



TECHNOLOGY TIGHTROPE

Firms Keep Up With Emerging Trends

By Charlee Beasor

“I’ve always had answers for you. I don’t have answers (this time). I have questions.”

That’s what Judy Okenfuss, managing partner at the Indianapolis office of Ice Miller and chair of the law firm’s Internet of Things (IoT) group, offers that she’s had to tell clients due to the rapid pace of changing technology.

Artificial intelligence (AI), IoT, blockchain and other technology-related topics are posing challenges in the legal profession, not only as clients deal with the issues, but as the law firms work to adapt their own technology, software and legal knowledge to keep up.

Stephen Reynolds, Ice Miller partner and co-chair of the Data Security and Privacy Practice, acknowledges that there won’t be much legal guidance or precedence for emerging technology issues.

“When you have emerging technology, especially if it’s cutting edge, there’s not going to be a lot of court decisions out there, such as a dispute involving a blockchain transaction. You’re not going to find much guidance,” he says.

“With emerging technology, the most difficult problems are where you don’t have

prior case law or regulations that are clear or lag behind the technology because it changes a lot faster than the law.”

When is the last time emerging technology has had such a major impact on the legal profession?

Reynolds jokes that he has to think back to his law school days and comes up with the parallel of the Industrial Revolution and spread of the railroad system in the United States in the 1800s.

“It’s not unusual when you have a new technology, there are new bodies of law and drastic changes,” he explains. “You probably could draw analogies to vehicles ... lots of new laws and regulations. We’re probably having the same kind of shift now.”

Later, Reynolds brings up a (slightly)

more recent analogy: the proliferation of email. Email not only impacts how lawyers and clients do business, but many legal cases now revolve around or include communication via email as evidence.

“(Electronically-Stored Information) is a whole thing in lawsuits; it’s one of the largest costs of lawsuits and the volume of time it takes to go through those is drastic and it changes the way discovery is conducted,” he notes.

Cause and effect

Technology advancements impact the law in countless ways.

“It really is pervasive,” says Bill Kealey, chair of the executive committee and litigation group at Lafayette-based Stuart & Branigin.

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“At our firm, there’s no lawyer who hasn’t had to deal with some technology-driven problems. It’s certainly more prominent in some areas than others. For example, the real estate practice looks in many ways like it did a generation ago. But the HR practice, the litigation practice, certainly corporate counseling practices, the health care practice, these are all areas that are heavily impacted by technology.”

One of the firm’s clients is Purdue University. Stuart & Branigin (in various iterations) has been representing the school since before Purdue was officially founded, and the firm’s intellectual property practice is heavily impacted by the relationship. Kealey sees that only growing as technology evolves.

Mark Samila, co-managing partner at Evansville’s Kahn, Dees, Donovan & Kahn, agrees that technology issues are inescapable.

“There are very few areas where technology does not become an issue,” he says. “One area I was thinking about was estate planning, but even then, you get into issues of access to digital assets, email accounts, file sharing services. . . . Somebody passes away; who’s able to access that information?”

More than an iota of IoT

Ice Miller created an IoT practice group about two years ago, according to Okenfuss.

“It’s an industry group. There are people in the business section, IP, cybersecurity; it’s a cross-sectional group, which is purposeful. This is going to affect all parts of the law,” she asserts. “We have authored dozens of articles, over 10 to 20 that have been published nationwide. We’re spending the time thinking about the issues.”

A complicated topic, IoT and its legal ramifications are not always at the forefront of a company’s strategy.

“A lot of people don’t understand it,” Okenfuss observes. “They say, ‘I don’t need a lawyer who understands the Internet of Things.’ I say, ‘Go and see whether or not you own that data.’ Part of the value in the Internet of Things is the data. A lot of people don’t realize the importance of the data.”

Reynolds offers an example of not understanding the impact of IoT: a treadmill with a USB-enabled port. Not only are proprietors and manufacturers aware of fall risks and other litigation threats with the devices, they now have to take into account data.

“I imagine they may not know historically about the risk of a product having an internet-connected device. There’s risk in general, but you’re now taking a product and really changed it by adding the internet connectivity or USB,” he remarks.

Shifting resources

While law firms often have legal libraries filled with hard-bound tomes, that’s not where attorneys are spending their time.

Kealey explains that law libraries are less utilized today than when he started 30 years ago.

“It certainly has become a faster-moving profession. Like every other business, we’re expected to respond at a digital pace and that



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has challenged the business model because the opportunity to do research and to do analysis is sometimes compressed in ways that make it difficult to really meet the expectations.”

