ABA TECHSHOW 2020 Written Materials
February 26-29, 2020 | Chicago, IL
Table of Contents

Thursday, February 27, 2020

Core Concepts Track

Next 20 Track

Human Skills Track

Recession Proof Track

Analytics/Data Track

Client Attraction

Litigation Track

Automation Track

Friday, February 28, 2020

Core Concepts Track

Next 20 Track

Lawyer Well-Being Track

Recession Proof Track

Artificial Intelligence Track

Client Experience Track

Cybersecurity Track

Saturday, February 29, 2020

Saturday Workshop Track

Tech Toolbox 2020:
What's Right for Your Practice

WRITTEN BY:

Natalie Robinson Kelly
Richard G. Ferguson

PRESENTERS:
Natalie Robinson Kelly: @NatalieRKelly
Richard G. Ferguson: @RG_Ferguson

January 2020

Tech Toolbox 2020: What's Right for Your Practice

There is no lack of technology available for you and your law firm. The most essential technologies, hardware and software to build your modern law office can be hard to decipher with so many options. Guidance to find the correct tools vital to your practice begins with a review of what technology you already use, and then moves to solutions that make the most sense for your needs before leading to the holy grail of a complete "Technology Toolbox" for your practice.

1. Core hardware and software to run your office

a. Evaluating the software and hardware and systems you already have

Law firms and legal departments should first conduct an office technology assessment when tackling upgrades or new implementation schemes. Looking at which tools are available, what is being used, what is not being used, what tools are needed, what tools are wanted, and even how much all of this will cost the firm is just the beginning of the process in getting to the most essential tools for an office.

Not all technology assessments are the same. So care should be taken to select the proper level and type of assessment used in identifying what will be needed in the practice. Some technology assessments are offered by IT consultants, and some are conducted informally, i.e.Judy, do you use XYZ program? Defining the scope of the assessment is necessary, too. Broad-ranging services can be addressed, i.e. cloud-managed services, cybersecurity, disaster recovery, compliance, etc. Determine which services you need to address most immediately, and seek out the appropriate assessment for your needs.

Once armed with the knowledge of which products and tools are in actual use in the firm, and to which level, then decide which solutions are essential to your practice. Keep in mind the need to include current and future practice areas and scenarios for the best and worst cases likely to be encountered by the firm. Review the firm's policies and procedures to address any gaps or need for efficiency building.

Keep these basics in mind for evaluating your technology needs.

It is also appropriate to reflect upon the strategic place that technology plays in translating your firm's core values to your clients and potential clients. Simply updating technology will not necessarily assist in realizing the practice objectives or "style" that your firm seeks to promote.

In the paper presented at Tech Show 2019 "Next Generation Technology for the Solo and Small Firm", Mary Vandenack and Richard Ferguson discussed some of these issues with reference to solo and small firms.

Selection Basics

Current Software - Check existing programs and hardware configurations to determine which software can or should be upgraded or purchased new. Do an analysis of what is installed, what is used (and what is not being used) and to what level of proficiency in your office. Also, determine what software solutions would be beneficial to add to the mix of existing or planned software programs.

Operating System – Selecting a Windows, Mac or an open-source computing platform used to have a serious impact on the number of software programs which were available for legal-specific tasks. Now, however, general programs are usually available for any platform because they are delivered up mainly online. This makes the choice of an operating system less impactful for firms looking to select products. Firms should continue to monitor platforms and look to ease the support burden by not carrying too many system services to support in a mixed operating environment.

Operating Environment – Cloud or traditional or mixed/hybrid? Cloud or internet-based software services have become popular ways to manage information without having to be concerned with a local office computer network. Solutions also exist so that some of the software is available and used on the local office network while simultaneously using an online software service. This mixed traditional/cloud environment may be the answer to many different logistical concerns. Take your time and weigh the options available. Look for security and efficiency when making your final operating environment selections.

Practice Solutions - Select programs with features that answer the specific needs of the firm first. Remember solutions have been built to answer most basic law office workflow needs, and you are simply searching for the most compatible solution. Begin by being sure you:

- Determine need for an accounting solution
- Determine billing software needs
- Determine practice and document management software needs
- Determine productivity-focused tech

Training - Get training on systems you select by contacting the vendor or program for training options with larger installations. Online training has become commonplace, so you should not have a lack of online resources for any of your key technology. And, it bears repeating that TRAINING IS ESSENTIAL. Remember that software is only a solution, and your use of the solution determines it effectiveness in your firm.

Planning and Budgeting - Remember software changes rapidly and you can expect to make major technology decisions regarding key systems every 1-2 years, if not sooner. The most important part of keeping up with what is essential is to know that you must plan and have an appropriate budget.

b. Consider new software and hardware and systems to supplement or replace what you already have

Speakers Heidi Alexander and Mary Vandenack listed this hardware and software as being Essential technology at TECHSHOW 2018 in their session, "Affordable Technology for Solo and Small Firm Productivity":

Essentials

- Scanner ($0 - $1k)
- Backup hardware ($50 - $200) and software ($20 - $100 / yr)
- Two monitors ($40 - $200)
- PDF software ($150 - $500)
- Case management software ($20 - $100 / mo)
- Financial management software ($0 - $30 /mo)
- Legal research tool ($0 - $500 / mo)
- Website ($0 - $10 / yr – 12/mo)

www.techshow.com #ABATECHSHOW

The authors agree that this slate has not changed much over the past two years, but advances in adoption to Office 365 as a more popular computing platform has shifted the focus to more online applications and more streamlined tools for data manipulation and access, including changes for email and word processing. Office 365 moves the traditional desktop applications to the cloud and users access almost everything online with a username and password, moving fluidly from one work environment to another all the while accessing and working with data more freely.

Cloud Technology - Essential to modern practices is access to the internet and cloud-based solutions. This is primarily true because modern software offerings and applications are delivered online. The remaining vestiges of old computer networks are quickly fading. So, having internet access for using cloud technology is a must for a modern law office, and law firms continue to slowly, but steadily adopt. Law firm cloud usage was listed at 58% in 2019 up from 55% in 2018 in the ABA Legal Technology Survey.[1]

i. Practice Managers - Law practice management software is at the center of most modern law practices. While the adoption of practice management has slowly grown over the past 20 years, there is still the need to educate on its importance for some firms. The 2019 ABA TECHREPORT says 53% of firms surveyed use practice management software; and this is up from the 20% range that held for many years prior. Law practice management software provides a central location for firm matter information and allows users to bill for their work, and in some programs manage every aspect of the law firm business, including full general ledger accounting.

Below is a list of practice management products suitable for solo and smaller firms. Some are designed for desktop or server-hosted installation and do not reside in the cloud. Cloud-based systems are most popular due to their ease of access and management. It should be noted that the number of features native to most practice managers and the addition of models which allow integrations with other applications, increase the functionality of these systems, so determining what is essential for your practice will require an investigation of which features are provided in which configurations.

Desktop Practice Management

AbacusLaw $47/user/month 800-726-3339 www.abacusnext.com	Practice Master $600/license (one-time license fee) 402-423-1440 www.practicemaster.com
Daylite $349.95/license (one-time license fee) 905-480-5555 www.marketcircle.com	Time Matters $2,243 1st user license $1,365/addtl. user 800-219-3679 www.timematters.com

[1] https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/cloudcomputing2019/

Web-Based (Cloud) Practice Management

ActionStep $60 per user/month 800-257-4042 www.actionstep.com	GoMatters $20 per month for 1st user license & up $200 per month for 1st user license & up 757-819-4950 www.gomatters.com
AdvoLogix $720 per user annually at $60 per user/month & up Monthly prices require an annual contract. 888-898-2386 www.advologix.com	LEAP $199 for 1st user license & up $149 per addtl. user/month & up 201-208-0010 www.leap.us
Casefleet $40 per user/month & up or $360 per user annually & up 800-968-3994 www.casefleet.com	MyCase $49 per user/month or $468 per user annually at $39 per user/month 866-463-6110
Case.one Basic plan free for up to 10 active cases Pre-paid plan at $35 per month or $333 annually for 50 active cases Pay as You Go plan at $0.99 per active case/month Unlimited users for all plans 844-622-7366 www.case.one	Omni Software Systems Monthly and annual subscriptions available. Complete online form to request price quote. 404-644-2779 www.omnisoftwaresystems.com

CASEpeer $55 per month with firms of 1-3 users $70 per month with firms of 4-9 users $85 per month with firms of 10+ users 888-605-7337 www.casepeer.com	Practice Panther $59 per user/month $588 per user annually at $49 per user/month 800-856-8729 www.practicepanther.com
Centerbase Firm Management plan - $52 per user/month Firm Management plus Legal Accounting plan - $62 per user/month www.centerbase.com	Prevail Contact sales by phone or email for price quote. 866-974-3946 sales@prevail.net or www.prevail.net
Clio $49 per user/month & up or $468 per user annually at $39 per user/month & up 866-878-6798 www.clio.com	Smokeball $139 per user/month & up 855-668-3206 www.smokeball.com
CosmoLex $69 per user/month $708 per user annually at $59 per user/month 866-878-6798 www.cosmolex.com	ZolaSuite $59 per month for 1st user license or $588 at $49 per month annually & up 888-608-1509 www.zolasuite.com
Filevine Contact sales by phone or email for price quote. 801-657-5228 info@filevine.com or www.filevine.com	

ii. Time Billing - Billing for legal work is managed through practice managers in most modern practices. So deciding which practice management system has the most complete means of tracking time can help determine which product is essential. The time tracking and billing process should accommodate the needs of all users. Determine how effective systems are in reporting billable and non-billable time; and how easy it is to track time, manage payment arrangements, keep up with retainer accounts, track expenses and generate bills.

For standalone or separate time tracking and billing systems, make sure they are not onerous when it comes to integrating with the main practice management or matter management scheme of the firm. Gains are sometimes had where time management applications focus on productivity, too. Determine whether this is needed for your office, and if so, add it to your list of essential technology.

Below are popular systems for time billing, but again, much of this functionality is now found in cloud-based practice managers.

AbacusLaw $47 per user/month 800-726-3339 www.abacusnext.com	TABS3 General Ledger add-on to TABS3 Billing $265 per user license 402-423-1440 www.tabs3.com
PCLaw $1,288 1st user license $955 per addtl. user 866-448-5871 www.pclaw.com	RTG Bills $95 per user license $15 per addtl. timekeeper & up 800-414-4268 www.rtgsoftware.com

Web-based (Cloud) Time, Billing & Accounting

Bill4Time $29 per user/month & up or $324 per user annually at $27 per user/month & up 877-245-5484 www.bill4time.com	EnterYourHours $19.95 per month for 1st user license & up 888-479-4224 www.enteryourhours.com
FreshBooks $15 per month for up to 5 clients & up or $162 annually for up to 5 clients at $13.50 per month & up 866-303-6061 www.freshbooks.com	RTG Bills Online $15.95 per month for 1st user license & up 800-414-4268 www.rtgsoftware.com
Brief Accounting $49.95 per month for 1st user license $24.95 per addtl. timekeeper/month 604-629-0928 www.brieflegal.com	Time59 $99.95 annually for entire firm 312-957-4711 www.time59.com

MyCase $49 per user/month or $468 per user annually at $39 per user/month 866-463-6110 www.mycase.com	TrustBooks -Trust Accounting Software Do It Yourself Platform at $39 per month Team with Add Expert Support Platform at $129 per month info@trustbooks.com or www.trustbooks.com
Chrometa $12 per month for 1 time tracker & up 888-340-6425 www.chrometa.com	TimeSolv Legal $34.95 per month for 1 timekeeper & up or $377.52 annually at $31.46 per month for 1 timekeeper & up 800-715-1284 www.timesolv.com
Practice Panther $59 per user/month $588 per user annually at $49 per user/month 800-856-8729 www.practicepanther.com	Xero Accounting $9 per month & up www.xero.com
eBillity Time Tracker $5 per user/month & up $48 per user annually at $4 per user/month & up 800-851-0992 www.ebillity.com	Rocket Matter $65 per user/month $660 per user annually at $55 per user/month 866-710-1845 www.rocketmatter.com

iii. Accounting - Law firm accounting will generally involve accounting like any other with the addition of managing law office trust accounts. With the specialized tracking that is required in many jurisdictions, utilizing mainstream accounting packages without customization is not a very good option. The accounting products mentioned above manage law office trust accounting, and with QuickBooks being a very popular product for accountants, it must not be ignored. In fact, QuickBooks online is often the very first accounting program used via an integration to manage billing and revenue coming from cloud-based practice managers.

Accounting products are only essential if you are managing your firm's accounting directly. Smaller firms may find that outsourcing the billing and accounting are attractive, and this would make this technology non-essential.

Iv. Website - Having a website in 2020 is a must. But, like accounting, if the website is not being manned by the lawyer directly, then website building and management technology is non-essential. If you are, however, responsible for setting up and maintaining a law firm website, these options would be advisable.

Web Hosting Providers

GoDaddy Business Web Hosting at $29.99-$99.99 per month & up; Basic plan comes includes 60GB of storage, 2GB of RAM, 1 CPU, Unmetered traffic, unlimited websites and databases, and standard SSL Certificate 480-505-8877 www.godaddy.com	Weebly Free basic plan available with 500MB of storage, subdomain, SSL Security Certificate, and search engine optimization. Premium price starts at $96 annually at $8 per month & up. www.weebly.com
Google Sites Free basic plan available with 10GB of storage; mobile optimized sit, drag-and-drop feature, and SEO friendly. Premium price starts at $50 per user annually in conjunction with Google Apps and user license fee. www.sites.google.com	Strikingly Free basic plan available with 5GB of monthly bandwidth, unlimited free sites, and a simple store for 1 product per site. Premium pricing starting at $20 per month & up. www.strikingly.com
Squarespace $16 month-to-month plan or $192 annually at $12 per month & up for Personal Space plan which includes unlimited pages, galleries, and blogs with unlimited bandwidth and storage; free custom domain; website metrics; mobile optimized site, and SSL Security www.squarespace.com	WordPress Free basic plan available with 3GB of storage, subdomain, free themes, design customization, and Jetpack plug-in that includes SEO, spam protection, social sharing, site stats, and more. Premium pricing starts at $48 annually at $4 per month & up www.wordpress.com

Logo Generators

99Designs $299 & up Basic plan includes up to 30 designs. 800-515-1678 www.99designs.com	Squarespace Free basic plan available with download of law resolution files at no charge and high-resolution images at $10 per image. www.squarespace.com

2. Mobile Tools

Today's lawyers are mobile, and having the appropriate mobile tools is imperative. The toolbox entrants which are essential are smartphones, laptops, VPN, encryption and scanners. Printers would sometimes be deemed essential, but with the increased awareness of creating less paper and moving toward paperless offices, the need for printers to be on the essentials list has diminished. And, PDF software has gained in importance instead.

High-end peripherals are also sometimes made essential when developing the most efficient mobile practice set up. Look for top of the line keyboards, monitors, mice, headphones, earbuds and speakers. Many options are listed and reviewed in resources listed as references later in this paper.

If you are going to practice remotely, security compels that you leave your physical and electronic files "at home" and that you do not take data with you on a mobile drive or device. Better to set up your mobile device to permit remote access to data and information at your main office.

TeamViewer $58-$109 per month 1-800-638-0253 www.teamviewer.com	Go To My PC $35-$66 per month www.gotomypc.com
LogMeIn $449.99 per year per user www.logmein.com	Remote PC $22.12 - $52.12 per year 1-818-275-5909 www.remotepc.com

3. Security

An absolute must for today's technology tool box is security technology. From virus scanning and ransomware and adware protection to email and full-disk encryption, law firms have to have this technology in place and made key part of any disaster recovery and prevention plan. Having multiple data backup points is also a necessity. Online data storage services can be found online at www.backupreview.info, and the following encryption services are also useful.

Absio Dispatch Call for specific products and pricing. 720-836-1222 www.absio.com	Zix Call for specific products and pricing. 866-257-4949 www.zix.com
Symantec $189 annually for first-user license & up 650-527-8000 www.symantec.com	Safeguard Encryption Call for specific products and pricing. 866-866-2802 www.sophos.com

Citrix ShareFile $132 quarterly for 1 employee user with unlimited storage or $11 for up to 4 users & up 800-441-3453 www.sharefile.com	ZoneAlarm $17.95 per month & up www.zonealarm.com
Virtru Free basic plan available. Call for specific products and pricing. www.virtru.com	SecureDoc $136.40 per single-user license & up 877-405-5220 www.winmagic.com
McAfee Endpoint Protection Essential $30.16 per user annually & up 888-847-8766 www.mcafee.com	

4. Prioritizing products

a. *Defining Your Practice and its technology needs*

As previously stated, to define which technology should be in your legal Tech Toolbox, you need to have a clear understanding of your practice, its mission and its goals. The products listed above are only for consideration and are generally more important for small law offices. When you are deciding what is essential, consider how you need to approach a specialized practice management program vs. a general system.

Below are some specialized programs that are sometimes considered when deciding on this essential technology. With the explosion of practice areas for lawyers, it is likely that many more products will be developed. And, note there is not a list of litigation support or electronic discovery tools to consider here.

1. Bankruptcy

BankruptcyPro 5-Case License - $225 Chapter 7 - $495 Chapter 7, 11, 12 & 13 - $995 210-561-5300 www.legal-pro.com	CINcompass $75 per month or $855 annually for 0-2 bankruptcy filings with access to Chapters 7, 9, 11, 12 & 13 866-218-1003 www.cincompass.com

BestCase Bankruptcy Chapter 7 - $995 Chapters7 & 13 - $1,595 & up Chapters 7, 11, 12 & 13 - $1,895 & up 800-492-8037 www.bestcase.com	

2. Collections

Totality Debt Collections Software Totality Software, Inc. $999 & up Addtl. computers $399 each 800-286-3536 www.totalitysoftware.com	

3. Divorce Settlement

FinPlan Divorce Planner $804 per year & up 888-807-4656 www.thomsonreuters.com

4. Immigration

eImmigration Air $55 per user/month, 1GB storage per user, 1 optional module & up 800-617-4202 www.cerenade.com	INSZOOM $199 setup fee: $50 per user/month & up 925-244-0600 www.inszoom.com

Immigration Tracker $500 setup fee; $159 per user/month & up 888-411-8757 www.trackercorp.com	LawLogix Call for specific products and pricing. 877-725-4355 www.lawlogix.com

5. Personal Injury

Needles $1,000 per single-user license & up 410-363-1976 www.needles.com	SmartAdvocate Call of specific products and pricing. 877-438-7627 www.smartadvocate.com
The Personal Injury Assistant $55 per user/module/month & up $588 annually at $49 per user/month 888-381-2831 www.thelegalassistant.com	

6. Real Estate

Easy Soft Real Estate Closing Solutions** $59.99 per user/month & up 800-905-7635 www.easysoft-usa.com	RamQuest Title and Settlement Solutions Call for specific products and pricing. 214-556-1407 www.ramquest.com
LandTech Real Estate Settlement System Call for specific products and pricing. 985-556-1407 www.landtechsystems.com	

5. Other Resources

Finally, there are numerous resources to help you add to your Toolbox. This list is far from exhaustive, but it is authoritative in helping review and devise effective legal technology for modern law practice.

a. Legal Technology Resources
   i. ABA Legal Technology Resource Center and ABA Legal Technology Survey

ii. The 2020 Solo and Small Firm Legal Technology Guide (book) – written by Sharon Nelson, John Simek, and Michael Maschke
iii. Technology Solutions for Today's Lawyer (book)
iv. LawGeex Legal Tech Buyer's Guide - https://ltbg2019.lawgeex.com/
v. Lawyerist.com – Complete Guide to Law Firm Technology including the Basic Tech Competence Checklist (membership required)
vi. SimpleLegal Whitepaper - Making the Case: Selling the Investment in Legal Operations Technology Internally - https://bit.ly/2NDiN3N
vii. Above the Law Webinar: How to Evolve Into a Tech-Savvy Law Firm - https://bit.ly/2R4mUIs

6. Transitioning from tired tech to more robust solutions

Transitioning from old technology to the more robust solutions of today, leads many lawyers through the first phases of a journey where they are required to take with the adoption of the duty of tech competency 38 U.S. jurisdictions.[2]

Likewise, advances in the use of technology – defined by practitioners' focus and work to improve office workflows using the document generation and management tools found in and integrated with practice management systems; with using data analytics more frequently to monitor business data and trends; and in striving to reach technology planning and transition goals with system implementation and advanced individualized training.

Users of practice managers know their systems can help them generate documents and track those documents effectively. Yet, it takes actually developing workflows and using these functions in concert with online document storage service to get more users familiar with streamlining their workflow with this more robust functionality.

Popular practice management system, Clio, made headlines a few years ago with its acquisition of Lexicata to build its product offering, Clio Grow, which focused on using data analytics based on information from the practice manager.[3] This technology move is just one example of the everyday practice management user being exposed to the more robust functionality of a key firm management solution.

[2] https://www.lawsitesblog.com/tech-competence

[3] http://www.abajournal.com/news/article/clio_acquires_lexicata_starts_customer_relationship_product_clio_grow

Procertas and its Legal Technology Assessment offers digital COBOT badges for those satisfactorily completing courses on essential law office technology software, namely Excel, Word and PDF. [4] There are several Learning Plans and a certification program from LT4C – Legal Technology Core Competencies Certification Coalition for law office operations and legal department staff.[5]

[4] https://www.procertas.com/offerings/digitalbadges/
[5] http://www.ltc4.org/certification/

Paperless 3.0: Making Your Paperless Workflow Work

WRITTEN BY:

Charity Anastasio & Daniel J. Siegel

PRESENTERS:
Charity Anastasio: @charityanas
Daniel J. Siegel: @danieljsiegel

February 27, 2020

1. Considerations for Every Paperless Office

The Benefits of Going Paperless/Making the Move

- What is paperless
- Consequences of too much paper
- Costs of digital documents
- Hardware—scanners, backup systems, monitors

File Retention and Naming

- Establishing protocols for file retention
- Organization for easy retrieval
- Training your staff

Cloud-Based Storage

- Privacy and Security Services

Getting Your Team Committed to a Paper Free Environment

- Checklists
- Dealing with naysayers
- Training the staff

Keys to a Paperless Workflow: Adobe Acrobat DC and PDF Documents

- Navigating PDF documents
- Creating PDF documents
- Editing and manipulating text
- Assembling PDF documents
- Working with forms and OCRing documents
- Using headers and Reducing file size
- Redacting information and Digital signatures
- Bates numbering and Numbering pages
- Document Security

2. Paperless 3.0 – The Struggle to Create a Truly Paperless Office Workflow

The "paperless office." Remember that concept? Like the idea that paper checks would disappear, the promise of a paperless office remains a pipedream for virtually every business, including law firms. Even after "converting" to a paperless office, the mail still comes, faxes continue to fly out of the machine, and those e-mails remain endless. Thus, even most paperless offices struggle with the next level of efficiency. This program and this paper are designed to help you overcome the latest hurdles, while reminding you about the necessity for workflow revision and improvement.

Consider a typical client file. In most cases, your office prepares an initial intake. It may be a detailed client interview, a case assignment sheet received from an insurance company, or something a bit more complicated. Regardless, you should have all of these scanned to your computer or your server, and named so that you (or anyone else) can locate the documents easily. There are two reasons to do this. First, it is all too easy to misplace documents, and scanned copies serve as insurance. Second, when the client calls, you no longer have to place the client on hold, get up from your desk, search for the file, and then, once you find it, rummage through the morass of papers to locate the document you need. Instead, you simply locate the document on your computer, open up the file, and you are ready to discuss the document in seconds. You are more efficient, and your client is impressed by your ability to discuss the document and the case at a moment's notice.

Let's jump ahead a bit. Suppose the case requires you to obtain voluminous records. They could be medical records, financial records, or copies of contracts in dispute. Regardless, they encompass dozens, if not hundreds or possibly thousands of pages. In a traditional setting, you would have obtained hard copies of every document and would later supply paper copies to opposing counsel. That is a lot of dead trees, especially for records that, for the most part, probably will be reviewed only once; after all, only a small percentage of the records produced in most cases have any relevance to the case itself. More and more, however, records are either produced – or they are available – electronically, that is, in tif or pdf format on CD or floppy disk.

If you're already paperless, you should be taking advantage of the fact that when you need to review the file, if you only print and highlight the truly relevant documents, it is much easier to find these documents instead of having to fumble your way through reams of paper.

Suppose, however, the matter involves litigation. Pleadings, discovery, motions, pretrial documents, etc. For my nickel, every document should be scanned and OCRed (optical character recognition). The paperless workflow not only renders the documents searchable, it generally also allows you to copy portions for use when preparing other documents. As a bonus, if you misplace a document (which of course will "never" happen), there is a copy readily available. In addition, when you file a motion, you can easily produce a CD rather than a case of paper, and at far less expense. Moreover, most courts now permit – or require – electronic filing.

Scanners

Scanners are a necessity. A scanner analyzes a document or other image and processes it in a way that allows you to save it on your computer. If the document contains text, a scanner can perform a scan of the text (Optical Character Recognition or OCR), thus allowing you to search by keywords and, depending on your software, use the text in other applications. If the document contains an image (picture), the scanner can save it in a manner that allows you to alter or enhance the image, print it out or use it elsewhere.

In recent years, scanning technology has improved dramatically. Sheetfed scanners have become far more common and much more affordable, and allow you to scan large documents at the push of a button. For around $450.00, you can purchase a Fujitsu Scansnap scanner with a 35 to 50 page sheet feeder, which is sufficient for most small to mid-size firms. In addition, large copiers generally also serve as scanners. Either way, scanning is as easy as making a copy.

But the key to successful scanning is in the software. Most manufacturers supply all of the software you will need for free when you buy a scanner. For example, Fujitsu offers user-friendly software that makes scanning a snap. You open the software, click on the scan button, and the scanning begins. Once the scanning is over, the software asks you what format to save the images in, generally a pdf, and where to save it. Of course, if you need to save your document as an image, such as a tif or jpeg, you can do that just as easily. The advantage of the pdf format (rather than a jpeg or other "image" format) is that, with proper software, you can search one or more documents for keywords.

After You Scan – You Need Software

Scanning documents is just the first step. After your documents are scanned, you need the proper software to review them. Selecting the correct software for handling your documents is crucial to reducing paper and increasing efficiency. If you save your documents as pdfs, you can review them with the free Adobe Acrobat Reader (downloadable at http://www.adobe.com/products/acrobat/readstep2.html). Adobe Reader allows you to view your documents, but not much else.

If you purchase Adobe Acrobat DC (the latest version – in either Standard or Professional), or comparable software, however, you can accomplish much more. For example, Adobe Acrobat easily performs an OCR on a document, allowing you to search its text, export it to Microsoft Word, or use it in other applications. Adobe Acrobat is relatively inexpensive and is the most versatile product of its type.

One of the best features in Adobe Acrobat is its ability to index documents (Adobe calls it a "catalog"). In seconds, with an index, Adobe Acrobat can find every instance in which a word or phrase appears in one or many documents.

File Retention and Naming

Well defined file retention and naming conventions are an essential part of an effective paperless workflow.

Does Your File Retention Policy Need a Check-Up?

A cybersecurity expert recently said, "You should keep [client] information while you need it, but once the need is gone, get rid of it." This comports with a lawyer's ethical obligations to protect client information. Some states have guidance or rules on file retention, but rarely do they say, "keep files forever." RPC 1.6, confidentiality, tells us to protect all client information, not just the secrets—that we should not be the source. Many states re enacting or strengthening data protection and breach disclosure rules, mirroring the General Data Protection Regulation enacted in the EU May 2018. In other words, having and following a file retention policy that has a finite, safe destruction date for all files is a fundamental part of your ethical obligations, as well as good office management.

Unfortunately, many firms' file retention policies look something like this:

The firm keeps the file until death of the lawyer or of the firm, whichever comes first.

Except it isn't written down. Often, firms sacrifice entire offices and common areas to file storage or pay thousands of dollars a year for 20 years or more to file storage companies to maintain their files. A file retention policy could save them thousands of dollars a year and sometimes give them an additional office or two they could fill with staff or sublet out.

A healthy firm file retention policy and closing file procedure commonly looks something like this:

- We keep IOLTA records for five years because applicable Rules of Professional Conduct require it. (Check state rules because they vary, but foremost states require retaining IOLTA records for five or seven years).

- For client files, we have set retention periods for certain types of cases or clients. We keep most types of files for seven years. For minor clients, we keep it to age of majority plus three years to account for statutes of limitations. We have a "weird file exception" that applies when the managing partner decides a case or client is concerning and needs to be kept longer.
- After a client gets a result, we notify the client of the result in a letter, reminding them of future actions they will want or need to take, and that we are closing their file. We return all originals to clients. We give clients a copy of the file when requested.
- We cull the file of duplicates and anything that isn't part of the file. Enumerate typical things that need to be retained, and those that do not need to be retained, after closing a file.
- We shred or permanently delete private information we culled.
- If the firm keeps paper, we store the paper file in X locked cabinet(s) in Y order (for example, by file number or alphabetically by client's last name).
- If the firm is paperless or less-paper: We scan the file, review the scan for accuracy before we shred the paper file, and shred any paper version once it is verified. An important part of the policy is determining where you keep the electronic version, to keep it backed up and uncorrupted but also secure and inaccessible to hackers. Some store it unconnected to the internet. Others store it in the cloud after careful vetting and monitoring of the cloud vendor.
- On the destruction date, we review the file one more time, then we shred or permanently delete the file. Review of a file before destruction should be supervised by lawyers, but shredding old files is a good job for a temporary worker or summer intern.
- We wipe clean all laptops, scanners, printers, and other devices data can be stored on before we get rid of them.
- We notify clients of our data retention policy at the beginning and end of representation. Our notification includes information about how to get a copy of your file, how we store electronic data, and keep it secure.

Use this basic framework of a file retention policy to build your own, based on your firm's current systems, or to audit your file retention policy. Finally, ask, *Are you following the policy you set?* If not followed, why? Training may be in order, or changing the policy to make it easier and more effective to maintain may be the right approach.

Naming Conventions

No matter how you implement your less-paper office, one factor critical to its success is creating a file-naming protocol. Where possible, your office should use a protocol that makes locating files easy, and allows any person to determine the contents of a given file. Document management software (DMS) automatically performs this function, although many offices do not have DMS. For those offices, files should still be organized in an easy-to-use style, generally by client name (after all, who remembers every matter number?). There are then, generally, subdirectories for correspondence, pleadings, discovery, medical records, etc.

After you establish a file organizational structure, you should define a file-naming protocol. For example, save all letters as "Ltr to XXXX re YYYY, Date." I recommend that dates be in YEAR-MONTH-DATE format (2005-10-28) because it makes sorting similarly named files far easier. Thus, if you have four letters to Attorney Smith about settlement, they will sort in date order when you are searching.

It is essential the file naming protocols are used universally throughout the firm. You may have one or more practice groups with a separate protocol, because the practice area deviates so significantly (e.g. transactional practice areas have different focuses from litigation practice areas), but there should still be universal use of the highest level of organization. That means

you need to find a convention that is the most user friendly and instinctually searchable by the widest swath of mandatory users possible. In other words, don't forget to consult with paralegals and associates who do the work. If it isn't understandable and searchable by the common user, it will get ignored or cause wasted time and delay.

Implement uniform file naming conventions. It is less difficult for a solo to implement uniform file organization and naming conventions than it is for a firm of more than one because it only needs to satisfy one person's proclivities. What is intuitive for one is not for another, how one thinks things are easily found for one is not always the same for another. After workflow and processes are analyzed, communication to reach a consensus or near-consensus on what would be the most effective file naming conventions is key to success.

Taxonomy is the organizational scheme or indexing system a firm uses to manage and archive documents. It is crucial that this be given serious consideration and the final result to standardized firm wide. If documents are named and stored accurately and efficiently across the entire firm the database is more searchable—and therefore usable--for everyone.

Determine the most important pieces of information to you and your staff. Usually it is the names of the parties or clients, the type of document, date it was made, and/or a file number or case number. Design a system that includes the most important information in the title of the PDF.

Create a consistent labeling system. Consider such things as:

- What format will you use for dates? (e.g. MM-DD-YY or MM/DD/YYYY or YYYY-MM-DD)
- Should names be entered first last or last, first?
- What are your universal abbreviations? (e.g. Deposition – DEPO, Medical Records – MR, Request for Production – RFP, Interrogatories – ROGS, Pleading – PLEAD, Parenting Plan – PP, Power of attorney – POA, etc.) Make a list for your Policies and Procedures Manual.
- Determine the order the information will be listed.

Put the most important information first. For example, if you organize all files by client last name, then client first name, start every document title with the client's last name followed by the client's first name. If the firm, instead, organizes based on case number or file number, place that number at the beginning of the file.

Do not give in to wanting short, easy titles for your PDFs. Think about how you search for things later, when you cannot find them, and try to make your title the way you would have that search come to your mind most readily. Put more than one form of search point of reference into the title, so that if one fails to be intuitive, another can apply. For example, you may want to find the Corsair case file later, or you may just want to find an example of a Buy and Sell Agreement which just happens to be in the Corsair case. If you remember only half of this information, you still have a good chance of finding it if you have labeled the Buy-Sell with both what it is and who the client was in the title.

Have uniform folders for certain case types and implement the folder template into every electronic file at the opening of the case. Know where each item goes and put it into the proper file. Use a shared file system so that all lawyers and staff in the firm work from the same set of documents and old versions exist unless on purpose and labeled accordingly.

Getting Your Team Committed to a Paper Free Environment

Involve the team. Everyone owns their position in a law firm and each position is essential to serving the clients. Give each one a voice, but have a lead who makes the final decisions and lays out the plan. One grumbling, disgruntled employee can unravel a plan to go paperless, depending on where she is in the lifecycle. Support for that plan should be top-down.

Sometimes the loudest grumblers can be partners, and when leadership says it doesn't work, it gives permission for everyone else to say the same.

When something isn't working though, make adjustments. That is part of implementing a new process. In an ideal world, you made a plan for how to go paperless and followed it. The implementation probably looked something like:

1. Evaluate current systems and processes.
2. Audit current files and retention policy.
3. Determine you want to go paperless in two phases: Phase one is current open files. Phase two is pat files
4. Create new paperless workflows
5. Train and implement new workflows.
6. Get help with old files.

But there are always unknowns and issues that come up during and after implementation. These cases studies illustrate certain pitfalls and offer solutions:

Case Study #1

Bender and Crankton went paperless last year. They had a planned office move that put them in a smaller space, and they decided that the best thing to do would be to make everything paperless at the same time the implemented the move. This gave them a tight deadline for completion, so they did a rush job of planning and implementing the move. They decided to just bring in a couple temporary workers to scan everything they had, and thought they'd do file naming conventions after the move. Now that they are in their new office space, but their electronic documents are named things like 74859567012.pdf and they have no idea how they are going to sort out certain old files and determine what goes where.

Bender and Crankton gave into the urge to save absolutely everything with an intention to sort through it later. Electronic storage is cheap. The sorting is like the filing you never get done—it usually languishes. And the mass saving of everything under the sun reduced searchability and efficiency. With basic, simple naming conventions in place and a little bit more time training those temporary workers in what they were doing, they could have had one person scanning and the other checking and categorizing each document saved as they went.

To fix this problem, **the firm will likely need to 1) establish a document retention policy with clear deadlines for destruction, and 2) establish simple, easy to follow naming conventions.** Then, it will likely need to bring in temporary workers again, who will have to search and either destroy or categorize every oddly named documents, based on the new retention policy and naming conventions. Time would have been saved by shredding files fit for destruction and doing the naming and categorizing contemporaneously with the scanning.

Case Study #2

Fox Firm thought it did everything right with the new paperless workflow. It hadn't been in business too long (only eight years) so it didn't have as many files as some firms do. May, who ran the project, gave everything a file retention period fit for the practice area (usually seven years), sound naming conventions, and had everything scanned by Eve. They are nine months into their new system. Very recently a few deadlines were missed on a couple cases. They are, naturally, freaking out. A load of extra work had to be done to address the issue and clients were upset. May has an epiphany that the missed deadlines are linked to the new paperless process, and goes back to the drawing board to improve the workflow.

May should have put a step for calendaring essential deadlines in the master calendar and on the appropriate lawyer's calendar before a document was scanned. One of the greatest risks of a paperless office is that the scanned item does not

get calendared properly before it is scanned and filed away, and that important dates aren't noted before they pass. Protocols should include a step calendaring such as *all deadlines are calendared before scanning and destroying the paper copy* or *scanned documents is checked for accuracy and deadlines are noted and properly calendared before destruction of the paper document.*

Say that May goes back to her protocol and sees that deadlines are clearly part of the workflow, but when she watches support staff they have skipped that step. Then it is a training issue. Retrain staff to put deadlines in the proper places electronically again, and reevaluate. If it continues to be a problem, consider if it is a staffing problem. Since it is such an important part of the law firm's functionality and ethical responsibilities, it makes sense to have your most detail-precise staff person doing it, and/or two sets of eyes check the deadlines are calendared and accurately. So, maybe the above system becomes a) Eve scans and puts in deadline, b) hands paper off to Sam who checks accuracy and completeness of scan, and accuracy of deadline in calendar, then c) approves and hands back to Eve to shred.

Case Study #3

Alex has been going paperless for three years. His firm has three paralegals and one other lawyer. It isn't big, but they are very busy. They plan and move another aspect to electronic every now and then, but the project just goes on and on. Meanwhile, he has 186 boxes in storage he is still paying for—20 years in practice in a highly paper-heavy practice area such as immigration—and his staff are looking at him with thinly veiled disdain every week, when he talks about the his "new paperless workflows" being "a work in progress."

Alex needs to put a pin in it and move on. There is a danger to treating this major project as a "work in progress." If you do, it heightens the possibility you never reach the **final switch over** to the new system. If it is broken down into smaller projects, they should have a beginning and an end date. Alex needs to make a final push to get this things done on a set date. A final date can be changed, but it makes the goal more emergent, less "when you can get to it."

Even if the project isn't everything you imagined it would be, calling it complete has power. Alex may decide to create phases for current files and past files, and be able to easily pronounce current files less-paper done at the moment. Phase two may largely be a document retention policy creation and implementation, with a weekend reviewing files from storage and organizing mostly their destruction. Don't underestimate the power of destroying massive amounts of paper files and getting rid of the filing cabinets. It will be good for the soul and morale to get this off everyone's plate.

Case Study #4

Salvatore and Elizabeth were put in charge of the paperless office initiative at their firm. They work in the same department and don't know many folks from other departments. They came up with a plan based on a presentation, implemented it, trained everyone, and felt good. A few months later, they see Sue sauntering over to her wall of filing cabinets to search for something from a file. They looked at each other and rolled their eyes. "That Sue never listens to anyone," Elizabeth murmured. But then they started seeing several lawyers with stashes of paper files in their office, and paralegals are complaining that files appear incomplete online, or that they can't find things. What is going on here?

It's hard to say what in this new paperless workflow has failed, on these facts, but there is definitely a need to evaluate the new processes and determine what isn't working right. Paper does not disappear from every paperless office—there are lawyers who cannot effectively research or write without a certain amount of paper drafts, for example. That is alright. It doesn't mean you will never print a paper copy of something again. It just means that the accessibility and searchability of the entire file will be more widely available to everyone in the firm, and that at a certain point in the lifecycle of the file there will be no more paper. Even if it is at closing the file that you scan and manage the entire file as paperless, you could save thousands of dollars in storage fees, office square footage, cabinets, and time wasted searching for a copy of

something or a file that wasn't properly checked out and returned.

Salvatore and Elizabeth need to make inquires. They did not get hardly any input from staff at the beginning and it is likely, because of that, they didn't have as much buy-in from everyone as thought. They may need to make adjustments to the workflow, to match different practice area or worker needs, or do more training with everyone. **It is possible their search functionality isn't working for everyone**. Searchability is important when one works in a paper setting, but one can discover a misfiled paper or "run into it" around the office. It is absolutely indispensable when working in a paperless system, because one will *not* come by that misfiled or difficult to search for document in electronic format. Without a document management system giving the firm that structure, they may be sing the effect of people just trying to hold onto what they need to do their job well. The item may as well never have been filed if it cannot be retrieved through a smart search. This could be a naming convention or practice area difference issue. On the other hand, they may have done everything right and Sue may be just rebelling. If they get rid of those filing cabinets, she can't persist in old behaviors. Either way, it's time to start talking to people and evaluating progress.

Checklists

Checklists are crucial when creating and modifying your workflows. They ensure everyone uses the same procedures and prevent errors. You are teaching people something new, after all. Give them clear guidance on what the procedure will be in writing.

Some Ways to Improve Your Paperless Workflow: Creating PDFs from Microsoft Outlook Emails

One of Acrobat's best features is its ability to convert one or more emails, or email folders, into a PDF Portfolio. This feature is only available in Outlook or Lotus Notes and not with other email clients. When you create an Outlook Email Portfolio, or add emails to an existing Portfolio, Acrobat not only saves the original email but also saves any attachments to the email in their native/original formats.

Saving email as a Portfolio also serves as an easy way to review a client's or matter's communications (you can also save sent email) and as a means of archiving communication, thus complying with an attorney's ethical obligation to preserve a client's file, including email.

The Adobe PDF toolbar or ribbon bar tab is installed as part of an Acrobat installation. The options on this tab will change depending on the specific task you are doing.

- When Sending Email: When a user creates a new email message, the Attach as Adobe PDF command appears on the ribbon, allowing the sender to attach different file types, such as a native Word file, as a PDF file in the email. This is a helpful option for large files, such as PowerPoint presentations, that may be more compressed as a PDF.

- Viewing Email Messages in Outlook: There are three sections on the Adobe PDF section of the ribbon when viewing messages in the Reading pane. Only the Convert section appears when reading an email in its own window.

    - Convert: There are two options in this section. The Convert Selected Messages option converts one or more selected email messages to PDF. The Convert Selected Folders option converts one or more selected folders to PDF. These options allow users to either create a new PDF or to append the selected messages or folders to an existing PDF. The Append command is particularly handy because it allows you to add messages relating to a specific topic or matter to an existing PDF. In addition, when you append messages or folders, Acrobat only appends messages or folders that were not previously included in the PDF. This means that there are no duplicate messages stored in the PDF.

When you use the Selected Folders option, Acrobat displays a dialog box showing all of the folders in Outlook and allows you to choose whichever folder or folders you wish to include.

Whether you are creating a new PDF from one or more emails or one or more folders, Acrobat then allows you to specify the location where you want to save the file and the name you want to use. Acrobat will then convert the emails and will show you the progress of the conversion.

Acrobat creates a Portfolio from the emails rather than one single PDF file. The Portfolio contains not only the email messages but also any attachments to the emails in their native format. The default view lists the number of attachments to a particular email but does not automatically display any links to open them. There are two ways to display attachments.

The first is to use the View menu on the main menu and choose View>Show/Hide>Navigation Panes>Attachments. Acrobat then displays the Attachment pane to the left of the email message. Alternatively, you can select Open Document to display the specific email message as a single PDF outside of the Portfolio. Once the single email is open, you will need to open the Navigation pane on the left and click on the paper clip to view the available attachments. When you choose an attachment, it will open in the default program on your computer for that file type.

The content of the Portfolio is fully searchable, so you could find a specific email just by remembering and searching for a word or phrase in it. To do so, select Edit>Search Entire Portfolio from the main menu or Ctrl+Shift+F. Saved messages are also date-stamped with the date that messages were sent or received, not the date on which they were saved.

Some Ways to Improve Your Paperless Workflow: Editing Text in an Existing PDF

You can edit or delete the actual text in virtually any OCRed PDF file, unless the document's security settings prohibit it. Assuming you are able to make changes, to edit the existing text, open the PDF file, and select Edit PDF from the Tools pane. The Format pane opens on the right and the Edit PDF toolbar opens above, just below the main toolbar.

If the document you are opening is a scanned document that has not been OCRed, Acrobat DC will automatically run OCR to convert the document into an editable image. By default, only the current page you are viewing is OCRed, but you can change this setting if you wish in the Format pane under Scanned Documents, Settings. PDF documents that were created from a program like Microsoft Word will be editable without being OCRed first.

Once the document is OCRed, you will see boxes around any text that can be edited. Select Edit from the toolbar, place your cursor in the document, and begin typing as you would in any word processing file. You can also delete any text by either backspacing over the text or, if you want to delete an entire box, select the box and press the Delete key.

Acrobat will automatically attempt to match the fonts in the original document and will "reflow" the paragraph. When your changes are complete, be sure to save your file.

Some Ways to Improve Your Paperless Workflow: Extracting PDF Files or Tables to Excel Spreadsheets

You can export an entire PDF file or a selected table in a PDF file as an Excel worksheet. Keep in mind that an entire exported PDF file will not necessarily be formatted in a usable format in Excel, but you do have the ability. Most likely, you will be exporting tables of data.

Exporting a Table to Excel

To export a table, in Acrobat choose File>Open and open your PDF document. In order to select the table, drag your mouse around the table so that the entire table is selected. Right-click the selected table and choose Export Selection As. In the Export Selection As dialog box, choose Excel Workbook from the Save As Type dropdown menu. Name the file and save it to your desired location and click Save. Excel will open your document automatically as long as you have the View Result check box ticked under the Save as type dialog box.

Exporting an Entire PDF File to Excel

If you do want to export an entire PDF file to an Excel spreadsheet, in Acrobat choose File>Open and open your PDF document. From the main menu, choose File>Export To>Spreadsheet>Microsoft Excel Workbook. This saves the file to an .xlsx format. The Windows File Explorer window opens and allows you to navigate to the folder where you want to save your file. Name the file and click Save. Excel will open your document automatically as long as you have the View Result check box ticked under the Save as type dialog box.

Alternatively, open the PDF and choose Export PDF from the Tools pane. Here you are given the option to export your file to Spreadsheet. Clicking the Export button allows you to proceed.

Some Ways to Improve Your Paperless Workflow: Using the Acrobat Word Round Trip (A Great Way to Send a Document to One Person for Review)

There are many ways to send a document to another attorney for review. Many attorneys prefer, however, not to send Word documents to another attorney because they are concerned about relying on Tracked Changes in the event the other attorney makes changes that do not appear in the returned document. Acrobat has many options to avoid this concern. Among the easiest is the Acrobat Word Round Trip, in which one party converts a Word document into a PDF, sends it to another person (who only needs the free Acrobat Reader), who adds any proposed changes or comments, and returns the document to the sender. When the sender receives the PDF with the proposed revisions, he or she can open the PDF in Word and review the suggestions using Track Changes. Here is how to do it.

- Open a document in Microsoft Word. Go to the ACROBAT tab on the ribbon bar. In the Review And Comment section, click on Create and Send For Shared Commenting. Acrobat opens an Explorer window. Name and save the document (as a PDF) in your desired location.

- Acrobat will create a PDF of your document.

- If you are not connected to a network, you will need to do the following steps. After the document opens in Acrobat, it will display the Send for Shared Commenting dialog. In the top box, use the default setting, that is, collect comments from reviewers in My Network Folder (manually send). Click Next.

- Acrobat will then ask you to specify the location on your network where it will store the shared review file.

- You can then either send the document using Acrobat or save a local copy and manually send it later.

    - If you do so, Acrobat will ask you to specify where to save the file. Acrobat then asks you to name the location where you saved the file.

    - If you are connected to a server, you may not have to perform the steps in the preceding paragraphs. Regardless of which process you must use, Acrobat will prompt you to save a local copy and manually send it later.

- In this process, Acrobat will create (1) a PDF of your document, and (2) a second PDF of your document with "_review" appended to the document name. This "_review" document is the one you will send to reviewers.

- If you are manually sending the file for review, you do not need to enter any email addresses in the dialog box. Click Finish and Acrobat will save the shared review-enabled PDF file.

- If you are using Acrobat to send the file, in the next dialog, enter the email address for the person to whom you want to send the PDF for review and commenting. You can change the review deadline by clicking on the hyperlink in this dialog. Click Finish.

- When the recipient opens the file, Acrobat will ask the reviewer to connect to the review copy. If the reviewer has access to your server, he or she can do so, and any comments will automatically be collected. If the recipient does not have access to your server because he or she is outside your organization, he or she will choose to work and make any comments offline.

- When you receive the annotated version, go to Word and click on the ACROBAT tab on the ribbon. In the Review And Comment section, click the dropdown next to Acrobat Comments and select Import Comments from Adobe Acrobat DC. This will open a dialog box. Click OK to begin the import process.

- Under Choose Files, browse and select (1) the PDF file with the comments you want to review and (2) the Word file you want to incorporate the comments into. You can choose whether to import All Comments, All Comments with Checkmarks, Text Edits only, or Apply Custom Filters to Comments. Generally, you should select All Comments. Also, select or check the box next to Turn Track Changes On Before Importing Comments. Click Continue.

- Word will display the Successful Import dialog and list the number of items imported. Click Integrate Text Edits. Acrobat will then walk you through the various proposed revisions. You can Apply or Discard any revision or skip it by selecting Next. You can also choose to Apply All Remaining revisions as well. When you are done, you will see the Text Integration Summary, with the new revisions highlighted.

    - **Note:** You can send a document to multiple reviewers using the Acrobat Word Round Trip, but Word will warn you, after the first revisions are imported, that the original document has been changed. In those cases, consider using the Group Review Processes.

Using Portfolios for Discovery, Real Estate Closing and Other Matters

Portfolios can facilitate advanced classification or display of documents. For example, you could compile documents, determine which are privileged, categorize documents, or perform actions for any other purpose. This method of analysis builds on the use of comments outlined previously for discovery and depositions and can be used in almost any type of case.

- Right-click on any thumbnail and select Portfolio Properties to view and select the data to display about each document, as well as the order in which the information will be shown.

- Next, while still viewing Portfolio Properties, click Add and create a new field, such as Privileged. Make sure there are checks in the boxes next to any fields you want to view, including the newly created ones. Click OK when you are done.

- Click on View>Portfolio and select Details. The Portfolio will display all of your selected fields. To edit the value in the field, such as adding Yes to the Privileged value, right-click on the file name, select Edit Value, and choose the item, such as Privileged. Type in "yes" or whatever value you desire and click OK.

- You can then sort on any value or remove documents that do not have the desired value from the Portfolio. For example, by sorting on Privileged, you could then delete from a Portfolio of potentially discoverable documents any document that is marked with a value of "yes" in the field called Privileged.

Some Ways to Improve Your Paperless Workflow: Dealing With Handwritten Documents That Cannot Be OCRed?

Acrobat cannot generally convert handwriting or poor-quality documents into searchable text. At times, you may be able to use the Correct Recognized Text command. However, when the document is of very poor quality, the handwriting cannot be OCRed, or an image cannot be OCRed, there is an alternative that permits users to search for the text.

- Open the Comment toolset.

- Click the Add Sticky Note (Ctrl+6) tool.

- Drag your cursor to the location in the document where the suspect text appears and click.

- A Comment dialog box will appear and display the name of the Acrobat user. In the box, type the correct text.

- Save the document.

To Locate the Additional Text

- Open the Find (Ctrl+F) or Advanced Search (Ctrl+Shift+F) dialog.

    - Using the Find dialog, type the desired text in the dialog box, click the Down arrow in the search box and select "Include Comments," and then click Previous or Next. Your results should include the text in the comment box. Note that the comment box appears in the Comment panel on the right of the document.

- Using the Advanced Search dialog, type the desired text in the dialog box, select "Include Comments," and then click Search. From this dialog, you can search within one or many documents by selecting "In the current document" or the "All PDF Documents in" dialog.

Some Ways to Improve Your Paperless Workflow: Using Actions and Custom Commands (Acrobat Professional Only)

Actions, a feature available only in Acrobat DC Professional, allow users to automate repetitive tasks. If you think of one of the workflows in your cases (such as a list of the things you do to prepare for trial and the order in which you do them), Acrobat actions do the same type of thing with your PDFs. As a result, actions allow you to consistently handle your files. For example, you could create an action that OCRs files and then reduces their size.

Depending upon the action, you might be prompted to tell Acrobat what steps to take, while other actions can be performed once you specify which file, files, or folders to process. For example, if you include "Remove Hidden Information" in an action, Acrobat will require you to specify the information to remove. But if your action requires Acrobat to create bookmarks, that process can be performed automatically.

Acrobat Pro includes a limited number of actions, such as preparing documents for distribution or creating accessible PDFs, but most are not particularly focused on legal users. With a little practice, you will save time by creating and using actions.

Using Actions

All actions (whether created by Acrobat or by you) are available by going to Tools and selecting the Action Wizard. The Actions List on the right of the window displays all available actions.

When you select an action, Acrobat displays the steps in the action on the right on the window, as well as the files to be processed. You can select other files from this window. When you are ready to process the action, click Start. The Start button changes to a Stop button, which you can click on to stop the action at any time.

If the process requires additional input, Acrobat will prompt you. When the action is done, the Start button will say "completed." Below the dialog is a "Full Report" link, which you can select to display a list of all tasks performed.

Obtaining Additional Actions

The Acrobat Actions Exchange (https://acrobatusers.com/actions-exchange) is a great website for obtaining actions created by other Acrobat users. You can access the site from Acrobat by selecting More Actions (Web) on the Action Wizard toolbar. After downloading the desired action to your computer, select Manage Actions and then Import. Navigate to the location where you saved the downloaded file and click Open.

Warning: Be careful when downloading any files to your computer. Always run antivirus software, and only download files from reputable websites. Downloading files from unsafe websites can be very dangerous and could result in damage to your computer and your network.

Some Ways to Improve Your Paperless Workflow: Using a Security Envelope to Send Attachments of ALL Types

Acrobat permits users to create a Security Envelope, a secure container in which to send and receive files. Because Acrobat files may contain attachments in non-PDF format, a security envelope also provides a convenient way to include all of those files. Moreover, the recipient can open the Security Envelope with the free Adobe Reader.

Security Envelopes Are a Great Solution for Ensuring Email Security

Many state and local bar associations have opined that lawyers have an ethical obligation to encrypt their email to prevent unauthorized persons from viewing confidential email communications and attachments. Although Acrobat is not per se a secure product, if you use strong passwords, then a Security Envelope is an excellent way to comply with this ethical obligation because a Security Envelope may contain all types of files and does not have to include any PDFs.

To create a Security Envelope, go to Tools and select Protect. Select Create Security Envelope from the More Options dropdown on the toolset to view the Create Security Envelope dialog, which displays all of the steps in the process.

Resources

Acrobat DC tutorials, free online tutorials by Adobe.

Acrobat for Legal Professionals – A blog by Rick Borstein. This is the very best resource for legal professionals using Adobe, hands down. Some screen shots may be out of date, but the context can still answer your pressing questions.

Create a Transparent Signature Stamp for Adobe Acrobat X, YouTube video by Catherine Sanders Reach's, courtesy of The Chicago Bar Association.

The Ultimate Guide to Adobe Acrobat DC, Daniel J. Siegel and Pamela A. Myers, ABA publication March 2018. Another very good resource recently updated. If you are an ABA member, you get a discount on the ABA website.

The Lawyer's Guide to Records Management and Retention, Second Ed., Cunningham, George C., ABA Law Practice Division c. 2014.

Paperless in One Hour for Lawyers, Sheila Blackford and Donna S.M. Neff, ABA, 2014.

Cloud computing due diligence guidelines, courtesy of the Law Society of British Columbia at http://www.lawsociety.bc.ca/docs/practice/resources/guidelines-cloud.pdf

Cloud computing checklist , courtesy of the Law Society of British Columbia at http://www.lawsociety.bc.ca/docs/practice/resources/checklist-cloud.pdf

TECHSHOW2020

Office 365 – Enhancing its value to your practice

WRITTEN BY:

Ben M. Schorr, Microsoft

PRESENTERS:

Ben M. Schorr: @bschorr

January 21, 2020

(SPECIAL THANKS TO ANNETTE SANDERS OF PAYNE GROUP WHO CONTRIBUTED CONSIDERABLY TO THIS ARTICLE)

First some words of wisdom...

In this article I'll take you on a short insiders' tour of some of the features of Office 365 that you might not be using yet, but you probably should be. There is an important proverb that you should remember though:

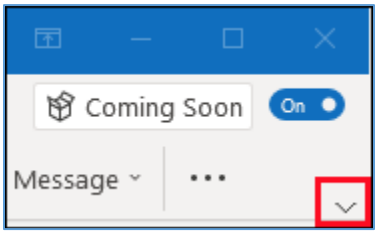
You step in the river, but the water has moved on.

Office 365 is constantly being updated and improved. It's likely that by the time you're reading this article that we've added some new features that aren't included here, and we may have updated a few of the screens that appear in this article. The article is current as of right now...but right now may have been weeks or months ago.

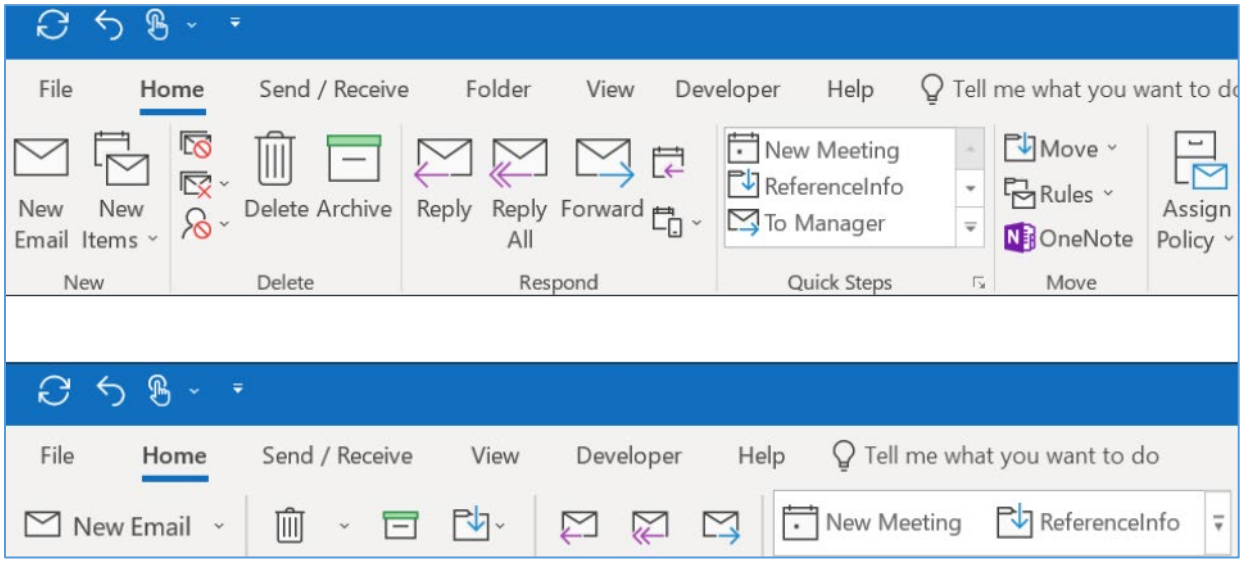
Enjoy the View—New Simplified Ribbon/Icons

A smaller, more simplified ribbon has been introduced to Office 365. The Simplified ribbon is available in Outlook and the online versions of the Office apps now and will come soon to the rest of the desktop suite.

In Outlook, click the *Switch Ribbons* command (caret symbol in the lower right of the ribbon) (previously known as *Collapse the Ribbon*) to toggle between the Simplified Ribbon and the classic ribbon.



Here is an example of the classic ribbon and the Simplified Ribbon.



First stop – Microsoft Search

At the top of your Office window you'll find the new Microsoft Search box. This tool brings a lot of capabilities you might not have realized.

- **How do I?** – If you're not sure how to do something in Microsoft Office just type what you want to do in the Microsoft Search box. If there's a command that does it, Search will offer you the command right in the results; no need to hunt for it. Also Search will offer you help articles, or videos, that can help you better understand how to use the feature.

- **Where's that text?** – Need to find some text in your document? Enter the text you're searching for in the Microsoft Search box and you can launch the search tool to find all instances of that text in your file.

- **Didn't we do a file like this…**? – Thinking that you have a similar file in your system? Type the keywords you want to search for and Word will search all of the files in OneDrive and SharePoint that you have access to for matches. This is a fast way to find similar documents when you want to reuse well-curated sections or text.

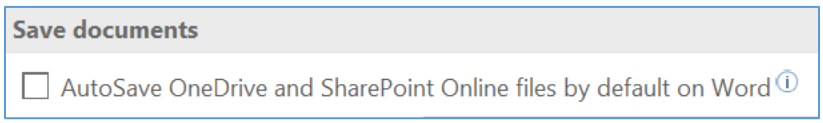
For more info see: https://support.office.com/en-us/article/find-what-you-need-with-microsoft-search-in-office-2457d4d8-48a8-4ad4-ab89-5a0657aa8446

Many of you have packed snacks for the trip; here's what's in my bag!

AutoSave

AutoSave, when turned on, will save your OneDrive/SharePoint document every few seconds eliminating the need to remember to save.

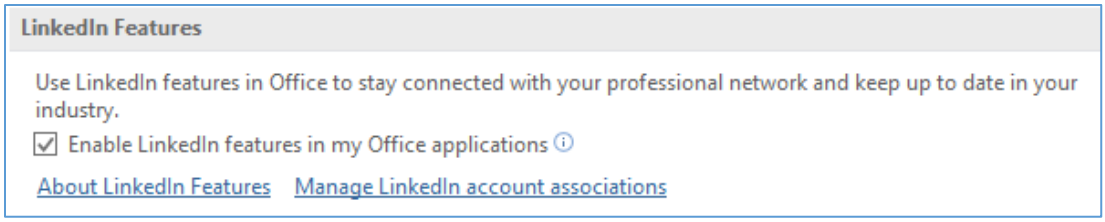
Want to add it to your Quick Access Toolbar? Click *Customize Quick Access Toolbar* (down arrow at the end of the toolbar) and select *Automatically Save*. You can also turn the feature on by default. Select *File*, *Options*, *Save* and check the *AutoSave OneDrive and SharePoint Online files by default on Word* checkbox.

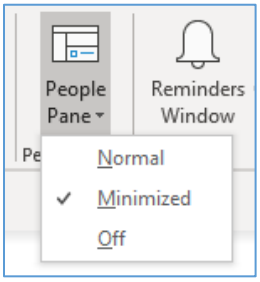


LinkedIn Services

A new client emails me and neglects to add their title to the signature block. I really need their title, and, rather than leaving Outlook, opening LinkedIn and searching for their information, I hover over their contact information in the *People Pane*, click on the *LinkedIn* icon and—voilà!—all their information right there at my fingertips.

To enable LinkedIn in Outlook, click *File*, *Options*, *General* and tick the *Enable LinkedIn features in my Office applications* checkbox.





To turn on the People Pane, click *View*, *People Pane* and select either *Minimized* or *Normal*. Not seeing the People Pane? Outlook Social Connector must be enabled to use the People Pane.

The next step is, of course, to teach them how to add a title to their signature for outgoing messages. 😉

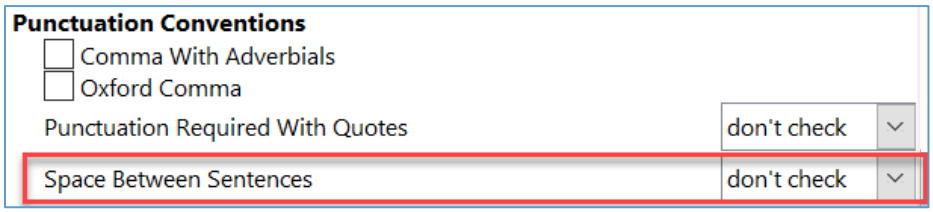
For more details, see Connect your LinkedIn and Microsoft accounts

Checking a Word document for number of spaces at the end of a sentence

It is the battle of the spaces. One person cries, "You only need one space at the end of the sentence! Get with the times!!" while another, "I will NEVER give up my two spaces!" I can see both sides but, please, just pick one and be consistent! Rather than attempting a cobbled find/replace on a document that has both, word offers a proofing tool that simplifies the process.

Click *File*, *Options*, *Proofing*. From *When correcting spelling and grammar in Word and click the Writing Style:*, click *Settings*. In the Punctuation Conventions group (the Require group in some versions), change *Spaces Between Sentences* to either *one space (1)* or *two spaces (2)*. Select one space if you are wanting to change double spaces to single and two spaces to change single spaces to double.

If *Mark grammar errors as you type is turned on* (*File\Options\Proofing\When correcting spelling and grammar in Word*), you'll see the blue squiggly line under all the spaces that need "correcting." If not, they'll show up during *Check Document* (on the *Review* tab; checks for Spelling, Grammar and Writing issues).

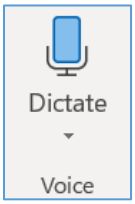


Pop-up for adding rows and columns to a Word table

I have a table. I need to add a column between the first and second column. Best way ever—hover your mouse just above the two columns. The *Insert Control* button pops up. Click it to insert the new column. Same applies to rows. If you have more than one column or row selected, the Insert Control will insert the same number of rows/columns.

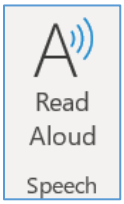
Topic¤	Notes¤
Pace·Yourself¤	Keep·at·energy·level·of·10!¤
Be·Well·Rehearsed·but·Sound·as·Though·You·are·Saying·the·Words·for·the·Very·First·Time¤	Be·a·rock·star!¤
Take·Care·of·the·Pipes¤	Hydrate!¤

Dictate



Dictate has come to Office! In a Word document, on the *Home* tab, click the *Dictate* command in the *Voice* group. Speak clearly and concisely adding punctuation by saying the name of the punctuation (i.e., period). This paragraph was dictated. Some of the text had to be altered to take into consideration capitalization for words like Office and Word. All in all, it was excellent! I did not have to train it to know my voice and my pronunciation at all. Impressive!

Read Aloud



Read Aloud is a built-in feature of Word, Outlook, PowerPoint, and OneNote. You can use *Read Aloud* to have text read aloud in the language of your version of Office. The command is on the *Review* tab in the *Speech* group. Select the text you want read aloud and click *Read Aloud*.

Navigation pane

With the *Navigation pane* you're able to search your document for a word or term, include specific properties such as graphics or footnotes—both on the Results tab, browse pages (Pages tab), and browse headings (Headings tab).

When you set up a document using Heading styles for your titles and/or numbered paragraphs, the *Headings* tab of the *Navigation pane* allows you to navigate to a specific heading rather than scrolling down bit by bit through the document.

Click *View*, *Navigation Pane* (CTRL+F) and click *Headings*. Select a heading in the Navigation pane to browse to that part of the document. The best part of the Headings tab is that you can reposition entire parts of the document simply by clicking and dragging the heading.

Flash Fill in Excel

Let's say column A contains first names, column B has last names, and you want to fill column C with first and last names combined. When you establish a pattern by typing the full name in column C, Excel's Flash Fill feature will fill in the rest for you based on the pattern you provide.

Enter the full name in cell C2, and press *ENTER*.

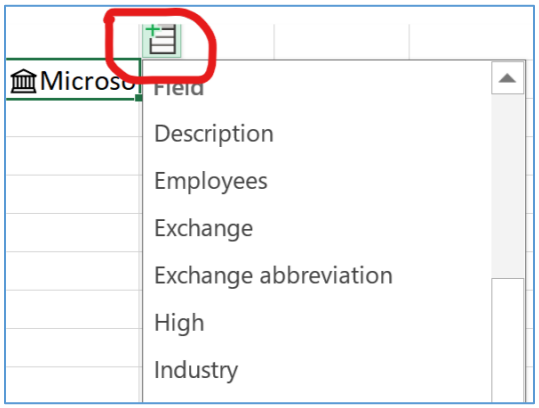
	A	B	C
1	**Last Name**	**First Name**	**Full Name**
2	Miller	Jayne	Jayne Miller
3	Johnson	Chad	Chad Johnson
4	Rowe	Anne	Anne Rowe
5	Siver	Emily	Emily Siver
6	Urbanek	Robert	Robert Urbanek
7	Dowing	Thomas	Thomas Dowing
8	Sanders	Fred	Fred Sanders
9	Davis	Sally	Sally Davis
10	Beck	Ailnor	Ailnor Beck
11	Howard	Joseph	Joseph Howard
12			

Start typing the next full name in cell C3. Excel will sense the pattern you provide and show you a preview of the rest of the column filled in with your combined text. To accept the preview, press *ENTER*.

Data Types/Excel

Excel brings you some advanced data analysis capabilities in the form of custom data types. The first two that are available are Stocks and Geography. Simply enter a stock symbol, company name, or place name in a cell and format it with the Stocks or Geography data type.

Excel will recognize the item and an icon will appear that lets you select related fields.



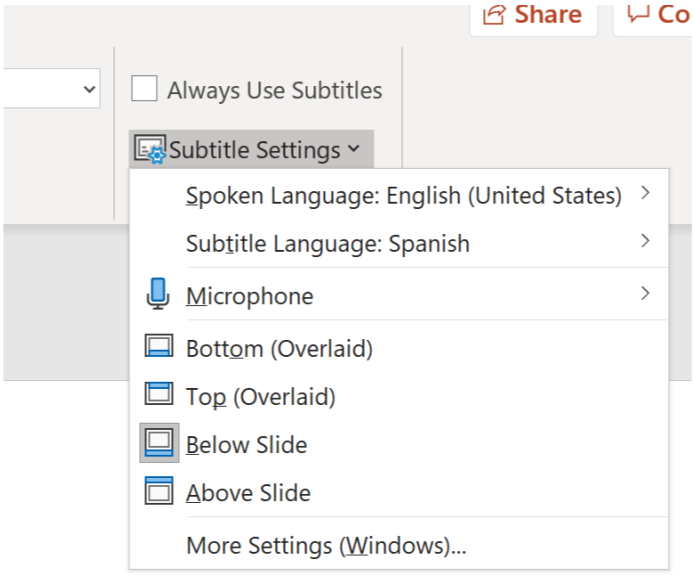
Fields you select will be placed in the adjacent columns, and the data for those fields will be retrieved from the Internet.

Better still those fields are live – which means that if you enter a column of stock ticker symbols, for example, and choose the stock price for the second column, that stock price will update (on a short delay, typically) as the price changes throughout the day.

The Geography data type lets you get interesting facts and data about selected cities, states, countries, etc.

PowerPoint Live Captioning/Translate

When you present in PowerPoint it's sometimes handy to have closed captioning in case your audio isn't great, or if you have people in your audience who have hearing disabilities. On the Slide Show tab you can select "Always Use Subtitles" to turn the captions on, and specify what spoken language you're presenting in.



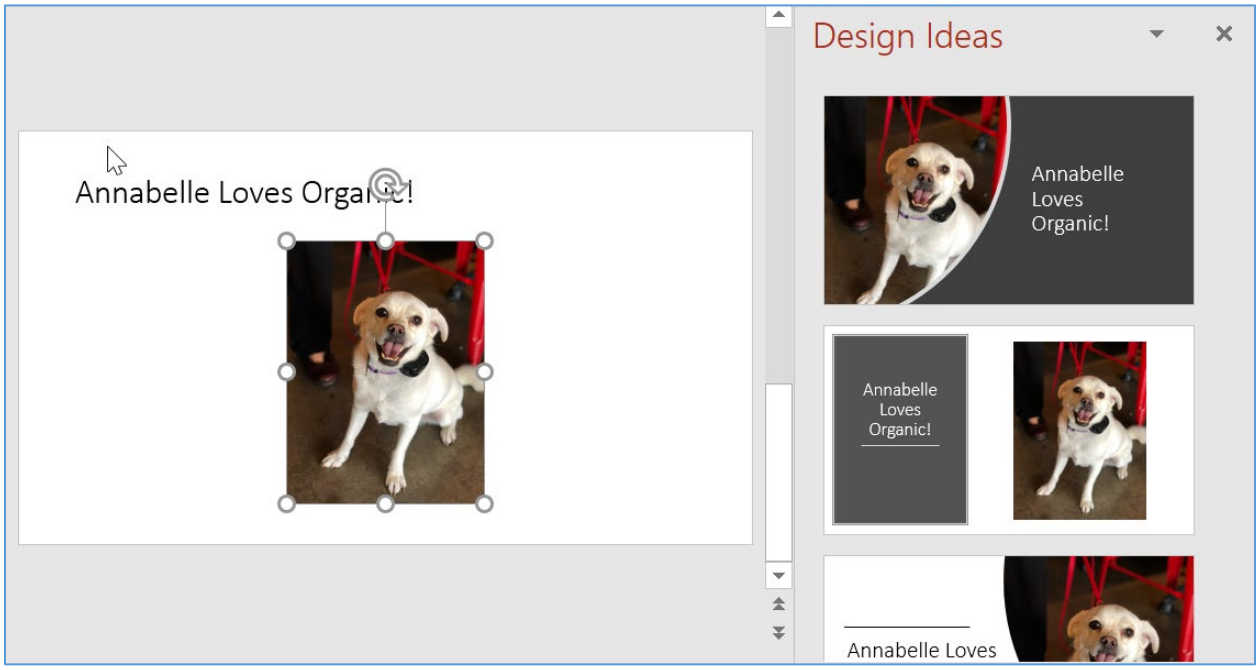
You can also choose where you'd like the captions to appear, and if they should appear overlaid on the slide, or beneath it.

The sharp-eyed among you may notice in my screen shot to the left that you can choose a different subtitle language from the spoken language. Yes, that does mean that PowerPoint can do live translation for you from the language you're presenting in, to another language such as Spanish, or German, or Japanese, for just a few examples.

For more information on this feature see: https://support.office.com/en-us/article/present-with-real-time-automatic-captions-or-subtitles-in-powerpoint-68d20e49-aec3-456a-939d-34a79e8ddd5f?ui=en-US&rs=en-US&ad=US

PowerPoint Design Ideas

PowerPoint Designer helps you automatically create professional looking slides in seconds. Just insert one or more pictures, a list of items, or a list of dates. From the *Design* tab, click *Design Ideas* and select the design you want.



To prevent Designer from automatically popping up, select *File*, *Options*, and in *General*, uncheck *Automatically show me design ideas* in the *PowerPoint Designer* section.

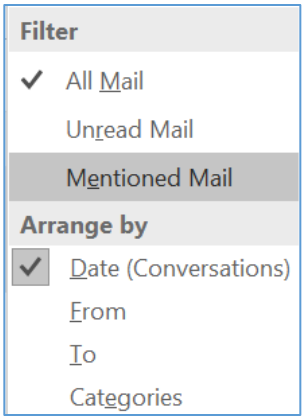
@mentions

Need to quickly add a colleague to an email thread or invite? Enter the @ symbol, followed by their name or email alias and Outlook will add that person to the TO: line of the email thread. Also, when the colleague receives the email, they'll see their name highlighted to quickly draw their attention to the relevant part of the email.

1. In the body of the message, type @. Start typing the contact's name and choose from the list.

2. Edit the name to make it less formal.

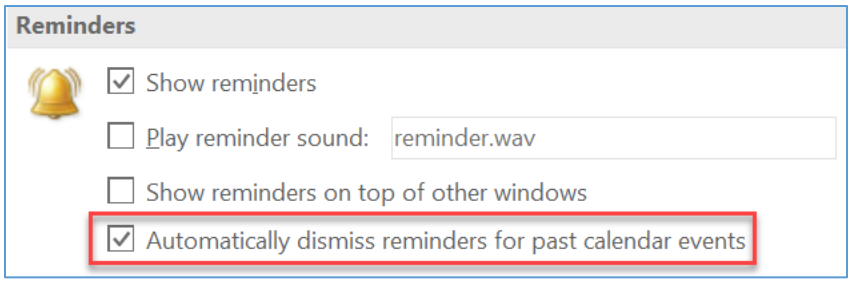
3. The contact will be added to the To line.



Filter your list of messages by ones you've been mentioned in by clicking *Mentions Mail* in the *Filter* drop-down.

Dismiss Outlook Reminders for Past Calendar Events

Ever receive a reminder for an event that has already past? You can now prevent these from popping up. From *File*, *Options*, *Advanced* under *Reminders*, check the *Automatically dismiss reminders for past calendar events*.



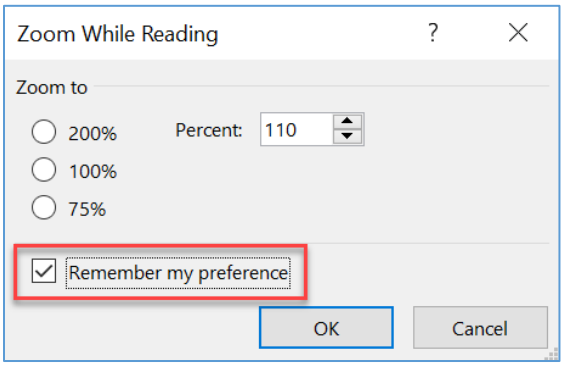
Reading Pane Zoom

This is an option I get asked about all the time and am happy that there is now a solution!

In the past, with the *Reading Pane* open either on the right or bottom, you change the Zoom percentage to a higher number so you can read it, you click away to another message and the Zoom returns to its original percentage of 100%. Now you can make the *Zoom percentage* "stick"!

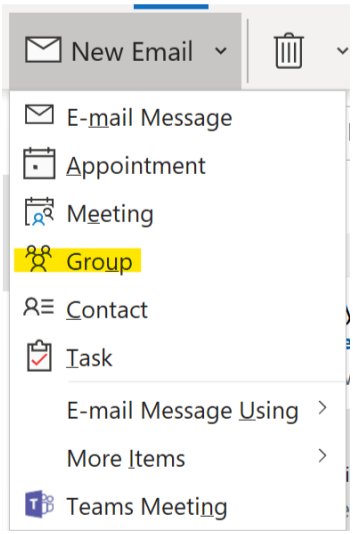
Click the *Zoom percentage* button at the bottom of the *Reading Pane*.

Check the *Remember my preference* checkbox. Now whatever *Zoom percentage* you change the *Reading Pane* to, it will remember it for all messages.



Those of you on the left side of the bus have a nice view of Planner

Microsoft Planner is a browser-based tool (though there are also mobile Planner apps for iOS and Android) that let you create, assign, and manage tasks. You can see the progress of the tasks as the project or matter progresses and even work with them on a Kanban board if you like that interface.



To the right side you can get your folks together with Office 365 Groups

Office 365 Groups is a great way to bring together people in your firm around matters, practice groups, or areas of interest. Create an Office 365 group from Outlook by selecting the drop down next to the New item button and select Group.

Give your Group a name, a description, and select people that should be members of the Group, just like the old email distribution lists. The Group automatically gets a shared inbox, shared calendar, files library, shared OneNote notebook, dedicated Planner instance and more.

And now we have Microsoft Flow, in its natural habitat

Microsoft Flow is a tool that lets you create workflows to automatically accomplish certain tasks; like creating a task item if a new document is created in a certain folder, for example.

You select the triggers that should initiate the action – which can be things like a file being created, email received, or even you tapping a button – and then define what actions should be taken. The Flows run on the server side so they can do work even if you're not signed into your computer.

You can find Microsoft Flow (including templates, examples, training, and documentation) at https://preview.flow.microsoft.com/en-us/.

Let's conclude our tour with some resources for more information

There are a number of resources that can help you get more out of Office 365 or Office 2019. These include:

- https://support.office.com – The official support website for Office 365 and Office 2019 (and older versions). Here you'll find thousands of free support articles, training videos, and a lot more. The site is fully searchable.
- https://templates.office.com – Here you'll find hundreds of templates, usually free, for Word, Excel, PowerPoint, Visio, and more. The templates are searchable and you can download any of them that you like and use them whenever you need.
- https://answers.microsoft.com – Free community forums where you can post questions and read answers from others.
- Microsoft Search! We talked about it earlier in this article; you can type what you're looking for into the Microsoft Search box, then select "Get Help on..." to access help articles and documentation related to what you're trying to do.

- Press F1 in the application! Our in-app help has improved a lot in the last couple of years. Give it another try by pressing F1 – or going to the Help tab on the ribbon – to find the information you need.

Business Continuity and Disaster Minimization – Where are YOU At?

WRITTEN BY:

Richard G. Ferguson
Darla Jackson

PRESENTERS:
Richard G. Ferguson: @RG_Ferguson
Darla Jackson: @darlaj_okbar

January 2020

BUSINESS CONTINUITY AND DISASTER MINIMISATION – WHERE ARE YOU AT?

1. Business Risks and Threats to Legal Practices

Given that this paper is being presented at TECHSHOW 2020, it will focus on the threats to lawyers and law firms caused by intentional, accidental or unintentional events or failures which affect the technology used in the delivery of legal services to clients.

These events could include such things as:

- A lost or stolen thumb drive
- A crashed hard drive
- Permanently deleted electronic files or precedents --- whether due to accidental mistake or intentional act
- A server corrupted by a virus or malware or encrypted by third party ransomware
- Physical events (fire, flood, tornado, hurricane) which destroy or render unusable the firm's premises and the equipment situated there.

The 2019 ABA Legal Technology Survey (LTS) Report indicates that fourteen percent of respondents have experienced some type of natural or man-made disaster. Of course, this varies based on number of lawyers at all locations. Over a quarter of firms with 50-99 lawyers report experiencing some type of disaster. As the number and intensity of natural disasters appears to be increasing, this percentage will likely increase. However, the percentage in 2019 was slightly less than the percentage (16.5%) reported in the 2018 LTS Report.

In contrast, the number of respondents reporting security breaches increased in 2019. In the 2018 LTS Report, the percentage of respondents reporting having experienced a security breach was 22.5 percent. While in 2019, the percentage reporting such a breach was 26 percent.

2. Ethical Obligations and Responsibilities of Lawyers and Firms

Formal Opinion 483: Lawyers' Obligations After an Electronic Data Breach or Cyberattack (October 17, 2018); and, Formal Opinion 482: Ethical Obligations Related to Disasters (September 19, 2018).

Disasters and data breaches bring with them issues regarding sometimes competing duties. Duties of disclosure compete with those of confidentiality. The responsibility to provide legal services for which clients have contracted may be adversely affected by disaster. Model Rule 1.4 (Communication), Model Rule 1.6 (Confidentiality), Model Rule 1.15 (Safeguarding Client Property), and Model Rule 1.1 Comment 8 (Competence – Technology) set forth the duties and the ABA opinions discuss these ethical duties in the event of a disaster or a data breach.

The opinions make it clear that ethical obligations are not suspended due to the situation and Formal Opinion 482 concludes by noting that:

> Lawyers must be prepared to deal with disasters. Foremost among a lawyer's ethical obligations are those to existing clients, particularly in maintaining communication. Lawyers must also protect documents, funds, and other property the lawyer is holding for clients or third parties. By proper advance preparation and taking advantage of available technology during recovery efforts, lawyers will reduce the risk of violating professional obligations after a disaster.

Additional resources include:

- David L. Hudson, New Ethics Opinion Offers Timely Reminder of Lawyers' Duties After Disasters, ABA JOURNAL.COM (Dec. 1, 2018), http://www.abajournal.com/magazine/article/lawyers_duties_disaster_ethics_opinion.
- Jason Tashea, ABA Ethics Opinion Offers Guidance on Data Breaches, ABA JOURNAL.COM (Oct. 17, 2018), http://www.abajournal.com/news/article/aba_ethics_opinion_offers_guidance_on_data_breaches.

3. Making Tech Disaster Preparedness Part of Your Firm's Continuity and Recovery Plan

1. Preparing a Plan BEFORE the Disaster

You and your firm need to prepare a plan to attempt to mitigate the effects of risks that could reasonably be predicted to be suffered by clients and your firm's ability to carry on its practice … if not in response to the ethical obligations you may have, but surely for the preservation of the business of your firm.

Each firm's plan will necessarily be somewhat unique as it will be a reflection of:

- the location of the practice and the design and features of its physical premises;
- the risks of fire, flood, natural disasters, electronic and physical security systems;
- the age and capabilities of the hardware and software used in the delivery of legal services to clients whether situated onsite, offsite or in the cloud;
- the inventory of hardware, software and support systems used in the practice and the design of the computer network which allows them to operate; and
- how the lawyers and support personnel work (solely remote work, solely on-premises work, a mixture of both).

All members of the firm (lawyers and support personnel) should be involved in collecting and sharing this information leading to the preparation of the technology component of the firm's more general Continuity and Recovery Plan

4. Physical Security for Your Firm's Technology

One overlooks the physical security of a firm's technology at one's own peril. Placing computers or peripherals in plain view without securing them in the physical premises is an invitation to a common thief. Use the locking loops built into virtually all computers to physically lock the CPUs down. If you can thwart the removal for more than a minute or two, it will give your after-hours alarm system or someone else in the firm an opportunity to respond to the attempted removal by a third party. Any devices in open public areas like your reception area or library MUST be physically secured. In some larger firms, physical removal of any technology larger than a laptop must be approved by a designated person from their IT department.

Portable data storage devices, tablets and laptops should also be physically secured when not in use or at the very least kept out of sight. Laptops and tablets should have mobile device management (MDM) solutions installed or enabled which will allow you to track any lost, misplaced or stolen devices and to remotely erase or lock data stored on the device. This includes personal devices of employees that are used to conduct business under a Bring Your Own Device (BYOD) policy. Absolute (https://homeoffice.absolute.com/) OR Prey (https://preyproject.com/) are solutions to help you track these devices). MobileIron (https://www.mobileiron.com/en) and Citrix Endpoint Management (https://www.citrix.com/products/citrix-endpoint-management/) provide enterprise MDM solutions.

All physical and software components of your network should be fully recorded in an inventory listing including full descriptions of their make, model, acquisition date and cost. You might even take photos of equipment and their serial number stickers. (How else are you to make claim for its replacement after it is stolen or destroyed?)

Servers and other elements of your network do not ordinarily like water, so a sprinkler system will not tend to preserve much data or hardware for post-fire recovery. You will want to consider waterless fire suppression systems where they are situated. If you are harboring paper in your office…. It must be housed in cabinets after hours. (Check your insurance policy exclusions for files left out of cabinets.)

After a catastrophic disaster you will need to retrieve information about software licenses to reinstall the software onto new computers. If you don't have that information you can add the additional cost of buying new licenses to your loss.

Any on-site backups of computer data and software or operating system configurations (images) should be stored in a secure fireproof vault or in some other off-site secure place.

5. Electronic Elements of Your Firm's Preparedness Plan

1. Encryption

All client data must be stored in encrypted form…. Whether it is stored in the cloud, on a computer or in any portable device. That way if the storage source is stolen or hacked, the data remains secure. Boxcryptor (https://www.boxcryptor.com/en/), Sookasa (https://www.sookasa.com/), Bitlocker (part of Win 10 Pro), Symantec (https://www.symantec.com/products/encryption), AxCrypt (https://www.axcrypt.net/pricing/) are common Windows programs. Disk Utility and File Vault (MacOS) provide encryption for Mac.

While breech notification laws may vary in different jurisdictions, several states, including Oklahoma, have breach notification laws that exclude access to encrypted data from the definition of a breach unless "encrypted information is accessed in an unencrypted form or the breach involves a person with access to the encryption key." (24 Okla. Stat. §§ 162-163) However, Formal Opinion 483 concludes that Model Rule 1.4 may nonetheless require notification of clients to permit the client to make informed decisions concerning continued representation.

2. Passwords

Use secure passwords to boot your computer, to access encrypted files or folders and enter portals and websites. How secure are the passwords you commonly use?

https://howsecureismypassword.net/

7 or 8 characters/numbers/symbols just isn't enough anymore and when so many sites, programs and databases require them they become impossible to remember, say nothing to change them regularly. If you dare to use the same one for all accesses, one talented hack could lay open your entire client database, bank account info and confidential email history. Better to have a program like LastPass (https://www.lastpass.com/), Roboform (https://www.roboform.com/) or Dashlane (https://www.dashlane.com/) create or store your multiple passwords…… then should the device be stolen, it is far easier to change all passwords.

3. Cloud Storage

Virtually all "cloud" storage facilities have far more physical and electronic security measures than any law firm has over its physical premises and computers…. So cloud storage of data is clearly a preferred repository for at least one copy of any data or software that a firm might need. But encrypt the data before you send it for storage so that your firm controls the encryption key. If the client data were to be intercepted it would be useless to the recipient.

Upload and download speeds may be prohibitively slow for your firm to use cloud storage for all client data and files used in the course of the workday, but for cloud-based apps it

obviously integrates well. But should the active, on-premises, database ever be destroyed or corrupted…. or held to ransom, MoxyPro (www.mozy.com), Carbonite (www.carbonite.com) and Crashplan (https://www.crashplan.com/) are some sources for this kind of service.

Most practice management applications and document/email management tools, such as NetDocuments (https://www.netdocuments.com/) also provide secure cloud storage as well as provide structured arrangement of items/documents by matter. Additionally, such applications and tools may provide a client portal to facilitate communication of confidential and privileged items. As Formal Opinion 482 provides:

> Lawyers may not be able to gain access to paper files following a disaster.11 Consequently, lawyers must evaluate in advance storing files electronically so that they will have access to those files via the Internet if they have access to a working computer or smart device after a disaster. If Internet access to files is provided through a cloud service, the lawyer should (i) choose a reputable company, and (ii) take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer.

(If you are interested in learning more about practice management applications, consider attending the Next Generation: Practice Management Applications session on February 28th at 4:15 PM.)

4. *Update Everything*

To prevent your software and systems from being exposed to electronic attacks, keep all operating systems, security and firewall software and productivity apps and software updated automatically. Vendors are always responding to changes and threats … and they attempt to keep you as safe as possible. Updates are normally free, so take advantage of the latest protection against electronic threats when offered.

5. *Equipment and Software Upgrades*

When it comes time to replace existing hardware of software keep in mind the security and recovery plan you have made and evaluate new additions to ensure they are consistent with the direction of that plan. Do they operate well with the other software you have deployed? Are they backward compatible with other software and hardware you use? Can they be backed up with the same software as other users?

6. *Backup, Backup, Backup*

Your data files and smart system libraries are one of the major assets of your firm's practice … and they are not to be risked to a hard drive defect, a criminal intrusion or accidental loss. In order to ensure business continuity and client service delivery these data resources and the software necessary to create and modify them must be accessible. Backup on a dynamic basis to a cloud server, backup to an onsite data bank at least daily

and to a local, but physically remote, data bank at least weekly. Each backup should be a full backup which does not rely on any other portion of data from another backup.

If a local hard drive crashes, you can restore from the other onside data source; if both data sources are destroyed in a catastrophic flood, fire or other disaster, you can still be up and running from the physically remote data source. And if all of those are destroyed… you have the cloud-based server to restore from, even though it may take a longer time to accomplish.

This redundancy ensures your ability to weather (literally) most disasters and be able to return to the practice of law with minimal delay.

Word for the Wiser - Never assume that the backups you make are successful…. Regularly test the restore capability of the backup files to ensure that you are getting what you expected. Also remember that there may be issues in restoring an image backup from a no longer functioning computer to a replacement computer. Image backups are designed to restore the entire system to a known good state on the same machine - for instance, in case of malware - and to restore the entire system to a replacement hard drive on the same machine - as in the case of a hard-drive failure. Image backups may also be used for restoration of specific data files. Restoring a complete image backup to different hardware may sometimes be successful, but it is often problematic.

7. Don't Invite Disasters to your Firm

Do not let client data leave your firm on portable devices unless it is securely encrypted or unless the firm's data will be accessed using secured, encrypted internet pathways. Free public Wi-Fi in hotels and coffee shops or other law firms' waiting rooms are not places you want to be communicating confidential client communications.

8. Include All Lawyers and Support Personnel in your Planning

The security of your data and the systems you design to help you recover from a small or large disaster requires all hands to be pulling in the same direction. Discuss the theory of the plan as you make it with their input…. Explain how their actions in opening email attachments, clicking on unsolicited links can jeopardize all the other efforts taken to ensure their livelihood and the viability of the firm.

Inform everyone of the latest cyber risks that are out there and how criminals are attempting to trick them into responding and providing damaging information. Ensure that when something goes wrong or appears to go wrong, that they know who to report the incident to so that appropriate response can be made. In the case of a larger disaster, ensure that you have a communication plan for staff and clients so they know what has happened and how you intend to proceed.

Some of the security and internet use policies described in **Locked Down (2nd Ed)** by Sharon Nelson, David Ries and John Simek may serve to further reduce the cyber risks faced by your firm.

Conduct formal reviews of these preparation and recovery plans at least annually … do not let the risks overtake you.

6. Cybercrimes and Insurance

The threats to your firm's viability posed by cyber attacks on your firm and its clients' information are numerous and very costly to "fix" (if at all).

The cost of cybercrime insurance is not insignificant but the risks of large exposure on a simple data breach is not to be ignored.

> See discussion **Locked Down (2nd Ed)** - Sharon Nelson, David Ries and John Simek @ pp243-249 (ABA Book)

Here are links to two other resources that can assist you in evaluating your firm's need for this kind of extended indemnity for these kinds of breaches:

> www.practicepro.ca/2018/01/does-your-firm-need-cybercrime-insurance/
>
> www.lawpracticetoday.org/article/4-steps-getting-serious-law-firm-cybersecurity - Joseph M. Burton and Duane Morris

7. Other Resources

The appendix to this paper will refer you to many other resources on how to prepare general law firm disaster preparedness and recovery plans but many fail to address the very real and present risks that firms face in protecting their clients' information and their own ability to deliver legal services posed by cyber criminals and common thieves.

8. In Conclusion

We have hopefully alerted you to some of the ethical and practical risks that you and your firm face in using various kinds of technology in your practice and provided some measure of practical solutions and resources to assist you in addressing those risks.

BUSINESS CONTINUITY AND DISASTER MINIMISATION – WHERE ARE YOU AT?

APPENDIX OF RESOURCES

A. American Practice Management Advisors and Bar Associations*

- Guide to Developing and Conducting Business Continuity Exercises - ABA Committee on Disaster Response and Preparedness (ABA)
- Resources for Lawyers and Law Firms – www.americanbar.org/groups/committees/disaster/resources/resources_for_lawyers_law_firms/ [Note the references to other materials in this publication]
- Disaster Recovery for Law Firms from The Essential Formbook – Gary Munneke & Anthony Davis. (ABA)
- www.arkba.org
- www.cobar.org
- www.eriebar.org [Note: great "Plan" template]
- www.Floridabar.org
- www.masslomap.org
- www.osbar.org
- www.tba.org
- www.texasbar.org
- www.wisbar.org

B. Canadian Practice Management Advisors and Bar Associations*

- www.lawpro.ca
- www.lawsociety.ab.ca
- www.lawsociety.bc.ca

*these are not an exhaustive lists of state or local bar resources, but only a representative example

C. Legal Insurers

- Managing Practice Interruptions – www.lawpro.ca [NOTE the appendix of resources referenced]
- "Disaster Recovery for Law Firms" – www.lawyersmutualnc.com

D. Other Resources

- A 5 Step Checklist for Law Firm IT Disaster Recovery" – www.biglawbusiness.com
- Putting Together a Law Firm Disaster Recovery Plan – https://www.logikcull.com/blog/putting-together-a-law-firm-disaster-recovery-plan

TECHSHOW2020

Seeing is Believing: Virtual Reality Prepardness

WRITTEN BY:

Matthew Stubenberg
Kenton Brice

PRESENTERS:
Matthew Stubenberg: @MatthewLawTech
Kenton Brice: @kentonbrice

January 6, 2020

VR: IMMERSIVE VIDEO AND 3D EVIDENCE

By Kenton S. Brice and Matthew Stubenberg

Introduction

Theorizing about the use of virtual reality in the legal industry is nothing new.[1] However, the widespread availability and low cost of current virtual reality systems is quickly moving the use of virtual reality in the legal world from the theoretical to the practical. In 2016, three desktop virtual reality systems were introduced on a consumer level that made virtual reality readily accessible to most.[2] Since then, second generation systems have been created, as well as increased platforms for viewing content.[3] In addition, 360 cameras, 3D scanners, and drones are becoming more mainstream, making content creation much easier for the general public.[4] From the massive to the miniscule, legal professionals now have the capability to present a variety of types of evidence or participate in the litigation process through the use of virtual or augmented reality technologies without having to invest tens or hundreds of thousands of dollars. As the technology continues to improve, attorneys must stay abreast of these innovations and explore how it can be used in practice. Law schools are starting to incorporate these emerging technologies into curriculum and projects to help provide basic understandings of the two main types of content for training the next generation of legal professional.

Immersive Video

The easiest introduction for the legal industry to virtual reality is immersive video.[5] While not truly "virtual reality", immersive video, also known as 360° video, takes advantage of the virtual reality system hardware to provide a truly immersive video experience. Immersive video places the viewer into the middle of a video scene, where the video and audio exist in a 360 degree sphere around the viewer. These immersive videos have a wide range of application in the legal field, from experiential teaching in a courtroom to recorded depositions to the next generation of police body cameras.[6]

Capturing immersive video is also much more simple and cost efficient than creating 3D models in virtual reality (although, as detailed below, is becoming simpler and more cost efficient as well). For immersive video, most consumer cameras cost under $1,000, with most under $500, and feature one button capture or a paired mobile application for to control lighting settings and capture.[7]

---

[1] In 1992, prosecutors used a virtual reality recreation of a crime scene to prosecute Jim Mitchell for the shooting death of his brother, Artie Mitchell. Mary C. Kelly & Jack N. Bernstein, *Virtual Reality: The Reality of Getting It Admitted*, 13 J. MARSHALL J. COMPUTER & INFO. L. 145 (1994). In 1995, CNET created a virtual reality recreation of the O.J. Simpson murders. https://www.cnet.com/news/cnet-vault-oj-simpson-murder-computer-simulation/

[2] Oculus Rift (www.oculus.com), HTC Vive (www.vive.com), and Playstation VR (https://www.playstation.com/en-us/explore/playstation-vr/) all came out in 2016.

[3] Will Greenwald, *The Best VR Headsets for 2020*, PCMag.com, 2019 (last accessed Jan. 4, 2020).

[4] "LIDAR, which stands for Light Detection and Ranging, is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses—combined with other data recorded by the airborne system— generate precise, three-dimensional information about the shape of the Earth and its surface characteristics." http://oceanservice.noaa.gov/facts/lidar.html.

[5] Immersive pictures are also available, known as 360 photos.

[6] See BodyWorn's Smart Scene 360 camera system (http://www.bodyworn.com/smartscene-360/).

[7] OU Law currently has four 360 cameras: Garmin VIRB 360 (https://buy.garmin.com/en-US/US/p/562010),

What OU Law is Doing with Immersive Video

OU Law is currently using various immersive videos in its legal curriculum, including professionally produced videos and custom created content. With professional produced videos, our faculty are delivering high quality, documentary style content for our students. The most popular video so far has been *Clouds Over Sidra*,[8] an immersive video experience of a Syrian refugee camp in Jordan, narrated by a twelve-year-old Syrian girl. Professor Evelyn Aswad has used this video in her International Human Rights courses in hopes of increasing students' levels of empathy for displaced persons. Since our students cannot travel to Jordan on a regular basis, and OU Law cannot send a camera crew to massive refugee camps, having this type of professionally produced content is an easy way to transport our students to experience Jordan in a more tangible way than a regular video or a textbook can.

OU Law students have also come forward asking for curriculum-oriented videos to be included in OU Law's offerings. Hannah White ('19) served for a summer in Thailand for the International Justice Mission ("IJM"). While there, she learned of a new 360 video project that IJM was involved with, documenting IJM's efforts in freeing indentured servants in India. Similar to the *Clouds Over Sidra* video, *The Hidden*[9] has provided OU Law students with the ability to experience a human rights crisis with as much proximity as possible without leaving the College.

In addition to curating professionally produced content, OU Law is creating its own immersive video content in multiple contexts. As early as December 2016, after only two months of having the virtual reality systems and 360° cameras, then Associate Dean and Professor of Law Brian McCall started exploring how this technology could enhance his Transactional Law Practicum class. Prof. McCall took a Nikon KeyMission 360 camera to capture student presentations of a mock merger at various law firms in Oklahoma City. By placing the camera in the center of the conference room table, Prof. McCall was able to capture the students' presentations and the attorneys' reactions all at the same time, enabling future students to critique the presentation from all perspectives. These early videos showcased the possibilities of using immersive video in a non-litigation setting using 360° cameras to capture an entire boardroom.

Since that early video, OU Law has expanded its 360° video content, from recording moot court competition practices, hearings, and oil and gas operations, which all highlight the varied and extensive possibilities that this technology brings to attorneys and legal departments. OU Law's most recent project was using its Garmin Virb 360° camera tethered to a DJI Phantom 4 Pro drone to capture historic and current oil and gas operations in and around Midland, Texas. Using this footage, students have been able to explore oil and gas wells, tank batteries, and water reclamation sites without having to leave the law school.[10]

While these first tests have been a major success, there are plenty of challenges that practitioners face when using 360° imaging. First, resolution when viewing 360° video is limited. The current consumer-grade 360° cameras range in resolutions from 1080 high-definition to 5.7K. At first glance, these

---

Nikon KeyMission 360 (http://www.nikonusa.com/en/nikon-products/product/action-camera/keymission-360.html), Ricoh Theta S (https://theta360.com/en/about/theta/s.html), and Kodak PixPro SP360 4k (https://kodakpixpro.com/Americas/cameras/vrcamera/sp3604k/).

[8] "Clouds over Sidra", With.in (2016) (https://with.in/watch/clouds-over-sidra/).

[9] "The Hidden", Oculus: VR for Good (2018) (https://www.oculus.com/vr-for-good/programs/hidden/).

[10] For a sample of the video shot, and then narrated by OU Law's involved with the OU Law Oil & Gas, Natural Resources, and Energy Center, see *Santa Rita No. 1 – A 360 Experience, Narrated*, Youtube.com, 2018 (https://www.youtube.com/watch?v=THU54CDsgGk).

specifications would seem to produce a truly high-quality image, however, because the pixels are spread over an entire half-sphere (most consumer 360° cameras include two spherical camera lenses), the resolution turns out to be less than what someone would expect from a "high-definition" experience. These cameras are also limited in how far a subject can be captured without distortion. These two issues alone make the level of precision and detail that most would expect from a high-definition experience lacking. In addition, the current mainstream consumer-grade headsets do not display in a true "high-definition" format. Because of a host of issues with the current technology, pictures and videos are still somewhat pixelated and not as sharp as modern video screens.

What Access to Justice Lab at Harvard Law School is Doing with Immersive Video

The Access to Justice Lab (A2J Lab) is testing the effectiveness of immersive video virtual reality trainings with pro-se defendants. In 2018 the A2J Lab put out a call for nonprofit legal service providers interested in innovative virtual reality trainings. One of the groups that reached out was the Gulf Coast Legal Services (GCLS) of Florida. Experience had shown training videos needed to be short, in a legal area where a little bit of knowledge can go a long way, and where the defendant played an active role in the Courtroom. A2J Lab and GCLS agreed pro-se debt collection cases were a prime candidate for a virtual reality training video.

A2J Lab and GCLS recorded several mock debt collection hearings using a Garmin Virb 360 camera. The video was edited to create a full 360 version designed for a VR headset and a "flat" version designed to be watched on a television. The study which launched in 2019, is a randomized controlled trial, randomizing pro-se debt collection defendants at GCLS. The study tests whether the defendants who watch the VR version of the video will get better outcomes than the defendants who watch the flat version without any VR headset. The results will hopefully cut through the hype of virtual reality and give legal service providers actionable information to use when deciding how to create new training programs.

Maryland's Immersive Video Attorney Training

The Maryland Volunteer Lawyers Service (MVLS) and Maryland State Bar Association (MSBA) worked together to create a number of mock courtroom videos for Pro Bono attorneys and attorneys new to the legal market. The videos were filmed with a Samsung Gear 360 and used experienced attorney volunteers from MVLS and the MSBA. The videos focused on areas of law that required courtroom interaction that may be difficult to explain in an outline. For instance, how to introduce a photograph into evidence or enter a divorce agreement on the record.

The videos can be found for free on YouTube at http://bit.ly/VRLawyerTrainings. While the videos can be watched on a computer by using the mouse to see in all directions, the videos were designed to be viewed with a VR headset.

3D Models

To receive the full value out of a virtual reality system, 3D content is a must. This is the bedrock of virtual reality – transporting a user from their current world to any other world that can be imagined through the use of 3D models. 3D models are digital models of objects or places that are displayed in virtual space

through the use of a computer, software, and a headset.[11] The scope and scale of the types of models available are endless, and people all across the world are creating 3D models of anything and everything.[12] For instance, a 3D model can consist of the entire earth, with scalability options from viewing the entire earth down to the street level of a city.[13] Additionally, 3D models can go as small as the imagination can take it, even to the molecular level, providing pharmaceutical patent claims a new arena of displaying the difference between the molecular makeup of a new and old drug. The easiest 3D models to create are static models, which can be done with cameras, scanners, or LiDAR systems, and models can also be animated or interactive depending on the nature of the file type that makes up the model and the level of coding ability used to create the model.

What OU Law is Doing with 3D Modelling

Currently, OU Law has been experimenting with 3D models created from various sources. Being part of a larger research university, OU Law gets to take advantage of the models that the colleges of engineering, architecture, anthropology, chemistry, and biology are creating in exploring what virtual models can do for lawyers. One model in particular, a highly detailed model of a skull made from a 3D scanner, highlights how personal injury attorneys can view injuries in a new, dynamic light. In addition to these models, OU Law is also creating its own models. As with the 360° footage that was captured using the drone, multiple photographs (120 to be exact) from the drone were taken of the Santa Rita #1 Oil Well in Texon, Texas.[14] These photos were then "stitched" together in software[15] to create a 3D "photographic" model of that oil well in a process called photogrammetry. This first attempt created a good model that highlighted details of the well that future students could explore on their own, without having to travel away from the law school.

OU Law has since began experimenting with recreating evidentiary scenes in 3D. The first attempt was a demonstrative recreation of a scene in the National Institute of Trial Advocacy's *Dixon v. Providential Life Insurance Co.* case file for Brent Dishman's Trial Techniques class in Spring 2019. OU Law and the OU Libraries's Emerging Technology Librarians went to work creating a grusome scene in which Judge Dixon had shot himself with a shotgun in OU's OVAL 2.0 software. Key eveidence was recreated in the scene, and students were able to virtually walk through the demonstrative scene. Functionality included the ability to indicate various evidence, perform measurements on the included shotgun, screwdriver, etc., as well as view a transposed skull with the path of the shotgun blast through Judge Dixon.

Currently, OU Law is working on a photo-realistic scene of the *Dixon v. Providential Life Insurance Co.* scene. In August 2019, OU Law and the Emerging Technologies Librarians staged a live scene, complete with actors and make-up artists, and recorded the scene through scaled photography. Using

---

[11] OU Law is using two Oculus Rift (www.oculus.com) Headsets paired with either an Alienware 13 laptop (http://www.dell.com/en-us/shop/productdetails/alienware-13-laptop) or a Falcon-NW Tiki Desktop (https://www.falcon-nw.com/desktops/tiki/design) running various VR applications, including the University of Oklahoma's own OVAL system (https://github.com/OULibraries/edge/wiki/OVAL).

[12] There are online communities and marketplaces where creators are posting their 3D models. See SketchFab (https://sketchfab.com/); see also Turbo Squid (https://www.turbosquid.com/).

[13] Available in Google Earth VR (https://vr.google.com/earth/)

[14] The Santa Rita #1 is the historic "discovery well" for the Permian Basin in Texas. See more about the Santa Rita #1 at the Texas State Historical Association, https://tshaonline.org/handbook/online/articles/dos01. To see a video of the drone footage that was used, see *Santa Rita #1 – Raw Drone Footage – Video 1*, https://www.youtube.com/watch?v=NJGMFFpR-rE.

[15] Autodesk's ReCap (https://www.autodesk.com/products/recap/overview).

photogrammetry, these images are being stiched together and coded to create a photo-realistic scene that OU Law students could explore in 3D.

3D modelling is not limited to curricular integrations. Because of the variety of models that could be created, attorneys can "walk through" crime and accident scenes, construction sites, or even historic areas. This has already happened to some extent, as seen with German prosecutors using the technology to recreate a 3D model of the Auschwitz concentration camp in Nuremberg trials[16] and more recently, even in Norman, Oklahoma.[17] As the technology progresses, more and more courts, attorneys, and legal departments will be exploring this technology to enhance the litigation experience.

There are challenges to incorporating 3D models into litigation. As with digital photos, or even Microsoft Powerpoint presentations, there will be hesitancy as to the accuracy of 3D models to depict the actual scene or object it purports to be. Additionally, attorneys and practitioners that receive a 3D model file during discovery may have a host of questions, beginning first on how to even view the file if they do not have hardware or software needed. Thankfully, the consumer market is already moving quickly to adopt standards. The Microsoft Windows 10 2017 Fall Creators included Microsoft's Mixed Reality Viewer, which can view most standard 3D model files with no extra software or hardware needed. As this technology progresses, more and more attorneys will have the tools and know-how to incorporate into their practices.

What Does This All Mean for Lawyers

The legal profession has become particularly good at teaching law students and attorneys the black letter law and how theoretically the law works. However, a common complaint among new lawyers is they were ill prepared for the practical elements of the law. For example, the physical steps for entering something into evidence or how to properly interact with opposing counsel. These skills are difficult to teach in the current paper chase/Socratic method of law school. Law students may pick up a few of these skills during a clinic or court watch and new attorneys may shadow a senior attorney. However, this is a slow process involving a bit of luck in what the student happens to see that day in Court. Mock trials will sometimes fill these gaps but often revolve around how a trial should work in a perfect setting and not the reality of today's fast paced courtrooms.

The answer to how to train law students, new attorneys, and pro-se defendants on the actual procedure in Court is with VR technologies. The relatively low cost of entering the VR space means law schools and law firms will create libraries of what to expect for every time of courtroom interaction. The videos will be useful to experienced attorneys as well. Each locality has its own unspoken rules on how to act in Court. These VR videos will allow for an attorney to better understand the nuances of the new locality they are practicing in with relative ease. It is an exciting time to be practicing law. The changes coming down the pipeline have their flaws and bugs to be worked out but promise to allow lawyers to spend more of their time practicing law and less time with the administrative headache that comes with practicing law.

---

[16] Mark Cieslak, *Virtual reality to aid Auschwitz war trials of concentration camp guards,* BBC News (Nov. 20, 2016). Available at http://www.bbc.com/news/technology-38026007.

[17] Jesse Crittenden, *McMullen Trial Closing Statements Set For Today*, Norman Transcript, Oct. 2, 2019 (https://www.normantranscript.com/news/local_news/mcmullen-trial-closing-statements-set-for-today/article_82a910c1-281b-5248-ba59-8cf8143ba2ab.html).

VIRTUAL REALITY IMPLEMENTATION GUIDE

By Matthew Stubenberg

Introduction

Congratulations on considering the addition of virtual reality (VR) to your training materials. While still fairly new, VR is quickly being adopted as a valuable tool in training. Because VR can be a complex topic, this implementation guide attempts to boil down VR to what is most useful for training attorneys. It is important to note that VR technology is a dynamic and rapidly changing field, therefore, like all guides about technology, this guide will require regular updating.

Generally, VR is the creation and viewing of an artificial environment. This guide focuses on two main components of VR for creating your training materials: (1) how to create the artificial environment; and (2) how to view the artificial environment you just created.

There are two main ways to create an artificial environment. The first way is through the use of computer generated images (CGI), similar to how video games and Pixar movies are created. While this process can lead to some amazing results, it is expensive to build and requires complicated coding to be able to build the ability to interact with this environment. The second way is to record an environment with a special 360 degree camera. A 360 degree camera, discussed in detail below, has multiple lenses that allow the user to record video in every direction. Because the creation of CGI VR experiences is currently too expensive to create for most organizations, this guide focuses on how to make VR trainings using a 360 degree camera.

Once recorded, to view the VR video, you will need a VR headset. Using the VR headset, the user experiences the video as if they are standing in the location where the camera had been placed to record the video. There are many VR headsets on the market that range in price and immersiveness. The higher end headsets require connection to a high performance computer, but can allow a user to walk around in the VR experience and interact with it. Lower end headsets do not allow for the same level of interaction, but they provide for greater ease of access, such as the cardboard headsets created by Google that can be used with your smart phone. This guide will discuss the most likely choices for application in the legal field.

Most people have never experienced VR, therefore, an “easing-in” process is needed. This can be accomplished by creating VR videos or “experiences” that are relatively short with a maximum length of any individual experience of about 5 minutes. Creating multiple short videos will also allow for the user to take breaks in between. Eventually, when the technology is mainstream and people experience VR in everyday life, longer experiences may also be useful. For now, the key rule is to keep the videos short!

With this in mind, appropriate areas of law are those that can be broken down into 5 minute or less segments. Areas that have worked for other groups in the past are: putting divorce settlements on the record; accepting a guilty plea; and participating in an expungement hearing. It is also possible to take longer areas of law and break them down into shorter segments. For instance, a full trial would be too long for most people to watch comfortably in VR. However, the trial itself can be broken up into smaller segments such as one video on opening arguments, one on entering a photograph into evidence, and one on a motions hearing.

Selecting Your Equipment and Software

Video Cameras

VR technology is moving very fast and any recommendations for hardware may very well be outdated in six months. In order to record a VR environment you will need a 360 degree video camera with multiple lenses. The multiple lenses allows for the camera to see and record in every direction. This is crucial for the ability of a VR user to be able to see everything around them. To meet this need companies have developed a number of different cameras.

The most important factor in selecting a 360 degree video camera is video quality. HD video quality is generally acceptable for most uses, but is insufficient for purposes of a VR video. The video in a VR needs to be stretched to fit the environment all around the user, requiring a camera with a minimum of 4K resolution. For most organizations, an entry level camera like the Samsung Gear 360, pictured below, will be good enough. It contains two fish eye lenses, one on each side that capture video at the same time. This camera will cost approximately $100 plus an additional $25-$75 for a memory card to go with it. The Samsung Gear 360 specifically requires you to have a higher end Samsung phone to properly use it. If no one on your team has a high end Samsung phone you may want to consider a similar type of camera, like the Ricoh Theta V, that does not require a higher end Samsung phone. Both the Samsung Gear 360 and the Ricoh Theta are designed to be consumer friendly and easy to operate right out of the box.

There are also cameras on the market that have a higher resolution, like the Garmin VIRB 360, which has a resolution of 5.7k, however, the extra resolution comes at a cost. At the time of this writing, the Garmin VIRB 360 costs $800.

Alternatively, professional grade cameras can produce significantly higher quality video, but they can also be much more difficult to work with. If you want professional grade video recording, consider hiring a video production company to film your videos to save the cost ($10,000+) and challenges associated with professional grade video production.

Stitching

VR videos typically must be carefully prepared before posting online, at a minimum by stitching the raw video together. The raw video from the VR camera typically comes out of the camera looking like a side-by-side "fish-eye" projection. The video must be converted into a format that allows for the full 360 effect before it is usable as a VR experience. This process is called "stitching". Some cameras will do this automatically or it can be done using the software included with the camera. If you have a proficient user, professional grade software like Adobe Premiere Pro, may provide faster stitching speeds and more options. Once stitched together, the video is ready for editing.

Editing

Editing VR video is identical to editing conventional video in terms of software functionality. Adobe Premiere Pro is the easiest to use and best supported video editor for VR videos, but many VR cameras come with basic video editing software that is an excellent start for users new to video editing or VR video editing.

Editing VR videos is substantially identical to editing conventional videos from a technical point of view, but the VR environment presents special videography challenges. For example, the audience's attention can be focused anywhere in a VR experience - there is no guarantee that the user is actually paying attention to or even looking at the action. Conventional videography handles this issue by centering the action in the camera frame, but that is impossible with a camera that records everywhere at once. Therefore, editors must attract attention in other ways - we have used text appearing on screen, transitions where the viewer is re-centered on the action, and actors who conspicuously look at the action on screen.

Although this guide does not cover how to select video editing software, many include how-to guides and selecting editing software with extensive documentation, such as Adobe Premiere Pro, may alleviate issues and help in learning the software.

Filming Your Video

Audio

Audio is an important element in your VR video. You'll want to make sure that you record audio with a special microphone that captures audio from multiple directions. This is important because if the person speaking in the video is to the user's right, the audio should come from the right. Luckily, most VR cameras today will come with built in microphones capable of capturing audio in multiple directions.

Location

After deciding what camera to use, the question then becomes where to film. This depends on what you are filming and the types of partnerships you have. If you are filming mock court hearings, then filming in a courtroom where these hearings are typically held is the best option. If you cannot get permission to film in your local courthouse, the mock trial rooms at your local law school are also a great option.

Scripts

You will want to give plenty of time to find and recruit subject matter experts who can boil down the information that you are trying to relay into a concise script. It is also important that the script is suited for your target audience. For example, if you are filming for users that may not have been inside a courtroom before, such as pro-se litigants or law students, it is important not to make any assumptions about what your user should know and include even seemingly minor details. For instance does your Court call cases alphabetically or the cases with attorney representations first? Including these details can increase the effectiveness of the training.

Actors

Choosing who will be in your VR video is also important. If possible, invite key stakeholders to be the actors. For example, if you are filming a mock court hearing that is always in front of a particular judge, it may be helpful to request that judge plays the judge in your mock hearing. The same can go for the state's attorney, public defender, court reporter, and bailiff. Other actors should be the subject matter experts to give appropriate tone and speed necessary to the script as expected in court.

If you have the time you may want to consider adding as many elements of realism as you can to the videos. See if you can get volunteers to fill the court gallery to give a sense of a packed courtroom. If this is a criminal hearing maybe you want to have a defendant being brought in from lockup. You can add the final bit of realism by making sure everyone looks the part. Lawyers and clients are easy with people's existing wardrobe but consider buying a Judges gown, prisoner jumpsuit, and bailiffs uniform at a Halloween store.

Making Your VR Video Accessible

Hosting

For publicly available VR videos, the easiest way for people to find the videos is to host them on an online platform such as YouTube and Facebook. It is important to note that the default for viewing a VR video should be set to the highest possible quality to avoid having your 4K video defaulted to HD by YouTube's default settings. Platforms such as YouTube and Facebook generally allow users to find the video and watch it in 2D with the ability to move the view around with their mouse. To obtain the VR display with a VR headset the user will either have to click a button or the headset will automatically detect it is in VR.

If you do not want to make your VR videos public, the videos can also be loaded directly onto standalone VR devices. This can also be useful if you'll be showing them in areas with limited internet access.

Viewing

There are a number of different options for viewing the video you just created. First, the video can be viewed on a regular computer. For example, https://www.bit.ly/VRLawyerTrainings will link to YouTube where you can see the VR videos we have already created. You can use your mouse and drag the video around to see every angle of the video.

To get the real experience from VR, you need to view it using a VR headset. A VR headset consists of a screen that the user holds up to his or her face to watch the video. The VR headset has a gyroscope and accelerometer which can determine if the user is moving their head and in what direction. In response to the user moving his or her head, the VR headset will display the corresponding part of the video. If the user looks to the left the video will seamlessly move along, giving the illusion of actually looking around.

There are many options for providing your users with VR headsets. Some like the HTC Vive and Facebook's Oculus Rift can be very costly, need to be connected with a powerful computer, and are usually designed for more serious interaction like gaming. On the other end of the spectrum there are cardboard headsets like Google Cardboard that work by using your phone as the screen. You simply slide your phone into the Google Cardboard headset. These headsets (minus the phone) can cost as little as $10. One recent option are standalone headsets that are mobile but do not require a phone. These options are great for small clinics where you need something reliable every week for lots of people. The most recent standalone headset is the Oculus Go which is priced at $200 and contains 32GB or 64GB of memory meaning you can keep your videos on the headset. This means no internet is needed once they are loaded on.

Measuring Success

VR is new technology and it is uncertain how to best implement it into the legal field. Studying the success of a VR project is important, not only for your particular organization but for the legal community as a whole. Randomized controlled trials (RCT) are the gold standard of measuring the effectiveness of a project. For a typical pro bono attorney training program, implementing an RCT would mean half of the attorneys at the training are picked at random to view the VR videos. The other half would not view the VR videos. You would then determine if the VR videos had a noticeable effect by measuring outcomes like how confident the attorneys after the training and whether they receive better results for their clients. Empirical evidence like this will allow the legal community to better allocate resources toward proven methods of VR implementation. If your organization has limited experience in running an RCT, there are groups that can help like the Access to Justice Lab at Harvard Law School.

Conclusion

VR offers vast potential for use in the legal field. Groups should approach this new technology knowing it will change significantly over the next couple of years. As with all new technology, there will be skeptics who don't understand the possible benefits. Don't let them dissuade you from trying new projects in VR. As with any new project, make sure you have the ability to study its effectiveness. Conducting a randomized controlled trial (RCT) to test if the VR videos you created are having the intended effect is the best way to get continued funding and convince skeptics. If you have ideas for VR or lessons learned from your own VR video production, please share them with the community.

Skills Building: Best Practices for Teaching Tech to Law Students

Edited BY:

April Dawson, Deborah Ginsberg, and Jennifer Wondracek

PRESENTERS:
April Dawson: @AprilGDawson
Deborah Ginsberg: @debgpi
Nicole Morris: @nicolenmorris3
Jennifer Wondracek: @JenWondracek

January 6, 2020

FIFTIETH SELECTED BIBLIOGRAPHY ON COMPUTERS, TECHNOLOGY, AND THE LAW, 45 RUTGERS COMPUTER & TECH. L.J. 169 (2019) (EXCERPTED TABLE OF CONTENTS)

From: Westlaw Edge

45 Rutgers Computer & Tech. L.J. 169

Rutgers Computer and Technology Law Journal

2019

Bibliography and Cumulative Index

FIFTIETH SELECTED BIBLIOGRAPHY ON COMPUTERS, TECHNOLOGY, AND THE LAW

(January 2018 through December 2018)

INTRODUCTION

Each year, the *Journal* provides a compilation of the most important and timely articles on computers, technology, and the law. The Bibliography, indexed by subject matter, is designed to be a research guide to assist our readers in searching for recent articles on computer and technology law. This year's annual Bibliography contains nearly 1000 articles, found through the examination of over 1000 periodicals.

The Bibliography aims to include topics on every legal aspect of computers and technology. However, as new issues in this field emerge, we welcome your suggestions for additional topics and sources, as well as your commentary on the Bibliography.

JENNIFER WONDRACEK, *LAW STUDENTS—AVOID MALPRACTICE AND EMBRACE TECHNOLOGY!*, BEFORE THE BAR (FEB. 20, 2019), HTTPS://ABAFORLAWSTUDENTS.COM/2019/02/20/LAW-STUDENTS-AVOID-MALPRACTICE-AND-EMBRACE-TECHNOLOGY/

Law students—avoid malpractice and embrace technology!

Did you know that thirty-five states have expressly included knowledge of technology in the official comments for their Rules of Professional Conduct? Most states have adopted language similar to comment 8 of the ABA Model Rule 1.1: Competence. Two states – Florida and North Carolina – now require attorneys to take CLE courses on technology during each of their CLE cycles.

More and more, technology is integrating into the practice of law and affecting many different areas and raising different ethical issues. Lawyers do not need to be IT experts, but they do need to "keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." As you begin to delve further into the matter through ethics opinions and other documents, you will also find that lawyers are held to a "reasonable efforts" standard with regard to technology.

What do "reasonable efforts" look like? State and ABA ethics opinions give us some ideas:

- Recognize the nature of the threat to confidentiality, including how to treat materials based on their sensitivity.
- Understand how confidential information is stored and transmitted.
- Understand and use reasonable security methods, both on and offline
- Conduct due diligence on vendors who have access to client information
- Train attorneys and staff on how to use technology and security methods.

There is still debate amongst the legal community regarding how these new(ish) rules will be implemented, but the issue is escalating based on some prominent issues coming to light. On January 8th, 2019, Paul Manafort's attorneys filed a response to claims made by Special Counsel Robert Mueller. It was soon discovered that whomever redacted the document failed to do so properly, allowing anyone to read the "redacted text" by copying and pasting the blacked out sections. While there is likely a staff member at one of the firms being blamed for the problem, attorneys and law students should remember that the attorneys who sign the documents also take responsibility for the contents of the documents. Should sanctions or a malpractice suit come of out of this situation, "my secretary did it" is not a valid excuse.

Client confidentiality is a huge issue that needs to remain on an attorney's radar at all times, but it is not the only concern in the legal realm with regards to technology. Technology audits, such as those the (in)famous Casey Flaherty required of Kia Motors' outside counsel, raised the question "in which technologies should a 'competent' attorney be proficient?" There are some who opine that if you are capable of serving your client more efficiently using technology, but refuse to learn how to do so, you are overbilling your clients. Problems may also arise while representing your client if you do not understand how technologies function. For instance, in the video below, we see what happens when prosecutor

Bernie de la Rionda tries to question a witness about a social media technology that he does not understand.

[Video: George Zimmerman Trial – Day 4 – Jenna Lauer's Twitter - https://youtu.be/rY0TGH1OYuY]

This type of questioning hurts the client, the attorney, and the attorney's firm. This behavior reasonably leads back to the ethics rule of competence and whether the attorney was adequately prepared to represent his client.

Embracing technology is not something that one can do for a single moment in time, either. The concept of technology continually evolves. At one point in time, when people discussed technology, they spoke of the wheel, a bicycle, or even a telephone. Today, however, those technologies are so ingrained in our society that most people would not include them in a conversation about learning to use technology — unless referring to a smart telephone.

As the technologies evolve, so, too, does the need for attorneys' knowledge of these technologies. It should not surprise anyone, for example, that the American Academy of Matrimonial Lawyers reported in 2015 that 99% of attorneys surveyed said that text messages are being introduced as evidence in divorce cases. Also, 67% of attorneys surveyed have noted a rise in evidence from apps.

Great leaps are being made in the assumption of attorney's technological knowledge in small periods of time, however. For instance, in a November 2018 Canadian judicial opinion, a judge deciding upon an award of attorney's fees refused to allow a $900 research fee, in part because the attorney did not use "artificial intelligence" sources.

Thus, in three short years, we went from attorneys needing to know enough about how text messages and apps function to use them as evidence to using artificial intelligence to conduct legal research.

Now that you understand the implications of NOT embracing technology, what should you do in order to avoid those pesky malpractice claims and bar grievances? I recommend the following topics:

- MS Office, including Word, Excel, PowerPoint, and Outlook. These programs are industry standards and you need to understand how to use them efficiently and effectively.
- General principles of increasing efficiency and effectiveness, such as document and service automation, collaboration technologies, and portability.
- The creation and manipulation of PDFs, including redaction.
- A thorough understanding of what metadata is, how it is generated, and how to remove it from a wide variety of materials, including documents, images, movies, audio clips, etc. (metadata scrubbing).
- Cybersecurity, including how to select vendors who will help you protect your data, acquiring cyberinsurance policies, and training employees on best practices and use of available tools.
- The threats and opportunities involved with using personal devices to complete legal work.
- An understanding of the technologies that your clients use or which your opponent may utilize, such as accident recreation software.
- If you are a planning to be a trial attorney:
    - Courtroom technologies, including exhibit presentation software, voir dire software, etc.
    - eDiscovery platforms, principles, and specific court rules.
- General practice software, such as case management systems, billing software, efiling systems, and common mobile productivity applications.
- Google and specialized searches, such as public records and social media.
- Data Analytics.
- Keep an eye on cutting edge technologies, for example:
    - Artificial Intelligence (already very active in the legal realm)
    - Augmented and Virtual Reality
    - 3D printing
    - Blockchain and cryptocurrencies

This list may look overwhelming, but remember, attorneys do not need to be IT specialists. They need to have a general awareness of the technological issues and be willing to increase their knowledge and skills should their practice require it. Attorneys will also differ in their knowledge based on the type of law that they practice. A trial attorney will need to know different technologies than a real estate attorney or a mediator.

The key is a willingness to learn.

IVY B. GREY, TECHNOLOGY COMPETENCE, WHAT THE ETHICAL DUTY MEANS FOR YOU AND YOUR FRIM, DEC. 2017, HTTPS://LEGAL.INTELLIGENTEDITING.COM/BLOG/TECHNOLOGY-COMPETENCE-WHAT-THE-ETHICAL-DUTY-MEANS-FOR-YOU-AND-YOUR-FIRM/

Introduction

When the American Bar Association published its rules update in 2012, the notion that lawyers would incorporate technology into legal practice felt more aspirational than realistic. Five years later, it is now clear that technology awareness, wisdom, and adoption are necessary. Ignoring the duty also has business, practical, and ethical ramifications.

This white paper explains the codified duty of technology competence. It reviews business and ethical consequences of the new requirements; and it explores the practical implications for your firm. It is split into four sections:

- What Is the Duty of Technology Competence?
- Why Does It Matter?
- How Does It Affect You?
- Becoming Technologically Competent: The Example of MS Word

What Is the Duty of Technology Competence?

Background

It was once unthinkable that lawyers would email clients or store information in the cloud; that they would research cases online rather than in the library; or that firms would exist with no physical office. Now each of those things is common in legal practice.

The American Bar Association (the "ABA") noticed this shift. In 2009, the ABA formed the Ethics 20/20 Commission (the "Commission") to study technology in law. The Commission was led by Andrew Perlman, who served as its Chief Reporter. In 2012, following this lengthy study, the ABA revised the Model Rules of Professional Conduct (the "Model Rules"). The rule revisions reflect lawyers' changing relationship with technology; and they acknowledge how prevalent technology has become in modern society, and in legal practice.

> *"Competency directly relates to everything that lawyers do and every tool we use to serve our clients."*

Updating the Existing Duty of Competence

A lawyer's fundamental duty has always been to provide competent representation to her client. In the past, lawyers thought of competence as focused solely on the substantive knowledge of a certain area of law combined with the experience and ability to adequately represent a client in a specific engagement. As times changed, so did the view of what it meant to be competent. The modern view is that competency directly relates to all aspects of performing our duties as lawyers—it is about everything that lawyers do and every tool we use to serve our clients.

The text of Model Rule 1.1 requires lawyers to provide competent representation. Now Comment 8 to Model Rule 1.1 goes further, it reads: "a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]" We refer to this as the duty of technology competence.

It requires that every lawyer:

- keep abreast of changes to technology used in legal practice;
- develop an awareness of technology, its functionality, and available offerings;
- gain a grasp of the risks and benefits associated with using technology; and
- attain a reasonable level of skill in all chosen technology.

Competence does not mean perfection, expertise, or paranoia. Instead, it requires a baseline understanding of, and reasonable proficiency in, the technology at hand.

The update does not change the duty to maintain competence under Model Rule 1.1. Rather, the revision clarified that maintaining technology competence is part of meeting the well-established duty of competence. Now we know that the duty of competence includes both substantive knowledge of law and awareness and competent use of the tools that lawyers use to practice law. In short: Lawyers can no longer be proudly unaware of technology and still claim to ethically serve their clients' needs.

Nationwide Adoption of Technology Competence

States started adopting revised Model Rule 1.1 in 2013, and the rate of adoption is increasing. At the time of drafting, 28 states had adopted some version of the new Model Rule and two other states (California and New Hampshire) have made other efforts to acknowledge a duty of competence related to technology.

Complementary Continuing Legal Education Update

The CLE ecosystem is also changing to reflect the new technology mandate and the corresponding need for technology training. In February 2017, the ABA adopted a revised Model Rule for Minimum Continuing Legal Education ("MCLE"). This revision responded to revised Model Rule 1.1 and Comment 8, and Florida's inclusion of technology-focused courses in its MCLE requirements, which became effective January 1, 2017. The revision helps lawyers comply with Model Rule 1.1. To encourage access to high quality technology programs, the Commission recommended accrediting technology MCLE programs. The revised MCLE requirements are important because they reinforce that the duty is continuing and that mere exposure to technology is not enough.

Technology Competence in Practice

To technology advocates, it may seem woefully insufficient to require lawyers to dedicate a few hours per year to developing technology competence. However, while one would hope that lawyers would strive for mastery, it is not what the duty of technology competence requires. Only a baseline level of competence in the tools we use is required and it is possible to attain that baseline through lower doses of training followed by actual usage. To that end, we must acknowledge that technology competence is broad yet attainable.

Debunking Myths About MS Word

Myth #1: MS Word doesn't pose an ethics issue...

A simple MS Word document implicates six ethics rules: Model Rules 1.1, 1.5, 1.6, 4.4, 5.1, and 5.3.

In practice, the definition of technology competence must include the tools that lawyers use to practice law, such as case management software, document management software, billing software, email, a PDF system with redacting capabilities, and the MS Office Suite, particularly MS Word. Any lawyer who does not develop basic skills in these six types of programs will risk ethical rebuke.

2

Why Does Technology Competence Matter?

Whether the impact of technology makes you afraid or excited, we should all think about the ethical and business ramifications of Model Rule 1.1. Potential implications include:

- unreasonable fees;
- failure to train and supervise; and
- lower realization rates and profits.

These dangers of failing to learn technology are explored below.

> *"Incompetent use of basic office technology may be more than a billing write-off—it may constitute an ethical violation."*

Unreasonable Fees

Failure to understand how technology works implicates multiple ethics rules, such as the obligation to bill fairly under Model Rule 1.5. Lawyers who refuse to learn to use technology properly could be overbilling clients for work that would have been done better and faster if they had used technology appropriately. Deliberately slow, low skilled, and low tech work could violate Model Rule 1.5 because this failure to work efficiently may amount to "churning" the bills. Further, inability to effectively use technology tools, or refusal to learn, raises issues of technology incompetence. And if incompetent representation means unreasonable fees, then failing to become competent in technology would also lead to unreasonable fees. This may be more than a billing write-off—it may constitute an ethical violation.

Failure to Train and Supervise

The ethical violations are not just limited to fees. The duty to train and supervise under Model Rules 5.1 and 5.3 relates to the duty of competence.

According to Model Rule 5.1(a), partners, senior lawyers, and firm management must ensure that the firm has developed, and continues to enforce, policies that direct and facilitate that all lawyers in the firm conform to the ethical rules. And under Model Rule 5.1(b), they must also ensure that all lawyers in the firm actually comply with all ethical rules. To be clear, in both cases, the ethical rules include the duty of technology competence. So if your subordinates are not meeting their ethical duties—and you fail to address the problem—then you are violating your own ethical duties.

Tech Competence and Client Confidentiality

Another practical impact of the duty of technology competence is the duty to protect client confidences under Model Rule 1.6. Even outside of the litigation context, the duty to not disclose information related to the client's representation plays a role. Under Model Rule 1.6(a) and (c), lawyers may not reveal client confidences and must take reasonable measures to protect them.

This has implications for every document drafted in MS Word. That's because MS Word documents contain hidden metadata that falls within the scope of "information related to the representation." Metadata includes everything about the document's properties, ranging from the file path and author permissions, to editing history (comments and track changes) and drafting time. Such metadata has the potential to reveal sensitive information about a client's case. A lack of technological understanding increases the risk that metadata will be unwittingly disclosed.

3

This duty extends beyond lawyers in the firm to practice support staff and vendors. Practice support staff play a key role in delivering legal services and managing outside vendors and resources. Because they work with lawyers, under Model Rule 5.3 they must also meet the ethical standards that lawyers meet. Firm management must have effective measures in place to ensure their compliance; and together, management and practice support staff must ensure that effective measures are in place to ensure ethical compliance of all vendors and staff.

Whatever the makeup of the team that provides legal services, each person must do so in a manner that is compatible with the responsible lawyer's own ethical obligations. That means that vendors (and staff) must have adequate security measures that meet the duty of confidentiality and must be technologically competent. It is the duty of the lawyer to supervise completion of the delegated work and compliance with ethical rules.

> *"Technological competence is not just a disciplinary or malpractice concern. It is becoming essential in a marketplace where clients handle more of their own legal work and use non-traditional legal service providers. To compete, lawyers need to learn how to leverage 'New Law'–technology and other innovations that facilitate the delivery of legal services in entirely new ways. Lawyers are also being pressed to make better use of well-established technologies, such as word processing."*
>
> The Twenty First Century Lawyer's Evolving Ethical Duty of Competence
> Andrew Perlman (2014)

Lower Realization Rates and Profits

When lawyers don't spend enough time on substantive, billable work, it hurts the bottom line. That's a particular challenge for solo and small firm lawyers. According to Clio's 2nd Annual Legal Trends Report, "[T]he average small-to-midsize firm only collects 1.5 hours of paid work time for each workday."

Before the bill even reaches the client, many lawyers voluntarily write down their time by 20-25% because they believe that the process took too long. While not expressly recognized as such, these voluntary write-downs are largely due to lack of technology competence, which pushes a larger portion of would-be substantive legal work into the non-billable clerical category. Without adequate technology training, assessment, and process management, lawyers are recognizing there is a problem with workflow and legal service delivery, but miss the root cause to address and are left without a tangible plan to resolve the problem.

Write-downs and discounts are a temporary salve to a long-term problem. Every tenth of an hour cut from the bill costs the firm the value of that time, reduces realization rates, and sets a precedent for further billing discounts. If nothing changes, over time, the funnel will continue to narrow, and the business of lawyering will become financially unsustainable.

When lawyers see they are losing so much of each day, the natural inclination is to work more or work harder. A real solution that would lead to coprosperity—and stop the narrowing of the funnel—would be to invest in learning the tools that lawyers use every day, such as MS Word. When lawyers become more proficient and efficient in using their basic office technology, both the lawyer and the client benefit. According to Casey Flaherty, on average a client will save 15% on its bill, while, at the same time, the firm will profit 16% more on the same work. So, rather than continuing to fight against office technology, lawyers should embrace learning it. With improved usage, lawyers can spend more time developing more nuanced arguments and creative solutions, which provides more value to clients.

Evidence shows that substandard MS Word skills won't cut it. Technological illiteracy results in inefficient and poor work product, lower realization rates, lost profits, and even malpractice. On the other hand, research shows that training to build competence works. According to a 2013 study by Capensys and Neochange Inc., "[L]egal workers who adopt technology and learn how to use it can bill for more of the time they spend working, achieving [25%] higher billable resource utilization[.]"

Clients want lawyers to deliver great work product but they're also demanding that lawyers cut costs and charge them less. And the ethics rules require that lawyers change their anti-technology ways. There are no longer any business, practical, or ethical excuses that lawyers can make to avoid learning about, understanding, and adopting technology. Lawyers who refuse to keep up with modern technology risk violating ethical obligations and face becoming obsolete.

Debunking Myths About MS Word

Myth #2: My job is thinking, not typing…

Over the last decade, the share of MS Word keystrokes attributable to lawyers (as compared to staff) has shifted from 39% to 80%.

How Does the Duty of Technology Competence Affect You?

If a lawyer is incompetent, the lawyer has three choices:

- Sufficiently learn the necessary information before undertaking the matter;
- Delegate to competent staff or associates; work with technical consultants and competent counsel; or
- Decline the representation.

Lawyers may seek help in meeting their duty of competence. Delegation is a viable option. But do not be tricked into thinking that delegation is an easy way out for lawyers lacking technology competence. Delegation means sharing authority and responsibility with an employee or a third party and adequately supervising them. Effective delegation takes work and consideration and can lead to great efficiencies. The person delegating must have enough knowledge and ability to give direction, ask questions, ensure ethical compliance, and determine whether the work was done properly. Without some level of technological literacy, a lawyer is incapable of providing proper oversight.

Debunking Myths About MS Word

Myth #3: I can delegate all grunt work in MS Word…

Even if you delegate, you must still have an awareness and understanding of what is possible and how the work should be done. On late nights, weekends, and in time crunches, you must be able to do this work yourself.

Partners and Supervising Lawyers

Word processing tools have become ubiquitous, and use of MS Word has increased for all lawyers. Staff are now expected to support up to eight lawyers, which is significantly more than the pre-2008 standard of supporting one to three lawyers. So more lawyers, regardless of seniority, are expected to do their own work. Despite high billing rates, partners and supervising lawyers are not exempt from this trend. In fact, it's because of their high billing rates that proficiency, not mere competence, is ever more important—even 30 minutes wasted struggling with MS Word is costly for the client and provides little, if any, value.

Debunking Myths About MS Word

Myth #4: My secretary will do it…

According to the Survey of Law Firm Economics, legal support jobs have steadily trended downward since 2007. It is projected that each support staff person will soon support seven or eight lawyers.

5

Under the ethics rules, partners and supervising lawyers are not responsible only for themselves. They are also charged with bringing all other lawyers and staff within their firm into ethical compliance, too. To meet the duty of adequate training and supervision, partners and supervising lawyers must create policies and procedures that facilitate compliance with all ethical duties. For technology competence, this means technology training programs.

Debunking Myths About MS Word

Myth #5: Young lawyers will do it…

Fewer than a third of students tested using the Legal Technology Assessment could perform more than 60% of the basic functions in MS Word required for legal practice.

Junior Associates

Young lawyers are often thought of as "digital natives". As a result, there is an assumption that they have innate technological skills that are helpful for legal work. However, young lawyers' technology experience is usually social or lifestyle-focused and their learning is undirected and informal. Nobody grew up using document management software, encrypted email, redacted PDFs, and MS Word in the way that lawyers do. Thus, when it comes to workplace technology, young lawyers' skills are incomplete and their knowledge is largely superficial.

Debunking Myths About MS Word

Myth #6: MS Word doesn't really matter…

According to a National Conference of Bar Examiners survey of recent law graduates, using basic office technology ranks 6th out of the 30 most important skills for a new lawyer to acquire. According to a survey by The Lawyer and Brochet, 99% of fee earners say MS Word is a critical tool, yet a third say they don't get the most out of it.

It is true that many young lawyers are more comfortable with technology. However, developing skills only happens when use is combined with competency-based training. Though young lawyers must take it upon themselves to develop technology competence under Model Rule 1.1, firm management must also support and encourage those efforts—not penalize them.

Designing Training Programs that Work

Training programs must be supported by firmwide policies that encourage, reward, and make time for it. Ideally, firms would incorporate training as part of a professional development program and align technology training with developing substantive core competencies necessary for advancement in each practice group. Without a truly supported firmwide technology training program designed to assess and actually build core competencies, lawyers will be set up for failure.

Management must carve out time for training and treat that time with respect. When lawyers and staff feel penalized for investing non-billable time in training, management undermines the program and fails to meet the duties set forth in Model Rule 5.1.

Assessment as the Foundation for Training

Successful training efforts start with a skills assessment, incorporate competency-based learning with deliberate practice, and have a clear, practical link to each lawyer's practice.

Assessment plays a key role in training. It serves as a reality check and provides a roadmap for future learning. It also helps to differentiate mere exposure from proficiency, which is necessary because superficial knowledge and years of exposure to programs make it easy for us to overestimate our skills.

Assessment-based learning rewards people who possess the necessary skills by allowing them to skip certain training, and provides direction for people who do not yet have the skills. With assessment, we focus our efforts on building competency without wasting time.

Becoming Technologically Competent: The Example of MS Word

Identifying Technology in Your Practice

Technology competence is about the tools that lawyers use to practice law rather than the substance of the law we practice. The software we use in the business of law is necessarily included in the mandate to learn technology. Nothing illustrates that more clearly than the example of MS Word.

> *"Using your computer as a glorified, glowing typewriter does not meet the minimum standard for technologically competent lawyers."*

Competency Starts with Software Everyone Uses

When Comment 8 was revised to explicitly state that technology is part of the duty of competence, it necessarily affected Comment 5 to Model Rule 1.1. So Comment 5 must be read to mean that technology is part of the "methods and procedures" necessary to competently provide legal services. Therefore, under Comment 5, lawyers must use the technology methods and procedures that meet the standards of competent practitioners. Today, no competent lawyer would rely solely upon a typewriter to write a contract, brief, or memo. Typewriters are not part of "methods and procedures" used by competent lawyers. So using your computer as a glorified, glowing typewriter is unlikely to meet the standards.

As legal professionals, we do intricate work and create complex documents, such as briefs, motions, contracts, exhibits, and e-filings. So even our daily word processing is more complicated than the average user. Document preparation, drafting, and polishing consumes a significant amount of every lawyer's time regardless of practice area. Therefore superficial and merely passable use of MS Word is not enough. When using technology, a baseline level of competence is necessary. Word processing is integral to practice and must be learned.

Legal Documents: Our Key Deliverable

As lawyers, our primary and most tangible deliverable is our written work. When the client representation ends, the written documents are the lasting evidence of the advice and counsel we gave or the value we created. Legal documents are more than just words on paper, they are meaningful representations of our work. Lawyers take writing seriously, and judges, colleagues, and clients evaluate legal documents harshly.

If written documents are our key deliverables, then it makes sense to think that we ply our trade with our word processing tools. Though the profession can be slow to change, a lawyer who cannot use word processing tools may soon seem like a carpenter who can't use power tools.

Benefits of Learning MS Word

Even small improvements in how we use MS Word, such as learning to apply styles and collaborate using track changes can have a significant impact. Though each new skill we develop for working in MS Word may seem minor in isolation, when taken together, they add up. Lawyers who use MS Word properly save time, allocate more time to substantive and satisfying work, write off less time on client bills, and have higher realization rates. 7

Skills to Learn in MS Word

These are some basic MS Word skills that every person at your firm should possess. Lawyers perform these tasks again and again, every day. If possible, they should be delegated to a lower-level employee. Yet, some level of competence at each task is necessary—even for partners—because partners are now typing and creating their own documents. The skills are:

- Apply and modify styles;
- Automatically number paragraphs or add line numbers;
- Clear document metadata;
- Create and update a table of contents and table of authorities;
- Insert and fix footers;
- Insert and delete comments;
- Insert and update cross-references;
- Insert hyperlinks;
- Insert non-breaking spaces;
- Insert page breaks;
- Insert section and paragraph symbols; and
- Use headings for navigation and accessibility.

Lawyer's Guide to MS Word Resources and Training

Part of learning technology is knowing what is possible in a given program and having resources to draw upon when needed. The Lawyer's Guide is an ever-expanding list of articles, blawgs, on-demand CLEs, companies, and products that help lawyers get the most from MS Word. The focus is on free, low cost, and tiny tech solutions, so it's a great resource for any lawyer.

www.intelligentediting.com/lawyersguide

It's also important to know that more is possible. Even if you will not become an advanced user, you should know that additional functions are available in MS Word, such as macros for repetitive tasks; creation of form documents; availability of a Quick Parts Gallery for reusable content; and customizable styles and templates. There are also third-party add-ins that can help save time on drafting and proofreading. The key is to know when you should look for a solution. Look for improvements in areas where you are wasting the most time or experiencing the most frustration.

> *"Comment 8 supplies a forward-looking directive to continue learning and seeking efficiency-enhancing solutions."*

Beyond Competence

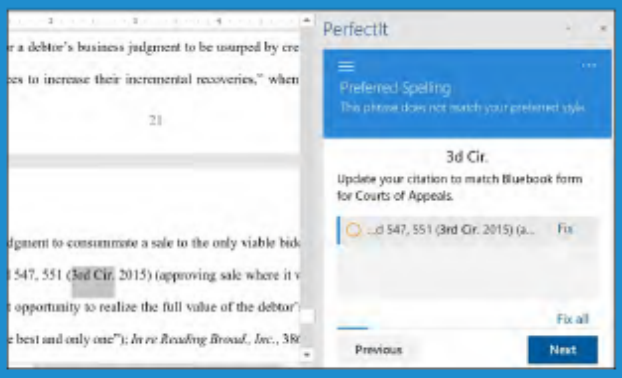
The duty of technology competence is not static. It addresses how lawyers currently work, and also requires lawyers to keep abreast of technological changes and developments. Comment 8 supplies a forward-looking directive that implies something active. Though learning the programs we already have is a good place to start, lawyers must also continue to seek solutions that will make them more efficient.

Keeping abreast of changes can mean looking for new programs or searching for ways to enhance your current set of programs. You can achieve both by learning about MS Word add-ins. Add-ins for MS Word are often developed by lawyers and are available through the MS Office Store or directly from the developer. They run within MS Word from the ribbon and add functionality and speed, simplifying cumbersome non-billable tasks. Add-ins designed for lawyers address the ever-increasing complexity of legal documents while leaving the final determinations to lawyers. They augment legal intelligence—not replace it.

8

PerfectIt with American Legal Style

You can dramatically cut the time you spend proofreading by using PerfectIt with American Legal Style. It helps find and correct consistency errors, legal-specific typos, and *Bluebook* formatting. PerfectIt also enforces leading legal writing style guidance, so it helps add polish to your text. It ensures that you work faster and better while still keeping complete control over the text of your document. It's inexpensive, easy to use and easy to install. A free trial is available from www.intelligentediting.com



For example, relying on spellcheck and grammar check alone will not help lawyers achieve the required levels of proofreading accuracy that the profession demands. According to our own survey, lawyers spend more than three hours per week proofreading, and many spend much more. A LexisNexis study found that lawyers are spending 10 hours per week on the task, and that, despite commercial and compliance risk, one third of lawyers are skipping proofreading all together. Though clients demand perfect documents, they do not wish to pay for the time involved in making them perfect. So the ethics and business decision should be to seek software to help. Add-ins for proofreading do exactly that. They're low cost and deliver instant impact.

> *"Relying on spellcheck and grammar check alone will not help lawyers achieve the required levels of proofreading accuracy that the profession demands."*

Pushing beyond the minimum level of competence and enthusiastically seeking improvements within MS Word benefits you and your firm. It improves your efficiency and ensures that you are not overbilling your clients for your written work.

9

Conclusion

Every lawyer and every legal workflow is affected by the duty of technology competence. Neither newness to the profession nor imminent retirement provide exemptions.

Data security and e-discovery get attention in the press. However, under the duty of technology competence, lawyers must use all of their technology tools of the trade properly. That starts with mundane tools that lawyers use every day, especially where there are ripe opportunities for learning, such as with MS Word. Ignoring that can lead to inefficient and poor work product, lower realization rates, lost profits, and creates a multi-layered cluster of incompetence and potential ethical violations across firms.

Tools for Enhancing MS

- **WordRake** helps with avoiding legalese and writing clear and concise prose, which also helps stay within page limits.
- **PerfectIt with American Legal Style** helps with proofreading, particularly with consistency errors, legal-specific typos, *Bluebook* formatting, and enforcing legal writing style guides.
- **Compass by jEugene** helps with verifying consistent substantive use of defined terms and cross-references.
- **CitePad** helps to accurately type *Bluebook* citations and toggle between irksome features, such as small caps and footnotes.
- **Best Authority** helps to automate marking citations and creating a table of authorities for long briefs.

To prevent that, every lawyer needs to be aware of their responsibilities. Firm management must create training programs to help all lawyers and staff to develop technology skills, and provide adequate time and incentive to do so. Individual lawyers should critically evaluate their workflows, time records, and billing outcomes to understand how they work, identify the programs they use most, and make a training plan to improve the areas where they need to build technology competence—followed by actual training. And support staff should seek training and play an active role in improving their own workflows, rather than just accepting assignments and maintaining the status quo.

> *"To succeed, firms must create a culture of continuous improvement, and empower individual lawyers and staff to explore, adopt, and fully learn technology."*

The legal profession is changing. Clients are expecting services to be delivered differently and lawyers must find new and efficient ways to meet client needs. Technology is part of that. The rapidly expanding nationwide codification of the duty of technology competence is driving a paradigm shift. As firms adjust, the most successful ones will be those that create a culture of continuous improvement, and empower individual lawyers and staff to explore, adopt, and fully learn technology.

About the Author

Ivy B. Grey is an accomplished lawyer and writer. She is the author of American Legal Style for PerfectIt, which is a proofreading and editing add-in for lawyers. Ivy is also a Senior Attorney at Griffin Hamersky LLP. She focuses her practice on bankruptcy, which includes distressed transactions and some litigation. She's been named as a Rising Star in the New York Metro Area for four consecutive years, and her significant representations include *In re AMR Corp. (American Airlines), In re Dewey & LeBoeuf LLP, In re Eastman Kodak Company, In re Filmed Entertainment Inc. (Columbia House)*, and *In re Nortel Networks Inc.* Ivy received her J.D. from the University of Houston Law Center where she was Chief Notes & Comments Editor of the Houston Business & Tax Law Journal. Prior to becoming a lawyer, Ivy spent about 10 years working in public relations and advertising. You can follow Ivy on twitter at @IvyBGrey or connect with her on LinkedIn at www.linkedin.com/in/ivybgrey/.

RESOURCES TO HELP LAWYERS AND LAW STUDENTS WITH TECHNOLOGICAL COMPETENCIES

Debbie Ginsberg, Educational Technology Librarian

The resources below are starting places for exploring legal technological competencies. The resources and the competencies they address are not exhaustive - future lawyers will need to continue to develop and improve new competencies throughout their practice.

Online teaching tools

These tools allow lawyers and law students to "learn by doing". Users can earn legal technology certificates by completing modules.

- Procertas -https://www.procertas.com/
    - Tests the user's ability to perform discrete tasks in programs like Word, Excel, and Acrobat. Users can use their own computers - PC or Mac - and their own versions of Office and Acrobat.
- National Society for Legal Technology - Legal Technology Certificate - https://legaltechsociety.wildapricot.org/certification
    - NSLT covers a wide variety of legal technologies. Users learn to use these technologies using online simulations.

Syllabuses

- Syllabi Commons (CALI) - https://techforlawstudents.classcaster.net/syllabi-commons/
    - A growing list of nearly 60 legal technology syllabuses and lecture modules donated by dozens of law schools

Sample Law School Programs

Many law schools are offering institutes, certificates, clinics, and courses integrating law and technology. These are a few examples.

- The Law Lab (Chicago-Kent) https://www.thelawlab.com/
- Cybersecurity & Data Privacy Certificate (Loyola LA) - https://www.lls.edu/academics/concentrationsspecializations/jdconcentrationscoursesofstudy/cybersecuritydataprivacy/
- Legal Innovation & Technology Certificate (Suffolk) - https://www.legaltechcertificate.com/
- Startup@BerkeleyLaw Clinic (Berkley) - https://www.law.berkeley.edu/experiential/startupberkeleylaw/entrepreneurs/
- Entrepreneurship & Innovation Clinic (Boston College) -https://www.bc.edu/bc-web/schools/law/academics-faculty/experiential-learning/clinics/entrepreneurship-innovation.html
- Online Dispute Resolution course (Santa Clara) - https://law.scu.edu/scheduled_classes/online-dispute-resolution-the-state-of-the-art-5-2/

- The Policy and Business of Cryptocurrencies course (Hofstra) - https://lawnews.hofstra.edu/2018/12/19/legal-technology-courses/

Online videos/webinars

- Law Technology Today webinars (ABA) - https://www.lawtechnologytoday.org/category/webinars/
    - These webinars address the "how to" for legal competencies.
- Why Law Faculty Need to Learn About Legal Tech and What they Need to Know webinar (AALS) - https://www.aals.org/sections/list/technology-law-and-legal-education/techwebinar1/
    - Moderated by this panel's own April Dawson, Speakers include Catherine Sanders Reach, ABA Techshow Co-Chair, and Michael Robak, the organizer of the law school speakers at past TECHSHOWs
    - Slides feature additional helpful resources

The annual CALI Conference features many programs on teaching technology to law students and law practice technology. The 2020 conference will be held at the Chicago-Kent College of Law - https://www.cali.org/CALI-Conference

- They Said There Would Be No Math: Law Schools Teaching High Tech and High Concept Courses (CALI 2019) -https://youtu.be/Cpw3PHe3gYU
- Law Students + Access To Justice + Legal Education Technology = A2J Author (CALI 2019) - https://youtu.be/UbCNGZHJyM4
- From Decoder Rings to Deep Fakes Translating Complex Technologies for Legal Education (CALI 2019) - https://youtu.be/AajWuBA6puc
- Are You Experienced: Simple Timesheets for Experiential Learning Courses (CALI 2019) - https://youtu.be/PyJar8HgJgs
- Teaching Tech to Law Students (CALI 2018) - https://youtu.be/jbaNGK4a6bw
- More CALI Videos - https://www.youtube.com/channel/UCAGrA9Jx9q6DSO1X1Ov0Y-Q

Libguides for teaching tech

Law school libraries' online guides can be great starting points for all kinds of topics. The guides below provide additional resources about law practice technologies and technology competencies.

- Law Practice, Management, and Technology (Florida State University) - https://guides.law.fsu.edu/LawPracticeandManagement/Home
- Law Firm Technology (University of South Carolina) - http://guides.law.sc.edu/lawfirmtech
- Legal Technology for Students and Practitioners (Maine School of Law) - http://lawguides.mainelaw.maine.edu/lawtech/duty

Useful Articles and resources

- ABA TECHREPORT 2019 (a good overview of current legal tech issues) - https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/
- Law Technology Today Quick Tips Archives (ABA) - https://www.lawtechnologytoday.org/category/quick-tips/
- How Legal Professionals Can Keep up With Technology - https://www.lawtechnologytoday.org/2019/10/how-legal-professionals-can-keep-up-with-technology/
- Do Lawyers and Law Students Have the Technical Skills to Meet the Needs of Future Legal Jobs? - http://www.slaw.ca/2017/06/29/do-lawyers-and-law-students-have-the-technical-skills-to-meet-the-needs-of-future-legal-jobs/
- 7 Key Tech Skills for Law Students - https://www.lawyer-monthly.com/2018/11/7-key-tech-skills-for-law-students/
- Teaching Tech: How Legal Education Coursework Is Changing in Today's Digital Era - https://www.law.com/legaltechnews/2019/10/01/teaching-tech-how-legal-education-coursework-is-changing-in-todays-digital-era/?slreturn=20200006204253

Legal Technology Competencies Outline

The list below is a starting point for determining what technologies lawyers and law students should focus on. Individual practices will require additional competencies. New technologies and technological threats will also expand this list.

Everyday work

No one wants to spend hours fighting Word documents. Mastering the software you use every day will save hours of time - and alleviate legal work's most common frustrations.

- Common desktop software like Office and Acrobat
- Practice software (e.g. discovery software for trials or contract-analysis software for transactional work)
- Mobile practice apps

Marketing

If you are looking for new clients, online tools can be invaluable.

- Social media (e.g. when and how to use networks like Twitter, Facebook, and LinkedIn)
- Websites (creating, securing, updating, and search engine optimization)

Security

Law firms have been called the "soft underbelly of the internet." Taking precautionary measures to protect your firm's and your clients' data is no longer just an option.

- Threats (from ransomware to stealing passwords)
- Protections (e.g. antivirus software, VPNs)
- Responses (how will you respond *when* you are hacked?)
- User training (training yourself and others in your firm to avoid common threats)

Efficiency

Your time is literally money. Evaluating firm processes and projects can speed up your work, not to mention improve consistency and reduce errors.

- Process management - how lawyers handle common or repetitive work)
- Project management - how lawyers handle individual matters
- Task management

Resource Evaluation

Before you install/buy/license a new product:

- Product research (e.g. what problems does it solve and will the product make your life easier?)
- Product evaluation (e.g. what are the benefits and risks?)
- Budget evaluation (e.g. what are the costs for purchase, what are the implementation costs, and what will the future maintenance costs be?)
- Future-proofing (e.g. can you transfer data/work/information to a competitor?)
- Working with vendors (e.g. what are the terms of service?)

Continuous Learning

- Planning learning paths (e.g. what technologies do you need to learn now to improve your practice, and what will you learn in the future?)

Ethics

- Model Rule (1.1. Comment 8)
- Other applicable rules (other rules may also require lawyers to use technology well)

TECHSHOW2020

Innovation Foundation: Forward-Thinking Law School Curriculum

WRITTEN BY:

Nicole Morris
Jennifer Wondracek
Alexander Rabanal

PRESENTERS:
Nicole Morris
Alexander Rabanal
Jennifer Wondracek

January 14, 2020

THE MIT SCHOOL OF LAW? A PERSPECTIVE ON LEGAL EDUCATION IN THE 21ST CENTURY

*Daniel Martin Katz**

"Protected from the harsh winds of the markets, legal educators were free to develop a hothouse plant that bore little resemblance to anything that grew in the natural soil of law practice. The hothouse walls are falling, leaving law schools to cope with markets."[1]
Larry Ribstein
Practicing Theory: Legal Education for the 21st Century

TABLE OF CONTENTS

* Associate Professor of Law, Michigan State University. Ph.D. University of Michigan (2011), J.D. University of Michigan (2005), M.P.P. University of Michigan (2005).

1. Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649, 1652, 1655 (2011) [hereinafter Ribstein, *Practicing Theory*].

I. INTRODUCTION

This is a symposium for the late Larry Ribstein. As the above quote highlights, Larry could be direct. In a similar vein, let me do the same. Despite some of the blustery rhetoric attendant to the ongoing market transition,[2] lawyers and the market for legal services are not going away.[3] Lawyers serve integral roles in a wide variety of social and political systems. Their work supports the proper functioning of markets and helps individuals and organizations vindicate their respective rights. At the same time, the processes associated with completing their work—as well as the contours of their respective expertise and judgment—are already changing.[4] These changes are being

2. *See, e.g.*, Daniel D. Barnhizer, *Cultural Narratives of the Legal Profession: Law School, Scamblogs, Hopelessness, and the Rule of Law*, 2012 MICH. ST. L. REV. 663 (2012).

3. That said, a nontrivial reset in the total number of law jobs and the contours of those jobs is exceedingly possible.

4. *See generally* MITCHELL KOWALSKI, AVOIDING EXTINCTION: REIMAGINING LEGAL SERVICES FOR THE 21ST CENTURY (2012); BRUCE MACEWEN, GROWTH IS DEAD: NOW WHAT?: LAW FIRMS ON THE BRINK (2013); RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES (2008) [hereinafter SUSSKIND, THE END OF LAWYERS?]; RICHARD SUSSKIND, TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE (2013) [hereinafter SUSSKIND, TOMORROW'S LAWYERS]; Daniel Martin Katz, *Quantitative Legal Prediction—or— How I Learned to Stop Worrying and Start Preparing for the Data Driven Future of the Legal Services Industry*, 62 EMORY L. J. 909 (2013)[*hereinafter Katz, Quantitative Legal Predicition*]; Neil Rickman & James M. Anderson, *Innovations in the Provision of Legal Services in the United States*: *An Overview for Policymakers*, KAUFFMAN-RAND INST. FOR ENTREPRENEURSHIP PUB. POLICY, 2011, *available at* http://www.rand.org/content/dam/rand/pubs/occasional_papers/2011/RAND_OP354.pdf; Drury D. Stevenson & Nicholas J. Wagoner, *Lawyering in the Shadow of Data*, 66 FLA. L. REV. (forthcoming 2014), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325137. *See also* Nolan M. Goldberg & Micah W. Miller, *The Practice of Law in the Age of 'Big Data'*, NAT'L L. J. (Apr. 11, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202489457214; Rachel Zahorsky & William D. Henderson, *Who's Eating Law Firms' Lunch?*, A.B.A. J. (Oct 1, 2013, 5:30 AM), http://www.abajournal.com/magazine/article/whos_eating_law_firms_lunch; Farhad Manjoo, *Will Robots Steal Your Job?*, SLATE (Sept. 29, 2011, 2:42 AM), http://www.slate.com/articles/technology/robot_invasion/2011/09/will_robots_steal_your_job_5.html; John Markoff, *Armies of Expensive Lawyers, Replaced by Cheaper Software*, N.Y. TIMES (Mar. 4, 2011), http://www.nytimes.com/2011/03/05/science/05legal.html; Sharon Driscoll, *A Positive Disruption: The Transformation of Law Through Technology*, STAN. LAW. (June 4, 2013), http://stanfordlwyer.law.stanford.edu/2013/06/a-positive-distruption/; Jeff Gray, *Welcome to Robot, Android & Automaton LLP*, GLOBE & MAIL (June 14, 2011,

driven by a number of economic and technological trends, many of which Larry identified in a series of important articles published in the years before his untimely death.[5]

At the outset, it is worth noting that the legal services industry is not a monolith, and change has and will continue to manifest in different ways across different tranches of work. At the high end of the market, lawyers often help their clients navigate increasingly complex legal, regulatory, and institutional environments. Indeed, helping navigate complexity is part of the core value proposition offered by a significant number of lawyers. Arguably, the legal system and society are getting more complex;[6] given complexity is at the core of bespoke work,[7] the market for lawyers that can thrive in complex environments should remain robust. The ongoing question for legal educators is how best to equip future legal professionals to deliver value for their respective clients in a variety of complex multi-disciplinary environments. Whether it is a multi-billion dollar M&A deal, the construction of a comprehensive and legally defensible document management and retention system, a challenging piece of bio-tech centered patent infringement litigation, or Dodd Frank compliance, high-end lawyering is an exercise in helping clients navigate in opaque environments.

Despite growth in complexity and likely inelastic demand for the very best lawyers, a non-trivial fraction of today's legal work is not high end legal architecting and does not require nearly as many individuals in order to see the work accomplished.[8] For a certain range of tasks, high cost human capital can be substituted for less expensive alternatives—whether this is through labor arbitrage, better processes, or software.[9] In the medium and long term, some of the largest financial returns likely will be obtained by the set of individuals who are able to help transition the legal industry to the proper reallocation of

6:58 PM), http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/welcome-to-robot-android-automaton-llp/article4261559/; Tam Harbert, *Big Data Meets Big Law: Will Algorithms Be Able to Predict Trial Outcomes?*, L. TECH. NEWS (Dec. 27, 2012), www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202555605051; Aric Press, *The Future of Law as Seen from Silicon Valley*, AMERICAN LAWYER (Mar. 12, 2013, 9:06 PM), http://www.americanlawyer.com/id=1202591626075/The-Future-of-Law-as-Seen-from-Silicon-Valley.

5. *See generally* Bruce H. Kobayashi & Larry E. Ribstein, *Law's Information Revolution*, 53 ARIZ. L. REV. 1169 (2011); Larry E. Ribstein, *Delawyering the Corporation*, 2012 WIS. L. REV. 305 [hereinafter Ribstein, *Delawyering the Corporation*]; Ribstein, *Practicing Theory*, *supra* note 1; Larry E. Ribstein, *The Death of Big Law**, 2010 WIS. L. REV. 749 [hereinafter Ribstein, *The Death of Big Law**].

6. This is a topic that I have begun to explore in recent work. *See*, Michael J. Bommarito II & Daniel M. Katz, *A Mathematical Approach to the Study of the United States Code*, 389 PHYSICA A 4195 (2010). Daniel Martin Katz & Michael J. Bommarito II, *Measuring the Complexity of the Law: The United States Code*, J. ARTIF. INTELL. & L. (2014 Forthcoming); *see* Paul Lippe & Daniel Martin Katz, *10 Predictions About How IBM's Watson Will Impact the Legal Profession*, ABA J, – NEW NORMAL (Oct. 2, 2014, 10.00 AM) http://www.abajournal.com/legalrebels/article/10_predictions_about_how_ibms_watson_will_impact.

7. *See generally* SUSSKIND, THE END OF LAWYERS?, *supra* note 4, at 29.

8. *See, e.g.*, Manjoo, *supra* note 4; Markoff, *supra* note 4.

9. *Id*.

the legal production function.[10] Both existing lawyers and law students are awakening to this reality and a non-trivial number are building companies that will help support the transition.[11]

The transition is underway in high to medium complexity work and to a lesser extent in the retail segment of the legal market. So called "regular people law"—i.e., affordable legal services for the middle class, pro-bono and "low bono" market segment—still remains illusive. Using technology, process, and lower cost infrastructure, there are a number of notable efforts to better serve the underserved and thereby meaningfully and sustainably provide access to justice. However, much more work remains to be done.

As Larry predicted, *law's information revolution* is very much underway. Whether the clients are institutions or just regular folks, it is a process and efficiency revolution. For lawyers, substantive expertise is (of course) a minimum expectation, but going forward it may not be the primary dimension of competition. Within legal organizations (both law firms and, more importantly, corporate law divisions) and in the legal entrepreneurship community, process, workflow, metrics, efficiency, and analytics are beginning to take hold. It is transforming the practice of law in ways that are not yet fully realized. Complete change typically takes longer than it should.[12] Organizations are sticky, due to noisy signaling and other factors, and markets take time to clear.[13] But there are signs that this time is indeed different.[14]

10. To the extent that one can model legal service provision as the byproduct of some sort of Cobb-Douglas style production function, the present shift in the market is aimed at substituting labor for capital (i.e., software, process and other related technology).

11. *See, e.g.*, Rachel M. Zahorsky, *Vendor or Competitor? Pangea3 Purchase Pleases Some, Worries Others* A.B.A. J. (Feb. 1, 2011, 1:50 AM), http://www.abajournal.com/magazine/article/vendor_or_competitor/; Jessica Bruder, *A Start-Up Rethinks the Process of Getting a Trademark*, N.Y. TIMES (Apr. 11, 2012, 7:00 AM), http://boss.blogs.nytimes.com/2012/04/11/a-start-up-re-thinks-the-process-of-getting-a-trademark/; Lora Kolodny, *Khosla Ventures, Peter Thiel Back Legal Research Startup Judicata*, WALL ST. J. BLOGS (May 28, 2013, 1:34 PM), http://blogs.wsj.com/venturecapital/2013/05/28/khosla-ventures-peter-thiel-back-legal-research-startup-judicata/; Cari Sommer, *How Entrepreneurship is Reshaping the Legal Industry*, FORBES (July 24, 2013, 11:46 AM), http://www.forbes.com/sites/carisommer/2013/07/24/how-entrepreneurship-is-reshaping-the-legal-industry/; Christina Farr, *Meet the Startups That Are Giving Everyone Affordable Access to Justice*, VENTURE BEAT (Mar. 20, 2012, 10:16 AM), http://venturebeat.com/2012/03/20/legal-startups/; Tam Harbert, *Stanford Law: Vortex for Legal Tech Startups*, LAW TECH. NEWS (June 1, 2013), http://www.lawtechnologynews.com/id=1202600694430; Joshua Kubicki, *6 Reasons the Legal Industry is Ripe for Startup Invasion*, TECH COCKTAIL (Mar. 25, 2013), http://tech.co/legal-industry-startup-invasion-2013-03; Alice Truong, *LegalForce Revs Up $10M Fund to Help Startups Build Patent Portfolios*, FAST COMPANY (July 24, 2013, 5:34 PM), http://www.fastcompany.com/3014799/legalforce-revs-up-10m-fund-to-help-startups-build-up-patent-portfolios.

12. *See generally* CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL (1997); EVERETT M. ROGERS, THE DIFFUSION OF INNOVATIONS (1962).

13. Real labor markets do not instantaneously adapt to changes in the broader environment. Indeed, many of the returns obtained by entrepreneurs who identify and capture gains associated with such moments of transition.

14. Probably the most important signs are (1) the changing appetite on behalf of general counsels to pay otherwise outsized legal bills and (2) the significant amount of startup activity that has taken place in the legal industry since the financial crisis began in 2008.

Taking stock of these changes, this Essay is a thought exercise about a hypothetical MIT School of Law—an institution with the type of curriculum that might help prepare students to have the appropriate level of substantive legal expertise and other useful skills that will allow them to deliver value to their clients as well as develop and administer the rules governing markets, politics, and society as we move further into the 21st Century.[15] It is a blueprint based upon the best available information, and like any other plan of action would need to be modified to take stock of shifting realities over time. It is not a solution for all of legal education.[16] Instead, it is a targeted description of an institution and its substantive content that could compete very favorably in the existing and future market. It is a depiction of an institution whose students would arguably be in high demand. It is a high-level sketch of an institution that would be substantively relevant, appropriately practical, theoretically rigorous and world class. In other words, it is a plant that can survive and thrive outside those *hothouse walls*.[17]

If Larry was right and law schools now have to deal with markets, the question is how best to do so. As of this very minute, there are approximately two graduating law students for each available law job.[18] This situation will

15. It is important to note that this is not a new idea. Indeed, it is a vision that can be originally attributed to Robert Rines, a professor at MIT. *See History of IP at UNH Law*, UNIV. N.H. SCH. LAW, http://law.unh.edu/franklin-pierce-ip-center/about/history-of-ip-at-unh-school-of-law (last visited July 14, 2014) ("More than 35 years ago, Robert Rines, a patent attorney and professor at the Massachusetts Institute of Technology (MIT) had a dream of a MIT School of Law, where the focus would be on the interface of law and science as well as on training patent lawyers with a practice-based approach. What was intended as the 'MIT North Campus' in New Hampshire was not to be, as a change of administration at MIT resulted in a decision not to pursue building a law school."). Franklin Pierce (now called University of New Hampshire Law School) is one of the leading schools teaching Patent Law and is able to compete against schools such as Stanford and Berkeley.

16. The benefit of adopting the approach outlined herein is particularly strong in an environment like the present where very few institutions are pursuing this strategy. Law schools cannot change the aggregate demand for legal services, but it is very possible to increase the availability of opportunities for their students.

