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ABA TECHREPORT 2014

Litigation Technology

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Litigation and courtroom technology is always one of the most well-attended tracks at ABA TECHSHOW every year in Chicago. This past year was no exception. This area, while rich with mature software and hardware solutions, continues to evolve and, like many other areas, be affected by cloud computing (see the "Cloud Computing" *TECHREPORT*, by Dennis Kennedy) and mobile computing developments (see the "Mobile" *TECHREPORT* by Tom Mighell).

The use of laptops/tablets, combined with the development of tablets to perform more like laptops (i.e. larger tablets like the Surface Pro) and the development of laptops to perform more like tablets (smaller laptops like the Lenovo Yoga or Dell XPS), continue to create "greyness" in the survey data. For instance, there is a decrease in courtroom laptop use, but almost an exact percentage increase in the use of tablets. Despite the blurry lines between these mobile devices, the race to define the ultimate laptop or tablet has resulted in some excellent features for litigators.

With the exception of a huge upswing in the use of tablets by litigators, there seems to be a consistent downward trend in the use of litigation software, with larger firms having the most access. My theory is that the easy end-user interface and features available in apps on tablet devices have shifted the litigators' attention from the more sophisticated/complex programs on PCs to the more "keep it simple stupid" programs on tablets. In other words, tablets and apps are stealing a chunk of that business.

Survey Highlights

- The use of smaller mobile devices in the courtroom is on the rise. Lawyers are looking for the ultimate light and thin device to be paperless. Laptops are getting smaller and tablets are getting larger.

- We have new baseline data on newer display/audio technology and new data on older technology in the courtroom which clearly indicates that tablet technology in the courtroom is on the rise and courtrooms are starting to update appropriately.

- Larger firms continue to have more access to litigation support and trial presentation software than smaller firms, but the overall trend is less for everyone.

- The number of depositions increased slightly this past year, which is consistent with litigation increasing across the country according to Fulbright's 10th Annual Litigation Trends Survey, but apparently not enough to increase the demand for at least traditional litigation support, trial presentation, and transcript management software. iPad apps may be capturing some of that market.

- Electronic court filing in state and local courts seemed to stabilize last year, over a sharp increase from the *2013 Survey*.

- Electronic discovery requests remain steady, but firms continue to be more frugal.

Laptops Take a Dip as Lawyers Ride the iPad Wave

Laptop use in the courtroom continues to experience a slight downward trend, as tablets and smartphones strongly gain. Fewer litigators are using a laptop in the courtroom. 54% of those surveyed reported that they do not use a laptop in the courtroom, compared to 52% in 2013, and 50% in 2012 and 2011. Among the top uses:

27% to check and receive e-mail

26% to access internet

25% to conduct online research

25% to access key evidence and documents

23% to deliver presentations

When you look at the top uses, it is no surprise that smaller mobile devices are taking away some laptop business. These are fantastic, light, thin, and super easy apps made for all the top uses.

For example, 8.3% of individuals who had downloaded an app for the iPad reported having downloaded TrialPad, an app used for presentations and accessing key evidence and documents. The only four that ranked higher than TrialPad were research/reference apps. We see 49% of lawyers reporting that they use a tablet outside the office, those are pretty significant numbers, and clearly indicate (1) that lawyers are heavily relying on tablets, and (2) tablets have taken away a small piece of that pie.

37% of respondents who report practicing in the courtroom use a tablet device compared to 34% in 2013, 28% in 2012, and only 10% in the *2011 Survey*. Not surprising, the top uses of the tablet in the courtroom were email (31%), internet (25%), calendaring (25%), and online research (22%).

Further proving this point, smartphone use in the courtroom is also very high. Similar to the *2013 Survey*, the percentage of respondents who report practicing in a courtroom using smartphones is 77%, compared to 74% in the *2012 Survey* and 69% in 2011. That is nearly a 10% increase from the 2011 data.

