Apple Founder Steve Jobs' 's design philosophy was "Simplicity is the ultimate sophistication." Beginning with interactions at Vanderbilt Law School with law professors and continuing with on campus and off campus interviews that I had with law firms and in-house legal departments, internships with law firms and private practice, I discovered that lawyers really like the term sophisticated. As in, "we represent sophisticated clients" or our "real estate practice is sophisticated." However, I do not think Steve Jobs would find anything sophisticated about the big law business model.

Sophistication in the legal industry is based largely on the billable hour. The billable hour is a cost plus system. The widely held perception is that higher rates charged means higher quality. A similarly situated professional charging less for his services must not be as good as the high priced adversary. We operate in a small firm environment and have certain practice specialties including e-discovery and electronic records management. A boutique perhaps although I feel that term may be as overused as sophistication. Our lesser costs are largely based on the fact that we do not have multiple floors of a major office building or extensive staff. Therefore, we are not as dependent on the billable hour as a way to ensure revenues to keep the machine rolling. We firmly believe that we provide representation of equal quality in our areas of specialty.

While Steve Jobs never had the opportunity to revolutionize the legal business as he did for personal computing and music to name a couple, a revolution in the business model is under way. One need only look at the rise of alternative fee arrangements, legal process outsourcing ,and companies such as LegalZoom and Rocket Lawyer as evidence of this revolution. These issues are being regularly blogged and written about in the legal press so I will simply recommend the *End of Lawyers* by Richard Susskind, the writings of Jordan Furlong at Law21, and the ABA Journal's New Normal series by Paul Lippe and Patrick Lamb regarding these subjects.

The sad fact is that big law did not lead the revolution. In our humble opinion, the adherence to the billable hour is largely to blame for the failure of big law to capitalize on huge opportunities. Imagine if it was law firms through an internal research and development department that had developed document assembly or electronic discovery software.

Similarly, big law as a whole is not taking the lead on providing true solutions and quality services to clients in the area of e-discovery. McDermott, Will and Emery is facing a widely publicized legal malpractice case for e-discovery failures. When document review attorneys can be easily found in the Midwest, Southeast and overseas for $25-30 an hour, does it make any sense to pay a partner over $400 or an associate over $200 to do the same work.? Many times the contract reviewers are utilized but are marked up significantly even to levels approaching that of associates.

At the recent Congressional hearing on the "The Costs and Burdens of Civil Discovery", Thomas Hill, Associate General Counsel responsible for Environmental Litigation and Legal Policy at General Electric, provided persuasive testimony regarding the preservation demands and risks and costs of litigation in the digital age. He also provided specific examples of preservation burdens borne by General Electric and Microsoft. In one of his examples involving a case with a dispute of less than $4 million, he testified that GE collected, preserved, reviewed and produced over 3 million documents. Further, each of the documents were reviewed by a lawyer at a total

cost of $6 million. While Hill is correct that large document productions such as this one are rarely if ever reviewed by the requesting party and that courts rarely consider cost-shifting leading to "a perverse incentive which becomes leveraged to skew dispute resolution not on the merits but on the economics", it does not follow that this matter could have been handled at substantially less cost without sacrificing quality.

Assuming a review of 100,000 documents or more, we provide our e-discovery project management services from collection through production at less than $1 per document. As the amount of documents increases, we are able to lower the price we charge. While not knowing the specific details of the case in question, I believe it is safe to assume that we could have provided the same services to GE for $2.5 million. Given the size of the review involved, it would have been an ideal case to use predictive coding tools. The utilization of predictive coding can reduce the amount of documents subject to traditional linear attorney review to 30% of the total review set. Thus, we feel confident that if permitted to utilize predictive coding technology that the services that cost GE $6 million in Hill's example could have been provided for a cost of $1.8 million or less.

Admittedly, spending $1.8 million on just the electronic discovery phase of litigation in a case with a dispute of approximately $ 4 million may still not make good business sense. However, this is an altogether different business decision than when the e-discovery costs exceed the amount in controversy. It would at least appear that this case could be tried on the merits. For any doubts on the quality of predictive coding or similar technology assisted reviews or concerns regarding judicial endorsement of such approaches, we reference the excellent study by Maura Grossman and Gordon Cormack in the *Richmond Journal of Law & Technology* and the remarks by Magistrate Judge Andew Peck of the Southern District of New York at the Carmel Valley E-Discovery Retreat last year.

There is no doubt that the strains on our civil justice system caused by electronic discovery and the digital age are real or that the costs and risks created by electronic data are driving settlements in cases that may have been more heavily contested in the past. The solution to these pressing issues facing the system lies in the effective utilization of technological tools and education of the members of the bar on these issues. The answer does not lie in adherence to costly outdated methods and tired complaints about the surmounting costs.

The world of multinational corporations and the large law firms that represent them may be sophisticated but they are ignoring a simple truth that these services can be provided at a much cheaper cost by qualified e-discovery counsel.