17. *See* Ribstein, *Practicing Theory*, *supra* note 1

18. On the labor supply end of the equation, according to the ABA Section of Legal Education and Admissions to the Bar, during the 2012–2013 academic year there were 46,478 J.D. or L.L.B. awarded, while 2011–2012 witnessed 44,495 graduates and 2010–2011 witnessed 44,258 J.D. or L.L.B. graduates. *See Enrollment and Degrees Awarded 1963 – 2012 Academic years*, 2012 A.B.A. SEC. LEGAL EDUC. AND ADMISSIONS BAR 1, *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf. The best available forecast of current and long-term future demand is produced by the Bureau of Labor Statistics. Collectively over the 2010–2020 decade they forecast 131,000 jobs will be created or roughly 13,100 per year. *See* C. Brett Lockard & Michael Wolf, *Occupational Employment Projection to 2020*, MONTHLY LAB. REV., 84, 94 (2012). This 13,100 number can be added to the existing rate of turnover which could range from 7,000 to 13,000 per year yielding a total set opportunities ranging from 20,000 to 26,000 per year. The past few years have witnessed significant declines in the number of applicants and number of enrolled students. To the extent that these declines continue they would eventually lead to some sort of equilibrium state some time between 2017 and 2021. *See* Deborah J. Merritt, *When Will Graduates = Jobs?,* LAW SCH. CAFÉ (Nov. 22, 2013, 8:40 PM), http://www.lawschoolcafe.org/thread/when-will-graduates-jobs/. There is a significant difference between the total number of jobs and the contours of those jobs. The overall market is diverse and cannot be captured by a single characterization. The operating premise of this

hopefully improve in the coming years,[19] but, generally speaking, changing the macroeconomic environment is not within the province of an individual educational institution.[20] The demand for legal services is set exogenously by the dynamics of the relevant market(s). What an individual institution can do is compete and do the best possible with respect to its students. For many institutions, if they accept the status quo contours of the market as given, they will underperform. The way to win is to stop trying to be the "50th or 100th best Harvard and Yale"[21] and instead to concentrate on outflanking these and other institutions by becoming leaders in law's major emerging employment sectors.

The objective function that educational institutions must seek to optimize is high quality jobs that support the respective educational investment by students.[22] Some institutions easily satisfy this criteria,[23] while many others fall short. As Bill Henderson has argued: "[T]he new gold standard employment

Article is that polytechnic legal jobs will be one source of growth in the legal labor market. For a certain range of increasingly important current and future legal jobs, the existing liberal arts tradition present in most law schools will not be able to compete with a well-specified MIT Law style offering. The market will selected the polytechnic alternative.

19. Given the decreasing number of law school applicants, the ratio of jobs to graduates should improve. There is, however, a significant backlog of applicants who are seeking law or law-related jobs. In addition, even if more jobs do return, the contours of the work performed by those white-collar professionals is still likely to change. Most importantly, all jobs are not equal so even as conditions improve the question will still remain - which institution(s) is preparing its students for long term success as we move further into the 21st Century.

20. Retail legal services represent one potential untapped frontier. *See* Chas Rampenthal*, Retailing Lessons for the Legal Industry,* Presentation at ReInventLaw Silicon Valley (Mar. 8, 2013), *available at* http://reinventlawchannel.com/chas-rampenthalretailing-lessons-for-the-legal-industry/. To the extent that entrepreneurially minded enterprises are able to lower price points and convert the unrepresented population into those receiving legal services, this could obviously change the broader macro legal labor market. Many of the startups in the legal space are making this sort of a play. The key to success is to leverage technology, design, and a novel business model in order to deliver services in a cost effective manner. To the extent that an institution helped support this transition, then it could be said to have actually changed the otherwise exogenous demand function.

21. The legal academy's obsession with mimicry is well documented—and there are no two institutions that more beloved when it comes to mimicry than Harvard and Yale. This extends to faculty hiring. *See, e.g.*, Daniel Martin Katz, et al., *Reproduction of Hierarchy? A Social Network Analysis of the American Law Professoriate*, 61 J. LEGAL EDUC. 76, 84 (2011) [hereinafter Katz, *Reproduction of Hierarchy*]. It also extends to various practices and perspectives. *See, e.g.*, MARK A. GRABER, TRANSFORMING FREE SPEECH: THE AMBIGUOUS LEGACY OF CIVIL LIBERTARIANISM 134 (1992); Pamela Brandwein, *A Judicial Abandonment of Blacks? Rethinking the "State Action" Cases of the Waite Court*, 41 LAW & SOC'Y REV. 343, 374–75 (2007).

22. There are a number of important caveats to this claim. There are obviously other goals associated with enterprise, but it should not be a controversial claim to assert that the primary goal of professional education should be ensuring that students can obtain relevant professional jobs (broadly construed).

23. Even taking a broad perspective on the question and including positions in business and nonprofit enterprises as well as the J.D. advantage type positions, the relative employment rates by schools differ widely. To access data on employment rates by schools, see *ABA Section on Legal Education and Admission to the Bar*, A.B. A. SEC. LEGAL EDUC. & ADMISSIONS BAR, http://employmentsummary.abaquestionnaire.org/ (last visited July 14, 2014). For schools that easily place a substantial percentage of their class, there exists in a sense a surplus of resources, which the institution can spend to pursue other directives and goals. This surplus once extended to far more institutions, but as Larry noted for many institutions "[t]he hothouse walls are falling, leaving law schools to cope with markets." Ribstein, *Practicing Theory, supra* note 1, at 1652.

outcome is full-time, long-term professional law-related jobs. The issue of how to maximize this outcome is so pressing and intricate that it may warrant trade-offs in the admissions process, favoring students will lower credentials but more rock-solid employment prospects on the backend at graduation."[24]

The key is to build a better product and demonstrate its superiority to the marketplace. Obviously, this is a non-trivial endeavor. The first question to ponder is what precisely constitutes a better product? Better for what set of tasks that lawyers undertake? The legal education and legal services market contain a series of market distortions, information asymmetries, and agency problems.[25] In addition, both the market for legal education and a market for legal services feature a variety of noisy signals.[26] Namely, it is difficult to overcome strong brands and the noisy lagging signals that surround the classification of quality.[27] At all places within the industry—law schools, law professors, practicing lawyers, law firms, and general counsels—assessing the quality of the relevant product or service is extremely difficult.

On the education side of the equation, students historically seek branded institutions. Specifically, they tended to seek institutions with higher U.S. News rankings. The general assumption held by students (and faculty) is that a higher ranked institution would result in better labor market outcomes (as measured by dollars or other related quality measures).[28] From the perspective of many students, whether those outcomes were due to sorting or the treatment effect of the underlying education is actually immaterial. The would-be students voted with their feet and they often did so with little deep understanding of the quality of the product being offered or how their respective skills or background were suited to offerings at particular institutions. In many unfor-

24. *See* William D. Henderson*, The Competition Is for Full-Time, Professional Law-Related Jobs, Part II*, THE LEGAL WHITEBOARD BLOG, *available at* http://lawprofessors.typepad.com/legalwhiteboard/2013/06/the-competition-is-for-full-time-law-related-professional-jobs-part-ii.html; *see also* William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 462 (2013) [hereinafter Henderson*, A Blueprint for Change*]. The U.S. News rankings make this tradeoff difficult. Among the many shortcomings of the U.S. News rankings is that it should care far less about front end entering credentials and more about the back end employment outcomes.

25. Historically, students were often (and still are) myopic regarding their own lives in the law. They are, however, not entirely to blame. To the extent they provided misleading or otherwise inaccurate information (and many of them did) to would-be law students, law schools deserve blame as well. Going forward, transparency initiatives such as the Law School Transparency Project and otherwise better available data have helped reduce the information asymmetry present in the legal education market. For more on transparency, see Rachel M. Zahorsky*, Kyle McEntee Challenges Law Schools to Come Clean*, A.B.A. J. (Sept. 19, 2012, 9:00 AM), http://www.abajournal.com/legalrebels/article/kyle_mcentee_scourge_of_the_status_quo; *see also* LAW SCH. TRANSPARENCY, http://www.lawschooltransparency.com/ (last visited July 14, 2014).

26. When trying to classify the quality of one's legal education and one's lawyer, it is difficult for the relevant consumer to generate a clean assessment.

27. This is a problem that is not unique to legal education and the legal services.

28. At a high level, such a pattern has historically been present. With respect to labor market outcomes, though, the distances between institutions are nonlinear. In other words, U.S. News is an ordinal rank while job placement is indexed between zero and one hundred. Other than in a few discrete stair steps, small to medium differences in U.S. News ranking typically do not correspond to significant changes in labor market outcomes.

tunate instances, would-be students were often myopic about their own likely prospects—their own "lives in the law."[29] Incoming students too often selected programs, academic tracks, and institutions that were poorly configured to the economic realities of their current and future legal labor market.[30]

The legal labor market (particularly at the entry level) is also very noisy. Large law firm partners sell their time as well as the time of their associates to their clients. To the extent there were questions raised regarding why a particular associate was working on their matter, the firm could answer with statements such as "well they went to XYZ elite institution or were at the very top of their class at ABC regional institution." This brand signal served as a placeholder for quality because, as noted above, lawyer quality is among the most difficult of measurement problems.[31] Both in law and in consumer markets generally, in the absence of clearly better alternative measures, firms and clients fixate on well-established brands.

An entrepreneurially minded law school has to overcome the existing brand signals. This is necessary as the institution seeks to obtain an increasing share of the existing jobs, and it is important in order to position its students to take advantage of places where new labor market openings are created. The high level workflow is simple—train, attract, and place students (in that order). To understand where the placement opportunities lie, one must work backwards starting with the employment end of the pipeline and ask employers this question: "What would it take for you to hire one (or more) of our graduates?" This information is a useful starting point but not complete because the target is shifting and thus even the employers are not quite sure what they want.[32]

29. *See, e.g.*, Daniel Martin Katz, *Thoughts on the State of American Legal Education—The New York Times Editorial Edition*, COMPUTATIONAL LEGAL STUDIES, (Nov. 28, 2011) http://computationallegalstudies.com/2011/11/28/thoughts-on-the-state-of-american-legal-education-the-new-york-times-editorial-edition/ ("Students do carry some of the blame here. They are far from realistic about their position in the market for legal services and thus pursue coursework and training for which there is limited (zero) labor market payoffs. This happens at every institution, every year and has been going on for a very long time.").

30. In other words, the students selected a specialty track for which there was little or no chance that in their specific circumstance a job would follow.

31. Direct measurement of lawyer quality and performance is among the most challenging questions facing our industry. Various organizations are attempting to develop such metrics. *See* Steve Gibson et al., *Moneyball for Law Firms*, AM. LAW. DAILY (Oct. 10, 2011, 4:00 PM) http://amlawdaily.typepad.com/amlawdaily/2011/10/moneyball-for-law-firms.html. In the absence of alternative metrics, hiring partners end up relying on pedigree and this reliance is too often misplaced. *Id.* ("Bias among brilliant equity partners? Yes, it happens. A good example is attitudes toward law school pedigree. The data suggests that, in several firms, a subset of partners who attended elite law schools often give higher performance ratings to associates who also attended elite law schools—even when non-elite associates are statistically identical on every other measure. In contrast, when looking at the same group of associates, partners who did not attend elite law schools observe no performance gap."); *id*. ("Using [a] wide range of biographical data, [its] Moneyball analyses reveal that law firms are often systematically overvaluing some attributes, ignoring others that really matter, and generally making bad tradeoffs in both entry level and lateral lawyer 'drafts'.").

32. There are entirely new job titles with entirely new set of skills required. These jobs are an important source of growth within the industry. *See* Stephanie Francis Ward, *15 Fairly New Legal Industry Jobs and 6 More You May See Soon*, A.B.A. J. (Sept. 30, 2013, 4:57 PM),

For example, a recent Macarthur Foundation study noted sixty-five percent of grade school students will end up undertaking a job that has not yet been invented.[33] While such extreme uncertainty is arguably not present in the legal services industry, this statistic points us to a basic insight regarding labor markets—past performance is not necessarily indicative of future results. This is particularly true in periods of disruption.

The balance of this Article proceeds as follows: Part II sets the stage by highlighting several recent trends in the market for legal services. Taking stock of those trends, Part III highlights an alternative paradigm for legal education and describes the polytechnic style of legal education that students might obtain at an MIT School of Law. Part IV carries through on that basic thought experiment by describing the process of attracting, training, and placing students that would occur at MIT Law. Part V provides some concluding thoughts.

II. THREE FACES OF LAW & ENTREPRENEURSHIP AND FIVE LARGE TRENDS IN THE LEGAL INDUSTRY

A. Three Faces of Law & Entrepreneurship

As a starting point, it is important to highlight three distinct ways in which entrepreneurship and entrepreneurial thinking are present in the legal industry. The classic version of law and entrepreneurship, as understood by most legal academics and practitioners, involves lawyers who generate legal work on behalf of entrepreneurs. Such work is critical to support the effective protection of inventors, innovators, and others devoted to startup type activity. This includes crafting operating agreements, company incorporation materials, and DBAs, protecting intellectual property, drafting, and reviewing term sheets, as well as a whole host of other relevant legal work. Lawyers who successfully represent entrepreneurs help their clients navigate the startup process from idea to company formation and beyond. Across the entire spectrum of the economy, these tasks require the talents of a non-trivial number of lawyers

http://www.abajournal.com/legalrebels/article/what_new_legal_services_jobs_have_emerged_in_the_last_five_years/ (noting that the "latest and greatest law jobs" include legal risk manager, legal knowledge engineer, alternative litigation funder, legal pricing specialist, contract or litigation analyst). Allow me to add a few more—legal information architect, legal product designer, legal project manager, legal process engineer, etc. For a recent example of one such new "J.D. Advantage Job," see Bill Henderson, *What Does a JD-Advantaged Job Look Like? Job Posting for a "Legal Solutions Architect,"* THE LEGAL WHITEBOARD (Oct. 15, 2013) http://lawprofessors.typepad.com/legalwhiteboard/2013/10/what-does-a-jd-advantaged-job-look-like-job-posting-for-a-legal-solutions-architect.html.

33. *See* Virginia Heffernan, *Education Needs a Digital-Age Upgrade*, N.Y. TIMES OPINIONATOR BLOG (Aug. 7, 2011, 5:30 PM), http://opinionator.blogs.nytimes.com/2011/08/07/education-needs-a-digital-age-upgrade/ ("If you have a child entering grade school this fall, file away just one number with all those back-to-school forms: 65 percent. Chances are just that good that, in spite of anything you do, little Oliver or Abigail won't end up a doctor or lawyer — or, indeed, anything else you've ever heard of. According to Cathy N. Davidson, co-director of the annual MacArthur Foundation Digital Media and Learning Competitions, fully 65 percent of today's grade-school kids may end up doing work that hasn't been invented yet.").

and law firms. In addition, it has drawn the attention of a number of law schools which in recent years have launched both clinics and academic centers devoted to this face of law and entrepreneurship.[34]

While traditional law and entrepreneurship is certainly important and worthwhile, there is much more, however, to law and entrepreneurship. Indeed, there are two other dimensions that are worthy of mention because they are driving meaningful innovation in the legal industry. While there are lawyers *for* entrepreneurs (as described above), equally interesting are lawyers working *as* entrepreneurs within the legal industry. The efforts of these individuals are driving innovation in both substantive law and in the process through which legal services are produced and delivered.

Starting with the substantive innovations, there exist a constantly unfolding set of substantive legal questions for which entrepreneurially minded attorneys can demonstrate competency and mastery. Innovation and entrepreneurship around substantive legal questions is not a new idea. Each time the world changes in some substantively meaningful manner, the law is called upon to respond in turn.

Perhaps the most famous example of such a substantive innovation is the poison pill defense (shareholder rights plan) crafted in 1982 by Martin Lipton at Wachtell Lipton in a response to the ever-increasing set of corporate raiders who were targeting companies for a hostile takeover.[35] Some have characterized the poison pill as "the most important innovation in corporate law since . . . [the invention of] the trust for John Rockefeller and Standard Oil in the late 1879."[36] Lipton's substantive innovation made him perhaps the most sought after corporate lawyer in America. While it is rare for a major substantive legal innovation to be ascribed to a single practicing lawyer, there are many examples of emerging areas of law where lawyers are seeking to stake out their respective expertise. Contemporary examples include 3D printing, driverless cars, augmented reality, drones, cybersecurity and data breach, the Internet of Things, and big data and privacy, to name a few. In each of these domains, lawyers with the proper ensemble of legal and technical knowledge are poised to be successful.

Process-centered innovation is the third face of law and entrepreneurship. Technology as well as methodologies such as "lean" thinking, design thinking and the use of analytics are helping lawyers meet what Richard Susskind has

34. *See e.g.* Martha Neil, New Law School LLM Programs Teach Attorneys to Be Entrepreneurial, ABA J. (Jan 23, 2010 02:14 AM), http://www.abajournal.com/news/article/new_law_school_llm_programs_teach_attorneys_to_be_entrepreneurial/; *How Law Schools And Entrepreneurs Collaborate to Serve Both Students and Innovators*, FORBES (Dec. 7, 2012 12:06PM), http://www.forbes.com/sites/ashoka/2012/12/07/how-law-schools-and-entrepreneurs-collaborate-to-serve-both-students-and-innovators/.

35. Liz Hoffman, *Martin Lipton: Poison Pills are "Critical in the Face of Increased Activism*, WALL ST. J. MONEYBEAT BLOG (Jan. 29, 2014, 12:27 PM), http://blogs.wsj.com/moneybeat/2014/01/29/martin-lipton-poison-pills-are-critical-in-the-face-of-increased-activism/.

36. Ronald J. Gilson, *Lipton and Rowe's Apologia for Delaware: A Short Reply* 2 (Columbia Law School: The Center for Law and Economic Studies Working Paper No. 197 2001), *available at* http://papers.ssrn.com/sol3.papers.cfm?abstract_id=299912.

called the "more for less" challenge.[37] Several of the other trends described below highlight how various institutions and entities are embracing this third face in order to meaningfully differentiate themselves in this ultra-competitive market.

B. Five Large Trends in the Legal Industry

Not only is it "*tough to make predictions, especially about the future*," but it is particularly challenging in turbulent environments. What is certainly true is that every industry is infected with some level of wrongheaded thinking, and the legal services industry is no different. It is the successful entrepreneur who sees the world differently—sees the world as it might be and capitalizes. The successful entrepreneur properly identifies where things are heading and gets to the future before others. This is not to say that current and past trends are not meaningful. Indeed, to best understand where opportunities lie requires a strong understanding of the relevant dynamics of the overall legal services and legal product market.

1. Trend #1: General Counsel as Legal Supply Chain and Legal Process Manager

The account is not mono-causal, but there are some fundamental features that appear permanent and thus strongly support the account that the legal industry has been permanently transformed. Specifically, a non-trivial number of the general counsels of the world's largest corporations appear to have permanently changed their behavior. They have taken control of the legal supply chain and in so doing have put the industry on the path to the "new normal."[38] The micro-foundations of their behavioral change started in the early to mid 2000's as the convergence of technology, analytics, outsourcing, and procurement allowed entrepreneurially minded individuals to develop new and more efficient methods to help deliver solutions to clients.[39] The changes have not

37. *See generally* SUSSKIND, THE END OF LAWYERS?, *supra* note 4,

38. *See generally* ANN PAGE & RICHARD TAPP, MANAGING EXTERNAL LEGAL RESOURCES (2007); MARI SAKO, UNIV. OF OXFORD SAID BUS. SCH. GENERAL COUNSEL WITH POWER? (2011), *available at* http://sbs.eprints.org/4560/1/General_Counsel_with_Power.pdf; SUSSKIND, THE END OF LAWYERS?, *supra* note 4; Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137 (2010). *See also General Counsel Eyeing Legal Services "Production Line," Oxford Research Finds*, LEGAL FUTURES (Sept. 7, 2011), http://www.legalfutures.co.uk/legal-services-act/market-monitor/general-counsel-eyeing-legal-services-production-line-oxford-research-finds (discussing Mari Sako's work).

39. *See* CTR. FOR THE STUDY OF THE LEGAL PROFESSION AT THE GEORGETOWN UNIV. LAW CTR., 2013 REPORT ON THE STATE OF THE LEGAL MARKET 12 (Thomson Reuters Peer Monitor 2013), *available at* https://peermonitor.thomsonreuters.com/ThomsonPeer/docs/2013ReportLegalIndustryPeerMonitorGeorgetown.pdf [hereinafter 2013 GEORGETOWN STUDY] ("While it is clearly true that the economic downturn has been the proximate cause of much of the disruption we have seen in the legal market, the recession alone does not tell the whole story. Even in the boom years of the decade preceding 2008, other important market forces were at work gradually building toward an inflection point.").

been instantaneous because technological possibility and technology adoption are, of course, not one in the same. It is in this respect that the recession is responsible for accelerating the timeline associated with a long overdue structural shift.[40]

Following the financial crisis and associated economic downturn, an increasing number of the primary consumers of large-to mid-sized legal services (i.e., corporate general counsels) have been placed under directives from the CEOs or CFOs of their respective companies to reduce their legal expenses.[41] Legal was brought in line with other "C-level" officers who were forced to live within a budget of decreasing size.[42] This cost pressure required a very different approach and placed stress on many historic and longstanding relationships between general counsels and their preferred outside lawyers.[43]

Necessity may be the mother of all innovation, but as these general counsels began to reset the historic relationships, they had plenty of entrepreneurial enterprises seeking to aid them in lowering their respective legal costs.[44] The openness on the part of the relevant consumer (in this case the general counsel) is an important and necessary precondition for innovation in the legal services industry. Now, forced to do "more with less,"[45] the shifting environment created the perfect window of opportunity for technology firms, analytics firms,

40. There is an ongoing debate regarding whether the legal market is undergoing a cyclical or a structural downturn. Suffice it to say, it is the view of this author the sum of quantitative and qualitative evidence supports the structural account. Yet, such an argument can typically never be fully adjudicated in contemporaneous manner. Every structural change begins by looking like a cyclical change until which time as exceeds some prior historical threshold. For example, in a recent paper that received attention in the media, Simkovic and McIntyre argue that the available data show that the current downturn is still within historic cyclical rates. *See* Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, (APRIL 13, 2013) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250585. It is useful to remember what is really important. Identifying whether a change is structural or cyclical is not really that important. Even in a period without disruption, it is always possible to develop a better product. The thrust of this paper is about an institution helping support innovation and entrepreneurship in the legal industry. In principle, such an institution can be developed regardless of whether structural or cyclical view is ultimately correct. Innovation is about doing the obvious before it is obvious to others. The question properly posed is how best to prepare to for lawyering in the 21st Century. It is hard to escape the conclusion that those championing the Simkovic and McIntyre thesis are doing so because they see it as some sort of vindication for their status quo thinking about the operation of legal education and the market for legal services. As someone interested in attracting students and competing to secure job placements for my students, I welcome their complacency.

41. *See* Jennifer Smith, *Smaller Law Firms Grab Big Slice of Corporate Legal Work*, WALL ST. J., Oct. 22, 2013, http://online.wsj.com/news/articles/SB10001424052702303672404579149991394180218 ("General counsel at many companies have become smarter shoppers since the economic downturn in 2008, when clamping down on legal costs became a necessity. Corporate law departments face continued pressure to keep the bills down."). *See also* Ribstein, *Delawyering the Corporation*, *supra* note 5, at 305. SUSSKIND, TOMORROW'S LAWYERS, *supra* note 4, at 72–75.

42. *See* Smith, *supra* note 41.

43. *See* Ribstein, *The Death of Big Law**, *supra* note 5, at 760–61; Ben W. Heineman, Jr., *The Rise of the General Counsel*, HARVARD BUS. REV. BLOG NETWORK (Sept. 27, 2012, 1:00 PM) http://blogs.hbr.org/2012/09/the-rise-of-the-general-counsel/. *See also* SAKO, *supra* note 38, at 19–23.

44. *See* sources cited *supra* note 11.

45. *See* SUSSKIND, TOMORROW'S LAWYERS, *supra* note 4, at 68–70.

legal process outsourcing enterprises, and a new generation of efficiency minded law firms to begin to capture particular *tranches* of legal work. Like virtually every story of upstart success, these startup entities focus upon the lower end of the respective value chain.[46] Thus, many of the first generation companies focus upon tasks such as due diligence, e-discovery, basic document assembly, and information and knowledge management. Subject to some limits, there is no reason why these organizations cannot attempt to climb further up the value chain.

More expertly managing the legal supply chain, general counsels rather than law firms are beginning to control the sourcing of work. Clients are now in control. Not surprisingly, they are saving money by selecting the more efficient and more effective providers. As noted in the recent 2013 *Report on the State of the Legal Market*,

> all of the critical decisions related to the structure and delivery of legal services—including judgments about scheduling, staffing, scope of work, level of effort, pricing, etc.—are now being made primarily by clients and not by their outside lawyers. This represents a fundamental shift in the relationship between lawyers and their clients.[47]

Value propositions and arbitrage opportunities abound for the sophisticated general counsels to save money while still receiving high quality legal services. In situations other than the "bet the company case," the relationship between the general counsel and Big Law partners will likely continue to fray. The recession imposed significant pressure on legal department budgets.[48] Although once sacred, the corporate law department is being subjected to pressure similar to other corporate divisions.[49] As such, some of the informatics and supply chain techniques used in other portions of the business have now

46. Both adoption cycles, diffusion and market entrant strategy are well studied areas. For just one classic treatment of diffusion, see ROGERS, *supra* note 12.

47. 2013 GEORGETOWN STUDY, *supra* note 39, at 13.

48. Law firms and other legal service providers often offer "rack rate[s]," a term developed in the travel industry to describe the often inflated prices that a person pays at a hotel if he or she deals directly with the hotel under high demand conditions. The Real Rate Report is particularly useful because it highlights the actual rates paid by purchasers. In much the manner that online travel sites (e.g., Orbitz, Travelocity, and Kayak) revolutionized the travel industry, this aggregated information can help high-end purchasers of legal services overcome various information deficits. *See* Debra Cassens Weiss, *Why Law Firms Are like Hotels: 'Rack Rates' Are Negotiable, Real Rates Vary by Client*, A.B.A. J. (May 26, 2010, 8:08 AM) http://www.abajournal.com/news/article/client_beware_law_firm_rack_rates_are_negotiable_and_real_rates_vary_even_f/.

49. *See* BUYING LEGAL: PROCUREMENT INSIGHTS AND PRACTICE (Silvia Hodges ed., 2010) [Hereinafter Buying Legal]; Heidi K. Gardner & Silvia Hodges Silverstein, *GlaxoSmithKline: Sourcing Complex Professional Services*, HARVARD BUS. SCHOOL CASE STUDY (June 2014), *available at* http://www.hbs.edu/faculty/Pages/item.aspx?num=45646; *see also* Rebekah Mintzer, *2013 Law Department Metrics Benchmarking Survey*, CORPORATE COUNSEL (Nov. 20, 2013), ("One way some law departments are getting a better handle on outside spending is by using alternative fee arrangements (AFAs) as a substitute for the traditional billable hour . . . Just as in-house attorneys are handing less work to outside counsel, they are also cutting down on the number of outside firms they use, the 2013 survey indicated. This outside counsel "convergence" trend doesn't appear to be slowing down.").

been retrofitted and applied to support increasingly sophisticated forms of legal procurement.[50]

For the AM Law 200 and other large and medium size firms, general counsels have imposed blunt rules such as a ban on first and second year lawyers working on particular matters.[51] General counsels have required many law firms to work with blended teams of providers where each provider delivers a component of the overall service. Such providers include mid-size regional law firms, boutique firms, software providers, and analytics companies, as well as the insourcing of work to their own growing set of in-house lawyers.[52]

While law firms used to provide a white-glove beginning-to-end service, this has given way to a new reality where general counsels are the maestros of the global legal supply chain.[53] Operations professionals, supply chain managers, and data analysts are substantially aiding them in this effort. Consider the case of the "Real Rate Report" produced by TyMetrix (a division of the informatics conglomerate Wolters Kluwer).[54] The Real Rate Report and associated information products leverage more than $40 billion in legal spend data by law departments to identify patterns and trends across invoicing generated by over 3,500 law firms and 90,000 individual billers in fifty-one major metro areas.[55]

50. *See* sources cited *supra* note 49. In addition to more complex procurement, consider simple questions such as the effective use existing technologies. Casey Flaherty (In-house Counsel at Kia Motors) developed a basic technology audit that examined the ability of lawyers to effectively use simple tools such as Word, Excel, etc. Suffice to say, the results have not been pretty. *See e.g*. D. Casey Flaherty, *Could You Pass This In-House Counsel's Tech Test? If the Answer is No, You May be Losing Business*, ABA J. (Posted Jul 17, 2013 2:30 PM ET), http://www.abajournal.com/legalrebels/article/could_you_pass_this_in-house_counsels_tech_test.

51. *See* Joe Palazzolo, *First-Year Associates: Are They Worth It?,* WALL ST. J. L. BLOG (Oct 17, 2011, 9:59 AM), http://blogs.wsj.com/law/2011/10/17/first-year-associates-are-they-worth-it/ ("Here are the numbers, according to a September survey for WSJ by the Association of Corporate Counsel, a bar association for in-house lawyers: More than 20% of the 366 in-house legal departments that responded are refusing to pay for the work of first- or second-year attorneys, in at least some matters."); Elie Mystal, *Corporate General Counsel Puts Fear of God into Legal Educators (And You Should Be Worried Too)*, ABOVE THE LAW (Apr. 9, 2010, 6:08 PM), http://abovethelaw.com/2010/04/corporate-general-counsel-puts-fear-of-god-into-legal-educators-and-you-should-be-worried-too/ ("We don't allow first or second year associates to work on any of our matters without special permission, because they're worthless.").

52. *See* Rebekah Mintzer, *Law Departments Trading Large Firms for 'Large Enough'*, CORPORATE COUNSEL (Oct. 23, 2013), *available at* http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202624694197; LEXISNEXIS, ENTERPRISE LEGAL MANAGEMENT TRENDS REPORT (2013), *available at* http://www.lexisnexis.com/counsellink/documents/CounselLink-ELM-web.pdf. *See also* Smith, *supra* note 41.

53. *See supra* notes 38-39; BUYING LEGAL, *supra* note 49.

54. WOLTERS KLUWER TYMETRIZ, http://tymetrix.com/products/legal-analytics/2/2012-real-rate-report/ (last visited July 14, 2014).

55. *See id.; see also* Press Release, TyMetrix, CT TyMetrix and the Corporate Executive Board Provide the Industry's First True Look at Legal Billing Rates and Trends (Sept. 7, 2010), *available at* http://tymetrix.com/press-releases/16/2010/showArticle/. *See also* Law Firms Gain Competitive Advantage for Business Growth With $45 Billion of Data From TyMetrix MatterAnalyzer, MARKETWATCH (Sept. 24, 2013), http://www.marketwatch.com/story/law-firms-gain-competitive-advantage-for-business-growth-with-45-billion-of-data-from-tymetrix-matteranalyzer-2013-09-24.

Among the patterns they identified, seventy-eight percent of timekeepers billed different rates to different clients.[56] It is these and other related insights that will allow general counsels and their corporate law departments to drive down legal costs.[57] These trends will create winners and losers but it has given rise to a law related growth sector—legal procurement and legal supply chain management.

The mechanics obtaining efficiency are generated by heavily managing the legal supply chain. This among other trends is responsible for the increasing competition in the market for legal services. There is now "an increasing willingness on the part of clients to 'disaggregate' matters—both litigation and transactional—by parceling out different parts or phases of matters to different firms depending on expertise and an ability to deliver cost effective services."[58] It starts by (1) unbundling a task into its component sub-tasks, (2) distributing it to providers with specific expertise in the relevant subtask, and (3) collecting it and repackaging the work product developed by each provider.[59] The long-term question is who will be responsible for managing this process. Given the amount of money that can potentially be saved, it is likely that the clients (rather than law firms) will remain in charge.

There is on-going debate regarding whether the current downturn is cyclical rather than structural.[60] The empirics will never be definitive until the arbitrage window is closed. In such a circumstance, the best one can do is interpret the available evidence. Both qualitative and a significant amount of quantitative evidence support the structural account.[61] One clear way to understand the matter is to consider this question: as more and more general counsels learn how to get "more for less," why would they once again start paying more?

2. Trend #2: Lex.Startup

Every January, as the ice and snow falls on the streets of Manhattan, more than 10,000 attendees gather in the Midtown Hilton to see the latest in technical offerings pitched to law firms, general counsels, and related individuals and institutions.[62] Oliver Goodenough has estimated that between "twenty

56. Press Release, TyMetrix, CT TyMetrix and The Corporate Executive Board to Release Industry's First True Analysis of Law Firm Billings (May 24, 2010), *available at* http://tymetrix.com/press-releases/19/showArticle/.

57. *See generally supra* notes 38,39,49, 54 &56.

58. 2013 GEORGETOWN STUDY, *supra* note 39, at 15.

59. *Id.* at 40 (citing Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Borders: The Disaggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2148–2160 (2010)).

60. *See* Allison Schrager, *Five Years After Recession, We Still Can't Agree On What Causes Joblessness*, REUTERS (Aug. 28, 2013), http://blogs.reuters.com/great-debate/2013/08/28/five-years-after-recession-we-still-cant-agree-on-what-causes-joblessness/.

61. *See id. See also supra* note 40 and associated text.

62. *See* LEGALTECH TRADE SHOWS, http://www.legaltechshow.com/ (last visited July 14, 2014) [hereinafter LEGALTECH]. For a similar description, see Oliver R. Goodenough, *Developing an E-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise*, 88 CHI.-KENT L. REV. 845, 845–46 (2013).

to thirty billion dollars of commerce [is] on display at the show."[63] LegalTechNYC,[64] together with other events such as the ABATechShow in Chicago[65] are the technical trade shows of the legal industry. The companies represented therein cover a diverse set of approaches designed to enhance lawyer efficiency. Whether it is electronic discovery, legal analytics, project management, workflow optimization, knowledge management, information visualization, optimized search tools, client and matter management portals and platforms, or automated document generation, all of the available offerings share a similar theme: they are directing themselves toward the task of trading labor for capital in the relevant legal service production function.

In addition to the incumbent companies represented at industry trade events, the legal technology sector is populated with an increasingly large number of startups companies that are seeking to develop novel solutions to particular legal problems. These startups are beginning to draw attention from the venture community in Silicon Valley and other innovation hotspots.[66] The

63. *See* Goodenough, *supra* note 62, at 845. "In the past I was deeply impressed by all of this activity, which I saw as supporting legal work. This year, however, I realized that this activity is *legal work*.". *Id.* at 845–46. "A technology-driven revolution is overturning how America practices law, runs its government and dispenses justice, and the revolution has so far gone almost completely unnoticed by the people who teach aspiring lawyers. This has to change." *Id*. at 847.

64. *See* LEGALTECH, *supra* note 62.

65. *See* ABA TECHSHOW, http://www.techshow.com/ (last visited July 14, 2014).

66. *See e.g.*, Milt Capps, *ERM Legal Solutions Startup Is Thinking Big Beyond Its $1.25MM A Round*, VENTURE NASHVILLE (Feb. 13, 2012, 6:08 AM), http://www.venturenashville.com/erm-legal-solutions-startup-is-thinking-big-beyond-its-1-25mm-a-round-cms-781; Rip Empson, *Clio Grabs $6 Million To Help Bring Small Legal Practices To The Cloud*, TECHCRUNCH (Jan. 30, 2012), http://techcrunch.com/2012/01/30/clio-grabs-6-million-to-help-bring-small-legal-practices-to-the-cloud/; Christina Farr, *Meet the Startups That Are Giving Everyone Affordable Access to Justice*, VENTURE BEAT (Mar. 20, 2012, 10:06 AM), http://venturebeat.com/2012/03/20/legal-startups/; Bill Flook, *Law-Tech Startup Modus Raises $10 Million*, WASH. BUS. J. (June 11, 2013, 9:04 AM), http://www.bizjournals.com/washington/blog/techflash/2013/06/law-tech-startup-modus-raises-10.html; Ansel Halliburton, *YC-Backed Casetext Takes a New Angle on Value Added Legal Research With Wikipedia-Style User Annotations*, TECHCRUNCH (Aug. 12, 2013), http://techcrunch.com/2013/08/12/yc-backed-casetext-takes-a-new-angle-on-value-added-legal-research/; Ansel Halliburton, *YC-Backed SimpleLegal Reduces Legal Bills With Machine Learning*, TECHCRUNCH (Aug. 6, 2013), http://techcrunch.com/2013/08/06/yc-backed-simplelegal-reduces-legal-bills-with-machine-learning/; Ansel Halliburton, *Judicata Raises $5.8M Second Round to Build Out Advanced Legal Research Systems; Keith Rabois Joins Board*, TECHCRUNCH (May 28, 2013), http://techcrunch.com/2013/05/28/judicata-raises-5-8m-second-round-to-build-out-advanced-legal-research-systems-keith-rabois-joins-board/; Scott Kirsner, *Start-Ups Take on Tough Customers: Lawyers*, BOS. GLOBE, Sept. 01, 2013, http://www.bostonglobe.com/business/2013/08/31/tech-start-ups-target-tough-customer-law-firms/fyznk5CXkhnCqQzHpGEIGO/story.html; Amir Kurtovic, *St. Louis Startup Juristat Wants to Analyze and Predict Behavior of Judges, Trial Lawyers*, ST. LOUIS BUS. J. (Feb 26, 2013, 11:00 AM), http://www.bizjournals.com/stlouis/blog/BizNext/2013/02/st-louis-startup-juristat-wants-to.html?page=all; Ryan Lawler, *UpCounsel Is a Marketplace to Connect Small Businesses With Affordable Legal Help*, TECHCRUNCH (July 24, 2013), http://techcrunch.com/2013/07/24/upcounsel/; Leena Rao, *Stealthy Legal Startup DocRun Raises $1.1M From Resolute.VC, Don Dodge And Others*, TECHCRUNCH (Feb. 8, 2012), http://techcrunch.com/2012/02/08/stealthy-legal-startup-docrun-raises-1-1m-from-resolute-vc-don-dodge-and-others/; Rachel M. Zahorsky, *Stanford Law Is a Hotbed for Tech Startups and Legal Entrepreneurs*, A.B.A. J. (May 22, 2013, 8:40 AM), http://www.abajournal.com/news/article/stanford_law_hotbed_for_tech_startups_and_legal

historic adage in venture capital circles is "don't invest in legal." Why? Because the dominant business model (i.e., *billable hours*) did not encourage lawyers to be efficient. Indeed, it created the opposite incentive.[67] However, the pressure from general counsels is forcing a growing number of alternative fee arrangements including fixed fees.[68] To an increasing extent, technology is also being embraced as part of their efforts to either insource or more effectively outsource a growing percentage of their work.[69]

From the investment side of the equation, the legal sector is heating up and has experienced exponential year over year growth in investment.[70] Legal startup industry expert Josh Kubicki recently noted that in 2010 there were approximately fifteen legal technology or law-related companies listed on the prominent website AngelList.[71] Fast forward less than four years later and there are more than four hundred listed companies—many of whom have received significant financial support from the venture community.[72] The growth and rapid maturity of the legal technology startup sector is significant, particularly when one considers the winnowing process that is present in the venture space. There are far more ideas than companies and only a small number of companies will ever receive significant venture support.

While some of the root ideas originate from other spaces, domain implementation is a non-trivial challenge faced by both incumbents and startups. Are these startup companies really solving problems that represent actual "pain points" for the industry? Are the products really well specified to the contours of the current and future market? Many of these startups cluster around particular ideas. In general, the ideas are solid, but whether an individual company is able to persist and gain market share is always an open question.

As an outsider, you might be wondering: is there something that differentiates technology in general from this generation of legal tech? Within these startups, is there a role for those with legal training? Simply put, the answer is yes to both questions. The generation of technology that is emerging is not just technology that lawyers happen to use (like word processing, smart phones, etc.). This generation of technology has been and is being retrofitted to the

_entrepreneurs/; *Thomson Reuters Acquires Indian Legal Outsourcing Co. Pangea3*, A.B.A. J., (Nov. 18, 2010, 5:25 PM), http://www.abajournal.com/news/article/report_thomson_reuters_to_acquire_indian_legal_outsourcing_co_pangea3/.

67. Suffice it to say the reliance upon the billable hour does not provide the appropriate incentive for law firms to innovate. One interesting development is the increasing use of various alternative fee arrangements, particularly among law firms looking to compete with the current market leaders. "As a [percentage] of their billings, firms with 201-500 lawyers billed nearly twice as much under alternative fee arrangements as did the 'Largest 50' firms over the trailing 12 months." LEXISNEXIS, *supra* note 52, at 2.

68. *See id.* at 21. *See also supra* note 38.

69. *See generally* BUYING LEGAL, *supra* note 49.

70. *See* Josh Kubicki, *ReInvention is Doing, Not Talking*, Presentation at ReInventLaw London (Aug. 3, 2013), *available at* http://reinventlawchannel.com/joshua-kubicki-reinvention-is-doing-not-talking-legal-transformation-institute/.

71. *Id.*

72. *Id. See also* David Curle, *Startups: $458 Million in Legal Services R&D*, LEGAL EXECUTIVE INSIGHTS (Feb. 10, 2014), http://legalexecutiveinsights.com/startups-438-million-in-legal-services-rd/.

specific work that lawyers do.[73] That is a very important qualitative distinction that differentiates legal technology from the more pedestrian technology for lawyers.

Between the incumbents and the startups, the legal technology industry is rapidly growing. Its goal is to aid interested parties, both general counsels and law firms as they seek to reinvent the industry. While the one-on-one consultative component and the high-end architecting of litigation or transaction strategy is not in sight of today's legal technology (and possibly never will be), many of the other secondary tasks associated with the production of legal work are very much in play. These are the tools that lawyers can use to enhance their ability to efficiently complete their respective substantive tasks. The growth in this part of the industry stands in direct contrast to the core of the legal services industry—a core that has experienced little to no growth over the past years.[74]

3. Trend #3: Quantitative Legal Prediction: From E-Discovery to Case Prediction

Welcome to the era of "big data" and soft artificial intelligence.[75] Increases in computing processor speed, decreases in data storage costs—taken together with corresponding developments in artificial intelligence—have significantly improved the quality and precision of predictive analytics. Predictive analytics have already transformed many industries, and their entry into

73. *See* Henderson, *supra* note 24, at 487.

74. *See id.* at 472. This is particularly true if one accounts for the increase in the U.S. population over the past decade or so.

75. *See* ERIK BRYNJOLFSSON & ANDREW MCAFEE, RACE AGAINST THE MACHINE (2011); JAMES MANYIKA, ET AL., MCKINSEY GLOBAL INSTITUTE, BIG DATA: THE NEXT FRONTIER FOR INNOVATION, COMPETITION, AND PRODUCTIVITY (2011); Editorial, *Community Cleverness Required*, 455 NATURE 1, 1 (2008), *available at* http://www.nature.com/nature/journal/v455/n7209/pdf/455001a.pdf; Gary King, *Ensuring the Data-Rich Future of the Social Sciences*, 331 SCIENCE 719 (2011) *available at* http://gking.harvard.edu/files/datarich.pdf; Lisa Arthur, *The Surprising Way eBay Used Big Data Analytics to Save Millions*, FORBES, Aug. 23, 2012, *available at* http://www.forbes.com/sites/lisaarthur/2012/08/23/the-surprising-way-ebay-used-big-data-analytics-to-save-millions/; Steve Lohr, *The Age of Big Data*, N.Y. TIMES, Feb. 11, 2012, http://www.nytimes.com/2012/02/12/sunday-review/big-datas-impact-in-the-world.html; Conrad Quilty-Harper, *10 Ways Data is Changing How We Live*, THE TELEGRAPH, Aug. 25, 2010, http://www.telegraph.co.uk/technology/7963311/10-ways-data-is- changing-how-we-live.html; Sanjeev Sardana, *Big Data: It's Not A Buzzword, It's A Movement*, FORBES, Nov. 20, 2013, http://www.forbes.com/sites/sanjeevsardana/2013/11/20/bigdata/; *The Data Deluge*, THE ECONOMIST, Feb. 27, 2010, http://www.economist.com/node/15579717?story_id=15579717; Joseph Walker, *Meet the New Boss: Big Data*, WALL ST. J., Sept. 20, 2012, http://online.wsj.com/news/articles/SB10000872396390443890304578006252019616768; Steven Levy, *The AI Revolution Is On,* WIRED (Dec. 27, 2010), http://www.wired.com/magazine/2010/12/ff_ai_essay_airevolution; Tam Harbert, *Big Data, Big Jobs?*, COMPUTERWORLD (Sept. 20, 2012, 6:00 AM), http://www.computerworld.com/s/article/9231445/Big_data_big_jobs; Eyder Peralta, *Are You Smarter Than a Computer the Size of 10 Refrigerators?*, NPR (Jan. 13, 2011, 1:19 PM), http://www.npr.org/blogs/thetwo-way/2011/01/13/132902908/are-you-smarter-than-a-computer-the-size-of-10-refrigerators.

the legal industry has been noted by myself and several other commentators.[76] The legal industry is witnessing the rise of quantitative legal prediction (QLP) and the potential applications are wide ranging. QLP offers great opportunities for data literate lawyers to more efficiently and effectively complete their respective tasks. While virtually nothing in the legal industry is truly "big data,"[77] the tools and methods of data science can generate rapid insights and help lead to the more efficient resolution of disputes.

Experts tend to overstate the novelty of their particular expertise.[78] Thus, they are not particularly credible sources for predicting the ability of software to meaningfully engage in tasks within their respective industry. As noted venture capitalist and Netscape founder Marc Andreessen has argued—"software is eating the world."[79] Andressen has also noted that

> [p]ractically every financial transaction, from someone buying a cup of coffee to someone trading a trillion dollars of credit default derivatives, is done in software . . . . Health care and education, in my view, are next up for fundamental software-based transformation. My venture capital firm is backing aggressive start-ups in both of these gigantic and critical industries. We believe both of these industries, which historically have been highly resistant to entrepreneurial change, are primed for tipping by great new software-centric entrepreneurs . . . . Companies in every industry need to assume that a software revolution is coming.[80]

As I noted in a recent article

> [e]very single day lawyers and law firms are providing predictions to their clients regarding . . . their prospects in litigation and [other allied domains]. How are these predictions being generated? Precisely what data or model is being leveraged? Could a subset of these predictions be improved by various forms of outcome data drawn from a large number of 'similar' instances? Simply put, the answer is yes. Quantitative legal prediction already plays a significant role in certain practice areas and this role is likely to increase as greater access to appropriate legal data becomes available.[81]

Thus, whether it is technology aided document assembly,[82] predicting dispute outcomes,[83] forecasting the costs of retained counsel,[84] predicting judi-

76. *See* Lippe & Katz *supra* note 6; Katz, *supra* note 4; Stevenson & Wagoner, *supra* note 4; *see also* Josh Blackman, *Robot, Esq.* (Jan. 9, 2013) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2198672.

77. The datasets in the legal industry are small when compared to data sets such as the search traffic on Google, a single day of package tracking at UPS or the daily call records of a major (or minor) telecom carrier.

78. I would, of course, be required to note that this statement could also be applied to this author.

79. Marc Andreessen, *Why Software is Eating the World*, WALL ST. J. (Aug. 20, 2011), http://online.wsj.com/article/SB10001424053111903480904576512250915629460.html.

80. *Id*.

81. *See* Katz, *supra* note 4, at 912.

82. *See* Marc Lauritsen, *Artificial Intelligence in the Real Legal Workplace* in INFO. TECH. AND LAW 165, 175 (2006); Darryl R. Mountain, *Disrupting Conventional Law Firm Business Models Using Document Assembly*, 15 INT'L. J.L. & INFO. TECH. 170 (2007); Ward, *supra* note 32; Richard S. Granat, *Document Assembly Over the Internet*, L. PRAC. TODAY (Dec. 2011), http://www.americanbar.org/content/dam/aba/publications/law_practice_today/document-

cial decisions,[85] forecasting who will become a successful lawyer[86] or harvesting relevant documents in response to a request for production,[87] data centric disruptive technologies are beginning to permeate the work that lawyers do.

It is important to explain precisely what is implied by legal analytics. Indeed, the sloppy response—often lodged by someone with little or no actual knowledge about trends in computation, law, data, AI, or related topics—argues something akin to "*you cannot simply replace legal work with machines*."[88] First, this is simply not correct as a matter of recent history.[89] The question, properly understood, regards the relative machine v. human involvement across the range of tasks associated with the "practice of law."[90] With respect to that overall distribution, there is likely to be more machines in law's future. This is the prognosis for law practice as currently constituted. At the same time, there are likely to be entire new employment sectors—with legal information engineering, legal analytics, and legal software taking center stage. While the precise net labor effect is unclear, what is clear is pathological assertions such as "I did not become a lawyer to do math" may need to be revised.

assembly-over-the-internet.authcheckdam.pdf; Marc Lauritsen, *Fall in Line with Document Assembly: Applications to Change the Way You Practice*, LAW OFFICE COMPUTING, 72, (Feb.–Mar. 2006), *available at* http://www.capstonepractice.com/loc2006.pdf; Elizabeth J. Goldstein, *Kiiac's Contract Drafting Software: Ready for the Rapids?,* LAW TECH. NEWS (May 18, 2012), http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202555105751&Kiiacs_Contract_Drafting_Software_Ready_for_the_Rapids.

83. *See, e.g.*, Blakeley B. McShane et al., *Predicting Securities Fraud Settlements and Amounts: A Hierarchical Bayesian Model of Federal Securities Class Action Lawsuits*, 9 J. EMPIRICAL LEGAL STUD. 482 (2012).

84. *See* Press Release, *supra* note 55; *see generally* BUYING LEGAL: PROCUREMENT INSIGHTS AND PRACTICE (Silvia Hodges ed., 2012) (discussing the sourcing of legal services); Weiss, *supra* note 48.

85. *See* Daniel Martin Katz, Michael J. Bommarirto II & Josh Blackman, *Predicting the Behavior of the Supreme Court of the United States: A General Approach*, PHYSICS ARXIV (July 23, 2014) *available at* http://arxiv.org/abs/1407.6333; Theodore W. Ruger et al., *The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking*, 104 COLUM. L. REV. 1150, 1151 (2004); Roger Guimerà & Marta Sales-Pardo, *Justice Blocks and Predictability of U.S. Supreme Court Votes*, PLOS ONE (Nov. 9, 2011), *available at* http://www.plosone.org/article/info:doi/10.1371/journal.pone.0027188.

86. *See* Gibson, *supra* note 31.

87. KATEY WOOD & BRIAN BABINEAU, PREDICTIVE CODING: THE NEXT PHASE OF ELECTRONIC DISCOVERY PROCESS AUTOMATION 5 (2011); Evan Koblentz, *Recommind Intends to Flex Predictive Coding Muscles*, LAW TECH. NEWS (June 8, 2011), http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202496430795&slreturn=1&hbxlogin=1.

88. This point is also emphasized by Susskind. *See* SUSSKIND, THE END OF LAWYERS? *supra* note 4, at 274.

89. *See* sources cited *supra* notes 3–10. *See also* John Markoff, *Armies of Expensive Lawyers, Replaced by Cheaper Software*, N.Y. TIMES, March 4, 2011, http://www.nytimes.com/2011/03/05/science/05legal.html; David Hill, *Big Data's Evolving Role in E-Discovery: What Is Predictive Coding?*, NETWORK COMPUTING (Aug. 17, 2012,10:07 AM), http://www.networkcomputing.com/e-discovery/big-datas-evolving-role-in-e-discovery-w/240005739.

90. *See* SUSSKIND, THE END OF LAWYERS?, *supra* note 4, at 274; *see also* FRANK LEVY & RICHARD J. MURNANE, THE NEW DIVISION OF LABOR: HOW COMPUTERS ARE CREATING THE NEXT JOB MARKET 2 (2004).

It is very early in the life cycle and there are many technical questions attendant to its implementation in white-collar domains such as law. What is important to understand is that the primary thrust of this work is not traditional statistics or causal inference but rather increasingly sophisticated implementations of applied machine learning.[91] As such, the approaches are typically inductive rather than deductive.[92] The science of prediction is forward deployed rather than backward looking and thus must confront many thorny challenges such as model overfitting.[93]

Law's information revolution generally, and quantitative legal prediction specifically, has significant implications for the scope and content of law practice and legal education. Notwithstanding the normative criticism one might appropriately lodge toward various excesses in the financial services industry, finance offers instructive lessons for law.[94] Prediction within finance has undergone a radical transformation—on the path forged by Black-Scholes[95] that ultimately led to algorithmic trading.[96] A generation ago, the vast majority of trading activity was guided by individual brokers selecting stocks in direct consultation with individual clients.[97] Such human reasoners would typically leverage a mental model—a model that the reasoner developed through experience in the field.[98] Human reasoning certainly has not been completely removed from finance, but the rise of the quants displaced many status quo prac-

91. Katz, *supra* note 4, at 949-55. *See generally* ETHEM ALPAYDIN, INTRODUCTION TO MACHINE LEARNING (2d ed. 2010); DREW CONWAY & JOHN MYLES WHITE, MACHINE LEARNING FOR HACKERS (2012); MEHRYAR MOHRI ET AL., FOUNDATIONS OF MACHINE LEARNING (2012); KEVIN P. MURPHY, MACHINE LEARNING: A PROBABILISTIC PERSPECTIVE (2012).

92. Much of the empirical legal studies movement is focused upon causality and backward looking models. For appropriately posed questions, such backward looking and often causal inference centric models are the correct methodological choice. Most lawyers, however, are often interested not in backward looking models but rather forward prediction. For a description of the tradeoff, see Katz, *supra* note 4, at 949. For a related discussion, see Andrew Gelman, *Causality and Statistical Learning*, 117 AM. J. SOC. 955, 956 (2011).

93. To partially protect against this issue, one is called upon to predict out of sample or forward deploy on known data.

94. *See* Michael Bommarito, *Law's Future from Finance's Past*, http://vimeo.com/65836938 (last visited July 15, 2014). *See also* Daniel Martin Katz, *Thoughts on Legal Prediction and Legal Metrics*, SLIDESHARE (Sept. 16, 2013), http://www.slideshare.net/Danielkatz/thoughts-on-legal-prediction-and-legal-metrics-association-of-corporate-counsel-huron-consulting-meeting-for-law-department-operations-september-16-2013-professor-daniel-martin-katz.

95. *See* Fischer Black & Myron Scholes, *The Pricing of Options and Corporate Liabilities*, 81 J. POL. ECON. 637 (1973).

96. For more on flash and algo trading, see Roger Lowenstein, *A Speed Limit for the Stock Market*, N.Y. TIMES, Oct. 2, 2012, http://www.nytimes.com/2012/10/02/opinion/putting-the-brakes-on-high-frequency-trading.html; Jerry Adler, *Raging Bulls: How Wall Street Got Addicted to Light-Speed Trading*, WIRED, (Aug. 3, 2012), http://www.wired.com/business/2012/08/ff_wallstreet_trading/; Huw Jones, *Ultra Fast Trading Needs Curbs -Global Regulators*, REUTERS (July 7, 2011, 7:53 PM), http://uk.reuters.com/article/2011/07/07/regulation-trading-idUKN1E7661BX20110707. *See also Moving Markets*, *Shifts In Trading Patterns are Making Technology Ever More Important*, THE ECONOMIST, Feb. 2, 2006, http://www.economist.com/node/5475381.

97. *See* Black & Scholes, *supra* note 94.

98. Phillip N. Johnson-Laird, *Mental Models and Deduction*, 5 TRENDS IN COGNITIVE SCI. 434, 434 (2001).

tices.[99] The emphasis has shifted from purely human to a blend of human and machine-implemented judgment. Thus, on any given day, a majority of trades executed on the NYSE are generated algorithmically.[100] As it is a domain that involves sophisticated reasoning, finance offers an important lesson for legal education. The skills that were formerly privileged in finance were simply of diminished value after the advent, implementation, and deployment of soft artificial intelligence.[101] In order to participate in the newly created sector of quantitative finance, it was necessary to obtain new skills. To help support this transition, new academic programs such as financial engineering have grown up in order to place students in positions that were previously given to traditional MBAs.[102] In addition, traditional MBA programs began to place greater emphasis on finance as a core competency for all their students.[103]

4. Trend #4: Process vs. Substance—The Expanding Dimensions of Competition

Is there really a difference between the AMLaw 143rd law firm and the AMLaw 124th law firm? Is there really a difference between the AMLaw 63rd law firm and the AMLaw 58th law firm? Historically all of these entities are primarily competing on one dimension—substantive legal expertise. No doubt each otherwise elite entity has great lawyers who can deliver substantive expertise to their respective clients. So is there a real difference? Perhaps—but it is a losing argument. Substantive legal expertise and performance is very difficult to measure (particularly among good lawyers). Process is easy to measure and serves as a potential differentiator between otherwise equally situated firms.[104] In order to meaningfully compete at virtually every tier of the legal industry, firms need (and some are beginning) to embrace process. In

99. *Quant Comes to the Cloud—and Down to Earth*, TOTAL TRADING (Sept. 6, 2013), http://blogs.terrapinn.com/total-trading/2013/09/06/quant-cloudand-earth/.

100. Michael Mackenzie, *High-Frequency Trading Under Scrutiny*, FT FUND MGMT. (July 28, 2009, 6:44 PM), http://www.ft.com/cms/s/0/d5fa0660-7b95-11de-9772-00144feabdc0.html#axzz3CTrFZewT (noting that "high-frequency trading accounts for as much as 73 per cent of US daily equity volume").

101. *See* TANYA S. BEDER & CARA M. MARSHALL, FINANCIAL ENGINEERING: THE EVOLUTION OF A PROFESSION (2011).

102. *See generally id.* at 3–23.

103. *Id.* at 51.

104. There are important developments on this front with some forward thinking law firms, consultants, law professors and general counsels taking the lead. *See generally* William H. Simon, *Where is the "Quality Movement" in Law Practice?,* 2012 WISC. L. REV. 387; Elaine Schmidt, *Law and Order: 64-Year-Old Law Firm Seyfarth Shaws Adapts Six Sigma to the Delivery and Billing of Legal Service*s, SIX SIGMA MAGAZINE, Nov.-Dec. 2009, at 26; William D. Henderson, *From Big Law to Lean Law*, 38 INT'L REV. L. & ECON. 5 (2014); John E. Murdock III & Nancy Lea Hyer, Lean Lawyering, (July 28, 2012) (unpublished presentation at SubTech 2012 New York Law School); Association of Corporate Counsel, *ACC Value Challenge*, http://www.acc.com/valuechallenge/index.cfm (last visited July 15, 2014); Stephanie Francis Ward, *Making It Lean: Lisa Damon, Seyfarth Shaw*, LEGAL REBELS (Sept. 21, 2011, 8:50 AM), http://www.abajournal.com/legalrebels/article/making_it_lean_lisa_damon_seyfarth_shaw/; Karen Gimbal, *Intro to Lean Six Sigma for Lawyers*, (Feb. 13, 2013), *available at* http://www.slideshare.net/KarenGimbal/intro-to-lean-six-sigma-for-lawyers-university-of-ottawa-january-2013.

other words, if one expands the relevant dimensions of competition, then {law} becomes {law + tech + design + delivery} where {law} is substantive legal expertise and {tech + design + delivery} are process.

All else equal, better processes yield less expensive and more effective services for the client. In order for the reward structure to have any real chance to operate properly, however, it is necessary for the client to acknowledge process-centric differences between otherwise similar law firms. Although clients are increasingly taking charge, many large institutional purchasers of legal services continue to be part of the problem. Their general lack of oversight has been (and in some areas continues to be) responsible for reinforcing a series of highly inefficient processes across the legal industry.[105]

When client relationships were more stable and general counsels were under less internal cost pressure, the billable hour (even with a decent write down from the rack rate) was perfectly sufficient as a law firm operating model. Clients were likely to remain loyal and thus upstarts (even those with superior business models) could not lure away the work. The billable hour model badly misaligns the incentives of the relevant actors. Undoubtedly, the model disincentivizes innovation since the actors do not feel strong competitive pressure. As long as the clients were willing to pay, law firms (and particularly the older partners contained therein) are quite happy to continue with the status quo. Among other things, the model is attractive because it shifts the risk of cost overruns from firm to client. Historically, it is up to the client to referee the matter and demand better treatment. Without significant resistance, there is no strong incentive for a law firm to change its practices. An external shock was necessary to accelerate the process. As noted earlier, the financial crisis has forced a significant number of corporate legal divisions to get serious about their own processes including the retention and management of outside counsel.

In specialty areas or so called "bet the company" cases or matters, clients are still very willing to pay full price. What is important to understand is there are an ever decreasing set of clients, matters, or even sub-matters that are not sensitive to price.[106] Firms are aware of this fact. Indeed, there is increasing awareness by most of the leaders of the world's largest law firms that this is the "new normal."[107] Specifically, a recent survey of law firm leaders found that "'[m]ore price competition' was identified as a permanent trend by 95.6%

105. In more extreme instances, firms have engaged in unscrupulous and potentially illegal billing practices. *See, e.g.*, Peter Lattman, *Suit Offers a Peek at the Practice of Inflating a Legal Bill*, N.Y. TIMES, Mar. 25, 2013, http://dealbook.nytimes.com/2013/03/25/suit-offers-a-peek-at-the-practice-of-padding-a-legal-bill/?_php=true&_type=blogs&_r=0; D. Casey Flaherty, *DLA Piper Is Not Alone: Why Law Firms Overbill*, LAW TECHNOLOGY NEWS (Mar. 27, 2013), http://www.lawtechnologynews.com/id=1202593733970?slreturn=20140115130055.

106. For some elite firms, it may still be okay. For everyone else not purely engaged in representing clients in so called "bet the company" litigation, an essential regulatory action or high stakes deal making the 'new normal' is already here.

107. See ALTMAN WEIL, LAW FIRMS IN TRANSITION 2013: AN ALTMAN WEIL FLASH SURVEY 7, (2013), *available at* http://www.altmanweil.com/LFiT2013/.

of firm leaders surveyed in 2013. Eight out of ten leaders believe 'more non-hourly billing' is here to stay."[108]

Notwithstanding this basic acknowledgement, there is a significant disconnect between this awareness and the typical firm behavior/response. Namely, when it comes to its workflow, many law firms claim to be efficient, process driven, and innovative. Properly posed, the question is against what benchmark such a claim should be evaluated. Are they as efficient as a modern manufacturing facility, a data-driven emergency room, or a Fortune 500 logistics center? Are they truly embracing process as a foundation for medium to long-term competitiveness? In most instances, the answer to these questions is no. As noted in the recent 2013 Altman Weil Survey "[m]ost firms appear to be reacting to external forces and making incremental changes within the framework of the existing business model, rather than pursuing opportunities to meaningfully differentiate their firms in the eyes of clients."[109] By contrast consider the following: "[W]e asked firm leaders about their greatest challenge in the next 24 months . . . . Improving efficiency is eleventh on the list of twelve challenges, cited by only 2.8% of respondents."[110]

Although this firm behavior is inconsistent with today's reality, it not surprising. As Larry argued in *The Death of Big Law*, there are a variety of acute features of law firm organization that make change difficult.[111] Law firms are partnerships, and large-scale partnerships are often plagued with structural problems.[112] Partners (as well as associates) can leave the firm at any time[113] and take their clients with them. This ever-present, looming potential makes law firm leadership inherently weak—in many instances they are

108. *Id*. at 5.
109. *Id*. at 1.
110. *Id*. at 11–12.
111. *See generally* Ribstein, *The Death of Big Law**, *supra* note 5.
112. *See* Douglas R. Richmond*, The Partnership Paradigm and Law Firm Non-Equity Partners*, 58 U. KAN. L. REV. 507, 508 (2010) ("[O]nce admitted to partnership, there is a risk that some lawyers will shirk their responsibilities as partners by not attempting to develop new business or expand existing client relationships, by not billing as many hours or otherwise generating fee revenue as they should, or by failing to participate in the full panoply of nonbillable activities typically expected of partners—such as serving on firm committees, leading practice groups, training junior lawyers, and so on. Although most firms adjust or structure partners' compensation on individual bases to reward performance, relatively unproductive or unmotivated partners may still earn handsome livings at the expense of their more capable or ambitious colleagues.").
113. *See* Robert M. Wilcox, *Enforcing Lawyer Non-Competition Agreements While Maintaining the Profession: The Role of Conflict of Interest Principles*, 84 MINN. L. REV. 915, 915–16 (2000) ("Contractual efforts to limit or discourage competition between lawyers, however, are deemed unethical by the Model Rules of Professional Conduct and face close and usually unfavorable scrutiny from the courts. Courts typically refuse to enforce competition restraints against lawyers on the ground that the restraints violate public policy."). ABA Model Rule 5.6 states in relevant part: "A lawyer shall not participate in offering or making: (a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement. . . ." MODEL RULES OF PROF'L CONDUCT R. 5.6. *See generally* Mark W. Bennett, *You* Can *Take It With You: The Ethics of Lawyer Departure and the Solicitation of Firm Clients*, 10 GEO. J. LEGAL ETHICS 395 (1996); Larry Ribstein, *Ethical Rules, Agency Cost and Law Firm Structure*, 84 VA. L. REV 1730 (1998).

unable to enforce their directives if even a small number of key partners are unwilling to go along.

The legal status of law firms as partnerships (rather than as corporations) incentivizes underinvestment in initiatives that feature a long-term return cycle. Why? Unlike a corporate setting, the partners can vote themselves an increase in direct compensation in the current moment rather than support initiatives that have a longer term but potentially speculative return cycle. On aver-average, these incentives produce underinvestment in both human capital and technology. As Larry identified, partners have an incentive not to spend time training young associates as many of them will spend relatively little time at the firm.[114] As such, they cannot easily monetize their respective investment.[115] In addition, partners have an incentive to underinvest in technology as the costs are significant and the return on investment is typically only realized over the long run.[116]

Time horizons are a critical problem. The core leadership of many large (and not so large) law firms is old enough to plausibly believe they can reach retirement without embracing core reforms to their business model and internal practices.[117] Change management is the most challenging innovation of all. Even in a corporate setting, transitioning a business model is difficult because the organization is not a monolith. In a legal partnership, it is even harder as the partners are not deciding what to do with capital from third party shareholders. Instead, they are deciding what to do with their own money.[118] They can support or demand compensation systems that reward them in the short term—even if they may be trading away potential gains in the long term.

In absolute rather than in relative terms, most law firms (large and small) are clearly behind the curve. This has been true for a long time. What is different is that the market is starting to break open as some firms are beginning to embrace real changes (though most are not). A growing number of law firms are actually attempting to leverage data, process, and software in order to

114. According to a study conducted by the National Association for Law Placement (NALP), almost 23% of entry-level hires departed within twenty-eight months of their start date and 53.4% left within fifty-five months of starting at their respective law firms. *See* Paula A. Patton, *Keeping the Keepers II: Mobility & Management of Associates*, NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION (2003).

115. *See generally* Ribstein, *The Death of Big Law**, *supra* note 5. Every moment spent training is time that could be put to other productive ends. Thus, there is a strong incentive to minimize the amount of time spent on training.

116. This problem is likely to be particularly acute in instances where a substantial fraction of the equity partners are relatively close to retirement. They lack the necessary incentives to invest in the long run. *See* Daniel Martin Katz, *Innovation in the Legal Industry: "The Future is Already Here—It is Just Not Evenly Distributed*," SLIDESHARE (Mar. 10, 2013) http://www.slideshare.net/Danielkatz/innovation-in-legal-the-future-is-already-here-it-is-just-not-evenly-distributed-slides-by-professor-daniel-martin-katz-reinventlaw-laboratory-msu-law.

117. *Id.*

118. *Id.* This is the key difference. It is the partnership's money (and by implication the partner's money). The partnership can vote to distribute more money today or it can make investments for the future. For those who are nearing retirement, the incentive to maximize the present and trade away the future is particularly strong.

support more efficient processes.[119] To do so, they are turning to a growing army of consultants, analytics, and process engineering firms that are helping guide institutional transformation. Simply put, process is where the money is.

5. Trend #5: Retail Legal Services and Technology Aided Access to Justice

One stain upon the legal profession is its inability to provide meaningful access to justice for many Americans. As noted in a recent article by Professor Ron Staudt and his coauthor Andrew Medeiros,

> Every serious study of the legal needs of the poor shows that eighty percent of these needs go unmet. Legal Services Corporation funded legal aid offices turn away a million eligible prospective clients every year because they lack the capacity and the lawyers to serve these legal needs. In addition, millions of modest-income people who are not eligible for legal aid cannot afford the fees charged by lawyers.[120]

The problems associated with providing meaningful access are longstanding. There are glimmers of hope in the quest to provide better access and they are linked to advances in legal technology, the application of "lean" thinking, and innovation in existing business models. Price is the clear obstacle that has left many to ignore their legal problems or choose to go it alone. So why are legal services for regular people so expensive? This is a multi-faced question. Certainly, fixed cost infrastructure, a lack of scale, and inefficient processes are partially to blame. Another major impediment is trust. It is hardly a revelation to note that the public does hold the legal profession in particularly high esteem. However, lawyers are not trusted, particularly because their services are associated with high cost; those who might consider obtaining legal services are concerned about the cost of those services. Their concerns are justi-

119. *See, e.g.*, Alex Hamilton & Kevin Colangelo, *Making LPO Work*, 28 OUTSOURCE MAGAZINE (July 3, 2012), http://outsourcemagazine.co.uk/making-lpo-work/; Tam Harbart, *Supercharging Patent Lawyers With AI*, IEEE SPECTRUM (Oct. 30, 2013, 2:00 PM), http://spectrum.ieee.org/geek-life/profiles/supercharging-patent-lawyers-with-ai ("John Dragseth, a principal at Fish & Richardson (the most active IP litigation firm in the United States, according to *Corporate Counsel* magazine), credits Lex Machina's database with helping him spot meaningful but otherwise hidden trends in IP litigation—and he won't give details. 'If you published it, then people on the other side would know,' he says."); Zahorsky & Henderson, *supra* note 4; Steve Rosenbush, *How Clearspire Used IT to Reinvent the Law Firm*, WALL ST. J. Apr. 9, 2012, http://blogs.wsj.com/cio/2012/04/09/how-clearspire-used-it-to-reinvent-the-law-firm/; Kellie Schmitt, *Orrick's Ops Center: One Small Town's Salvation*, LAW.COM (May 9, 2008), http://www.law.com/jsp/article.jsp?id=1202421246077 Natalie Stanton, *Slater & Gordon Acquisition Spree Continues with Industrial Disease Firm John Pickering*, THE LAWYER (Oct. 24 2013), http://www.thelawyer.com/news/practice-areas/insurance-news/slater-and-gordon-acquisition-spree-continues-with-industrial-disease-firm-john-pickering/3011450.article; Steven R. Strahler, *Seyfarth Shaw Takes a Page from the Six Sigma Playbook*, CRAIN'S CHICAGO BUSINESS (Sept. 17, 2012), http://www.chicagobusiness.com/article/20120915/ISSUE02/309159995/seyfarth-shaw-takes-a-page-from-the-six-sigma-playbook#; Rachel M. Zahorsky, *ACC Hails Virtual Law Firm Axiom Among Its 'Value Champions'*, A.B.A. J. (June 20, 2013), http://www.abajournal.com/news/article/acc_hails_virtual_law_firm_axiom_among_its_value_champions/.

120. Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution, 88* CHI.-KENT. L. REV. 695, 696 (2013).

fied. Basic legal services are far too expensive. The question for the industry is how to establish trust and convert the unlawyered into those who consume legal services.

The economic organization of the retail legal profession mirrors the small business centric structure present in many sectors prior to the establishment of national brands. Real estate, accounting, restaurants/food services, personal services, other professional services and grocery/general goods—all of these industries were at one point highly decentralized with local providers offering the majority of the service provision. Overtime, the rise of various alternative business models such as franchises, branded networks, and centralized national brands began to capture an increasing share of the relevant markets. Examples include Century 21 (real estate), Molly Maids (personal services), Pearle Vision (other professional services), H&R Block (accounting), Target (general goods), Cheesecake Factory (causal dining), and many others who offer nationally-branded products and services to the retail consumer market.[121] In each of these sub-markets, locally owned businesses still exist but those businesses had to focus on some sort of competitive differentiator in order to remain viable.

Branded networks help overcome the consumer information deficit (consumer skepticism) by providing signals that allow otherwise low information consumers to obtain quality and affordable services. In order to maintain brand quality and thereby protect their substantial investment, branded organizations typically standardize their practices and products. They engage in costly forms of monitoring in order to ensure adherence and prevent free-riding by their respective agents and affiliates. Some (but certainly not all) pursue process improvement methodologies as a means to maintain quality and increase profitability. Local affiliates and agents benefit from branding as it allows for high visibility and greater reach through the scale of regional and national marketing.

Given the size of the problem and the reasonable likelihood that there will never be a civil equivalent to *Gideon v. Wainwright*, the use of scalable technology-centric market mechanisms is the only practical means to make real progress on the problem of access to legal services.[122] While certainly not a complete answer to the problem, there have been recent notable entrepreneurial efforts in this direction. Established entities such as LegalZoom and Rocket Lawyer are working to deliver some form of legal service or legal information product that have aided millions in solving their specific legal problems.[123] In general, these entities serve the great middle tranche that does not qualify for legal aid but is unable or unwilling to obtain a retail lawyer through traditional means. These organizations are being challenged by many other recent market entrants working to deliver some from of retail legal service.

121. *See, e.g.*, Atul Gawande, *Big Med*, NEW YORKER (August 13, 2012) http://www.newyorker.com/magazine/2012/08/13/big-med.

122. Gideon v. Wainwright, 372 U.S. 335 (1963).

123. Sarah Mull, *Concierge Legal Services*, ABA J. (Feb, 8, 2013, 9:29 AM), http://www.abajournal.com/mobile/article/around_the_blawgosphere_legalforce_Richard_III_career_coaches_payroll/.

III. A THOUGHT EXPERIMENT: MIT SCHOOL OF LAW

A. Product Differentiation in the Market for Legal Education?

Given these shifting realities and emerging trends, it is reasonable to consider possible circular modifications that would allow graduates to thrive in the new age of unbundling, commodification and the march toward the more efficient provision of legal services.[124] Whether "equipping the garage guys,"[125] facing "law's information revolution,"[126] "practicing theory,"[127] "preparing for the age of quantitative legal prediction,"[128] or building "apps for justice,"[129] there have been a wide variety of calls for changes in legal education.[130] A paradigm shifting model for legal education still remains illusive, however.[131] As

124. *See generally* MITCHELL KOWALSKI, AVOIDING EXTINCTION: REIMAGINING LEGAL SERVICES FOR THE 21ST CENTURY (2012); BRUCE MACEWEN, GROWTH IS DEAD: NOW WHAT?: LAW FIRMS ON THE BRINK (2012); SUSSKIND, THE END OF LAWYERS? *supra* note 4.

125. Gillian K. Hadfield, *Equipping the Garage Guys in Law*, 70 MD. L. REV. 484, 484 (2011).

126. Kobayashi & Ribstein, *supra* note 5, at 1169.

127. Ribstein, *Practicing Theory, supra* note 1.

128. Katz, *Quantitative Legal Prediction, supra* note 4.

129. *See* Matthew Homann, *Marc Lauritsen,at Ignite Law 2011: Apps for Justice, Code to the Rescue*, YOUTUBE (May 8, 2011) http://www.youtube.com/watch?v=bQ2SMKWTi7c.

130. The list is extremely long and some of the proposals are clearly better than others. Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 10, 2013, http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html?_r=0; *Legal Education Reform*, N.Y. TIMES, Nov. 25, 2011, http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0. For just a small slice of the academic conversation, see generally Kevin D. Ashley, *Teaching Law and Digital Age Legal Practice with an AI and Law Seminar*, 88 CHI.-KENT L. REV. 783 (2013); Erwin Chemerinsky, *Reimagining Law Schools?*, 96 IOWA L. REV. 1461 (2011); Michael A. Fitts, *What Will Our Future Look Like and How Will We Respond?*, 96 IOWA L. REV. 1539 (2011); Richard S. Granat and Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI. KENT L. REV. 757 (2013); Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT. L.J. 295 (2006); Goodenough, *supra* note 61; Henderson, *A Blueprint for Change*, *supra* note 23; Jennifer S. Holifield, *Taking Law School One Course at a Time: Making Better Lawyers by Using a Focused Curriculum in Law School*, 30 J. LEGAL PROF. 129 (2006); Rogelio A. Lasso, *Is Our Students Learning?: Using Assessments to Measure and Improve Law School Learning*, 15 BARRY L. REV. 73 (2010); James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423 (2013); Renee Newman Knake, *Cultivating Learners Who Will Invent the Future of Law Practice: Some Thoughts on Educating Entrepreneurial and Innovative Lawyers*, 38 OHIO N.U. L. REV. 1 (2012); Ribstein, *Practicing Theory, supra* note 1; Tanina Rostain et al., *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, 88 CHI.-KENT L. REV. 743 (2013); Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609 (2007); John O. Sonsteng, et al., *A Legal Education Renaissance: a Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303 (2007); Staudt & Medeiros, *supra* note 120.

131. There are certainly some ideas out there which are more sound than others. *See, e.g.*, Robert Condlin, *Practice Ready Graduates': A Millennialist Fantasy* (Univ. of Md. Law, Legal Studies Research Paper No. 2013-48, Feb. 5, 2014) ("Law schools cannot revive the labor market or improve the employment prospects of their graduates, by providing a different type of education. Placing students in jobs is principally a function of a school's academic reputation, not its curriculum . . . ."). Obviously, I would disagree with this state-

noted earlier, one difficulty is that there is little consensus within the academy about what sort of change is needed. When facing uncertainty, turbulence, etc., diversification is usually the appropriate response.

Diversification in the market for legal education would allow institutions to search for appropriate responses to an uncertain environment.[132] In a wide variety of instances, decentralization in the search for policy solutions has been shown to be far more effective[133] in solving difficult problems than a centralized search. Focusing on various legal employment sub-markets, there exists an arbitrage opportunity for schools (or other institutions) to develop a truly innovative curriculum. Historically, many have argued that various existing ABA rules as well as internal cultural practices have acted to stymie upstarts.[134]

Regulation, though, is far less to blame than extreme status quo bias and a genuine lack of imagination.[135] Like many other parts of the legal industry, there is too much tinkering around the margins and not enough real innovation. In light of the pressure upon law schools to reform, institutions should have the courage to experiment with their curriculum in the hopes of finding a configuration that would attract and better serve either all law students or, more likely, various sub-markets of law students.[136] In other words, we need an age of law school diversification.

ment. While fully practice ready graduates might not be possible, it is possible for law schools to reap the benefits of offering a better core product.

132. This is an idea that has been advocated for by Brian Tamanaha. *See* BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012). Many of the defenders of the status quo have offered a series of attacks on the basic thesis offered by Tamanaha and while there is some merit to their critique— his basic thesis remains still intact. The question, properly posed, is how best to develop and deliver innovative legal education. The purpose of this article is to offer a perspective on the contours of that innovation.

133. *See, e.g.*, Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499 (2011); Ken Kollman, et al., *Decentralization and the Search for Policy Solutions*, 16 J. L., ECON. & ORG. 102, 103 (2000); Ashby Jones, *Who Should Foot the Bill for the "Worthless" Young Associates?*, WALL ST. J. L. BLOG (Apr. 13, 2010, 11:03 AM), http://blogs.wsj.com/law/2010/04/13/who-should-foot-the-bill-for-the-worthless-young-associates/.

134. This is not always the case, however. Through the pursuit of the once insurgent field of law and economics, for several decades George Mason Law School steadily elevated its position within the law school hierarchy. For a description of this approach by the former Dean, see Henry Manne, *An Intellectual History of the George Mason University School of Law*, GEORGE MASON UNIVESITY (1993), http://www.law.gmu.edu/about/history.

135. In terms of curricular offerings, the differences between institutions are fairly small. Inside of most (if not all institutions) is a set of individuals with strong status quo bias. They tend to have graduates from two elite institutions, Harvard and Yale. *See* Katz, *Reproduction of Hierarchy? supra* note 20. Not surprisingly, their institutions that tend to mimic the offerings at schools such as Harvard and Yale. This would be unproblematic in a world where Harvard Law School and Yale Law School were actually innovative on a dimension that mattered in broader market. But of course, they are not.

136. *See, e.g.*, John Schwartz, *This is Law School? Socrates Takes a Back Seat to Business and Tech*, N.Y. TIMES (Aug. 1, 2014), http://www.nytimes.com/2014/08/03/education/edlife/socrates-takes-a-back-seat-to-business-and-tech.html.

B. Innovation through Entrepreneurial Configurations of {Law+Tech+Design+Delivery}

As currently configured, across many (although not all) institutions, the value proposition associated with a law degree is currently waning.[137] It is incumbent upon institutions to consider how to restore that value. Acknowledging this proposition does not itself answer the difficult question of what specific alternative options an institution should select. Uncertainty abounds, but it is possible to both engage in internal reflection regarding a given institution's factor endowments as well as thoughtful and candid consideration of the future legal services market into which it sends its respective graduates.

What is true of the entrepreneurial lawyer is also true for the entrepreneurial law school.[138] In this vein, there has been too much conversation and not enough action. Individual institutions and law students cannot shift the demand for legal services. For all practical purposes, this is set exogenously. However, what institutions can do is identify and exploit arbitrage opportunities. The ability to identify and develop a superior product or service offering is the key. Polytechnic legal training at the intersection of {law+tech+design+delivery} arguably helps position students to take advantage of multiple emerging tranches of legal work as well as certain streams of existing work.

Technology, design, and novel delivery models will help both current and future lawyers develop processes that can more efficiently produce traditional legal work. It also prepares students to obtain newly emerging jobs that exist at the intersection of law and technology, including positions in legal project management, legal process engineering, and legal analytics. Yet, there is an additional benefit to working at in that overlap between law and science, technology, engineering, and mathematics ("STEM"). Legal jobs exist in some basic relationship relative to the scope and content of the economy.[139] STEM related jobs represent a large and growing share of the labor market.[140] Indeed,

137. Nothing in the recent Simkovic & McIntyre study contradicts this claim. *See* Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree* (HLS Program on the Legal Profession Research, Paper No. 2013-6, Apr. 13 2013), *available at* http://paper.ssrn.com/no13/papers.cfm?abstract_id=2250585. Even if the posited return structure is correct (and there are lots of reasons to believe that going forward it is not correct) this Article and blueprint contained herein is directed to how individual institutions might conduct their affairs and seek to increase the returns of their specific J.D. Those institutions that pursue the path of innovation actually should hope that their would-be competitors "double down" on the status quo. It makes innovation much more likely to succeed when those with existing market power do not use that power to stamp out competition.

138. *See* Ajaz Ahmed, *Nobody Yet Has Delivered Disruption,* REINVENT LAW CHANNEL (Apr. 1, 2013), http://reinventlawchannel.com/ajaz-ahmed-nobody-yet-has-delivered-disruption/. ("Entrepreneurship is about doing the obvious before it is obvious to others.").

139. In other words, the demand for legal services operates as a function of developments in society and in the economy.

140. As of today up to twenty percent of all jobs require high-end STEM training. *See* Jonathan Rothwell, *The Hidden STEM Economy*, BROOKINGS RESEARCH REPORT (June 2013), http://www.brookings.edu/~/media/research/files/reports/2013/06/10%20stem%20economy%20rothwell/thehiddenstemeconomy610.pdf; *Why STEM Education Matters*, NAT'L MATH + SCIENCE INITIATIVE (2011),

many law schools have already responded in part to this phenomenon by significantly increasing their offerings in fields such as patent law and law and entrepreneurship. But patent law is just one of a number of domains in which increasing scientific and technical complexity make it difficult (and in some cases impossible) for those without requisite STEM or associated training to effectively compete. In other words, technical expertise is either an actual prerequisite, a functional necessity, or at the very least a significant advantage to solving traditional legal problems that are intertwined with developments in science and technology.

Enter the MIT School of Law. MIT Law would be an institution dedicated to offering a polytechnic legal education. Its educational experience would be centered at the intersection of substantive law, process engineering, computer science and artificial intelligence, design thinking, analytics, and entrepreneurship. These modalities would be blended to produce a very different kind of lawyer—a lawyer well-positioned for law practice in the 21st Century. As it concerns the future of the legal industry, innovation and entrepreneurship in the current and future legal industry can be characterized as some sort of novel combination of {Law + Tech + Design + Delivery}. Given Larry Ribstein's pronouncement that law schools must now deal with markets, the MIT School of Law (or a version of that basic idea) would be extremely well positioned to thrive.

C. Liberal Arts v. Polytechnic Legal Education—Less Foucault, More Claude Shannon

It is just as important to identify what the MIT School of Law is as what it is not. There is a significant departure between a polytechnic legal education and the model of legal education seen today. As an average proposition, law schools operate as liberal arts colleges, not polytechnic institutions.

Although there has been some movement over the past couple decades, the style of scholarship, the modes of reasoning, and the intellectual ancestry of many of the core concepts and methods on display in legal academia would be more traditionally identified or located within the humanistic disciplines (as opposed to core polytechnic fields such as engineering, artificial intelligence, computer science, and applied mathematics).[141] Again, it is worth noting that the interdisciplinary turn in legal education has ushered in meaningful perspectives from allied disciplines such as behavioral psychology, evolutionary theory, economics, and public policy, as well as other social sciences. These fields have enriched our collective understanding of the operation and function of legal rules in a modern society. That said, other than a notable handful of exceptions, the overall American legal academy as well as the overall population of

http://www.nms.org/Portals/0/Docs/Why%20Stem%20Education%20Matters.pdf ("STEM job creation over the next 10 years will outpace non-STEM jobs significantly, growing 17 percent, as compared to 9.8 percent for non-stem positions.").

141. In some instances, this is perfectly appropriate as questions within law draw upon many concepts such as rights and justice. However, for many other questions these disciplines have nothing meaningful to contribute.

American lawyers are fairly unsophisticated, with respect to the polytechnic mainstays of computer science, artificial intelligence, engineering, and applied mathematics.

Historically, this was not particularly problematic because most the lawyers of the 20th century could operate without significant understanding of such polytechnic content. As briefly outlined in Part II, for a number of tasks and sub-fields in law this is no longer true. Rather, such technical expertise can and will serve as a strong point of differentiation in the relevant legal market. Part II highlighted several concrete instances where locating oneself at the intersection of law and technology offers significant labor market opportunities. While a full-bore polytechnic concentration is likely not an option for all institutions,[142] it is an approach that would meaningfully depart from the liberal arts legal education that most institutions currently offer.

Everyone would likely agree that institutions should do the best job possible of preparing students to practice law. It is important, however, to be mindful of the shifting nature of this proposition. The old "practice" versus "theory" debate is likely to dominate the discussion as it becomes increasingly clear that the "new normal" is indeed the new normal. Here Larry Ribstein offers some useful guidance: "Legal educators' main objective should not be to distinguish 'theory' and 'practice,' but rather to focus on the types of legal theory. . . ."[143] In certain areas, the push for a more practical version of legal education is certainly appropriate. But I agree completely that we cannot lose a commitment to teaching theory. The question, however, is what theory should be taught? At MIT Law, the answer is clearly less Foucault, and more Claude Shannon (also less Ronald Dworkin and more Richard Susskind).

If the trends highlighted in Part II are remotely correct, it is very important for any institution (MIT Law or otherwise) to not over-fit to the world of today as they help prepare students for the world of tomorrow. Specifically, like many industries on the edge of an information and process revolution, the goal for both legal education and practitioners is to (1) shift attention to tasks that are not subject to automation, (2) take stock of and appropriately leverage changes in legal information technology, and if possible (3) become the individual developing displacing technologies.

D. How to Prepare Your Students for a Job You Have Never Heard Of

As noted earlier, a recent MacArthur Foundation study noted that "65 percent of today's grade-school kids may end up doing work that hasn't been invented yet."[144] This is a thought provoking statement, and it points to the disruptive nature of innovation and its impact on a variety of labor markets. While such extreme uncertainty is arguably not present in the legal services

142. Every institution must look inward and determine their factor endowments and strategy going forward. In general, there is a desire to be all things to all people. This approach is generally not sound. Instead, it is better to focus upon a few specific objectives and direct all available resources toward excellence with respect to those objectives.

143. Ribstein, *Practicing Theory*, *supra* note 1, at 1673.

144. Heffernan, *supra* note 33.

industry and it is impossible to isolate all of the relevant micro-trends and associated dynamics, it is possible to plausibly identify the classes of skills that tomorrow's lawyer is likely to need.

Although the available evidence arguably counsels otherwise, it is almost certain that some institutions will not accept the premise that there is change of a fundamental sense occurring. For the entrepreneurially minded institution, this is actually very good news. If those institutions with market power adapt quickly, then in many instances they can commandeer the available arbitrage. For the forward thinking institution that accepts the basic premise that legal software and computation are likely to play an important role in law's future, then the question is how to provide training that best prepares students to survive in that new environment.

It should be clear at this point that this essayist believes that there may be fewer lawyers (as currently understood) in law's future.[145] Either way, across the various forms of work, the lawyer of the not too distant future will look quite different than today's lawyer. To help combat legal complexity, Lawyer 2.0 will leverage information technology to more efficiently undertake many of the traditional legal practice tasks that will remain after law's information revolution is fully seated. For other tasks, Lawyer 2.0 will be a hybrid who successfully combines skills to operate in mixed skills industries such as consulting, venture capital, technology development, business, and policy analysis.[146] Hybrid lawyer 2.0 will combine his or her legal training with other high demand skills. For a growing number of employment opportunities, legal expertise may simply not be enough. To acquire many of these positions, it will be necessary to have multiple skill sets.

Those who can blend their legal training with other useful skills are likely to do quite well. The MIT brand would help attract the world's top new polytechnic legal talent. The attraction of the high quality inputs is critical. However, attracting high quality students is simply only part of the process. It is important to train them for the world of the future—taking them at any level of prior preparation and leaving them ready to compete in the labor market.

So how can an institution achieve these ends? Well, this is the difficult part. In order to add/emphasize new content, some feature(s) of the current curriculum must be either removed or deemphasized. Students cannot take every class and there is a built in constituency for the current model and the current set of educational offerings. In Part IV, I highlight a list of potential courses at MIT School of Law—a curriculum built from scratch. Of course, it is one thing to start from scratch and it is a whole different matter to transition an existing institution. The strongest force in the universe is the status quo and law faculties and lawyers are inherently skeptical and conservative. It is worth

145. Other than helping support the development of new markets such as in the case of retail legal services.

146. Some version of this idea has been long discussed in the legal literature under the banner of a lawyer as a "transaction cost engineer." *See, e.g.*, Lisa Bernstein, *The Silicon Valley Lawyer As Transaction Cost Engineer?*, 74 OR. L. REV. 239 (1995); Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239 (1984).

noting that this skepticism and conservatism are not necessarily bad in many contexts. In other instances, however, they represent a blind spot that needs to be overcome.

IV. TRAIN, PLACE, AND ATTRACT—IN THAT EXACT ORDER

If reasonably well conceived and executed, an "MIT School of Law" (or equivalent school) is likely to either attract a selective pool of students with some sort of prior technical training or those with a strong desire to acquire such skills. The difficult problem is simply getting the initiative off the ground. In other words, how does one credibly signal to a first round of would be adopters that the institution is committed to serious innovation? Obviously, in the context of opening an actual law school as part of the Massachusetts Institute of Technology the overall brand coupled with some basic effort in the right direction would likely be more than sufficient. This Essay, though, is a broad thought exercise offered for those interested in transitioning existing institutions (or more likely portions thereof) toward potential opportunities that exist in the general domain of law plus science, engineering, design, technology, and entrepreneurship.

It all starts with the training and meaningfully differentiating that training from the existing offerings at most law schools. The order of operations is as follows: train, place, and attract in that exact order. The goal is to create a positive and reinforcing feedback loop where employers want to hire the graduates and students want to attend because employers want to hire its graduates.

Once this positive reinforcement cycle begins it can build off of itself as differential training attracts the employers and the positive employment outcomes together with aggressive recruiting, which should lead more and more like-minded students to be drawn toward the respective institution. Compared to many existing options and seen from the student perspective, the value proposition immediately looks superior to what other institutions are offering in the relevant market. As noted, the challenging part is to get it off the ground and make the commitment credible. Although an institution must simultaneously work on all three pieces of the training, placement, and attraction spectrum, it all starts with changing the content of the education being offered and marketing this fact to the legal labor market. This requires change agents and a willingness to act quickly and decisively.

A. A Model Curriculum—More Courses, Different Courses, and Lots of Continuity

Conversations among reasonable individuals advance when someone commits to a proposed approach and invites refinement. In that vein, let me offer a proposed curriculum that marries the left brain and right brain, that is designed to develop a creative, analytical, technically sophisticated, and substantively informed lawyer.

When starting from scratch with a brand new academic institution, a basic animating principle would posit that each required—and most elective—

courses should be evaluated in light of their usefulness in bar passage and the current and future market for legal services. This heuristic rule would of course create winners and losers within an existing institution but more importantly would help restore the law school value proposition because it would require a more significant pegging of the curriculum to conditions and opportunities present in legal marketplace.

Given a shared starting language, the emphasis upon the intersection of science, technology, etc., could be much more extensive than might be found in the law curriculum of today. A legal curriculum that strongly emphasized science, technology, process engineering, predictive analytics, and mathematical and computational modeling could be blended with the standard first year and upper level content to yield students with a relatively novel set of skills.

Let me offer a few thoughts regarding the training that would take place as part of a polytechnic legal education. As mentioned already, one must understand that in order to add/emphasize new content something must be deemphasized. Each course should be evaluated in light of its ability to further the students' standing in the current and future legal labor market.

Applying this animating rule, one useful starting idea is to modify the calendar to embrace the quarter system. Though far from the dominant calendar used in America's law schools, the quarter system allows students to take more courses over their academic careers.[147] Given that the future is difficult to predict, the flexibility to offer more total courses is critical. Most courses have diminishing marginal returns at some point throughout the term. It also allows for more assessment and student feedback. Thus, simply ending that course and starting another is a generally sound idea. In addition to the standard number of circular units, the MIT School of Law will offer more classes for the same money by leveraging a Massive Open Online Course (MOOC) platform as well as a series of free, optional, voluntary, and intensive courses taught at strategic points within the logic of the overall curriculum. Thus, in addition to the full curriculum outlined below, the MOOC style platform will deliver an additional twenty-five to fifty full courses that will be available for free on a non-credit basis for those who are interested in building and expanding their skills. This content would be available both during their time on campus and in the years following graduation. At MIT School of law, *we offer more for less*.[148]

Reviewing the curriculum below, one observes a strong commitment to generally retain the classic first year courses. In addition, the canonical upper level courses are also left pretty much intact. This is conscious decision designed to ensure that each individual obtains foundational substantive legal knowledge and is able to maximize his or her bar passage probability. The credit hours within these courses can be adjusted as needed to cover the necessary overall requisite credit hours and fulfill the broader objectives of the institution. As a point of departure from most institutions, however, this curricu-

147. Students can take approximately one-third more courses over a three-year window.

148. This is the institutional version of Richard Susskind's "more for less" challenge. *See* SUSSKIND, TOMORROW'S LAWYERS, *supra* note 4, at 4–5.

.

lum features far fewer electives than are offered at the typical law school. The economics of the legal profession, legal project management, and legal process engineering are offered to the entire class through intensive multi-week boot camps. These will immediately follow the spring quarter and will follow the mantra of the organization—at MIT School of Law, *we work harder*.

Many schools attempt to be all things to all people. This is a mistake. An institution should select a handful of objectives and focus on developing excellence in those particular objectives. MIT School of Law will offer intensity tracks on the following seven topics: *(1) Tax, (2) Business Law (e.g. Finance and Transactional), (3) Intellectual Property, (4) Law, Technology, and Policy, (5) Law and Entrepreneurship,* (6) *Law, Regulation, and Public Policy, (7) Privacy, Technology, and Cybersecurity*.

A Hypothetical MIT School of Law—(Quarter System Curriculum)

Pre- 1L BootCamp (4 Weeks)
Business of Law / Economics of the Legal Profession
Introduction to Legal Reasoning

Fall 1L	Winter 1L	Spring 1L
Contracts I	Contracts II	Contracts III
Torts I	Torts II	Admin. Law
Criminal Law	Property I	Property II
LWR I	LWR II	LWR III
Civil Pro I	Civil Pro II	E-Discovery

Pre 2L BootCamp (3 Weeks)
Legal Project Management
Legal Process Engineering (Lean / Six Sigma)

Fall 2L	Winter 2L	Spring 2L
Quantitative Methods	Legal Analytics	Legal Design Thinking
Legal Technology	Prof. Responsibility	Tax I
Corporations I	Corporations II	Litigation
Finance for Lawyers	Acct. for Lawyers	Law & Economics
IP Survey	Evidence I	Evidence II

Pre 3L BootCamp (3 Weeks)
Intensive Simulation (Transaction or Litigation)

Fall 3L	Winter 3L	Spring 3L
Capstone Project I	Capstone Project II	Capstone Project III
Clinic I	Clinic II	Clinic III
Constitutional Law	Trusts & Estates	Criminal Procedure
<<Elective>>	<<Elective>>	<<Elective>>
<Intensity Track I>	<Intensity Track II>	<Intensity Track III>

Intensity Tracks are 3 Course Intensive Training in One Substantive Area :
(1) Tax (2) Business Law (e.g. Finance + Transactional),
(3) Intellectual Property, (4) Law, Technology & Policy,
(5) Law and Entrepreneurship, (6) Law, Regulation and Public Policy,
(7) Privacy, Technology, and Cybersecurity

B. Placement and Marketing of Students to the Legal Industry

The legal industry includes law firms, corporate law departments, established and startup legal technology companies, as well as law related consulting firms. All of these organizations comprise the broader legal industry[149] and most of them could be convinced to consider hiring an MIT law student. As a starting point, MIT law students would be of obvious appeal to the existing and emerging legal technology sector. Indeed, such students would likely become among the most sought after students by legal technology and legal startup enterprises. MIT law graduates could play an important role in policy making as many contemporary policy debates turn on technical questions. In addition, the MIT School of Law would attract a significant fraction of high quality, patent bar eligible students. As such, many of the leading patent firms would be interested in hiring an MIT Law graduate.

Beyond intellectual property, there exists a growing set of legal questions that either require technical knowledge or for which some level of technical sophistication is extremely helpful. Entry level hiring at law firms, however, has grown tricky. The economics of hiring at law firms are challenging as many firms lose money or make relatively little money on first year and second year associates.[150] Firms often have to write down a significant amount of their time and their billable rates are lowest in the firm.[151] Recruitment costs, although lower perhaps than they once were, are another source of expenditure. Perhaps the most significant issue is retention. The turnover rates among entry-level associates are fairly high and unless the individual remains in the organization, the return on the firm's investment is often negative.[152] While historically the basic economics of law firm hiring were questionable, the financial crisis has significantly limited firms' willingness to hire entry level associates.[153]

The distribution of control over existing legal work is highly skewed. The general counsels of the top five hundred companies control a significant share of the total U.S. and global non-criminal legal expenditures.[154] Since a growing number of these and other clients have barred first and second year associates from working on their matters, the entry market has tightened. It

149. *See* Bill Henderson, *A Summer Graduate School for E-Discovery*, LEGAL WHITEBOARD (May 31, 2013), http://lawprofessors.typepad.com/legalwhiteboard/2013/05/a-summer-school-for-e-discovery.html (presenting a chart highlighting the distinction between the legal profession, legal services industry and legal industry).

150. *See generally* Palazzolo, *supra* note 51 ("Here are the numbers, according to a September survey for WSJ by the Association of Corporate Counsel, a bar association for in-house lawyers: More than 20% of the 366 in-house legal departments that responded are refusing to pay for the work of first- or second-year attorneys, in at least some matters."); Mystal, *supra* note 50 ("We don't allow first or second year associates to work on any of our matters without special permission, because they're worthless.").

151. Palazzolo, *supra* note 51. The time must be written down because the client will not pay.

152. *See supra* notes 111-115 and accompanying text.

153. V. Dion Haynes, *Law Firms Tightening Belts—By Request*, WASH. POST, Oct. 20, 2008,http://www.washingtonpost.com/wpdyn/content/article/2008/10/19/AR2008101901401.html.

154. *See supra* notes 38-39 and accompanying text.

has grown far more challenging for individuals outside of the very top of their class or at very top institutions to obtain high quality full time J.D. required, J.D. preferred, or equivalent professional law related job. Indeed, the contraction of the entry-level law firm hiring market has imposed spillover consequences on other submarkets including those seeking to become criminal or public interest lawyers.[155]

It is worth noting that the existing bar on first year and second years working on certain client matters is not immutable. Instead, it is typically a rebuttable presumption. That is to say if a law firm were able to explain in a convincing manner why a particular timekeeper (associate) was working on their matter, then it would remove a major barrier to being hired in the first place. Individuals with significant training in legal project management, legal process engineering, legal analytics, and body of scientific and technical skills could arguably prove useful almost immediately as either associates in law firms or perhaps as junior in-house counsels. Many emerging in-house roles are a mixture of substantive legal work with managing and streamlining the processes needed to accomplish the overall legal work of the corporation. It is part law, part operations. MIT law students would be well positioned to join corporate law divisions looking to maintain or cut their legal spending.

Marketing its training to these industry stakeholders would be key a task for a polytechnic law school. This would likely require the directed attention of members of the faculty as opposed to outsourcing that effort to the career services department. It is hardly a revelation to note the existence of a dysfunctional relationship between the practicing bar and the legal academy. While there are a large number of notable exceptions, this is a point that Larry made quite forcefully.

> Many of us write scholarly articles unconcerned that practicing lawyers never read them but in hopes that other professors will . . . . To call us residents of an ivory tower may be giving us more credit than we deserve. Residents of ivory towers sometimes climb the parapet and get a glimpse of the outside world.[156]

Building substantive and fruitful relationships with the relevant industry stakeholders is a very important and wise move for law schools. It can help students obtain jobs—particularly when your institution is MIT Law and you have a very desirable product. Having a solid product and making that fact clear are not one and the same. Thus, in order to initially stoke demand, mar-

155. *See* Miranda Selover, *Myths and Realities of Pursing Public Interest Careers*, EQUAL JUSTICE WORKS (Apr. 17, 2012), http://www.equaljusticeworks.org/news/blog/myths-and-realities (noting that as the economy has continued to struggle, "the brightest minds from the top law schools are competing for coveted public interest positions"); *see also* Debra Cassens Weiss, *Blame It on BigLaw: Firms of 100-plus Lawyers Cut Hiring the Most, Creating Ripple Effect*, A.B.A. J. (Aug. 19, 2013, 5:00 AM), http://www.abajournal.com/news/article/blame_it_on_biglaw_firms_of_100-plus_lawyers_cut_hiring_the_most/.

156. Bruce Antkowiak, *Law Schools Must Reform: They Need to Leave the Ivory Tower and Teach Practical Lawyering*, PITT. POST-GAZETTE, Jan. 4, 2011, http://www.post-gazette.com/pg/11004/1115309-109.stm.

keting the difference between polytechnic legal education and liberal arts legal education is a very important challenge for the institution.

C. MoneyLaw: The Student Admissions Edition

Students with prior training in the physical and life sciences, computer and information science, engineering, and applied mathematics are systemically undervalued by the current law admissions environment. They are less likely to apply to law school (due to higher opportunity costs), and if they do, their lower grade point averages make them less likely (*all else equal*) to gain admission to their preferred institution.[157] At the same time, these individuals (if trained to focus their prior skills on the new and emerging legal sectors) are far more likely to secure employment than their humanities or liberal arts-trained counterparts.[158]

Mathematics, computer science, physics, statistics, and engineering undergraduate students are the most undervalued while the next set includes the life sciences and quantitative social sciences. So how does an institution attract these undervalued students? An MIT School of Law would thrive at this task because it could offer a curriculum, a faculty, and an overall ecosystem in which these individuals could shine. If you build it, they will come, and they are more likely to do so if there is a critical mass on the front end and fantastic employment opportunities on the back end. In other words, the dynamics of talent acquisition is a process featuring negative and positive feedback. Obviously, an actual "MIT School of Law" would be relying upon the fairly strong brand signal of the larger university. If an institution wants to follow the MIT School of Law approach and rebrand, they must be committed to jump start that process by applying greater resources in earlier periods.

V. CONCLUSION

Generated by the nexus of available technology and the current legal employment crisis, there appears to be a growing "garage culture" breaking out—but it is still in its very formative stages.[159] Legal tech is in the stage today where personal computing was in 1975.[160] Across the United States, UK, and Canada, the past years have witnessed various incantations of law's version of

157. *See* Simkovic & McIntyre, *supra* note 40 (finding that law students are disproportionately drawn from majors that have the lowest earning averages, including humanities and social sciences); *id.* at 27 n.66 (noting that science, engineering, technology, and math majors tend to have the lowest GPAs); *see also* Shawn P. O'Connor, *In Law School Admissions, STEM Sells*, U.S. NEWS & WORLD. REP., (May 30, 2012, 10:30 AM), http://www.usnews.com/education/blogs/law-admissions-lowdown/2012/05/30/in-law-school-admissions-stem-sells (discussing that although law schools are admitting more students with technical majors, these students still do not receive much deference for their major's difficulty in the law school admissions' process).

158. *See supra* notes 136, 139-140 and accompanying text.

159. *See generally* Hadfield, *supra* note 125. Professor Hadfield finishes her article with this statement: "I hope we are not so far from graduating our own garage guys who can transform how we do law in the way that Apple and Google have transformed how we find information, connect with one another, and learn." *Id*. at 498. I agree.

160. I say 1975 as this was the first year of homebrew computer club newsletter.

the "homebrew computer club."[161] For example, ReInventLaw,[162] Law-TechCamp,[163] New and Emerging Legal Infrastructures Conference,[164] LexThink.1,[165] The Forum on Legal Evolution[166], Stanford CodeX Future Law,[167] Harvard Conference on Disruption in the Legal Profession[168] and other related conferences, meetups, and hackathons showcase just some of the innovations that are being generated in the legal marketplace. Law's version of the Homebrew Computing is just getting started[169]—the question, as Larry Ribstein posed it, is when "law's version of Steve Jobs" will emerge.[170] It is still possible for institutions to claim a portion of growing industry sub-sectors. The key is to get off the bench and get in the game.

There are various ways to be competitive in a given market, but if you are any institution in any industry that does not already have dominant market power, pure mimicry of one's competitors is basically akin to quitting. If you accept the terms of a dramatically unfair game, you lose. There is, however, nothing like necessity to spur innovation. The best response is to identify a dimension of competition where the terms are less uneven and specialize on that dimension. In the sports world, this worked for Billy Beane and the Oakland A's and for many others looking to be upstarts in any given market.[171]

161. Josh Walker of Stanford Law School and CodeX (Stanford Center for Legal Informatics) recently described the growing group of law tech enthusiasts as law's version of the Home Brew Computing Club. *See* Harry McCracken, *For One Night Only, Silicon Valley's Homebrew Computer Club Reconvenes*, TIME, Nov. 12, 2013, http://techland.time.com/2013/11/12/for-one-night-only-silicon-valleys-homebrew-computer-club-reconvenes/#ixzz2v8sZCzls.

162. *See REINVENT LAW*, *SILICON VALLEY*, http://reinventlawsiliconvalley.com/ (last visited July 15, 2014); *REINVENT LAW NYC*, http://reinventlawnyc.com/ (last visited July 15, 2014)..

163. *See* LAW TECH CAMP, http://lawtechcamp.com/ (last visited July 15, 2014).

164. *See* ROBOT ROBOT & HWANG, http://www.robotandhwang.com/conference/ (last visited July 15, 2014).

165. *See LexThink.1: The Future of Law Practice in Six Minute Increments*, POINTONELAW.COM, http://www.pointonelaw.com/ (last visited July 15, 2014).

166. *See* Paul Lippe, *More Lawyesr are Embracing Chance— Even Though "Old Normalists" are Still the Majority*, ABA J. (Mar. 19, 2014, 8:45 AM), http://www.abajournal.com/legalrebels/article/aba_a_tale_of_three_conferences/.

167. *CodeX Future Law 2014*, STANFORD LAW SCHOOL, https://www.law.stanford.edu/event/2014/05/02/codex-futurelaw-2014 (last visited July 15, 2014).; *CodeX Future Law 2013*, STANFORD LAW SCHOOL, https://www.law.stanford.edu/event/2013/04/26/codex-futurelaw-2013 (last visited July 15, 2014).

168. *Disruptive Innovation in the Market for Legal Services*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/programs/plp/pages/kenny_event.php (last visited July15, 2014).

169. Daniel Martin Katz, *The #LegalHack Movement–or–The HomeBrew Computer Club of the Legal Industry,* COMPUTATIONAL LEGAL STUD. (Nov. 1, 2013), http://computationallegalstudies.com/2013/11/01/the-legalhack-movement-or-the-homebrew-computing-club-of-the-legal-industry/ ("#Legal Hacking is a Movement. This is what Robert Richards from Legal Informatics Blog declared back in 2012. It turned out to be a very accurate prediction. The rise of the legal hack movement is among the most interesting developments in our industry—with significant growth coming in the second half of 2013.").

170. *See* Larry Ribstein, *Waiting for the Steve Jobs of Law,* TRUTH ON MARKET (Aug. 27, 2011), http://truthonthemarket.com/2011/08/27/waiting-for-the-steve-jobs-of-law/.

171. *See* Michael Lewis, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2003).

It is important not to be fatalistic and to instead emphasize how individuals and institutions can respond to this new ordering. While it is likely the case that students with a background in science and technology (rather than the humanities, etc.) will have a significant advantage as we move deeper into law's information revolution, institutions can help level this playing field by offering their students the requisite skills training necessary to be competitive.[172] This basic proposal is designed to offer general guidance to institutions outside of my hypothetical "MIT School of Law." The pathology of attending law school to avoid math/science simply must give way to a new reality. In other words, if professional success for our graduates is the ultimate test—then, yes—there is going to be math (engineering and technology) on the exam.

In legal education, George Mason offers a good example of a startup law school.[173] They specialized and reaped the rewards as law and economics became a "pillar of legal education."[174] However, the landscape is never static. The world changes and yesterday's fast is today's slow. Indeed, Henry Manne was Billy Beane for the last generation—but who is going to be the forward thinking change agent for this go around? While the actual "MIT School of Law," is likely to remain a hypothetical, the ideas expressed herein need not. In other words, the future is *not* self-executing – it is up to all of us to go make it happen!

172. *See supra* Part I.B–C.

173. Ilya Somin, *Do the Recent Failures of the Oakland A's Discredit Moneyball Strategies in Baseball and Academia?* VOLOKOH CONSPIRACY (July 18, 2009, 8:24 PM), http://volokh.com/posts/1248827099.shtml.

174. *See generally* Joni Hersch & W. Kip Viscusi, *Law and Economics as a Pillar of Legal Education* (Vanderbilt Univ. Law Sch. Law & Econ., Research Paper No. 11-35, Nov. 2, 2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907760.

TECHSHOW2020

Tech Forward: New Jobs for New Lawyers

WRITTEN BY:

Helen Bukulmez & April Dawson

PRESENTERS:
Helen Bukulmez: @HelenBukulmez
April Dawson: @AprilGDawson

January 9, 2020

PRESENTER BIOS

Helen Bukulmez is an attorney practicing immigration and injury law. She received her Bachelor of Arts degree in Business and Economics, and obtained her Juris Doctor at Northern Kentucky University's Salmon P. Chase College of Law. Prior to her legal career, Helen taught Medical Law & Ethics, trained college students in the use of basic computer programs, and worked in various academic leadership positions particularly in schools providing education in computer programs and allied health professions. Helen teaches Attorney Marketing and Law Project Management at Chase College of Law, and advises law firms through EceROI.com, a consulting firm globally advising law firm teams. Helen can be reached at helen@helenbukulmez.com or (859) 412-2235.

April Dawson is a professor of law at North Carolina Central University School of Law. She received a Bachelor of Science degree in computer science and was a computer programmer before attending law school. April teaches, among other classes, Constitutional Law, Administrative Law, and a Supreme Court Seminar. In addition to researching and writing about the U.S. Supreme Court, April researches, writes, and speaks about legal pedagogy and the use of technology in legal education. April also has a blog titled LawProfHacker. April can be reached at adawson@nccu.edu or (919) 530-6502.

INTRODUCTION

Advances in technology have created new opportunities for new law school graduates. There are many alternatives to traditional law practice, such as legal project management, data analytics, legal operations.

While these newer concepts have created entirely new career choices for lawyers and law school graduates, they have also impacted and changed the law practice in the United States. In this track, April Dawson and Helen Bukulmez provide an insight into these alternative careers while also discussing the way law practice has been and continues to be altered by the demands of the corporate or individual consumer who wants nothing less than faster, better, and cheaper legal services. The common denominator in almost all of these careers is the need for legal service providers to create and offer better VALUE than the competitors, some of which may be simple apps and other technological advances making repeatable and foreseeable tasks much easier and efficient to complete.

Below, some of the more representative new career choices are chosen to be studied in depth and the reader is given resources for further study.

TECH FORWARD: NEW JOBS FOR NEW LAWYERS

Legal Technologist by April Dawson

As technology innovation continues to change the way attorneys practice law, there is an increasing need for lawyers who are competent both in the practice of law and the utilization of technology. These "legal technologists" serve a hybrid role that allows them to bridge the gap between legal and technology professionals and facilitate more efficient legal operations. As a result, these lawyers must have a strong technology background and familiarity with emerging technologies.

Legal technologists assist technology and IT teams with the development of strategies and long-range plans to develop and expand the use of technology to support firm lawyers, staff, and clients.

Some common skills of legal technologists are the ability to problem solve and design innovative solutions to achieve lawyers' and clients' desired outcomes and the ability to clearly articulate and explain technology solutions benefits in non-technical terms. Legal technologists must also be able to explain legal processes to IT to ensure the tech solutions address the legal needs.

Advice for Lawyers Interested in Becoming a Legal Technologist

- Attend all tech training workshops offered within your organization. If your organization does not offer tech training, propose workshops.
- Look for opportunities within your organization to serve a hybrid role and fill the gap between lawyers and IT professionals.
- Stay abreast of emerging technologies and their application in the practice and business of law.
- Join International Legal Technology Association (ILTA).
- Follow #LegalTech on Twitter.
- Write and publish in the area of legal tech.

Advice for Law Students Interested in Becoming a Legal Technologist

- Take legal tech classes offered in law school
- Join International Legal Technology Association (ILTA)
- Follow #LegalTech on twitter
- Write and publish in the area of legal tech

Resources

The International Legal Technology Association's (ILTA's) 2019 Technology Survey Executive Summary

The Lawyerist Complete Guide to Law Firm Technology

LawNext Podcast

ABA Law Technology Today Newsletter

LawSites

Law Firm Marketing by Helen Bukulmez

As the supply of lawyers and legal services professions increases, better practices in finding the best cases and the ideal clients are more in demand. Law firm marketing is arguably everything an attorney or a law firm does at all times with the focus on

- (1) identifying the target client base,
- (2) creating the legal services and products needed,
- (3) delivery of the services and products to clients in the most effective and efficient manner, and
- (4) communication of such legal services delivery to create further need by new clients, satisfaction by current clients, and repurchase intent by the former clients of the firm.

As such, although advertising is an important aspect of law firm marketing, it is simply a part of the overall marketing plan and not the only element in successful law firm marketing. In fact, firms with mere focus on advertising of their brand and services may find themselves marketing not only a bad reputation but also spreading the word about a firm that lacks in crucial legal services delivery concepts such as pricing, growth, operations, staff relations, team development, conflict resolution, communication, and efficiency. As such, law firm marketing encompasses everything that first makes the law firm a competitive, efficient, and client-focused service delivery machine, complete with the necessary technological advances and business considerations.

It is important for law firms to identify and finalize their own marketing VALUE and plans before outsourcing or delegating any marketing functions to outside vendors.

Law firm marketing focuses on such concepts as

- Identifying both the ideal consumer and the competitive product/service to be delivered through market research and internal & external systems,
- Creating a value system that is concise and effective in reaching and satisfying the target consumer along with a clear Unique Value Proposition plan,
- Definition of brand for the legal services/products offered and the manner in which they are offered,
- Establishing an internal process for the strongest team culture focusing on the mission and vision of the law firm,
- Identifying the best brand communication strategy, e.g., (1) inform, (2) educate, (3) entertain,
- Budgeting and planning,
- Identifying and clarifying the goals on Return on Investment for each investment item both in time and cost for the firm
- Researching, selecting, execution & implementation and review & analysis of the best available marketing tools for the effective communication of the product/service to the ideal client
    - Networking
    - Online Marketing Tools
        - Well optimized website clearly communicating the law firm message
        - Search Engine Optimization Plan
        - Content
            - Images

        - Videos
        - Blog
      - Paid Advertising
      - Social Engagement
    - Email campaigns
    - Management of online reviews and feedback
    - Ongoing client education and analysis
- Researching, Request for Proposals, Selection of Bids, Purchasing and Relationship-building with the marketing vendors,
- Establishing a system of internal and external delegation of tasks and checklists,
- Integration of the marketing plan and metrics into the internal data systems, such as case management software
- Careful application and ongoing review of the ethical and professional responsibility standards to the marketing tools and content utilized,
- Creating and continuously analyzing an accountability system for both the internal and external marketing operations, and adjustment of the strategy and tools utilized,
- Data analytics and review of marketing practices employed and marketing metrics achieved.

Although incomplete, the law firm marketing concepts listed above are helpful in understanding the implications of each planning item, and finding opportunities for alternative careers in this area.

Advice for Lawyers Interested in Law Firm Marketing Career

- Join Law Firm Marketing Groups in person, online and on social media
- Utilize your own firm's branding and business development efforts to create a marketing plan and put in place a system of accountability. Practice makes it perfect!
- Research the best law firm marketing plans and implementation ideas
- Create a marketing plan for yourself as a partner-track attorney, associate attorney, a solo law firm owner, etc.
- Attend trade shows or conferences in which marketing is studied specifically for law firms
    - Avoid making purchasing decisions when pestered with vendor deals or promotions at conferences. Engage in intentional planning and identify your marketing needs before attending conferences so as not to be talked into buying without an actionable and systemic plan.
- Attend workshops teaching marketing with tangible actions plans
- For corporate law firms, join groups such as Law Firm Marketing Association ("LMA") and follow the conversations on their social media groups
- For plaintiffs' firms, carefully evaluate the value offered by countless marketing vendors without understanding the basic marketing concepts and the unique standing of their firms, staff, and the legal services/products offered to a particular client base.

Advice for Law Students Interested in Law Firm Marketing Career

- Take any law firm or attorney marketing course offered at your school
- Take any business courses offered at your school
- Alternatively, taking or auditing undergraduate or graduate marketing courses may be of value
- Learn how to put together a basic Marketing Plan

Resources

https://www.legalmarketing.org/

https://eceroi.com/ for sample marketing templates, checklists upon request.

Chief Innovation Officer by April Dawson

Technology innovation continues to change the way businesses and governments operate. And with the growth of legal tech, many law firms and legal organizations have created Chief Innovation Officer (CINO) positions. CINOs develop and implement strategies that drive innovation and technology within their organizations. Legal CINOs carry out legal innovation initiatives to transform the business and practice of law to improve the quality and delivery of legal services. In addition to being knowledgeable about emerging technology, CINOs need experience developing, implementing, and executing initiatives. They must also be able to build and manage teams of professionals and oversee effective training programs.

Advice for Lawyers and Students Interested in Becoming a Chief Innovation Officer

- Develop a strong understanding of emerging technology, including artificial intelligence, machine learning, cognitive computing, robotic process automation, blockchain technology
- Develop strong managerial, communication, and leadership skills
- Take design thinking courses

Sources & Resources

The Law Firm Chief Innovation Officer: Goals, Roles, and Holes, Michele DeStefano

Legal Upheaval: A Guide to Creativity, Collaboration, and Innovation in the Law, Michele DeStefano

Operationalizing Innovation in Legal Organizations

The Current State of Play in Legal Innovation: A New Era of Evolution in the Making

LawNext Podcast

ABA Law Technology Today Newsletter

Client Success Manager by Helen Bukulmez

Client success manager is a liaison between the law firm and the law firm clients, the law firm and the vendor, or the law firm and the legal services buyers/procurement to ensure an ongoing positive relationship, loyalty, retention, repurchase intent, referrals and positive social proof through effective and regular communication, reporting, and transparency in data, analytics, results, and return on investment. In the context of a law firm practicing in the areas serving the plaintiffs, a client success manager can assist the firm and the individual attorneys by scheduling and connecting with clients on a regular basis, providing information on their case, informing clients of the progress, and answering any questions the clients may have. Often faced with injury, pain, a lot of uncertainty, and loss, most plaintiffs demand and appreciate the opportunity to speak with the representatives of the law firms assisting with their case and the ability to ask specific questions about proceedings, expectations, costs, and other details that are directly pertinent to the outcome of the case.

In a corporate law firm setting, a client success manager may be in a position to handle all communications not only with clients and client representatives, such as executives of the company represented, in-house counsel, or general counsel, but also with legal procurement, legal operations, and other departments that may be directly in charge of purchasing legal services from the law firms.

While focusing on operational excellence and value creation, client success managers can also assist the firm with its ethical and professional responsibility obligations of client communication.

A client success manager is in a unique position to be recruited, employed, trained and perhaps promoted by a law firm. She has an intimate knowledge and understanding of the firm, its leaders and employees, unique contributions of each associate and partners to the cases, its organizational structure, operations, trial and litigation skills, negotiation practices, and case management. A client manager's initial purpose may be to be an integral part of the profitability planning for his firm. As such, it is important for a client success manager to have a clear understanding of his firm's mission, vision and goals. Her job will focus on retaining as much business as possible and growing the firm through repurchase, referrals and positive online and offline social proof. She will also be compensated by the law firm for her work.

Despite a client success manager's deep financial and professional ties to her firm, her job is also focused on understanding the needs of the firm's clients or buyers, and to advocate on their behalf so that the firm meets and preferably exceeds the expectations clearly set forth from the initiation of the relationship. In such an environment, building trust and credibility, maintaining professionalism, and management of expectations of both her employer and her clients will be crucial to her success. Project management tools such as Key Performance Indicators, Key Responsibility Areas, Success Mapping, Process Flow, Checklist and System Creation, and Return on Investment are highly useful for a Client Success Manager to create and use a language that is meaningful and valuable to all parties involved.

Advice for Lawyers Interested in Client Success Manager Positions

- Utilize your existing client base and their expectations & frustrations in continuously improving your skills in managing expectations and resolving conflict
- Take courses or workshops in Psychodrama, Conflict Resolution, Negotiation
- Read or attend courses in Emotional Intelligence
- Train yourself on Project Management and Performance-Based Value Evaluation tools

Advice for Law Students Interested in Client Success Manager Career

- Take any business and customer service related courses offered
- Obtain an internship and externship positions that place you in a position of managing expectations of several parties to a transaction and practice your skills in negotiation, clarifying, coaching and conflict resolution
- Treat any part-time job (before or during law school) in customer service as a valuable learning tool in understanding expectations and managing conflict-based behavior

Resources

PMI.org

Legal Tech Entrepreneur by April Dawson

Becoming a legal tech entrepreneur is appealing to many lawyers not interested in working traditional legal jobs. Lawyers who are interested in starting their own tech business building a legal tech company can be risky, and like many startups in various industries, there is no guarantee of success of a legaltech business, and many ultimately fail. However, the payoff can be rewarding.

Advice for Lawyers and Students Interested in Becoming a Legal Tech Entrepreneur

- Learn about successful lawyer turn LegalTech Entrepreneurs
- Attend legal tech conferences. In addition to attending relevant sessions, check out exhibitor booths
- Take business, entrepreneur, and
- Take a coding and app development classes (While you will not be coding your application, having an understanding of the process will be beneficial.)
- Explore below resources

Sources & Resources

Legal Tech Accelerator, Incubator, and Venture Programs

LexisNexis Legal Tech Accelerator Program

Duke Law Tech Lab

Allen & Overy Fuse

Nextlaw Labs

Deloitte Venture Path

Thomson Reuters Labs Incubator

ABA Lawyer Incubator Directory

Legal Tech Startups List

Legal Innovation Podcasts

Artificial Lawyer Legal Tech Education Guide

ABA TECHSHOW Startup Alley Competition

LawSites

Legal Procurement by Helen Bukulmez

Legal procurement is the new and improved way of purchasing corporate legal services so as to find the faster, cheaper, better value for the corporations and entities buying those legal services. The year 2008 brought much financial stress to everyone forcing companies to cut budgets anywhere they could. Legal procurement is perhaps the baby born out of that depression era.

Prior to 2008, we all knew procurement as the person or the department that engages regularly in purchasing widgets, materials or services for companies or for the government. The traditional concept of procurement involved many different business and legal concepts such as negotiation, contracts, pricing, request for proposals, and bidding.

Similarly, prior to 2008, most buying of legal services by the corporations was done based on "trusted legal advisor" relationships between the law firms as providers and the executives/owners of corporations or their in-house counsel. Most of the time, no one questioned the price of these legal services even at the highest hourly rates, and the quality and efficiency of the legal services tasks were almost never examined. The cost of legal services as provided by large law firms was seen as the cost of doing business. After all, legal services were highly complex, requiring special study, expertise, and even some form of nobility by the learn-ed lawyers, who knew how to handle legal challenges and had a close connection with the decision-makers.

For the longest time, until about the end of 2008, not many put the two together. However, tight budgets caused many law firms to go out of business, and the legal services industry was pushed for a creative solution. Legal procurement became the answer. The companies and other legal services consumers learned that the same efficiency, pricing, competition, and value-based principles could be applied to purchasing legal services. Why pay a law firm even $300/hour for e-discovery if and when the same task can be done much faster and cheaper by technology requiring minimal supervision and input? Why pay a lawyer to review a contract when an average lawyer takes about 90 minutes with about 85% accuracy rate but a trained AI only takes about 30 seconds to read the same contract with 90+% accuracy rate? Finally, why engage in a blind budgeting for legal services when a more closely managed sourcing system can save a company up to 40-50% on its annual legal spend budget?

Although filled with many terms such as Alternative Fee Arrangement, Invitation to Tender, Key Performance Indicator, Master Service Agreement, Request for Proposal, Uniform Task Based Management System, legal procurement is the simple concept that what is done can be done more efficiently and effectively through the use of the right tools, data, and systems. It is then the job of a legal procurement professional to identify not only the best legal services suppliers but also the best tools in technology and the best resources in human services to reach the efficiency with the desired quality and effectiveness for her company.

Traditionally held by accountants and data analysts, careers in legal procurement is attracting more lawyers and law school students who have interest, training, education or experience in accounting, budgeting, negotiation, sourcing, purchasing, systems, and collection, organization and processing of large amounts of data and special skills in identifying opportunities for significant savings for their employers. Most non-lawyer legal procurement professionals bridge the gap in their knowledge of the legal system by taking courses in specific topics such as advanced contracts. If you enjoy teaching and can

present such topics with clarity and simplicity, finding your own audience of legal procurement professionals may also be an excellent career opportunity.

Advice for Lawyers Interested in Legal Procurement Career

- Join Legal Procurement platforms such as BuyingLegal.com * Membership fee required
- Research online
- Join ABA sections for marketing for the corporate legal services and products
- Utilize LinkedIn to connect with Legal Purchasing professionals, Legal Procurement professionals and Supply Chain professionals
- Attend trade shows or conferences designed to train legal procurement professionals
- Attend trade shows or conferences providing platforms for networking among legal procurement professionals, in-house counsel, general counsel or legal operations professionals

Advice for Law Students Interested in Legal Procurement Career

- Law school students who have Bachelors' Degrees in business, accounting, management, operations, logistics, analytics, engineering, and economics may have an advantage.
- In law school, take courses such as Counseling and Negotiation, Mediation, Global Arbitration Law and Practice, Law Project Management, Corporate and Business Law, E-Discovery, Taxation, Labor and Employment Law, Advanced Contracts and Contract Drafting, Entrepreneurial Law, and any course that is designed to better understand the legal implications of the industry in which the law school students plan to work, e.g., healthcare, immigration, accounting, may further their advantage.
- Interview law firms selling their services to large corporations as outside vendors
- Interview legal procurement professionals
- Research on websites such as BuyingLegal.com or cloc.org to learn more about how large corporations buy legal services and how law firms are adjusting to the way their services are marketed, sold and delivered to large corporations targeting larger savings.

Resources

Buying Legal Council: BuyingLegal.com

Books:

https://www.amazon.com/Procurement-Handbook-Silvia-Hodges-Silverstein/dp/0692371648/ref=sr_1_fkmrnull_1?crid=RAJIB6A1B82M&keywords=legal%2Bprocurement%2Bhandbook%2Bby%2Bdr.%2Bsilvia%2Bhodges%2Bsilverstein&qid=1550172347&s=gateway&sprefix=legal%2Bprocurement%2B%2Caps%2C236&sr=8-1-fkmrnull

https://www.amazon.com/Winning-Proposals-Essential-Services-Providers/dp/0692893733/ref=sr_1_1?keywords=john+de+forte+winning+proposals&qid=1578411319&sr=8-1

A simple blog explaining how legal procurement works:

https://sterlingmiller2014.wordpress.com/2018/10/22/ten-things-legal-procurement-the-next-big-thing-for-in-house-lawyers/

Spend Matters: Solution Intelligence for Procurement: spendmatters.com

Resource for information and RFP samples: https://cloc.org/

Sample conference idea:

https://legalsolutions.thomsonreuters.co.uk/en/products-services/events/legal-tech-procurement-conference-2019.html?elqTrackId=0b242178d503414cac8c592584da0fe2

Chief Privacy Officer by April Dawson

With business and government organizations collecting sensitive and personal information from clients, customers, patients, students, etc., organizations need to ensure they are in full compliance with privacy laws and regulations and have systems in place to protect accumulated data. Chief Privacy Officers (CPOs) are senior-level executives responsible for overseeing an organization's privacy compliance strategies.

While there may be some overlap in the responsibilities of a Chief Information Security Officer (CISO) and CPOs, the roles of the CISO and the CPO are distinct. A CISO, typically part of the IT team, is responsible for ensuring that the firm's electronic data is adequately protected. CPOs are sometimes part of IT but are often part of the general counsel's office or risk management department. In contrast to CISOs, CPOs are responsible for policies and procedures for the protection of electronic and physical data across the entire organization. They advise their organizations as to what data may be collected, how that data may be used, where and for how long data should be stored, and when it may or must be destroyed.

With the enactment of Europe's General Data Protection Regulation (GDPR) and California Consumer Privacy Act (CCPA), which went into effect on January 1, 2020, CPOs have to ensure that their organizations are complying with these new privacy laws. CPOs also have to anticipate and prepare for future federal and state privacy legislation.

Advice for Lawyers Interested in Becoming a Chief Privacy Officer

- Obtain Information Privacy Professional Certification
- Join Admin Law Section of ABA
- Attend Admin Law Conferences

Advice for Law Students Interested in Becoming a Chief Privacy Officer

- Take Administrative Law, Organizational Leadership, and other relevant business classes
- Secure intern- and externships in state and federal regulatory agencies
- Write a comment or casenote on an information security-related topic. (For example: 2019-2020 Data Privacy and Cybersecurity Writing Competition for Young Lawyers)

Sources & Resources

International Association of Privacy Professionals (IAPP)

The Chief Privacy Officer: "The New Must Have" ACC Docket, December 2018
https://www.acc.com/sites/default/files/resources/20190314/1493964_1.pdf

NASCIO Perspectives on Privacy: A Survey and Snapshot of the Growing State Chief Privacy Officer Role

CPO Magazine

Legal Designer by Helen Bukulmez

Originally an "access to justice" invention legal design is the application of design thinking, project management, and creative design principles into law practice and management issues as experienced both by the providers and the consumers of legal services. The goal is to identify the actual issues surrounding the apparent problems around legal services creation and delivery, and to find effective and efficient solutions to such issues considering not only the potential answers to the questions but also the implications of those issues on a human-centered, holistic level. Incorporating the considerations of user experience, whether online or not, and visual presentation of facts, ideas and issues into the solution-finding process is a high priority for a legal designer.

A legal design professional is typically a project manager who has design thinking education, training, experience or background. A natural leader who can remain calm, collected, organized and cooperative under pressure, a legal designer initiates the process of bringing issues to the table for discussion. Reducing the real problems into clear and concise issue statements, she utilizes the tools of project management, design, and design thinking to gather perspective and begin the process of finding potential solutions without judgment, restrictions, or fear of failure. Upon agreement on potential solutions list, additional considerations of cost, risk and collective preference finalizes the solution ideas to be applied to the problems, and actionable, scheduled, regularly revisited accountability system is put in place to ensure the efficiency, effectiveness and longevity of the solution. Alternative solution ideas are also included in the final draft to make sure that the next encounter with a similar problem does not result in waste in time or resources. Legal design allows law firms, ancillary legal service providers and legal vendors to find creative solutions to problems as they arise, while also effecting significant savings in the process so as to profit both the providers and the consumer of legal services.

Some of the skills necessary for an effective legal designer are as follows:

- Understanding the needs of humans involved
- Clear understanding and experience in legal terminology, legal issues, creation of order in society, and prevention and solving of conflict
- Skill, background, training of education in creation and measuring of user experience both online and in-person
- Ability to create visual representations of all issues, solutions and parties involved so as to clarify and simplify complex stories
- Ability to respond professionally versus reacting to strong personalities, complex stories and challenging problems in law, society, design, and project management

Advice for Lawyers Interested in Legal Design Positions

- Attend the ABA TECHSHOW and other CLEs & courses on Legal Design
- Attend Legal Design Workshops

Advice for Law Students Interested in Legal Design Career

- Take courses such as Legal Design, Project Management, Design Thinking or Innovate Law Practice Management offered at your school

- Attend the ABA TECHSHOW and other CLEs & workshops on Legal Design

Resources

Follow Caitlin "Cat" Moon on Twitter: @inspiredcat (Caitlin Moon is the Director of Innovation Design for the Program on Law and Innovation (PoLI) at Vanderbilt Law School)

Advice from Cat for lawyers or law school students who may be interested in Legal Design as an alternative career choice:

- 1- Find opportunities to learn about and practice human-centered design methods: sprints, workshops, hackathons
- 2-Find/create volunteer opportunities that give you a chance to use design, e.g., work with a local legal nonprofit to redesign educational materials, work with state's AOC to redesign legal forms made available to the public
- 3-Look for ways design can make something better where you are: if in a firm, find something that needs fixing (this shouldn't be hard to do) and apply design methods to fix it, either on your own or create a team. As a law student, look for ways to apply design to your course projects and look for challenges that could benefit from design methods, e.g., if you're working in a clinic, could you redesign a form or process that the clinic uses to make it more client-centered?

Chief Information Security Officer by April Dawson

With the increase in cyberattacks and data security breaches, many business and government organizations have created the position of Chief Information Security Officers (CISOs). Law firms have not been immune to cybersecurity breaches and attacks. Indeed, because law firms often have voluminous sensitive client information, they have increasingly become prime targets for cybersecurity attacks. Lawyers have an ethical duty to be aware of the risks associated with the use of technology and to take steps to protect client data. As a result of the increased risks and obligations, more law firms are hiring CISOs.

CISOs are typically high-level executives and are responsible for managing information security in their organizations. CISOs must have expertise in IT as they will regularly oversee a wide range of IT operational tasks and data security assessments. CISOs also need expertise in data management. They need to "fully understand the flow of all data within their organization and must define and manage security policies to protect against information loss, damage, harm, or theft."

CISOs also need knowledge of compliance and regulatory responsibilities. With the enactment of the European Union's General Data Protection Regulation and the California Consumer Privacy Act, CISO's will be responsible for ensuring compliance with these and other privacy laws.

Because CISOs manage work with cross-discipline positions within their organization, CISOs must have strong managerial and leadership skills.

Advice for Lawyers Interested in Becoming a Chief Information Security Officer

- Join ABA Section of Science & Technology Law
- Join technology, security & privacy organizations such as the International Legal Technology Association (ILTA), International Association of Privacy Professionals (IAPP), and EC-Council
- Seek the following certifications:
    - CISA: Certified Information Systems Auditor
    - CISM: Certified Information Security Manager
    - GSLC: GIAC Security Leadership
    - CCISO: Certified Chief Information Security Officer
    - CGEIT: Certified in the Governance of Enterprise IT
    - CISSP: Certified Information Systems Security Professional
    - CISSP-ISSMP: Information Systems Security Management Professional

Advice for Law Students Interested in Becoming a Chief Information Security Officer

- Take Administrative Law, compliance law courses, and legal tech-related classes.
- Take business courses focusing on data management, data analytics, and management.
- Join technology, security & privacy organizations. (Many of these organizations offer reduced membership fees for students.)
- Attend technology, security & privacy organization conferences. (These conferences often have reduced registration fees for students. Also, inquire about student scholarships to attend these

conferences. Attending these conferences will expose students to the current security issues and provide vital opportunities to network.)

- Write a comment or casenote on an information security-related topic.

Resources

ABA Cybersecurity Legal Task Force Resources

ABA Annual Meeting panel, Law Firm Cybersecurity Requirements You Never Dreamed Of: Emerging Threats, Ethical Obligations to Clients, and Survival Tactics

The ABA Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals, Second Edition

ABA Legal Technology Resource Center free webinars

When You Are the Whale: Growing Risks from Social Engineering Attacks

Today's Legal Technology Document Management

ABA Techreport 2019 Cybersecurity Article

Federal Chief Information Security Officer Handbook

Legal Operations by Helen Bukulmez

Legal operations is the efficient and effective delivery of legal services to the legal services consumer. The concept employs several technological, business, and legal elements, and may change form based on whether the legal services are provided to a corporation or an individual.

In the context of serving the needs of corporate clients, legal operations focuses on the efficient and effective delivery of legal services and client management. The ultimate question then is how can the law firm create, organize and deliver legal services to the client that creates the most value for the client?

Some of the most important factors in such client management become the following: (1) service delivery, (2) project management, (3) technology support, (4) change management, (5) outsource resources, (6) data analytics, and (7) financial management. Corporate Legal Operations Consortium ("CLOC") is a great resource in understanding the workings of legal operations in the context of legal service delivery to the corporations: https://cloc.org/wp-content/uploads/2019/10/What-is-Legal-Ops_Oct2019-FINAL.pdf

In firms focused on the delivery of legal services to individuals, in the context of mostly plaintiff's work, legal operations focus on solving a range of business issues and concerns helping the law firm become leaner, more flexible and more profitable in a competitive market: how do we get the next best case, how do we create the best practices and streamline systems to drive the most efficiency, and how do we focus on the business aspect of running the law firm so as to create an environment where the attorneys can focus solely on serving the legal needs of the clients rather than being involved in the overall and daily management of the law firm as a business? Legal operations in plaintiffs' firms is a relatively newer concept. Susan Rovetto is Director of Legal Operations who has been with the same New Jersey law firm, practicing plaintiff's work, for decades. Susan describes her position with the firm as follows:

> Legal operations is about understanding the vision of the firm and its goals so as to create sustainable growth strategies and while streamlining processes and systems to drive greater efficiency allowing the lawyers to focus on the practice of law. The Legal Operations professionals in plaintiffs' firms must be highly organized innovative leaders that are continuously involved in professional and self development and gain the ability to develop, review and implement policies and procedures. It is crucial to understand legal terminology, best law firm practices, financial reporting and budgeting. Operational leaders must be good communicators both within the firm and with clients, have an analytical mindset with an eye for quality and solutions.

Background in operations, marketing, human resources, and project management specifically in the legal service industry, and skills in office system management, SOPs, client management, and corporate growth strategies are directly relevant to the success in legal operations in the plaintiffs' legal service delivery firms.

Advice for Lawyers

Attorneys interested in transitioning to legal operations roles may be well-served by focusing on gaining the knowledge and experience necessary in understanding the goals of the law firm and its clients in order to drive effective and efficient law firm management and operations practices. Joining groups such as CLOC, attending relevant ABA conferences in law firm management and operations, and completing CLEs

focused on driving efficiency in law firm practices and service delivery may be helpful in preparing the lawyers who will already be well-trained in the use of legal terminology based on their past legal experience.

Advice for Law Students

Law school students interested in legal operations positions would be well-prepared to focus on research regarding legal operations in the sector in which they intend to work (defense or plaintiff's work), gain applicable skills and knowledge in human resources, financial management, service delivery, data analytics, communications, organizational management, marketing, and operations. Dual degrees in law and business, such as JD+MBA programs, may offer more opportunities to obtain the skills necessary for the legal operations positions. Additionally, any electives offered in law school for law practice management, marketing, and operations are directly relevant to the acquisition of skills and understanding of the legal operations concepts.

Resources

cloc.org

CONCLUSION

Having to respond to the demands of the legal services consumer, whether it is corporate clients seeking large savings in their annual legal spend budget or plaintiffs not willing to pay for extravagant dinners for their litigation attorneys, the legal landscape is changing. The same clients insist on faster, cheaper, and better legal services. Competition has forced law firms and other legal service providers to find more systemic methods to achieve efficiency and effectiveness. Although these changes may challenge the traditional legal mindset that has been comfortable with hourly billing and lucrative law firm gains, it provides excellent news to lawyers and law school students to find not only new career opportunities but also entrepreneurial chances.

The new career opportunities discussed in this track are mere samples.

The new legal world has a lot more space for creativity, organizational excellence, planning, adjustment, privacy, innovation, technology, efficiency, balance, and systemic and repeatable success. Isn't it a grand time to be a lawyer?

For further discussion, exchange of ideas, or any questions, please do not hesitate to reach out to the authors:

Helen Bukulmez helen@helenbukulmez.com | (859) 797-4323 | Twitter: @HelenBukulmez

April Dawson adawson@nccu.edu | (919) 530-6502 | Twitter: @AprilGDawson

EQ Over IQ: Building Emotional Intelligence for Lawyers

WRITTEN BY:

Dina Eisenberg & Darlene Tonelli

PRESENTERS:
Dina Eisenberg: @dinaeisenberg
Darlene Tonelli: @inhouseallies
@lawyerlifepod

January 6, 2020

WHAT IS EMOTIONAL INTELLIGENCE (OR EQ)?

Daniel Goleman "describes emotional intelligence as your ability to manage and use your own emotions, as well as the emotions of others, purposefully."
The components of emotional intelligence vary depending on which author or researcher you are following.
Daniel Goleman, often identified as the pre-eminent researcher and writer on this topic, identifies five components to emotional intelligence:

- self-awareness
- self-management
- motivation
- empathy
- social skills.

Travis Bradberry & Jean Greaves, in their book *Emotional Intelligence 2.0* replace the last three qualities in the list above with social awareness and relationship management. More recent articles and authors break it all down even further.

However you define it, would you say your law firm is high in emotional intelligence? If not, you're probably leaving money on the table, and definitely missing out on better results for your clients and team.

WHY DOES EQ MATTER?

We believe that emotional intelligence is the foundation on which a successful lawyer's career is built. IQ is important (and arguably, table stakes), but it's not capable, on its own, of resolving the vast majority of issues lawyers face in a typical day. IQ has been overvalued in the law firm business model, when it's EQ that drives true differentiation in results for clients.

On a closer look, many successful lawyers and law firms do use emotional intelligence to resolve cases more efficiently, to improve negotiation outcomes, to foster healthy law firm cultures, and to establish the law practice they want and need to have. We just haven't been talking about EQ as a core "black letter law" skill until recently.

Clients need things from their lawyers, and we need to be high EQ to deliver those things. Emotional intelligence is no longer a soft skill or "nice to have" if you can make time to develop it. Being emotionally intelligent with clients and staff is a business strategy that smart lawyers need to employ as we transition into the future of law.

EQ helps lawyers with the key components of every client relationship:

Intake and Building the Relationship with the Client

1) understanding how clients choose lawyers
2) understanding the client's perspective

Achieving Results for the Client

3) designing the strategy to achieve results for the client
4) building relationships with opposing counsel and people key to achieve the results
5) building trust with the client necessary to keep client acting from the "win zone".

1. USING EQ TO UNDERSTAND HOW CLIENTS CHOOSE LAWYERS (AND MAKE SURE THEY CHOOSE YOU!)

(*Dina Eisenberg*)

From minute one in your interactions with a potential client, you can use emotional intelligence to make sure they are the right client for you, and you are a lawyer who can help them.

According to the book *Outside In*, there are four questions that clients ask themselves when considering buying. When you answer these questions as part of your intake and later your client onboarding process, clients will think, "this lawyer gets me", a necessary conclusion driving their decision on whether or not to hire you. For them to arrive at that conclusion, they need to understand, through your intake process:

1. What is this?
2. Will it work for me?
3. Can I do this?
4. Will I look dumb?

Your goal is to exchange bits of information that help your client answer these questions, moving you from the stranger category to the expert category by connecting.

Looking back at the key elements of EQ above, the lawyer in the client intake meeting needs to have empathy and social awareness to overcome the divide between the client with the problem and the lawyer with the solution. Empathy allows the lawyer to realize that:

- the client is stressed and facing a complete unknown, with unforeseeable costs and consequences;
- the client does not know how to make a good decision about which lawyer to choose.

Nine out of ten legal consumers surveyed by Avvo reported that they experience *a lot of stress*. And, 62% of legal consumers fear making a mistake in handling their legal matter.

Dr. Nika Kabiri, formerly the Director of Strategic Insights for Avvo, wrote an amazing white paper that every lawyer who wants to grow their practice in a client-centric way should read entitled, *In the Hot Seat: How Understanding Client Stress Can Help Grow your Business*.

People under enormous stress find it difficult to process information to make good decisions. You know that. What you might not know is that this stress impacts your potential client's ability to make two decisions that are very important to you:

1. whether to hire you
2. to refer future business to you

Your clients are stressed. Taking the initiative to incorporate awareness of their feelings into your intake process will ensure that they choose you as their lawyer and refer you to others.

An emotionally intelligent lawyer, on intake:

- Actively listens to the client's perspective and asks (rather than assumes) specifically about the issues that the client is concerned about.
- Acknowledges that the situation is stressful.
- Reassures the client that he or she is not expected to have any knowledge on how everything is going to work.
- Creates transparent systems for the client to minimize stress and helplessness.
- Creates systems to allow meaningful connection for the lawyer with the client.
- Conveys to the client his or her role in getting to a successful outcome as well as his or her role in managing costs on the file.

2. USING EQ TO APPRECIATE THE CLIENT'S PERSPECTIVE

(Dina Eisenberg)

An anecdote may help to anchor some of these high-level concepts in a real-life situation.

Bumping into a friend on the street I asked, "how's business?" She laughed and said, "it's great if you don't mind the clients", as her grin slid into a grimace.

If I had a dollar for every time I heard a lawyer complain about something a client did, well, I'd be writing this article from my private island.

There's a funny meme on Facebook right now that sums it all up nicely. Let me describe the visual.

You see a lawyer reading a text from client in the first screen asking, "*when will there be an update"* in the first screen. Then, the lawyer's response, "*since yesterday?"*, in the second screen.

No doubt you giggled at this. I did because it so accurately represents two qualities that lawyers rant about the most in their clients: demanding and clueless.

Clients are demanding. It's true. Clients will demand lower fees, more attention and communication, and the perfect outcome. They have unrealistic expectations.

As between lawyers and clients and the status of the file, clients are clueless. They have very little or no real idea about the legal process, your skills and the enormous resources it takes to successfully resolve a legal problem. They don't know how long it takes or why some problems can't be resolved at all. Clients are in the dark.

These are the facts, my friends. We can bemoan them or we can look for different ways of communicating with and relating to clients that make lawyering easier (and more profitable).

From minute one in the intake process, as outlined above, the lawyer can be taking steps to head off this type of problem.

People fear what they don't understand. Maybe that's why there are so many horrible lawyer jokes out there. Clients would like to tell you what they need and expect from you, but are too intimidated to say. Let me share what I've discovered from clients about what they want and need from you.

The next time you're interacting with a client in person, email or text, remember that in the back of that person's mind they are thinking:

I want connection (and protection)

Belongingness is the driving force behind human behavior according to Pamela B. Rutledge who reexamined Maslow's hiearchy of needs.

Your client wants to connect with you.

No, I'm not suggesting a date night. Clients need to connect with you in some manner to feel protected and to avoid regretting their selection.

How can you connect with your client? It's so much easier than most of us think to connect with another human being. Robert Cialdini, the foremost expert on persuasion, tells us that simple ideas like growing up in the same city or sharing a birthday or initials are enough to spark a connection.

You have everything you need to connect with clients based on the intake information you collect. A simple question like, "what do you like to do to relax?" is easy for the client to answer and gives you a starting place to connect as well as a calming tool you can point your client to when things get hectic.

Clients want reassurance.

Your client has likely never been in a legal battle. You have been in many legal battles. And, while you can't promise a result, you can help normalize the situation for your clients and help them put everything into perspective. Remember the last time you got news that knocked you off your feet. Did you want to be reassured?

How can you reassure your clients without getting in too deep?

You can't guarantee the outcome of a case as a lawyer. However, clients still want to have their doubts and fears removed.

Listen and reflect. One of the greatest gifts you can give someone is to actually, deeply listen to them. Listen to your client's concerns. Sometimes just saying them aloud is enough for the person to be reassured.

If not, ask questions that help your client reflect on how likely it is that their fear will come true. This technique worked wonders for me as a mediator. People would talk themselves into a better frame of mind.

Your goal is to provide a space where you client can feel safe, accepted and respected.

Why? You already know how challenging it is to work with an uncooperative client. If you can help your client behave and save yourself drama, why wouldn't you spend 5 minutes reassuring your client?

Clients want things to be easy (comfort)

Seeing a lawyer is incredibly scary for most people. The process of hiring and working with a lawyer is a complete unknown. That would make anyone stress out.

Make working with you easy. Install systems that automate while explaining your process. Repeat explanations often and with differing words because stressed clients have a hard time comprehending.

A good example is payment. Are you explaining your payment system completely including what happens if a client can't pay and how to communicate that? Do you accept credit cards or explore whether payment apps like Venmo would work for you?

Using an app like Case Status allows you to easily communicate with clients, ask for and track documents and keep clients informed all without you spending billable hours to do it.

3. **USING EQ TO ACHIEVE RESULTS FOR THE CLIENT**

(*Darlene Tonelli*)

1) Designing the strategy to achieve results for the client
2) Building relationships with opposing counsel and people key to achieve the results
3) Building trust with the client necessary to keep client acting from the "win zone".

In my practice, I'm generally dealing with commercial negotiations on intellectual property issues. My clients are creators and technology companies protecting their ideas and property.

Designing the Strategy

In designing negotiation strategy for each of my clients, the key components I employ are:

- honest discussion about what the client hopes to achieve. This is all about active listening and trying not to operate from assumptions. Every file is different. And, as Dina says above, so much about what a client really wants comes out in personal anecdotes or value-based stories. A few extra minutes spent building a relationship through this discussion and learning about who the client is, is always time well spent.

- educating the client about what will happen in the process. This is intended to minimize the stress of the unknown and learn from the client what their knowledge level and ability to contribute and assist is. Taking an educational approach creates an immediate connection and conveys the impression from the first meeting that the client and I are on the same team. With a sophisticated client, this is equally an educational opportunity for me on how the client usually handles negotiations and how their product works.

- establishing the client's role as my partner in achieving results for them. We set the expectation up front that we will work in tandem to get the deal over the line. Taking on a negotiation for a new client involves learning how they have handled negotiations in the past, what some of the obstacles have been, and how they have been overcome. If we waltz in pretending we "know how to negotiate these things", we might miss valuable tools in the client's toolbox to help us get the deal done.

- aligning incentives, discussing any outside factors that might be in play. Earlier in my career, I worked on a few isolated matters where I later discovered that knowledge of a bigger picture problem would have been very useful to our strategy. I now ask the question very broadly at the end of the initial discussion – "anything else I should know? About you or the file?" Usually this is the point in the discussion where I hear more about pressures the clients might be under (e.g. to hit a quarter-end sales commission deadline) and big picture challenges facing the company. This information is always relevant and can be transformative to both the negotiation and the relationship with the client.

The goal in walking through these steps is to allow us to level the playing field a bit between lawyer and client through information-sharing and setting boundaries that are respectful of the client's knowledge and the gaps in it that the lawyer is needed to fill. Done with care and empathy, this meeting can set the foundation for years of successful negotiations.

Building Relationships

We next identify the players that might come between us and the results the client is looking for.

An emotionally intelligent negotiation involves:

- starting, first, with awareness of where your own ego might come up as you move forward. One quick way to do this is to say "am I going to be intimidated here by opposing counsel?" If so, why? Most lawyers will be surprised by how often the answer to this question is that there is something about the file that will engage their ego – the need to be right, to show they are the smartest, to show their firm is the most thorough, etc. That sort of thing can have a place, particularly if it's helpful to the client. It's not fine, though, if it's posturing for opposing counsel and counterproductive to the client's interests. Becoming aware of when ego is driving the agenda (for you or your opposing counsel) is the first step in zeroing in, in a negotiation, on what really matters to both sides getting over the finish line.

- an attempt to really understand, with compassion for the other side, what their needs are. Listening attentively, not making assumptions, and cultivating a genuine concern for trying to help them achieve their objectives where possible, while simultaneously achieving the results your client wants. It is far easier to ask for what you want in a negotiation if you are clear on what the other side wants and needs. It can transform a negotiation from a series of "demands" to a process of "give and take". Sensing discomfort from the other side and asking about it in a compassionate manner can give a lot of insight also.

- self-awareness, for lawyer and client, on when points might be given for the purpose of conflict avoidance or other individual preference reasons that don't support the results we are looking

for. For example: being conflict averse, on its own, is not a reason to give up a point; wanting to be liked is not a reason to give up a point.

- maintaining professional distance and objectivity. This is much easier to do when your ego is not engaged. It's also a great service to a client to not add to drama on a file. Calm is contagious, as they say in the Navy Seals. All good solutions come from a place of calm. We resolve conflict better when we are calm. We see clearly when we are calm. When we can remain objective, we can stay calm and know that whatever happens, this is a file, with a desired outcome. The outcome (good or bad) doesn't determine our worth as a human being.

- Awareness that the relationship between client and the other side will continue long after the negotiation is complete, with the negotiation setting the tone. This can drive choices about who (lawyer or client) will handle certain thorny issues with the other side.

Many of these points are transferable to more adversarial situations as well. Even in family law, a lawyer who can remain aloof from drama and stay calm, while still being compassionate and reassuring to his or her client, provides a valuable service. In litigation, ego is so easily engaged that it can lead lawyers to file motions or take other actions that are expensive for the client and counterproductive. Taking a moment to pause, get calm, reflect on where and how your ego is engaged, and consider the appropriate response with focus on the results that you need to achieve, goes very far toward building and maintaining relationships on a file.

One point of clarification - acting with emotional intelligence does NOT mean that you allow yourself to be walked over. You teach people how to treat you. So, if opposing counsel is offside, you can set boundaries without reacting in kind. You can respond in a respectful tone and request the same from them. You can advise your client that you will not be responding in the tone that opposing counsel chooses to use, nor will you be bullied by him or her. You can use each experience with someone difficult on the other side to practice remaining implacable in the face of confrontational or insulting behaviour.

It is a myth about emotional intelligence that it is synonymous with being "nice" or "kind". It can be, in that there is overlap: emotionally intelligent people care about others, which usually goes hand in hand with being kind and nice to some extent. But emotional intelligence is about using all of your senses to achieve the best result for your client. If being kind and compassionate and empathetic to the other side is not driving toward the results the client needs, an emotionally intelligent lawyer will have the self-awareness to shift the strategy. Emotional intelligence also drives honest but difficult conversations at times.

As an example from my own practice, a lawyer on the other side once started shouting on a call. Instead of responding with shouting of my own, I took a deep breath and allowed an uncomfortable silent pause. Then I said "do you need to call me back once you've calmed down?" It changed the dynamic of the negotiation completely, and we proceeded to a result that was better for my client than it would have been had the shouting not happened. EQ is about interacting honestly from a place of knowing what you need and what the situation demands. It's not about being a pushover.

Building Trust With the Client

As stated above, clients are a key component to assisting the lawyer to get the desired results. If we operate from a position of our clients having to read our minds or fill in blanks when we are not keeping them informed, what we're doing is losing their trust. And trust is a key ingredient in any successful relationship.

It has been my experience that in most cases, if the client feels they are a partner from the beginning, and we steadily build trust with the client by doing the basics:

- meeting deadlines
- doing the things we say we will do
- demonstrating that our approach works and gets results
- respecting their wishes and concerns
- taking responsibility when we are wrong or have not delivered on schedule

that client will not take counterproductive actions on files, or proceed without discussing matters with us, etc. The lawyer/client relationship is like any other relationship. When it operates on a platform of mutual respect, it works. When one party has the upper hand and full knowledge, the power imbalance can lead the other party to take unproductive actions that lead the file off course, driving the lawyer crazy in the process (as Dina points out above).

Working as partners on a team with shared goals keeps the client in the "win zone", as I call it.

CONCLUSION – WHY BOTHER?

You run a business. No clients, no business. Today, legal consumers have changed their buying behavior. They shop around more, something I bet you've experienced. They use their alternatives to gather information (hello Google). They expect good pricing and great client experience. Business is not being done as usual. Forward-thinking law firms already recognize this fact and are adjusting their models to be more client-centric. Hopefully that includes you.

To quote an article from Thrive Magazine written by Sara Robertson, founder of Limehorse (and recent guest on the Lawyer Life Podcast):

> Much has been written on what Mark Cohen calls "law's looming skills crisis." Within this mindset, the law is seen as a hierarchical profession built on knowledge that only a lawyer can understand and apply. But the clients of the digital age "demand transformed legal services" that no longer fit within this traditional model. These services must be client-centred with the "ability to handle complex and tense social situations." Services must be multidisciplinary and

> "meld law, technology and business." As legal work becomes more diverse and global, your ability to be flexible and adapt to the demands of different clients relies on the strong interpersonal skills of emotional intelligence.

It has been our intention with this paper to point you in the right direction, so that you can be one of these purveyors of transformed legal services. EQ is definitely a set of skills to be cultivated. It is a myth, though, that EQ is something you either have or you don't. Some people have a more natural propensity towards emotional intelligence, but there is so much information out there that there is no excuse to not work on improving EQ if this is an area of struggle for you.

SO WHAT DOES A HIGH EQ ATTORNEY LOOK LIKE?

(Dina Eisenberg)

High EQ attorneys understand that acquiring emotional smarts enables them to better serve their clients while enjoying greater financial success. Because of their transparency and empathy, these attorneys gain the trust of their clients which leads to more referrals and a longer working relationship.

You stress less. Work is easier.

When you have high EQ, you are able to adapt to change and tolerate the ambiguity that can be part of working remotely with clients or staff.

You can let go of issues or mistakes because you have coping mechanisms and feel positive about your competency. You have the communication and social skills as well as the confidence needed to speak up for yourself, giving meaningful & actionable feedback and setting boundaries when necessary.

You connect more. Work is happier.

Lawyers with high EQ are intentional listeners and tend to be more empathetic. You're better able to identify and highlight commonalities and to tactfully handle difficult topics, which gets results.

You see people as balanced with good and less than good qualities without judging. People are drawn to you because they feel heard and acknowledged, which increases your likeability and personal power.

You have a growth mindset. Work is more fun.

With high EQ, you are eager to try new things. You recognize that failure is part of growth and you know your success comes from effort as much as your innate abilities.

You aren't afraid of being wrong or challenged. You have the resilience to try new areas and gain new marketable skills and deeper satisfaction in your work.

You know your value. Work is more lucrative.

When you have high EQ, you know your strengths and their value to your clients and the world.

You understand how your role impacts others and you have the confidence and the communication skills necessary to convey your value to others without sounding like bragging. You also know how to connect quickly with others because of your high social awareness, which leads to more clients.

NOT SURE ABOUT YOUR EQ?

Determining your personal EQ is a good idea. The more you explore the Sovereign Nation of You and your rules, values and ethics, the easier it becomes to build a practice that supports your authentic self.

You know the benefits of high EQ as discussed above. But, is it actually harmful to be a lawyer with low EQ?

Low EQ is a problem in any business but especially a law practice. Low EQ is linked to lower performance, lower productivity and lower earnings, according to a study done by Cary Cherniss, an EQ researcher from Rutgers University.

You might have low EQ if you are experiencing any of the six statements below as true for you:

- You have a tough time accepting or making change.
- You struggle to work in a team setting
- You have a hot temper
- You don't know or care what others think
- You tend to be negative or see obstacles easily
- You don't like to try new things

The best way to determine your capacity is to take an assessment such as the one found at TalentSmart. Travis Bradberry offers a free test with the purchase of his book *Emotional Intelligence 2.0*. The insights will be immediately helpful to you as you interact with clients and your staff.

WHAT EQ CAN DO FOR YOU

If you read through until now, we hope you see how beneficial emotional intelligence is to your law practice. EQ is like finding an amazing hack that you want to share but also keep to yourself. It is the Leatherman of law practice management tools, as Dina says.

EQ helps you to:

- Attract clients who appreciate your value
- Create policies and systems so your law practice runs smoother
- Engage in healthier work relationships with clients and your staff
- Educate clients so that you get better results and more referrals
- Value yourself and your work appropriately
- Take better care of you, your energy and creativity

Thankfully, emotional intelligence can be learned. Be sure to put seminars addressing this topic on your list of CLEs to attend early in 2020 and reap the benefits all year and beyond.

***

About the Authors

Dina Eisenberg is a former prosecutor turned award-winning entrepreneur and Onboarding Mentor at Unstoppable Lawyer Playbook (formerly Outsource Easier), a training and consulting firm that helps law firms and solo lawyers to create sustainable, profitable, and happy workplaces. Via custom outsourcing and onboarding strategies that convey your values and retain employees. She also designed and installs Ombudsman programs in small law firms. Dina frequently speaks for bar associations and at law firm retreats across the country.

Darlene Tonelli is the founder of Inter Alia Law, a virtual association of lawyers with a primary focus on technology, media & entertainment. She is the co-host of the award-winning Lawyer Life Podcast, and author of the award-winning Inter Alia blog. Inter Alia lawyers were trained at big firms, but honed their skills in-house at companies like Microsoft, Live Nation and Universal Music. Inter Alia is founded on the premise that these lawyers, who have worked inside a company, provide more empathetic and practical advice to clients than traditional outside counsel. Prior to Inter Alia, Darlene spent 8 years at Universal Music Canada, where she was Vice President, Business Development and Corporate Affairs. At Universal, Darlene was tasked with building new digital business models for a changing industry. In that role, she worked on several ground-breaking license deals to bring music to listeners in new ways. In her writing and public speaking engagements, she encourages legal professionals to look at reducing ego and taking ownership of their own happiness, authenticity, and fulfillment as a key means to becoming the kind of lawyer clients really need.

ADDITIONAL RESOURCES

- Daniel Goleman, Emotional Intelligence: Why It Can Matter More Than IQ.
- Travis Bradberry & Jean Greaves, Emotional Intelligence 2.0.
- Harley Manning & Kerry Bodine, Outside In. (One of the leading books on client experience. A helpful book for understanding how clients buy and interact with providers.)
- Dr. Nika Kabiri, *In the Hot Seat: How Understanding Client Stress Can Help Grow your Business*.
- Brene Brown, Dare To Lead.

TECHSHOW2020

HR 101For Lawyers: Best Practices for Hiring and Firing

WRITTEN BY:

Stephanie Everett & Darlene Tonelli

PRESENTERS:

Stephanie Everett: @lawyerist

Darlene Tonelli: @inhouseallies

@lawyerlifepod

January 6, 2020

DOES THIS SOUND FAMILIAR?

"I'm done with employees. I've gone through the hiring process with no luck or some luck. It is hard to find the right people. They always seem great in the interview, but then they start and don't work out. I delegate work but they don't seem to get it. The work always comes back needing more revisions so I end up just keeping it and doing it all myself. Why even bother?"

Hiring, onboarding, training, and managing a team takes work. Work that busy attorneys and law firm partners don't always take the time to figure out and master. Unfortunately, there wasn't an HR class in law school that taught us the right way to hire, manage, and fire employees. Entire bookstore sections are devoted to management books so we won't be able to tell you everything, but this paper is designed to get you started by adopting a new philosophy along with some new tools when it comes to hiring and firing employees.

START HERE: YOUR VALUES

The biggest mistake many attorneys make is jumping into the process without a clear plan.

Every company and law firm has a firm culture. It is the way you approach your work, your clients, and your team. Even if you've never gone through the exercise of defining your corporate values (we think you should; it is a worthwhile exercise), your values exist. They are the beliefs and behaviors shared by the people on your team.

The earlier and more often you talk about your firm's culture, the better the hiring process will be for everyone. This is why it is important that you take the time to realize what your culture is. Being able to articulate this in a written document will help you attract and hire the right type of person for your team. Hiring someone with the right technical skills who doesn't fit with your firm values is a mistake. The person may seem right, but they won't be a good fit in the long term. Taking time to identify the firm's culture and values now will save you time and resources on bad hires in the long run.

Of course, to hire people that fit your culture, you first need to figure out what your culture is. Once you're clear on this and have built your vision and values into the workplace, find a meaningful way to articulate your culture and share it both in your job posting and early in the interview process.

CULTURE IN ACTION

The hardest thing to do is to reverse engineer the culture you want when nothing about who you are, the way you work, or the people you hire matches that vision. So, assuming you've followed the tips above and communicated your values clearly through the hiring process, the next step is to walk the walk and talk the talk at every available opportunity.

When she founded Inter Alia Law, for example, Darlene's vision was to create an environment in which top level professionals could practice law without sacrificing their family and life outside work. To achieve

that vision, every social event and interaction between firm members became an opportunity to reinforce the culture with a supportive action.

For example, where typical law firm culture is built around evening events that feature alcohol, expensive food, fancy venues, and often no spouses, a firm that truly values the web of relationships that its lawyers value needs to do things differently.

Culture in action at a family-friendly firm might re-envision these events to consider:

- scheduling events outside prime family time (5-8 pm window);
- asking lawyers to focus, in "end of year recap" presentations or introductions to new lawyers joining, on stories about lawyers' accomplishments outside work (e.g. child's or spouse's accomplishments, field trips attended, teams coached, etc.) in the mix with work accomplishments; and
- including spouses and/or children in an authentic way that is fun for everyone and gives other lawyers the opportunity to see their peers in a different setting.

Culture in action also shows up in small daily demonstrations of commitment to values.

For example, being honest with clients and other lawyers when promises to children and family members are the reason the lawyer can't make a suggested meeting or call time. Instead of "unfortunately another urgent matter has come up", be honest say "this afternoon I've promised to be at my son's baseball game. I will be back to you by 10 tonight or first thing tomorrow morning." Seems radical, but 9 times out of 10, if you have chosen clients that align with your firm's values and mission, the client will have a story of his or her own and will respect the fact that his or her lawyer prioritizes family.

Within an organization, as well, if the values or "culture" ostensibly respect lawyers' lives outside the office, the leaders of the firm need to walk the walk and demonstrate that they have lives outside the office that sometimes take precedence over work.

It is difficult, if not impossible, to craft a values-based culture without buy-in and example-setting by those at the top. As a small example, Darlene is purposefully vocal with her team when she is going to be unavailable unexpectedly because one of her children is sick. Each time she does this, it cements for the other members of the team that they also have freedom to be there for their own kids when they are sick without fearing negative consequences at work. The fringe benefit is that most of the time this leads to better client service because lawyers are not juggling work they really can't do and ask their colleagues for help. There is a culture of helping others to work flexibly.

HIRING PROCESS

Once you're set on your firm's culture and values, it is time to map out your hiring process. Decide on the front end what steps you will take to determine if someone is a good fit and the objectives of each stage. Here is a sample hiring process:

- Create a written hiring profile that is shared with everyone on the interview team
- Create a job posting that highlights the firm's mission and values and attracts amazing candidates who want to join the team
- Post job and ask applicants to send resume and essay (more on that below)
- Screen applicants with a resume check and a phone call (scripted questions aimed to determine minimum skills needed to complete the job)
- First round interviews for skills
- Second round interview for culture
- Inbox test designed to see skills in action
- Final interview (dinner, potentially with partner or spouse)
- Reference check
- Fun and exciting job offer (you are still recruiting!)

If you are thinking that this is a long and arduous process, you're right. You want to hire slow. Take your time to make sure you are getting to know the person and making the right decision. Hiring the wrong person is expensive. It is better to take your time on the front end and make sure you are hiring the right person for the job.

JOB POSTINGS

The way you advertise for roles in your company is important. Your job ad is your opportunity to attract the right person. Too many firms post the same boring ad that merely list the duties or skills required for the job.

Think of your posting as an advertisement for an amazing and qualified person to join the team. What do you want them to know about your company and your team? Why should they be excited to come to work with you? Here is your chance to share your firm's mission and values with ideal candidates. Talk honestly about the skills and attributes the ideal person needs to have to be successful on your team.

Remember, the purpose of a hiring process is to weed through the masses and find the best fit for your firm. The hiring process is about trying to eliminate people. Out of a hundred candidates, you have to find the *one person* who is the best fit for you, and vice versa.

JOB POSTINGS IN ACTION

Stephanie was working with an attorney recently who kept striking out on hiring a paralegal. When he first connected with Stephanie, he was frustrated and said no one was even applying to his posting. The first thing they did was focus on the job posting. Stephanie noted that the current posting said "work here, we don't suck." He could do better. After a short while, they crafted a statement that described the firm's work and why it mattered. They talked about the team and what it meant to be successful. They threw in some fun and quirky things that fit with the value and culture of the firm.

One day after the posting when live, an ideal candidate responded and noted how fun and thoughtful the job posting was and that she wanted to apply because it was a sign of what it must be like to work at this firm. It didn't take long for more qualified applicants to apply. Ultimately, the attorney ended up with several very qualified candidates to choose from. The new paralegal is in place and doing a fantastic job. Other team members have noticed what a difference it has made to have the new person join the team--in a positive way!

At Inter Alia, Darlene takes a slightly different approach. Inter Alia rarely proactively posts actual "job postings" for candidates. Instead, the website has a prominent "Join" page that outlines exactly what Inter Alia offers lawyers, so there is no confusion. There is a strong focus on entrepreneurialism and freedom to set one's own schedule and choose clients. This terrifies some lawyers and thrills others. Since implementing the clear articulation of what Inter Alia is on the Join page, together with publishing a blog and podcast that make public the values held by Inter Alia's lawyers, candidates reach out to Inter Alia now rather than vice versa. This allows Inter Alia to choose from an increasingly high caliber field of candidates, knowing from minute one that they share its values and are committed to practicing law differently. It also has the benefit of saving Inter Alia an incredible amount of time meeting with candidates who would never be a fit. And the lawyers who do come on have very little trouble integrating with the team.

INITIAL SCREENING: FROM HUNDREDS TO TENS

An upside to online job sites for employees searching is that they make it easy for candidates to apply for a job. The downside to online job sites is that they make it easy for candidates to apply for a job. Employers seeking candidates are often flooded with hundreds of resumes. It can be time consuming and overwhelming to search through all the responses to find qualified candidates.

A great way to combat this problem and help you have the best candidates stand out is to require something in addition to the resume. For example, you can ask for a nonstandard cover letter or statement to give applicants the opportunity to explain why they would be a good fit for your team and the job. Smart applicants will pick up on the culture and value statements in the job posting and explain

why that applies to them. It will help you see who is paying attention and being thoughtful about applying to the job instead of just hitting the "apply" button.

Because Lawyerist is a remote team, team members connect with one another throughout the day on video calls. Understanding this technology and being comfortable interacting this way is a key component to being successful on the team. For our recent search, we asked candidates to submit a 3-5 minute video answering a few specific questions about themselves. We were aware that this could create a barrier for some applications so we explained why we were requested it and gave some parameters that the video did not need to be well produced or silly. Again, seeing which candidates followed the instructions helped us narrow the applicants that were moved into the next phase of the process.

At Inter Alia, although we are a virtual team, when hiring we rely heavily on in-person meetings and references from past clients. This is key as the lawyers on our team all have large firm experience and many years of experience as in-house lawyers or general counsel. We're looking for very specific comments from references that speak to the qualities we know set candidates up for success with our clients. However, having worked with Stephanie on this presentation, we're considering adding a video component. It's a fantastic idea!

INTERVIEWING

Interviewing is a skill. Despite what people think, there *is* a great way to interview people. If the interview ends with you liking the candidate and thinking they're a nice person, that's great. But that alone isn't enough to know whether that person will be successful in your organization.

First, you need to change your mindset. Your job as an interviewer is to go beyond finding someone good enough and instead find someone who is amazing for your team. Get excited for the process and keep this top of mind. Also, don't settle. If you interview fifty people for a job and none of them fit, don't hire the person who was good enough—don't hire anybody. Reconsider your job posting and where you're advertising and try again.

Next, who will be on your interview team? People tend to hire people they like, which means they are usually looking for qualities that they have. If you are a big picture person and you are hiring an operations manager that needs to be detail oriented, you might want to bring in help in the interviewing process. Consider a friend or colleague that has the traits you are looking for and ask them if they will be on your interviewing team.

Make sure everyone on the team is clear on who you are trying to hire: both the culture/fit pieces and the skills necessary to do the job. This is a where a written hiring profile can be helpful. Everyone should be clear on what is required to do the job.

Set up ways for the interview team to communicate about the hiring process throughout the process. Too often, everyone conducts their independent interviews and waits until the person is finished interviewing before collaborating. This is a mistake. The interviewing team gets together at the end to discover they all covered the same basic questions, they have some open questions or concerns, and no real ability to learn

more and answer the open issues. Instead, collaboration throughout the process allows each successive interview to dig a little deeper or answer open issues from previous interviews.

