
REMAAPPING DEBATE

Asking "Why" and "Why Not"

Where hiding the truth is a major selling point

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March 9, 2011 —A [recent article in the New York Times](#) reported on software that can sift through documents potentially relevant to a lawsuit in a “fraction of the time for a fraction of the cost” that it used to cost when document review was performed manually by “a platoon of lawyers and paralegals who worked for months at high hourly rates.”

The still developing software is not only able to work faster, it can apparently also spot “digital anomalies” that would escape the ability of human reviewers to synthesize.

The story pays considerable attention to the important labor market consequences of these technological advances: enabling “a single lawyer to do work that might have once required hundreds” means that many high paying jobs will be lost, a pattern that may recur in other industries.

Then, near the end of the story, the reader learns of a not-so-benign use of the technology, through an anecdote told by an “e-discovery” company that was representing a large corporation. Faced with plaintiffs who came prepared with numerous keywords they wanted searched, defense counsel used the software to “analyze their own documents during the negotiations, and those results helped them bargain more effectively.”

Theoretically, the “aid in bargaining” could have had to do with getting a better sense of the client’s vulnerabilities and thereafter tailoring a case settlement strategy accordingly.

But the more plausible explanation is that the tool was being used to determine where resistance to the plaintiff’s discovery efforts should focus. That is: let us understand which keywords can hurt us, and stonewall the plaintiffs in respect to those keywords. If the plaintiff doesn’t give in, craft arguments for the court claiming that the requested (and known to be revealing) keywords were “overbroad” or “irrelevant” or otherwise improper.

Among the questions for future reporting:

How much withholding of potentially valuable evidence is being facilitated by advance peeks made possible by artificial intelligence software?

How much of an additional advantage will this software create for deep-pocketed litigants as compared with their less well-off adversaries?

Could the software paradoxically achieve a levelling effect — that is, enabling plaintiffs who were never able to afford a “platoon of lawyers” to compete with adversaries who are

To what extent are e-discovery software companies peddling their wares as aids in concealing the truth?

Are law firms responding to such appeals, and, if so, what does that say about prevailing legal culture?

If you wind up writing about this, please be sure to [let us know](#).

This content originally appeared at <http://remappingdebate.org/article/where-hiding-truth-major-selling-point>