



I've administered the audit 10 times to nine firms (one firm took it twice). As far as I am concerned, all the firms failed—some more spectacularly than others. The audit takes me 30 minutes. So, somewhat arbitrarily, I selected 1 hour as passing. The best pace of any associate was 2.5 hours. The worst pace was 8 hours. Both the median and mean (average) pace rounded to 5 hours.


I do not have the data or rigor to quantify just how much waste exists in the legal system or what percentage of it is attributable to technological incompetence. My claims are much broader: *a lot* (of waste exists in the legal system) and *enough* (of that waste is attributable to technological incompetence to make this a problem worth addressing). My collaboration with Suffolk should, however, provide a more robust, numerical foundation to support these claims. Or I could find out I'm wrong.

With the audit, I am not attempting to offer “the answer” to every challenge facing the legal profession. Clients expend such substantial sums on legal work that incremental improvements at the margin save real money. Basic technological competence is low-hanging fruit, and the object of the audit is its own obsolescence in the very near term. I therefore tailored the audit to the legal market as currently structured. I would prefer to avoid having the issue subsumed into the long-standing, often vitriolic debate over AFAs.

By contrast, the ABA has been moving Beyond the Billable Hour (<http://www.legalbizdev.com/files/GuideAlternativeFeesAx.pdf>) (PDF) since 1989. In 2007, Scott Turow took to these very pages to join a legion of voices, before and after, proclaiming that The Billable Hour Must Die ([http://www.abajournal.com/magazine/article/the\\_billable\\_hour\\_must\\_die/](http://www.abajournal.com/magazine/article/the_billable_hour_must_die/)). Yet, in 2013, we are still learning Why the Billable Hour Endures (<http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1367137601918&slreturn=20130426170527>) and getting thought-provoking pieces In Defense of the Billable Hour (<http://www.adamsmithesq.com/2013/05/in-defense-of-the-billable-hour/>). Indeed, a recent survey showed that “AFAs accounted for a *decreasing* portion of overall U.S. work ([http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202589762043&AFAs\\_Trending\\_Down\\_in\\_US\\_and\\_UK&slreturn=20130615125922](http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202589762043&AFAs_Trending_Down_in_US_and_UK&slreturn=20130615125922)).” (emphasis added)

([http://ilta.ebiz.uapps.net/productfiles/productfiles/914311/FMPG4\\_ABABillableHours2002.pdf](http://ilta.ebiz.uapps.net/productfiles/productfiles/914311/FMPG4_ABABillableHours2002.pdf)) (PDF), Patrick Lamb (<http://www.abajournal.com/authors/4768>), Jim Hassett (<http://www.legalbizdev.com/files/GuideAlternativeFeesAx.pdf>), and Jeffrey Carr ([http://www.abajournal.com/legalrebels/article/jeffrey\\_carr\\_business\\_unusual/](http://www.abajournal.com/legalrebels/article/jeffrey_carr_business_unusual/)), just to name a few. Further, I'm a strong proponent of the continued developments in legal project management (<http://www.acc.com/legalresources/quickcounsel/lpm.cfm>), legal process outsourcing ([http://www.abajournal.com/advertorial/article/legal\\_process\\_outsourcing\\_its\\_about\\_the\\_process/](http://www.abajournal.com/advertorial/article/legal_process_outsourcing_its_about_the_process/)), and budget analytics ([http://www.abajournal.com/magazine/article/the\\_dawn\\_of\\_big\\_data](http://www.abajournal.com/magazine/article/the_dawn_of_big_data)). These are all pieces of the value puzzle and attendant forces of structural change that occupy the likes of Paul Lippe (<http://www.abajournal.com/authors/4767>), Richard Susskind

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([http://www.abajournal.com/legalrebels/article/running\\_susskind\\_in\\_reverse](http://www.abajournal.com/legalrebels/article/running_susskind_in_reverse)), and Bruce McEwan ([http://www.amazon.com/Growth-Is-Dead-firms-brink/dp/1481896040/ref=sr\\_1\\_1?ie=UTF8&qid=1367007727&sr=8-1&keywords=bruce+macewen](http://www.amazon.com/Growth-Is-Dead-firms-brink/dp/1481896040/ref=sr_1_1?ie=UTF8&qid=1367007727&sr=8-1&keywords=bruce+macewen)). I do not place my audit at the forefront of these pivotal issues because it does not belong there. I recognize that basic technological competence is not of world-historical importance. But this concession is not license to dismiss the issue. The perfect need not be the enemy of the good, and not every innovation has to be disruptive.

## Will lawyers waste time as long as they have the incentive to do so?

Some will. Personally, I am not so cynical about the pervasiveness of intentional overbilling or so optimistic about eradicating graft. I believe that most lawyers will avoid drudgery once they learn how. That some will still pad their bills is a separate issue.