Finally, everyone on the interview team should be training in interviewing. Just like there is an art to taking a good deposition, negotiating a deal, or conducting a cross examination, there is an art to interviewing candidates. By changing the way we ask questions, we can get better information. We're big fans of behavioral interview techniques, which are a way of asking questions about past performance as a way of gauging future performance. If you're interested in learning about this type of interviewing, we recommend tracking down a copy of *Who* by Geoff Smart, which offers a great framework for conducting successful interviews.

INTERVIEWING IN ACTION

Many people approach interviews as a conversation to discover if you like someone. That misses the point. Instead, you are there to gather information and determine if this person is a good fit for your team. One mistake we make is asking people closed questions that assume the answer.

For example, Stephanie has heard more than one person say something along the lines of "this is a very demanding job and we sometimes have to stay late to prepare for a hearing. Are you ok with that?" Most candidates would be foolish to say anything other than "Yes! Of course!" Imagine the difference if you simply flipped the way you ask the question. Instead, Stephanie's coached a colleague to ask "tell me about a time the work day ended, but there was still important work to be done." This allows the candidate to tell a story based on their past experience and the interviewer can follow up. In this case, the candidate described a time when the boss called an "all hands on deck" emergency meeting at 5:00 and asked everyone to stay late during his internship. With a few follow up questions, the candidate admitted that he got bored of the work after a short while and decided to leave. Behavior interviewing questions work.

As part of the recruiting team at a large firm, Darlene was taught to use the interview to determine whether the interviewer would be comfortable leaving the interviewee alone with the firm's most important client. That remains a good screening mechanism, although only one part of a wide-ranging interview.

Another good test is to consider whether the person is someone you would enjoy sitting next to on a transatlantic flight, or working through the night on a file with. When you think about candidates in a situational context, it becomes easier to figure out who would make sense as a member of the firm. It's broader than considering which person you "like", and more an analytical assessment of the candidate's ability to mesh well in different environments with different people.

It's also a good idea to have a few red flags that you look out for. At Inter Alia, attitude and adaptability are everything, and our questions are directed at learning as much as we can about a candidate's attitude in a short period of time. As part of this, we're watching for whether the person has a positive or negative outlook, can share examples of principled action versus fear-based decision-making, and a predisposition to taking personal responsibility over feeling like a victim. A story about how a third party has done an

interviewee wrong, without any acknowledgment of the candidate's part or role in the situation or learning opportunity is a deal-killer for us.

MANAGING & FIRING

Taking time to find the right people on the front end should help you avoid having to fire people who are not working or are not the right fit. Still, even the best hiring processes sometimes fail and firing could be necessary.

One management goal should be to make sure no one is ever surprised when they are let go. The best managers are committed to great communication throughout and work to ensure that every team member knows where they stand and how they can bring their best to the team.

If you're going to be managing other people, you should be actively learning and working to improve your communication and management skills. It is just as important as the work you do as a lawyer. Ultimately, having an amazing team will result in better client services which leads to happy clients. At some point, your job as the firm owner shifts. You no longer are primarily responsible for taking care of your clients. Instead, your job is to take care of your team so that your team takes care of your clients.

COMMUNICATION

Communication is essential to any business. While we may think we are doing a great job communicating to our team, we often are not.

In addition to communicating about business goals, client updates, and internal work structures, you need to be in constant communication with team members about their performance.

In her book *Radical Candor,* Kim Scott explains that the basis for great team communications is relationships. Many managers struggle to have the hard conversations with team members because they don't put in the effort to have the easy ones. Get to know your team members. Find out about their families, their hobbies, their likes and dislikes. Ask them about their professional goals. Understand what they want to do long-term and how you can help them achieve it. Having a solid base with team members is critical and allows you to give honest feedback.

At Inter Alia, if there are issues regarding performance to be discussed, we try to take off our lawyer hat and put on our client hat. Lawyers can be too focused on trying to make sure other lawyers (in particular) are doing things "the way I would do them". When we consider issues from a client perspective, it becomes much easier to deliver difficult feedback. It adds a layer of objectivity as well as urgency. We try to keep constructive feedback limited to the things that matter, rather than wasting goodwill on redrafting work for the sake of it or insisting that everything be done our way. We focus on actual requirements and try to downplay preferences. If something is just a preference, it doesn't need to be mentioned. If it's a requirement such that not providing it is affecting the service to the client in any way, it needs to be mentioned and dealt with as soon as humanly possible.

At Lawyerist, we ask team members what they see themselves doing after Lawyerist. It may sound strange, but we aren't fooling ourselves into thinking everyone will spend their entire career with our company (we'd love it; but that isn't the way the workplace works any more). Having these honest conversations allows us to discover what our team members see for themselves long term. Then, we can explore how we can best support them on their professional journey and look for opportunities to help them gain the skills they will need for their next step. Ultimately, we build team members who are successful and appreciative of their time on the team. The goal is to build lifelong fans from previous team members. It also allows them to be more open with us about when they are ready for the next step. Ideally, this would allow us to plan for succession instead of being surprised by a two-week notice.

When you need to give feedback to a team member, do it as close to in-the-moment as possible. Don't wait for the person's next formal review. Many companies are now doing away with formal review processes and instead looking to regular feedback as needed. Simply tell the person you need to give them some feedback and then give the feedback. Be clear without being harsh. Allow the person to repeat it back to make sure they understand the instructions. Sometimes, the person doesn't understand the "why" behind the instructions or they are missing a key piece of information needed to complete the task. Having these conversations frequently allows you the team member to make adjustments and improve.

PERFORMANCE ISSUES

When you notice performance issues, have engaged in communication as suggested above, but are still considering firing the person, we recommend you first consider your own part in the situation. Ask yourself - what's my part in this? Are the issues here objectively a problem or is it only me who sees this as a problem? Does this person rub me the wrong way, while seemingly being innocuous to other people?

If you decide it's personal, consider where the issues you're annoyed about show up in your own life. Often difficult people in our lives are here to help us grow by addressing long-standing issues in ourselves. (e.g. if the person is really negative and always starting with the reason things can't be done, where does negativity show up in your own life?)

Once you figure out the answer to #2, work on this issue in yourself and see if it improves the situation with your colleague.

Finally, ask if you have a habit of "rescuing" people, trying to change people, or waiting around for people to change. If you do, note this and move forward with any decision on the assumption that nothing is going to change. If you are not going to fire them, do not entertain the idea that the person will change. Act solely in the best interests of your firm and your clients, assuming no change in the other person.

In Darlene's experience, difficulties with employees and interpersonal relationships are often just a handy mirror for issues we still need to do some personal work on in ourselves. For example, in dealing with team issues over the years, Darlene noticed that the issues that most annoyed her about others involved fear-based thinking, scarcity mindset, and negativity. From trying to be honest with herself about why these interactions bothered her so much, she realized that requiring her level of optimism from everyone around her wasn't reasonable. But she *also* realized that she had a ways to go on reducing her own negative thinking and scarcity mindset. Overall she has taken the approach of working with team

members to improve on these points while simultaneously working on them herself. This approach has required some awkward conversations but has led to high quality resolution of most issues that have arisen so far, along with a general improvement in overall level of professionalism and self-analysis among team members. It's much easier for team members to take on self-improvement if the firm's leader is doing it right along with them.

FIRING

With all of that said, from time-to-time, there will be issues that cannot be overcome. Your only choice may be to let someone go. Firing someone is never easy, but there are a couple of things you can do to make the process go smoother.

Don't delay. When it is clear that the person needs to go, it is best to act quickly (assuming you've been clear about communicating with the employee along the way about issues). Often times, we drag our feet because we don't want to deliver the bad news and upset the person. This often negatively impacts the entire team. Team members notice when one person isn't pulling their weight or doing a great job. They are often asked to help pitch in and fix their mistakes. This creates resentment among the team and weighs everyone down.

Keep the conversation with the person short. Be upfront and direct. "I have bad news. Today is your last day here." Give a one sentence explanation. Avoid engaging in a debate with the person about the decision or alluding to a second chance.

If you are willing, you can offer to help the person in their search or make introductions. If you are offering a severance package, be ready to share the details and let them know who they can contact with follow-up questions. If the issue has been one of poor performance, advise that you will be glad to act as a reference, but it will be a truthful one including positives and negatives. Lukewarm references are damning anyway. When checking references, I would prefer to hear an employer say "it wasn't a fit for him here, but we think he has real potential in X environment."

Don't forget to let the rest of the team know. Be short and direct with your communications with the team. You don't have to go into details, but you should let everyone know and have a plan for how you will cover their work in the interim.

Firing someone is never easy, but it can be done with compassion and in a professional manner.

TECHSHOW2020

Implicit Bias: What You Don't Know Can Hurt You

PRESENTERS:

Jennifer Gerstenzang: @Jennifergerste1

Erin Gerstenzang: @EHGLawfirm

February 27, 2020

William M. Muir, a Professor of Animal Sciences at Purdue University, conducted a study in the 1990's in an effort to increase the egg-laying productivity of hens. The hens were housed in cages of nine hens per cage. In one experiment, Muir took the hen that produced the most eggs in each cage, a Super Chicken so to speak, and selected it to breed the next generation, soon creating cages where he would place 9 Super Chickens per cage. In the control group, Muir took a cage of 9 average producing hens. He then bred the hens in each group for 6 generations.

Muir would measure the productivity of each group simply by counting the number of eggs produced. The expectation was that the Super Chicken group would yield the most eggs per cage. This is not, however, what Muir discovered. Instead, he found the Super Chickens became exceedingly aggressive, and would actually peck one another to death. Only three Super Chickens were alive at the end of the experiment. The control group, however, were plump, well-feathered, healthy, and were producing even more eggs than at the start of the experiment- they showed an egg productivity increase of 160% in only a few generations.

This experiment shows us that too many competitive players in a group can be the seed of failure and also shows us that in order to have a collaborative group, we need to have members with different strengths. The data suggest time and time again, be it chickens or humans, that diverse groups breed success.

WHAT IS DIVERSITY?

An article in the New York Times Magazine pinpoints why talking about diversity can be problematic: "The definition of ''diversity'' changes depending on who is doing the talking." [1]

What this means is that diversity often pins one group (the majority, and in most cases white heterosexual able-bodied male Americans) as the default and everyone else as the Other. This means that diversity is a collective term. A company can seek to have a diverse body of employees, but it cannot seek to hire a diverse employee. An individual can be of a diverse background, his ancestry diverse, but the individual himself cannot be such.

This makes achieving diversity difficult because if the majority is responsible for creating the group, it is much harder to spot an absence of diversity. “We cannot change what we cannot see.” Without diversity, the majority will not know whose needs are not being met or who is being left out of the discussion. Diversity is absolutely essential if we want to transform our environment and world to one where everyone has both a place to stand and a voice.

Diversity may be better referred to as inclusion and equity in terms of access to both opportunity and power. The challenge for thinking diversely is that we all have implicit biases that impact the way we see the world. Implicit bias is a relatively unconscious and automatic feature of prejudiced judgment and social behavior. It has been linked to the amygdala, so implicit bias also dictates the way we *feel* about certain people, things, or situations, which means we have strong feelings about things without really understanding why. These biases do not have to be right or wrong, they simply exist based on our experiences. The important thing is that we become aware of these beliefs we innately hold to be true and challenge their validity through discussion, exposure, and new experiences.

DIVERSITY IS GOOD FOR BUSINESS

Diversity is, plain and simple, a tool for success in business. In a recent study by McKinsey& Company, the data suggested there was a positive correlation between companies with more diversity in their leadership and board and companies who were financially succeeding their competition. The "Delivering Through Diversity" Research found the following by looking at the profits and value built by more than 1,000 companies in 12 nations:

- Companies ranking in the top quarter for gender diversity were 21% more likely to see above-average profitability than those in the bottom quarter.
- When it comes to ethnic diversity, companies in the top quartile (specifically among executive positions) were 33% more likely to see above-average profitability than those with the least ethnic diversity among executives.[2]

More diverse companies are more profitable, and conversely less diverse companies are less profitable. A research article by the Center for Talent Innovation (CTI) also supports these findings. [3]

The CTI concluded that when leadership lacks innate or acquired diversity or fails to foster a "speak-up" culture, fewer promising ideas make it to market. This is because ideas from minority groups (women, ethnic minorities, LGBTQI members, etc.) find less support from the majority when those in leadership do not personally see the value or usefulness of the idea.

LAW FIRMS STRUGGLE WITH DIVERSITY

In the legal profession, there is a profound lack of diversity. The ABA reports that the legal profession is 85% white and 65% male. Despite this being a topic of discussion for decades, the problem has persisted. According to the National Association for Law Placement, which tracks legal industry statistics, over 75% of firm partners are still white male, with women at less than 20% and minorities just slightly over 5%. The New York City Bar Association recently released a report of the top New York City law firms, which validates that the progress to diversify both women and minorities has been slow.[4]

The National Association of Women Lawyer's published a 2017 Annual Survey on the Retention and Promotion of Women in Law Firms, and the results were similarly disheartening. The report found that women attorneys exit law firms disproportionately more than their male peers. It also indicated that women make up barely 15% of equity partners in a typical firm and this figure has not changed in the 7 years that they have conducted the survey.

This is a dangerous trend for the future of these law firms because the country is becoming more and more diverse. The U.S. Census Bureau predicts that by 2020, 50.2% of all babies born in the United States will be part of a minority or ethnic group. By 2044, no one racial or ethnic group will dominate the United States in terms of size. As law firms struggle to attract and serve new clients, they will have to pay attention and be sensitive to the needs of all their potential clients.

DIVERSITY IN THOUGHT

"Even simply being exposed to diversity can change the way you think." (Katherine W. Phillips, Senior Vice Dean and the Paul Calello Professor of Leadership and Ethics at Columbia Business School.) Phillips explains that members of socially diverse groups "change their expectations." They work harder to reach an agreement, and that process leads to more developed, fully fleshed-out outcomes. "The cost of homogeneity is immeasurable and unknowable — the hidden cost of the missed idea, the missed solution, from looking only at what you know and not seeking to know what you do not. Ignorance is not bliss when you want to be successful and effective."[5]

An excellent example of how exposure to diversity can change the way a person thinks was conducted by Samuel Sommers in a 2005 research on jury deliberations. Researchers wanted to see how diversity impacted deliberations in a jury panel to see if racial diversity of a jury leads to materially improved deliberations.[6] In the study, Sommers asked 30 different mock juries, each composed of six adults, to watch a video summary, edited from *Court TV* coverage, of the trial proceedings of an actual sexual assault case in which a black male defendant allegedly assaulted, separately, two white females. Participants were jury-eligible adults who were at the court for real jury duty. Their age ranged from 18 to 78. Only the racial composition was varied systematically: half of the juries were white, and the other half was made up of four white and two black jurors.

The researchers found that both the verdicts and the deliberation quality and content varied significantly depending on the juries' racial makeup. Mixed and all-white juries were equally likely

to raise the subject of race when discussing the case -- but differed sharply in how they reacted to the subject once it was raised. Every time racism was mentioned in an all-white jury, at least one juror objected that racism was not relevant. This is a 100 percent rate of objection to the idea that race was relevant. In the diverse juries, by contrast, only 22 percent of mentions of possible racism met with objections. Meanwhile, the diverse juries deliberated longer, cited more case-relevant facts during deliberation, made fewer factual mistakes, and were more likely to correct inaccurate statements than the all-white juries were.

The question, then, is who among the jurors influenced the difference in dynamics between the homogenous and heterogeneous juries? It is easy to think that the black jurors themselves were alone responsible for contributing unique perspective and experience to the discussion. This would mean that the diverse members of the group are solely responsible for providing the benefits of diversity. However, the data from the study actually attributes the group differences to the white jurors.

White jurors in diverse groups mentioned more facts, made fewer factual errors, corrected more mistakes and raised the possibility of racism more often than did white jurors in homogeneous groups. Even before the deliberations began, white participants who expected to deliberate with black jurors privately espoused less harsh views of the black defendant than did white participants who expected to deliberate in an all-white group. Both the anticipation and the experience of serving on a diverse jury seemed to sharpen the white jurors' sensitivity not just to race but to accuracy and due process.

This is excellent news because it means that the mere existence of diversity within a group opens up the minds of other jurors.

Barbara Beskind is another example of how a diverse group can change the way people think. As a child, Barbara wanted to be an engineer but was told that because she was a woman she would not get accepted into an engineering school. Finally, at the age of 89, she reached out to a leading Silicon Valley design and technology company called IDEO after hearing about their emphasis on diversity in experience on their teams. To her delight, she was offered a fellowship with the company.

Her participation in these team meetings provided a unique perspective to the team regarding the struggles older generations have in their day to day lives. Her mere presence, however, also fostered a sensitivity and appreciation in her teammates for the difficulties presented to older generations that younger ones do not perceive.

In this way, diversity Is transformative. Sheryl Sandberg said in her book, Lean In, "We cannot change what we are not aware of, and once we are aware, we cannot help but change." By simply being exposed to another person's experiences, we can see the world from an entirely different perspective.

Ruth Bader Ginsberg has been a champion for women's rights and equality. She spent her career before being a Supreme Court Justice selecting cases to take to the Supreme Court to educate the nation's most influential court on the injustices that women experienced every day. In an interview for her documentary, "RBG", that was recently released in 2018, Justice Ginsberg described her job at the time: "I did see myself as sort of a kindergarten teacher in those days because the judges didn't think sex discrimination existed."

While her efforts- both off and on the bench- have made great headway for women, there are still many challenges that exist today for women that male policymakers and lawmakers are simply unaware exist. For this reason, women are more likely than men to introduce legislation about women's rights and reproductive health choices, and also bills dealing with children, health care, and welfare. For example, it is very common that if both parents are working, the mother, not the father, will often take a sick day to stay home with a sick child. Legislation for mothers to have more sick days available is not something that male legislators would even think to consider if it is not something that impacts their lives.

Recent legislation addresses a problem that many legislators would not know about nor would likely wish to discuss. Research found that low-income female students would stay home from school for up to a week each month during their menstrual cycle because the cost of tampons and sanitary napkins were too high for them to afford. This put these women at a severe disadvantage from frequently missed classes and even put them at risk for being labeled as

truant. A recent California Law will require schools to keep these items stocked for their female students and provides funding for the schools to do so.

Men and women are different and have different needs. When we are not aware of the struggles others are enduring, we have no clue that change is necessary. Too often, change is spurred on by individuals living in their struggle who have inspiring and unimaginable stories of conflict and triumph. By making sure we have equal and diverse representation in the legislature, we can make sure that all needs are represented and all voices are heard.

AGE DIVERSITY

We currently have five different generations in the workplace:

Traditionalists 1926-1945

Baby boomers 1946-1964

Generation X 1965-1979

Millennials 1980-2000

Generation Z 2001-?

By 2035, two-thirds of the workforce will be represented millennials. Compared with Baby-Boomers, who are 76% white, Millennials are 56% white. Additionally, the differences in needs between Traditionalists and Millennials or Generation Z are vast. In order to address the concerns of varying generations, we need to connect and stay involved with them.

Recall Barbara Beskind's story of being hired in Silicon Valley. She brought so much value to an outstanding company with her experienced-based ideas and by influencing her colleagues to consider her needs and those of her peers when designing. This consideration is imperative when providing services to multi-generational clients.

DESIGNING FOR DIVERSITY

In the early 20th century, the Swiss architect Le Corbusier created the fictitious character *Le Modulor,* who was an able-bodied man, of average height and dimension, around whom Le Corbusier believed standardized design should revolve. Whole cities were designed by the able-bodied men on which *Le Modulor* was modeled.

Of course, *Le Modulor* excludes a huge percentage of the population from its calculations, and thus only designs convenience for certain individuals. For example, when sidewalks were originally built, they did not have any of the curb cuts we frequently see today. This meant that if a person needed to use a wheelchair, their ability to move around their environment was severely limited. In the 1940s and 1950s, when World War II Veterans started returning home with mobility-related injuries, more and more people realized the need to modify the six-inch curb on sidewalks to allow access for individuals using wheelchairs. We still have a long way to go to make our environments accessible to everyone.

Haben Girma, a deaf-blind Harvard law graduate has made it her mission to convince designers to design first for inclusiveness. Haben Girma attended Lewis and Clark University for her undergraduate education. She received all of her textbooks and course materials in Braille. She found, however, that she had a lot of difficulties eating at the school cafeteria. The menu changed daily and was printed new every day. The staff at the cafeteria could not tell her what was at each station because she could not hear. She could not see what was at each station, either.

The solution she worked out was to have the menu e-mailed to her each day, as she could print it on a Braille reader. However, the cafeteria staff frequently forgot to send her the menu. When this happened, she would simply have to take what was given to her, which lead to some terrible surprises. She went back to the manager to find a new solution. Exacerbated, the manager explained to her that he did not have time to send this to her every day and that she should be grateful he was doing her this favor in the first place. This is when Haben Girma threatened to sue under the Americans with Disabilities Act. This threat made all of the difference, and when a blind student attended the same school the next year, he benefited from her efforts. Haben Girma continues to be a champion for the rights of differently-abled individuals and groups by challenging policies and companies who, blind to the needs of people different from them, and inadvertently excluding them.

Designing for inclusivity can be extremely difficult giving how much humans beings can differ from one another. It is absolutely impossible, however, if we have homogenous teams doing the designing. Take, for example, the “racist” soap dispenser that only dispensed soap on hands of

white people but not on those with darker skin.[7] The sensor on the dispenser was triggered when the hand of a white person waved beneath it, or when a person with darker skin used a paper towel over their hand, but not when a dark-skinned hand waved at the sensor on its own. The reason for this is clear- no one on the team creating and testing this product was a person of color, so the designers could not see the flaw in their design.

If we start the design phase with many unique perspectives, experiences, and backgrounds, we will be able to begin developing products that serve the needs of a larger range of people. Since we cannot change what we cannot see, we need to have people on our teams who can see different problems that need to be solved, and continuously reach out to groups who may not be represented to get additional input.

DIVERSITY FOR PROBLEM-SOLVING

As attorneys, we are expert problem solvers. However, the more experience we have in our field, the more limited our vision can be. Gillian Hadfield, a law professor at the University of Southern California wrote: “The more a person focuses on solving the same type of problem, the more he or she comes to rely on the same type of solution. Innovation requires deep knowledge, but it also requires fresh eyes, to see a problem in a new light and to fashion a new way of resolving it. New solutions bubble up when there are diverse perspectives brought to bear, different experiences developed in a wide variety of contexts.”

We are taught in law school to issue spot and zoom in on what the exact question the case and law seeks to answer. As attorneys, we are not only in the legal profession, but we are also in the customer service industry. While the judge and opposing counsel may have a certain idea about what the issue in the case is, your client may be concerned with other factors that may seem ancillary in your view but are absolutely critical to your client.

It is important to be masters of empathy. Attorneys have the unique privilege and simultaneous burden of holding our clients' secrets, stories, and sadness in our heads, hearts, and files.

For the clients, the overall and actual outcome of the case may matter far less to them than the way they *feel* about the outcome. This means that our jobs are so much more than representing the client in their court appearances and doing the work as an attorney. The compassion, attention, and kindness you show your clients during their case will truly make a difference as to how their outcome and your representation resonates with them for years to come. While it is certainly not fair to have to shoulder this responsibility on top of all the other demands of the job, you are the one who has the most influence on how your client feels about their case years later.

For our client to feel heard, they must feel understood. A fundamental part of feeling understood is knowing that the listener can imagine and comprehend the information he or she is hearing. Our identification and examination of our implicit biases and assumptions are crucial to allowing our clients to be heard without our judgments subconsciously interfering with their truth.

We need to understand society and the people involved in our culture in order to best help solve our clients' problems. By sitting with our clients and getting their perspectives on how they are experiencing their case we provide outstanding client care. We also allow for the opportunity to find out more about our client and investigate who they are outside of their legal problem. In doing so, we will be able to experience their life from their perspective, which can be immeasurably helpful when we are working to personalize our client during our representation and advocate the most effectively on their behalf.

WHERE TO START

Get better input

When we open our minds up and learn about other people's experiences, and how they differ from ours, we have the ability to transcend our own culture, history, and biases and see the same situation from an entirely new perspective.

Thinking diversely requires learning from other people who have different needs and experiences. It is nearly impossible to learn something new from someone who shares your views or thinks like you, but we are wired to feel more comfortable around people who are more similar to us than dissimilar. We must embrace the confrontational aspect of different viewpoints and become comfortable with challenging our assumptions about the world.

When we first start talking about diversity, it can be a very uncomfortable conversation. People often conflate implicit biases with racism or bigotry which of course leads people to recoil from

the conversation and clam up. Often times, people say or think that they do not even notice race or differences, and believe this is a positive thing. It is not. Recognizing the differences between people is essential to creating fair paths for everyone. Unfortunately, shutting down conversations regarding diversity perpetuates the problem and leads to our society, companies, and legal field being diversity-challenged.

Create Excellent Problem-Solving Teams

A study at MIT, published in Science magazine, set out to determine what drives high performance in teams. After collecting data from 192 problem-solving teams of 2-5 people, the researchers identified three specific factors that contributed to greater team performance:

1. *Social Intelligence*: Teams that had higher social sensitivity and emotional intelligence and were open-minded to other ideas;
2. *Equality*: Teams that gave everyone an equal voice and was not dominated by only one or two of the members;
3. *Women*: Teams that had more women performed better.

If working in teams toward solutions, make sure that the team has these attributes. It is important, however, that these teams also have different perspectives and are comprised of people who are diverse in thought, background, and experience. Remember, solutions that are created from answers and insight that do not satisfy a problem nor connect with people are not solutions at all.

Be a mentor, find a mentor

With new technology constantly rolling out, it's increasingly common to see younger workers teaching older ones how to use the new tools. This process of "reverse mentoring" helps younger employees feel like their ideas are valued and provides a fresh perspective for more established office members. Managers can help encourage reverse mentorship among their teams, or company leaders can put a formal program in place. Older mentors can learn from younger generations about the needs of younger clients and the best ways to serve them. Of course, younger generations have a lot to learn from their older mentors as well.

The Illinois State Bar, inspired by the findings in William Muir's chicken experiment, implemented a very successful Lawyer-to-Lawyer mentorship program. In a similar program in South Carolina, implementation of a mentorship program caused the seriously disciplinary sanctions for new attorneys to drop 90% after their program started in 2012. Many states bars have mentorship programs, but you can certainly find a mentor on your own to find this important connection with.

Diversity truly has the ability to transform our beliefs and enrich our lives and the lives of those around us. See diversity for what it is: an opportunity to learn, grow, and connect with others. By engaging in diverse experiences and conversations, the mind you change might be your own.

---

[1] Holmes, Anne. (2015, October 27.) "Has 'Diversity' Lost Its Meaning?" New York Times Magazine.
[2] Bonnington, Christina. (2018, January 19) "McKinsey's Newest Report Shows Just How Good Diversity Is For Business," The Daily Dot.
[3] Sylvia Ann Hewlett, Melinda Marshall, and Laura Sherbin, "How diversity can drive innovation", Harvard Business Review, December 2013.
[4] Olson, Elizabeth. (2016, October 16) "Leading New York Law Firms Lag In Including Women and Minorities," The New York Times.

[5] McGovern, Amanda. (2017, November 22.) “Diversity’s Paradigm Shift Makes for Better Law Firms,” Daily Business Review.
[6] Sommers, Samuel. (2005, July 12.) “On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations”

[7] Many videos showing the soap dispenser’s design flaw may be found easily online with the search terms “racist soap dispenser.

TECHSHOW2020

At the (Physical and Virtual) Podium: Public Speaking for Lawyers

WRITTEN BY:

Ian Hu

PRESENTERS:

Ian Hu @Ian_Hu_

Lyndosha Jamison

January 19, 2020

CONTENTS

PUBLIC SPEAKING IN ANY MEDIUM

There are three keys to public speaking in any medium: ethos, pathos, and logos. Ethos is achieved when the speaker is convincingly credible. Pathos is achieved when the audience is emotionally moved. Logos is achieved when the reasoning presented is reasonable.

Testing

Before I move to these three keys, a word on development. Great speakers do not come naturally to the calling, but through testing. The speaker must test everything, observe effectiveness, and adapt. Give a speech and, to emphasize a point, clap hands a few times. Was it effective? No: it communicated an infantile sensibility. Give another speech and clap once. Was it effective? More, but perhaps too aggressive. Give another speech and spread the arms wide. Was it effective? Yes, the audience paid attention. To become a great speaker, one must test and test often to determine what works and what fails.

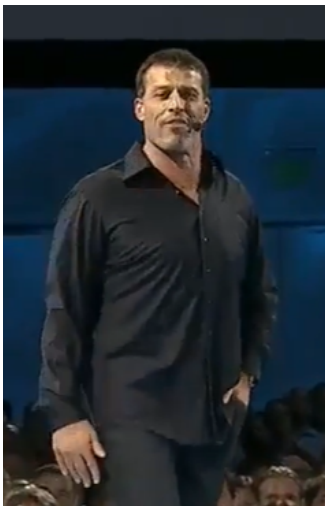
The comedy special you see is not the first time the comedian delivers the joke. It is a joke told over and over and over again. It is tested for inflection. It is tested for pregnant pauses. It is tested for language. It is tested for content. It is tested for length. It is tested for body gestures. It is the product of tests. By the time you see the joke, you are seeing it in its umpteenth version. All the fluff and stuff that doesn't work has been thrown out. Only the most effective parts of the joke have made it through the sifter. The genius of the great speaker is in convincing you that it is genius. But it is, in fact, simply hard work.

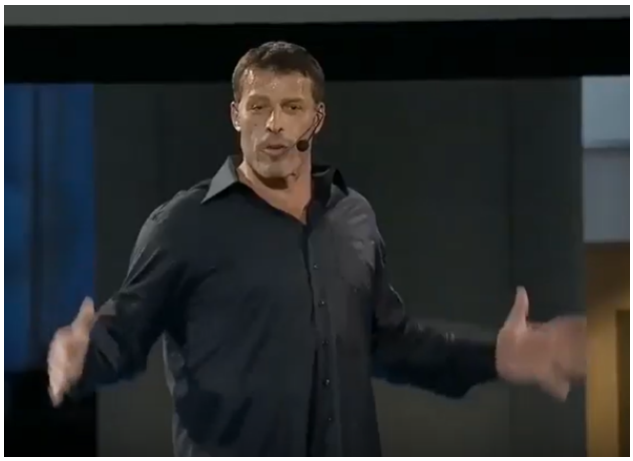
If you do not have the time nor the inclination to test, then give up the ghost. Public speaking is not for you. Otherwise: Speak up in team meetings within your firm. Speak up at the partners' meeting. Speak up at bar association conferences. Speak up at firm dinners. Speak up at weddings and funerals. Speak up in court. Speak up. The alternative is to fail to speak well.

Ethos Is A Projection

The speaker must project a physical presence. Tony Robbins comes to mind as an exemplar. He is 6'7 and fills a stage. He stands tall. His chest is puffed up, shoulders back. No trace of a slump can be found in his demeanor. He does not shake and quiver. He is comfortable. He employs the superman stance: legs apart, hands on hips, straight back, neck raised, head slightly up. He is dynamic and takes up space. He spreads out his arms completely to the side or up. You know you're in for a treat before he even speaks. You could mute the whole presentation and still know he's giving a great speech.

Observe the next set of screenshots taken from the same speech.





Oprah is not nearly as imposing but she, too, fills a room. At 5'6 she is of average height. She uses her hands liberally and intentionally. She raises a hand, finger pointing up or at the audience, to accentuate a point. She opens up both arms, palms facing the audience, to build consensus. She employs the Clinton thumb, a closed fit with the thumb inside the index finger, to signify strength. These are intentional gestures of the body.

Observe: Superman, palms out, and pointing poses. All in the same talk.

The speaker must be welcoming. Smiling is a universal welcome. But to do so all the time is fake. Excitement generates energy. But too much excitement projects wildness. The goal is credibility. Smile when smiling is called for. Be exciting when excitement is called for. Act according to how the audience expects when the message is delivered. Incongruity between behavior and content is devastating. Have you ever heard a person deny a serious allegation and laugh? Did you believe the denial?

By the way: there are no excellent quiet public speakers.

Pathos Is A Story

Abraham Lincoln was the "story telling president". Think of a mediator you love and the stories told to you while waiting for the next offer. An audience will remember a presentation if they are moved. They will forget about their kids at home, the next lecture, the file nagging them, the mistress, the game, their back pain, the grocery list – if they are moved. They will be moved if they are told a story that has a loser and a winner, a problem and an answer, a victim and a rescuer, a villain and a hero.

Donald Trump is an exemplar. The villain is the dumbo, Crazy Joe Biden, Low Energy Jeb, Heartless Hilary, Slippery James Comey, Beautiful Ted, High Tax Schumer, Cuban puppet, Mad Alex, Crooked H Flunkie, Angry Democrat Thugs, et al. Each villain is presented with an undesirable trait. The story expands such that the villain with the undesirable trait will cause harm to the citizen. The hero, lacking the trait, and presented as the solution, is the speaker. Fear and anger are paths to pathos. And, combining both pathos with ethos, nothing could be more effective than to present oneself as the hero.

Empathy, compassion, and morality are equally strong movers of pathos. Martin Luther King Jr.'s *I have a dream* speech evokes the pain of racial discrimination and inspires the pleasure of peace and moral righteousness. Never underestimate the power of morality. *Live free or die*; *sticks and stones may break my bones but words will never hurt me; money can't buy happiness*; these are popular phrases and embody the salve that morality has over pain.

Therefore paint your point in the palette of morality and the competition of life. Zero sum game or not, doing so sells pathos.

Logos Is Truthiness

It is not necessary to be right to deliver a great speech. Many a speech has been uttered with truths and disappeared into the ether. In fact the speech that succeeds is often one that allows for various interpretations. Who can play variations on a theme if the theme is well known and dull? Offer instead a slightly strange and new theme, and the ear is open to the experience.

And so dispense with the lawyer-talk. A sentence qualified with a qualifier is long winded. Jargon is erudite and opaque. Obvious points are not points at all. Strange points are not credible; slightly curious points are interesting. So the speaker must be a curator of common sense, to know what is obvious and what is not, to differentiate between what is strange and what is merely curious.

The deductive syllogism is true but boring. Avoid. If A then B. A. Therefore B.

The enthymeme – hiding a premise - is infinitely better:

> I think, therefore I am.
>
> Where there's smoke, there's fire.
>
> I knew Jack Kennedy. Jack Kennedy was a friend of mine. Senator, you're no Jack Kennedy.
>
> They've taken our jobs. They've taken our base. They've taken our money. And I love China. They get along great with me. I told you I have all these people. I do business with China. They agree with me. They can't…

Metaphors and idioms are memorable:

> But there are many mountains yet to climb.
>
> I have a dream that one day even the state of Mississippi, a state sweltering with the heat of injustice, sweltering with the heat of oppression, will be transformed into an oasis of freedom and justice.
>
> We could've had it all, rolling in the deep
>
> These is bloody shoes

Persuasion is not the art of truth. It is the art of shining a light on the monster lurking in the dark.

Conclusion

Public speaking is a skill and not a talent. I have never met a great public speaker who did not prepare. I have heard it said that for every 1 minute of speech, one prepares 5 minutes. Add an extra 5 minutes for up to 100 in the audience, and an extra 5 for every 1000, and so on. Every great speech is tested for hours; every speaking opportunity a chance to test and adapt. Approach the task like one approaches any task requiring mastery. Do it, do it often, do it observingly, do it adaptively, do it with certainty. The finished product – the speech - is never a surprise to the speaker.

CAN POWER POSING HELP LAWYERS GAIN CONFIDENCE?

By Rachel Casper for www.masslomap.org

Confidence helps any career flourish and it's even more critical in the legal profession. Can adjusting your body posture really return immediate results? Here's the 'final' word.

Words are never final in science, but the recent controversy over whether research concluding "power posing" is an effective way to gain confidence fast seems settled enough to call it well worth a try.

The art of presentation is an integral aspect of the legal profession, regardless of your particular practice. Good presentation skills matter, whether you are providing direction and counsel to a client, wooing potential referral sources or influencing a judge or jury at trial. Essential to your presentation skills is the ability to project confidence and power to those you wish to influence. This goes for new and experienced practitioners alike. And it all begins with the way in which you view yourself. If you don't believe in your abilities, then how can you persuade others to trust and respect you?

A social psychologist named Amy Cuddy revealed a solution at a TED conference in 2012, when she was a professor at Harvard Business School (she's now a Harvard University Lecturer). Her talk — now with 43 million views — shares her research on how *Your Body Language Shapes Who You Are*. She explained how power posing can change not only how others perceive you, but also how you perceive yourself. She found that by embracing a *high-power pose* for two minutes, you can increase levels of testosterone by 20 percent and decrease levels of the stress-related hormone cortisol by 25 percent. With these physical changes transforming the how you think and feel about yourself, you can thereby project a more positive and confident image to others.

Concluding her talk, Cuddy described a challenging personal experience where she was convinced she would fail. Her college advisor told her to *fake it until you make it.* Amy says she used that approach through undergrad, graduate school and as a teacher until she forgot that she was faking it and actually became it. Her message is that power posing will feel like you're faking confidence. But because your body position is a tool that creates confidence, "faking it" will help you *become it*.

But will it? When some researchers failed to replicate her results, most of the research community responded beyond questioning the validity of her results with uniquely harsh criticism. Her coauthor even abandoned any defense of their work. In 2017, The New York Times published a pretty fascinating story on why The Revolution Came for Amy Cuddy, revealing culture changes in academia that shaped the disproportionate backlash.

In April 2018, Forbes published more enthusiastic support of Cuddy's work. In 2016, New York Magazine published Amy Cuddy's overview on the state of the science on postural feedback (power posing) and some comments on civilized scientific discourse.

Power posing is worth trying. Next time you are gearing up to make a presentation, meet with a client or give an opening statement, take two minutes to "power pose" and see how it impacts you and your audience. As you learn about any new research, stay mindful of how you can use it. If there's dubious causality but little risk and time commitment, you might stand to gain even if it's just from the placebo effect. In the unlikely event that power poses make you feel less confident or any other negative emotion — which was never an actual claim opposing Cuddy's research — it makes sense to find other options instead.

Affirming your values is also worth trying. Don't lie to yourself like Al Franken's character tried in that old SNL sketch. Listen to Amy Cuddy explain how we can feel more powerful by taking time to remind ourselves what our values are and why we hold them.

If there are actual skills you need to develop to pursue your values but you don't know where to start, find out How to Grow Strengths for the Right Career as a Lawyer, the first workbook of five in our Career Research & Development Series.

(DON'T DO) DEATH BY POWERPOINT

Posted by Catherine Sanders Reach

Microsoft PowerPoint has a bad reputation. Edward Tufte, professor at Yale, bashed the software for elevating format over content. However, whether you are making a pitch to a potential corporate client, preparing an opening statement, or giving a CLE presentation, a visual presentation can go along with your verbal remarks to help engage your audience and help reinforce your message. The following are some tips and suggestions for how to do it right.

Best Practices

There are lessons to take away from Matt Homann's Conference PowerPoint Bingo. If you strenuously avoid every item on the card, including overuse of bullets, reading the slides, and apologizing for a chart or table being too small to read you will immediately have improved your visual presentation game.

Slides should use images and words that help you make your point clearly and quickly:

- Keep it simple and minimal.
- Assume bad lighting or low contrast.
- If you use animations, then practice, practice, practice with it.
- Avoid lots of words (use images instead).
- Use high-resolution graphics and avoid clip-art.
- Learn to use Microsoft Office's WordArt, SmartCharts, Drawing Tools and Picture Tools.
- If you must use charts, use them appropriately. It may be more powerful to call out a specific number rather than displaying a chart that is difficult to read or decipher.
- Pick just one font — if you must use a second font, use it sparingly, only for emphasis.

Your Style

While there are plenty of other visual presentation tools to experiment with, including Prezi, Keynote, or Haiku Deck, most lawyers have Microsoft's PowerPoint available and have some idea how to use it. Office 365 suggests layouts when you add an image and makes your slides immediately look better. Here's how. However, it is immediately distracting if a slide presentation is built in an older version of PowerPoint because the themes and design styles have been used and seen by millions. If you have an old version of PowerPoint (pre Office 2016) consider building your deck in Google Slides (free) which provides fresh templates and design. If your firm's standard slide template is outdated, consider creating a new one with the help of a graphic artist so that the presentation is not immediately marred by a stale template.

It is suggested that you only have one major point per slide. That, however, is merely a suggestion. A slide should help focus on a theme or a single concept, but it may have many points. It depends on the purpose of your presentation and other factors.

Finding Images

In addition to the images available through PowerPoint in Office 365 (Insert – Online Pictures) here are some additional resources for free, high-quality stock photos or DIY images:

- Unsplash. Free, high-resolution photos. No attribution is necessary.
- io. Free stock photos, no attribution or copyright.

- MorgueFile. A free photo archive of high-resolution stock photos. In some cases, photographers request attribution, so check the details for the image. Adaptation (editing) is usually allowed.

- Snagit. Capture screenshots and anything you see on your screen, annotate and save in an image library. $50 for a single user.

- Google Image Search. You can find anything on Google but watch for copyright permissions. Even under "educational," if your slides are made into handouts, sold as CLE materials or made public on the web, consider what is fair use. Filter by usage rights and choose "free to use, share or modify, even commercially." Then double-check.

Be Prepared

The more technology you use, the more potential failure points.

- Make sure you have your own VGA and HDMI adapters, especially if you use a Mac.

- If you are depending on a WiFi network you've never used, be prepared for an alternative. In fact, be prepared for an alternative even if it is a WiFi network you've used repeatedly! It is always better to have a copy of your slides downloaded locally on the device.

- If you are going to bring in wireless presentation technology like an Apple TV, Google Nexus Player or Roku, expect to be the only person who knows how it works — don't depend on IT help.

- Ask ahead about the room setup — your use of presenter view for your notes may be thwarted if the display computer is on the other side of the room.

- Need access to the projector's USB port? It might be mounted on a 14-foot ceiling.

- Let your hosts know in advance what you would like to do and ask what is possible to do. Find out what is best for the audience in terms of sightlines and audio quality — then adjust accordingly and show up early, prepared to adjust yet again.

Despite how well you plan, there will be glitches and emergencies. Expect your projector to fail, your screen to fall down, your laptop to fry, the power to be off, and the roof to cave in. At best, assume limited or no internet, poor sight lines, low lumens, and no audio line in for video/audio playback over speakers:

- Make sure you can do your presentation without slides or visuals. If visuals are necessary, make sure they are provided as handouts in advance. And take a copy of your slides, in print, with you — or at least on your tablet.

- Do not rest your entire presentation on the ability to play a YouTube video.

- Bring backups of everything — have another laptop, email the slides to yourself and your host, have them on a thumb drive, and store them in the cloud.

- Show up early. Really early. Test everything and be ready to adjust accordingly.

Take-Aways

Audiences often ask to get a copy of the slides before and after a presentation. Despite the fact that you turned in a 40-page paper, the audience still wants the easy-to-digest slide deck version. To find a compromise between supplying that "Cliff's Notes" version of your talk and keeping your slides appropriately image-driven, you can add notes, links, bulleted lists and useful information in the notes area of your slides and distribute the presentation as a PDF. For a CLE presentation here's how:

- Once you have completed the slide deck in PowerPoint, save the slides as a handout. (In PowerPoint 2016, go to File > Export > Create Handouts > Create Handouts in Word > Notes Below Slides.)

- Then, once the slides are in Word, add or edit bulleted lists, hyperlinks and more, using formatting options you don't have in the PowerPoint notes area.

- Finalize your notes, save the file to PDF, and voila — your notes appear below the slides, the audience can follow along, and everyone has what they want.

For a corporate audience, you can also save your presentation, with narration, as a video. Or, to enhance client instructions, incorporate timeline add-ons or create your own infographic so that it is easy to read and understand at a glance.

Conclusion

Practice makes perfect. Microsoft is even building an artificial intelligence Presenter Coach to help provide feedback in PowerPoint rehearsal mode. Presentation technology has come such a long way. "Death by PowerPoint" should be a thing of the past. Use visual and audio aids to enhance your message — not detract from it. In addition to having a well-organized and thoughtful presentation, keep best practices in mind as you prepare and use slide decks and other presentation tools.

Resources

Rhetoric by Artistotle. You don't need to read anything else.

Your body language may shape who you are, Amy Cuddy, TED Talk.

Thinking, Fast and Slow by Daniel Kahneman. Seminal book about cognitive biases.

Toastmasters. Test, test, test.

I had a dream. Watch and watch again.

Practice by Allen Iverson. Enthymemes.

TECHSHOW2020

Building a Niche Practice: Solutions to Unconventional Problems

PRESENTERS:

Lyndosha Jamison: Lyndosha_e

Megan Zavieh: ZaviehLaw

January 2, 2020

BUILDING A NICHE PRACTICE IN FOOD AND BEVERAGE LAW
BY MICHAEL J. PALEUDIS – ORIGINALLY PUBLISHED ON LAWPRACTICETODAY.ORG

My career in the food and beverage business began at age 14. My job as a busboy at the Ponderosa Steakhouse was my foray into the business that I have enjoyed, in one form or another, for the last 30 years. When I was old enough to drive, I began milking Holsteins on a dairy farm on the outskirts of our rural Ohio town. Next, I worked as a dishwasher at Peaches Roadhouse, in Wheeling, West Virginia. After moving to Boston for college, I spent my first year working as a food runner, my second year as a waiter, and my third and fourth years as a bartender; these jobs were all at the Harp, an Irish pub across the street from the decommissioned Boston Garden. Although I did not know it at the time, the people I met during those four years of undergraduate school were the beginning of a network that I ultimately relied upon to develop the practice I maintain today.

After undergraduate school, I continued in the trade, bartending full time for four years at various taverns owned by a conglomerate of Irish bar owners in Midtown Manhattan. I was shipped from bar to bar as they opened new establishments. Again, the bartenders, waitresses, waiters, and owners that I met during this period of my life proved to be the underpinnings of my career as a food and beverage attorney, or as we are called in New York, an SLA lawyer, and in New Jersey, an ABC attorney. What both New York and New Jersey food and beverage attorneys have in common is that their practices center around the representation of bars, restaurants, distributors, and manufacturers such as breweries and wineries.

At age 25, I began to stray from my decade-long career in the food and beverage business and opted to follow my father's chosen path, law school. At the time, I believed law school was my exit strategy from the hospitality business. Law school was my way out of the long nights behind the bar (in Manhattan, the bar does not close until 4 a.m., and it was a rare morning that I returned to my apartment before 6 a.m.). I was determined to work hard, finish at the top of my law school class, and land a high-paying job at a big firm. I continued to tend bar through most of my law school days, the entire time believing that the tips I earned were simply a means to an end, the necessary steps toward that coveted white-shoe firm.

Alas, the path was not so clear. Halfway through my third year, the career counselor at George Washington University Law School arranged an interview at a now-disbanded Amlaw 100 firm. My lunch with the firm's associates was enlightening. A group of exhausted, downtrodden, and outright unhappy chaps spent the 90-minute lunch feigning love for their firm and for the countless hours they were required to bill to remain in the good graces of the firm's partners. I realized that a white-shoe firm was not the path for me. I clearly recall several follow-up meetings with that same career counselor in which she desperately encouraged me to take interviews with intellectual property firms, where I would handle the abundance of trademark and copyright work that was then flooding the market. Years of filling ketchup bottles, wiping down back bars, and restocking reach-in beer coolers had left upon me a mark of provinciality that precluded fraternization with the attorneys at these firms. Put simply, I did not fit in.

Instead, I started my legal career as an assistant district attorney in the Office of the Bronx County District Attorney. In the rough and tumble courthouses of the South Bronx, I learned quickly how courtrooms and government agencies work (and do not work), and how vastly different their ecosystems are from the private sector. After meeting my three-year commitment to the DA, I spent two years working for two boutique litigation firms. The day I gave notice at the last of these two firms, one of the equity partners humbly pointed out the reasons not to start my own practice. The support and collegiality were overwhelming as he explained that, "No one who leaves this firm makes it. The last guy that left to start

his own practice was never heard from again. You are a rising star here. If you just keep billing the way you have for the last year, you will make partner." That was the last day of my life as a law firm associate, and the first day of my career as a small law firm practitioner.

Despite my enthusiasm and eagerness to begin my own practice, I had a problem—I didn't have a single client. One of the bar restaurant operators that employed me more than a decade earlier, a member of the Irish conglomerate mentioned above, invited me to join his team at a "dinner dance" at the United Restaurant & Tavern Owners Association. I accepted and, on that fateful night in December 2010, my ex-employer suggested that I begin handling their liquor license applications to the New York State Liquor Authority (SLA). I explained that this was something I had never done before, but that was all right, my new client responded, because he trusted me. I worked hard for that client. In the years that followed, I regularly represented all six of that operator's bars before the SLA, filing applications for new liquor licenses and the array of applications that are required to keep a bar and restaurant operator in compliance with the law as their business changes and evolves.

That first client referred me to other bar and restaurant operators, who also became clients. In turn, those clients referred me to their friends and affiliated restaurants. As luck would have it, many of the bartenders that I had worked with 10 years earlier had already opened, or would eventually open, their own bars and their businesses soon became my clients. These bar and restaurant clients led to clients that manufacture alcoholic beverages, breweries, importers, and wholesalers. My bar, restaurant, brewery, and wholesale client base grew over the years, as did my firm's geographic reach.

Relying on technology to run a nearly paperless office has allowed me to maintain offices in New York, New Jersey, and Philadelphia. I have kept overhead and staff low, and have been careful about the clients I agree to represent. I have joined trade associations and networking groups and developed an optimized website that generates regular leads. I continue, on varying levels, to employ these marketing methods. However, the driver of my practice, the engine if you will, is my deep-rooted history in the food and beverage business. I understand how restaurants and bars work, and appreciate what it takes to produce, brand, and market a craft beer. On a fundamental level, I can relate to the people that work in bars, restaurants, and other food and beverage businesses. I relate to them because I am one of them. They have given me the privilege of representing them because of the care and humility that accompanies my representation of their businesses.

It goes without saying but building a law practice is hard work. The task requires dedication, perseverance, and nerve. Most of all, I believe, building a law practice involves recognizing where opportunity exists and understanding how to maximize each opportunities' potential. My opportunities to build a practice have arisen, largely, as a result of my background in the food and beverage industry. It is the business I am most familiar with. I am thrilled and honored to remain a part of it. It is the business where I have made lasting friendships and professional relationships, and where I have learned to relate to my fellow humans. I can't imagine building a law practice in any other way.

BEYOND SOLO: GROWING YOUR PRACTICE ETHICALLY IN 2019
BY MEGAN ZAVIEH – ORIGINALLY PUBLISHED ON ATTORNEYATWORK.COM

Are you a solo lawyer considering growing your practice in the new year?

Operating as a true solo has real benefits. You likely know all your clients and their files personally, so if something is not written down, chances are you still know the information. Shortcomings in systems can be overcome with institutional memory; even super important details like conflicts checks can be managed to a certain extent with the information inside your head. A certain amount of disorder is more tolerable as a true solo, too.

The limitations of solo practice, though, can be significant. There is only so much work one person can take on. This limits your impact on the community and your revenue. And when you are performing all the administrative functions, too, the time you have to devote to the revenue-generating side of the business is significantly impacted.

If you have made the decision to expand in 2019, particularly if your shift will be from true solo to something larger, there are some critical ethics issues to keep in mind as you make your plans.

What Level of Growth?

A preliminary question in considering growth is exactly what type of growth you mean. If you intend to remain a solo lawyer but add support staff, your issues will be slightly different than if you intend to add lawyers.

Do You Want to Bring on Lawyers?

Adding lawyers means that issues like conflicts checks take on new importance. Each new attorney brings their own potential conflicts with them, and running a conflicts check with another lawyer in the firm means that every possible conflict must be recorded in a database that the other lawyer can search. It is not possible for a second lawyer to search the knowledge in your head.

An additional attorney also brings a certain safeguard in that the lawyer is subject to the same ethics rules as you. Unlike non-attorney staff, the lawyer will have had training in ethics and have their own duties and license to be concerned about and guided by.

If the new lawyer will be brought in as a partner, you will share management duties and ethical responsibilities. If the lawyer is an associate working under your supervision, you will have supervisory duties.

Do You Want to Hire Staff?

If you are bringing only staff on board, you still have supervisory obligations. You can be found culpable of ethical violations for errors made by non-attorney staff if those errors are the result of your failure to supervise. This means you must ensure adequate training and oversight of your team members.

Key Ethical Issues

As you expand, certain issues are going to take on more importance compared with when you are a solo.

Data Security

Security of client data is extremely important even for a true solo. Hackers can so easily steal passwords, and use of public Wi-Fi remains a vulnerability for less tech-savvy lawyers. Once you introduce additional users onto your system, the risks are magnified. Instead of one login, now there are multiple logins that could be compromised. Instead of controlling one person's use of unsecure networks, you need to worry about everyone. Sharing of data among users from multiple cloud platforms becomes a concern.

If you lack the technical expertise to ensure the security of your client data meets ethics standards, you want to seek outside assistance. Consultants can work with you to establish secure systems and best practices to add users to your firm without compromising security.

Conflicts

As mentioned, the introduction of additional lawyers complicates matters in terms of conflicts checking systems. You need to have both an updated system for running conflicts and a set of processes for handling them when they arise. For a solo, a conflict leads to two possible outcomes: If it is not waivable, the representation is declined. If it is waivable, then the attorney seeks a waiver and either gets it (representation continues) or does not (representation is declined). With multiple lawyers, solutions like ethical screens become possible.

If you're also growing your practice with non-lawyer staff, that makes it a good time for revamping your conflicts check processes. While ensuring you are not violating conflicts rules is the attorney's responsibility, portions of running a check are delegable. Make sure your system is tuned up and ready for someone else to work within it.

Unauthorized Practice of Law

UPL can come into play with firm expansion in a couple of ways. With lawyers, if you are adding capacity across state lines, you will need to ensure compliance with all state regulations. Make sure any lawyer you are adding is barred and up to date on all membership requirements in the state in which they are located and practicing. If the expansion means some virtual remote practice, check the admissions requirements in both the state in which the lawyer sits and the state in which they practice.

Non-lawyers or other unlicensed personnel need training on what it means to practice law so that they can ensure they are not doing so. Ultimately the supervisory role falls to the lawyer, so you must ensure that your staff are not crossing lines.

Systems Need Fine-Tuning

Whatever systems a true solo has in place, they are likely to be unwritten. When you are planning to expand, it's the time to put your systems in writing — and fine-tune them. Adopt a management system for the office and deploy it with your new help.

APPLY THE 'IF IT'S NOT A HELL YEAH, IT'S A NO' MANTRA
BY MEGAN ZAVIEH – ORIGINALLY PUBLISHED ON ATTORNEYATWORK.COM

You may have heard it before: "If it's not a hell yeah, it's a no." It's a great line, often quoted by Tim Ferriss and broken down in wonderful detail in "Essentialism: The Disciplined Pursuit of Less" by Greg McKeown.

The concept is relatively simple. We are all constantly inundated with demands on our time. Say yes too easily and you become overburdened, cannot perform at your highest level on any of your tasks … and ultimately become completely burned out.

Thus, we all need to say no more often.

Most of Us Can Get Behind the Idea of Saying No

Few of us are dreaming of being able to take on one more volunteer opportunity. Still, saying no can be so very difficult.

And yet we know it's true: Without firm boundaries on our yeses, we do become overburdened. We struggle to keep up and inevitably drop the ball on clients and potential clients. And if we are not careful, it can be our professional undoing. So, how do you know when it's a "hell yeah" or a definite no?

What Is a Hell Yeah?

A hell yeah is tough to define. It will be different for each of us.

In "Essentialism," McKeown breaks it down using a decision tree, where you identify criteria that an obligation must meet in order to be a "yes." The criteria will depend on your personal and professional goals. This means you cannot determine your own "hell yeah" based on what someone else is doing. Your friend thinks an upcoming conference is a can't-miss, so it's a hell yes? Sure — for them. You have to do your own test to see if you should join in or not.

To me, the analysis gets a bit burdensome, so I end up doing most of my activity-sifting by feel: If I say no and this thing happens without me, how am I going to feel? Am I OK with that?

For example, recently I had to say no to a conference I adore and have never missed. My dilemma? It was the first day of school for my kids, with one switching schools. I put myself in the emotional space of missing the conference — I felt super bummed. Then I put myself in the emotional space of missing the first day of school — and the choice was obvious. Being home for the first day of school was a hell yeah. Nothing else mattered.

Ways to Bring It Home

Here are some ways the "hell yeah" concept comes up in law practice — and how you can work on saying no.

Niching Down

Niching down is the idea that you narrow your practice and narrow it again until you are the No. 1 expert in your very narrow field. This is scary for a lot of lawyers because it means saying no to a lot of work that may come your way.

Consider this example. You're a personal injury lawyer. You know the tort law in your state and can help anyone injured. You take on car accidents, motorcycle accidents, medical devices gone awry and anything else that hurts someone. Then you decide to niche down. You become the expert in representing 30-something women who had a specific type of IUD for five or more years, and who upon removal of the device tried for more than two years to become pregnant. Super niche. Very narrow.

When the car accident case calls, you turn them away. It is scary, but that accident case is no longer your niche.

How does practicing in a super niche help prevent overburdening and burnout? Some might say it is more likely to cause missed mortgage payments and financial stress.

When you practice in a very narrow niche, your ideal client is going to find you. You speak directly to them in your marketing — you are clearly the person to call for their specific issue. You also choose a niche with enough business to support it.

(A great podcast on this point is one of the original Maximum Lawyer episodes with Jim Hacking and Tyson Mutrux called "Niching Down.")

Stress is less because when your niche is narrow, you know the law and the process for that area inside and out. You are not scrambling to research new issues on every case, learning a new court or its processes, or otherwise venturing into unfamiliar territory for each client. And you can put systems and templates in place to quickly process cases, leading to more efficiency and capacity.

Before long, you should be making far more money than you would with a broader practice.

Conferences and Speaking Engagements

If you attend or speak at conferences as part of your practice, it can be easy to get bogged down in the options, the FOMO (fear of missing out) and peer pressure. But if you attend all the events, you will spend a small fortune, miss a ton of work hours and sacrifice significant time with family. At some point, you have to make choices and "attend every conference" is very likely not the best one.

So what questions can go into your analysis of whether or not to attend a specific conference? Here are some ideas from my experience:

- If I'd be a speaker, are the audience members my target clients? Referral sources?
- Are other attendees people I would get a tangible benefit from connecting with in person?
- Are there attendees I will not see at another event?

- What personal sacrifices are involved in attending this particular conference? Any date conflicts with important life events (such as the first day of school)?

- What is the cost of attending, including travel and the incidentals that tend to add up?

- Are there sessions or keynotes on the agenda that are really enticing? Can they be seen on YouTube later? Is there a benefit to seeing them live and on the date they are presented?

If you critically analyze each conference opportunity, the "hell yeah's" become more clear.

Ideal Clients

Similar to the niching down idea is the concept of creating an avatar for your ideal client and saying no to the ones who don't fit it. Again, turning away business is a scary prospect. However, working with your ideal clients is much less stressful, less prone to ethics complaints and more profitable than working with every person who comes through your door.

Everyone's ideal client is different, but the criteria you use to narrow down your client field should be things that make working with a client simpler and smoother.

For example, if you are very tech-driven in your practice, an analog client is probably not a good fit. If your processes require that your client responds to emails, fills out online forms and electronically signs documents, then a client who is largely offline is going to require special handling at every step. Neither of you will be very satisfied with the relationship.

Identify what goes into being your ideal client, and put in place screening measures to try to attract the ideal ones and not the less-than-ideal fits.

Continue to Work Your System

It takes a while to get used to the "hell yeah" concept, but continue to work it. As you become more aware, you will probably kick yourself swiftly when you say yes too quickly. But you will get better at it.

In addition, guilt you may feel from saying no (a common problem) begins to dissipate as you realize that by saying no, you are doing yourself and the person asking for your time a favor. The favor for yourself is obvious. The favor for the other person is that they can get someone to fill your shoes who will be more energetic and committed. It will be their "hell yeah!"

HOW TO COMPETENTLY REINVENT YOUR PRACTICE
BY MEGAN ZAVIEH ZAVIEH – ORIGINALLY PUBLISHED ON LAWYERIST.COM

Reinvention is part of being a solo lawyer. Some solos decide to become publishers or journalists or law clerks, leaving the practice of law behind. But sometimes it is a new practice area that defines a lawyer's reinvention. With so many options in established practice areas and new ones being created through changes in law and through innovation, there are limitless possibilities for redefining your practice.

Why?

Lawyers adopt new practice areas for all kinds of reasons. Some practice areas are legislated away so that when a law is changed, a practice area might be wiped out entirely. A new practice area is sometimes required for survival. Sometimes a lawyer is just bored with what they are doing and wants a new area of focus, or their interest is piqued when they come into contact with a new area. And sometimes, laws change and create entirely new practice areas, and lawyers want to get onboard, such as the rapid growth of marijuana law.

What?

Lawyers add many skills to their repertoire over the course of law practice, and sometimes a new practice area comes from learning a new skill. For example, a transactional lawyer who oversees a single real estate transaction that goes bad might then decide that he wants to branch out into real estate litigation.

A new area might be chosen because it is not only new to the lawyer but new to everyone. This has been true of marijuana law as the drug has slowly become legalized in several states; a couple of decades ago, seat belt laws were a significant change (and source of traffic tickets). Think about the new practice area that is being created with the advent of self-driving cars: out with DUI and in with AI failure. When the law evolves, so too must its practitioners.

How?

Once you choose to add a new area of law to your practice, how do you go about achieving a level of competence in the new field? After all, you do not want to violate the duty to provide competent representation on your first case in the new practice area. Thankfully, there are resources available even when the area of law is brand new.

Read the law. If your new practice area relates to a discrete law, your first stop should be the legislation itself. The underlying legislative history and any regulations flowing from the law also need to be read and thoroughly digested. When you are dealing with a new law, this will be a relatively manageable universe of material. If you are evolving into an existing field, the actual law might be more voluminous and the legislative history less relevant.

Read the cases. Like legislation, the key cases in a practice area are critical reading. The volume of key cases will vary based on practice area, but if you use resources like practice guides, you can likely narrow down the most important cases to get a better handle on the authorities governing your new field. You do not want to get caught not knowing a major case in your new practice area.

Other resources. Unless you are transitioning into a brand new area of law that no one has begun teaching or presenting about, the chances are good that there will be resources available for learning the basics and the details of a new practice area.

Online articles. Look for sources of information such as blogs and articles. Keep the source in mind as you use the information, but since blogging is a simple and effective way to share first-hand information and research, it might be very useful so long as it appears reliable.

Find online CLE presentations on your new area. Large CLE providers have hundreds of programs available online and one may be what you need. Individual lawyers practicing in the field may also offer CLE programs on their websites, often for free.

Search for Slideshare materials from talks on your topic. Presenters from programs can post their slide decks through Slideshare, and often the slides alone are enough to educate you.

Print publications. Books and other publications can give you the background you need in more established areas of the law. Law libraries will typically carry practice guides, and a thorough reading of a practice guide can educate you to a great extent.

Mentors. Reach out to people working in the field. Take someone to lunch, pick their brain, and learn about your new area. Go to an in-person conference and meet people practicing in the area; listen to the speakers, introduce yourself to practitioners, and absorb the information while seeking out a mentor.

Do!

Reinventing your practice, to some extent, is bound to be a part of your firm's story. Embrace the evolution of practice, and redefine your work with competence.

TECHSHOW2020

You're So Predictable: Subscription Legal Services

WRITTEN BY:

Kimberly Y. Bennett and Lauren Lester

PRESENTERS:

Kimberly Y. Bennett: @kbennettlaw

Lauren Lester: @mslaurenlester

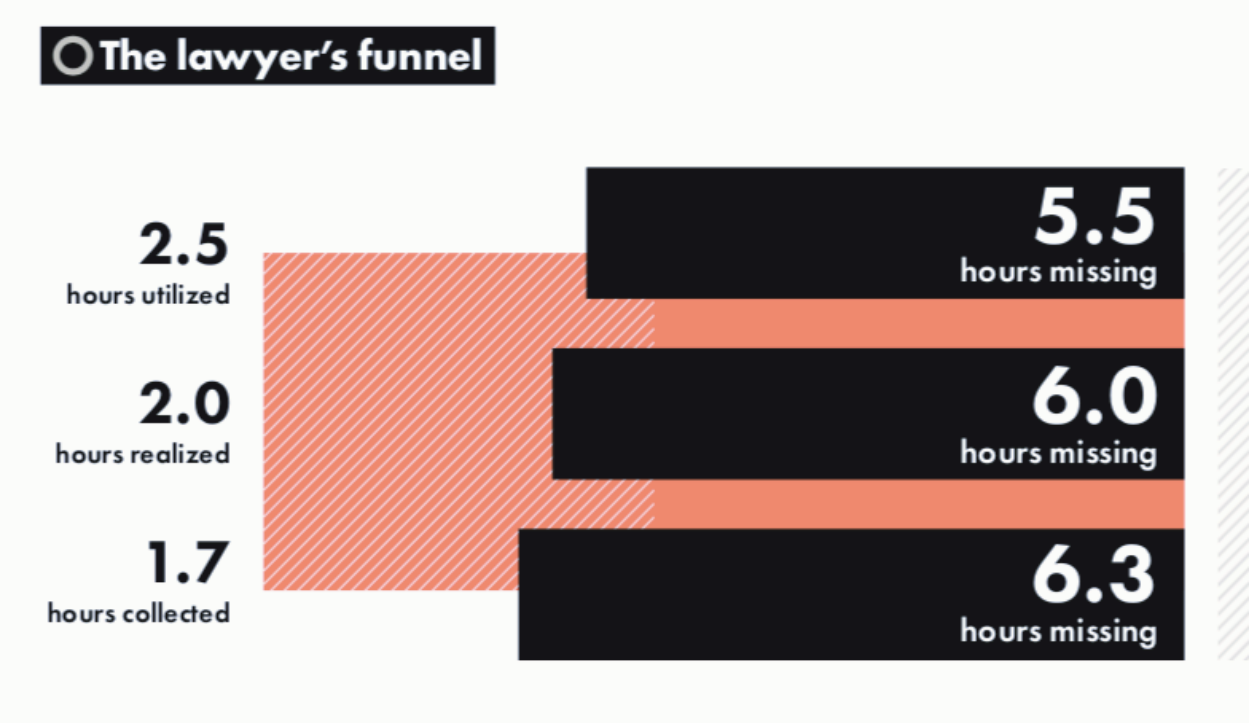
January 6, 2020

The Problems We Face

Problem 1: Underperformance

Firms are under-utilizing and under-collecting, even across consistent hourly rates.

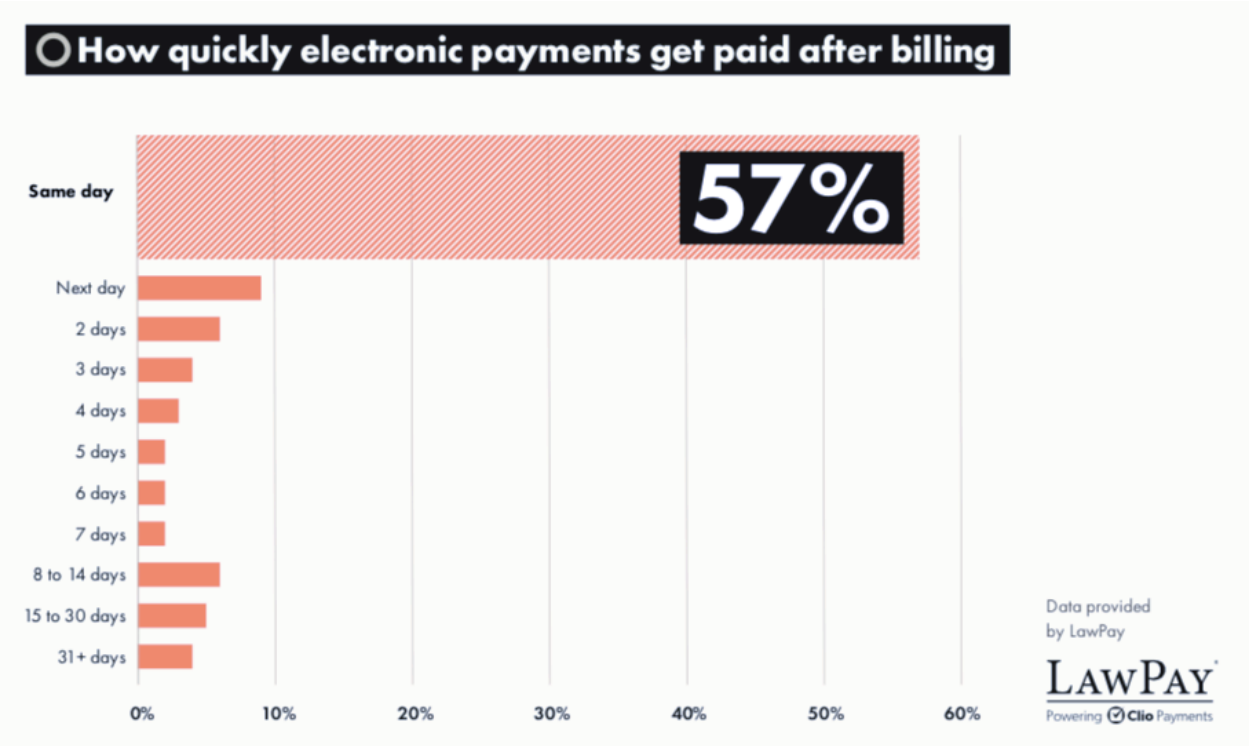
Utilization = average of 2.5 billable hours a day | Collection = average of 1.7 hours a day



Source: Clio Legal Trends Report 2019

This underperformance is likely a result of not having an efficient process in place for collecting payment or because clients decline to pay because the value they received doesn't align with the cost.

57% of electronic payments are paid the same day as billed



Source: Clio Legal Trends Report 2019

Lawyers are focused on the time spent; clients are focused on the value received.

Problem 2: We Aren't Selling What Clients Want

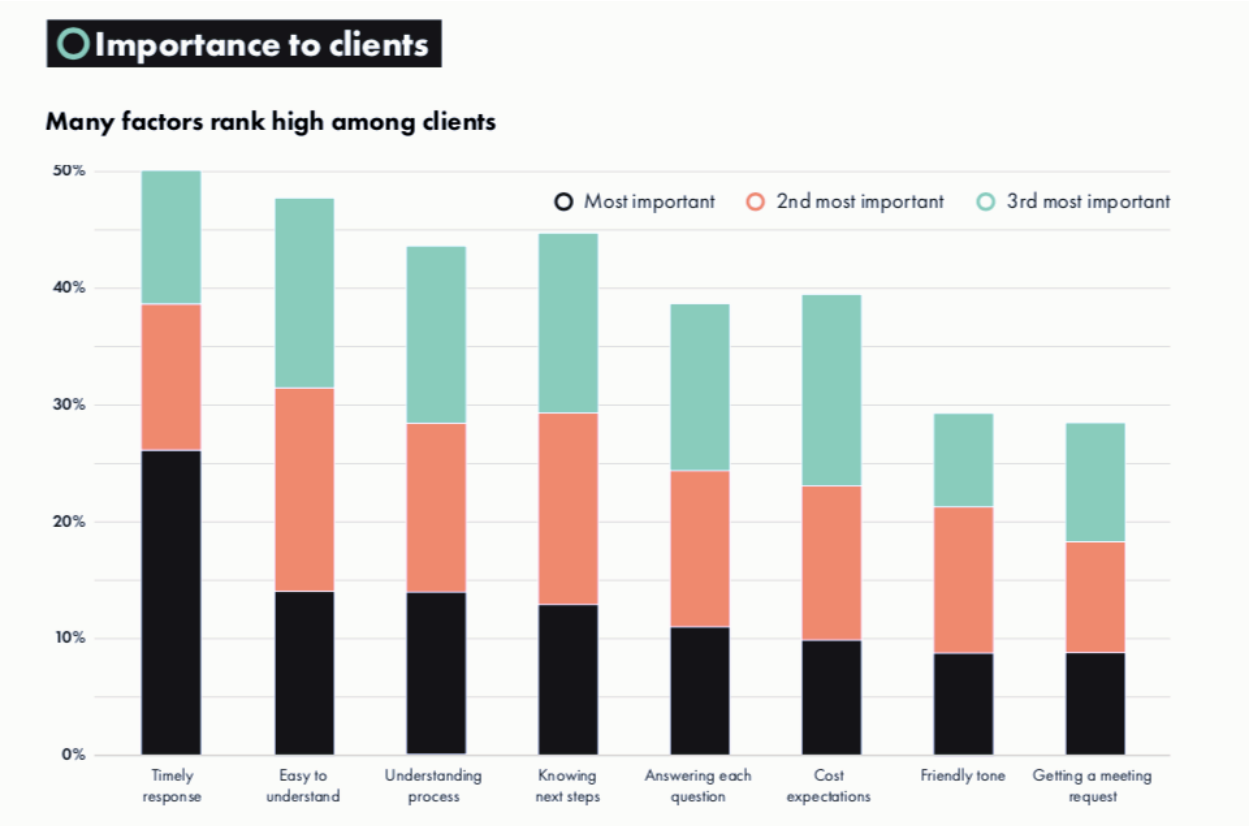
Two-thirds of clients, when shopping for a lawyer, want "an estimate of the total cost of their case" and 76% want to get a clear sense of what their legal issue will cost during the first contact.

What do clients look for when first contacting a lawyer?

Making a good impression isn't just about picking up the phone or answering an email—clients need to have reason to believe that the lawyer they contact is the right lawyer for them.

Of those who have ever experienced a legal issue, **82%** agreed that timeliness was important to them. Clients also have an appetite for knowledge and want to get as much information about their case as possible:

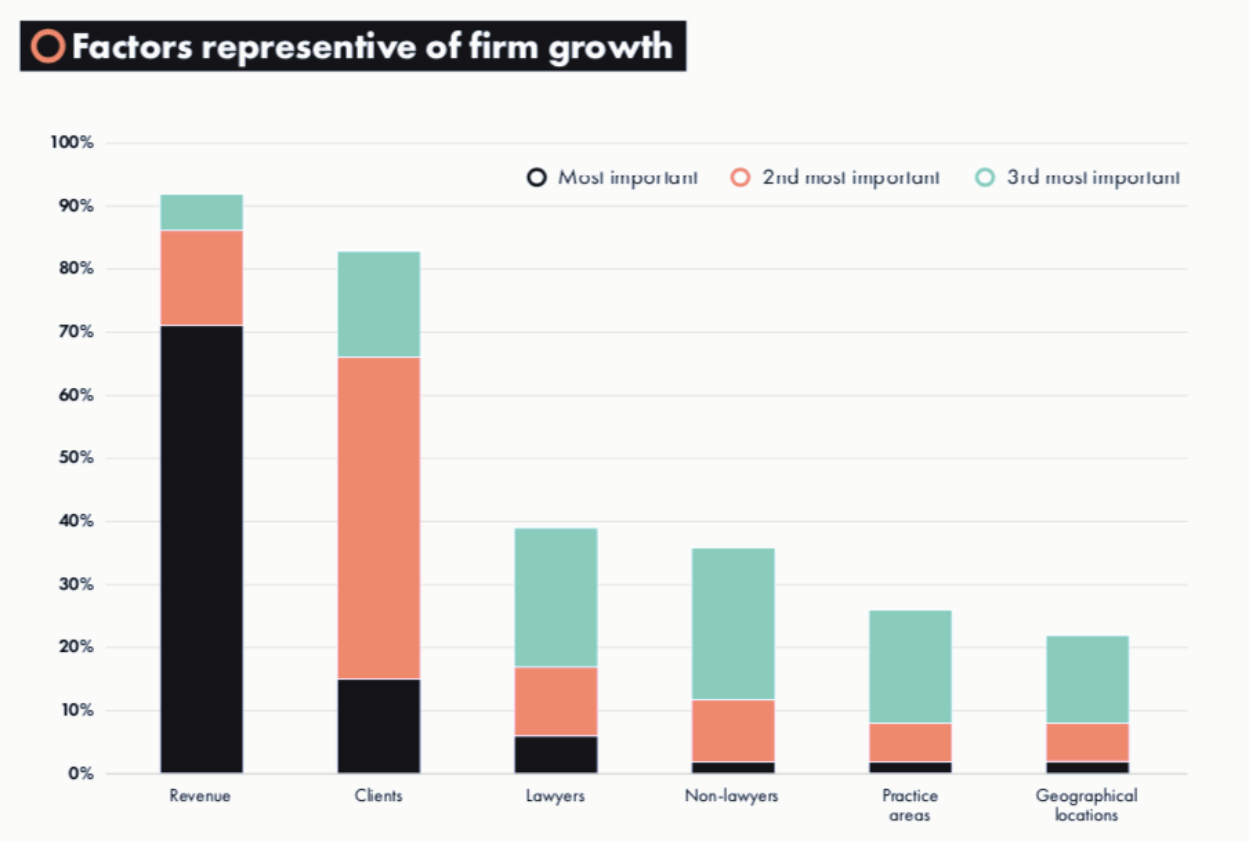
- **81%** want a response to each question they ask.
- **80%** say it's important to have a clear understanding of how to proceed.
- **76%** also want to get a clear sense of how much their legal issue could cost.
- **74%** want to know what the full process will look like for their case.



Source: Clio Legal Trends Report 2019

Problem 3: Businesses Need Revenue

70% of firms say the most important measure representative of the firm's growth is revenue.



Source: Clio Legal Trends Report 2019

The Opportunity We Have

To have a business that focuses on our greatest assets: being an advisor, issue spotter, and problem solver!

A Solution: Subscription Billing

Subscription billing solves the problems commonly faced by law firms by:

- Utilizing near 100% of billable time
- Collecting 100% of bills with automatic payments/withdrawals
- Providing clients the cost up front
- Giving the firm predictable revenue
- Providing a reliable indicator to support expansion

Focusing on Value

Clients buy the value we provide, not our effort or time.

They don't care how long it takes us to complete the work. They care about the value they receive by the work we do.

Value Provided By Lawyers

What we traditionally think of the value we provide a lawyers, we say:

- Creating work product
- Reducing risk or liability
- Advocating
- Counseling

We also provide value in ways we don't realize but are often more important to the client, including:

- Providing information
- Reducing anxiety
- Saving time
- Simplify the process
- Avoid hassles

- Reducing cost
- Providing access to legal help
- Creating legacy
- Providing hope
- Predictability
- Transparency

Putting Together Subscription Packages

How do you identify which services to include?

What are the benefits of a tiered approach?

What are some variables to consider?

- Communication time
- Admin time
- 3rd party costs
- Industry

Go slow!

Choose a specific type of client or case to start with. See how it goes and adjust as needed. Just because you start with one type of package doesn't mean you are stuck with it.

Stay open!

It's not always immediately obvious, but if you stay open and creative, can find a solution that works great for both your firm and your clients.

Examples

Family Law - https://www.mylifelawyer.com/pricing/#divorce-custody

Help throughout Your Case

– Divorce & Custody

	Coaching	Gold	Platinum
	per month $350	one-time cost $2375	one-time cost $4575
	Start	Start	Start
Answer questions	✔	✔	✔
Provide guidance	✔	✔	✔
Email support	on-going	on-going	on-going
Phone calls	1 per month	as needed	as needed
Response time	next business day	next business day	next business day
Try to keep you out of court	✔	✔	✔
Help with documents	not included	we review them	we draft them
Filing documents	on your own	on your own	we file them
Status Conferences	on your own	we help you prep	we attend with you
Mediation	on your own	we help you prep	we attend with you
Court hearings	on your own	we help you prep	we help you prep
Talk to other party	on your own	on your own	through us
LawGuides account	✔	✔	not needed
Recommended for	see details	see details	see details
Peace of mind	✔	✔	✔
Reduced risk	✔	✔	✔
Exceptional service	✔	✔	✔
	Start	Start	Start

IP and Business Law - https://www.kbennettlaw.com/subscriptionlegalservices

Your Options

THE KBL LEGAL OFFICER SUBSCRIPTIONS

Review our subscription options below and select the plan that fits your current business needs. You may upgrade or cancel your subscription at any time. After joining, all new clients must clear a conflicts check.

BRAND COUNSEL

$1000/month

Who is this for?
multiple 6-7 figure businesses seeking proactive legal advice & ongoing support to protect their assets and grow their brand.

What's included:

Monthly document review
Unlimited Cease & Desist letters
Unlimited scheduled consultations
Ongoing trademark monitoring & USPTO filings

- PLUS -

annual brand assessment
quarterly trademark search
quarterly strategy session
quarterly legal project

---

projects include:
(1) entity restructuring,
(2) trademark application,
(3) customized contract template, or
(4) operations development & support.

**maximum of two trademarks*
**additional trademark search is $850*
**excludes report and Government fees*
clients outside of NJ, PA, or GA will have access to trademark & operations projects only

Step 1 → Design My Brand Plan

CHIEF BRAND COUNSEL

$2000/month

Who is this for?
multiple 6-7 figure businesses seeking proactive legal advice & ongoing support to scale their brand and build their team.

What's included:

Monthly document review
Unlimited Cease & Desist letters
Unlimited scheduled consultations
Ongoing trademark monitoring + USPTO filings
Ongoing assistance & monitoring of business compliance

- PLUS -

bi-annual brand assessment
monthly trademark search
monthly strategy session
monthly legal project

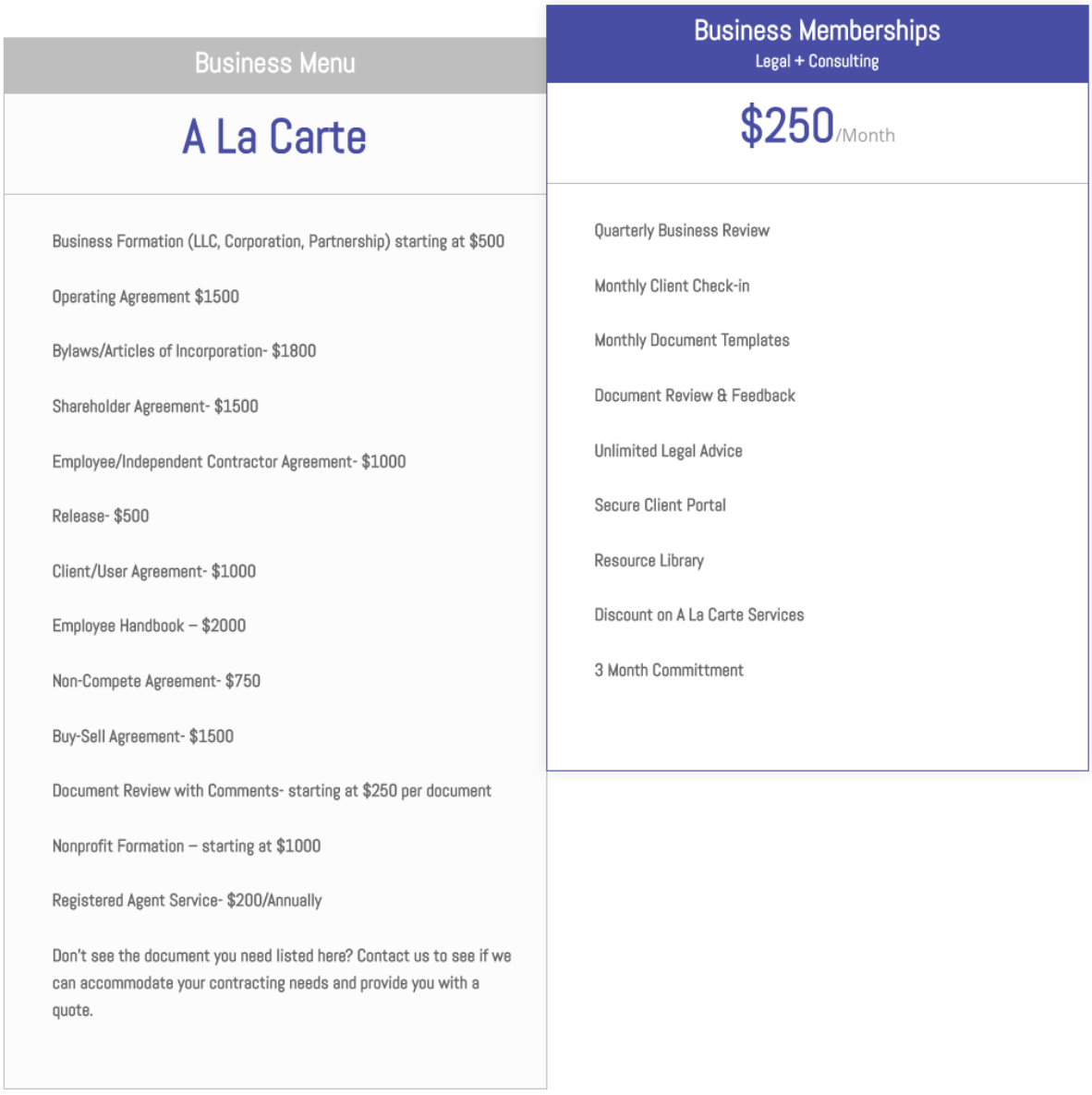
---

projects include:
(1) entity restructuring,
(2) trademark application,
(3) customized contract template,
(4) operations development & support,
(5) customized team trainings & workshops, or
(6) ongoing deal management & contract negotiations.

**maximum of four trademarks*
**additional trademark search is $850*
**excludes report and Government fees*
clients outside of NJ, PA, or GA will have access to trademark & operations projects only

Step 1 → Design My Brand Plan

Unbundled Services - https://myvirtual.lawyer/small-business/



Business Menu

A La Carte

Business Formation (LLC, Corporation, Partnership) starting at $500

Operating Agreement $1500

Bylaws/Articles of Incorporation- $1800

Shareholder Agreement- $1500

Employee/Independent Contractor Agreement- $1000

Release- $500

Client/User Agreement- $1000

Employee Handbook – $2000

Non-Compete Agreement- $750

Buy-Sell Agreement- $1500

Document Review with Comments- starting at $250 per document

Nonprofit Formation – starting at $1000

Registered Agent Service- $200/Annually

Don't see the document you need listed here? Contact us to see if we can accommodate your contracting needs and provide you with a quote.

Business Memberships

Legal + Consulting

$250/Month

Quarterly Business Review

Monthly Client Check-in

Monthly Document Templates

Document Review & Feedback

Unlimited Legal Advice

Secure Client Portal

Resource Library

Discount on A La Carte Services

3 Month Committment

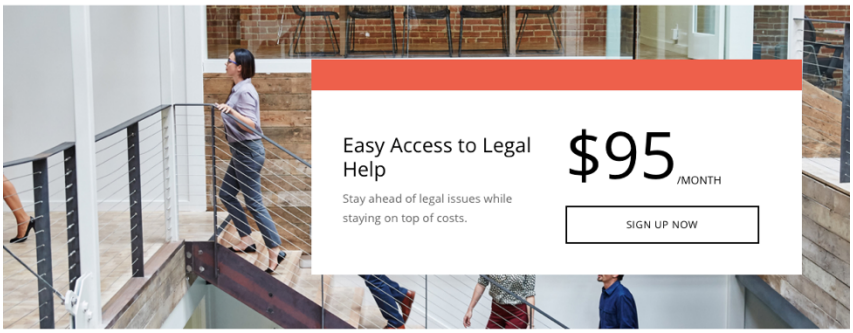
Hemp Law - https://www.ehglawfirm.com/hemp-and-cannabis-business-legal-services/

Subscription Legal Services Helping Hemp and Medical Marijuana Businesses in Georgia

There have never been more opportunities for growth in the hemp industry in Georgia than there are today. We continue to see ever-multiplying businesses and individuals operating at the intersection of hemp and wellness. In Georgia, the path to legalization is long and paved with a morass of regulatory hurdles and compliance issues.

At EHG Law Firm, we bring clarity, consistency, and reliability to the ever-changing hemp regulatory landscape in Georgia by helping businesses and individuals stay informed and in compliance.

Business Law - https://counselforcreators.com/creators-legal-program/



The Basics

The Creators' Legal Program is an innovative legal subscription service that helps creative businesses understand and address legal needs proactively. Members of the Creators' Legal Program can easily schedule attorney phone calls or send documents to us for for review. But most importantly, we help you identify legal issues early so that they don't become expensive legal problems down the road.

Benefits

The Creators' Legal Program makes it easy for business owners to have an attorney on their team. Through this innovative legal subscription service, we help you come up with a plan to address your legal needs, allow you to easy consult with an attorney or send in a document for legal review.

Strategic Guidance −

When you join the Creators' Legal Program, we will provide you with an ongoing legal assessment to determine your legal needs in a variety of areas: contracts, business formation, intellectual property, trademarks, and more. We will help you understand what it takes do things right and then help you come up with a plan to do those things.

Unlimited Phone Calls +

Unlimited Document Reviews +

Weekly Live Webinars +

Legal Documents and Guides +

Easy Access to Legal Help

Imagine if you could have a lawyer on your team – and it was actually affordable. We designed the Creators' Legal Program to do just that.

Creators' Legal Subscription Plan

$95 /MONTH

Easy access to an attorney through free phone calls, free document reviews and a variety of other tools that can help you address your legal needs proactively.

SIGN UP NOW

TECHSHOW2020

Keying into People: Solving Onboarding and Turnover with Intention and Tech

WRITTEN BY:

Dina Eisenberg, Esq

PRESENTERS:
Dina Eisenberg, Esq, Unstoppable Lawyer Playbook: @DinaEisenberg
Lori Gonzalez, Rayna Corp: @RayNaCorp

January 3, 2019

Program Goals

- Increase ability to reduce turnovers while increasing client satisfaction
- Provide a peek inside the current climate in the paralegal labor force
- Share a new technology tool that attendees can use with their staff
- Offer actionable next steps

Glossary

These definitions were designed to move people functions from an abstract notion to a practical working definition.

Onboarding- introducing your new paralegal, assistant or associate to your law firm and their role

Outsourcing – asking someone outside of your law firm to help you achieve a goal

Delegation- Clearly defining the task and providing the information and tools for a success

Mentoring- a working relationship where one person provides advice or training for another

Turnover- describes the number or percentage of employees who leave and are replace

Quick quit- an employee who quits within the first 6 months

Current Climate- Law Firm Turnovers

This is a time of great transition for the profession as well as individual law firms. Turnover is high. The very idea of what it means to practice law and be a lawyer is changing. Business models are changing. With that much change, it's clear there will be competing interests and goals for law firm owners, paralegals, associates and other staff that need to be addressed before growth can happen successfully.

The statistics are daunting. According to Law360:

44% of associates in Big Law firms leave after 3 years
62.4% turnover rate for small law firms less than 10

Employees leave due to (in no order):

- Time demands
- Lack of training
- Job satisfaction

- Lack of work/life balance
- Abusive partner/staff
- Not a good fit for culture

The traditional model for running a law firm focused on productivity and client satisfaction while paying less attention to the needs of associates and paralegals. As the structure and needs of law firms change to meet the needs of the new legal consumer, so too change the job expectations for associates and paralegals at firms of all sizes.

Competition looms

Unlike the past when associates and paralegals were limited in their employment options, today's legal staff have a multitude of options that are outside of the conventional law firm.

To keep you talented paralegals and associates you are competing with legal service providers, in-house counsel, private business, legal tech companies and much more. The workload and stress are likely to be less than private practice, which is very attractive.

Your small law firm might not be able to offer some of the most popular employee benefits according to Forbes, but that doesn't mean you can't win the talent race!

Focus on benefits that enhance your employee's life. Get creative. More importantly, ask employees since they can define what is a meaningful benefit to them. Want inspiration? Look to tech companies that are small but understand how to attract and retain talent.

What leads to high turnover and quick quits?

What leads to high turnover in law firms? Poor fit. Most lawyers hire for skill set which makes perfect sense. You want to know that your new associate or paralegal can perform well.

However, your new hire also has to be a cultural fit. Your new hire needs to fit your culture, values, work ethic, even sense of humor. Have you ever been in a group where you didn't fit? What was that like and how can you use that to inform your hiring process?

Consider creating an Employee avatar.

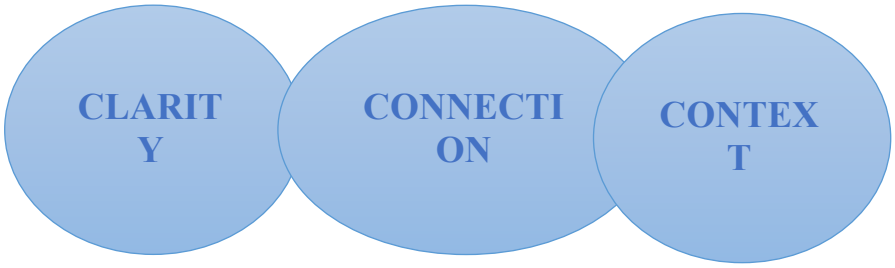
Just like you wouldn't allow just anyone to enter your home, don't allow just anyone to become an employee. Identify what you want to see in an ideal employee. Working with someone who is skilled and gets who you are is a joy.

Connection. Context. Clarity- 3C Framework

Once you have the right paralegal or associate for you, it's time to introduce the new employee to your firm. It helps if you have a repeatable process to do that. The 3C framework makes it easy to help your

new hire understand your firm, learn their job and see how their contribution contribute to the firm's overall success.

The 3 Cs of Onboarding



Onboarding is a process. There are steps to follow. To build a caring, trustworthy team that is dedicated to helping you grow, you must provide connection, context and clarity.

Connection

People buy from people they know like and trust. Employees work harder for bosses they know like and trust so make an effort to connect with your new employee. No, you don't have to sing kumbaya.

You can connect by noting that you like the same cuisine or sports team. According to neuroscience, simply having a name that starts with the same letter is enough to build a connection. And, no, this doesn't violate professional distance. It enhances loyalty and trust.

Context

Adults need context. Were you ever asked to do something that didn't make sense to you? I bet you were distracted by wondering why. Your employee needs to understand how their work contribution fits into the overall picture of your firm.

Motivation is intrinsic according to author Daniel Pink. In his book, Drive, he notes that purpose is an aspect of motivation. Purpose creates meaning. Context assists your employees to be engaged and motivated to do their best for you because their work has meaning.

Clarity

Confused minds don't do their best work. Your employee needs you to give them clarity about their job and your expectations. An employee manual is helpful but a conversation during orientation does an even better job of setting expectations.

Your employee knows how to do their job, just not how to do it the way you prefer. Educate using a variety of teaching methods from verbal to written to video during the onboarding period.

What do you get out of onboarding?

What's the upside for you when you create an onboarding program? The benefits are legion.

Studies show that 69% of employees who are properly onboarded stay longer (up to three years) and get up to speed 25% faster. That means your new hires can generate revenue for you faster. Your business will grow.

You break even on your investment when your new employee stays six months. That's significant, especially if you have experienced many 'quick quits' where the new employee leaves in the first three months.

You work less and stress less knowing that you have a reliable team. I heard from a client that she had her first two-week vacation while her most senior paralegal was out and left her two new hires to mind the store. She didn't get bothered with a single phone call and she returned to an organized desk, not the usual post-vacation chaos.

If you invest in onboarding your staff, that could be you!

4 shifts forward

There are four shifts in your mindset and systems that help you to retain that great employee that you just invested hours and dollars to onboard.

Fit

Seek compatibility, not likeability

You're gonna spend hours and hours with your legal staff. Of course, you want to like them but reach further. Make sure you are compatible with your team.

You are a sovereign nation. You have rules, jokes, rituals and more that your staff should be fine with. Spend time thinking about the kind of culture you want to create. Think about what is non-negotiable for you. Then, look for people who fit.

Who all do our best for the people who we know, like and trust.

Speaking of which, here's a pro-tip. Use your orientation process to make a real person-to-person connection. Get to know each other.

Connection is the glue that holds things together when work threatens to rip your law firm apart.

Reduce turnover by hiring employees who fit your culture right from the start.

Satisfaction

I can't get no satisfaction is the song lyric that most law firm employees are singing these days. Paralegals and associates alike want more job satisfaction.

How do you accomplish that when you can't control the cases or people?

There are many ways but let's focus on context and benefits. Adults need context to understand their work otherwise they become distracted and dissatisfied.

Do your employees understand your mission for your firm and how their work fits into achieving that mission? If not, it's time to share. Employees join law firms not simply for the paycheck. Your legal staff joined you because they want to be part of your mission and achieve something greater than themselves.

Let me be motivated by sharing your vision; giving them ownership of their role; and helping your staff see that they are a needed part of your office.

NOTE: Heartfelt, meaningful praise and appreciation doesn't spoil workers. It enhances their pride and performance.

Benefits matter. Today's employee wants time flexibility and work life integration. The best way to ensure that you are offering the benefits that your employees truly want is to ask them. Don't make assumptions. Remember that Lori thought her employees would want a 3-day work week, but they didn't.

It's natural that you're focused on the marketability and growth of your law firm but don't forget to think about it in terms of your team. How can you aid the growth of your paralegals and associates and make them ore marketable after leaving you.

Yes, it does seem counterintuitive to invest heavily in someone who is going to eventually leave you. However, the gamble pays off. Your employee will be amazed that you see their potential and choose to invest in their development.

That gratitude is represented by working longer, smarter and generally doing an amazing job. Why? Reciprocity. You wanted the best for your paralegal so now she wants the best for you. Retain your team by making it easy to go but hard to leave because they won't find the same nurturing with another law firm.

Working Relationship

You are in a relationship with each of your staff members whether you realize it or not. All relationships take work to develop and maintain. Your job is to figure out what kind of work relationship you want with your employees.

It's likely that you've already experienced different kinds of work relationships in your career. Which ones worked best for you? Big law firms typically employ a' control and command' type of management style that doesn't embrace close relationships. That doesn't work as well with small firms.

Connect with your new paralegal as a person first, not in your role as 'boss'. Strive to get to know the person. What are their likes, dislikes, future plans, favorite cuisine? Why did they join you?

Neuroscience tells us that even the smallest commonality, like sharing initials, builds bonds between people. It may feel awkward and be a bit confusing at first, but the boost in loyalty and productivity are worth it.

Indicators you have a toxic workplace

Turnover happens most often in a toxic work environment. You might not even recognize that your workplace had become toxic over time. Here are a few indicators to help you identify if your workplace needs to be rehabilitated.

Lori suggests these indicators:

1. High turnover
2. High sick day/ time off requests

3. Lack of teamwork
4. No socializing beyond work

Dina suggests these indicators:

1. Multiple quick quits in a year
2. Team fears giving feedback or sharing new ideas
3. Team doesn't accept accountability for work
4. Inflexible leader- 'my way or the highway'

You can function in a toxic workplace, but the cost is high. You'll find it harder to achieve more and spend more time handling office drama than necessary. Eventually, toxic workplaces fail r only attract unsuitable candidates because of reputation.

Indicators of an aligned workplace

What is an aligned workplace?

Just like a jigsaw puzzle, an aligned workplace is one where all the different people come together, in their respective roles, to grow your law firm based on a shared set of values, work ethic and goals.

Lori defines an aligned team as:

- Happy
- Has little turnover
- Has Talent agility (team responds easily to challenges)
- Engaged in reviews and firm growth

Dina defines as an aligned team as:

- Connected
- Has communication skills to be a high-functioning team
- Understands and supports the vision and mission
- Thinks of themselves as vital contributors to success

How to retain a troubled employee

Turnover doesn't have to mean the end. If you have a paralegal or associate that you'd like to retain but there are issues, you do have options.

First, decide why you want to retain this employee. What makes them valuable to you? Be prepared to share that during the conversation.

Quick quits happen when there's a poor match between the employee and the culture or job. If the employee has qualities or skills you want to keep, what can you adjust to improve the fit? Sit down with the paralegal or associate to explore what is possible.

Longstanding issues are best resolved through a process called a facilitated conversation, where a neutral third party skilled in conflict management helps you identify and resolve the issues present. This would be called a mediation in other settings.

RECAP

The fight for good talent in the legal industry is certainly going to get worse. But you don't have to be part of the struggle if you create a welcoming, healthy work environment where the best people want to work.

How do you create a welcoming, healthy workplace that eliminates turnover?

1. Decide that is important to you
2. Clarify your law firm vision and mission
3. Identify the qualities and traits you want to see in an ideal employee
4. Create systems that introduce new hires in an effective way
5. Create systems and routines that nourish and support your staff
6. Create a culture that embraces transparency, connection and communication

If you are a new lawyer who is just starting out, investing in planning your law firm culture and systems will give you a solid foundation to build upon and a team to help you grow right from the start. You'll get up to speed and reach profitability much faster than DIYing it.

If you own an established law firm, investing in planning to revive your law firm and creating new systems, allows you to let go of the past and begin again with a fresh, solid foundation.

Maximize Value-Take the first step

Big conferences are great. You get exposed to many new and thought-provoking ideas. I generally leave a conference on fire with the ideas I want to try. Then, I get home and life happens.

Don't just sip the knowledge you were given at TECHSHOW. Take action. Even if it's a baby step.

To get you on your way and into action, Lori and I offer you this suggestion for your first step once you get back home.

First steps…

Lori suggests this as your first step:

Take time to study and connect with your existing team, if you have one. Explore their needs and interests by creating a survey. Survey Monkey, an online tool, is a good resource that has survey templates that you can use.

However, you choose to survey your staff be sure to:

- include different options to respond (survey, written or conversation) so everyone feels comfortable
- tell staff what you plan to do with the opinions and thoughts that they share with you so that everyone feels values and doesn't have to fear the unknown
- Share the results and data with your staff so that everyone is willing to participate next time
- Don't assume that you know the responses. Be open to being surprised.

Dina suggests this as your first step:

Explore the 'Sovereign Nation of You' and what you want and need your law firm culture to be about. Turnover happens when there is a mismatch between you and your new hire.

Ask yourself some questions:

- What is my vision for my clients?
- Where do I want to take my firm in 5 years?
- Who do I need besides me to get there?
- What qualities do I want to see in an employee?
- What is my work ethic?
- What are non-negotiables for me

Of course, there are more questions to answer. If you'd like support around creating your law firm culture, reach out.

About your Presenters

Dina Eisenberg is a former prosecutor turned award-winning entrepreneur and creator of the Unstoppable Lawyer Playbook, a law practice management firm that focuses on people skills. Dina helps small firm owners and solo lawyers to leverage their time, earn more and make life easier by delegating and onboarding properly. She is a frequent CLE and retreat speaker. Join her free FB group, Unstoppable Lawyers. Dina@UnstoppableLawyerPlaybook.com

Lori Gonzalez

President and CEO of RayNa Corporation RayNa is a full-service management and consulting company. We consult with lawyers and firms in Tennessee and surrounding states on law practice management and legal technology.

Our services help create or execute strategic plans. We work with lawyers and firms desiring to take the next step in growing their business with the use of technology. lori@raynacorp.com

How to Create + Run a Virtual Law Practice

WRITTEN BY:

Charity Anastasio & Brooke Moore

PRESENTERS:
Charity Anastasio: @charityanas
Brooke Moore: @virtuallawgirl

February 27, 2020

Description

Clients are demanding convenience and lawyers are craving balance. Virtual law practice improves the client experience, significantly reduces your overhead, and provides lawyers unparalleled flexibility.

Leave the file folders, mahogany desks, and inefficiencies behind. These tips will help you to best manage your clients, cases, and costs virtually.

- Learn how to create systems for operating a virtual practice.
- Identify workflows that support unconventional delivery of legal services.
- Discover the key technology needed for maximum efficiency and optimal client experience within this law firm model.

Table of Contents

Going Virtual: The Modern-Day Law Firm is in the Cloud[1]

You hear the term "virtual," and you think of something distant or not real. Not true for the virtual law firm model. This is a viable alternative business model for real lawyers to connect with clients in a very meaningful way. Legal consumers are driving change in how we provide services and are growing more comfortable conducting their business online.

So what exactly is a virtual law firm? A fully virtual law firm is a web-based law firm model for the delivery of legal services, providing easier access to legal consumers and the flexibility to meet evolving consumer demand. A virtual law firm is a real law firm bound by the same procedural requirements and ethical rules as a traditional law firm, with the difference being how services are delivered.

A virtual law firm is not simply e-lawyering. Communicating through e-mail or working remotely does not make your law firm virtual. It's also not just a website with an intake form or call-to-action button. Going virtual is about abandoning the traditional way lawyers deliver legal services. The virtual practice is created by utilizing technology as the primary delivery for interacting with clients throughout representation. This is best achieved by working within law practice management software to provide a secure client portal in which to exchange documents, allow for payments and provide communication.

Your client portal is the foundation of your virtual practice. Many law practice management software offerings are out there and many serve as a full service one-stop shop. However, you may find combining multiple technologies and software services a better fit for your firm. The ABA's Blueprint is a free service to members and is a great place to start when trying to determine which technology or legal service providers are the best fit for your firm.

Regardless of which software you choose, your full service or piecemeal client portal should provide certain features for your virtual practice. It should be user-friendly and secure. It should offer document automation, allow for flexible online payments, and provide for messaging and other communication access. You should have the ability to upload and exchange documents. You need a method for conducting conflicts checks, and your client portal should integrate with other software you use, as well as your calendar and scheduling system.

Is a virtual law firm right for you? This model definitely has benefits. A fully virtual practice requires fewer overhead expenses, because you do not have a physical office space, and with outsourcing and automation you do not have to hire full-time staff. You have the flexibility to work when, where and how you want. Your services are more easily accessible, because your reach is greater online. Being paperless also reduces expenses and allows for easier access to case information. A virtual model can more easily adapt to the changing legal landscape to better meet consumer needs.

However, certain risks are involved in a virtual practice. Operating entirely online can raise privacy issues. Take extra precautions by using secure internet connections, and ensure that your communications are encrypted on your computer, tablet or mobile device. Also make sure that the technology you are using is secure and encrypted, and that you are competent with and knowledgeable of your technology. Practicing in multiple jurisdictions also requires you to be extra diligent to ensure that you are complying with all pertinent rules.

Ready to get started? Here are your first five steps.

1. Research state-specific bona fide office requirements and obtain any local licenses.
2. Decide which services to provide, choose and create your business entity, and obtain appropriate professional liability insurance. Also, create a brief business plan to revisit every few months.

[1] By Brooke Moore on January 13, 2017; Republished from *American Bar Association Law Practice Today*

3. Register your domain and create your website.
4. Choose your law practice management software solutions and other technologies. Be sure to integrate these into your website.
5. Draft all forms, templates, agreements and disclaimers.

Once you have completed those tasks, use the video tutorials provided by most practice management software providers. Read blogs, attend legal tech CLEs, and follow other legal innovators so that you stay updated on legal technology and can begin accepting clients and providing services that meet the ever changing needs of today's legal consumers.

10 Tips for Improving the Virtual Firm Experience (for Lawyer and Client)

Working from home is outstanding for many. Cutting out unnecessary commuting time, working where one is comfortable, and avoiding the high overhead of full-time office rent makes this a smart choice for many solo and small firm practitioners. But there are downsides to every work setting, and the virtual law practice is no exception. If you are practicing in a virtual setting or considering changing to it, apply these tips to improve the experience for both client and lawyer.

Make Space for the Firm

The virtual law firm can literally consist of a laptop and a lawyer's brain. Entrepreneurial lawyers with little physical space work on their couches and beds, in coffee shops and parks—anywhere with a secure internet connection. But for some, that can leave one feeling shiftless and unfocused, and it may mean interruptions by children or pets, mail deliveries or strangers. Laptop screens can feel tiny and additional materials can end up clumsily strewn about. Create a working space at home that has a desk, comfortable chair, docking station for the laptop, two screens, and good lighting. Make it comfortable for long-term work. In an ideal setting, have a door where you can shut out interruptions completely.

Set Boundaries

Life is busy. Many have dependents they care for. Laundry and dishes, vacuuming and errands—there is a never-ending list of demands on our time without adding *work*. When the primary place of business is the home, it is essential for some of us to set boundaries of when one does what. What worked for me: When I was working, I would feel like the laundry was yelling at me, and when I did "life" I would feel like my cases were yelling at me. I decided to implement rules. At 7:30 am I would clock in and only work was permitted to demand my time until noon. Then I would clock out, have lunch, do the dishes or whatever life stuff I had, then clock back in at 1:00 pm until day end at 5:00 pm. Sometimes I would have to push things into "overtime," but I would not entertain demands from one side when I was engaged in the other.

Use Virtual Meeting Technology

GotoMeeting, Zoom, and Skype for Business are several options for online meetings with clients and staff. In offices where some or all folks work virtually on a regular basis, they can have a morning roundup online to connect and plan. In meetings with clients, all these products have a share screen and edit in real-time feature, so that you can discuss the terms of contact or will clause, the client can decide it, and it can be edited on the spot. If you have clients and meetings with many participants or one big conference room, look at the Meeting Owl that will help make that virtual meeting more functional, by focusing the screen and speakers on the speaker of the moment.

Train Clients to Collaborate Virtually

I hear time and again that "certain clients" are not receptive to a client portal or virtual meeting. The only client this truly applies to are ones that do not have the requisite technology. If a grandmother can be trained to use FaceTime to talk with her grandkids, she can be trained to login to video conferencing to meet with her lawyer. Ask what the issue really is and solve for that problem. For example, if it's technology needs can be resolved by having a space and device for the client to meet the lawyer on, even if the lawyer isn't in the office. If it's client comfort with the client portal, make giving a login and teaching the client how to use it part of the client onboarding process.

Hire a Virtual Receptionist

A good virtual receptionist will answer your phone the way it should be answered, all the time, with a phone script you gave them and a smile on their face that can be heard over the line. Ruby Receptionist, Smith.ai, and LexReception are example of companies that have the right services, but there's not one company that fits everyone. Being a small law firm can mean calls go unanswered when you are in court, which means catching less cases. Even when "in," calls mean a zillion interruptions while drafting, researching, or other deep work. Interruptions can take, on average, 25 minutes to recover from, and contribute to errors and dissatisfaction in work. Cut the interruptions and make sure potential clients and current clients get the attention they need, without having to hire and manage staff.

Take Advantage of the Flexibility

Set your own schedule. By this I do not mean set your own 70-hour work week where you have no time for family, self-care, friends, and fun. Consider working four 10-hour days. Take vacations. Make a mix of time and work that fits you. It is one of the best benefits of being in business for yourself! Be your best boss, not your worst boss you ever had.

Use a P/T Office

Many part time offices have full services, like mailboxes, accepting service of process, receptionist and phone services, and a professional office setting for client appointments. It is a scalable model—you can increase or decrease the package to fit practice and client needs. Officesense, Carr Workplaces, and Regus are examples. And avoid client meetings in busy coffee shops. Clients may think this is convenient, but we know that they have secrets and privileges that need to be protected.

Know When to Grow

Sweat equity is great, but it is more profitable to outsource things that are not your core skill set and just do the things that are. There are a zillion benchmarks businesses use to determine if it's time to grow, like getting referrals easily, evidence you are in an untapped market, more work than you can handle, making enough to put a good percentage back into the business. But in my experience the biggest tell is profitability and taking time to identifying the next opportunity. Think through the next steps in business every year, then take them.

Grow Appropriately

Invest in the future of your business strategically. Yes, practice management software costs money every month, but it will make you more money once it is built out. This is the cost of doing business. However, tailor-made products can cost way more than a small shop needs. Find a balance between cost and functionality that makes sense. So, do not overinvest or underinvest, and always invest in the training. (Rule of thumb is training costs equal to software costs.)

Make Time for Connection

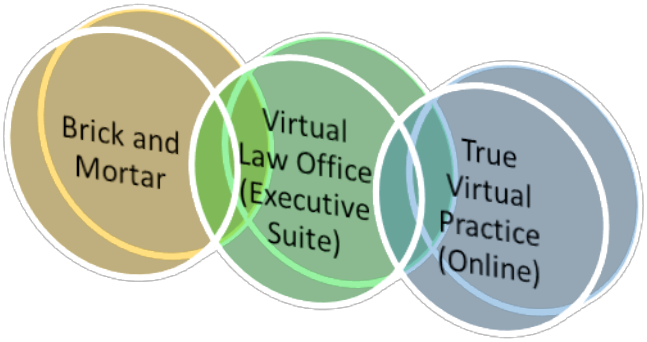
The most common issue I hear among all practice area true solos is loneliness. Writing and research is not a team sport. Sure, client meetings are in there too, but most lawyers who work virtually express some sense of isolation that, frankly, is not good for health or wellbeing in most people. Even introverts need connection and companionship sometimes. If you find yourself keeping your clients longer to just chat, or just feeling alone, start a regular meet up group with lawyers or friends like you, just to talk. Make a date to check in with a mentor or colleague on the phone once a month. Get out to events and mingle. Find a nerdy game group to play with every week. Whatever your fancy, make sure you do some of it with others.

The Ethics of Virtual Practice

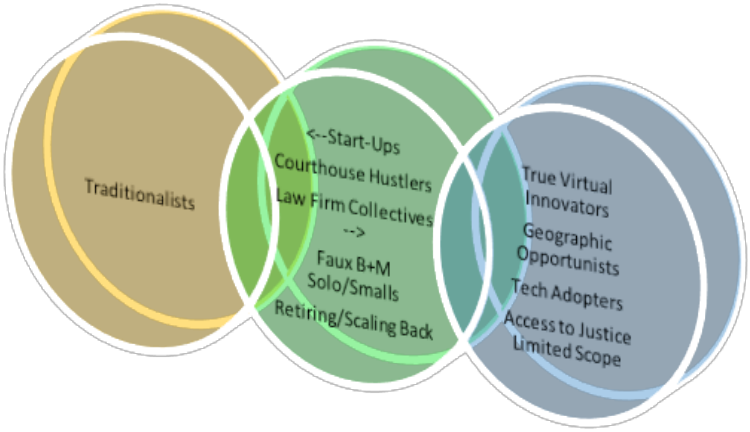
Working in a virtual or multijurisdictional practice setting is the becoming a new norm for many practitioners. The advent of mobile technology solutions and the increasing acceptance of teleworking and online portals offering services, the ties to one state's jurisdiction or one physical location being the place one "practices law" begins to sound old fashioned.

Naturally, virtual law practice can also implicate ethics rules and unique concerns. It probably comes as no surprise to many practitioners that the Rules of Professional Conduct is, at times, a hinderance to a lawyer's dreams to expand into the virtual hemisphere. There is variety in the rules and opinions that regulate multijurisdictional practice and ethical considerations in working with clients primarily in a virtual platform. Out of the ten state and one city ethics opinions this author studies, there is a wide variety of ethical concerns. Some states only conceptualize a virtual law practice as a home office as the primary place for performing legal work and an executive suite for client meetings. See *Colorado Opinion 89, New York Ethics Opinion 964.* Only California's ethics opinion discusses the ethical implication of a true virtual law office, where the primary mode of communication is online and there is no intent to have a physical office space whatsoever. See *California Opinion 2012-184*. It becomes clear that the possibilities of a truly virtual law office are almost unfathomable to some of the committees trying to analyze the facts, as they try to turn them into office-sharing discussions or they make claims that without an address, it must be misrepresentation.

Therefore, we will look at two different vectors of ethical concerns raised, as an executive suite plus home office leads to different ethics issues than a true virtual practice. Let us define the type of virtual office and the typical users first:



A law firm can be "brick and mortar," housed partially at a home office and partly at an executive suite which has often been coined a "virtual law office" (herein "executive suite" or ES) or purely online (herein "true virtual" or TV). The attractions of the newer types of offices are numerable. Save overhead expenses, commuting time, and flexibility with life. The benefit of being able to outsource assistance at an executive suite and not being tied to a desk to receive service process, phone calls, or clients is not just a norm, but an expectation by many these days. Lawyers in different phases of their profession may find themselves moving between these settings for many reasons, including opportunity, expansion, flexibility wanted for retirement or life demands, or to reach a different client base.



Primary Ethical Concerns of the Executive Suite

Confidentiality. Every ethics opinion recognizes confidentiality as one of the primary concerns of the alternate office settings. In the ES office, the concern is with protecting client information from being exposed to other lawyers and staff who share the office setting. In other words, the same issues one sees in traditional law offices, especially when outsourcing to workers who are not within the firm. Avoid leaving files out in the open and discussing cases in open areas. Have secured WiFi for each firm and a locked cabinets and doors leading to any paper files.

Avoiding conflicts of interest. Colorado's Ethics Committee was concerned those sharing law offices would be associated so closely, they should have a joint conflicts check system for all office-sharing firms and avoid taking cases with direct conflicts if someone they share an office with is conflicted out. New York City's ethics opinion would counter, and this author would agree, that confidentiality should be maintained between the different firms sharing a space, similar to the screening procedure of a firm, and that those people working in the same vicinity should not be conflicted out, as there should be firewalls and procedures that ensure information does not leak through to different firms in the space.

Supervision of support. The ethics opinions that envision an ES virtual office highlight that supervision of subordinate lawyers and support staff at executive suites can be a challenge. Ensuring everyone working for the firm is abiding by the Rules of Professional Conduct is required, and in several instances a supervising lawyer will be held responsible for the actions of her subordinate lawyer or non-lawyer employees. Washington State's opinion says "…lawyers in a virtual law office might not share any physical proximity to their supervising lawyer, making direct supervision more difficult" and Virginia asks whether executive suite employees know confidentiality requirements and that confidences must be protected. There will be a need to train and monitor the outsourced support staff, and to employ new methods for supervision of firm staff that's less reliant on proximity.

Supervising internal staff may be the greater challenge. Management of remote-working lawyers, paralegals, and legal support staff is possible with the right employees and procedures. These tips to managing remote workers may help: First, have some face-to-face time, at certain conferences or monthly or quarterly headquarters visits from your employees, depending on travel time, budget, and necessity of work and performance. Second, have regular remote check-ins, preferably over videoconferencing so that you can see their facial expressions and share the screen to work on a brief, motion, Kanban board, or other project together, and consistently confirm you are on the same page. Third, establish set work hours and expectations. Fourth, address security in your employees' work environment as well. If equipment is purchased by the law firm, there is more control over the cybersecurity, but there is added expense. Work out those details with your employees and ensure that they do security updates and use the security measures you put in place, even when they are remote. Fifth, do not micromanage remotely. It is the worst experience to be micromanaged, made even more irritating when done from

afar. Train, supervise, verify understanding, create a culture of personal responsibility for each employee's role, then trust. There will be management issues, as in any firm. Pay attention to them, address them, and change the process as appropriate.

Not misrepresenting the firm. The ABA Model rules on advertising recently went through significant changes, but the one part that survived as probably the most important point is to accurately represent the firm itself. A lawyer isn't permitted to imply partnership where there is none, so one should ensure through signage, engagement agreement, and verbally that clients understand the size and scope of the firm, it's resources, and the ways to interact with the firm. Lawyers need to ensure their executives suite arrangement doesn't "falsely imply access to the resources…a physical office provides[,] like…meeting space or [a chance] to meet with the lawyer on a drop in basis." *Washington Opinion 201601.*

Primary Ethical Concerns of the True Virtual

Above we went through the ethical concerns of an ES which are very similar to those of a standard law office, with a few differences. Here, we will look at the more unusual—dare we say more innovative—office that is almost completely online. A true virtual law office (TV) meets clients through the firm's website, online client portal, serves them through such things as online questionnaires, online chat features that can be a combination of automated responses and an individual manning the answers on the other end of the chat, videoconference meetings with clients and lawyers/support staff, and/or texting and email.

Some of the ethical issues raised by ES are alleviated by the TV. The TV is isolated, so there is not a concern other office-sharing firms would appear affiliated or partnered; nor a concern of confidentiality would be jeopardized by physical proximity, shared Wi-Fi, or outsourced support staff; and not the same concern for conflicts of interest. However, confidentiality and supervision take on different characteristics, and new issues arise.

Confidentiality. There becomes a concern whether client confidences are protected sufficiently by the technology platforms and tools the firm employs. This issue isn't absent from traditional practices, of course, but in a TV there is simply so many more points of technology, many of them public-facing, that the concern for potential vulnerabilities and breach becomes paramount. California and other state opinions recommend disclosing technologies the firm uses and risks inherent in them, to get consent from clients. (This issue bleeds into the next.)

Technology Competence. About half of the ethics opinions on vitural law practices site technology competence as an issue to address. California's opinion (the only one that focuses solely on TV) says lawyers must determine if vendors' credentials, data security, and third-party services and data locations are up to muster, if they have an ability to supervise vendors sufficiently, and what the terms of the contract are before they start the TV. Then, it says TV lawyers must continue to audit the vendors' performance and platforms. While it says a lawyer not need become a technologist, it may be incumbent upon her to bring on technology experts in order to fulfil a level of competence. As of the time of this article, 39 states have adopted a technology competence requirement in the Rules of Professional Conduct that mirrors ABA Model Rule 1.1, comment 8. Interestingly, California did not adopt this comment in it's 2018 major revisions, though it has had this ethics opinion since 2012. Bottom line: You need to understand the tools of your trade. If you adopt more technology, you need to understand more technology, or have someone on staff who does.

Communication. Perhaps one of the largest areas of ethical obligations affected is communication, because the modes of communication are changed. California and Pennsylvania ethics opinions both point out that the duty to identify that the client is, in fact the client, and eligible for certain reliefs can become more difficult in a virtual setting. Therefore, it will be incumbent upon any TV platform to have a method of verifying identity at the outset (in the intake process, for example), and continue to verify that identify (generally done through logins, password, and two-factor authentication) as

representation continues. Another related issue is determining client understanding. Lawyers must explain an issue to the extent a client can make an informed decision. The rules are silent on what indicators a lawyer should look for to determine what that level of understanding looks like in a client, but experience would tell us that it varies depending on the client, and that it comes from a combination of visual and verbal cues the client engages in. Where a large part of the communication is electronic, without those visual cues, this issue may be harder, and clients with diminished capacity, for example, may fall through the cracks.

Pennsylvania says a lawyer must take appropriate steps to determine client understanding and is the only state to identify the potential diminished capacity problem. California lays out five responsibilities related to communication: 1) identify client, 2) intake to determine eligibility, 3) communicate enough information so client can make informed decision, 4) verify receipt of information (could be training client on use of tool and reminding them to check status on the website), and 5) determine client has sufficient technology skills. If representation has commenced and it is discovered client doesn't have the technology skills necessary for this mode of communication, the California opinion says a lawyer has a duty to change the mode of communication or withdraw. (Ohio also recognizes a duty to change the mode when a client isn't capable.) A couple opinions note certain practice areas and clients may be a better fit for the TV firm ("…[It] may depend in part on the kind of advice or assistance involved and in part on the needs and capabilities of the clients.").

Supervision of vendors. The duty to supervise still exists in a TV. Ohio's opinion notes that RPC 5.3(a) requires lawyers make sure non-lawyers are providing services in line with ethics obligations. "This requires the lawyer to diligently investigate the measures undertaken by the vendor to ensure its operations are compatible with the lawyer's professional obligations." The California opinion is a great resource for outlining what should be looked at, as are opinions about cloud computing in several jurisdictions.

Again, don't misrepresent the firm. As in any other law firm, it is essential a lawyer does not misrepresent the firm. In this author's opinion, the duty to not misrepresent is made more difficult by some jurisdictions' obligation to have a bona fide address, or a physical address listed in advertising, on websites, or on business cards. New York lawyers and the use of even ES firms seems to be caught in the crosshairs with this. How could a true virtual firm accurately represent it's services and makeup when it is required to last a physical address space?

Unauthorized practice of law. An issue not reached by most of the ethics opinions is one of the potential for unauthorized practice of law in a TV. The only opinion that does is Illinois, and it reaches nothing else except the firm conclusion that a lawyer not barred in Illinois cannot work on Illinois cases whether the firm is physical or truly virtual. There is some misunderstand of how internet advertising works, when the North Carolina opinion states "Cyberlawyers have no control over their target audience or where their marketing information will be viewed." Granted, North Carolina was the first to issue an opinion on virtual law practices, and it accurately noted "[l]awyers who appear to be soliciting clients from other states may be asking for trouble." Because the internet has boundaries, one could expand your reach into other jurisdictions easily, and expand your potential client base exponentially. But the states are a patchwork of ethical obligations and nuanced rules is a danger in offering services beyond state boundaries a lawyer is unauthorized to practice in or does not understand well.

Most state have modified and expanded the scope of those who can practice within their state without a license under RPC 5.5, but there is wide variation in what those exceptions are. For example, every jurisdiction should be permitting those who work exclusively in federal law to practice in their jurisdiction, because it isn't state specific and there is precedent for it, but several states still resist this through backdoor bona fide office requirements and other rules relating to the practice of law. This limits applicability of the TV across jurisdictions, insofar as it requires lawyers be barred and practicing within that jurisdiction to the specifications of the rules be within the firm. Therefore, careful planning and hiring of the right lawyers in

the desired jurisdictions may be a part of the construction or expansion of a TV. Limiting advertising, adding disclaimers and explanations to the site, and verifying where the client is located should also be part of the plan.

The chart below cites ethics opinions used for this research, and what each one addresses.[2]

Jurisdiction	Opinion	Title	Date	TV/ ES/ MI	Approve/ Disapprove	Commu	Competenc	Supervision	Confidenti	Office Share	Advertising/ Misrep	UPL
North Carolina	2005-10	Virtual Law Practice and Unbundled Legal Services	1/20/2006	TV	A	x	x		x		x	x
Pennsylvania	2010-200	Ethical Obligation on Maintaining a Virtual Office for the Practice of Law in Pennsylvania	1/1/2010	MIX	A	x	x	subordinate lawyers	x	x		
California	2012-184	Ethical Virtual Law Office Solely Through Internet	1/1/2012	TV	A	x	Tech compi	x	x			x
Illinois	12-9	Unauthorized Practice of Law; Multijurisdictional Practice; Law Firm	3/1/2012	TV	D - UPL							x
Michigan	RI-355	Maintaining Part Time Presence in Alternate Office; Virtual	10/26/2012	ES	A w/ reservat	x	x	subordinate ES staff	x	x		
Virginia	1872	Virtual Law Offide and Use of Executive Office Suites	3/29/2013	MIX, ES emphasis	A	x	x	subordinate ES staff	x	x	x	
New York	964	Virtual Law Office; office address; advertising; business cares and letterhead	4/4/2013	ES	D						x	
Washington	201601	Ethical Practices of the Virtual Law Office	1/1/2016	MIX	A			subordinate lawyers	x		x	
Ohio	2017-05	Virtual Law Practice	6/9/2017	MIX - predom ES	A	x	Tech compi	subordinate vendors				
Colorado	89	Office Sharing and Virtual Offices	3/12/2018	ES	D			suborinate ES staff	x	x	x	
New York City	2019-2	Use of a Virtual Law Office by New York Attorneys	3/15/2019	ES	A	x		Subordinate lawyers and ES staff	x	x		
		*TV: True Virtual, online/ ES: Executive Suite/Office Share; MIX discusses both										

Resources

Alabama Formal Opinion 2002-02 Affiliation agreements with foreign lawyers are ethically permissible

Alaska Opinion No. 2010-1 Ability Of Lawyer Not Admitted In Alaska To Maintain Office For Federal Immigration Practice

Arkansas Opinion 2003-03 Advertising and Referrals to Out of State Attorneys

Arkansas Opinion 2004-03 Non-Arkansas Lawyers in Arkansas Law Firms

Arizona's RPC 5.5 [Arizona's 5.5 is one of the clearer, more progressive multijurisdictional rules stating "A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction may provide legal services in Arizona that exclusively involve federal law, the law of another jurisdiction, or tribal law[,]" among other exceptions]

California's RPC 5.5 (became effective November 1, 2018)

California Formal Opinion No. 2012-184 Virtual Law Practice

Colorado Ethics Opinion 89: Office Sharing and Virtual Offices

[2] For a larger version of this chart, with more details of the treatment of each issue, contact Charity Anastasio at canastasio@aila.org.

Connecticut Informal Opinion 18-02 and 90-8 An Attorney Admitted to Practice in Another Jurisdiction, with No Physical Presence in Connecticut May Advise a Connecticut Client on Matters of Federal Law

Florida Ethics Opinion 61-14 Improper to list lawyers in firm on letterhead, even if announcing not barred in Florida

Florida Ethics Opinion 88-10 Out of State lawyers may obtain pro hac vice admission in Florida no more than 3 times in a single 3-65-day period

Florida Ethics Opinion 17-1 Florida firm may divide fees with out-of-state firm that permits non-lawyer ownership under certain circumstances

Illinois Advisory Opinion 12-09 Unauthorized Practice of Law; Multijurisdictional Practice; Law Firm

Illinois Advisory Opinion 13-08 Multijurisdictional Practice; Non-lawyer Assistants; Unauthorized Practice of Law

Kimbro, Stephanie, MA, JD, Practicing Law Without an Office Address: How the Bona Fide Office Requirement Affects Virtual Law Practice [This scholarly article is long in the tooth, but still helpful in understanding the bona fide office requirement and how it is applied]

Maine Opinion #189 Unauthorized Practice of Law in Maine by Admittees of Foreign Jurisdiction

Maryland Ethics Docket No. 2016-05 Multistate Jurisdictional Practice and Unauthorized Practice of Law

Michigan Ethics Opinion RI-355 Alternate office space; virtual law practice ["Lawyers are not precluded from meeting with clients or prospective clients at locations other than a permanent office maintained during normal business hours. However, in communications governed by MRPC 7.1, a lawyer cannot identify a physical location as a law office without having a dedicated office space that has the necessary separation from other businesses."]

Needham, Lisa, States That Require a Bona Fide Office, Lawyerist blog, 2015. [Pay close attention to the comments section on this article. This author agrees with the commenter that points out that RPC 7.2 is not a bona fide office requirement and there is no stipulation in that rule that the address be in-state. Still, it is a helpful article for cross-referencing other states.]

Nevada Multijurisdictional Practice [pro hac vice forms, rules, and reports]

New Jersey Advisory Opinion 718 The Bona Fide Office Requirement and Listing of Offices on Letterhead, Websites, or Other Advertisements.

New Jersey Advisory Opinion 49 Multijurisdictional or Crossborder Practice Under Rule of Professional Conduct 5.5(b)(3).

New Jersey Advisory Opinion 40 Out-of-State Lawyer Employed in a New Jersey Law Firm Office Solely for Practice of Immigration Law (Modifying Opinion 27).

New York Opinion 964 Virtual law office; office address; advertising, business cards and letterhead

New York City Formal Opinion 2019-2 Use of a Virtual Law Office by New York Attorneys ["To engraft a more burdensome 'bona fide office' requirement onto New York Rule 7.1(h) via an interpretation of 'physical street address' (which is itself an

interpretation of Rule 7.1(h)) is not justified. Such a requirement would unnecessarily burden busy solo practitioners who spend most days in court and may have no full-time support staff."]

North Carolina 2005-10 Virtual Law Practice and Unbundled Legal Services [First of the virtual law firm opinions; positive towards expansion of unbundled legal services through online firms.]

Ohio Opinion 2017-05 Virtual Law Practice [The 'office address' of a lawyer required may be a lawyer's home or physical office, the address of shared office space, or a registered post office box.]

Oregon Formal Opinion No 2005-103 [Revised 2015] Information about Legal Services: Multistate Law Firm, Advertising Availability of Out-of-State Lawyer.

Pennsylvania 2010-200 Ethical Obligation on Maintaining a Virtual Office for the Practice of Law in Pennsylvania

Virginia Legal Ethics Opinion 1872 Virtual Law Office and Use of Executive Office Suites

Virginia Legal Ethics Opinion 1856 Scope of Practice for Foreign Lawyer in Virginia

Washington State Advisory Opinion No. 201601 Ethical Practices of the Virtual Law Office.

TECHSHOW2020

Picture This:
Data Visualization for Fun and Profit

WRITTEN BY:

Kristopher Turner

PRESENTERS:
Kristopher Turner
Jennifer Roberts

January 13, 2020

A PICTURE IS WORTH … HOW TO USE DATA VISUALIZATION TOOLS IN THE COURTROOM AND LAW OFFICE

This article first appeared in WisBar InsideTrack, August 2016

Infographics can serve as an important marketing tool – they can brand a firm as competent, caring, and knowledgeable. Learn how to add data visualization to your arsenal of communication tools.

As the old saying goes, a picture is worth a thousand words. If that is the case, then data visualization is nearly invaluable in our increasingly digital world. With so much information being created every day, it is especially important to be able to distill the salient points of this data into an image, graph, or map that is easily and quickly understood.

There are numerous tools available that allow attorneys and staff to input data and create an easy-on-the-eyes image that conveys intent that is supported by your statistics. These final products, called infographics, can be used in numerous ways in the courtroom, in the office, or even marketing your services to potential clients. The basics of data visualization provide an idea of what infographics can do for a law firm, be it large or small.

The Benefits of Infographics

The goal of many infographics is to inform. Lawyers have plenty of reasons to want to educate and update clients, co-workers, and others about their work and their jobs.
A simple infographic on a law firm's webpage can illustrate the impact that certain crimes have on a community, or how many hours of pro bono work that firm contributes. These educational infographics can serve as an important marketing tool as well, since they can brand a particular firm as being competent, caring, and knowledgeable, all in one effective infographic.
Infographics grab the attention of the casual browser, educate them with the data that is provided, and then lead them back to the firm that created it – such as this one on making a will.
By providing education via well-designed and visually engaging graphics, the law firms have created an opportunity for new clients to sign up, or at the very least, positive word-of-mouth.
Adding these infographics to your social media accounts or to your website will break up the monotony that a wall of text represents. 'Legalese' is a difficult and confusing language for many, and by making complicated issues more comprehensible, an infographic can provide goodwill for your firm, while simultaneously making your clients and potential clients more well-informed about the legal process.

This article will cover:

- What is data visualization
- How infographics are created and low-cost or free tools to create them
- Why lawyers should use data visualization
- Where and when to use your infographics

The tools or know-how to fully take advantage of data visualization range dramatically depending on how much data are added and what the general goal for the infographic is. Some tools can cost very little or nothing at all, while some companies can provide top-of-the-line infographics to law firms for a set price. Regardless, as law firms and courtrooms slowly migrate to a more digital world, infographics can provide a welcome relief from either walls of text or basic charts and graphs, all while making communication much easier.

What Are Infographics and Data Visualization?

It is very likely that you have run across infographics either online or in your everyday life. Infographics are the end result of data visualization, and bring all that dull but vital information to life. For an infographic that explains infographics, visit this page on the website for Customer Magnetism, a digital marketing company.

Some of the most common infographics take a specific subject and distill it down to its essential facts, presenting in a clean, easy-to-digest manner. The information could highlight numbers or facts – such as the one on Presidential Lawyers. With a clean layout and the ability to input the information themselves, lawyers can use infographics to present a case or market their services very effectively and professionally.

For example, the goal of this "Lawsuits in the U.S." infographic (scroll down to #5) is to efficiently use data to present the case that steps need to be taken to ease the number of frivolous lawsuits in the U.S. Instead of a wall of text or simple graphs, the infographic aims at combining these two communication methods, jamming as much pertinent information as possible into a format that is more palatable for many attorneys and the public in general.

In the last three years, there has been more of a push to integrate infographics into e-discovery and the entirety of case management. There are for-hire companies that can shape the data that attorneys have and create beautiful infographics. Companies, such as Recommind and A2L Consulting, take the mass amounts of sheer data that law firms inevitably deal with, and create content that can be used in everyday law offices. Of course, there are also do-it-yourself options out there for lawyers who want to keep data visualization entirely in-house.

Examples of Infographics from the State Bar of Wisconsin

"Just the Facts"

This infographic appeared in the Feb. 3, 2016, InsideTrack article, "National Study Highlights Alcohol and Mental Health Issues for Lawyers, Identifies Barriers to Seeking Help." It shows results from a study of approximately 13,000 U.S. lawyers and judges regarding issues of substance abuse, depression, and anxiety.

Creating Infographics: Familiar Names, New Tools, and Techniques

There are numerous programs available for the willing DIY attorney or staff that can creatively visualize data. The questions that must be asked when determining which product is right for your law office are straightforward but necessary.

First, have your data ready to go and ensure that the data are worthwhile. Infographics can be a compelling argument in favor of something, but they also take a lot of time and/or money to produce. By confirming that your data will drive home the point you want to illustrate, your infographic will eventually make the cost worthwhile. With sound data as a foundation, create a visually appealing infographic that can grab attention, educate, or sway opinion.

The programs and tools that can do the actual creating run the gamut from free to costly, though often you get what you are paying for. A few of the more trusted tools are listed below, though remember that a free tool will likely not provide options for saving your infographics privately. If that is your goal, consider purchasing a subscription that allows for private publishing or download options.

Infographics are one of most important tools in making this data digestible and easily understandable for nearly everyone that you want to reach.

Piktochart

Piktochart is one of the most well-known infographic programs, and that is due to its flexibility in handling a variety of images and data. Piktochart allows its users to create infographics, posters, and presentations that really pop off the screen. There are both free and pro accounts available. The learning curve is not very steep to create basic infographics, and it is very possible to distill complicated explanations into one image, such as this award-winning infographic.

Infogr.am

Infogr.am is another free program that focuses on making charts, graphs, and maps more colorful and powerful. Using an Excel-type spreadsheet, Infogr.am takes charts to the next level, mashing them up with more imagery and attention-grabbing data. The enhanced graphs and charts that it creates are very simple but elegant in layout, such as the one on this website. This familiar interface makes it easy to quickly edit data.
Note that the final products are published online and can be embedded on websites and elsewhere, so proprietary data are not recommended for Infogr.am, unless you upgrade your account.

Easel.ly

Easel.ly is another free tool available online that provides users with templates, graphics, and more in order to create infographics. Easel.ly focuses on educational areas, making it especially useful for introducing legal concepts to clients or even to juries. Once again, the learning curve is generally gentle, and the final infographics can be either saved online or downloaded as PDFs.

Timeline JS

Timeline JS covers a different type of data visualization. Users lay out events in chronological order and enhance the effect of each event with audio, visual, or clickable icons. An attorney could use Timeline JS to present the events that happened to their client, or to present the correct workflow for how a document is filed with the court for new assistants.
Timeline JS has been used by Time Magazine, CNN, Mashable, and others for unique online content. Timeline JS accepts content from a wide array of online sources, making it easy to create a chronology that is visually affective. The timelines themselves are published via a Google Spreadsheet and can be embedded in a website just like a Youtube video.

Google Charts

Google, unsurprisingly, also has an answer for data visualization in the form of Google Charts. If you feel comfortable with Google's accounts and layouts, this is an easy way to be introduced to data visualization. While not as attention-grabbing as some of the other tools discussed here, Google Charts does provide a nice selection of charts and graphs that can be quickly created and animated. It's also possible to create a live chart that updates in real time.

Carto

Carto is a powerful data-mapping program that gives users a glimpse into what data can show, given time and geographic space. With data about lawsuits in the U.S., numbers of accidents in the workplace, or movement of workers, a visually appealing map can tell numerous stories at a simple glance.

The most recent tool is the builder, which – although still in beta – allows for the quick upload and organization of data onto maps. Some know-how about mapping programs may be helpful, but Carto is meant to be intuitive for newcomers and professionals.
Carto is more expensive than the other tools listed above (you can sign up for free as an individual), but the results may be worth it if your practice needs to communicate via dynamic maps.

And More

These are only six examples that give a good idea of the powerful tools that are out there and waiting for their capabilities to be applied to the legal world.

Other data visualization programs, of varying degrees of intuitiveness and cost, can be found at these websites:

- The Next Web: The 14 Best Data Visualization Tools
- Creative Bloq: The 38 Best Data Visualization Tools

Step-by-Step: How to Visualize Data with Infogr.am and ABA Statistics

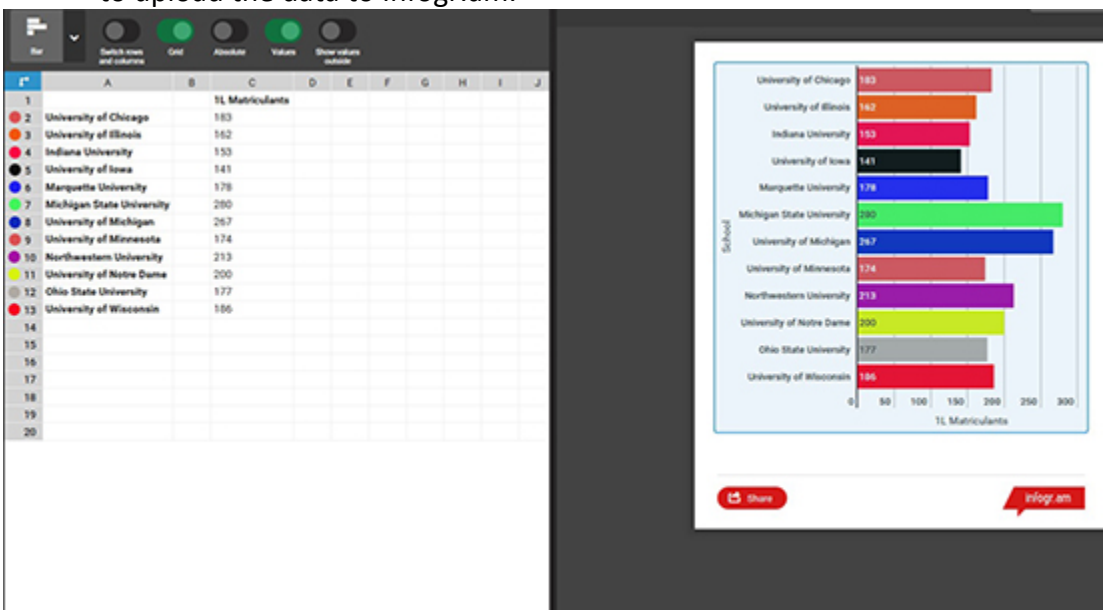
Chart creation – whether infographic or other data visualization – can be done very quickly and easily.

For this example, I will illustrate similar enrollment trends across the Midwest. I will use Infogr.am, and data that is found on the ABA Statistics website on the number of 1L students at various Midwestern universities.
Here are the steps to make this chart:

1) Get the data. In this case, download the data into an Excel spreadsheet file from the statistics page on the ABA website. This takes only a few seconds, and the data are dropped into a file editable within Infogr.am.

2) Create a free Infogr.am account.

3) You can either start with design or with the data. In this case, choose "start with data" to upload the data to Infogr.am.



4) Adjust the look and feel of the chart. This is the most important aspect of data visualization (after the data itself). Infogr.am makes that easy by providing intuitive ways to switch around your data and easily edit labels, colors, and other areas to help your information really grab attention.

For this chart, I want to give viewers more than one way to digest this information. I used a wordcloud, based on the number of enrollments per school, as a way to provide basic information at a quick glance. I roughly assigned school colors to each name and the number of enrollments. Someone viewing my chart will easily determine that the two major law schools in Michigan enrolled the largest numbers of students in 2015, with Iowa enrolling the smallest class:

5) Download or publish the infographic. You can download infographics from Infogr.am as images (or as PDFs with a paid subscription), post it on its website or your own, and promote it on social media.

The sample infographic that I created in about one hour can be viewed on the Infogr.am website. The information is accurate, the layout is clean and simple to understand, and my goal of educating viewers about enrollment numbers has been accomplished very rapidly without forcing them to review rows upon rows of raw data. It does not take a large amount of technical expertise to make this simple but very effective infographic that people will remember.

Conclusion: Lawyers and Data

Data visualization is becoming more prevalent, as more data have become either freely available or the tools have become easier to use. Regardless, the clean way that your data are laid out in these eye-catching visuals can make your firm's presentations, website, workflow, or social media stand above all the others.

The level of sophistication that data visualization can provide varies greatly, depending on expertise, cost, and the patience that the firm has with creating an infographic. However, the data that serves as the foundation for all great visualizations is becoming increasingly available

and important to companies from all types of businesses. Law firms can use this aggregated data to educate, market, emphasize, teach, and explain any number of complicated legal concepts or processes.

As the information age begins to reach new heights of usability and availability, many potential clients will expect to see data that supports any assertion and any advertisement. Infographics are one of most important tools in making this data digestible and easily understandable for nearly everyone that you want to reach.
A picture may be worth a thousand words, but a well-crafted infographic or data visualization may be priceless.

MORE RESOURCES

For more resources about data visualization, infographics, and how they are used in legal practices, visit one of these websites:

- 4 Ways to use Law Firm Infographics
- 5 Ways Infographics can market your Law Practice
- How Attorneys can use Infographics for Legal Marketing
- Infographics for Lawyers
- Why Data Visualization is becoming an Important Legal Trend

TECHSHOW2020

Buried Treasure: Hidden Analytic Tools in Your Practice

WRITTEN BY:

Shantelle Argyle and David McNeill

PRESENTERS:
Shantelle Argyle: @shantelle8
David McNeill, PhD, MBA:
linkedin.com/in/biodavid/

January 6, 2020

BUSINESS ANALYTICS: WHAT TO MEASURE AND WHY

> *"Not everything that can be counted counts, and not everything that counts can be counted."*
>
> - William Bruce Cameron

The following are important arenas to look at with your business data systems. This discussion presupposes that your work involves some kind of regular flow of relatively routine cases. If your line of work involves very few (0-10 per year) cases that are highly customized and unique, then much of the following won't be useful.

Data quality surveillance

Garbage in, garbage out. Data systems usually contain duplicates, typos, incorrect dates, and fat fingered amounts. The goal of data quality surveillance is to find errors, fix them, and then try to prevent them from happening again.

For example, I created a business dashboard full of key business metrics when I worked at Open Legal Services. I could see at a glance things like how many new cases we were opening, how many old cases we were closing, and how many hours and dollars our attorneys were billing. Occasionally I would open my dashboard and one of my charts would be way off. I traced the problem to one attorney who would occasionally enter the year incorrectly on a billing event, such 2105 instead of the year 2015. So my chart would be showing a hundred years of billing data instead of just the current year. Instead of yelling at the attorney, we added a line of code to our billing system that would pop up whenever someone entered a future date by mistake that said "The laws of causality disallow future billing."

Here are some of your best friends for finding data errors:

1. Sort data to find the smallest and largest values. This is typically where the fat finger entries land.

2. Group data to find typos. For example, if your data system allows users to enter hashtags, you can run a report that shows all the hashtags in use and how many times each is used. If you see #newclient 127 times and #new_client only once, you know which one is correct and which one you need to hunt down and fix.

3. Data duplication is the downfall of any data system. Many systems have their own ways of finding and merging duplicates. Pivot tables are a great way to find and count duplicates.

Problem hunting

Unfortunately, many businesses only reactively respond to problems as they arise. Most data systems and reporting can be used both to proactively find issues before they turn into problems and to implement systems to prevent recurring problems. Taking the time to find problems may seem overly burdensome, but if you put in that time you will see a return on your investment in the form of increased efficiency, lowered costs for the task, and even an improvement in morale.

Zombies

One of my favorite reports to create is a zombie report, which lists all cases that have seen no activity for some period of time (how long depends on the type of case, but 30 days is a good starter). These are the cases where the client is about to call in and ask what is being done on their case. There may be a legitimate reason no work is happening, but it's far better to proactively contact the client and give them a periodic update than to get an angry phone call.

Data omissions

Do you have all the data you need when you need it? Often you don't realize that you forgot to collect important documents at Step 1 until you are frantically trying to finish Step 5 on a tight deadline. There are three ways you can prevent this problem from recurring:

1. Require the necessary data at Step 1 before you can move on to Step 2. Unfortunately, you might not always have control over required fields in your data system.

2. Checklists are another great way to make sure you do the right thing on time every time. Client intake is an obvious point in time to implement a checklist to make sure you don't have to bother the client later with questions you should have asked them at the beginning.

    a. As an aside, asking clients for a lot of information up front is a sneaky way to draw them in. If they have already invested so much of their time in working with you, they will be less likely to want to invest the same time and effort elsewhere.

3. The way to discover missing data is to run reports for null, empty, or zero values. Unfortunately not all data systems make this easy.

Workflow management and resource prioritization

Businesses are always full of problems and a lack of time and resources to solve them. One way I love to prioritize resources is by looking at workflow and finding bottlenecks. Where is work piling up? At what point is your system breaking down? Removing the biggest bottlenecks is a way to prioritize resources.

When I worked on a medical device startup, I designated myself as the keeper of the bottleneck. There were always many different things we could be working on, but I did my best to remember which problem was the one that was holding us back. Once that was solved, there was always another bottleneck, but at least we were able to stay focused on what would move us forward the most.

If your business runs like a factory, then you need to think carefully about what step you want to be the bottleneck. Business Operations is a field dedicated to workflow management, and its wisdom is that you want your most expensive resource to be the bottleneck. Put another way, you want your most expensive resource to be idle the least. In a law firm, this would be your highest paid attorneys. I know someone who worked for a firm where the partners took a dim view of the support staff because they weren't working 100% of the time like they were. Based on operations management principles, the only way to keep everyone busy 100% of the time (and not 110% of the time) is to:

1. Have no variability in workflow (wouldn't that be nice!)

2. Have complete flexibility to do work whenever you have time to do it, in other words, no deadlines (wouldn't that be nice!)

Obviously, neither of these conditions are always true, so it's not necessarily a bad thing for some employees to not be busy all the time. In fact, I think you always want to have some spare capacity so you can take advantage of opportunities that come your way.

Leading vs lagging indicators

Revenue is typically a lagging indicator, so it can only tell you how your business performed in the past. It is important to find leading indicators that can tell you how your business will perform in the future. Two leading indicators I like are your number of new prospective clients and your number of new clients that actually hire you.

It's more difficult to find indicators that are further upstream, but Google Trends is a good place to look for indicators of market trends. Google Trends is a way to look at search volume over time for any given topic or search term. The classic example of Google Trends is that you can tell how the flu season is going by looking at the search term for "flu." You can use this data to reveal and track things like seasonal trends. For example, "divorce lawyer" has a clear decrease each year around Thanksgiving and Christmas.

Side note: One of my favorite leading indicators is the inverted bond yield curve that predicts a coming recession, because there's a saying that it has predicted nine out of the past five recessions. In other words, it is over-predictive.

Process improvement

Data systems are a gold mine for measuring and improving your processes. In addition to identifying bottlenecks, data systems can measure the following variables so you can focus on improving them:

- Response times: How long does it take to respond to an inquiry from a prospective client? How long does it take to respond to an existing client?

- Inventory turns: How quickly do you turn over cases? This is a fantastic metric that doesn't get enough attention. If you can move your cases through more quickly, you can be more profitable.

- Conversion rates: How many of your prospects turn into clients? Are you getting enough of the right kind of prospects?

- Measuring & reducing variability: Why are some response times longer than others?

- Reducing error rates: How often do you get to Step 3 and realize something wasn't completed at Step 1?

Paying attention to all of these metrics is a great way to increase your profitability.

Budgeting & forecasting

Another important use for business data is budgeting and forecasting. I love the following metrics:

- Number of inquiries from prospective clients each month (broken down by referral source if possible)
- Number of new cases opened each month (broken down by case type if possible)
- Number of old cases closed each month (broken down by case type if possible)
- Expected revenue per case (broken down by case type if possible)
- Average case lifetime (broken down by case type if possible)

In addition to measuring these variables, it is also crucial to measure their variability. For example, one law firm I work with does only contingency cases, so their revenue varied 10-fold over a recent three month period. This firm would want to keep a lot more cash on hand to weather this variability than a firm that works hourly on retainer because retainer work is inherently more predictable than contingency work.

By tracking the above variables, you can answer questions like the following:

- Is our revenue per case going up or down?
- Is our client acquisition cost justified by our revenue per case?
- Are we moving cases through faster, or are we getting overwhelmed and sitting on them longer?
- Do we need to hire more staff?
- Can we afford to hire more staff?
- How many cases do we need per attorney in order to offset their cost?
- Which marketing efforts paying off? Which marketing and referral sources are giving us good prospective clients, and which are giving us the wrong kind of prospective clients?

Important questions to answer

Find examples of each of the following three types of clients:

1. Clients who hired you that were a good fit
2. Prospective clients who would have been a good fit but did not hire you
3. Clients who hired you that were not a good fit

And then use your data systems to try to answer:

1. How can you identify each of these different types of clients as early and as easily as possible?

2. How are each of these types of clients finding you?

3. What can you do to modify your referral and marketing systems to get more of the first two types of clients and less of the third?

4. What can you do to get more of the second type of clients to hire you?

The downsides of data

There's a saying that "If you can measure it you can manage it." I think this maxim is part of the trend toward relying on data to answer to all our problems. Here are some downsides to data:

1. Good data can be expensive. It can be costly to conduct market research surveys to get useful feedback from prospective customers in your market.

2. Bad data can be expensive. There are all sorts of companies that will sell you a market research report for several thousand dollars. Most aren't worth it.

3. Bad data happens far too easily and far too often. Anyone can make a simple survey and get people (or robots?) to fill it out online. Are they the right people? Who knows? In addition, mistakes happen easily and computer systems make replicating those errors effortless.

4. Fake data is everywhere. Companies pay for fake reviews all the time, both positive reviews for themselves and negative reviews for their competitors.

5. At its best, data can only tell you what you are measuring and looking for. At its worst, data can amplify your biases and draw you toward dangerous conclusions. Come see my talk "Survey Says: Can You Trust the Data?" to learn more about how data analysis can lead you astray.

The value of qualitative information

The value of any data system begins with listening to the people all across your company who often have the best questions and key insights about what you should be looking for in your data. The term for this type of management is "Management by wandering around." Data systems don't generate ideas, people do.

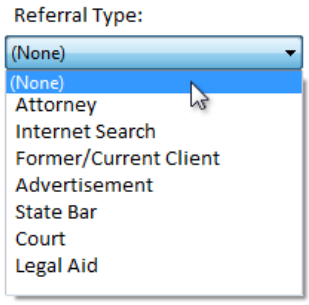
What parts of your business are invisible to your data system?

All of these ideas only work if you have data to work with. Take some time to map out your business processes, all the way from referral to prospect to client to case closing to Google review and back to referral. How much of this process do you have data for? Work at filling in the gaps so that you can continue to improve.

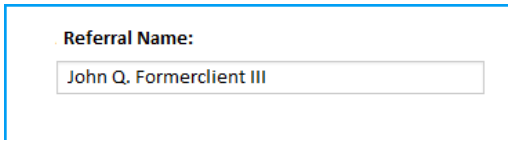
The Human Factor

One of the best hidden sources of data (or rather, data collection) comes from the people in your office. The key is to get them to adopt practices that are part of their daily routine and which result in the collection of valuable data that can be mined later. Essentially, you can socially engineer your team to interact with technology in a way that they become data spies for you. Some examples of this are:

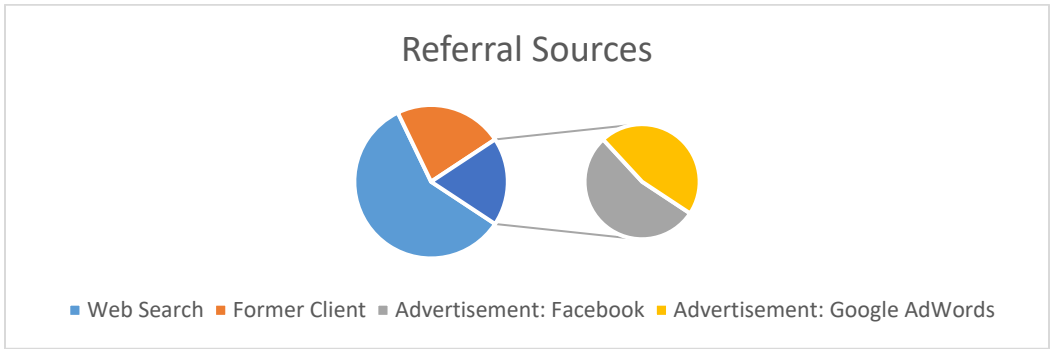
- File Creation – create both quantitative and qualitative fields that can be quickly entered when a client is first engaged. Many of the reports mentioned previously would not have been an option had our staff not been in the habit of filling in the data (and unknowingly allowing for complex statistics work.) If you train staff to always always always ask "How did you hear about us?" as the first substantive question on an initial phone inquiry, you will benefit greatly from data that helps you decide which referrals need fostering and which need to be cut off. For example, this box will give you an easy-to-generate count of referrals from a particular group that you would like to track.



The box below will give you a place to manually type in the name of the referral source. While you can do searches and consolidate repeats for purposes of reporting, as well as look through for any interesting patterns of repeat referrals, this data takes slightly more effort to put to good use. It is still very valuable, but in a different way.



If you use both sets of related data thoughtfully, you can generate a chart (using Excel or a similar tool that you feel comfortable with) like this:



- Quality Control – As noted above, you can use data that has been thoughtfully collected to track a variety of statistics for purposes of measuring neglected cases (AKA "zombies) and to improve any processes that might be less efficient than they should be.
    - For example, using "case open" and "case closed" date fields can provide a number of helpful stats for quality control purposes. With these you can:
        - Calculate the average number of days a case is open.
        - Flag cases which have been open beyond the average.
        - Discuss with an attorney who has an anomalous case age what the issues are that keep it from being settled.
        - Catch closed cases that were accidentally not marked as closed (thereby identifying a staff member who may need additional training.)
    - Process improvement requires human participation, so these same fields can also identify staff who are not using the tools properly.
        - For example, say you have a partner who has a very high number of cases that show "open" status and many of them are well beyond the average case age. You look into it further and discover that many of these cases are actually closed but the partner failed to fill out the "case closing survey" which would have allowed the front desk to mark the case "closed" and put in the closing date. You discuss the issue with him, and he complains that the survey is too long and takes too much of his time to fill out.

          The survey currently includes a number of qualitative fields (non-unique data which can be typed in any format the author chooses). You decide to streamline the survey with nearly all quantitative "clickable" fields which require little thought and typing but include one that allows a user to flag a case as concerning. Doing so requires the attorney to fill out a short form to describe their concern. For cases which are routine, the survey now takes 30 seconds instead of 5-10 minutes. The partner feels heard and begins regularly using the form.

- Employee Surveys – Happy staff means happy clients. However, in organizations of any size disputes arise and grudges begin to fester. Depending on your management style, your staff may or may not feel comfortable discussing their concerns with you. If you create an employee survey that goes directly to a designated staff member (as opposed to a partner) that person can go over the data and anonymize it as much as possible before bringing the results to partners. Surveys are also helpful if you have a larger firm, because the designated team member can run reports that clearly demonstrate patterns. If 60% of staff feel that a partner is too hard to approach with questions, the data will show it and the staff will have that data on their side.

- Client Surveys – Happy clients rarely fill out reviews, so you often must incentivize their participation somehow. Attorneys often hear praises when finishing up a case (while the client is happiest about getting the litigation over with) but those comments do not necessarily turn into a review. Attorneys are therefore the best source for whether a client would likely give a good review, and if you train staff to reach out to the happy client as quickly as possible, you are more likely to get them to respond. To ensure this happens, have the attorney flag the client in their closing checklist as likely to give a good review. Then, have the staff reach out. Offer a $5 gift card

to Amazon in exchange for willingness to leave a review (you don't need to ask them to leave a 5-star review, just only target those clients who are likely to do so!)

For an unhappy client, have your staff offer a survey to them via email as soon as possible. If you give them a place to air their concerns, they will likely do so and feel better without taking the extra step of leaving a nasty 1-star review. In addition, if the client has a criticism or frustration with a specific attorney, a survey gives them a way to provide that feedback in a way that is not necessarily public to the attorney. Have staff include in their email that the feedback will go directly to management and will not be seen by the associate. You can tailor this email to the situation (as reported by the attorney who knows the client is unhappy with them).

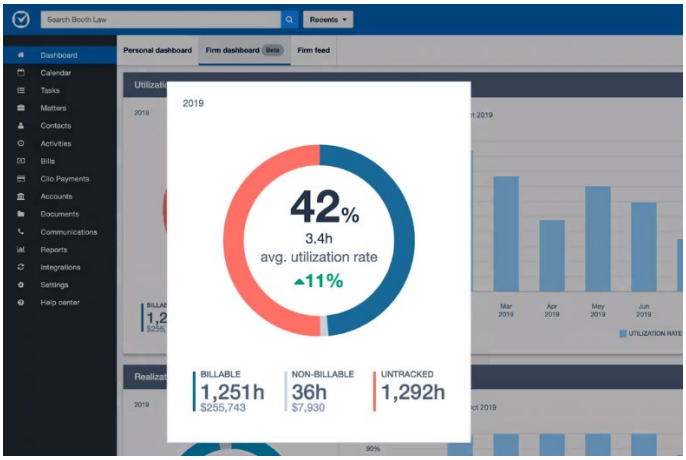
Use What You've Got

Most businesses are paying for services to help them manage. Technology providers have learned that the more accessible data is (and the easier to run helpful reports using it) the more likely they will earn a loyal and paying customer. Consider the following tools for practice management, accounting/bookkeeping, or marketing data:

- Quickbooks Online – Check out the budget wizard. You can create a budget for the new year using your actual expenses from the previous one. This is a simple way to get a handle on your revenue requirements and make a plan to pay off debt or accomplish a specific goal. Check out a tutorial here:
    - https://www.dummies.com/software/business-software/quickbooks/how-to-prepare-a-budget-in-quickbooks-online/

- MyCase – Check out the recently-added Leads Reports where you can easily see stats for referral sources and a forecasted pipeline value!

- Clio – Clio has amazing data tools. In December 2019, they added the Firm Dashboard where you can get critical stats (such as your attorney utilization rates) at a glance.



- Facebook – If you use the (very inexpensive with great ROI!) advertising tools on Facebook, you might not have taken a look at the helpful stats it generates for you. Head to your Page on Facebook and click the Insights tab. You get a plethora of helpful information about your Page's

engagement levels along with some helpful tips (such as adding a picture increases your click-through levels significantly).

- Google Analytics – If you have embedded the token for Google Analytics onto your website, be sure to install the app on your phone. You can literally watch people (in number form) visiting your website in real time. If you launch a new ad campaign or publish a new article, it's fun and interesting to watch the traffic come in (and see where they came from). If you have an appointment setter on your site but you notice that people seem to abandon the page without following through, there might be a problem with the tool. The app has a number of helpful reports that you can run with a few taps of your screen, so don't miss out.

- LawPay – If you only hop on to LawPay to run a credit card (or it integrates with your practice management software) you might be missing out on some interesting data. For example, you can see revenue information about credit card purchases and fees. You can see if a particular client has been having trouble getting their online payment to go through. You can adjust settings to block high-risk transactions such as international payments. You can also get information about PCI compliance to ensure you are following best practices for your clients' valuable information.

- State Bars and State Courts – Many jurisdictions have research projects and data study results available to the public. Accessing this data can provide helpful information for your business. For example, imagine you want to launch a new practice area. You review state court data and discovery a very low or very high rate of self-represented parties. This could indicate either a great opportunity to expand, or indicate a saturated market.

- Your Phones – If you use a VoIP service or a PBX phone system, there is likely a wealth of information to be mined. For example, say your phone provider has a portal where you can login and see a dashboard. It indicates that your phone lines are busiest in the morning from 9-10. This would be a good time to double your phone staff to avoid missed potential clients. If your phones are dead from 1-2, that might be the best time to have your support staff take their lunch.

- Your Website – If you use a Wordpress-based website, there are a ton of great plugins that can generate reports for you. Install them (check the reviews first) and click Go. That's basically it! Some find broken links (like Google Analytics does), some report on referral sources (that's the site where the visitor came from), some help with Spam commenters, some help you decide which pages to revamp or eliminate. Here is a list of good ones: https://www.wpbeginner.com/showcase/7-best-analytics-solutions-for-wordpress-users/

Use it or Lose it!

Many small firms do not feel they have the resources to hire someone to help generate reports. If you've ever tried to work in Crystal Reports or similar it can be very overwhelming. If you can't do it yourself, consider finding a student at a local college or university. A lot of the development of dashboards and reports can be done on a part-time basis. Once you have invested the time and money to develop your reports, get trained on them and train relevant staff members. While the data won't necessarily go anywhere, its value is zero if you simply let it sit there.

TECHSHOW2020

Survey Says: Can You Trust the Data?

WRITTEN BY:

Jennifer Roberts and David McNeill

PRESENTERS:

Jennifer Roberts, MPP:

linkedin.com/in/bioJenRob/

David McNeill, Phd, MBA:

linkedin.com/in/biodavid/

January 6, 2020

INTRO:

There is no denying that data is the going currency in today's market. Seen in nearly all industries from retail to manufacturing, data has shown the power to unlock and up level a company's value proposition in the market. From understanding and enhancing a product, figuring out a customer's journey as well as digging deep into market performance, data is there to help tell the story. The last decade saw major wins for data and even bigger wins in its application with the proliferation of new technology and roles such as data scientists to support the cause. It is now time for legal to get on board with the data game. The treasure troves of data that exist at the firm are commonly acknowledged, however, the application and impact is still in early phases. In order to achieve what is being done in other industries, legal must walk before it runs, albeit at a quick pace.

Frequently the lack of confidence in the data deters users and therefore dampens the impact. Lack of confidence is understandable; data hygiene or lack thereof has caused dirty if not filthy data along with misinterpretation of data and/or methodology. This is an area worth spending time on, the 2017 Quant Crunch report on how the demand for data science skills is disrupting the job market cited 80% of analytics work being in data capture, clean-up and ensuring the proper methodology as compared to 20% in running the analysis thus emphasizing the importance of ensuring good data and analytics practices to deliver the full impact of an analytics project.

The following paper is broken into 2 parts. Part 1 examines data capture practices to consider and explores some of the analyses possible with the right data and Part 2 examines common biases, fallacies, misinterpretations, and distortions in data analytics to help ensure best practices in interpretation and impact.

PART 1: DATA CAPTURE

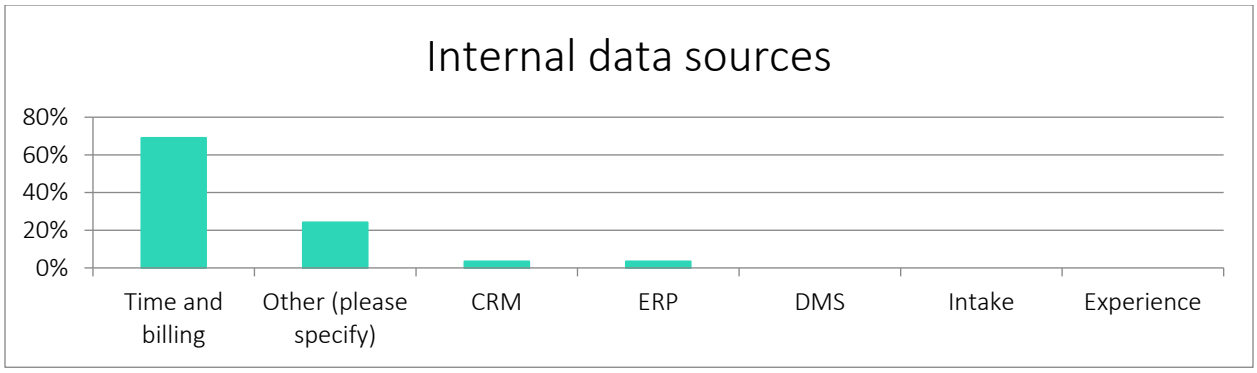
A strong data foundation is needed to gain credibility and drive action through analytics. In order to avoid the issue of garbage in, garbage out (GIGO), a firm must bring rigor into data practices with the end goal of establishing confidence in data.

Data inventory - attributes, variables and features, oh my!

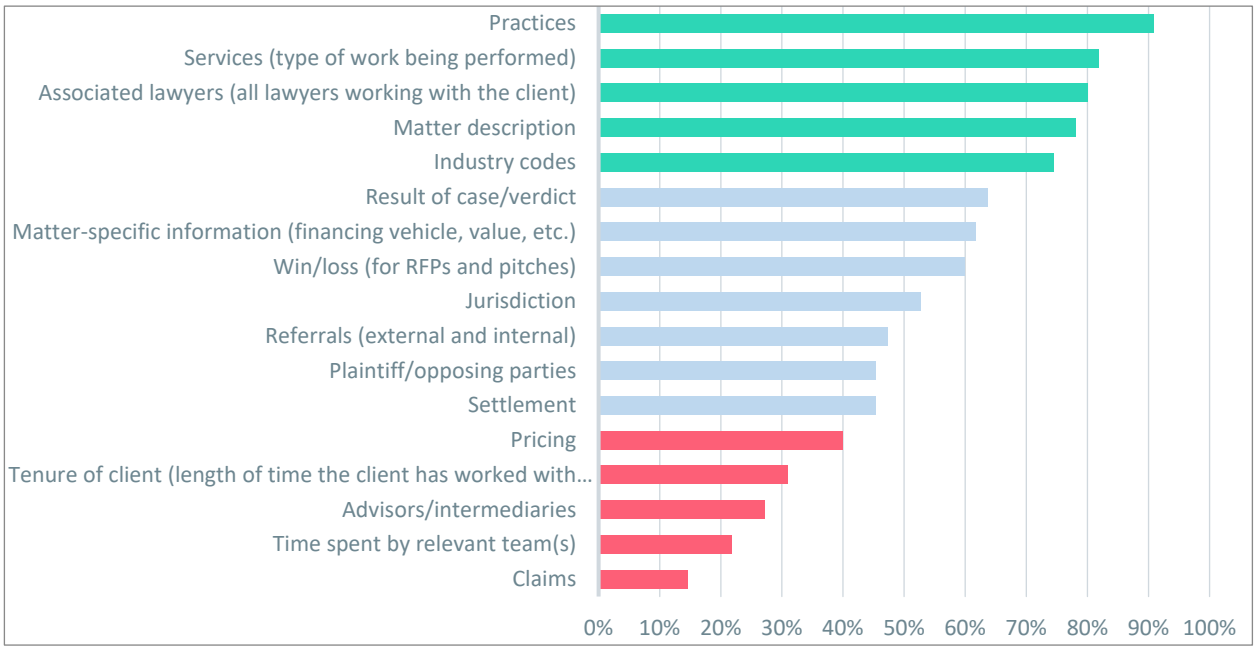
In the early innings it is important to understand what is available from a data perspective. Think outside the box. Data resides within financial systems, however, client data is also collected on intake and during a conflicts check as well as by business development and marketing. Some reside within systems, others homegrown excel spreadsheets.

Internal data

In the 2019 Rise of Legal Data Scientist report by Intapp and Law Vision, firm executives were asked about what systems they get data from within the firm. Over 60% rely on the financial system followed by small proportions looking into CRM, homegrown spreadsheets and ERPs.



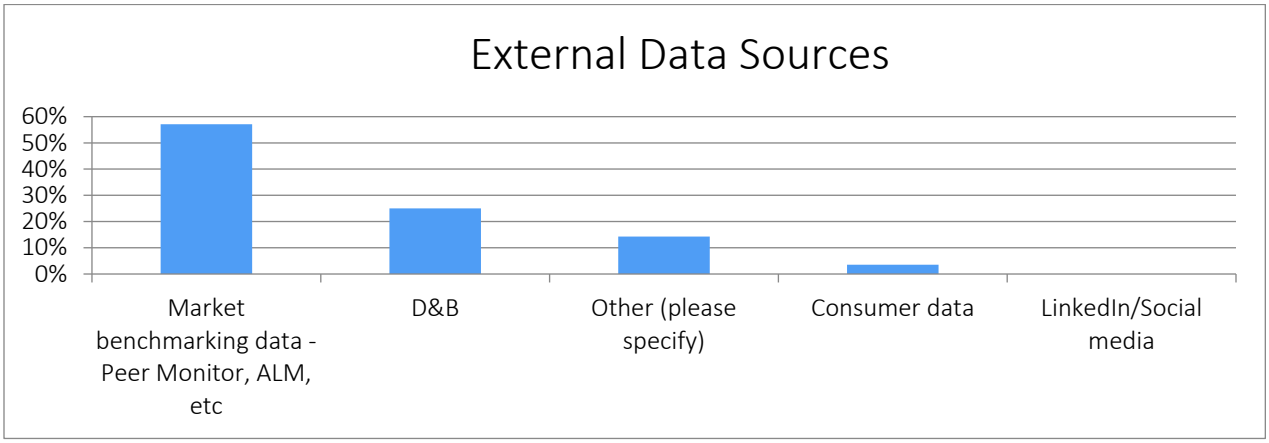
Attributes, features, elements and variables are just a few names for the data points that reside within these systems. In the 2018 Growth Enablement Survey done in collaboration between Intapp and Calibrate Legal, participants were asked what internal data elements they commonly use. The usual suspects make the list. The top 5 data points are practice, service types, lawyer data, matter description and industry, however, this brings additional variables to light. There is a clear opportunity for many firms that aren't tapping into some of these lesser used variables. Don't be surprised to find the variables that are used less frequently to be more difficult to capture and keep clean, however, as they become more popular and relied upon, hygiene habits can change.



External data

While a lot of data resides within the firm, external data sources should not be overlooked. In the 2019 Rise of the Legal Data Scientist report when asked what external data sources are currently being used at the firm, market benchmarking data like Peer Monitor and ALM are used by over 50% of respondents. Other external data like Dunn and Bradstreet and consumer data offers demographics on the client industry, corporate trees, revenue and number of employees.

When this data is combined with the internal data already discussed, it can aid in cohort analyses to understand buying patterns for similar clients. Once segmented firms can define how to meet similar client's needs and understand what makes a client sticky (aka loyal). The data can be used to understand what type of clients leave the firm and what type of clients stay as well as help define a practices value proposition for the market. Those are just a few business of law examples, when it comes to the practice of law this data can help you understand the probability of a win or loss against a certain judge or litigator.