Samila began practicing law 29 years ago and has seen the shift toward electronic research not only as more efficient, but necessary in today’s quick-moving legal times.

“We rarely use books at this point and certainly with the younger attorneys, they’ve really grown up with electronic research and I’m really not sure how much actual book research is taught in law school; it’s all electronic at this point,” he notes.

Resources, such as software and capital expenditures, at law firms are also impacted.

“Our software maintenance spend is up 32% since 2016,” offers Mitch Hopwood, chief operating officer at Ice Miller.

“I have one person on staff that spends about a third of her time dealing with audits. That didn’t exist three or four years ago. That’s a huge change. The dollars we spend on outside consultants just helping us . . . as consultants to the firm, they do a great job of scaring us to death about the things we need

to be aware of.”

One of those issues law firms are keenly aware of is cybersecurity. It’s a resource-intensive focus for Kahn, Dees, Donovan & Kahn, Samila offers.

“Cybersecurity is the big one, not only from counseling our clients, but also as a firm,” he outlines. “We’re trying to do everything we can to make sure we have a secure environment. It’s very important to clients and that’s probably the biggest issue that we face, as with a lot of companies. I think we’ve put a lot of money into technology and security services.”

Priority No. 1?

The issue of data protection and cybersecurity is impacting companies of all sizes, and most understand — or are beginning to grasp — the issue, Samila contends.

“It really depends upon the size of the company, how much technology is part of their business, but even with the smaller clients, they’re becoming more and more aware and more concerned because of the number of issues that are occurring,” he shares.

Kealey points to the General Data Protection Regulation (GDPR) from the European Union (EU) as a cybersecurity and data issue that poses challenges for organizations. The regulations went into effect May 25 and impact any organization or company that does business with anyone from the EU.

Just add it to the list of issues business owners need to be aware of. “(Companies are) wanting to focus on whatever their business is delivering to a customer. Then something like GDPR comes in kind of out of nowhere as a major distraction and it’s challenging to stop what they’re doing and deal with it,” Kealey expresses.

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Steve Hoar, partner at Kahn, Dees, Donovan & Kahn, describes how the breadth of GDPR is challenging.

“(The law) is pretty broad as to who it applies to; not everybody really understands how broad the law is at this point,” he offers.

Adds Samila, “As a law firm, we try to practice preventative law and keep our clients from being embroiled in issues. . . . Again, it’s such a wide-reaching law, everybody is trying to figure out how it’s going to apply and be enforced.”

Future focus

AI and blockchain technology are on the

horizon and law firms are paying attention to those issues today.

“We certainly foresee artificial intelligence playing a growing role in the law the same way it will play a growing role in medicine and other learned professions because the analytical tools are already a factor in legal research and they will continue to get more powerful,” Kealey shares.

“(These issues) are likely to make legal counseling more efficient and help us deliver more value in a shorter time for clients, and that will likely affect the staffing model for both general counsel teams and for outside counsel.”

A question about young attorneys being prepared inspires Kealey to recall a joke about the “fish who says, ‘What’s water?’”

“I think the law schools have been effective in this area ... because the new law grads come out of law school immersed in technology; they don’t even think about it,” he observes.

While the younger generation is perhaps fluent in technology, Hoar points to the “pre-digital skills” as critical ones for attorneys today.

“Speaking for myself, that may be where you really have to watch out and make sure people still



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have the ability to communicate face to face. That’s an important part of the practice of law, whether in the transactional end or in litigation. You have to have the ability to be able to persuade, write persuasively; you have to be able to talk to clients,” he maintains.

“We have to continue to be vigilant to make sure our new lawyers have these other skills as well.”

Kealey has a similar recommendation in the face of emerging technology: Remember “the profession of law is still a counseling profession.”

“You have to step back from technology and look at the big picture. The way the digital world works, if you are constantly moving from immediate problem to immediate problem, you can get sucked into a very tunnel vision. So, pulling back and looking at how do we want to make the technology work for us rather than having the technology dictate our business is very important.”

RESOURCES: Mitch Hopwood, Judy Okenfuss and Stephen Reynolds, Ice Miller, at www.icemiller.com | Bill Kealey, Stuart & Branigin, at www.stuartlaw.com | Steve Hoar and Mark Samila, Kahn, Dees, Donovan & Kahn, at www.kddk.com

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- Build the Chicago-Fort Wayne corridor
- Expand the NW Indiana South Shore commuter system
- Develop light rail commuter systems for Central Indiana

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