Survival is the threshold that most people, only some of whom are lawyers, reach with most technology. Attention is a scarce commodity. We are capacity constrained in mastering the robust features on offer from smartphones, televisions, microwaves, in-car infotainment systems, etc. Lawyers, for example, do not (openly) bill for the time spent creating billing entries. Yet, barely functional is as far as most get in learning their billing software. They know just enough to get their hours logged. But they fail to take advantage of features—duplication, text expansion, hot keys—that would reduce the time necessary to produce substantially similar entries day after day after day. This becomes my problem, however, when lawyers are similarly ignorant of the software they use—e.g., Word, Acrobat—to perform my billable work.

## I’m too busy.

I sympathize. The deadline pressure from clients and courts can border on suffocating. It is unfortunate that it often takes time to save time. In an isolated instance, learning a shortcut can absolutely consume more attention than just pushing through. But to understand is not to forgive. Legal bills are cumulative. Those six-minute increments aggregate at an alarming rate. When someone, including me, protests that they are “too busy,” what they are really saying is that they have other priorities. Prioritization is inescapable. It is, however, my right as the client to question the priorities of my outside counsel when they give precedence to low-value-added, billable work over non-billable training that would reduce my total spend.

## Our firm would not charge for busywork. We give that to paralegals, secretaries, assistants, etc.

Excellent. What follows is an excerpt from the introductory letter I send to associates before I audit them:


*It is important to understand that the distribution of work is one focus of the audit. You should not hesitate to explain that a particular task would be performed by someone else—e.g., your secretary, a paralegal, word processing. For certain tasks, that is precisely what is expected (i.e., it is the right answer). A few caveats, however:*

- Paralegals bill for their time. Invoking them does not obviate my interest in how efficiently the subject task is performed. Unless your paralegals receive substantially different training than associates, I remain interested in observing how you perform the task. If the paralegals do possess alternative, pertinent skills, then I am also interested in auditing them.
- The audit measures general proficiency, not just ability on a narrow task. While a specific task may not be entirely appropriate to your position, the task should still reveal whether you have acquired the general proficiency with which the audit is concerned.
- Sufficient support staff is not always available. In particular, associates put in late nights, long weekends, and marathon sessions on the road. They do whatever is required to achieve their primary objective: ensure that all work gets done well and on time. This includes work that would ideally be handled by support staff.
- Finally, I will take you at your word, but I will hold you, and the firm, to it. If you represent to me that efficiency on a particular task is immaterial because it will never show up on a bill, then I expect it to never show up on a bill.

It is not always easy to draw the line as to which type of work should be handled at which level. But, before even reaching the proper distribution of work, it is important to recognize that, oftentimes, appreciable human labor is unnecessary. In my presentation, I discussed basic functions in Acrobat that prepare PDFs (e.g., for e-filing) without printing and scanning.

Bates stamping, in particular, engendered considerable pushback, such as:

*There is no need to charge a client \$250+/hr for me to put page numbers on a stack of documents. I will do the substantive document review, prepare the written responses to the document requests, etc. My secretary or paralegal can do the photocopying and numbering. If a firm has the resources (and I recognize that not all do), I maintain that this would be the proper way to handle such tasks. If you feel otherwise, you should let your clients know.*

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There is truly no such need. And the workflow described is preferable to the attorney sitting at the copier herself. But this largely manual process is substantially worse than someone (attorney or staff) clicking a couple of buttons and letting the machine do the work. Even though I was making the point that the software automates Bates stamping, this \$250/hr professional still did not recognize the waste endemic to her “proper way.” Even if a client were not billed directly for the wasted labor, we would be charged for photocopying. And, in an environment where the lawyer-to-staff ratio continues to shrink ([http://www.abajournal.com/news/article/bvideo\\_weil\\_gotshal\\_layoffs\\_start\\_of\\_wave\\_video/](http://www.abajournal.com/news/article/bvideo_weil_gotshal_layoffs_start_of_wave_video/)), staff assigned to fake work is not available to assist elsewhere. There is no such thing as a free lunch; lawyers should not pretend that overhead doesn’t exist or is not ultimately passed on to their clients.

## **On task X, I would use Method 2 rather than Method 1 called for in the audit.**

Fair enough. Your way may in fact be better. I often feel like a fraud in evangelizing the audit because I deem my own skills so inadequate. I know just enough to recognize my own ignorance and the even more profound ignorance of the profession at large.

Still, I am less focused on the specific tasks than on general skills. For example, I use a spreadsheet of deposition exhibits to test Excel acumen. Not all lawyers are litigators—i.e., no deposition exhibits. Not all litigators maintain their exhibit lists in Excel. Many firms assign exhibit-tracking duties to non-billable staff. Thus, whether an associate can skillfully manipulate deposition-exhibit data in a spreadsheet is not all that important in and of itself. But that does not change the fact that “Excel is everywhere you look in the business world (<http://baselinescenario.com/2013/02/09/the-importance-of-excel/>).”

