



"Alexa, Please State Your Name for the Record."

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“Alexa, Please State Your Name for the Record.”

The developing role of smart technology in modern legal practice.



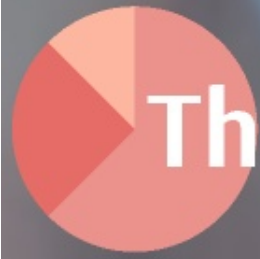
Photo Credit: Daniel Garcia, CNET.com (<https://www.cnet.com/news/alexa-fitbit-apple-watch-pacemaker-can-testify-against-you-in-court/>)



Video Credit: CBS News (
www.cbsnews.com/video

Other Virtual Assistants in the news

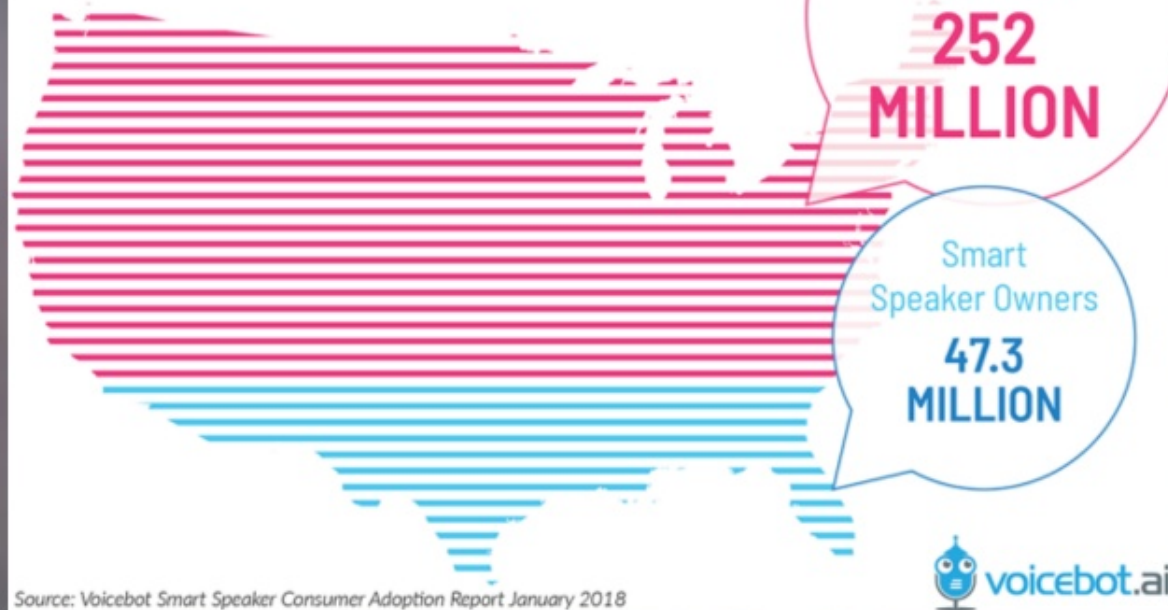
- Apple-FBI standoff: locked iPhone in the San Bernardino shooting investigation.
- Fitbit alibi: Boyfriend of woman murdered by man from bar freed thanks to Fitbit data



The Numbers

- March 2018: **47.3 million** *U.S. adults* have access to a smart speaker.
 - February 2018: Fitbit had **25.4 million** active users.
 - January 2018: Siri actively used on over **500 million** devices worldwide.
 - 2019 ABA Legal Technology Survey Report: **55% of lawyers** have used cloud computing software tools for law-related tasks.
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U.S. Smart Speaker Total Audience Reach



*graphics from techcrunch.com and voicebot.ai

Smart Technology in Practice

- Fitbit for damages in injury cases
 - Limiting expenses of experts--or using different types of experts
 - Virtual Assistant or Cloud Computing for billing, document management, etc.
 - Lawsuits re: data security, etc.
 - Other examples?
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A blurred background image showing a person's face and hand, possibly interacting with a device, overlaid with a semi-transparent blue rectangle containing text.

Legal Concerns with Smart Technology

- Evidentiary concerns
 - Privacy problems
 - Juror/Judicial understanding
 - Data security internally
 - Attorney Confidentiality
 - Attorney Competency
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Duty of Competence

- February 26, 2019: Texas becomes 36th state to formally adopt an expanded definition of a lawyer's competence to include an **“ethical duty of technology competence.”**
- Texas Supreme Court amended Comment 8 to Rule 1.01 of the Texas Professional Rules of Disciplinary Conduct:

Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology.

- “What does technology competence mean for lawyers?” Language in the resolution submitted by the State Bar of Texas Computer & Technology Section suggests an answer:

... “[T]he practice of law is now inextricably intertwined with technology for the delivery of services, the docketing of legal processes, communications, and the storage and transfer of client information, including sensitive and confidential private information and other protected data.”

See “Technology Matters” by Elizabeth A. Rogers in the May 2019 Issue of Texas Bar Journal.

Confidentiality/Privilege

- Using smart technology for administrative efficiency may incite confidentiality breaches or waive privilege.
 - Cloud storage may implicate data security/ethics questions.
 - **ABA Model Rules:** Lawyers should know not just the benefits of technology but also the risks associated with using it.
 - **Best practice:** an attorney should know how his or her provider handles storage and data security; consult with an expert if you don't have the necessary knowledge.
 - **Best practice:** make clients aware of the risks associated with certain technologies (disclose to client how information will be stored or transmitted, perhaps in retainer).
 - **Texas Ethics Opinion 680:**
 - A lawyer may use cloud-based electronic data systems and document preparation software for client confidential information; however, lawyers should remain continually alert to the vulnerability of cloud-based vendors and systems to data breaches and whether a particular vendor or system appears to be unusually vulnerable, based on systemic failures by that vendor or system of which the lawyer should be aware.
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- Technology can help your case tremendously.
 - Technology can also hurt your case tremendously.
 - Be aware of the tools at your disposal, and also the tools that can be used against you. Attorneys have an ethical duty to do so.
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