Data Selection

It is important to outline the questions underpinning the strategic data initiative prior to selecting the data. What questions do you hope to answer? What metrics do you want to report on? These questions will help you stay focused on the problem and therefore the data needed to answer. The data inventory comes into play as a tool to help identify what attributes you have versus the data that you need. This exercise also allows you to outline any assumptions you have about the data and what you will measure. For example, not to oversimplify but if the underpinning question is "are my clients satisfied?", in order to answer that question, it is important to define satisfaction (a state of happiness) and then identify variables that would indicate satisfaction. Some include;

- Strong realization
- Net promoter score
- Year-over-year revenue with the firm

All the variables above are considered indictors of happiness with a company. There is a lot of literature out there on indicators and many other industries are well on their way when it comes to studying these indicators with respect to satisfaction. Lean on other industries. While professional services are different, you can imagine that the lawyer's hours are the product and then it becomes analogous to many other industries.

Additionally, net promoter scores and satisfaction surveys in general aren't as popular within firms as in other industries (think about the email Delta sends after you fly asking just 5 simple questions or when you receive a short survey after a call to customer service). There are issues such as the relationship partner not wanting to collect this information to getting clients to even respond. However, data that is already collected at the firm can step in as a proxy variable. Proxy variables are used in the practice of

data science to capture indirect measures of a desired outcomes. It is common practice when direct measures cannot be obtained or they are unobservable. In the case of client sentiment, a combination of variables can be used to define the client's attitude towards the firm. Pulling together variables like client longevity (the longer a client has been with a firm actively engaging in matters suggests loyalty), number of relationships at the firm (the more relationships a client has at the firm beyond just the relationship lawyer suggests a connection with the firm – something that is ideal in the age of lateral movement), number of practices engaged (when 3 or more practices are engaged, a client has a higher propensity to purchase additional services suggestive variable regarding the state of the relationship with the client as an unhappy client would not continue to engage work) and realization (realization is linked to value. Value can be allusive and is defined differently by all but a client who sees the value in the work being done will have stronger realization as they are willing to pay). All these attributes brought together into a composite score provides a picture of client sentiment.

Deriving variables is yet another methodology used frequently in data science. This is the creation of new variables to measure things that aren't currently being measured (rather than things that are difficult to measure which is where proxy variables shine). One example of a derived variable is the duration of a matter defined as how long a matter lasts. Trending duration across clients can help understand how the firm may better serve similar clients and help find efficiencies. Another example is effort as in the rhythm of a matter. This gets at what roles are taking part at what point. Are associates doing the upfront work and partners on the backend? Or is it reversed? Is it mixed? Effort can help the firm understand the types of matters and how best to serve and staff clients based on the matter and type of client.

Data Hygiene

Last but certainly not least, data hygiene is key to gaining data confidence, it also increases efficiency as less time must be spent scrubbing the data prior to a project as well as helps to avoid interpretation missteps. Frequently firms speak of how dirty their data is, however, this is no dirtier than what has been seen in other industries and there is methodology out there to help scrub and enhance data so that there is a robust sample to choose from. Obviously doing all of this takes time and resources hence the development of the data steward role within the firm. This is the spokesperson for the data… a large undertaking! These individuals reside where the data does and as long as data remains disparate and siloed so do the data stewards. The exception is when data committees are formed so that all data stewards are talking about quality issues and solutions together. A data committee is also a great place to figure out data efficiencies. For example, upon intake a client's industry is typically collected, this is valuable information that marketing and business development also try to capture. By sharing this information, there are now 2 dependencies on quality data, increasing the use, effectiveness and hygiene just by the nature of having more resources focusing on one set of variables instead of two.

Cleaning methodology

Frequently, visualizing the data helps the cleansing exercise as it allows you to quickly identify data issues and outliers. A few examples of data cleansing techniques include;

- Treat blank cells by inputting the samples average for that variable.
- Remove duplicates
- Correct format
- Remove outliers

However, be ware that cleaning the data can cause a completely different set of issues some of which are addressed in Part 2.

PART 2: COMMON BIASES, FALLACIES, MISINTERPRETATIONS, AND DISTORTIONS IN DATA ANALYSIS

We are all fallible human beings, fraught with innate and cultivated biases and misperceptions. The following are descriptions and examples of how these distort our attempts to use data to inform our perceptions of reality.

Observer bias

We all look at the world through our own eyes and within the context of our life experience. These shape and limit what we look for and how we interpret what we see. The observer bias is a type of detection bias where different observers can reach different conclusions, based both on what they see and how they interpret what they see.

For example, a college roommate and I shared food expenses for our apartment. We kept all of our grocery receipts, put our initials on them to show who had paid for what, and periodically tallied them up so we could settle up. It always felt like I was doing all the grocery shopping because I never saw my roommate go grocery shopping, but when we tallied up the receipts, the numbers showed that we were usually less than a dollar apart in our spending on groceries.

Observer bias is especially apparent any time you are reliant on a person to make an observation that requires any kind of judgment call. The classic example of observer bias is medical staff taking patients' blood pressure. You would think this is purely analytical, but if medical staff expect a patient's blood pressure to be high, they might unconsciously round up slightly.

Confirmation bias and sunk cost fallacy

We tend to see what we are looking for and overlook everything else. For example, if you think that a certain candidate will win, you will give more weight to evidence that confirms your belief and find reasons to disregard evidence to the contrary.

I think that confirmation bias and sunk cost fallacy often go hand in hand. Let's say your company just spent a bunch of time choosing a new client management system and then spent a bunch more time and money switching to it. The confirmation bias will push you to disregard shortcomings of the new system, and the sunk cost fallacy will push you to stick with a system even if it isn't working well. I have to constantly remind myself that the time and money we spent in the past is gone, and all that matters is which choice will provide us with the most value going forward.

It is incredibly difficult to admit when we make mistakes and to challenge the norms around us, but these are the keys to combatting confirmation bias and the sunk cost fallacy. The following are some ideas for creating a work environment where it is safe to be wrong, make mistakes, and challenge norms.

1. Management needs to set an example of admitting mistakes. Mistakes will always happen, what matters is whether you can use them to grow and improve. One place I worked gave out an award at weekly staff meeting for whoever admitted to a mistake, and the mistake was written on a

white board. There's a fine line here between public shaming and creating a safe place to learn from each other's mistakes.

2. Encourage devil's advocates. Any time there is a discussion, look for whether people are in agreement or whether all sides of an argument are well represented. If everyone agrees, your group could have just fallen prey to group think. You can designate a devil's advocate to help explore alternate views. One extreme (and expensive) version of this is when law firms hold mock trials on big cases. Again, management must take the lead in encouraging respectful disagreement.

Response or non-response bias

For the 2016 presidential election, the polls predominantly said that Hillary Clinton would win. However, polls can be skewed by both who is sampled and who chooses to respond. In this example, Hillary voters were more likely to respond to telephone surveys. In addition, it's worth pointing out that a statistical sample can never give you 100% confidence.

A classic example of response bias is Google Reviews. Most reviews are either 1 or 5 star because those are the only people with enough motivation to leave a review.

Generating hypotheses to test and choosing which variables to measure

Our hunches and intuitions are based on our perception of reality, which may or may not be the same as objective reality. Instead of using our intuitions to form decisive conclusions, they are best used as a starting place for more quantitative research. Coming up with hypotheses to test is an imaginative rather than a scientific process. This is where cultivating both diversity and dialog within your organization is important because diversity increases the breadth of reality that you are sampling, and open dialog connects that web of perceptions into a clearer picture of reality.

If you don't ask the right questions, you won't collect the right data and arrive at the right conclusions.

ANALYSIS MISTAKES AND DISTORTIONS

Insufficient data

Incomplete data for the current month or year

While this isn't technically a mistake, it is very common to plot the current year or month of incomplete data along with previous complete data points. This almost always makes the current month or year look lower than it will be when the current month or year is over and all the data comes in. One risky solution is to extrapolate based on the data available. A slightly better method is to compare this year to date to the same time period last year. In my opinion, it's fine to plot incomplete data for the current month or year as long as you make note of it clearly on the chart.

Two data points do not make a trend

We are all susceptible to coincidences and the order that the data comes in. For example, I run a small subscription business where I send attorneys a list of all their upcoming court appearances each week. As I developed the service, I gave it away for free in exchange for feedback. When I started asking these beta testers how much they were willing to pay, the first few gave a much higher amount than the subsequent users I talked to. I felt great after talking to those first users, but I'm so glad I increased my sample size to get a more accurate read on my market.

It's fine to do qualitative research by talking to people; we just have to make sure to talk to enough people that are different enough from each other to give an accurate representation of the population we are trying to measure. One of my rules of thumb is that you have to keep getting additional feedback until you stop getting new feedback and you start hearing the same thing from different people.

How do you determine what sample size you need?

There are many sample size calculators available for free online. In general, your sample size will depend on the size of the population you are sampling from and the magnitude of the difference you are trying to measure.

Normal variation vs. actual change

Anything you measure will vary over time. Thus it is important to know whether an anomaly fits within this normal variation or if it's an actual change worthy of time and resources.

Back when I worked at a nonprofit law firm, one of my roles was to build a business dashboard and keep track of our key business metrics over time. Occasionally people would come to me freaking out because we hadn't gotten very many new clients recently. Because I had built the business dashboard I could see whether this fit within our normal variation, so I usually told them to chill for a couple weeks and then come back and freak out of our numbers were still down.

This example highlights the importance of measuring your key metrics over the long term so that you can confidently determine whether what you are seeing is an actual change worthy of attention and action, or just normal variation.

In his book, *Fooled by Randomness*, Nassim Nicholas Taleb describes a method where you can use a large sample size and randomness to fool people. If you have a large mailing list, you can tell half the people that the market will go up this next month so they should invest, and the other half you tell to sell because the market will go down. After a month, you will be right for half the people. You can repeat this process multiple times until you have a small group of people that think you can predict the future because you have been right for many months in a row.

Extrapolating beyond your data

Extrapolations work very well when you are trying to estimate what happened in a gap for which you have data both before and after. Extrapolations work decently well if you are trying to forecast the size of a repeating seasonal trend. In general, extrapolations depend on how much data you have and how far beyond your data you are trying to predict. If you don't have much data and you are trying to predict the distant future, good luck!

The housing bubble is a great example of how extrapolations are extremely susceptible to changes that are outside the dataset the extrapolation is based on. Based on increases over prior years, the housing market was predicted to keep increasing in value. This became a self-fulfilling prophecy, until it all fell apart.

Outliers skew the data

Is it possible for the majority of people to be above average? Yes! Outliers can skew averages, so it's important to know when you should use an average and when you should use a median. You might be familiar with median home prices, which are used in the housing industry precisely because outliers skew the average home price.

In general, I use averages when I am trying to create a budget, and I use medians when I am trying to understand what's going on in a group or to compare different groups.

It's also a really good idea to look at the raw data for two reasons:

1. Outliers might be trying to tell you something. For example, an outlier could be due to an error that needs to be corrected, or maybe the outlier is an opportunity waiting to be investigated.

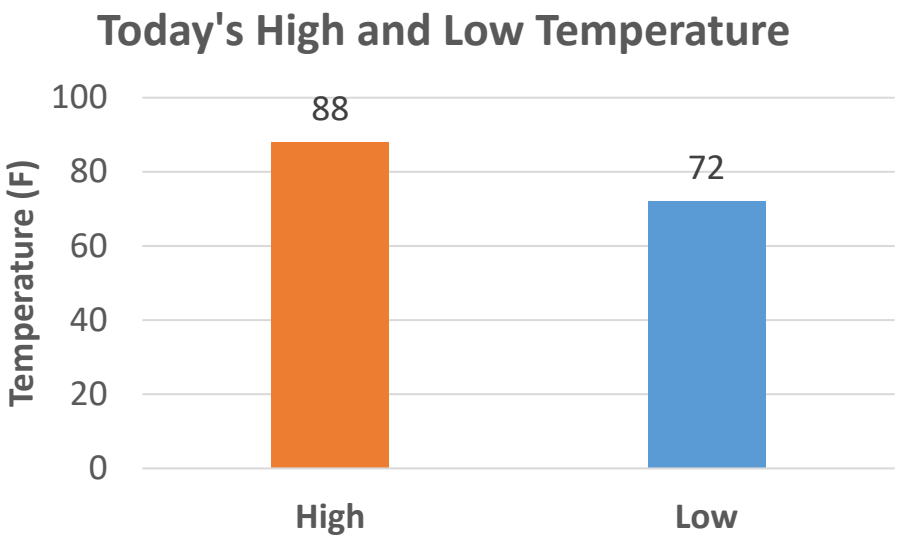
2. Plotting all the raw data points might reveal sub-groups that warrant segmentation of your data based on some variable you haven't determined yet. Your eyes are very good at picking out patterns that may or may not be real.

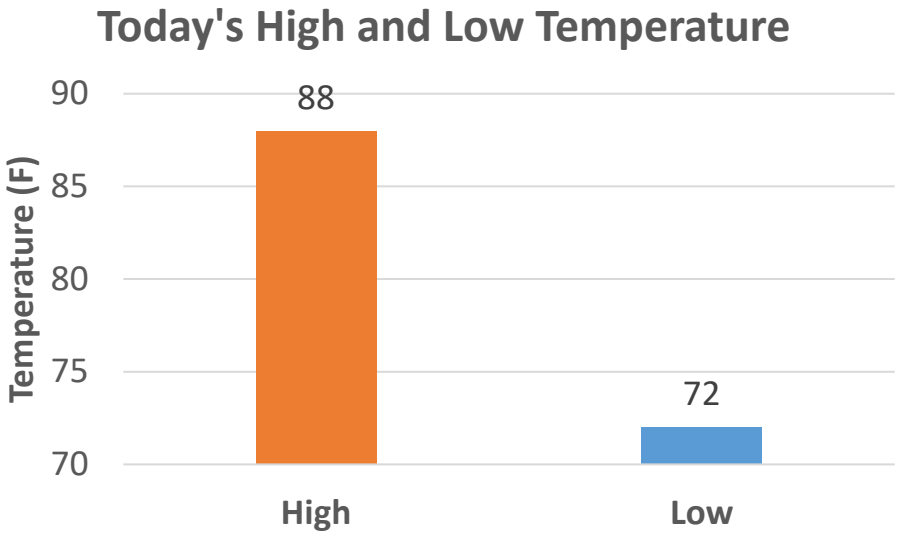
If you don't look at the raw data, you might miss an opportunity to spot something important.

How charts can hide or highlight differences

This is one of my favorite tricks of the trade to harp on. If you are trying to highlight the similarity between data points, you can start the Y-axis scale on your chart at zero. If instead you are trying to highlight the differences between data points, you can start the Y-axis scale somewhere close to the minimum of your data set. Both ways of plotting the data are accepted, so you just have to be discerning when you are looking at charts.

Below is an example of the same data plotted with the Y-axis starting at zero, which makes the values look more similar, and the Y-axis starting near the minimum value and ending near the maximum value, which makes the exact same values look more different.





Statistics can help determine if differences are actually significant instead of just visually impressive. So whenever someone shows you a chart showing an impressive difference, you should ask, is it a statistically significant difference?

Another difficult decision is how to choose your bin size when you create a histogram. It's obvious that you shouldn't choose bin sizes so small that they contain few or now data points. But how large should you make them? And where should the break-points be? Sometimes break-points are imposed by outside industry standards, such as the federal poverty guideline levels or area median income. If you have no constraints, the Freedman–Diaconis rule is a standard way of determining your bin size for a histogram based on the number of observations, the maximum value, and the minimum value.

Misattribution of cause and effect

My father always liked to point out that “correlation is not causation.” If you compare 100 different phenomena, it is highly likely that you will find two that correlate. This in no way indicates that there is a causal relationship, let alone which is the cause and which is the effect.

TECHSHOW2020

Forecast-Analytics Understanding Analytics for Case Evaluation

WRITTEN BY:

Benjamin Alarie, Anthony Niblett, & Albert H. Yoon

PRESENTERS:

Benjamin Alarie

Warren Agin

December 15, 2017

USING MACHINE LEARNING TO PREDICT OUTCOMES IN TAX LAW

Benjamin Alarie, Anthony Niblett, & Albert H. Yoon
University of Toronto, Faculty of Law

December 15, 2017

ABSTRACT

Recent advances in artificial intelligence and machine learning have bolstered the predictive power of data analytics. Research tools based on these developments will soon be commonplace. For the past two years, the three of us have been working on a project called Blue J Legal. We started with a view to understanding how machine learning techniques can be used to better predict legal outcomes. In this paper, we report on our experiences so far. The paper is set out in four parts. In Part 1, we discuss the importance of prediction. In many fields, humans are outperformed by mechanical and algorithmic prediction. We explore this phenomenon and conclude that the legal field is no different. In Part 2, we discuss recent advances in machine learning that have generated powerful tools for prediction. These new methods outperform traditional statistical techniques in predicting outcomes. In Part 3, we describe the Blue J Legal project. We discuss how Blue J Legal is using these machine learning technologies to provide predictions in grey areas of tax law. We provide a number of examples to illustrate the strength of these predictions. In part 4, we discuss the broader possibilities for technologies such as those powering Blue J Legal. We foresee a world where information about legal rights and responsibilities is more affordable; where the informational asymmetries that lead to wasteful expenditure on litigation is reduced; and where regulators use these tools to create a more effective and efficient administration of government. A final section concludes.

INTRODUCTION

Law is full of grey areas. Vague terms such as "reasonable," "material," and "prudence and diligence" are ubiquitous for business lawyers. Laws that turn on such imprecise standards create a great deal of legal uncertainty. Beyond falling short of the ideals of the rule of law of transparency and predictability, the manifest costs of this legal uncertainty can be great. It can generate unnecessary litigation, and tends to reward excessively aggressive or even consciously noncompliant behaviour.

The art of being a lawyer lies, in part, in understanding how to navigate the grey areas of law. In doing so, the lawyer helps clients to overcome legal uncertainty and comply with the law. This aspect of the art of lawyering involves predicting how a court would characterize the client's situation. Prediction and judgment are important skills for any lawyer, and until now have been driven principally by educated hunches, rules of thumb, and heuristics.

But what if computers were able to predict legal outcomes better than a human lawyer? What if a data driven algorithm were able to navigate the grey areas of law with demonstrably better accuracy and reliability than even the most sophisticated humans? Recent advances in artificial intelligence and machine learning have bolstered the predictive power of data analytics. Research tools based on these innovations will soon be commonplace for lawyers and those seeking legal advice.

For the past two years, the three of us have been working on a project called Blue J Legal. We started the project with a view to understanding how machine learning techniques can be used to better predict legal outcomes. Specifically, we have been using machine learning to predict outcomes in areas of tax law where the law is governed by a vague standard, rather than a bright line rule. There are many such grey area questions in tax law.

Take, for example, the grey area question of whether a worker is an independent contractor or an employee. This question has enormous tax consequences. The analysis is complex and the answer always depends on the facts. We wondered: what if we could generate a data driven predictive program – based on machine learning technology – that could analyze every relevant judgment and provide a prediction in any hypothetical situation? How accurate would that prediction be? How confident could we be in the answer?

In this paper, we address these questions based on our experiences so far. We outline the significant progress we have made over the past two years. We have learned much about the strengths (and weaknesses) of machine learning technology. We have applied this technology to a variety of questions in tax law. For example, we have created programs that determine whether the gains made from trading in securities and real estate are capital gains or rather income from business.

The paper is set out in four parts. In Part 1, we discuss the importance of prediction. In many fields, humans are outperformed by mechanical and algorithmic prediction. We explore this phenomenon and conclude that the legal field is no different. In Part 2, we discuss recent advances in machine learning that

have generated powerful tools for prediction. These new methods outperform traditional statistical techniques in predicting outcomes. In Part 3, we describe the Blue J Legal project. We discuss how Blue J Legal is using these machine learning technologies to provide predictions in grey areas of tax law. We provide a number of examples to illustrate the strength of these predictions. In part 4, we discuss the broader possibilities for technologies such as those powering Blue J Legal. We foresee a world where information about legal rights and responsibilities is more affordable; where the informational asymmetries that lead to wasteful expenditure on litigation is reduced; and where regulators use these tools to create a more effective and efficient administration of government. A final section concludes.

1. ALGORITHMIC PREDICTIONS VERSUS HUMAN JUDGMENT

Oliver Wendell Holmes, in an 1897 article *The Path of the Law*, famously remarked that the "prophecies of what the courts will do in fact . . . are what I mean by the law."[1] Prediction of what the courts will do lies at the heart of the lawyer's task. In developing arrangements that are legally compliant, the lawyer needs to be able to predict what behaviour is allowed under the law, and what behaviour is not permitted. In developing litigation strategies, the lawyer needs to be able predict how a court would likely characterize the client's case.

In our everyday lives, we forecast how the future will unfold.[2] Professionals – such as lawyers, accountants, and doctors – typically rely more heavily on prediction than do other sorts of occupations. Expertise in forecasting outcomes is central to their professional duties. But humans commonly use informal, subjective, and impressionistic prediction procedures. We use rules of thumb and base our predictions on our own individual experiences.

Human judgment and the use of hunches have, however, consistently proven to be quick and dirty, and often unreliable predictors. A series of studies conducted over the past 75 years have consistently shown that formal, algorithmic methods of predictions are invariably equal to or superior to humans in predicting outcomes. Even very simple algorithms outperform human judgments in predicting outcomes in parole board decisions,[3] predicting the performance of college

---

[1] Oliver Wendell Holmes, Jr., "The Path of the Law", 10 *Harvard Law Review* 457, at 460-1.

[2] See, e.g., Philip E. Tetlock & Dan Gardner, *Superforecasting: The Art and Science of Prediction* (2015); Brian Christian & Tom Griffiths, *Algorithms to Live By: The Computer Science of Human Decisions* (2016).

[3] Paul E. Meehl, "Clinical Versus Actuarial Prediction", In *Proceedings of the 1955 Invitation Conference on Testing Problems.*

student, [4] and predicting outcomes of electroshock therapy. [5] Grove and Meehl present a meta-study of 136 studies over a wide range of fields, showing that predictions made using the clinical method – human judgment based on informal contemplation and discussion with others – outperforms a formal, algorithmic, and objective equation in just eight of these 136 studies.[6]

Still, as Grove and Meehl note, humans are skeptical and possess a high degree of self-importance.[7] Humans still intuitively believe that they have superior judgment to that of an algorithm. In the book *Moneyball*, Michael Lewis illustrates how this skepticism and narcissism can be costly. Lewis showed that statistics and data outperform baseball scouts who for years had relied on hunches and their own human judgment. Their hunches represented the accumulation of years of biases, prejudices, and outdated modes of thinking that had concretized into human judgment. The Oakland A's were able to consistently outperform deeper pocketed rivals by taking advantage of other teams' inefficient predictions and using statistical analysis to generate more accurate forecasts about player performance.

In fields from medicine to sports to insurance, prediction by algorithm outperforms human judgment. Data driven analytics provide superior predictions. Legal predictions are no different. Indeed, as Oliver Wendell Holmes wisely noted in *The Path of the Law:* "For the rational study of the law, the black-letter man may be the man, but the man of the future is the man of statistics . . ."[8]

But where could we find the data and statistics to generate such algorithms? It turns out that there are data everywhere in the law. Take, as a starting point, data relating to legal cases decided by courts. There are over 1 million publicly available Canadian court and tribunal decisions on CanLII alone. Now add the decisions and rulings of regulators such as the Canada Revenue Agency or the various securities regulators, which are also widely available. And these data points are just the data relating to a serious legal dispute or legal question has been raised and resolved by a court or tribunal. Now consider all the data generated by law firms and accounting firms when deciding whether legal action should be commenced or continue.

---

[4] Theodore R. Sarbin, "A Contribution to the Study of Actuarial and Individual Methods of Prediction", 48 *American Journal of Sociology* 592 (1943).
[5] M. P. Wittman, "A Scale for Measuring Prognosis in Schizophrenic Patients," 4 *Elgin Papers* 20 (1941).
[6] William M. Grove & Paul E. Meehl, "Comparative Efficiency of Informal (Subjective, Impressionistic) and Formal (Mechanical, Algorithmic) Prediction Procedures: The Clinical-Statistical Controversy", (1996) 2 *Psychology, Public Policy, and Law* 293.
[7] Michael Lewis, *Moneyball: The Art of Winning An Unfair Game* (2003).
[8] Holmes, above note 1, at 469.

All this activity provides a tremendous amount of textual data. It is, of course, nowhere near the same degree of "big" data that, for example, Google has when analyzing what people are searching for. It is nowhere near the same level that Uber has with regard to travel habits. This amount of legal data, however, is far more than any human lawyer can ever hope to store in his or her mind. The data can be aggregated, processed, and analyzed to generate better information about what courts and other legal actors do in order to provide predictions that are superior to human judgment.

Indeed, there are examples in the legal system where data driven analytics are being used to provide more accurate – and less biased – predictions. Consider how judges set bail. Some jurisdictions in the United States are turning to predictive technology to determine whether bail should be granted and, if so, under what conditions. [9] These algorithms not only reduce the inconsistency of judges' decisions, but also reduce the errors of releasing defendants who skip bail and ameliorate the unnecessary human and financial costs of holding defendants who are very unlikely to skip bail. There are millions of observations of how defendants behave when released on bail. The algorithms aggregate this information to reduce the costs associated with imperfect human judgments.

We have focused here on the accuracy of algorithmic prediction. But algorithmic prediction has many other advantages over human judgment. Take, for example, the speed with which a prediction can be made. Algorithmic prediction provides answers within seconds or minutes. Humans are more deliberative. Humans take time to evaluate the different factors. Further, algorithms never get tired, sleepy, or make decisions while angry.

The formal algorithmic predictions described in Grove and Meehl above vary from very simple counting rules to advanced statistical techniques. Grove and Meehl show that the more advanced the statistical technique and the more data used to generate the algorithm, the more likely it is that the algorithm will outperform human judgment.[10]

In the next section, we discuss recent advances in cognitive computing that improve the predictive power of algorithms beyond that of statistical techniques such as linear regressions.

---

[9] See, e.g., Shaila Dewan, "*Judges Replacing Conjecture with Formula for Bail*", *New York Times* (June 26, 2015), available at: http://www.nytimes.com/2015/06/27/us/turning-the-granting-of-bail-into-a-science.html.

[10] Grove & Meehl, above note 6, at 298-9.

2. MACHINE LEARNING AND PREDICTION

There are many ways in which data can be used to predict outcomes. Let's say there is a hypothetical law under which corporations can be found liable. Let's also say that there are five factors that judges must balance when determining liability.

One simple way to "predict" the outcome would be to simply add the factors that weigh in favour of finding the corporation liable. The rule of thumb for prediction might be: if three or more factors are present, we predict the corporation will be found liable. This would be a blunt way of predicting the outcome. The algorithm is easy to implement, but its predictive power would be weak. This "rule" assumes that all five factors are equally weighted and a simple majority is required. It is possible, but unlikely, that such a model could accurately and consistently predict how a court would decide.

We can do better than a simple rule of thumb. Under the right conditions, we can use multivariate regression analysis to better predict legal outcomes. Multivariate regression estimates the relationship between the dependent variable – here, the dependent variable would be liability of the corporation – and the five independent variables that the court takes into account. If we have enough data, we can generate a model that will characterize the relationship between the variables.

Regression analysis is simple and powerful. It allows data analysts to predict the outcome of legal cases if the independent variables are known. Further, the analyst can calculate how the probability of liability will change if one of the independent variables changes holding all the other constant.

There are many different regression models that data analysts can choose from. The right model will depend on the type of data and the relationship between the variables. In predicting legal outcomes, the dependent variables will commonly be dichotomous (e.g., liable or not liable.) For this reason, models such as logistic regression and Probit models may be used.

The data analyst must make many choices and assumptions in specifying the model. The analyst must choose the form of the model and make assumptions about whether the effect of an independent variable depends on the level of other independent variables (i.e., include "interaction effects".) But the data analyst may provide an inappropriate specification. The relationship may, for example, be non-linear, and if the analyst selects a linear regression model, it will not accurately

predict how courts decide cases. The model will assign "incorrect" weights to different variables and, thus, provide poor predictions.

Machine learning algorithms have been developed to overcome such problems.[11] There are many different types of machine learning algorithms that are able to overcome some of the problems of simple regression analysis, such as various kinds of neural network algorithms, developed by Professor Geoff Hinton of the University of Toronto. With enough good data, you can let the machine figure out what the relationship is between the outcome and the five variables. The "learning" here is simply finding the equation that best fits the data and solves a specific problem. The machine finds "hidden" connections between the outcomes and the variables.

There are, of course, limitations with these technologies. The machine learning is only as good as the data provided. If the inputs are garbage, the outputs will be garbage too. The data needs to be carefully curated in order to allow the machine to "magically" solve the problem. If too many independent variables are entered into the machine, the algorithm may suffer from "over-fitting." Over-fitting weakens the predictive power of the model and leads to unjustified confidence in the predictions of the model.

Machine learning technology already produces excellent results in many circumstances and will continue to develop. The ability to collect, store, process, and analyze data will continue to improve exponentially. Computing power doubles, on average, every two years. If growth continues at this pace, by the year 2050, computing capabilities will be over 100,000 times greater than our current capability. Other innovations in cognitive computing – such as natural language processors – will be used to provide structure and understand unstructured data such as court opinions and regulator rulings.

We think it is inevitable that machine learning techniques will be used to predict legal outcomes in the near future. We began the Blue J Legal project two years ago to determine whether such machine learning technologies could be applied to narrow grey area questions of tax law. In the next section, we outline the progress we have made.

3. THE BLUE J LEGAL PROJECT

[11] See, e.g., Jon Kleinberg, Jens Ludwig, Sendil Mullainathan, & Ziad Obermeyer, "Prediction Policy Problems", 105 *American Economics Review* 491 (2015).

How well can a machine predict outcomes in law? With Blue J, we set out with the task of generating a machine-driven algorithm that could do in minutes what currently takes hours for a human lawyer.

We started with Canadian tax law. Rather than seeking to answer *every* question in Canadian tax law though, we started by testing some fundamental concepts. We looked for areas of law that are narrow enough to be answerable, but still had a relatively large number of litigated cases upon which to base our initial dataset. To illustrate the power of using machine learning techniques in tax law, let's consider a fundamental question in tax law: *Is your client an independent contractor? Or are they an employee?*

3.1 Example: The Worker Classifier

The question of whether a worker is an independent contractor or an employee is of immense importance under the *Income Tax Act*. Most notably, perhaps, there are enormous differences in the way that individuals who are independent contractors can claim deductions (generously) vis-à-vis individuals who are employees (restricted). The question also commonly arises in cases where hiring businesses claim the workers are independent contractors in order to deny that the worker is carrying on insurable and pensionable employment within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act* and paragraph 6(1)(a) of the *Canada Pension Plan*.

The distinction between independent contractor and employee is not, however, governed by a bright-line rule. There is no one dispositive fact that courts can look to resolve the question. The definitions in the *Income Tax Act* are not helpful in resolving this question. The "total relationship" test for worker classification is one that often frustrates law students and lawyers alike: it depends on the facts. It is a classic "grey area."

The distinction is found by looking at a vague judicially created standard. Under the test laid down in *Wiebe Door Services v. M.N.R.*, [1986] 3 FC 553 (FCA), the total relationship between the parties and the combined force of the whole scheme of operation must be considered. Using the *Wiebe Door* test as a guide, courts look to a number of factors including the level of control imposed by the hirer on the worker, who owns the tools and equipment that the worker needs to complete the work, the chance of profit and the risk of loss for the worker, and the level of integration of the worker into the hirer's business.

But this grey area law is complicated. And it creates great legal uncertainty. Imagine the following scenario. Your client is a massage therapist. She works for a chiropractor and physiotherapy clinic. She wishes to know whether she is an independent contractor or an employee for tax purposes.

The therapist and the clinic have an oral agreement that the therapist is an independent contractor. She has worked at the clinic for the past 12 months. She receives 60 percent of the amount invoiced at the clinic, while 40 percent is deducted for use of the clinic's rooms, reception desk, and other facilities.

The therapist's hours and schedule are determined by the clinic. The clinic also determines the framework within which the treatment procedures are performed for clients, but she is free to determine how the work is done. The clinic imposes some dress requirements, but they are not onerous. The therapist is not permitted to delegate her work or subcontract with other therapists. The therapist is free to work elsewhere while not working at the clinic and, in fact, she has done so.

All of the work done by therapist for the clinic was performed at the clinic. This clinic is fully equipped with all the tools and equipment that the therapist requires for her services (e.g., massage tables, oils, towels.) There is some evidence that other therapists who work at the clinic have brought their own tools and equipment to work, but this is not true of your client. The therapist's patients were the patients of the clinic. Their payments were made directly to the clinic. The clinic bore all the risk of bad debts. The therapist had to pay her own liability insurance and association fees.

Here, there are some factors that suggest the therapist is an employee and some that suggest she is an independent contractor. How would a lawyer balance these factors under the *Wiebe Door* test?

As the massage therapist's lawyer, you may look for precedents that are similar. Even the most brilliant of tax lawyers could not be expected to have memorized or even be at all familiar with every case from the Tax Court of Canada over the past twenty years. Some research would be required.

After some hours of researching, one might come across some cases that are factually close. There are some precedents from the Tax Court of Canada that have decided cases involving massage therapists. Some cases find that the massage therapists in question are employees (see, e.g., *Sher v. M.N.R*[12]); while others find

[12] *Sher v. M.N.R*, 2000 CanLII 511 (TCC).

that massage therapists are independent contractors (see, e.g., *Vida Wellness Corporation v. M.N.R.*[13]).

You analyze the differences in the decisions. While many of the facts in these cases are similar to your client's case, neither has facts that map on perfectly. Further, a good lawyer would also want to know about similar cases from industries other than massage therapy. There have been over 600 decisions from the Tax Court of Canada over the past twenty years that have analyzed this narrow issue.

The volume of cases is a tremendous hurdle for lawyers in ensuring that they have covered all their bases and ensuring that their clients are getting the best advice. The amount of research required for a lawyer to fully investigate this question would be enormous. But, to us – as empirical researchers interesting in bringing machine learning techniques to the law – the volume of cases presents a wonderful opportunity. These 600+ cases provide the backbone of a powerfully predictive system.

We analyze each of these cases carefully and extract relevant variables. These variables relate to the four-in-one test ascribed in *Wiebe Door*. There are 21 different features that we assess in each and every worker classification case. For example, we wish to know whether the worker and the hirer had a contract. And if so, did the contract specify whether the relationship was that of an independent contractor or an employee? We wish to know whether the hirer set the worker's hours and schedule. We also wish to know who owns the tools and equipment. These are questions that any lawyer analyzing this issue would need to ask the client.

But how do courts weigh these variables to arrive at their decision? How do the different variables interact with each other? To put it simply, we do not know.

We don't use a simple formula. That is, we don't simply count the factors that favour one classification and weigh them against the factors favouring the other. Nor do we use standard regression techniques that require us to set the structure of the relationship between all the variables and the predicted outcome.

Instead, we let the computer find the right answer. We use machine learning technology to figure out the best way to assign weights to each of our variables and to figure out how the different variables interact with each other. This task is practically impossible for a human. Neural networks find hidden connections between the variables that we, as empirical modelers, do not specify and – probably – could not have identified even with unlimited time and resources using conventional approaches to legal research.

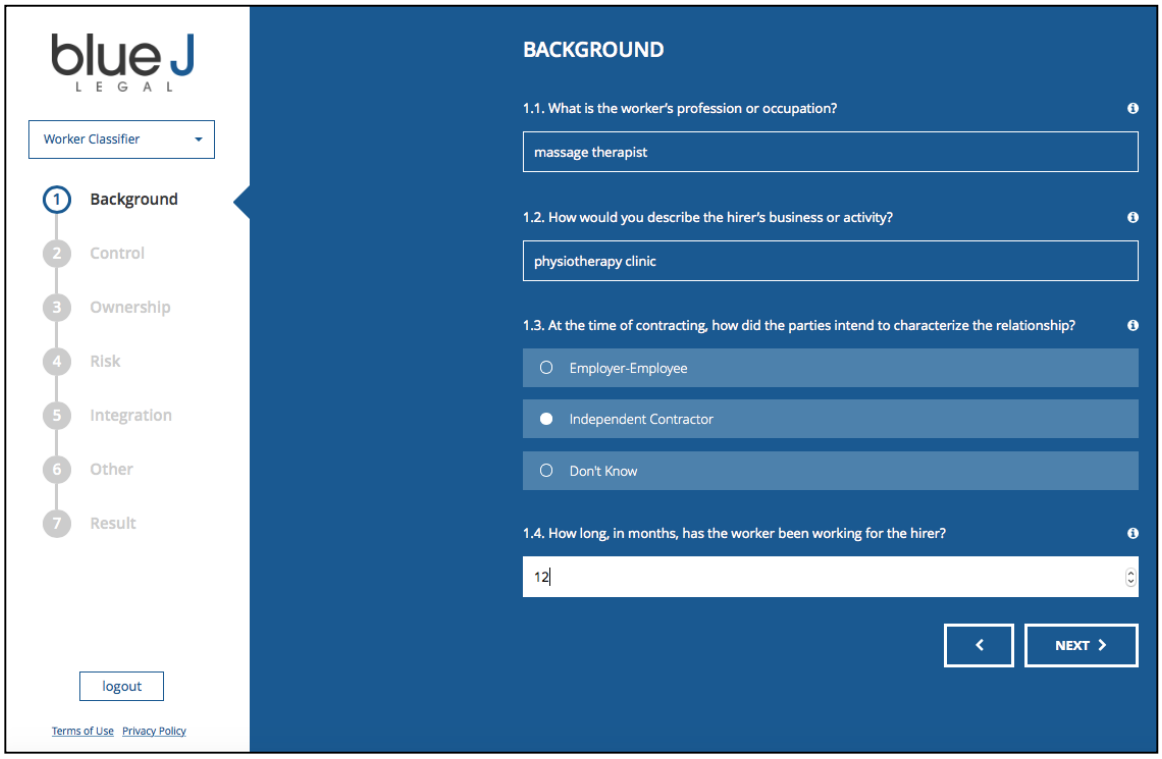
---

[13] *Vida Wellness Corporation v. M.N.R*, 2006 TCC 534.

How well does this machine-driven algorithm do? Exceptionally well. In out-of-sample testing, in a variety of different questions in tax law, Blue J consistently gets more than 90 percent of predictions correct. We divide our sample up in multiple ways. First, we partition the data into two sets. We generate a model based on 70 percent of the data and we test on the other 30 percent. This partition is random. In the worker classifier, these test illustrate that the model provided by the machine learning algorithms are extremely accurate. A second way of testing the accuracy is to divide the data by date. We generate a model based on all cases until some fixed point in time (e.g., all cases until December 31, 2008.) We then test on all cases after that fixed point in time (e.g., all cases after January 1, 2009.)

Rather than spending hours researching the relevant cases, trying to draw distinctions between the precedents, and arriving at an inconclusive answer, lawyers in the future will able to use systems such as the one we are developing to answer the questions with greater accuracy and confidence.

Let's return to our example massage therapist. Filling out the survey, providing answers for all our 21 features takes approximately five minutes.



Once answers for all 21 questions are provided, Blue J Legal gives its answer. Here, Blue J is 87.1% confident that the worker would be classified as an employee.

Blue J compares the facts of this new case to the facts of every precedent decision that the courts have decided. In some sense, Blue J generates a probabilistic legal landscape. There are cases that Blue J thinks are very black-and-white. These are situations where the taxpayer is either clearly an independent contractor or clearly an employee. But there are other questions that are more "grey" than others. Even here, Blue J can provide clarity through its explanation of the result.

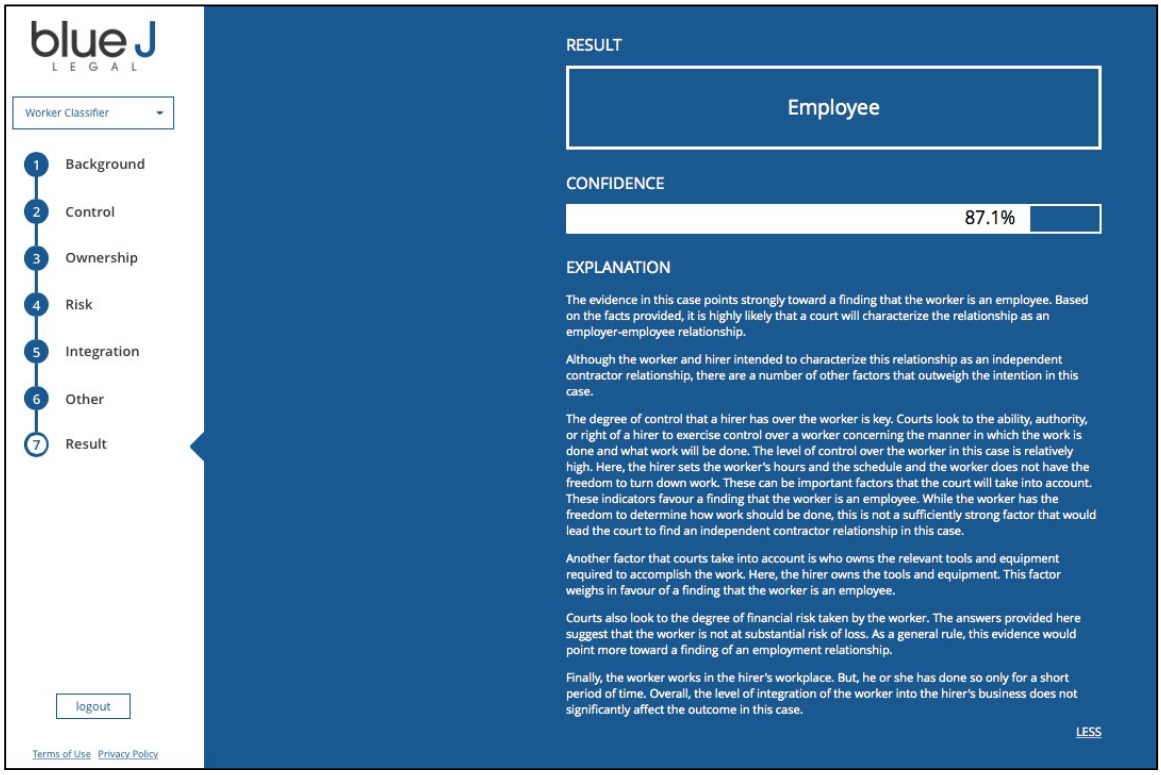
Blue J also provides its reasons for this classification. First, Blue J Legal recognizes that the mere fact that the two parties intended the relationship to be an independent contractor agreement is not a sufficient condition to find that the relationship is an independent contractor relationship:

> "Although the worker and hirer intended to characterize this relationship as an independent contractor relationship, there are a number of other factors that outweigh the intention in this case."

In cases that come before the Tax Court of Canada, it is common for the parties to have characterized their agreement as an independent contractor relationship. But the intention is in no way dispositive. The actual relationship may be very different to that spelled out in the contract. The court has commonly looked to other factors – that is, those specifically mentioned in the *Wiebe Door* test – to characterize the relationship for tax purposes.

Here, the control factor was very important. Blue J characterizes the control exerted by the hiring clinic as "relatively high." The fact that the hiring clinic sets the therapist's hours and schedule and the therapist is not free to turn down work were among the more important factors.

Other factors – such as the ownership of relevant tools and equipment and the risk of loss – also tend to favour a finding that the therapist here is an employee. The level of integration by the therapist in the clinic does not significantly affect the result in this case according to Blue J.



Overall, the factors suggest that the therapist an employee of the clinic. But what if the facts are not so clear-cut? It is common for parties to a dispute to be in dispute of the facts. What if the parties dispute the characterization of the facts in this way?

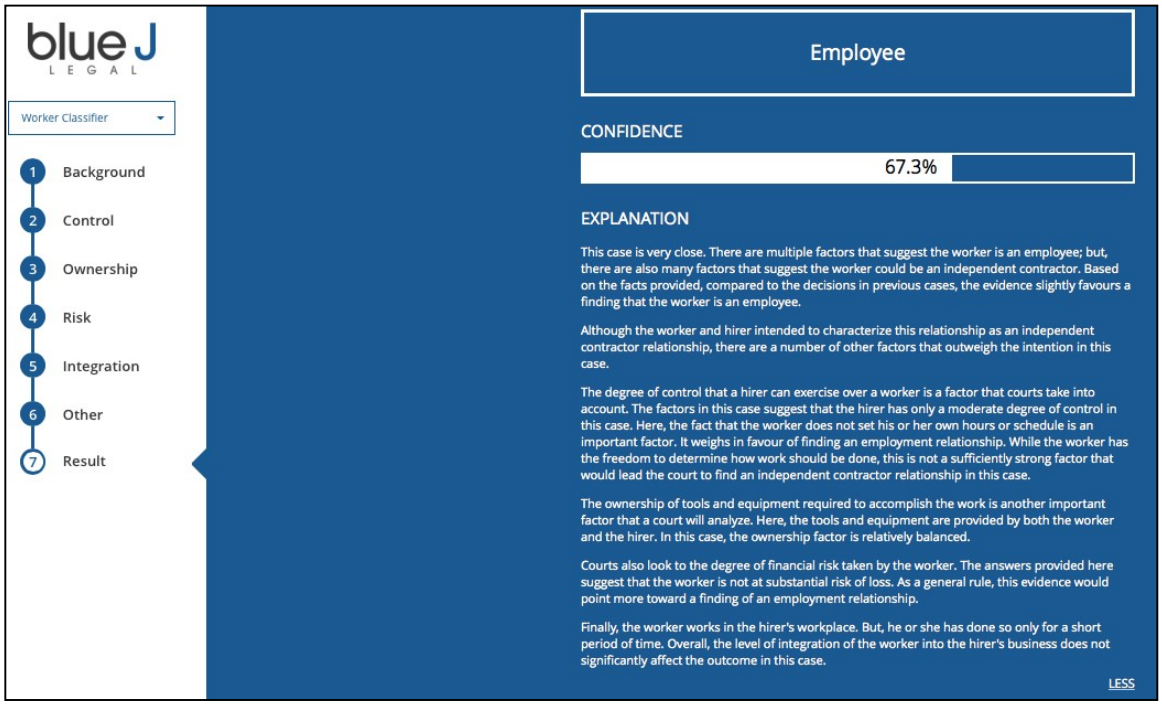
Here, Blue J is 87.1% confident in its answer. A user can test for the sensitivity of this result by returning to her answers to different questions and recalculating Blue J's prediction about the likely conclusion that a court would reach. This is particularly helpful when some the user is not completely certain about her answer to some of the factual questions posed by Blue J. It can also be helpful in a dispute resolution context when the other side takes a different view on the facts. One can learn using Blue J whether the version of the facts advanced by the other side, if accepted by the court, would lead to an unfavourable outcome.

An illustration may be helpful. Let's say that the above facts represent the therapist's perspective of the facts. She believes she should be treated as an employee and presents her facts in the best light possible.

For the most part, the clinic agrees with the facts, but wishes to emphasize that, in most cases, therapists bring their own tools and equipment. Further, they wish to highlight that the dress code is not enforced and, even though the clinic sets the

hours and schedule of the therapist, the clinic works with the therapist's preferences to arrive at a mutually agreeable schedule.

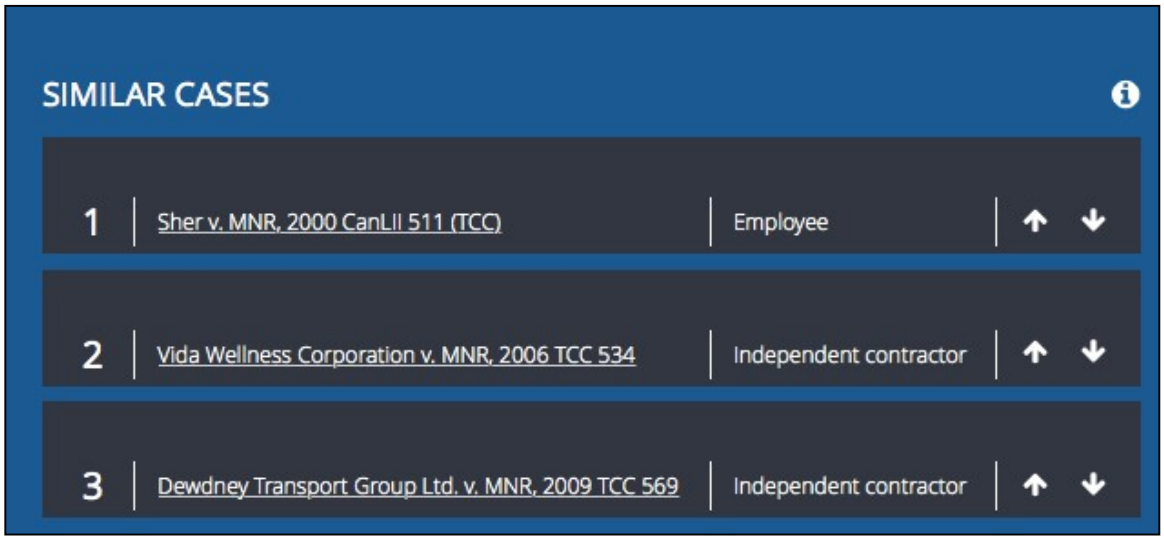
Under these facts, the case is closer. But even using the clinic's best version of the facts, Blue J *still* finds therapist more likely than not to be an employee. The confidence is reduced somewhat – down from 87.1% to 67.3%.



Put simply, this is a dispute that should not go to court. This is a case that should settle before significant resources are wasted in litigation. This is a case where the lawyers for each side should agree what the outcome is, long before hours of research and writing, and long before days are taken up in an already crowded court system. It is not simply the private costs of those individuals and businesses that are parties to the litigation that must be taken into account; there are significant costs to the taxpayer. Not only will this litigation take up time in an already crowded court system at the taxpayer's expense, the Minister of National Revenue is commonly one of the parties to the litigation where this question arises.

In addition to providing a classification, Blue J provides a list of previously decided cases that are similar to the case at hand. Here, the two closest cases to the massage therapist example are *Sher* and *Vida*, both mentioned above. Blue J users can check the cases to see how the Tax Court of Canada has decided similar cases

in the past. Here, Blue J identified *Sher* as the most similar case. In that case, the Tax Court of Canada also held that the massage therapist in question was an employee.



Finding similar cases to the user's case also involves machine learning. We ask users to provide feedback. Blue J also collects information from users to continue training our algorithm. If only one person "trains" a machine, then a machine-driven algorithm will begin to faithfully replicate that person's actions over time.

But we know that many minds, acting independently, are better than one. The aggregation of information in groups allows for better decision-making. Francis Galton famously noted at a county fair that when individuals' guesses about the weight of an ox were averaged, the collective average was very close to the actual weight of the ox. Indeed, the average of the guesses was closer to the correct weight than the vast majority of the individuals' guesses.[14]

Aggregation of information de-biases the errors of individuals. Some individuals may be biased one way; others biased the other. When taking into account all the data, a more accurate picture can be discerned.

---

[14] See, generally, James Surowiecki, *The Wisdom of Crowds: Why the Many are Smarter than the Few and How Collective Wisdom Shapes Business, Economies, Society, and Nature* (2004). Cordorcet's jury theorem also illustrates how the collective probability of arriving the correct decision when using a simple majority rules increases with the number of individuals. See Marquis de Condorcet, *Essay on the Application of Analysis to the Probability of Majority Decisions* (1795).

At Blue J, we provide a mechanism through which private decisions and judgments can be turned into one collective answer. Blue J asks the user for feedback: does the user agree or disagree with the relevance of the precedents provided? We collect the data provided by the user. We update the Blue J algorithm to provide better results for users.

Blue J provides all the necessary ingredients for "wisely" aggregating information. One might be concerned that users will be able to individually bias the results. But, under sensible assumptions, with diversity of opinion, aggregating the information de-biases the classification and provides more accurate descriptions. Importantly, users can train the machine independently, allowing the entire process to be decentralized. Users are able to draw on their own knowledge of how the law operates to better train the system and teach Blue J which cases are most relevant. Through this feedback mechanism, Blue J continues to learn and gets better and better over time.

3.2 Other Classifiers in Canadian Tax Law

The worker classifier was our first test case of using machine learning technologies to answer grey area questions of tax law. Following this test case, we were confident that we could use similar techniques to answer other classifiers that resolve other grey area questions in tax law:

- *Residency classifier* – is an individual taxpayer resident in Canada or non-resident for tax purposes? This question relies on more rules than the worker classifier, but ultimately turns on two grey area questions: (1) is the individual ordinarily or factually resident in Canada? (2) where is the individual's centre of vital interests?

- *Home office classifier* – are the expenses related to a workspace in the home deductible or not? Under subsections 8(13) and 18(12) of the *Income Tax Act*, expenses are deductible if the workspace is where the principal duties are performed or where the principal place of business is, or the workspace is exclusively used for the purpose of work. Again, these are grey area questions that involve weighing various factors.

- *Tangible expenditure classifier* – are expenses classified as current expenses or capital expenses? Current expenses are ones that generally reoccur after a short period, such as painting a house; while a capital expense generally provides lasting benefit, such as replacing walls of a property. The question turns on many different factors such as the duration of the benefit, the

frequency of this type of expenditure, and whether the expense is a repair or a replacement.

- *Intangible expenditure classifier* – are the purchases of licenses, interest payments, and legal fees classified as current expenses or capital expenses? Here, similar issues of the duration of the benefits and the frequency of expenditure arise, but the nature of the questions asked is different from those in the context of tangible property.

- *Real estate classifier* – are the gains from sales of real estate classified as on account of capital or are they income from business? Sales of properties may realize a capital gain or they constitute income from a business, especially where taxpayers repeatedly purchase and sell real properties. Courts must weigh a variety of factors relating to the taxpayer and their current and previous conduct.

- *Securities classifier* – are the gains or losses from securities transactions classified as on account of capital or are they income from business? For many taxpayers, the gains or losses from trading securities will be treating as on account of capital. But for those traders who work in the securities industry or who frequently purchase and sell securities, it may be classified as income from business.

- *Taxable benefits classifier* – are the benefits an employer provides an employee taxable under paragraph 6(1)(a) of the *Income Tax Act*? Courts look to the materiality of the benefit, who was the ultimate beneficiary, and whether the benefit was provided in the course of employment. These are all grey area questions.

In each of these areas of law, the answer is dichotomous. That is, the algorithm classifies the facts as one of only two possible answers (e.g., independent contractor or employee.) But in some areas of law, there may be multiple possible classifications, not just two.

Take, for example, the capital cost allowance for determining depreciation expense. Under Canadian law, there are over 50 different "classes" that property may fall into. The distinctions between classes can be difficult. There are many questions a lawyer might ask to narrow down the classes. For example, the lawyer may wish to know the date the property was acquired, what the property is used for, and in what industry the property is used. Using a process of elimination, by asking a series of questions a determined lawyer will eventually be able to isolate the class to which the property belongs.

To draw an analogy to a children's game, in the game *Guess Who?* players select a card from 24 different cards featuring cartoon images of people. Each player then asks yes or no questions – such as "Is this person female?" or "Does this person have brown hair?" – to eliminate potential candidates until all but one is left.

Blue J Legal is using machine learning technology to replicate and improve upon this sequencing of questions. We are drawing on machine learning tools that can be used to minimize the number of questions that need to be answered by the user. Finding the most efficient path of questions – especially when there are over 50 different classifications – is almost impossible for a human.

3.3 Algorithmic Predictions versus Human Judgment in Practice

As we noted above, Blue J solicits feedback from users. Experts in the field of tax law will help Blue J to learn and will help to perfect our system. Sometimes human experts, however, provide feedback that illustrates our point that humans have biases that Blue J does not.

To take an example, one user of our "Tangible Property Classifier" sought to classify whether an expense is a current expense or a capital expense. Here, the tax professional wished to check whether expenditure on a furnace boiler was a current expense or a capital expense. After the tax professional ran through the 22 questions that make up the relevant variables, Blue J gave its response. In this particular case, Blue J considered the expense to be "Capital Expenditure" with 95%+ confidence.

Blue J concluded:

> "In summary, while there is some evidence to suggest that the expenses are current expenses, after weighing all the factors, courts would likely find that the expenses are capital expenses in this case."

The tax professional intuitively felt this was wrong and provided feedback to Blue J. The language used was strong. From the tax professional's perspective, Blue J Legal had "clearly" provided the wrong answer. The tax professional argued that the replacement of a furnace boiler is simply a repair. Without such, the building is worthless. Even though the boiler system in this fact pattern would last for 30 years, the tax professional contended that the courts would classify this as a current expense.

We take this type of feedback seriously. We were concerned that Blue J classified this case incorrectly, given both the expertise of the user and the forceful nature of the feedback. We revisited Blue J's answer. Blue J seemed very confident that furnace and boiler system would be treated as a capital expense.

We looked at some of the similar cases that were most similar to the user's query. One case that was returned when we ran our test was *DiFruscia v. The Queen*.[15] In that case, the Tax Court of Canada examined the tax treatment of a variety of expenses. Relevantly for our furnace example, the court held the following:

> "In *MNR v. Vancouver Tug Boat Co. Ltd.*, 57 DTC 1126, the Exchequer Court held that the replacements of a boat engine and of the engine for a power shovel were capital expenditures. The Supreme Court of Canada held that the acquisition of stoves and refrigerators were not repairs but replacements and thus capital outlays: *MNR v. Haddon Hall Realty, Inc.*, 62 DTC 1001. At the case at bar, the purchase of a new furnace was also the purchase of a capital asset. The new furnace replaced the old furnace, but without a new furnace the use and enjoyment of the building would be affected. A new asset was acquired." (emphasis added.)[16]

This is not to say that Blue J is perfect. The machine-driven algorithms we have developed still generate predictions that are confusing to us. Especially early on, when we were first training Blue J, some answers it provided were truly baffling. The machine-driven algorithms can only deal with the data they are given. And if the data are not sufficiently informative, then the results provided will be less predictive.

4. BROADER IMPLICATIONS

In recent years, much has been written about the interface of artificial intelligence and the law. The academic literature can be thought of as consisting of three strands. The first strand analyzes how law should respond to the growth in artificial intelligence. This strand of the literature examines how best to regulate the use of artificially intelligence. Chief amongst these concerns include how best to regulate self-driving vehicles and automated aircraft, how to ensure the fairness

[15] *DiFruscia v. The Queen*, 2007 TCC 310.
[16] *DiFruscia*, at para 8.

and non-discriminatory nature of automated programs used in banking, insurance, and the justice system, and examining the privacy issues that co-exist with the advent and use of big data.[17] There are also concerns with who benefits as a result of these technologies.[18] Concerns have been raised that these technologies may exacerbate inequality. Earlier this year, these concerns were highlighted in a prominent report from the United States White House released a report called "Preparing for the Future of Artificial Intelligence."[19]

The second strand focuses on the legal profession. Prominent authors, such as Richard Susskind and Daniel M. Katz, have discussed how improved data analytics will dramatically change the role of lawyers and other professions.[20] Some of this literature expresses grave concern for the future of lawyers,[21] while others take a more optimistic view. Albert Yoon has argued that the cost of legal services will fall for both lawyers and litigants and this will lead to greater access to legal information and, ultimately, democratization of the law.[22]

The third strand of the literature discusses how lawmakers will use the technology to produce better laws. This is a literature to which two of us (Alarie and Niblett) along with Anthony Casey have contributed. Casey and Niblett have argued that regulators will be able to generate more precise laws, tailored to individuals' circumstances and communicated directly to citizens.[23] These laws – called "micro-directives" – update automatically as the circumstances or objectives of the law

---

[17] See, e.g., Ryan Calo, "Robotics and the Lessons of Cyberlaw", 103 *California Law Review* 513 (2015). Also see, more generally, Nick Bostrom, *Superintelligence: Paths, Dangers, Strategies* (2015).

[18] Jerry Kaplan, *Humans Need Not Apply: A Guide to Wealth and Work in the Age of Artificial Intelligence* (2015).

[19] Executive Office of the President, National Science and Technology Council, Committee on Technology, "Preparing for the Future of Artificial Intelligence," (October 2016), available at: https://www.whitehouse.gov/sites/default/files/whitehouse_files-/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf (*White House Report*).

[20] Richard Susskind & Daniel Susskind, *The Future of Professions: How Technology Will Transform the Work of Human* Experts (2015); Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (2013); Daniel Martin Katz, "Quantitative Legal Prediction—Or—How I Learned to Stop Worrying and Start Preparing for the Data-Driven Future of the Legal Services Industry", 62 *Emory Law Journal* 909, 914-915 (2013); Bruce H. Kobayashi & Larry E. Ribstein, "Law's Information Revolution", 53 *Arizona Law Review* 1169 (2011); William Henderson, "A Blueprint for Change", 40 *Pepperdine Law Review* 461 (2013).

[21] Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (2010); Larry E. Ribstein, *The Death of Big Law*, 2010 *Wisconsin Law Review* 749 (2010); and William D. Henderson, "From Big Law to Lean Law", 38S *International Review of Law & Economics* 5 (2013).

[22] Albert Yoon, "The Post-Modern Lawyer: Technology and the Democratization of the Legal Representation", *University of Toronto Law Journal* (2016, forthcoming.)

[23] Anthony J. Casey & Anthony Niblett, "Self-Driving Laws", *University of Toronto Law Journal* (2016, forthcoming); Anthony J. Casey & Anthony Niblett, "The Death of Rules and Standards", *Indiana Law Review* (2017, forthcoming). See also, John O. McGinnis & Steven Wasick, "Law's Algorithm", 66 *Florida Law Review* 991 (2015).

change. Ben Alarie has argued that law is on a path towards a "legal singularity" where the law will eventually be complete, with no genuinely grey areas in the law remaining.[24]

The Blue J Legal project is a specific application of machine learning technology that shines light on the second and third strands of the literature. Consider how technologies like Blue J will lead to reductions in the cost of legal advice. Clients seek to avoid or resolve legal disputes at lowest cost. But high fees may leave most potential customers out of the market. Lawyers spend costly hours scrutinizing materials to give advice and clients receive complex, costly, and often inconclusive guidance. Blue J offers a tantalizing glimpse of how the costs of providing legal advice will fall in the future.

Further, these technologies will change the nature of litigation. In our example case above, Blue J considered the client – a massage therapist – to be an employee. But the litigants in our example disputed the facts. Under either side's version of the facts, Blue J would consider the massage therapist to be an employee. This is a case that should be settled. But the likelihood of settlement, currently, is hindered by suspicion and distrust. These technologies increase the likelihood of settlement, while the likelihood of cases going to court will fall, save perhaps for the most ambiguous, where further legal development will be most valuable. Even where the parties disagree on the facts and the result turns on these facts, the litigants can narrow the dispute to these facts, rather than litigating all potential issues.

The focus in the literature on the effects of technology on the legal services industry is overly narrow. The nature of legal advice will change considerably if regulators, lawmakers, arbitrators, and courts begin to use technologies such as Blue J. In the future, the costs of regulating behaviour will begin to fall.[25] We foresee regulators and lawmakers using this type of predictive and communication technology to inform individuals and corporations of their legal rights and responsibilities in an on-demand basis, accurately, quickly and in a mutually agreeable way. Regulators, such as the Canada Revenue Agency, could use machine-driven algorithms to provide high-quality compliance advice.

This advice would be instantaneous, consistent, and – most importantly – accurate. This state of the world would be Pareto-improving for everyone involved. Taxpayers would incur less time and lower costs in complying with the tax code. The Canada Revenue Agency would foster greater compliance – and confidence – amidst lower costs, allowing it to focus more of its time on more complex or novel

[24] Benjamin Alarie, "The Path of the Law: Toward the Legal Singularity", *University of Toronto Law Journal* (2016, forthcoming).
[25] See, e.g., Casey & Niblett (2017) above note 23.

tax issues. Lawyers and accountants using Blue J will be able to provide more accurate advice to their clients, faster and cheaper, allowing the possibility of helping a greater number of potential clients in the process.

CONCLUSION

Cognitive computing and artificial intelligence are the topic of much discussion in legal circles. There is sometimes confusion about what these terms mean. Indeed, there is no single definition of artificial intelligence.[26] But, in this paper, we have outlined a very specific use of "narrow" artificial intelligence. The descriptor "narrow" here is being used to indicate that our machine learning technology is being used to help solve very specific problems. The machine helps us predict what the law is.

Predicting what courts will actually do is a key component of what lawyers do. But we know that in many fields, formalistic and algorithmic approaches to prediction work better than relying on human judgment and hunches alone. Despite some resistance to change within the legal services industry, we believe that data driven approaches to the law and algorithmic assessments of risk will become commonplace in legal services in the near future.

New machine learning techniques outperform traditional regression approaches to prediction. Algorithms based on these approaches, using big data, can be used to wade through grey areas and provide predictions with greater accuracy. We have presented a specific example here. Here, we used machine learning techniques to answer a question that is a classic grey area of law. Rather than spending hours researching precedents, or relying on imperfect human memory, Blue J can instantly process a new case, compare the facts of the new case to those of past precedents, and locate where in the legal landscape the new case falls.

Predicting the impact and development of new technology can be difficult. As Bill Gates once noted: "We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten."[27] The rise of cognitive computing and machine learning technology presents enormous opportunities for legal academics and practitioners. We are excited to be part of the journey.

---

[26] See Pedro Domingos, *The Master Algorithm: How the Quest for the Ultimate Learning Machine Will Remake Our World* (2015); White House Report, above note 19, at 6-7 for a summary.
[27] Bill Gates, *The Road Ahead* (1996), at 316.

By the Numbers: Build a Data-Informed Marketing Plan and Budget

WRITTEN BY:

Stephanie Everett and Chelsey Lambert

PRESENTERS:
Stephanie Everett: @StephAEverett
Chelsey Lambert: @ChelseyLambert

January 6, 2020

MARKETING BY THE NUMBERS: DATA DRIVEN MARKETING PLANS AND BUDGETS

Too many attorneys are out in the world practicing random acts of marketing.[1] They are networking. They are posting blogs. They are running a Facebook page, a LinkedIn account, and tweeting at every chance. They are speaking and writing. They are going to lunches, and dinners, and networking events. Basically, they are doing lots of things. It is exhausting.

What they are not doing is being intentional with their marketing. They are not planning or being strategic with their most valuable resources (i.e. time and money). They are not thinking about who they are trying to attract and what methods might be most effective to attract and convert them. They are not planning on the front end how much they have to invest each year in their marketing and sales efforts. They are also failing to track their results. They don't know what is working and what's not. As a result, they aren't sure where they should put more effort to get better results.

Smart law firm owners see the advantage to being intentional with their efforts. They clearly identify their business goals and then create sound S.M.A.R.T. marketing goals that are aligned with the business's larger goals. These owners then collect data and monitor the results of their efforts. They don't just rely on their instincts or hunches. They can manage with data and that generates even better results.

The Three Rules of Law Firm Marketing (Courtesy, Traci Ray, Techshow 2019)

1. Marketing is a lifestyle not a project.
    a. Much like those new year's resolutions we make about losing weight, the effort only lasts so long before interest dissipates, and we are back to our old ways. Marketing and business development activities are a non-stop routine of effort and refinement.
2. Using technology is critical to success and measuring ROI.
    a. Without technology, a law firm cannot generate, track, manage or measure the effectiveness of a marketing campaign. Even the simplest excel spreadsheet is a start towards understanding where money in advertising is best spent.
3. Proper training of all staff involved in the sales process is required.
    a. Logos don't sell legal services, people do. The training and ongoing coaching of staff who interact with leads is a mandatory part of every law firm's marketing strategy.

Set Standards. What is your definition of a great pnc / prospect or lead?

A successful law firm knows exactly who they target, where to find them and how much it costs to generate a lead that matches their ideal criteria. Before we dive into where, when and how to generate leads you should understand each of the following.

1. Buyer Persona
2. Cost Per Lead
3. Cost Per Appointment
4. Cost Per Retain (Also known as cost of acquisition)

Step 1: Identify Your Goals

[1] Shout out to Allison Shields who coined this term on Episode #48 "Random Acts of Marketing: Allison Shields and the 2019 ABA Marketing Survey" of Clienting with Kelly Street and Gyi Tsakalakis originally airing December 23, 2019.

What do you want your business to achieve now and in the future? We may sound like a broken record by now, but you have to start with your goals. You need to clarify what you want your business to accomplish in the 3-5 years and during the next 12 months.

Do you want to grow brand awareness? Are you trying to expand your market share? Is your goal to enter a new market? Maybe you'd like to raise more revenue? If so, by how much? 5%? 10%? 20%? Are you trying to increase your profits or your profit rate (the percentage of your income that is profit)?

For the goal-setting-adverse crowd, this next bit is for you. The research continues to show us that companies and teams who set goals are more likely to see success and achieve those goals. According to research by Coschedule, "marketers who set goals are 376% more likely to report success than those who don't. And 70% of those successful, goal-setting marketers achieve them."[2] So it is absolutely worth going through the goal setting process for your business. As you'll see in a minute, the answers to these questions matter because they will drive the major decisions you make about your firm's budget.

In addition to general business goals, it is a good idea to nail down your specific marketing goals for the year as well. Do you want to attract more potential clients to your firm? Improve your conversion rates? Or are you trying to drive more traffic to your firm through paid ads? It's always best to set S.M.A.R.T. goals. Make sure that each goal is specific, measurable, attainable, relevant, and time-bound. A quick check is to ask yourself "do I know what must happen and by when for this goal to be achieved?" "Is it a bit of a stretch, but not so big I'll never reach it?" Great! You're on the right track.

Step 2: Create a Marketing Plan

Your marketing plan should identify who you are targeting and how you intend to attract them to your firm and convert them into clients. If you are clear about who you are trying to attract, it should be straightforward to decide what activities might get their attention. There are many off-line and on-line strategies you can use for your firm. Some include:

- Social media engagement or paid social media ads
- Blogging
- Writing articles
- Hosting or appearing on a podcast
- Webinars
- Speaking and teaching
- Publishing a newsletter
- Traditional advertising like print ads, TV, radio, or billboards
- Event sponsorship

[2] https://coschedule.com/marketing-strategy/marketing-goals/

- In-person networking

Your marketing plan should map out which activities you will do throughout the year and the expected result from each activity. Ideally, you will have a S.M.A.R.T. goal for each marketing activity you engage in during the year.

3. Create Your Marketing Budgeting

Do you have a marketing budget for your law firm?

That answer was a resounding "no" for 47% of respondents to the 2019 ABA Marketing Survey. It is hard to imagine that these firm's lack of marketing budgets means they are not out marketing their services. The more likely story is that they are just out doing those random acts of marketing and not planning or being intentional.

Obviously, random marketing acts is not a very strategic way to run your practice and is a great way to ensure you fail to hit those amazing S.M.A.R.T. marketing goals you just created for yourself. While you don't have to plan out every penny you will spend in the next year marketing your firm, it is valuable to have marketing dollars set aside and a general sense of where you'll spend it. We'll show you how.

The first step is to determine how much you intend to spend on your marketing activities in the coming year. While the amounts vary, a small business will typically spend 2-4% of their total income each year on marketing activities (not associated with the salaries of the team members who are executing on those activities). Firms looking to see significant growth may budget as much as 10% of their anticipated revenue towards their marketing activities. Start with a number that feels comfortable to you.

Next, check in to see if your budget is in line with your overall business and marketing goals. For example, if you set a marketing goal to increase the amount of engagements you handle this year by 10%, but your current marketing budget only allows for you to buy new business cards, your budget and goals are probably not aligned. If you want to see significant growth for your firm, you'll probably need to be prepared to invest more into your marketing budget (or get real creative with your marketing plan).

Once you have an overall budget set, you can start allocating amounts to the different marketing activities you plan to execute during the year. For example, if you know you will conduct five monthly networking lunches, run Facebook ads, and buy a half-page ad in your local town magazine, you can now start allocating how much of the overall budget will be spent on each specific activity.

Don't Forget Your Time

Your time is a valuable resource. In fact, it may be your most valuable resource. You need to make sure you are accounting for your time and your team's time spent marketing your firm and spend it wisely.

Take the list of marketing activities you scoped out and ask how much time it will take you or other team members to execute the activity. Going through this exercise will help you determine your cost to acquire a client (more on that in a minute).

Allocating time to each activity helps you determine if you have the appropriate resources in-house to execute your plan or whether you'll need outside help. For example, if your plan calls for new content each week and you know it takes you 4 hours to produce the content, you can now ask yourself whether you have 4 hours each and every week to devote to creating that content. If the answer is "no", you can make adjustments on the front end and plan a better solution. Too many lawyers set lofty goals and then just feel

bad and judge themselves later when they fail to reach them instead of realizing it was an unrealistic expectation from the start.

Your initial marketing budget might look something like this:

Marketing Activity:	SMART GOAL:	Hard Costs:	Time x Rate:	Total Costs/Activity:
Facebook Ad	Increase number of potential clients contacting firm by 5% in next quarter through targeted Facebook ads	$1,000/mo	1 hr x $250	$1,000 costs + $250 in time
Write blog	Increase blog traffic by 8% in the next six months by increasing frequency we publish blogs from monthly to weekly	$0.00	4 hrs x $250	$1,000/week in time

Metrics That Matter

With a marketing plan and budget in place, it is time to start executing on your plan. If one aspect of your marketing plan is working and bringing in great clients with high-value cases, it only makes sense that you'll want to put more funds into that effort to see even greater returns.

Unfortunately, many attorneys are not monitoring or measuring the impact of their marketing activities and therefore lack the data they need to make sound decisions. The results reported in the 2019 ABA Marketing Survey are telling. Only 38% of respondents say they have access to analytics or reports to monitor the effectiveness of their website or blog. 41% reported not having this access and 21% did not know if they had access to this information.[3] When asked if attorneys were receiving this information from the outside marketing agencies they hired, the results did not improve. In fact, only 17% of respondents indicated that they work with an external agency who provides regular reports on marketing performance. Another 11% reported using external agencies but not receiving regular reports.[4]

Key Performance Indicators (KPIs) help you quantify your marketing efforts and give you the information you need to make good decisions in the future. This is the data that tells you how you are doing vis-a-vis your goals. You can have KPIs that measure all your marketing activity generally or KPIs that tell you specifics about the different campaigns or tactics you are using. In the end, it all boils down to collecting the right data, analyzing the data, and then making adjustments based on the information you glean from the data you collect.

[3] 2019 ABA Marketing Survey

[4] 2019 ABA Marketing Survey

Let's break down some of the key marketing KPIs.

Lead

Many companies define any person or business that may eventually become a client as a lead or potential new client. This could be anyone.

Qualified Lead

Many companies will distinguish qualified leads from leads (these are sometimes referred to as sales qualified leads or SQL). Each firm can create their own definition or criteria for when it will consider someone a qualified lead. For many companies, the criteria includes whether the person has done something to express interest in your services (completed a form on your website, called your office to inquire about services, etc.).

Cost Per Lead (CPL)

This is the amount you are spending to acquire a new lead. Assume your firm spends $1,000 on a pay-per-click (PPC) campaign and 10 users convert to leads:

Cost per lead = $1,000/10 = $100

Your ultimate goal is to minimize your cost per lead. Campaigns that have low costs per lead and generate a high volume of quality leads is considered successful. Also, the amount of money you are willing to spend on a lead may vary depending on the lifetime value of your client. If you have a low-fee high volume business, you may not be willing to spend the same amount on a lead as a firm that provides very high-end services.

Client Lifetime Value

This calculation helps you determine the value of adding a client to your firm. This metric attempts to quantify how much revenue every new client will bring into the company throughout its lifetime.

Consumption Metrics

These metrics track specifically how people interact with different type of content. For example:

Page Views. This number tells you the total number of pages viewed by individuals who visited your website. This allows you to see which pages are getting the highest and lowest amount of traffic. You might adjust your content strategy depending on which pages are more popular.

Clicks. This tells you how many people are clicking through links in your emails and ads to your website. If you have a high click-through rate, then your audience is responding to your content and finding relevant.

Email Open Rates. You'll want to know how many people on your email list are viewing the emails you send them. The current average open rate for emails from the legal industry is 22%.[5] If you find that less than 22% of your email subscribers are opening your emails, you might want to adjust your email strategy.

Downloads. If you offer a free resource on your website (an white paper, ebook, or how to guide), you'll want to track how many people are downloading the resource. If this number is low, you can consider

[5] Mailchimp.com/resources/email-marketing-benchmarks/ (updated October 2019).

reviewing the copy describing the content or even changing the resource to make it more appealing to your audience.

Conversion Rate

The conversion rate is the percentage of people who take a desired action or interact with pieces of your marketing activities. For many marketing activities, you might have multiple conversion rates that you are calculating.

For example, you may track how many visitors land on your firm's landing page and sign up for your email newsletter. If 100 people visit your website and 10 of those request your email newsletter, your landing page has a conversion rate of 10%. In essence, your landing page is 10% effective.

If you then send your email newsletter out to 1,000 people offering your new service and 50 clicked through to sign up to take advantage of your offering, your conversion rate on that email was 5%.

You'll also want to track your conversion rates for how many qualified leads contact your firm and how many ultimately engage you to represent them. Tracking conversation rates for each step of the process allows you to see which parts of your process are most effective and where you might need to pay more attention. If you have very few qualified leads calling you, but you do a great job of signing them up when they do call, you have a marketing problem. If you have a high volume of calls coming in, but not many people are actually engaging with your firm, then you have a sales problem. Understanding where the issues are lets you adequately address them.

At a minimum, consider tracking the following:

- Potential calls/contacts to the firm
- Number of consultations booked
- Number of consultations held
- Number of engagement letters signed

Client Acquisition Cost

This is determined by diving the total costs spent on the marketing activity by the number of new clients acquired during the period the money was spent.

For example, if a firm spent $1,000 in a year on its marketing activities and acquired 100 new clients, its client acquisition costs is $10.

Ideally, you'll want to keep this number as low as possible. If you are just staring out, aim to keep this at a 3:1 value-to-cost ration. In other words, make sure that the cost to acquire a new client is at most about 33% of the total lifetime value you expect to generate from this client.

Key Considerations for Marketing KPIs

Now that you have a basic understanding of some key metrics, its important to remember these key considerations.

Don't Get Number Crazy

First, don't go overboard or get yourself lost in the numbers. If you are new to the world of KPIs, it can be a little like taking a kid into the candy store. It is exciting and all of a sudden, you want to track all the numbers and have all the information at your fingertips. That is great, but it takes time and the key to to consistently track the data and use it for future decision making.

Pick the few key numbers that really matter for your marketing activity and start there. You can always add more later. The key is to just get started collecting the data.

Yes, Your Time Counts

Too many attorneys think they are not spending any money on marketing activities because all they are doing is going to lunch with referral sources or attending networking activities. Your time is a valuable resource and should be part of your client acquisition costs.

Doing so will help you get an accurate picture of the cost to acquire a client and will be essential when you are making decisions about your marketing plans in the future. For example, you might assume that writing your weekly blog costs you nothing, but a closer look reveals the true costs:

Marketing Activity:	**Hard Costs:**	**Time x Rate:**	**Total Costs/Activity:**
Writing blog post 1/week	$0.00	4 hours x $250	$1,000

Even if you do have 4 free hours each week to write content, you should consider if this is the highest and best use of your resources. If your hourly rate is $250/hour, is the weekly content worth $1,000? Could you outsource the content for $500 and spend 30 minutes editing it for a total investment of $650?

Marketing Activity:	Hard Costs:	Time x Rate:	Total Costs/Activity:
Writing blog post 1/week (outsourced to 3rd party contractor)	$500	.6 x $250	$650

Completing this analysis for each marketing activity you do will help you evaluate your marketing activities more accurately.

Use the Metrics to Make Decisions

Don't just review the numbers. The key is to use them to experiment, test, and make smart decisions about your marketing. Suzie is an estate planning attorney. She is a member of two busy networking groups and makes it a point to have lunch with a colleague/potential referral source at least twice a week. This is her only source of marketing. Last year, she generated 200 clients with an average case value of $2,500. She doesn't know why anyone would pay to advertise.

Let's take a closer look at her true marketing expenses.

Her first networking group meets for 3 hours each week and has a mandatory attendance policy. Her other organization has numerous functions each week and she is an active member of several committees. She estimates that she spends another 3 hours a week with this organization. She goes to lunch at least twice each week for networking purposes. Each lunch easily takes her two hours by the time she factors in travel and parking.

Weekly Time:

Organization 1 = 3 hours

Organization 2 = 3 hours

2 lunches = 4 hours

Total Weekly Time Spend Networking = 10 hours

Assuming an hourly rate of $250 and she is now spending $10,000 a month on marketing activities in time alone. Suzie is spending over $120,000 a year to generate $500,000.

Let's break it down even more. When we do, we learn that Suzie generates 5 clients a month from Organization 1.

Suzie is spending $3,000 a month in Organization 1 to generate 5 clients worth $12,500.

Suzie decides to cut out Organization 1 and instead dedicated $100 a week to a Facebook campaign that leads to her evergreen webinar and then to a consultation. Suzie spends 5 hours setting up the campaign and recording the webinar and runs it for 3 months. During that time, it generates 20 new clients. How did she do?

5 Hours Creating Campaign x 250 = $1,250

Facebook ad = $100/week for a total of $1,200

Total Marketing Investment = $2,450

20 New Clients x $2,500 Lifetime value = $50,000

If you were advising Suzie, where do tell her to put her marketing dollars? By paying attention to the numbers that matter, Suzie can make more informed decisions about her marketing activities.

How did you find me?

The easiest data point to is to ask every lead that connects with your firm how they found you. It seems so easy and yet so many people fail to collect this information consistently. A simple way to start is to make sure this question is part of your intake script and asked of every new person who contacts the firm. For now, a simple spreadsheet tracking the potential client's name and the source is valuable.

Tools to Help You Get Started

There are various technology tools that you can use to collect your marketing KPIs.

Google Analytics is a must if you have a website (and you should have a website). Google Analytics will allow you to see how many people are visiting your site, where the traffic is coming from and which pages are most popular. You'll also see your bounce rate which will tell you how engaging your content is.

Client Relationship Management (CRM) tools like Lawmatics, Clio Grow, Intake Matters, Lead Docket, Captorra, and Law Ruler manage intake and automate contact follow up to ensure no prospects are left behind.

Email Marketing tools such as Mailchimp, and Hubspot will track email open rates, conversion rates for call-to-action buttons, and where your leads are coming from.

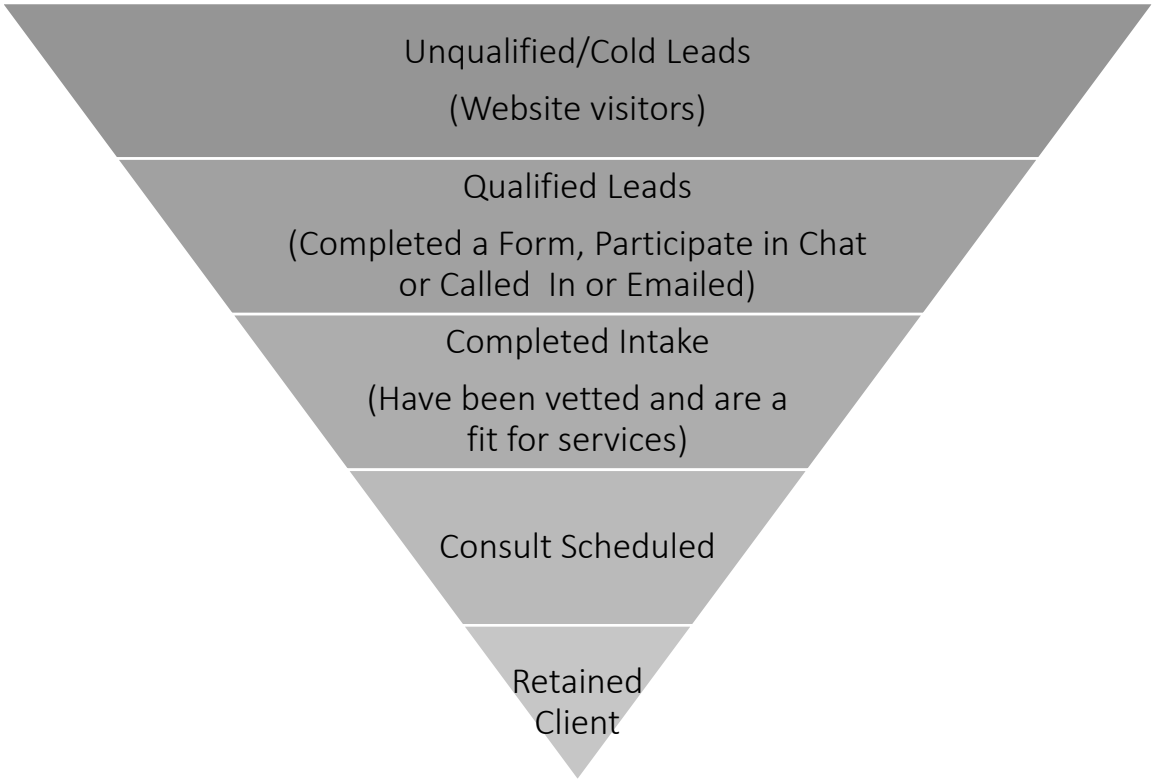
Social Media Platforms like Facebook, Twitter, Instagram and LinkedIn all have their own reporting data built in. For example, Facebook Page Insights will tell you when your followers are most active so you can post at the right time, who views your posts, where they live and which buttons they click on.

Tools like SEMRush help you find profitable keywords and see your current and past Google search rankings, and give you a ton of valuable data related to your online content marketing strategy.

As you start running more sophisticated campaigns, you can use call tracking numbers and preassigned URLs to tell you exactly which ad or effort they saw so you don't have to rely on the client. For example, services like CallRail, WhatConverts, or CallTrack allow you to tie every call or text to your firm to a specific campaign. Website visitor tracking software allows you to see data such as company name and contact information for people who visit your website.

Sample Law Firm Conversion Funnel and Worksheet

Sales terms, metrics and ideology are not often discussed, the following visuals and exercises are designed to measure where your law firm stands today. Then, provide you with a formula that you can use to 'multiply' your cash flow by increasing the volume of potential new clients, conversion rate or both.



CONVERSION METRICS	COST AND REVENUE	MARKETING COA & ROI
_____ VISITORS	_____ MONTHLY SPEND	_____VISITOR
_____ LEADS		_____LEAD
_____ OPPORTUNITIES		_____OPPORTUNITY
_____ CONSULTATIONS		_____CONSULTATION
_____ RETAINED CLIENTS	_____ CASE VALUE	_____CLIENT

SUPPORTING ARTICLES:

Measure Twice, Cut Once by Catherine Sanders Reach

Do you blog? Have a social media presence on LinkedIn for professional purposes? Post videos to YouTube? Does your firm have a Facebook page or Twitter account? How about an email newsletter? If you do any of these potentially rewarding but time-consuming activities it is imperative to measure your reach so that you learn from your successes and craft messaging effectively for maximum impact.

YouTube

Go to https://studio.youtube.com/, login, and on the left panel click "Analytics". You can get an overview including top videos, overall performance, and number of subscribers. Remember that the default analytics report is the last 28 days so change that in the upper right to get more information. In the main overview, you can drill down by clicking "See More" in a section like "Top Videos". In addition to showing you at-a-glance stats on your best performing videos, you can drill down to how long someone watched a video. If viewers consistently don't watch the entire video it could be too long. You can also understand how people find your videos (traffic sources), and demographics of your audience by age, fender, and geography. You can also see what device they are watching on – smartphones, tablets, or computers. Depending on whether you add cards, translations, and other screen elements you can get intel on those too. Each chart can be filtered, customized, and downloaded as a .csv (or Google Sheet) for further analysis.

If you only want to see analytics for a certain video go to "Videos" in the left panel, mouse over the video you are interested in and click on the Analytics button that appears.

LinkedIn

If you have a free LinkedIn account, there are two main ways to test for impact – how people interact with your profile and how they interact with the content you share (posts or articles).

To see analytics for your profile, go into your profile page (click on the "Me" button on the upper right) and choose "View Profile". On your profile page, you can click on the number of connections to see how many people you have connected with on LinkedIn. Going back to the profile page, scroll down to view Your Dashboard. Unless you pay for a premium LinkedIn account the information will be limited to the last 90 days and will reveal little other than how many people viewed your profile and decline/increase over that period. You can also see how many times you appeared in search in the last 90 days and where your searchers work, what they do and what keywords they used.

If you are posting, adding articles and interacting with other people's posts/articles you can click on "Me" again in the upper right and choose Manage – Posts and Activities. You can see on the left how many followers you have. On the right, you can view all activity or filter by "articles", "posts" and "documents". For each interaction, you can see how many people liked your post or commented on it. You can also see your reactions (likes, comments) to posts by other people. Filter by "Posts" and for each post, you have made you can see how many views you got, as well as reactions (like, curious, congratulations, etc.) and comments. You can drill into any of these to see metrics about who viewed your posts by place of business, title, and geography. Are you reaching your intended audience?

Twitter

To measure your Twitter performance, you will want to know how many times you've tweeted, how many followers you have and how many people interact ("like" or retweet or respond) with your tweets. Fortunately, Twitter has a whole site devoted to helping you see your Twitter performance at https://analytics.twitter.com/. There you can get a 28-day summary report showing the percentage change over the previous period and your performance for the month, such as "Top Tweets" "Top Mentions" "Top Followers" and "Top media Tweet". Keep scrolling down the page to see your previous monthly highlights and summary (tweet impressions and new followers).

If you need to know the demographics of your Twitter followers click on "Audiences" at the top of the page. You can get a whole lot of insight on your followers including their interests, demographics, lifestyle and consumer behaviors. To get even more detailed demographics, including the geographic location of your followers, you can use the freemium product like Tweetsmap (be aware, in exchange for using the free product you will be prompted to tweet about your use of Tweetsmap).

Facebook

Like Twitter, Facebook provides a separate site for your page's analytics at https://analytics.facebook.com/. This free tool lets you view an overview that defaults to the last 28 days. From the primary dashboard, you can customize your report by time period, audience and even add more filters. You can create custom dashboards. You can view reports on users, retention, cohorts, journeys, events and more on your Page activity. Scroll down and select "People" to view the demographics of your visitors.

The landing page is not the usual yada yada. The Facebook Analytics features page explains what all of these measurement elements mean. For instance, a cohort report can measure the percentage of people who take specific actions like view a page and register for an event and then measure it over time. There is also a help center to get started and a blog for news, ideas, and insights.

Mailchimp

Popular email campaign tools like Mailchimp and Constant Contact provide tons of metrics to measure the success of your email marketing campaigns and newsletters. In Mailchimp, you can view Campaigns, Audience Insights, and Reports. In Audience for different mailing lists you can see how people subscribe, the date they were added and if they unsubscribed (and why). In Campaigns, you can see performance across your campaign emails, including opens and click-throughs compared to the industry average. In the Campaigns tab, you can drill into reports for a campaign to see not only the click rate but what was clicked on by percentage or a "heat map" of which links attracted clicks in the flow of the text.

Websites and Google Analytics

If you are using WordPress.com, Wix.com, Weebly, Squarespace or another website platform you get simple analytics that will show views, visitors, search terms, referring traffic, etc. If you are using a host for WordPress, such as BlueHost, WPEngine, HostGator, etc. you will need to either add code for Google Analytics or use a plugin to help you. Google Analytics is free, but it is complicated and besides understanding very simple measurements it requires some study.

Social Media Management Dashboards

Tools like Hootsuite, Sprout Social, Buffer, and SocialOomph help you read and interact with multiple social channels and schedule posts. They also measure analytics for all your activities in one place. Analytics generally do not come with the free plans for social media dashboards and may need supplementation with those built into the platforms. However, features like having reports sent to your inbox on a weekly schedule will go a long way to reminding you to take your performance into consideration to improve your social activity.

Conclusion

Once you have a sense of what types of analytics you can get then you can figure out what is most meaningful to you and create goals. Is your goal to get more followers? Get more views? Have more people watch your videos all the way through? What can you learn from the analytics, combined with marketing best practices that get you to those goals? For instance, following people on Twitter generally results in more followers. Creating shorter serial videos have more watches and get more subscribers to your YouTube channel than a single lengthy video. Hosting events and using polls engage your audience. Blog posts written following Bob Ambrogi's excellent tips will get more views. Understand how analytics can impact the big picture and change your strategy to get the most ROI out of your efforts!

The Low Down on Pay Per Lead Offerings, A View from The Inside by Chelsey Lambert

Disclaimer: The following is based from my experiences as a business owner, and as a former lead gen employee / spokesperson. Policies, rates and lead processing vary by provider and often change. Contact the organization directly for specific delivery details and pricing.

Overall the consumer marketplace, retail and B2B sales efforts are familiar with the act of 'purchasing leads.' Either you generate them on your own, or you use a service to bring them to you. Whether that's the location of your office, local ads, networking, referrals, Avvo or another avenue, it is seen as a cost of doing business.

In my own 'off the record' opinion, lawyers have been trained to get business through word of mouth, referrals, and in general being a good, or well-known lawyer in their community, industry or business circle. That landscape has changed. Now it's hard to get seen, build a great website, and market yourself in 20 different places. While paying per click, or a daily fee to do so.

Enter lead generation.

Taking the marketing work out of it, and delivering just the contacts, leaving the business owner to do the work. Therein lies the problem for lawyers.

Lead generation is often miss-sold as a turnkey, magical fountain of clients running through your door. When if 1 out of every 10 or even 20 leads you purchase turns into a client. Why? Because online lead generation is a different animal, and it's a beast. You have got to be serious and ready to respond on a dime. The mentality of a consumer searching on the internet is different than any other type of lead. We provided extensive coaching and training to our clients, and some made their money back hand over fist. Others would wait until the end of the month, pull their list of leads and send them an email… wondering… why hasn't anyone hired me?! Any then… why do I have to pay?

Which regardless of whether a contact turns into a case, you have to pay for the lead. Non-law firms offering lead generation services are not allowed to exercise discretion beyond Fake name, bad phone numbers, or fraudulent contacts. So, when you get a bill for 100 contacts billed at $75 each, know you're on the hook for it.

Overall remember this:

1. ROI from a lead gen service typically takes about 90 days. Most providers will require a commitment of at least that to prove their value.
2. The mentality of an internet lead is different than a referral or walk in. They are answer hunting and require a different approach. Calling within 5 minutes of receipt is key, also being able to sell over the phone is a must.
3. Tracking is critical, there's no way to know if you're getting value, and what's worth paying for if you don't keep track of the leads, and more importantly what happens after you get them. The law firm needs to have a solid intake process and follow up person, especially in competitive practice areas.
4. In order to 'dispute' or ask for credit for services or leads you will need to have detail on why or a tracking report to fight the charges.
5. Be ready to spend, these services are not cheap, and don't really ever offer discounts.

Is there a difference between lead generators?

For example, LegalZoom, Martindale, Nolo, Total Attorneys and others – are they all essentially doing the same thing or are there qualitative differences in their models?

All are essentially doing the same thing. Differences include:
The quality of the websites the consumer is being directed to (educational, or just a capture?)

The follow up process after the lead is submitted (Do they have a call center, or is it a cold form handoff)

Pricing and distribution processes are varied, quality is probably about the same. Many of the providers are also selling to each other to supplement areas they don't have enough traffic for or have overflow they need to sell.

How to know if lead gen is right for your law practice?
Here's a quick assessment to run through to determine your level of comfort with pay per lead services. For both you, and the lead providers you are considering.

Ask the provider:

How long after the client fills out the form will I receive it?
Online shoppers are impatient. If we won't wait for a page to load, do you think we will wait for you to call us? No, we'll click away until our phone rings or a chat session opens. If those don't work and we've got time it might be another week or month before I spend time searching again.

How many people are getting the same information?
And when. Some websites may sell the same contact information to multiple law firms. If you're going to run a 100-yard dash, wouldn't it be nice to know if you're alone or one of ten?

Are you quoting fees, or free consultations on the site?
What is the expectation of the consumer? Think about how upset you are when you feel you've been misled. It's difficult to start a relationship off on the right foot after that.

Ask Yourself:

Are you ready to give these contacts priority in your office?
Time is of the essence. An internet lead is very different from a referral or walk in prospect. There are hundreds of websites that offer legal help / advice to consumers, who are also paying Google big bucks to be seen. So, when you don't call them immediately after receiving the form, or worse Don't Answer Your Phone?! your chances of converting that contact into a client decrease dramatically.

Do you have tools in place to send out regular communication?
You're not going to turn every contact into a client.

If you are comfortable with a 5-15% conversion rate on your investment.
I know this sounds ridiculous but it's the truth. Preparing yourself for months that may not perform as well as other, leaving much to be desired after seeing your bill is part of the game. The internet may be wonderful, but like a high maintenance housewife... gets expensive.

Now, after all of that if you're ready to take lead gen for a test drive. Jump in the driver's seat!

I recommend starting with two providers at a small budget for each. And, most importantly, have a system in place before the leads start arriving. Such as a virtual receptionist service, CRM software, and a solid intake process with tracking at every level of the process.

Then, after a month or two, you'll be able to see in your data which lead source is producing the right type of clients at the right price.

Mistaken Identity! The Difference between CRM and Practice Management by Chelsey Lambert

You may not know this, but my background includes quite a bit of sales experience. When speaking to attorneys about technology, I often hear. “What’s a CRM, isn’t that what a case management system does?”

To which I reply, “No, not really.” A vague answer for a vague question.

The following article is aimed to shed light on a very confusing gray area of functions when shopping for a case or practice management system. First you must understand what each tool was built to accomplish. To do this, let’s focus on the two distinct areas of a law firm.

Front of the house, and back of the house.

Front of the house is where all pre-client or prospect interaction occurs. Answering the phones, client intake, and retention. Back of the house is where the delivery of the actual services, and payment occurs.
A CRM (Customer Relationship Management) system is designed to support the front of the house sales process, while traditional case management features are built to help track, streamline and execute the back of the house processes. Herein lies the confusion. Think about the ‘statuses’ or names you would use to describe a contact during the time-frame when they are working with your front of the house team. A standard set of contact names, life-cycle stages are:

- Lead
- Prospect
- Potential New Client
- Opportunity
- Won
- Lost
- Not a fit
- Client

Now, let’s assume that you close that client and they retain your services. At that time, they become a back of the house contact or client. You will also need to associate other contacts with them related to their matter. Including but not limited to:

- Party
- Spouse
- Judge
- Mediator
- Expert Witness
- Child Custody Evaluator
- Insurance Adjuster
- Defendant
- Plaintiff

There may be several more depending on your area of law, or case type. As you can see, the two lists are very different. Because, until recently, the general population of lawyers have not had to monitor marketing efforts in a laser focused manner. Now, the marketing and business development aspects of running a law firm have changed. It is critical that law firms track and manage their leads. Which requires the use of tags, life-cycle stages, or a CRM tool dedicated to just that function of the business.

Case Management software platforms, particularly those in the cloud have done some work in this area. Most provide users the ability to tag or identify that a contact is not yet a client. However, the real feature gap lies in the management of that specific group of contacts. So much can be learned about where your law firm clients are coming from simply by utilizing CRM features.

When law firm staff tracks the stages of a lead in the initial intake and appointment process those actions can translate into thousands of dollars in new business, or saved marketing expenses for the law firm. How? By running a report or filtering contacts by status you can quickly project how many potential new cases you can expect. On the flip-side, you can also gauge which marketing sources are producing the most viable potential new clients.

But… these tools only work if they become part of your process. Which means, either taking the time to learn how to use tags, custom fields, or prospect level features in your existing software, or invest in a CRM dedicated to business development portion of your business.

So, why would I invest the time and money in CRM features?

Here are just a few ways CRM features when properly used can make your law firm more money:
You will know what your highest producing marketing sources are. Increase spend in these areas to watch the cost of acquiring a new client drop, while top line revenue grows.

The ability to go back to clients who did not retain you when you first spoke. This is an untapped area of revenue for so many law firms! Consumers can take up to one year to retain an attorney. Where did they go after speaking with your law firm? All contacts with a CRM stage of lost opportunity, or tag such as “not ready yet” can be filtered and called upon during staff downtime.

Targeted marketing. A CRM tool also has built in communication methods to send mass messages to contacts in a status. Let’s say they spoke to you when they weren’t ready. You can segment those leads and send them a follow up campaign, or helpful video. List segmentation can increase law firm conversion rates much faster than sending those leads the same newsletter that the rest of your list receives. Use segmentation and life-cycle stages to tailor a message that is specific to that group.

Focus intake and associates time on the leads that matter most. Instead of throwing a net into the ocean and filtering out the type of fish you want use CRM tools to identify the leads that have the most potential in retaining you.

Master and automate the intake process. A CRM is designed to help you generate leads. A case management system is designed to help you execute the work that the leads are paying you for. Leverage the automation process between your website, eBook and intake staff. Use tools that share forms, send template emails and e-sign ready retainer agreements to get them past the finish line as fast as you can. Then, spend the time you saved delivering an amazing client experience.

A true CRM is meant to be a sales powerhouse. The same thought process you use to set deadlines, reminders and automate tasks with a case management system, should be used for your leads too. While you won’t receive a complaint from the clerk’s office for filing a document past the due date your bank account will show the stress of one less client retainer payment being deposited.

I’ll be profiling some ways you can master the lead conversion and intake process in future posts. Consider this your ‘Intro to CRM and Lead Conversion’ 101 course!

TECHSHOW2020

Free Lunch: Market Your Practice Online for (Almost) Free

WRITTEN BY:

Gyi Tsakalakis

PRESENTERS:

Gyi Tsakalakis: @gyitsakalakis

Joy Hawkins: @joyannehawkins

February 6, 2020

1. Google My Business
    a. Info
    b. Reviews
    c. Posts
    d. Questions & Answers
    e. Images
    f. Videos
2. Websites
    a. Hosting
    b. Content Management Systems
    c. Mobile-First
3. Local SEO
    a. RDP
    b. Local Link Building
4. Facebook
    a. Profiles
    b. Business Pages
    c. Groups
    d. Contests
5. LinkedIn
    a. Profiles
    b. Groups
    c. Publishing
    d. Recommendations
6. Instagram
    a. What works best?
    b. Hashtags
    c. Business Pages
7. Twitter
    a. What works best?
8. Directories
    a. How to Choose
    b. What to Include
    c. How to Measure Performance
9. Content Marketing
    a. Downloads
10. Email Marketing
    a. CRM
    b. Automations
11. Publishing

    a. Guest Posts
    b. HARO
12. YouTube
    a. Channels
    b. How to Create
    c. Captions / Transcripts

TECHSHOW2020

Power Tools: Boost Your Marketing with Online Ads, Tools, and Experts

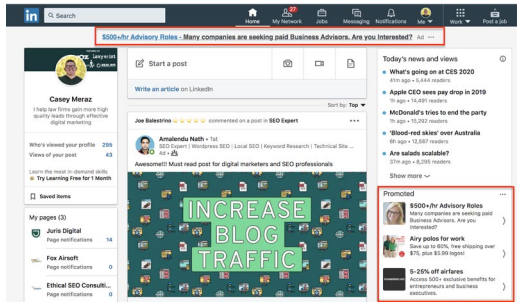
Casey Meraz

There are many places to invest in paid advertising

facebook Advertising

YouTube

Google Ads



reddit

But Before You Invest, Know Your Goals

Beating your competitors

Most Visibility

Make more money / sign more cases

Biggest Problems with Social Advertising

- No strategy with clearly defined goals and KPI’s
- Patience
- Lack of Testing
- Speed
- Budget Control
- Poor Tracking (Know your OWN data)
- Be careful of shiny objects

Data is the most important piece

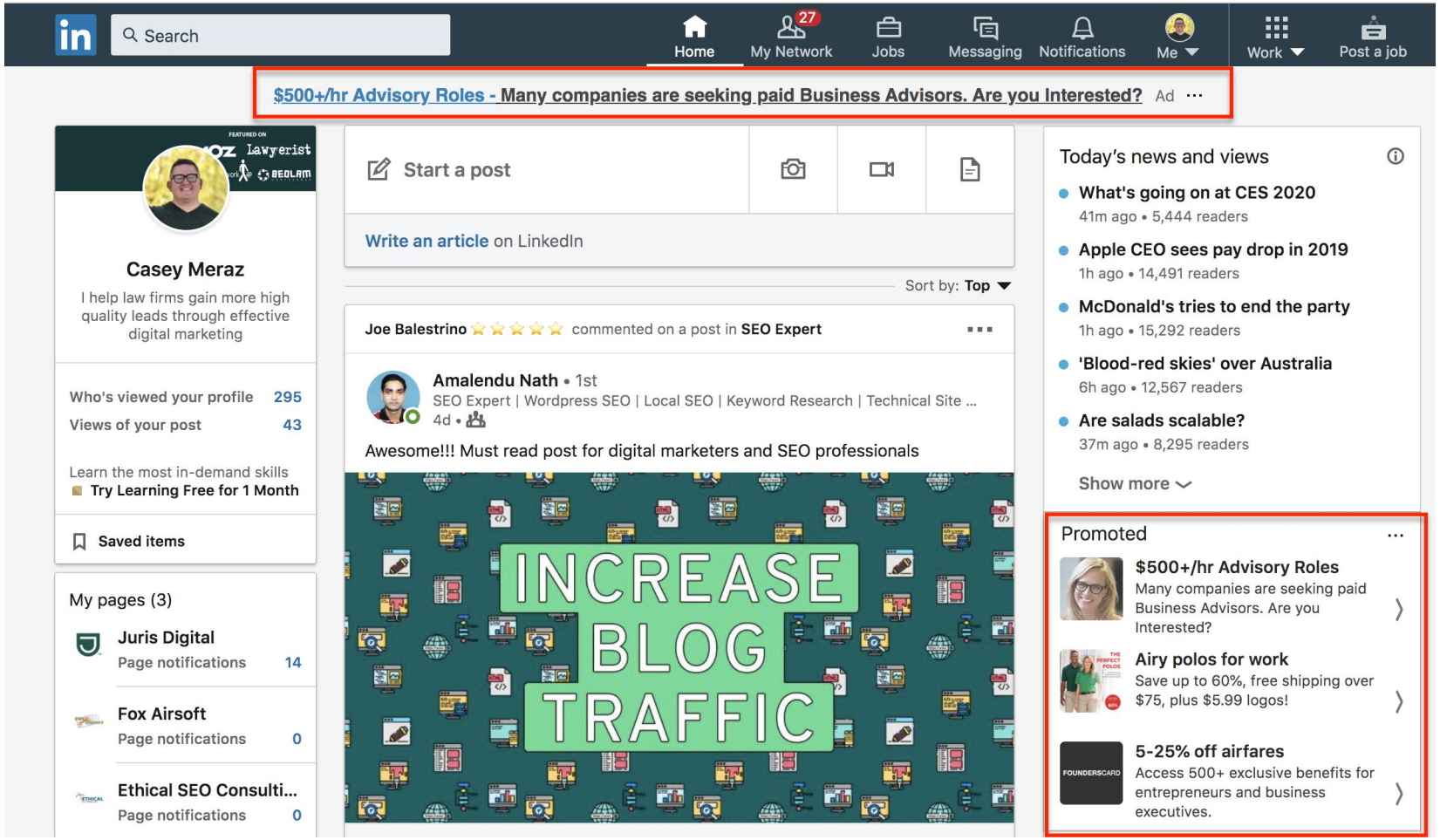
- You need to spend money where it helps YOUR FIRM + STRATEGY the most

The Strategies will differ

- Depends on your type of firm and the customers you're looking to acquire.

- Channels
  - Google Ads
  - Twitter
  - LinkedIn
  - Facebook Ads

LinkedIn


Search
Home
My Network
27
Jobs
Messaging
Notifications
Me
Work
Post a job
$500+/hr Advisory Roles - Many companies are seeking paid Business Advisors. Are you Interested?
Ad
Casey Meraz
I help law firms gain more high quality leads through effective digital marketing
Who's viewed your profile 295
Views of your post 43
Learn the most in-demand skills
Try Learning Free for 1 Month
Saved items
My pages (3)
Juris Digital
Page notifications 14
Fox Airsoft
Page notifications 0
Ethical SEO Consulti...
Page notifications 0
Start a post
Write an article on LinkedIn
Sort by: Top
Joe Balestrino commented on a post in SEO Expert
Amalendu Nath • 1st
SEO Expert | Wordpress SEO | Local SEO | Keyword Research | Technical Site ...
4d •
Awesome!!! Must read post for digital marketers and SEO professionals
INCREASE
BLOG
TRAFFIC
Today's news and views
What's going on at CES 2020
41m ago • 5,444 readers
Apple CEO sees pay drop in 2019
1h ago • 14,491 readers
McDonald's tries to end the party
1h ago • 15,292 readers
'Blood-red skies' over Australia
6h ago • 12,567 readers
Are salads scalable?
37m ago • 8,295 readers
Show more
Promoted
$500+/hr Advisory Roles
Many companies are seeking paid Business Advisors. Are you Interested?
Airy polos for work
Save up to 60%, free shipping over $75, plus $5.99 logos!
5-25% off airfares
Access 500+ exclusive benefits for entrepreneurs and business executives.

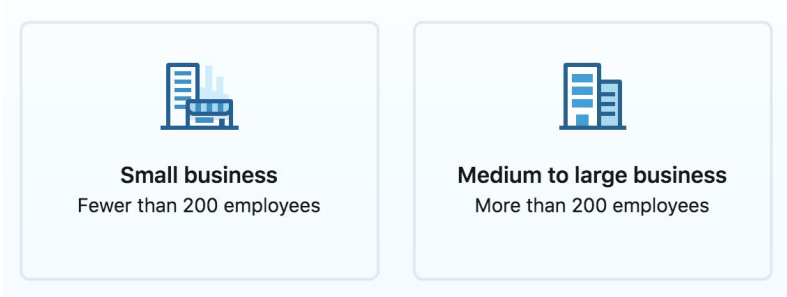
LinkedIn: Claim Your Page!

1. Add and confirm an email address that you use at your law firm. Example: (Joe@YourLawFirm.com)

2. List your CURRENT POSITION with your law firm on your profile. You must select a company name that appears in the list

3. On the Listing Page you'd like to claim, click the Menu icon and select Claim this page from the dropdown that appears.

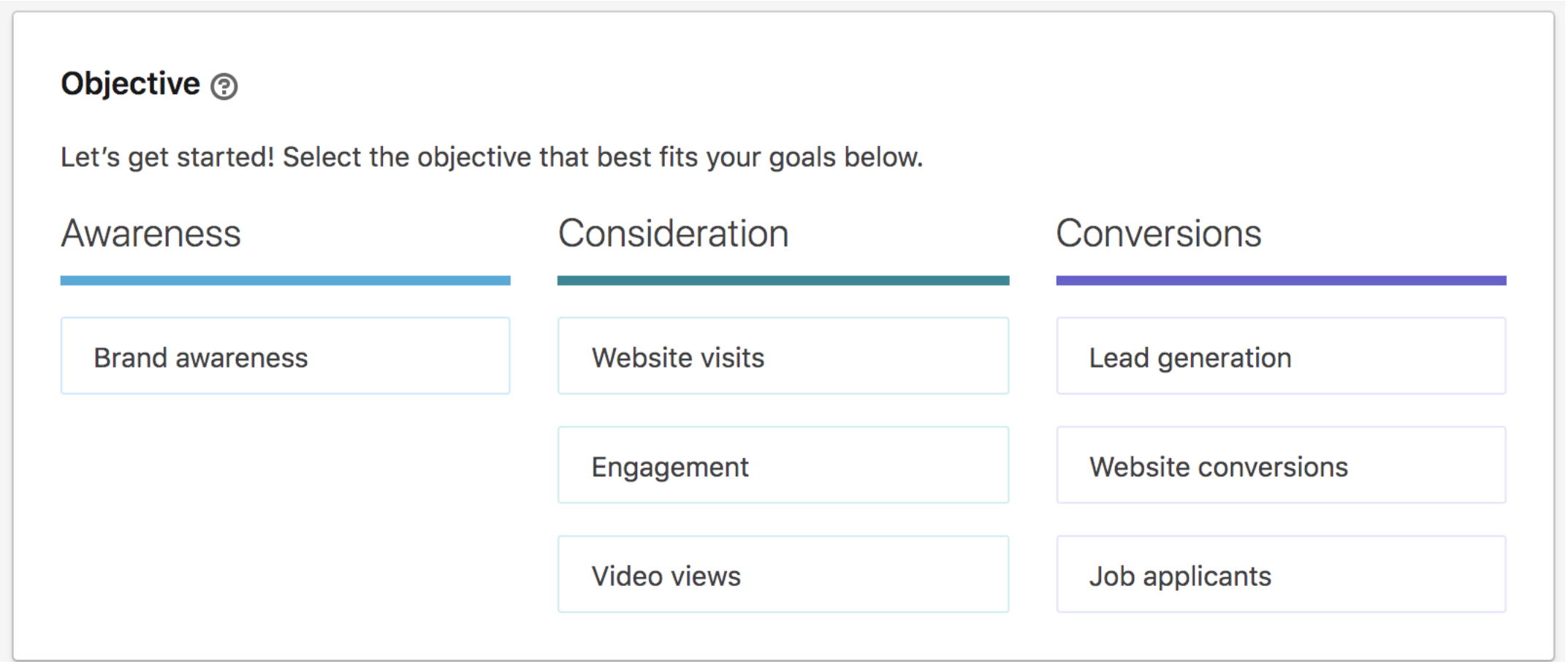
If your LinkedIn Page has already been claimed, you can contact the current admin and request to be added as an admin



No company page? Be 100% Sure! Search first. If not, then visit this URL:

https://www.linkedin.com/company/setup/new/

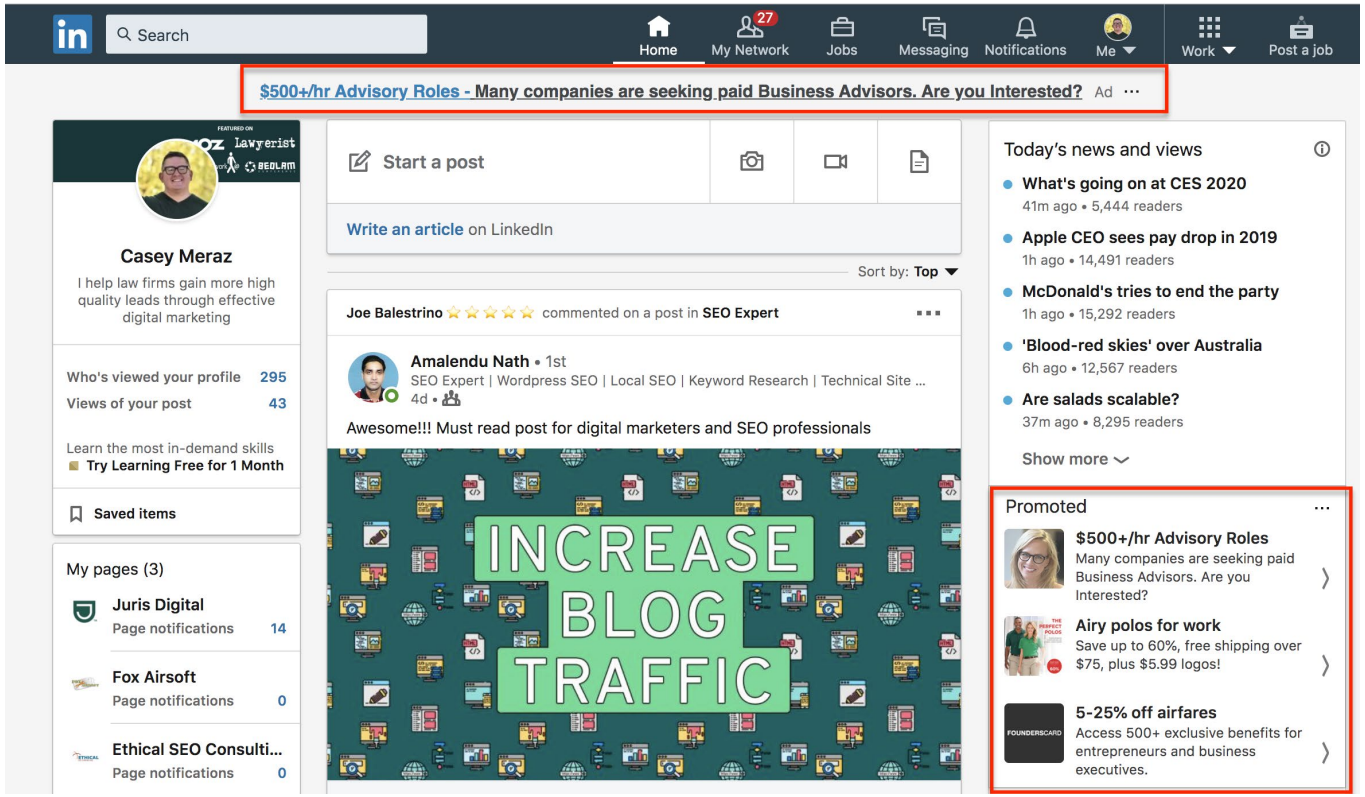
Strategy: LinkedIn Brand Awareness



Strategy: LinkedIn Brand Awareness

Goal: Build Brand Awareness
Platform: LinkedIn
Ad Type: Text Ads w/ logo

URL: https://www.linkedin.com/campaignmanager/



Strategy: LinkedIn Brand Awareness

Pro Tip: Use Text Ads with Cost Per Click for best value

LinkedIn Targeting Settings are Specific. Examples include:

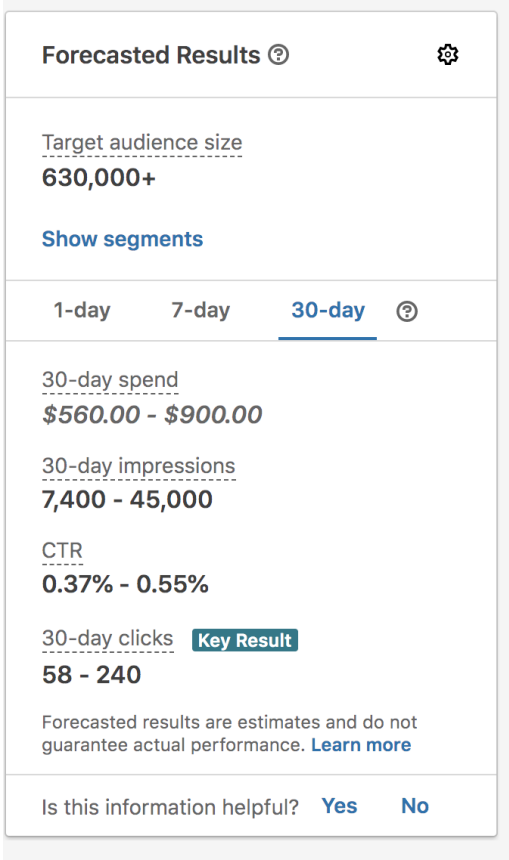
- Job Title
- Company
- Industry

Text Ad Format:

- Logo
- Brand Name
- Descriptor

Example:

- John Law Firm – Business Law Firm
- John Law Firm – Free Contract Dispute Guide



Strategy: LinkedIn Brand Awareness ACTUAL RESULTS

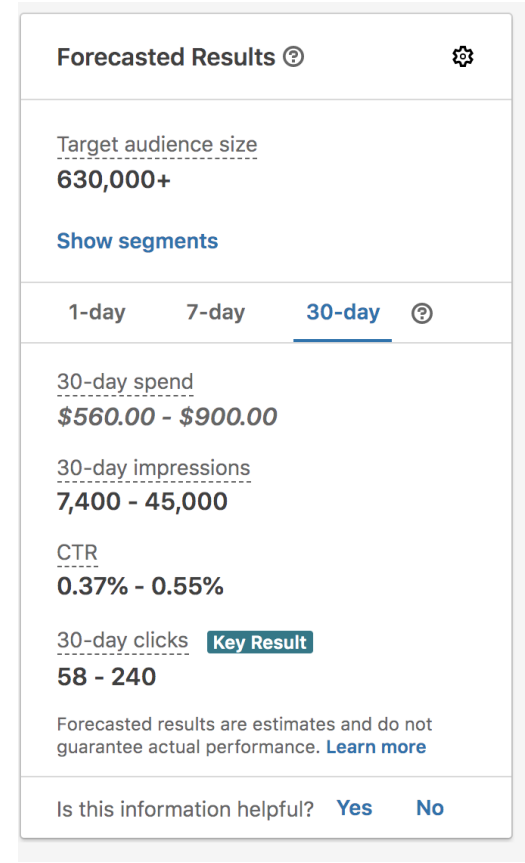
If I used the LinkedIn Cost per 1000 impression model this campaign **would have cost $1,896** where I spent $50

Spent	Key Results	Cost Per Result	Impressions	Clicks	Average CTR
$50.90	**-**	**-**	**172,378**	**18**	**0.01%**
$50.90	18 *Website Visits*	$2.83	172,378	18	0.01%

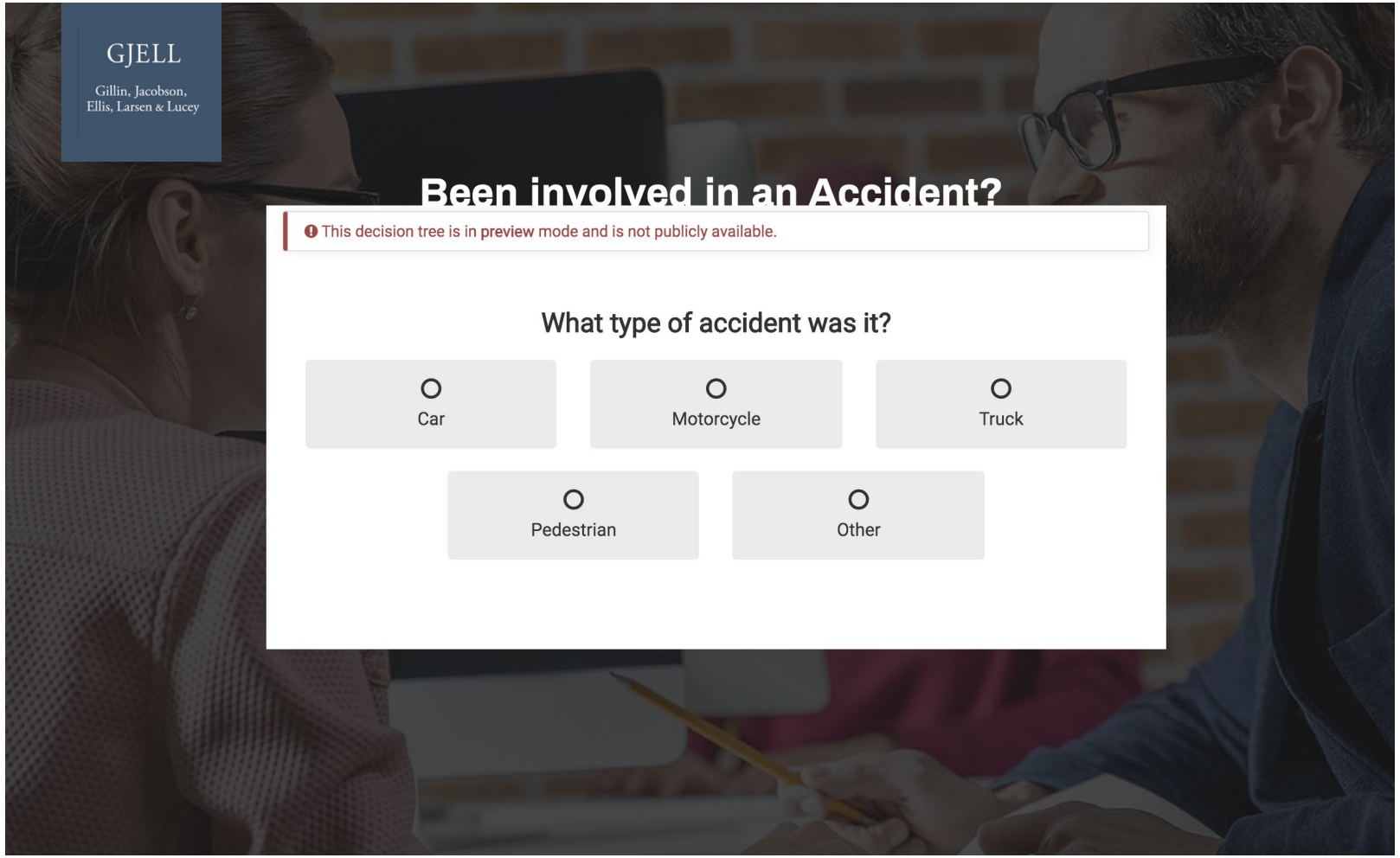
LinkedIn: Claim Your Page

- Discuss CP

Spent	Key Results	Cost Per Result	Impressions	Clicks	Average CTR
$50.90	**-**	**-**	**172,378**	**18**	**0.01%**
$50.90	18 *Website Visits*	$2.83	172,378	18	0.01%



Strategy: Facebook Social Ads



Strategy: Facebook Social Video Ads for Brand Building

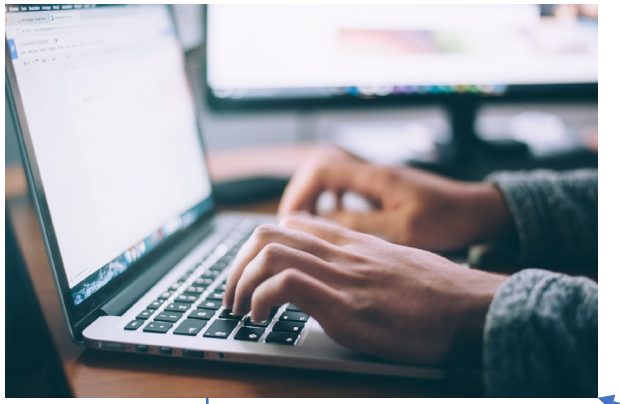
Campaign Name	Delivery	Budget	Results	Reach	Impressions	Cost per Result	Amount Spent
Video views	Active	Using ad se...	58 ThruPlays	235	2,272	$0.85 Cost per T...	$49.11

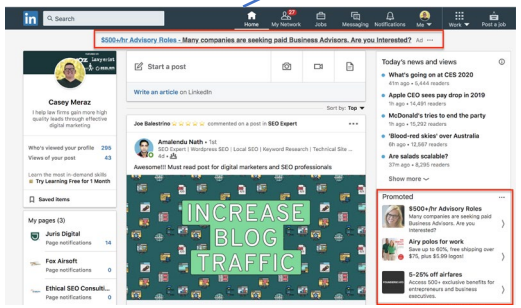
ThruPlay is an optimization and billing option for video ads through the video views objective.

ThruPlay allows advertisers to optimize and choose to pay only for ads that are played to completion, or for at least 15 seconds. This optimization is available with auction or reach and frequency campaigns.

Strategy: Facebook Pixel

Tie Them Together





facebook Advertising

Google Ads

How to Choose a Vendor?

- Make sure you own your own data (no exceptions)
  - What are they hiding?
  - What happens when things don't work?
- Make sure you own your own brand and it's assets
- Ask to see a case studies or past work
- Ask to talk to current customers
- Know your contract
- Transparency
- Do they know your practice area?

TECHSHOW2020

YOU play the most important part in keeping TECHSHOW exciting.

Please complete the Speaker evaluation before you leave.

See You Next Year!

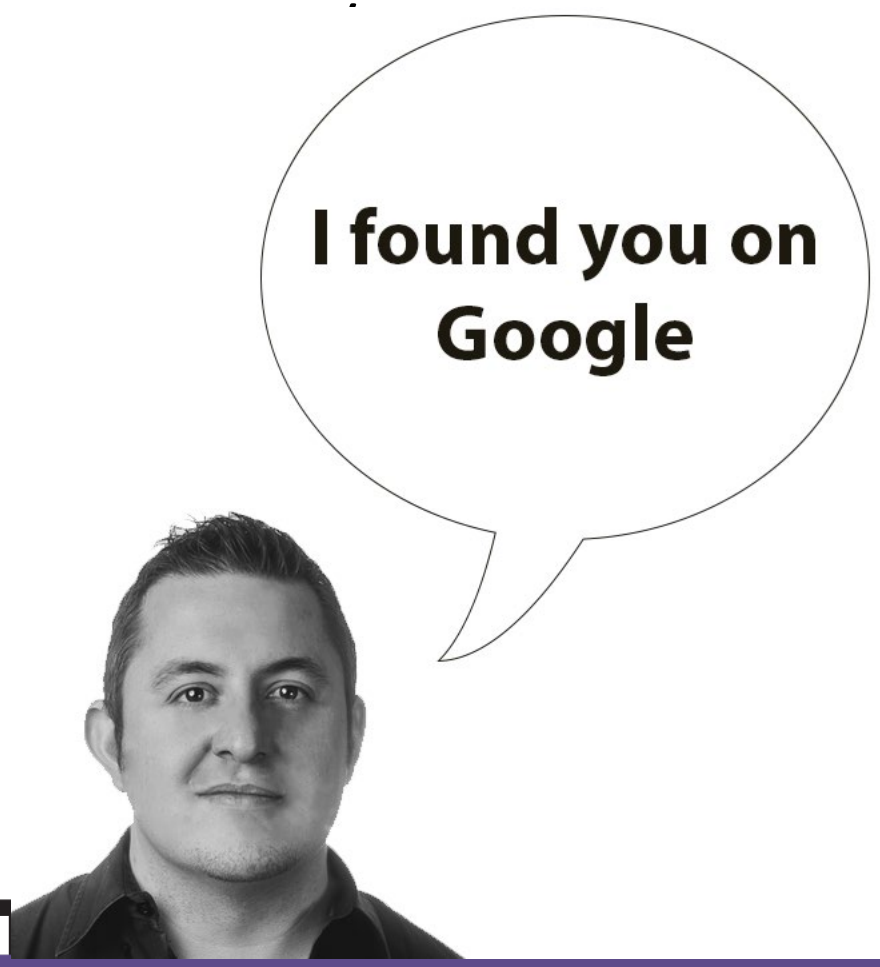
TECHSHOW 2021: March 10-13, 2021

TECHSHOW2020

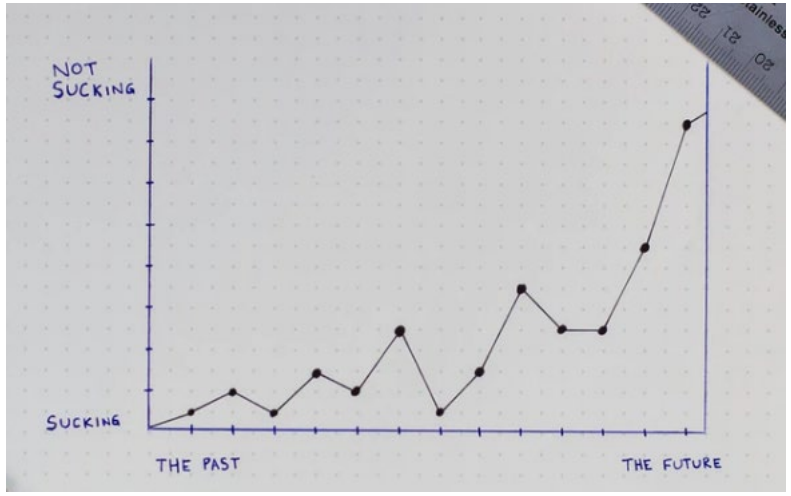
Measure Your Success: Marketing Accountability

Casey Meraz

Tracking customer revenue is easy…



Agencies vs. Sign Up's



Agency Reports

New Sign Ups

How did you find us?

- Potential customers might not even know how they found you
- To be the most successful you need a process that works for you
- Data tracking is difficult

Get as integrated as you can

- Transparency will create the best tracking
- Don’t be afraid to share and integrate data

What you should be tracking [& Asking Your Agency For]

- **ROAS** : Return on Ad Spend

- **Cost Per Client**: The fees per client may vary, but know how much a new client will cost you to get.

What is Return on Ad Spend (ROAS)?

How much revenue your law firm receives for every dollar spent on an advertising source.

$ - $$$

Google Ad's

If you spent $10,000 on Google Ad's and generated $20,000 in fee's was the investment worth it?

$ - $$$

What is Cost Per Client

How much did it cost you to acquire a new client?

Cost Per Client vs. Cost Per Lead

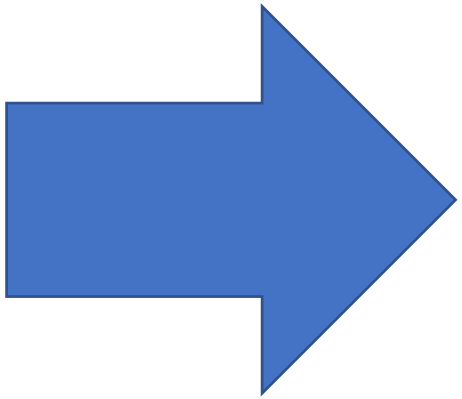
Cost per lead can be a vanity metric

- I can buy $150 personal injury leads… that are shared with 4 other law firms

Start with all of your marketing channels

Online
- SEO
- SEM
- Social
- Display

Offline
- Mailers
- Magazine Ads
- Billboards
- Radio



Tracking
- Separate Phone Numbers
- Analytics Setup
- CRM Tracking
- Ask potential clients how they heard about you

What you can track

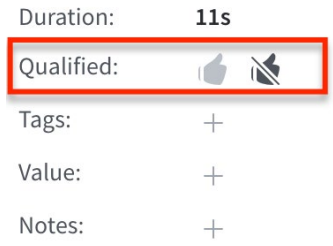
- Phone Calls
- Contact Forms
- Email Subscribers
- Click to Call
- Live Chat
- Text Messages
- Lead Gen Forms

Phone Call Tracking
Callrail

Phone Call Tracking
Callrail

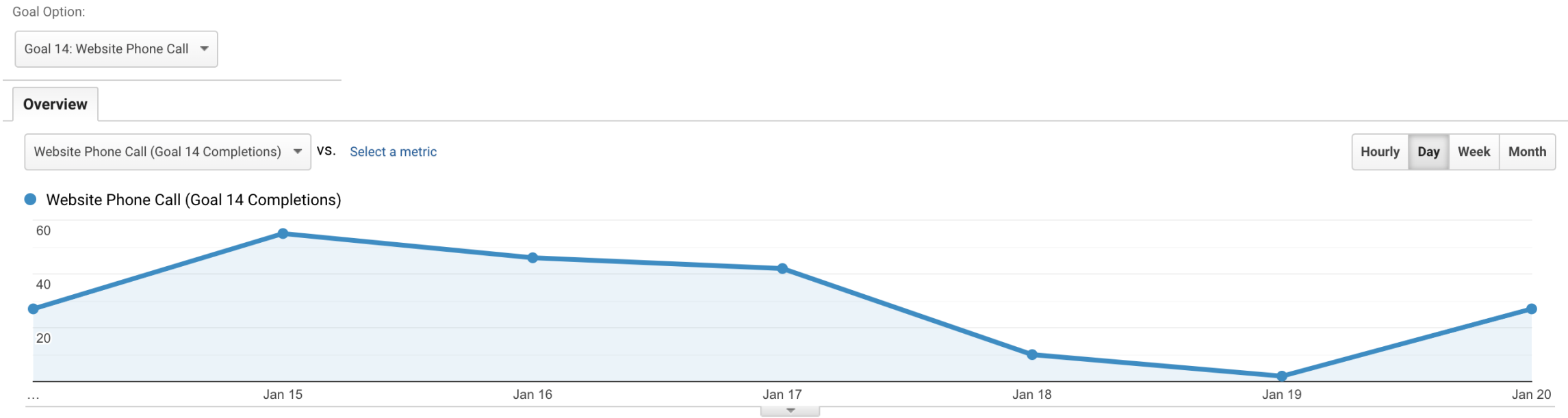
Good: Manually track

Better: Use Callrail to tag calls as leads



Best: Integrate with GA and CRM

Google Analytics



Improving Conversion Rates

- Think about the average customer journey
- Are they shopping?
- One contact is not enough
- Increase conversions through remarketing + follow ups. (This can also be automated!)

Tracking Will Never be Perfect…

- The best firms have full staff buy in
- The best firms have tight feedback loops
- The best firms communicate with their agencies / teams

TECHSHOW2020

YOU play the most important part in keeping TECHSHOW exciting.

Please complete the Speaker evaluation before you leave.

See You Next Year!

TECHSHOW 2021: March 10-13, 2021

TECHSHOW2020

Following the Digital Breadcrumbs

WRITTEN BY:

Roger Chown

PRESENTERS:

Antigone Peyton
Roger Chown

January 26, 2020

FOLLOWING THE DIGITAL BREADCRUMBS

The primary goal of this paper is to help you get creative in finding digital evidence that may assist with your cases. The intent is to arm you with practical ideas for digital evidence you might seek, whether from your own client, from an adverse party or from a non-party.

The focus of this paper is digital evidence that you can realistically obtain with moderate effort and within a budget that is proportionate to a modest case.

This paper is by no means an effort to comprehensively catalog sources of digital evidence, but many common potentially relevant data sources are considered, such as activity trackers, smart watches, phone apps, video games, smart speakers, and vehicle infotainment systems.

Increasingly, people can obtain the digital data held about them by the big tech companies they interact with. These companies often make it surprisingly easy for you to quickly download the huge data sets they have about you. In this paper I review how such data can be retrieved.

But people can also delete much of their data with similar ease. I assume for purposes of this paper that you will be asking your own client or friendly witnesses to obtain their data, or that your discovery requests will be honorably answered. Whether or how you might get parties to litigation or witnesses to preserve, find and disclose evidence of this nature, or what to do if they do not, is beyond the scope of this paper.[1]

The paper concludes with a review some of the lesser known features of Google Maps and Google Earth, which are so often handy in litigation.

---

[1] I have taken shortcuts for the citations in this paper, on the assumption that most readers will be reading an electronic version of it and will not need the hyperlinked web addresses spelled out. I've also not cited the retrieval date for the web pages referenced. In all cases the referenced web pages were retrieved in January 2020.

Health Data

Activity, exercise and health data from devices and apps

Activity trackers and smart watches

Activity trackers have become immensely popular. A large variety of devices are available in a wide price range. Early versions measured steps taken and combined this with user data "to calculate distance walked, calories burned, floors climbed and activity duration and intensity."[2] The devices have evolved to add many other recorded data types. Smart watches have evolved in parallel, so the two types of devices are no longer distinct categories. Most devices of this nature now provide features of both activity trackers and smart watches.

The Fitbit was among the earliest electronic activity tracker devices and still commands a significant market share. But Fitbit is now considered the fifth largest "wearables" company in the wearables market (if "hearables" are included in "wearables").[3] Apple, Xiaomi, Samsung and Huawei are ahead of Fitbit in market share in this category. Many other manufacturers sell similar products which generate health data that might be of interest as evidence. These include Samsung, Garmin, Jawbone, Tom Tom and many others.

Types of data recorded

These devices record steps, floors climbed, kilometers walked (or ridden), calories burned, active minutes, exercise duration, exercise type, sleep hours (and sleep stages), heart rate and location (routes taken). This data is typically synced to your phone and your password protected personal web page for the app. More recent developments include automatic monitoring and tracking of blood oxygen saturation, menstrual cycles, and noise exposure. The Apple watch now includes an electrocardiogram feature, capturing a heart rhythm that can be provided to a doctor. It can also notify users of atrial fibrillation. The nature of data being collected continues to expand.

These devices typically automatically record data and automatically sync the data with an app on a mobile phone. The apps also typically allow the user to manually record other data for tracking, such as body measurements, water consumption, food and calories consumed, and vital signs.

Smart scales

Fitbit also sells a "smart scale" which records your weight and percentage of body fat and transmits this to the phone app and the user's password protected Fitbit dashboard web page. It knows who is on the

---

2 Wikipedia: List of Fitbit products.

3 idc.com: Worldwide Wearables Shipments Surge 94.6% in 3Q 2019 Led by Expanding Hearables Market, Says IDC, December 9, 2019. Note that the term "wearables" includes activity trackers and smart watches but also electronic earwear, eyewear and clothing products.

scale if the person is wearing a registered Fitbit. Many other brands of smart scales are available with similar functionality, including scales that transmit to an iPhone and into the Apple Health app.

Health apps

Apple Health, Google Fit, Samsung Health and the Fitbit App all perform similar functions, although with varying scope and methodologies. These apps sometimes interact with devices or other apps to obtain and record data. For example, these apps all record and display the distance travelled for a workout or in a day. To determine the distance travelled, the iPhone records steps (or if you are wearing an Apple Watch and not carrying your iPhone, the Apple Watch will record steps). The Apple Health App will prompt the user for height data. The app then calculates distance travelled based on the user's estimated stride length multiplied by the steps taken. In contrast, Google Fit:

> will not constantly poll the phone's hardware in order to read step count. Instead, the app uses smart AI-based algorithms to estimate step count based on periodic readings of the pedometer sensor (if available) and a combination of accelerometer data, Significant Motion sensor data, and location data. Steps are calculated based on walking distance and pace as well as the user's body measurements. Google Location Services appear to play a major role in sourcing the data; location points are always saved to the cloud. Companion devices (fitness trackers, smart watches etc.) may provide additional information.[4]

Apple Health seeks to be an all-in-one health app: "an intelligent guardian for your health."[5] "It consolidates health data from iPhone, Apple Watch and third-party apps you already use, so you can view all your progress in one convenient place. And it recommends other helpful apps to round out your collection — making it simpler than ever to move your health forward."[6]

---

4 Oleg Afonin: Securing and Extracting Health Data: Apple Health vs. Google Fit, The ElcomSoft Blog, January 30, 2019.

5 Robbie Gonzalez: The Apple Watch is Now the Control Center for Your Health, wired.com, June 4, 2019.

6 apple.com: A more personal Health app.

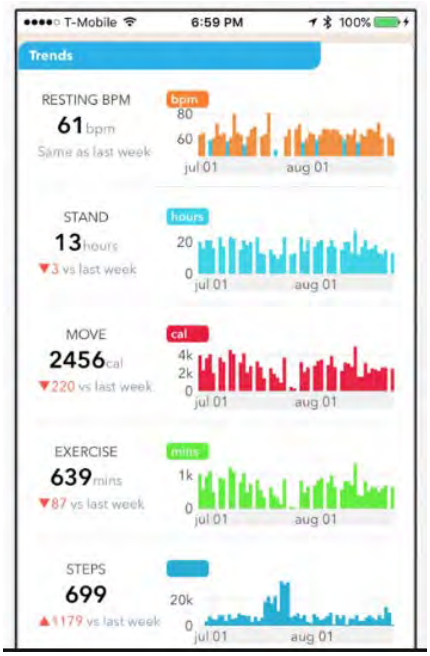


Figure 1 – Screenshot from Apple Health app

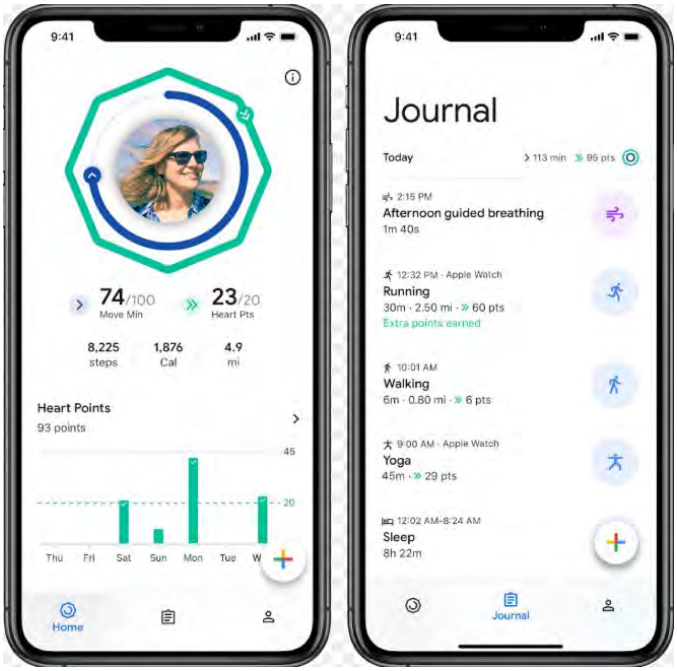


Figure 2 – Screenshot from Google Fit app

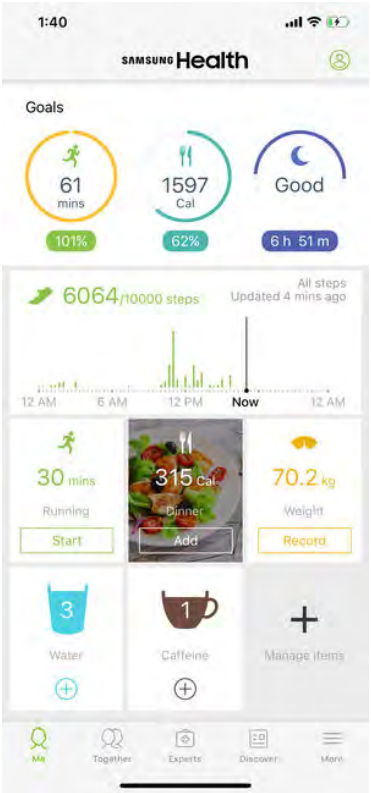


Figure 3 – Screenshot from Samsung Health app

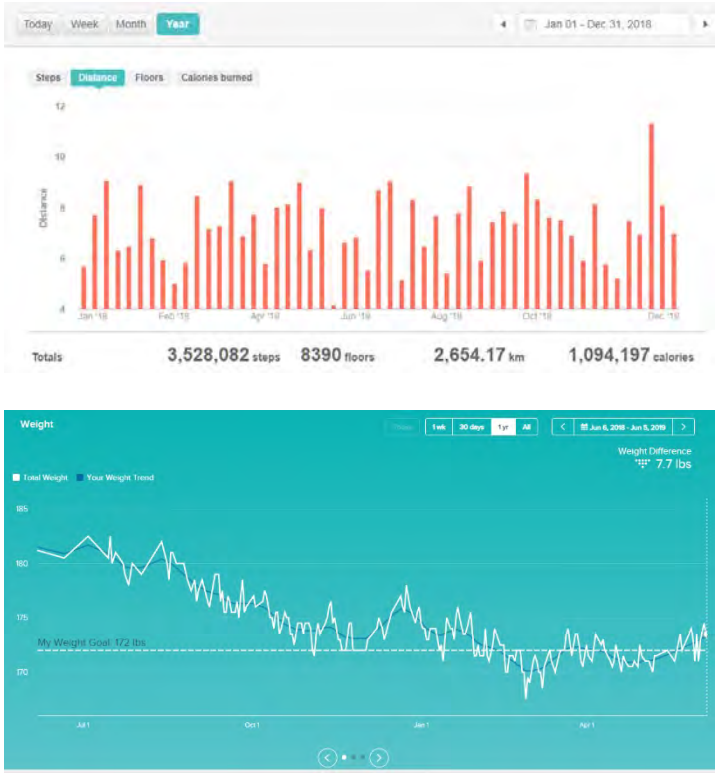


Figure 4 – Screenshots from Fitbit user's web page

Diet apps

There are a multitude of apps that people use to record weight and count calories, including Apple Health, Samsung Health, Calorie Counter – MyFitnessPal, and the Fitbit app. These apps typically let users lookup food items or scan barcodes from food products to record what they eat and assess the calories and nutrients consumed.

CPAP machines

When a person's sleep is in issue and the person uses a CPAP machine, the CPAP machine may be a rich source of data.[7] Continuous positive airway pressure (CPAP) machines are used to treat sleep apnea. Sleep apnea is said to affect 1% to 6% of the population. It is more common in men and its prevalence with age peaks at between 45 and 55 years of age. CPAP machines are worn during sleep and provide pressure to keep the airway open.[8]

CPAP machines, including some of the most popular models, record data about the user's sleep and in some cases transmit the data to the vendor and the user's physician. Some of the data is made available to the user in the form of a mobile phone app. One popular CPAP machine manufacturer, ResMed, has an app called MyAir. The data available through the MyAir app includes usage hours per night, leak rate for the mask seal, apnea events and a sleep score. Much more detailed information is available to the vendor or physician, but would require a sleep professional to interpret.

Even the basic data available to the user through MyAir requires interpretation. For instance, the machine only records data while the user is wearing the mask. It is possible that the user did not sleep with the mask on all night. It is also possible that the user was lying awake with the mask on, so usage data may not be entirely accurate. However, in the latter case a sleep professional may be able to interpret the data to assess whether the user was asleep or not, as well as the quality of sleep.

---

7 As indicated above, smart watches and activity trackers routinely also provide sleep information.

8 World Health Organization: Global Surveillance, Prevention and Control of Chronic Respiratory Diseases: A Comprehensive Approach, 2007 at p. 32.

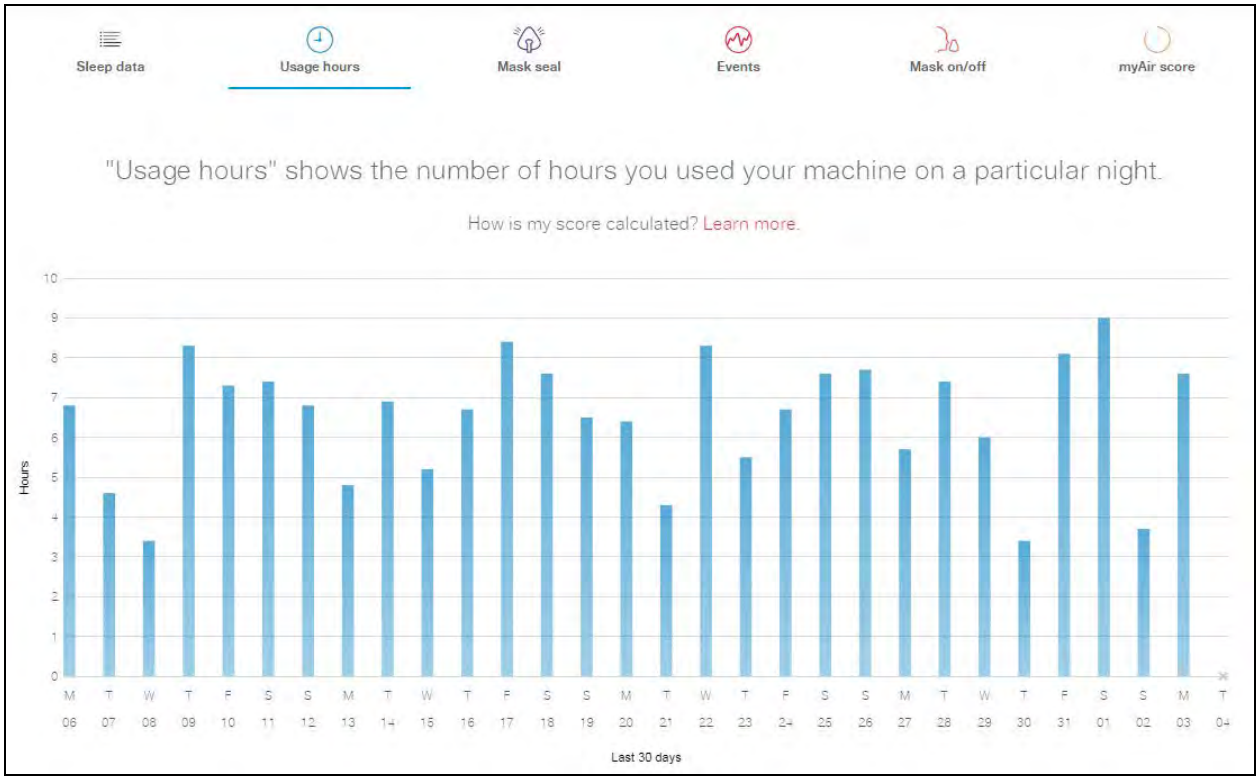


Figure 5 - Usage hours data for a ResMed CPAP machine from the MyAir app and website.

Strava and other running or cycling apps

Strava is one of many popular apps people use to record their runs, bicycle rides and other activities.[9] The times and routes are measured from the user's mobile phone or smart watch as the user rides or runs. There is a social media aspect to Strava because users can share their activities with others, depending on privacy settings. The app lets users compare times for running or riding a route segment against others, including others of the same gender and age group.

The app also records the activity data including the route taken during the activity.

9 Others include Under Armour's Map My Run, Nike+ Run Club, Runkeeper, Runtastic and Weaverun.

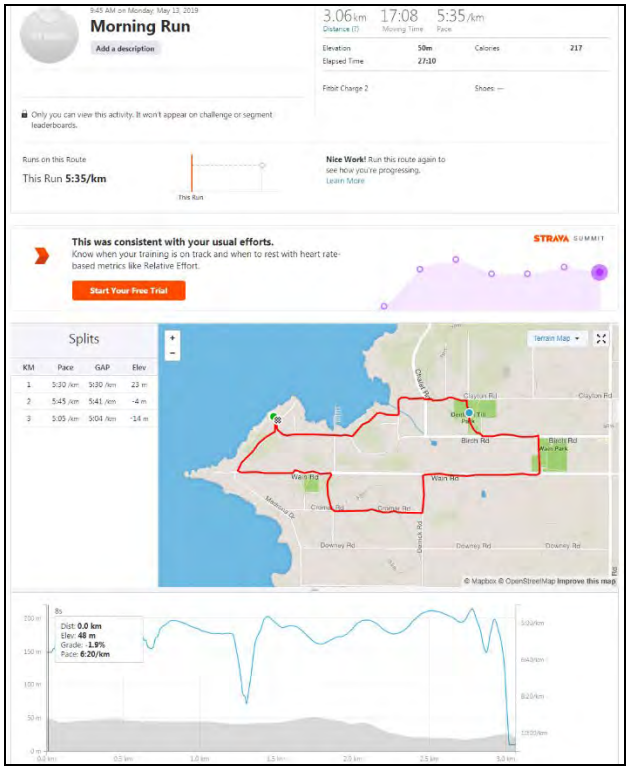


Figure 6 – A Strava record of a run

Smart Speakers (Alexa, Google Home, Apple Home Pod) and AI assistance (Google Assistant, Cortana, Siri)

Amazon keeps users' Alexa inquiries – both the recording and a speech recognition text version. It appears these recordings and text versions are kept indefinitely unless deleted by the user. It is easy to review and delete your Alexa voice recordings.[10] Alexa users can review their recordings and delete them individually or by date range or completely.

> You can review voice recordings associated with your account and delete the voice recordings one by one, by date range, by Alexa-enabled device, or all at once by visiting **Settings** > **Alexa Privacy** in the Alexa app or https://www.amazon.com/alexa_privacysettings. From either page, you can also choose to have your voice recordings older than 3 or 18 months deleted automatically. And you can delete all those voice recordings associated with your account all at once for each of your Alexa-enabled devices and apps by visiting Manage Your Content and Devices.
>
> You can also enable the ability to delete your recordings by voice. Once enabled, you can delete the voice recording of your last request by saying "Alexa, delete what I just said"

---

10 See Amazon's Alexa and Alexa Device FAQs.

> or you can delete all the voice recordings from your account for the day by saying "Alexa, delete everything I said today." To enable deletion by voice go to **Settings** > **Alexa Privacy** > **Review Voice History** in the Alexa app or https://www.amazon.com/alexa privacysettings. When enabled, anyone with access to your Alexa-enabled devices can ask Alexa to delete voice recordings from your account.

Google provides similar functionality for Google Home voice recordings and Google Assistant voice recordings.

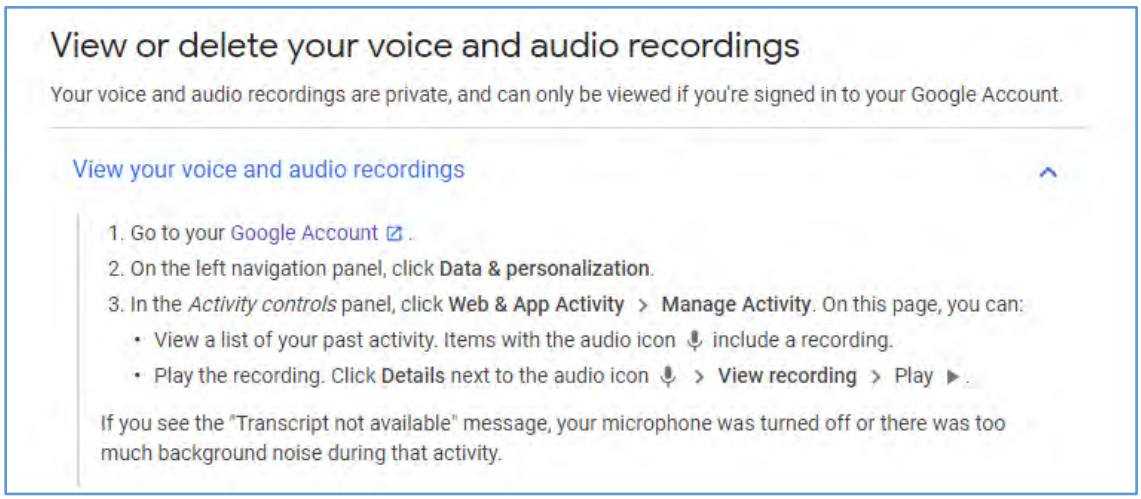


Figure 7 – see https://support.google.com/websearch/answer/6030020?hl=en&ref_topic=6032684

These recordings are part of the data set kept for all your activity with all Google products. (See the discussion below under the heading “How to download your data from big tech companies”.)

Microsoft also takes a similar approach, allowing users to view review and clear voice activity to Cortana along with browsing, search and location activity.[11]

Apple takes a different approach with Siri and HomePod. Apple says:

> When you use Siri and Dictation, the things you say and dictate will be sent to Apple to process your requests. In addition to these audio recordings, your device will send other Siri Data, such as:
>
> - contact names, nicknames, and relationships (e.g., “my dad”), if you set them up in your contacts;
> - music, books and podcasts you enjoy;
> - names of your and your Family Sharing members’ devices;
> - names of devices and members of a shared home in the Home app; and

11 https://account.microsoft.com/privacy/

- the names of your photo albums, apps installed on your device, and shortcuts you added through Siri.

Your requests are associated with a random identifier, not your Apple ID. … Siri Data is associated with a random, device generated identifier. This random identifier is not linked to your Apple ID, email address, or other data Apple may have from your use of other Apple services. … If you have Location Services turned on, the location of your device at the time you make a request will also be sent to Apple to help Siri and Dictation improve the accuracy of its response to your requests.

Only the minimum data is stored by Siri on Apple servers. … Your request history is associated with the random identifier for up to six months. Your request history may include transcripts, audio for users who have opted in to Improve Siri and Dictation, and related request data such as device specifications, device configuration, performance statistics, and the approximate location of your device at the time the request was made. After six months, your request history is dissociated from the random identifier and may be retained for up to two years to help Apple develop and improve Siri, Dictation, and other language processing features like Voice Control.

Location Data

Google Location History

If you have Google Maps, stay logged in to your Google account, and have location history turned on, Google will track your location.[12] Google determines your location based on variety of sources such as GPS, WiFi, cell towers and sometimes infers location based on device sensors like gyroscopes and accelerometers. The data is not as useful for accident reconstruction purposes as attorneys would like, because data points are recorded infrequently. With that said, the frequency of data collection does vary. When you are using Google Maps to navigate or to record your activity in, for example, an exercise tracking app, the frequency of collection of data points is much higher.

Google Maps Timeline

You can display your Google location history data using the "Your Timeline" feature. It works on your device or on your computer (if you sign into your Google account on your computer).

---

[12] According to this 2018 article and others like it, Google continues to track your location history even if you turn location history off: Emily Dreyfuss: Google Tracks You Even If Location History's Off. Here's How to Stop It, wired.com, August 13, 2018.

Figure 8 below demonstrates this. When Nordic skiing with my Fitbit on, my Google Pixel recorded data points very frequently, so a trace of my positions was recorded, as represented by the green line. The green line represents my exact route. When driving, I had my phone with me but did not use Google Maps or any other navigation app. The blue lines show only a few data points to represent my driving and do not accurately trace my route.

Figure 8 – timeline trace from Google Maps Timeline

Note that other phones will not necessarily allow so much data to be transmitted to Google from the phone, even with an activity tracker in use. The data will be transmitted to the activity tracker app, but not Google. In particular, iPhones will not transmit data to Google under these conditions but will transmit it to, for instance, Fitbit or Strava if these apps are in use.

Thus, attorneys hoping to secure detailed location data will frequently be disappointed by the data available in Google Timelines, unless: (1) rough geographic timeline data is all that is required; (2) the user was navigating with Google Maps or Waze; or (3) the user was tracking their location with another app at the relevant time.

Apple Location Services

Apple tracks the locations of iPhone users but limits the amount of identifiable data it stores. Apple's Maps app doesn't include a sign-in, so "where you go isn't associated with your Apple ID at all. Personalized features, like locating your parked car, are created right on your device."[13]

Apple does, however, keep track of users' "Significant Locations." Its Location Services & Privacy policy states:

> Your iPhone and iCloud connected devices will keep track of places you have recently been, as well as how often and when you visited them, in order to learn places that are significant to you. This data is end-to-end encrypted and cannot be read by Apple. It is used to provide you with personalized services, such as predictive traffic routing, and to build better Memories in Photos.

To access your Significant Locations, just go to Settings>Privacy>Location Services>System Services>Significant Locations.

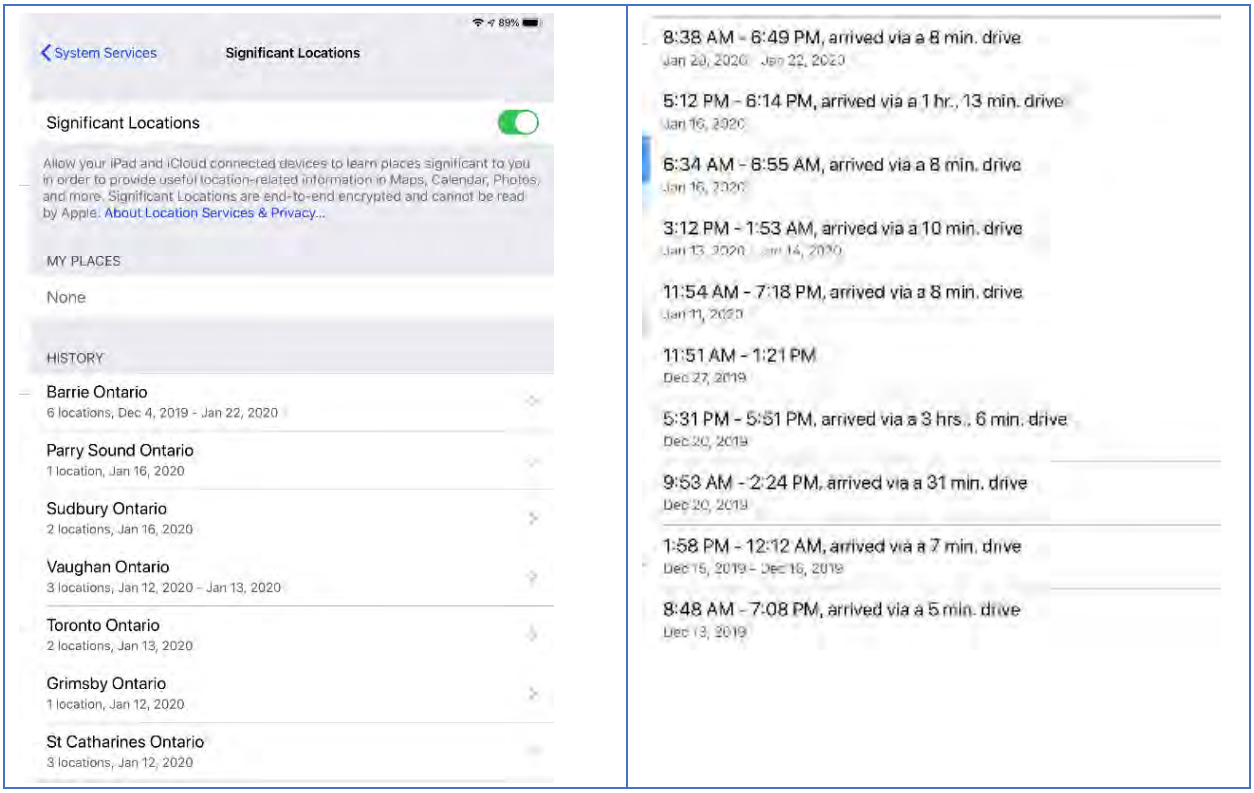


Figure 9 - screenshots from an iPad of "Significant Locations"

13 See Apple's privacy page.

As can be seen from the screenshots above, detailed information about the dates and times spent at Significant Locations is recorded and saved by Apple. However, the data will only go back a few months. As a result, this location data often will not be useful in the litigation context, and to be available at all it must be preserved in a timely way.

Runners or cyclists can use the Apple Watch to record traces of their outdoor runs, walks, swims and cycles, and that data will be preserved in the iPhone Apple Watch app, My Watch>Workout>Workout View.

Geofence Warrants

The New York Times published an article[14] last year about the increasing use of Google Location data by law enforcement, through "geofence warrants." According to the article, Google maintains a database called "Sensorvault" which "includes detailed location records involving at least hundreds of millions of devices worldwide and dating back nearly a decade." Google's protocol requires the police to obtain a warrant which will specify GPS coordinates for an area covering the location of the crime. Google will then provide the police with data for each device in the area at the requested time, with an anonymous ID code used for each device. The police will then review the data to look for patterns that narrow their request. "After detectives narrow the field to a few devices they think may belong to suspects or witnesses, Google reveals the name, email address and other data associated with the device." The article said that Google had received as many as 180 geofence warrant requests from law enforcement in one week.

Cell phone provider location data

For mobile phones to work, phone providers must keep track of the approximate location of the phones on their network. Otherwise, they could not route wireless communications. Mobile phone companies record their customers' location data based on cell tower locations, phone GPS data, Wi-fi locations, and other sources.

In my experience in Ontario, Canada, cell tower records are available from mobile phone carriers but only with a court order. A consent from the phone subscriber is not adequate because the phone numbers of others (those calling the subscriber or being called by the subscriber) will be available, including blocked numbers, so the privacy rights of those individuals are in play. In a case I was involved with in 2016, a cell phone provider (Rogers) advised that call detail records and cell tower locations data was only kept for 13 months. The content of text messages or calls is not recorded so is unavailable.

It will be interesting to see if, as a result of the California Consumer Privacy Act (CCPA) (discussed below under the heading "How to download your data from big tech companies"), subscribers will be able to obtain copies of their location history from their cell phone providers.

---

[14] Jennifer Calentio-DeVries: Tracking Phones, Google Is a Dragnet for the Police, NY Times, April 13, 2019.

Entertainment Data

Video game use

In the context of a personal injury action, a plaintiff's use of video games may be relevant in the following circumstances:

- The plaintiff alleges reduced ability to play video games because of the injury (as a component of loss of enjoyment of life).
- The plaintiff alleges reduced dexterity, vision difficulties or impaired concentration (especially if this is allegedly apparent when playing video games).
- The plaintiff alleges a head injury and the prescribed treatment included reduced screen time.
- The plaintiff alleges fatigue or hypersomnia (especially if there is evidence the plaintiff plays video games late at night).
- There is reason to investigate whether the plaintiff's use of video games has affected other spheres of life, raising the possibility of addiction to video games.
- There is reason to assess whether video games were or are a significant element in the plaintiff's social life (many games involve team or cooperative play and live communication with other players during the game), and the plaintiff's social life is allegedly impaired by the accident.

A starting point for investigating the plaintiff's video game habits is to ask what games the plaintiff likes to play, and their gamertag(s).[15] There is often publicly available information associated with gamertags that can only be associated to an individual if you know the person's gamertag.

For instance, the developer of the popular game Destiny publicly on its website sets out achievements associated to gamertags, including the name of the achievement and the date and time of the achievement. From this information one can discern the dates and times that the player was playing.

Another game called Smite publishes the total time played by its users, searchable based on the gamertag.

---

15 An avatar, username, game name, alias, gamer tag, screen name, or handle is a name (usually a pseudonym) adopted by a video gamer, used as a main preferred identification to the gaming community. (Wikipedia: Gamer.)

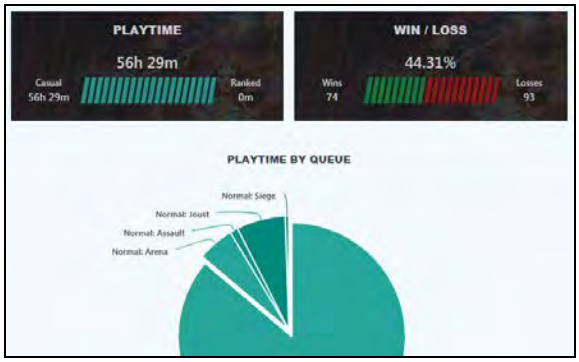


Figure 10 - Excerpt from the Smite.guru website publicly showing the playtime stats for a Smite player who has played 56 hours and 29 minutes of this game.

These are just two examples. Many other games publish data of this nature on the web. Also, many games encourage users to share their accomplishments on social media, which is sometimes also publicly available.

However, many games require users to log in with a password and only allow data to be seen by other users, or let users control what data is public. Publicly available data is invariably a fraction of the data available from within the game or, for Xbox games, on the player's Xbox Live Profile. To access this information, you need the player's Xbox Live account login information.

Netflix

Netflix users can access and download their entire viewing activity from the Netflix website. There may be some cases where this is relevant, although the value of this information for use in litigation seems limited.

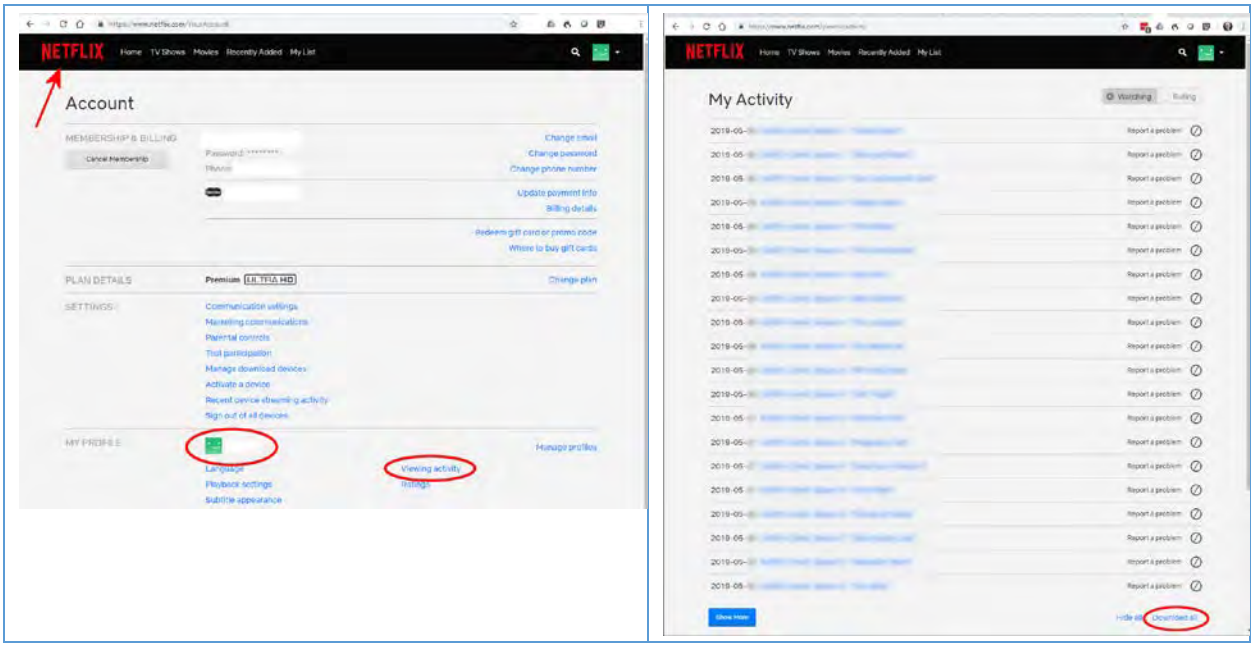


Figure 11

Vehicle data

The amount of information vehicles are collecting and car manufacturers are storing is astounding and ever-increasing.[16]

One reason vehicles are equipped to record and deliver so much data to manufacturers is that vast data is required to develop cars that will be smart enough to operate autonomously. Tesla, in particular, collects vast amounts of data, but anonymizes the data when using it for this purpose.[17]

However, vehicle data has other potential uses and huge commercial value.[18] We will likely see increasing collection of data.

Accessing the data from a vehicle remains difficult. Vehicle manufacturers seem to be nowhere near the stage of allowing users to download all the data they have about them, like the big tech companies have done. The on-board data can often be accessed by accident reconstruction engineers with appropriate experience, but some manufacturers lock down the data so that only the manufacturer can obtain it.

---

16 Michael Liedtke, How is data being collected and used in my car?, The Chicago Tribune, December 25, 2018. According to yourcaryourdata.org, "87% of cars in the U.S. will be equipped with wireless technology that collects and reports on car safety, maintenance and repair by 2022."