Like so many companies, we export a substantial percentage of our structured data to Excel spreadsheets to be sorted, filtered, rearranged, put in pivot tables, and disseminated throughout the enterprise. My team and I rely on over 50 massive spreadsheets that are updated on a monthly, and sometimes daily, basis. We frequently send these huge collections of data to outside counsel for use in litigation. If counsel does not know how to manipulate the data, they will waste substantial resources trying to locate the pertinent information. Those are the general Excel skills I’m testing. The fake exhibit list was simply a better testing option than using real proprietary data.

## **I’m a Mac person. I don’t use, or even like, the Microsoft Office Suite—Outlook, Word, Excel.**

I don’t care. Use whatever software you prefer. I am not an authority on software. I am, however, keenly attuned to the file types—.xlsx, .docx, .pdf—we send to outside counsel. Thus, I use those file types in my audit. My counsel needs to be able to open my files, complete tasks efficiently, and send me files I can open. Beyond that, I am not particularly concerned with the tools they use.

## **You should use small law firms instead of BigLaw. They would pass your audit.**

I do hire small law firms. Or, rather, I hire lawyers who happen to work at small law firms just as I hire lawyers who happen to work at large law firms. The size of the firm is rarely material, though it can be a proxy for other considerations—e.g., rates, geographic reach—that sometimes factor. If lawyers I trust were to move from a big firm to a small firm, or vice versa, my business would very likely move with them.

No law firm who works on my matters was selected solely because they passed my audit. No law firm has had business withheld solely because they didn’t pass my audit (though they have had their fees cut). I believe technological competence is worth considering. But I do not think technological competence is the most important, let alone only, consideration in selecting counsel. The efficiency gains from improved technology utilization do not match the efficiency and efficacy that come with hiring experienced, effective subject-matter experts.

That some of the senior lawyers on whom I rely for sage counsel may be afflicted with mild technophobia does not trouble me. I do, however, feel compelled to test their support system to determine whether the work they delegate will be handled efficiently. Thus, I only audit associates; the idea being that the associates will handle the low-value-added, labor-intensive drudgery at which the audit is aimed.

Regardless of who takes the audit, I don’t hold individual lawyers accountable for failing my audit. The firm is responsible for their lawyers’ facility with the tools the firm provides. Technological competence is nurture, not nature. But most firms tend to leave their lawyers to their own devices, literally.

## **I [the commenter] would pass the audit.**

Me too. I have passed my audit. I know a number of other lawyers who would fly through it. The problem isn't that no lawyers can pass my audit; the problem is that most lawyers should be able to pass my audit but can't. Indeed, I feel as if my case would be more compelling if some of other lawyers had already passed. Unfortunately, the lawyers who accurately predict that they can pass my audit also rightfully see themselves as exceptions. Moreover, I would caution against being too cocky (a hard warning for a lawyer to heed). Bold predictions often precede abject failure. I have observed too many manifestations of the Dunning-Kruger Effect ([http://en.wikipedia.org/wiki/Dunning%E2%80%93Kruger\\_effect](http://en.wikipedia.org/wiki/Dunning%E2%80%93Kruger_effect)) where profound ignorance fuel delusions of adequacy, which the audit quickly shatters. One audit literally ended in tears.

For example, most lawyers know how to apply basic text formatting in Word—e.g., bold, italic, center, justify. But few are familiar with styles and cross-references. In my presentation, I use styles and cross-references to insert a new provision into a properly formatted contract. This takes 12 seconds. The software updates all of the subsequent paragraph numbers and internal references (e.g., “pursuant to Paragraph XVII”). By contrast, the very real contract I inherited had to be updated manually. Inserting the same new provision takes 10 minutes instead of 12 seconds (50x as long). And that is for a relatively short, simple contract. With proper formatting, the time required is independent of the size of the document. Adding the new provision will only ever take 12 seconds. Conversely, the time necessary to manually update the old contract is dependent upon, and increases in lockstep with, the length and complexity of the document.

Properly formatted documents are a particularly potent example of technological incompetence. Such busywork is patently avoidable. Moreover, many firms already offer their lawyers a simple solution. Along with Word, many firms provide templates ([http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202609855368&Could\\_Baker\\_amp\\_McKenzie\\_Have\\_Saved\\_150\\_Million\\_Last\\_Year](http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202609855368&Could_Baker_amp_McKenzie_Have_Saved_150_Million_Last_Year)) with the applicable styles accessible in the Quick Access toolbar. Yet, the templates are only useful if the users (i) know they exist, (ii) can load them, and (iii) make use of the styles. Most lawyers are ignorant on all three counts. Lawyers who don't know about templates, styles, and cross-references won't know that they should be using templates, styles, and cross-references. So they consider their existing formatting skills perfectly adequate. Only when this illusion is shattered do they realize just how much time (and client money) they have wasted.