Laptops vs. Tablets in Court

It will be interesting to see what happens over the next few years as laptops continue to get lighter, thinner, and incorporate multi-touch screens. Laptops like the Lenovo Yoga and tablets like the Surface Pro continue to blur the lines between laptop and tablet. No matter what transpires, the reality is that overall, litigators are benefiting and clearly using more mobile technology in the courtroom today than at any time in the past.

Courtroom Technology Stagnant?

Most court provided/supported audio and video display hardware has remained consistent over the past three years. Roughly 6-12% of survey respondents indicated that annotation hardware is provided/supported in the courtroom. These are things like the color printer, telestrator, touch screen, or light pen. Remaining very constant, 56% reported projection screens were provided, 41% reported that digital projectors were provided, 47% reported having a single monitor for the courtroom, 28% reported having individual monitors for trial participants, 17% reported that a document camera or some hardware with presentation software was provided, and 12% reported having a whiteboard. These numbers represent no significant change, which is a bit disappointing. It seemed a few years ago that state and local courts started to build technology into their courtrooms. Perhaps this trend has tapered and resources at that level are just too slim.

Realtime reporting equipment continues to decrease slightly over previous years:

Realtime Reporting Equipment

We do have new baseline data on display/audio input hardware. Some of these numbers are higher than I personally would have expected, which is somewhat encouraging. Namely 12% reported having HDMI inputs available at the podium, and 14% at counsel table. Without historical data, we can only guess that this represents an increase over the last few years when we look at the increased use of iPads and other tablets in the courtroom. Because tablets, namely iPads combined with the Apple TV (and newer laptops with HDMI and Dispay Port 1.2), demand HDMI inputs, it is logical to at least hypothesize that HDMI inputs will become increasingly available in courtrooms.

Lawyers at Larger Firms Have More Access to Technology & Training

Unfortunately, training covering courtroom technology is down, which is at least consistent with the lower reported usage of laptops in the courtroom. 27% of respondents reported having had training, compared with 29% in 2013, 31% in 2012, and 34% in 2011.

Disappointing, but not surprising, is the disparity between large and small firms when it comes to the availability of courtroom technology training and software. Moreover, solo respondents to the survey were most likely to report that they did not have training because none is available (43%, compared to 33% in 2013 and 34% in survey years 2012 and 2011).

Simply stated, the availability of software and training increases exponentially as firm size increases; larger firms have more resources and capacity to try out new technology. In the *2014 Survey*, 79% of respondents in firms of 100 or more attorneys reported having litigation support software available to them, where only 9% of solos and 30% firms of 2-9 attorneys reported having litigation support software available. That is an enormous disparity.

Availability of Litigation Software at Law Firms

60% of firms with 100 or more attorneys reported having trial presentation software available to them, where only 6% of solos and 22% of firms with 2-9 attorneys reported having trial presentation software available. Strikingly similar numbers exist across the board with deposition/transcript management software.

Litigation is Up, but Use of Traditional Software is Not

While we know litigation is up overall across the country, the use of traditional software is not up. Take a look at these numbers over the past four survey years:

- Deposition/transcript management software is 32% in 2014, compared to 52% in 2011.
- Trial presentation software is 30% in 2014, compared to 47% in 2011.
- Litigation support software is 41% in 2014, compared to 60% in 2011.

Types of Litigation Software Available for Use at Law Firms

I believe that—at least for trial presentation software—the numbers should reflect an increase. I believe a significant chunk of the loss reflected above is caused by litigators using the iPad and trial presentations apps like TrialPad or ExhibitView. Technically, an app on the iPad is software, but litigators may not realize this when reporting. More research is warranted in this area to determine if there is a true decrease, or if there is, in fact, an increase.