17 Joann Muller, What Tesla Knows About You, Axios, March 13, 2019; Trent Eady, Tesla's Deep Learning at Scale: Using Billions of Miles to Train Neural Networks, Towards Data Science, May 6, 2019. For a sense of what data Tesla collects, look at its Customer Privacy Policy. Tesla may collect telematics log data (including "speed information; odometer readings; battery use management information; battery charging history; electrical system functions; infotainment system data; safety-related data and camera images (including information regarding the vehicle's SRS systems, braking and acceleration, security, e-brake, and accidents)." They may also collect "short video clips of accidents; information regarding the use and operation of Autopilot, Summon, and other features; and other data to assist in identifying issues and analyzing the performance of the vehicle." They may "dynamically connect to your Tesla vehicle to diagnose and resolve issues with it, and this process may result in access to personal settings in the vehicle (such as contacts, browsing history, navigation history, and radio listening history). This dynamic connection also enables us to view the current location of your vehicle, but such access is restricted to a limited number of personnel within Tesla."

18 Matt Bubbers, What kind of data is my new car collecting about me? Nearly everything it can, apparently, The Globe & Mail, January 16, 2020. Jeff Plungis: Who Owns the Data Your Car Collects?, Consumer Reports, May 2, 2018. This articles states that, "By 2030 the automotive data industry is predicted to be worth $450 billion to $750 billion."

A group of 20 of the largest vehicle manufacturers have signed on to a set of privacy principles,[19] but when you read the principles[20] you find that the access provisions are limited. (That is, the ability of vehicle owners to access all the information the manufacturer has is limited.) The principles state that the participating vehicle manufacturers "commit to giving Owners and Registered Users reasonable means to review and correct Personal Subscription Information," which is presumably a miniscule subset of the information the companies have. It will be interesting to see how access requests under the CCPA play out with these companies.

Airbag system data

Most people will be familiar with the types of data available from vehicle air bag modules or so-called "black boxes" – speed, accelerator position, brake engagement, seat belt use, and so on. The availability of this information depends on the make, model and year of the vehicle. Vehicles now being sold invariably have these modules and record this information; however, some manufacturers make the data inaccessible (except to themselves presumably), so it can be extremely difficult to recover the data for certain makes of vehicles.

The accuracy, reliability and admissibility of airbag module data is well established. It must be interpreted with care by an expert with knowledge and experience, but the information obtained is generally accurate, reliable and very useful.

Infotainment systems

A vast array of other data is available through the infotainment systems of many vehicles. Some of these systems provide radio or music to the vehicle occupants, navigation information or vehicle information. When a mobile phone is connected to these systems, some of the phone data is transmitted to or through the infotainment system in the vehicle. For many vehicles, the information from the phone can now be accessed, downloaded and interpreted by accident reconstruction engineers.

A company called Berla Corporation based in Annapolis, Maryland, has developed a training program to train accident investigators to access and download data from infotainment systems. Berla's website allows you to look up a vehicle model to see what type of information is available from the infotainment system.

---

19 autoalliance.org: About Automotive Privacy.

20 Alliance of Automobile Manufacturers, Inc.: Consumer Privacy Protection Principles, established November 12, 2014, reviewed May 2018, at page 3.

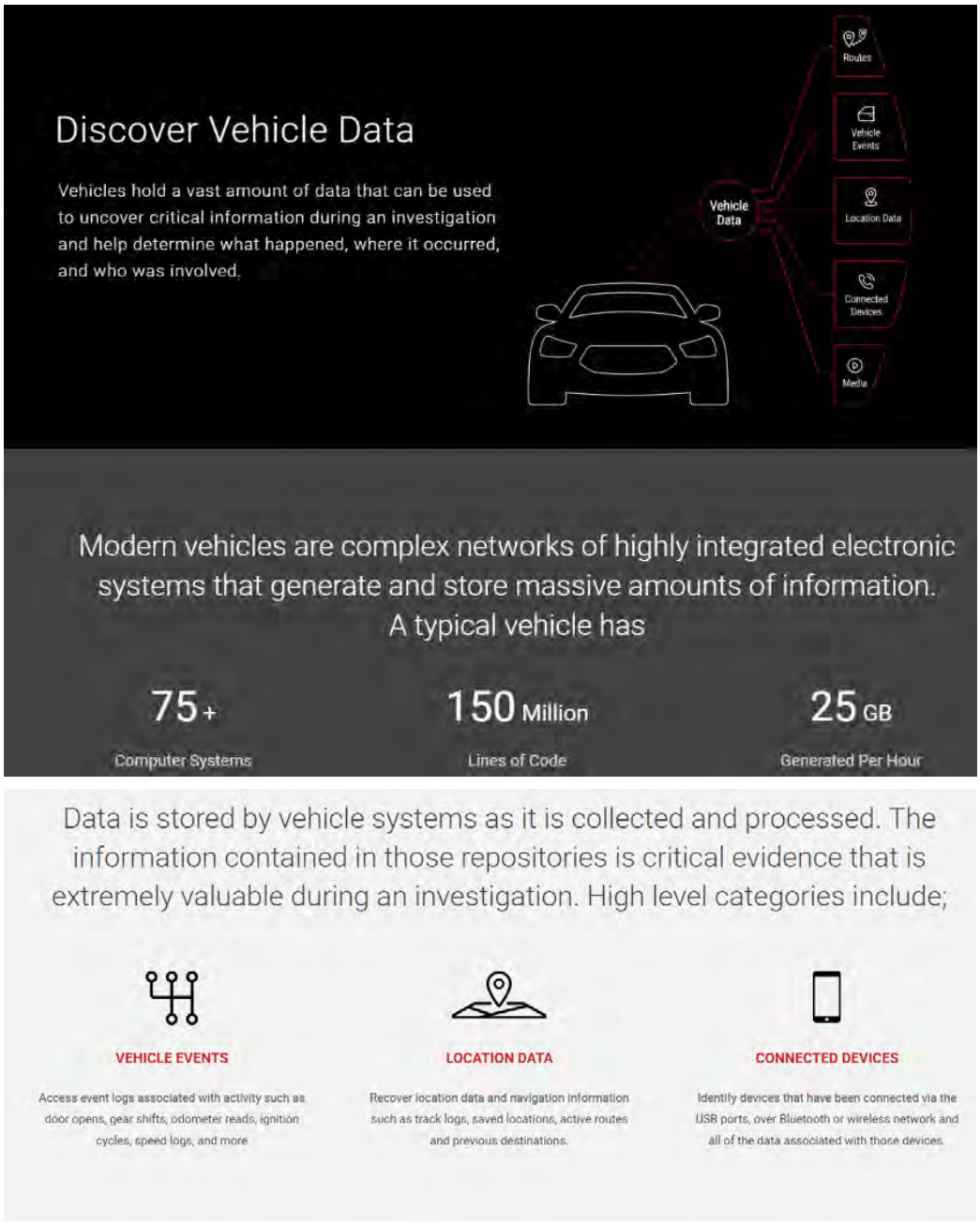


Figure 12 - excerpts from the Berla.co website

As indicated, infotainment systems typically connect to a mobile phone and data from the phone is transferred to the infotainment system. This means call logs and the content of text messages, for instance, pass through the infotainment system. The data is recorded and stays in the infotainment system until it is recorded over. Other data from the vehicle occupants' phones can flow through the Infotainment system as well, such as song titles played. Of more interest in the litigation context, some vehicles keep a recording of each voice command used for voice activation.

Infotainment systems typically sample vehicle telematics data once per second, and each data point will include the time the data point was taken and the vehicle's location from the GPS system, if available. This allows the investigator to determine the path of the vehicle and the speed of the vehicle. However, this is just the starting point. The investigator can assess when other events occurred and where the vehicle was when they occurred. Recorded events include, for some systems: receiving and making telephone calls or text messages; doors being opened; devices being connected or disconnected; lights being turned on or off; hard braking or hard acceleration; and gear shifts. In some systems, traction events are also recorded when the speed calculated based on wheel spin is different than the speed calculated from distance travelled. (This means the wheels must be spinning or skidding.)

Note that it is often not possible to recover such information. Some manufacturers make data from their infotainment systems completely inaccessible, although they presumably could obtain the information themselves.

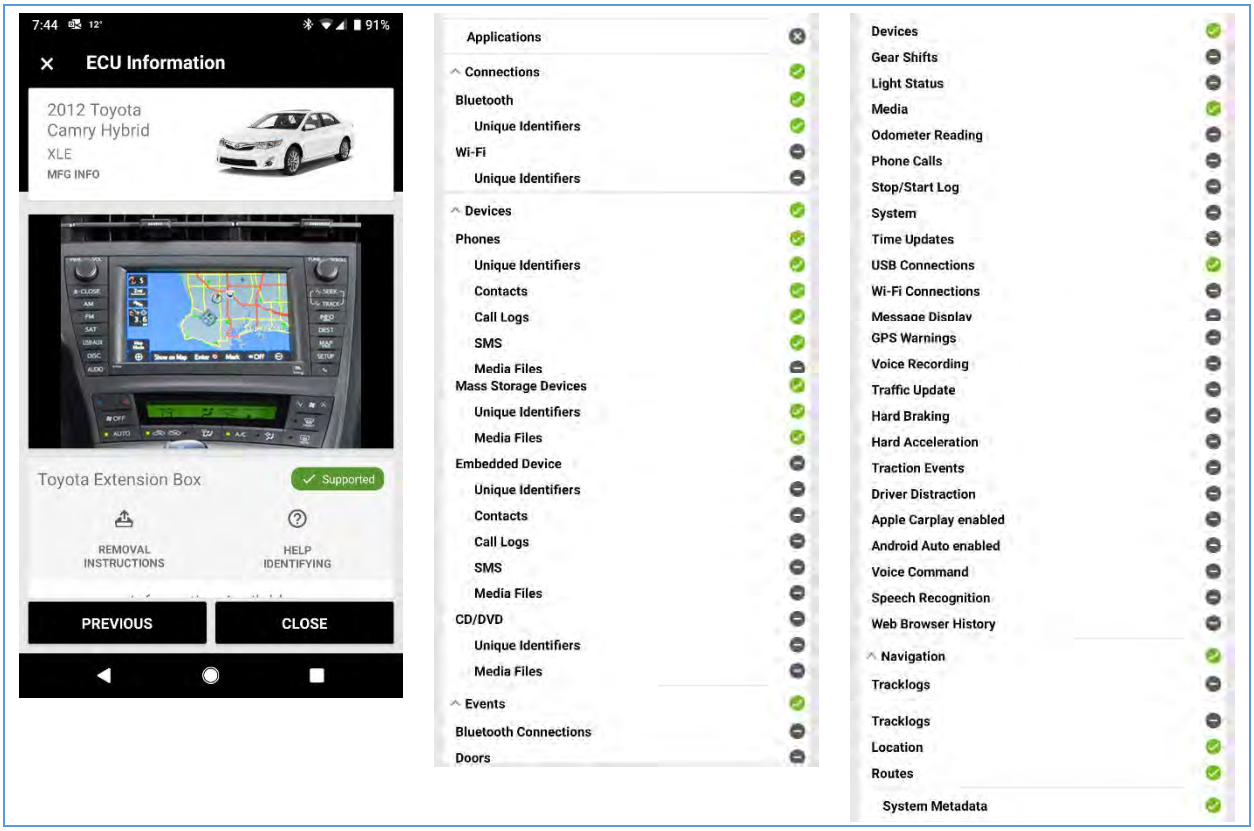


Figure 13 - screenshots from iVe app, showing the types of data available from infotainment systems, with the checked items being available on a 2012 Toyota Camry Hybrid XLE.

Preserving the data

In general, the information in both airbag systems and infotainment systems is time sensitive, in that it is subject to being recorded over during subsequent use of the vehicle. The way data is overwritten varies from vehicle to vehicle and is complex.

Airbag modules often record "deployment events" and "non-deployment events." Deployment events occur when the airbag deploys, which generally means there will have been a crash. The data from a deployment event cannot be overwritten. Non-deployment events occur when the vehicle has experienced a sudden but small change in speed (such as a jolt to the vehicle, even potentially from hitting a curb). The speed change was enough to cause the airbag module to "consider" deploying but not enough that it "decided" to deploy. For many systems, this data will stay recorded in the airbag module until the next non-deployment event occurs or for a certain number of ignition cycles,[21] whichever occurs first. Thus the information for the non-deployment event may be available for months, but it will become more difficult over time to discern whether the event recorded and preserved in the airbag module relates to the event in question in the litigation, or a subsequent or even a prior event. You can then get into debates with opposing parties as to whether the recorded event was from the incident in question or some other incident.

Non-deployment event data is very useful in car v. pedestrian, car v. bicycle, and low-speed car v. car accidents. For defendants, the data is especially nice to have in low-speed car v. car incidents because one can develop an accurate sense of how severe or modest the incident was from the change in speed of the involved vehicles. However, because low-speed collisions are rarely thoroughly investigated, it is rare to have the data.

Infotainment systems typically have significant storage capacities, but the extent of data that is recorded depends on a host of factors, including what systems of the vehicle are in use. You can readily imagine that when a host of SMS message or contacts are transferred to the infotainment system from a mobile phone, it will take up the infotainment system's memory capacity, writing over older data. However, often days or weeks of use of the vehicle is captured.

The police will generally only download information from the airbag module or from the infotainment system in cases involving life-threatening injuries or potentially criminal conduct. Thus, if you have the luxury of being involved in a matter from its early stages, you should consider engaging an engineer to download and preserve the data from a vehicle. The expense to do so is modest.

Data available two years after the fact

Often attorneys, especially defense attorneys, are not after accident until long after the data from the airbag module and infotainment system is normally gone. However, there is one avenue you can still consider. If the involved vehicle or vehicles were destroyed in the accident, it is often possible to track down the salvage in a salvage yard and to remove the airbag module and buy it for a minimal amount from the salvage company, or even to download it at the salvage yard.

---

[21] An ignition cycle means the car has been turned on and off. Ignition cycles are recorded in the airbag module so the system will show how many times the car was turned on and off after the non-deployment event.

Dash cams

Dash cams record video as a vehicle is being operated, usually from the driver's point of view. Dash cams have generally been after-market add-ons for car buyers, but this is changing. Several manufacturers are now offering dash cams as optional equipment,[22] although still not as standard equipment. Teslas are an exception to this general rule. Teslas include dashcams as standard equipment,[23] but the dashcam must be set up to record and preserve video.[24]

Nevertheless, aftermarket dash cams have become quite popular. Obviously, these systems provide immensely valuable evidence when they catch video of an accident.

---

22 blackboxmycar.com: Are OEM Dash Cams Worth the Extra Cost?

23 Teslas have always had dashcams but only with the release of a software update in October of 2018 did it become possible for Tesla owners to preserve recorded dashcam video relatively easily: https://www.tesla.com/en_CA/support/software-v9#dashcam. The Tesla also has side cameras. The functionality of the side cameras was enabled in a software release in February of 2019.

24 Owners have to setup a special folder on a USB drive and insert it into one of the USB ports in the vehicle. Then, to save a 10-minute video clip the user must press an icon on the control screen. "Dashcam is only available for Model S and Model X cars manufactured after August 2017, and all Model 3 cars." https://www.tesla.com/en_CA/support/software-v9#dashcam. When the vehicle is in "sentry" mode, the cameras including the side cameras start recording if the vehicle is bumped, even lightly. This is especially useful for catching vandals or thieves.

Getting and Using Digital Breadcrumb Evidence

How to download your data from big tech companies

In the European Union, the General Data Protection Regulation (GDPR) came into effect in May 2018. The GDPR requires that companies provide, upon request, copies of personal data that belongs to EU citizens. Many companies around the globe have moved to become compliant with this EU regulation, no matter where their customers live. It is therefore possible in many cases for individuals to obtain a copy of their personal data if the data collector is a large international company.

The California Consumer Privacy Act (CCPA), which came into effect on January 1, 2020, is having a similar effect in the U.S. and worldwide. For instance, Microsoft has decided it will honor California's new privacy rights throughout the United States,[25] and T-mobile is honoring these rights for all its customers, whether they are California residents or not. [26] Like the GDPR, the CCPA also mandates large companies to make available for review the customer data that they maintain about consumers. Companies are being forced into transparency for the data they hold.

Typically, some but not all the data from devices and apps can be accessed and downloaded. A series of 2018 articles by Todd Hasselton of CNBC provides instructions on how to get your data from the big tech companies. [27] Although the information in these articles is already a bit outdated, they will get you started and give you a strong sense of what's out there. This information changes rapidly and will continue to change as the impact of the CCPA is felt.

---

[25] microsoft.com: Microsoft will honor California's new privacy rights throughout the United States.

[26] T-mobile.com: Take Control of Your Data. "Although the CCPA only provides these rights to California residents, we allow non-California residents to make the same requests about their personal data."

[27] Todd Hasselton: How to Download a Copy of Everything Apple Knows About You, CNBC, October 18, 2018; How to find out what Facebook knows about you, CNBC, November 19, 2017; How to see everything Twitter knows about you and download your tweet history, CNBC, April 4, 2018; Here's how to find what Amazon knows about you, CNBC, April 5, 2018; How to download a copy of everything Microsoft knows about you, CNBC, April 18, 2018.

Google Takeout

Another great article which appeared in the Guardian called "*Are you ready? Here is all the data Facebook and Google have on you*."[28] The article includes subtitles such as: Google knows where you've been; Google knows everything you've ever searched – and deleted; Google has an advertisement profile of you; Google knows all the apps you use; Google has all of your YouTube history; The data Google has on you can fill millions of Word documents; Facebook has reams and reams of data on you, too; Facebook stores everything from your stickers to your login location; They can access your webcam and microphone; Google knows which events you attended, and when; And Google has information you deleted; Google can know your workout routine; And they have years' worth of photos; Google has every email you ever sent.

Google has since 2011 had a service which allows users to export their data from most Google services, previously known as the Google Data Liberation Front, now known as Google Takeout. To download data, a user can go to https://takeout.google.com/settings/takeout and follow the instructions to download the files.

From the attorney's perspective, this service greatly simplifies how one can request and obtain data housed by Google. Further, the list of Google products which collect data that users can download is comprehensive.

In cases where the data from a given Google product is or may be relevant, it will be a relatively straightforward process to obtain the data through Google Takeout. However, you cannot select a date range for the data, so it may need to be curated and/or redacted after it is downloaded.

Facebook

Facebook has a good explanation of how to access and download your information at this link: https://www.facebook.com/help/1701730696756992?helpref=hc_global_nav. The link includes a detailed explanation of the data available, which is extensive. It includes all stored active sessions, including date, time, device, IP address, machine cookie and browser information; your current address or any past addresses you had on your account; a list of topics that you may be targeted against based on your stated likes, interests and other data you put in your timeline; any alternate names you have on your account; all of the apps you have added; a history of the conversations you've had on Facebook Chat (a complete history is available directly from your messages inbox); email addresses added to your account (even those you may have removed); events you've joined or been invited to; friends you've indicated are family members; a list of people who follow you; a list of your friends; messages you've sent and received on Facebook; mobile phone numbers you've added to your account, including verified mobile numbers you've added for security purposes; photos you've uploaded to your account; any metadata that is transmitted with your uploaded photos; any information you added to Political Views in the About section of timeline; anything posted to your timeline by someone else, like wall posts or links shared on your timeline by

---

[28] Dylan Curran, Are You Ready? Here is all the data Facebook and Google have on you, The Guardian, March 30, 2018.

friends; the current information you added to Religious Views in the About section of your timeline; people you've removed as friends; videos you've posted to your timeline; and more.

Apple

It's easy to obtain a copy of all of the data Apple has about you by going to https://privacy.apple.com/. As discussed above, Apple does not keep nearly as much data as Google, but they do keep Apple Online and Retail Stores activity, Apple Pay activity, Game Center activity, iCloud Bookmarks and reading list, iCloud Calendars and Reminders, iCloud Contacts and of course photos, iCloud Drive folders and documents, and iCloud mail.

Microsoft

Microsoft allows users with a Microsoft account to download or export their data to an archive file.[29]

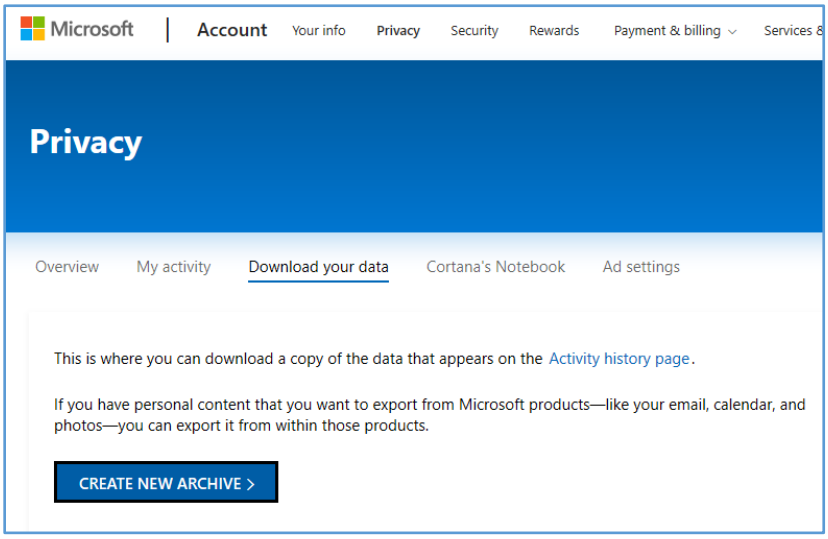


Figure 14 – https://account.microsoft.com/privacy/export

Microsoft has a nice refinement in what they call a privacy dashboard, which allows you to review and clear your browsing history, search history, location activity, voice activity and other data.[30]

Fitbit

The Fitbit web site contains detailed instructions on how to download data at this link.

---

29 https://account.microsoft.com/privacy/export

30 https://account.microsoft.com/privacy/

The downloaded data will include weight, BMI, percent body fat, steps, distance, floors, minutes sedentary, minutes lightly active, minutes fairly active, minutes very active, activity calories, calories burned, start time, end time, minutes asleep, minutes awake, number of awakenings, time in bed, minutes of REM sleep, minutes of light sleep, minutes of deep sleep. Heart rate data will not be included in the download, even though the device records this information.

Instagram

It's very easy to download your Instagram data. Go to the Instagram website. Log in to your account. Go to Settings > Privacy and Security and select Data Download – Request Download. Instagram will email you a link with your photos, comments, and profile information, as well as a list of all the posts you've liked, all the comments you've made, all the comments you've received, and more.

Twitter

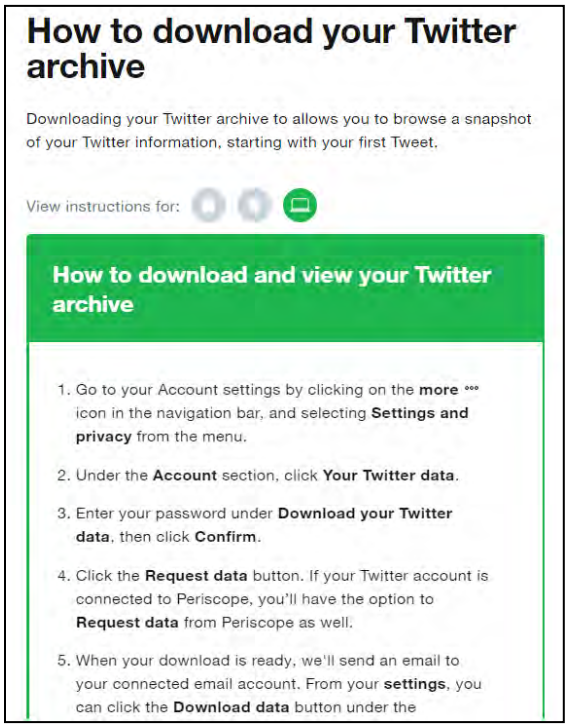


Figure 15 – https://help.twitter.com/en/managing-your-account/how-to-download-your-twitter-archive

Amazon

Amazon collects vast data including what you've bought, what you've browsed, all the Kindle and Audible books you've read, everything you've watched on Prime Video, everything you've listened to on Prime

Music, and everything you've said to Alexa. If you have an Amazon Ring smart doorbell and a paid recording plan, "Amazon stores videos for 30 to 120 days depending on location, or until a customer manually deletes the video."[31]

Earlier in this article, under the heading "Smart Speakers (Alexa, Google Home, Apple Home Pod) and AI assistance (Google Assistant, Cortana, Siri)," I described how easy it is to review and delete your Alexa recordings. However, apart from your interactions with Alexa, Amazon hasn't yet advanced as far as Apple, Google or Microsoft in terms of making it easy for you to download your data. With that said, there is a great deal of information accessible by essentially browsing through your own account information.

Strava

Strava has always allowed users to export data relating to a single activity, such as the .gpx file (a file format for a GPS trace) for a run or ride. As of May 2018, Strava provides users the ability to bulk export an archive of their entire account. The user will receive a zipped folder with all of the activities uploaded to Strava, all the photos uploaded to Strava, all the routes the user has created, all the posts and comments they've made, all of their "Relative Effort" data and other information.[32]

Mobile phone companies

The websites of T-Mobile[33] and AT&T[34] both provide means to request the personal data they hold about their customers. It appears for the time being that AT&T will only provide this service to California residents. As stated above, T-mobile will honor these requests from all its customers.[35] No doubt other mobile phone companies are moving in the same direction.

At the time of writing, I have been unable to determine whether mobile phone companies will provide their customers with location data in response to CCPA data access requests.

---

31 Ina Fried: What Amazon knows about you, Axios, May 2, 2019.

32 https://support.strava.com/hc/en-us/articles/216918437-Exporting-your-Data-and-Bulk-Export

33 https://www.t-mobile.com/privacy-center/our-practices/privacy-policy#section7

34 https://about.att.com/csr/home/privacy/StateLawApproach/ccpa.html

35 *Supra*, note 26.

Relevance and Usefulness

The relevance of data from the sources described above will be fact specific in any given case. When digital data is available, it is often nice to have in the sense that it can usually be depicted graphically. Graphs or charts from evidence of this nature can be impactful. Further, the evidence is often objective and reliable.

Criminal cases

In a high-profile California homicide, the victim's Fitbit helped establish the time of death, which was five days before her body was found. Her steps count stopped, and then seven minutes later her heart rate spiked, then dropped, then stopped altogether eight minutes later. Her Ring surveillance camera showed that she had been visited by her 90-year old stepfather at the time of her death. He was charged with her murder.[36] It was reported that the Fitbit data would be challenged by the defense, but the accused died before trial.[37]

In another high-profile homicide, this one in Connecticut, police have alleged that the steps data from the victim's Fitbit is inconsistent with the narrative her husband gave about her death. The husband is now accused of her murder.[38]

In an Ohio assault case arising from a road rage incident between a motorist and a cyclist, the accused unsuccessfully sought a new trial after becoming aware that the victim had been using Strava at the time of the incident.[39] The court found that the Strava data would not have affected the outcome.

Personal injury cases

In the personal injury context, the injured claimant's Fitbit or other activity tracker data is now frequently being sought and used by both sides when it exists. The data can help the claimant if pre-accident activity data shows an active claimant and post-accident data shows a decline in activity. Alternatively, it can help the defense if post-accident activity is high.

A plaintiff's steps, exercise or heart rate data may be helpful in assessing how active the plaintiff has been.

---

36 Lauren Smiley: A Brutal Murder, a Wearable Witness, and an Unlikely Suspect, wired.com, September 17, 2019.

37 Megan Cassidy: Murder defendant dies: A Fitbit device linked 91-year-old San Jose man to his stepdaughter's death, San Francisco Chronicle, September 11, 2019.

38 Christine Hauser: In Connecticut Murder Case, a Fitbit Is a Silent Witness, NY Times, April 27, 2017.

39 *State v. Bauman*, 2018 Ohio 4913.

Injured persons often complain of weight gain or weight loss as a result of an accident and, if available, weight data would certainly objectify that claim and would be relevant to evaluating the claim.

So many cyclists are tracking their riding activity with Strava or similar apps these days that cases involving Strava data will continue to arise more frequently. The data provides a trace of the person's route so could be valuable in assessing speed (discussed above under the heading "Location Data"). The possibility that the cyclist was trying to set a new personal best or competitive time should be considered in these circumstances.

In addition, injured individuals who use these apps may be generating relevant activity data. A person's pre-and post-accident exercise data may assist in appreciating the effect of the accident on the person's activities, as frequency, duration and intensity of exercise may all be reflected in the data.

In cases where fatigue may have played a role in causing an accident, the sleep data from a wearable device or from a CPAP machine may be highly relevant. Also, it is very common for personal injury plaintiffs to complain of sleep difficulties as a result of an accident, and generally there is no available method to objectively verify these claims. However, if a plaintiff is using a CPAP machine, the sleep data from a CPAP machine could be very valuable.

Privacy

No one would dispute that very important privacy interests are raised with digital data of the type being considered here. With that said, much of the data litigants might seek from each other's devices is similar in nature or less intrusive than other types of information long acknowledged as discoverable in appropriate cases. In one case I was involved in, the court found that production of evidence regarding the plaintiff's video game use "could not be considered highly intrusive." Unlike medical records, the data did not disclose any core biological information.[40] As another example, steps data seems less intrusive than medical records. Further still, courts typically have no difficulty seeing the relevance of surveillance, which can be intrusive. As such, we can expect that a lot of evidence of this nature will be producible despite the legitimate privacy concerns.

Proportionality

Given the volume of data that can be generated by devices, proportionality issues will also play a significant role in the assessment of whether the types of data discussed above should be produced. However, as we have seen above, it will often be easy to obtain the data. It is often readily downloadable, at no or little cost, by the individual who generated it.

---

40 *Redmayne v Rose*, 2015 ONSC 3011

Accuracy

The developers of devices like the Fitbit apps typically claim considerable accuracy for the data, with some limitations. However, it will often be possible to dispute not only the accuracy of the data, but also the appropriate interpretation of it. For example, even though a device or app may be registered to a specific individual, sometimes you can't tell who was using it at the relevant time and you will be left to infer from the available data. Further, users often complain that data from wearable devices is not accurate.

The accuracy of the digital evidence being considered here will be fact specific.

Geographic Data

The usefulness and the depth of information in Google Maps and Google Earth is amazing.

Google Maps

Google Maps provides great maps, satellite images, directions, transit routes and traffic information. It provides views from street level of locations around the world. It calculates how long it will take for you to get from one place to another in various modes of transit. You can use it to share your location. You can find just about any business with the simplest of searches, and conveniently find business contact information, hours and website links. Google Maps also has a Timeline feature which tracks location data from your phone (discussed above under the heading "Google Maps Timeline"). Google Maps also allows you to create "labelled" and "saved" places. It keeps track of places you have visited, if you enable this. It allows you to create and save maps with marked routes or locations and to share these with others. If you get driving directions using Google maps, you can receive a notification for when it's time to leave. A relatively new feature on Google Maps allows you to directly access, delete and download your location history and Maps data.

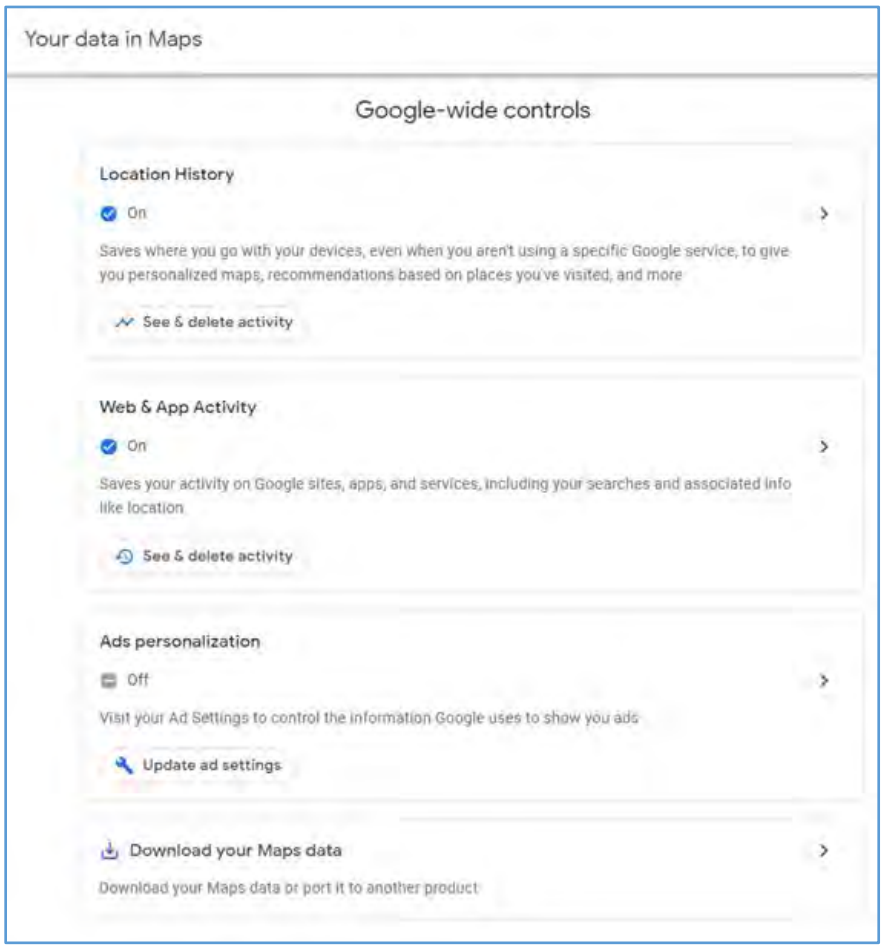


Figure 16 – You can now directly access your location history and download your Maps data from Google Maps.

Figure 17 - Google Maps in map view

Figure 18 - Google Maps in satellite view

Figure 19 - Using the menu on the left you can toggle between Map view, Satellite view and Terrain view. You can also turn on live traffic data, transit routes and bike paths.

Figure 20 - Live traffic data in Paris.

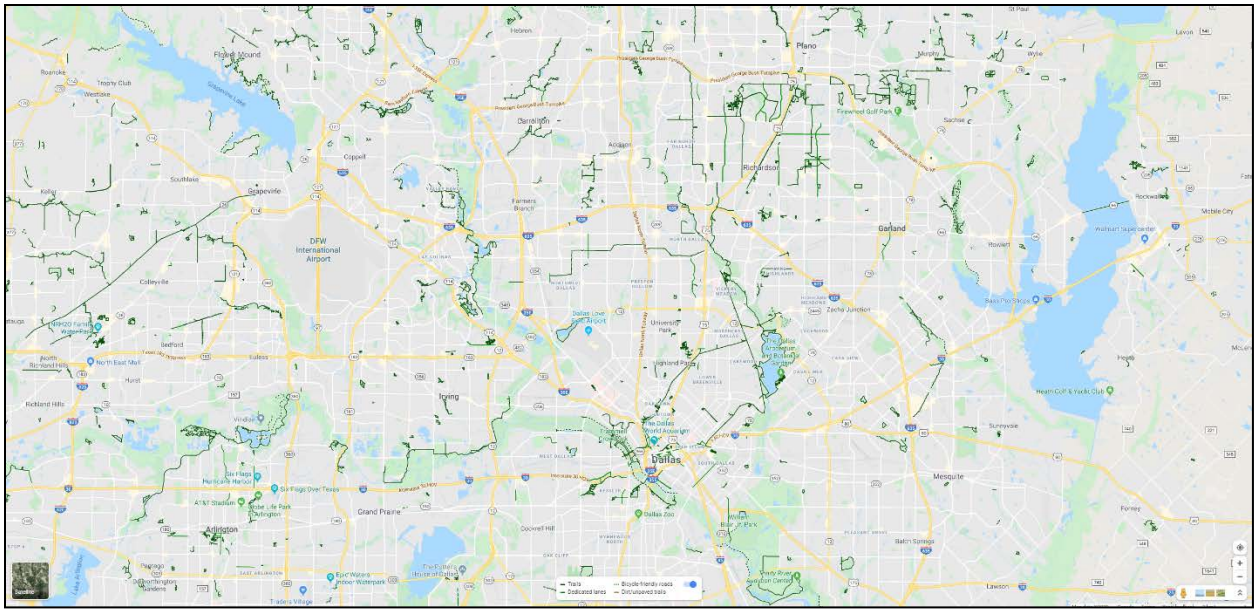


Figure 21 - Bike paths in Dallas

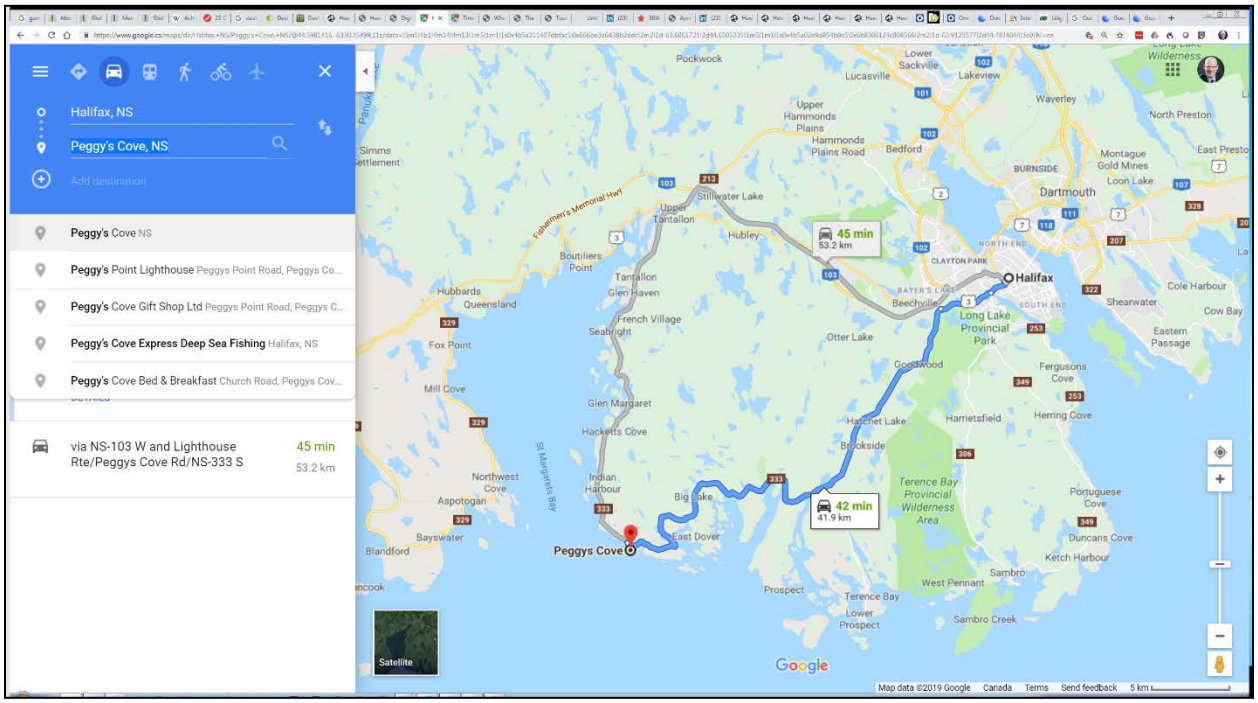


Figure 22 - You can find directions with alternate routes and travel times displayed.

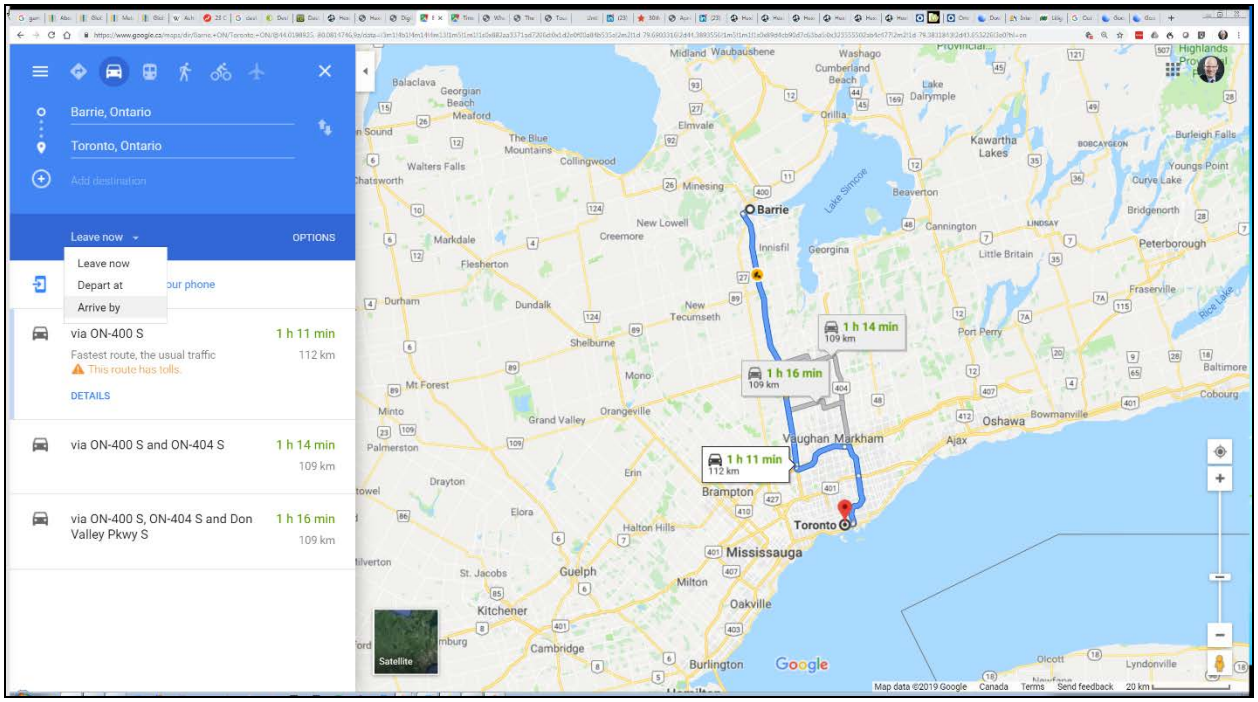


Figure 23 - Google maps can suggest what time to leave in order to arrive at a given time.

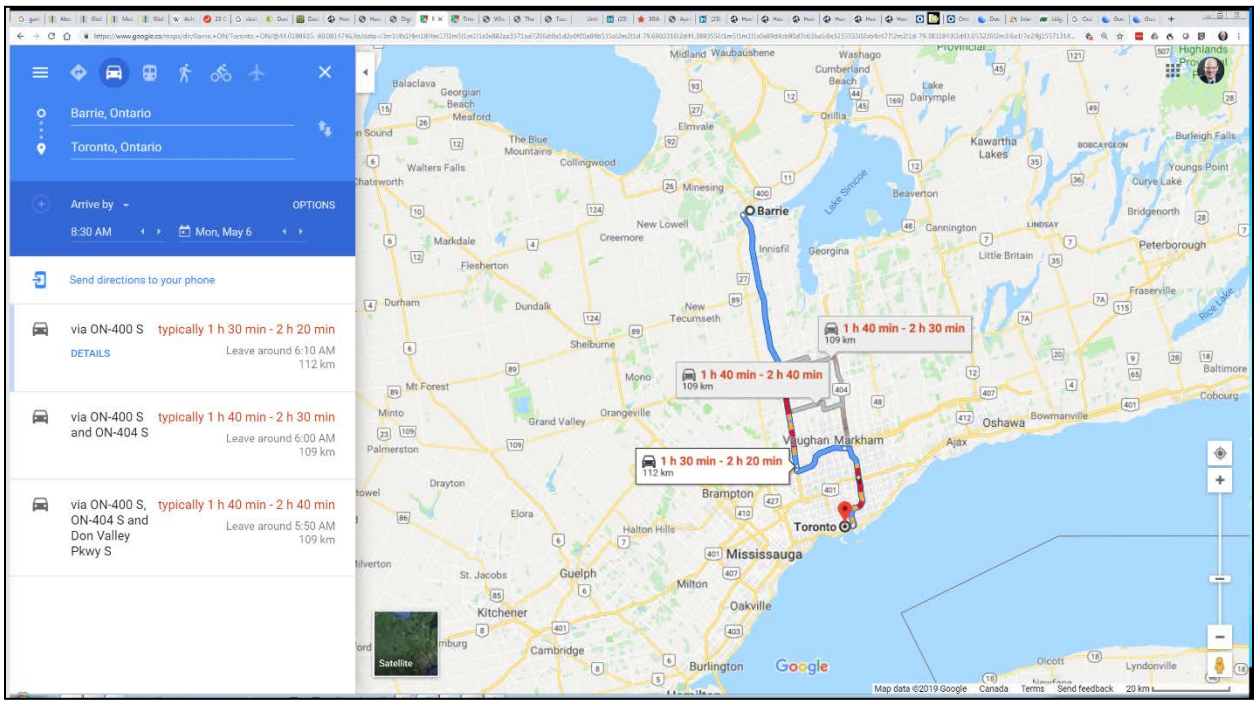


Figure 24 - You can also find travel times which factor in typical traffic for a given day of the week. If you have a Google account and have given Google your mobile phone number, you can send directions from the website to your phone.

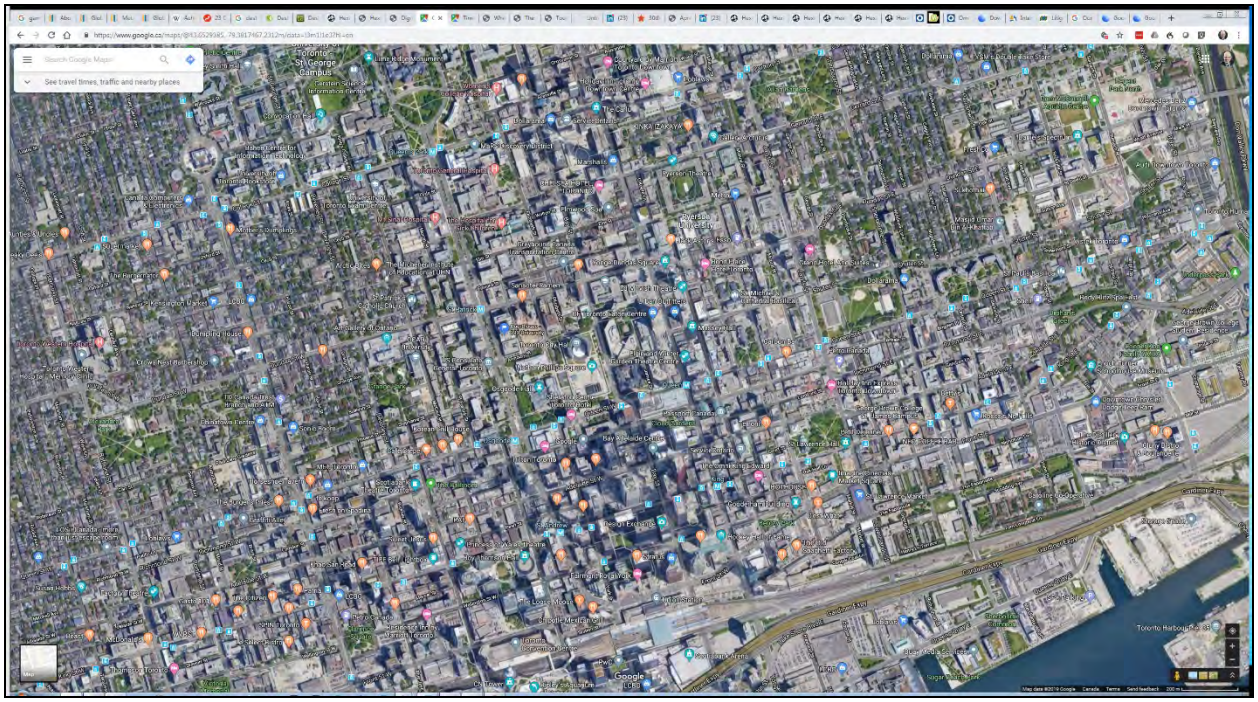


Figure 25 - Google Maps is a business directory as well. It feeds Google's advertising universe. You cannot easily display a map from Google maps which does not also display the many labels for businesses. This can, however, be done in Google Earth (see below).

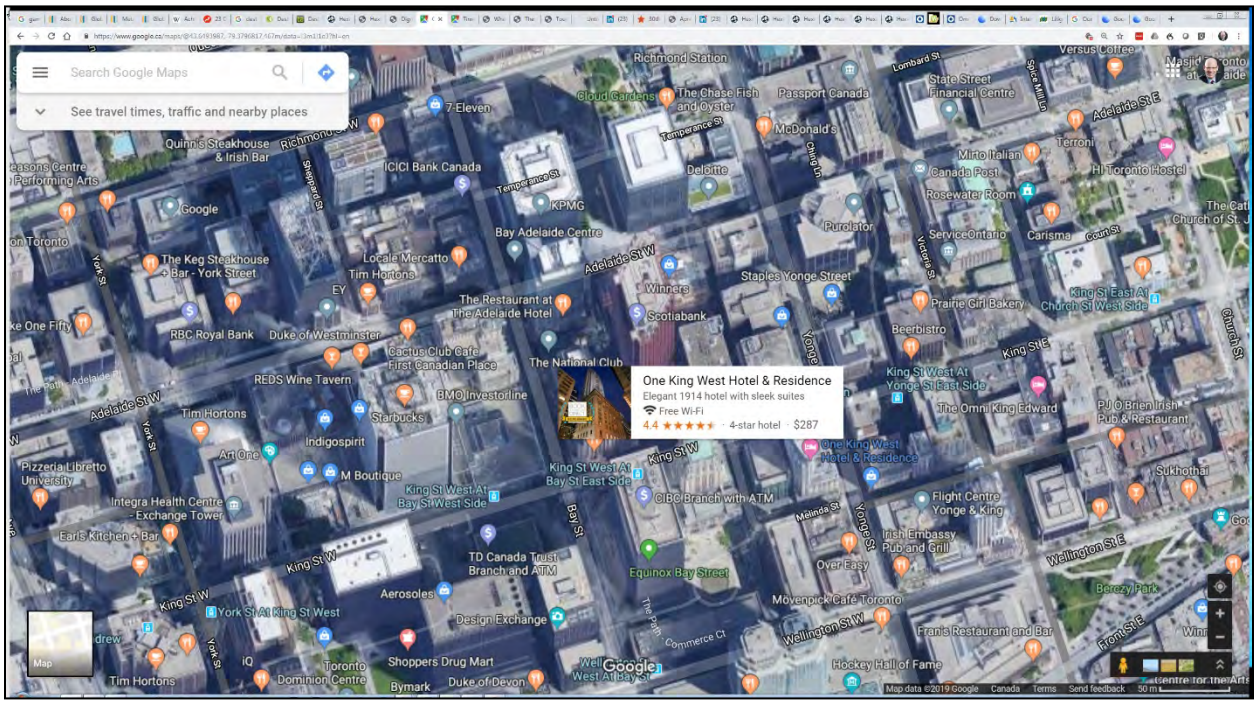


Figure 26 - An example of what you see when you roll your mouse over a business label.

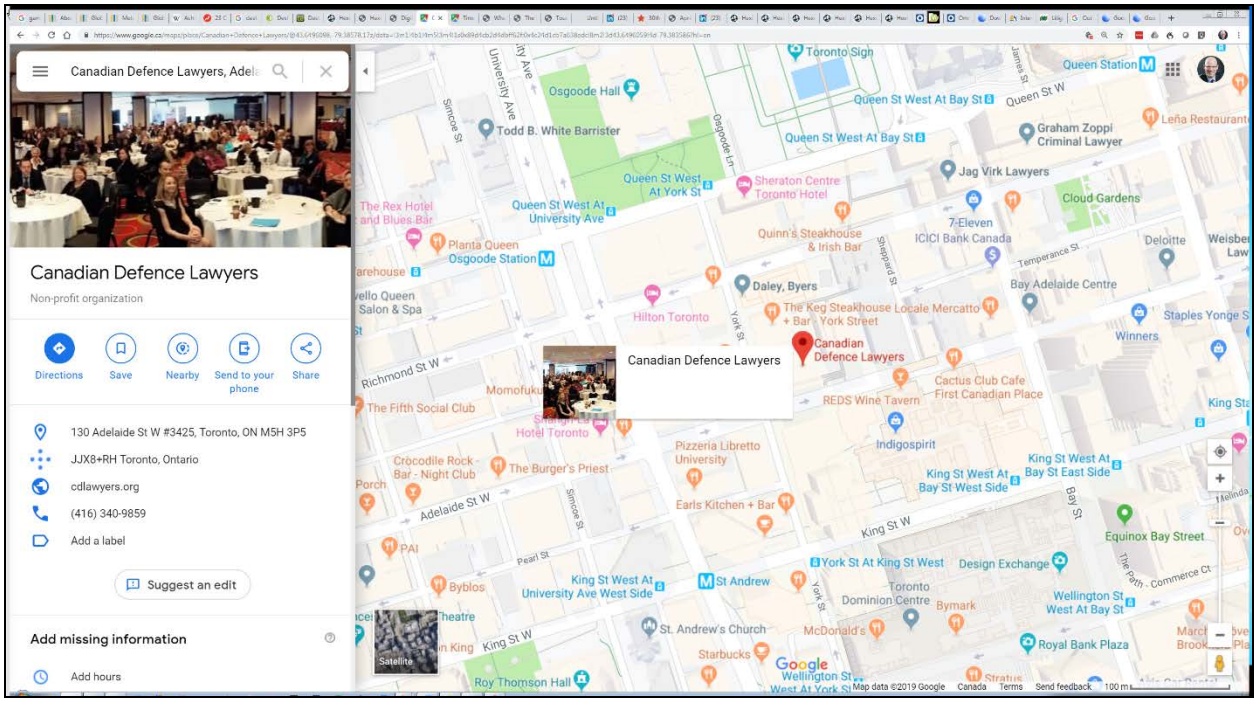


Figure 27 - An example of what you see when you click on a business label. If the business owner has provided the data to Google, you will see the business address, website and phone number.

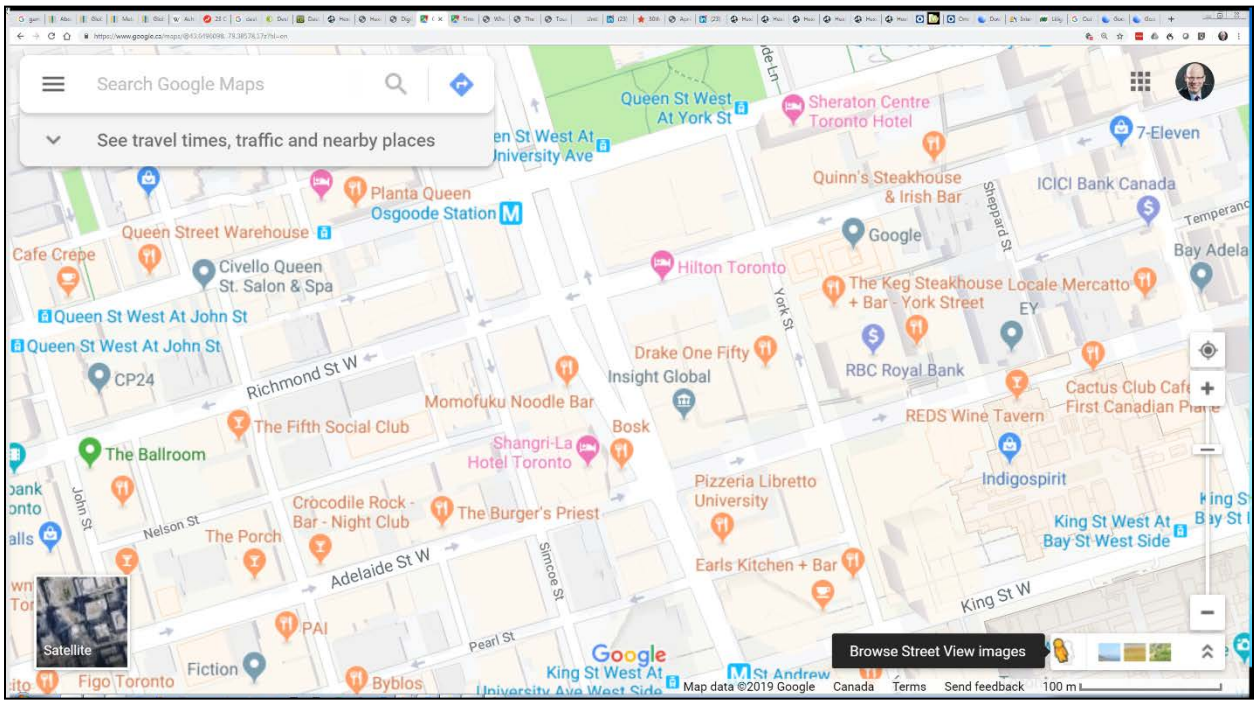


Figure 28 - Street view images are available by dragging the little person in the bottom right and dropping it at your selected location.

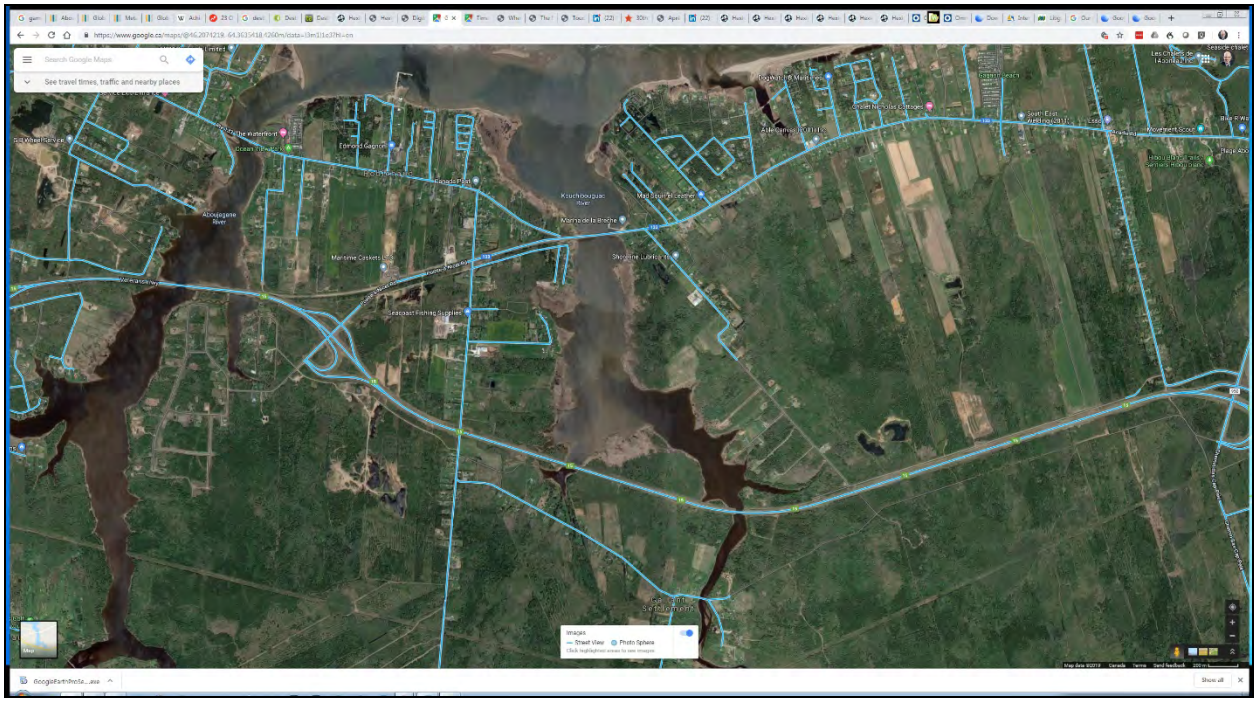


Figure 29 - As you drag the person onto the map, roads which have been photographed for Street View are highlighted in blue. Many small rural roads have never been photographed.

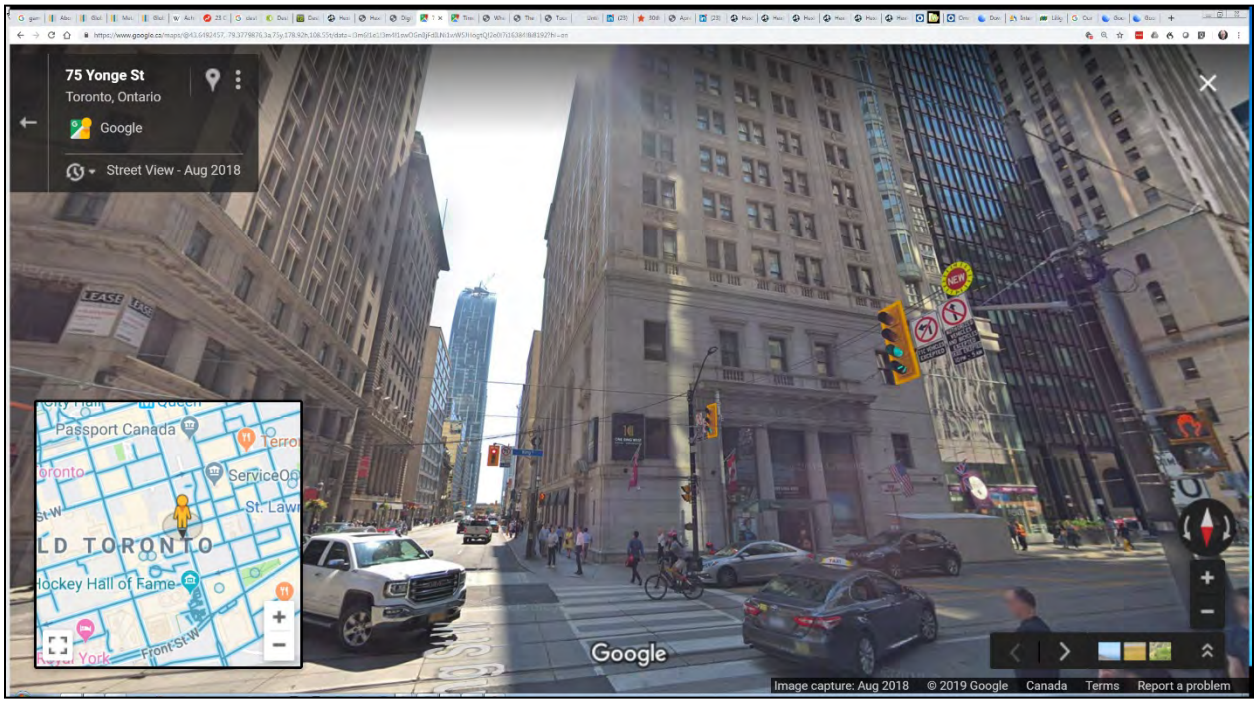


Figure 30 - One King Street West, Toronto. The date of the photo is displayed in the upper corner. This image is from August 2018.

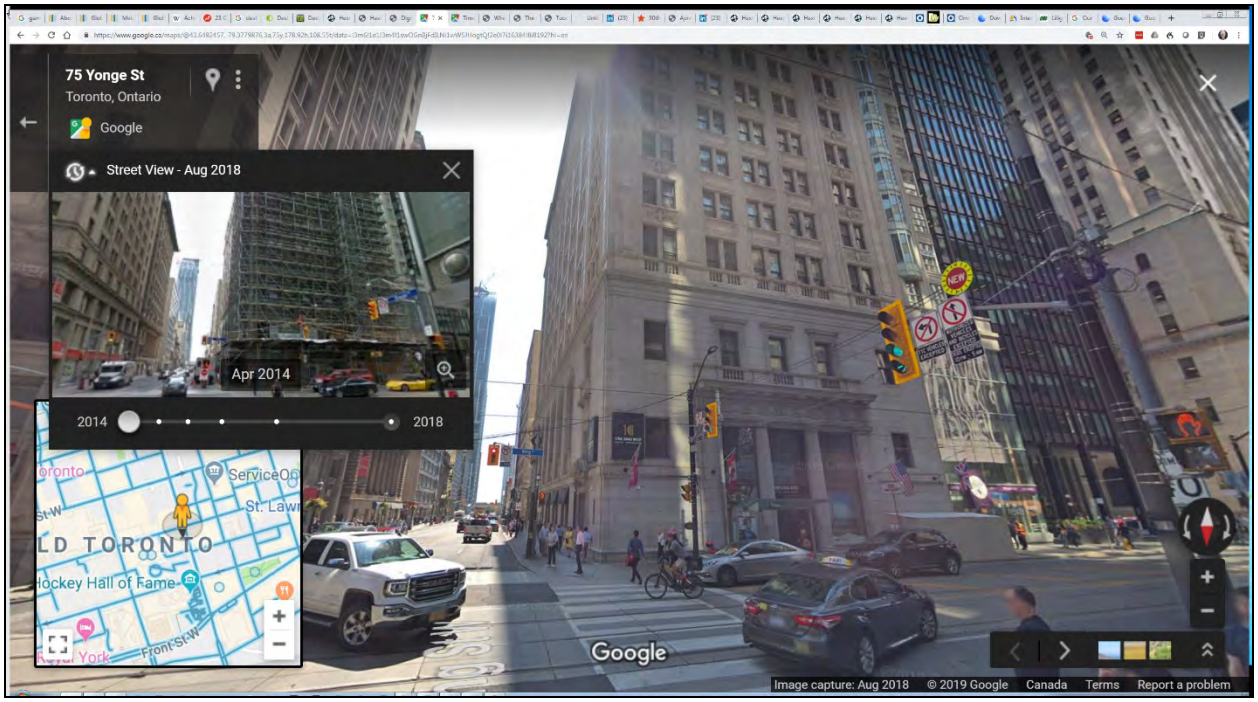


Figure 31 - Many streets have been photographed several times, especially in more dense urban areas. This allows for historic Street View imagery, which can be very helpful.

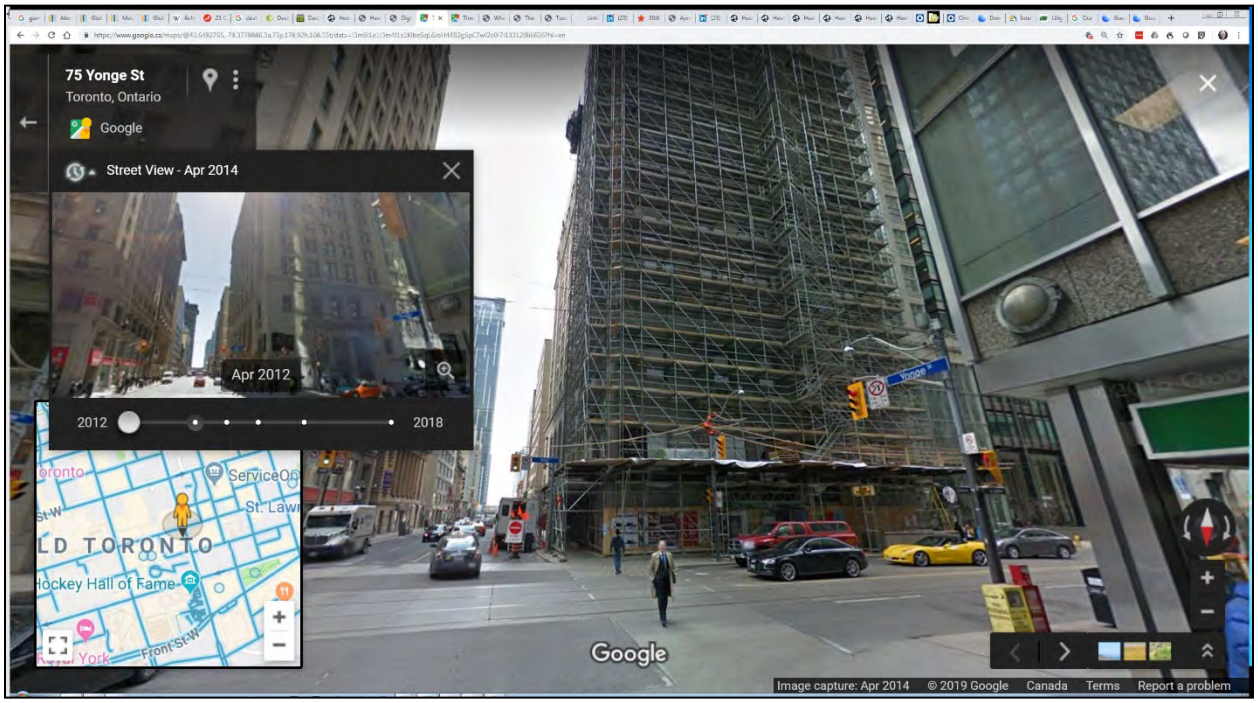


Figure 32 - This shows 1 King Street West in April of 2014, and in the upper left corner you can see that April 2012 imagery is also available.

Below is an excerpt from a pretrial memo in a matter in which the plaintiff's spouse died in an accident in December 2009. The plaintiff began another relationship within a year. We looked on Google Earth Street View and noted that the plaintiff's home appeared better landscaped and maintained post-accident. The garage door had been painted, landscaping done, and more flowers planted.

Figure 33 – Google Street View image from 2009 (four months before accident).

Figure 34 - Google Street View image from 2012.

The plaintiff admitted that her new boyfriend had done these home improvements. We argued that this detracted from the claim for loss of services.

Google Earth for Chrome

Google Earth for Chrome provides overlapping features to Google Maps. It is marketed as the "world's most detailed globe." It only works in the Chrome browser.

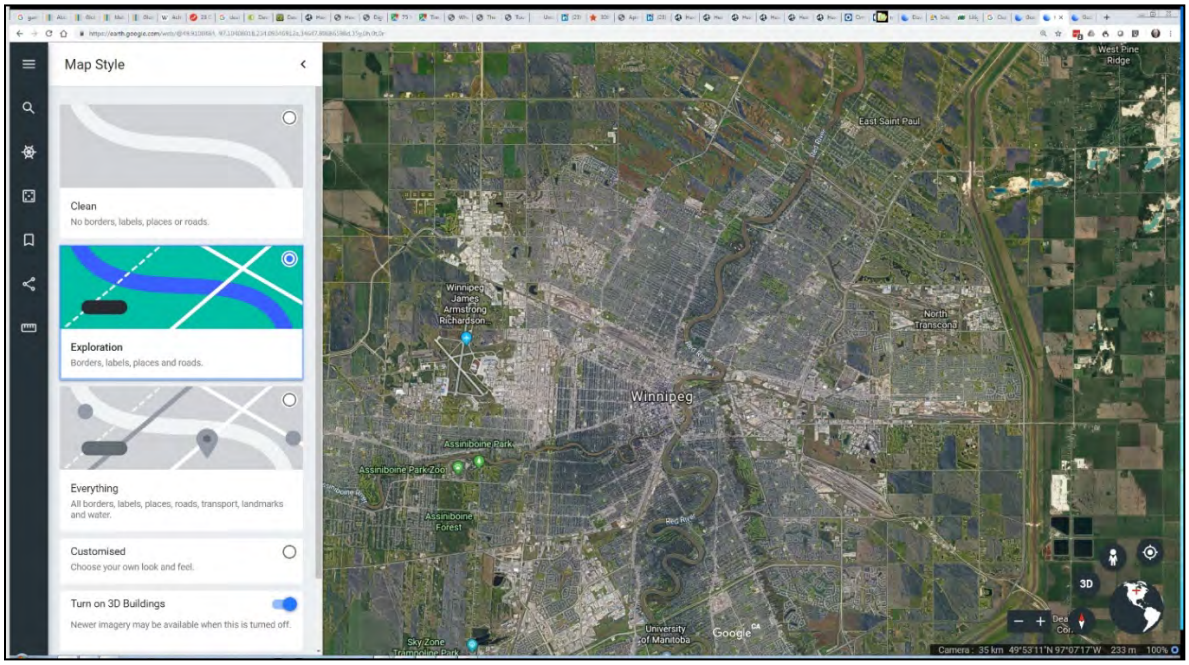


Figure 35 - Unlike in Google Maps, in Google Earth for Chrome you can easily select or deselect labels to be displayed.

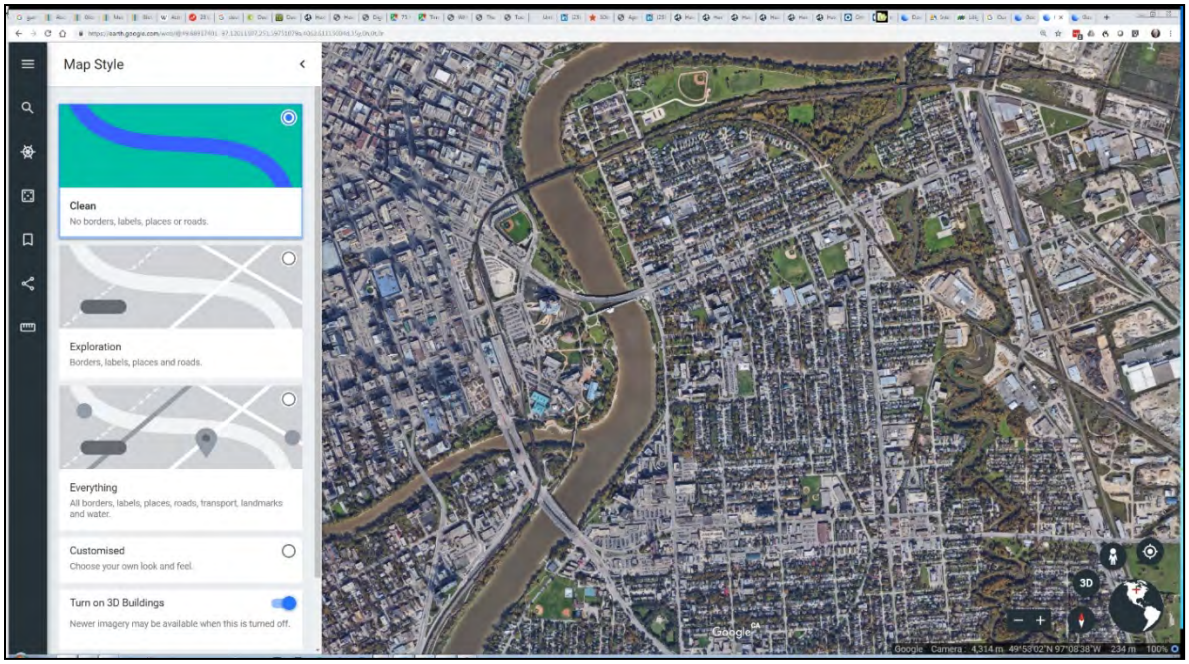


Figure 36 - Here is a clean display with all labels removed.

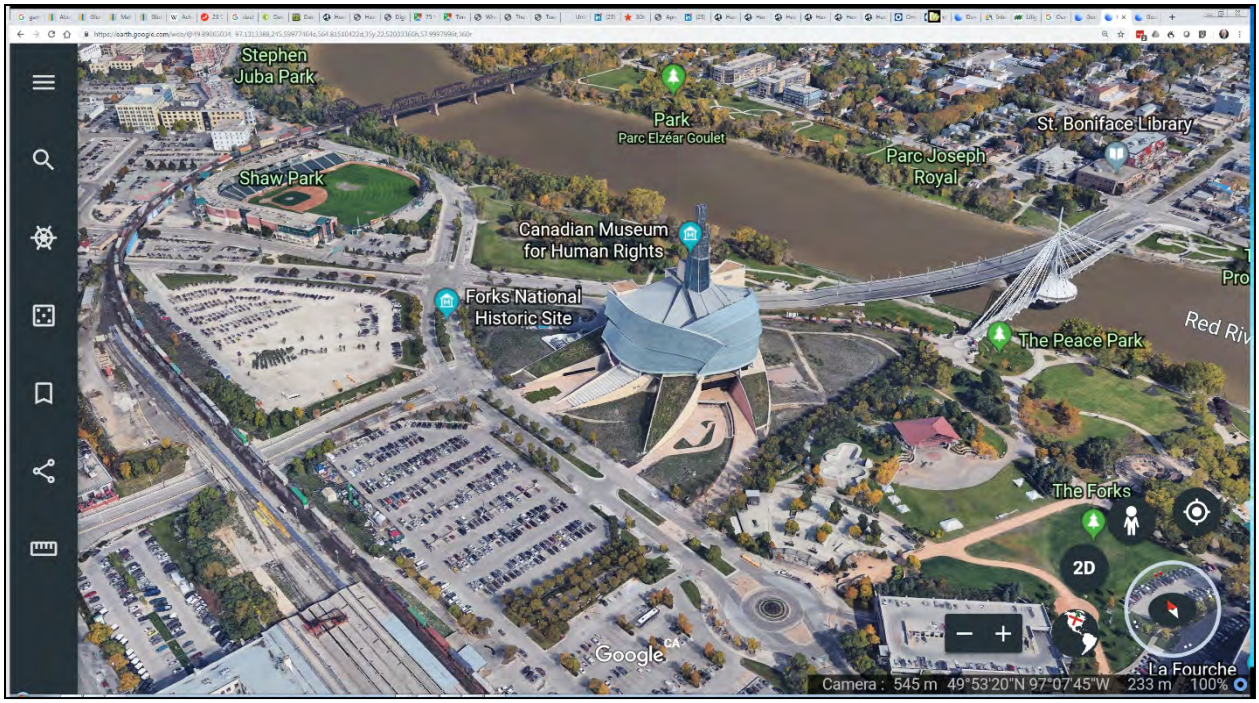


Figure 37 - You can turn on 3D view in Google Earth for Chrome, and display buildings and geographical features in 3D. Here, to return to 2D you would click on the 2D button in the bottom right. You can also tilt the view so that you are not looking straight down from above, and you can change the direction of the view by rotating the compass in the bottom right using your mouse.

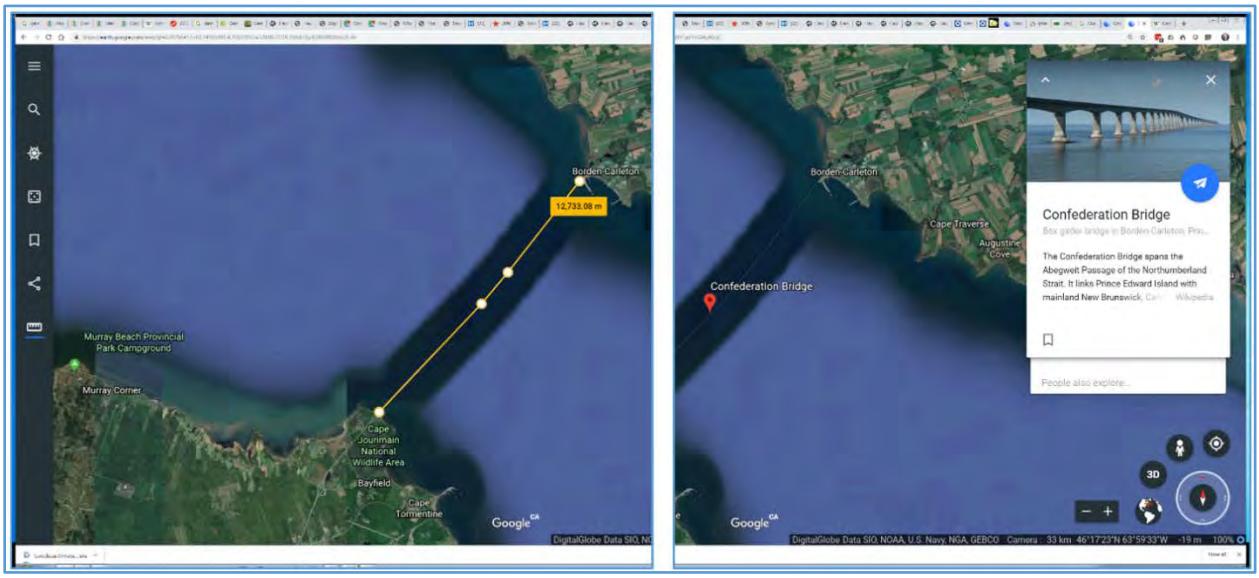


Figure 38 – Google Earth for Chrome also has a handy measuring tool which allows you to measure the distance between two places on a map, whether between two points or between a series of points. Here I have measured the length of the Confederation Bridge. Google Earth Pro has more sophisticated measuring tools (discussed below).

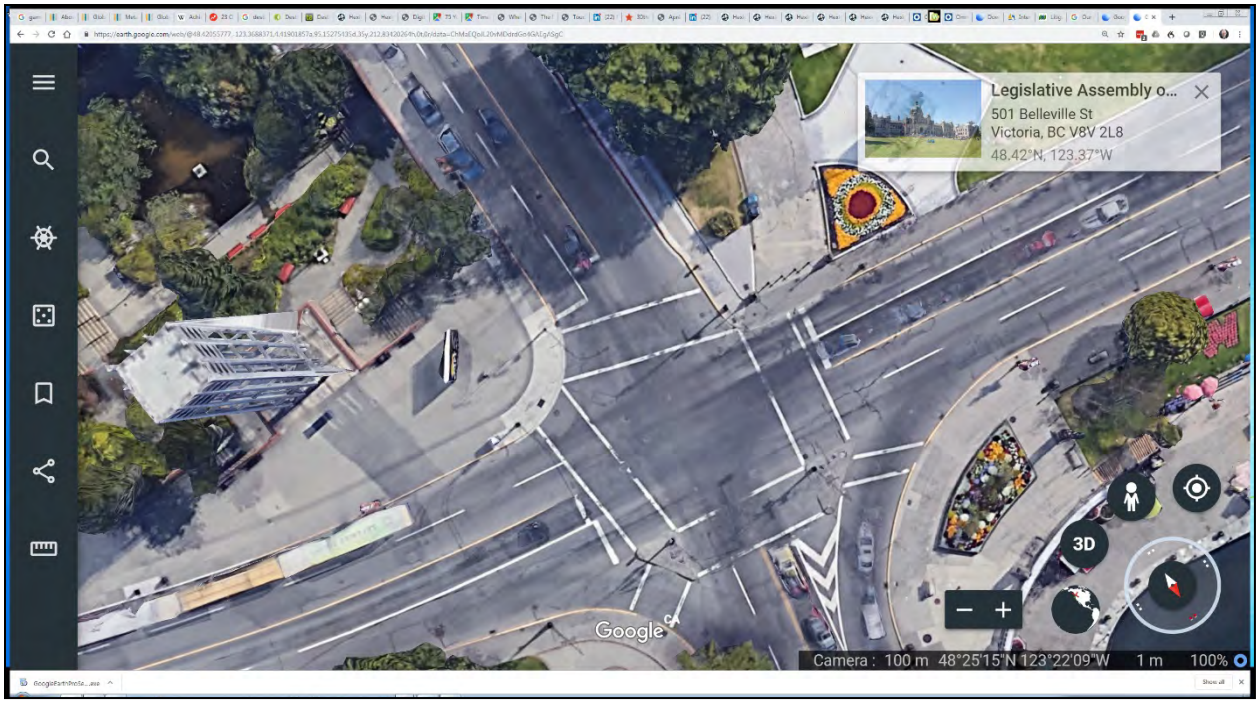


Figure 39 - Google Earth for Chrome is terrific for visualizing the lanes and markings of an intersection.

Google Earth Pro

Google Earth Pro is a separate product that also provides overlapping functionality. It is a program you can freely download onto your computer. In the litigation context, Google Earth's most useful features which distinguish it from Google Maps are: (1) it allows you to create labels on satellite images and to mark and measure paths and areas and save views; and (2) it provides historic satellite imagery.

You can download the desktop version of Google Earth for free at https://www.google.com/earth/versions/. There is also a mobile version of Google Earth. It provides essentially the same functionality as Google Earth for Chrome but works on your mobile device.

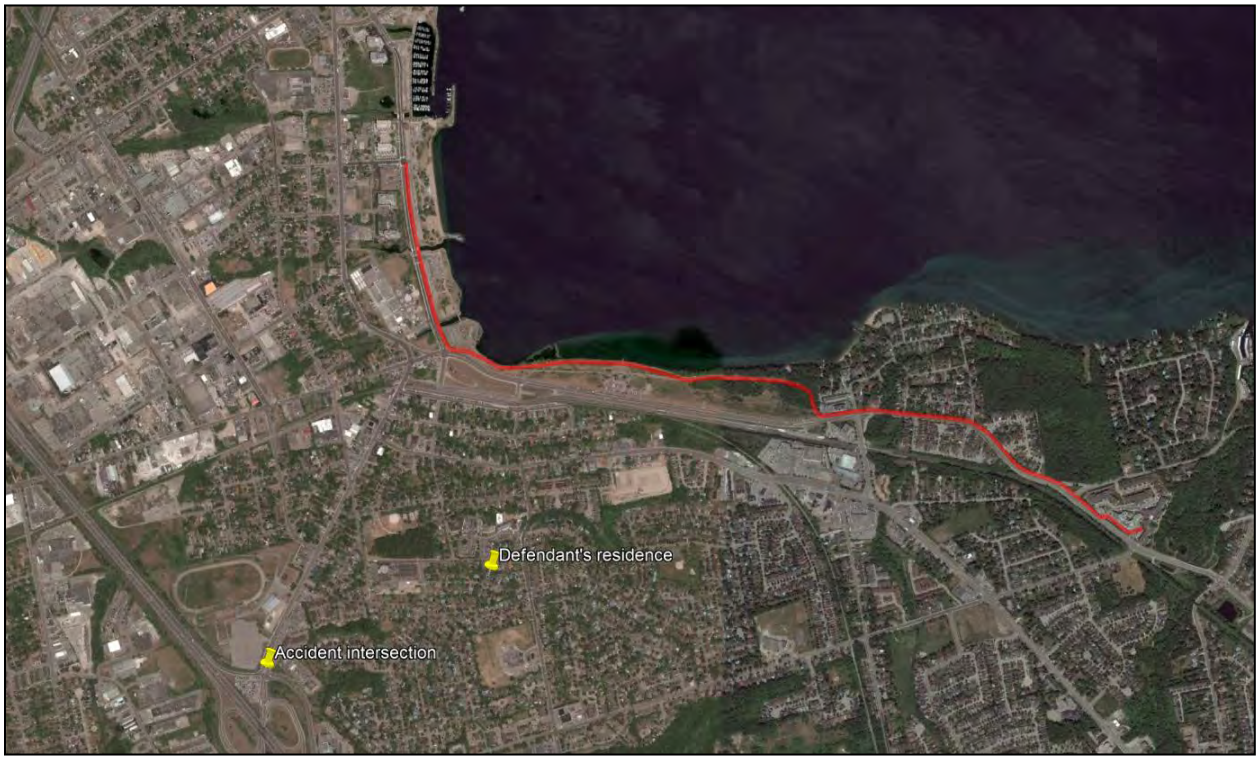


Figure 40 – Examples of marking paths and labeling using the desktop version of Google Earth Pro.

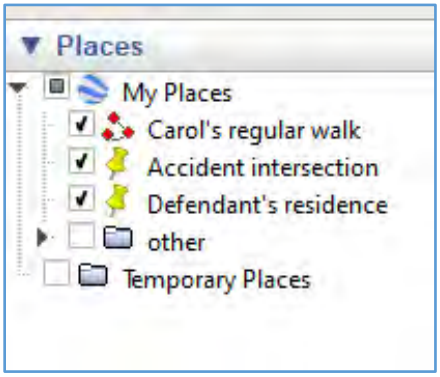


Figure 41 – The corresponding saved places for the image above.

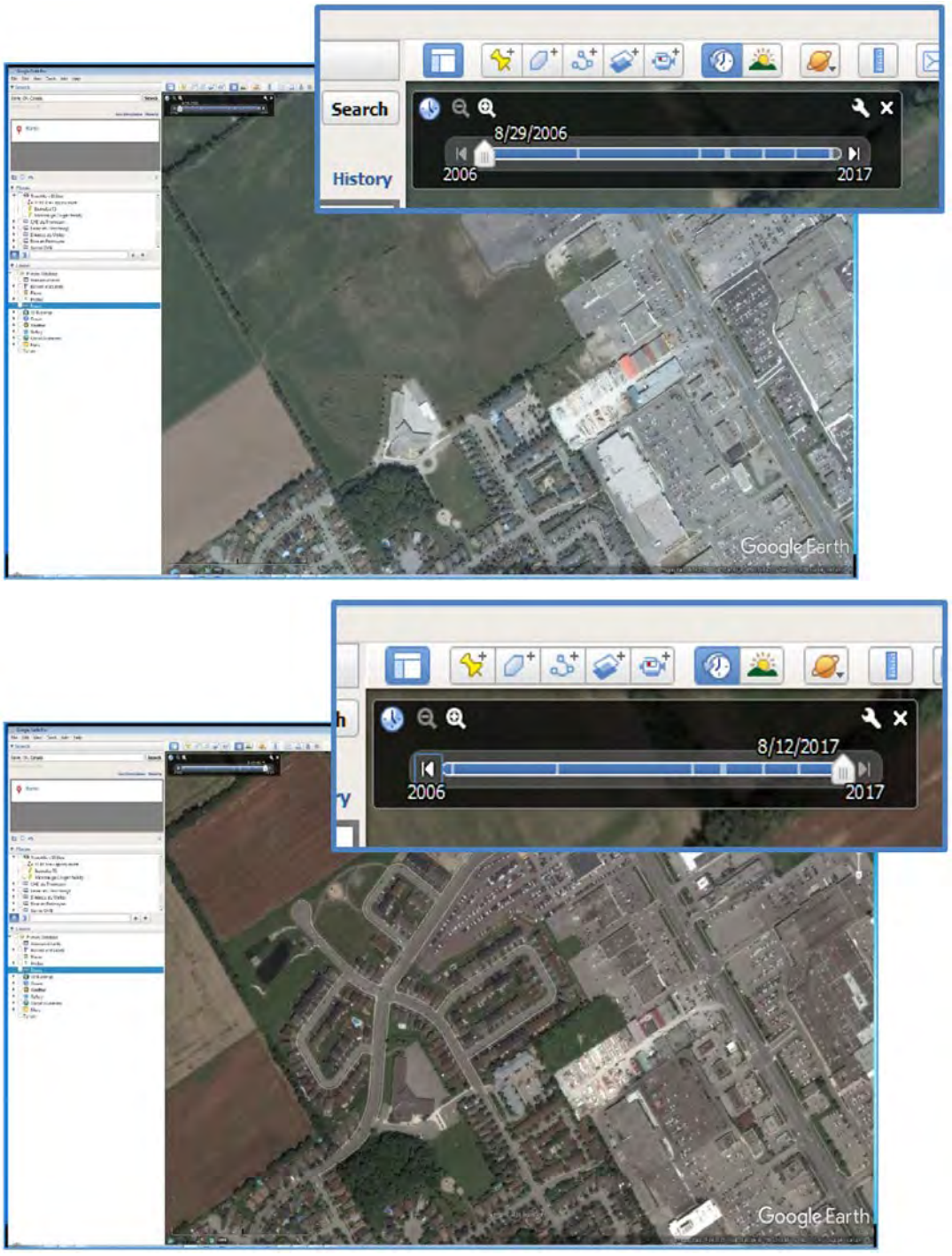


Figure 42 – These are two images of the same location showing the function of the time slider. The upper image was taken on August 29, 2006. The lower image was taken on August 12, 2017. Between the time of the two photos, the road was constructed and a subdivision in the area was constructed. Historical satellite imagery is not available in Google Maps, Google Earth for Chrome or mobile Google Earth, and this is one of the biggest advantages offered by Google Earth Pro.

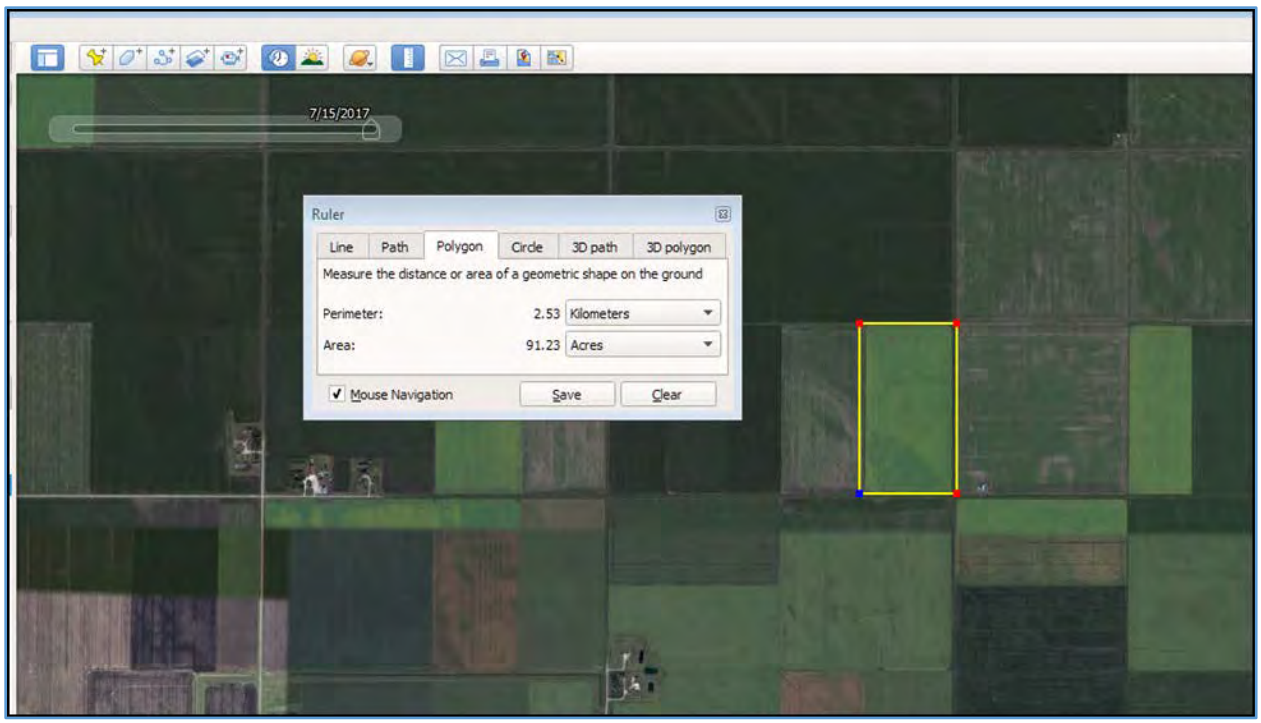


Figure 43 – Google Earth Pro can also help you easily measure areas. Here I have marked a 91-acre field

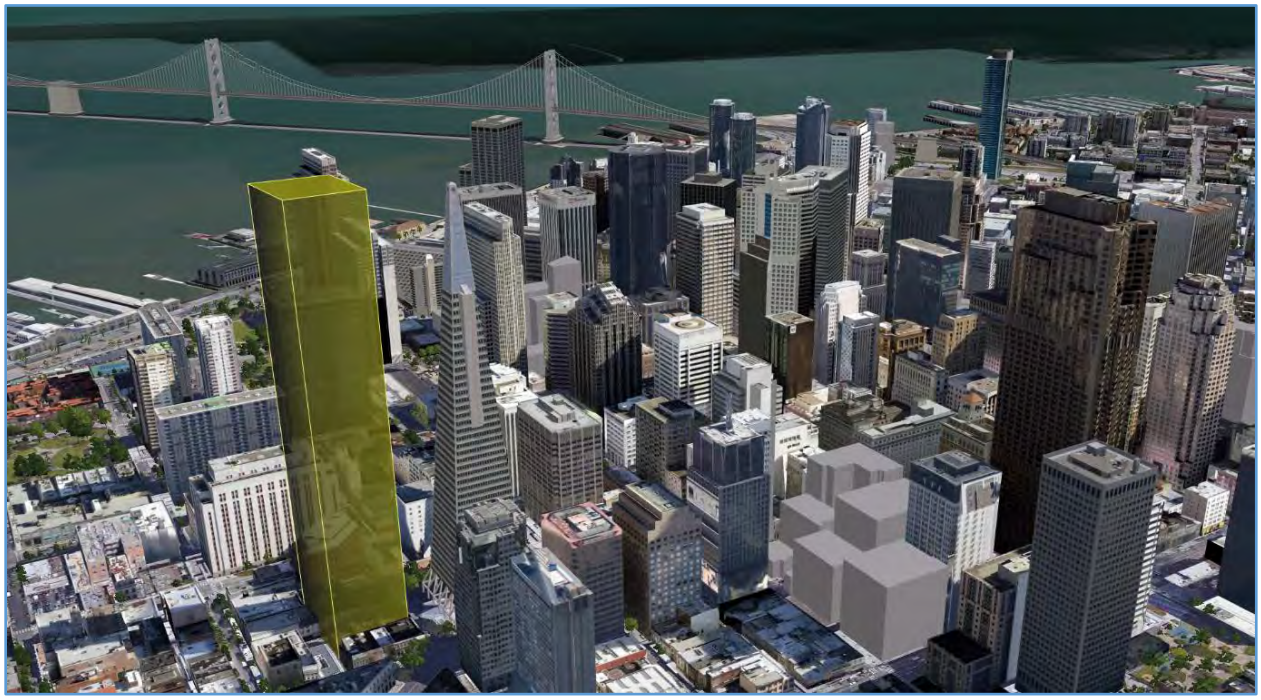


Figure 44 – Google Earth Pro allows you to draw shapes into your image, controlling the location, elevation and measurements of the shape. Here, a building the same height as the Transamerica Pyramid has been drawn.

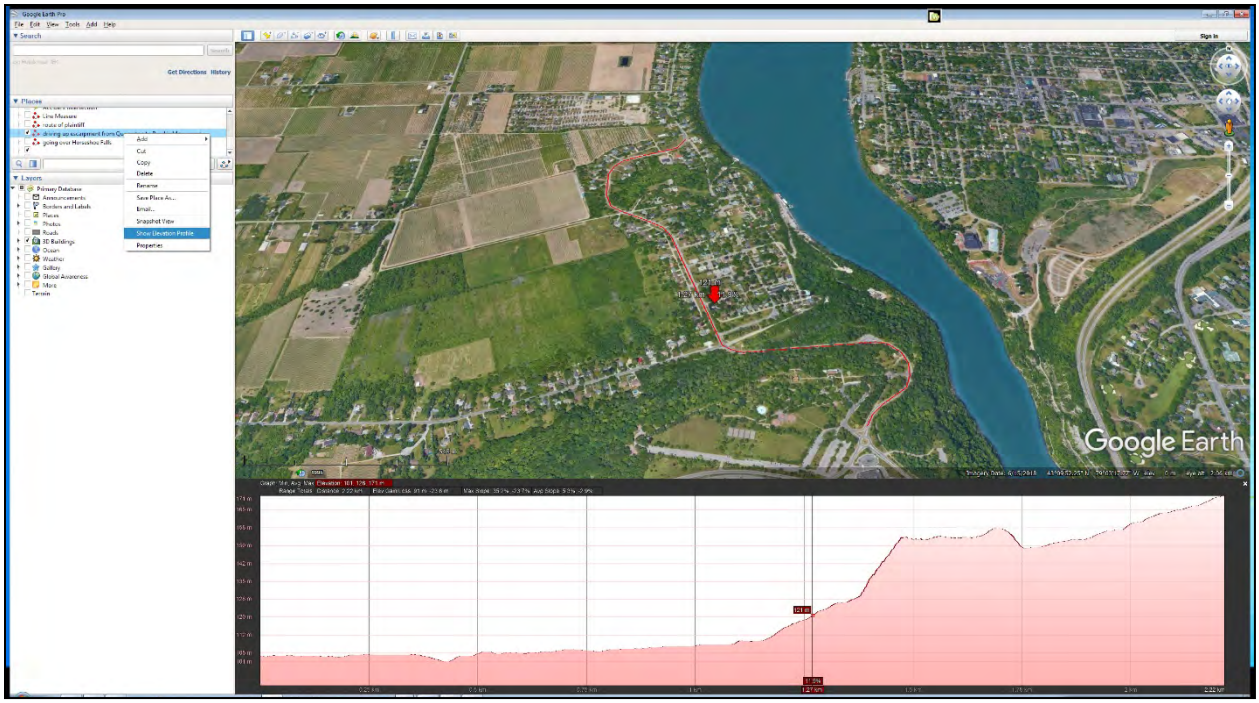


Figure 45 - Google Earth Pro also offers elevation profiles along a selected path. Here, the elevation of a road up the Niagara Escarpment at Queenston is shown.

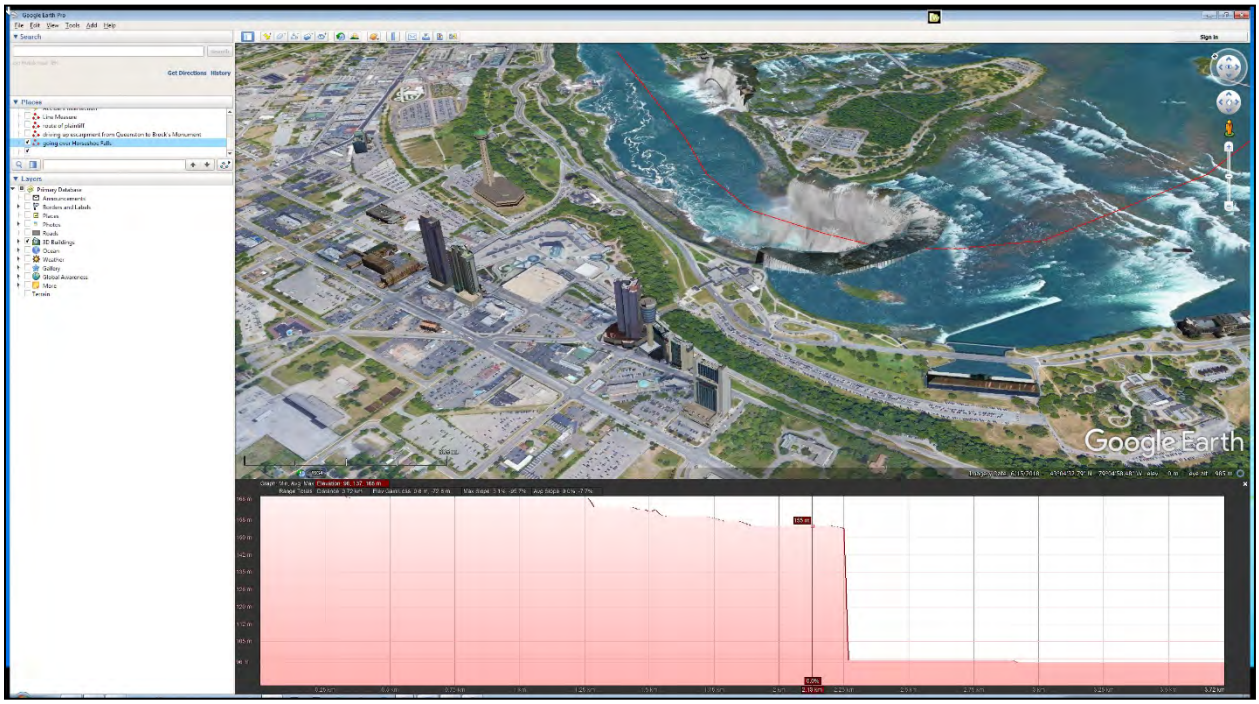


Figure 46 – Here, the elevation profile along the Niagara River and over Niagara Falls is shown.

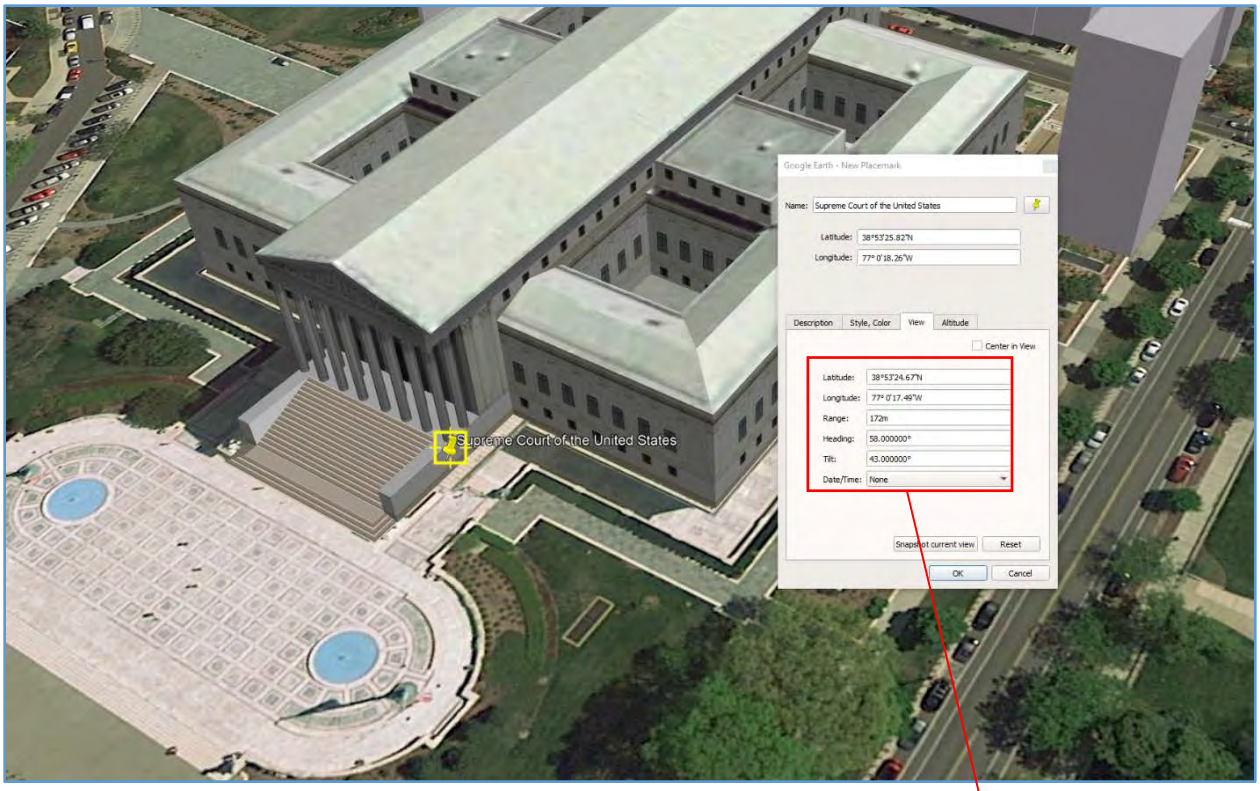


Figure 47

You can add a placemark (here depicted by the yellow push-pin) in any color and in a variety of shapes. You can set the location of the pushpin by selecting it on the map or by entering GPS coordinates. You can name the placemark, and select the font color, size and opacity for your label. When you set a placemark, you can control every detail of the view. As shown in Figure 48, in addition to Latitude and Longitude, you can control the Range (*i.e.*, the elevation from which the image is taken) as well as the heading and tilt angle for the image. The image in Figure 47 shows how things would appear from a height of 172 meters.

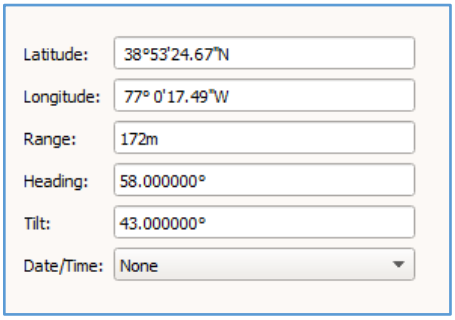


Figure 48

Placemarks get saved in your "My Places" and you can easily return to precisely the same location and view by double clicking on the saved placemark under "My Places."

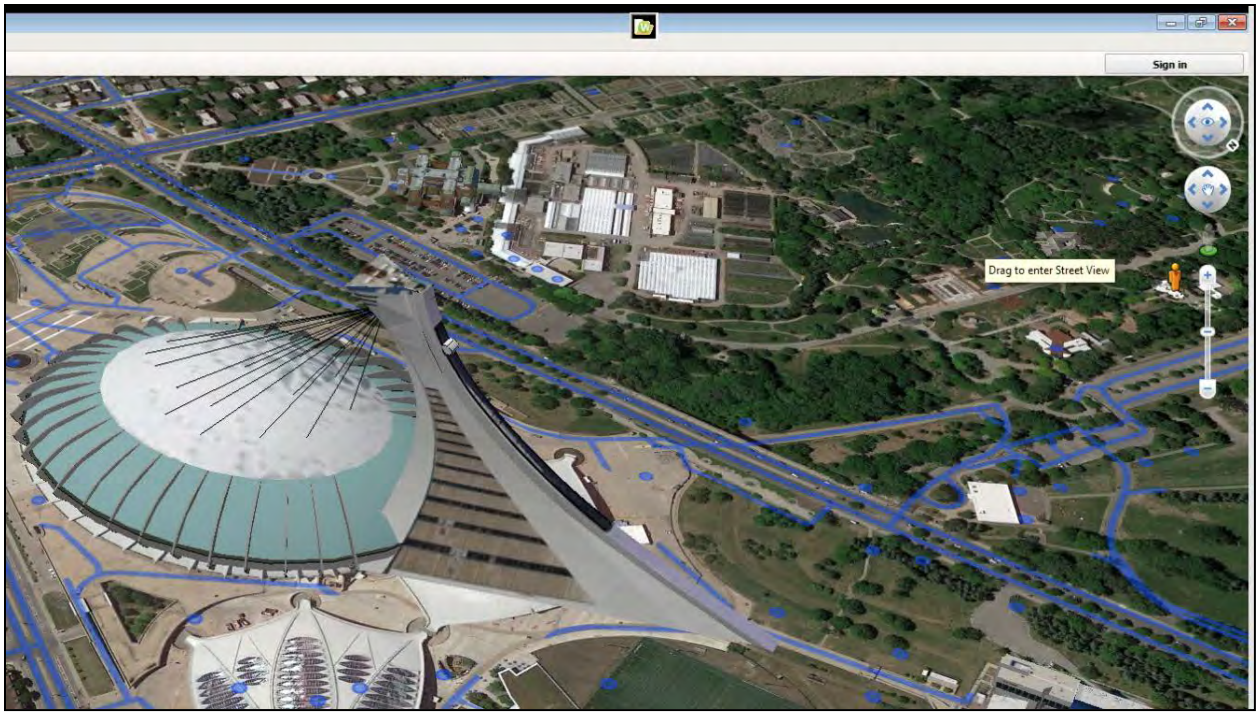


Figure 49 - Google Earth Pro also offers street view. However, only the most recent street view imagery is available in Google Earth Pro. The historical street view imagery offered in Google Maps is not available in Google Earth Pro. Street view is accessed the same way as in Google Maps, by dragging the little person to a blue line. Blue dots offer a 360-degree view.

Figure 50 - Here, the Supreme Court of Canada is seen from street view in Google Earth. Note that there is no historic street view imagery available.

Figure 51 - Google Earth Pro has a feature called “ground level view.” This shows generated 3D buildings and topography from satellite imagery. You do not have to be viewing from the street to get a view. Here, the perspective is from the park, not the street. Measurement lines and paths from “My Places” can be displayed in ground level view and from street view in Google Earth Pro. Here, the red measurement line appears to be lying on the ground.

Sources of aerial imagery

Many if not most municipalities in the United States and Canada have publicly available maps and aerial imagery which show city features and lot lines. In some cases, assessed values of every lot in the municipality are made publicly available.

A Google search with the search terms “interactive gis map” and the name of the municipality will often yield web sites with this information. Some municipalities provide historical aerial imagery. Some even provide assessed property values or even the names of the owners of properties in the municipality.

TECHSHOW2020

Online Dispute Resolution: Changing the Status Quo and Defining the Future of Work in the Legal Profession

WRITTEN BY:

Shannon Salter

PRESENTERS:

Shannon Salter

Jonathan Verk

January 21, 2020

ONLINE DISPUTE RESOLUTION AND JUSTICE SYSTEM INTEGRATION: BRITISH COLUMBIA'S CIVIL RESOLUTION TRIBUNAL

Shannon Salter[*]

This article undertakes a brief comparison of private and public online dispute resolution [ODR] systems before providing an overview of the Civil Resolution Tribunal [CRT], Canada's first online tribunal, and its ODR processes. The article discusses why the CRT has come to be, how it has been implemented, as well as its implications for civil justice reform more broadly. A main proposition is that the transformational potential of ODR will only be realized when ODR is fully integrated with public justice processes. This proposition is not without its difficulties, as the CRT's experience illustrates. To this end, the article also provides an introduction to some of the opportunities and challenges offered by an integrated ODR system like the CRT as well as some of the steps the CRT has taken to meet these demands as transparently and collaboratively as possible.

Dans cet article, l'auteure compare brièvement les systèmes privé et public de règlement des conflits en ligne (RCL) avant de donner un aperçu du Civil Resolution Tribunal (tribunal de règlement des conflits au civil (TRCC)), le premier tribunal en ligne du Canada, et des processus qui le régissent. L'article traite des raisons sous-jacentes à la création du TRCC, de la façon dont il a été mis sur pied ainsi que, de manière générale, de ses incidences sur la réforme du système de justice en matière civile. L'auteure soutient principalement que les possibilités de transformation du RCL passent impérativement par une intégration avec les processus de justice publique. Or, c'est là une démarche parsemée d'embûches, ainsi que l'illustre l'expérience du TRCC. Dans ce contexte, l'auteure fait état de quelques-uns des défis et des possibilités que comporte un régime RCL intégré comme celui du TRCC, ainsi que de certaines des mesures que celui-ci a prises pour relever ces défis de manière à favoriser le plus possible la transparence et la collaboration.

[*] Shannon Salter is the Chair of the Civil Resolution Tribunal. She earned her Bachelor of Arts (2001) and Bachelor of Laws (2005) from the University of British Columbia and her Master of Laws from the University of Toronto (2011). Salter clerked with the Supreme Court of British Columbia, practised litigation at a large Vancouver law firm for several years, and has served as a vice chair of the Workers' Compensation Appeal Tribunal. She is also a commissioner of the Financial Institutions Commission, vice president of the British Columbia Council of Administrative Tribunals, a board member of the Canadian Legal Information Institute (CanLII), and a past board member of the College of Registered Nurses of British Columbia. She is a co-author of the BC *Administrative Decision Maker's Manual*.

I. INTRODUCTION[1]

Put the public first. This is the appeal from the Action Committee on Civil and Family Justice (Action Committee), led by Justice Thomas Cromwell, former justice of the Supreme Court of Canada.[2] It is a deceptively simple concept, and one with which we, as lawyers, would intuitively agree. If there is a unifying theme in the legal profession, it is a common desire to help the clients we serve. However, we must also acknowledge that our profession resists change. Our common law tradition is built on the notion that precedent, or what came before, is inherently better and more trustworthy than some uncertain future innovation. This preference for past over present, while key to the development and refinement of the principles of justice that strengthen our legal system, has also become an impediment to adopting procedural changes to our legal system that would greatly improve access to justice for the public we are meant to serve.

Truly putting the public first in civil matters would require us to examine intensely the structure of our legal system and to ask ourselves, to whom does the justice system really belong? As the Action Committee's report argues, "court processes – language, location, operating times, administrative systems, paper and filing requirements, etc. – typically make sense and work for lawyers, judges and court staff. They often do not make sense or do not work for litigants."[3] The Action Committee's report concludes that the civil and family justice system is too complex, slow, and expensive to produce "just outcomes that are proportional to the problems brought to it or reflective of the needs of the people it is meant to serve."[4]

One of the promises of online dispute resolution [ODR], and technology generally, is that it will increase access to justice by removing barriers like cost, time, and information asymmetry.[5] In doing so, it would offer an answer to the Action Committee's call to provide dispute resolution that is more proportional and tailored to the needs of the public. ODR has a wide definition and, as Richard Susskind points out, can include almost any dispute resolution process, including negotiation, mediation, facilitation, arbitration or other adjudication, so long as it is carried out online and outside a traditional physical setting.[6] It can also include programs or systems offered by private enterprises, non-profit organizations, governments, or a combination of these.

In support of the idea that ODR can reduce barriers to public justice processes, proponents point to the near universality of Internet access in developed countries like Canada.[7] They also argue that the public is overwhelmingly familiar with everyday online activities. Indeed, research in British Columbia shows

---

1 Portions of this article were drawn from papers originally presented at the Osgoode Forum on Administrative Law and Practice in Toronto on 23–24 October 2014 and the Continuing Legal Education Society of British Columbia's (CLEBC) Administrative Law Conference in Vancouver on 30 October 2014.

2 Action Committee on Access to Justice in Civil and Family Matters, "Access to Civil and Family Justice: A Roadmap for Change" (October 2013), online: <http://www.cfcj-fcjc.org/sites/default/files/docs/2013/AC_Report_English_Final.pdf> [Action Committee].

3 *Ibid*. at iii.

4 *Ibid*. at 7.

5 O Rabinovich-Einy, "Balancing the Scales: The Ford-Firestone Case, the Internet, and the Future Dispute Resolution Landscape" (2006) 6 Yale JL & Tech 29.

6 Richard Susskind, "Foreward" in Mohamed S Abdel Wahab et al, eds, *Online Dispute Resolution: Theory and Practice – a Treatise on Technology and Dispute Resolution* (The Hague, Netherlands: Eleven International Publishing, 2012).

7 Network BC Connectivity Map, online: BC Government <http://www2.gov.bc.ca/gov/topic.page?id=07995D6F9B7947E2AD602A101FBCAFA6>.

people are comfortable with online banking, email, texting, and searching, for example.[8] Conversely, despite the very high number of Canadian adults who experience serious, difficult-to-resolve legal issues,[9] the public is overwhelmingly unfamiliar, and uncomfortable, with traditional justice processes, such as those that take place in courthouses, tribunals, and their registries.[10] Evidence suggests that engaging with a civil justice process can wreak havoc on a person's mental, physical, and financial well-being.[11] This, combined with the high cost of justice, discussed below, may explain why Canadians tend not to seek help for the vast majority of justiciable issues.[12]

The Civil Resolution Tribunal [CRT] is Canada's first online tribunal and, currently, the only ODR system in the world that is fully integrated into the justice system. The CRT allows the public to resolve their condominium property and small claims disputes fairly, quickly, and affordably.[13] The CRT provides the public with access to interactive information pathways, tools, and a variety of dispute resolution methods including negotiation, facilitation and, if necessary, adjudication.[14] Participants use all of these ODR services from a computer or mobile device at a time that is convenient for them. For those who are unable or unwilling to use technology to resolve their dispute, the tribunal provides paper-based or telephone-based services.

This article undertakes a brief comparison of private and public ODR systems before providing an overview of the CRT and its ODR processes. The article discusses why the CRT has come to be, how it has been implemented, as well as its implications for civil justice reform more broadly. A main proposition is that the transformational potential of ODR will only be realized when ODR is fully integrated with public justice processes. This proposition is not without its difficulties, as the CRT's experience illustrates. To this end, the article also provides an introduction to some of the opportunities and challenges offered by an integrated ODR system like the CRT as well as some of the steps the CRT has taken to meet these demands as transparently and collaboratively as possible. The discussion of the CRT in this article is based primarily on my experience as the tribunal's chair. While I have endeavoured to examine objectively some of the CRT's challenges and criticisms, my perspective is necessarily shaped by my ongoing involvement in the project.

II. GENERAL COMPARISON OF PUBLIC AND PRIVATE ODR PROCESSES

Until the CRT's implementation, ODR systems were primarily private or non-profit projects (collectively referred to as "private ODR systems").[15] By necessity, much of the quite extensive academic

---

8 BC Stats survey, commissioned by the BC Ministry of Justice, conducted in March 2015, confidence interval of +/- 2.9%, nineteen times out of twenty.

9 Ab Currie, *The Legal Problems of Everyday Life: The Nature, Extent and Consequences of Justiciable Problems Experienced by Canadians* (Ottawa: Department of Justice Canada, 2007) at 2, 10–12.

10 Action Committee, *supra* note 2 at page iii. Noel Semple, "The Cost of Seeking Civil Justice in Canada" (2016) 93:3 Canadian Bar Review 639.

11 Julie Macfarlane, "National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants, Final Report" (2013) at 14.

12 Currie, *supra* note 9 at 60.

13 Strata, or condominium property, is a form of shared ownership over land. For a good overview of strata property law in British Columbia, see Mike Mangan, *The Condominium Manual: A Comprehensive Guide to Strata Law in British Columbia*, 3d ed (Vancouver: Strata Publishing Corporation, 2010)

14 Bill 44, *Civil Resolution Tribunal Act*, 4th Sess., 39th Leg., British Columbia, 2012 (as passed by the Legislative Assembly 30 May 2012). [*Bill 44*]

15 Maurits Barendrecht et al, *ODR and the Courts: The Promise of 100% Access to Justice? Online Dispute Resolution 2016* (The Hague: Hague Institute for Innovation and Law, 2016).

work on ODR has focused on its theoretical aspects or on a comparison of ODR with either traditional public justice processes or alternative dispute resolution [ADR].[16] Other work has attempted to draw conclusions from the experience of private ODR systems and to use these conclusions to extrapolate ODR's impact on the public justice system.[17] This is understandable given that ODR processes had not yet been adopted by a public justice system.

However, this article argues that the promise of ODR for increasing access to justice cannot be fully realized or assessed unless it is integrated into a public justice system, as has been done with the CRT. This view appears to be gaining traction with many in the ODR community.[18] As discussed below, private ODR systems have fundamentally reconfigured the boundaries of dispute resolution.[19] Their successes have inspired academics, lawyers, and technologists to reflect more broadly and creatively on how public justice processes, such as those used by courts and tribunals, operate. The exercise of viewing public justice processes from the perspective of the end user, as private ODR systems do, requires us to challenge the status quo on a foundational level and ask difficult questions. Which parts of these processes are necessary to achieve a fair resolution between the parties? Which parts are merely holdovers from a bygone age – a matter of habit rather than a necessity?

Private ODR systems have much to teach us in this regard, largely because they are created using best practices in software development, including rigorous user-experience testing. By design, the resulting dispute resolution processes are often simpler and easier to use than traditional public justice processes.[20] The access to justice benefits from private ODR systems are derived from providing an alternative to, or augmentation of, public justice processes, without requiring the justice system itself to transform. To the extent that this relieves public pressure on the justice system, and makes it easier for the public to do what it needs to do, this can be seen as a social good.

On the other hand, seen through a systemic lens, the use of technology to create a buffer between public justice processes and the public they are meant to serve is problematic because it may actually create long-term impediments to justice transformation. For example, some private ODR systems have a strong document assembly component, such as Rechtwijzer 2.0. Developed by the Hague Institute for Innovation and Law (HiiL), a Dutch justice innovation organization, in partnership with that jurisdiction's legal aid society, Rechtwijzer 2.0 provided people undergoing a family breakdown with access to negotiation, mediation, and arbitration services. The ODR-based system also assembled court documents necessary to obtain a desk order divorce.[21]

These document assembly services simplify the process of navigating court forms by creating an accessible interface between the user and the justice system.[22] A welcoming and easy-to-use interface asks the user plain language questions and then electronically completes the existing court form using the user's

---

16 Leah Wing & Daniel Rainey, "Online Dispute Resolution and the Development of Theory" in Wahab et al, *supra* note 6, at 35.

17 Suzanne Van Arsdale, "User Protections in Online Dispute Resolution" (2015) 21 Harv Negotiation L Rev 107.

18 Barendrecht et al, *supra* note 15 at 80–81.

19 For an excellent review of some of these private online dispute resolution (ODR) systems, see generally *ibid.*

20 An example of one of these user-friendly private ODR systems is MyLawBC (<http://www.mylawbc.com/>), a project of the BC Legal Services Society, which provides free public family law information and negotiation tools.

21 More about the Rechtwijzer 2.0 project is found here. "Rechtwijzer 2.0: Technology That Puts Justice in Your Hands," online: <http://www.hiil.org/project/rechtwijzer>. In 2017, HiiL announced that it was winding down Rechtwijzer 2.0, to be reconstituted at a later time.

22 See also A2J Author (<http://www.a2jauthor.org>), an online, cloud-based document assembly tool that allows people to, "easily complete and print court documents that are ready to be filed with the court system." A2J Author states that its software has conducted 3 million client interviews and assembled 1.8 million documents since 2005.

information. The user never sees these court forms until the end of the process, when the user is presented with the completed documents to take to a court or tribunal registry for filing. In providing this service, these private ODR systems implicitly acknowledge how difficult traditional court forms and processes can be to navigate for the everyday person.

Similarly, private ODR systems like Rechtwijzer 2.0 provided dispute resolution services such as mediation or arbitration, often at prices that compare favourably with court fees.[23] These services create accessible alternatives to public justice processes by connecting users with expertise they could not otherwise easily find or afford. One of the key benefits of these services is that unlike in traditional public justice processes, ODR participants have some control over how and when they engage with the dispute resolution process. For example, they can decide when it is time to enlist the help of a mediator, who supports them in attempting to resolve their dispute consensually. By contrast, ADR processes tend to be "add-ons" rather than the focus of traditional public justice processes in courts and tribunals, a concept discussed more below.

Document assembly and online ADR services provide significant benefits to the user, in terms of allowing them to augment or avoid traditional public justice processes. However, they do little to transform existing public justice processes. Rather, by creating a buffer around the justice system, these private ODR systems may insulate the justice system from well-founded pressure from the public to transform their processes to better meet public need. Justice system transformation requires more than simply limiting direct interactions with existing processes.

Rather, it demands a fundamental reassessment and reconfiguration of public justice processes. This is not to minimize the value of private ODR systems, which have had a powerful impact on the way we think of dispute resolution in the modern age. Evolved from e-commerce[24] or non-profit dispute resolution,[25] many private ODR systems have demonstrated that ODR is not only possible but can also be used successfully in a number of contexts. For example, the Rechtwijzer 2.0 software, described above, was built on the Modria platform to assist people in collaboratively obtaining a desk-order divorce. The same combination of technology is also being used to resolve landlord–tenant disputes.[26] The Modria platform evolved from technology used to power dispute resolution for e-commerce giants PayPal and eBay.

These private ODR systems have operated as a kind of incubator, where ideas and methods can be explored and refined. However, while there are similarities between private dispute resolution and public dispute resolution, their requirements are also different in key ways, as the CRT's development has illustrated. For example, private ODR systems can self-select their users. In the context of e-commerce disputes, this means that 100 percent of users come to the ODR system willing and able to access technology. However, public justice system processes must ensure that everyone can participate, with all of their unique attributes and challenges. This will likely mean creating ancillary offline processes to accommodate the general population, even though this adds cost and complexity. For example, despite the high adoption of online technology in British Columbia, between 3 percent and 5 percent of people do not use the Internet.[27] It is therefore necessary for the CRT to provide access to services through mail or telephone, despite the tribunal's focus on online service delivery. Similarly, public justice processes should, and often must, accommodate the needs of people with literacy or language issues, visual, hearing, or other impairments, and mental health issues. The CRT works with community advocates to

---

23 Barendrecht et al, *supra* note 15 at 55.

24 See e.g. "Modria: Expanding Access to Justice with Online Dispute Resolution," online: <http://modria.com/about-us>.

25 See e.g. the University of Montreal's Cyberjustice Laboratory, online: <http://www.cyberjustice.ca/en/laboratoire/presentation/>.

26 Barendrecht et al, *supra* note 15 at 39.

27 BC Stats, *supra* note 8.

accommodate these needs in a variety of ways, including specialized training for staff and providing additional resources and support for people with barriers.

Further, private ODR systems can devise their own internal rules, including evidentiary and procedural ones, without being bound by the weight of the common law. This is not the case for public ODR systems, which must gingerly design technology that carefully navigates and respects applicable legal principles and statutory provisions. In the CRT context, applying the requirements of administrative law to the architecture of a software system presents some challenges. The common law adds layers of complexity that likely seem superfluous or inefficient to a software designer. For example, administrative law requires that people have the right to be heard, even though it might be more efficient from a data processing and storage perspective for a software program to impose a character limit on submissions. Private ODR systems can render themselves immune from these issues through the judicious use of business rules and system architecture.

Further, while marketing and conversion are necessary to build awareness and adoption of private ODR services, the use of private ODR services is voluntary and lies outside the justice system. For this reason, private ODR systems are not charged with the daunting task of leading the considerable change management required to transform existing public justice processes. As discussed above, the common law legal tradition, and those who act within it, tend to resist change. Lawyers, by training or temperament, skew towards pessimism.[28] The unwillingness of some legal professionals to think creatively and openly about justice system reform is a significant impediment to resolving the access to justice crisis in Canada and a primary reason why public justice processes appear stagnant and outdated to many members of the public.

The freedom to act decisively, and to target particular demographics and issues, has allowed private ODR systems to thrive. They have proved that ODR is full of potential, not just for highly repeatable claims like e-commerce transactions, but also for more complex disputes like those involving marital breakdown and landlord–tenant issues. The next step for ODR is to test the theory that it can significantly reduce access to justice barriers in the context of public justice processes. This is the challenge and the opportunity of the CRT.

III. BRITISH COLUMBIA AS AN ODR EARLY ADOPTER

As a discipline, ODR is young, and in that context, its history in British Columbia is storied. The BC Ministry of Justice began exploring the use of ODR in a public justice context in 2011.[29] That year, Consumer Protection BC, a not-for-profit corporation for the protection of consumers and marketplace fairness, began using a Modria-based ODR system to resolve disputes between consumers and businesses.[30] The same year, an administrative tribunal, the BC Property Assessment Appeal Board [PAAB] began using a similar system to resolve disputes about residential property tax assessments, in conjunction with more traditional modes of administrative law dispute resolution.[31] While uptake was

---

28 Catherine Gage O'Grady, "Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate" (2006) 30 L & Psychology Rev 23.

29 Darin Thompson, "The Growth of Online Dispute Resolution and Its Use in British Columbia" (Paper presented to the CLEBC Civil Litigation Conference 2014) at 1.1.4.

30 Consumer Protection BC, online: <https://www.consumerprotectionbc.ca/odr>.

31 Property Assessment Appeal Board, online: < http://www.assessmentappeal.bc.ca/Resources/ODRHelp.aspx>

initially low for both programs, user satisfaction and resolution rates were encouraging, and these initiatives have become permanent components of both organizations.[32]

The results from these forays into ODR in a public context prompted the BC Ministry of Justice to consider its application more broadly. In 2012, the BC government passed the *Civil Resolution Tribunal Act* [*CRTA*] with the goal of using technology and ADR to increase access to justice for British Columbians with small claims and condominium property disputes.[33] The *CRTA* provides that the mandate of the CRT is to provide "accessible, speedy, economical, informal and flexible" dispute resolution services for small claims and condominium property disputes. The CRT's role is to use electronic communication tools to facilitate the resolution of disputes by consent, where possible, and by decision, where necessary. The CRT is required to accommodate the diverse needs of participants wherever it can and to recognize any relationships between the parties that will likely continue after the tribunal proceeding is concluded.

While the CRT was originally planned as a voluntary tribunal, there was strong demand from condominium property stakeholders to make the CRT mandatory for all parties. In their view, a voluntary scheme would allow one party to veto the other's ability to use an accessible dispute resolution forum like the CRT. This would force the initiating party to use the Supreme Court of British Columbia (BC Supreme Court), which prior to the CRT, was the main forum for resolving condominium property disputes. In response to these concerns, the *CRTA* was amended in 2015 to designate the CRT as the mandatory forum for condominium property and most small claims disputes in British Columbia.[34] The CRT is not the end of the road for ODR in British Columbia. Rather, it is a foothold, benefiting from earlier initiatives from PAAB and Consumer Protection BC and clearing the path for other tribunals and public justice processes to incorporate ODR, early dispute resolution, and public-focused design.

IV. WHY THE CRT?

A question that arises from time to time is why the BC Ministry of Justice chose to establish the CRT as an independent tribunal rather than simply removing condominium property claims from the BC Supreme Court and placing them within the Small Claims Court. One answer is that, as a new entity with no established culture or processes, the CRT was less constrained in pioneering a transformative approach to delivering justice services to the public. The transformative potential of the CRT is that it starts from the principle of putting the public first, while also giving effect to the time-honoured tenets of fundamental justice that are foundational to our legal system. Using these principles, the CRT envisions a dispute resolution process that empowers people to become actively engaged participants in their justice system.

As the Action Committee makes clear, Canadian court processes have become increasingly onerous. Civil court matters require citizens to finance court and legal fees, take time off work, and pay for additional childcare. In 2015, the average two-day civil trial in Canada cost an average of $31,330 in legal fees.[35] Meanwhile, the average Canadian family earned a median after-tax income of $53,500 in 2013.[36]

---

32 Thompson, *supra* note 29 at 1.1.4.

33 *CRTA*Bill 44, *supra* note 14.

34 Bill 19, *Civil Resolution Tribunal Amendment Act*, 4th Sess., 40th Leg., British Columbia, 2015 (as passed by the Legislative Assembly 21 April 2015).

35 Michael McKiernan, "The Going Rate" *Canadian Lawyer* (June 2015), online: < http://www.canadianlawyer-mag.com/author/michael-mckiernan/the-going-rate-2913/>.

36 Statistics Canada, Canadian Income Survey 2013, online: <http://www.statcan.gc.ca/daily-quotidien/150708/dq150708b-eng.htm>.

Not surprisingly, 90 percent of parties in British Columbia's Small Claims Court are self-represented.[37] Even if they could finance legal fees, many British Columbians in remote communities must travel great distances to a courthouse, burdening them with further costs. No matter where you live or who you are, navigating the civil justice system, even Small Claims Court, can be stressful and overwhelming, and there is little support available to help with the process.

This stress is compounded by increasing delay in the system. Small claims cases in British Columbia can take up to twelve months to be heard,[38] while condominium property disputes in the BC Supreme Court may take even longer. These delays are costly, not just in terms of time and money, but also in terms of their effects on the health and emotional well-being of participants and on the public's confidence in the administration of justice.[39] Moreover, the high cost of accessing civil justice services is not proportionate to their outcome. After all the time and money expended on a court case, less than 3 percent of BC Supreme Court civil cases actually go to trial.[40] Similarly, in the rest of Canada, the United Kingdom, and the United States, 98 percent of filed civil claims do not go to trial.[41] Research shows that, while some cases settle, many are abandoned because people run out of time, money, or energy without resolving the underlying dispute.[42] When trials do occur, they tend to follow one-size-fits-all processes, with little mediation or case management applied to resolve disputes early.

To be clear, the identification of procedural problems with the resolution of civil disputes is not a critique of our conscientious and committed judiciary and court registry staff in British Columbia. Access to justice issues are endemic to the larger Canadian civil justice system. As George Strathy said on being sworn in as Chief Justice of Ontario, "[w]e have built a legal system that has become increasingly burdened by its own procedures, reaching a point that we have begun to impede the very justice we are striving to protect."[43] In the areas of jurisdiction under the CRT, these procedural and cost burdens are clear. Before the CRT began accepting condominium property claims in July 2016, these claims had to be resolved by the Supreme Court of BC. This required the parties to invest financially and emotionally in protracted disputes with neighbours who share a common living space. Condominium property claims often involve highly emotional conflicts over matters with a relatively low monetary value – for example,

---

37 BC Judges Compensation Commission, "Final Report of the 2010 British Columbia Judges Compensation Commission" (2010) at 19.

38 "Semi-Annual Time to Trial Report of the Provincial Court of British Columbia (30 September 2015) at 13–15.

39 Macfarlane*, supra* note 11 at 14.

40 British Columbia Justice Reform Working Group, "Effective and Affordable Civil Justice," Report of the Civil Justice Reform Working Group to the Justice Review Task Force (2006), n 3, online: < http://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-reform-initiatives/cjrwg_report_11_06.pdf >.

41 For US trial rates, see Brian J Ostrom & Neal B Kauder, *Examining the Work of State Courts, 1997: A National Perspective from the Court Statistics Project* (Washington, DC: Bureau of Justice Statistics, 1998) at 11. See also John Barkai, Elizabeth Kent & Pamela Martin, "A Profile of Settlement" (2006) 42 Court Review 34 at 34–35. For Canadian civil trial rates, see e.g. Canadian Centre for Justice Statistics, *Civil Courts Study Report* (Ottawa: Minister of Industry, 1999) at 10. For UK civil trial rates, see UK Ministry of Justice, *Court Statistics Quarterly: October to December 2012* (London: Ministry of Justice, 2012) at 2.

42 Carl Baar, "The Myth of Settlement" (Paper presented to the Annual Meeting of the Illinois Law and Society Association, 28 May 1999) at 12. For some of the difficulties in collecting data on this issue, see Canadian Forum on Civil Justice (CFCJ), *Civil Non-Family Cases Filed in the Supreme Court of BC: Research Results and Lessons Learned,* (Victoria: Focus Consultants for the CFCJ, 2015).

43 Paola Lorrigio, "Ontario's Legal System Too Costly and Complicated, New Chief Justice Says," *Globe and Mail* (9 September 2014), online: <http://www.theglobeandmail.com/news/national/ontarios-legal-system-too-costly-and-complicated-new-chief-justice-says/article20506719/>.

parking spots, pets, rentals, and the use and repair of common property. For the vast majority of condominium owners, taking such a claim to a superior court is not worth seriously considering.

Despite this, it is clear that entrenched conflicts tear at the fabric of these small condominium communities across the province. Over one million British Columbians live, own, or work from condominium properties, and, until the advent of the CRT, they had no accessible dispute resolution forum.[44] For condominium disputes, early and collaborative dispute resolution is essential to cultivate a respectful and positive communal living environment.

V. HOW DOES THE CRT WORK?

The Action Committee recommended that the civil and family justice system be reformed to avoid, manage, and resolve disputes in ways that are as timely, efficient, effective, proportional, and just as possible:

- by preventing disputes and by early management of legal issues;
- through negotiation and informal dispute resolution services; and
- where necessary, through formal dispute resolution by tribunals and courts.[45]

This is what the CRT aims to achieve. The CRT involves four stages, each part of a seamless, end-to-end process focused on early, participatory ODR. Before beginning a claim with the CRT, a person with a dispute can access a free online tool called the Solution Explorer, which uses guided pathways to help a person learn more about their dispute so that they can make informed choices about how to resolve it.[46] The Solution Explorer asks a series of questions about the dispute and then provides information and resources tailored to that dispute. For example, someone contesting a condominium bylaw fine might be given information about the applicable provisions of the *Strata Property Act* as well as a template letter to edit and send to their condominium council.[47] At the end of the pathway, the Solution Explorer provides a summary of the person's claims as well as recommended resources and next steps.

If someone is not able to resolve their dispute using the Solution Explorer, the next step is to start a CRT claim, using the online intake process. A key design feature of the CRT is that, wherever possible, a user should only have to enter information once, and the system should carry this information forward to other stages of the CRT process. Finally, the CRT process incorporates relevant parts of the tribunal's rules on an as-needed, when-needed basis, to avoid overwhelming parties with inapplicable rules. After serving the others in the dispute with notice of the claim, the parties have a brief opportunity to negotiate directly with each other. While the parties will be given some resources to help them do this, this is a low intervention area for the CRT. The intention is to resolve a modest number of "easy" disputes very early and very inexpensively so that the parties can move on with their lives. If negotiation is not successful, the parties will enter a facilitation phase where an expert facilitator will help the participants to reach a consensual agreement. The facilitator can use a variety of communication channels to work with the parties, including the CRT platform, email, text, phone, video conferencing, fax, and mail. Despite being online, the CRT is a very human-driven organization. Leveraging technology, the CRT democratizes

---

44 BC Ministry of Housing, "Strata Housing," online: <http://www2.gov.bc.ca/gov/content/housing-tenancy/strata-housing>.

45 Action Committee, *supra* note 2 at 2.

46 To use the CRT Solution Explorer, see Civil Resolution Tribunal, online: <https://www.civilresolutionbc.ca/self-help/>.

47 SBC 1998, c 43.

access to dispute resolution services by connecting the public, wherever they may live, with expert facilitators and tribunal members.

The *CRTA* provides for an extremely flexible and responsive facilitation phase, enabling the facilitator to use a variety of tools to help the parties settle their claims. The facilitators are generally not lawyers, although they can be. Rather, facilitators must have strong mediation experience and skills. The focus at this stage is on helping the parties to reach a consensual agreement, wherever possible. Facilitators may help parties settle all or some of the issues, and they can caucus with a party to provide a frank evaluation of the dispute. Settlement communications in the facilitation phase are confidential and are not disclosed to the tribunal members. If the parties reach an agreement, the facilitator can ask a tribunal member to convert the agreement into a binding order of the tribunal, which can be enforced in court, without the parties having to sue for a breach of the agreement.

The CRT anticipates that the facilitation phase could resolve up to 70 percent of disputes.[48] In the event that the parties are unable to reach an agreement, the facilitator's role includes preparing the parties for adjudication by helping them, in a neutral way, to narrow issues and organize their claims. The dispute is then transferred to a tribunal member, a lawyer with specialized expertise in small claims or condominium property matters, who hears the parties' arguments (usually in written form), considers the evidence, and then issues a binding decision of the tribunal, which is emailed or mailed to the parties. If an oral hearing is necessary, due to credibility issues, for example, this is conducted though telephone and video conferencing. The CRT's adjudicative process is very similar to that of other large administrative tribunals, and, of course, tribunal members are subject to the same procedural fairness requirements that govern administrative tribunals generally.[49]

The civil justice system struggles with proportionality, and the principle is often framed in opposition to fairness. However, the Supreme Court of Canada has recently endorsed the proportionality principle, finding that "a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial. This requires a shift in culture … [t]he proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure."[50]

From beginning to end, the CRT process is intended to take about ninety days for most cases, and the average total cost to the parties is roughly the same as in Small Claims Court, or about $200. However, many parties will pay less than at Small Claims Court because fees are staged so that parties who resolve their disputes early pay less than those who require the full range of the CRT's services. Like the Small Claims Court, there are fee exemptions for those experiencing financial hardship, and the CRT has worked with community legal advocates to design an accessible process for people who need these exemptions. The CRT's fees are meant to reflect the proportionality principle; they are high enough to deter frivolous claims, but not so high that they are unbalanced with the interests at stake.

---

48 This estimate is based on experiences from programs such as the Court Mediation Program for small claims disputes in British Columbia. For general success rates for mediation, see e.g. US Department of Justice, "Statistical Summary: Use and Benefits of Alternative Dispute Resolution," online: <http://www.justice.gov/olp/adr/doj-statistics.htm>, which found a success rate for voluntary alternative dispute resolution of 71% in 2015.

49 *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

50 *Hryniak v Mauldin*, 2014 SCC 7 at 27–28.

VI. WHERE IS THE CRT NOW?

On July 13, 2016, the CRT began accepting condominium disputes. About a year later, on June 1, 2017, the CRT assumed jurisdiction of small claims disputes $5,000 and under. The monetary threshold for claims within the CRT's jurisdiction will slowly increase, by regulation, until the CRT becomes the mandatory forum in British Columbia for claims under $25,000. Consistent with the CRT's public-focused approach, the next phases of the technology development, namely expanding the case management system and the CRT's communication tools, will be informed by feedback from the CRT's early participants. In fact, in the first forty-eight hours after beginning to accept claims, the CRT made agile and transparent changes to the CRT's website, processes, rules, and intake form in response to feedback from participants. Continuous improvement is a core value for the CRT, and this improvement involves consulting with the public, testing processes with stakeholders, listening closely, incorporating feedback, and then doing all of this again and again.

A. Opportunities and Challenges

The combination of technology and early dispute resolution presents an exciting opportunity to rebuild public justice processes around the needs of the public and truly realize the long-held promise of ODR. However, the integration of ODR systems into a public justice process presents opportunities as well as challenges. The most significant of these are summarized below, along with the CRT's approach to navigating them. Briefly canvassed here, each of these issues would be a fruitful area for further study in the future.

B. Opportunities

1. Leveraging Access to Technology to Increase Access to Justice

Online technology is not a panacea. Dogmatic insistence that technology can resolve any problem ignores the fact that it is only one tool within a varied kit. At times in the CRT's development, in answer to a need that online technology will not easily accommodate, someone will eventually say: "Why not just pick up the phone in those cases?" which often turns out to be the most efficient and sensible solution to an intractable technology problem. Requiring technology to resolve all problems often results in unnecessarily complex processes, which is, ironically, one of the justice system ailments that ODR is meant to address. Despite its limitations, technology is able to offer a relatively inexpensive, nearly universal way of connecting people with expertise, support, and, most importantly, other people. Among British Columbians aged eighteen to thirty-four, smartphone ownership is nearly universal – 93 percent – and it is 74 percent for those aged thirty-five to fifty-four.[51] Ninety-three percent of British Columbians have broadband connectivity.[52]

Online technology also offers a high degree of comfort, convenience, and familiarity, at least within the scope of common online activities. A recent BC Statistics survey found that 92 percent of British Columbians use the Internet daily, including 69 percent of people over the age of seventy-four.[53] British Columbians are overwhelmingly comfortable with using email (94 percent), searching for information or services (91 percent), texting (89 percent), and online banking (80 percent).[54] Given recent studies about

---

51 Insights West, "Smartphone Insights," online: <http://www.insightswest.com/wpcontent/uploads/2014/07/Rep_Insights-West_iamota_SmartphonesForiamota_26June2014_ForWebsite.pdf>.

52 Network BC Connectivity Map, *supra* note 7.

53 BC Stats, *supra* note 8.

54 *Ibid*.

the public's challenges in using the court system, it is reasonable to conclude that British Columbians access the Internet much more easily and comfortably than they do traditional justice institutions and processes.[55]

While the overwhelming majority of citizens have access to online technology, any truly accessible justice system must also consider and address the needs of the minority. What about people who are unable or unwilling to use the CRT's online platform? In such cases, the tribunal will assist a party with information and support in using the CRT online. However, where a party has significant barriers to using the online platform, the CRT provides telephone-based or paper-based services. This is consistent with the CRT's stated commitment to build the tribunal around people, by assisting them to resolve their disputes using the communications method that best serves their needs.

2. Transforming Public Justice System Processes

By integrating the CRT with the existing justice system, the CRT model has the opportunity to fundamentally transform the justice system rather than simply augmenting or "alternativizing" it. As discussed above, some programs that aim to increase the use of ADR in the justice system operate as "add-ons," augmenting the existing process but never really challenging the justice system's focus on a "day in court," which is treated as inevitable, despite its rarity. Similarly, as discussed above, despite their clear benefits to users, private ODR or ADR systems may externalize the cost and responsibility for justice system reform away from the government and the justice system. The "alternativizing" of the justice system relieves public justice processes of the responsibility to reform and modernize to better meet the public's need.

By integrating with the justice system, the CRT model provides a template for how transformation and innovation can occur in a public justice context. The CRT model goes beyond incremental measures, such as simply changing forms or allowing online filing. Rather, it inverts the traditional public justice process model by assuming that disputes can be resolved consensually, with the right assistance and expertise. The CRT model, therefore, builds processes aimed at supporting this approach. The goal is to provide a seamless, simple, end-to-end ODR process that is both fair and convenient for the public. Once established, the CRT model could be adapted and applied to a wide variety of disputes. The model is likely particularly useful where (1) there is a high number of participants who cannot afford legal representation; (2) the parties have an interest in building or maintaining relationships; and (3) existing public justice processes are highly complex or time consuming. Family disputes, for example, fit these requirements and would likely benefit from the CRT model. The Rechtwijzer 2.0 platform, and its BC iteration, MyLawBC, are good examples of the potential for using ODR in the context of family disputes. Whereas the Rechtwijzer 2.0 process stopped outside the courthouse doors, an integrated approach would spare families the time and inconvenience of any court process by connecting the ODR system with a binding adjudicative component, whether offered by a court or tribunal.

3. Co-Designing Justice Processes with the Public

The CRT is the first known area of the Canadian justice system that has been co-designed with the public. At every stage of the CRT's development, from the Solution Explorer, to the intake system, to fee exemptions, the CRT has worked with the public and key stakeholders, like community legal advocates, to make sure the CRT meets their needs. The CRT's software has been, and continues to be, developed

[55] See e.g. Action Committee, *supra* note 2; Macfarlane, *supra* note 11.

using an agile process that focuses on incrementally producing functional, user-tested software that works for the public.[56]

Typically, CRT user testing starts with people who experience multiple barriers to accessing justice as well as with the people who support and advocate for them. The assumption is that if a CRT process or technology component works for vulnerable people with barriers, it will likely be accessible to the wider public. Generally, the CRT's next step is to recruit public testers who are representative of expected users – for example, people who have had a previous small claim or condominium problem. After each round of testing, the CRT reviews the feedback and makes improvements. One of the most important ways the CRT has built goodwill and trust with stakeholders is to report back after each consultation or testing activity. For example, after asking for public input on CRT fee options and the CRT's draft rules, the CRT published a blog post reporting on public feedback and explaining how the tribunal was going to apply this information.[57]

This commitment to early public co-design has generated very positive results at later stages of user testing. For example, after several rounds of early user testing for the Solution Explorer, including observational user testing,[58] the CRT team launched a closed beta test, where members of the general public tested the system and completed a survey. This survey yielded a tremendous amount of valuable constructive feedback.[59] It also validated the general approach to the Solution Explorer. About 90 percent of respondents said the technology worked well and that it was easy to use, while 94 percent said the information was accurate. This overall feedback supports the theory that public co-design produces public justice processes that closely match public need and expectations.

4. Normalizing the Integration of Plain Language in the Justice System

To be widely understood, general information for the public must be written at a grade 6 reading level.[60] Despite this, public legal information and court and tribunal forms routinely use complex language and "legal-eze" that assume a high degree of facility in English. Part of the CRT's commitment to putting the public first includes truly ensuring that CRT information and forms are as simple and clear as possible. The CRT has worked extensively with public legal education and information providers, as well as community legal advocates, to ensure that the CRT's platform, language, forms, rules, and processes are accessible. Part of this endeavour includes providing some information in video or audio format for those who have difficulty absorbing written information and finding alternative ways to support participants for whom English is not a first language, including by offering free telephone interpretation services.

---

56 For more on the agile approach to software development, see James Shore & Shane Warden, *The Art of Agile Development* (Sebastopol, CA: O'Reilly Media, 2008).

57 See e.g. Shannon Salter, "What You Told Us about the CRT Rules," online: Civil Resolution Tribunal < https://civil-resolutionbc.ca/new-crt-rules/ >

58 The Civil Resolution Tribunal (CRT) conducted observational user testing by inviting members of the public with strata disputes to come to the CRT office and try the system while CRT staff recorded how they used it (with their consent). This yielded some surprising results for the team. Some features that the CRT team was convinced would be invaluable were merely annoying and confusing for users. These features have been removed or changed.

59 The lessons from this constructive feedback could easily fill another article. Overall, the CRT team learned that lawyers and information technology professionals are not always good at gauging how members of the public with legal problems will behave online. Public testing led us to remove or de-emphasize features that turned out to impede people's access to information and increase the ease with which people can navigate forward and backward in their use of the software.

60 Keenan J. Safeer, "Health Literacy: The Gap between Physicians and Patients" (2005) 27 American Family Physician 463.

Technology can assist this objective in a number of ways. For example, information from a person's Solution Explorer exploration is used to present them with a more tailored CRT application form, which already contains some basic information about their problem, based on their answers in the Solution Explorer. The form itself asks as little information as possible to allow the CRT to process the claim. Wherever possible, the application form fills in information automatically. For example, if a person begins to type an address, the rest of the address is filled in for them, minimizing incorrect information. Similarly, if someone misses a field, the application form will remind them of this omission before letting them continue, reducing possible delays that may result from later requests for this information.

C. Challenges

Many of the opportunities afforded by a CRT model stem from the "newness" of the initiative and the absence of any established procedures or rules, aside from those that apply to administrative tribunals generally. However, the CRT's newness also presents some significant challenges that require a great deal of careful thought, collaboration, and patience to navigate successfully.

1. Fear of Change

One of the fundamental concerns voiced by the legal community when the CRT was first announced was that it would subvert foundational legal principles by replacing courts with "robojustice." A common myth about ODR is that it relies on algorithms and avatars to decide disputes. This can be frightening, particularly to justice system actors who worry that fairness and the rule of law will be sacrificed in the name of efficiency. While some software programs, such as IBM's Ross, or Canada's own Blue J Legal are using artificial intelligence [AI] to build access to legal information and conduct basic legal research,[61] most ODR platforms rely on a combination of basic AI and good old-fashioned human skill and judgment. For example, the Solution Explorer uses simple AI by providing guided pathways to lead people to tailored legal information and tools.[62] However, the facilitation and adjudication phases of the CRT are conducted by humans with extensive dispute resolution skills, either in ADR or administrative decision making. In ODR, technology is used to connect the public to highly skilled humans and does not replace them with robots.

The corollary fear is that technology will render lawyers obsolete. The CRT is being implemented at a time of considerable change and tumult in the legal profession, in part due to the profession's reluctance to modernize its provision of legal services to the public.[63] With the intention of evening the playing field for participants, the *CRTA* creates a rebuttable presumption of self-representation.[64] This was not popular with lawyers, who sometimes felt they were being excluded.[65] The issue of change management in public justice reform initiatives is important, because the failure to engage and communicate properly with stakeholders can quickly scuttle otherwise sound initiatives. The CRT undertook a considerable change

---

61 Ian Mulgrew, "Siri for Lawyers? Artificial Intelligence on Cusp of Changing the Legal Profession," *Vancouver Sun* (22 June 2016), online: < http://vancouversun.com/opinion/columnists/ian-mulgrew-siri-for-lawyers-artificial-intelligence-on-cusp-of-changing-the-legal-profession >. See also, Blue J Legal, online: < https://www.bluejlegal.com/>

62 Darin Thompson, "Creating New Pathways to Justice Using Simple Artificial Intelligence and Online Dispute Resolution" (2015) 2 Intl J Online Dispute Resolution 1.

63 Richard Susskind & Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford: Oxford University Press, 2015); Jordan Furlong, "Do Law Differently: Futures for Young Lawyers," CBA Futures Initiative (2016).

64 Bill 44, *supra* note 14 at s.20

65 Cristin Schmitz, "Tribunal Aimed at Streamlining Deals Out Lawyers, Prompting Ire," *Lawyers Weekly* (3 April 2015), online: <http://www.lawyersweekly.ca/articles/2351>.

management project to engage with stakeholders, including the public, the condominium community, community legal advocates, lawyers, mediators, and the courts. The CRT conducted public forums around the province to consult with the public. The CRT website offers continuous updates and requests for public feedback. The CRT also established a number of working groups to gain input from various stakeholders. In many cases, the CRT met with particular organizations over a period of time to try to address concerns and gain understanding. The most important tools in this project were open, frequent communication, and a willingness to compromise, where doing so could build consensus without undermining the CRT's access to justice mandate.

2. Assumptions about Dispute Resolution Processes

In addition to the assumption that a public ODR system will replace lawyers with robots, the CRT has frequently encountered assumptions about the efficacy of ODR-based dispute resolution processes as well as comparisons between ODR and more traditional court processes.

(a) Assumptions about ADR

Within the ADR community, there are strongly held views that the effectiveness and accountability of processes like mediation and facilitation lie in their format. That is, ADR is ineffective if, for example, participants are not in the same room, if they cannot see each other's body language, or if they have not engaged in pre-mediation conferences.[66] For some, the idea that mediation can occur at a distance or over email, or that ADR services can be scaled down or up to meet the needs of the parties and the issues, rather than delivered as a full package, is anathema.

However, for many people, mediation services are almost as unaffordable or inaccessible as legal services. Both services can suffer from some of the same access to justice barriers including high rates, travel costs, time away from work and family, and uncertain outcomes. Distance mediation, using technology such as video and telephone conferencing, can reduce many of these barriers in the same way that technology reduces access to justice barriers generally. Further, studies on distance mediation suggest it compares favourably with in-person mediations, both in terms of the number of settlements and the participants' opinions about its efficacy.[67] In some contexts, distance ADR processes may actually have advantages over in-person ones. Antagonistic body language, for example, may discourage settlements. Participating comfortably in one's home may reduce anxiety or logistical hurdles for those with mental health issues or physical disabilities. The scholarship in this area is nascent, and the CRT will be closely monitoring and analyzing which techniques seem to be most effective in different contexts and will continuously improve in this area.

(b) Assumptions about adversarial processes

Justice system actors often hold certain assumptions about common law justice processes that can impede the development of public ODR systems. The most powerful of these is that the adversarial system, and its attendant focus on in-person testimony and cross-examination, is the ideal form of dispute resolution. The idealization of the adversarial trial process can cause deep scepticism about ODR systems

---

66 See e.g. Joseph Goodman, "The Pros And Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites" (2003) 4 Duke L & Tech Rev 3. For a discussion of the "accountability problem" in online mediation, see Orna Rabinovich-Einy, "Technology's Impact: The Quest for a New Paradigm for Accountability in Mediation" (2006) 11 Harv Negotiation L Rev 253.

67 Catherine Tait, "Evaluation of the Distance Family Mediation Project: Report on Phase III of the Technology-Assisted Family Mediation Project" (March 2013), online: <http://www.mediatebc.com/PDFs/1-2-Mediation-Services/Distance-Family-Mediation-Evaluation-Report-FINAL.aspx>.

like the CRT, which focuses heavily on consensual dispute resolution and, failing that, uses the flexibility enjoyed by most administrative tribunals to make the adjudicative process as accessible and fair as possible. There is no doubt that adversarial processes are sometimes necessary and have an important role, especially in criminal and public interest trials, in testing evidence and holding state authority to account.

However, an examination of public justice processes in civil cases demonstrates that, as a dispute resolution mechanism, adversarialism is less than ideal in several regards. First, civil justice processes focus on preparing for an adversarial trial – the day in court. This forces parties to expend a great deal of time and money on preparing pleadings, undertaking discovery, bringing preliminary motions, and participating in trial scheduling conferences. While establishing one's case can, at times, assist parties in reaching a settlement, these activities are wasted in many of the approximately 98 percent of filed civil claims that never make it to trial. Further, this focus on adversarial pre-trial activities tends to entrench the parties' positions from the outset, wedding parties to positions rather than interests, and making it difficult to reach consensual agreements. This is especially problematic given that parties tend to be happier with consensual resolutions rather than judicially imposed resolutions.[68]

Second, social science evidence increasingly suggests that some of our assumptions about the adversarial system's capacity to determine truth and reach sound decisions may be misplaced. Judges and tribunal members, despite their excellent training and commitment to the rule of law, have a difficult time not being human, and they inherit the heuristics that attend that proposition.[69] Research suggests that, like everyone else, decision makers are susceptible to biases and weaknesses in reasoning, which sometimes affect the outcome of the cases they determine.[70] Maintaining adjudication as the gold standard for dispute resolution ignores some of the limitations of human decision making. Adversarial legal processes serve as an important check on state power in criminal cases and a powerful lever for restitution in civil ones. However, minimizing the limits of adversarialism, while inflating its benefits, impairs an evidence-based approach to the design of our public justice processes. In particular, this may cause us to ignore other important considerations like proportionality, the relationship between the parties, and the parties' underlying interests in the resolution of their dispute.

3. Government Innovation

Seemingly every jurisdiction in the modern world is haunted by examples of government technology projects gone awry.[71] High-profile technology project failures combined with frustrations with red tape, complex procurement processes, and a lack of market discipline have caused critics to proclaim that governments simply cannot innovate.[72] The very debate over whether governments are capable of leading innovation initiatives is one of the challenges to implementing public ODR projects like the CRT. A

---

68 Austin Lawrence et al, *The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta Analysis* (Ottawa: Department of Justice, 2007) at 21-23.

69 CRT tribunal members are also subject to this concern. CRT members undergo mandatory training on cultural competency, mental health issues, and implicit bias to try to counteract heuristics.

70 Eyal Peer & Eyal Gamliel, "Heuristics and Biases in Judicial Decision-Making" (2013) 49 Court Review 114. See also Craig Jones, "The Troubling New Science of Legal Persuasion: Heuristics and Biases in Judicial Decision Making" (2013) 41 Adv Q 48; Craig Jones & Micah Rankin, "Justice as a Rounding Error: Judicial Bias in Second Degree Murder Sentencing" (2014) 52:1 Osgoode Hall LJ.

71 See e.g. James Ball & David Pegg, "The Costly Trail of British Government IT and 'Big Bang' Project Disasters," *The Guardian* (19 August 2014), online: <https://www.theguardian.com/technology/2014/aug/19/costly-trail-british-government-it-disasters-universal-credit>.

72 Nikhil R Sahni "Unleashing Breakthrough Innovation in Government," *Stanford Social Innovation Review* (Summer 2013), online: <http://ssir.org/articles/entry/unleashing_breakthrough_innovation_in_government>.

related ongoing debate in the ODR community is whether governments should ever be in the business of ODR system development or whether only the private sector is competent to deliver sophisticated, functioning software that meets the needs of the end user. On the other hand, private ODR systems may not always meet the needs of public justice processes, which have highly complex and often competing legal, privacy, budgetary, accessibility, and logistical demands.

To some extent, the CRT model illustrates this point. The CRT was developed using a hybrid model. The CRT's case management system is powered by an off-the-shelf customer relationship management platform called Salesforce.[73] Salesforce has an established record for security, robustness, and scalability, which are all important features when managing thousands of claims and related personal information. However, Salesforce was developed for private corporations, not public justice processes. To adapt it to an ODR context, the BC Ministry of Justice contracted with local software design and development companies to create the Solution Explorer, the intake system, and the communications portal, all of which are relatively lightweight applications, built to integrate into the Salesforce platform. As a strategy for minimizing the risk of a government technology failure, buying as much as you can off-the-shelf and customizing the rest is a good starting point.

Governments also lack a key driver for private software companies to produce timely, functioning, user-focused software: market discipline. If a private software company fails to deliver a quality leading-edge product, no one will buy it, investors will pull out, and the company will be eclipsed by a new competitor. In other words, private companies must innovate or die. Governments, conversely, do not face any market discipline except, perhaps, for the distant threat of electoral defeat if the software failure is sufficiently large or outrageous. Moreover, governments are notoriously risk adverse, with a strong bias towards inaction. These are hardly the ingredients for software innovation, which requires risk taking and a "failing forward" approach to development. There is also no doubt that government initiatives, by their nature, often take more time than private ones. Delay is poison for innovation because it saps money, time, momentum, and credibility. Unfortunately, delay is also endemic to government.

In British Columbia, the CRT was conceived and championed by a committed and thoughtful group of individuals within the provincial Ministry of Justice, which saw value in an innovative access-to-justice project like the CRT and took risks to implement it. One of those risks was collaborating with the CRT to undertake early, frequent user testing on the Solution Explorer, even though the technology was not completely built, and bugs and glitches remained. This is a risky proposition for government because if the technology is not yet fully functional, there is a chance that its shortcomings could become media headlines. At the same time, a key antidote to the lack of market discipline in public sector software development is rigorous validation with users at every stage to ensure that software is meeting public need. There are ways to bridge these conflicting interests – for example, by gradually expanding the circle of testers as confidence in the basic functionality of the software grows and by carefully communicating to key stakeholders that the software is early work and their feedback will inform improvements. In short, the CRT model proves that governments can innovate, if they take a strategic, agile, collaborative, and highly disciplined approach to new projects.

4. Technology Risk

Thankfully, the CRT has not encountered any technology issues since beginning to accept disputes for resolution. Despite this, the team has devoted considerable time to ensuring that the CRT is able to cope with the hiccups that are part of any new technology project. The goal is to ensure that the CRT has strong risk mitigation strategies so that it can handle possible technology interruptions while still providing

---

[73] For more, see Salesforce, online: <https://www.salesforce.com/ca/?ir=1>.

timely service to the public. A major risk mitigation strategy was deciding to build the CRT's online services on the already well-established and widely used Salesforce platform.[74] This platform has been used successfully by private and public organizations much larger than the CRT, and the scale of the platform means that support and updates will be readily available in the event of a problem. Additional technology risk-mitigation strategies include temporarily reverting to telephone-based or paper-based service, triaging claims, and escalating claims to adjudication if necessary to avoid a backlog. However, the CRT's biggest risk mitigation strategy is the commitment to rigorously include the public in developing and testing processes to ensure that public needs are being met.

VII. CONCLUSION: WHAT WILL THE FUTURE LOOK LIKE?

Putting the public first is not a one-time endeavour; it is an enduring obligation. One of the CRT's guiding principles is a commitment to continually improve by regularly asking for, and incorporating, public feedback about the CRT's processes. Technology enables an agile response both to measuring and increasing public satisfaction with the tribunal's services, which will let the CRT adapt quickly to serve the public better. The CRT will transform small claims and condominium property disputes by coupling skilled facilitators and tribunal members with new online tools to encourage accessible early dispute resolution. As the first ODR system integrated into public justice processes, the CRT will also yield valuable evidence about ODR's capacity to increase accessibility to our justice system.

If successful, the CRT model, featuring a seamless, service-driven, flexible ODR experience, could be leveraged by multiple organizations in different jurisdictions in the future. In British Columbia, these tools will be applied across the administrative justice system in the coming years, tailored to each tribunal's processes and jurisdiction. Under the BC government's tribunal transformation initiative, the administrative justice system, led by the CRT, will increasingly focus on using technology and early dispute resolution to increase access to justice for citizens.[75] At its core, the CRT is intended to empower people to resolve their problems in a manner that respects their dignity, their autonomy, and their lived reality.[76] By putting people at the centre of the dispute resolution process, rather than the periphery, the CRT will significantly increase access to justice for British Columbians and pioneer a new model for the delivery of civil justice services in Canada.

---

74 *Ibid*.

75 Ministry of Justice, "White Paper on Justice Reform – Part Two: A Timely, Balanced Justice System" (2013).

76 For more on the intersection of human dignity and administrative law, see David Dyzenhaus, "Dignity in Administrative Law: Judicial Deference in a Culture of Justification" (2012) 17 Rev Const Stud 87.

TECHSHOW2020

Laser and Light Show

WRITTEN BY:

Michael Ko

PRESENTERS:

Michael Ko: @groundworkTC

Antigone Peyton

February 27, 2020

LASER AND LIGHT SHOW

Special effects have a place in litigation! Grounded by scientific and engineering principles, demonstrative evidence has moved on from pencil drawings and pictures. Illustrations in 3D, videos that accurately portray accidents and other events, aerial footage that provides helpful overviews - these are some of the trial lawyer's favorite things.

Learning Objectives

- What technology is available to create demonstrative evidence
- What contexts can use this technology
- How to introduce into court

What technology is available to create demonstrative evidence?

The technology that lawyers can use to create demonstrative evidence falls into three categories: looking at something, rotating around something, or moving within something. Photos and videos are things we can look at. 3D renderings take that concept but allow us to look at some object or thing from multiple angles. And 360 cameras take that concept even further to give us manipulatable views from multiple locations within a scene – it lets us be there and look around.

Some of the technology can be used by the lawyer themselves to create the demonstrative. Other times, the lawyer creates the demonstrative with the help of a trained professional. But an exciting part about trial practice today is that, as technology become more accessible, the lines between what a lawyer can do and what a lawyer has to commission is becoming blurred.

Demonstratives we Look At

Photos have long been a part of a trial lawyer's arsenal. But with jurors and other decision-makers today being constantly inundated with images from an endless scroll of information at our fingertips, photos and other images have become more important than ever. Photos help us set up the basics of the when and where of our trial story. And video gives us a living view of what a place looked like. Many times, those photos and videos come from our clients or witnesses, whether it's from their phones, from their security cameras, or from their social media feeds. Other times, the lawyer can visit a scene or a place to take their own photographs or hire a photographer than can take photos for them.

Sometimes, photos and videos aren't available or aren't practical. There might not be video or photos from the event. Or a surgeon might not want anyone in the operating field taking pictures of what is happening as a personal injury plaintiff is being operated upon. That's where illustrations can be particularly useful. Medical illustrations can help depict the various steps of a complex surgery or help make visible what might otherwise be difficult for a lay person to identify on a radiological image.

In terms of after the fact video, video cameras can be placed in a variety of locations to depict the path of exemplar vehicles or to depict the viewpoint of a driver or witness. Or if a specific set of circumstances need to be recreated, lawyers can have a re-enactment animation created. But whether it's a medical illustration, a re-enactment video, or a re-enactment animation, lawyers will typically not be making these

in house. Typically, it will be a better use of the lawyer's time, efforts, and money to either hire a proficient illustrator or animator work under their direction. Frequently, complex illustrations, videos, and re-eanctment animations will be created by the expert who will be testifying from them in court. Many experts have the capability or have the staff trained in the relevant arts to be able to create the animations consistent with the evidence and your theory of the case.

Demonstratives that can Rotate Your Point of View

While photos can sometimes make or break a case, they can also be limited in what you get to see. A photo gives us only one view. An x-ray can only show us a single snapshot of what was going on in the body at the moment of image capture. The technology is limited in terms of what happens when things are behind one another. Similarly, a video of how a product works in a products liability case can only show us one view of the object at a time. Whether it is an animation or a re-enactment video, whatever was captured and edited into the video is the view that you get. What if you want to see things from a top down view? Or from the side? That's where a lot of 3D models come into play.

3D models are likely the province of experts and their graphics people or standalone litigation graphics vendors. 3D models can give us a view of the vasculature around a patient's heart, or they can enable us to pick up a piece of machinery and look at it from all angles, as if you were holding it in your hands. While ultimately, you're projecting this image onto some sort of 2D screen for a jury, the power of the 3D model is that it can be manipulated in real time. If it's an architectural rendering, you can rotate around the building and see if from any angle. You can zoom into an area of interest or zoom all the way out to get the big picture of the structure.

Examples of this that lawyers can play with is Google Earth. While Google Earth is a product that will ultimately be discontinued by Google, it still currently allows a hybrid view between a standard google maps view and what Google provides in Street View. Google Earth lets you view an area with a 3D buildings feature, which lets you view an area, such as the Chicago Loop, and you can see 3D renderings of the skyscrapers. You can zoom in to view a single building. Or you can zoom out to see the entire downtown area. You can rotate around a skyscraper. You can look at it head on from 10 stories up in the air. Or you can look at it from far above, like a satellite.

If you can understand how to rotate your views and move around in a Google Earth environment, you will then understand how to manipulate any 3D model. Whether it's a surgical instrument or a bridge, you can operate that demonstrative with your mouse and keyboard so that your expert witness can testify about any aspect of the model that you want, whether it's in direct or in response to a cross examination question in redirect.

Demonstratives that you can move around within

The most immserisve type of demonstrative is a 360 environment. An example of this would be Google's Street View. With Street View, an attorney can get to the ground level of a street and look left, right, up, down, forward and back. You can also walk down a street and move within the mini universe captured by Google's cars and 360 degree cameras.

With consumer grade 360 cameras, attorneys can recreate similar environments. But instead of relying on what and where Google can go, the attorney can bring the 360 camera with them to a construction site, a factory floor, or the scene of an accident.

A 360 camera is generally a device that has two (or more) lenses on it. When you take a photo with a 360 camera, it then captures everything around the device. Later, you can then look at that 360 photo and pan all around the room or scene that you've captured. From a user's perspective, it's the same as looking at a panorama photo taken with an iPhone. You can click and drag around an image to change what you're looking at. And from the image capture side, it's a matter of setting up the camera and clicking a button (you'll also need to figure out where you're going to stand, as the 360 camera will capture you too).

What Contexts can use this Technology?

Realtors have been using all of these types of technology for years to help sell properties. These days, when we look for our next home or our next office space, we can use google maps to see where the property is in relation to highways and other points of interest. We can use streetview to see what the building looks like from the outside. We can see photos of the interior. We can watch video of a staged home. And with 360 technology, we can look around a room, click to walk through to the next room, and then look around there. We can fully understand a property without ever setting foot inside it, at any time we want, no matter which parts of the property are important to us. It's a powerful way to introduce a person to a location.

I recently worked with a trial team defending a construction crane manufacturer in a product defect case. The Plaintiffs argued that the crane was defectively designed, resulting in a part of the machine falling off the crane and injuring the Plaintiff. The Defense argued that the crane was not defectively designed and that the injury was caused by operator error. I generally try to avoid telling war stories, but this recent trial featured a variety of demonstrative and evidence types that may best illustrate in a single fact pattern how a variety of these new types of technologies can be used.

In terms of demonstratives and visual evidence, the Plaintiff used primarily 2D images. However, this is not to say that their evidence was in any way limited or boring. The Plaintiff used maps to show the jury the location of the construction site, which was a highway bridge expansion project. They had photographs taken at the time of the accident, as well as other general photographs depicting the site and the work in the weeks leading up to the accident. There was also some video taken by construction workers periodically and for what seemed to be personal use.[1]

Where I suspect the Plaintiff spent much of its graphics budget was in the damages. The Plaintiff had a graphics company create an interactive app, where a schematic of the Plaintiff's body depicted the nature and extent of the injuries. Surgical procedures could be selected by date, and injuries could be viewed by organ systems involved. The Plaintiff's attorney was able to walk the different medical fact witnesses through the severity of the Plaintiff's injuries and the pervasiveness of the harms experienced. It was all interactive. Click on a part of the body or click on the name of an organ system, and the medical illustrations would appear alongside pertinent medical records or imaging.

From the Defendant's side, the Defendant had the same images from the construction site and of the accident that the Plaintiff had access to. In addition, the Defendant used video quite effectively by placing video cameras (GoPros) at key locations on exemplar machines that were subjected a variety of vibration

[1] Many construction sites may also have a gopro mounted at a high point to capture periodic photos of the progression of the work, which can provide specific snapshots of the site or that can be stitched into a timelapse.

and stress tests. Finally, the Defendant worked with their expert to create a variety of 3D models and a 360 reconstruction of the accident site.