## Whether a contract is written correctly is more important than it being formatted correctly.

Agreed. But this is a false choice. Having a contract that is formatted correctly in no way undermines how well it is written. Rather, it makes getting the contract right more likely because the lawyer will not have their focus depleted by mind-numbing repetition (e.g., updating section numbers), which the machine handles better anyway (e.g., never misses a cross-reference). One of the four horseman ([http://www.abajournal.com/legalrebels/article/what\\_if\\_someone\\_could\\_measure\\_what\\_lawyers\\_do/](http://www.abajournal.com/legalrebels/article/what_if_someone_could_measure_what_lawyers_do/)) of the new normal is the substitution of technology for people in repetitive work (<http://blog.diligenceengine.com/2011/07/12/59827957/>). While it may reduce the quantity of billable work, it should improve its quality, as well as the quality of life ([http://www.abajournal.com/news/article/why\\_a\\_career\\_website\\_deems\\_associate\\_attorney\\_the\\_unhappiest\\_job\\_in\\_america/](http://www.abajournal.com/news/article/why_a_career_website_deems_associate_attorney_the_unhappiest_job_in_america/)) of the lawyers who have to do it.

D. Casey Flaherty is corporate counsel at Kia Motors America, Inc. where he oversees dealer-related legal matters and electronic discovery. Casey regularly writes and speaks about the audit, electronic discovery, budgeting, and other topics at the intersection of law and technology. His LegalTech West keynote on the audit can be viewed for free here (<http://www.virtuallegaltechshow.com/r5/home.asp>). The opinions he expresses are his own and not those of Kia Motors America, Inc.

**Editor's note:** *The New Normal* ([http://www.abajournal.com/topic/the\\_new\\_normal](http://www.abajournal.com/topic/the_new_normal)) is an ongoing discussion between Paul Lippe (<http://www.abajournal.com/authors/4767>), the CEO of Legal OnRamp, Patrick Lamb (<http://www.abajournal.com/authors/4768>), founding member of Valorem Law Group and their guests. New Normal contributors spend a lot of time thinking, writing and speaking about the changes occurring in the delivery of legal services. You're invited to join their discussion.

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Comments

Michael Olenick said:

This is great but why not just outsource it all from your level, rather than at from the law firms you hire? Pay an outsourcing firm that can handle receipt of raw files, in whatever format, and efficiently format them to your standards. Pay for that by insisting that your bills shrink, because the lawyers (or their support staff) has less work. Law firms focus on the law and a data management firm specializes on the data. Better data management firms will even provide tools that work a lot better than Excel: custom interfaces for all those spreadsheets you are using to make sure there is one master copy, with an audit trail, backed-up, and available to everybody who needs it—and nobody else—on their computer, tablet, or phone.

Kia itself purchases many parts for the cars from focused subcontractors where it does not make sense to design and manufacture the parts from scratch, focusing instead on its core competencies. Specialized firms produce a narrow range of parts that meet the specifications so that they work well when assembled together. I completely support what you are trying to do but—in trying to implement it—why not mimic efficiencies from the manufacturing group in the legal department?

Posted: Jul 17, 2013 03:44 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243309](http://www.abajournal.com/report_abuse/?comment_id=243309))

Jessica Gomez said:

I love this article and the approach to solving the problem - this audit. This same problem is something that I am seeing with public relations firms as well. PR firms bill by the hour. Speaking to the comment, I believe outsourcing parts of the work offers a great alternative for large companies. However I believe more the point is being able to be proficient in basic Excel functions is highly necessary for a lawyer to continue to be competitive in today’s technological society.

Posted: Jul 18, 2013 03:23 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243580](http://www.abajournal.com/report_abuse/?comment_id=243580))

Monica Sandler said:

I’ve tried to keep up with your audit project since I read one of the earliest articles on it. (Late 2011 sticks in my head?) I’ve applauded the efforts every step of the way and this “response to comments” article simple confirms why Trainers are such an important yet maligned position in so many firms. I first heard Roberta Gelb of Chelsea Office Systems when I participated in an ILTA webinar entitled “The Cost of Bad Formatting”, circa 2005 (I think). I was at the second firm of my career and could not understand why (a) attorneys were always made “optional attendees” to learning events and (b) why so many of them loudly refused and even claimed to hate technology tools that would have made their lives so much easier. Roberta’s dollars and sense approach hit home and helped me change a few decision maker’s minds on why encouraging ALL legal staff, not just secretaries, to use the tools correctly was not just about saving time but also about saving the almighty dollar. A FEW is the key concept. Today, after teaching for three firms I am now on the



Dark Side, I am a vendor to law firms. I offer Training as a Service. Time and time again I hear from the folks I work with say things like “Oh we don’t bother to use styles because the attorneys won’t use them” or “Oh there is no reason to show the time keepers how to use that stop-watch tool, they just email us their time entry and we input it”. I cringe and smile. I wish more managing partners saw technology from your perspective. I wish all law schools would make Word and Excel mandatory for at least 6 weeks of a semester. I hope that if I run into you at an ABA or ILTA event you will allow me to buy you a drink, just to say THANK YOU for shining a searchlight on this as an industry issue.

