

The Bottom Line - Official Publication of The State Bar of California Law Practice Management and Technology Section

MCLE Self-Study Article:

A Time to Tool Up



By Marc Lauritsen

Times are tough for lawyers. How can we survive and prosper? Most would agree that effective use of technology is part of the answer. I believe that systems aimed at the *core* of practice are among the most important measures we can take. And that having them requires us to be more than innocent bystanders.

The march of technology in law – as in other quarters of life – is a mixed blessing. More and more machine intelligence is not necessarily progress. But it's coming at us like a runaway steamroller. Here are some ways to avoid being flattened.

Brush up

First, brush up on how your part of the law business might be disrupted by new tech-enabled competitors. Consider especially (1) what portion of your work can be accomplished cost-effectively with software systems, and (2) what portion of that portion presently is being so accomplished. The former is always growing, as technologies emerge, existing ones get cheaper, and people gain comfort and proficiency. The latter is mostly a matter of good management and strategic insight. Take an honest look at your 'latent systemization potential' – how much more effective you could be by deploying better systems. If that potential is high, you're not only missing opportunities, you're vulnerable to displacement.

Break down

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There are no standard units of legal work, as there are for physical work (e.g., ergs and joules). But it is possible to decompose things lawyers do into more elementary pieces, and to discover parts that are amenable to delegation and systemization. Even large, complex matters contain fungible components.

You can classify what lawyers distinctively do in terms of three 'A's – analysis, advice, and advocacy. If something doesn't fit well in one of those categories (such as factual investigation, information retrieval, or form filling), there's a good chance someone or something other than a lawyer can do it more cost-effectively. (Of course, some lawyers earn huge fees delivering another 'A' – access to scarce information, private networks, and levers of public policy – but lobbyists and others can do that as well or better.)

Similarly, you can classify most of the things lawyers *produce* in terms of three 'D's – decisions,

documents, and deals (broadly understood as settled legal arrangements – such as agreements, institutions, legislation, and judgments.) Each of these kinds of artifacts can be produced more effectively with knowledge-based technology.

Tool up

Lawyers are surrounded by technology these days, but much of it can be found in almost any office setting. Specialized tools that assist at the core of law practice offer more strategic advantage. Working on that part of your tool kit can pay major dividends.

There are lots of ‘substantive’ legal technologies. One of my favorites is document assembly, which is both dramatically useful and dramatically underused. The industry is mature. In addition to established vendors like ContractExpress (<http://www.business-integrity.com/index.html>), Exari (<http://www.exari.com/>), HotDocs (<http://www.hotdocs.com/>), Pathagoras (<http://www.pathagoras.com/>), and Rapidocs, dynamic new players continue to enter the market, such as Brightleaf (<http://www.brightleaf.com/>), TheFormTool (<http://www.theformtool.com/>), WordFusion (<http://www.zumesoft.com/>), and XpressDox (<http://www.xpressdox.com/>). There are also fascinating new approaches, like those of Kingsley Martin at KMstandards (<http://www.kmstandards.com/>) and Jim Hazard at CommonAccord (<http://www.commonaccord.com/>).

Artificial intelligence is experiencing a resurgence, in part due to IBM’s Watson (<http://www-03.ibm.com/press/us/en/pressrelease/34115.wss>), which was able to beat human contestants at Jeopardy. Its Deep Question Answering technology is being applied to medicine and other fields. In the legal world, Neota Logic is fielding expert applications.

As the process outsourcers and online document preparers are showing us, advanced tools can help people with important legal work even when there are no lawyers at the controls. It’s usually better, though, to have a trained legal professional in the loop. On a level playing field, lawyers are best suited to provide legal services by dint of their training, experience, and ethical regulations. Those with optimal tools, billing practices, and marketing techniques can thrive even in an era of general fee deflation.

Push down

The good news is that much core legal work *can* be done more effectively, by delegating parts to less specialized personnel, and to our increasingly intelligent machines. That includes putting systems directly in clients’ hands for self-help and co-production.

However the legal marketplace may evolve, strategic advantage will flow from getting substantive work done as effectively as possible. Too little attention is yet being paid to the specialized systems that can skyrocket effectiveness. We need to stop using information technology just at the periphery of lawyer activity.

Tools that resonate with the core structures of legal knowledge work perform best in the hands of lawyers who are reflective about its systemization. The future will belong to those who can choreograph optimal distributions of work across teams of humans and non-biological assistants.

Step up

Imagine a rising generation of tech savvy practitioners, aggressively wielding intelligent tools. Do you want to be among them, or watching from the sidelines?

Seek to discover how much more effectively your work *can* be done, because soon someone *will* be doing it that way. If much of what you do can just as easily be done by those who are not professionally trained, or even by machine, you're living on borrowed time. Take some of that time to better equip yourself. Legal knowledge technology is not a silver bullet. But it's an essential weapon. Step up and get with the program.

Learning to code

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This past fall I taught a course on *Lawyering in an Age of Smart Machines* at Suffolk Law School in Boston. Students were required to learn two software development environments and build useful applications. Most had no programming background whatsoever. All succeeded in creating programs that worked. Much was learned along the way. I see efforts like this as an essential part of the future of legal education, both for students and for lifelong learning.

As MIT Media Lab's **Lifelong Kindergarten Group** recognizes, "people learn a great deal when they are actively engaged in designing, creating, and inventing things." Director Mitch Resnick argues that the ability to code, like the ability to read and write, is becoming essential for full participation in today's society. Lawyers, take notice. (See Kids should learn programming as well as reading and writing for inspiration: http://boingboing.net/2013/01/21/206830.html?utm_source=dlvr.it&utm_medium=twitter.)

What to do? Get competent in at least one technology that lets you express substantive legal knowledge. Start with software you already have running in your office. Are there repetitive aspects of document drafting that you could automate with some basic macros in Word? Do you find yourself frequently doing calculations that might better be modeled in a simple Excel spreadsheet? Are you using any rules to filter incoming emails? Does your matter management system offer scripted workflows and document templates? Try creating some. In each case, pay attention to the *substance* of legal and practical know-how that might be encoded for machine handling.

If you get more ambitious, consider adopting one of the above document assembly systems. For little more than a few hundred dollars you can have software at your fingertips that will enable you to create powerful applications that are limited mainly by your imagination.

The most important tool is your own mind. Discover to what extent you can become comfortable with and competent at legal knowledge systemization. If you're not good at it, don't like doing it, or determine that others can do it more cost effectively for you, at least try to understand it.

About the Author

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