The 3D model used during the trial was a 3D model of an exemplar construction crane. While one use of this 3D model could have been to get 360 views of the machine, the way that the Defendant elected to use this model was to create a video that depicted a variety of views of the machine as it operated and utilized the part of the crane that vibrated loose to cause the injury. This video was also then combined with additional GoPro video footage placed on key portions of the exemplar machine. While the Defendant certainly could have used a simple video of the exemplar machine, the machine was quite large and filming it would have necessarily included filming the environment in which it sat, which could have been distracting and potentially confusing for the jurors to view. As a 3D model, the attorney could easily explain all the different parts of the machine and exactly how they all work, without distraction.

The last demonstrative used by the Defendant was a 3D model of the accident scene. Before the scene was cleaned up and work resumed, measurements and photos taken were used to recreate the scene with 3D models. With a 3D model of an entire construction site, the Defendant could explain some key facts about the manner in which the work was conducted. The attorney could choose exactly what to look at by manipulating the location of the view, the height of the view, and the angle of the view. These views were then prepared for the jury through the creation of a video tour of the site, much like a flyover showing key areas of interest of a race course.

Using technology where each party considered it most valuable, the jurors were quickly introduced to:

- the medicine involved in the Plaintiff's injuries with their interactive medical illustrations
- the nuances of the machine at issue with the 3D model
- the exact circumstances and limitations imposed by the work site itself via the 360 type views provided by the 3D model of the entire scene

How to Introduce into Court

A concern that most trial attorneys have when it comes to creating demonstratives is whether it will be worth the time and money. Many attorneys still worry that any time or money spent on demonstratives will be wasted after a sustained objection by the trial judge. Fortunately, you can maximize the likelihood that you will get to use your demonstrative by comparing it to something simpler.

Photos

I think we all have a solid grasp on how to get a photo into evidence. However, the basic evidentiary principles that we all so easily understand can be applied to more complex demonstratives or other forms of evidence. And the rationales apply easily to both. Remember: we don't need to have the photographer to lay foundation for a photo. Instead, all that matters with a photo is whether the witness can aver that the photo accurately depicts the scene or the object at the relevant time.

Video

Again, it's 2020. I think everyone has laid foundation for a video to be used at trial. And video is really nothing more than a series of photographs. So, the same foundation requirements apply. Similarly, we don't need the videographer to lay foundation for the video. As long as the witness can testify that the video accurately depicts the scene or the thing as it existed at the relevant time, the video itself should come in.

Audio

Video frequently also has an audio component. And any statements made that are recorded on the video are certainly out of court statements. And, unless there are any audio quality issues that make the statements unintelligible, we don't have to doubt the reliability of what was said. However, we will still need to overcome any hearsay objections where the statements, even if perfectly recorded, are being offered for the truth of the matter. At that point, even if the images of the video can survive objection, you will need to find a way that there is a hearsay exception if you want to also present the audio that goes with the video.

Typically, what I find is that lawyers will mute the video when playing them in court. Or, they will work with a videographer to strip out the audio so that it can't be accidentally played. Sometimes, it can feel quite comforting to use technology to make it technically impossible to accidentally play something that might result in a mistrial.

Unspoken Statements in a Video

Sometimes, a video may contain statements that are not audible. For example, a security camera might have a timestamp burned on to the image. In other instances, a dash cam video may have a code of letters applied to the image that correspond to whether the squad car has its lights on, its siren on, or both. In each of these scenarios, the video or the photo is the image of what is happening. To get the video or still frame from the security camera itself admitted, you'd only need someone to state that the image accurately depicts the scene. However, if you want to use the timestamp of the security camera footage to say that a person was at a certain place at a specific time, you may need an additional witness. You will want someone who can verify that the timestamp corresponds to the actual time. Whether it's because a timestamp on a security camera defaulted to a different time zone or because whoever installed the camera didn't know how to set the correct time, the testimony you will want to be able to get is how far from actual time the timestamp is.

In the scenario of the video footage that has other indicators or notifications that correspond to other conditions, like whether a police car's siren is on during a high speed pursuit, you will need to find a witness that can testify that the video indicator signals accurately depict what is going on in the car. Or, if there is a dispute as to whether the signals accurately reflected what was happening in the car, testimony on how the indicator signals are supposed to work should suffice.

Medical Illustrations and Other Drawings

Frequently, medical illustrations are used to either explain any medical concepts that may be relevant to a trial. Or, medical illustrations may be used to explain in a summary form the types of procedures that a party may have had to endure. These are pretty straightforward, and as long as there is a competent witness to vouch for its fairness and accuracy. However, as the cost to obtain customized illustrations has come down, some attorneys have inadvertently crossed the uncanny valley of demonstrative evidence.

Sometimes, evidence that too fairly and too accurately depicts a topic can somehow become objectionable.

Bringing Injuries to Life (a little too much)

Even with the ubiquity of camera phones and video cameras, a serious injury might not be captured at its most devastating moment. The next best thing a Plaintiff's attorney may have in showing the nature and extent of an injury may be a black and white plain film. Some attorneys will then work with a medical illustrator or graphic artist to bring these images to life. Opaque white shards on a plain film suddenly become legs with muscles, vasculature, and graphic depictions of bone shards. A fractured orbital bone suddenly becomes an artist's rendering of an injured Plaintiff's face the moments after sustaining a head injury.

Particularly when the medical illustrations are made to conform to the Plaintiff's specific anatomy (rather than general anatomy) or the Plaintiff's likeness, judges are more likely to bar their use. Plaintiffs can argue that the illustrations fairly and accurate depict, and their graphic nature is a function of the seriousness of the injury. However, this type of demonstrative may also inflame the jury or present prejudice that substantially outweighs any probative value.

I typically recommend a Goldilocks approach when it comes to medical illustrations. Make it realistic and specific to this case by using the correct skin tone and anatomy. Avoid making it too realistic by customizing the illustration to the Plaintiff's actual face.

Making Things Clear (a little too much)

A frequent request that I get is to "enhance" video – typically security camera footage. The security camera footage doesn't show something quite as clearly as the attorney wishes it could be. And so, the attorney looks for ways to "enhance" the video. Notwithstanding the fact that "zoom and enhance" is a meme unto itself, [2] lawyers should be wary of opposing counsels who claim they can now clearly see something after their video or tech people were able to enhance the video.

Surveillance camera footage is typically optimized to take up very little space, which is typically very convenient for ease of use and for cost of operation. The drawback is that there is little that can be rescued from suboptimal surveillance camera footage. As good as our cell phone cameras are, we've all experienced limitations in zooming in on subjects that are far from the camera. As good as our cell phone cameras are, we've all experienced limitations in trying to get the right filters to make a subpar lowlight photo look better. When it comes to enhancing or improving surveillance camera footage, keep in mind that surveillance cameras are far inferior compared to our cell phone cameras.

So what does "enhancing" do? For me and my clients, I can tweak brightness and contrast. I can slow down the footage so that we can look at the footage frame by frame. But other than that, there's not much I can do without it crossing the line from processing evidence over to altering evidence. Or to put it a bit more kindly, there is a difference between optimizing what can be seen in a video versus turning that video into a demonstrative. The moment any information is added to a video, the videographer becomes

[2] Do a quick youtube search for zoom and enhance. The results are good for a laugh.

an illustrator. It doesn't mean the new exhibit is inadmissible, but it might no longer be appropriately considered a video.

For surveillance camera footage, I typically recommend slowing down the video.[3] If there is something that needs to be emphasized, I also recommend annotating the video, such as by putting a circle around the area of interest or spotlighting the area of interest, much like how a sports replay may highlight a player in the moments before the player makes a big play. Combined with slowing down the footage, this may be able to get you something that is closer to the results you want while avoiding the pitfalls that may accompany any attempts to enhance the source video.

3D Models

3D models, such as a model of a construction crane or a patient's coronary arteries, may seem complex to lay foundation for. But think of 3D models, from an evidentiary perspective, in the same way that you would consider medical illustrations. Like medical illustrations, you don't necessarily need the person who created the graphic to lay foundation. You will only need a competent witness who can state that the model is a fair and accurate depiction and that it would aid the jury in understanding that witness' testimony.

Some images that we consider demonstratives, such as a 3D model of a patient's coronary arteries mentioned above, may appropriately be considered as real evidence or substitute evidence. The court cannot receive a patient's actual vasculature as evidence, and so the 3D model could be received as real evidence. Because the significance in terms of how the jury may use the evidence changes, some of the foundational requirements change as well. The models are typically created by stitching together actual medical imaging studies. Generally, where the artist doesn't have to make decisions, such as how thick to make an artery or what dimensions to use for a tire, the court is more likely to grant a motion to admit the model as real evidence vs demonstrative.

Accident/Scene Reconstruction Videos

The type of demonstrative that is most likely to be barred from use is the accident or scene reconstruction. (It also happens to be the type of demonstrative that tends to cost the most). The problem comes down to the demonstrative/real evidence distinction described in the 3D models discussion above. While an attorney may state that the accident reconstruction is a fair and accurate depiction of events and is additionally based on the available forensic evidence, judges may sustain objections to these types of reconstructions because they are "too realistic" or "too convincing." This is understandably maddening for an attorney who can now no longer use this concededly realistic depiction, but I suspect that the ultimate problem that judges are trying to avoid with such demonstratives is that juries may not be able to navigate the difference between demonstrative and real evidence.

Another characteristic common to reconstructions that are barred from use is that they required someone – whether it was the attorney or the artist – to make many decisions or assumptions as to what was happening. In a reconstruction of an accident of a car versus train, the attorney may have black box data from the train in regards to when the train blew its horn and when it hit its brakes. The attorney may also

[3] Keep in mind that the smoothness of the slow motion is dependent on the framerate of the source video. Typically, surveillance camera footage uses a framerate that is not amenable to smooth slow motion. But, the images can be slowed down to better discern what is happening.

have forensic data from the car itself in terms of where it came to rest and what the car looked liked in terms of damage as a result of the crash. But the attorney may not have velocity information. And even more importantly, the attorney will likely not have acceleration data. So, where the car was in relation to where the train was at any moment ahead of the crash is not knowable without corroborating witness testimony or corroborating video footage. Even then, where there is a dispute as to some of the decisions or assumptions baked into a reconstruction video, the court may be wary that permitting the jury to view the video may imply to the jury that the court favors one side's account of events over the other side's.

That is not to say that accident or event reconstruction videos never get admitted. The key considerations to keep in mind when working with a vendor or expert to create a reconstruction video are to minimize decisions/assumptions, emphasize the forensic data from which the video is made, and remember the demonstrative purpose for which the evidence's admission is sought.

360 Images

Many courts may not have had the experience to rule on the admissibility of 360 images or environments, but any objections should be easily overcome by relating this new technology to something we've all experienced before. I started this discussion with a review of how to admit a photograph. And 360 images are nothing but photographs. All you should need is for a competent witness to testify that it accurately depicts the scene. Remember that 360 images are captured with 360 cameras. And 360 cameras are really just a collection of multiple cameras that shoot at once. A 360 image sounds like a new type of evidence. But from an evidentiary perspective, it's just a photograph.

Conclusion

Jurors are more visually oriented than ever, and an attorney's potential arsenal for storytelling is deeper than ever. Nevertheless, we still need to make sure we can get our demonstrative evidence past any objections. At the trial phase, it is helpful for the court when you can analogize how your new type of demonstrative is similar to an older type of technology that courts may be more comfortable with. And at the creation phase, it will be helpful for your time and budget to stay close to the forensic data and avoid the insertion of subjective decisions or assumptions.

One last consideration that I would recommend for all attorneys using new kinds of demonstratives is to make sure you think it fully through. And by that, I mean to consider how you are going to actually use it in court (in addition to thinking about how to fund it and how to get it past objections). Work with you vendor and ask questions, like will the demonstrative run on an iPad? Or will I need a laptop with special software to be able to manipulate the model? Will I be able to manipulate the model myself or will someone on my trial team need some training? These are questions that you will want to answer long before trial and not on the morning your star expert witness is going to hit the stand.

TECHSHOW2020

The Frugal Litigator: DIY Trials

WRITTEN BY:

Brett Burney & Daniel J. Siegel

PRESENTERS:

Brett Burney: @bburney

Daniel J. Siegel: @danieljsiegel

February 27, 2020

THE FRUGAL LITIGATOR: DIY TRIALS

Not every case is a zillion dollar piece of litigation that requires the use of complex and expensive trial presentation software such as Sanction or Trial Director. In fact, most cases that go to trial are much smaller, and often do not justify the expenses and manpower necessary to effectively use these tools.

Rather, attorneys can often prepare for and try cases in a more economical manner: a DIY Trial, which we define as one where an attorney (and when possible, a second chair, paralegal or other staff member) can use the technology ***they already own or should own*** to effectively present their case to the jury or the judge (in a bench trial).

This program (and this paper) will help you understand how to handle a trial effectively using the basic technology tools everybody has access to. Some are free, some require a financial investment (you have to buy it), but we believe that these products are essential for every firm that must go to trial.

Learning Objectives

This program will highlight why doing it yourself is not as hard or complicated as many perceive. We will discuss:

- What DIY tools work best for trials and litigation generally
- Where to find them
- How to use them

Most law offices have (or we believe should have) most, if not all, of the software that we will discuss and demonstrate. Among the basic essentials for virtually every office are products such as:

- Microsoft Office 365 (including Word, Excel, PowerPoint and Sway)
- Adobe Acrobat DC (either the Standard or Professional version, not the free Reader)

- Image Display and Editing Software (*e.g.,* Microsoft Photos, ACDSee Photo Studio, Adobe Lightroom, Adobe Photoshop, Corel PaintShop Pro, Gimp and many more)
- Video Presentation & Editing Software (*e.g.,* Microsoft Photos, various CyberLink products, Apple iMovie, VLC Media Player, Blender and many more)
- The CaseMap Suite

1. Case Analysis / Chronology Tools

One of the first things you do when you take on a litigation matter is to start writing down the people, places, and things involved in the matter. Next you might start reconstructing the events leading up to litigation on a whiteboard or legal pad. Then you have to keep track of what documents support each fact involved in the matter. How do you keep all these information silos organized and connected together?

There are a variety of tools and methods that lawyers use to track all of this crucial information. Some of you might just write things down on a yellow legal pad, others might create a Microsoft Word table or use an Excel spreadsheet.

Some of the best (and oldest) software for tracking all of the information associated with a litigation matter is CaseMap. Purchased by LexisNexis in 2006, CaseMap has continued to flourish as one of the most powerful case analysis tools for litigators because it elegantly weaves together all of the critical fragments of information involved in a litigation matter. CaseMap version 13 was released in October 2017.

Today, there are a couple of cloud-based tools that you should consider:

CaseFleet (www.casefleet.com) was designed specifically for litigators to create timelines, link events to issues, and associate the pertinent documents so they're easily accessible. Since CaseFleet is cloud-based, you can access all your information from any computer or mobile device. You have complete access to all the facts, issues, contacts, and documents associated with your timeline from anywhere right at your fingertips.

The primary focus of CaseFleet is the "Timelines" view since that's really how most litigators seek to tell their clients' story based on when events happened. If you were writing out your timeline on a yellow legal pad, you'd start off by writing down a date, and then put the "players" involved in the event. You'd probably also write down where the event happened along with a note or two about how this relates to your case.

FactBox (www.factbox.com) is a "fact management" system – pure and simple. It's a straightforward and uncomplicated platform for keeping track of all the information you are responsible for remembering. It can be daunting to stare at a blank screen when you first create a case in FactBox, but just start recording the bits and pieces of information that you already know about the matter. For example, you already know the name of your client, and probably the name of opposing counsel, so record those in FactBox. And since you've agreed to take on the matter,

you probably already have a couple of ideas about the specific issues that are involved in the matter so just start entering those in FactBox.

2. Document Review (eDiscovery)

E-discovery is expensive. There's really no way around it. The process of collecting, preserving, processing, reviewing, and producing electronic evidence will usually require a heftier investment than a discovery project that solely involves paper. The biggest expense factor is simply because there is so much more information to collect, preserve, process, review and produce.

On the other hand, ignorance of e-discovery can be even more costly. While the e-discovery market may seem like a goldmine for vendors today, many parties and legal professionals can save money by simply educating themselves on how to practically and efficiently handle e-discovery projects. It may not always be necessary to request extensive records and complete e-mail inboxes from the opposing party, but this requires both parties to sit down and frankly discuss what information is going to be relevant and discoverable. This is why we see the so-called "meet and confer" requirement now in the FRCP – the Rules Committee recognized the importance of requiring both parties to thoroughly discuss the parameters of electronic discovery in order to streamline costs.

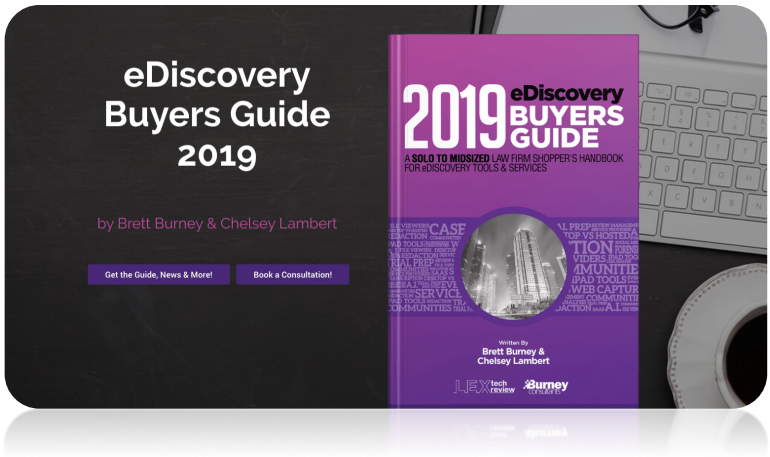
If you need to review files in PDF format, you should absolutely invest in a subscription to Adobe Acrobat DC which will enable you to annotate files, edit PDFs, redact sensitive information, and apply Bates labels.

LexisNexis CaseMap also provides some capabilities for reviewing documents so if you are using CaseMap for case analysis, you might be able to use the software for document review as well.

Lastly, there are several cloud-based e-discovery platforms that you should absolutely consider today for best managing the files and documents involved in electronic discovery:

- Logikcull (www.logikcull.com)
- Everlaw (www.everlaw.com)
- Nextpoint (www.nextpoint.com)
- Lexbe (www.lexbe.com)
- Digital WarRoom (www.digitalwarroom.com)
- GoldFynch (www.goldfynch.com)

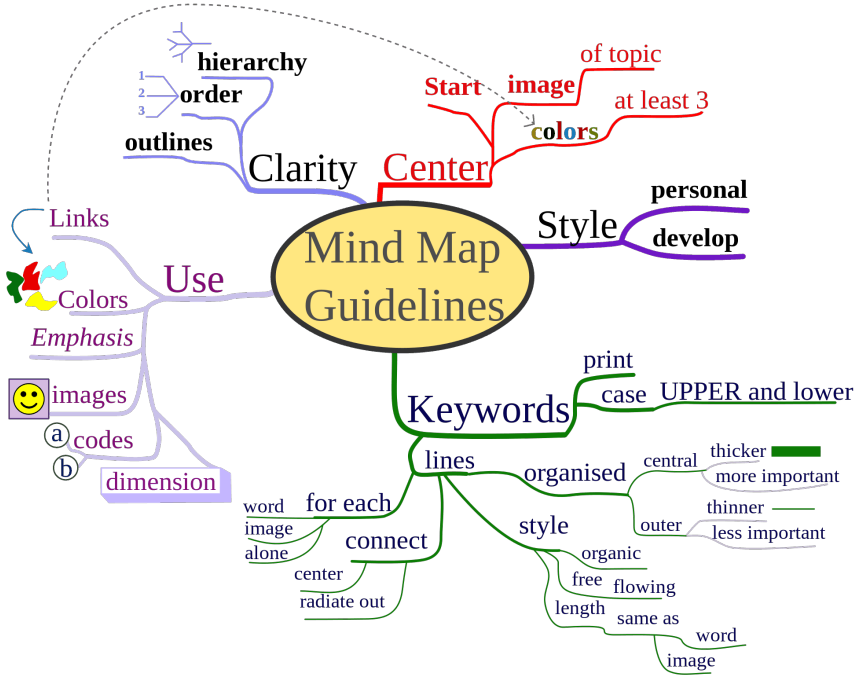
For more information on these tools (and more) you can download the free eDiscovery Buyers Guide from www.ediscoverybuyersguide.com.



www.ediscoverybuyersguide.com

3. Mind-Mapping

A mind map is a graphical/visual way to display ideas and concepts, and help you structure information so that you can analyze, understand and generate new ideas about your cases. Unlike conventional note take, a mind map, you structure information in a way that resembles how your brain works. Because mind-mapping is analytical and artistic, it engages the brain in a richer way. Here is one example:[1]



4. Timelines

There are a few tools available to craft an engaging and informative timeline for your litigation matter. One of the oldest tools is the companion application to CaseMap, called **LexisNexis TimeMap**.

You can also create a timeline for free with Adobe Spark:
https://spark.adobe.com/make/timeline-maker/

Lastly, if you have an iPad, you case use the Timeline 3D app (watch a video review of the app at https://appsinlaw.com/timeline-3d-for-ios-create-elegant-and-stylish-timelines-on-your-ipad-or-iphone/).

[1] https://commons.wikimedia.org/wiki/File:Mind_map_Strategy.png

5. Transcript Management

If you've ever worked with transcripts before on your computer, you've probably used software like **LexisNexis TextMap**, or **Case Notebook** from Westlaw. While these software applications are designed to allow litigation teams to mark up and annotate transcripts, they routinely become just a repository for storing transcripts. When a litigator does want to annotate a transcript, they'll usually print it out and use a highlighter and sticky notes.

But if there were an easier option for lawyers to digitally annotate and summarize transcripts without having to use a keyboard and mouse, that could change the whole dynamic. That's exactly what **TranscriptPad** https://www.litsoftware.com/transcriptpad has done for legal professionals that are comfortable using an iPad. Because you can hold an iPad similar to a legal pad, and since you just need to tap with your fingers, TranscriptPad has become an indispensable tool for managing, organizing, summarizing, and annotating text transcripts.

You can view full video reviews of TranscriptPad here:

Part 1: https://appsinlaw.com/transcriptpad-part-1-import-view-and-search-transcripts-on-your-ipad/

Part 2: https://appsinlaw.com/transcriptpad-part-2-select-text-apply-annotations-assign-issue-codes-create-reports/

6. Legal Research

Of course, when it comes to legal research, we are all familiar with LexisNexis and Westlaw. You may already have a subscription to one of these services and you may be content where you are (although our "pro tip" is to make sure you make full use of the mobile apps for each service).

But if you're still struggling to find good resources for your research, you should look at Fastcase (www.fastcase.com). If nothing else, you should sign up for a free account and use that, but you should also check with your local or state bar association since many of them offer a discount on the Fastcase service to members.

Another service to consider is Casetext (www.casetext.com).

Lastly, you should bookmark Google Scholar (https://scholar.google.com) where you conduct web searches for federal and state case law.

7. Trial Presentation

In the old days, you had to purchase a high-end laptop and high-end presentation software (**Trial Director** and **Sanction**). But today, using an iPad or Android tablet, you have options that are simple and intuitive and wonderful for litigators.

Of course, you can still use your laptop and basic Windows programs, including:

- PowerPoint
- Adobe Acrobat DC
- Excel
- Word
- WordPerfect
- Sway

TrialDirector is still available today, but the company has been acquired by Ipro and is now offered at **TrialDirector 360** (https://iprotech.com/trialdirector-360/).

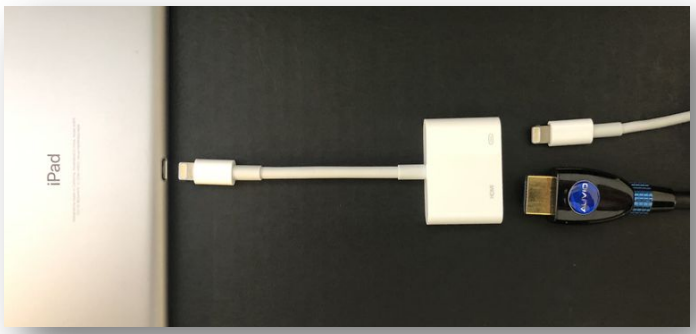
Sanction is now owned by Lexis (https://www.lexisnexis.com/en-us/products/sanction.page) and do works well with LexisNexis CaseMap.

Both TrialDirector and Sanction only run on Windows PCs.

But today, if you have an iPad or Android device, you have all the tools necessary to DIY your presentation needs.

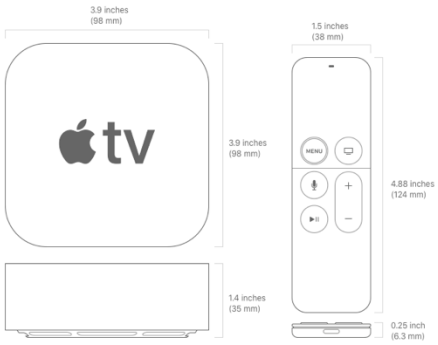
The first thing you need to consider when giving a presentation from the iPad is the environment in which you'll be presenting. Will you presenting on a widescreen TV? Will you be hooked up to a projector and screen? Will you need to present to multiple monitors? Is there a podium for you to set your iPad on? Will you need to output the iPad's audio as well as video?

The easiest way to connect an iPad to a TV or projector is through a VGA or HDMI cable. You'll need to purchase an adapter for your iPad that can plug into the bottom of your iPad (Lightning or USB-C) and the other end can connect to the VGA or HDMI cable.



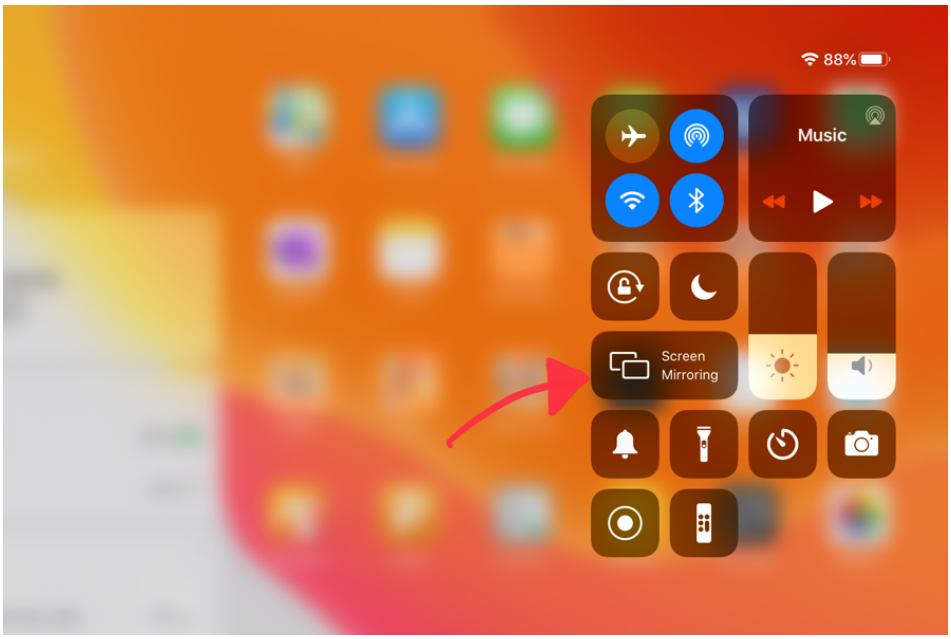
But even better, the iPad can wirelessly present to a projector or widescreen TV. In 2011, Steve Jobs announced that Apple's AirPlay technology could be used to "mirror" the screen of their iPad to a widescreen TV wirelessly using the $149 Apple TV device. It does NOT come with an HDMI cable, so you'll need to supply one of those yourself.

The Apple TV is a small 4" x 4" square device that connects directly to a widescreen TV (or projector) via an HDMI cable. There is no other way to connect the Apple TV to a TV or projector except through an HDMI cable. When connected to a TV, the Apple TV can show movies and videos downloaded through iTunes, as well as connect to Netflix, YouTube, and more.

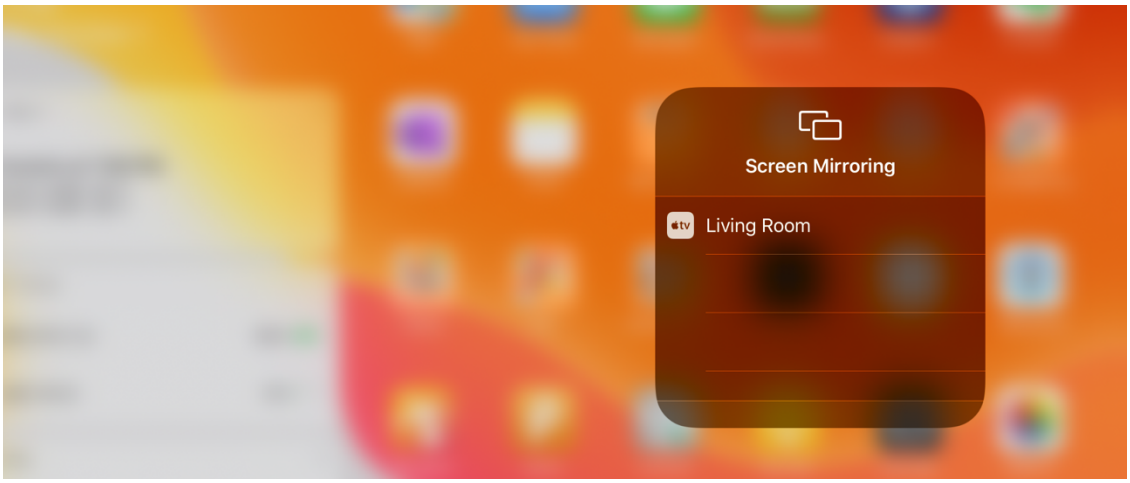


After both the iPad and the Apple TV are connected to the same Wi-Fi network, you can mirror the iPad's screen by accessing the Control Center.

On an iPad with iOS 12 or later: Swipe down from the upper-right corner of the screen. (On iOS 11 or earlier: Swipe up from the bottom edge of any screen.)



Next, tap the "Screen Mirroring" button and select the appropriate Apple TV listed there:



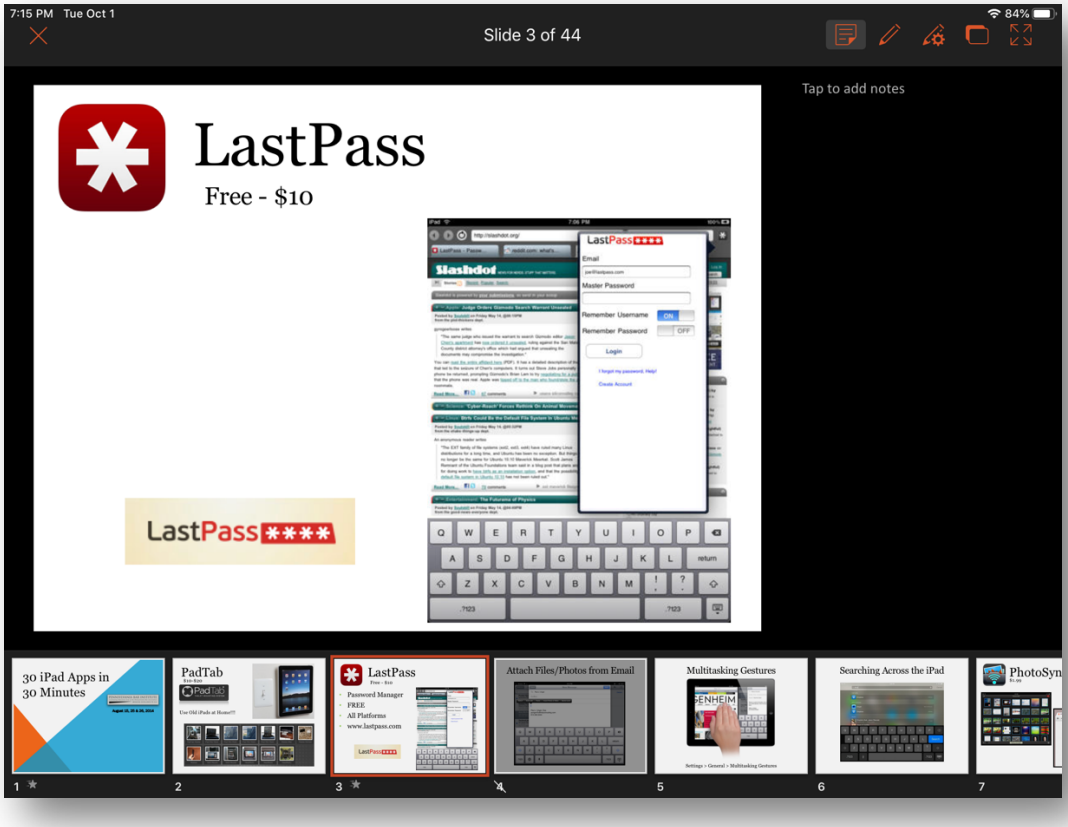
Depending upon the AirPlay settings on your Apple TV, you may have to enter an AirPlay passcode on your iPad before proceeding.

PowerPoint for iPad (from Microsoft)

Microsoft finally released a PowerPoint app for the iPad in March 2014. It is truly the best choice for presenting PowerPoint on the iPad.

Why is PowerPoint the best choice? Because there are no conversion issues, it has a very large font set, and it now supports video, audio and animations. The app also includes Presenter View, which gives presenters the ability to jump to another slide very easily, and most importantly, the ability to see notes.

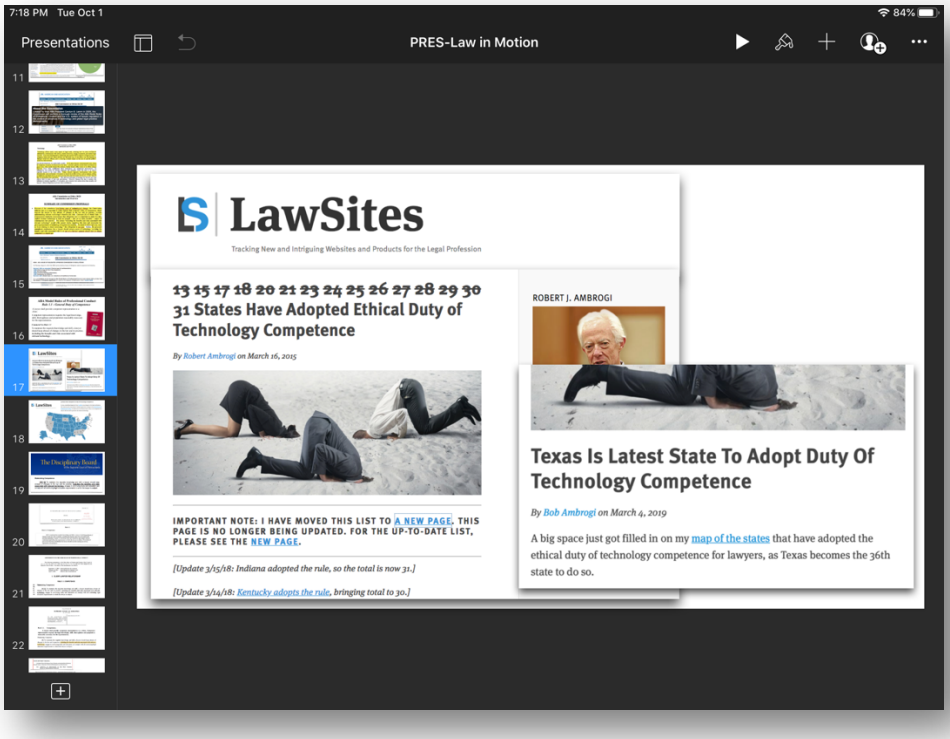
Here is what the Presenter View looks like on the iPad screen, while the current slide is projected on to the TV or projector:



You can download Microsoft PowerPoint for your iPad completely free, which allows you to perform some basic editing functions on text. However, if you need access to more advanced features, you will need to purchase a subscription to Office 365 (www.office365.com). In addition to connecting to Microsoft's OneDrive cloud storage service, PowerPoint for iPad now also connects to Dropbox.

Keynote for iOS (from Apple)

Apple's presentation software is called Keynote and has been available for Mac computers for many years. Naturally, Apple developed Keynote for iOS that worked on both the iPhone and iPad. The app is available for $9.99 or it comes free with any new iPad. The Keynote for iOS app also works directly with an iCloud account for storage and accessibility from any computer connected to the Internet.



While Keynote presentations have their own file format, Apple was smart to allow you to pull PowerPoint files into the Keynote app where they are immediately converted. The conversion process is good, but you should always check your presentation to ensure everything converted properly.

As one might expect, Keynote for iOS is a beautiful app on the iPad. You can edit slides, add animations & transitions, and insert pictures, video & audio. When presenting from the iPad, only the current slide shows on the projector, but the Keynote app on the iPad allows you to see the next slide or read through your speaker notes.

Trial Presentation on the iPad

As soon as lawyers got their fingers on the iPad, they've wanted to brandish it in the courtroom with electronic eloquence. The iPad just might be the perfect contraption for annotating exhibits, calling out documents and highlighting impeachable testimony.

Three of the top trial presentation apps available for the iPad today include:

TrialPad from Lit Software LLC
http://www.litsoftware.com

iTrial from ExhibitView Solutions, LLC
http://www.exhibitview.com

TrialDirector for iPad from InData Corp.
http://www.indatacorp.com

All three apps run un-chaperoned on the iPad, meaning they don't require companion software running on a computer, although ExhibitView does sell a desktop application that can "Save to iPad" and TrialDirector is designed to be a “companion app” for the TrialDirector software for Windows PCs.

All three apps handle images (JPG, TIFF, etc.) but the recommended file format for any of the apps is PDF. In fact, it may work best to convert all other files types to PDF whenever possible.

TECHSHOW2020

Documents in a Snap: Tips and Tools to Automate Your Documents

WRITTEN BY:

Chris Fortier & Lauren Lester

PRESENTERS:

Chris Fortier: @crflego

Lauren Lester: @MsLaurenLester

February 27, 2020

OUTLINE

1. **The Value**
    1. *We will go over what the client expects and how that has evolved*
    2. *The Benefits of Automation*
2. **The Basics**
    1. How much tech knowledge and how much do you want to know?
    2. Document variables, *if then* clauses, autotext, and templates
3. **Scenarios**
    1. *Three to four scenarios, what do lawyers run into…*
    2. *Problem: Find/replace*
    3. *Problem: Wasting time doing document admin…(reinventing the wheel)*
        1. What are the variables?
        2. What is the "constant stuff?"
4. **Opportunity: Get your clients directly involved (with your supervision, of course :-))**
5. **Review some of the many service providers (See the end of this document)**
6. **Simulate the life of an average case through a law office**
    1. *Create Document Types*
    2. *Map out decision points*
    3. *Designate generic clauses*
    4. *Create specific language for most common situations*
7. **Simulate Common Problems to Solve by Automation**

Common Clauses
Local Rules Formats
Restatements of Law
Structure an Analysis

Integrate with Client Intake
Assembling a Filing of Multiple Documents
Editing a PDF
Having Client Directly Create Their Own Documents
Your Policies and Procedures

THE VALUE PROPOSITION - WHY AUTOMATE?

Clients are on to us. They know how we operate and they have opinions about it. They have opinions on what we bill and how we bill. Their question: what is the value of our services? Can you answer that question?

Why do your clients come to you? In many instances, they have a problem and need your help solving that problem. That is the essence of our work, the value we bring to society. Think of the family that needs to set up an estate, the individual who needs to divorce their spouse, the child that needs to be adopted, the client who needs to have a competent defense so that they are not run over in a criminal trial.

According to "Is Your Law Firm Delivering What Today's Clients Want," found on myshingle.com, your clients want products that are accessible and easy to find. They want access to you and a personalized experience. We have to change the way we are delivering legal services to fulfill these expectations. That means opening the vault to legal documents (which the internet and alternative legal service providers already do), automating the tasks that we are not valued to do (such as cutting and pasting clauses or paragraphs from other documents), and focusing on what makes us who we are; listening, providing advice, solving problems, and reviewing proposals to make sure they fulfill what our clients want or need.

You work for one large client such as a corporation or a government? This presentation is for you too. Preparing documents can be a repetitive task that can numb your mind. Learning how to assemble documents can take the numbness out of it by automating the repetitive passages you have to put in each document and allow you to focus on the unique aspects of your case. IN essence, you are making your job more interesting!

Finally, automation can create consistently. You treat the same issues the same way. Statutes, ordinances, or regulations stay mostly similar. Why reinvent the wheel? Let your unique keystrokes go to the facts of your case/issue and why the law applies the way you and your client want. Additionally, consistency allows you to train new people as to the decision points in your analysis. What questions do you need to answer and why? You can create templates that launch analyses and get your trainees into the fine art of your work.

This presentation will get you in the direction of fulfilling your value statement. Less recitation of law, less data entry, more advice, more application of the law to your client's problem. We'll do this by:

- Introducing you to the basics of how all of this works
    - Helping you figure out where you can automate text in your document assembly
- Thinking about your thought processes to put them on paper
- Introducing you to programs that can assist
    - Providing examples of how to use these programs

BEFORE YOU START AUTOMATING - DESIGN!

As with any new toy or tool that you would put in your business, make sure you have a business justification. Consider these factors when deciding where to start:

- Just the basics, please. What are you typing into your documents that is not legal in nature? Think names, addresses, phone numbers, email addresses. Getting that automatically generated makes your life much easier.

- Formatting. Do you deal with local rules about the size of the paper, the font, the margins, amongst other things? A template takes the headache of all that adjustment and all the anxiety of not being sure if your document makes the standard.

- Is the process that you are automating getting frequent use? You want the work that you put into the automation to save you multiples of time in creating your documents. However, you will never automate 100% of your work. Choose your most frequent document types and automate those.

- Is the process you are automating have lots of twists and turns? If you have a process that you do not frequently use but you are having to look up laws/regulations, this may be a place to save time. You want to put all the messy information into one neat questionnaire that generates into your desired result.

- Do you have favorite paragraphs/phrases/restatements of law? Having these available at a keystroke or a click of a button saves you the time of finding, copying, and pasting.

Once you have figured out the forms, motions, or documents that you most frequently generate, map out your thought process. Where are the decision points? What are the results of the decisions? That includes resulting questions (decision points) and your action (text you would put in the document).

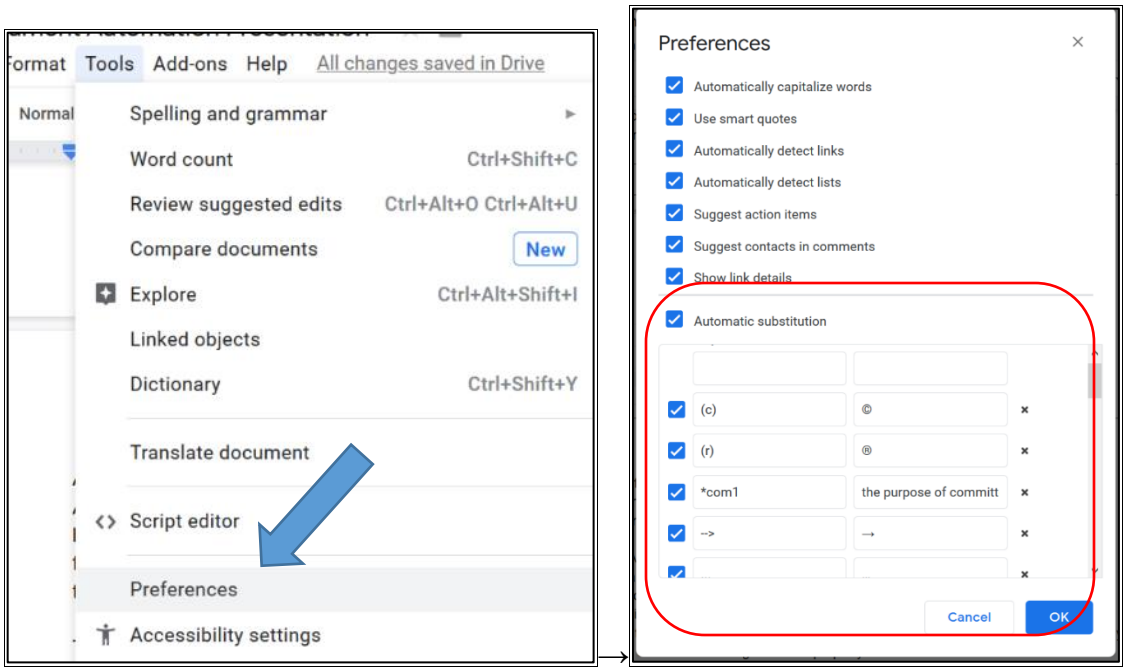
AUTOTEXT

AutoText is a way to store parts of a Word document for re-use. You can, for example, create a library of boilerplate paragraphs for business letters, or keep a handy selection of headers and footers. An AutoText entry can store anything a Word document can contain, such as formatted text, pictures, and fields. (https://wordmvp.com/FAQs/Customization/AutoText.htm).

8. Finding native autotext features

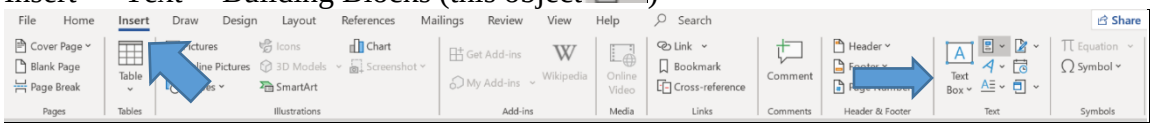
1. G-Suite

Tools -->Preferences-->Automatic substitution



2. *MS Office*

Insert -->Text-->Building Blocks (this object)



TEMPLATE

A template is a file that serves as a starting point for a new document. When you open a template, it is pre-formatted in some way. For example, you might use template in Microsoft Word that is formatted as a business letter. (https://techterms.com/definition/template)

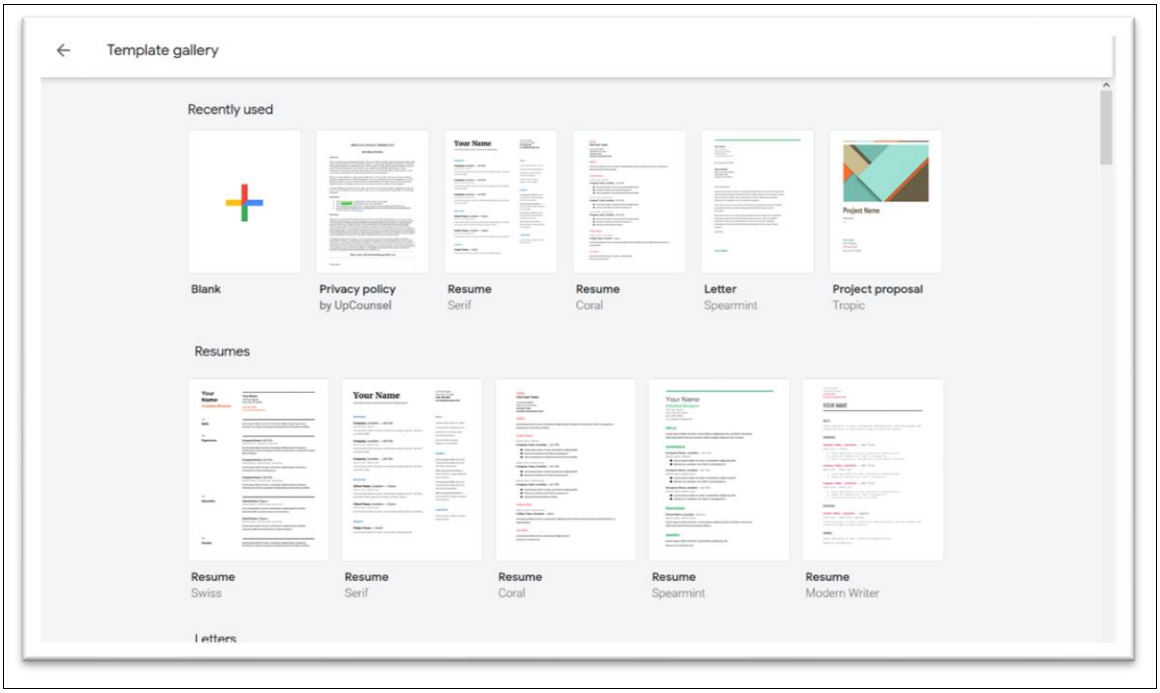
You can locate some pre-made templates using sites such as formswift.com, or through your "New" document feature in Word (File → New, then use the search bar for your desired type of document) or in Docs (File → New → From Template).

You can create your own templates from your past work. Convert all the variables in the document, such as names, gender indicators (especially he/she), product names, or citations to something that can be flagged for your review. Symbols (**[SUCH AS THIS]**) or highlights can make these variables easy to catch in your review.

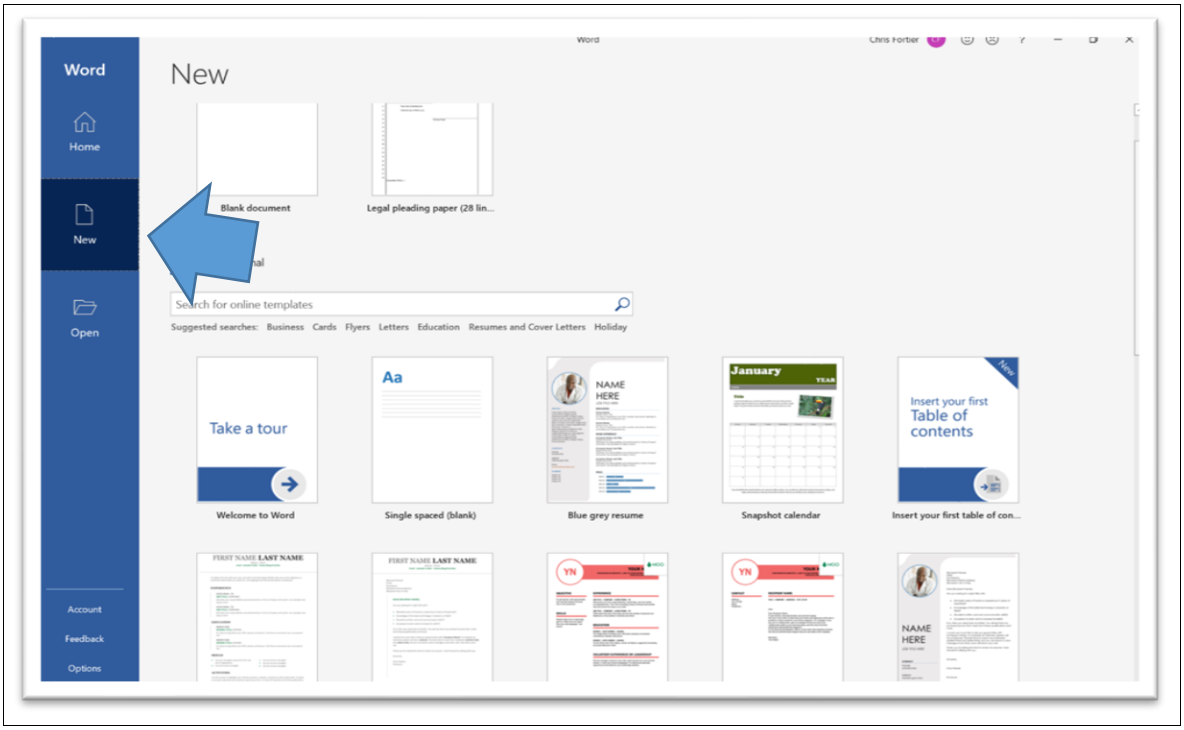
In Word: File → Save As → under document type menu, choose Word Template (dotx), Word Macro Enabled Template (dotm), or Word 97-2003 Template (dot).

In Docs: Open your file and then File → Make a Copy to create a new version of the document.

9. Google Docs Templates



10. Microsoft Word Templates



CONDITIONAL (IF-THEN-ELSE) LANGUAGE

In the most basic language, a conditional statement says that: if some condition is applicable, then do something. (from Using Conditional Text in Document Automation).

Conditional statements follow the general format: IF this THEN that or ELSE some other thing.

> IF means something happens
>
> THEN means the result of something happening
>
> ELSE means the result of something not happening

For example:

- IF the trust balance is 0, THEN display a message asking for another prepayment, ELSE display a thank you message
- IF custom_field_1 is true, THEN display custom_field_2, ELSE display custom_field_3

Or if we want to put this in lawyer language…

IF we have a federal civil rights action, THEN we have to add this language (the text of 42 USC 1983) in our applicable law section:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Imagine the work saved by having this in one click or keystroke. When designing your documents and processes, getting to know "If then else" helps you figure out how to make your documents come out efficiently.

DOC(UMENT) VARIABLES

A result of the "if then else" logic is document variables. Document variables are string variables that can be saved into documents or templates.

The Document object has a Variables property that returns a Variables collection containing all variables associated with that document. (https://support.clio.com/hc/en-us/articles/204459577-Tutorial-Using-Conditional-Text-in-Document-Automation)

Using document variables provides you with a way of saving custom information without actually putting it on the document or using a custom property.

The variables that you have saved into your template can the basis of something you can automate in a click. For example, gender. Depending on the choice inputted in a form, you can have a document choose between a variable of he/she, Mr./Ms., his/her, etc.

THE TROUBLE WITH FIND AND REPLACE

When the same document is needed in different matters, it can be tempting to copy a version of the document from one matter to another and use the Find & Replace feature to simply change the client-specific information to match the new matter. Although it sounds simple and easy to do, this feature can cause a false sense of security.

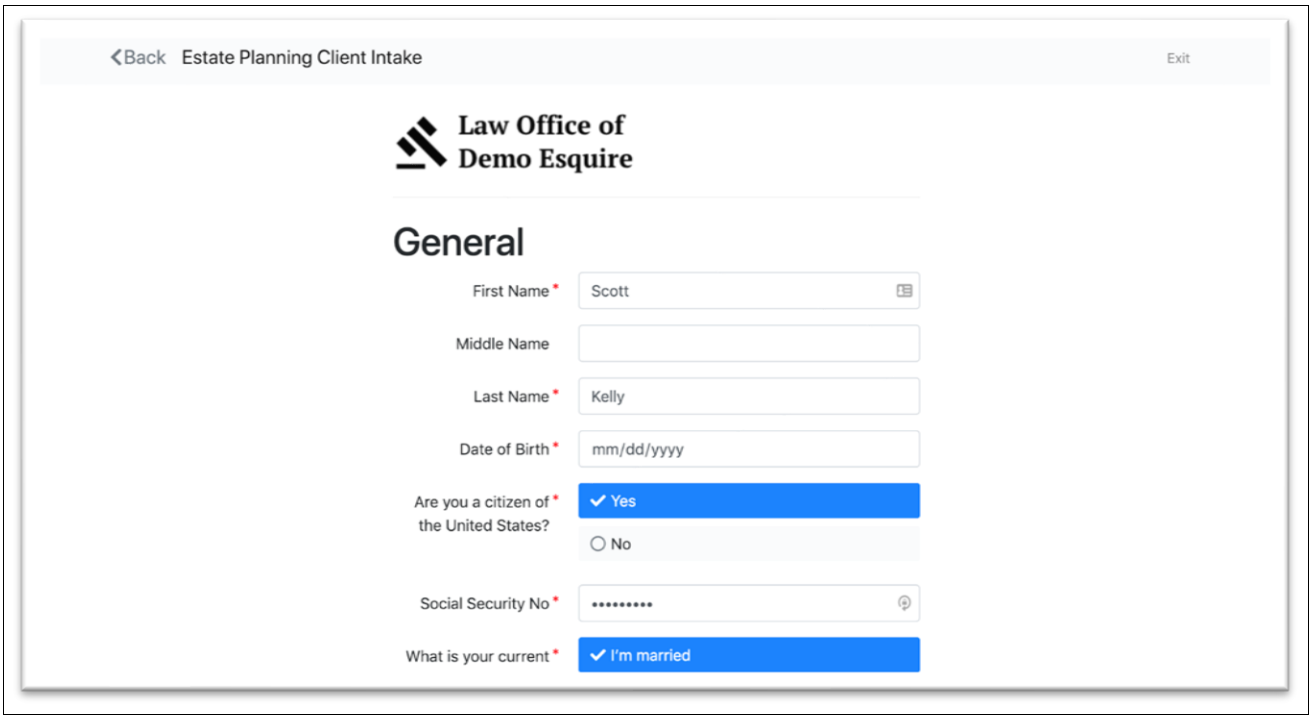
For example, wanting to change the client's name from Chris to Jeff could mean you now have Merry Jefftmas in your document. Or if you need to change the client's initials from P.M. to B.B., you now have 3:00 B.B. in your document instead of 3:00 PM.

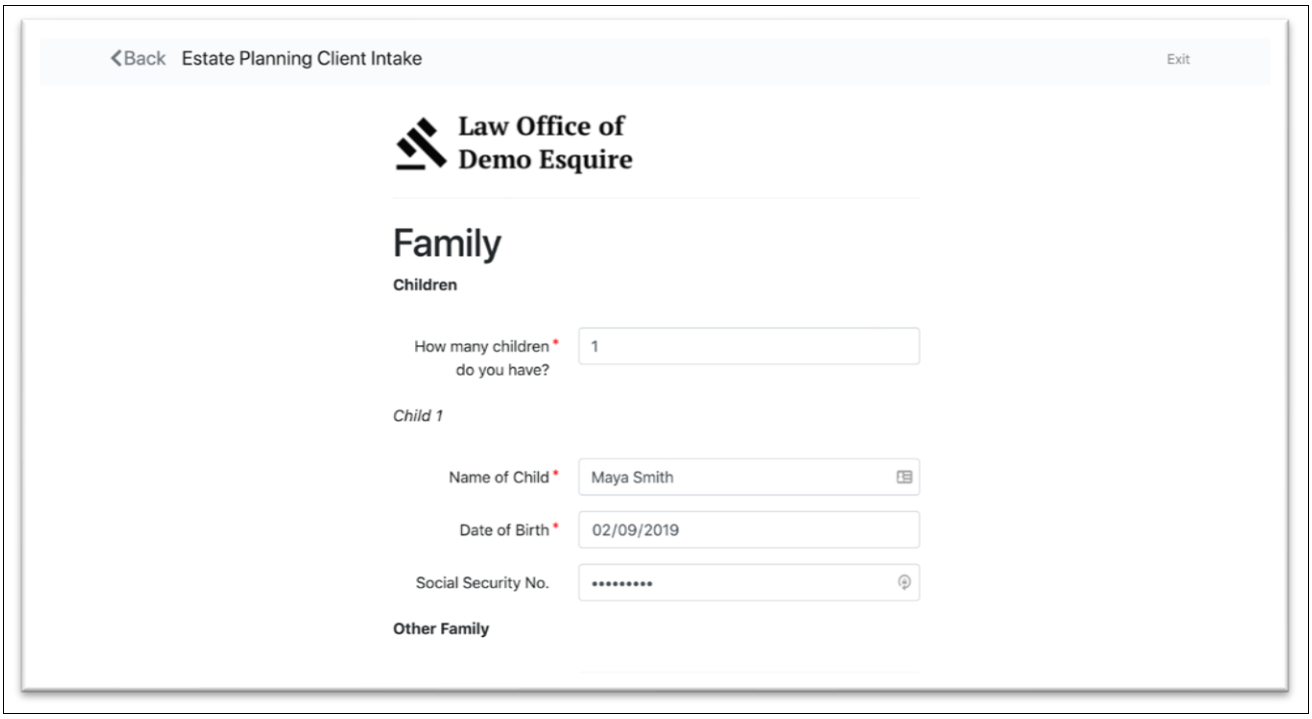
Without combing through the entire document to make sure the new version is appropriate for the client, relying on Find & Replace can not only mean embarrassing mistakes but also that entire provisions are included or not included that shouldn't be. Instead, starting with a fresh template for each client will both save you time and ensure a thorough job.

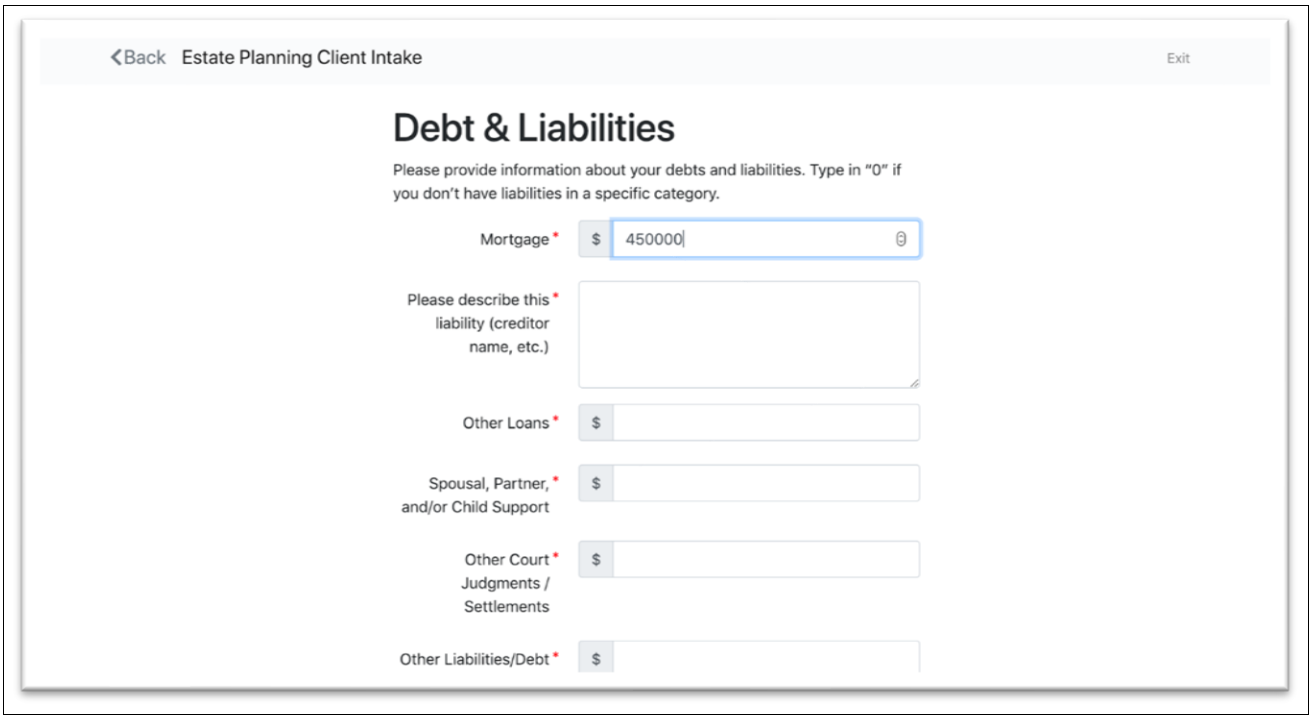
GETTING CLIENTS INVOLVED

While automating the process of generating documents will certainly save time, having clients input their own data will further reduce admin time spent and reduce the risk of data error.

In addition to creating customized document automation systems, Community.Lawyer is a great option to create custom forms that collect information directly from the client. Below is an example of an intake form for an estate planning practice from Community.Lawyer's site https://community.lawyer/cl/communitylawyer/estate-planning-client-intake-1:


Back
Estate Planning Client Intake
Exit
Law Office of
Demo Esquire
General
First Name *
Scott
Middle Name
Last Name *
Kelly
Date of Birth *
mm/dd/yyyy
Are you a citizen of the United States? *
Yes
No
Social Security No *
What is your current *
I'm married


Back
Estate Planning Client Intake
Exit
Law Office of
Demo Esquire
Family
Children
How many children do you have? *
1
Child 1
Name of Child *
Maya Smith
Date of Birth *
02/09/2019
Social Security No.
Other Family



Client-driven data forms could also be used for generating documents or gathering information related to:

1. Client intake questionnaire
2. Details involving a civil protective order
3. Information for a non-contested divorce
4. Sealing of criminal records
5. Wrongful termination claims
6. Assessing a civil tort claim

For more ideas, visit Community.Lawyer's list of featured apps at https://community.lawyer/featured-apps.

It is very important to note that if sensitive or legally protected information is being requested in a form, the appropriate security measures must also be taken to protect that data.

Taking client-driven data collection to another level, one could create a form with a series of questions that provides real-time feedback on the client's case. If the client answers a certain way, do they likely have a claim? If the date of incident is provided, is there a statute of limitations issue? If the client provides a budget, what are options for obtaining legal help?

Our ability to provide better service and add more value to the client experience expands every day as technology advances and allows us to increase our efficiency.

SERVICE PROVIDERS

While the following is not a comprehensive list of document automation service providers, it covers a wide range of options:

- Citrix ShareFile - https://www.sharefile.com/
- DraftOnce - http://draftonce.com/
- Form Tool - https://www.theformtool.com/
- HotDocs - https://www.hotdocs.ca/
- Pathagoras - https://www.pathagoras.com/
- Community.Lawyer - https://community.lawyer
- Documate - https://www.documate.org/
- Ultradox - https://www.ultradox.com/
- Office 365 - https://www.office.com

TECHSHOW2020

Automation in Office 365

WRITTEN BY:

Kenton Brice
Allan Mackenzie

PRESENTERS:
Allan Mackenzie: @EfficientAllan
Kenton Brice: @KentonBrice

January 6, 2020

INTRODUCTION

For quite some time now, forums such as the ABA TechShow have put together classes, webinars, even books on Microsoft Office and automation WITHIN. Subjects such as Excel Macros, Word Styles, PowerPoint background designs have been hammered on the anvil of podium and PowerPoint. In addition, external add-on products for each of the core office applications have be come available for purchase and. Tools such tasks as :

- Outlook filing.
- Specialized functions for Excel,
- Document assembly tools for Microsoft Word.

Following these developments and at almost the same time, other packages began to interact with not only the individual products but across the suite and in some examples across *all* Windows and IOS and other operating systems:

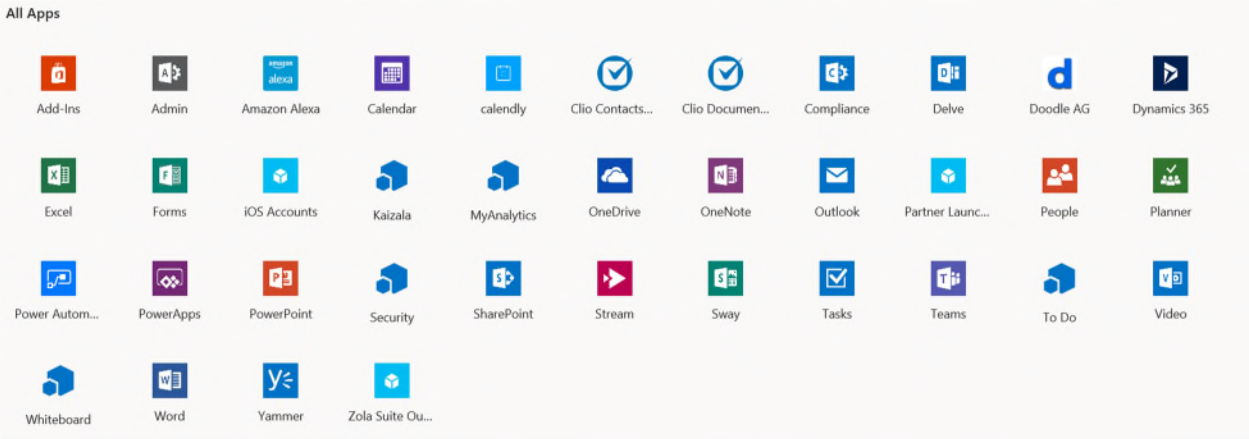
- Text Expanders
- Case Management Systems
- Document Management Systems
- Time Capture Tools
- Document Collaboration Tools
- Document Assembly Applications

Microsoft themselves have not remained idol. The introduction of Microsoft Office 365, still a confusing topic to many, has launched not only a smart way of purchasing the standard Microsoft Office Suite, but offer a way of rolling out immediate additions not only to the individual products but to other products that interact with suite packages from WITHIN and WITHOUT.

Office 365 – Beyond Word and Excel

There is a very good chance you have not DELVED (pun intended) into the tools you already own if you have Microsoft Office 365 – especially if you have Office 365 for Business. After all a jump from $9.00/month to $12.50/month gets you your own Exchange Server - maintained by Microsoft – for your organization.

The ALL Apps page in Office 365 for Business can be bewildering at first glance.



What is half of this stuff? Keeping to limited descriptions, we will try to introduce you to some of the products below (but Wikipedia can sometimes have interesting translations). Driven by the ingenuity both internally and watching the players that have come to the field for topics like task and project management, video sharing and document collaboration, Microsoft recognized the need to compete with players like Slack®, Calendly®, Trello®, and on and on. Sometimes they acquired (Skype®), sometimes they started over. But in all cases they made them interactive with darn near every product they have already created and published within the Microsoft Office 365 environment. Are they better than other products? When apps have their core programming code located in the cloud and can be updated at any moment without reinstallation, the answer to that question is a moving target that's harder to catch than a dog avoiding a bath.

But here's the clincher**:** ***You probably already own them.***

Let that sink in a moment.

Owning them means you have the option to use without purchasing more stuff and wait for that "stuff" to integrate with the other Microsoft Office 365 Products. But that may or may not be the final say in a decision-making process as it will be your job to setup and configure the workflows. Are these beneficial tools eye-popping designed for use in large firms multiple practice areas? Absolutely. Do they compete with case management platforms? In many ways, yes. Could they replace case management systems? Possibly, but with much work and understanding. Could specific pieces be used in your own organization in conjunction with non-Microsoft products. Absolutely!

An Abbreviated Catalog

Bookings

Microsoft Bookings is a scheduling tool and is part of the Microsoft Office family of products. Generally released by Microsoft in March 2017, Bookings allows customers of small businesses and companies to book appointments with the company. The application is available to Business Premium subscribers to Office 365 and although offered as part of the suite of Microsoft services, has no facility to integrate with Microsoft's flagship Teams meeting tool to create an online meeting (although this feature is promised)

Microsoft Compliance

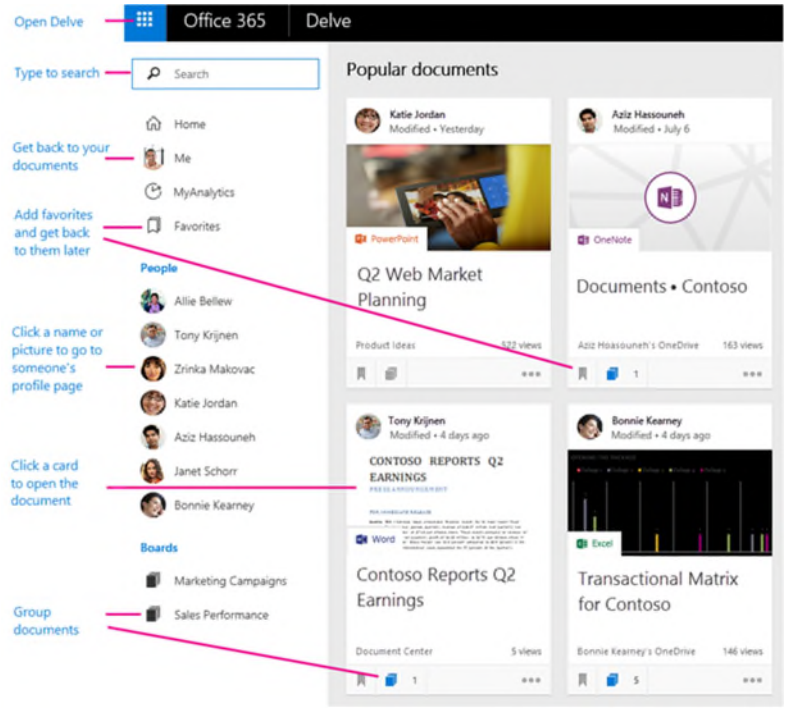
Microsoft 365 compliance center, your new home for managing compliance needs using integrated solutions for classification, information governance, case management, and more.

There's a lovely little 2000-page PDF you can download. And that's all we have to say about that. https://compliance.microsoft.com/homepage

Delve

Use Delve to manage your **Office 365 profile**, and to **discover** and **organize** the information that's likely to be most interesting to you right now - across Office 365.

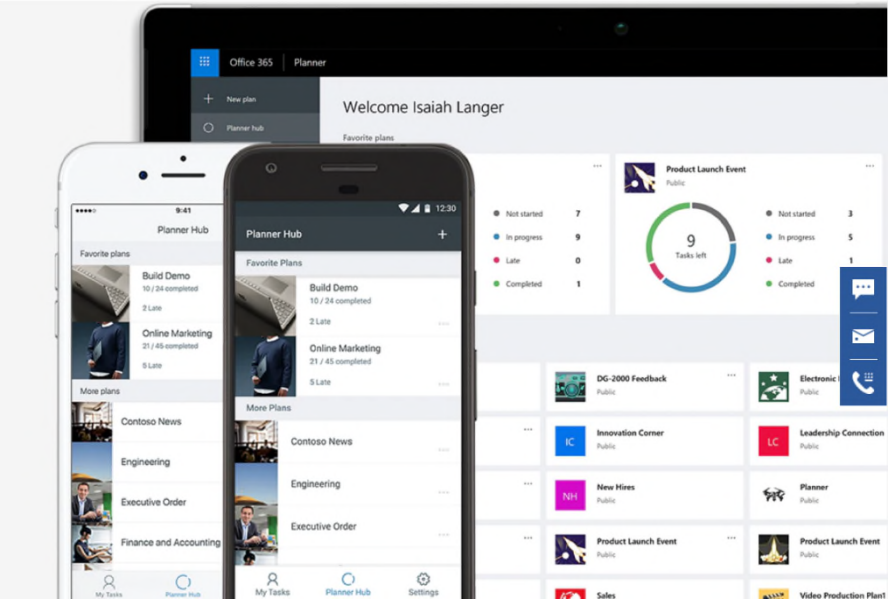
Delve never changes any permissions, so you'll only see documents that you already have access to. Other people will not see your private documents. To go to Delve, select **Delve** in the app launcher in Office 365, or open delve.office.com in your browser. Sign in with your work or school account if necessary.



- Click someone's **name** or **picture** anywhere in Delve to see documents they're working on or to learn more about them.
- When you find a document you're interested in, add it as a **favorite** or to a **board** to easily get back to it later.
- **Search** for people, documents, or boards.

Planner

Interactive with Microsoft Outlook and Microsoft Teams, Planner creates plans, organizes and assigns tasks, shares files. Planner is available as through web interface as well as mobile devices.



https://products.office.com/en-us/business/task-management-software

PowerApps

Allows you to build web and mobile apps accessing the data you already use/have within the Microsoft Office 365 applications and storage services, such as SharePoint

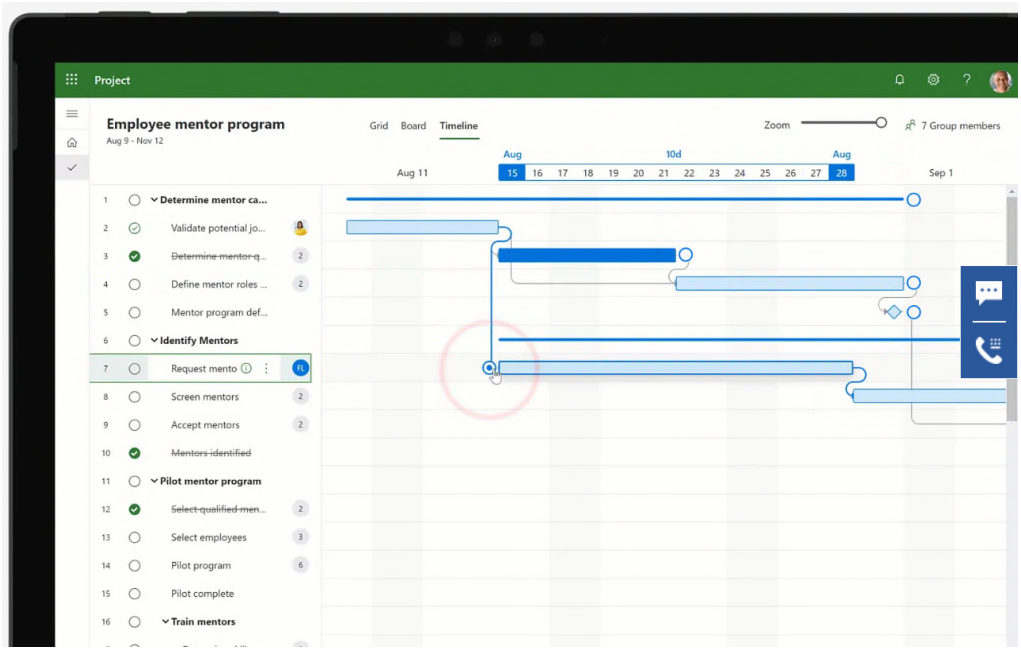
PowerBI

Power BI is a business analytics solution that lets you visualize your data and share insights across your organization or embed them in your app or website. Connect to hundreds of data sources and bring your data to life with live dashboards and reports.

https://powerbi.microsoft.com/en-us/what-is-power-bi/

Project

Microsoft Project is designed to assist a project manager in developing a schedule, assigning resources to tasks, tracking progress, managing the budget, and analyzing workloads.

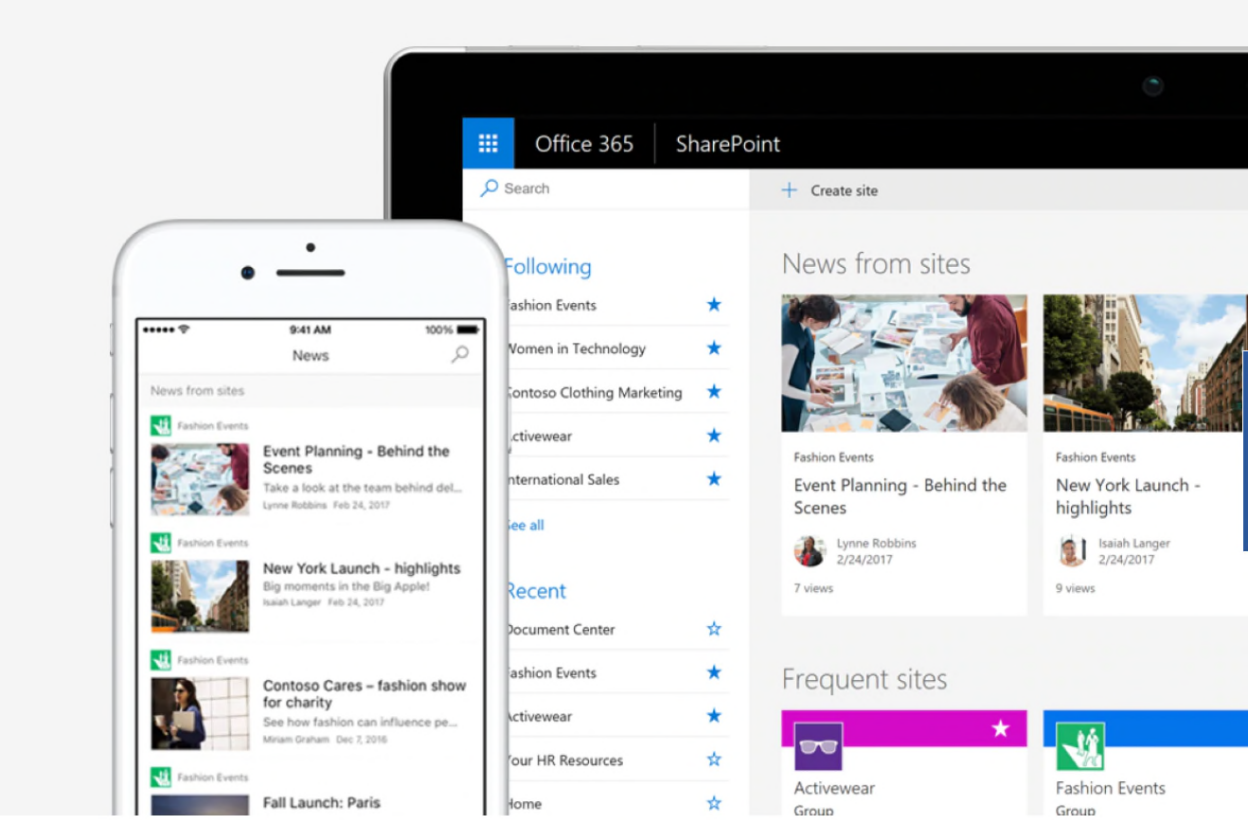


https://products.office.com/en-us/project/project-management-software

SharePoint

While used many ways, and with the official description below, an extremely oversimplified description is this: SharePoint can be thought of like your mapped "G:\" drive on the server, accessible on internal machines like the server but also accessible through web interface and mobile applications. Some of its features can also be compared to packages such as Box® or DropBox®.

A cloud-based service, hosted by Microsoft, for businesses of all sizes. Instead of installing and deploying SharePoint Server on-premises, any business can subscribe to an Office 365 plan or to the standalone SharePoint Online service. Your employees can create sites to share documents and information with colleagues, partners, and customers. To get started storing your files on your team site, see Set up Office 365 file storage and sharing. Give Office 365 a try. deploying SharePoint Server on-premises, any business can subscribe to an Office 365 plan or to the standalone SharePoint Online service. Your employees can create sites to share documents and information with colleagues, partners, and customers.



https://products.office.com/en-us/sharepoint/collaboration

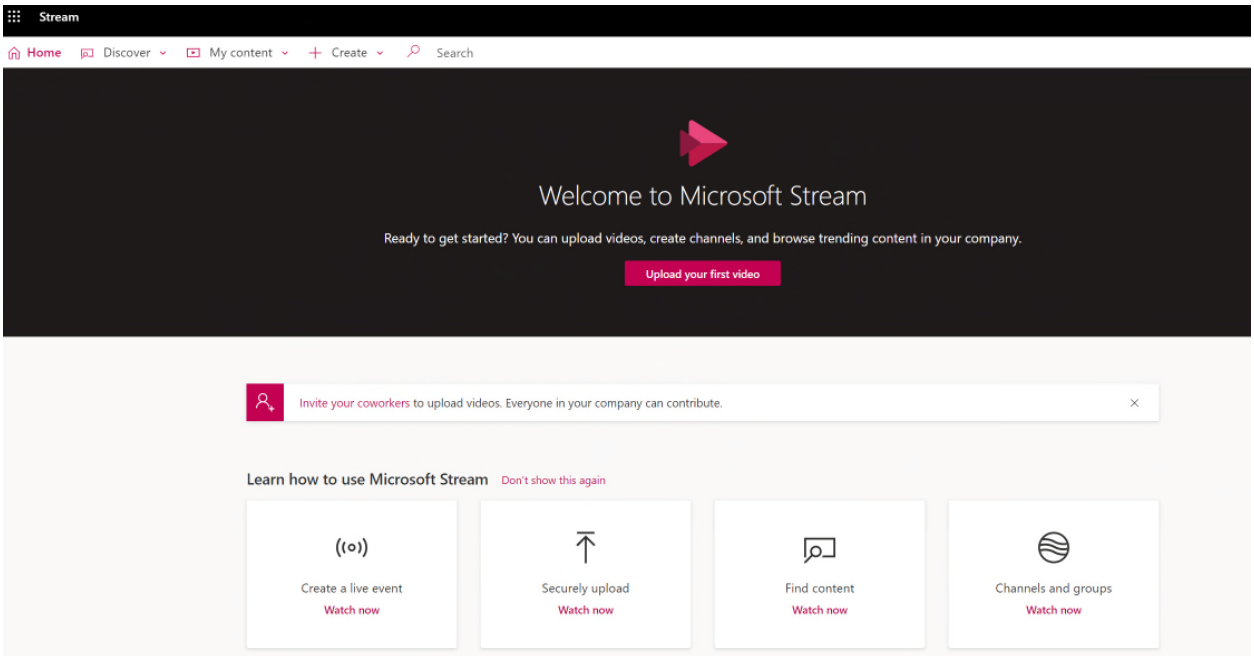
Skype for Business Server

Skype for Business Server[3] (formerly Microsoft Office Communications Server and Microsoft Lync Server) is real-time communications server software that provides the infrastructure for enterprise instant messaging, presence, VoIP, ad hoc and structured conferences (audio, video and web conferencing) and PSTN connectivity through a third-party gateway or SIP trunk. These features are available within an organization, between organizations and with external users on the public internet or standard phones (on the PSTN as well as SIP trunking).

Stream

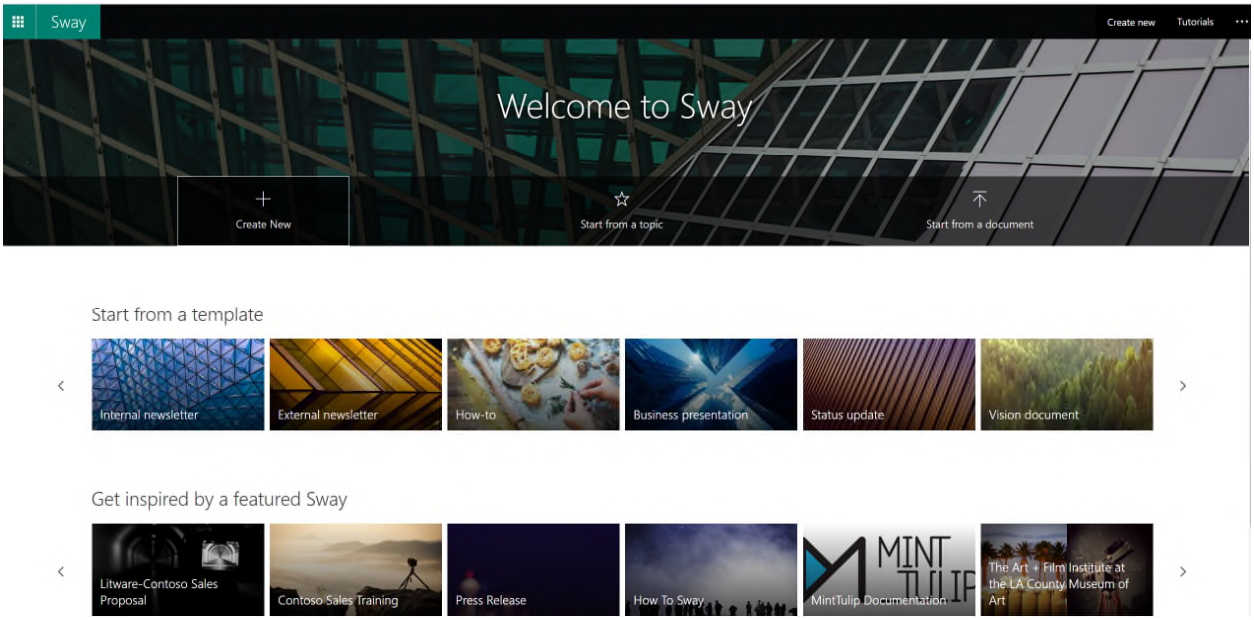
Microsoft Stream is an Enterprise Video service where people in your organization can upload, view, and share videos securely. You can share recordings of classes, meetings, presentations, training sessions, or other videos that aid your team's collaboration. Microsoft Stream also makes it easy to share comments on a video, tag timecodes in comments and descriptions to refer to specific points in a video and discuss with colleagues.

Think of it like that place you go to see videos people have shared, but this one is your collection to be shared internally, externally, or BOTH!



Sway

Think of this one as a broader PowerPoint, presented on a web page and interacting with the many formst of data stored in your Office 365 account.



Teams

"The customizable, chat-based team workspace in Office 365" is what Microsoft says.

While this may harken back to the days of CU-SeeMe® or be likened to Zoom® meetings, it's a bit more. It links with other features of Office 365 for a team or project-based center to jump in, see documents, look at assignments, and basically add to the whole soup of what is in Office 365. When linked to these additional sources it can be compared to even more things like Slack®

ToDo

Manage, prioritize and complete the most important things you need to achieve every day.

This product, while interactive with Outlook, steps outside of the Outlook boundaries to interact with the rest of the products and look more like case management Tasks. ToDo is part of the next section of the document.

Whiteboard

Ideate and collaborate on a freeform canvas designed for pen, touch and keyboard.

Yet another piece to the Teams and other applications and considered a necessary part of competitive online meeting applications, Whiteboard is both standalone and integrated.

Yammer

Deliver live and on-demand events with Yammer and Microsoft 365. Easily create and host town halls, company meetings, and training. Share rich communications with events for up to 10,000 attendees. Invite people to view and engage with video and discussions across web and mobile apps.

Think of this one as an internal video conferencing and chat system, again interactive with the Office 365 products.

OUR PRESENTATION

In the 55 odd minutes that we have to share with you, Allan and Kenton will start with a snowball of somewhat familiar automation within the standard Microsoft Office Suite, and move slowly from within the individual packages like Microsoft Outlook, Microsoft Word and other topics will covered through the years and then move into the new world of applications that sit outside the core products and pull a few strings, share some data and come up with information that actually gives a thrill.

EXAMPLES OF APPS THAT WORK TOGETHER NATIVELY IN OFFICE 365

Microsoft Forms

Microsoft Forms is a survey and polling application that provides users the ability to easily collect and analyze data. While this tool is not as robust as Survey Monkey, Qualtrics, or other web-based surveying and form tools, it is native in Office 365 and creates automations within the Office 365 environment that the other tools just cannot do, and, because it is included, it is free of charge.

Forms

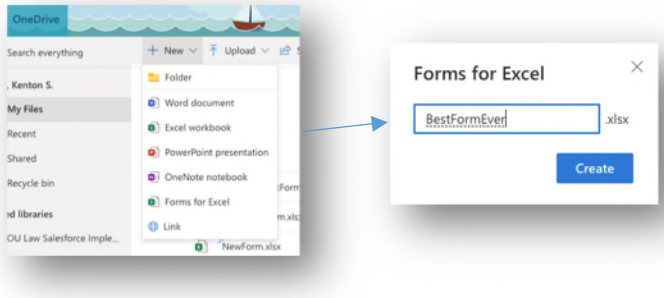
Using Microsoft Forms automates the processes of downloading data, cleaning it, and reuploading or resaving as a different file. In essence, Microsoft Forms provides a front-end web form for excel, the same

that the former Microsoft Access forms did for data tables, but with a much user-friendly and approachable interface and familiar data system (Microsoft Excel). Attorneys can use Microsoft Forms to create intake processes, have quick service feedback surveys, or generate quick polls for inter-office voting (more on this later).

There are five ways to create a form in Office 365, and the integrated nature of the form with the rest of Office 365 depends on how the form is created. The first and most basic way to create a form through https://forms.office.com is detailed in Appendices. The remaining methods of creating a form begin to enhance the capabilities of Microsoft Forms.[1]

Creating a Form through OneDrive for Business

Creating a Form directly through OneDrive for Business automatically creates (1) a form for distribution and (2) the Excel spreadsheet that captures the data input from user responses to the form. In one step, form and data tabulation are created, thus, sparring a user from having to export form or survey results from a website to an Excel spreadsheet! To do this, follow these steps:



1. Create the form inside an Office 365 OneDrive for Business Folder with the New dropdown menu, and select "Forms for Excel
2. In the popup box, name the Form and attached Excel Spreadsheet.
3. Clicking "Create" will open the Form creation wizard, as well as automatically add the Excel workbook to the OneDrive for Business Folder.
4. Once Form creation is complete, the Excel workbook will include a new worksheet called "Form1", and will include an already formatted table with all of the questions from the Form.
5. Users that fill out the Form, either online or through other distribution channels, such as links, email, etc., will have their data auto populated in the Excel workbook for analysis.

Creating a Form through Excel Online

In the event that a user already has an existing spreadsheet that data is being tracked, a Form and resulting data tables can be added automatically through Excel Online. Follow these steps to do this:

1. Open the Excel workbook in Excel Online.
2. From the "Insert" menu, select the "Forms" dropdown box.

[1] Documentation on these different methods can be found at https://support.office.com/en-gb/article/create-a-form-with-microsoft-forms-4ffb64cc-7d5d-402f-b82e-b1d49418fd9d.

3. The Form creation wizard will automatically open. Create the Form, and once saved (which happens automatically), the resulting data table is automatically created in the Excel workbook with a new worksheet labelled “Form1”.

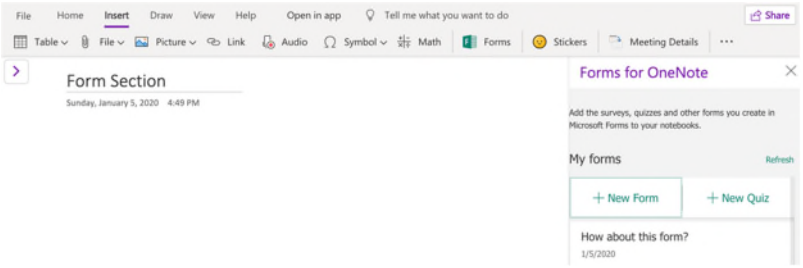
Creating a Form through OneNote Online

Users can also create Forms to place inside of OneNote Notebooks. This is generally helpful when multiple users are collaborating in OneNote. This feature is only available in OneNote Online at the moment, however, created forms are accessible through OneNote Desktop applications with links to the web based version of the Form. Creation of a Form in OneNote is simple and straightforward:

1. Open a OneNote notebook in OneNote Online.

2. On any page, insert a Form through the “Insert” menu and selecting “Forms”.

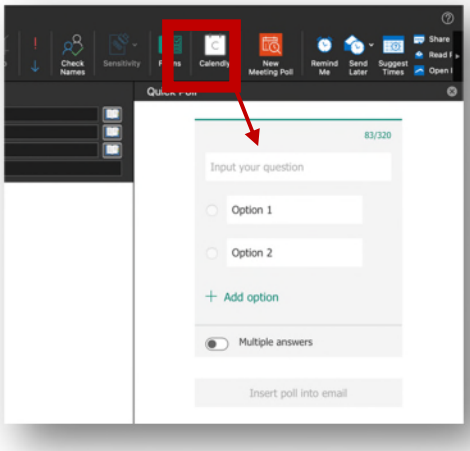
3. A sidebar appears, allowing users to insert an already created Form (that is part of that user’s Office 365 account), or create a new Form. Selecting “New Form” will additionally open the Form creation tool in a different web-browser tab.

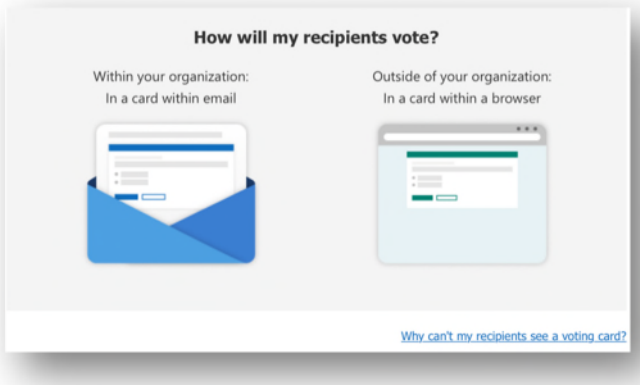


4. The form is then inserted into the OneNote page. Any data from the Form is now collected similarly to the regular Any data from the Form is now collected similarly to all other forms, and is either added automatically to the Excel workbook attached to the Form (if available) or exported to Outlook.

Creating a Quick Poll through Microsoft Outlook

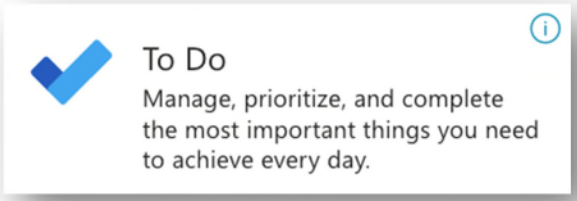
With the Microsoft Outlook Quick Poll integration, the process of creating and sharing a poll is even easier. Instead of having to leave Microsoft Outlook, open a web browser, logging in, creating a poll, and then sharing out from forms.office.com, this can all be automated in Microsoft Outlook. The integration allows users to instantly create a poll in an email through Microsoft Outlook.





The voting user, if they are within the same organization as the poll originator, will see the poll embedded in an email. If the user is outside of the organization, the voting user will open the poll in a web browser. As with all other Microsoft Forms, all results are recorded online and saved in Excel.

Automating Task Management with Microsoft Outlook, Microsoft Planner, and Microsoft To Do

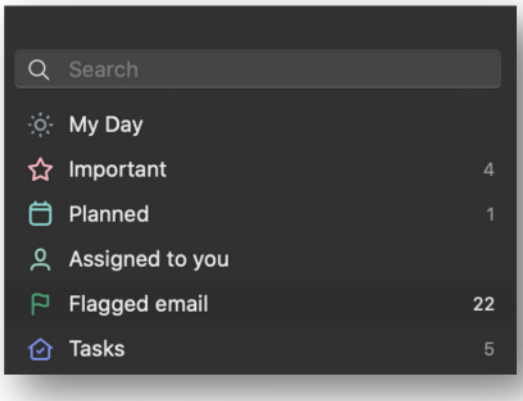


Task management is one of the major stressors for attorneys. Microsoft Office 365 includes tools and native integrations that can help relieve some of this stress, and allow attorneys to delegate, delay, and do tasks in a simplied environment. The backbone of task management in Office 365 is Microsoft Outlook, which has grown more functional over time and is at its best in Office 365, however, instead of using Microsoft Outlook solely for task management, attorneys now have the option of using the Microsoft To Do app, which is Microsoft's successor to the task management application Wunderlist. The Microsoft To Do app is available everywhere and anywhere, so tasks go with a user wherever the user goes!

Microsoft To Do takes task management in Office 365 to a simpler and more user-friendly environment, allowing native creation of tasks and to do lists, but the greatest feature is in its integrated nature. Microsoft To Do natively integrates with all other Office 365 apps, namely Outlook and Planner, to allow for a centralized task management list of *all* a user's tasks that exists on their smartphone, desktop or laptop, and within a web browser. The app allows for multiple to do lists, and tasks can be scheduled, have subtasks, notes, and more, as detailed in the Appendices.

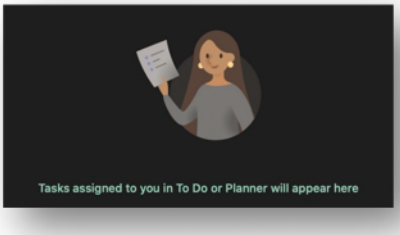
Outlook Flags

The killer feature is Microsoft To Do's integration with Outlook's email flag system. Many users use email as a task management system, keeping certain emails as "unread" or categorized as some mysterious category to keep track of pending tasks. This is cumbersome and not very useful. Historically, Outlook's flags have been a potential solution, flagging messages as needed for follow-up, etc. These flagged emails are added as a Task in Outlook, but Outlook's task management has always been cumbersome, busy, and not design or user friendly. However, now with Microsoft To Do, flagged emails are added instantaneously to a special to do list called "Flagged Emails". The email subjects, bodies, and senders follow the task, and the task even includes a "Open in Outlook" hyperlink to open the connected email in Outlook Online. This greatly enhances going through the 4 D's of email management (Delete, Delay, Delegate, Do), allowing for the delayed emails to go directly into To Do's centralized task management.



Microsoft Planner

Microsoft Planner is a collaborative project/task management application that works across Office 365. Microsoft Planner brings together the Kanban-styled bucket and card task management system that many Trello users are accustomed to, but with the ability to coordinate with other Office 365 users in an organization through Office 365 Groups and Sharepoint, as well as automate task sharing across the Office 365 environment. While a discussion of all of the features of Microsoft Planner is outside the scope of these materials (more information on Planner is in the Appendices), Microsoft Planner integrates seamlessly with Microsoft To Do, allowing for task assignment and tracking through To Do, instead of having to jump between Planner and Outlook. This simple integration automates sharing and assigning tasks, and automatically creates accountability between collaborators. Any tasks created in Planner will automatically be added to the "Assigned to you" to do list in the To Do app, complete with any sub-tasks, notes, deadlines, etc.

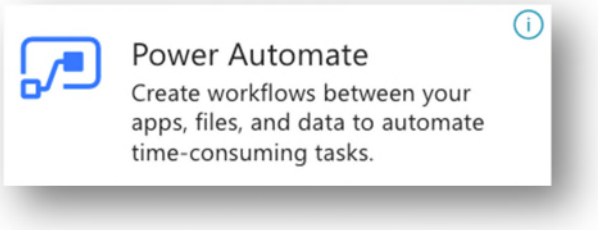


Scheduling Meetings with FindTime

Microsoft's FindTime add-in to Microsoft Outlook allows for multiple users, inside and outside of an organzation to schedule meetings in a streamlined manner. FindTime automates the process of meeting scheduling by directly inserting a meeting poll into an email through Outlook, reviews the calendars of those invited to the meeting, allows for voting on times that most people are available, and then automatically schedules that meeting based on the best time available for all users. It additionally creates holds on the calendars of those that have voted on the meeting time before the final meeting is scheduled, barring the potential to over-commit a time slot. This takes the headache out of multiple email back and forths from multiple people with the added functionality of being able to see each person's availability when setting up a meeting. While simple, this is a highly effective tool that saves precious time throughout the day by automating meeting planning!

CONNECTING APPS

Using Power Automate to Connect Apps



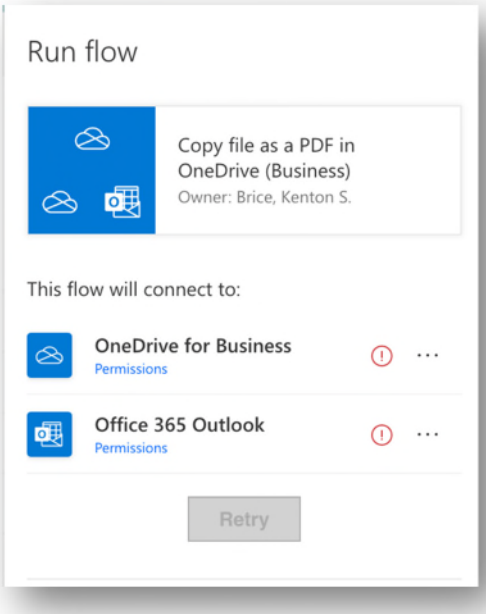
Formerly called Microsoft Flow, Microsoft Power Automate is a trigger-based, "if this than that", application in Office 365 that automates processes between apps where native integrations do not occur. Similar to Zapier or IFTTT, Power Automate connects various apps inside and outside of the Office 365 environment to allow users to automate processes. Users can create automation "recipes", using Office 365 apps as a back drop, however, the easiest way to use Power Automate is to use already created recipes, called templates, of which there are hundreds. Here the top 10 templates in use on Power Automate by count:

1. Save Office 365 email attachments to OneDrive for Business
2. Send myself a reminder in 10 minutes
3. Get today's weather forecast for my current location
4. PowerApps button
5. Start approval when a new item is added
6. Get a push notification when you receive an email from your boss
7. Send a customized email when a new SharePoint list item is added
8. Save Outlook.com email attachments to your OneDrive
9. Send a customized email when a new file is added
10. Get a push notification with updates from the Flow blog

While some of these are good templates to consider, some other favorites for lawyers to start automating in Office 365 are the following:

- Post messages to Microsoft Teams when a new task is created in Planner
- Add a Microsoft To-Do task for the selected file
- Copy as PDF in OneDrive for Business
- Block out my Office 365 calendar for an hour

- Post a message to Microsoft Teams for a selected file
- Create Planner Tasks for Office 365 email
- Save tweets about a topic to an Excel table
- Retweet with approval
- Translate and re-tweet non-English tweets in English
- Share blog updates on LinkedIn



Beyond the templates, attorneys can create flows with connections between web-based apps. While Power Automate is native to Office 365, it can also be connected to popular web-base applications, such as document storage solutions (Dropbox, Box.com, Egnyte), document management (NetDocuments), social media platforms (LinkedIn, Twitter, Facebook), and more. To explore the totality of what is possible, go to https://flow.microsoft.com.

Going Further with Power Apps

If Power Automate is not enough, Office 365 users can also build mobile and web-based applications through Power Microsoft Apps. These are customized application solutions based on existing or to-be-created data. As with Power Automate, Power Apps contains premade templates, allowing attorneys to select pre-made apps depending on the data sources that fuel these apps. There is even a template application called PowerApps Training for Office that is an application to train users on how to create apps in PowerApps. More information on PowerApps is in the appendices

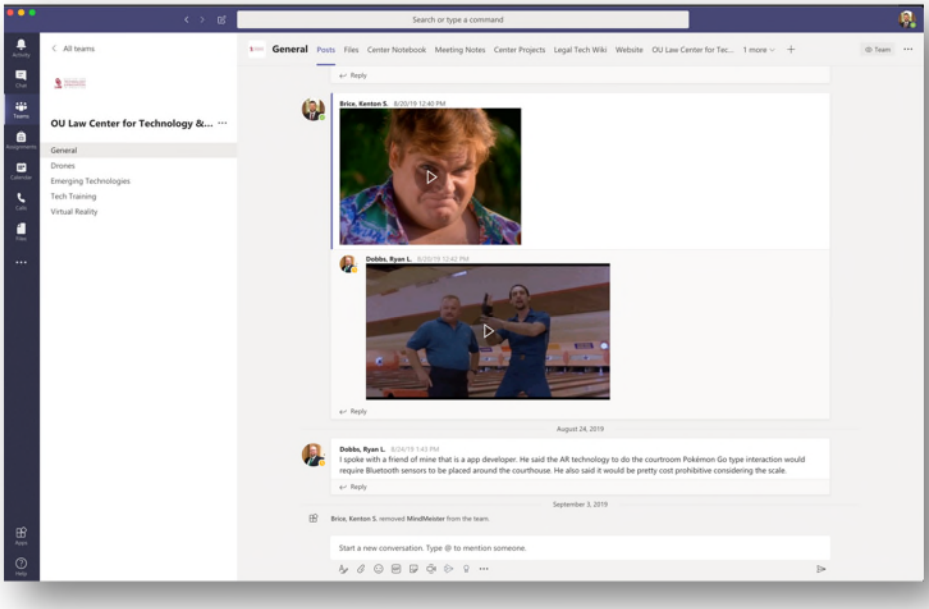
BRINGING IT ALL TOGETHER

Leveraging Teams for Automated Collaboration

Microsoft Teams is Microsoft's solution for a collaborative workspace to challenge Slack in the market. Teams brings together threaded Slack-style conversations with the rest of Office 365 functionality in a team-centric environment. The hallmark feature of Teams is the conversations, where teammates can communicate in various topic channels. Conversations are threaded, meaning that teammates can respond in-line to each other, instead of a running flow of statements. This allows for contextual conversations to stay within their original context. In addition to traditional language, conversations can include emojis, digital stickers, and even include chatbots to help automate some of the conversation and tasks.

A favorite automation is the Polly plug-in, where users can automatically create a poll in a conversation with a few keystrokes. Additional plug-ins are available to help automate conversations and tasks. One fo the best integrations/plug-ins is Skype for Business. Instead of jumping out of Teams into another application, teammates can meet in a web conference immediately from a conversation. The Skype

meeting's details are added to the conversation, and teammates can later comment on the meeting in context.



In addition to conversations, Teams adds Office 365 functionality through the use of Tabs. Each Tab in Teams holds team-based document storage (built on SharePoint), a team based OneNote Notebook, and a variety or other applications. Word Documents stored in teams can be edited directly in Teams through Word Online in a Tab in Teams. Want to share a website in Teams? Add the website as a Tab. Want to add a Microsoft Planner application for the team? Add the Planner plan as a Tab. While every application native to Office 365 can also exist inside of a Tab in Teams, the number of external web-based applications that can be added to Teams is growing, with hundreds of apps as current offerings.

TECHSHOW2020

Happy Clients, Happy Lawyers: Client Facing Automation

WRITTEN BY:

Genie Doi & Sofia Lingos

PRESENTERS:

Genie Doi: @PureGenieUs

Sofia Lingos: @SofiaLingosEsq

February 27, 2020

HOW DO I CHOOSE THE RIGHT SOFTWARE FOR MY PRACTICE?

With the growing number of software solutions for law firms and small businesses on the market, the sheer number of choices can be overwhelming for many practitioners. Here is a checklist of questions to ask yourself and factors to consider, helping you decide which new technology is the best fit for your firm.

1. Figure out your feature set.

- Put yourself in the shoes of a potential client and map their journey from lead to retainer to onboarding, case processing and case closing.
- Ask yourself what tasks during that journey are repetitive or inefficient for you and/or your legal staff.
- Distill your desired feature set

1) Client Touchpoints	*2) Firm Actions*	*3) Desired Features*
Example: Schedule initial consultation by phone	Check voicemail Check calendar availability Contact client with proposed date, time and location.	Virtual receptionist Online appointment scheduling Automated email or text notification to client about scheduled appointment Automated email or text reminder to client about scheduled appointment Automated follow up email or text to client about their experience

2. Prioritize your desired features.

While sometimes you can get lucky and find a platform (or two) that will solve all of your firm's operational problems, sometimes, you will have to make sacrifices and forego some desired features until technology catches up or the pricing becomes more accessible. List each desired feature in order of desirability—ask yourself which features are essential versus "nice to have."

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

PRO TIP: If one platform doesn't tick all of your automation boxes, tools like Zapier (www.zapier.com) can be utilized to "stitch" together two separate software solutions to create a completely automated experience. Many legal tech platforms already integrate with common small business tools such as Quickbooks Online, LawPay, Gsuite, Outlook, etc.

3. Examine the cost.

Software solutions come with a wide variety of payment options, with the monthly recurring fee becoming more and more common in the industry. Common pricing factors include:

- Monthly recurring cost
- Per user cost
- Onboarding/initial set up fees
- Annual fee increases

PRO TIP: Try to negotiate and eliminate or reduce any initial set up fees or request a free trial.

1) A. Determine your current spend.

Chances are, you're already using a series of software platforms that are already eating at your operational budget. Write them down and calculate your monthly total costs.

Utility	Platform	Monthly cost
Example: Email + calendar	 Outlook	$120/year/user $10/month/user 3 users = $30/month
Accounting	Quickbooks Online	$40/month
TOTAL MONTHLY RECURRING COST		

B. Determine your ideal spend.

Now that you've determined how much you're already spending each month, how much more are you willing to spend to automate and improve your firm's efficiency? While good software does not usually come cheaply, consider the following savings:

Cost	Time saved	Monthly savings
Example: Hourly billing rate = $300	 0.5 hours/day	2.5 hours/week 10 hours/month $3,000/month in billables
Virtual receptionist = $60/month	Calendly eliminates need for virtual receptionist	$60/month
TOTAL MONTHLY SAVINGS		

2) C. Remember, some benefits cannot be quantified.

While quantifiable results are preferable, some of the most important things in life (and law practice) cannot always be measured by numbers. When justifying the monetary cost of potential software platforms, don't forget to consider:

- Will never having to chase a client payment ever again spark joy in your life?
- Increased efficiencies can improve staff morale.
- Streamlined onboarding will improve client experience, leading to more referrals
- Cost of 10 extra minutes a day to (unhurriedly read new case law, quietly sip your coffee, cuddle your child, etc.) = priceless

3. Last but not least, ask yourself some basic questions.

- Does the software's security standards comply with your state's ethics roles?
- User interface (UI): does the platform look like it's straight outta the 90s? Do you care? Would your clients care?
- User experience (UX): could your mother figure out how to use the platform without your help?
- Will the software publisher be around in 1 year? 5 years? 10 years?
- Will you still be practicing law in 1 year? 5 years? 10 years?

AUTOMATING THE CLIENT CONTINUUM

Automation has become a critical part of the way in which we can deliver legal services differently. From outreach to intake throughout representation I have worked to standardize the process implementing automated solutions wherever possible. The following are the steps that we take at Trident Legal throughout the client continuum.

I. Initial Outreach

1) *Website*:

   i. *Contact Form*: If a client finds the firm via our website, we have an imbedded contact form that is attached to Clio Grow. We request the user include the individual's name, e-mail address, phone number and a short description of what type of service they are seeking. The information is automatically entered into Clio Grow which can be accessed for the next steps. We also have an automated response that notifies the person requesting information of our 24-hour response policy so they know when they should expect to hear back.

   - TIP: If you are going to have a section which allows potential clients to describe their matter you should include a disclaimer such as:

     - *No Confidentiality. Please do not use this website to provide confidential information. Your use of this website does not make you a client of Trident Legal or even a prospective client. Information provided prior to signing an engagement letter is not privileged. Thank you!*

   ii. *Chat:* The website chat industry has grown exponentially over the past 2 years. According to J.D. Power, live chat has become the leading digital contact method for online customers with 42% preferring live chat, 23% e-mail and 16% social media forums. Besides live chat, you can have an automated AI chat feature that can answer preprogrammed questions, collect contact information or just send an away message.

2) *Phone*: I do not accept phone calls that I was not expecting. We've elected to use RingCentral as our digital answering service that allows us to answer and make calls from anywhere while looking as though we are always in the office. We have a number of automated messages, so through the phone menu a potential client can receive substantive information.

   Some practices prefer to have a live person answer their calls. A great solution is a virtual receptionist service such as Ruby Receptionist. You can have a standard form of questions to be asked of callers and they can even enter the information into the back end of Clio Grow. Virtual reception solutions are expensive so it is worth it to do some additional research and determine what features you really need. Another industry leader at a lower price point than Ruby is MoneyPenny.

3) *E-mail*: For the majority of my clients, our initial interaction is via e-mail. Outlook has some excellent automation options. Our rule is if you've written the same e-mail three times then it should be turned into a template. In order to create a template in Outlook:

i. Click **New E-mail** and in the message body enter the content that you want.

ii. In the message window, click the **File** tab.

iii. Click **Save As**.

iv. In the **Save As** dialog box, in the **Save as type** list, click **Outlook Template**.

v. In the **File name** box, type a name for your template, and then click **Save**.

To use the template:

i. Select **New Items** > **More Items** > **Choose Form**.

ii. In the **Choose Form** dialog box, in **Look In**, click **User Templates in File System**.

iii. The default templates folder is opened. The default folder location is **c:\users*username*\appdata\roaming\microsoft\templates**. If your template is saved in a different folder, click **Browse**, and then select the template.

iv. Select the template, and then click **Open**.

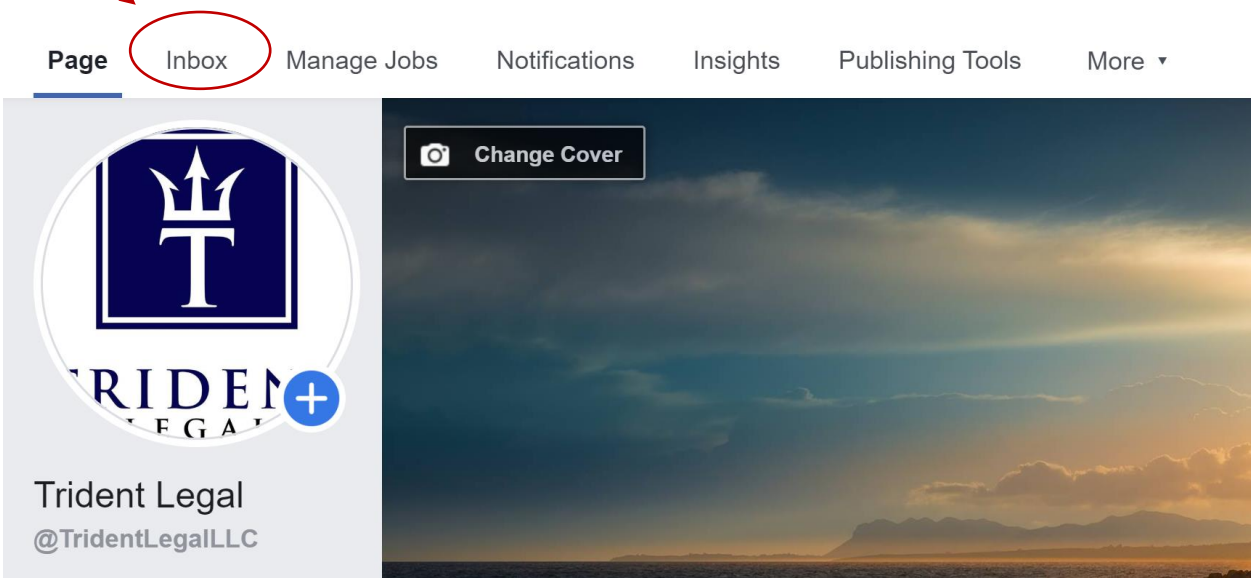
v. Make any additions or revisions to the message and the original template will remain unchanged.

II. Social Media

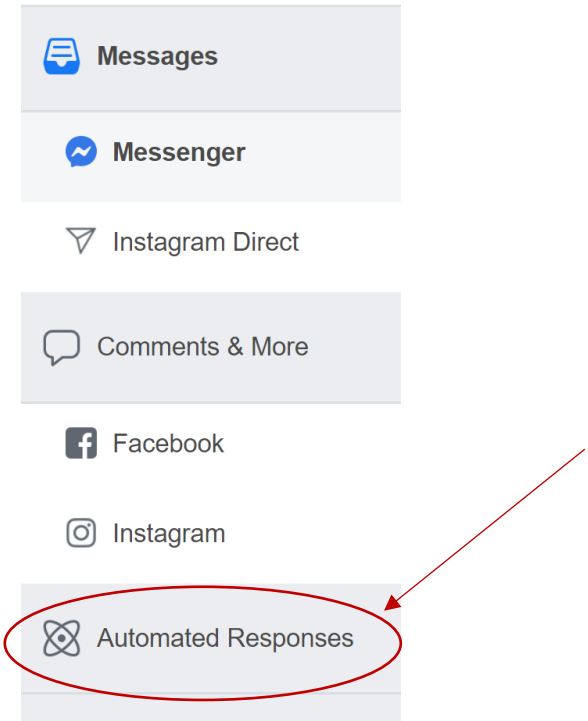
1. *Content Manager*: Having a social media strategy is critical to successfully using these tools to engage with you audience. There are a number of ways to plan and automate the process. To begin with, posting can be scheduled with tools like HootSuite accessing all platforms with planned content. It also has great analytical capabilities so you can track your assumptions and adjust your strategy accordingly.

2. *Facebook*: Facebook can be a powerful marketing tool for lawyers. To those who hate the term networking I always recommend starting with your existing network and making sure they know exactly what it is that you do and you can access your personal network through Facebook. Facebook has also created their own automation tools to assist with interactions through messaging.

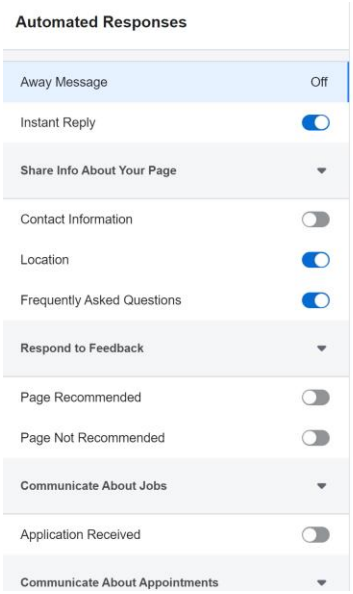
1. Navigate to your business page and click “Inbox”:

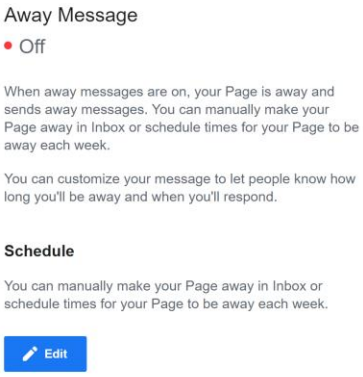


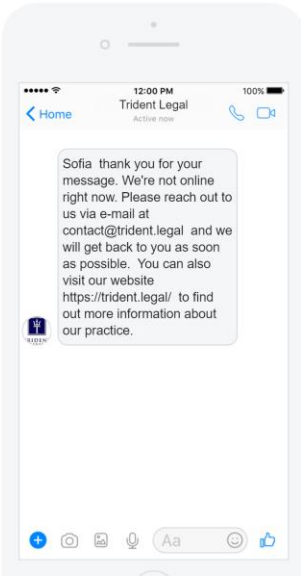
2. On the left-hand column click “Automated Responses”



3. Walk through the options under the menu and select which automated responses you would like to use and customize your response. I prefer to communicate with clients via e-mail so my auto-response directs clients to contact us via e-mail. You can also personalize your response by adding name, e-mail and website fields.







III. Scheduling

1) Calendly: I do not have an assistant who handles my scheduling and that is probably for the best as things are constantly changing. Thanks to technology I don't need to bother anyone with these changes (or provide an explanation). I love having my calendar on Calendly. I enter my availability monthly. I can duplicate that for different calendars. Potential Clients can book an initial consultation by clicking on the link and even make payment. Ongoing clients have access to my meetings calendar and now I have eliminated the step of them reaching out to me requesting an appointment. Alternatively, they just look at my calendar and schedule a time. My employees also have access to my calendar and are able to book a time for us to speak as they already know my availability.

2) Clio Grow: For those of you looking for more integrated solutions Clio Grow has recently rolled out a scheduling program.

3) *Doodle:* If you have not yet experienced Doodle scheduling and you've ever tried to make plans with more than one party then you are really missing out. This tool allows everyone to indicate their availability and when there is a match the organizer can select the date, have it automatically generate a calendar invite and have an automated message notify everyone that a time and date have been set. You can even include a reminder. Also, the lowest version of this tool is free!

IV. Intake & Engagement

1) *Clio Grow*: As we prepare to convert our contacts into clients we must first assess the needs of the client. I prefer to have a quick complimentary call (booked via Calendly) where I am able to introduce myself and understand the scope of representation. If I am performing an intake or consultation over the phone than I always have my client's Clio Grow matter open and enter all of the information into the notes field. As soon as I hang-up if they have elected to proceed with representation I navigate to the Documents tab and generate an engagement letter from my template. It will automatically enter my client's name and I only need to update the scope of services and retainer. With a click of a button it is securely sent through HelloSign and my client is able to enter into an engagement with a swipe of their finger on their smart phone. I even have created automated cover e-mails and subjects so I don't have to take the time to type one up that accompanies the engagement link.

2) Aurora: I recently began using Aurora for our intake form. Aurora is a client facing version of the free TheForm Tool. Having previously used TheForm Tool I have numerous smart documents I have created, but now clients are able to complete the intake form and the information is loaded into a secure dedicated database. You are then able to use the information to automatically populate all of the documents for the matter. I must disclose that there is definitely a learning curve that has taken some time getting up to speed with creating documents and using Aurora but the investment of time has definitely paid off.

By way of example, I am a transactional business attorney. A common type of representation I provide is forming a legal entity. After I have been engaged, I securely send my client the intake form via Aurora. The client provides their contact information and answers a number of other necessary inquiries. I have prepared word documents with fields developed by TheForm Tool. Once the client has entered their answers, I can run the auto answer button and it will fill in all of the information on all of the documents where indicated. It has reduced the time spent preparing formation packages by hours and has also eliminated inherent inaccuracies. You are always starting from blank templates so no risk of including another client's information. It is also the client entering the spelling of their name and business so, more often than not, they get that part right.

V. Billing & Retainers

1) *Clio Manage:* I track my time in Clio Manage and it is incredibly easy to send a bill directly to a client. If you are going to take retainers it is important that you use a company like LawPay that deals with fees as required under the Professional Rules of Responsibility. LawPay allows you to customize quick messaging if you're sending bills directly through their site and it also integrates with Clio so if you send a bill through Clio clients can make secure payment directly through their bill.

VI. Time Tracking: I don't think that I'd be alone in admitting that tracking time is my least favorite part of the job. Enter Timely. Timely tracks all of the time you spend on different matters recoding web and desktop activity, including mobile calls and GPS location. It uses AI to translate the information into fully accurate timesheets for billing. There is even a real-time dashboard and key reporting that allows you to share data with clients.

VII. Financials

1) *Clio Manage:* Clio has thorough reports that you can run to track your firm's financial well-being. You can run billing reports, client reports, matter reports, productivity reports and revenue reports. Clio allows you to set you billing goals and it automatically tracks how close you are to your goal.

2) QuickBooks: In order to ensure a streamlined practice, it is important to have integrations and helpful when you don't have to enter information in multiple different locations. Quickbooks has an excellent integration with Clio. I also found a great expert who specializes in setting up the integration and QuickBooks for lawyers the 4700 Group.

3) Payroll: We often represent small businesses when they are making their initial hires. We used to do a lot of paperwork to make sure they were compliant. Now many of the payroll providers automatically generate all of the forms you need and some like Gusto even file them for you.

V. Closing

Almost as important as opening a matter is to officially close it and convert from an existing client to a former client. We have an automated closing letter that goes out from Clio Grow. That also means it automatically attaches to the client's file so we have the complete record of opening and closing of the matter. We also include a hyperlink to a satisfaction survey.

YOUR ENGAGEMENT PROCESS

CURRENT PROCESS

IDEAL PROCESS

YOUR ZAP MAP

TRIGGER APP	ACTION APP	DESIRED OUTCOME
TRIGGER APP	ACTION APP	DESIRED OUTCOME
TRIGGER APP	ACTION APP	DESIRED OUTCOME
TRIGGER APP	ACTION APP	DESIRED OUTCOME
TRIGGER APP	ACTION APP	DESIRED OUTCOME

TECHSHOW2020

Apps Apps Everywhere: Table and Mobile Legal Practice

PRESENTERS:

Brett Burney: @bburney

Paul Unger: @pauljunger

January 6, 2020

Mobile lawyering is no longer a rarity. A small handheld device can provide an enormous amount of computing power and can be used to accomplish many (if not all) the tasks you need to do in a day. Here are the best tips, apps, and gear you can use to get the most out of your iPhone and iPad.

TIPS:

Switch between apps on an iPad

To get work done on an iPad, you often need to switch back and forth between apps. There are several ways to do this, and make sure that you know and are comfortable using all of them so that you can be the most efficient.

- You can put your finger at the bottom of your screen and pull up just a little to see the Dock, which will let you switch to another app, assuming that the app you want is in the Dock. Remember that you can put up to 15 apps in the Dock, and in addition, the three apps you used most recently which are not always in the Dock appear at the far right of the Dock.

- You can put your finger at the bottom of your screen and pull up even more to get to the app switcher, where you see small previews of all of your recently used apps. Then just tap the app you want. Or, put four fingers anywhere on the screen and slide them towards the top of the screen.

- You can put your finger on the very bottom of your screen and drag your finger from left to right to switch to the last app that you used.

- Put four fingers on the screen and swipe from left to right to switch to the last app that you were using. You can swipe multiple times to go to additional apps, and if you ever go to far, just swipe from right to left to go back one app. Note that if you try this and doesn't work, it may be because you have the Gestures feature turned off. Go to Settings -> General -> Multitasking & Dock and turn on Gestures.

- Put five fingers on the screen and pinch to go directly to the Home Screen, where you can select any app to open it.

- If you have an external keyboard connected to the iPad, hold down the command key and then press tab to switch apps—similar to using Command-Tab on a Mac or Control-Tab on a PC.

Read the fine print

Your iPhone works great as a magnifying glass whenever you want to read the fine print, whether it be in a contract or on a menu. To use this tip, you need to enable using the side button for the magnification feature by **Settings -> General -> Accessibility** and then under Vision turn on Magnifier.

With this feature turned on, simply triple-press the side button on your iPhone to launch the Magnifier. You can slide the button along the bottom to change the amount of magnification. Once the text is in focus, you can (optionally) tap the lack to maintain that focus. You can tap the camera button and wait a second to freeze the image, so that you can then move the iPhone closer to your face to read what is on the screen. You can tap the bottom right button to change the brightness, color, or other image settings.

Listen at your own volume

Let's say you're watching a movie with the family and you keep turning up the volume, but it's blasting for the rest of the family. Try using the "Live Listen" feature in iOS with your AirPods. Set this up first by going to **Settings > Control Center > Customize Controls** and enable the "Hearing" item so that is shows up in the Control Center. When you have your AirPods in your ears, you can pull down the Control Center and turn on Live Listen to boost the volume just for you!

Leave me alone until I leave

Whether you're talking to a judge or meeting with opposing counsel or a client, there are many times when you want to tell your iPhone not to interrupt you. There are many ways to manage notifications on an iPhone, but one of the most useful is the **Do Not Disturb Until…** feature. For example, you can tell your iPhone do not disturb me until I leave my current location. Access the iPhone's Control Center by pulling down from the top right of the screen (or pull up from the bottom of the screen on older iPhones) and then hold down on the Do Not Disturb button (which looks like a moon). Then select one of the Do Not Disturb options, such as until you leave your current location.

You've got to see this

If you want to quickly show someone else what is on your iPhone or iPad screen, here is what you can do. First, take a screenshot (how you do this varies depending upon what model iPhone or iPad you are using – on the latest iPhone or iPad, press the sleep/wake button and the top volume button at the same time). Next, tap the small version of the screenshot which appears at the bottom left side of your screen. Then tap the sharing button at the bottom left. From this Share Sheet, you can send a picture of whatever was on your screen to someone else via AirDrop (if they are close to you), via email, via Messages, etc.

QR Code

There was a time when you had to download a special app to read a QR code on an iPhone. Those days are over. Just point your regular camera at a QR code. As soon as your iPhone or iPad notices it, you will be given an option to use the QR code, such as go to a website associated with the QR code.

Safari's split personality

You probably already know that you can run two apps side-by-side on an iPad. In the case of Safari, you can run the same app side-by-side. When you have multiple tabs open, put your finger on the one of the tabs and drag down and then to the right. Safari will open up that tab in a separate Safari window on the right side of the screen. That way you can have two different webpages open and viewable at the same time.

Easy-Peasy Print to PDF

Let's say you're reading a web page that you'd like to convert to PDF to archive in your files or send to a client. You can tap the Share menu and then tap the Print button to see a "print preview" of the web page. If you're on an iPhone, simply force touch on that print preview to automatically convert it into a PDF file which can then be emailed, opened in another app, saved up to Dropbox, etc. If you're on an iPad, the process is the same except that instead of a force touch, simply take your thumb and forefinger and spread them apart to convert the print preview into a PDF file.

Where have I been?

Trying to remember the name of that restaurant you went to last week in Boston? Or trying to figure out how long you were at a location such as a courthouse, to help you to do your time sheets? Your iPhone keeps a log of many of the places that you visit, and how long you were there. Sometimes it's useful for you to go back and see where you've been. But whether you use this feature or not, you should know that it is there in case someone else gets access to your iPhone and you don't want them to know where you've been.

Go to **Settings -> Privacy -> Location Services -> System Services** [all the way at the bottom] **-> Significant Locations**. You will next have to confirm your identity using Face ID or Touch ID. On the next screen, when Significant Locations is turned on, you will see a list of many (although probably not all) of the cities that you have been to recently. Tap a city to see specific locations with the city. The time associated with a specific establishment may include some time when you were merely nearby, but these time estimates can still be useful whenever you need to recreate your day.

Your iPhone uses this log of Significant Locations for providing location-related information to some of the built-in apps on the iPhone. Apple tells you in the Settings app that "Significant Locations are encrypted and cannot be read by Apple." Nevertheless, if you find this feature to be more creepy than useful, feel free to turn off Significant Locations.

APPS:

CARROT Weather - Excellent weather forecasts with lots of features, plus (optional) attitude to keep things interesting while you are checking the weather.

Deliveries - Track your packages as they are en route to you via FedEx, UPS, US Mail, etc.

Dropbox - Easily share files between devices.

Fantastical 2 - Calendar app with lots of great features that makes it easier to enter and view your events.

GoodNotes 5 - Excellent app for taking handwritten notes on your iPad.

Notability - Another excellent app for taking handwritten notes and typing notes on your iPad. Plus you can sync your notes with recorded audio.

iTimeKeep - Enter your time on your iPhone so that you can jot it down while you are thinking about it and don't forget about it later.

Microsoft Word - Almost as powerful as the version on the desktop, and in many ways even easier to use.

Microsoft PowerPoint - Create a presentation on your computer first, then port it over to your iPad to present it.

PDF Expert 7 - Excellent app for viewing and annotating PDF files on an iPad or iPhone.

GoodReader - one of the original PDF viewers and annotation tools

Scanner Pro - Fantastic app for turning a physical document into a PDF.

Scanbot - another excellent app for scanning a document with your phone or iPad.

Things 3 - Keep track of all of your to do items.

TranscriptPad - View and annotate deposition transcripts on your iPad.

TrialPad - Present and annotate evidence or documents on an external display.

TripIt - Create itineraries for your trips.

iExit - Wonderful little app for car trips – if you're driving on a U.S. Interstate, the app will tell you the upcoming exits and what stores, restaurants, or hotels are there.

TextExpander + Keyboard - If you use the fantastic TextExpander application on your Windows or Mac computer, then you must download the TextExpander + Keyboard app for your iPhone and iPad.

Calcbot 2 - A wonderful calculator option instead of using the iOS built-in calculator.

Microsoft To-Do - Clean and simple task list app from Microsoft (when they acquired the Wunderlist app) for when you just need to make a simple list!

GADGETS:

AirPods

Apple's wireless Airpods are fantastic. They sound good, you barely notice them in your ears, the carrying case keeps the AirPods charged and is easy to keep in a pocket, and Apple has designed iOS to work very well with the AirPods. This is one of the best accessories that Apple has ever made.

Apple Watch Series 4

The first two models of the Apple Watch showed promise but had drawbacks. With the Series 3, Apple started to show that it knew what it was doing. But the Apple Watch Series 4 is so much better than its predecessors. The larger screen, with more of the screen used to show information, makes everything easier to see. The Series 4 is solves the speed issues that made prior models feel like they were not keeping up with you. And if you get a model with built-in cellular, it is incredibly freeing to leave your iPhone behind without leaving behind your connectivity with the outside world if someone needs to reach you, your music, your podcasts, etc.

An external keyboard

There are lots of different and great models to choose from, made by Apple and other companies. Which one you get depends upon your needs. But if you own an iPad, I encourage you to get some model of external keyboard. That way, you can travel with just your iPad and the keyboard and you can still type fast enough to get your work done.

A car with CarPlay

A car is a pretty expensive accessory for an iPhone, but it is a fantastic way to make the best use of your iPhone in your car for playing music or podcasts, getting turn-by-turn directions, using Siri, listening to and dictating responses to texts and voice mails, etc.

Apple Pencil Series 2

If you own a new iPad Pro which supports the Apple Pencil Series 2, you should definitely get one. It works much better than the original Apple Pencil, and the Pencil is great for annotating documents or taking handwritten notes on an iPad.

Anker Lightning and USB-C cords

Anker makes high-quality cables that work with the Lighting or USB-C port on your iPhone or iPad. The PowerLine+ line of cables is especially durable because it features a double-braided nylon exterior, which protects the cord, and has very strong connectors at both ends. The Anker cords are better and cheaper than the versions sold by Apple.

Wireless Charger for your iPhone

If you have an iPhone 8 or higher, you can wirelessly charge it with a Qi-certified charger. Qi is an open, universal charging standard and so you have probably already seen Qi wireless chargers in coffee shops or hotels. There are several Qi wireless chargers available on Amazon for your iPhone but one of the best is the Anker Ultra-Slim Wireless Charger. It's really nice to have one of these in your home or office so that when you're setting your phone down, it can be charging without the need to actually plug it in.

Anker PowerPort

The PowerPort line of chargers from Anker have a cord that plugs into a wall outlet. That cord attaches to the PowerPort, which has multiple USB and/or USB-C ports. Keep one of these in your travel bag and you will have one central location to charge your iPhone, iPad, Apple Watch, AirPods, etc. at night when you are away from home. Or keep one in a location at your house so that you and others always have a station to charge up.

Shark Bite: Phishing, Privacy, IOT

WRITTEN BY:

Nicole Black and Maria Phillips

PRESENTERS:
Nicole Black and
Maria Phillips

January 6, 2020

Author's Note: For our written materials for this session we have assembled several different papers on cloud computing written by your co-presenters.

Practicing Law in the 21st Century: The Ethical Requirement of Technology Competence

-By Nicole Black

Over the past decade, technology has changed at a rapid clip, affecting every aspect of our day-to-day lives, from how we communicate and interact with others, to how we shop, cook, travel and conduct business. And yet, many lawyers continue to practice law just as they did 25 years ago, refusing to change their attitudes about technology to comport with modern day expectations. This isn't necessarily surprising, since ours is a precedent-based profession and predicting the future based on what's happened in the past has historically proven to be a very successful way of doing business. Unfortunately, that methodology is proving to be acutely ineffective in the 21st century. This issue was recently addressed by Richard Susskind - one of the most forward-thinking authors and leaders in the legal technology space - in the recently published second edition of his ground breaking book, "Tomorrow's Lawyers: An Introduction To Your Future." In it he suggests that adopting technology will be one of the primary drivers of success for law firms seeking to gain a competitive edge: "One key challenge for the legal profession…is to adopt new systems earlier; to identify and grasp the opportunities afforded by emerging technologies. We need, as lawyers, to be open-minded because we are living in an era of unprecedented technological changes in what our machines can actually do. They are becoming increasingly capable." This is a warning that lawyers should take to heart: the failure to keep up with emerging technologies and their application to the practice of law will have long-lasting effects, even more so now that lawyers in many jurisdictions are required to maintain technology competence. In other words, not only is it good business to stay on top of changes in technology - you may very well have an ethical obligation to do so. **The duty to maintain ethical competence** The American Bar Association recognized the importance of technology competence for lawyers in 2012 when it amended the comments to Model Rule 1.1. This amendment imposed an ethical duty on lawyers to stay abreast of changes in technology. The amended comment reads as follows:

> Maintaining Competence To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (Emphasis added).

Since that time, bar associations across the United States added commentary to their ethical rules indicating that lawyers have an obligation to stay on top of changes in technology, with 31 states having now requiring it. Similarly, two other states, California and New Hampshire, while not formally adopting the duty to maintain technology competence, have confirmed in recent ethics opinions that lawyers have this duty.

[SIDEBAR: States that have revised their ethical rules to require technology competence:

- Arizona
- Arkansas
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Massachusetts
- Minnesota
- Missouri
- Nebraska
- New Hampshire
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

End SIDEBAR]

Then in 2016, Florida adopted new language into its Bar Rules which requires lawyers to stay abreast of legal technology advancements while also mandating that lawyers complete 3 credits of legal technology CLE per biennial cycle. In an opinion issued on September 29th, the Supreme Court of Florida changed the number of biennial CLE credits required from 30 to 33 and mandated that 3 of those credits be "in an approved technology program."

North Carolina followed suit in April of 2018, when the North Carolina State Bar Council voted to adopt proposed amendments that provided a definition of "technology training" and mandated "that one of the 12 hours of approved CLE required annually must be devoted to technology training."

These technology CLE requirements represent an important departure from business as usual in the legal profession. Technology is clearly affecting the practice of law, and state bars across the country are taking notice. Florida and North Carolina may be the first to enact these new CLE requirements, but they certainly won't be the last.

What does ethical compliance entail?

It's one thing to require lawyers to be up-to-date on legal technology, but what does that actually entail? What do lawyers need to learn about in order to fulfill their legal technology competence obligation?

Some guidance can be found in the North Carolina Bar's proposed amendment mandating that lawyers take technology CLEs. Within the text of the amendment, the Council provides a helpful explanation as to the types of technology training that will satisfy the legal technology CLE requirement. According to the Council, "(T)he primary objective of the program must be to increase the participant's professional competence and proficiency as a lawyer. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool process or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; and g) practice management software."

The Council also clarified the types of CLEs that qualify for technology credit - and which ones will not: "A program on the selection of an IT information technology (IT) product, device, platform, application, web-based technology, or other technology tool, process, or

methodology, or the use of an IT tool, process, or methodology to enhance a lawyer's proficiency as a lawyer or to improve law office management may be accredited… A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training courses on Microsoft Office, Excel, Access, Word, Adobe, etc., programs; and instruction in the use of a particular desktop or mobile operating system."

In essence, lawyers need to understand which technologies will impact their law practice. Then they need to ensure that they have taken steps to maintain a core level of competence in regard to those specific technologies. With that in mind, let's take a look at the ways that different types of technology are affecting the practice of law in 2018.

The unavoidable impact of technology

The writing is on the wall: technology is impacting the practice of law and changing the way that legal services are delivered. It only makes sense that lawyers should take steps to understand technology and how it can be used to improve their practices and help them to be more receptive, responsive counselors to their clients.

The requirement that lawyers maintain technology competence is necessary given the far-reaching impact of technology on the practice of law. From digital evidence and ediscovery to bitcoin and secure electronic communication, the effects of technology on the legal profession is inescapable. You need look no further than the daily news to encounter cases where technology impacts the practice of law.

For example, data from mobile and wearable devices is increasingly being used in both civil and criminal cases. In 2015, Fitbit data was used as evidence in court to support a personal injury claim and to disprove rape allegations. And earlier this year, data from the iPhone Health App was used during a murder prosecution in Germany where investigators accessed data from the Health App on the defendant's phone and it was used to support the prosecution's timeline for the murder.

For litigators, understanding how social media platforms work is of particular importance since lawyers are now routinely mining social media for evidence and researching jurors online. Service of process via social media platforms has been permitted by some courts, and actions taken by individuals on social media have formed the basis for criminal prosecutions.

Litigators also need to familiarize themselves with the mechanics of efiling, now that courts around the country are beginning to mandate the digital filing of court documents. Because digitized documents are a condition precedent to efiling, lawyers must also learn about the mechanics of setting up a paperless law office.

Similarly, for many lawyers technology competence will likely entail gaining proficiency in the use of technology - including cloud computing software and artificial intelligence tools - to help them deliver legal services more efficiently and facilitate secure client communication. Understanding the ins and outs of secure client communication is increasingly important in light of the issuance of ABA Formal Opinion 477 in May of 2017, which encourages lawyers to avoid unsecure email when sending certain types of confidential client information and suggests that lawyers should consider using encrypted methods of communication, including secure, web-based client portals.

And last, but not least, cryptocurrencies are another emerging area that lawyers need to learn about. Astute lawyers will make efforts to learn more about Bitcoin and Blockchain since they have the potential to affect law practices. Some attorneys may want to consider accepting Bitcoin as a form of payment, while others may handle practice areas, such as securities law or financial litigation, that will be increasingly impacted by Bitcoin.

So no matter what your areas of practice, or the size of your firm, the effects of technology are unavoidable. Ignoring it is no longer an option, so your only choice is to learn about it. That way you'll meet your ethical obligations and provide the best possible representation to your clients. But how do you go about learning about the latest technology developments? A great place to start is by taking advantage of some of the free or low cost resources below.

Stay up to date with these legal technology resources

Now that we've agreed that turning a blind eye to technology is a mistake, let's dive into resources, both online and off, that will help you stay up-to-date on the latest technology trends. Legal technology books are always a great place to start, since they provide a thorough review of the topics they cover. First, consider reading "Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple," a book written by Attorney Sharon Nelson, Certified Information Systems Security Professional John Simek, and Digital Forensics Examiner Michael Maschke. This book covers a vast range of hardware and software, provides a wealth of information and tips on choosing the right tools for your firm, and offers their perspective on the impact of emerging technologies on the practice of law.

Another helpful book is “The Lawyer’s Guide To Collaboration Tools and Technologies: Smart Ways to Work Together, Second Edition,” written by Tom Mighell and Dennis Kennedy. In it you’ll learn how to use today’s legal technology to collaborate on and manage cases with clients, co-counsel, and more.

Finally, there’s “Legal Ethics and Social Media: A Practitioner's Handbook,” co-authored by Jan Jacobwitz and John Browning. This book covers the ins and outs of the most popular social media platforms and addresses the ethical implications of using social media to advertise your firm, mine for evidence, and research jurors, among other things. Blogs are also a valuable resource for lawyers interested in learning about legal technology. What follows are some of the more well known legal technology blogs that will provide you with the latest legal technology news and updates.

A great place to start is by following the legal technology columns at Above the Law, which are written by a number of different legal technology bloggers (myself included), and focus on many different legal technology issues offered from a variety of perspectives. Bob Ambrogi’s LawSites blog is also a must read. Bob has been blogging about legal technology since 2002 and his blog covers the latest legal technology industry news, along with a wealth of information and advice for lawyers interested in using legal technology in their law firms.

[SIDEBAR: Other popular legal technology blogs include: 1) Future Lawyer - written by the always-knowledgable Florida litigator Rick Georges and focused on a variety of technology topics; 2) Divorce Discourse - attorney Lee Rosen shares lots of technology and law practice management advice; 3) Law Practice Tips - Jim Calloway, an attorney and the Director of the Oklahoma Bar Association’s Management Assistance Program, provides insight and tips on using technology to run an efficient law firm; 4) iPhone JD - attorney Jeff Richardson focuses on all things Apple-related, including iPhones, iPads and iOS apps; and 5) Ride the Lightening - lawyer Sharon Nelson provides her take on the effect of legal technology on the practice of law. END SIDEBAR]

Another way to stay abreast of technological change is to take advantage of the legal technology CLEs offered by your local or state bar associations. There are also a number of other free online resources that will assist you in learning about the latest legal technology developments. The ABA, along with many legal technology software providers, such as law practice management companies, offer free educational webinars, some of which may qualify for CLE credit. Many of these same organizations also offer free ebooks and guides focused on legal technology topics that are available for download. In most cases, the webinars and ebooks provide substantive, useful information with minimal advertising, so they’re definitely a resource worth keeping in mind.

And last, but not least, don't forget about the legal technology conferences. ABA Techshow is one of the most popular conferences for solo and small firm lawyers seeking to learn about the latest legal technology tools and how to use them in their practices. Solo and small firm conferences sponsored by the ABA or your local and state bars are also a great resource. These conference often have technology tracks that can be a great source for legal technology updates.

So now that you fully understand your ethical obligation to learn about legal technology and know where to look for the latest information on legal technology developments, what are you waiting for? Sign up for a legal technology conference or CLE, subscribe to a few blogs, and buy a few books. Before you know it, you'll be well on your way to being fully competent and armed with the information you need to make the right legal technology choices for your law firm and your clients.

Cybersecurity and the Realities of Practicing Law in 2018 -By Nicole Black

Cybersecurity is a hot topic for lawyers in 2018. It's discussed often, both online and off, and cybersecurity sessions are always well attended at legal conferences. So it was no surprise that it was the focus of this year's Futures Conference in Boston (which I attended on a press pass), since the conference is put on by the College of Law Practice Management, an organization whose members always seem to be on the cutting edge of what's trending in the legal technology space.

The Futures conference is held annually and each year it has a different theme. This year's topic was particularly timely given the many well-publicized data breaches that have occurred — and affected millions and millions of people — since last year's conference on artificial intelligence.

Of note was a theme that quickly emerged and was oft-repeated throughout the conference: Breaches are simply a fact of life and are inevitable. During the second session, this concept was highlighted by the following Robert Mueller quote:

"I am convinced that there are only two types of companies: those that have been hacked and those that will be. And even they are converging into one category: companies that have been hacked and will be again."

Given the realities of the potential for a breach in 2018, you shouldn't be surprised to learn that one of the statistics shared during the conference was that one third of law firms with 10-99 lawyers suffered from a cyber breach in 2017.

According to the speakers, email is the weakest link for many law firms, with phishing emails being one of the most common types of hacking encountered by lawyers. Another type of email scam that is increasingly prevalent and that firms should be aware of is pretext

emails, which occur when a person uses the email address of another and pretends to be that person. These incidents have occurred five times as often this year than last.

An example of this type of scam was widely reported over the past year and involved real estate transactions. Real estate lawyers were warned to be aware of last-minute emails purportedly from opposing counsel wherein there was a change in the information relating to the deposit bank account for the transaction. In the vast majority of these cases, a criminally motivated third party had inserted themselves into the email chain, and sent emails which, at first glance, appeared to be from one of the attorneys to the transaction. Unfortunately, in many of these cases, funds were often transferred prior to the fraud being detected.

The speakers explained that hacking is committed by a number of different parties ranging from lone hackers and cybercriminals to nation states and terrorists. In other words, the motivations for the hacking vary but the end result is the same — your law firm's data is compromised.

So if a breach is inevitable, what's a law firm to do? The short answer: In addition to taken preventative measures, have a cyber response plan prepared in the event of a breach.

During the first session, this concept was adeptly illustrated via this quote from Bruce Schneier, a well known security expert: "You can't defend. You can't prevent. The only thing you can do is detect and respond."

In other words, responding to cyberattacks is an unfortunate part of practicing law in the 21st century now that breaches are an inevitable reality. In fact, as shared during the second session at the conference, it is predicted that by 2020, 60 percent of businesses' technology budgets will be devoted to detection and response.

Remediation involves a lot of moving parts within a law firm. As the speakers emphasized throughout the conference, the key is to ensure that the various departments — including management, finance remediation, and the PR and IT teams — coordinate both their internal response and all external communication.

For more on how to prepare for and remediate a cyber breach, make sure to read this article from the Michigan Bar Journal: What To Do When Your Data Is Breached. It provides an overview of the cybersecurity issues faced by law firms and covers incident response plans and actions for law firms.

The bottom line: Be careful — it's a jungle out there! Ignoring the realities of cybersecurity in 2018 isn't an option, so do the responsible thing and face it head on. Cyber thieves are lying in wait and your firm may be their next target. So make sure that your law firm is prepared both in terms of taking steps to prevent a cyberattack and responding when — not if — a breach occurs.

Originally published by Above the Law 2018 Reprinted with permission

Lawyers and Cybersecurity in 2019: How Does Your Firm Compare?

-By Nicole Black

In 2019, cybersecurity is an issue that is — or should be — on the minds of lawyers in firms big and small. This is because lawyers have an ethical obligation to preserve the confidentiality of client information. And as lawyers increasingly move their data into digital format, that obligation necessarily shifts to the firm's data stored online.

Law firms take many different security precautions in the name of client confidentiality. But, according to the most recent ABA Legal Technology Survey Report, the types of security measures used vary greatly from firm to firm.

What cybersecurity procedures does your firm have in place? Read on to see how your firm's efforts compare to some of the measures taken by other firms to secure their data.

Password-protect all devices

For starters, lawyers are using passwords to protect their laptops. According to the Report, more than 90 percent of lawyers surveyed reported that they password-protected their laptops. The large firm lawyers led the way with 100 percent of respondents from firms of 100 or more attorneys doing so. Next were of solo firms at 99 percent, followed by 98 percent of lawyers from firms with 2-9 attorneys, and 94 percent of lawyers from firms with 10-49 attorneys.

Even more lawyers report using password protection for their smartphones, with 92 percent of lawyers doing so. The lawyers most likely to password-protect their smartphones were lawyers from firms of 10-49 (97 percent). Next were 95 percent of lawyers from firms of 2-9, 95 percent of lawyers from firms with 100 or more attorneys, and 87 percent of solos.

Physical protections for firm hardware

According to the Report, 55 percent of firms used physical security measures, such as a key fob, to protect the hardware located onsite. Other steps taken included a locked or secured server room (36 percent), computer locks (35 percent), a security alarm (26 percent), and video camera surveillance (18 percent).

Solo lawyers were the least likely to use any of these security measures. And, not surprisingly, the larger the firm, the more likely its lawyers were to report that entry security was in place, such as key fobs, with 98 percent of lawyers from firms of 500 or more lawyers reporting that their firm used that type of physical security measure. Interestingly, lawyers from firms of 50-99 lawyers were the most likely to lock their server room, with 90 percent reporting that occurred in their firm, compared to 74 percent of lawyers from firms of 500 or more lawyers.

Other security tools used to protect firm hardware

Firms of all sizes implemented a variety of other types of security measures to protect law firm hardware. For example, 87 percent of lawyers reported that their firms used spam filters. Other very common security measures included anti-spyware (80 percent), firewall software (79 percent), pop-up blockers (75 percent), desktop and laptop virus scanning (73 percent), email virus scanning (69 percent), mandatory passwords (68 percent), network virus scanning (66 percent), and hardware firewalls (57 percent).

Less common, but nevertheless still fairly prevalent hardware security tools used by the firms of lawyers surveyed included file encryption (46 percent), file access restriction (41 percent), email encryption (38 percent), intrusion detection (34 percent), intrusion prevention (33 percent), web filtering (29 percent), whole/full disc encryption (24 percent), and employee monitoring (20 percent).

Password managers

Another popular security measure that is on the rise in 2019 is using a password manager such as Lastpass or 1 Password to store passwords. According to the Report, 24 percent of lawyers reported that they used these types of tools.

Lawyers from firms with 100-499 lawyers were the most likely to use password managers at 30 percent, followed by solos at 27 percent. Next were lawyers from firms of 500+ attorneys at 26 percent, and last were lawyers from small firms (2-9 attorneys) who were the least likely to use password mangers, with only 23 percent of them reporting that they did so.

Secure computing in the cloud

One notable statistic from the Report was that one of the primary reasons lawyers are moving from premise-based software to using legal software in the cloud to run their law firms is because of security. In fact, according to the Report, 31 percent of lawyers surveyed reported the primary reason that their firms made the move from premise-based software to cloud-based software in 2018 was because it provided better security than they were able to provide in-office. Also of note is that 55 percent of lawyers surveyed reported that they'd already used used cloud-computing software for law-related tasks over the past year, up from 38 percent in 2016.

So it's no surprise that more lawyers than ever are planning to make the move from premise-based software to cloud-based software in 2019. According to the Report, in 2019, 10 percent of law firms are planning to replace premise-based legal software with a cloud-based alternative (notably 43 percent weren't sure what their firm's plans were). Of the firms that planned to make this move, small law firms with 2-9 lawyers led the way at 15 percent. Next up were law firms with 10-49 lawyers at 14 percent, followed by firms with 50-99 lawyers at 13 percent, firms with 100-499 lawyers at 12 percent, and coming in last were solos at 6 percent.

Security assessments

And last but not least, law firms are making use of outside security experts to assess the sufficiency of their law firm's security measures. As shared in the Report, 28 percent of firms had had a full security assessment conducted by an independent third party last year. The most likely to do so were firms with 100-499 lawyers (44 percent), followed by firms with 50-99 lawyers (34 percent), firms with 2-9 lawyers (33 percent), firms with 10-49 lawyers (32 percent), firms with 500 or more lawyers (30 percent), and solos (16 percent).

How does your firm compare?

Those are just some of the security measures being taken by law firms in 2019. While the steps shared above aren't an exhaustive list of everything that firms are doing in 2019 to ensure security, they provide a good overview. How does your law firm compare? Are you doing everything that you can — and should — be doing to secure your law firm's data and systems? If not, there's no better time than now to increase your firm's security by performing a security audit and establishing additional security procedures for your firm.

Originally published by Above the Law 2019 Reprinted with permission

Check out some secure communication and collaboration tools for lawyers

-By Nicole Black

Regular communication with clients is one key to effective legal representation. Clients have to be regularly apprised of the status of their cases, and lawyers have an ethical obligation to do so.

Of course, as is the case with most aspects of practicing law, technology has necessarily impacted the means and methods of client communication. Confidential conversations have shifted over the years from letters and phone calls to emails and texts.

At first, this transition was met with resistance by ethics committees. But over time, as electronic communication became commonplace, that changed. And in the mid-1990s, bar association ethics committees across the country began to approve the use of unencrypted email when communicating with clients.

Even so, many of the first ethics opinions on this topic wisely recognized that technology would change over time. Thus, an elastic standard governing the use of email for confidential client communications was established, with ethics committees acknowledging that accepted security standards would likely change as technology advanced and more secure options became available.

A NEW ETHICS STANDARD

In 2018, that time has come. Technology has improved greatly, and more secure electronic communication methods have emerged. This has rendered unencrypted email insufficient for certain types of client communication, as the ABA acknowledged in 2017 in Formal Opinion 477. In this opinion, the Standing Committee on Ethics and Professional Responsibility concluded that unencrypted email may not always be sufficient for client communication, and it advised lawyers to assess the sensitivity of information on a case-by-case basis and then choose the most appropriate and sufficiently secure method of communicating and collaborating with clients.

What does this mean for law firms that regularly handle particularly sensitive information or who will handle such information on occasion for certain cases? The short answer: You'll have to incorporate more secure electronic communication methods into your law firm's technology arsenal.

Not sure where to start? Here are a few options for you to consider.

NEW GMAIL AND OUTLOOK SECURITY FEATURES

If you do nothing else, you can fall back on the email encryption features built into many web-based email platforms. There are varying degrees of encryption available for web-based email messages, with HTTPS encryption being the most basic level of encryption provided by default by many popular email providers, such as Gmail and Yahoo. However, although HTTPS will prevent others on the network from reading your emails, when you use this type of encryption, your email provider still retains an unencrypted copy of your communication, which may be accessible by law enforcement via a warrant.

Another option is to implement the new security features that were rolled out earlier this year for Gmail and Outlook. If your firm uses Gmail, there are a number of new features that provide more control over the emails sent.

First, there's "confidential mode," which allows the sender to create a passcode generated via SMS to protect the email. An expiration date also can be generated for sent emails, and features can be activated that will give the sender more control over what the recipient can do with a specific email. For example, the sender can prevent the recipient from forwarding, copying, downloading or printing emails. Of course, screenshots can still be taken of the emails, so it's important to keep that in mind.

Lawyers who use Outlook.com for email also have new security features available to them. For example, for those who use Office 365, individual emails, or all emails, can be encrypted.

Another new feature provides the capability to share password links that will allow clients, co-counsels and others to access sensitive documents stored in OneDrive. Last but not least,

like Gmail users, those sending emails via Outlook.com can prevent email recipients from forwarding or copying emails sent to them.

PGP EMAIL ENCRYPTION

A further level of email security is added by using PGP encryption, an option used by some lawyers seeking more secure communication methods. This method encrypts your email while in transit and at rest. Unfortunately, it's not an ideal solution for a number of reasons. For starters, earlier this year, European researchers discovered major vulnerabilities in the PGP email encryption standard typically used to encrypt email and recommended that the use of encrypted email cease until such issues were addressed—something that has not yet occurred.

Another problem with encrypted email is that it still exposes metadata to prying eyes, including the subject of your email, who you are communicating with, and when you're doing so.

If you choose to use PGP encrypted email, understand that it's not easy to set up properly, often requiring the services of a technology consultant. That being said, if you'd like to try to set it up on your own, you can find detailed guides that will assist you (provided by the Electronic Frontier Foundation) for Apple Mac, Microsoft Windows and Linux users.

You also can consider email encryption software, an option that, because of its price point, tends to be better suited for larger firms. Many choices are available, but the following are a good places to start: AppRiver, DataMotion and Mimecast.

SECURE CLIENT PORTALS

Last but not least are encrypted online portals, which often are built into other software programs such as legal practice management software. These portals provide end-to-end encrypted communication in one central, secure online location. All communications happen within the portal, meaning that once you log in to the portal, all activities occurring therein, along with your communications, are encrypted from prying eyes.

In addition to providing built-in encrypted communication, these portals allow you to share case-related information with clients, all in one convenient location, making the cumbersome back-and-forth process of unsecure, threaded emails a thing of the past.

Of course, as is the case with any encrypted communications solution, client portals require a buy-in from your clients. However, in light of the new ABA electronic communication guidelines, the time saved by avoiding the required case-by-case analysis regarding the sensitivity of client data and the security gained by using encrypted email or client portals will likely outweigh pushback from clients.

Rest assured, encrypted communication is the wave of the future. Regardless of which path you take to protect confidential client data, the time to choose is now. After all, it's better to be ahead of the curve than behind it.

Originally published by the ABA Journal 2019 Reprinted with permission

"The IoT: WHAT IS IT, WHAT CAN HAPPEN WITH IT, AND WHAT CAN BE DONE WHEN SOMETHING HAPPENS"

-By Ronald J. Hedges and Kevin F. Ryan

What is the Internet of Things?

The term "Internet of Things" (IoT) refers to the inter-networking of a wide variety of objects embedded with electronics, software, sensors, actuators, and connectivity that enables these objects to generate, collect, and exchange data. While each object is separately and uniquely identifiable, what sets the IoT apart from a mere multiplicity of objects is the fact that the objects are capable of operating together through existing Internet infrastructure. The inter-connectivity of the IoT allows objects to be sensed or controlled remotely across networks, creating opportunities for more direct integration of the physical world into computer-based systems.

Gartner points to the rapid growth of the IoT, noting that in 2017 approximately 8.4 billion objects were expected to be in use, up 31% from 2016. Gartner, in that estimate, does not include smartphones, tablets, and computers, of which there are many more billion units.

Expert predictions of the breadth of the IoT by the year 2020 vary widely, ranging between 20.8 billion and 30.7 billion such devices. Even if the growth turns out to be less rapid than many expect, the extent to which our lives will be affected by interconnected devices will surely be enormous, and the associated legal issues promise to engage a greater and greater portion of the time of legal practitioners of all sorts.

Living in an Interconnected World

The explosion of Internet-connected devices has affected all of our lives in one way or another. In order to get a sense of many ways we come into contact with such devices, we can usefully distinguish among consumer, business, and infrastructure applications.

Consumer applications include connected entertainment, car, and smart home devices such as washer/dryers, refrigerators/freezers, ovens, robotic vacuums, heating systems, or air purifiers that use Wi-Fi for remote monitoring. Smart home technology also includes devices that provide assistance for disabled and elderly persons, including monitors for seizures or falls, and other kinds of connected health devices. Recent years have seen an enormous increase in the prevalence of wearable technology, such as Fitbit or Apple Watch, and "quantified self" technologies (data acquisition on aspects of a person's daily life in terms of food consumption or exercise, physical states such as heart rate, mood, arousal, blood oxygen levels, and mental or physical performance). Automobiles now have built-in, computer-connected sensors that tell the operator to brake or get back into her lane, and we are not far from the day when highways will be filled with self-controlled vehicles requiring minimal operator input.

Some devices straddle the line between consumer and business application. For example, cameras and audio devices can stream live feeds of everything from babies in the nursery, to building and property perimeters, to conferences, to wild animals in remote regions of the world.

Business (or enterprise) applications include various devices aimed at determining and responding to consumer preferences and linking marketing to personal devices via text messaging or other forms of communication. Also included are various technologies used to track consumer responses, such as conversion tracking, drop-off rate, click-through rate, and interaction rate. The IoT also includes network control and management of manufacturing equipment, permitting greater efficiency in the development of new products, dynamic response to product demands, asset management, and health and safety management. Finally, a wide range of healthcare applications have emerged, connecting patients and data about them with medical personnel many miles away.

Infrastructure management applications include technologies that permit monitoring and controlling bridges, railway tracks, wind farms, and other structures and facilities. A large

class of cyber-physical systems have emerged, including smart grids, virtual power plants, intelligent transportation (computer-operated train systems, for example), and smart cities. IoT infrastructure can be used to observe conditions that can compromise safety and security, to schedule repair and maintenance activities efficiently, and to assist firefighters, soldiers, and others in search and rescue or military operations.

Problems that Might Arise with Interconnected Devices

Given this proliferation of interconnected devices, what kinds of legal problems can we expect to arise? We suggest potential problems can be of several sorts: they can be related to (1) privacy concerns, (2) security concerns, (3) investigation and criminal matters, or (4) personal injury and other sorts of civil litigation. In this article, we focus solely on litigation issues raised by the IoT. But a brief tour of other sorts of problems will give the reader a sense of the tremendous breadth of legal issues that will soon emerge (if they have not already done so).

The devices and networks in the IoT contain and transmit a huge amount of personal data, information that the average person would consider private. Medical and health devices contain information about activity, heart rate, diet, and so forth; smart homes know when residents were at home and when they were not; cameras contain images, some of which may be compromising, and the metadata about those images; business applications know consumers' purchasing habits and their responsiveness to particular sorts of messages. It remains to be seen what information about an individual might be held and distributed within smart cities. We may be living in an age when the boundaries of privacy are shifting, but the amount of information about a person that will be moving around the IoT is truly staggering and guaranteed to generate major privacy concerns.

With all that data floating around on networks, security becomes a critical issue. The recent spate of security breaches, from Equifax to hospitals in several states and nations to the National Security Agency, illustrates the susceptibility of even tightly secured networks to the work of malicious hackers. As more information about individuals finds its way into the IoT, potential for such security breaches increases.

Obviously, the devices and networks of the IoT contain personal information that might reveal aspects of a person's condition or behavior, and therefore become the target of investigatory and criminal proceedings. An Apple Watch knows how far someone walked yesterday and what their heart rate was and that data has entered the network. A cell phone contains even more information about a person's movements. A smart home knows not only when a resident was there but also what lights were on and whether or not the security system was engaged. As new devices and interconnections emerge, the opportunities to investigate aspects of someone's life increase exponentially. Lawyers and judges are already wrestling with determining what sorts of data from what sources can be sought in criminal

proceedings, and with considering the ways the traditional rules may need to change to take account of the new world of the IoT.

Litigation

With the above as background, let's assume that "X" had just left her office and was driving home in her new-model SUV. She decided that, because the weather had become chilly, she would increase the temperature in her home by four degrees. She instructed the smart thermostat in the home to accomplish this with a smart phone app that controlled the thermostat. The phone was connected through a Bluebooth device to her SUV and from the SUV to a WiFi. Thirty minutes after the instruction to the thermostat she arrived at her home. It was aflame and the fire department had arrived and was at work, having been alerted to smoke and flames coming from the home by a neighbor. By the time the fire was extinguished the home and its contents were a total loss.

X immediately thought that something was wrong and so she consulted an attorney about possible litigation. The attorney agreed that something seemed to have gone wrong but told X that he would have to undertake an investigation before he could commence a civil action. The attorney explained that he would have to contact whoever was in the likely chain of causal acts, ask for whatever records might be available, and consult with an expert to review the records and see what happened. (Of course, he put whoever he contacted on notice of possible litigation and requested that all records be preserved).

As a result of the investigation the attorney became satisfied that there was sufficient evidence that the app "miscommunicated" the temperature change to the thermostat and that the miscommunication caused a temperature rise that destroyed the home heating system and started the fire. The attorney was also satisfied that the thermostat should have recognized the miscommunication and prevented the rise of temperature to a dangerous level. On the first anniversary of the fire X's attorney filed a diversity action in United States district court, naming the manufacturers of both devices as defendants and asserting products liability claims. He also asserted negligence claims, not being convinced that products liability claims would suffice.

After the defendants unsuccessfully moved to dismiss the complaint on *Twombly/Iqbal* grounds, they filed answers. In the answers the defendants asserted, among other things, that X was herself responsible at least in part for the fire because she had not completed installation of either the app or the thermostat. Had she followed all the prompts on installation she could have directed the app and the thermostat to "cap" temperature change. In any event, the thermostat could have been enabled to detect smoke and fire in the home and to send a signal to the local fire department when it did so. Moreover, the defendants asserted third-party claims against every other entity in the causal chain because the

evidence the app manufacturer gathered from its records appeared to show that X's instruction somehow became "garbled" in transit to the thermostat.

Once the defendants answered, the parties conducted a Rule 26(f) conference to prepare a joint discovery plan. Discovery disputes arose immediately. These included:

1. X's attorney learned that the defendant manufacturers had not instituted a litigation hold on receipt of his preservation letter. They took the position that the letter was insufficient to put them on notice of imminent litigation. Instead, holds were implemented on receipt of summonses.

2. X's attorney advised the defendants that he intended to demand production of, among other things, the source codes for the app and the thermostat so that his expert could determine why the devices failed. In response, the manufacturer of the app advised that the source codes were irrelevant and that, in any event, the source codes had been modified six months after the fire and pre-modification codes had not been retained. Moreover, the source codes would have to be subpoenaed because these were developed by independent contractors in other states. Finally, both manufacturers took the position that all source codes were trade secrets and proprietary and would not be turned over absent a protective order that restricted access to only one expert.

Discovery-Related Issues

Let's step back from our hypothetical and think about the issues presented for ultimate resolution. First, as to causes of action and defenses:

1. Rule 11 imposes an obligation on a putative plaintiff's attorney to conduct an adequate investigation into the facts and controlling law prior to signing a pleading. What might "adequate" mean in the context of an IoT action? However adequate might be defined, it will likely be necessary for the attorney to retain one or more consultants to assist him before the commencement of litigation. Why? The attorney will need to understand, among other things, the operation of the devices in issue, the interaction between the devices and existing safeguards against data breach and untoward consequences.

2. The plaintiff in our hypothetical asserted cause of action sounding in both strict liability and negligence and the defendants have alleged that X was herself negligent. The defendants also asserted third-party claims against (presumably) Bluetooth and the manufacturer of the SUV. The IoT may give rise to multi-party action that may culminate in an allocation of fault between all parties.

3. Given the nature of the IoT and, specifically, the development and implementation of the app and devices in issue, both fact and expert testimony will be

necessary to allocate liability. The latter will require *Daubert*- or *Frye*-qualified expert opinions.

Then, as to discovery:

1. Discovery in a IoT-related action will likely involve large volumes and perhaps varieties of electronically stored information (ESI). That ESI will have to be collected, searched and analyzed in defense of asserted causes and actions and, to at least some degree, produced. That production will itself have to be searched and analyzed by the receiving party. These various tasks will almost certainly require the assistance of nonparty consultants. Without that assistance, no attorney may understand the "in's and out's" of interconnected devices.

2. Large volumes and varieties of ESI may give rise to concern about proportionality under Rule 26(b)(1). Assuming that a party asserts that a discovery request is not proportional to the needs of the action, what proofs should that party be prepared to offer and what witness or witnesses will that party rely on to do so?

3. "[P]ossession, custody or control" of ESI for Rule 34(a)(1) might well be a recurring question in IoT actions. As in our hypothetical, third party vendors or consultants might maintain ESI that is relevant to a claim or defense. If so, can a requesting party demonstrate that a responding party has some tie to a third party sufficient to require that party to make a production? If not, the requesting party will presumably have to subpoena the third party. Resolution of "control" is likely to be a fact-intensive undertaking.

4. Requests for discovery in a IoT action may well encompass arguments that the ESI sought is proprietary and that the discovery not be had. This raises the possible need for protective orders under Rule 26(c) and limitation of access to the proprietary ESI.

5. As with every action involving ESI, there is the possibility that at least some ESI may have been lost. Any loss may lead to proceedings unrelated to the merits.

Conclusion

We may be entering a brave new world of complexity in civil litigation because of the IoT. That complexity may require attorneys to devote additional time and resources to understand the ways in the which the IoT works, thus fulfilling the duty of competence under Rule of Professional Conduct 1.1.

1. Gartner, Inc. is a research and advisory firm providing information-technology-related insight for IT and other business leaders located across the world.

Sources

- E. Corken, "Current Issues Regarding Possession, Custody or Control," 16 *DDEE* 426 (2016)
- H.B. Dixon, Jr., "The Wonderful and Scary Internet of Things," Judges' Journal 36 (Summer 2017)
- "The Smart Home Checklist" (Online Trust Alliance), at https://otalliance.org/system/files/files/initiative/documents/ota_smarthome_check_list.pdf.
- The Sedona Conference Commentary on Rule 34 and Rule 45 "Possession, Custody, or Control," 17 *Sedona Conf. J.* 469 (2016)
- United States Department of Homeland Security, "Strategic Principles for Securing the Internet of Things (IoT)" (Nov. 15, 2106), at https://www.dhs.gov/sites/default/files/publications/Strategic_Principles_for_Securing_the_Internet_of_Things-2016-1115-FINAL....pdf
- Press Release, Gartner, Inc., Gartner Says 8.4 Billion Connected "Things" Will Be in Use in 2017, Up 31 Percent From 2016 (at https://www.gartner.com/newsroom/id/3598917).
- Amy Nordrum, "Popular Internet of Things Forecast of 50 Billiion Devices by 2020 Is Outdated" (IEEE, Aug. 18, 2016), https://spectrum.ieee.org/tech-talk/telecom/internet/popular-internet-of-things-forecast-of-50-billion-devices-by-2020-is-outdated

Reprinted with permission from: NYSBA Journal, March/April 2018, published by the New York State Bar Association, One Elk Street, Albany, NY 12207

Order, Order: Law Firm Document and Knowledge Management

WRITTEN BY:

Paul J. Unger, Esq. and Quinten Steenhuis, Esq.

PRESENTERS:
Paul J. Unger, Esq: @pauljunger
Quinten Steenhuis: @QSteenhuis

January 6, 2020

THE PROBLEM WITH PAPER & DOCUMENT MANAGEMENT

INTRODUCTION

To achieve effective time, document and knowledge, we have to "get organized." In order to be organized today, we absolutely must figure out how to manage digital information. According to one study, we receive via digital delivery (email, text, social media, on our phones, computers, etc.), the equivalent of 140 newspapers of information per day! This can be overwhelming, especially if you don't have a system in place to process that digital information.

In most offices today, only 1 attorney in 10 have eliminated 90+% of the paper file. In other words, only 1 in 10 have stopped maintaining a paper file and rely solely on the digital file. While better than nothing, that needs to be significantly better.

The good news is that the tools necessary to eliminate paper are available, easy to use and inexpensive. Of course, this hasn't always been the case. Back in the 90s, scanners were very expensive and relatively slow. Document management systems weren't very easy to use, and they were also expensive and made primarily for large organizations. Electronic storage space on servers was also expensive. Since that time, the tools have steadily improved as their costs have declined. Secure cloud storage is a highly competitive market, and therefore, there are many solutions available at a reasonable cost. As a result, the benefits of paper reduction now far outweigh the costs of implementing such a system.