Posted: Jul 18, 2013 07:47 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243640](http://www.abajournal.com/report_abuse/?comment_id=243640))

**Book Nerd said:**

I just had to opportunity of hearing Mr. Flaherty speak at the 2013 AALL Conference in Seattle a few days ago. He got me thinking as to how we could better serve our students while they are in law school, as many are ignorant of how to use the basic features of Word and Excel. @ #3...I LOVE your idea for making Word and Excel (and other programs) mandatory for 6 weeks. I think I am going to bring up that idea at my next Director’s meeting!

Posted: Jul 18, 2013 10:35 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243661](http://www.abajournal.com/report_abuse/?comment_id=243661))

**Book Nerd said:**

And by “to” I of course meant “the.” I got so excited to add a thread to the discussion that I forgot how to type!

Posted: Jul 18, 2013 10:36 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243662](http://www.abajournal.com/report_abuse/?comment_id=243662))

**Island Attorney said:**

I would not hire an attorney that is incapable or unwilling to deal with the higher functions of Word and Excel. These programs are easy to use and the training can be found for free online. Or buy a book. Either way, these are basic skills that all attorney should have.

Posted: Jul 18, 2013 10:49 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243664](http://www.abajournal.com/report_abuse/?comment_id=243664))

**Paul M. Sod said:**

Mr. Flaherty makes some interesting comments but I think he could be more effective if he would either give instructions on how to do some of the more bedeviling and time-consuming chores he writes about, such as Bates stamping, or offers suggestions on where to find out how to do such tasks. The reality of law practice is that we don’t know how to do a lot of these things, we don’t know where to learn how to do them, and we don’t have time to fool around with these programs or worse, use the F1 help function to attempt to learn these skills. I personally would be interested in learning but don’t know how to go about it, and would welcome some guidance on the matter.

Posted: Jul 19, 2013 10:25 am CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243727](http://www.abajournal.com/report_abuse/?comment_id=243727))

**Caroline Schroder said:**

For this audit to be truly relevant and comprehensive, it should cover encryption and other means of securing the materials with which attorneys work.

Posted: Jul 19, 2013 11:55 am CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243752](http://www.abajournal.com/report_abuse/?comment_id=243752))

**Natalie Vyne said:**

To 7,  
  
Paul,

I have found Lynda.com very effective for coming up to speed on all sorts of technical issues. It is a site with hundreds, if not thousands, of training tutorials. They're broken into 3-6 minute discrete chunks, so I can catch one or two if I'm taking a quick break and want to get my head out of what I am doing. They got their start doing software training but recently have expanded into just about all areas of business.

I started on a month-by-month basis but found it so useful that I've bought an annual subscription. My training needs, however, may exceed that of others. I'm a solo and must leverage technology—I'm fully digital and have a paperless office.

N.

Posted: Jul 19, 2013 12:07 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243755](http://www.abajournal.com/report_abuse/?comment_id=243755))

**Peter Gulia said:**

I sometimes have a reverse situation - using my knowledge of software to help inside counsel improve efficiency and quality-control in automating and managing disclosures, agreements, and other business tasks.

Posted: Jul 19, 2013 12:15 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243761](http://www.abajournal.com/report_abuse/?comment_id=243761))

**Michael Olenick said:**

Adobe, the company that owns the PDF file format, publishes a video showing how to Bates Stamp a batch of documents using their Acrobat software:

<http://tv.adobe.com/watch/acrobat-tips-and-tricks/bates-numbering/>

Posted: Jul 19, 2013 12:40 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243772](http://www.abajournal.com/report_abuse/?comment_id=243772))

**Jam3s said:**

I wouldn't want to work for this guy. While I'm pretty proficient at learning and using whatever tools necessary, I question the fabric of a guy who devotes this much time and energy to complaining publicly that other lawyers aren't as good as he is when it comes to using word and excel.

Posted: Jul 19, 2013 12:52 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243778](http://www.abajournal.com/report_abuse/?comment_id=243778))

**Yenrab of Syr said:**

Rather than the Microsoft products, we use Word Perfect and Quatro Pro, as they have proven to be far superior for drafting legal documents, and easier to proofread, word-count, etc. If you want us to send you the files in Microsoft Word, that would be extra. Or we can instruct the client how to convert the file. Even the Open Office software seems to be superior to Microsoft Word and Excel!

