journals, written memos, hard copies of files – and the older lawyers who are most comfortable with them – will all soon be made obsolete by computers and online technology.

I’m convinced, however, that paper is still an efficient part of law office information management. Lawyers and administrators over age 40 know and understand computers, but they remain highly effective with the use of books and paper records as practical tools.

THE PROBLEM WITH E-MAIL

Technology is a tremendous tool, but it needs to be managed just as any other communication modality must be. Many people passionately believe in the power of technology to transform our profession. But, we should all remember that virtually all of the innovations that have meant so much for us are just another turn of the wheel in the law’s evolution from profession to business. The time saving, efficiency, and commoditization of routine tasks and services afforded by computers and other electronic technologies have freed lawyers to focus on the creative, problem-solving aspects of their practices. However, technology has its downside.

Consider this example: Several years ago, when I was managing a law firm, a partner complained to me about the speed with which people



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wanted a response to a fax. If he didn't get back to them within 20 minutes, they called to ask if he received the fax and, if so, why he didn't respond. Today, with e-mail, colleagues and clients seem to expect that response within 20 seconds.

Given the rapid response that e-mails encourage, many lawyers are reacting so quickly that they may not be giving the same advice that would result from greater reflection. From an administration standpoint, lawyers are moving so fast and doing so many things (multitasking) that they don't actually write down their time notations as they're working on e-mails. This is billable work, yet much of it is not adequately accounted for. The result is lost profitability.

PAPER'S INTANGIBLE BENEFITS

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The first sphere is philosophical and encompasses such ideas as these.

- **The importance of touch.** Touch is one of the five basic senses. We learn by touching from the time we're infants. That may be why as adults we retain positive feelings toward touching warm and familiar things like papers and books. People do not touch computer screens, and most view touching keyboards as a necessary evil. Emotional attachment to tactile paper will be hard to overcome.
- **Environmental correctness.** A superficial argument for the paperless office is that it is more environmentally responsible: Eliminating paper saves trees and reduces the pollution from paper production. However, equally strong environmental arguments are in favor of paper. Recycling has

reduced the need for new paper from freshly cut trees by at least 25 percent to 40 percent; some paper products are now made from 100 percent recycled materials. Conversely, the disposal of old computers, computer monitors, and related equipment has become an enormous problem.

- **Creativity.** People over age 40 may know and understand computer technology, but they remain more comfortable with the use of books and paper records as creative tools. A major reason for that is the free association that is made possible by glancing through printed pages. Facts and concepts leap off the printed page quickly and can be processed in different ways readily. Computers allow only linear searching and processing; developing a new concept is much harder when you have to follow the logic of the search program. Similarly, the devotees of Real Simple Syndication (RSS) to secure information from the Internet receive only the information they sign up to receive and lose the creative burst from finding something unexpected in the daily newspaper.
- **Fundamental skills.** Generational skeptics sometimes seem to imply that anything other than computer skills is unnecessary. Dictation to a secretary, who then creates a paper document, is often cited as an example of skill obsolescence. Yet clear, distinct dictation is required for effective use of voice recognition software, such as Dragon Naturally Speaking, and many younger practitioners find the knack of dictation hard to acquire. The point is that computer literacy and dictation involve fundamental mixes of communication skills that work best in harmony.

PAPER'S PRACTICAL BENEFITS

The second sphere of argument in favor of paper is a practical one that involves the nature and requirements of legal practice. Here are some of the important points to remember.

- **Permanence.** Unlike a digital file, paper cannot be imperceptibly altered. That's one big reason why lawyers are required to maintain physical copies of important client documents, such as original notes or securities, original wills, and settlement agreements. The rules and time periods for storing or destroying such client files vary by jurisdiction. Some states require a lawyer to securely store a client's file and documents for 10 years after a representation ends, absent other arrangements between the lawyer and client. That requires secure storage of physical records.
- **Cost.** The cost of computer memory is considerably less than the cost of physically renting storage space to keep paper records. But the use of familiar paper documents is often less costly in the long run. Consider the example of one attorney who decided to improve staff productivity by purchasing practice-specific software. The cost of the new system and training might be \$15,000, but the staff's productivity would double, allowing for more work, fewer people, and greater cash flow. The attorney calculated a \$30,000 first-year gain in savings and in profitability, with a 200 percent return on investment (ROI) and a payback period (recouping the initial investment) of six months. But, after the purchase, the ROI was thwarted

by human considerations: the staff preferred paper documents, was resistant to the change, afraid of the new system, and had no emotional investment in its use. The software languished until it became obsolete, with little of the expected savings or profits.

A GENERATIONAL BIAS?

I admit that some of the arguments in favor of paper have a strong generational element. It's purely a practical recognition that significant paperlessness will never truly happen until the youngest members of the profession reach the age and numerical preponderance that professionals over age 40 have today.

Change happens slowly in the law – precedent (*stare decisis*, in the language of 2,000 years ago) still drives what we do. Perhaps it won't take another 2,000 years, in the kind of time frame envisioned by the various Star Trek generations, for paper to disappear from law offices. But, for very valid reasons, the transformation is a long way off. A generational prejudice? Perhaps, but no more so than the idea that age equals incompetence. *

about the author

Ed Poll is the principal of LawBiz Management and author of the blog at www.lawbizblog.com. Contact him at edpoll@lawbiz.com.

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