State Electronic Filing Requirements Slowly Increasing

It appeared based on the *2013 Survey* that the nation's state courts were making significant strides in implementing electronic court filing (ECF). The most striking electronic discovery statistic in the *2013 Survey* was that 40% reported ECF was mandatory (compared to 26% in 2012, 24% in 2011, and only 21% in 2010. In the *2014 Survey*, 42% reported electronic filing was mandatory. Local court electronic filing is slightly less with 18% reporting in 2014 that ECF was voluntary, and 36% reporting ECF is mandatory (compared to 35% in 2013, 24% in 2012, and 22% in 2011). The frequency of filings remained stagnant as well, based on the survey data. We see however: 45% of the respondents disappointing, it still represents some progress. Closing the gap to get to 100% will most likely take quite some time since state and local courts in rural area lack the resources to make it happen quickly.

### Electronic Discovery Remains Steady and Law Firms Becoming Frugal

Electronic discovery requests and responses have remained fairly steady over the past four years, despite the increase in litigation over the past few years. The percentage of respondents overall who indicated they receive an electronic discovery request on behalf of their client was 56% in the *2014 Survey*, compared to 59% in 2013, 62% in 2012, and 58% in 2011. No significant decrease, especially in light of a slight increase in litigation over the past few years. On average, respondents received electronic discovery requests on behalf of their clients 33 times per year (compared with 27 times in 2013, 30 in 2012, and 26 times in 2011).

The leading primary practice areas most likely to report that they receive electronic discovery requests on behalf of their clients were litigation (79%), personal injury (72%), commercial law (70%), and general practice (64%).

The leading primary practice areas most likely to report making electronic discovery requests on behalf of their clients were litigation (79%), personal injury (77%), commercial law, and general practice (67% each).

E-Discovery Processing

Outsourcing processing and review continued to slowly decrease, as it did last year, which indicates that either law firms are becoming more frugal, and/or they are acquiring the skills and tools to do it themselves. As you can see in the chart below: 45% of the respondents in the *2011 Survey* reported using a litigation support (versus 14% using a computer forensics specialist), and both have steadily decreased to just 31% in the *2014 Survey*.

Respondents report having used the following outsourcing parties from survey years 2011 through 2014:

Those Who Use Keyword, Concept, or Predictive Coding Techniques
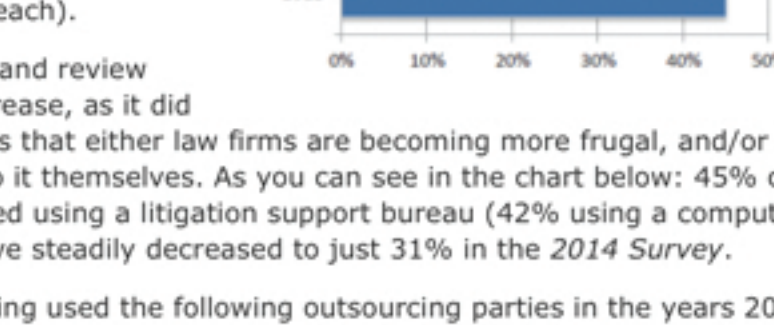
Finally, respondents who had actually conducted processing or reviewing of ESI were also asked if they use (1) keyword, (2) concept or (3) predictive coding techniques to process/review the ESI. Predictive coding was really the only technique that experienced any significant loss, and that seems to be a marked decrease from the *2012 Survey*. In 2014, only 14% reported using predictive coding, compared to 17% in 2013, and 23% in 2012. Concept searching actually increased from 28% in 2013 to 33% in 2014.

About ABA TECHREPORT

The ABA TECHREPORT combines data from the annual *Legal Technology Survey Report* with expert analysis, observations and predictions from leaders in the legal technology field. This year's TECHREPORT was edited by Britt Lorish and Erik Mazzone, along with the staff of the ABA Legal Technology Resource Center.

For more information on the full *Survey*, including more than 700 pages of detailed data and analysis, visit the LTRC webpage.

About the LTRC

The ABA Legal Technology Resource Center educates and assists ABA members with the latest legal technology through outlets including *Law Technology Today*, publications, monthly webinars and its website.

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