Posted: Jul 19, 2013 12:59 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243780](http://www.abajournal.com/report_abuse/?comment_id=243780))

**Monica Sandler said:**

@Book Nerd – I would love the chance to speak to you about teaching MS topics – preferably remotely. Not sure if I can share this here but I can be reached at mls at attorneyresource dot com.

@Paul M. Sod – I believe Mr. Flaherty is working with his online partner (Capensys) to make some type of version available. I am sad I did not get a chance to bid on the project! I do agree with Natalie – I refer a number of our temp candidates to office.microsoft.learning, Lynda and YouTube for free video training. Vendors like me offer classes, webinars and 1-on-1 training opportunities for all of what Kia is auditing for. Feel free to contact me for a private consult. (see above for contact info.)

@ Jam3s – I don't think he is complaining. I think he recognized a need, assessed the problem and created an appropriate "fix" for it. I say this in the simplest of terms. That is quite the opposite of what complainers do. The fact that OTHERS saw what he had done and were impressed enough by it to write about it and ask Mr. Flaherty to write about it



himself is testimony to the original assessment at large. This is a common problem and I can say common because I come up against it as a legal trainer over and over again. @Yenrab - regardless of the brand of tools you use the concepts being audited are the same. Styles are Styles (WP v Word) , Bates numbering is Bates numbering (Adobe v Nuance) and Filtering is Filtering (Excel v Quatro Pro). Mr. Flaherty even commented that he doesn't care as long as the folks doing his work are proficient and using tools wisely. "Working smart not working hard" comes to mind.

Posted: Jul 19, 2013 01:36 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243788](http://www.abajournal.com/report_abuse/?comment_id=243788))

**Business Lawyer said:**

He would not have this problem if he requested an attorney with business office experience such as engineering or accounting or finance before going back to law school. Makes a significant difference in a lawyers productivity. I learned all of these tools back in the 1990s before going to law school working at AT&T. I am now a senior partner and still type all my own documents and filings (it is much faster especially when you type as you think), prepare my own powerpoints, and prepare my own spreadsheets (learned quatropro in early 1990s and now use EXCEL, though I dislike all of the supposedly "intuitive" features and changes to the toolbars and ribbons in the current version, but give me a 1/2 hour and I can figure pretty much any application program with the exception of MS's worst product MS Project - I leave that to the engineers).

Posted: Jul 19, 2013 02:52 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243842](http://www.abajournal.com/report_abuse/?comment_id=243842))

**Realist said:**

At my very small firm, Mr. Flaherty's own time of a half an hour to pass his own audit would be considered grossly slow. How about 10 minutes, tops. Because he does not mention it, I question whether he hires attorneys who still do not use dragon speak or some similar voice recognition software, and whether he hires attorneys who still type themselves or have secretaries do it for them. Regardless, one has to admire Mr. Flaherty's focus on proficient attorneys, only one factor of which is an attorney's "tech savviness," if you will. Other factors are whether the attorney genuinely has "off-the-top-of-his/her head" knowledge of the law, in theory and in application, and whether the attorney's law firm effectively uses an efficient business model designed to reduce overhead and other expenses, and hence hourly rates. It is interesting to note Mr. Flaherty's point of view is one as corporate counsel at Kia, an up-and-coming car company relatively new to America. Sadly, those of us who have done work for years for GM or another large old-line American car company never had to focus on, or even think about these things, for those clients.

Posted: Jul 19, 2013 02:59 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243851](http://www.abajournal.com/report_abuse/?comment_id=243851))

**Jamie said:**

I have above-average proficiency at excel because of my engineering background. I just had to watch a video on how to index and search multiple pdfs. Is there a youtube video on how to work with Word styles?

Posted: Jul 19, 2013 03:12 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243861](http://www.abajournal.com/report_abuse/?comment_id=243861))

**Brad Hamilton said:**

Except for Jam3s, all of these comments seem to be positive. I am confused. I spent 25 years as general counsel for international organizations, during which I certainly did not have the time Mr. Flaherty does to spend on a technology audit - I hired outside counsel based on their skill and ability to accomplish the task in the best interests of my client. The tasks Mr. Flaherty refers to are relevant almost solely to legal commodity work and data mining discovery. Many, many lawyers, myself included, do not do commodity work. I work in law, words and persuasion. The ability to manipulate an Excel spreadsheet is as valuable to my practice and my clients as the ability of a surgeon to mop the floor. Making an associate do staff work to test a misguided measure of efficiency will provide Kia with lawyers entirely capable of doing menial tasks, but will not measure the ability to persuade a jury, negotiate a difficult matter, close a deal, or write a contract. Presenting this "audit"

as a measure of law practice efficiency and the new normal, is discouraging and sad. For Kia’s sake, I hope Mr. Flaherty is not in charge of selecting counsel for major matters, because I like their cars and I would hate for them to lose a bunch of big judgments to good trial lawyers, while Kia’s “new normal” lawyers are cranking out those spreadsheets in 30 minutes.