PROBLEMS WITH PAPER RELIANCE

There is still a heavy reliance on paper for many users in most environments. I realize that some people generally don't see paper reliance as a problem. Therefore, I want to explain why paper reliance represents an efficiency problem and needs to change.

Paper Reliance Means Higher Operating Costs: Most law offices are very interested in ways to save money. Operational efficiency means lower costs and improved profitability. Further, high efficiency and paper reliance are mutually exclusive. Creating paper files, maintaining them, updating them, moving and storing them all require non-billable labor. An organization's number one cost is probably payroll, so paper management factors into that. The paper, toner and office supplies (such as folders) are all expensive. Redweld expanding files are $10 for a 5 pack. Staples copy paper is $46 per case. Avery file labels are $26/pack (Staples); black toner for your copiers and printers is expensive. Further, a percentage of your offices are occupied by filing rooms and filing cabinets. So, you're technically paying rent every month for those files.

The bottom line is that all of these things add up to a large amount of money per year. These costs are a primary reason that courts, banks and almost every business that previously dealt with a lot of paper is now all electronic. Law offices are not exempt from this economic reality.

More Paper Means Limited Mobility: Transporting bulky paper files is difficult and sometimes impossible (depending upon the number one needs). As a result, lawyers often feel tethered to the office because they can't easily take the paper files with them if they need to work remotely.

Too Easy to Lose Something or Drop a Ball: If a lawyer or paralegal has stacks of files and paper all over his/her office, there is no way he/she knows what is at the bottom of those piles. Almost every person

I've ever spoken to who has a big mess of files in their office has claimed "I know where everything is." However, if I pick up a random stack and ask them to tell me everything that's in the pile, they have to admit that they don't know.

Digital Records Are Being Forced on Lawyers: Much of what we do as lawyers, whether we like it or not, is already digital whether we like it or not. ALL documents that we create start out as digital files. They don't start in typewriters! Why do we convert those to paper? Many courts have gone to electronic filing, governmental entities we deal with are electronic, documents are traded between attorneys and clients electronically, and more and more evidence and discovery is electronic. Lawyers who insist on operating with an analog/paper approach will have to keep printing more and more electronic documents in order to maintain a complete paper file. All professional service industries will eventually be electronic because that's the form all of the information they deal with will take. Accountants, physicians, engineers, financial planners and architects are already there. The only question for offices who provide legal services is whether they'll wait until the last minute and be reactive, or get out in front of it proactively.

Overwhelming Volume of Communications to Manage: We machine gun one another with electronic communications resulting in many more pieces of correspondence to keep track of. When I started practicing law 25 years ago, we received an occasional fax and no email. Most correspondence came in the form of letters received via USPS or FedEx. I might have received 3 to 5 pieces of mail a day related to cases I was working on. Today, it's not uncommon for a lawyer to receive 150 emails a day related to their practice, some with attachments and most of which requiring an immediate response. Voice mails are often emailed as sound files and faxes are also often received as emailed PDF files. As a result of this, the volume has exploded and paper-based systems break down as volume increases.

Hunting for Files Is Expensive: All offices who maintain paper case files spend non-billable, administrative time looking for paper files every month. For example, files might be in your office (on the desk, under the desk, on the floor, in a cabinet or on a shelf), in a person's office, on a counter in a hallway, on a ledge somewhere in the office, in a filing cabinet, in the wrong filing cabinet, in someone's car, at someone's home or in someone's briefcase or bag. That's a lot of places to look. The cost associated with finding files can be very high.

Paper Files Can Only Be in One Place at a Time: Generally, only one person can be in possession of a paper file at a time. However, the same electronic files can be accessed by multiple people simultaneously.

Paper Files Are Not Sharable: If you want to share a paper file, then you have no choice but to incur the additional time and expense of making more paper copies. This makes it difficult to collaborate with clients, experts, courts and co-counsel.

Finding the Document Once You've Found the File: Once you locate the paper file, now you begin the second search - finding the individual piece of paper within that file. If the file is really big, it may take just as long to find a document within the file as it took to find the file in the first place.

Paper Files Are Not Searchable: Obviously, you lose the search functionality an electronic file provides.

The Paper File is not Complete and Neither is the Electronic File: Almost everyone I talk with indicates that email is not getting saved into the digital file and some of the work product is not getting saved. Nearly everyone my polls indicate that they feel overwhelmed by email and there isn't an easy way to save incoming and outgoing emails into the digital case file or paper file.

DOCUMENT AND KNOWLEDGE MANAGEMENT

DMS DEFINED

A Document Management System (DMS) is the combination of software/hardware tools which streamlines and automates the process of document & email management. Document management software has become so useful over the past 20 years, most organizations believe it is the true foundation for knowledge management and eliminating paper in the office.

Since DMSs only manage electronic documents, any paper documents must be converted (scanned) so that they can be managed by the DMS. In simple terms, your paper "Files" are just collections of paper documents related to a particular matter. Once all of that paper is in digital form, a DMS can organize it by matter just as your paper files are currently organized.

KMS DEFINED

A Knowledge Management System (KMS) is broader than document management, but many people erroneously use the phrases synonymously. Technically, knowledge management is more like a meta search engine that taps into an organization's document management system, as well as other databases, and provides a single place to search all the firm's digital resources. In other words, it is database that would provide users the ability to search the organization's DMS, Microsoft Exchange, CMS, Time/Billing/Accounting, research databases (Lexis or Westlaw), etc. in one global search.

An example of a system like this is HighQ (www.highq.com). In reality, because of the cost associated with a full blown knowledge management system, most solo, small, medium and many large firms simply use their DMS system for knowledge management. For example, it is very easy to set up a "Library" within the DMS, and have people save model research, forms & templates in there. The DMS may not search company email or the time, billing & accounting system, but it is going to search all documents everywhere that are client related, as well as everything else that isn't, but it contained in the "Library".

DMS Core Functionality

Legal document management software should have all the below **core functions**/features:

EASY COMPLIANCE – INTEGRATION WITH MAJOR APPS

In order to be convenient to use, the DMS must integrate with Word, Acrobat (or pdfDocs, Nuance PowerPDF, Foxit, etc.), Excel and any other major application in which you save documents or files. For instance, when someone clicks the Save or Open button in Word, the DMS must intercept and ask the user to "profile" or save the document, or find the document within the DMS.

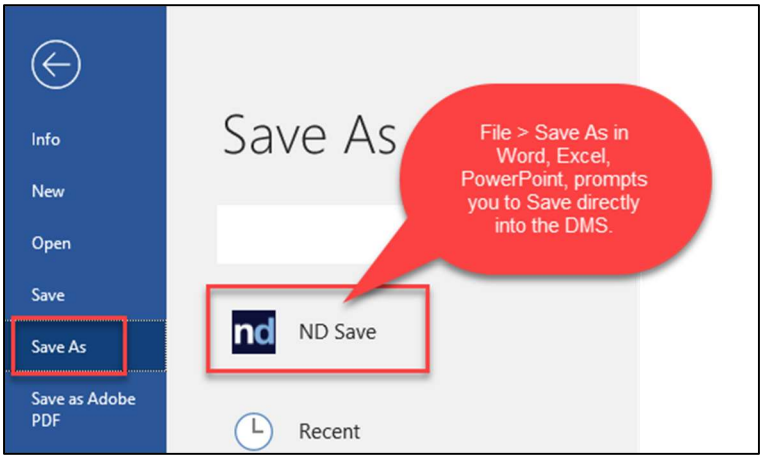


FIGURE 1

EMAIL MANAGEMENT – INTEGRATION WITH OUTLOOK

Email management is extremely important since most people feel crushed by email. A DMS is a full email management system (among other things). With a DMS, all emails related to a particular matter can be easily saved along with the other matter-related documents. Right now, without a DMS, users are saving emails in Outlook subfolders that no one else has access to, or they are saving emails to Windows folders through a very inefficient tedious process. Saving emails must be an easy process! Important features include:

One-click Saving: People do this constantly, every day. The process can't be time consuming, tedious or have too many steps. A good DMS solution will have integration with Outlook by selecting or opening an email and then simply clicking on a toolbar button to move a copy of the email into the DMS, as seen here in a screenshot from the Worldox document management system:

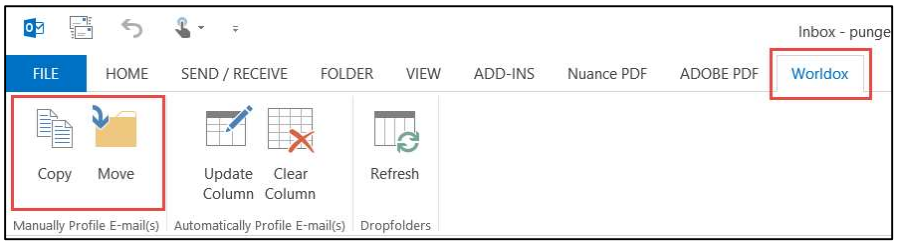


FIGURE 2

One selects an email and then hits Copy to Worldox or Move to Worldox.

Here is a screenshot from the NetDocuments document management system:

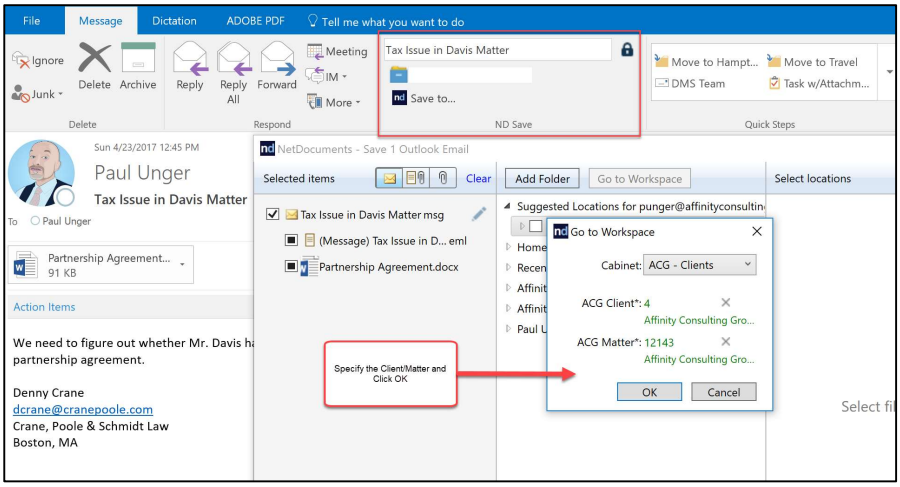


FIGURE 3

The user simply selects an email or multiple emails and using the ndSave function, can select the correct client/matter or area/matter.

Ability to save emails with attachments embedded in the native email format from within Outlook without "exporting" them or saving them somewhere else before they're moved into the DMS.

Ability to save only attachments easily into the DMS from a right-click on the email attachment and use the Save to the DMS Command as seen here with the NetDocuments integration with Outlook:

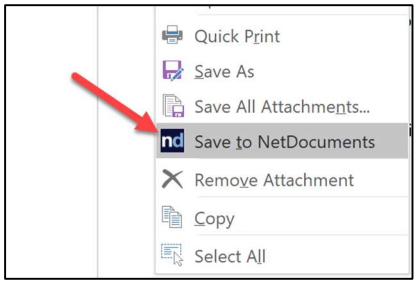


FIGURE 4

SAVING EMAIL USING ARTIFICIAL INTELLIGENCE (AI)

The NetDocuments' DMS has launched a pretty amazing new feature that uses AI to help lawyers automate the saving of email, eliminating many clicks from the above process. The feature is called ndMail. It is an optional add-on module that enhances the email filing experience from Microsoft Outlook by drastically reducing the time and effort required to save email messages into the client/matter folder.

Core to the application is the predictive email filing component which uses machine learning to determine which matter each email message in your inbox should be filed against based on the sender, recipient, subject and content from the actual message.

As a user highlights an email message in Outlook, the integrated ndMail panel will display suggested matters that it has determined may be appropriate for that email. They are listed in order based on the

its “confidence” of fit. The user can then make the decision to accept, override or ignore the suggested destinations:

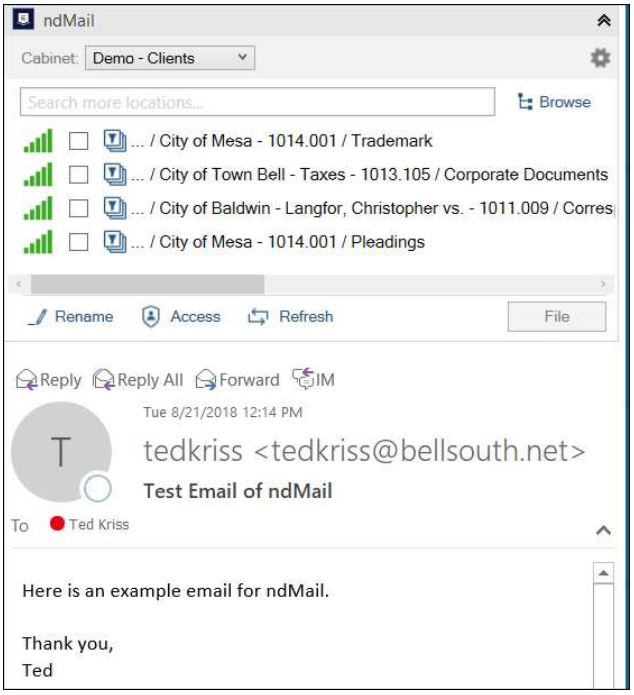


FIGURE 5

Most importantly, ndMail “learns” each time a user in your firm files an email with ndMail, which significantly increases the accuracy of suggested destinations over time across the entire firm.

ndMail also provides an email de-duplication service during the email saving process, as it reviews each message and instantly notifies the user if that email has already been saved into the system previously by anybody else at your firm.

FULL TEXT AND BOOLEAN LOGIC SEARCHING

If you have a document management program (like Worldox, NetDocuments, iManage or OpenText), you do not need to invest in a separate search engine (like Copernic, X1, dtSearch). The search engine functionality is part of the program, and within legal DMS programs, they are extremely powerful. Full text searching gives users wide-open access to their documents by framing searches based on concepts rather than categories. Users can search by many criteria - words, combinations of words, phrases, words within proximity of each other, expressions, etc. Each document matching the search terms is returned as a "hit" and the integrated file viewer will highlight each occurrence of a search term in the returned documents. This is exactly like doing a Lexis or Westlaw-type search through your own documents. When evaluating DMSs, you want the ability to view the documents in a viewer without actually opening them, you want to be able to use Boolean logic terms (and, or, not, near, etc.), and you want the search terms highlighted in the document the system found. This is a screenshot from Worldox, who has one of the best and cleanest advanced search dialog boxes:

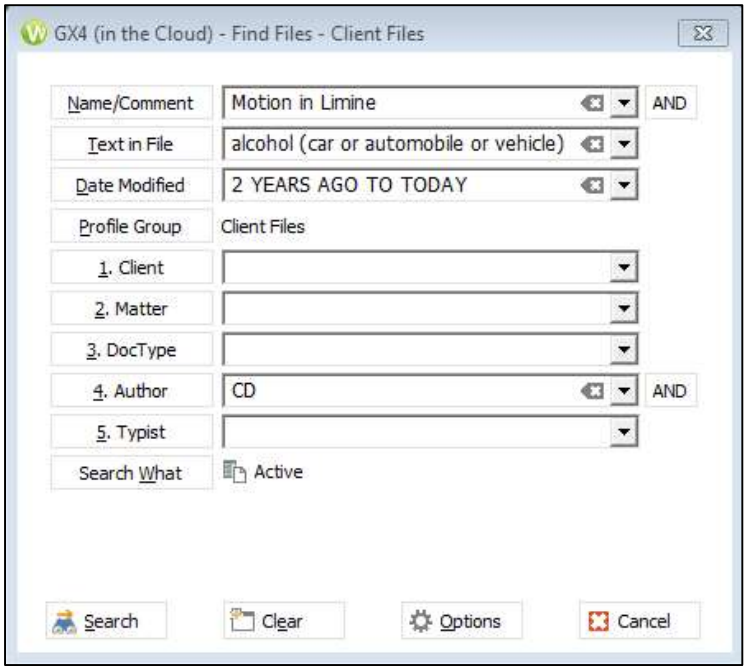


FIGURE 6

SIMPLE GOOGLE-TYPE SEARCHING

It is important for less tech-savvy people to have the ability to do quick simple searches with a "Google-Type" single search field, as best seen here in NetDocuments:

FIGURE 7

METADATA SEARCHES

In the realm of document management, metadata is the critical additional information stored about the document (other than the file name).

Metadata includes, but is not limited to, information like:

- Name
- Comments
- User-defined "tags"
- Indexed full text
- Email From

- Email To
- Email Sent Date
- Doc ID
- Date Modified, Created, Accessed
- Cabinet
- Client
- Matter
- DocType
- Author
- Typist
- Date (actual date associated with the document)
- Date range

This search capability ensures continuity and a smooth transition when someone leaves or joins your office. For example, if someone unexpectedly (and suddenly) left your office, it would be pretty difficult to determine exactly what they were working on before they left. However, if a document management system were in use, it would be quite easy to find every single document or email that person touched in the last 90 days (for example). It's one thing to have a log or list of documents they were working on; it's quite another to actually be able to find those documents. Furthermore, the searches can be narrowed down considerably. For example, I could easily find every pleading (document type), containing the phrase "motion for summary judgment" (text in file), created by a particular employee (author), between 11/1/2008 and 11/1/2009 (date created range), for any matter having to do with the Jelson Electric, Inc. (client name). I imagine that it is presently impossible for anyone in your office to even contemplate a search like that

OCR CAPABILITIES

As discussed above, the ability to OCR Image-Only PDFs to make them Text Searchable is critical. The DMS should be able to identify PDFs that are non-searchable and automatically OCR them to make them text searchable. This should happen on the back-end automatically, so users do not have to waste time running the OCR process on every PDF they scan or receive via email. Most DMS systems utilize add-on products like Symphony OCR or ndOCR to perform the OCR automatically.

GIVE CLIENTS/EXTERNAL USERS SECURE ACCESS TO SOME DOCUMENTS

Systems like NetDocuments have collaboration tools natively built-in because they are designed using pure cloud architecture. In other words, you don't need to buy an add-on product like Citrix ShareFile in

order to create a place to share documents with clients. This is a screenshot taken from NetDocuments, showing this feature, which they call Collaboration or Share Spaces:

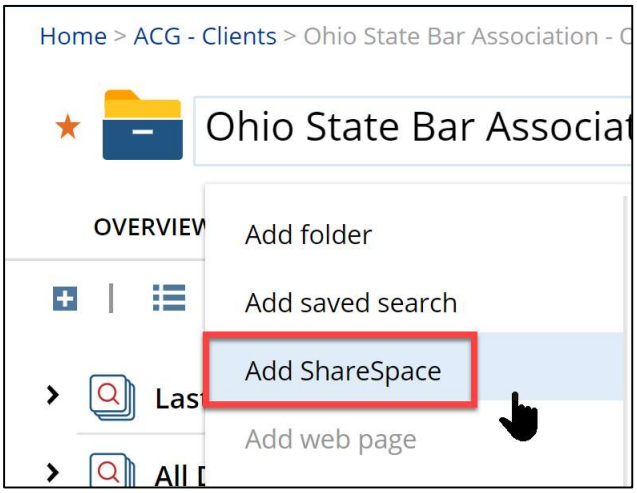


FIGURE 8

NO ACCIDENTAL DRAG & DROPS

A frequent issue reported to us is the cry for help when a document folder goes missing. Those folders are often accidentally dropped into a different folder and the user has no idea what happened. This is impossible with a document management system. Moreover, if documents do get moved accidentally, the audit trail would accurately identify what happened, when it happened, and who did it.

DELETING DOESN'T HAVE TO MEAN DELETED

The office can set up a rule where deleted documents go to a 'trash' holding place where they can be auto deleted after a certain number of days or kept until an administrator empties the trash.

ORGANIZE A LIBRARY OR BRIEF BANK

A document management system can be incredibly helpful when it comes to categorizing and protecting forms, templates, precedents and organizing a brief bank by topic that is fully text searchable. Create a dedicated cabinet that is fully searchable to tap into your organization's knowledge base.

ABILITY TO SAVE MOST ANY FILE TYPE

The DMS must be able to hold any type of file you've created in-house as well as any type of scanned document (PDF, TIF or JPG) which will typically represent the documents you're received from the outside. A search must turn up all relevant documents regardless of physical location, format, and source application. For example, we have seen plenty of copier-based applications which only hold documents you scan. It does little good to have scanned documents in one system and all of the documents you've created in-house in another system. The idea is to get everything related to a matter in the same system, including documents you've created in-house, documents you've scanned, faxes, hand-written notes, email and attachments to email.

VERSION TRACKING/MANAGEMENT

The DMS must be able to keep multiple versions of every document. This becomes very important when a document is undergoing revision and is being passed back and forth between attorneys. Most DMSs will keep over 100 versions of every document along with a detailed audit trail noting who did what to the file and when. When the revised document is saved within the system, it will prompt the user with the option to save it as another version, as see here with Worldox:

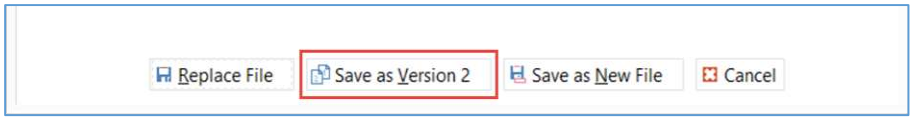


FIGURE 9

Once saved, whenever that document appears in a search result or list, the DMS groups all of the versions as one listing, and indicates that there are multiple versions available of that document, as seen here in a screenshot from NetDocuments:

FIGURE 10

If users want to see all versions of the document, they can right-click and select list versions and see a complete history:

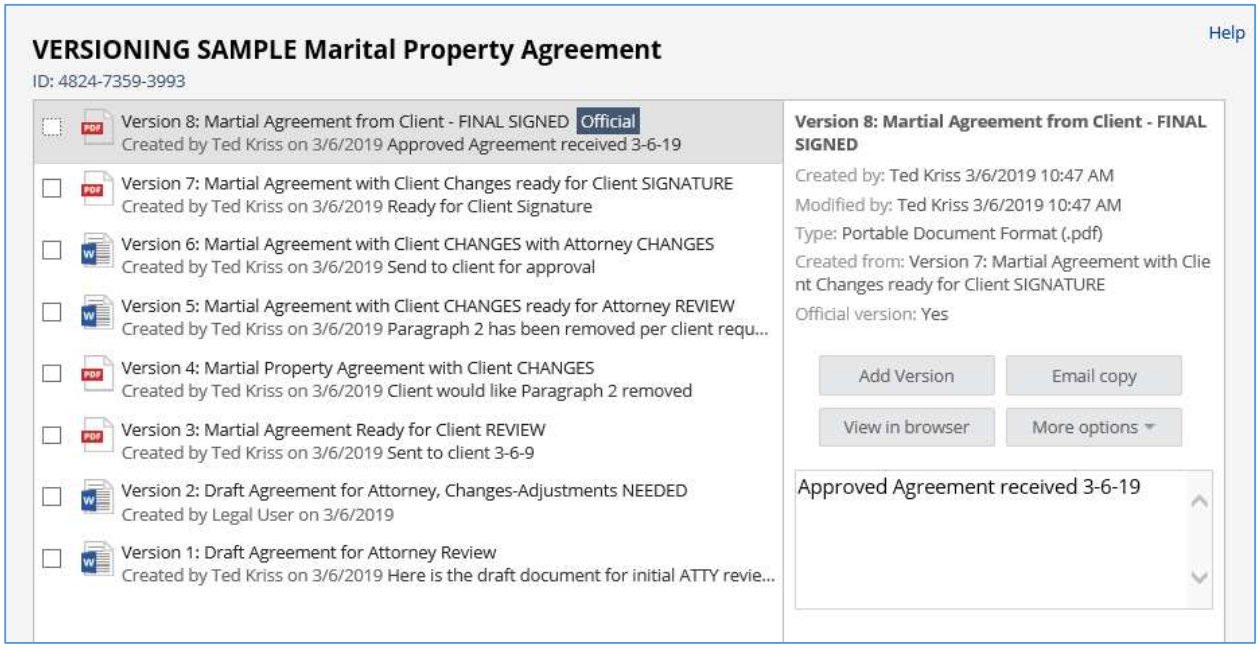


FIGURE 11

ABILITY TO COMPARE DOCUMENTS

Related to version tracking, users must also have the ability to compare different versions of a document or compare one document to another. In order to compare documents, some people use the compare features built into MS Word while others use 3rd party applications like CompareDocs or Workshare Professional (fka DeltaView). Since all of the documents being compared to one another will be stored in the DMS, the DMS must integrate with these functions in Word or 3rd party programs. Not all DMSs incorporate this functionality which is why this is an important question to ask up front.

AUDIT TRAIL / DOCUMENT HISTORY

The DMS must be able to automatically audit all transactions related to a file saved within the system so it is easy to determine with files were first created, see everyone who touched it, and determine things like when files were copied, printed, emailed or deleted from the system.

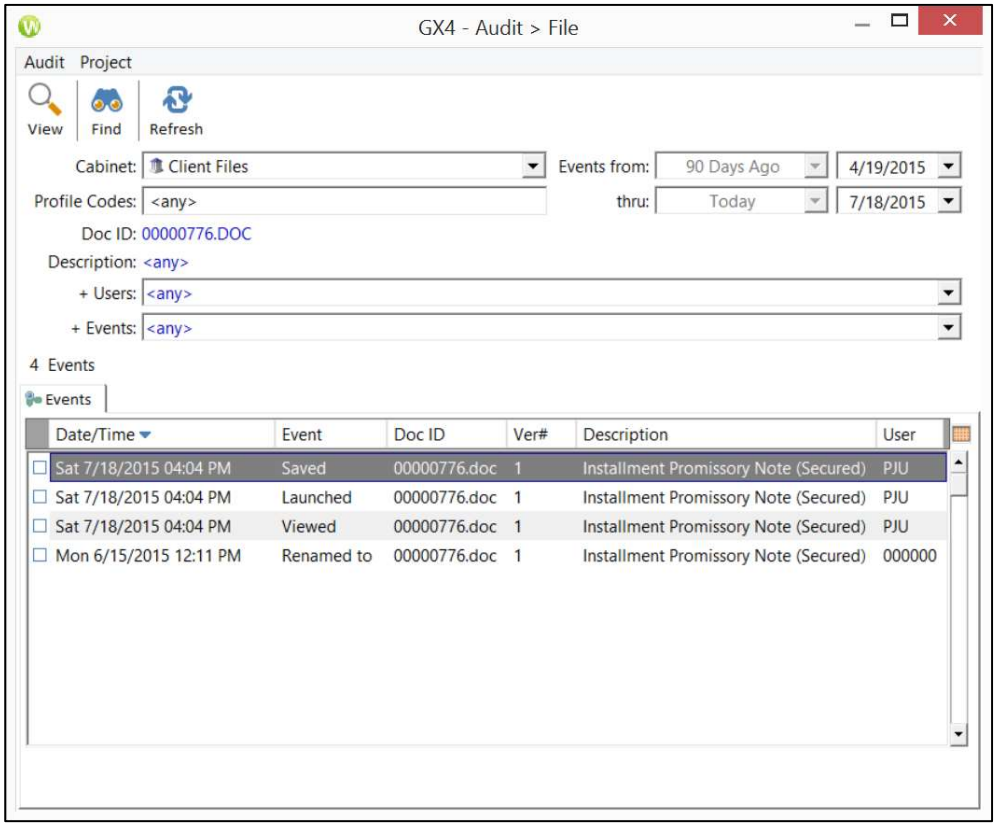


FIGURE 12

FOLLOWING A DOCUMENT

If you want, you should be able to have the DMS system notify you if a document has been reviewed or edited.

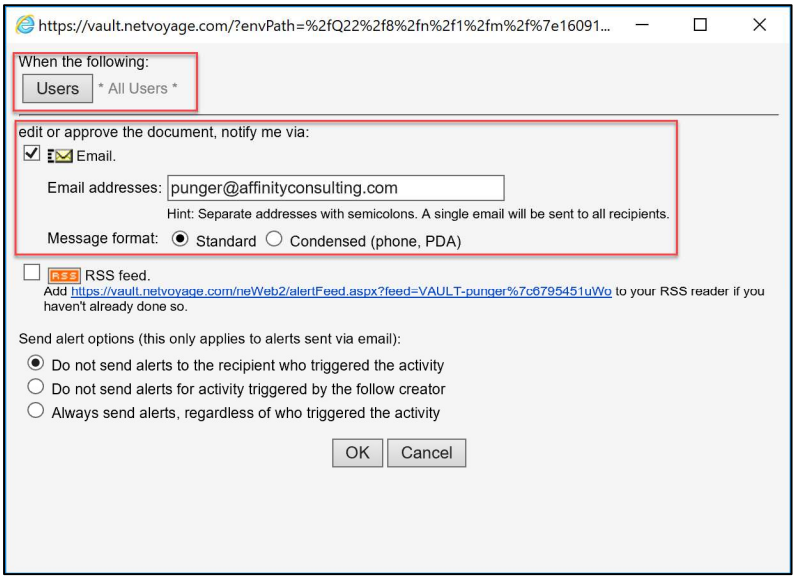


FIGURE 13

ARCHIVING

Archiving is a means to move dated or unused files off the main storage medium to secondary storage. The DMS ensures that users can still search for information in the archived files and that there is a ready means to restore it. Many DMSs will allow site administrators to set "triggers" in the document profiles that enable automated archiving. For example, it may be desirable to set internal memos to be archived automatically after say, 24 months.

OFFLINE ACCESS

The DMS must be accessible when you're not in the office or if you lose connectivity … at least the most recent documents that you have touches. You will need to have full access to those recent documents. This functionality is called “mirroring” or “caching”.

REMOTE ACCESS

It is critical that lawyers have access to the system via the web, from an iPhone, iPad or other mobile device. All major legal document management programs (Worldox, NetDocuments, iManage and OpenText) offer these solutions and this incredibly convenient access.

SCANNING INTEGRATION

Scanned documents must be easily added to the DMS so that they are included in the document store and can be associated with matters, clients, and the like. All the major legal DMS programs have direct integration with the Fujitsu ix1500 desktop scanner. This is important because the ix1500 is the most popular desktop scanner in North America.

CONSISTENCY

The system must ensure that documents are consistently labeled and stored. This means that profile fields are drop-down lists and people don't have to manually type document types, client and matter identification numbers, etc.

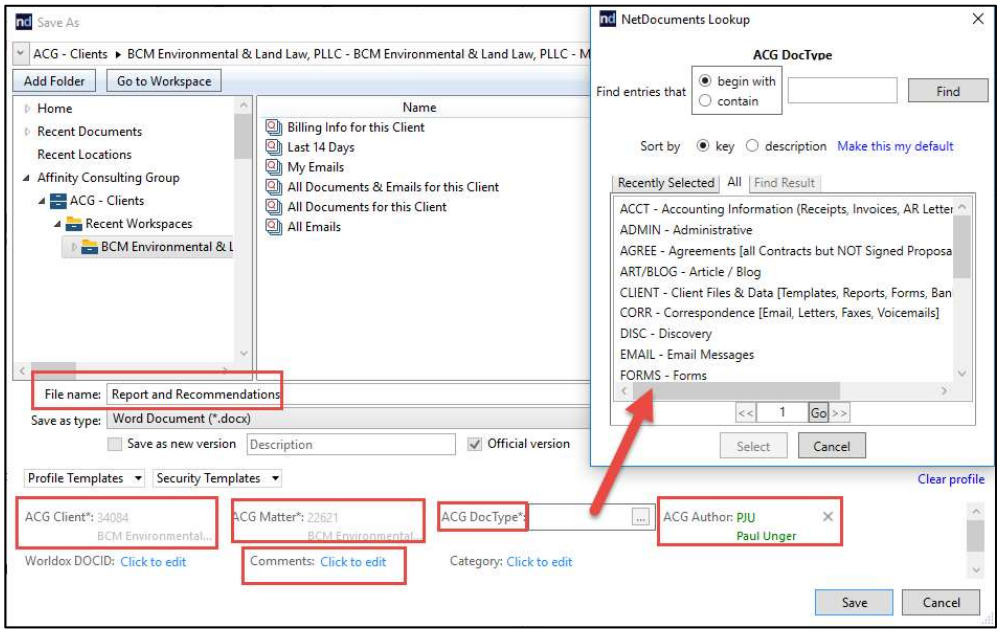


FIGURE 14

LEGAL DMS MAIN PLAYERS

I've listed below the main players in the legal market, but there are many other options:

NetDocuments: See www.netdocuments.com. This is a pure cloud-based option and is therefore going to be less expensive up front than the on-premise options. NetDocuments is easily the most mature cloud DMS platform on the market today. NetDocuments is currently one of the most popular DMS for most firms, and is a great choice for firms of all sizes.

Worldox: See www.worldox.com. Worldox is also one of the most popular DMS options. It can also accommodate larger environments, but NetDocuments, iManage and OpenText are probably better suited for very large environments (over 350 users). Worldox's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

iManage: See http://www.imanage.com. iManage is an excellent program, but it tends to cater to large enterprises. iManage's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

OpenText (formerly Hummingbird): See http://www.opentext.com. Like iManage, OpenText tends to cater to large enterprises also. OpenText's core product is terrestrial (on-premises), but they do offer a hosted hybrid cloud solution.

DOCUMENT MANAGEMENT WITHOUT DM SOFTWARE (HOME GROWN DMS)

From a productivity standpoint, an enormous amount of time is collectively wasted daily in law firms and legal departments searching for documents when documents are managed poorly. Unfortunately, in our experience, most organizations, no matter the size, have poor document management practices if they do not have document management software. It's simply too hard to police and monitor to make sure that people comply … ie. Saving documents in the central designated location and doing so in a consistent manner. As the firm size grows, so does the need and justification for a DMS. That said, sometimes there isn't money in the budget right now. So what can you do in the interim? What are the essential elements?

CENTRAL FOLDERING THAT IS MATTER-CENTRIC

It is critical that documents are saved by **client/matter, or within a legal department by area/matter**, and not by user. Saving documents by user can create lots of problems, such as:

- Documents for one client being located in more than one folder.
- Revision conflicts.
- Losing things permanently if staff turns over. Turnover creates an administrative nightmare for everyone in managing those documents. Saving by user results in duplicate files and no one really knowing what is the authoritative version of a document or how matters were left.

Saving documents on a user's local hard drives is a big no-no as well. Those documents are not getting backed up! They need to be saved centrally on a file server or in the cloud, within one matter folder. You can create a logical directory layout, find documents easier, and it makes backing up your documents simpler. You can use Windows active directory security to limit access to folders based on users.

If S is your server drive where your documents are located, you may create something like:

- S:\Clients
- S:\Accounting
- S:\Marketing
- S:\Admin
- S:\Library

It would look something like this:

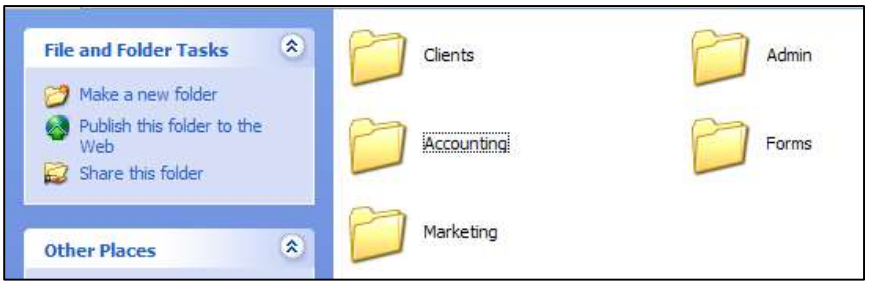


FIGURE 15

If S:\ is your server drive, you'd create a folder called S:\Clients, and sub-folders for each client thereunder:

- S:\Clients\Carsey, Joe
- S:\Clients\Cochran, Doug

Within the specific client folder, you would have a subfolder for each matter.

S:\Clients\Smith, John\Real Estate - Sale of 123 Maple St

- S:\Clients\Smith, John\Real Estate - Purchase of 400 E Main St
- S:\Clients\Smith, John\Divorce

Within each matter, you would have a subfolder for each document type (correspondence, memos, pleadings, etc.)

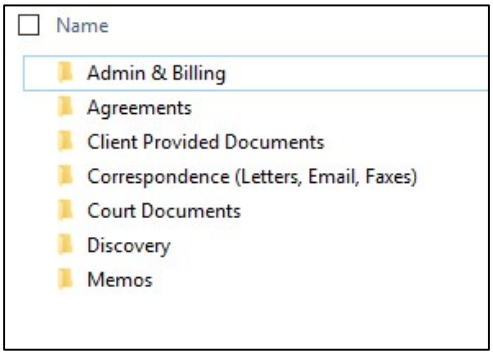


FIGURE 16

We recommend keeping an empty set of these folders and then pasting them into each matter/case created so that you have a consistent folder structure for all of your matters/cases. This will also make it much easier later down the road if you decide to purchase a full-blown legal document management system. Migrating documents to the new system will be much easier.

SOLID NAMING SCHEME

Just like the paper file, most people would like everything sorted by true chronological date. To accomplish this, precede every file name with a date, year first. If you enter the date month/day/year,

then all of the January files (for all years) are lumped together, all of the February files are together, etc. Recommended naming convention:

2020-10-30 - Letter to Rob Miller re Jared.docx

2020-09-10 – Letter to Jared re Paula.docx

2019-01-14 – Letter to Judge Smith re Nothing in Particular.pdf

The date indicates the date the document was mailed out if it's a letter; and the longer description makes it clear what this document contains without even opening it.

SEARCH ENGINE PROGRAMS

One of the most common technology problems facing lawyers today is difficulty finding their documents and email. We are forced to "re-invent the wheel" because we cannot tap into the intellectual capital of our (and others') previous creations. We are constantly forced to do research over and over, and then re-write things from scratch, resulting in loss of productivity and sometimes inconsistent advice to clients.

Document management systems (DMS) solve this and many other document management problems, but a full blown DMS requires an investment of time and money. If a full robust document management solution (discussed below) is not in your budget at the moment, or just not needed right now, you would definitely benefit from a search engine or a search program in the interim. These programs crawl through entire folder structures and will create an index of every single word in every single text-searchable document going back to the beginning of time (late 80's when word processors were first utilized). It is important to note that the document must be text-based/text-searchable (see discussion below on OCR Tools).

WINDOWS SEARCH ENGINES

Copernic Desktop Search: See www.copernic.com. There are three versions of Copernic, Home (FREE), Professional ($49.95) and Corporate ($59.95). Unless you're installing it in a very large firm, you only need the Professional version. You can try the free home version, but one of the limitations of the free version is that it does not search network drives. So unless you're keeping all of your files on the C:\ of the computer you're using (I certainly hope you're not doing this), the Home version will not help you very much. Copernic will search all of your files (Word, Excel, PowerPoint, PDF, HTML, WordPerfect, text and another 150 types of files). It will also search your Outlook email and any attachments to email.

X1 Search Engine: See https://www.x1.com/products/x1-search/. Very similar to Copernic, X1 will also creating an index that is searchable in seconds. X1 retails for $96.

dtSearch: See www.dtSearch.com - $199 - one of the most sophisticated and fast search engines I've ever seen. It provides the most search options and file types that it can recognize. If you need industrial strength search capability involving enormous numbers of documents, this is your program.

Filehand: See www.filehand.com - FREE. Instantly search for files on your computer, by content. See the extracts of the files you found, even for PDF files. Scroll through the extracts so you can quickly find the

information you're looking for. Find the file you are looking for, even when many files match, because Filehand Search sorts the results by relevance.

Windows Instant Search (Windows 7 and 10): The Windows operating system has a basic, but powerful ability to search all folders.

APPLE/MAC SEARCH ENGINES

Spotlight Search (Mac OSX): This is included with the Mac OSX operating system. For more information, see http://support.apple.com/kb/HT2531

EasyFind: If you are looking for something a little more robust than the Spotlight Search, EasyFind is one alternative. Free - see http://easyfind.findmysoft.com/mac/

HoudahSpot: $15 - see https://www.houdah.com/houdahSpot/download.html.

OCR TOOLS

As discussed above, in order for a document to be searchable, it must be text based. MS-Word documents, Word Perfect documents, Excel Spreadsheets, PowerPoint files are all natively searchable because they are natively text-based. PDFs may not be IF they are generated from a scanner or copier. PDFs are searchable if they converted to PDF (using an add-in, driver, or printed from Word, Excel, or PowerPoint. If a PDF is generated from a scanner, then there is an extra step that must be taken in order for that image-only PDF to become text searchable. That step is called Optical Character Recognition (OCR). This is a process that takes a short amount of time. On average, a 1-10 page document will take 5-30 seconds to OCR. That number increases significantly as the number pages increases. Generally, this is not a function that you want to require staff to perform. It is not a good use of their time, and as a practical matter, it just doesn't get done a huge part of the time, resulting in a bunch of documents that people can't search!

Many computer users don't even know what OCR means and they just assume the search tool is broken because it is "not finding my documents, and I know it is there!" Many of these image-only PDFs come if from clients, or opposing counsel, or from a discovery production. Some come from your copier. As you may know, To address this problem, we strongly recommend a third-party back end OCR tool like SymphonyOCR or DocsCorp Content Crawler. These solutions will look at any PDF deposited in a document management system (for NetDocuments, Worldox and iManage), or a plain Windows folder structure and run the OCR function automatically. ndOCR is an add-on to NetDocuments that retails for about $3/user per month. These solutions allow you to quickly scan PDFs into the system without the time-consuming process of converting them to searchable PDFs at the time they're added. It also will OCR all your old or legacy PDFs that are currently in Windows folders and Legal Server. This may not sound like a huge issue, but it will save you and your office hundreds of hours per year. See http://symphonysuite.com. The cost of Symphony is roughly $45/user/year.

Next Generation: Practice Management Applications

WRITTEN BY:

Darla Jackson
Natalie Robinson Kelly

PRESENTERS:
Darla Jackson: @darlaj_okbar
Natalie Robinson Kelly: @NatalieRKelly

January 5, 2020

NEXT GENERATION: PRACTICE MANAGEMENT APPLICATIONS

Law practice management applications (PMAs) are not a one-size fits all proposition. When considering which of the many law practice management solutions is best, the answer depends on your practice and the structure and organizational culture of your firm. The rapidly changing market of practice management solution vendors and the available features from these vendors makes it difficult to select a single solution that is "best" in every situation. Further, no one can be as familiar with the goals, workflows and client needs of a law practice as the attorneys and support staff. This information is essential when trying to determine the best practice management solution to help the firm or practice accomplish its goals and provide quality legal services.

What is a Practice Management Application?

Before continuing with a discussion of practice management applications, it is important to define the term. While one might think that most attorneys know what practice management applications are, the data from the 2019 ABA Legal Technology Survey indicates that practice management adoption remains relatively low with just over half, 53.1 percent, of survey respondents reporting having it available for use at their firm."[1] And because a few law schools offer courses in law practice management and/or technology as part of their curriculum, attorneys may have had no familiarity training with practice management solutions as part of their law school education.[2]

A law practice management application is a technology tool (software as a service) that assists with a wide variety of law firm management and case management issues, ranging from billing and invoicing to organizing the documents in a digital client file and provide "…attorneys with a convenient method of effectively managing client and case information, including contacts, calendaring, documents, and other specifics by facilitating automation in law practices. It can be used to share information with other attorneys in the firm and … help prevent having to enter duplicate data in conjunction with [time and] billing …"[3] functions or features.

In part because the term case management software and practice management have been used interchangeably for some time, there has been confusion about how practice management and case management differ. Even in the 2019 ABA Technology survey the terms are used together leading 64.3 percent of the respondents to the survey to respond that they use Outlook for case/practice Management.[4]

The Subjective Nature of Intuitiveness and the Related Need to Be Inclusive

How intuitive a particular practice management solution is may be a matter of subjective judgment. While one practice management solution may seem very intuitive, the same solution may not seem intuitive to

[1] American Bar Asso., 2019 LEGAL TECHNOLOGY SURVEY REPORT COMBINED Volumes, at III-33.
[2] Richard S. Granat and Stephanie Kimbro, "The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm," 88 Chicago – Kent Law Review 757, 758-759 (2013), https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3978&context=cklawreview.
[3] Joshua Poje, *Practice Management*, ABA TECHREPORT 2016, AMERICANBAR.ORG (Dec.1, 2016), https://www.americanbar.org/groups/law_practice/publications/techreport/2016/practice_management.html.
[4] American Bar Asso., 2019 LEGAL TECHNOLOGY SURVEY REPORT COMBINED Volumes, *supra* note 1 at III-42.

others. This is one primary reason to include of all staff and attorneys in the selection process. Their inclusion will help ensure selection of a system that is intuitive to the greatest number of users.

Because they are often very familiar with the sometimes-undocumented goals and operations of the firm and practice, support staff and other end users like junior attorneys can assist in choosing the solution that best integrates with the goals and current workflows of the practice.[5] Involving members of the entire firm in the process will encourage buy-in and increase the likelihood that the practice management solution ultimately selected is used.

Keys to Law Practice Management Applications

The ABA TechReport 2016, written by Josh Poje, contains good advice on selecting a practice management solution. In the section on practice management, Mr. Poje suggests that attorneys review their current systems, research their options, consider possible changes to business procedures and plan for training.[6]

Poje points out:

> Failing to clearly understand your current setup and how it is or isn't working for you is the easiest way to waste a pile of money [and time] on technology. The pattern is all too common: lawyer is frustrated by their tech; **lawyer throws money at the first alternative with a decent review (usually anecdotal from a colleague); lawyer switches and discovers a month or two later that the new tool did nothing to solve their problems**. [emphasis added][7]

It probably does not surprise many of you that a significant number of attorneys may be unaware of the full capability of their chosen solutions.[8] A review of current systems is an important early step in the selection process. However, you must consider the goals of your firm or practice prior to reviewing whether your current system is meeting those goals.

Five Steps When Choosing Law Practice Management Software, published in Law Technology News, also suggests starting the process by examining the goals of the firm.

> … the starting process for deciding which tools a firm should use should begin with an analysis of the long-term goals of the firm. For instance, solo firms intending to remain solo should have different goals and needs than solo firms hoping to bring on additional attorneys and staff. Small firms hoping to add remote staff in the future have different needs than firms [where] everyone shares an office. Firms that offer alternative fee

[5] Joshua Poje, *supra* note 3.
[6] *Id*.
[7] *Id*.
[8] "… if you already have a practice management application but are barely scratching the surface of what it can do for you … illuminate its potential." Wells H. Anderson and JoAnn Hathaway, "All-in-One Practice Management Applications," GpSolo, (July/Aug. 2014) at 51, www.americanbar.org/publications/gp_solo/2014/july-august-2014/allinone_practice_management_applications.

> arrangements or document automation have different needs than firms that have no plans to ever alter their business model.[9]

Don't Rush In

Even with firms committed to following an appropriate process, there is a tendency to rush to an examination of the features available from particular practice management solutions. While several law practice management solutions may have some similar features, they do not offer identical features. You must establish the priority of your needs and then see how a product matches up to your priorities.

Tom Lambotte suggests that some of the more established case or practice management systems available have become what he terms "bloatware" be-cause of the numerous features the vendors have added in response to user requests.[10] "The problem with adding on every feature request for 5, 10, 15 years or more is that features, when you are not able to easily access them, become worthless. The software becomes so intimidating and non-inviting to the user that it simply goes unused."[11] This is just a reminder that when you begin to consider features, you may not want to look at the number of features but the set of features that will meet your goals.

If one of your goals is to prepare for the future, you may not only want to consider current feature sets, but also consider what types of features are on the PMAs roadmap. And consider the companies that the PMA vendor has acquired and whether the PMA has historically emphasized partnerships or integrations with other cutting-edge partners. For example, CLIO has traditionally supported integrations and in 2018 CLIO acquired Lexicata with a plan to expand its customer relationship management (CRM) functionality.[12]

Failing to fully consider goals and priorities and rushing into a selection, may be some causes of lack of satisfaction with a PMA. The 2019 TechReport notes there has been a slight decrease in the satisfaction with Practice Management Applications and suggests that the

> … level of satisfaction decreasing slightly indicates … that these programs do have room to continue to improve as more firms look to these programs as a potential option. It is also important to note that user expectations increase with every passing year, and with the larger selection of practice management systems, each with their own set of (mostly overlapping features), users are growing accustomed to wanting more specialized

---

[9] Aaron Street, "Five Steps When Choosing Law Practice Management Software," Law Technology Today (July 23, 2015), https://www.lawtechnologytoday.org/2017/03/choosing-law-practice-management-software [https://web.archive.org/web/20170713113759/http://www.lawtechnologytoday.org/2017/03/choosing-law-practice-management-software/].

[10] Tom Lambotte, *Features Are Worthless: A Case for New Case Management Software*, GlobalMacIT (n.d.), https://www.globalmacit.com/features%20areworthless/?inf_contact_key=5505b3edc6fba10aab%203179151234b0ed%2064891daba7cb8b8ba2e4e42304cfdeab [https://web.archive.org/web/20200113180518/https://www.globalmacit.com/features-%20areworthless/?inf_contact_key=5505b3edc6fba10aab%203179151234b0ed%2064891daba7cb8b8ba2e4e42304cfdeab].

[11] *Id.*

[12] CLIO, *The newly available Clio Grow combines with Clio Manage, Clio's trusted practice management software, to create the Clio Suite*, GLOBENEWSWIRE.COM (Jan. 30, 2019), https://www.globenewswire.com/news-release/2019/01/30/1707733/0/en/Clio-Grow-Clio-s-new-client-intake-and-legal-CRM-software-now-available.html.

features and automation, and as such need to pay more attention in selecting their practice management system, so as to make sure they select the ones with the optimal features for their practice types.[13]

Budget Considerations

Before you look at features and examine your options, you must set your budget. As Mr. Poje says, "Shopping for new technology with a vague budget is an easy way to ensure you overspend."[14] Robert Ambrogi offers similar advice, "Determine your budget for a practice management system and then shop for systems that fit it. Prices range widely."[15] Mr. Ambrogi further notes that cloud-based systems charge monthly subscriptions ranging from $39 to $105 per user per month if paid annually.[16]

Remember that your budget should be realistic. Issues such as whether you will select a web-based system or a more traditional on-premises solution[17] will influence your budget. If you select an on-premise solution you may also need to consider if you must include the cost of a technology consult or IT

---

[13] Alexander Paykin, 2019 Practice Management in the ABA TECHREPORT 2019, AMERICANBAR.ORG (Nov. 06, 2019), https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/practicemgmt2019/ "While 33% of users reported being 'very satisfied' with their software, a 1% increase from last year and an 8% increase over two years ago, the percentage of attorneys reporting being 'somewhat satisfied' has decreased 4%, shifting from 61% in 2018 to 57% in 2019. This level of being 'somewhat satisfied' is tied with 2016 as being the lowest level of being 'somewhat satisfied' in the last four years…This decrease in satisfaction is even more evident in the 3% increase in users reporting they are "not very satisfied" with their software, with 9% of users now reporting this. This is the highest percentage reporting this level of satisfaction over the last four years."

[14] Poje, *supra* note 3.

[15] Robert Ambrogi, *This Week In Legal Tech: 6 Questions To Ask Before Selecting A Practice Management System*, ABOVE THE LAW (Jan. 23, 2017), https://www.abovethelaw.com/2017/01/this-week-in-legal-tech-6-questions-to-ask-before-selecting-a-practice-management-system.

[16] *Id.*

[17] See Wells H. Anderson and JoAnn Hathaway, *supra* note 8, at 52-53 for a discussion of traditional versus cloud applications. Sharon Nelson indicates that the decision between cloud or an on-premise alternative may be the first decision in selecting a practice management solution. Sharon Nelson, *Cloud or On-Premise?* in TIPS FOR CHOOSING PRACTICE MANAGEMENT SOFTWARE, ATTORNEY@WORK BLOG (July 8, 2016), https://www.attorneyatwork.com/choosing-practice-management-software/.

support in your budget. Support is included with most web-based system subscription. But even traditional premise-based applications, such as TABS/PracticeMaster are converting to subscription-based business models as demonstrated in the pricing information below and are also acquiring alternative providers that have already developed web-based systems.[18]

Consultants can be essential partners in making determinations about practice management applications, but also be aware that most consultants make money in three ways:

> … (1) the consulting fee you pay for their advice, (2) re-seller commissions when they refer a sale to particular vendors, and (3) on-going hosting/support/training/customization contracts ... Pay particular attention to consultants who "always" or "never" recommend cloud-based software solutions for law firms, since those vendors may not be making recommendations based on the specific needs of their law firm clients …[19]

When working to set a realistic budget, also consider the "murkiness" of the web-based practice management solution subscription costs.[20] While most vendors feature the subscription pricing on their websites, the cost of other applications integrated with the PMA or other factors, may cause significant pricing increases.[21] While some transparency regards pricing of web-based systems, add-ons or upgrades may affect the pricing.

Rather than engage in a lengthier process that begins with consideration of the firm's goals and includes examination of features, some attorneys may desire to turn to the state bar's listing of member benefits to see what practice management solutions provide a discount and are "acceptable" according to the bar.

Some take the following to mean they should only select a practice management solution endorsed by the state bar association:

> Many cloud service providers are upstarts or new side ventures for existing companies. The cloud service provider your firm entrusts its data to should be recognized by the ABA, multiple state bar associations, and generally be well regarded in both the legal and technical communities.[22]

But endorsement and inclusion on a membership benefits list are very different procedures. Most bars do not endorse practice management solutions although the vendors of these solutions may offer discounts to members of the bar association. Bar associations often provide a disclaimer stating as much. Attorneys should interpret no list of member benefits as indicating that a practice management solution includes

---

[18] Software Technology LLC, developer of Tabs3 Software, acquired CosmoLex, a cloud-based practice management platform in the latter part of 2018. Bob Ambrogi, *Breaking Practice Management News: Tabs3 Acquires CosmoLex to Expand in the Cloud*, LawSites (Oct. 2, 2018), https://www.lawsitesblog.com/2018/10/breaking-practice-management-news-tabs3-acquires-cosmolex-expand-cloud.html.

[19] Aaron Street, *supra* note 9.

[20] Robert Ambrogi, *This Week In Legal Tech: Practice Management Pricing Gets Murky*, ABOVE THE LAW (Oct. 24, 2016), https://abovethelaw.com/2016/10/this-week-in-legal-tech-practice-management-pricing-gets-murky/.

[21] *Id.*

[22] Dennis Dimka, *Hosted vs. Web-based Legal Practice Management*, LAW TECH. TODAY (July 23, 2015), https://www.lawtechnologytoday.org/2015/07/hosted-vs-web-based-legal-practice-management./.

specific features or meets the security requirements for acceptable storage of confidential client information in the cloud.

A Discussion of Law Practice Management Application Features, Current and Future

Most attorneys (and support staff) want to know about the features of specific practice management solutions. While a discussion of the features of the most popular practice management solutions is beyond the scope of this work, it is important to discuss at least some features that are currently available via several practice management solutions and to call attention to a few developing features.

Basic Features of PMAs

Before launching into the laundry list of basic features found in modern practice management solutions, it is necessary to point out that lawyers in 2020 are less likely to implement such programs on local office networks, but instead are now more likely to implement programs over cloud-based platforms, with larger firms adopting cloud hosting platforms which house their selected solutions. Whether cloud or on-premise across a local area computer network, the basic features of practice management solutions are the same.

Calendars

PMAs include calendars which allow users to track appointments or events at specific times. With most lawyers using Microsoft Outlook for email and increasingly utilizing the program for its calendar features, most PMAs include a direct bi-directional input or synch to Outlook. Some solutions take full advantage of Outlook and have been developed to utilize the Outlook calendar as the solution's main system calendar. However, because practice management calendar events are often directly affecting client matters within the solution, most program vendors have not eliminated their own calendars.

Many practice management solutions allow users to share a group calendar easily; and with tight integration to client matters within the programs, this feature is one key to building blocks for law office workflows.

Tasks

Tasks or to dos is another basic feature of practice management solutions. Rounding out calendar features, users can input a list of items to be completed. These lists of to do items can be linked and even attached to event records making the systems capable of creating an actionable checklist directing users to perform certain tasks at specific times on the calendar. This linking of to dos and appointments can be managed in templates called workflows in many programs.

Contacts

Contacts are a standard and key feature in practice management solutions. Contact records contain not only basic contact information typical of any contact or customer relationship management system, they also allow for grouping by role, i.e. judges, adjusters, opposing counsel, etc. This sorting and labeling across contacts and allowing users to input both client and non-client records is the modern-day version of the firm rolodex.

Matters

At the heart of all practice management programs are matters or files. The record for a matter/file/case in practice management becomes the main item to which all other features revolve. Users input calendar entries – both events and to dos – and relate them back to a specific matter belonging to a specific contact, or sometimes multiple contacts.

Matter records will typically track every transaction for a matter/file/case. Vendors differentiate their features by offering end-user access to space and capacity for managing this information. For instance, some programs allow users unlimited fields for customized data, i.e. case styles or headers, etc.

Communications

Tracking communications had been a function eluding the sphere of many PMAs. However, that has now changed dramatically as programs no longer just look to integrate email mailboxes and track phone call records. Client portals have delivered a secure platform for external contacts, mainly clients, to interact with law firms. Many regulatory professionals appreciate a solution for the age-old problem of lawyers not remaining in contact with clients. Clients can now get a username and password and login into their case information and even upload documents and pay their legal services bills with the client portals now native to online PMAs.

Email tracking is made easier and two-way integrations are common, especially with popular systems like Outlook and Gmail. Plug-ins for Outlook and Chrome Extension Add-ins and other tools allow practice management users to easily designate a single email or communication thread to the main email program.

Basic telephone call tracking is done with simple input of client or contact and matter/file/case linking. Task integration allows steps for managing calls to be added to workflow templates and can be found in steps as early as client onboarding and intake.

Document Management

With matters/files/cases, users can add documents. Arguably, it had been easier to attach documents to legacy systems because documents resided on the very same local area network as the practice management software. But with increased internet speed and capacity, online PMAs now find it easier to upload documents and have them designated for a specific record – contact, client matter, phone call record, etc. by users.

Sorting and arranging documents and finding them within the PMA has had its functionality expanded through integrations with both traditional document management platforms like Worldox and NetDocuments; and popular online document storage platforms like DropBox, Google Drive and Box.

Document Generation

Using practice management data from all its records, users can generate form letters and documents from within PMAs. As with other feature expansions made possible with integrations, document generation can now also be started from within external programs, and most notably word processors and email programs, like Word and Outlook.

Research

Legal research is not managed natively within practice management programs, but instead appear as attached notes or is linked to for access directly from a matter record or issue on a specific matter record. However, the ability of a program to make convenient access to research key to a matter/file/case is an attractive feature for a modern practice management solution.

Time Tracking

Tracking time is the bane of many a lawyer's existences. Yet, it is imperative in a product which looks to bridge capturing and managing the required information for matters to billing for the work produced from this information. Time tracking is included in PMAs, and entry via pop-up timers and real-time record tracking are common ways for users to track the time they expend on matters. Records are tabulated and relayed via reports to end users. Convenience is added to time tracking entry by allowing for automatic text expansion with abbreviations and entry direct from voice transcription functionality.

Billing

Taking time entries and turning them into invoices is a key feature of modern PMAs. Billing functionality within solutions feature options for sorting and tracking billing entries, payments and individual transactions attributed to specific matters and/or specific clients. Tracking payments and accounts receivable information is enhanced by the delivery of this information to clients via the client portals built into most PMAs.

And integrated electronic payment platforms like LawPay make it easier for lawyers to bill clients and get paid for their work more readily. Systems can track what is owed and manage payments made in intervals and tracked as a payment plan. ACH payment option and self-serve credit card transaction links are accessible to clients when receiving bills via email or directly in their client portal. This makes getting paid easier and billing a key function of PMAs.

Reporting

PMAs use reports to offer data to end users. While reports are standard in modern PMAs, the move to have a home-base set dashboard is now common. Dashboards cover client financial information and metrics for progressing through representation and other important metrics for clients. The dashboard is typically the first thing a user sees upon entering an online practice management solution.

Typical reporting menus from PMA drop-downs offer users access to:

- contact reports – clients by address; emails lists; etc.;
- matter/case file reports – lists of active vs. inactive matters, case lists by area of practice, etc.;
- attorney reports – number of hours worked, time entries for clients by period; etc.
- financial reports – accounts receivable by period, billing entries, etc.

PMAs by Functional Categories

PMA features are often divided into functional categories: 1) client management; 2) secure communication and email functionality; 3) tasks and workflows; 4) document storage, management and assembly (automation); 5) time & financial management; 6) research and knowledge management; and 7) integration. We may see how artificial intelligence interacts with each of these features.

Client Management Features

According to the ABA TechReport 2016,[23] client management features include conflict checking, contact management and client relations management (commonly called CRM). All attorneys need a conflict checking system. Many of the popular practice management solutions have a conflict checking feature.

In early 2016, some noted that some "case management systems feature CRM tools as well, but those are in the most nascent of development stages."[24] CRM tools allow solo practitioners and firms to track potential clients "from leads to conversions." Few practice management solutions have features such as Clio's campaign tracker, which provides firms with the ability to determine return on investment for their marketing campaigns.[25] Yet, an increasing number of solutions, including PracticePanther and RocketMatter, provide automated intake forms that can be embed directly onto the firm website. When a new form is submitted, a new contact and matter may be automatically created. Omni Legal is also marketing itself as a AI & machine learning tool which "puts innovation in Matter and Practice Management" and allows lawyers to "train the … decision engine to orchestrate client engagements …"[26]

For those with a desire or goal of increasing the number of clients and growing their firms or practices, these CRM-like features may be important. In the keynote he delivered to open the Clio Cloud Conference, CEO Jack Newton talked about the access-to-justice paradox in the legal market. On the consumer side, there is a huge unmet demand for legal services. On the law firm side, 81 percent of lawyers say they are looking for more clients.[27] Yet the report noted that "32 percent of clients who have shopped for legal help do not expect a firm to get back to them…" and "60 percent of law firms did not respond to the emails at all and 27 percent of firms did not answer or return phone calls."[28] In such an environment, CRM tools and using AI based chatbots and integration of virtual receptionist are important.

Secure Communication and Email Clients

Secure client portals are a powerful feature that falls in this category. Many of the PMAs provide client portals. However, the ABA Tech-Report 2016 suggests that use of "secure client portals have not hit the

---

[23] Poje, *supra* note 3.
[24] Jared Correia, *The Long Nine: Essential Software for the Modern Law Practice*, ATTORNEY@WORK BLOG (Feb. 2, 2016), https://www.attorneyatwork.com/long-nine-essential-software-modern-law-practice/.
[25] Joshua Lenon, *New Clio Features Help Make Practice Growth a Reality*, ATTORNEY@WORK BLOG (Nov. 6, 2015), https://www.attorneyatwork.com/Clio-announcements-help-make-practice-growth-simplification-reality/.
[26] OMNI Legal, https://omnilegal.co/ (last visited Jan. 12, 2020)
[27] Robert Ambrogi, *Clio's Latest Legal Trends Report Reveals A Troubling Truth About Lawyers*, ABOVE THE LAW (Nov 4, 2019 at 12:49 PM), https://abovethelaw.com/2019/11/clios-latest-legal-trends-report-reveals-a-troubling-truth-about-lawyers/?rf=1.
[28] *Id*., citing the 2019 Clio Legal Trends Report.

mainstream. This is likely due to a convenience factor…"[29] Additionally ABA TechReport 2016 notes that secure client portals, such as those available from practice management solution Clio and MyCase, although available, are not fully utilized. "Only 4.3% of respondents indicated that they use the Clio client portal (Clio Connect) and 3.7% for MyCase. If lawyers used the client portals to collaborate with clients, those secure messages would be directly tied to that client's matter(s) …"[30]

With the growing emphasis on secure communications, especially as unencrypted email is increasingly recognized as inappropriate for confidential communications,[31] it is likely that the utilization of client portals.

Email functionality is also a feature within this category. While most PMAs have some email functionality, Lawyerist's feature comparison reflects that only a few practice management solutions have an email client. While this may be technically true, it is confusing. For example, occasionally there are questions about automated transmission of messages from Outlook to practice management solutions. A few web-based practice management solutions, including CosmoLex, provide the ability to forward email into a solution and attach the message to a matter based on subject and sender data. Other practice management solutions require the user to manually attach the email to a particular matter. However, as more solutions integrate with Office 365 and Outlook, the number of solutions offering this feature will increase. And as traditional document management systems, such as Netdocuments and Worlddox, have also moved into the area of email management, the functionality has had increased attention.

Tasks and Workflows

Perhaps one most effective feature of an PMA is the workflow feature. Workflow features allow the user to set up several tasks and apply the task list to any matter. Individual tasks in the workflow may be calendared and delegated to other system users. For instance, if there are several tasks associated with opening a new matter, these tasks can be included in the workflow and applied to each new matter. It is unnecessary to manually input each new task into every matter. While initially only a few PMAs provided this feature, the feature is now available via a growing number of practice management solutions including Practice-Panther, RocketMatter (which calls the feature a matter template) and CosmoLex. And several PMAs have integrated services such as Zapier or IFTTT to allow workflows across applications, including PMAs. Further workflows and tasks are another area in which there is potential expansion in using AI or machine learning.

Document Storage, Management and Assembly (Automation)

---

[29] Chad Burton, *Virtual Law Practice*, ABA TECHREPORT 2016, AMERICANBAR.ORG (Dec. 1, 2016), https://www.americanbar.org/groups/law_practice/publications/techreport/2016/virtual_law_practice/.
[30] *Id.*
[31] Jim Calloway, *Email Attachments vs Client Portals*, 87 OKLA. B.J. 1707 (2016), https://www.okbar.org/lpt_articles/email-attachments-vs-client-portals/and Jim Calloway, *ABA Issues New Ethics Opinion on Encryption of Attorney-client Email*, LAW PRACTICE TIPS BLOG (May 11, 2017), https:\\www.lawpracticetipsblog.com/2017/05/2017-aba-ethics-opinion-email-encryption [https://web.archive.org/web/20170610164322/http://www.lawpracticetipsblog.com/2017/05/2017-aba-ethics-opinion-email-encryption.html].

Document storage is an essential feature for those firms desiring to go paperless. Almost all the PMA options now provide a native document storage feature. However, some solutions limit the storage or provide for the purchase of additional storage capacity. Most PMAs also allow integration with external file storage and sharing services such as Dropbox and Box.

Document management is a term of art referring to functionality such as versioning and document checkout. The advanced document management tools are very helpful, but not necessarily essential in a solo or small firm. Advanced document management functions can be incorporated into the PMA through integration of document management service providers such as NetDocuments. Even the traditional premise based PMA TABS3/Practice Master now provides the option to integrate the web-based document management option of NetDocuments.

Several PMAs have moved into the area of document assembly using form/templates and automating the completion of the documents with fields. While this results in greater productivity by negating the need for multiple inputs of data, as discussed, lawyers are having increased expectations regarding document preparation. For example, LegalMation describes its operations :

> Unlike existing template generators and form-fillers, LegalMation's ground-breaking AI system is able to dynamically produce responsive pleadings, discovery requests, discovery responses, and related documents that are tailored to the claims, allegations, and requests in the legal document uploaded, incorporating jurisdictional requirements as well as the attorney's own style, formatting, and response strategy.[32]

PMAs, such as Smokeball, which has been leading jurisdiction specific document automation efforts, should anticipate that users will expect the development of similar capabilities or the ability to integrate with tools such as LegalMation.

Research, Litigation and Precedent Analytics, and Knowledge Management

Several of the PMAs have exclusive agreements with legal research providers. For example, Clio integrates with Fastcase, CaseMaker integrates with CosmoLex and Firm Central is a sister product of Westlaw. These integrations have advantages, including the ability to store research results in the practice management application. Firm Central displays legal authority cited in documents stored on the system with KeyCite symbols and facilitates the ability to update the law cited in briefs, memorandums and other documents stored in the practice management solution. Firm Central also provides a light version of a knowledge management tool at a cost affordable for solo and small firms not wanting the expense of the full West KM knowledge management tool.[33]

Another advantage of integration is the accessibility of the litigation and precedent analytic tools provided by the research platforms. These tools allow attorneys to develop strategies and cite precedent that has persuaded a specific judge in the past.

---

[32] LegalMation, https://www.legalmation.com/ (last visited Jan. 12, 2020).

[33] See e.g. Jack Bostelman, *Leverage the Small Stuff*, KMJD Consulting (Jan. 05, 2014), (Explains how firms have identified matter completion through the knowledge management features and how that information has been used.)

Integration

If, after review of your current system, you find there are legacy applications you want to continue to use, despite the additional cost, then you will likely want to look at those practice management solutions with the widest opportunity for program integration. Clio is recognized for its wide range of integrations.

Many adopters of law practice management applications have found that the web-based systems do not provide what they desire in accounting. They have often integrated programs like QuickBooks into systems providing such opportunities.

Time and Financial Management

Because time and billing are essential features for all users of practice management solutions, time and billing features are available universally. However, the customization available for included functions such as invoice preparation, trust and operational accounting varies widely. CosmoLex and Centerbase are two web-based PMAs that provide more robust accounting functionality. Available on a more limited basis are several financial analytics reports. For example, CLIO's Manage Elite Plan and RocketMatter provide the ability to set and track matter budgets. The matter budget feature allows you to set a monetary cap on billable time within the matter. Determining this limit will allow you to track the amount billed against your projections.

Conclusion

There are numerous reasons attorneys and firms should adopt and use practice management solutions. Among these reasons is increased efficiency. This increased efficiency allows less time to be spent completing administrative responsibilities and more time to be spent on providing quality, billable legal services for clients. Other advantages of using a cloud-based PMA include increased mobility, avoidance of malpractice claims (based on calendaring and docketing errors or incomplete conflicts checking) and improved security and protection of confidential client information.[34] And a good process for getting all documents and notes scanned into the digital client file will mean no more wasted time looking for lost documents.

Attorneys may cite multiple reasons for their reluctance to adopt practice management applications regardless of the advantages associated with their use. The change in work processes is a concern. Change is difficult. Cost is an often-discussed reason for reluctance. However, there is evidence that the return on investment resulting from these practice management tools would more than cover the cost.[35]

Lack of technical knowledge or understanding of the security concerns raised by cloud-based practice management solutions are also often cited reasons for failing to adopt a practice management solution. However, cloud-based practice management solutions actually reduce the need for technical knowledge and continuous IT support. Further, it is easy to establish security requirements that should be in place to

[34] Robert Ambrogi, This Week in Legal Tech: 10 Reasons You Should Use Practice Management Software, *ABOVE THE LAW* (Oct. 3, 2016), https://abovethelaw.com/2016/10/this-week-in-legal-tech-10-reasons-you-should-use-practice-management-software/.
[35] *Id.*

protect client information in a cloud-based environment.[36] And most legal consumers can easily understand that the cloud-based law practice management applications were designed with attorney-client privilege and confidentiality requirements in mind. These PMAs often provide greater security than could be attained via on-premise servers/networks, particularly in a smaller firm without IT staff.

If your firm remains unmotivated to adopt a PMA, plan and research and prepare to "make the jump" now. You can serve as the change leader who facilitates better service to clients through technology. You increase your likelihood of succeeding if you begin the process by considering your goals and current system, setting a realistic budget and researching and matching some system features with your goals. However, you should not stop with simply researching possible practice management solutions on vendor websites. Instead, as Mr. Poje explains:

> Ask for a demo or even a free trial. Get hands on. Ask hard questions about the issues you've identified in your current workflow. And check in with your peers before you make the leap. It's likely someone in your professional network has tried the tools you're considering. Benefit from their experience. (And … consider attending ABA TECHSHOW where you can get both the hands on experience and the networking opportunity in one place.)[37]

Use a comprehensive checklist and determine if the solution you are investigating is suitable for your firm and its practice needs.

Assessing PMA Functionality

As suggested above, use of a checklist will assist you in determining the PMA that best meets the needs of your practice or firm. Complete the checklist with the input and direct participation from as many end users in the law office as possible.

Conduct a Self-Assessment

- What is your work style and ethic?
- What are your primary practice areas?
- Consider your use and ownership of technology.

---

[36] The reputation of the practice management solution provider is an important indicator of the likelihood that the vendor will appropriately handle security requirements. However, attorneys should look for the following technical assurances when selecting a practice management solution: 1) 2048-bit SSL Certificate and secure HTTPS connection when connecting to the service via a Web browser; 2) ISO 27001 and SOC 2 Type II certification; 3) AES 256-bit data encryption (which is equivalent to the encryption standards used by financial institutions); 4) inclusion of intrusion detection and virus protection software as part of the providers own servers; and 5) a separate uninterruptible power supply at the server facilities of the practice management solution vendor. Thomson Reuters, *5 Things Law Firms Need from a Legal Cloud Services Provider*,https://store.legal.thomsonreuters.com/law-products/ns/news-views/small-law/legal-cloud-services.

[37] Joshua Poje, *Practice Management*, *ABA TECHREPORT 2016*, *supra* note 3.

- What are your plans for your practice and technology?
- How much time is spent in the office and on the road?
- How many support staff and other office technology users do you have?
- What is your experience/comfort level with technology?
- What are your absolute necessities?

Budget

- How much of your office budget is allocated for technology solutions?
- Are you prepared to pay annual maintenance or support amounts beyond any base cost of a solution?
- Have you included training costs in your budget?

Research

- Find out about vendors and software - the different options/solutions for your particular issue.
- Read law office technology books and periodicals.
- Join technology-oriented discussion lists.
- Listen to legal technology podcasts.
- Read discussion list archives.
- Ask your colleagues.

Try

- Download or request a demonstration/trial version of the software.
- Try the software on your desktop or network computers.
- Ask for on-line demonstrations of the software.
- If you have staff, have the staff try the software.

Evaluate

- Compare your list of absolute necessities with the features the system offers.
- Did the software meet your expectations?
- Did you feel comfortable with the "look" and "feel" of the software?
- Will the solution help you get your work done faster and more efficiently?
- Is the price of the software within your budget?
- Is the software designed for the type of work you do?
- What do staff and other users think of the software?
- Does the software fit into your future goals?

Buy

- Determine how many licenses you will need.
- Determine what is included in the price of the software.
- Determine whether you need a maintenance and support contract.
- Determine amount of training you and your staff will need.

Implement

- Communicate to the staff when and by whom the software will be implemented.
- Arrange for training for yourself and your staff.
- Commit to using the new software.
- Be positive and patient with yourself and your staff while in the transition period.

Train

- Include training for yourself and your staff.
- Arrange for a company representative or a local consultant to come to your office.
- Set a training schedule and stick with it.
- Get training on new versions of the software when you upgrade, if necessary.

TECHSHOW2020

Rise Up: Diversity, Leadership, and Innovation

WRITTEN BY:

Safaya Fawzi
Shannon Salter
Dennis Garcia

PRESENTERS:
Safaya Fawzi
Shannon Salter
Dennis Garcia

January 21, 2020

RESOURCES

I. Resources for Further Learning from the ABA

- American Bar Association's "D&I 360" report created an Implicit Bias Toolkit and Bibliography. Learn more at ambar.org/implicitbias
- ABA Diversity and Inclusion Center's Resources Depository
- ABA Section of Litigation: What is Implicit or Unconscious Bias?
- ABA Career Center: Implicit Bias 101 video and Leading and Managing Diversity, Inclusion and High Performance
- ABA Section of State and Local Government Implicit Bias Initiative
- ABA Judicial Division Joint Committee on Fighting Implicit Bias in the Justice System

II. Partners to Advance D&I in the Legal Profession

- **Microsoft Legal Diversity:** microsoft.com/en-us/legal/diversity
- **Institute for Inclusion in the Legal Profession**: theiilp.com
- **Practicing Law Institute**: pli.edu
- **Aleria: Measuring Inclusion**: aleria.tech
- **Diversity Lab: Boosting Diversity through Innovation, Data & Behavioral Science**: diversitylab.com
- **Minority Corporate Counsel Association (MCCA)**: mcca.com
- **The Forum on Workplace Inclusion:** forumworkplaceinclusion.org
- Check out local, state, and national affinity bar associations in your area. Consider large demographic groups in your community.
- A starting point:
    - National Bar Association
    - National Asian Pacific American Bar Association
    - National Native American Bar Association
    - Hispanic National Bar Association
    - National Association of Women Lawyers
    - National Conference of Women's Bar Associations
    - South Asian Bar Association
    - National Association of Muslim Lawyers

III. ABA's Implicit Bias Toolkit

ABA Diversity and Inclusion 360 Commission Toolkit Introduction

Dear User,

The information provided in this Toolkit is designed to help you recognize some of the biases that we all have, including, specifically, the implicit biases of judges, prosecutors, and public defenders. The goals of this toolkit are to:

1. Explain the social science term *implicit bias*;
2. Provide some examples of where implicit biases live and thrive;
3. Explain how they exist;
4. Raise consciousness about the power of these unknown "mind bugs," as some have called them, and their ability to negatively impact decision-making;
5. Help you identify some of your own implicit biases;
6. Examine how implicit biases might show up in the performance of your job;
7. Provide some tools to help you catch and correct snap decision-making that may be linked to harmful implicit biases; and
8. Provide you with the knowledge that will allow you to help others catch decision-making that might be based on implicit biases.

We all have biases. Every one of us. This is not a finger-pointing expedition. Rather, we are sharing with you the evidence of this science, offering strategies for you to find the implicit biases hidden within you to help you reduce their harmful effects. As you learn more about how these biases work in society and in your life, you will not only become more mindful and deliberate in your decision-making but also be able to help others in the profession with whom you interact regularly: court personnel, including law clerks, officers of the court, other lawyers, parties to litigation, witnesses, and jurors.

Implicit biases are unwitting and unconscious cognitions that include stereotypes, beliefs, attitudes, intuitions, gut feelings, and related intangibles that we categorize in our brains—without conscious effort—every fraction of a second.[1] For instance, if we think that a particular category of human beings is frail—the IAT (Implicit Association Test) indicates that many of us categorize the elderly in this way[2] —we will not raise our guard around them. That is a stereotype in action. If we identify someone as having graduated from our beloved alma mater, we will feel more at ease—that is an attitude in action.

Your ever-efficient brain automatically organizes all of the information it receives and places the information into cognitive boxes, shorthands, or schemas, if you will. A more colloquial way to think of a schema is the aforementioned "stereotype," though the two terms are not entirely interchangeable. Consider some of the data collected about what many people think when they see an Asian male. The data shows that many people believe Asians and Asian-Americans are extremely smart, excellent students, excellent in mathematics, and pretty good at some martial art; play, *really well*, some musical instrument; and are also really polite, kind, and shy—in other words, the model minority.[3] These labels have

1.) JERRY KANG, NAT'L CTR. FOR STATE COURTS, IMPLICIT BIAS: A PRIMER FOR COURTS 1 (Aug. 2009), available at http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/.

2.) You will learn much, if you have not already, by taking an "implicit association test," or "IAT" as it is commonly known. The IAT is explained in other parts of your Toolkit. One of the IATs deals with how people implicitly view the elderly. The fragile and the elderly are always paired together. For more about this result in particular or the IAT generally, visit https://implicit.harvard.edu/implicit/.

3.) https://www.bing.com/videos/search?q=jerry+kang+ted+talk&view=detail&mid= C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE; see also Bernadette Lim, "Model Minority" Seems Like a Compliment, but It Does Great Harm, N.Y. TIMES (Oct. 16, 2015), http://www.nytimes.com/roomfordebate/2015/10/16/the-effects-of-seeing-asian-americans-as-a-model-minority/model-minority-seems-like-a-compliment-but-it-does-great-harm.

implicit origins. Based on information that we are fed in society through television, movies, the media, work, and social exposures, our mind quickly creates schemas and puts these associations into one box. These social schemas form based on everything that we've ever consciously and unconsciously seen and heard. So when we see an Asian male, we immediately think of many of the characteristics and adjectives referenced above even though we do not know *that* individual. These judgments, assumptions, and attitudes require no contemplative, deliberate thought. It just happens.

Social scientists categorize our dual ways of thinking into two systems: System 1 and System 2. System 1 is the unconscious mode, which helps us make snap judgments and is where our schemas live. System 2 is our deliberative mind, i.e., the conscious mode that is active in explicit biases. The focus of this Toolkit is to get you more conscious of System 1, that place where, as it turns out, 90 percent of your mind operates.

In a similar vein, we also must think about coded words and microaggressions. Take coded language, for example. It is not uncommon for women to be referred to as aggressive or bossy, characteristics viewed positively with male employees but considered negatively with female employees.[4] Is the woman "opinionated" or "sassy"? Why? And why are men not ever similarly categorized?[5] Consider some race-related terms and words. *Inner city* and *urban education* are terms most quickly associated with predominantly black, brown, and poor areas.[6] *Thugs* is a word almost exclusively used in connection with black men.[7]

Microaggression is another type of behavior the ABA is hopeful that this Toolkit will help reduce and ideally eliminate. Microaggressions are "commonplace daily indignities, whether intentional or unintentional, that communicate racial slights and insults towards [minorities]."[8] Studies have shown that the recipients of microaggressions experience greater degrees of loneliness, anger, depression, and anxiety.[9] There are many examples of microaggressions in daily life, some of which include assuming that a black student in an elite school is there because of affirmative action, confusing black attorneys for court staff, telling an LGBT person that s/he does not "look like" an LGBT person, telling a black person that s/he is "articulate," touching someone else's hair without permission, asking people of color where they are from, and assuming that all Asian-Americans are Chinese and/or speak an Asian language.[10] An attempt to be aware of microaggressions and taking a thoughtful approach to language when speaking with minority groups are part of this process of consciousness raising, education, and correction.

This program is designed to help with all of these areas. It includes a PowerPoint presentation that focuses on the aforementioned goals. It includes a video, too—just a short 10 to 12 minutes, designed to allow you to hear from experts and others who perform the very same role that you do in the judicial system. Implicit biases are analyzed in the video; and others, whether judge, prosecutor, or public defender, share their own implicit biases and strategies for how they work to be continually mindful of them in order to interrupt them. Finally, this Toolkit contains a comprehensive bibliography and resource list, including a large category of books, articles, and websites that focus on implicit bias generally for those who want to learn more about this fascinating social science; material specifically addressed to judges; material specifically addressed to prosecutors; and material specifically addressed to defenders.

Whether you are a judge, a prosecutor, or a defender, we hope that you find this Toolkit useful. This is fascinating yet challenging work. It is not rocket science, but because biases are in our DNA, it will require great determination and conscious effort to catch assumptions that are made and applied automatically. The Toolkit will reveal the benefits of deliberation, i.e., slowing down to take a few extra moments to focus on the person in front of you before making decisions that will or might affect that person.

We are confident that you will not only learn about that stranger that lives within you but also actually enjoy the materials contained herein and this journey.

Thank you

4.) See Claire Cain Miller, Is the Professor Bossy or Brilliant? Much Depends on Gender, N.Y. TIMES (Feb. 6, 2015), available at http://www.nytimes.com/2015/02/07/upshot/is-the-professor-bossy-or-brilliant-much-depends-on-gender.html.

5.) See Caroline Turner, Women in the Workplace 2015: Is Gender Bias Part of the Story?, HUFFINGTON POST (Oct. 7, 2015), http://www.huffingtonpost.com/caroline-turner/women-in-the-workplace-20_b_8255008.html.

6.) Is the System Racially Biased?, PBS FRONTLINE (2014), available at http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/bench/race.html; see also Jenee Desmond-Harris, 8 Sneaky Code Words and Why Politicians Love Them, ROOT (Mar. 15, 2014), http://www.theroot.com/articles/politics/2014/03/_racial_code_words_8_term_politicians_love.html.

7.) Id.

8.) Microaggressions: Be Careful What You Say, NATIONAL PUBLIC RADIO (Apr. 4, 2014, 10:23AM), available at http://www.npr.org/2014/04/03/298736678/microaggressions-be-careful-what-you-say.

9.) Id.

10.) See Tanzina Vega, Students See Many Slights as Racial "Microaggressions," N.Y. TIMES (Mar. 21, 2014), http://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html; Heben Nigatu, 21 Racial Microaggressions You Hear on a Daily Basis, BUZZFEED (Dec. 9, 2013, 10:27AM), http://www.buzzfeed.com/hnigatu/racial-microagressions-you-hear-on-a-daily-basis#.ouAPDQo8L.

ABA Diversity and Inclusion 360 Commission
Implicit Bias Bibliography

A.) IAT WEBSITE

https://implicit.harvard.edu/implicit/takeatest.html.

B.) BOOKS

Eduardo Bonilla-Silva, Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America (4th ed. 2016).

Ferguson's Fault Lines: The Race Quake That Rocked a Nation (Kimberly Norwood ed., 2016).

Adam Benforado, Unfair: The New Science of Criminal Injustice (2015).

Margaret Reuter & Carwina Weng, Navigating Cultural Differences, in Learning from Practice (3d ed. 2015).

Howard J. Ross, Everyday Bias: Identifying and Navigating Unconscious Judgments in Our Daily Lives (2014).

Color Matters: Skin Tone Bias and the Myth of a Postracial America (Kimberly Norwood ed., 2014).

Geoffrey Beattie, Our Racist Heart?: An Exploration of Unconscious Prejudice in Everyday Life (2013).

Leonard Mlodinow, Subliminal: How Your Unconscious Mind Rules Your Behavior (2013).

Mahzarin R. Banaji & Anthony G. Greenwald, Blind Spot: Hidden Biases of Good People (2013).

Justin D. Levinson, Implicit Racial Bias Across the Law (2012).

David Eagleman, Incognito: The Secret Lives of the Brain (2012).

Daniel Kahneman, Thinking, Fast and Slow (2011).

Christopher Chabris & Daniel Simons, The Invisible Gorilla: How Our Intuitions Deceive Us (2011).

Verna A. Myers, Moving Diversity Forward: How to Go from Well-Meaning to Well-Doing (2011).

Deborah L. Rhode, The Beauty Bias: The Injustice of Appearance in Life and Law (2011).

Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010).

Gregory Parks et al., Critical Race Realism: Intersections of Psychology, Race, and Law (2010).

Claude M. Steele, Whistling Vivaldi and Other Clues to How Stereotypes Affect Us (2010).

Shankar Vedantam, The Hidden Brain (2010).

Derald Wing Sue, Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation (2010).

Sarah E. Redfield, Diversity Realized: Putting the Walk with the Talk for Diversity in the Pipeline to the Legal Profession (2009).

Sheri Levy & Melanie Killen, Intergroup Attitudes and Relations in Childhood Through Adulthood (2008).

Gordon L. Patzer, Looks: Why They Matter More Than You Ever Imagined (2008).

Eugene Borgida & Susan T. Fiske, Beyond Common Sense: Psychological Science in the Courtroom (2007).

David A. Amodo & Patricia G. Devine, Changing Prejudice: The Effects of Persuasion on Implicit and Explicit Forms of Race Bias, in Persuasion: Psychological Insights and Perspectives (M. C. Green & T. C. Brock eds., 2d ed. 2005).

Malcolm Gladwell, Blink: The Power of Thinking Without Thinking (2005).

Anthony Damasio, Descartes' Error: Emotion, Reason, and the Human Brain (2005).

Patricia G. Devine et al., Self-Regulatory Processes in Interracial Interactions, in Social Motivation: Conscious And Unconscious Processes (J. P. Forgas, K. D. Williams & S. M. Laham eds., 2004).

Timothy D. Wilson, Strangers to Ourselves: Discovering the Adaptive Unconscious (2004).

George Lakoff, The Metaphors We Live By (2002).

Linda Gayle Mills, A Penchant for Prejudice: Unraveling Bias in Judicial Decision-Making (1999).

Virginia Valian, Why So Slow? The Advancement of Women (1999).

Thomas Ross, Just Stories: How the Law Embodies Racism and Bias (1997).

Elizabeth F. Loftus, Eyewitness Testimony (2d ed. 1996).

Joe R. Feagin & Melvin P. Sikes, Living with Racism: The Black Middle-Class Experience (1994).

C.) UCLA LAW PROFESSOR JERRY KANG'S WEBSITE

Professor Kang has worked with courts to created implicit bias primers for the court system; has written many law review articles on the subject; and conducts CLEs, etc. See http://jerrykang.net. In particular, see Jerry Kang, Nat'l Ctr. for State Courts, Implicit Bias: A Primer for Courts (Aug. 2009), available at http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/. See also his TED talk and other relevant videos of his work in this area:

https://www.bing.com/videos/search?q=jerry+kang+ted+talk&view=detail&mid=C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE.

http://uwtv.org/watch/PluF2WluqYE/.

http://uwtv.org/watch/dMVc1n599vg/.

D.) THE NATIONAL CENTER FOR STATE COURTS WEBSITE

Contains a lot of information on working with implicit bias: http://www.ncsc.org/Search.aspx?q=implicit%20bias. A particular work of interest is Pamela M. Casey et al., Nat'l Ctr. for State Courts, Helping Courts Address Implicit Bias: Resources for Education (2012), available at http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx.

E.) MATERIALS SPECIFIC TO JUDGES, PROSECUTORS, AND DEFENSE COUNSEL

Judges:

Videos produced by the ABA Diversity and Inclusion 360 Commission: Video for Judges; Video for Prosecutors; Videos for Public Defenders. Please visit: www.ambar.org/360commission to access the videos.

Prosecutors:

Prosecutor TED Talk: http://www.ted.com/talks/adam_foss_a_prosecutor_s_vision_for_a_better_justice_system?language=en#t-421101.

Foster v. Chatman, 578 U.S. ___ (2016).

Defense Counsel:

Jeff Adachi, S.F. Public Defender, Remarks on Implicit Bias at the Criminal Litigation Ethics Seminar at UC Hastings (Aug. 1, 2013): http://sfpublicdefender.org/news/2013/08/read-jeff-adachis-talk-on-implicit-bias/.

F.) COGNITIVE REFLECTIONS TEST (CRT) WEBSITE

The CRT is designed to assess an individual's ability to suppress an intuitive and spontaneous wrong answer in favor of a reflective and deliberative answer. The test is available at http://www.sjdm.org/dmidi/Cognitive_Reflection_Test.html#
x-Cognitive Reflection Test (CRT).

G.) PERCEPTION INSTITUTE WEBSITE

http://perception.org/.

H.) KIRWAN INSTITUTE WEBSITE

Shared research from researchers, grassroots advocates, policy makers, and community leaders: http://kirwaninstitute.osu.edu/.

I.) ARTICLES

GENERAL

Investigation of the St. Louis County Family Court St. Louis, Missouri, U.S. Department of Justice Civil Rights Division (July 31, 2015), available at https://www.justice.gov/sites/default/files/crt/legacy/2015/07/31/stlouis_findings_7-31-15.pdf.

Russell G. Pearce et al., Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships, 83 Fordham L. Rev. 2407 (Apr. 2015).

Esinam Agbemenu, Medical Transgressions in America's Prisons: Defending Transgender Prisoners' Access to Transition-Related Care, 30 Colum. J. Gender & L. 1 (2015).

Ronald Wheeler, We All Do It: Unconscious Behavior, Bias, and Diversity, 107 Law Libr. J. 325 (Spring 2015).

Robert J. Smith et al., Implicit White Favoritism in the Criminal Justice System, 66 Ala. L. Rev. 871 (2015).

Traci Burch, Skin Color and the Criminal Justice System: Beyond Black-White Disparities in Sentencing, 12 J. Empirical Legal Stud. 395 (Sept. 2015).

Erik J. Girvan, On Using the Psychological Science of Implicit Bias to Advance Anti-Discrimination Law, 26 Geo. Mason U. C.R. L.J. 1 (2015).

Michele L. Jawando & Chelsea Parsons, 4 Ideas That Could Begin to Reform the Criminal Justice System and Improve Police-Community Relations, Center for Am. Progress (Dec. 18, 2014), https://www.americanprogress.org/issues/civil-liberties/report/2014/12/18/103578/4-ideas-that-could-begin-to-reform-the-criminal-justice-system-and-improve-police-community-relations/.

Anthony Greenwald et al., With Malice Towards None and Charity for Some: Ingroup Favoritism Enables Discrimination, 69 Am. Psychol. 669 (2014).

Phillip Atiba Goff et al., The Essence of Innocence: Consequences of Dehumanizing Black Children, 4 J. Personality & Soc. Psychol. 526 (2014).

Jessica M. Salerno et al., Give the Kid a Break—But Only If He's Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts, 20 Psychol. Pub. Pol'y & L. 398 (2014).

Vivia Chen, The Diversity Crisis: Time to Call It Racism?, Am. Law. Mag. (June 5, 2014).

John Tyler Clemons, Blind Injustice: The Supreme Court, Implicit Racial Bias, and the Racial Disparity in the Criminal Justice System, 51 Am. Crim. L. Rev. 689 (2014).

Adam Hahn et al., Awareness of Implicit Attitudes, 143 J. Experimental Psychol. 1369 (2014).

Govind Persad, When, and How, Should Cognitive Bias Matter to Law?, 32 Law & Ineq. 31 (Winter 2014).

Nicole E. Negowetti, Navigating the Pitfalls of Implicit Bias: A Cognitive Science Primer for Civil Litigators, 4 St. Mary's J. Legal Malpractice & Ethics 278 (2014).

Deborah N. Archer, There Is No Santa Clause: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a "Post-Racial" Society, 4 Colum. J. Race & L. 55 (2013).

Debra L. Bassett, Deconstruct and Reconstruct: Reexamining Bias in the Legal System, 46 U.C. Davis L. Rev. 1563 (2013).

Christopher Cerullo, Everyone's A Little Bit Racist? Reconciling Implicit Bias and Title VII, 82 Fordham L. Rev. 127 (2013).

Cynthia Lee, Making Race Salient: Trayvon Martin and Implicit Bias in a Not-Yet Post Racial Society, 91 N.C. L. Rev. 1555 (2013).

Patricia Devine et al., Long-term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention, 48 J. Experimental Soc. Psychol. 1267 (Nov. 2012).

Jerry Kang et al., Implicit Bias in the Courtroom, 59 UCLA L. Rev. 1124 (2012).

Robert J. Smith & Bidish J. Sarma, How and Why Race Continues to Influence the Administration of Criminal Justice in Louisiana, 72 La. L. Rev. 361 (2012).

Jonathan Feingold & Karen Lorang, Defusing Implicit Bias, 59 UCLA L. Rev. 210 (2012).

Elizabeth F. Emens, Framing Disability, 2012 U. Ill. L. Rev. 1383 (2012).

Molly O'Leary, What Do You Mean I'm Biased?, 9 Advocate 10 (Sept. 2012).

Tamar R. Birckhead, Delinquent by Reason of Poverty, 38 Wash. U. J.L. & Pol'y 53 (2012).

Yuvraj Joshi, Respectable Queerness, 43 Colum. Hum. Rts. L. Rev. 415 (2012).

Building Community Trust: Improving Cross-Cultural Communication in the Criminal Justice System, A.B.A., http://www.americanbar.org/groups/criminal_justice/pages/buildingcommunity.html (last visited Apr. 27, 2011).

Eden B. King et al., Discrimination in the 21st Century: Are Science and the Law Aligned?, 17 Psychol. Pub. Pol'y & L. 54 (Feb. 2011).

Deborah L. Bassett & Rex R. Perschbacher, The Elusive Goal of Impartiality, 97 Iowa L. Rev. 181 (2011).

Fatma E. Marouf, Implicit Bias and Immigration Courts, 45 New Eng. L. Rev. 417 (2011).

Brian A. Nosek et al., Policy Implications of Implicit Social Cognition, 6 Soc. Issues & Pol'y Rev. 112 (July 12, 2011).

Suzanne B. Goldberg, Sticky Intuitions and the Future of Sexual Orientation Discrimination, 57 UCLA L. Rev. 1375 (June 2010).

Jerry Kang & Kristin Lane, Seeing Through Colorblindness: Implicit Bias and the Law, 58 UCLA L. Rev. 465 (2010).

Natalie B. Pederson, A Legal Framework for Uncovering Implicit Bias, 79 U. Cin. L Rev. 97 (2010).

Justin D. Levinson & Danielle Young, Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence, 112 W. Va. L. Rev. 307 (2010).

Adam Benforado, Frames of Injustice: The Bias We Overlook, 85 Ind. L.J. 1333 (Fall 2010).

Clifford J. Rosky, Like Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia, 20 Yale J.L. & Feminism 257 (2010).

Patrick S. Shin, Liability for Unconscious Discrimination?: A Thought Experiment in the Theory of Employment Discrimination Law, 62 Hastings L.J. 67 (2010).

Derald W. Sue, Microaggressions: More than Just Race, Psychol. Today (Nov. 17, 2010), available at https://www.psychologytoday.com/blog/microaggressions-in-everyday-life.

Jerry Kang et al., Are Ideal Litigators White?: Measuring the Myth of Colorblindness, 7 J. Empirical Legal Stud. 886 (2010).

Tim Wise, Denial Is a River, Wider Than the Charles: Racism and Implicit Bias in Cambridge (July 27, 2009), available at http://www.timwise.org/2009/07/denial-is-a-river-wider-than-the-charles-racism-and-implicit-bias-in-cambridge/.

Anthony C. Greenwald et al., Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity, 97 J. Personality & Soc. Psychol. 17 (2009).

Ralph R. Banks & Richard T. Ford, (How) Does Unconscious Bias Matter?: Law, Politics and Racial Inequality, 58 Emory L.J. 1053 (2009).

Chris Guthrie et al., The Hidden Judiciary: An Empirical Examination of Executive Branch Justice, 58 Duke L.J. 1477 (2009).

Shawn C. Marsh, The Lens of Implicit Bias, 1 Juv. & Fam. Just. 17–19 (Summer 2009), available at http://www.ncsconline.org/D_Research/ref/IMPLICIT%20BIAS%20Marsh%20Summer%202009.pdf.

Dale Larson, Unconsciously Regarded As Disabled: Implicit Bias and the Regarded-As Prong of the Americans with Disabilities Act, 56 UCLA L. Rev. 451 (2008).

Charles Lawrence III, Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection," 40 Conn. L. Rev. 931 (2008).

Ivan E. Bodensteiner, The Implications of Psychological Research Related to Unconscious Discrimination and Implicit Bias in Proving Intentional Discrimination, 73 Mo. L. Rev. 83 (2008).

Catherine Smith, Unconscious Bias and "Outsider" Interest Convergence, 40 Conn. L. Rev. 1077 (2008).

Cynthia Lee, The Gay Panic Defense, 42 U.C. Davis L. Rev. 471 (2008).

Howard Ross, Proven Strategies for Addressing Unconscious Bias in the Workplace, 2 CDO Insights 1 (2008), available at http://www.cookross.com/docs/UnconsciousBias.pdf.

Emily Pronin, How We See Ourselves and How We See Others, 320 Sci. 1177 (2008).

Samuel R. Sommers et al., Cognitive Effects of Racial Diversity: White Individuals' Information Processing in Heterogeneous Groups, 44 J. Experimental Soc. Psychol. 1129 (2008).

Phillip Atiba Goff et al., Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences, 94(2) J. Personality & Soc. Psychol. 292 (2008).

Phyllis Goldfarb, Pedagogy of the Suppressed: A Class on Race and the Death Penalty, N.Y.U. Rev. L. & Soc. Change (2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=977779##.

David Faigman et al., A Matter of Fit: The Law of Discrimination and the Science of Implicit Bias, 59 Hastings L.J. 1389 (2007).

Justin D. Levinson, Forgotten Racial Equality: Implicit Bias, DecisionMaking, and Misremembering, 57 Duke L.J. 345 (2007).

Nancy Levit, Confronting Conventional Thinking: The Heuristics Problem in Feminist Legal Theory, 28 Cardozo L. Rev. 391 (2006).

R. Richard Banks et al., Discrimination and Implicit Bias in a Racially Unequal Society, 94 Cal. L. Rev. 1169 (2006).

Anthony C. Greenwald et al., Implicit Bias: Scientific Foundations, 94 Cal. L. Rev. 945 (2006).

Christine Joll & Cass Sunstein, The Law of Implicit Bias, 94 Cal. L. Rev. 969 (2006).

Gregory Mitchell & Phillip E. Tetlock, Antidiscrimination Law and the Perils of Mindreading, 67 Ohio St. L.J. 1023 (2006).

Jerry Kang, Trojan Horses of Race, 118 Harv. L. Rev. 1489 (2005).

Justin D. Levinson, Suppressing the Expression of Community Values in Juries: How "Legal Priming" Systematically Alters the Way People Think, 73 U. Cin. L. Rev. 1059 (2005).

Reshma Saujano, The Implicit Association Test: A Measure of Unconscious Racism in Legislative Decision-Making, 8 Mich. J. Race & L. 395 (2003).

Deborah L. Rhode, Gender and the Profession: The No-Problem Problem, 30 Hofstra L. Rev. 1001 (2002).

Michelle A. Travis, Perceived Disabilities, Social Cognition, and "Innocent Mistakes," 2002 Vand. L. Rev. 481 (2002).

Irene V. Blair, The Malleability of Automatic Stereotypes and Prejudice, 6 Personality & Soc. Pscyhol. Rev. 242 (2002).

Jennifer Durkin, Queer Studies I: LF, 8 UCLA Women's L.J. 343 (1998).

George S. Bridges & Sara Steen, Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as Mediating Mechanisms, 63 Am. Soc. Rev. 554 (1998).

Mareasa Issacs-Shockley, Cultural Competence and the Juvenile Justice System: Irreconcilable Differences?, 8 Focal Point 19 (Summer 1994), available at http://www.pathwaysrtc.pdx.edu/focalpoint.shtml.

JUDGES

Justin D. Levinson et al., Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes Beyond Black and White, 68 Fla. L. Rev. (forthcoming 2016).

Richard Perez-Pena, St. Louis County Biased Against Black Juveniles, Justice Department Finds, N.Y. Times (July 31, 2015), available at http://www.nytimes.com/2015/08/01/us/st-louis-county-biased-against-black-juveniles-justice-department-finds.html?_r=0.

Dana Leigh Marks, Who, Me? Am I Guilty of Implicit Bias?, 54 Judges' J. 20 (2015).

Shana Heller, Dehumanization and Implicit Bias: Why Courts Should Preclude References to Animal Imagery in Criminal Trials, 51 Crim. L. Bull. 870 (Summer 2015).

Maya Sen, Is Justice Really Blind?: Race and Reversal in US Courts, 44 J. Legal Stud. S187 (Jan. 2015).

Rebecca Gill, Implicit Bias in Judicial Performance Evaluations: We Must Do Better Than This, Just. Sys. J. 1 (2014).

Robin W. Sterling, Defense Attorney Resistance, 99 Iowa L. Rev. 2245 (2014).

Michael B. Hyman, Implicit Bias in the Courts, 102 Ill. B.J. 40 (Jan. 2014).

Michael B. Neitz, Socioeconomic Bias in the Judiciary, 1 Clev. St. L. Rev. 137 (2013).

Valena E. Beety, Criminality and Corpulence: Weight Bias in the Courtroom, 11 Seattle J. for Soc. Just. 523 (2013).

Matthew I. Fraidin, Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability, 60 Clev. St. L. Rev. 913 (2013).

Thomas J. Miles, Racial Disparities in Wiretap Applications Before Federal Judges, 41 J. Legal Stud. 419 (June 2012).

Mark W. Bennett, Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions, 4 Harv. L. & Pol'y Rev. 149 (2010).

John F. Irwin & Daniel L. Real, Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity, 42 McGeorge L. Rev. 1 (2010).

Jeffrey Rachlinski et al., Does Unconscious Racial Bias Affect Trial Judges?, 84 Notre Dame L. Rev. 1195 (2009).

Pat K. Chew et al., Myth of the Color-Blind Judge: An Empirical Analysis of Racial Harassment Cases, 86 Wash. U. L. Rev. 1117 (2009).

Geoff Ward et al., Does Racial Balance in Workforce Representation Yield Equal Justice?: Race Relations of Sentencing in Federal Court Organizations, 43 Law & Soc'y Rev. 757 (2009).

Mary K. Ramirez, Into the Twilight Zone: Informing Judicial Discretion in Federal Sentencing, 57 Drake L. Rev. 592 (2009).

I. Bennett Capers, Cross Dressing and the Criminal, 20 Yale J.L. & Human. 1 (Winter 2008).

Michael E. Waterstone & Michael A. Stein, Disabling Prejudice, 102 Nw. U. L. Rev. 1351 (Summer 2008).

Eva Paterson et al., The Id, the Ego, and Equal Protection in the 21st Century: Building Upon Charles Lawrence's Vision to Mount a Contemporary Challenge to the Internet Doctrine, 40 Conn. L. Rev. 1175 (May 2008).

Lindsey R. Vaala, Bias on the Bench: Raising the Bar for U.S. Immigration Judges to Ensure Equality for Asylum Seekers, 49 Wm. & Mary L. Rev. 1011 (2007).

Jeffrey J. Rachlinski et al., Blinking on the Bench: How Judges Decide Cases, 93 Cornell L. Rev. 1 (2007).

Dennis Jacobs, The Secret Life of Judges, 75 Fordham L. Rev. 2855 (2007).

Jennifer L. Eberhardt et al., Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes, 17 Psychol. Sci. 383 (2006).

William T. Pizzi et al., Discrimination in Sentencing on the Basis of Afrocentric Features, 10 Mich. J. Race & L. 327 (2005).

Evan. R. Seamone, Judicial Mindfulness, 70 U. Cin. L. Rev. 1023 (2002).

Chris Guthrie et al., Inside the Judicial Mind, 86 Cornell L. Rev. 777 (2001).

David B. Mustard, Racial, Ethnic, and Gender Disparities in Sentencing: Evidence for the U.S. Federal Courts, 44 J.L. & Econ. 285 (2001).

Migdalia DeJesus-Torres, Microaggressions in the Criminal Justice System at Discretionary Stages and Its Impact on Latino(a)/Hispanics, 13 Just. Prof. 1 (2000), available at http://www.tandfonline.com/doi/abs/10.1080/1478601X.2000.9959574.

Bryan A. Stevenson & Ruth E. Friedman, Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice, 51 Wash. & Lee L. Rev. 509 (1994).

PROSECUTORS

Prosecutorial Oversight: A National Dialogue in the Wake of Connick v. Thompson, Innocence Project (Mar. 2016), available at http://www.innocenceproject.org/news-events-exonerations/prosecutorial-oversight-report.

Sunita Sah et al., Blinding Prosecutors to Defendants' Race: A Policy Proposal to Reduce Unconscious Bias in the Criminal Justice System, 1 Behav. Sci. & Pol'y 69 (2015), available at https://behavioralpolicy.org/article/blinding-prosecutors-to-defendants-race-a-policy-proposal-to-reduce-unconscious-bias-in-the-criminal-justice-system/.

Amita Kelly, Does It Matter That 95 Percent of Elected Prosecutors Are White?, NPR (July 8, 2015), http://www.npr.org/sections/itsallpolitics/2015/07/08/420913118/does-it-matter-that-95-of-elected-prosecutors-are-white.

James Babikian, Cleaving the Gordian Knot: Implicit Bias, Selective Prosecution, & Charging Guidelines, 42 Am. J. Crim. L. 139 (Spring 2015).

Nicole E. Negowetti, Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection, 15 Nev. L.J. 930 (2015).

James C. McKinley, Jr., Study Finds Disparity in Criminal Prosecutions, N.Y. Times (July 8, 2014), available at http://www.nytimes.com/2014/07/09/nyregion/09race.html.

Krisin Henning, Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform, 98 Cornell L. Rev. 383 (2013).

Angela J. Davis, In Search of Racial Justice: The Role of the Prosecutor, 16 N.Y.U. J. Legis. & Pub. Pol'y 821 (2013).

Justin Murray, Reimagining Criminal Prosecution: Toward a Color-Conscious Professional Ethic of Prosecutors, 49 Am. Crim. L. Rev. 1541 (Summer 2012).

Robert J. Smith & Justin D. Levinson, The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion, 35 Seattle U. L. Rev. 795 (Spring 2012).

Michael Callahan, "If Justice Is Not Equal for All, It Is Not Justice": Racial Bias, Prosecutorial Misconduct, and the Right to a Fair Trial in State v. Monday, 35 Seattle U. L. Rev. 827 (2012).

Maureen A. Howard, Taking the High Road: Why Prosecutors Should Voluntarily Waive Peremptory Challenges, 23 Geo. J. Legal Ethics 369 (Spring 2010).

Morgan Tilleman, (Trans)forming the Provocation Defense, 100 J. Crim. L. & Criminology 1659 (2010).

Kerala T. Cowart, On Responsible Prosecutorial Discretion, 44 Harv. C.R.-C.L. L. Rev. 597 (Summer 2009).

Alafair S. Burke, Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science, 47 Wm. & Mary L. Rev. 1587 (2006).

Antony Page, Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge, 85 B.U. L. Rev. 155 (2005).

Theodore Eisenberg & Sheri L. Johnson, Implicit Racial Attitudes of Death Penalty Lawyers, 53 DePaul L. Rev. 1539 (2004).

Anthony V. Alfieri, Race Prosecutors, Race Defenders, 89 Geo. L.J. 2227 (2001).

V. A. Richelle, Racism as a Strategic Tool at Trial: Appealing Race-Based Prosecutorial Misconduct, 67 Tul. L. Rev. 2357 (1993).

Elizabeth L. Earle, Banishing the Thirteenth Juror: An Approach to the Identification of Prosecutorial Racism, 92 Colum. L. Rev. 1212 (1992).

DEFENSE COUNSEL

Jeff Adachi, Public Defenders Can Be Biased, Too, and It Hurts Their Non-White Clients, Wash. Post (June 7, 2016), available at https://www.washingtonpost.com/posteverything/wp/2016/06/07/public-defenders-can-be-biased-too-and-it-hurts-their-non-white-clients/.

Public Defenders' Biases May Contribute to Wrongful Convictions, Innocence Project (May 3, 2016), available at http://www.innocenceproject.org/public-defenders-biases-may-contribute-wrongful-convictions/.

Alan J. Gocha, A Call for Realism in the Justice System: Why Criminal Defense Attorneys Should Take Race into Account When Advising Clients, 28 Geo. J. Legal Ethics 547 (2015).

Jonathan Rapping et al., The Role of the Defender in a Racially Disparate System, 37 Champion 50 (July 2013).

L. Song Richardson & Phillip A. Goff, Implicit Racial Bias in Public Defender Triage, 122 Yale L.J. 2626 (2013).

Jonathan A. Rapping, Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions, 16 N.Y.U. J. Legis. & Pub. Pol'y 999 (2013).

Andrew E. Taslitz, Trying Not to Be Like Sisyphus: Can Defense Counsel Overcome Pervasive Status Quo Bias in the Criminal Justice System?, 45 Tex. Tech L. Rev. 315 (Fall 2012).

Andrea D. Lyon, Race Bias and the Importance of Consciousness for Criminal Defense Attorneys, 35 Seattle U. L. Rev. 755 (2012).

Franita Tolson, The Boundaries of Litigating Unconscious Discrimination: Firm-Based Remedies in Response to a Hostile Judiciary, 33 Del. J. Corp. L. 347 (2008).

Russell Pierce, White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law, 73 Ford L. Rev. 2081 (2005).

Eva S. Nilsen, The Criminal Defense Lawyer's Reliance on Bias and Prejudice, 8 Geo. J. Legal Ethics 1 (1994).

JURIES

Sarah J. Forman, The Ferguson Effect: Opening the Pandora's Box of Implicit Racial Bias in Jury Selection, 109 Nw. U. L. Rev. Online 171 (2015).

Cynthia Lee, A New Approach to Voir Dire on Racial Bias, 5 U.C. Irvine L Rev. 843 (Nov. 2015).

Giovanna Shay, In the Box: Voir Dire on LGBT Issues in Changing Times, 37 Harv. J.L. & Gender 407 (2014).

Justin D. Levinson et al., Devaluing Death: An Empirical Study of Implicit Racial Bias on Jury-Eligible Citizens in Six Death Penalty States, 89 N.Y.U. L. Rev. 513 (May 2014).

Andrew E. Taslitz, Curing Own Race Bias: What Cognitive Science and the Henderson Case Teach About Improving Jurors' Ability to Identify Race-Tainted Eyewitness Error, 16 N.Y.U. J. Legis. & Pub. Pol'y 1049 (2013).

Anna Roberts, (Re)forming the Jury: Detection and Disinfection of Implicit Juror Bias, 44 Conn. L. Rev. 827 (Feb. 2012).

Todd Brower, Twelve Angry—and Sometimes Alienated—Men: The Experiences and Treatment of Lesbians and Gay Men During Jury Service, 59 Drake L. Rev. 669 (2011).

Janet B. Arterton, Unconscious Bias & the Impartial Jury, 40 Conn L. Rev. 1023 (2008).

Tara L. Mitchell et al., Racial Bias in Mock Juror Decision-Making: A Meta Analytic Review of Defendant Treatment, 29 Law & Hum. Behav. 621 (2005).

Karl L. Wuensch et al., Racial Bias in Decisions Made by Mock Jurors Evaluating a Case of Sexual Harassment, 142 J. Soc. Psychol. 587 (2002).

TECHSHOW2020

Inside and Out: Making Your Practice Accessible

WRITTEN BY:

Dennis Garcia & Annie N. Arbenz

PRESENTERS:

Dennis Garcia: @DennisCGarcia

Annie N. Arbenz

January 6, 2020

INTRODUCTION

After discussing this topic with each other, the speakers identified two unique points of view that are represented here: one from a busy trusts & estates law firm in Tacoma, WA, using technological solutions to provide accessibility to its clients, and the second from a large, international corporation, who is responsible for creating many of the technological solutions used by lawyers. Below is a discussion of the small firm's perspective and the international corporation's perspective will be discussed in more detail during the live presentation.

SMALL FIRM PERSPECTIVE

Over the last few years, I have experimented with various technologies and software that could help make my practice more efficient while not sacrificing the client's personalized experience with our firms. Aside from providing top-notch legal services, my priority is making sure the client has a good experience with our firm. This could mean that we accommodate a client who doesn't fit the "normal" mold – e.g., those with physical disabilities, those who cannot attend a meeting in-person, those who speak English as a second language, etc.

A lot of the technology I have reviewed has been focused on internal practices, which I believe significantly impacts a client's experience in your firm . . . if you have checks and balances within your firm that ensure a client's needs are met, the client benefits throughout their relationship with your firm. The other type of technology I have been experimenting with is focused specifically on the client's interaction with our firm.

As I became educated about the possibilities of technology in the law, I started to find gaps in the services lawyers provide and how those gaps can be filled with technology, thereby making my practice more accessible to more individuals.

The following outline discusses helpful technology that lawyers can use to assist their clients and improve the client experience, particularly for those clients with accessibility issues. It also discusses examples of how technology can fill various gaps in the services lawyers have traditionally provided to their clients.

Examples of Tasks That Can be Made More Efficient With Technology

Online Scheduling

If you have a traditional practice and do not use online scheduling, you need to fix that. Online scheduling, which I implemented after attending TECHSHOW last year, has been the single best improvement I've made in my practice. Benefits of online scheduling include (but are certainly not limited to):

- Automatic confirmation of appointment is emailed (and texted, if you want) to the client immediately after the appointment is made
- A personalized (automated) email can be sent with the confirmation email to explain any details you need explained to the client in advance
- An automatic reminder of the appointment is emailed (and texted) to the client 24 hours before the appointment
- The client can easily reschedule the appointment at their convenience
- You avoid the back-and-forth emails between you/clients or your staff/clients when trying to find a mutually agreeable time to meet

- Payment processing if you need to collect money prior to an appointment.

There are several online options to do this, but I use Calendly (www.calendly.com), which is connected to my Outlook calendar. I have a personalized email going out to each new client with a little "hello!" from me and a few instructions, with links to certain educational websites and also a link to my online questionnaire (see more on this below). It's a beautiful way to begin the relationship and – I'm telling you – clients absolutely love it. I wish I had started doing this sooner! You can use Calendly for free but the options are limited at that level. There are levels of options, the most expensive being $15/month/user. I find, in my practice, that I am the only user who needs to pay for this service.

Online Questionnaires

The next best thing I have added to my firm is the ability to send a client an electronic questionnaire to complete prior to an appointment.

In my practice, when a new client makes an appointment, I want them to complete a questionnaire with some basic information so I have it in advance of our meeting. I wanted this to be easy, "cute" (sorry for the lame term, but I did think that when creating it), and I wanted to receive an email confirmation after it was done. I needed different questionnaires for each type of client and I wanted it to look and feel a certain way to start off the experience for my clients.

For this service, I landed on Typeform (www.typeform.com), which has been fabulous. I was able to make several questionnaires, make them look just how I wanted them to look, and get all of the information I need from my new clients. And, again – clients absolutely love it. Even the people who aren't really into technology or emailing can get behind the Typeform questionnaires I've created. When we get a completed Typeform, we use that to set up a file and I am more prepared for my first meeting with them.

You can try Typeform for free, but you have to pay to get its full functionality. I find the Professional option works well for my firm, which costs $35/user/month ($26/user/month if you pay annually).

Online Payments

Another wonderful thing I've been able to implement in my practice is the ability for clients to make online payments. Clients feel burdened when they have to write a check and put them in an envelope and put a stamp on it. That's not good when you want to collect their money! I don't know about you, but the first thing I look for on a bill is whether I can pay it online. By using an online payment provider, clients can make payments on an invoice or payments toward their trust account and emails are sent to everyone who needs to know so all have a record of the payment. Further, clients can schedule payments for easy payment of an ongoing obligation to your firm.

My firm uses LawPay for online payments and it has been great. It's very easy to use. I love emailing a client what is needed, including how much something with cost, and including a link for them to easily and quickly make the payment. As soon as I see that payment come through, I begin my work. Clients love the ease of it! We also put the link in our bills when we send them out so the client can go online and pay it at their leisure. There are several options here, as well, but LawPay has been very easy to work with over the last few years.

LawPay is $20/month + a per transaction fee (transaction fee depends on the cards used).

Electronic Forms

Another great tool has been the ability to send clients documents to sign electronically. The real estate folks have had this figured out for a long time so it's about time we got on board. With this technology, you can send a document to a client with spaces to initial, date, and sign. It's a revelation when you don't

need an original document, as is the case with most legal documents these days. The options make this so easy to do, especially for your tech-forward clients.

I use HelloSign to create documents to send to clients for signature. Notably, court documents and fee agreements. For a business (1-5 senders), it costs $40/month.

Remote Meetings

As clients become more reliant on remote options, they expect us lawyers to get up to speed with other professional service providers. An example: you can meet with your doctor using a webcam instead of going into the doctor's office. (This one still surprises me!) I'll admit, this has been the hardest one for me to get used to because I still find a lot of value in meeting people face-to-face, particularly when we're discussing the type of issues I need to discuss with them. But, if doctors can do it, so can lawyers.

There have been plenty of times where an in-person meeting is not possible and a phone call is just too impersonal. Or, I have a client who is in a hospital or abroad and they cannot physically be in my office. In those cases, I first look to FaceTime, the video app available on Apple products. I find most people have iPhones so that will work. If not, though, I look to Zoom video conferencing, which is the leader in this area. It's easy for folks to use but does require some ease with technology to make sure it works on both ends. I think clients still prefer face-to-face meetings, but video conferencing gets us close and can be great when a phone call won't cut it.

FaceTime is included with your iPhone software and is free in all cases, if used on wifi. Sometimes additional charges will apply (from the carrier) if using cell data instead of wifi. Zoom is available for free, which mostly works for me, but it's a low monthly fee of $14.99 if you buy the Pro level service.

Genius Scan

So often, I want a client to send me a document they're looking at or one they promised to send me. Many clients are willing to drive to my office to drop something off, which still surprises me, given all the technological advances we have made. I asked them, instead, to take a picture of it with their phone and email it to me. That usually works OK, but if there are several pages and/or the image needs to be very clear (i.e., if I'm going to file it with the court or use it as an exhibit to a document), I ask that they use Genius Scan. This incredible app is available on your smartphone and allows you to take a picture of a document, which it saves as a PDF and allows you to send to a third-party via email or text message. It's marvelous and I ask that each of my clients download it when they hire me. This way, if they don't have a scanner or it's not convenient to come by the office, they can take a pic on Genius Scan and send me the scan. I use it weekly myself.

The best part is that Genius Scan is free!

Zapier

When it comes to automating processes, nothing makes that easier than Zapier. Zapier is the website that connects all these various apps/software, including those discussed above. For example, if a client completes a Typeform, you can connect that submission, via Zapier, to your server so that the client's information is used to create a server file. Or connect it to Outlook to create a client. This is a difficult one to explain and would probably be best if you tried it out on your own as the possibilities are endless. Let's just say this: if you are looking for a way to automate a process, I'll bet that Zapier can help you do that exact thing.

Zapier is free, which is fabulous, and it makes your processes seem seamless and so organized, which clients love.

Creating Online Alternatives for Clients – Filling the Gaps

Lawyers have a difficult time accepting that technology can make their lives easier. I think that this partially stems from the fact that lawyers want to feel like the services they provide can only be provided by a human and not by technology. I understand this emotion but I also understand that technology is only going to become a more important and involved part of our lives. So, we must evolve. There are many online options available to clients, including LegalZoom. Say what you want about LegalZoom, but people love using it because it's easy, cost-effective and makes clients feel like they've checked something off of their list.

For those folks who don't want to go completely online and would like to have a local "person" as their lawyer in case something comes up, I have found success in providing an online option for serving needs where a lawyer isn't necessary but important to have in the process. For me, in an estate planning practice, I have found that certain clients do not need the involved, traditional estate plan, which includes meetings, reviews, etc. Additionally, a client may not want to pay what it costs to get a traditional estate plan done. To respond to these identified gaps, I created a website that allows Washington residents to get a thorough estate plan done for a fraction of the cost and without any meetings. They do so by going to the website (www.orbitwills.com) and completing a questionnaire, paying for the service, and uploading their questionnaire to my office. We prepare the documents and send them to the client for review. If all looks good, we send them the final documents with instructions to sign. It has been incredibly successful and well-loved by those who have used it.

But, the success was hard for me to picture in the beginning. I was worried about cannibalizing my traditional practice with an option like this. So much so that I wanted the concepts to be completely separated and didn't mention Orbit Wills on my firm's website and vice versa. I had an awkward period

where I didn't explain both options to clients. I have discovered that linking the two provided more options for clients and, for those who chose to do the traditional route, at least they were aware of the options and made an informed decision to go one route vs. the other.

Most people these days prefer to do things online. Importantly, if they cannot obtain legal services the traditional way due to a disability, geographic, or financial constraints, we need to be able to provide options to those clients so they have the same access as do other clients.

The point is: online legal services are just starting. This is the way of the future and we must evolve or . . . retire?

Blockchain 101 for Lay People

WRITTEN BY:

Celiza (Lisa) Bragança

PRESENTERS:

Celiza Bragança: @LisaBraganca

Ian Hu: @Ian_Hu_

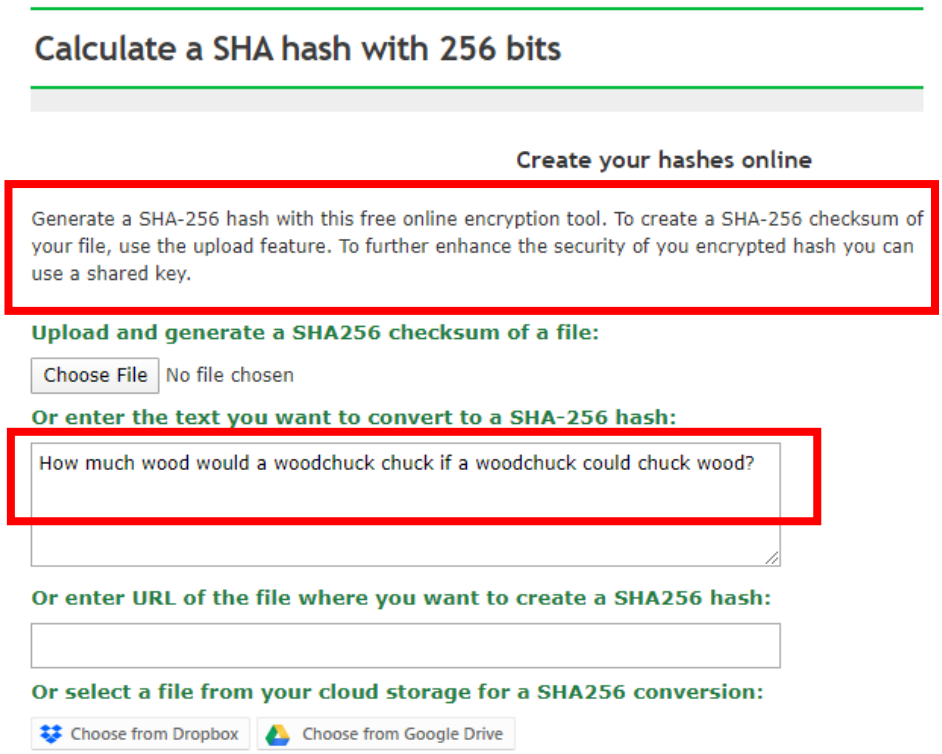
January 6, 2020

WHAT IS BLOCKCHAIN?

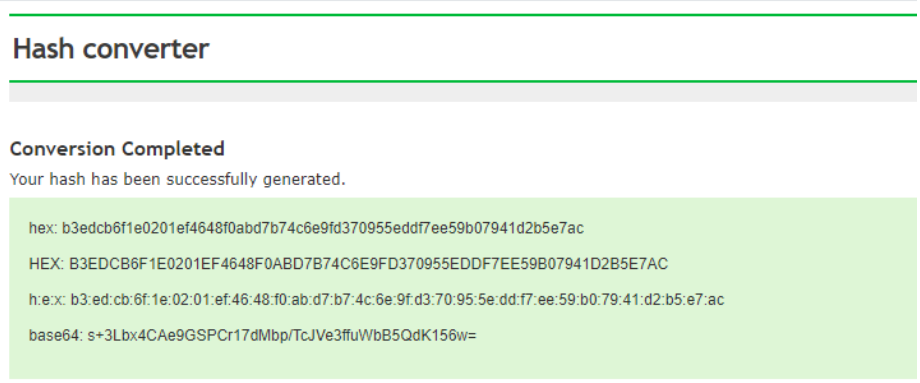
A blockchain is a special type of database that is shared across a network of computers. There are several factors that distinguish blockchain technology from the typical technology used in maintaining databases.

The first factor is a distributed network where each computer contains a complete copy of all records. There is no single centralized database. Nor is there a centralized entity that ensures the accuracy of all the data. Transactions are grouped into blocks and recorded by each computer in the network. This kind of decentralized network is only possible because of **cryptography**.

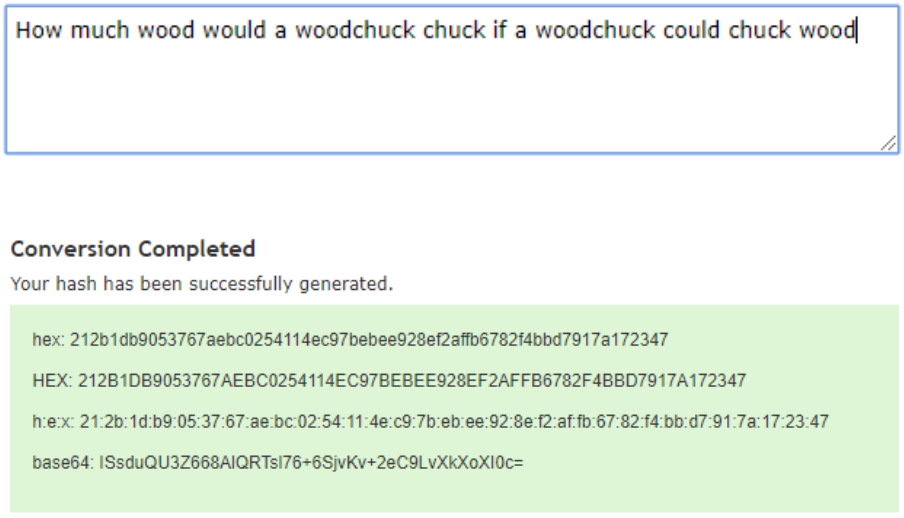
The second factor is the use of **cryptography** to ensure that transactions are recorded accurately and are unchanged. Blockchains use hashing functions (cryptography) to create a unique identifier – a hash code -- for every block of transactions. A hash code is generated by a mathematical function. You put in digital information and it generates a hash – a string of letters and numbers. Here is one website that will do this for you: https://hash.online-convert.com/sha256-generator



Put in the statement "how much wood would a woodchuck chuck if a woodchuck could chuck wood?" and it will generate the following hash:



But, if any part of the digital information (input) is changed, the hash will change. What if we take out the question mark at the end of the statement?



The mere removal of a question mark results in a completely different hash. Here is a graphical depiction of these concepts created by Reuters that you might find helpful: http://graphics.reuters.com/TECHNOLOGY-BLOCKCHAIN/010070P11GN/index.html.

The hash codes are used by the decentralized computers storing the blockchain to ensure that the information they have is accurate and unchanged. The hashes are embedded in the blocks making it ridiculously hard to go back and alter information in recorded blocks.

You may have heard about bitcoin mining. Mining is the name given to computers racing to solve complex mathematical problems in order to earn the right to record a block on the blockchain and earn bitcoin.

The winning miner records the block that is then recorded by all other computers in the network. This happens about once every ten minutes on the bitcoin blockchain. Miners also receive transaction fees from those who have transactions on the bitcoin blockchain. A really nice short description by SciShow is called *Bitcoin: How Cryptocurrencies Work*, available on YouTube at https://youtu.be/kubGCSj5y3k

There are lots of user-friendly resources to explain in detail what blockchains are and how they work. For example, Khan Academy has a course on blockchains, available at https://www.khanacademy.org/economics-finance-domain/core-finance/money-and-banking/bitcoin/v/bitcoin-what-is-it. A nice video on blockchain is *Blockchain Expert Explains Oner Concept in 5 Levels of Difficulty* (published by Wired Magazine), available at https://youtu.be/kubGCSj5y3k.

Do not be discouraged if you do not understand blockchain the first, second, or tenth time you watch a video or read about it. It can take a long time to understand these concepts. Moreover, you do not have to understand everything about blockchain to be technically competent.

WHAT IS A CRYPTOCURRENCY?

Cryptocurrency (or virtual currency) is a specific type of digital coin that is used as currency. Bitcoin is just one type of cryptocurrency. Use as currency means that a digital coin "functions as a medium of exchange, a unit of account, and/or a store of value." CFTC Primer on Cryptocurrencies, available at https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf. A comprehensive definition of cryptocurrency by The Financial Action Task Force is:

> a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued or guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency. Virtual currency is distinguished from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and

> accepted as a medium of exchange in the issuing country. It is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency.

Fin. Action Task Force, *Virtual Currencies: Key Definitions and Potential AML/CFT Risks* 4 (2014), https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf.

What does this mean? It means you can use a digital coin – cryptocurrency – to purchase something, to value something, and/or a way to save for later consumption.

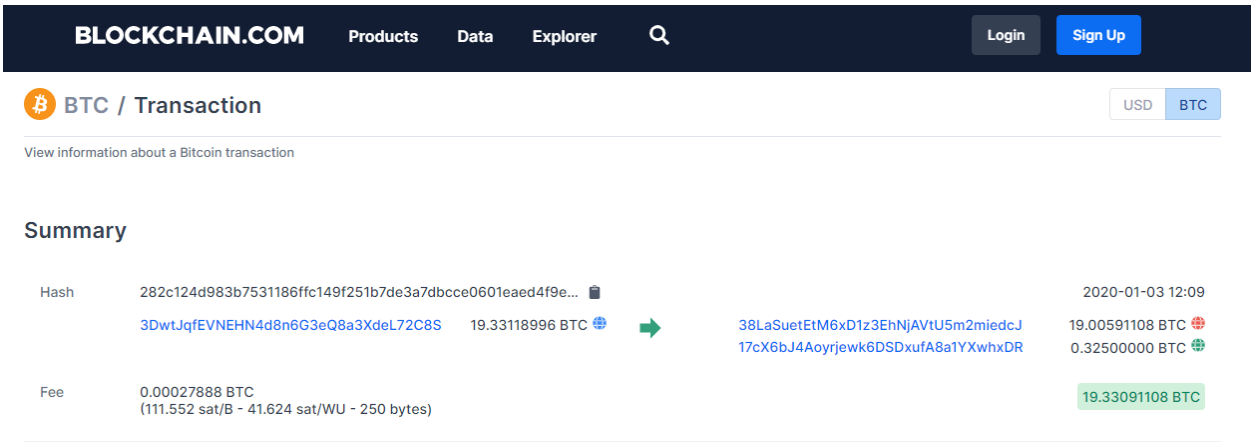
WHAT IS BITCOIN?

Bitcoin is the most popular of the cryptocurrencies in use today. The creation of bitcoin and the blockchain came on the heels of the Great Recession, when many people lost faith in the banking system and banking regulators. The first digital coin, bitcoin, was created in 2009 by Satoshi Nakamoto. Nobody knows who Nakamoto is or whether he is one person or a group.

Nakamoto published a nine-page white paper called *Bitcoin: A Peer-to-Peer Electronic Cash System*. In the paper Nakamoto proposed an alternative to the existing financial system, which had recently failed so spectacularly. He proposed a system that would cut out governments, banks and other financial institutions, a system that would allow "two willing parties to transact directly with each other without the need for a trusted third party." The goal was a peer-to-peer financial system that offered privacy, was independent of governments and eliminated the transactional expenses imposed by, and the interference of, banks and other financial intermediaries.

What does bitcoin look like?

Now that you have some idea of what bitcoin is, let's look at a bitcoin transaction. Because bitcoin are bits of computer code, you need a computer program to show them to you. One such program is called the Blockchain Explorer, available at https://www.blockchain.com/explorer. This program reads bitcoin transactions that exist on the blockchain and translates them into a readable format like the following:



This is the most important of the information available about a transaction available on the Blockchain Explorer. There is much more, including the identification of the "block" on which this transaction is recorded.

This is not the friendliest format, but this is what a bitcoin transaction looks like. The "hash" is the transaction identifier. The long blue number below the hash starting with "3Dw" is the address of the wallet from which bitcoin was transferred (the "From" wallet). The two long blue numbers to the right of the green arrow starting with "38L" and "17c" are the addresses of the wallets into which the bitcoin was transferred (the "To" wallets). At the bottom left, the fee for processing the transaction is reported.

WHO SHOULD CARE ABOUT BLOCKCHAIN AND DIGITAL COINS?

All lawyers should have some familiarity with the legal and regulatory issues concerning blockchain and digital coins. More individuals and businesses are choosing to acquire and hold digital assets that exist on blockchains. This means lawyers must be familiar with, and inquire about, digital coins in many types of matters such as litigation, tax, divorce, estate planning, probate, bankruptcy and business transactions, to name just a few. For example, if you are representing one party in a divorce, you should be seeking information about bitcoin or other digital assets that your client and the other party may possess. It would be a mistake to assume that only criminals use digital assets.

Moreover, as clients experience problems with bitcoin and other digital assets, their first call is likely to be to their lawyer – you. It is important that you are able to give them the kind of "first aid" advice that will preserve whatever chance they may have of recovering their losses. A fundamental legal skill is

identifying potential legal problems whether an attorney has the skill and knowledge to address those issues or not:

> Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

ABA Model Rule 1.1, Competence – Comments (Legal Knowledge and Skill), at Comment 2, available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence/comment_on_rule_1_1/.

REGULATION OF DIGITAL ASSETS

Digital assets as currency

Digital assets like bitcoin are regulated by banking regulators and state money transmission regulation. Banking regulators require businesses selling virtual currencies like bitcoin to comply with anti–money laundering and "know your customer" regulations. At the federal level the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department, oversees registration and regulation of money transmitting businesses. FinCEN issued guidance in March 2013 on the regulatory responsibilities of money transmitter businesses in a document entitled Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, which can be found online. There are also numerous state regulations of money transmitters.

Digital assets as commodities

Bitcoin is also considered a commodity by the Commodities Futures Trading Commission (CFTC). While the CFTC does not directly regulate the sale of commodities—such as gold, silver and pork bellies—it does regulate derivatives that are based upon the value of commodities, such as swaps, futures contracts and options contracts.

The CFTC has allowed two of the exchanges it oversees to begin trading bitcoin futures. The Chicago Mercantile Exchange and the Chicago Board Options Exchange used a self-certification process to

approve and begin trading these contracts, so the CFTC did not have to expressly approve the trading of bitcoin futures contracts.

Digital assets as securities

Federal and state securities laws apply to those digital coins that are securities. The determination of whether a digital coin is a security is not always clear-cut. There is no simple formula. The SEC looks at the economic reality of a particular transaction: if it walks like a duck and quacks like a duck, it is a duck.

The Howey test is the long-established test used by the SEC to determine whether an offering is subject to federal securities laws. The Howey test applies to digital coins as well as other offerings. In the *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO* (the DAO Report), available at https://www.sec.gov/litigation/investreport/34-81207.pdf, the SEC issued an authoritative statement of how it applied the Howey test to conclude that digital coins issued by the DAO, an unincorporated organization, were securities:

> An investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others . . . . In analyzing whether something is a security, form should be disregarded for substance, and the emphasis should be on economic realities underlying a transaction, and not on the name appended thereto (citations omitted).

Because the DAO digital coins, called tokens, offered investors the prospect of earning profits that would be generated through the managerial and entrepreneurial efforts of the issuers and others, the SEC considered the coins securities.

More recently, the SEC expanded on the DAO Report in specific guidance to those considering "initial coin offerings" or ICOs. *Framework for "Investment Contract" Analysis of Digital Assets*, available at https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets. The SEC also created a "Strategic Hub for Innovation and Financial Technology" which it calls "FinHub." https://www.sec.gov/finhub. FinHub is intended to, among other things, collect and publish in a central location the SEC's activities and initiatives involving blockchain and other "FinTech." This includes providing continuing guidance concerning the application of federal securities laws to FinTech activities.

In 2019, the SEC issued several no-action letters that provided further guidance on the application of federal securities laws to digital assets. In one no-action letter, the SEC Division of Corporation Finance stated that it did not consider the digital tokens that a corporate charter service proposed having customers use to purchase air charter services to be securities. *In re Turnkey Jet, Inc.*, April 3, 2019, available at https://www.sec.gov/divisions/corpfin/cf-noaction/2019/turnkey-jet-040219-2a1.htm. In another no-action letter, the SEC Division of Corporation Finance similarly stated that it did not consider digital tokens that a gaming company proposed to allow gamers who purchase or earn in-game currency in one game to transfer it to other participating games. *In re Pocketful of Quarters, Inc.*, July 25, 2019, available at https://www.sec.gov/corpfin/pocketful-quarters-inc-072519-2a1. In both cases, the SEC Division of Corporate Finance noted the issuers would not use the proceeds of the sale of the digital tokens to develop the operational platform and the tokens would only be used for consumption purposes.

TAXATION OF DIGITAL ASSETS

Another important consideration is how the IRS and other taxing authorities treat digital assets like bitcoin. The IRS treats cryptocurrencies like bitcoin as property, not like a foreign currency. IRS Notice 2014-21, available at https://www.irs.gov/pub/irs-drop/n-14-21.pdf. The IRS requires that any cryptocurrency that a taxpayer receives as payment for goods or services be reported at its fair market value on the date of receipt. The type of gain or loss recognized on the cryptocurrency is subject to IRS rules. Taxpayers may be required to issue a Form 1099-MISC for payments made in cryptocurrency and may be required to withhold taxes. Additional information on taxation of digital assets is available here: https://www.irs.gov/pub/irs-utl/2018ntf-bitcoin-cryptocurrency-an-introduction-and-tax-consequences.pdf

BEFORE YOU DECIDE TO ACCEPT PAYMENT IN CRYPTOCURRENCY

Cryptocurrencies like bitcoin and ether are gaining wide acceptance as currency. But there are a number of things to consider before you start accepting cryptocurrency as payment for legal services. For example, what is your state's attorney regulatory agency position on how you going to process the payments. Is your accountant prepared to handle cryptocurrency transactions? What steps will you take to ensure you are safely handling cryptocurrency?

The only state attorney regulatory agency to expressly authorize attorneys to accept bitcoin as payment is Nebraska's. If a Nebraska attorney receives bitcoin in payment, they are required to convert the bitcoin immediately to U.S. currency. If you do not live in Nebraska, then you could request an opinion from your state's agency.

You should make sure that your accounting software and your accountant are able to handle cryptocurrency transactions. This is a relatively new area and not every accountant is excited about having to deal with cryptocurrency transactions. Make sure that your accounting software is capable of reporting the information that you accountant will need to file your tax returns. It is better to work this all out ahead of time than to be scrambling at tax time.

Finally, be aware of all the ways that cryptocurrency can be stolen. Even Apple co-founder Steve Wozniak has had bitcoin stolen. Common ways that cryptocurrencies may be stolen are through phishing schemes, fake exchanges and clipboard hijacking. Fake exchanges have websites and addresses that masquerade as legitimate digital coin exchanges. Clipboard hijacking is accomplished by computer viruses that remain dormant until they detect a digital coin address copied onto a clipboard, which is the way most people enter online wallet addresses for digital coin transactions. The virus changes the receiving online wallet address to steal the digital coins. If you decide to accept bitcoin or other cryptocurrency as payment, you should take precautions and stay abreast of the latest scams.

Breakthru Change: Rules and Innovation

PRESENTERS:
Lori Gonzalez: RayNaCorp
Megan Zavieh: ZaviehLaw

January 3, 2020

OUTSOURCING FOR ETHICS COMPLIANCE

BY MEGAN ZAVIEH – ORIGINALLY PUBLISHED ON ATTORNEYATWORK.COM

Notice the title of this post: It is not "Outsourcing Ethics Compliance." That you may not do. Rather, it is "Outsourcing *for* Ethics Compliance," the idea being to send work out to help ensure you meet your ethics obligations.

What Is Outsourcing?

In the past, "outsourcing" brought to mind images of large offices filled with workers on telephones, most likely overseas, fielding customer service center phone calls. While that is still a component of the outsourcing industry, it is not what I have in mind when I suggest using outsourcing in your law firm business.

Outsourcing today includes very different types of services, from contract lawyers to virtual receptionists. It is simply sending out work you would otherwise do yourself. If you drop your laundry at the laundromat's by-the-pound counter, you're outsourcing your laundry. And if you need someone to answer your phone, you can outsource that as well.

Outsourcing for Solo and Small Firm Lawyers

For solo and small firm lawyers, some of the best outsourcing available is for tasks that eat up a lot of your time, are critical to your practice's success, and are irritating enough that they do not get the attention they demand. These tasks include answering the phone, returning phone calls, timekeeping, billing and file management.

Virtual receptionists and virtual assistants will gladly take on these types of tasks for you, without you ever having to hire a staff member. Virtual receptionists will answer your phone at hours you specify, return phone calls as you request, and deliver messages to you by email or text. Virtual assistants will go even further, handling office administration tasks like billing, time records and even managing electronic files.

These types of tasks are essential to running any successful law practice. Potential and current clients will be impressed by a friendly receptionist taking their calls and delivering their messages, and clients will appreciate a live phone call from your receptionist (instead of an email) keeping them updated on their matters. So, a virtual receptionist can not only free up your time but may also improve your image with clients. Similarly, having someone help with billing can improve your cash flow.

Lawyers can go further by outsourcing occasional overflow work as needed to lawyers or paralegals who work on a contract basis. This is like having a staff member on call when you need assistance, but without the burden of paying a full salary when you may only need them occasionally.

What This Has to Do With Ethics

It is all well and good to see how outsourcing some daily tasks can be efficient or even profitable, but how does it tie into ethics? Failure to keep up with these outsourceable tasks is the foundation of many state bar complaints:

Communications. One of the biggest complaints against lawyers is that they fail to communicate with clients. While email has made this much easier to do, it is still critical that we answer our phones and return our phone messages. Simple as this sounds, it can be overwhelming for some lawyers, especially if they are practicing truly solo. Having a virtual receptionist to take calls, deliver messages and return calls as needed can be a tremendous asset in keeping clients informed.

Billing. It is another source of countless complaints — failing to keep adequate records, billing sporadically, neglecting to keep clients updated on the status (or amount) of their bill, and similar behavioral shortcomings. A virtual assistant who keeps the practice's timekeeping software up to date, prepares invoices in a regular and timely fashion, and corresponds with clients regarding their bills would be invaluable. Not only will collections likely improve if these tasks are done correctly and on time, but the likelihood of a bar complaint plummets when accurate bills are being sent regularly.

Disorganization. This is a very broad category that can lead to ethics trouble. So many lawyers do not maintain clean, organized client files, either in paper or electronic form. Paper filing is becoming less and less the issue; today, the cluttered hard drive or cloud drive is the lawyer's enemy when a client comes asking for a copy of "the file." Disorganization can also lead to missed deadlines and mistakes in substantive work. The benefit of having someone help organize your electronic files should be obvious.

Overflow. Lastly, when a lawyer is overwhelmed by too much work (a problem many solos dream of having), charges of failing to perform with competence are all too often around the bend. Hiring a contract lawyer or a paralegal service to help pick up the slack when this happens can head off problems with the substance of your work.

Where Do I Sign Up?

Beneficial as outsourcing can be for your practice, how do you get started? For the names of trusted outsourcing vendors, turn to resources such as your state bar (including practice management advisors), local bar and bar sections, as well as colleagues. (Sometimes organizations may offer discounts, too.) Online reviews, particularly of virtual services, can be useful in sifting through the options.

No matter how you come to find your first outsourcing vendor, with the way the practice of law continues to evolve, most likely it will not be the last one you hire.

REREGULATION, NOT DEREGULATION
BY ANDREW ARRUDA – ORIGINALLY PUBLISHED ON IAALS.DU.EDU

It's no secret that the United States is facing an access to justice crisis. Our justice system is failing. We are failing to uphold what the country's founding fathers upheld as their ultimate goal and virtue: justice for all. George Washington himself said, "the due administration of justice is the firmest pillar of good government"; Alexander Hamilton famously stated that "the first duty of society is justice"; and Thomas Jefferson said, "the most sacred of the duties of government is to do equal and impartial justice to all its citizens." And yet every hour of every day, countless Americans go without legal assistance as they face a system designed by lawyers, regulated by lawyers, and one which profits only lawyers. The legal system has been regulated so tightly that it has led to a world where only a fraction of the citizens who require legal services can access them. Consequently, the current regulatory scheme has led to a black market of legal services and innovation stagnation in the evolution of legal services.

Reregulation, rather than deregulation, is the answer to these problems and stands at the heart of the worthy efforts of groups in Utah, California, Arizona, Illinois, and other states presently advocating for a rethinking of the existing legal regulatory schema. The idea is not deregulation, but rather reregulation, fueled by certified and regulated professionals who can deliver value at different steps of an individual's legal journey.

Today's regulatory framework forces most individuals into a Hobson's choice: they either face the legal system alone or take their chances with a black market representative. Without a tiered system of certified professionals delivering legal services, mirroring that of what we see in the world of medicine, individuals can either afford legal representation or they cannot. Those who cannot afford legitimate legal representation then obtain legal services through a black market of unaccredited legal service providers. What about civil legal aid, you ask? Annual federal funding for civil legal aid amounts to less than what Americans spend each year on Halloween costumes . . . for their pets. This black market of legal services continues to exist and grow due to protectionist regulation that must be unlocked, rethought, and reimagined.

In my opinion, anecdotal hyperbole centered around so-called *notarios* is not only predicated on thinly veiled racism—it is also the kind of uninformed rhetoric that desperately relies on half-facts to shore up the status quo. Most importantly, it distracts intelligent people from the most important point at hand, which is that all people—regardless of their mother tongue or socioeconomic status—should have access to good legal assistance.

In many low-income and immigrant communities, like the one I grew up in, a college degree is either prohibitively expensive or may not be considered an option to begin with. How then can members of these communities be expected to find a competent attorney who understands their needs, if none exist? Consider as well that members of this community also speak non-fluent English, and you begin to understand the lack of legal service supply in these communities. We need to reregulate as it is clear that our current framework, which requires an all-out prohibition of legal assistance by anyone other than a lawyer, only serves to strengthen the systemic racism that these groups already face on a daily basis.

In typical lawyer fashion, we have allowed perfect to become the enemy of good. A lack of tiering and specialization of labor in the legal industry then creates an innovation vacuum as lawyers have been forced to become jacks of all trades and are unable to collaborate, delegate, or systematize their practices.

Through an absolute prohibition on nonlawyer ownership of law firms, we have created a system where an individual who has worked hard to earn their Juris Doctor must also simultaneously perform the functions of someone who has earned a degree in business, in accounting, in computer science, in social work, and in psychology. How can we expect thoughtful innovation, with or without technology, within law when we freeze out those who specialize in what lawyers most need assistance with? I imagine a world where an attorney can team up with an MBA recipient, a social worker, and a computer scientist to open a highly profitable law firm where each of them benefits equally as owners. Again, our professional regulation as it currently stands does not allow this.

Access to legal representation is the foundation of access to justice. The crisis we face as a nation is not just an issue of access to justice for the poor, but also an access to justice crisis for the middle class, and even an access to justice crisis for the wealthy. It affects all of us.

IAALS, an organization on whose Board of Advisors I am proud to serve, recently launched their *Unlocking Legal Regulation* project, which does an admirable job of both keeping its readership up to date on regulatory innovation currently happening in states across the country, as well as acting as a nexus for literature, events, and initiatives focusing on this important mission. And, IAALS is partnering with Utah to pilot test what a better regulatory system could look like.

We cannot afford to fail those who cannot afford legal representation. We cannot afford the continued decay of the justice system to the detriment of the American citizenry. We cannot afford to *not* consider unlocking legal regulation when it is so very clear *our current system of regulation is failing all of us, every single day*. The words "equal justice under law" are etched into the façade of the Supreme Court. It is time that we start living these words. It is time we reregulate the delivery of legal services in a way that ensures equal access to justice, in form and in substance, regardless of mother tongue or economic status. More money should never mean more justice.

CALIFORNIA TENTATIVE PROPOSED REGULATORY CHANGES

General Recommendations

1.0 - The Task Force does not recommend defining the practice of law.

1.1 - The models being proposed would include individuals and entities working for profit and would not be limited to not for profits. 7

1.2 - Lawyers in traditional practice and law firms may perform legal and law-related services under the current regulatory framework but should strive to expand access to justice through innovation with the use of technology and modifications in relationships with nonlawyers.

1.3 - The implementation body shall: (1) identify, develop, and/or commission objective and diverse methods, metrics, and empirical data sources to assess the impact of the ATILS reforms on the delivery of legal services, including access to justice; and (2) establish reporting requirements for ongoing monitoring and analysis.

Recommendations for Specific Exceptions to the Current Restrictions on the UPL

2.0 - Nonlawyers will be authorized to provide specified legal advice and services as an exemption to UPL with appropriate regulation.

2.1 - Entities that provide legal or law-related services can be composed of lawyers, nonlawyers or a combination of the two, however, regulation would be required and may differ depending on the structure of the entity.

2.2 - Add an exception to the prohibition against the unauthorized practice of law permitting State-certified/registered/approved entities to use technology-driven legal services delivery systems to engage in authorized practice of law activities.

2.3 - State-certified/registered/approved entities using technology-driven legal services delivery systems should not be limited or restrained by any concept or definition of “artificial intelligence.” Instead, regulation should be limited to technologies that perform the analytical functions of an attorney.

2.4 - The Regulator of State-certified/registered/approved entities using technology-driven legal services delivery systems must establish adequate ethical standards that regulate both the provider and the technology itself.

2.5 - Client communications with technology-driven legal services delivery systems that engage in authorized practice of law activities should receive equivalent protections afforded by the attorney-client privilege and a lawyer’s ethical duty of confidentiality.

2.6 - The regulatory process contemplated by Recommendation 2.2 should be funded by application and renewal fees. The fee structure may be scaled based on multiple factors.

Rules of Professional Conduct Recommendations

3.0 - Adoption of a new Comment [1] to rule 1.1 "Competence" stating that the duty of competence includes a duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology.

3.1 - Adoption of a proposed amended rule 5.4 [Alternative 1] "Financial and Similar Arrangements with Nonlawyers" which imposes a general prohibition against forming a partnership with, or sharing a legal fee with, a nonlawyer. The Alternative 1 P a g e 7 amendments would: (1) expand the existing exception for fee sharing with a nonlawyer that allows a lawyer to pay a court awarded legal fee to a nonprofit organization that employed, retained, recommended, or facilitated employment of the lawyer in the matter; and (2) add a new exception that a lawyer may be a part of a firm in which a nonlawyer holds a financial interest, provided that the lawyer or law firm complies with certain requirements including among other requirements, that: the firm's sole purpose is providing legal services to clients; the nonlawyers provide services that assist the lawyer or law firm in providing legal services to clients; and the nonlawyers have no power to direct or control the professional judgment of a lawyer.

3.2 - Adoption of a proposed amended rule 5.4 [Alternative 2] "Financial and Similar Arrangements with Nonlawyers" which imposes a general prohibition against forming a partnership with, or sharing a legal fee with, a nonlawyer. Unlike the narrower Recommendation 3.1, the Alternative 2 approach would largely eliminate the longstanding general prohibition and substitute a permissive rule broadly permitting fee sharing with a nonlawyer provided that the lawyer or law firm complies with requirements intended to ensure that a client provides informed written consent to the lawyer's fee sharing arrangement with a nonlawyer.

3.3 - Adoption of a version of ABA Model Rule 5.7 that fosters investment in, and development of, technology-driven delivery systems including associations with nonlawyers and nonlawyer entities.

3.4 - Adoption of revised California Rules of Professional Conduct 7.1–7.5 to improve communication regarding availability of legal services using technology in consideration of: (1) the versions of Model Rules 7.1–7.3 adopted by the ABA in 2018, (2) the 2015 and 2016 Association of Professional Responsibility Lawyers reports on advertising rules, and (3) advertising rules adopted in other jurisdictions.

ETHICALLY OUTSOURCING SOCIAL MEDIA MANAGEMENT

BY MEGAN ZAVIEH – ORIGINALLY PUBLISHED ON ATTORNEYATWORK.COM

It's a given that you need to delegate or outsource some tasks if you want to grow as a firm. There are only so many hours in a day, and if you try to do absolutely everything yourself, it will mean limited revenues and likely unbearable hours and stress for you. And you are bound to falter on either administrative duties or client matters because it's impossible to perform all the necessary functions alone day after day.

At the same time, whatever work you do delegate must be done in compliance with attorney ethics rules. I have written on this topic before in the context of various types of tasks that may be outsourced, but the rise of social media and direct advertising methods highlights a new concern: How do you control compliance with attorney advertising rules when you seek to outsource in these areas?

Outsourcing Social Media

Social media is a hotbed of potential ethics violations. It has been an issue in contexts as varied as friending a judge on Facebook to having a client delete unflattering posts.

For ethics and outsourcing, the concern is the lawyer's control over the strict compliance required for any postings on social media. The debate over whether a social media presence is important in growing a law practice is fading as social media's influence in the market becomes undeniable. This puts cultivating a social media following high on the marketing priority list. Using services like Buffer or Hootsuite that allow you to schedule social media posts is fine when the lawyer is in control of the content of the posts. But what about hiring a social media consultant to post for you? This is becoming a huge industry, and for lawyers who are either too busy to cultivate a social media following or lack interest in doing so, the idea of hiring someone to do it for you is very tempting.

Content Marketing vs. Soliciting Business

When using social media for business, whether you are writing the posts yourself or hiring someone to do it for you, there are two primary types of posts. One is content marketing. Content marketing is basically demonstrating your knowledge of a subject by delivering useful information to people who may be interested in it. These are your blog posts on topics related to your practice area, articles you have written in other publications that you post links to, and comments on other people's posts of interest that you share on social media platforms.

The other type of posts are ones directly soliciting business. These are what we would generally think of as advertisements. They highlight your experience, ask people to call you for help on their cases, and make statements to the effect of "I am available to be hired." California's Committee on Professional Responsibility and Conduct issued Formal Opinion 2012-186 in which it went through examples of social media posts and determined which ones are attorney advertising and which were not. The determining factor was whether the posts indicated that the attorney was available to take on new work. (Note that opinion is now five years old, something of an eternity in the constantly changing social media landscape.)

The Difference Is Critical

Content marketing generally does not fall under attorney advertising rules. The rules are designed to protect the public from lawyers trying to get business in underhanded, confusing or oppressive ways. What content marketing really does is convey useful information to the public. The fact that you are the source of the information is intended to lead people to think of you and call you when they need help in your area of expertise; you are not going to cause confusion or be seen as oppressively soliciting business because you wrote an article on a useful topic. So, in general, content marketing posts are not subject to attorney advertising rules.

This makes content marketing a great task to safely outsource. A social media consultant who knows nothing of attorney advertising rules can likely post your content, share it on networks, and drive traffic to your blog through SEO and targeted sharing without running afoul of the ethics rules.

Advertising in which you tell the public that you are available for employment *is* subject to attorney advertising rules. With these posts you have to be very careful. Some state rules have requirements that simply cannot be met (or cannot easily be met) on Facebook or Twitter — like that every advertisement needs to say "advertisement" and identify the attorney responsible for the ad. You may have no characters left on Twitter for your actual ad.

Paid ads on the social media platforms are also likely to be onerous with the attorney advertising rules.

Every state has its own set of rules, and most social media consultants won't be familiar enough with how to comply with the rules to do your postings and not step over the lines.

Steps to Take to Outsource Safely

It's fine to use social media outsourcing help for content marketing. If you are not under the attorney advertising rules, you cannot violate them. Control the posts carefully, however, and make sure you explain to anyone helping you exactly what would cross the line into advertising.

If you do choose to outsource more direct advertising, make sure you work with someone familiar with the legal industry. In many respects, I like to look outside of law to find people who know the platforms first, with the industries they have worked in a distant second in terms of hiring criteria. But when you are seeking help in an ethically critical area, hire someone who knows the field.

Then, pay strict attention to everything that goes up on social media. You may think this defeats the purpose of having help, and it certainly cuts into the time-savings you gain from hiring someone. However, the need to keep strict control is paramount, and you will still gain a lot from having help. For one thing, your posts will actually go up on a regular basis (which they likely won't if you try to do it all yourself), so your presence will grow. Plus, you gain the benefit of your consultant's expertise in how to cultivate a real following. But in the end, you are responsible for everything that goes out under your name.

THE DISAPPEARING RURAL LAWYER

BY MARK PALMER – ORIGINALLY PUBLISHED ON 2CIVILITY.ORG

Illinois' rural lawyers are disappearing. The uneven distribution of practicing attorneys in the state is startling. Cook County represents 40% of the state's population and over 70% of its lawyers. Cook County and its six collar counties account for 65% of the state's population and 90% of its lawyers. That leaves 95 counties in Illinois with just 10% of its lawyers.

The lack of rural lawyers in Illinois is becoming more pronounced by the year, according to the Illinois Supreme Court Commission on Access to Justice. As the rural lawyer population throughout much of the state declines, locating legal aid is becoming increasingly difficult for citizens in need.

Shrinking Numbers Across America

The figure below in blue shows the distribution of the state's 65,000 resident attorneys (30,000 registered Illinois attorneys live outside the state). When it comes to new attorneys (in pink), 52 counties admitted fewer than five new attorneys in the last five years. Sixteen counties admitted none.

The shrinking number of rural lawyers isn't just a problem in Illinois. The main street attorney is an endangered species throughout rural America. The New York Times reported similar metropolitan saturation in a sampling of states: in South Dakota, 65% of the lawyers live in four cities; in Georgia, 70% are in greater Atlanta; in Arizona, 94% are in the two largest counties; and in Texas, 83% of attorneys are around Houston, Dallas, Austin and San Antonio.

According to a 2014 study in the South Dakota Law Review, while about 20% of our nation's population lives in rural America, only 2% of our nation's small law practices are in small towns and rural areas.

However, these numbers (including the Illinois numbers above) are overstated. The number of available private practitioners is fewer once you take into account non-public facing attorneys. These include government jobs in the state's attorney's office, public defender officers and the judiciary, as well as those working non-legal jobs or in-house positions, and those otherwise not available to serve the public's legal needs.

"We face the very real possibility of whole sections of this state being without access to legal services. Large populated areas are becoming islands of justice in a rural sea of justice denied," cautioned Chief Justice David E. Gilbertson of the South Dakota Supreme Court.

These disproportionately represented geographical areas create what have been called "legal deserts." To make matters worse, the limited availability of legal assistance in legal deserts is combined with other barriers specific to rural settings, such as the need to travel vast distances for services, the lack of transportation options and often-inferior cellular and internet communications.

Going it Alone

This hardship is clearly reflected in the continuing rise of individuals seeking justice without counsel. In 2015, statistics from the Administrative Office of the Illinois Courts (AOIC) showed that 93 of the 102 counties in Illinois reported that more than 50% of their civil cases had at least one self-represented

litigant (SRL). In some case types, that number rose as high as 80%. This was consistent in jurisdictions from all four corners of Illinois.

These startling numbers mirror similar trends nationally, where an estimated 3 out of 5 people in civil cases go to court without a lawyer. In urban, suburban and rural communities, more SRLs are attempting to solve legal problems in courthouses without professional counsel.

According to the Self-Represented Legal Network, civil legal disputes across the U.S. are handled in more than 15,000 courts, resulting in a patchwork of jurisdictions among state, county and municipal authorities. An estimated 46 million people are appearing in court, handling cases involving divorce, custody, child support, guardianship, housing and consumer disputes. These courts consistently report through sampling that 75% or more of these cases have at least one SRL. See NCSC's 2015 Landscape of Civil Litigation in State Courts.

Finding Solutions to this Lawyer Community Problem

Legal isn't the only profession experiencing the ramifications of America's shifting demographics. Our population is moving to urban areas, often following more jobs with better salaries and more of life's comforts. Nevertheless, bar associations and law schools are among those attempting to address this access to justice void.

Here's a survey of some initiatives addressing this problem, specifically as faced in rural areas:

Arkansas

The Rural Practice Incubator Project is an 18-month program at the William H. Bowen School of Law at the University of Arkansas at Little Rock.

The pilot program, funded by the attorney general's office and donations, provides continuing education programs, introduces participants to rural lawyers, and offers training and resources on how to run an office. Most participants have set up solo legal practices.

The program (started in late 2018) supports incubator attorneys with training, resources, mentoring and guidance to assist them in building their professional careers as rural attorneys.

Incubator attorneys are encouraged to implement innovative legal service delivery models to increase access to justice for low- and moderate-income rural Arkansans. Each participant will provide a minimum of 100 hours of pro bono or low bono legal services during the program.

Colorado

The Self-Represented Litigant Assistance Program is a courthouse-based provider of free legal and procedural information, referrals and court forms, and written information.

The Colorado judicial branch created self-represented litigant coordinators ("Sherlocks") who operate in courthouses in each of Colorado's judicial districts. Sherlocks assist litigants with information on court procedures and with forms and resources offered by the court and outside organizations.

Sherlocks may be attorneys or court staff operating under a statewide Sherlock coordinator. This coordinator works closely with each individual program to ensure consistency throughout the state and to share resources across districts.

South Dakota

The Project Rural Practice (PRP) is enacted legislation to recruit lawyers to rural areas.

PRP started with 16 lawyers and has grown to 24. Lawyers earn about $13,000 a year on top of their salary to practice in eligible counties with a demonstrated need and less than 10,000 residents.

The state pays half of the cost of the program. Local government pays 35% and the South Dakota Bar Foundation covers the rest.

PRP doesn't rely only on the participating attorneys and the state bar to address the dearth of rural lawyers. The program is a collaborative effort involving multiple organizations at the state, county and local levels, including schools and charitable organizations. The State Bar of South Dakota emphasizes that this multi-disciplinary approach will continue to bring stakeholders together, spotlighting their respective interests in the issue and identifying enlightened solutions.

Paraprofessionals

Another consideration often examined in the access to justice conversation is allowing paraprofessionals to assist on legal matters. Two states have already created models that establish licenses for trained legal practitioners who aren't licensed attorneys to give legal advice limited in type and scope.

Since 2012, Washington has authorized Limited License Legal Technicians (LLLTs) on certain matters in the area of family law. In 2019, Utah launched a similar paraprofessional, called Licensed Paralegal Practitioners (LPPs), in designated areas of law.

Several other states are exploring the possibility of instituting programs that would permit those without a law license to provide certain legal services. For example, Minnesota established an implementation committee to make recommendations before March 2020 for its Legal Paraprofessional Pilot Project. Likewise, the Colorado Supreme Court may follow Washington with LLLTs to assist tenants in eviction cases.

Innovations and Regulations

Several states are examining how modifications to ethics rules could promote innovation in the delivery of legal services and contribute to access to justice solutions, including in rural America. California, Arizona and Utah have task forces examining how rule changes could impact the delivery of legal services while best protecting the consumer.

Supporting Rural Illinois

The Illinois Supreme Court's Access to Justice Commission pays special attention to the unique needs of suburban and rural communities. Specifically, it's continuing efforts to support and simplify the use of

remote technology to connect attorneys interpreters and litigants with the court system in a cost-effective and efficient manner.

Here are a few ways that rural Illinoisans can connect with legal assistance:

Illinois Legal Aid Organizations

While the resources may not match those of their urban counterparts, Illinois citizens living in suburban and rural areas can find free legal advice across the state. In Chicago and suburban Cook County, Legal Aid Chicago (formerly LAF) provides free legal services for qualified individuals in the Chicago area.

Those living outside of Chicago may find help from either Prairie State Legal Services (PSLS) or Land of Lincoln Legal Aid (LOLLA). Prairie State serves central and northern Illinois, while Land of Lincoln serves central and southern Illinois.

PSLS and LOLLA reach across many Illinois counties to provide access to justice for low income persons and those age 60 and over. PSLS has 12 office locations serving 36 counties in northern Illinois, while LOLLA has six offices across 65 counties in central and southern Illinois.

These legal aid providers offer an access to the justice system for clients facing eviction and foreclosure, domestic violence, termination of vital benefits, and other threats to the health and safety of themselves and their families.

Nevertheless, these legal aid opportunities are too limited in size and scope to address the demand. Especially the demand around issues like homelessness, domestic violence and the loss of benefits that help people meet basic needs. There just aren't enough legal aid attorneys to service 102 counties across Illinois.

When individuals don't qualify for help or these organizations otherwise cannot help them, alternative resources may be available. These include free attorney consultations, court help desks and self-help options to serve their needs or guide them to other solutions.

JusticeCorps and SRL Coordinators

Illinois JusticeCorps is an innovative AmeriCorps program that places college students, recent graduates and other volunteers in courthouses to help the growing number of SRLs. Volunteers assist litigants and other court patrons in 13 courthouses throughout Illinois. The program is made possible by AmeriCorps funding from the Serve Illinois Commission and the Corporation on National and Community Service. Additional support is provided by the Illinois Supreme Court Commission on Access to Justice, the Illinois Bar Foundation (which oversees the program) and The Chicago Bar Foundation.

In addition to the Illinois JusticeCorps, rural residents can find legal support from a statewide network of SRL coordinators who are based in courthouses. Launched in 2017, the Commission on Access to Justice and AOIC established the network of court personnel to work collaboratively to identify new strategies for improving access to justice. Over 40,000 self-represented individuals received help from the coordinators in the first year and a half of the program.

In an effort to further expand legal assistance in Illinois, the Commission on Access to Justice and the AOIC issued a request for proposals for more SRL coordinators.

Legal Answers via PILI

The Public Interest Law Initiative (PILI) recently took over the operations of the Free Legal Answers program in Illinois. Prior to PILI, Illinois Legal Aid Online oversaw the project.

Originally an American Bar Association project, Free Legal Answers is a secure website where lower-income Illinois residents can ask a lawyer for help with a legal issue. Think: an online Q&A message board for legal questions answered by volunteer lawyers.

Qualified users post questions about civil legal problems. Volunteer lawyers then log onto the site and select questions to answer. Since its 2017 launch, volunteer lawyers have answered 3,435 questions through the website.

Limited Scope Representation

Limited-scope legal representation by attorneys can make legal services more affordable and accessible. Attorneys may unbundle their services – whether it's drafting a plea or motion or representing a client in court.

Illinois Rules of Professional Conduct 1.2 allows lawyers to "limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent." Examples of limited scope representation includes coaching self-represented litigants, providing limited legal advice, drafting and reviewing documents, gathering and preparing evidence, and even appearing in court for a portion of a case.

The Commission on Access to Justice, together with The Chicago Bar Association and Foundation, the Lawyers Trust Fund and the Justice Entrepreneurs Project, released a limited scope representation toolkit. The toolkit provides resources for attorneys interested in offering limited scope legal representation.

The Essentiality of Rural Lawyers

Assuring that main streets across the Land of Lincoln include a law practice isn't just an access to justice issue. It's not limited to delivering legal services or assuring justice in rural Illinois. The decline of the rural lawyer population can impact the overall quality of life for all Illinois citizens, from the health of local economies to the functionality of government entities.

Bar associations, law schools, legal aid organizations and the courts must support efficient and novel solutions to address this evolving legal landscape. Meaningful access to justice can come from a balanced, multi-disciplinary approach to connecting legal problems with legal solutions.

Do you see the decline of rural lawyers as a problem? What other solutions might help?

TECHSHOW2020

The Intersection of Ethics and Well-Being

WRITTEN BY:

Sharon Nelson, John Simek and Jennifer Gerstenzang

PRESENTERS:

Jenny Gerstenzang: @jennygerstenzan

Sharon Nelson: @sharonnelsonesq

January 2, 2020

THE INTERSECTION OF ETHICS AND WELL-BEING

by Sharon D. Nelson, Esq. and John W. Simek

ABA RESOLUTION 105

The ABA House of Delegates adopted Resolution 105 at the 2018 ABA Midyear Meeting. The resolution supports the goal of reducing mental health and substance use disorders and improving the well-being of lawyers, judges and law students. It urges stakeholders within the legal profession to consider the recommendations set out in The Path to Lawyer Well-Being: Practical Recommendations for Positive Change. The pursuit of lawyer wellness has spread rapidly through law firms, bar associations, state bars and state supreme courts.

The National Task Force on Lawyer Well-Being, assembled in August 2016 to "create a movement toward improving the health and well-being of the legal profession," defines lawyer well-being as a "continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical health, and social connections."

The Task Force's recommendations in their report entitled The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, published in August 2017, focus on five central themes:

(1) identifying stakeholders and the role each of us can play in reducing the level of toxicity in our profession,
(2) eliminating the stigma associated with help-seeking behaviors,
(3) emphasizing that well-being is an indispensable part of a lawyer's duty of competence,
(4) educating lawyers, judges, and law students on lawyer well-being issues, and
(5) taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The authors have monitored many of these developments – and now teach several CLEs related to lawyer wellness. We applaud the actions taken to date – and there is still so much to be done. We decided to write an article that highlights some of the developments since Resolution 105 was adopted, including several sad stories that have shaken the legal profession.

THE DEATH OF PAUL RAWLINSON

On April 16, 2019, The ABA Journal carried a story about the death of Baker McKenzie's global chairman Paul Rawlinson. He had died four days earlier, six months after he took a temporary leave to deal with health issues caused by exhaustion. He was 56 years old at the time of his death.

When he took the leave, his firm was struggling with an inquiry into the firm's handling of sexual harassment complaints and internal disagreement over associate pay. The firm at that time had 78 offices and nearly 5,000 attorneys. Reportedly, Rawlinson had visited more than half of those offices.

The exact cause of death was not released, but his death spurred the growing concern about lawyer wellness and the systematic pressures placed on many lawyers, especially at large law firms – and most especially those who lead those firms.

We do not suggest that Rawlinson's wellness issues resulted in unethical behavior of any kind. It was simply a crushing and disturbing story, suggesting that a lawyer's exhaustion could lead to their death. One thing we wondered – and still wonder – was whether there was a culture of wellness at Baker McKenzie and whether his colleagues had reason to suspect how unwell he really was. Have we, as a profession, become impervious to the symptoms of extreme stress on our colleagues?

THE SUICIDE OF GABE MACCONAILL

Attorney Gabe Macconaill, a 42-year old partner at Sidley Austin, committed suicide on October 14, 2018., His widow, Joanna Litt, wrote an open letter saying that "Big Law killed my husband."

In this case, there were signals – episodic binge drinking, the departure of several close friends at the firm which created more pressure on him, a new position chairing the summer associate program, and then a huge bankruptcy case.

He became visibly stressed, anxious and wasn't sleeping. When his wife called his closest colleague, she said he was working more and more with his door closed – and that his sense of humor had been gone for a while.

He told his wife that he felt like a phony who had fooled others about his abilities as a lawyer and he thought he would be fired at the end of the bankruptcy case. He worked himself to exhaustion, going to an ER with cardiac symptoms, but when early indications were that his health problems might be due to dehydration, he left the hospital without seeing a doctor so he could return to work.

His wife arranged a mobile IV to come to their home and give him fluids. He then flew to Delaware to file the bankruptcy case.