Posted: Jul 19, 2013 03:30 pm CDT  
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**Terry said:**

This article makes some valid points. Maybe the next article should address how to control arrogance.

Posted: Jul 19, 2013 03:33 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243883](http://www.abajournal.com/report_abuse/?comment_id=243883))

**OldLawyer said:**

Ditto to 19 Brad Hamilton. Lawyers who type everything themselves, rather than dictate, waste more time that could be used productively for their clients. Leave the secretarial work and “assembly” work to the secretaries and paralegals.

Posted: Jul 19, 2013 04:41 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243932](http://www.abajournal.com/report_abuse/?comment_id=243932))

**Martin Kessler said:**

Did he say \$250+ per hour? That is \$500,000 per year. (Assume 2000) workhours per year.)

Let’s see, that’s \$100K for the lawyer, \$100K for overhead and \$300K for the Partners. Is that it?

Posted: Jul 19, 2013 04:45 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243933](http://www.abajournal.com/report_abuse/?comment_id=243933))

**Cynical\_1 said:**

Perhaps some lawyers should spend more time perfecting their writing skills rather than their software skills. This article is verbose. I will summarize it for those who value their time.

Lawyers should master the following software skills: 1) using autoformat tools in document programs, such as Word; 2) using Adobe Acrobat’s editing tools to Bates stamp a document; and 3) manipulating data in spreadsheets, such as Excel. Lawyers who master these skills are more efficient in producing work product. There are no reasonable excuses for not learning these skills. Thus, the author cuts the fees of attorneys who do not demonstrate mastery of these skills.

The author could have made the above points using much fewer words. While it may be ideal for attorneys to possess the software skills described in this article, I prefer an attorney who can efficiently draft a concise argument.

Posted: Jul 19, 2013 08:17 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=243994](http://www.abajournal.com/report_abuse/?comment_id=243994))

**YoungLawyer123 said:**

Can we all just agree that most of these tasks should be performed by non-billers or paralegals? I am instructed at my office to not even make shells of documents. I get paid a lot of money, and am billed out at very high rates, to think. I am NOT paid to figure out how to Bates stamp. Ask a partner when the last time was that they Bates stamped something. Ask a partner the last time they created a PDF.

I applaud the attempt to avoid waste in the legal industry, but the author here misses the point: Lawyers should not be doing these tasks at all. Instead, admins, case assistants, and paralegals should be doing the “grunt work.”

Posted: Jul 19, 2013 08:59 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244009](http://www.abajournal.com/report_abuse/?comment_id=244009))

**Caroline Schroder said:**

Adobe provides good concise guidance for legal professionals:  
<http://blogs.adobe.com/acrolaw/category/bates-numbering/>

Posted: Jul 19, 2013 09:42 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244015](http://www.abajournal.com/report_abuse/?comment_id=244015))

**Yes but can you balance a hockey stick on your fin said:**

I can, and I feel that it makes me a heck of a lawyer. I also speak German. Please discuss the dative and ablative cases: you have 3 minutes.

I agree with Cynical1, Old Lawyer, Brad Hamilton, and anyone else who feels that this audit procedure reflects poorly on Kia and the young lawyer who feels it is appropriate to devise a cruel test designed to measure things that have no correlation to whether a lawyer has strong legal skills, relevant experience, and a good standing in the legal community.

Is is appropriate to make fun of older lawyers with less interest in the mundane details of how to number and format documents or work with spreadsheets, and then write belittling comments about the profession in general (repeatedly)? This test measures what are primarily secretarial functions and I am always concerned when I see a top executive or senior lawyer doing things such as typing lengthy documents or making photocopies themselves.

Interesting article chronicling a misguided attempt at measuring the value of legal services. The only thing that would be more absurd would be to hire an expensive consultant who is not a lawyer to administer such administrivia and then make actual business decisions based on it.

By the way, it is unbelievable that the employer has allowed so much time to be spent by its in-house counsel on this issue. Better he should read a case or something.

Posted: Jul 19, 2013 11:13 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244043](http://www.abajournal.com/report_abuse/?comment_id=244043))

**Yes but can you balance a hockey stick on your fin said:**

The title of the previous post was cut off. It reads:

Yes but can you balance a hockey stick on your finger for 1 minute?

Posted: Jul 19, 2013 11:15 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244046](http://www.abajournal.com/report_abuse/?comment_id=244046))

**Yes but can you balance a hockey stick...? said:**

And don't be surprised 25 years from now when there will inevitably be younger and hipper lawyers from GenZ9 coming out of school who may not know how to write with a pen or put together a persuasive argument, but they will know some new shortcut or use a new gizmo that will make all of this seem as avant-garde as using scissors and scotch tape to cut and paste a document you prepared on a typewriter.

Just hope that they don't make a test for you and then ridicule you or fire you when you come up short.

Posted: Jul 19, 2013 11:28 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244049](http://www.abajournal.com/report_abuse/?comment_id=244049))

**Island Attorney said:**

There is no legitimate reason for your firm to remain willfully ignorant of basic computer knowledge. This is your business. Do it well or you may find your competitors can do the same work for less.

Posted: Jul 19, 2013 11:55 pm CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244053](http://www.abajournal.com/report_abuse/?comment_id=244053))



**martin kessler said:**

Let’s not be so hard on Mr. Flaherty. He is infatuated with computers; computers are like quicksand and he is caught up.

He may whip up a fast spreadsheet than any lawyer in the firm but he is deficient on elementary economics, especially the Law of Comparative Advantage.

I’m a better typist than my secretary/paralegal, in fact twice as better in words per minute. It still is comparatively advantages for me to pay her \$20 dollars an hour to retype a draft pleading - or whatever - than for me to spend an hour on the keyboard even as I can do it twice as fast since the hour available to spend in billable time is 10 times her earnings. I’m pleased to net \$180 rather than save the \$20 dollars I need to give to her and not lose the opportunity of earning \$200. It’s a win-win deal.

Posted: Jul 20, 2013 02:47 am CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244080](http://www.abajournal.com/report_abuse/?comment_id=244080))

**Drea D. said:**

This thread is just weird. The verbosity (legitimate criticism) seems to have caused many commenters to just skip the article entirely and make the same comments the article is attempting to engage.

@YoungLawyer123 “Lawyers should not be doing these tasks at all. Instead, admins, case assistants, and paralegals should be doing the ‘grunt work.’”

Article “It is important to understand that the distribution of work is one focus of the audit. You should not hesitate to explain that a particular task would be performed by someone else—e.g., your secretary, a paralegal, word processing. For certain tasks, that is precisely what is expected (i.e., it is the right answer).”

@Brad Hamilton “I hired outside counsel based on their skill and ability to accomplish the task in the best interests of my client.”

Article “No law firm that works on my matters was selected solely because they passed my audit. No law firm has had business withheld solely because they didn’t pass my audit (though they have had their fees cut). I believe technological competence is worth considering. But I do not think technological competence is the most important, let alone only, consideration in selecting counsel. The efficiency gains from improved technology utilization do not match the efficiency and efficacy that come with hiring experienced, effective subject-matter experts.”

@Yes, but can...? “a cruel test designed to measure things that have no correlation to whether a lawyer has strong legal skills, relevant experience, and a good standing in the legal community. Is is appropriate to make fun of older lawyers with less interest in the mundane details...”

Article “The efficiency gains from improved technology utilization do not match the efficiency and efficacy that come with hiring experienced, effective subject-matter experts. That some of the senior lawyers on whom I rely for sage counsel may be afflicted with mild technophobia does not trouble me. I do, however, feel compelled to test their support system to determine whether the work they delegate will be handled efficiently. Thus, I only audit associates; the idea being that the associates will handle the low-value-added, labor-intensive drudgery at which the audit is aimed. Regardless of who takes the audit, I don’t hold individual lawyers accountable for failing my audit. The firm is responsible for their lawyers’ facility with the tools the firm provides.”

@Yenrab of Syr “Rather than the Microsoft products, we use Word Perfect and Quatro Pro”

Article “I don’t care. Use whatever software you prefer...”

Posted: Jul 20, 2013 04:08 am CDT  
I Flag this comment for moderation ([http://www.abajournal.com/report\\_abuse/?comment\\_id=244088](http://www.abajournal.com/report_abuse/?comment_id=244088))

**James Pollock said:**

I’m not sure I could pass, and I had a 20-year career in IT before starting law school.


Posted: Jul 20, 2013 07:56 am CDT  
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**Realist again said:**


Having considered the many and majority of comments critical of Flaherty’s approach and focus on only one small aspect of what he thinks makes an attorney proficient, one must ask why does Flaherty want to pay an attorney ANY hourly rate for ANY time the attorney spends on the non-attorney tasks that are the focus of his audit. No matter how fast the attorney can complete those tasks, Flaherty is still paying an attorney to do what is essentially clerical work. His own analysis admits that flaw in his conceptual approach, in that he reduces hourly rates of attorneys he deems lacking in clerical measures of proficiency. Those who insist on a reduced hourly rate for the clerical tasks that are the focus of his audit, usually call those less-expensive service providers “paralegals.” Nonetheless, if Flaherty’s approach is what he wants to do, it is his prerogative as long as his employer, Kia, thinks it benefits from and tolerates it. His approach and focus would be laughed right out of many savvy and well-run in-house legal departments, whose wider and far more extensive experience has led them to focus on the real things that make good lawyers good and great attorneys great.


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