Here, ethics entered the situation because, as his wife found out later, he had stopped responding to work emails when he returned home to LA. Every lawyer reading that sentence knows how close someone must be to the edge of the precipice when they stop responding to work emails in the midst of a high value case.

On the last morning of his life, he kissed his wife goodbye, took his gun with him, and shot himself in the head in the garage of the firm's high-rise office building.

His wife said that he set impossible high standards for himself, that he was a "maladaptive perfectionist" who lacked self-compassion. He said he couldn't "turn off his head."

She said, "He had a deep, hereditary mental health disorder and lacked essential coping mechanisms. But these influences, coupled with a high-pressure job and a culture where's it's shameful to ask for help, shameful to be vulnerable and shameful not to be perfect, created a perfect storm."

Remember that these are the words of a grieving widow. The description of the law firm is certainly accusatory and we cannot know how much is an accurate depiction.

Sidney Austin told the press that the firm handled the situation well, and that it was MacConaill's responsibility to come forward and ask for help when he was overwhelmed. The firm has a wellness program, but an anonymous source at the firm told Financial Times that folks at Sidley aren't comfortable using it. The source said "There is not a culture or feeling of safety right now in that set of offices. You can have resources in place, but unless you have the right culture, people aren't going to feel safe using them or approaching someone to ask for help."

That assessment, if true, certainly cries out for remediation.

THE DEATH OF PETER ZIMMERMAN

When Peter Zimmerman's ex-wife, Eilene, had not heard from him for two days, she became worried. She went to his house to check on him. She found him crumpled and lifeless on the floor between his bathroom and his bedroom. It was only after she ran to him and called the paramedics that she started to notice the syringes, pills, and drugs lying around the bathroom.

Peter died from a systemic bacterial infection caused by intravenous drug use. Eilene had no idea Peter used drugs. She noted that his behavior the last eighteen months had been erratic and odd, with his emotions unpredictable and darting from one extreme to another.

Peter had always been a hard worker. He was committed to his work and committed to showing his coworkers how committed he was. For example, he even declined to put family photos in his office because he didn't want to be perceived by the partners as being distracted by family. He worked 60 hours a week for twenty years. Peter's last call he made while he lay dying on his bathroom floor was to dial into a work conference call.

Eilene had no idea her ex-husband used drugs. She soon found out that his coworkers also were in the dark about his struggles. In the months following his death, she pieced together the clues and signs she had missed. She identified how

the legal field perpetuates a culture and conspiracy of silence around mental illness and addiction. She published the story of her husband's death and her revelations in the New York Times on July 15, 2017 in an article entitled "The Lawyer, the Addict."

THE STRESS OF PRACTICING LAW TODAY

Clearly, the personal stories above had a profound impact on the authors. Author Nelson, a former president of the Virginia State Bar, worked on the VSB's Special Committee on Lawyer Well-Being, chaired by then VSB President Len Heath, and was one of the many authors who worked on its May 2019 report, "The Occupational Risks of the Practice of Law." For anyone who works on such endeavors, what one learns often comes as something of a revelation.

The demands of being a lawyer can often hide substance or mental health issues and the high-achieving people who become lawyers often do not avail themselves of available resources to help them. There is a stigma attached to asking for help and a fear that one will seem "weak" or perhaps not worthy of rising within the firm.

The authors live in Virginia but frequently lecture across the nation. We have heard a lot of sad stories. After one CLE, a lawyer in another state called to ask for help because, as he said, "I just can't practice law anymore." It is amazing to think how many ethical rules he must have violated, because he flatly acknowledged that he wasn't able to adequately do his work for his clients.

In his case, he was simply distracted by everything – he had lost the ability to focus. Everything distracted him – the turbulent politics of our time, sports, online games, social media. He could no longer keep his nose to the grindstone and get his work done. He was ignoring emails, missing deadlines, failing to call clients back or respond to their email – and very much afraid of getting in disciplinary trouble. Fortunately, there are confidential resources in his state and we were able to persuade him to contact those resources.

ATTORNEY IMPAIRMENT

The ABA, in conjunction with the Hazelden Betty Ford Foundation, funded a large study dealing with attorneys and substances abuse. The Journal of Addiction Medicine published "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys" in 2016. The study surveyed nearly 13,000 attorneys.

Some of the findings: 20.6 percent reported problematic drinking, 31.9 percent of them attorneys age 30 or younger.

Of those who used drugs, both legal and illegal, respondents reported using stimulants the most—74.1 percent. Additionally, of those who used drugs, 51.3 percent of respondents reported using sedatives, 46.8 percent tobacco, 31 percent used marijuana and 21.6 percent used opioids.

It should be noted that this study relied on the attorneys self-reporting. Only 3,419 lawyers out of 14,895 surveyed answered questions about drug use. Peter Krill, one of the authors of the study, remarked: "It's left to speculation what motivated 75 percent of attorneys to skip over the section on drug use as if it wasn't there."

The most common mental health concerns were:

- Anxiety, 61.1 percent.
- Depression, 45.7 percent.
- Social anxiety, 16.1 percent.
- Attention deficit hyperactivity disorder, 12.5 percent.
- Panic disorder, 8 percent.
- Bipolar disorder, 2.4 percent.

How did those with alcohol and drug problems feel about getting treatment? The main concern, and it is huge, is confidentiality. Only 6.8 percent sought treatment and of those who did, only 21.8 percent went through a program designed for legal professionals.

ETHICAL MISSTEPS MAY INDICATE A PROBLEM

In many cases, the actions an attorney takes (or perhaps inactions) can lead to professional discipline or malpractice AND indicate the presence of mental illness or a substance use disorder.

Examples? An attorney could demonstrate a pattern of conduct - missed deadlines, missed appointments, last-minute requests for continuances, frequent absenteeism, failing to return client phone calls or respond to mail, co-mingling or inappropriately taking client trust funds, or making false representations. The attorney may also demonstrate behaviors at work that appear different from their prior functioning. For example, an attorney may become socially withdrawn, procrastinate, have unpredictable and frequent mood swings, demonstrate unwarranted anger or hostility, and seek to point the finger at others for personal failings.

Any of these behaviors may be the product of depression, anxiety, neurological dysfunction, gambling addiction and/or substance use disorder.

As indicated above, anxiety and depression are the two most common mental health problems affecting attorneys.

A depressed attorney may demonstrate low motivation, an absence of energy, fatigue, and difficulty concentrating. The attorney may take a long time to learn something new or to respond to client calls or answer mail. The attorney may not respond to important emails, mail, or phone calls out of panic or fear.

The lawyer may procrastinate and leave a job unfinished for someone else to complete, come into work late, leave early, or not come into the office at all for several days. They may file motions or briefs that omit important details because the attorney could not concentrate and could not remember specific information.

Work could be completed late, or not completed, and would likely contain major mistakes. If the lawyer's supervisor gave negative feedback, the depressed attorney may respond with anger and irritability. To this attorney, everything would sound like criticism, resulting in angry responses or blaming others for mistakes.

If the supervisor asked the lawyer to redo something or to correct a problem, the lawyer might feel overwhelmed and too stressed to manage. This attorney's ability to tolerate stress and cope with the everyday demands of clients, partners, opposing counsel, or judges becomes severely compromised to the point where the lawyer is unable to practice competently.

THE MODEL RULES OF PROFESSIONAL CONDUCT

As you might imagine, impaired lawyers may end up violating a number of ethical rules. Overwhelmingly, as we did our research for this article, experts pointed to the violation of Rule 1.1 (Competence) because the impairment often leaves an attorney without the competence to practice law.

Though Rule 1.1 is often implicated, ethical violations by impaired lawyers can involve violating many rules, including, but not limited to:

- Rule 1.15 (Safeguarding Property)
- Rule 1.3 (Diligence)
- Rule 1.4 (Communications)
- Rule 1.6 (Confidentiality)
- Rule 5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers)
- Rule 5.2 (Subordinate Lawyers)
- Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants)
- Rule 8.3 (Maintaining the Integrity of the Profession)
- Rule 8.4 (Misconduct)

WHEN MUST A LAWYER WITHDRAW OR BE REMOVED FROM CLIENT REPRESENTATION?

Rule 1.16 (a)(2) prohibits a lawyer representing or continuing to represent a client where "the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

In Formal Opinion 03-429 (Obligations with Respect to Mentally Impaired Lawyer in the Firm), the ABA Standing Committee on Ethics and Professional Responsibility writes, "Simply stated, mental impairment does not lessen a lawyer's obligation to provide clients with competent representation." The opinion does provide some direction: "[W]hen considering what must be done

when confronted with evidence of a lawyer's apparent mental disorder or substance abuse, it may be helpful for partners or supervising lawyers to consult with an experienced psychiatrist, psychologist, or other appropriately trained mental health professional."

An initial referral generally includes consultation with a state Lawyer Assistance Program (LAP), which most states now have. Many programs are run by volunteers or other attorneys who are in recovery. LAP programs differ widely in what services they can provide, so check to see what your state's organization is able to offer. Some LAPs merely provide referrals to mental health professionals in the community, while others may have mental health professionals on staff. Most LAPs are not able to provide a fitness to practice evaluation. In those cases, a referral to a forensics psychologist will be needed.

It is very common for impaired attorneys to need a month undergoing treatment with subsequent treatment thereafter.

These treatments often have good outcomes, with a combination of therapy and medications. This protects clients, the firm reputation and may save the lives of impaired lawyers. As we well know, the financial burden on a small firm may be significant – no hours billed and continuing to pay salary, benefits, etc. And of course, there is never a guarantee that the underlying impairment will be cured.

Sadly, sometimes a law firm must act. As the opinion says,

> "If the mental impairment of a lawyer has resulted in a violation of the Model Rules, an obligation may exist to report the violation to the appropriate professional authority. If the firm removes the impaired lawyer in a matter, it may have an obligation to discuss with the client the circumstances surrounding the change of responsibility. If the impaired lawyer resigns or is removed from the firm, the firm may have disclosure obligations to clients who are considering whether to continue to use the firm or shift their relationship to the departed lawyer, but must be careful to limit any statements made to ones for which there is a factual foundation. The obligation to report a violation of the Model Rules by an impaired lawyer is not eliminated by departure of the impaired lawyer."

THE ABA'S WORKING GROUP TO ADVANCE WELL-BEING IN THE LEGAL PROFESSION

The Working Group to Advance Well-Being in the Legal Profession was created to examine and make recommendations regarding the current state of attorney mental health and substance use issues with an emphasis on helping legal employers support healthy work environments.

The Working Group launched a Campaign to improve the substance use and mental health landscape of the legal profession. The primary vehicle for the Campaign is a Pledge calling upon legal employers (including law firms, corporate entities, government agencies and legal aid organizations) to first: (a) recognize that substance use and mental health problems represent a significant challenge for the legal profession and acknowledge that more can and should be done to improve the health and well-being of lawyers; and, (b) pledge to support the Campaign and work to adopt and prioritize its seven-point framework for building a better future.

The Pledge:

> "Recognizing that high levels of problematic substance use and mental health distress present a significant challenge for the legal profession, and acknowledging that more can and should be done to improve the health and well-being of lawyers, we the attorneys of _____ hereby pledge our support for this innovative campaign and will work to adopt and prioritize its seven-point framework for building a better future."
>
> The seven-point framework follows:
>
> 1. "Provide enhanced and robust education to attorneys and staff on topics related to well-being, mental health, and substance use disorders.

2. Disrupt the status quo of drinking-based events: Challenge the expectation that all events include alcohol and seek creative alternatives. Ensure there are always appealing nonalcoholic alternatives when alcohol is served.
3. Develop visible partnerships with outside resources committed to reducing substance use disorders and mental health distress in the profession: healthcare insurers, lawyer assistance programs, EAPs, and experts in the field.
4. Provide confidential access to addiction and mental health experts and resources, including free, inhouse, self-assessment tools.
5. Develop proactive policies and protocols to support assessment and treatment of substance use and mental health problems, including a defined back-to-work policy following treatment.
6. Actively and consistently demonstrate that help-seeking and self-care are core cultural values, by regularly supporting programs to improve physical, mental and emotional well-being.
7. Highlight the adoption of this well-being framework to attract and retain the best lawyers and staff."

As of December 29, 2019, there were 164 signatories to the pledge.

PROMOTING LAWYER WELLNESS – BEGINNING TO ADDRESS THE PROBLEM

How do firms nurture lawyers and help them stay well? The answer to that is complicated, but it is refreshing to see that more and more firms are committed to finding a path that encourages lawyer wellness. Here is some of what we've seen:

- Law firm physical fitness centers (greatly loved by lawyers)
- Space for yoga or meditation
- Non-alcohol events – or at least events where there is a choice of beverages
- Training/education sessions/retreats about wellness, including stress reduction, meditation, self-care, team building, etc.
- Policies which encourage employees to come forward for treatment without being afraid of losing their jobs

- Setting a maximum for billable hours and lowering the minimum required
- Special training for partners in creating a culture of wellness and how they can help
- For larger firms, hiring a Director of Wellness has become common
- To make sure lawyers are ready to come back to work and to perform competently, firms are requiring verification of participation in a treatment program, requiring that the lawyer commit to sticking with the program, and agree to alcohol and drug screens where appropriate

PROMOTING LAWYER WELLNESS – EVOLVING STEPS TO ADDRESS THE PROBLEM

We did a little research on 2019 steps taken by law firms to address lawyer wellness. While some steps echo the beginning steps above, some are innovative.

Law firms, particularly large firms, are offering CLE wellness courses, bringing in speakers and also offering online resources to help with stress or substance abuse. The resources are often available via firm intranet or through custom apps.

Firms have offered clubs ranging from knitting to running and events like "bike to work week." Reed Smith highlighted the connection between art and wellness and established a program encouraging its employee to create and exhibit art – as well as viewing art in the firm's offices around the world.

Firms are creating mocktails for retreats and functions – and they sound pretty appealing! New terminology and imagery are being employed. For Cooley, "cocktails and conversation" is no longer used – ditto for images of martini glasses and champagne flutes promoting events.

Unsurprisingly, there has been an emphasis on mindfulness and meditation, with firms offering training, guided meditation sessions, and subscriptions to meditation apps.

Employee assistance programs have bloomed, offering help for those with addiction problems, financial stress, relationship difficulties and other crises. Most programs are provided by a third-party vendor with interactions taking place via phone, video counseling, online chats or even face-to-face.

Some firms are bringing in counselors on a regular basis – and the sessions are confidential. This seems to be successful as appointments fill up quickly.

Knowing how helpful it can be to have symptoms of a colleague's struggle recognized, some firms are providing mental health first aid training, making sure that staff, attorneys and managing partners know the symptoms of depression, anxiety and substance abuse.

There has been a sudden rash of hiring to fill a new position: Director of Well-Being. As you might imagine, this is more likely to happen at larger firms. As of June 2019, 11 of 40 large firms had someone exclusively working on a firm wellness program.

FINAL THOUGHTS

The National Task Force on Lawyer Well-Being concluded, in part: "To preserve the public's trust and maintain our status as a self-regulating profession, we must truly become "our brothers' and sisters' keepers," through a strong commitment to caring for the well-being of one another, as well as ourselves."

As of August, 2019, Bloomberg Law reported that 29 state Twenty-nine states have established working groups or task forces, and revised regulations related to continuing legal education (CLE) programming and to bar admissions. Virginia modified Rule 1.1 to add a comment specifically addressing lawyer well-being:

7] A lawyer's mental, emotional, and physical well-being impacts the lawyer's ability to represent clients and to make responsible choices in the practice of law. Maintaining the mental, emotional, and physical ability necessary for the representation of a client is an important aspect of maintaining competence to practice law.

Systemic progress is happening. Still, it is legitimate to ask whether the efforts by law firms outlined above are "enough" or whether there is a real commitment to them. Let's face it, billable hours have been the holy grail for a very long time. While skepticism is fair, we think firms recognize (maybe for the first time) the true extent and cost of impaired lawyers. That recognition, coupled with a commitment to provide effective and confidential help to lawyers in need of

assistance, is a good sign of what we hope will be a long-term effort to make sure that lawyer wellness is a core concern of every law firm and legal entity.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, cybersecurity and digital forensics firm based in Fairfax, VA. 703-359-0700 (phone) https://senseient.com

ABA model rules for lawyer well-being (compiled by Jennifer Gerstenzang)

Rule 1.1: Competency

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

[8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.3: Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment [2]: A lawyer's work load must be controlled so that each matter can be handled competently.

Comment [3]: Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

Rule 1.4: Communications

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Comment [4]: A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Rule 1.6: Confidentiality

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Comment [3]: The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

Rule 1.15: Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. […] Complete

records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

Rule 5.1: Responsibilities of a Partner or Supervisory Lawyer

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment [5]:[…] Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Rule 5.2: Subordinate Lawyers

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Rule 5.3: Responsibilities Regarding Non-Lawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 8.3: Maintaining the Integrity of the Profession

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

Comment [1]: [1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Comment [2]: […] Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Comment [3]: Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. […]

TECHSHOW2020

Walking the Walk: The Purpose-Based Law Practice

WRITTEN BY:

Helen Bukulmez & Brooke Moore

PRESENTERS:
Helen Bukulmez: @HelenBukulmez
Brooke Moore: @VirtualLawGirl

January 15, 2020

PRESENTER BIOS

Helen Bukulmez is an attorney practicing immigration and injury law. Helen teaches Attorney Marketing and Law Project Management at NKU Chase College of Law, and advises law firms through EceROI.com, a consulting firm globally training law firm teams. She received her Bachelor's degree in Business and Economics, and obtained her Juris Doctor at Northern Kentucky University's Salmon P. Chase College of Law. Prior to her legal career, Helen taught Medical Law & Ethics, trained college students in the use of basic computer programs, and worked in various academic leadership positions particularly in schools providing education in computer programs and allied health professions. Helen is a national speaker on such topics as Lawyer Wellness, Diversity & Inclusion, Law Firm Marketing, and Law Firm Team Profitability Techniques. She is also the founder and one of the moderators of the Facebook group Hiking Lawyers & Friends, a platform where lawyers challenge themselves and inspire each other in wellness. The group Hiking Lawyers & Friends has well over 1,300 members across the United States, and the group discussions take place around such topics as hiking trips, hiking challenges and gear, mental health, exercise, outdoor fitness, poetry, art, healthy habits, and advice for travel destinations. Annual hikes take place in a different state each year (Georgia in early Spring 2020). Helen can be reached at helen@helenbukulmez.com or (859) 412-2235.

Brooke Moore is the Founder of MyVirtual.Lawyer, an online law firm model providing flat fee and subscription based limited scope services to self-represented litigants, individuals, and small businesses. After establishing the MVL brand in Arkansas she co-founded MVL Licensing, a LLC providing attorneys in other jurisdictions the opportunity to leverage the MVL brand, systems, and processes to implement limited scope, virtual components into their firms. She has also leveraged her experiences in law and life to co-found {Shift}her, a unique mindset-centric mastermind model created by women, for women to collaboratively level up in business and life. Brooke has worked on the Arkansas Access to Justice Commission's task force on limited scope representation and serves on the UALR Bowen School of Law Rural Incubator committee and as Chair of the Arkansas Bar Association's Continuing Education Committee. She is a 2013 graduate of the Arkansas Bar Association Leadership Academy and a 2015 recipient of the Judith Ryan Gray Outstanding Young Lawyer Award. She was a 2015-16 American Bar Association Law Practice Division Fellow and currently serves as a member of the ABA TECHSHOW Board and on the ABA Law Practice Division Council. In 2017 she was named as an American Bar Association Women in Legal Tech honoree and received the Fastcase 50 Award. She is a nationally recognized speaker and author on topics related to limited scope representation, virtual lawyering, legal technology, and well-being. She can be reached at Brooke@myvirtual.lawyer.

WALKING THE WALK: THE PURPOSE-BASED LAW PRACTICE

Introduction

As lawyers, we spend most of our time at work. Traditional law practice has not created a sustainable life style of health, happiness and overall professional or personal satisfaction for most lawyers. There are almost endless studies, reports and statistics proving such historical trend, beginning with depressed personalities of Thomas Jefferson and Abraham Lincoln to the modern day sufferings of lawyers that are all around us. It is time for a change, and it is exciting to be witnessing many creatively established law practices that reflect not only successful law practices but also legal work that is the result of a happy lawyer who builds her own law practice based on her own choices of place, practice area, and customer service. There is joy and great example for us all in seeing law practices run by effective lawyers who choose to bring in a full-time childcare staff for her office, do the work from a porch overlooking the ocean, hold conference calls from a lodge on a mountain top and close the deals while sipping coffee from the comfort of one's cozy home office.

Creating a law practice based on a lawyer's passions and interests may be challenging, but can also result in a practice in which the lawyer is fully invested and from which the lawyer may achieve both personal and professional satisfaction. Leveraging technology in this effort makes good business sense in allowing your business to achieve its full potential. This track will discuss the challenges and benefits of redefining your practice while affirming your commitment to your legal career.

In this track, we address concepts that will assist attorneys in considering balance, purpose and management of expectations in their law practice for a happier, more successful life:

(1) Understanding yourself as an individual, crafting a law practice that is based on your own unique strengths and weaknesses,
(2) identifying the practice areas that bring the most personal and professional satisfaction to you,
(3) recruiting, training, empowering and working with teams that align not only with your professional goals but personal growth planning,
(4) planning and living a daily life that supports not only your annual financial and professional goals but also your mental and physical wellness,
(5) intentionally building systems and processes within your practice to manage expectations while capitalizing on superior client service through transparency, project management, and utilization of technology, and
(6) purposefully establishing a communication style that effectively addresses issues without emotionally reacting to apparent problems.

The Purpose: Intentional Approach & Make it Your Own Practice by Helen Bukulmez

At some point, someone must have told lawyers and law school students in the exact manner in which a lawyer should look, think, work, talk or live. It appears as though the society in which we live has dictated so many expectations upon us and we have agreed to the weight of most, if not all, of those expectations without much questioning, adjustment, or creativity. Along that process, the clear need for customization of our law practices to match our own personalities, stories, passion, preferences and lifestyle choices appears to have been lost. Our agreements to those historical and traditional expectations seem to have been personal, professional and institutional. Most law schools curricula and activities are built

around those imposed expectations. Most law firms are established, located, staffed, and planned around the same.

An excellent resource to understand the impact of the impositions of self-limiting beliefs by those around us is *The Four Agreements: A Practical Guide to Personal Freedom* a book by Don Miguel Ruiz. Based on ancient Toltec Wisdom, the book advocates observation and understanding of facts, beliefs and limitations imposed upon us so as to question and not simply accept self-limiting beliefs that cause suffering and limitation in our lives. The application of the concepts examined in this book, along with other similarly relevant books, workshops, studies, reports and statistics, is helpful in understanding the impact of our loyal adherence to the expectations set over centuries.

Today's resources, research, and creativity around law practice have shown us that while those traditional expectations, rules, systems, and attitudes surrounding law practice may have served some lawyers, legal staff, and legal clients well, it has failed many. It has also led to a staggering number of unhappy, stressed, depressed, or suicidal lawyers, financially struggling law firms, terrified and abused staff, and a significant lack of joy, pride, and success in our lives.

Following tradition and agreeing to the imposed expectations in our law practices may not be the most effective, efficient or joyful endeavor for anyone: lawyers, law firms, or our clients. Instead, approaching our lives as lawyers in a more intentional and purposeful way can lead to better lives and better law practices.

Questioning one's own purpose in law practice and in life may be a lengthy and challenging task, as it involves many aspects of looking into, remembering, and perhaps sometimes challenging ourselves, our belief systems, and our initial goals that led us to believe that choosing law was the right step in our lives. It may even require the help of a trained, experienced, and caring career coach, psychologist or a really good friend. Some attorneys find it helpful to think back to their LSAT days and try to remember what made them think law school was the worthy of the pursuit. What set your heart on fire to go to law school? How did you think you were going to change the world? Who did you foresee helping the most? What did the picture of a healthy, successful and happy lawyer (with your face on it) look like before the soul-crushing demands and expectations of the actual law practice took it all away? Whatever that process looks like for you, insist on recapturing your purpose, your style, and your unique finger print waiting to stamp the world.

Bringing purpose back into our decision-making is not always easy. As such a systemic look at the some action steps may be helpful.

The Life of a Lawyer: The Challenges and Expectations by Helen Bukulmez

Regardless of the practice area, law practice brings its own unique challenges to our lives. It is very rare that we deal with happy, professional, calm, empowering people.

Typically, we deal with clients who come to us not only with their unique legal issues but also with business, personal, and emotional problems. As attorneys, we are charged, at the very least, with higher duties of competence, due diligence and professionalism. We have duties to the court, to the client, to our team, to our families, and to the society in which we live. We may or may not have the training to properly plan and prepare for such duties. Additionally, we are expected to deal with constant conflict and friction, *e.g.*, fighting spouses who chose each other to begin with, debtors and creditors, insurance

companies and the injured, employees and employers, or others who seek solutions, assurance, safety, justice, and love. Although the form of love our clients, perhaps unknowingly, seek from us may change based on their legal problems, personalities, and unique expectations, we are almost always in a position to better understand, forgive and continuously show care. With the advent of technology and the vast availability of legal service providers, all these expectations and challenge have a new face: our clients now also want legal services that are faster, better, and cheaper.

Even when the law practice is a relatively low stress area, changes in law, application of the law to unique facts of each case, and the unique personalities of our clients, expectations and performance of our team members, employers or partners can create challenges.

At home, our families have their own unique expectations from us, simply because we are lawyers. It means something specific for someone to have a lawyer spouse, mom, dad, daughter, sister, brother, son, cousin, etc. Our friends are not much different. We are often considered to be a walking, breathing, talking "easy access" for legal questions, political or legislative discussions, or even pro bono representation. Trying, even subconsciously, to meet those expectations as to how we must look, live, talk or even think is a heavy burden for most of us.

Expectations of others, however, are not the only challenge we face. Most lawyers are perfectionists. We expect the best results, best poise, best representation, best knowledge, etc. not only from each other but also from ourselves. We have placed a very heavy burden on the standards to which we hold ourselves as lawyers, too.

The challenges of law practice are here to stay. For many reasons, too many to list or cover in this material, law practice will almost always be just as heavily demanding, taxing, and stressful as it will be rewarding, satisfying, and empowering when managed effectively.

Examining, questioning and continuously balancing the challenges of being a lawyer requires a clear mind, strong mindset, and a healthy, humble approach to get to know ourselves, our team, our clients, and our surroundings at all times.

Happiness, Mental & Physical Health by Helen Bukulmez

In order to effectively plan for our law practices and to build a successful, balanced life as lawyers dealing with and managing some of the most demanding clients, court systems, and cases, we must first achieve happiness and mental & physical health. Contrary to popular belief, finding a place of gratitude, clarity, calm, and confidence is not a *consequence* of an already successful law practice filled with, e.g., excellent, understanding, grateful clients, superior financial security, and a significant history of wins in the courtroom. Such a perfect place rarely exists. Instead, finding happiness and mental & physical health is a *prerequisite* and *absolute necessity* for a successful, well-managed, and balanced law practice.

It is not a luxury: you must first be happy and healthy to be successful.

Imagine your days of stress, depression, pain, conflict, self-doubt, lack of confidence or other suffering. How effectively can you market your firm in such a mental and physical state? Would your mind allow you to have empowering conversations with potential clients? Would you be able to calmly manage a frustrated former client who is threatening an online negative review? How effective would your court appearance be in such a state of mind? How thorough, organized, effective or creative can your brief be

written if you are paralyzed with fear, anger, disappointment, or frustration? Set your foundation strong with a happy, grateful, healthy and balanced mind and body first: find the best of you.

The Best of YOU: Get to Know and Empower Yourself

Whether you are an associate at a firm, an experienced lawyer establishing a solo practice, an in-house counsel, a partner at a large firm, or the CEO & managing partner of an international law group, knowing your own strengths, weaknesses, personality style and communication style will be helpful in establishing crucial systems in, e.g., effective boundaries, hiring for your weaknesses, and empowering your team.

Personality Styles

With the help and assistance of technology, you can find many excellent tools for personality style testing, good culture fit, and best communication styles that will guide your decision-making.

For instance, if your Myers-Briggs (mbtionline.com) results indicate character traits of being a "decisive strategist," you may choose to utilize your leadership skills in a position allowing you to supervise while also focusing on your weaknesses which may be compassion and effective listening. If you are a "thoughtful idealist," you may decide to seek coaching for your time-management skills. Similarly, if your DiSC assessment (discprofile.com) shows that you are a highly driven, results-oriented, direct person, seeking law practice areas that can utilize your personality traits may be helpful, and you may decide to consciously focus on considering the input and feedback of your partners or team members before making decisions that could negatively impact their performance or morale.

Additionally, the personality assessment tools may help in building an effective training system to allow continuous personal and professional growth for ourselves and our teams. The way we build training systems may be affected by the personality, learning and communication style of our teams, clients and ancillary service providers. Understandably, however, requiring anyone we meet to take a personality test may not be the best option in getting to know them. In that case, learning the basic clues of each personality style may be helpful in identifying and responding to certain attitudes, patterns, and choices.

Further, although highly relevant and helpful, personality assessment results may not always be absolutely accurate, complete, or final. They are good resources to consider in addition to one's own observations, knowledge, experience and compassionate consideration of one's self and others. Taking, or giving, these tests several times over different seasons of life is recommended to avoid bias and judgment in decision-making. Purchasing one's first home for the first time will inevitably cause financial concerns and sharp focus on results. Becoming a parent will likely cause increase in worries, fears or perhaps compassion. Winning a large verdict and collecting financial gains may lead a person into a more secure and confident phase of life. As such, a person's focus in life will change based on her experiences, and a test result that reflects one's thoughts, perspectives and opinion at any given time will not always be defining of their entire being. It is imperative to utilize personality assessment tools with their incomplete and relatively fluid quality in mind.

Journaling: Find Your Strengths, Weaknesses and Patterns

It is vital for attorneys to understand their own strengths, weaknesses, and patterns in life in order to establish successful and balanced lives and manage the challenges of our profession effectively. In order to fully and truly understand ourselves, watching our patterns are extremely helpful. Journaling allows

for us to not only make note of important events, dates, wins, losses, fears, frustrations, goals, desires, and daily logging of incidents, but also to document our own patterns over time.

Do you tend to be most alert in the morning? Does eating an apple before breakfast every day have the same, or even better, effect of mental alertness on you as does coffee? If you leave responding to emails until the afternoon, do you better respond in a professional manner, regardless of the content or tone of the message? Is properly hydrating helping you with headaches? Does starting your day with yoga, exercise or meditation help improve your mood and calm? Do you treat your team in a positive and more empowering manner if you listen to classical music during your lunch break and take a brief nap? Is using colorful post-it notes and legal pads something that helps with your mood? Should you be postponing writing an important brief or a pleading when you are repeatedly annoyed, irritated, angry, and unreasonable especially around certain time of day or month? Would it be a good time for you to deal with an aggressive personality if you are feeling aggressive and unreasonable yourself? In short, what are your patterns? When are you most effective? Journaling will help identify the times, incidents, people, food, habits and activities that create the environment for you to be the best, most effective self.

Once identified, knowing more about your strengths, weaknesses and patterns will help you schedule your personal and professional life around these patterns for the best outcomes.

What patterns have your discovered about yourself that has helped you better coping systems?

Effects of External Life

Every person has a different response and reaction to the external environments in which we live, work, think and practice law. For example, Seasonal affective disorder ("SAD") is a real disorder for many. SAD is a type of depression or disorder that typically happens each year during fall or winter due in part to lack of light. It may cause stress, unhappiness, negative outlook, fear, lack of productivity or even lack of desire to engage in social or professional endeavors. For some, vitamin B supplements are helpful in treating the symptoms of SAD while others seek therapy or antidepressants to counter the potentially unproductive time of their year. Seeking medical and professional help is only possible for such external factors if the symptoms are identified and the person is aware enough to question the causes of her own impediments.

Based on one's belief system, there may be many other external factors affecting our decision-making, motivation, and productivity at any given time or day. If left unexamined, these factors may go unnoticed and untreated leading a person to believe that he is not a competent, professional or an effective attorney capable of serving his clients, team, or even his family.

What are the external factors affecting your personal or professional life?

Seasons of Life

Even when we plan for and manage our own personalities, expectations, and the external factors affecting our decision-making, our response to the events that take place as part of law practice may change based on the season of life we are experiencing. Some examples to such seasons may be the following:

- Law school or bar exam study period
- Managing the responsibilities of law school and being a single parent

- Being new to law practice
- Opening your own law office
- Handling your first case involving complex litigation
- Running for an office
- Being promoted
- Being terminated from a job you love/despise
- Losing a loved one
- Becoming a parent
- Focusing on material wealth and financial profits
- Preparing for retirement

Each of these seasons will change the person and her perspective on perceived and real challenges of law practice. Being aware of the season of life you are experiencing and its implications on your communication style, relationships, as well as the effects of seasons on others you interact with may be extremely helpful in finding the best ways to utilize your resources for providing the most effective and efficient delivery of legal services and for continuously leading a happy and balanced life as a lawyer.

Hydration

The effects of lack of proper hydration often cause physical symptoms that may lead to mistaken diagnoses, treatment or medication. For example, persistent headaches, fatigue, stress, frustration, etc. may be linked to lack of proper hydration. What is needed may be as simple as consuming highPH water regularly as opposed to taking pain pills to stop migraines, which may lead to more serious issues over time.

Being aware of your physical needs is the key, and a full consultation with your family physician will inform and educate you as to the specific hydration needs you may have. Proper hydration may be different for each person: some will need to drink mineral water and others may need to avoid drinking distilled water. Even if you are drinking a lot of water as part of your daily life, identifying proper hydration for your body is crucial.

Sleep

What is your ideal sleep schedule? Do you practice sleep hygiene? Do you allow your body and mind to be properly rested? What does it all mean for your particular life style to have sufficient sleep? What is the ideal temperature, place, comfort level, or length of time that would empower you to be rested before a work day? Do naps help for fresher perspective on issues? Intentionally examining, building, and practicing ideal sleep habits can help you be the best version of yourself.

Food

What type of food fuels your energy the best for the day? Consuming fresh food free of harmful chemicals and pesticides, eating in sizes that are ideal for your body's needs, allowing your body some breaks (from having to work at all times) through intermittent fasting, and utilizing cooking time as part of your wellness time are some of the ideas that have been found to be helpful.

There are endless resources, almost all showing that what we eat affects not only our well-being but also our mood, energy, and sometimes positivity. For example, in the Mediterranean culture, it is believed that fresh fruit increases energy, walnuts are recommended for boost in desire for intimacy, tea made with fresh thyme is good for stomach ache, hazelnuts are power food especially for heart and digestive health, and wild purslane (little-known, but widely available, invasive, wildly growing weed in the U.S.) has extremely high Omega-3 fatty acids, including both EPA and ALA, providing much needed nutrients and solutions to many bodily ailments.

Increasing awareness in the powers of certain food, effectiveness in scheduling your meal times according to your physical and mental energy needs, and using food as fuel for your body and mind may be helpful in creating a balanced life, and building the best of you.

Physical Exercise: Design Your Own

Although there may be countless physical exercise options, and the accompanying advertisings for them, the best exercise is the one you love. A diverse exercise plan that covers the aspects of cardio, strength, flexibility, high intensity, and mobility needs of your body and mind is perhaps the best plan. However, the plan may be as customized to each person as necessary, and requires a thorough medical examination and advice of a healthcare professional.

If you are new to physical exercise and looking for a low cost, free option, hiking is an excellent choice. Requiring foundational knowledge for safety, hiking has countless positive benefits for the body and mind. In recently years, there have been a growing number of studies, reports and testimonies showing that outdoors exercise, whether walking, jogging, exercising, hiking, etc, can help anyone feel healthy both mentally and physically. When practiced regularly, it can also help prevent or heal certain health conditions, aid in weight loss, and change one's mindset and perspective on perceived or real problems surrounding our lives, including our law practices. An article by e360.yale.edu asserts that the necessary dose of outdoor activity for such health benefits is 120 minutes per week. Ecopsychology: How Immersion in Nature Benefits Your Health by Luisa Rivera, Yale Environment 360. https://e360.yale.edu/features/ecopsychology-how-immersion-in-nature-benefits-your-health

Meeting and spending time with like-minded individuals who also seek not only financial profit but also personal and professional well-being as a lawyer may be helpful in finding the motivation, inspiration, encouragement, and personal & group accountability needed to build a long-lasting outdoors exercise plan. **Hiking Lawyers & Friends** is a Facebook group with over 1300 members across the United States, providing such a platform for networking. The group discussions include such topics as hiking, hiking destinations, group hikes, training videos, hiking, biking and climbing gear, poetry, art, networking, and case referrals among the members of the group.

Whether you like hiking, biking, climbing, going to the gym, yoga practices, or any other type of exercise, consider incorporating it into your weekly schedule and following a plan consistently. Consistency is key

in receiving the benefits of any physical exercise. It may help if you have a friend and if you can establish an accountability partnership with others.

Relationships

As lawyers, most of us have always relied on the motivation, inspiration and support of the people with whom we have built strongly, mutually beneficial, win-win relationships. We need others for referrals, positive testimonies and feedback, emotional support, professional advice, and friendship. These relationships can be built with our significant others, colleagues, law school friends/professors, mentors, clients or with those within the court system to create a positive, empowering law practice environment.

Through the steps above, any person can be on his way to find and build the best version of himself to prepare for the management of an effective and rewarding law practice.

Bring Purpose into Every Aspect of Law Practice

Bring Purpose into Your MARKETING by Helen Bukulmez

A recent ABA report is a cry for help when it comes to marketing the law firm. The annual study showed that "forty percent of firms of 10-49 lawyers, over 60% of firms of 2-9 lawyers, and over 80% of solos do not take the time to make an annual budget for marketing," and thus only engage in random acts of marketing rather than establishing a purposeful, intentional plan for their marketing. https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/websitesmarketing2019/

One of the most misunderstood yet simple concepts of law practice may be law firm marketing. Most law schools do not teach business skills, marketing planning, or practice management, and not every law school student starts law school after a degree or a career in Business. Hence the misconception that a website, a paid online campaign, or a nicely design business card is all there is to marketing. If the website is not bringing the expected or anticipated traffic & conversion rates, conflict ensures. If the phone is not ringing with interested clients wanting to sign up at that very moment, a crippling desperation sets in, especially if the law practice has not been generating revenue as planned. Such misunderstandings, misconceptions, and desperation significantly affect the personal and professional well-being of the attorneys and legal staff affecting the quality of work and overall success of the firm.

Although it includes advertising, effective online presence, and a carefully designed promotional events, items, and publications, law firm marketing is a much larger concept:

> Law Firm Marketing is EVERYTHING we do as lawyers (and legal staff) that is intentionally and purposefully designed to manage revenue, branding, reputation goals of an attorney or a law firm with continuous planning and adjustment of processes and systems that create conversion, purchase intent, stream of steady referrals and repurchase intent.

Your interactions with a grocery store clerk on your way home is part of your part of marketing. Your ability to create and repeat an effective, concise and relevant value statement is an absolutely necessary part of your marketing. Your skill in identifying the personality styles and utilizing the networking, revenue generating and reputation-boosting talent and willingness of your team is vital to the success of your marketing.

Creating, following and continuously adjusting a customized Marketing Plan for your firm is an absolute necessity to the success of not only your marketing and sales goals but also to the success of the vendors who may be assisting your firm with implementing of small parts of your marketing plan, such as building websites, printing brochures, or ghost-writing a book relevant to your practice. Without a detailed, customized marketing plan, you may be wasting your resources, time and the potential success of your relationship with the vendors who may want to provide a great service or product to your firm.

After a careful examination of yourself, your passions, interests, and the best match in law practice areas, starting your marketing plan right away may be helpful in almost perfecting it over time so as to include all necessary factors. Some examples of those factors are as follows:

- Identifying both the ideal consumer and the competitive product/service to be delivered through market research and internal & external systems,
- Creating a value system that is concise and effective in reaching and satisfying the target consumer along with a clear Unique Value Proposition plan,
- Definition of brand for the legal services/products offered and the manner in which they are offered,
- Establishing an internal process for the strongest team culture focusing on the mission and vision of the law firm,
- Identifying the best brand communication strategy, e.g., (1) inform, (2) educate, (3) entertain,
- Budgeting and planning,
- Identifying and clarifying the goals on Return on Investment for each investment item both in time and cost for the firm,
- Researching, selecting, execution & implementation and review & analysis of the best available marketing tools for the effective communication of the product/service to the ideal client
    - Networking
    - Online Marketing Tools
        - Well optimized website clearly communicating the law firm message
        - Search Engine Optimization Plan
        - Content
            - Images
            - Videos

        - Blog
      - Paid Advertising
      - Social Engagement
    - Email campaigns
    - Management of online reviews and feedback
    - Ongoing client education and analysis
- Researching, Request for Proposals, Selection of Bids, Purchasing and Relationship-building with the marketing vendors,
- Establishing a system of internal and external delegation of tasks and checklists,
- Integration of the marketing plan and metrics into the internal data systems, such as case management software,
- Careful application and ongoing review of the ethical and professional responsibility standards to the marketing tools and content utilized,
- Creating and continuously analyzing an accountability system for both the internal and external marketing operations, and adjustment of the strategy and tools utilized,
- Data analytics and review of marketing practices employed and marketing metrics achieved.

Although incomplete, the law firm marketing concepts listed above are helpful in understanding the general framework and continuously working to customize it to your own purpose in law practice.

Use Your Purchasing Power for Your Purpose

As an attorney or a law firm, your purchasing power alone can change the world if you incorporate purpose into your purchasing process.

Your first power is to make a purchase that is truly a part of your success planning for the firm. Instead of randomly buying whatever is being sold by sales people at conferences, question where that purchase fits in. If you do not already have a plan in which the intended purchase will bring the best return on your investment, do not make the purchase. It is very likely that once you do build a plan, whatever service or product you want to buy will still be there. Don't set yourself, or the selling vendor, for failure and the following disappointment, frustration or even conflict.

The second, and perhaps an even more important, power you have through purchasing is your ability to choose your seller. You want to see more women empowered in the world? Question the vendor and see if the company has hired, empowered and promoted women to leadership positions within the last year. Your dream world would include a lot of minorities in powerful positions? Ask the vendor to deserve your investment by showing you whether they have a system in which minorities are hired and empow-

ered. You'd like to see your fellow law school friends and lawyer colleagues be placed in leadership positions in non-law related industries or ancillary service provider companies? Ask them to make it happen. Whatever it is that is valuable to you as a person, you can make it happen by using your purchasing power and slowly building the world you desire over time.

For free templates for "How to Buy for Your Law Firm" or a sample Marketing Plan, please file a request at EceROI.com. Helen Bukulmez will provide a free 20-minute consultation to assist you in creating or improving for your firm's marketing plan. Offer only available to the attendees of this track.

Structuring Your Systems with Intentionality by Brooke Moore

First off, we teach our clients how to interact with us. I know we tend to create our own narratives about how we think clients will react to our processes or interactions but these expectations only stifle innovation and passion (and are mostly unfounded). When creating your intake and other internal processes start by defining your boundaries and design around them. Here are three big pain points most attorneys have that can be altered for both efficiency and your sanity.

1. **The Intake Process.** Is playing phone tag the most efficient use of your time? You can outsource to a receptionist service or provide an online calendar for clients to schedule with you.

2. **Client Communications.** Is digging through endless unsecured emails the best way to communicate with your clients? Utilize a client portal to exchange communications securely, in one place, and respond on your time.

3. **Task Management.** Is your to do list unmanageable? Get organized on how you spend your time. I highly recommend checking out Daniel Pink's book "When". He talks about everything from when you are most productive to when you should hold meetings based on when you are most productive.

Once you have your priorities defined and your systems designed, commit to it. As long as you are managing expectations well, by being transparent and communicating consistently, on the front end and throughout the process you will be well on your way to happier clients and a more fulfilled you.

Build a Law Practice You Love by Brooke Moore

We did not spend all of this time, money, and energy learning the law to hate what we do. Attorney burnout is a real thing. By profession, we have some of the highest rates of suicide, depression, and substance abuse. We deal with difficult situations and the emotions of others. It can be taxing. Women specifically have been disproportionately affected by traditional legal practice structures and systems. Women have earned more doctorate degrees since 2006 and in 2015, 48% of law degrees were earned by women. Yet, women are leaving the profession in droves or underutilizing their JD because traditional systems are broken, and wellness is undervalued. The bottom line is that we want to do good for others but that doesn't mean we must sacrifice ourselves. Work and wellness aren't mutually exclusive. However, to build a law practice we love we have to shift our perspectives on the practice of law.

About seven years ago I burned out, hard. I was a military spouse and mom of three young children trying to conform to the traditional idea of what a lawyer was "supposed to" look like. I was in the corporate grind, constantly fatigued, 60 pounds overweight, with no hobbies or quality time with family and

uncontrolled stroke-level blood pressure. I felt like a failure as a mom and an attorney. I thought lawyering must not be for me so I just left. I walked away from the profession for nearly a year. I was on a quest for my purpose, which I only found once I stopped searching and started focusing on serving a purpose instead. It was during that journey that I realized I could still meaningful serve clients in a way they were not being served, in a way that gives my quality of life. And so in January of 2015, MyVirtual.Lawyer was created as a way to provide clients convenient, affordable, and personalized legal services while allowing me the flexibility to work on things I enjoyed, with clients I wanted to work with, from anywhere (thanks technology), in a way that supported my lifestyle and fed my soul.

Here are a couple of articles I published illustrating how my win-win law firm model combines my passion for access to justice with my desire for flexibility. I call it a lifestyle law firm because the foundation of the firm is wellness and when you are well you can move others toward wellness, whether that's colleagues, clients, friends, family, or even strangers.

THE MIDDLE CLASS, AN UNTAPPED LEGAL MARKETPLACE

BY BROOKE MOORE ON DECEMBER 14, 2016 ·
Republished from American Bar Association Law Practice Today

The American Bar Association's 2014 World Justice Project Rule of Law Index shows the United States rating 65th out of 100 countries for access to and affordability of civil legal services, the lowest ranking among all industrialized nations surveyed. This finding, coupled with a trend toward self-representation and an overall Do It Yourself movement, has been driven by obstacles to legal help and the widespread use of technology. A growing number of legal consumers are self-educating and becoming comfortable with handling tasks traditionally performed by attorneys. This is creating similar challenges for lawyers as previously faced by realtors, travel agents and many other service industries. Non-attorney legal service providers have taken notice of this gap and are meeting consumer demand with great success. However, we all know that it is not a substitute for the knowledge and skills of a licensed attorney. The good news is that there is a viable private market solution.

Currently, the profession is readily available to legal consumers who are able to afford the costs of traditional full service representation, and the profession is at least attempting to address the legal needs of consumers at or below the 125% federal poverty level through pro bono services, legal aid providers and clinics. However, for the growing number of moderate-income individuals, the average legal consumer, legal help is not affordable. According to the 2015 Census ACS survey, the median household income for the United States was only $55,775. Attorneys in rural areas usually charge between $100 and $200 per hour, while attorneys typically charge between $200 and $400 or more in urban areas, and those fees can add up quickly. Of course, rates vary based on what state you live in, the size of the firm, and the attorney's status within the firm.

A viable solution to address the needs of these moderate-income legal consumers is providing "unbundled" or "limited scope representation" services. Limited scope representation is when an attorney represents or assists a party with part, but not necessarily all of his or her legal matter. The attorney and client enter into a detailed written agreement defining the scope of the legal assistance, including which tasks the attorney will be responsible for and which tasks the client will handle. Many types of limited scope representation are possible, including but not limited to providing legal advice to an individual about a case or legal problem; drafting documents, entering an appearance, and assisting the client in developing a legal strategy for court hearings.

Limited scope representation is not DIY or a lesser-quality service, and attorneys are still bound by their ethical obligations. By paying an attorney to handle parts of a case consumers not only reduce costs, but also gain access to legal services that may not otherwise be attainable. Legal consumers using these services are also able to maintain greater control over their case and court processes, and hearings become more efficient with the limited assistance of an attorney because self-represented litigants are more educated and better prepared.

Concerns have been expressed within the profession about increased liability of unbundling legal services, and also about how to best assist self-represented litigants within the rules. As is in providing traditional legal services, providing limited scope representation should not expose an attorney to additional risks as long as good intake and case management procedures are followed. This would include a detailed retainer agreement, a process for checking conflicts, and of course good communication. However, I will say that my experience with insurers in this arena has been frustrating. If you are looking to add unbundled services to your practice, make sure your professional liability insurance covers it. Even though unbundling is not exactly new, the

practice is not typically discussed for insurance purposes, and insurers haven't quite figured out how to assess it yet. That said, I assume with time and the growth of unbundled service providers that insurance premiums will adjust to more adequately reflect the actual risks associated with the practice.

As for best practices in assisting self-represented litigants, the first place to start would be reviewing your state-specific rules of civil procedure and rules of professional conduct regarding ghostwriting and limiting the scope of attorney representation. You also should be mindful of the cases you accept on a limited scope basis. Not all legal matters are suitable for unbundling. If the case is very technical or time-sensitive it may not be appropriate. If the client does not have the time or ability to be educated to handle the tasks delegated to them then unbundling may not be a good fit. It's also not a good idea to unbundle highly contested matters where there is a lot at stake, such as money, a home, or rights to children.

With all of that said, a lot of routine legal matters, if unbundled, would be beneficial to legal consumers. Unbundling also lends itself well to flat fees, which not only help the consumer better plan for the costs of the legal matter, but also tend to reduce or eliminate the outstanding account balances that often plague traditional practices from consumers who are unable to pay the full costs of services rendered.

An unbundled legal services component can be added to any delivery model, whether you are in a traditional brick-and-mortar practice, a virtual law firm, or some combination of the two. Cloud-based software and technological innovations are making it easier to automate documents and assist legal consumers without adding too much additional overhead to implement these services. The bottom line is that in order to stay relevant, the legal profession must acknowledge and respond to the growing needs and demands of the average legal consumer. There is a profitable, untapped market for legal consumers of moderate means yet to be adequately addressed, and like it or not we are competing with non-attorney legal service providers for the business of this growing, underserved market.

GOING VIRTUAL: THE MODERN-DAY LAW FIRM IS IN THE CLOUD

BY BROOKE MOORE ON JANUARY 13, 2017 ·
Republished from American Bar Association Law Practice Today

You hear the term “virtual,” and you think of something distant or not real. Not true for the virtual law firm model. This is a viable alternative business model for real lawyers to connect with clients in a very meaningful way. Legal consumers are driving change in how we provide services and are growing more comfortable conducting their business online.

So what exactly is a virtual law firm? A fully virtual law firm is a web-based law firm model for the delivery of legal services, providing easier access to legal consumers and the flexibility to meet evolving consumer demand. A virtual law firm is a real law firm bound by the same procedural requirements and ethical rules as a traditional law firm, with the difference being how services are delivered.

A virtual law firm is not simply e-lawyering. Communicating through e-mail or working remotely does not make your law firm virtual. It’s also not just a website with an intake form or call-to-action button. Going virtual is about abandoning the traditional way lawyers deliver legal services. The virtual practice is created by utilizing technology as the primary delivery for interacting with clients throughout representation. This is best achieved by working within law practice management software to provide a secure client portal in which to exchange documents, allow for payments and provide communication.

Your client portal is the foundation of your virtual practice. Many law practice management software offerings are out there and many serve as a full service one-stop shop. However, you may find combining multiple technologies and software services a better fit for your firm. The ABA’s Blueprint is a free service to members and is a great place to start when trying to determine which technology or legal service providers are the best fit for your firm.

Regardless of which software you choose, your full service or piecemeal client portal should provide certain features for your virtual practice. It should be user-friendly and secure. It should offer document automation, allow for flexible online payments, and provide for messaging and other communication access. You should have the ability to upload and exchange documents. You need a method for conducting conflicts checks, and your client portal should integrate with other software you use, as well as your calendar and scheduling system.

Is a virtual law firm right for you? This model definitely has benefits. A fully virtual practice requires fewer overhead expenses, because you do not have a physical office space, and with outsourcing and automation you do not have to hire full-time staff. You have the flexibility to work when, where and how you want. Your services are more easily accessible, because your reach is greater online. Being paperless also reduces expenses and allows for easier access to case information. A virtual model can more easily adapt to the changing legal landscape to better meet consumer needs.

However, certain risks are involved in a virtual practice. Operating entirely online can raise privacy issues. Take extra precautions by using secure internet connections, and ensure that your communications are encrypted on your computer, tablet or mobile device. Also make sure that the technology you are using is secure and encrypted, and that you are competent with and knowledgeable of your technology. Practicing in multiple jurisdictions also requires you to be extra diligent to ensure that you are complying with all pertinent rules.

Ready to get started? Here are your first five steps.

1. Research state-specific bona fide office requirements and obtain any local licenses.
2. Decide which services to provide, choose and create your business entity, and obtain appropriate professional liability insurance. Also, create a brief business plan to revisit every few months.
3. Register your domain and create your website.
4. Choose your law practice management software solutions and other technologies. Be sure to integrate these into your website.
5. Draft all forms, templates, agreements and disclaimers.

Once you have completed those tasks, use the video tutorials provided by most practice management software providers. Read blogs, attend legal tech CLEs, and follow other legal innovators so that you stay updated on legal technology and can begin accepting clients and providing services that meet the ever changing needs of today's legal consumers.

Practicing with Purpose Can Lead to Other Opportunities by Brooke Moore

One of the questions I am often asked when I am speaking, especially on the topic of alternative fee arrangements (ie- non billable hour) is whether I have a secondary or alternative revenue stream. Short answer, yes. When you pave a new path in the legal profession, people want to know what you are doing, especially if your model or system eliminates some of the main attorney practice pain points: flexibility, accounts receivable, efficiency, etc. After creating my own lifestyle law practice, I was so overwhelmed and consumed by requests to help other attorneys create their own balance between practicing and life. We leveraged that interest to create a program to license our brand, systems, and processes to other attorneys and created a source of recurring income. Then from there we were able to create a virtual law firm course, launching this spring, to provide value to attorneys outside of our licensee network. Helping other attorneys achieve that work-wellness balance has become my favorite job. If you follow your passions and remain authentic to yourself, you'll be surprised by the opportunities that will find you. Use your journey to inspire others. They can benefit from your hard work and lessons and you can monetize that experience to help create recurring revenue streams.

Be open to alternative revenue streams that you can't foresee. When you start walking with purpose you attract more of the same. Mindset work is important when you begin creating a lifestyle law practice to help you overcome the "supposed tos" of lawyering, blocks, and limiting beliefs. Some non-lawyer female business acquaintances and I put together a small mindset focused mastermind group to help support one another in innovating our businesses while improving our well-being. Similar to my journey to working with attorneys, as others saw our growth, they wanted to be part of that movement and {Shift} her, a mindset mastermind model for women, was created to share what we learned. My passion to help others not only guided me to create a law firm that I love but also lead me to two other opportunities to support others and make a profit! I tell you all this just to illustrate how breaking past the fear, insecurity, and uncertainty and stepping into your passion is not only fulfilling and freeing, but also affords you opportunities that you can't imagine if you are open to them.

CONCLUSION

The American legal system and the environment in which we live, operate, and perform as lawyers has changed. The challenging news is that our clients want faster, better and cheaper legal services. They also want us to be ever understanding, loving, caring, competent, and forgiving individuals who give them all they want. The good news is that the limitations, challenges, and restrictions placed on our profession by tradition no longer create an absolute ceiling. Within the confines of our duties of professionalism, ethics, competence and due diligence, we get to decide what our law practices look like.

As an attorney, you get to incorporate the unique person, purpose and intention you have into how you lawyer. We get to define success, happiness and health for ourselves and our profession. And, it is working. Some of the ways in which purpose has been blended into our practices are making us healthier, happier and much more successful.

Find your purpose. Use your purpose. Let it change our profession and our world for the better.

It is a truly exciting time to be a lawyer.

For any questions, discussions, or comments, authors can be reached:

Helen Bukulmez helen@helenbukulmez.com

Brooke Moore brooke@myvirtuallawyer.com

TECHSHOW2020

Friend or Foe: Tech and Well-Being

WRITTEN BY:

Jennifer Downs and Roberta Tepper

PRESENTERS:

Jennifer Downs: @aggregatelaw

Roberta Tepper: @AZPractice2_0

January 1, 2020

TECH IS NOT NEUTRAL – IT'S NOT ALWAYS "GOOD" FOR OUR WELL-BEING
Jennifer Downs, Aggregate Law

As a small business (law firm) owner, a consumer/client or as an individual, we use tech in every part of our lives. And what we should all be aware of is that every bit of that technology, from your law firm's practice management software to your facebook feed, is not neutral, but is instead imbued with it's creator's values. The choices founders and developers make about interface and functions - as well as the way the use of the technology is monetized, "can have profound impacts on our privacy, security and even civil rights as users." Article after article tells us about how technology is built to be addictive, compulsive and habit-forming. Technology has the power to not only change our behaviors but to shape and influence the very quality of our lives.

It's also true that tech is not always built for you (or your business) by people who have any idea what it is that you might actually need in your business. The best tech creators do understand the industry they are designing for, but that is by no means always the situation. And when there is "disruption" to a system that is not intended, there is often no one to hold accountable.

It's also important to note that "Tech" is not necessarily ushering in a future that is better for everyone. The choices the designers of tech make are a series of tradeoffs - like when email is "free" but you get your data mined and sold to advertisers in exchange. An advantage like affordability or accessibility might be one paid for with a weakness in privacy and security. And while technology might make things better for some, it could just as well make things worse (or at least different) for others. A great example is Uber. Ride-sharing has changed the landscape for how we get around. In some cases it's been very bad for taxi drivers and even for its own drivers, and Uber's leadership has landed them in trouble in the media more times than I can count. But while (minimal) studies on the subject are divided on the impact, when I talk to some DUI attorneys I know, it seems that drunk driving has slowed down as a result of ride-sharing. And so what is bad news for DUI attorneys is GREAT news for all of us out on the roads. Uber's intention - to disrupt the cab industry - may have also unintentionally disrupted something else: numbers of DUIs.

Finally, it's unclear that there is any institution or government that has the power to rein in big tech companies (think Apple, Google and Amazon.) It's often the case that our elected representatives are so ignorant about tech that there is no way for them to do anything meaningful towards protecting citizens from any harm that a particular technology might intentionally or unintentionally create. The biggest concerns on this front for lawyers have to do with privacy and security. Since it is your ethical duty to maintain client confidentiality, it is your responsibility as a tech user to make sure you understand the issues with any type of tech you engage in serving your clients. (See this link for the ABA's Formal Opinion on e-communication https://www.americanbar.org/content/dam/aba/images/abanews/FormalOpinion477.pdf)

For more along these lines -
see this post on "12 Things Everyone Should Understand About Tech"
https://medium.com/humane-tech/12-things-everyone-should-understand-about-tech-d158f5a26411

How do we establish 'Digital Trust'?
Since tech is not always a 'good' when it comes to our well-being or even the well-being of our firm - what, then, can we do to build trust in our new digital economy? It's not likely at this point that we can opt out, so finding a way to foster trust in our new ways of working and communicating is a critical piece of

understanding how technology affects well-being. Trust in the new digital economy must be built on many levels, with colleagues, clients and employees, each with different needs. How will we help new ethical standards be set and adopted? And how do we use technology for a bigger and better purpose?

As information flows between increasingly larger numbers of peoples and systems that don't necessarily trust one another - verifying authenticity and providing security of data, documents and processes is increasingly more important. While not all clients are demanding this sort of digital security, they should be - and offering it to them will establish trust and likely a more healthy working relationship.

We were accustomed, in the past, to building trust with people and businesses in person, through our daily interactions in our communities. As our communities are no longer only 'offline' - new standards of trust are needed. This means how you build trust in your law firm is changing, and while referrals from clients and attorneys who know you personally are still incredibly important, how will you build and create trust with those clients (and potential clients) whom you may never meet in person (clients for whom your website, social media presence and electronic communication is the only way they "know" you)?

You'll need to assess for yourself how much of your business is online and off - and then respond to the demands from each sector. This may cause some confusion for staff who is used to doing things one way while the demands of technology and our online presence as a business now demand another. And as we increase our dependence on technology in our workspaces, adding new tools as we go, this could cause frustration among some team members. Older workers often express concern with the complexity of the new technology while others are frustrated with the pace of change. So as we advance our businesses, we should keep our team in mind - and check in on team member frustrations so that we can help find ways to adapt and cope.

Likewise, there could be frustration with the amount of time it takes to get up to speed on new tools. New technology should be introduced along with training - and time should be allotted to do the training necessary to be proficient. Allowing this time will help your team trust you as you introduce new tools in the future.

Digital Well-Being

"'A wealth of information creates a poverty of attention." -Herbert Simon

So, if the big lesson here is that tech is not neutral, then in both our personal and work lives, we must grapple with this truth: Tech can be both bad and good, and work both for us and against us.

Technology has created ways for us to blur the line between work and life. The downside to that is that we're creating the "always-on" employee" or creating situations where we don't know how to unplug or have difficulty detaching from work, which might negatively affect our sleep, or physicality and even, in some cases, promote anxiety or depression. A larger problem with technology is that it can create cycles of inadequate communication between employees. Because communicating digitally leaves out facial expressions, hand gestures and the like, misinterpretation is common.

But there is another way to look at this blurred line between how we live and how we work. In many cases, there is a lot of good that comes from technology that allows us to live the way we want. Technology allows for more flexible work and freelancing, making it easier for us to connect from different locations.

And we are no longer necessarily limited to work based on our home location. Technology can also help us be more efficient, providing us time to spend in other ways besides work.

Technology can be used to help create more healthy habits and discourage negative ones. Getting the most out of your team members and your technology isn't just about practicing restraint. Processes and workspaces can be *actively designed* to encourage breaks and limit time on tech for work outside of work hours. Another way to limit distractions, prevent fatigue and increase productivity with tech is to limit the amount of technology an employee uses. Because the internet might too easily keep us glued to our chairs during breaks or when things are slow, it's also important to encourage active lunchtime or breaks.

And last but definitely not least, is that you, as an employer, can encourage face to face communication regularly. Meetings can be "tech-free" and a great opportunity to encourage verbal communication and the connection between your employees, growing their interpersonal relationships and skills.

For more information on the effects of too much technology, see https://www2.deloitte.com/us/en/insights/focus/behavioral-economics/negative-impact-technology-business.html#endnote-sup-2

For more information on employees frustrations with technology see
https://smallbusiness.chron.com/user-frustration-technology-workplace-16617.html
https://smallbusiness.chron.com/disadvantages-technology-workplace-20157.html

Not all technology is easily learned. Taking the time to learn new software or products produces stress, and for more on that, see
https://smallbusiness.chron.com/technology-impacting-workplace-stress-16029.html

Choosing 'Good Enough' Tech

The principle of *good enough* is a long-standing IT term used to mean: is a technology or service just good enough to meet the requirement of a project, team or initiative. Employing this principle when it comes to picking technology is meant to help you narrow your choices. And when it comes to picking the right tech tool for your context, it's good to have this principle in mind. Thanks to the speed and connection our digital tools provide, for the most part, we want three things from (most of) our technology: 1. Ease of use, 2. Continuous availability, and 3. A low price. All three of these requirements speak to the well-being of the user: the technology must be something you and your team can learn to use, it should be available to you where and when you need it and the price should fit within the budget you have set. Using this principle of 'good enough tech', you can work to implement a Tech Plan for your team that has in mind the particular team members who must use it, the environment you'll be using it in and the constraints you have when selecting. This is the beginning of understanding how tech affects the well-being of your team and your firm.

Have a good Tech Plan

Every office needs a good 'tech plan'. Because technology is a strategic investment, there are many factors to consider when choosing how you, your employees and your clients will use technology and what tech that might be. Likewise, when you add the factor of well-being, there are many questions to consider.

Consider your space and how it will determine what you need. Do you have an open office? Do any of your team members telecommute? Do you work with freelancers who might only occasionally come into the office?

Is the technology 'good enough'? Who will be using the new tool and should they have any input? Are you looking for a 'swiss army-knife' solution or a 'scalpel'? Meaning: do you need a tool to do precision work, i.e.one thing very well? Or do you need more of a 'does a little bit of everything' tool?

How will this new technology be received by your team? Will it be overwhelming? Or a welcome solution? How will you and your team be trained on the new tool?

Big companies have Technology standards- and implementing such standards will serve a small business well. A hodge podge of different technology might not work well together, and if you have to replace things that don't work well together, you're likely costing yourself money and time - and increasing your frustration with the process. Conversely, setting standards from the beginning will keep things more manageable and help with training as your team grows.

Having a good plan and asking the right questions will help make sure you don't overwhelm your team or make impulsive choices that will be met with frustration.

TECHNOLOGY AND WELL-BEING: FRIENDS OR FOES?
Roberta Tepper

Our world and the people in it, myself included, have become more and more dependent on technology. We, in the Law Practice Division, have embraced technology as a way to be more efficient and effective, as a way to provide increased access to justice, and as a way to provide the best possible service to our clients.

It seems, however, that technology is not the cure-all; nor should we expect it to be. There is a downside to the use, and certainly to the over-use, of technology. As we sit in our offices, or our homes, or in some other working space, and increasingly communicate with clients, colleagues and others by means of email, chat functions, or even Skype, we may be more efficient, but we are also increasingly isolated. The articles and resources listed below explore this dichotomy; the tension between the pros and cons of technology.

In the meantime, some thoughts and suggestions for balancing the pros and cons:

People like and most trust those they feel comfortable with, and/or have looked in the eye. Do you use an automated intake process? Are clients or prospective clients communicating with you by way of a form, by emails, or some other electronic medium? We've encouraged lawyers with high volume practices to leverage the "low touch" methods of contact.
Can you think of a reasonable way to personalize the contact you have with your client without compromising your business plan?

How much time are you spending on your devices? Are you so plugged in that you now have minimal or no face-to-face contact with colleagues (this is particularly pertinent to solo practitioners)? Do you find yourself with a device (or two) at hand at all times?
Consider limiting your device time.
There, for example, is a new movement encouraging device free family dinners.
Schedule time to unplug each day; don't make it a secret – create an automatic message that lets clients know when you will not be checking email. For example, one private business owner has an auto-response that says something like "I check emails twice a day, at 9 am and 4 pm. I will respond as promptly as possible." That specific provision may not work for you but consider that some version of that may and adapt it to your circumstances.
Remember, you are not a 911 operator. No single person can be available 24/7 without it negatively impacting their effectiveness.

Consider the technology available to enhance your well-being.
Meditation apps may help you center yourself with time-limited sessions. A variety of apps are available to monitor your screen-time and give you a more realistic picture of when you are plugged-in; it's probably longer than you would think.
Check out Headspace, the Digital Wellbeing dashboard (on Android)
Use Grayscale or Wind Down mode on newer phones to dull the graphics and make them less engaging
Try apps like Forest or SleepTown to encourage downtime and good sleep

Don't forget to explore the technology that will make your practice more productive

Practice management software. Remember that one-size doesn't fit all; check with your Bar's practice management advisory program to find the one or ones that best fit your needs and then try them out to find the one you like best
Time and billing software
Client management software
Intake software
Explore automation through Zapier or IFTTT
If you are a litigator, look at programs like CaseMap or CaseFleet
Automate your standard documents through your practice management software or through a stand-alone product

Don't forget that the best client management may be through a phone call or face-to-face meeting

Resource materials

Technology and Well-Being: Friends or Foes? Law Practice Magazine, January/February 2020 https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2020/jf2020/jf20tepper/

See, Time for a DigitalDetox: A Spoonful of Sugar May Make the Medicine Go Down, TECHSHOW 2019 materials

Using Technology to Improve Your Well-Being, Law Practice Today, January 2017
https://www.lawpracticetoday.org/article/using-technology-improve-well/

Well-Being for Attorneys, Law Practice Today, January 2019
https://www.lawpracticetoday.org/article/well-being-for-attorneys/

Is technology a friend or foe to your well-being? The Globe and Mail, February 2019
https://www.theglobeandmail.com/business/careers/leadership/article-is-technology-a-friend-or-a-foe-to-your-well-being/

How to Overcome Your (Checks Email) Distraction Habit, Harvard Business Review, December 2019
https://hbr.org/2019/12/how-to-overcome-your-checks-email-distraction-habit?fbclid=IwAR3rlFA-PK3bF6JpjWoAHRNh0UmP7ig4BEHgbZBUblXsDsF2dzPn8KTuMrc

See Yourself Through Your Client's Eyes, Law Practice Today, June 2019
https://www.lawpracticetoday.org/article/see-clients-eyes/

Look Me in the Eye, Law Practice Today, June 2019
https://www.lawpracticetoday.org/article/communications-clients-perspective/

Sneaky Ways Technology Is Messing With Your Body and Mind, HuffPost, December 2017
https://www.huffpost.com/entry/health-effects-of-technol_n_6263120

How Will Future Well-Being Be Impacted By Technology? Verywell family, March 2019
https://www.verywellfamily.com/how-will-future-well-being-be-impacted-by-technology-4176165

TECHSHOW2020

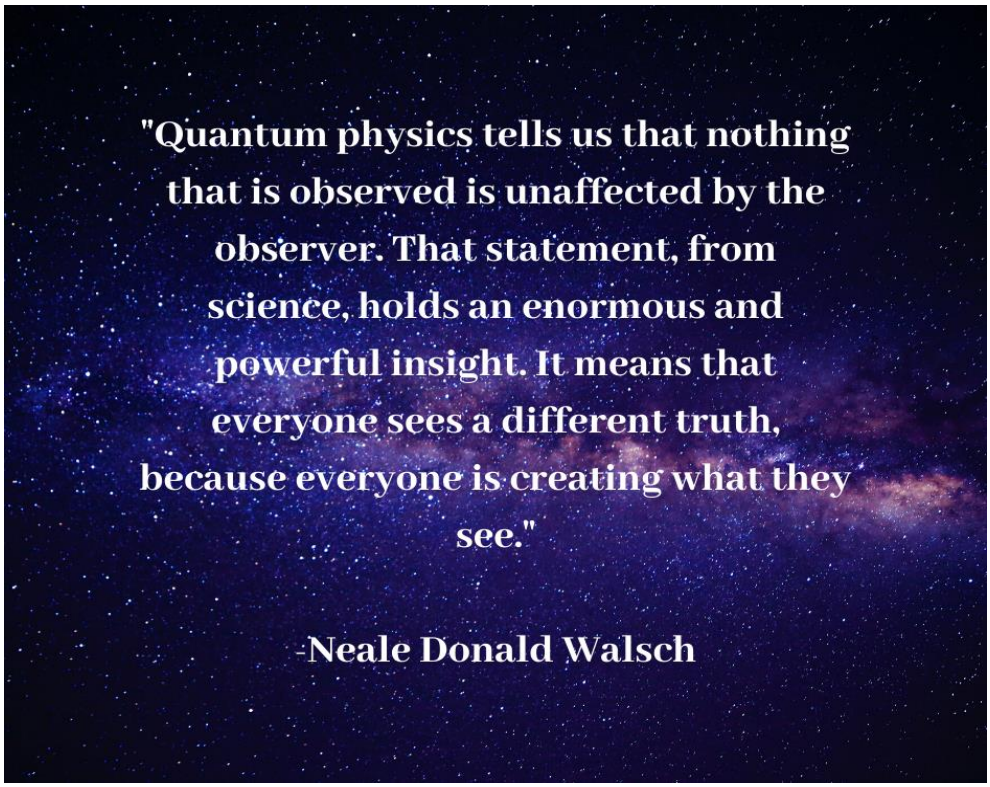
Eureka: The Science of Well-Being

WRITTEN BY:

Tharwat Lovett, Jennifer Downs,
& Brooke Moore

PRESENTERS:
Tharwat Lovett
Jennifer Downs: @aggregatelaw
Brooke Moore: @virtuallawgirl

January 6, 2020



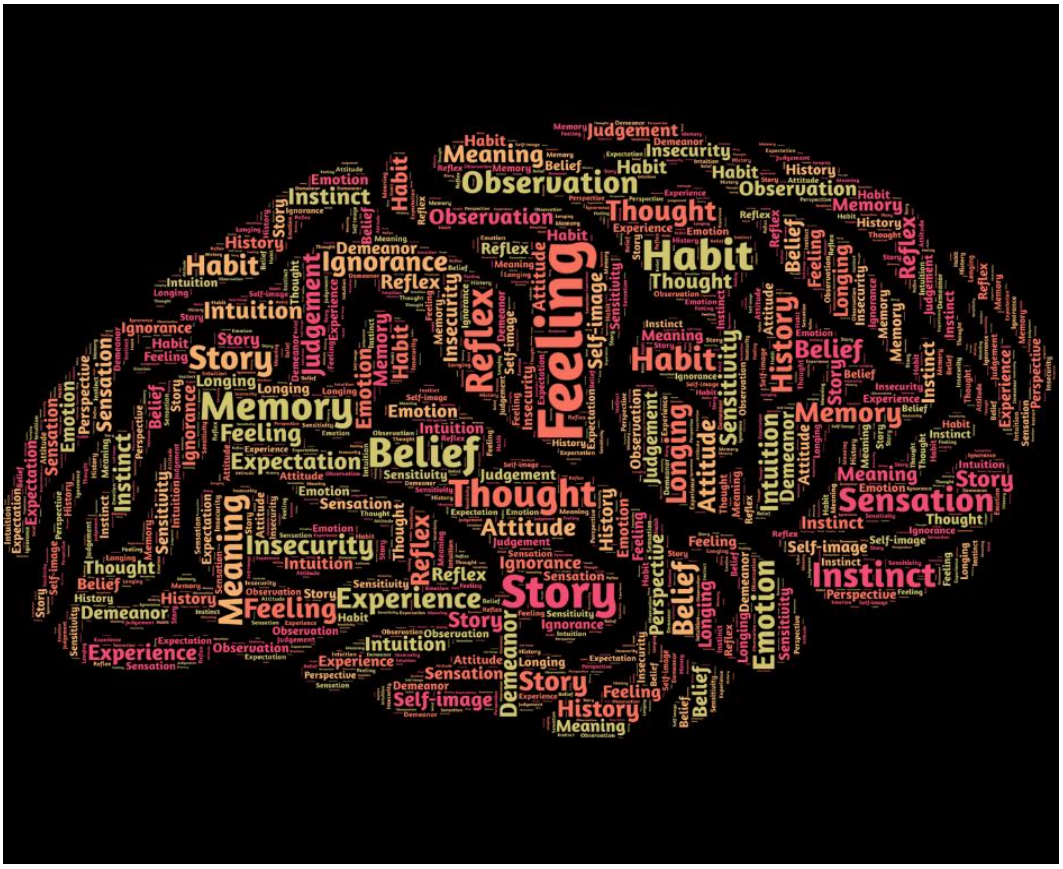
Well-being is the conscious and intentional act of engaging proactive behaviors that will lead to an increase in health, productivity and overall quality of life. Well-being is a tree that has many branches. These branches are the various dimensions of life in which we can focus our efforts toward well-being, for example, psychological, emotional, physical, occupational, social, financial, and spiritual well-being.

Currently, there is not a singular standard definition for well-being nor an agreed upon number of dimensions but one thing is for certain, well-being is not attainable unless we apply conscious and deliberate intent toward rewriting the programmed habits that have led to the unfavorable outcomes generating experiences of negativity in life.

If maladaptive, old habits are the cause of stress and stagnation in our lives and establishing adaptive, new habits is key to enhancing our overall sense of health and well-being, then taking a look at what a habit actually is warrants some attention (warning: we are about to jump into a bit of a rabbit hole) .

Habits are not just ideas. They are actual physical structures taking up real mental real estate in the brain. Habits look a lot like trees—clusters of neurons with lots of dendritic branches. We feed these trees through repetition of behavior, feeling or thought. If we water these trees for long enough periods of time, the roots will continue to grow deeper. The deeper

the roots grow the more sustainable that tree becomes on its own whether or not we are paying conscious attention to it. This means the habit of behavior, feeling or thought now has a long-term, deeply rooted relationship in our brain with memory. The subconscious mind acknowledges this habit as a new program. Once the subconscious mind has accepted this newly established habit, the reticular activating system receives this program as an important new filter through which to stream all incoming data.



The reticular activating system, RAS, is a structure in our brain whose job is to filter information. The RAS is a network of neurons that act as a filter system. This system allows certain information into the conscious mind that has been previously programmed as priority data. Simultaneously, the RAS blocks out information that does not fit any of our programs.

The subconscious will quickly eliminate any information that does not currently relate to our circumstances. Our mind is programmed to remember certain cues and will immediately direct our attention, conscious mind, toward certain conditions. Things such as our name and the names of our loved ones, the city we live in, our profession, and so on are all external cues that very easily catch our attention because they have been subconsciously programmed.

Our brain can be deliberately programmed to seek what we want. Everything we desire is right in front of us but we are unable to see it if our brain doesn't have the program to perceive its existence. We can install the program that's needed to make what we desire, our well-being, a part of our reality. When we are not getting what we desire it is likely due to a lack of persistent focused attention toward that thing. If we desire to create changes in our reality, we must direct attention toward those very things long enough for them to become a part of our automatic programming.

Imagine how much data exists in any given moment throughout our day that we are missing out on. The psychological term confirmation bias comes to mind. Confirmation bias is that thing that we all do where we completely ignore any information that proves contrary to a belief we possess. Our beliefs are our subconscious truths. These truths are not necessarily based on actual reality. They are simply the conclusions we have drawn from our experiences with reality. The RAS is constantly looking for evidence that confirms our beliefs.

We have referenced the conscious and subconscious mind several times so let's now establish a definition for those concepts.

1. The **conscious mind** is our objective or thinking mind. It has no memory and can only truly hold one thought at a time. The conscious mind is an instrument that we use to direct our attention, like a spotlight. Conscious awareness is our ability to be aware of our awareness. It is the awareness we are utilizing at this very moment to read the words on these pages. Conscious mind does not originate thought. It polices thought by either accepting or rejecting it. Conscious mind also shuts down at night when we are asleep.
2. The **subconscious** is the brain and nervous system. It is the unique and complex network of neuronal circuitry programmed within our physiology by our experiences. Our subconscious has infinite memory, can access near infinite information or thoughts and never goes to sleep. The subconscious is where all the automation, the programs, the habits, the patterns and the beliefs are warehoused. The subconscious is non-linear and mechanical. Its job is to immediately go to work making the information it receives true.

Some say we spend 95% of our day on subconscious autopilot and only 5% in conscious awareness. With numbers like that, it is important for us to begin taking a deeper look at exactly what programs, patterns and habits are running our lives. Consciousness is free will. When we are not paying conscious attention to our day, we give up free will by switching to our subconscious cruise control. Our subconscious cruise control is a set of preprogrammed patterns of habit, thought and feeling that has power over us until we consciously choose to disengage it.

Another concept worth defining is emotion. Emotion is a chemical response to a thought we are thinking. Thoughts are our observations or perceptions of ourselves, others, experiences or conditions—they can be real or they can be imagined.

A thought is a unit of awareness that stimulates the movement of electrical energy through the neurons of our brain. This electrical energy is activated by the movement of positively and negatively charged particles called ions.

Thoughts will always precede emotions because the electrical energy stimulated by our thought converts itself to chemical energy that is released with a set of instructions for other cells to respond in a certain way. We experience this chemical energy as emotion.

Emotions can be positively or negatively charged. Emotions are a powerful, influential motivating factor for our behavior. Our behavior communicates our intentions to the outside world. The external world responds to our intention, which produces an experience. Our experiences yield definitions that influence the direction of our attention. These definitions can be positive or negative.

We then think more thoughts about what we are paying attention to. These thoughts again trigger the release of biochemical energy that floods our bodies with the feeling of more emotion.

Beliefs are thoughts we think over and over again. These repeated thoughts become generalized and begin to fly below the radar of our conscious awareness. These subconscious thought habits called beliefs reflect our perceptual definitions, assumptions and judgments of experiences we have hardwired as memory. Beliefs are powerful subconscious forces that not only direct our attention but also limit our range of perceptibility. Also, don't forget, these beliefs present physiologically as neural clusters.

A mood is a pervasive emotion resulting from belief. Moods are generalized emotional habits that can be positive or negative depending on how we have chosen to perceptually define the memory of our experiences. Moods are consciously non-dominant but, because they have been hardwired by repetition into memory, they are also a powerful subconscious force that affects our behavior and can sabotage well-being.

Belief and mood lead to subconscious patterns of behavior called behavioral habits. Behavioral habits subconsciously recycle, perpetuate and limit our attention to the expectational outcomes of our past experiences. When our perception is dominated by habit, we live life through the lens of our past.

If at any point we become aware of a habit, moving it back to the realm of conscious awareness, it has then become a choice. A choice is a decision we make between two or more thoughts. The consequence of our decision is an emotion. This brings us full circle, looping us back around to what we understand well-being to be: the conscious and intentional act of engaging proactive behaviors that will lead to an increase in health, productivity and overall quality of life. When we exercise deliberate, intentional and conscious decision making, we engage free will and exercise the power necessary to begin our journey toward wellness.

Because most of us are not taught otherwise, we allow our experiences, our relationships or our external conditions to tell us what to think and therefore, how to feel. We emotionally react to our external experiences. Furthermore, we judge ourselves as good when external conditions are favorable and bad when external conditions are unfavorable. When we operate from this belief, we subject ourselves to emotional volatility, the opposite of well being, because, unless favorable conditions are present to yield emotional highs, we are doomed to experience emotional lows in their absence. Many generations of humans efforted to control their emotional state by attempting to control external conditions. But, not one of them have been able to maintain that control permanently or sustain their happiness consistently. We only truly have power or control over our own thought. We are the permanent directors of our own perception. We decide where and how we spend our attention. We have the undeniable freedom to choose how we wish to think about and interpret conditions and, as a result, learn to guide our emotions and seize our well-being.

WHY DOES WELL-BEING MATTER FOR YOUR PRACTICE?

The ABA in their 2019 Profile of the Legal Profession recognizes the ongoing work of 'Creating a Movement' to improve attorney's well-being. It repeats and reminds us of the issues for lawyers when it comes to health.

1. At times toxic work environments,
2. The stigma associated with help seeking,
3. Recognizing that well-being should be a part of a lawyer's duty of competence,
4. Education on issues of health and well-being and 5. Ultimately, changing the practice of law to improve well-being profession-wide.

One of the studies almost every article that talks about lawyers and well-being cites is this one. It is a 2016 study of 12,000 attorneys. Before this study, the issue was "largely unexamined" as the last significant study was one conducted in 1990, of about 1200 lawyers in Washington State.

The 2016 study found lawyers to have substance abuse issues and depression at a much higher rate than other groups of highly educated professionals. It found, more specifically, that the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder. But the study also points out that at least in theory, these same lawyers, throughout their career, should also have the greatest access to and resources for therapy, treatment and support.

In addition to unhealthy use of substances or depression/anxiety, there are many other health issues plaguing workers. Here are just a few:

1. Obesity
2. Chronic Illness

3. Chronic Stress
4. Pre-diabetes (most are unaware of the condition)
5. Low "Life-Satisfaction"

More and more employers are focusing on the importance of mental health, as across the globe, mental health issues are the leading cause of disability and illness. And recent research shows workplace culture is a definite roadblock for employees in their efforts to feel healthy and happy. The ABA research shows this as well: toxic law firm environments negatively affect all those who work in them.

But there is hope! Evidence also shows that if an employee does just the following five things, they are healthier, (typically spending 33% to 50% less on healthcare costs):

1. Walking 30 min a day
2. Eating healthy foods
3. Not smoking
4. Having a waist size less than half their height
5. Drinking alcohol in moderation

So, let's talk about what law firms can do, both for individual employees and within the work environment, to make the health and wellness of their teams a priority, as doing so is both a dire need within the profession, as well as a smart business strategy.

WHY LAW FIRMS SHOULD CONSIDER HEALTH AND WELLNESS INITIATIVES

The evidence points to many benefits of workplace wellness initiatives - both for the employee and employer. Employees report greater job satisfaction, less missed workdays and less stress overall. For the employer, this means attentive, present and well adjusted team members ready to get to work. Additional benefits for employers include a drop in insurance rates as your team gets healthier, less "presenteeism" (a play on absenteeism) - productivity loss due to poor health/personal issues, a great way to recruit millennials (or anyone looking for work/life integration), and increased employee morale.

A well-designed workplace wellness program should motivate individual team members to make healthy choices. It should also take a look at the systemic challenges workplaces present for employees. So what, then, does a good wellness program include?

One of the big needs that the study done by the ABA in 2016 found was in education. So maybe start here: Make sure you are providing some way for your team to access education and/or training that encourages the adoption of healthy habits and a healthy attitude towards getting help when help is necessary. And education is of course, closely tied to connecting your team with resources should they need more education, training, support or help.

After education, the way your firm operates, or it's "culture", should be one that encourages healthy habits. This can be as simple as encouraging a walk every so often, so your team isn't sitting all day, or making healthy snacks readily available in the break room. As a leader in your firm, set a good example - invite folks to take a walk with you at lunch or have a walking "meeting" rather than sitting in the conference room, or encourage time away from electronics by not expecting your team to always be accessible even outside of work hours.

The size of your firm will likely determine what other initiatives you take on, but some other ideas are around community building through recreational sports, preventative care programs where vendors conduct onsite health screenings or even health management with targeted programs for specific issues that folks on your team might be facing, i.e. learning how to eat well.

With any of these efforts, it's important to make sure your team knows that you prioritize your and their health - that you are all tied together as a team and that the health of individual team members is critical to the health of the team overall. To that end, talk about your wellness program when recruiting, during the hiring process and certainly, once you've on boarded a new employee through the policies in your employee handbook.

WHAT WELLNESS PROGRAMS DON'T DO FOR WORKERS

Employers are motivated by a simple proposition: keep my employees healthy, and I'll keep my costs down. But there are some pitfalls to be aware of when making a plan for your firm's wellness program.

The Google work culture is often satirized for offering "health" or "wellness" opportunities such as healthy free food or yoga at lunch, less to help its employees be happy and healthy and more

to make up for demanding expectations and "always on" work culture. So, perhaps don't be just like Google. One way to look at is is this: while all these wellness initiative should improve your bottom line, with healthy, attentive and present employees, that should not be the primary motivation for its implementation, but should instead be a happy side-effect.

Some evidence from a recent study suggests that corporate wellness programs might resonate with already- healthy employees and alienate those who are dealing with more serious health issues. So while it may be more fun to talk about office perks like healthy snacks or workplace-sponsored yoga, the job of promoting workplace well-being may be harder than that. It will be up to the leaders of the firm to be open, aware and flexible when it comes to identifying the needs of your particular team of employees. Likely a one size fits all plan won't be nearly as successful as a responsive environment with leadership that models prioritizing health.

This will require that we develop a workplace culture that allows team members to bring their full selves to the workplace, health challenges and all. So beyond offering health education (which is where we started), a workplace that prioritizes employee health will have flexible workplace policies. Workers thrive in environments with flexibility around where and when work can happen. Asking team members to come in at a certain hour or stay until a certain time may not be necessary and can be reconsidered, giving your employees the freedom to care for their family's (a big part of overall well-being) and their health OR seek support and/or treatment for any health issues they may be facing.

When the leaders of the firm show compassion and share their vulnerability, they are encouraging employees to show up more fully as themselves. This might mean that leaders open up about their own challenges, take responsibility for something gone wrong or reaching out then a team member seems to be struggling.

FOUR TALK THERAPY CHAT APPS

1. https://woebot.io/
2. https://www.wysa.io/
3. https://www.youper.ai/
4. https://replika.ai/

You can download these and 'chat' when feeling down or just having a bad day.

TECHSHOW2020

Limited Scope, Unlimited Possibilities

WRITTEN BY:

Jessica Bednarz & Laura O'Bryan

PRESENTERS:

Jessica Bednarz: @jessicabednarz

Laura O'Bryan: @virtuallawlady

January 6, 2020

INTRODUCTION

What are unbundled legal services?

Unbundled or Limited Scope Representation is when an attorney represents or assists a party with part, but not all, of the party's legal matter. In this relationship, the attorney and client enter into a detailed written agreement defining the scope of the legal assistance, including which tasks the attorney will be responsible for and which tasks the client will be responsible for. Examples of unbundled services include, but are not limited to, drafting documents, giving advice, or attending a hearing on a one-time or continuing basis.

Some considerations for unbundling in your practice.

Whether you choose to provide some or exclusively unbundled services you

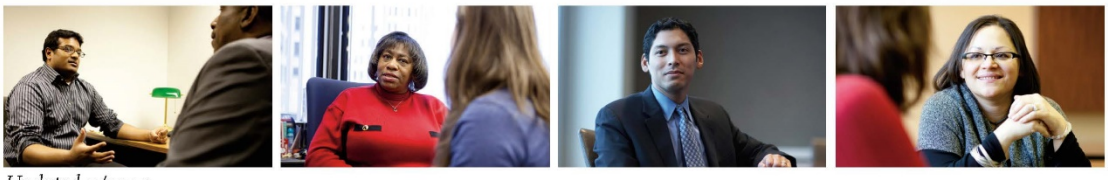
should:

- Be competent.
- Only unbundle suitable services.
- Be fluent in your technology.
- Ensure the client has the competency and capacity to handle the tasks assigned to them.
- Always clearly define the relationship and tasks in a written agreement and provide written notices.

LIMITED SCOPE REPRESENTATION TOOLKIT

The following Limited Scope Toolkit was created by The Chicago Bar Foundation. While most of the information in it is applicable to attorneys practicing in all 50 states, some of the information (e.g., the ethics rules and cases) is specific to Illinois. To find ethic rules, cases and other resources specific to your state, please go to the ABA Unbundling Resource Center. Double click on the toolkit image below to view it.

Limited Scope Representation Toolkit



Updated 7/2019

This toolkit is designed to assist Illinois attorneys with incorporating limited scope representation into their practice as a service offering to potential clients with civil matters in the Illinois trial courts. The toolkit includes the following:

CONTENTS

This toolkit is a project of the Illinois Supreme Court Commission on Access to Justice, The Chicago Bar Foundation, Justice Entrepreneurs Project, The Lawyers Trust Fund of Illinois, and The Chicago Bar Association. These organizations would like to thank the following individuals for their assistance in the development of the toolkit: Jessica Bednarz, Samira A. Nazem, David Holtermann, Patricia Wrona, Sari Montgomery, Trisha M. Rich, Roya Samarghandi, Alyease Jones, and Sonny R. Thatch.

If you have questions about the toolkit or limited scope representation more generally, please contact the CBF's Director of Innovation & Training for the Justice Entrepreneurs Project Jessica Bednarz at jbednarz@chicagobar.org or (312) 554-8022.

INTRODUCTION: How to Use This Toolkit

This toolkit contains resources designed to aid attorneys in developing and managing a practice that includes limited scope representation. Attorneys are encouraged to read through all the documents and to modify them to best meet their needs.

The Identifying Good Candidates for Limited Scope Representation and Discussing Limited Scope Representation with Potential Clients Checklists can be used in conjunction with an attorney's initial consultation checklist or client interview forms.

The Engagement Agreement for Legal Services and Attorney and Client Task Assignment Checklist are designed to help attorneys develop engagement agreements that properly define the limited scope of the representation and outline who is responsible for each associated task. The two documents are intended to be used together. As a best practice, attorneys should walk through the checklist with the client, and both the attorney and the client should sign and date each document to memorialize their understanding of the division of tasks associated with the representation. Attorneys may also choose to incorporate the Attorney and Client Task Assignment Checklist into the Engagement Agreement for Legal Services. Once the attorney has completed the representation, the attorney should send a Disengagement Letter to the client.

The Court Forms have been approved by the Illinois Supreme Court and must be used when an attorney provides court-based assistance by making a limited scope appearance. The attorney must complete and file the Notice of Limited Scope Appearance when making such an appearance. Under Supreme Court Rule 13, the preferred method for ending a limited scope appearance is by oral motion to the court at a proceeding where the client is in attendance. If the attorney seeks to terminate the limited scope appearance outside the courtroom, the Notice of Withdrawal of Limited Scope Appearance must be filed with the court and served on the client (and all other parties of record), along with the form Objection to Withdrawal of Limited Scope Appearance. The objection form is to be used by client litigants who believe the attorney has not completed the scope of representation identified in the Notice of Limited Scope Appearance.

The Appendix contains the Court Forms and some additional resources that may be helpful to attorneys as they build their limited scope practices.

Please note: This toolkit is intended as a practice aid to attorneys who seek to provide limited scope representation in civil matters in Illinois trial courts. Accordingly, it highlights ethics and procedural rules as well as best practices that relate to limited scope representation. An attorney's duty of care and obligations under the Rules of Professional Conduct in any legal representation extend beyond those discussed in this toolkit. Use of the toolkit is a supplement to, not a substitute for, the attorney's familiarity with the ethics rules and professional duties, and the attorney's exercise of judgment in providing representation.

OVERVIEW: Limited Scope Representation and Relevant Rules

Limited scope representation, often referred to as "unbundling," allows attorneys to help potential clients for part of a case rather than seeing it though from beginning to end. This type of assistance is permitted under Illinois Rule of Professional Conduct 1.2(c) so long as it is reasonable under the circumstances and the client gives informed consent.

Limited scope representation allows potential clients who cannot afford to pay for full representation to still hire an attorney for what the potential client, with the attorney's counsel, determines to be the portion(s) of the matter for which an attorney is most needed. Limited scope can be used for both discrete tasks, such as drafting pleadings or providing advice and coaching on an issue, and particular issues in a case, such as the custody portion of a dissolution case. Unbundling also allows the attorney to charge a fixed fee by task or phase of a case. Fixed fees help attorneys distinguish themselves in the market and allow them to focus on providing value rather than on billing time. They also provide clients with predictability and certainty with respect to legal fees, creating a win-win for both attorney and client.

Examples of how attorneys can limit the scope of their representation include, but are not limited to:

- Providing legal advice during a one-time consultation;
- Drafting and/or reviewing documents for a self-represented litigant to file;
- Coaching a self-represented litigant on presenting a case in court; and
- Appearing in court on behalf of a self-represented litigant on a one-time or ongoing basis pursuant to a limited scope appearance.

Additional examples can be found in the Attorney and Client Task Assignment Checklist.

Contrary to popular belief, attorneys who have incorporated limited scope representation into their practices have not seen corresponding increases in their malpractice insurance premiums. Instead, many malpractice carriers support limited scope representation because the limited nature of the representation requires attorneys to carefully document the details of each representation in writing and to stay in constant communication with their clients, typically resulting in strong, positive attorney-client relationships.

Attorneys offering limited scope representation to potential clients should familiarize themselves with the following rules which address the provision of unbundled services by Illinois attorneys, including civil matters litigated in state trial courtrooms:

- **Illinois Rule of Professional Conduct 1.2(c)** permits attorneys to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- **Illinois Rule of Professional Conduct 4.2** clarifies when attorneys may communicate with a person represented by counsel on a limited basis.
- **Illinois Rule of Professional Conduct 5.5** clarifies that attorneys may counsel self-represented litigants without filing an appearance in the case.
- **Illinois Supreme Court Rule 11** requires that the opposing party or counsel serve all documents on both the attorney and the party while a limited scope appearance is in effect.

- **Illinois Supreme Court Rule 13** allows an attorney to make a limited scope appearance on behalf of a party in a civil court proceeding pursuant to Illinois Rule of Professional Conduct 1.2(c) when they have entered into a written agreement with the party to provide limited scope representation.

  An attorney can withdraw from the limited scope appearance by oral motion or written notice to all parties of record. The notice shall advise the client that they have 21 days after the entry of the order of withdrawal during which to either retain another attorney or to file a supplementary appearance with the clerk of the court. At the end of the 21-day period, the representation will automatically terminate. See the form Notice of Withdrawal of Limited Scope Appearance.

- **Illinois Supreme Court Rule 137** allows attorneys to assist self-represented litigants by preparing and reviewing pleadings, motions, and other documents without signing the pleading or filing an appearance.

Note: The procedural rules described above pertain only to limited scope representation in civil matters in Illinois trial court.

CHECKLIST: Identifying Good Candidates for Limited Scope Representation

While limited scope representation is a helpful option for many clients, it is not appropriate for every client and legal problem. Attorneys who want to offer unbundled legal services should determine whether they know the area of law well enough to limit their representation to specific issues or tasks, and to explain those limitations to their clients. Assuming they do, attorneys then need to determine whether limiting the scope of the representation in any particular matter would be *reasonable under the circumstances* and *obtain the client's informed consent* pursuant to Illinois Rule of Professional Conduct 1.2(c).

Attorneys must determine whether it is reasonable to limit the scope of representation based on the circumstances at the time of the engagement. This requires attorneys to consider both the complexity of the legal matter and the capabilities of the client.

Complexity of the Legal Matter:

- Is the case simple enough substantively, strategically, and procedurally to be broken down into discrete steps that can be easily divided between the attorney and the potential client?

Capabilities of the Client:

- Does the potential client have realistic expectations about their ability to handle all or parts of the case on their own?
- Does the potential client have the mental, physical, and emotional capacity to handle parts of the case on their own? When making this determination, an attorney should consider many factors including, but not limited to, disability status, English proficiency, and whether the potential client is a victim of trauma.
- Is the potential client capable of appearing independently in court?
- Does the potential client have the ability to follow instructions?
- Does the potential client have access to the technology needed to comply with e-filing and other court requirements and do they know how to use it?

If the answer to any of the above questions is "no," the attorney should consider carefully whether limiting the scope of representation will be reasonable. However, the attorney should also keep in mind that reasonableness does not require the lawyer to predict that the client will prevail in the matter with limited scope assistance, but merely that there is a reasonable chance the litigant will do so.

CHECKLIST: Discussing Limited Scope Representation with Potential Clients

During the initial consultation, it is important that the attorney discuss the following items with the potential client before entering into a limited scope representation.

- **The differences between limited scope representation and full representation.** The attorney should identify the differences between the two models to the potential client. The attorney also should explain why limited scope representation would be reasonable in the potential client's case and make sure the client fully understands his or her role and responsibilities associated with limited scope. The attorney needs to make the limitations of the representation clear (e.g., "If you hire me to only draft and review court documents, this means I will not go to court with you."). Attorneys can use the Attorney and Client Task Assignment Checklist to facilitate this discussion with the potential client. Having this conversation will help the attorney satisfy the informed consent requirement in Rule 1.2(c).

- **Apportion tasks in writing.** If the client agrees to limited scope representation, using a document like the Attorney and Client Task Assignment Checklist will clarify the division of tasks associated with the representation, and memorialize the understanding of both the attorney and client. This checklist can also be incorporated into the Engagement Agreement for Legal Services.

- **Discuss and document changes in the scope of the representation.** The scope of the representation in a case may change for a variety of reasons including, but not limited to, the client later deciding that they would like the attorney to handle additional tasks associated with the matter. If this happens, the best practice is for the attorney and the client to complete, sign, and date a new Attorney and Client Task Assignment Checklist and Engagement Agreement for Legal Services. *If an attorney fails to document changes in the scope of a representation, they risk assuming responsibility for the entire case.* Because changes in the scope of the representation are common, attorneys should consider having a conversation about this with potential clients who are considering limited scope representation in an effort to manage expectations and reduce surprises down the road.

- **The proper filing and service of pleadings and deadlines.** During the initial consultation, the attorney should provide specific instructions to the potential client regarding proper filing and service of pleadings, including e-filing requirements, and advise them of the importance of deadlines and their responsibility to keep track of them.

- **Ancillary issues outside the scope of representation.** Attorneys should be aware that the court decisions in several states, including Illinois, have held that there is a duty to inform clients of issues that fall outside the scope of representation. See for example *Keef v. Widuch,* 747 N.E.2d 992, 321 App. 3d 571, 254 Ill. Dec. 580 (Ill. App., 2001), which found that an attorney whose representation was limited to a workers' compensation matter nonetheless had a duty to advise the client of the possibility of third-party claims and applicable statutes of limitation. This "peripheral" duty to advise does not require proactive representation by the attorney, and should not discourage attorneys from offering limited scope services when appropriate. There are several steps a practitioner can take to more effectively manage the duty to advise:
    - Attorneys should stick to areas of law with which they are familiar when providing limited scope representation. Knowledge and expertise in a practice area makes it easier to spot related issues that may fall outside the scope of representation.
    - Use a checklist or other screening document to ensure that initial client interviews include inquiries about commonly occurring ancillary issues.
    - Make sure discussions with clients about limiting representation address any ancillary issues and the risks of leaving those issues outside the scope of representation.
    - Document any advice given to clients about ancillary issues.
- **Communication with opposing counsel on matters outside the limited scope representation.** The attorney should advise the client that the client will need to communicate directly with opposing counsel on matters outside the scope of the limited representation. Outlining the scope and type of such communications on the Attorney and Client Task Assignment Checklist can be one helpful way to prepare the client for this. Once a limited scope appearance has terminated, the attorney may find it helpful to communicate that in writing to both the Circuit Clerk's office and the opposing counsel to ensure future case communications are directed to the correct person. If the attorney receives filed documents pertaining to matters outside the limited scope representation (or after the limited scope representation has terminated), the attorney has a duty to deliver such documents to the client in a timely manner.
- **Confirm the limited scope representation has ended.** Once the limited scope engagement ends, a best practice is for the attorney to send the client a Disengagement Letter to memorialize the end of the representation.

CHECKLIST: Attorney and Client Task Assignment

You can download this checklist as a word document.

This checklist is designed for an attorney to use during an initial limited scope representation consultation to explain to clients the various tasks that their case will entail and to visually outline how responsibility for those tasks will be allocated between the attorney and the client. A best practice would be to attach the completed checklist to the Engagement Agreement for Legal Services, especially in cases where attorneys are handling multiple tasks in a case. This will make clear to the client what the attorney will and will not be handling for them. The checklist is not designed for any particular practice area and the list of tasks within it is not exhaustive. Attorneys should therefore consider tailoring the checklist to fit their respective practices.

When using this checklist, offer a detailed description about any tasks to be completed by attorney. To the extent possible, avoid using legal jargon or other terminology that may be unclear to the client (this is particularly important because limiting the scope of the relationship requires informed consent). Make sure that the checklist is updated if the scope of representation changes after its initial completion.

SERVICES TO BE PERFORMED (TASKS)	ATTORNEY TO DO	CLIENT TO DO
Legal Advice		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on a one-time basis. *Describe:*		
Provide advice about legal rights, responsibilities, procedures, and/or strategy on an ongoing basis. *Describe:*		
Document Preparation		
Draft documents on behalf of client. *Describe:*		
Review documents prepared by client. *Describe:*		
Draft discovery requests on behalf of client. *Describe:*		
Review discovery requests on behalf of client. *Describe:*		
Draft or review correspondence. *Describe:*		
File and serve documents. *Describe:*		
Case Preparation and Investigation		
Conduct a factual investigation (*e.g.* contact witnesses and/or expert witnesses, obtain documents, public record searches). *Describe:*		

Prepare discovery responses on behalf of client. *Describe:*		
Review discovery responses prepared by client. *Describe:*		
Take or defend depositions. *Describe:*		
Settlement Negotiations		
Review an outstanding settlement offer or agreement. *Describe:*		
Negotiate specified issue(s) for settlement. *Describe:*		
Trial Preparation		
Draft or review subpoenas for trial. *Describe:*		
Draft or respond to motions for trial. *Describe:*		
Outline witness testimony and/or argument for trial. *Describe:*		
Court Appearances		
Appear in court on a one-time basis. *Describe:*		
Appear in court on an on-going basis. *Describe:*		
Represent Client at trial. *Describe:*		
Miscellaneous		
Other (describe):		
Other (describe):		

Any other task not set out in this Checklist is the responsibility of Client.

Client Initials _____ **Attorney Initials** _____

Date _____

SAMPLE AGREEMENT: Engagement Agreement for Legal Services

You can download this agreement as a word document.

Engagement Agreement for Legal Services

This agreement (Agreement) is made between Client, _____ (Client), and Attorney, _____ (Attorney). Attorney only represents Client. Attorney does not represent any other person in this matter.

1. **The Client's Goals.** Client has engaged Attorney to help them achieve certain goals. Client's goals in this case include:

   a. _____

   b. _____

   c. _____

2. **The Scope of the Representation.** To accomplish Client's goals, Attorney will provide legal services that are limited to the following (describe scope of representation – be specific):

   _____
   _____
   _____
   _____.

   Client and Attorney have discussed the difference between full representation and limited scope representation and agree that limited scope representation is an appropriate option for Client at this time based on Client's case, abilities, goals, and budget.

3. **Attorney Responsibilities.**

   a. **Assigned Services.** Client and Attorney have completed the Attorney and Client Task Assignment Checklist (Checklist) and attached it to this document. Attorney is only responsible for completing the services marked "Yes" in the "Attorney To Do" column of the Checklist. Client is responsible for completing all other tasks, including, but not limited to, those tasks marked "Yes" in the "Client To Do" column of the Checklist. [*Note: It is a best practice to complete the Checklist and append it to the Agreement. If an attorney chooses not to do this, the attorney should outline in the Agreement which tasks they will and will not be responsibility for during the engagement.]*

   b. **Additional Services.** If Attorney is requested or required to provide additional services, Attorney and Client will complete and sign a new Checklist and Engagement Agreement for Legal Services. Client will pay additional fees (to be agreed upon by Client and Attorney) for additional services.

4. **Client Responsibilities and Control.** Client will handle all parts of the case except those that are assigned to Attorney in the Checklist. Client will be in control of the case and will be responsible for all decisions made during the case. Client agrees to:

   a. Cooperate with Attorney and Attorney's staff by promptly giving them all information they reasonably request about the case.

   b. Promptly tell Attorney anything they know about the case, including any concerns they have, and to update Attorney as new information or concerns arise.

   c. Promptly provide Attorney with copies of all court documents and other written materials that Client receives or sends out about the case.

   d. Immediately provide Attorney with any new court documents, including pleadings or motions, received from the other party or the other party's attorney.

   e. Keep all documents related to the case together and organized in a file for Attorney to review as needed.

   f. Maintain an active phone number and email address by which Attorney can communicate with Client about the representation and where Client can receive documents and notifications from Attorney and the circuit clerk's office in litigated matters. Client will check their voicemail and email account at least once every couple of days. If there are circumstances that prevent Client from doing this, Client will decide what the best way for Attorney to communicate with Client is and will provide written notice to Attorney of their decision.

5. **Method of Payment for Services.**

   a. **Legal Fees.** In exchange for the legal services provided by Attorney, Client agrees to pay a fee of $_____. Client has initialed the payment option below that works best for them.

      _____ Client will pay the entire flat fee listed above when this Agreement is signed.
      _____ Client will pay a partial fee of $_____ when this agreement is signed. Client will pay the remaining $_____ by or before_____.
      _____ Client will pay off the flat fee listed above in installments as described here:
      _____

      *A best practice is to offer flat fee and other pricing options that provide potential clients with predictability and certainty. Attorneys have the option of offering other fee arrangements to clients, including, but not limited to, offering their services pro bono, and if they do so, they should customize this provision to reflect that pricing model.

b. **Costs.** The fee does not include costs and expenses incurred to provide those services. In addition to the fee above, Client agrees to pay any costs and expenses including, but not limited to, fees associated with filing the case, private investigators, expert witnesses, court reporters and transcripts, service of subpoenas, and travel expenses which Attorney considers necessary and proper for the preparation and execution of the Attorney's commitments. Attorney will seek Client's approval before incurring these costs and explain why these costs are necessary to accomplish Client's goals. Client agrees to pay costs within thirty (30) days of receiving an associated invoice.

6. **Right to Seek Advice of Other Counsel.** Client has the right to ask another attorney for advice and professional services at any time during or following this Agreement.

7. **No Guarantees.** Client agrees that Attorney has not made any promises or guarantees that their involvement in the case will cause a certain outcome or result.

8. **Termination.** Client and Attorney have entered into a voluntary relationship and may end that relationship at any time. Client may end the relationship for any reason. Attorney may end the relationship if Attorney learns that Client has misrepresented or failed to disclose material facts to Attorney, if Client fails to follow Attorney's legal advice, if Client fails to cooperate in the representation, if Client fails to make the agreed upon payment(s), or for any other reason allowed by the Illinois Rules of Professional Conduct. If the relationship ends, Client has a right to request a copy of their file, which includes all of the information given by Client to Attorney and any legal work completed by Attorney on Client's behalf.

   Client is responsible for payment of all outstanding costs and expenses incurred prior to termination and attorney shall have a right to keep an appropriate proportion of the fees paid or due based on the legal services provided to Client. In the event there is a disagreement over the fees owed to Attorney, Illinois law provides attorneys with the right to seek judicial relief for outstanding fees, including a retaining lien to enforce payment of the bill, *after* an attorney's withdrawal or a client's request for the attorney to withdraw.

9. **Withdrawal of Attorney.** Attorney's obligation to Client is over once Attorney has completed all of the services identified in the attached Checklist. If Attorney has made a limited scope appearance on behalf of Client, that appearance should be terminated or withdrawn in a timely manner. In addition, Attorney may withdraw from the representation at any time as permitted under Illinois Rule of Professional Conduct 1.16. Even if Attorney withdraws, Client must pay Attorney for all services provided and must reimburse Attorney for all out-of-pocket costs incurred prior to the withdrawal.

10. **Release of Client's Papers and Property.** Once all of Attorney's services are performed, Attorney will return all original documents to Client. If Client requests that all paper and property be returned, Attorney will release all of Client's papers and property to Client within a reasonable period of time. If Client does not make this request or give other direction, Attorney may dispose of the papers and property after seven (7) years following completion of services.

11. Client has carefully read this Agreement and understands all of its provisions. Client agrees with the following statements by initialing each one:

a. [____] Attorney has accurately described my goals in Paragraph 1.

b. [____] I am responsible for my case and will be in control of my case at all times as described in Paragraph 4.

c. [____] The services that I want Attorney to perform in my case are identified by the word "YES" in the "Attorney To Do" column of the Checklist that is attached to this Agreement. I take responsibility for all other aspects of my case, including, but not limited to, those tasks assigned to me under the "Client To Do" column in the Checklist.

d. [____] Attorney discussed the difference between full representation and limited scope representation and I understand and accept the limitations on the scope of Attorney's responsibilities identified in Paragraphs 2 and 3.

e. [____] I will pay Attorney for services as described in Paragraph 5.

f. [____] I understand that any amendments to this Agreement must be in writing as described in Paragraph 3.

g. [____] I acknowledge that I have been advised by Attorney that I have the right to consult with another independent attorney to review this Agreement and to advise me on my rights as a client before I sign this Agreement.

Client Signature _____ **Date:** _____

Attorney Signature _____ **Date:** _____

SAMPLE LETTER: Disengagement

You can download this letter as a word document.

[Client Name]
[Client Address 1]
[Client Address 2]
[Client Email]

[Date]
Re: Termination of Legal Services

Dear [Ms./Mr. Client's or Client Representative's Last Name]:
Thank you for allowing [Law Firm Name] to represent you in [Legal Matter]. [Enclosed/Attached] is a copy of [Relevant Document(s)—e.g., an order that was just entered]. I have completed the scope of legal representation agreed to in our Engagement Agreement for Legal Services. Accordingly, our attorney-client relationship has come to an end and I am no longer providing legal representation on your behalf. I am therefore closing your file. I will retain a copy of your file for seven (7) years after which I may destroy all documents in your file. You should keep all of your information and documentation concerning this matter in a safe place in case you need it in the future. If you would like to have copies of anything from my file, please let me know as soon as possible.
It has been a pleasure working with you. I hope this matter was concluded to your satisfaction. If you or someone you know needs legal assistance in the future, please feel free to contact my office to arrange a consultation. [Optional for mailed letter: I have included a few of my business cards.] I wish you the best of luck in your endeavors!
Best regards,
[Law Firm Name]

[Attorney's Name]

[Enclosures/Attachments]: [Relevant Document(s)]Resources

APPENDIX: Court Forms and Other Resources

Court Forms

- Notice of Limited Scope Appearance
- Notice of Withdrawal of Limited Scope Appearance
- Objection to Withdrawal of Limited Scope Appearance

Webinars

- M. Sue Talia/Practising Law Institute's (free) Expanding your Practice Using Limited Scope Representation (February 2018)
- The Chicago Bar Association's Expanding your Family Law Practice through Unbundled Services (March 2019)
- The Illinois State Bar Association CLE program Limited Scope Representation: When Less Is More (October 2016)

Articles

- Increasing Access to Justice Through Limited Scope Representation (March 2019)
- Limited Scope. (Almost) Boundless Opportunity (January 2019)
- New Resources Help Lawyers Build Business and Increase Access to Justice by Providing Limited Scope Representation (November 2017)
- Why Judges Should Embrace Limited Scope Representation (April 2014)
- Rule Changes Permitting Limited Scope Representation in Litigation: Increasing Access & Opportunity (September 2013)

Studies

- The National Center for State Courts' The State of State Courts2018 Public Opinion Survey
- Sara Smith & Will Hornsby's Unbundled Legal Services: At the Tipping Point? (April 2018)
- The Institute for the Advancement of the American Legal System's (IAALS) Cases Without Counsel: Research on Self-Representation in U.S. Family Court and Recommendations After Listening to the Litigants (May 2016)
- Dr. Julie Macfarlane's The National Self-Represented Litigant Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report (May 2013)
- American Bar Association's Perspectives on Finding Personal Legal Services (February 2011)

Cases

- *People v. Gawlak*, N.E. 3d (2019); 2019 IL 123182
- *Webb v. Holmes*, 2018 IL App (3d) 170167 (2018); 115 N.E. 3d 389; 425 Ill. Dec. 834
- *Global Data Science Inc. v. Ogletree, Deakins, Nash, Smoak & Stewart*, 2016 IL App (2d) 150141 - U
- *In re Jahring*, 514 B.R. 565 (2014)
- *In re WR*, 966 N.E. 2d 1139; 2012 IL App (3d) 110179 (2012)
- *People v. Santiago*, 895 N.E. 2d 989; 384 Ill. App. 3d 784 (2008); 324 Ill. Dec. 274

Other

- The Illinois State Bar Association's Limited Scope Representation Consumer Legal Guide
- The American Bar Association's Unbundling Resource Center
- The Institute for the Advancement of the American Legal System's (IAALS) Unbundling Legal Services Project
- Unbundled Law Facebook Group
- The Chicago Bar Foundation's Pricing Toolkit

CHECKLIST FOR VIRTUAL LAW FIRM UNBUNDLED PRACTICE

A virtual law firm is a law firm model that utilizes technology to deliver legal services to clients. This ultimately provides easier access for legal consumers and the flexibility to meet evolving consumer demand. A virtual law firm is ripe for offering unbundled services to their clients.

Key technology and practice tools needed to offer Unbundled services virtually include:

- Robust Website
- Cloud-Based Scheduling/Calendaring Tool
- Cloud-Based Payment Processing System
- Cloud-Based Practice Management System
- Secure Client Portal – considerations:
    - Be user friendly
    - Be secure
    - Offer document automation
    - Allow for online payments
    - Provide for messaging and other communication access
    - Include the ability to upload & exchange documents and information
    - Include a method for conducting conflicts checks

Business Planning List:

- Research applicable jurisdictional rules and regulations for virtual and unbundled practice.
- Create and register your business entity with your state.
- Compare malpractice insurers.
- Register a domain and create your website.
- Choose cloud-based technologies.
- Create business and marketing plans.
- Draft intake forms, client agreements, disclaimers, policies, and all other forms or documents.

- Start accepting clients!

CONCLUSION

Exploring the addition of unbundled legal services to your firm offerings OR starting a firm that is entirely dedicated to limited scope representation will allow you two major opportunities:

1. The ability to capitalize on an untapped legal consumer market of the middle class and those who either don't need or cannot afford a traditional full-service representation attorney.

2. Choosing lifestyle work over working for our lifestyle.

ADDITIONAL RESOURCES

Relevant ABA Model Rules

- ABA Model Rule 1.2(c): "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."
- ABA Model Rule 6.5: Allows attorneys to provide short-term, limited legal services, when participating in non-profit or court programs.
- ABA Formal Opinion 472 (2015): Addresses the obligations of a lawyer when communicating with a person who is receiving limited-scope representation.
- ABA Formal Opinion 07-446 (2007): Addressing obligations to inform the court when providing document assistance to pro se litigants (aka, ghostwriting)…spoiler: no disclosure required.
- ABA Resolution 108 (Adopted 2013): Encourages practitioners to consider unbundling and stakeholders to educate and raise public awareness about it to help meet legal needs.

National Resources

Articles & Studies

- Limited Scope. (Almost) Boundless Opportunity (January 2019)

  https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2019/january-february/limited-scope-almost-boundless-opportunity/

- The National Center for State Courts' The State of State Courts2018 Public Opinion Survey

  https://www.ncsc.org/~/media/Files/PDF/Topics/Public%20Trust%20and%20Confidence/NCSC_SoSC_2018_Presentation_Final.ashx

- Sara Smith & Will Hornsby's Unbundled Legal Services: At the Tipping Point? (April 2018)

  https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_unbundling_tipping_point_article.authcheckdam.pdf

- The Institute for the Advancement of the American Legal System's (IAALS) Cases Without Counsel: Research on Self-Representation in U.S. Family Court and Recommendations After Listening to the Litigants (May 2016)

  https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_research_report.pdf

  and

https://iaals.du.edu/sites/default/files/documents/publications/cases_without_counsel_recommendations_report.pdf

- Dr. Julie Macfarlane's The National Self-Represented Litigant Project: Identifying and Meeting the Needs of Self-Represented Litigants – Final Report (May 2013)

  https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/s/self-represented_project.pdf

- American Bar Association's Perspectives on Finding Personal Legal Services (February 2011)

  https://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/20110228_aba_harris_survey_report.authcheckdam.pdf

Other

- ABA Unbundling Resource Center

  https://www.americanbar.org/groups/delivery_legal_services/resources/

- Self-Represented Litigant Network (SRLN) Unbundling Working Group

  https://www.srln.org/taxonomy/term/677

- Unbundled Law Facebook Group

  https://www.facebook.com/groups/374101793037040/

- IAALS Unbundling Guide for Consumers

  https://iaals.du.edu/publications/unbundling-legal-services-guide-consumers

- IAALS Unbundling Conference Materials

  https://iaals.du.edu/events/better-access-through-unbundling

TECHSHOW2020

Legal Trends Report: Using Market Insight to Differentiate Your Practice

WRITTEN BY:

Sofia S. Lingos, Esq.

PRESENTERS:

Sofia S. Lingos, Esq: @SofiaLingosEsq

George Psiharis: Type Twitter Handle Here

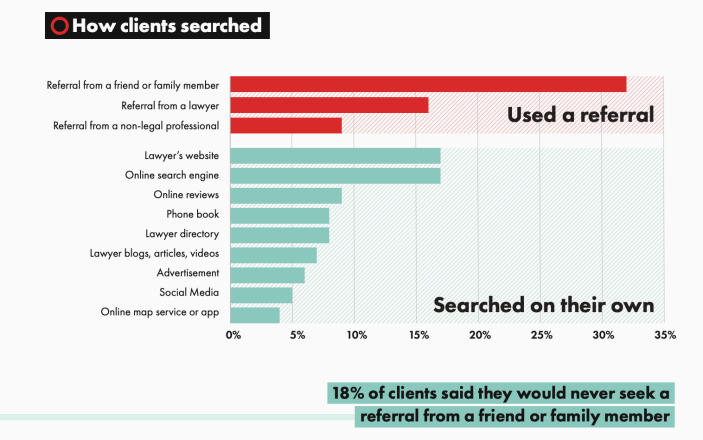
January 6, 2020

UNDERSTANDING CLIENT EXPECTATIONS

Source of original analysis: https://www.clio.com/wp-content/uploads/2019/10/2019-Legal-Trends-Report.pdf

What are potential clients really looking for when seeking legal help? To find out, Clio surveyed 2,000 consumers to learn how clients ultimately choose one lawyer over another. One of the most interesting things we learned is that—despite being recognized as the primary driver for new business—not all clients rely on referrals to find a lawyer. In fact, many opt to search on their own.

When comparing these methods of looking for a lawyer, 59% of clients sought a referral from someone they know or been in contact with, but 57% searched on their own through some other means—and 16% did both. Friends and family members were the most common source for a referral (32%), followed by referrals from a lawyer (16%) or another non-legal professional (9%). (A non-legal professional could include an accountant, real estate agent, or someone else working in a profession related to a certain type of issue.)



Additionally, 18% of clients said they would never seek a referral from a friend or family member, 17% said they would never get a referral from a non-legal professional, and 14% said they would never get a referral from another lawyer. But this wasn't the only way—57% (about the same number that sought a referral) looked for a lawyer on their own. Methods such as using an online search engine (17%) and visiting a lawyer's website (17%) were the most common among those who have ever shopped for a lawyer.

Our study found that clients are nearly just as likely to search for a lawyer through their own means first (39%) as they are to first seek a referral of any type (45%)—and 16% indicated they couldn't remember.

Online search engines were the most common first step for clients who didn't first seek a referral, but potential clients may use a range of resources as their first step to seeking a lawyer.

When we look at how mutually exclusive these two groups are to each other, the results show that there is relatively little overlap between those who seek a referral first and those who seek on their own through some other means:

- Of those who sought a referral first, only 16% also looked on their own.
- Of those who looked on their own first, only 17% also sought a referral.

While those who looked on their own were more likely to use more than one method, they didn't feel the need to also seek a referral. This suggests that those who look on their own were just as capable of finding a lawyer as those who sought a referral.

Clients want information more than anything

45% of consumers who have experienced a legal issue agree that their challenge is finding a lawyer they are confident is right for them. Regardless of how they search for a lawyer, the majority of consumers indicated that each of the following were important to them:

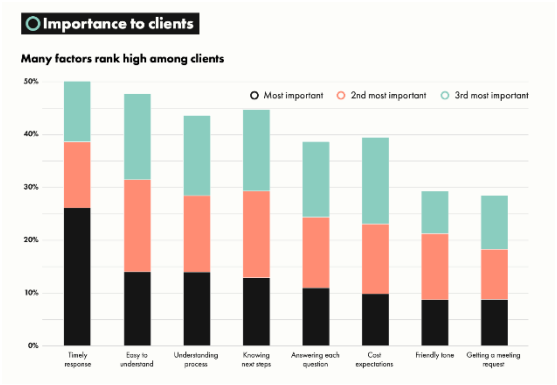
- 77% want to know a lawyer's experience and credentials (also ranked the most important).
- 72% want to know what types of cases they handle.
- 70% want a clear understanding of the legal process and what to expect.
- 66% want an estimate of the total cost for their case.

While potential clients say they want an estimate of total cost for their case, that doesn't mean they don't see the value in hiring a good lawyer. 62% who have ever hired a lawyer say it's worth paying a high price for a lawyer if they are very good.

What do clients look for when first contacting a lawyer?

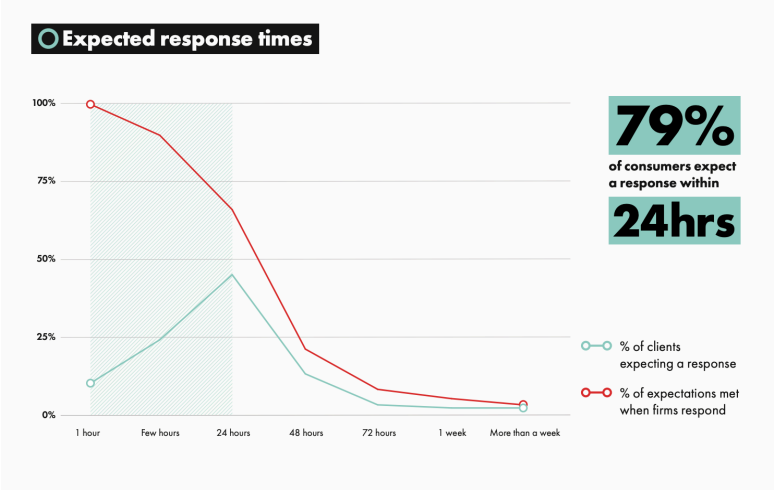
Making a good impression isn't just about picking up the phone or answering an email—clients need to have reason to believe that the lawyer they contact is the right lawyer for them.

Of those who have ever experienced a legal issue, 82% agreed that timeliness was important to them. Clients also have an appetite for knowledge and want to get as much information about their case as possible:



- 81% want a response to each question they ask.
- 80% say it's important to have a clear understanding of how to proceed.
- 76% also want to get a clear sense of how much their legal issue could cost.
- 74% want to know what the full process will look like for their case.

The friendliness and likeability of a lawyer's tone is also important to 64%, but not as much as having a solid foundation of knowledge for understanding their case and how to proceed.



Law firms should respond within 24 hours

How quickly do potential clients expect firms to respond when leaving a phone message or email? 10% expect a response within an hour, 24% within a few hours, and 45% within 24 hours. In other words, responding beyond 24 hours means missing the expectations of 79% of those who reach out. Only 5% of clients said they would expect a response beyond 72 hours. Given that clients are likely to reach out to more than one firm when experiencing a legal problem, being the first to respond will help make a better impression.

Tracking the Profession's Performance

We asked clients what reasons they had for not hiring the lawyers they reached out to. 64% indicated they contacted a law firm that never responded—either through phone or email. For any firm looking to find new business, not responding to potential clients means not getting hired. But clients also agreed that there were many other reasons for not hiring some of the law firms they corresponded with. Clients need information that confirms a firm can help them with their particular problem, and they need to know that the firm is ready to help.

- 65% didn't get any indication on what to do next.
- 64% didn't get a sense of how much their case would cost.
- 62% didn't understand the process for their case. • 61% didn't get enough information they could understand.
- 52% said the lawyer they spoke with wasn't likeable or friendly enough.

Putting 1,000 law firms to the test

To assess how well law firms are prepared to meet the needs of potential clients today, we put them to the test. We emailed 1,000 law firms and phoned 500 randomly selected from the same group.

Designed to evaluate the responsiveness and quality of service provided by each firm, we hired a third-party research company to contact each firm with a brief list of questions that a typical potential client would have when they first reach out. The questions pertained to a particular legal issue tailored to the firm's practice areas and inquired about overall cost and options for booking a consultation. The data from this analysis represents the first and only primary assessment of law firms of this magnitude, and the results provide strong implications for the state of client services—and indicate there is plenty of opportunity for firms to distinguish themselves from competitors.

The Legal Trends Report analysis assessed the client services provided by 1,000 randomly selected law firms in the United States. We tailored our outreach to correspond with the type of law practiced by each firm, across five different issue types:

- Family (child custody)
- Criminal (domestic abuse charge)
- Bankruptcy (debt elimination)
- Employment (racial discrimination)
- Business (incorporation)

To be eligible for our analysis, firms needed to have:

- An active web presence (such as a live website, a social page with activity in the three months prior to the study, or an active directory page).
- A publicly available email and phone number.
- Information available that indicated they handle legal issues related to the ones used in our study.

We also confirmed that all 1,000 law firms in our analysis received our email communications. For any emails that resulted in an email bounceback, we removed the associated law firm from our sample and replaced with another to ensure that we achieved 1,000 successful email deliveries. We also confirmed that all 1,000 law firms in our analysis received our email communications. For any emails that resulted in an email bounceback, we removed the associated law firm from our sample and replaced it with another to ensure that we achieved 1,000 successful email deliveries.

The Results Were Surprising

Simply put: 60% of law firms didn't respond to our emails at all. Given that this is the preferred method of initial outreach for 25% of potential clients, this means that these firms are missing out on a sizable proportion of their potential market. Of those who did respond, 82% did so within 24 hours. 11% responded after 24 hours, and 7% after 72 hours. There are a couple of takeaways from this. First, if a law firm is going to respond to a client inquiry, they'll likely respond in a day. Second, if a firm doesn't get back to their client inquiry in a day, there's a good chance they won't respond at all.

Few firms seem able to provide more than a brief response when communicating via email. Only 29% of law firms that responded via email were able to provide a response that was timely, clear, answered at least one question, and provided some information on either booking a consultation or rates or overall cost. In addition:

- 57% provided information that was clear and easy to understand.
- 58% had a likeable tone.
- 27% referenced similar legal situations or demonstrated knowledge of the issue.
- 13% provided information on what to expect from the legal process.
- 27% provided some information on rates or overall cost.
- 28% provided clear next steps.

While most email responses were still timely and within 24 hours, 71% were unsatisfactory in terms of the information provided.

Law firms are better at answering their phones but rarely return calls

Compared to email, law firms were more responsive through phone, but not by much:

- 56% of law firms answered our calls.
- 39% of our calls went to voicemail—of which 57% didn't return our call within 72 hours.
- 5% of our calls were unanswered.

In total, 73% of firms either picked up or phoned us back—meaning that, we were unable to reach 27% of law firms by phone.

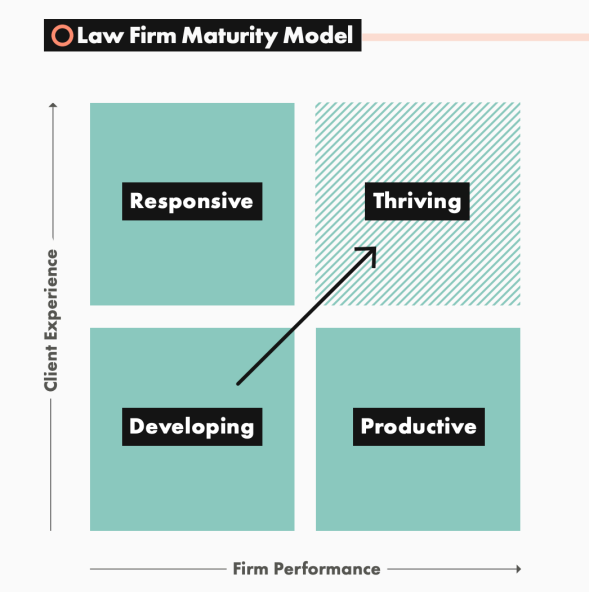
While many firms picked up the phone to speak with us, few were able to provide a lot of key information, and even fewer were able to demonstrate their knowledge and experience in working with similar types of cases. Many firms would only discuss information related to a case or questions related to rates and cost in a follow-up meeting.

- 49% answered most questions asked. 11% would only answer questions in a follow-up appointment.
  11% referenced case examples with contextual information.
- 56% provided rate information (hourly or fixed fees)—9% provided a total cost estimate.
- 43% would not discuss rates or cost over the phone.
- 50% explained the legal process and indicated next steps.

The Era of Client Experience in the Legal Profession

The market for legal services faces a critical paradox. On one hand, the vast majority of law firms say they want to increase their revenues, yet they have trouble finding business. On the other hand, clients continue to struggle to get help with their legal problems.

This paradox represents a market gap that shouldn't exist—and one that represents an enormous opportunity for firms that are able to build a strong business approach for their legal practice.



However, many high-growth firms are getting it right. We call these "high-growth" firms because they've been able to achieve substantial year-over-year revenue growth that is both consistent and predictable. We've discovered that these firms have achieved high growth over a sustained period of time due to two critical factors: a focus on client experience and firm efficiency. We've illustrated this growth path in a new format: the Law Firm Maturity Model.

In the bottom-left quadrant are new firms or firms that have either struggled or have yet to achieve the success they want. Firms that progress along the client-experience axis are those that become responsive to client needs. These are the firms that know how to attract new business and earn strong satisfaction among their clients. Firms that progress along the firm-productivity axis put more time toward revenue-generating tasks for clients, while keeping overhead costs low and investing in time-saving initiatives. High-growth firms progress along both axes. These firms consistently increase the amount of business they bring in while capturing the full value from all of the client-facing, revenue-generating work they perform.

We can learn a lot from high-growth firms—and we believe more law firms should. Not only are these firms achieving major success in the form of rapidly expanding revenues, they're doing it while closing the market gap and delivering more legal services to the clients who need them.

Data Sources Used to Collect These Insights

We use a range of methodologies and data sources to build a comprehensive understanding of how lawyers run their firms in today's market for legal services. This year, we've expanded the scope of our data sources even further to uncover new insights unlike any before.

Clio data

The *Legal Trends Report* uses aggregated and anonymized data from tens of thousands of legal professionals in the United States. In reviewing actual usage data, we identify large-scale industry trends that would otherwise be invisible to law firms.

Law firm survey

We surveyed 2,507 legal professionals, representing both Clio users and non-Clio users. By assessing the existing needs and strategies of law firms, we're able to better align our data analyses with real law firm goals.

Consumer survey

We surveyed 2,000 consumers to understand what they look for when searching for professional legal services and what types of experiences they expect. Our sample was representative across all adult age groups, genders, and geographic regions in the United States.

Email and phone outreach

We emailed a random sample of 1,000 law firms in the United States, and then phoned 500 of these firms. Our sample had equal representation across five practice areas, including Family, Criminal, Bankruptcy, Business Formation, and Employment, and comprised firms of all sizes.

ABA TechReport 2019: Lawyer Well Being

Sofia S. Lingos, Esq

Skilled at analyzing clients' problems from every viewpoint, lawyers traditionally not applied that same introspective lens to our own careers. This goes beyond review of a compensation package and understanding the value of your insurance benefits or retirement contributions. The practice of law is all consuming, and understanding the culture associated with one's firm, versus the opportunities available at another, is incredibly important in determining the best practice venue or what considerations your firm should offer for proactive cultural growth.

Demographics.

Rigid requirements regarding the specifics of how legal services are provided have dictated the profession. However, the growth of legal technology, cyber security, and a general shift in corporate cultures has led to many workplace changes. A new section was added to the 2019 Legal Technology Survey relating to life and practice to address the interest of our community. Based on the responses from 647 attorneys in private practice who are also members of the ABA, we were able to quantitatively analyze many aspects of attorneys' professional life and application to their personal lives. The population of respondents was comprised of 25% sole practitioners, 31% at firms of 2 to 9 attorneys, 17% at firms of 10-49 attorneys, 5% at firms of 50-99 attorneys, 9% at firms of 100-499 attorneys, and 13% at firms of 500 or more attorneys.

The distribution of respondents was fairly equally divided among the various practice areas of law. The top primary practice areas among respondents were:

Litigation 27%	*Corporate 14%*	*General Practice 10%*
Estates, Wills and Trusts 18%	*Contracts 11%*	*Family Law 9%*
Real Estate 17%	*Commercial 11%*	*Employment/Labor 9%*

The average age of all respondents was 57 years old. Twenty-five percent of respondents under the age of thirty were at firms with over one hundred attorneys, while 66% of respondents who had practiced from more than 30 years were sole practitioners. Seventy-one percent of respondents were male and 28% were female. The gender gap was most significant for respondents 60 years old or older with 85% of respondents being male and 15% female; the gender gap narrowed among the 40-49 age group (53% male and 46% female). Thirty-eight percent of males and 35% of females were partners at their firms, though only 7% of females versus 18% of males were managing partners. Twenty-seven percent of males and 23% of females were solo practitioners; and 19% of females and 7% of males were associates. Though the gender gap continues to decrease, it is statistically significant that at the leadership level there were 11% less managing partners that were female versus the 3% of partners in general.

Fees and Billing.

The traditional hourly billing model is slowly starting to shift. Overall, only 71% of respondents employed hourly billing; the others reported 13% using fixed fees, 10% using contingency fees and 6%

with alternative fee arrangements. Solo practitioners had the highest percent of fixed fees at 21%, small firms had the highest number of contingency matters at 19%, and 89% of respondents from firms with over 100 lawyers provided services at an hourly rate.

Changes in billing practices have been largely driven by client demand. Hourly billing generally rewards inefficiencies and tends to lead lawyers away from employing technological solutions. In order to meet the new demands that continue to evolve, implementing alternative billing models and technological solutions will ensure the ability to maintain a competitive edge versus losing clients.

Work Location & Flexibility

The traditional 9AM -5PM (or 8AM -7PM) behind a desk at an office with the rest of your colleagues still represents the majority of firms with 69% of respondents reporting that they work at a traditional office space owned/leased exclusively by their firm. It's not surprising that 88% of lawyers working at large law firms identified their space as a traditional office owned by the firm. However, use of a home office has increased 5% up over the last 2 years (previously 16%) .

Technology has expanded the ability to work from anywhere / anytime with the advent of telecommuting. This option has expanded from conference calling capabilities, to remote logons, cloud computing, video conferencing and virtual project management team rooms. No longer is it as necessary to make the daily trek to the office or incur the expense of traveling to meet a client. Surprisingly, only 55% of respondents overall reported that they telecommute; with 60% at larger firms, followed by 56% of solos. What are the barriers to greater implementation? 5% of respondents reported that it was prohibited by their office policies while 3% stated that they did not have the necessary technology.

If attorneys are no longer working in their office, where do they physically perform their job? We've seen a decrease in attorneys telecommuting from public places and coffee shops. That may be in response to the creation of official telecommuting policies and the associated security concerns. In a profession that requires confidentiality, working in public spaces does carry risk. Do not take confidential calls in public spaces and make sure that you have your own hotspot which can be activated on most smart phones these days. Do not log on to the coffee shop's free Wi-Fi.

Since 2016 telecommuting from hotels has diminished from 47% to 26%. It was not uncommon that attorneys would travel to meet with clients and then telecommute from a hotel back to the office. Instead, these technologies are permitting attorneys to telecommute to the client.

If you have a quiet and confidential space in your home, it can be the best place from which to telecommute according to 88% of respondents. If you intend to do this regularly, invest in the necessary technology to ensure that your work is uninterrupted with high speed internet, a printer, secure laptop, shredder and use a secure cloud server for easiest access to your materials whether you are in the office or at home.

It appears that there are still lawyers and law firms who have not discovered the value of telecommuting. An impressive 90% of respondents from firms with more than 100 attorneys reported flexible work schedules; however, only 53% said they were likely to take advantage of it. In order to truly effectuate policy change, it is important to take advantage of opportunities presented. Thirty percent of respondents reported that telecommuting permitted them to be more flexible, and 25% said it provided flexibility surrounding family obligations. We have a culture of relentless connectivity from smart phones, smart

watches, and internet access across the globe. Accordingly, taking advantage of workplace flexibility can have a positive overall effect on work-life balance.

Office Space.

Office designs are often revisited and revised based on aesthetics and work environment theories. Historically, the closed door and quiet layout was the norm. Subsequently there was the transition to all glass offices, and recently the open concept environment has been gaining popularity with 7% of respondents reporting that their space was primarily shared or semi-private as opposed to an office or cubicle (though 92% reported having a permanent assigned desk). The highest percentage of respondents in an open office were solos (12%) in real estate; with firms over 100 attorneys only 2% used an open office.

Some of the potential benefits supporting the open office concept were: ease of communication (53%), collaboration (40%), and cost (20%). Fifteen percent reported that there was no benefit, and in fact, a majority of respondents discussed the disadvantages surrounding lack of privacy (65%) and office chatter (51%). Investment in office space and design is important and costly. Ensure that you get buy in from your employees and attempt to match the appropriate work space with the most conducive for their work style instead of relying on short lived trends.

Smartphones & Security

The advent of handheld wireless technology that allows access to your entire office from anywhere has really been a game changer. Despite this advance, 2% of the lawyers surveyed reported that they do not own a smartphone. There are days that the ability to disconnect seems enviable, but generally speaking, smartphones have facilitated the completion of ongoing obligations with more flexibility.

As technology advances, we have seen a shift in what devices are used. Blackberries were previously the industry standard, but the most recent survey demonstrated that 79% of respondents were using an iPhone, 18% of respondents were using android, and only 1% use Blackberry.

If your mobile device is used for business, who is responsible for the purchase of the equipment and monthly service fees? Seventy-five percent of solo practitioners reported that their work paid for their mobile phone. Only 26% of respondents from firms over 100 attorneys reported cell phone compensation, even though 84% of those attorneys reported that their smart phone was the method they primarily accessed e-mails outside of work. Even more interesting was that only 15% of respondents of those respondents from firms of over 100 used their laptops for accessing e-mail outside of the office, demonstrating a large shift to mobile lawyering. Overall 58% of respondents strongly agreed that being constantly connected to technology makes it easier to balance work and family obligations.

Smart phone technology can be a clear value-add, but there are security concerns. Approximately 95% of respondents use some form of password protection. Make sure that you employ longer passcodes, set-up two factor authentication and have multiple layers of security for work related information that you access from your phone. Turn on your tracking software (less than 38% of respondents said they did so). Pro tip - if you lose your iPhone you can use FindMyPhone to emit a very loud sound so you can locate it deep in the couch cushions instead of panicking for the next 30 minutes. If you do not locate your phone, you should be prepared to wipe your data to prevent anyone who may have obtained your device from maliciously accessing confidential materials. It is a good practice to back-up your device. There are cloud

options so you don't need to plug it in to your computer (which I know you only do after you cracked the screen and need to get an upgrade). Don't avoid technology due to security fears. There are plenty of safeguards in place to permit you to securely employ these solutions.

Education and Training.

The practice of law requires a lifetime commitment to learning. Some firms support their attorney's endeavors in a holistic fashion while others have rigid requirements and restrictions. Seventy-two percent of respondents stated that their firms required ethics trainings. Ninety-two percent of respondents at firms with more than 100 attorneys were required to have security and cyber security training as opposed to 41% of solos. In order to facilitate this, 91% of respondents reported that their firms pay for CLEs and 90% pay for bar dues. Ongoing education should be supported, and some form of CLE should be required in order to stay compliant with ethical obligations.

There is a significant difference between firms of less than 50 and those with 100 or more attorneys with regard to required training. Workplace harassment (93%), diversity (79%) and implicit bias (74%) were all required for the larger firms, whereas smaller firms reported under 44% for workplace harassment, 21% for diversity and 17% for implicit bias. Solos actually had a slight uptick with 25% reporting diversity training and 24% with regard to implicit bias.

In order to access these opportunities travel may be required. Sixty-eight percent of respondents stated they'd be interested in traveling for professional conferences. Seventy-four of associates expressed an interest though only 7% noted having the opportunity to do so regularly. Managing partners (30%) were the most likely to attend professional meetings that required travel. It is important to provide opportunities and experiences to our young professionals. Their voice is relevant at the table, and though it seems like an expensive investment (55% said travel costs and 45% noted registration costs as obstacles from attending), investigate stipends, scholarships and fellowships that can fund these opportunities and fulfil their interests. Accordingly, young attorneys, take the initiative to identify these opportunities even if not spearheaded by your firm.

Benefits.

Benefits in addition to cash compensation can be more valuable than many people realize. Seventy-two percent of respondents stated that their firms offered a retirement plan. 90% of larger firm attorneys have retirement plans with the lowest number attributed to solos (42%). As life expectancies continue to rise averaging around 80 years old, contributing to your retirement is a wise investment. While there are plenty of colleagues in the profession who may work until their final days, many may want to retire and will require the financial flexibility to cease the practice of law. If you are not taking advantage of this benefit that is already offered, do so; if it is not offered, speak with your employer to see if they would consider including a contribution and propose a well-researched option.

With regard to insurance, only 74% of respondents worked for firms that offer health care, 53% of respondent's firms offer life insurance, 42% offer short term disability and 50% offer long term disability. Only 34.5% of solo practitioners obtained health insurance through their practice versus 100% of lawyers at firms of over 50, and 98.1% over firms of 10. Insurance service providers can assist in selecting plans that are catered toward your firm's needs. The offering of insurance benefits often distinguishes your firm in the recruitment process, and has a positive effect on the workplace culture as a whole.

There are a number of different types of leave policies such as sick leave, family leave, holidays, vacation, etc. Corporate culture has begun to embrace the idea of unlimited paid time off (PTO). i.e. Get your work done when it's due = keep your job. The legal profession is well situated to permit unlimited PTO, especially for those with a minimum billable requirement, but overall only 18% of firms offer unlimited PTO. Given the change in corporate culture and how the legal profession slowly seems to follow, I project we will see a significant uptick of this benefit being offered in the next couple of years (and if we don't, we should).

Growing Families.

The term work-life balance becomes even more relevant as families begin to grow. There are many important aspects an employer can support during this transition: providing health insurance; offering paid maternity and paternity leave for at least 12 weeks and genuinely encouraging all employees to take advantage of this benefit; lowering billable requirements for that year; and having someone handling their cases and ensuring clients know not to contact the individual on leave, to name just a few. At least 38% of firms did not offer paid maternity leave (13% did not know), and 70% of respondents stated that their firm did not offer paternity leave. Unfortunately, this is most significant for solos (84%) versus only 1% of large firms who do not offer leave. Forty-seven percent of solos who took leave had 6-11 weeks; firms with 2-9 attorneys averaged 34% for less than 6 weeks; and most firms with more than 100 attorneys provided 12 or more weeks paid.

Once you return to work there are still additional considerations. Breastfeeding mothers should be provided with a private lactation space, though only 23% of respondents reported having a mother's room. Childcare is also an important benefit but only 17% of firms reported having childcare benefits, 1% with on-site childcare, and 21% with back-up childcare. With the demands placed on new families just months after having a child, we need to evaluate how we can support their return to work and ongoing family obligations.

Well-Being.

Overall employee well-being is an important aspect of work-life balance. The leading amenity provided by firms was gym access. Forty-six percent of respondents at firms of 100 or more reported gym access, versus only 6% of solos. Out of all additional amenities that were not currently offered having access to a gym was the most desired by 15% of respondents. Many businesses have become pet friendly with 83% of small firms welcoming our furry friends, but 0% of firms over 100 had a pet friendly policy. Other well-being options offered at firms include: employee appreciation events (52%), staff meals (48%), extra holidays (36%), family friendly outings (35%), volunteer work (32%), fitness incentive programs (15%), and intramural sports (10%). Health and wellness is a critical aspect of one's overall wellbeing which has a significant positive effect on the overall workplace. Healthier employees have greater job satisfaction and require less time off.

Firms and employees should audit their current offerings and consider implementing many aspects reviewed in the Life and Practice Survey for the benefit of their employees, practice and our profession.

Reprinted with permission. Originally published on Law Technology Today here.

TECHSHOW2020

Using Data to Develop Your Law Firm Growth Strategy

WRITTEN BY:

George Psiharis

PRESENTERS:

George Psiharis

Roger Chown

January 20, 2020

UNDERSTANDING THE NEED FOR PERFORMANCE DATA

According to leading technology vendor International Business Machines (IBM), over 90% of the digital data stored in the world today is less than two years old[1]. The rate that new technologies create, store, and make data available for analysis is rapidly increasing, and this in turn has unlocked the study and analysis of new areas of commerce.

Foundational management science Peter Drucker is famous for having stated that "what gets measured gets managed," with his underlying notion being that data insights drive better business decisions. Despite its 4000-year history and sizeable head start on other professions and commercial models, the contemporary law firm has suffered from a paucity of industry data points and the insights that are available often struggle with several limitations, including:

- Self-reported data that is prone to deficiencies like the social desirability bias ;
- Small sample sizes;
- They are biased toward the AMLAW 100 or larger firms, which do not represent more than 80 percent of the practicing legal population in the United States.

Lawyers are often left struggling to benchmark and produce data-driven responses to simple business questions, such as:

- How much should I charge my clients?
- How have the prices for different types of legal advice trended over time?
- Where should I choose to practice, and in what areas should I concentrate?
- How many lawyers or staff should I bring on board to optimize my firm?
- Is my financial performance in line with averages across the profession?

In 2016, web-based software vendor Clio (ww.clio.com) produced the Legal Trends Report (LTR) - the first-ever benchmarking study of the legal profession driven by anonymized and aggregated source data. Since its launch in 2016, the LTR has grown significantly to encompass new sources of data and a broader array of topics for law firms, culminating in the most recent version [2]that dove extensively into client expectations and experiences.

[1] http://www-01.ibm.com/software/data/bigdata/
[2] https://www.clio.com/wp-content/uploads/2019/10/2019-Legal-Trends-Report.pdf

DATA SOURCES USED TO COLLECT THESE INSIGHTS

We use a range of methodologies and data sources to build a comprehensive understanding of how lawyers run their firms in today's market for legal services. This year, we've expanded the scope of our data sources even further to uncover new insights unlike any before.

Clio data

The *Legal Trends Report* uses aggregated and anonymized data from tens of thousands of legal professionals in the United States. In reviewing actual usage data, we identify large-scale industry trends that would otherwise be invisible to law firms.

Law firm survey

We surveyed 2,507 legal professionals, representing both Clio users and non-Clio users. By assessing the existing needs and strategies of law firms, we're able to better align our data analyses with real law firm goals.

Consumer survey

We surveyed 2,000 consumers to understand what they look for when searching for professional legal services and what types of experiences they expect. Our sample was representative across all adult age groups, genders, and geographic regions in the United States.

Email and phone outreach

We emailed a random sample of 1,000 law firms in the United States, and then phoned 500 of these firms. Our sample had equal representation across five practice areas, including Family, Criminal, Bankruptcy, Business Formation, and Employment, and comprised firms of all sizes.

THE LAW FIRM FUNNEL

Many businesses can be viewed as a "funnel", with a given number of inputs at the "top of the funnel" generating a commensurate amount of value at the "bottom of the funnel."

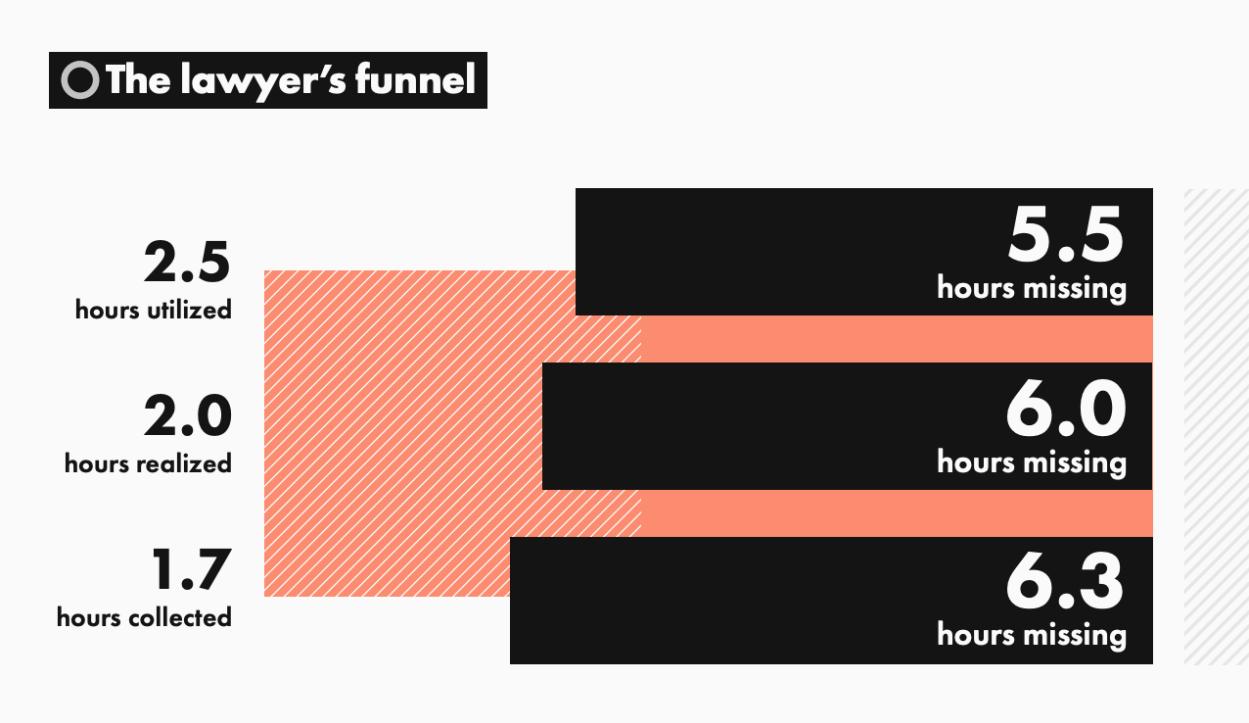
Take a retailer, for example. The top of the funnel may be the number of visitors (foot traffic) to the retailer's store in a day. The bottom of the funnel is the dollar value of goods sold in a day. And, in order to improve its business, the retailer will consider ways it can both increase the volume at the top of the funnel (increasing foot traffic) and maximize the output at the bottom of the funnel (for example, by increasing conversions from visitors to customers through a sale or one-day-offer).

Lawyers that bill on an hourly basis, however, have a fixed top-of-funnel: the number of hours in a day. Whether you're working a sane 8 hour workday or an 18-hour marathoner, you can't create more than 24 hours in a day?

And the lawyer's funnel is likewise unforgiving: we can convert a given number of hours in a workday to billable time (utilization rate), a subset of those hours to actual billed time after discounting and write-

offs (realization rate) and, finally, a given number of hours to actual collected revenue after bad debts (collection rate).

The Law Firm Funnel



Utilization Rate: The utilization rate answers the question "of your available hours, how many are billable." Non-billable work would typically include all administrative, overhead and marketing-related activities.

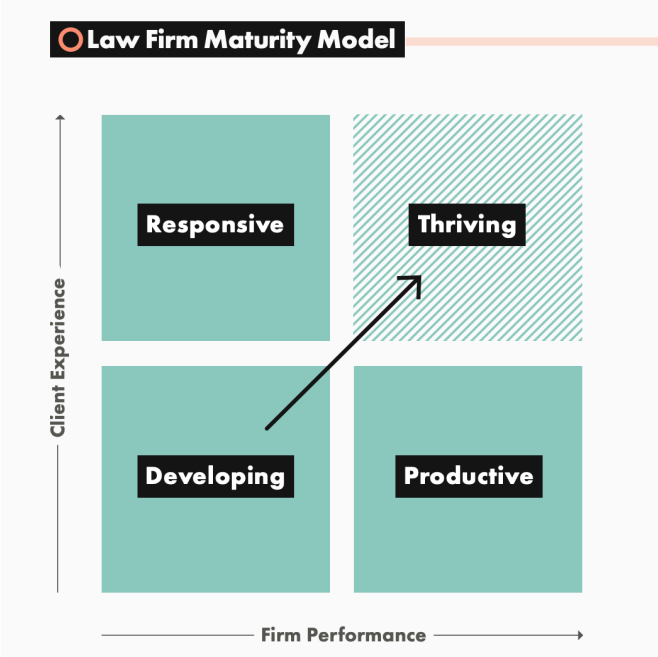
Realization Rate: The realization rate represents the number of hours actually billed to clients, net of discounting. The average realization rate is 81%. Put another way, for every $100 of billable work conducted, the average lawyer writes off $19.

Collection Rate: The final stage of the lawyer's funnel is the collection stage, which represents the total collected revenue versus the amount of billed hours. The collection rate represents the amount of revenue collected after factoring in bad debt and other sources of lost revenue.

Upon examining the typical lawyer's funnel, the devastating conclusion is that over 70% of available time is lost at the critical utilization step. Though this stunning benchmark can be driven by a multitude of factors, it is most typically the result of practitioners spending too much of their time on non-billable work or not having enough clients and thus needing more to capitalize on their available time.

LAW FIRM MATURITY MODEL

The market for legal services faces a critical paradox. On one hand, the vast majority of law firms say they want to increase their revenues, yet they have trouble finding business. On the other hand, clients continue to struggle to get help with their legal problems.



This paradox represents a market gap that shouldn't exist—and one that represents an enormous opportunity for firms that are able to build a strong business approach for their legal practice.

However, many high-growth firms are getting it right. We call these "high-growth" firms because they've been able to achieve substantial year-over-year revenue growth that is both consistent and predictable. We've discovered that these firms have achieved high growth over a sustained period of time due to two critical factors: a focus on client experience and firm efficiency. We've illustrated this growth path in a new format: the Law Firm Maturity Model.

In the bottom-left quadrant are new firms or firms that have either struggled or have yet to achieve the success they want. Firms that progress along the client-experience axis are those that become responsive to client needs. These are the firms that know how to attract new business and earn strong satisfaction among their clients. Firms that progress along the firm-productivity axis put more time toward revenue-generating tasks for clients, while keeping overhead costs low and investing in time-saving initiatives. High-growth firms progress along both axes. These firms consistently increase the amount of business they bring in while capturing the full value from all of the client-facing, revenue-generating work they perform.

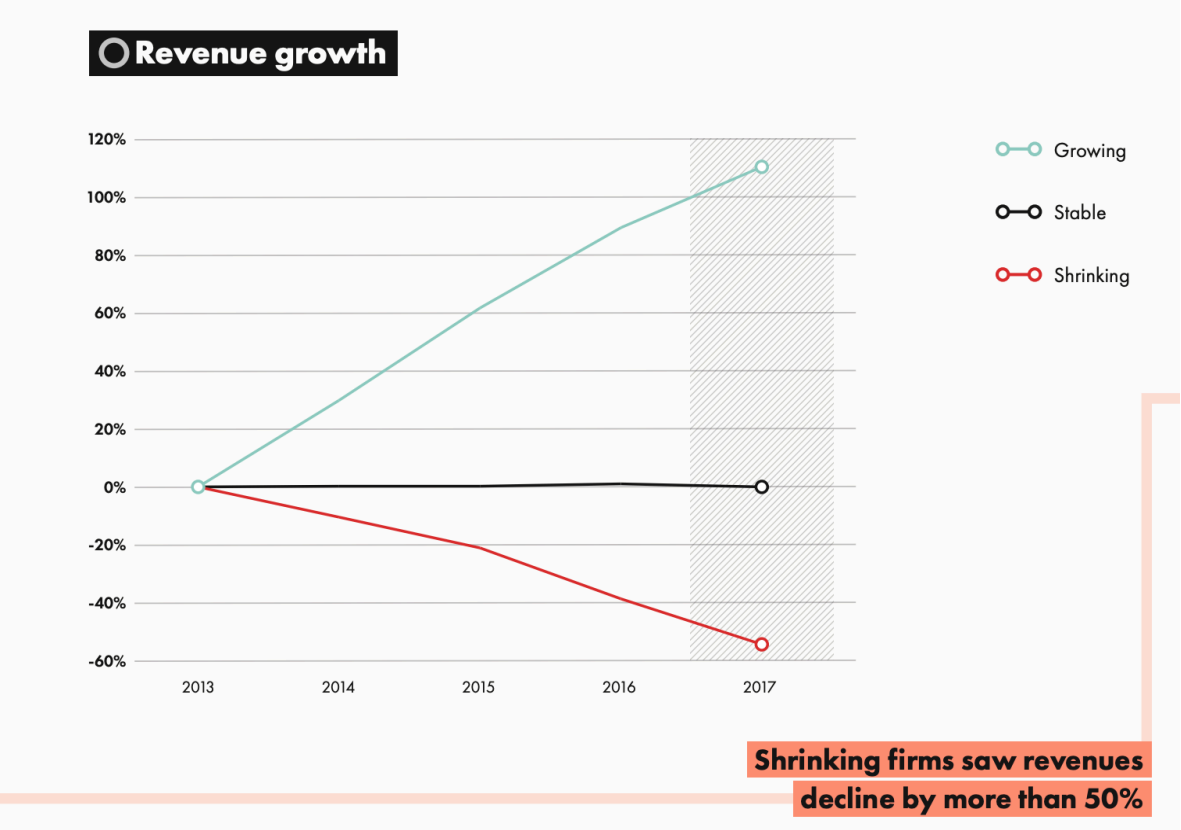
We can learn a lot from high-growth firms—and we believe more law firms should. Not only are these firms achieving major success in the form of rapidly expanding revenues, they're doing it while closing the market gap and delivering more legal services to the clients who need them.

WHAT DO THE BEST-PERFORMING LAW FIRMS HAVE IN COMMON?

For the past four years, Clio has been a system of record for the legal profession, benchmarking key business insights across tens of thousands of law firms each year—as reported in the Legal Trends Report (LTR). For the first time ever, the LTR has expanded to conduct a longitudinal study that follows a cohort of thousands of firms over a five-year period to determine what the fastest-growing firms among them had in common.

Through this analysis, we illustrate a powerful and insightful model for how high-growth law firms increase their revenues more and more over time—and why struggling firms see their revenues decline. From the data in this section, we discuss how critical business inputs contribute to exceptional, long-term growth in firm revenue—serving as a roadmap for any law firm to follow.

To better understand what distinguishes high-growth law firms from others, we leveraged aggregated and anonymized data from tens of thousands of law firms to design a comparative analysis that zeroed in on three distinct groups defined by their total revenue growth between 2013 and 2017:

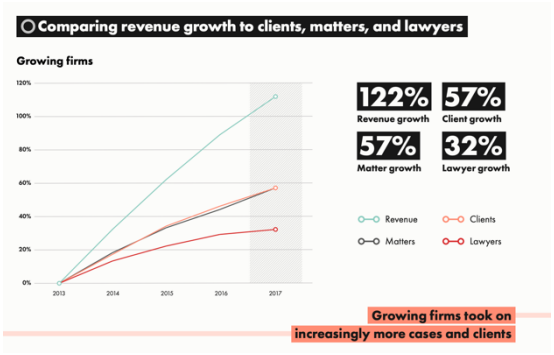


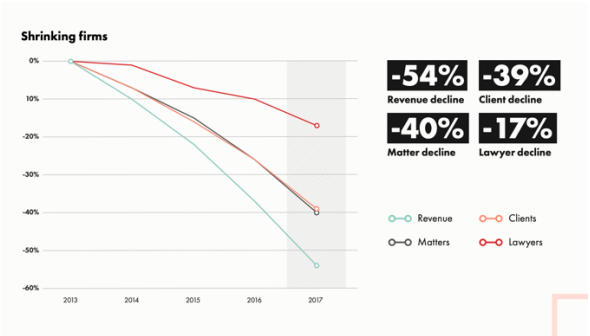
- **Growing firms.** Firms that grew their revenues by at least 20% over five years.
- **Stable firms.** Firms that neither grew nor declined by more than 20% over five years.
- **Shrinking firms.** Firms that saw their revenues decline by at least 20% over five years.

Why did we focus on revenue? Aside from being an objective and quantitative benchmark for success, 71% of lawyers say they consider revenue their most important indicator for law firm growth. Revenue is also a standard measure for the overall health of a business—from small private entities to the very largest—and is a key output for the other business metrics that we compare.

When looking at the total growth in revenues, we determined that growing firms actually grew by 20% to 30% year over year to achieve an average of 112% growth between 2013 and 2017—making them a

prime example of high-growth firms described within the Law Firm Maturity Model. On the other hand, shrinking firms saw their revenues decrease by 54%, meaning they took in less than half the revenue in 2017 as they did in 2013. Stable firms maintained approximately the same level of revenue over the same period. Each group has their own distinct patterns for growth—and these trends stayed consistent even when we controlled for firm size and practice area.



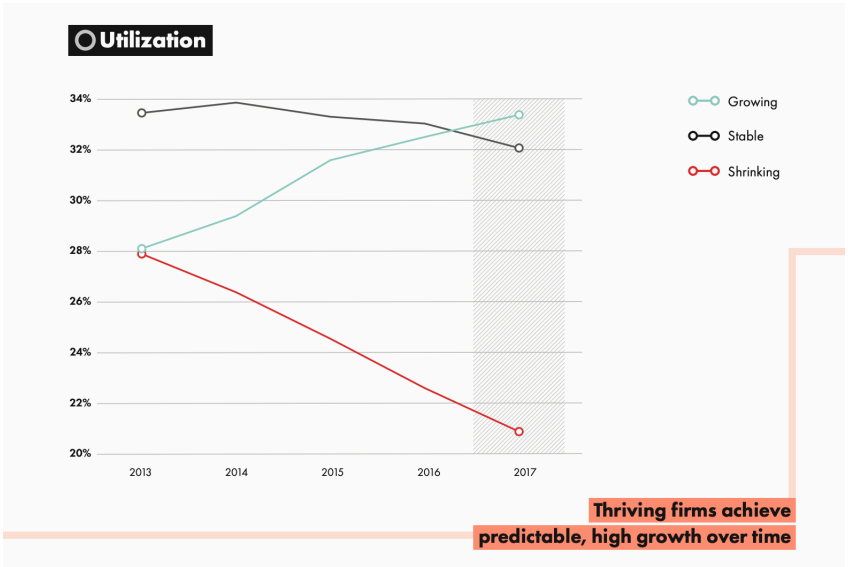


THE POWER OF UTILIZATION

Utilization rates turned out to be a key metric for revenue growth among growing firms.

The average utilization rate for law firms in 2018 was 31%, which means the average lawyer spent only 2.5 hours on billable work each day—which is a trend that's stayed relatively consistent over the last four years of reporting.

In the first year of our sample, we see that stable firms have the highest rate of utilization compared to early data from growing and shrinking firms. Over time, however, we see utilization rates climb from 28% to 33% for growing firms to the point of surpassing stable firms. Meanwhile, the opposite is true for shrinking firms, which see utilization rates steadily decline each year, falling from 28% to 21%.



The impact of utilization on firm revenue can't be understated. High utilization rates indicate that firms are able to bring in more business, and that lawyers are more focused on performing billable work. Boosting productivity per lawyer was at least as important as adding more lawyers to the firm.

Growing firms therefore have the highest earning potential, while shrinking firms struggle to build their revenue

opportunities. To put this into perspective, the difference between 21% and 33% utilization is 12% of a day, which equals about a full hour's work—or five hours every week. Compound that difference week after week, for every lawyer at the firm, and it's clear that growing firms are in a much better earning position than shrinking and even stable firms.

MAPPING INSIGHTS TO LAW FIRM GROWTH STRATEGIES

Foundational management scientist and researcher Peter Drucker popularized the phrase "what gets measured gets managed". In order to drive meaningful impact, the insights listed above need to be mapped to tangible, approachable growth strategies for practitioners at firms of all sizes. Below, we highlight a few key strategies that we believe to be widely applicable, though we recognize that they may not be a fit for all firms or areas of legal practice.

Conquer Utilization through Operational Efficiency

The performance data reviewed above shows that incremental gains in lawyer utilization can lead to strong and sustainable growth results. This therefore presents itself as a priority place to craft strategies that drive impact. Ostensibly, there are two causes of low lawyer utilization:

- Lawyers do not have enough clients;
- Lawyers have the clients they need but are spending too much time on non-billable work.

Typically, practitioners with low utilization find they struggle with one or both of these challenges, particularly in solo and small firm practices where they lack the administrative support and specialized functions that drive their productivity.

Within the frame of efficiency, lawyers have a number of opportunities to optimize their time, particularly as it pertains to administrative tasks. This is where technology can streamline or automate many of the tedious tasks that drain productivity. Some incremental steps to get started include:

- Record non-billable time spent and categorize it – this allows you to identify where your time goes and what areas you can focus on using technology to be more efficient.
- Use technology – such as online portals or CRM tools – to minimize interruptions from existing clients and focus in-person time on the critical aspects of client service
- Cloud-based and mobile-friendly tools allows you to be productive from outside the office – this can boost productivity, create focused time but also prevent lost time commuting to and from the office to access information.
- Consider utilizing electronic payment methods – these can result in faster payment and less time spent chasing receivables from clients.

Elevate your Client Experience

A significant strategic opportunity suggested in the law firm performance data published in the Legal Trends Report is in the area of client experience. Excellent client experiences drive growth in a variety of ways, with the most direct being as follows:

- Faster and more reliable acquisition of new business through converting more inquiries to clients.

- Higher degrees of client satisfaction that lead to higher rates of referrals from previous clients to their colleagues and close connections.

The 2019 Legal Trends Report found that overall response rates and response times to client inquiries were far below norms in other industries. This presents a critical place to meet or exceed client expectations on the path to delivering higher utilization and strategic growth in your firm. Our presentation will include reviews of the following:

- Creating a client or customer journey map – a key technique to understanding your ideal client profile and the service experience you are expecting to deliver them over the lifecycle of their case.

- Using intake + CRM automation tools to increase the rate of response to inquiries and dramatically reduce inquiry response times. Lowered response times dramatically increase the likelihood of conversion to paid clients, and clients often go with the first practitioner that gets responds to them.

- Quality of responses is critical – consumers are usually looking for information, clarity and next steps in the process but most practitioners miss the majority of these points in both written and verbal responses.

- Using tools like net promoter score surveys to understand who your satisfied clients are and encouraging them to make referrals and leave reviews on reputation management sites.

INSIGHTS FROM LEADING INDUSTRIES

Outside of the legal profession we see a variety of exemplars that are utilizing technology in innovative ways that are designed to deliver growth through boosting efficiency and elevating client experiences. Some relevant examples include:

- Notarize: https://www.notarize.com/ - a virtual notary service that allows businesses and individuals to legally notarize documents 100% online. This drives efficiency for

- Babylon Health: https://www.babylonhealth.com/product - using technology to drive efficiency and client experience, Babylon Health aims to put an accessible and affordable health service to a far broader audience than conventional delivery methods.

- PatientPop: https://www.patientpop.com/how-it-works/ - a practice growth platform, PatientPop helps dental and medical practitioners manage a deliberate patient journey while

also delivering tools that allow practitioners to stay laser-focused on productivity and utilization.

- Amazon: expanding into a variety of vertically integrated distribution chains, Amazon leads the way in using its technology and logistics ecosystems to drive efficiency while also aiming to exceed client expectations versus competing providers.

- Airbnb: using both provider and client – facing technology, Airbnb has dramatically increased the size of the total addressable vacation rental market across the globe versus existing providers.

Using the insights summarized herein as a guide and embracing technology that drives law firm productivity and superior client experiences, practitioners can boost their overall utilization and make strategic decisions that drive sustainable and lasting law firm revenue growth.

TECHSHOW2020

How to Partner Like a Pro

WRITTEN BY:

Jim Calloway and John "***The Purple Coach***" Mitchell

PRESENTERS:

Jim Calloway: @jimcalloway

John "***The Purple Coach***" Mitchell: PurpleCoach@KMAdvisors.com

January 6, 2020

HOW TO PARTNER LIKE A PRO
BY JOHN "THE PURPLE COACH" MITCHELL AND JIM CALLOWAY

Finding a business partner is as serious a decision as choosing a life partner, as our session description notes. Making great decisions with potential partners can yield huge potential results, while making the wrong decision can lead to lots of misery and pain. Criticism of the law firm partnership-based business structure is widespread today. But where are the successful alternatives?

Today we will cover what to consider as law firms attempt to find, recruit and retain the lawyers the firm needs to succeed. We cannot guarantee that we have all, or even many of the answers. But we both have much experience talking with lawyers dealing with these challenges.

Last year during a conversation between John and the owner of a small firm, the owner emphatically exclaimed "Having a business partner is the worst idea in the world! I'll never do it again. I just got finished buying out a second business partner and I'm done. I'll never be in that position again." Hyperbole? The searing emotion caused by a wound that is still raw? Perhaps. However, it is a story (or a version of the story) told over and over again from lawyers in firms with two lawyers to lawyers bailing out of an AmLaw 50 firm.

Less than a month after that conversation a lawyer on the West Coast called John and said, "I heard you can help me. My firm is doing great and it is growing. We have a dozen lawyers and some great staff. I think I need to figure out how to make some people equity partners so I'm not the only one responsible for the firm. Can you help me figure out the best way to do that and to establish some criteria for that decision?"

The second conversation occurs less often although not infrequently. These two conversations highlight bigger questions for every lawyer in a law firm: why do firms have partners (equity or otherwise) and is it still a good idea to do so today?

Why lawyers have had partners

Since the earliest days of the practice of law in the United States many lawyers have had partners. As the country became more populous, urban centers started to develop and the law became more complex, the drive to have partners has only increased. There have always been sole practitioners and there likely always will be. The bigger question is whether there will always be law firms that consist of more than one owner (partner).

As the practice of law evolved and became more complex the role of the partner followed suit. For many decades, partners did it all. As owners of the firm they acquired clients, did the legal work, developed the firm's apprentices (and later associates) and managed the firm's operations. As their capacity to do all of this reached a limit, they often sought out a partner to share the load.

In the late 20th Century our society, the law, the organized bar and client needs all became more and more sophisticated thus exponentially increasing the demands on the practice. Many lawyers who wanted to be part of a high-volume practice and or serve larger corporate clients found it nearly impossible to do so without scaling their operations. Partners now needed to compete for clients, while also managing teams of lawyers and other professionals handling client matters. In addition, lawyers had to deal with an increasingly complex regulatory environment as well as a changing economy. Having partners with skin

(literally and figuratively) in the game became critical as liability and competition made it more difficult for solo practitioners to compete for certain types of clients in this environment. For most, having partners became a necessity. Unless the lawyer was Superwoman, she was not going to be able to do it all and continue to grow a practice without another Superwoman or two onboard to help.

In the 1980's and 1990's law firms exploded into increasingly large organizations, many with multi-tier partnerships. The merger mania that crept into the industry in the early 1990's, and continues to this day, drove do-called "BigLaw" combinations that eventually topped out at more than 2,000 lawyers in some international firms. During this same time the practice of law paralleled that of medicine and many lawyers became more and more narrowly focused in their practice areas. This narrowing of focus did not just apply to substantive areas of law. Increasingly, a large number of partners no longer carried out any ownership or management duties. They did legal work for clients. Increasingly in large law firms, doing basic legal work was not the domain of owners. It was the domain of employees. Owners became even more specialized as rainmakers, firm managers (a scant few became leaders) and other specialists (like D&I partner, Summer Program Partner, Recruiting Partner and the like). While these owners continued to practice law, their time was increasingly consumed by non-billable work.

By the late 90's the competition in the profession had reached a fever pitch. 100 lawyer law firms that were "huge" back in the day were now on the small side of "medium". BigLaw became a vague misnomer encompassing firms with as few as a couple of hundred lawyers to those exceeding a thousand lawyers. The increased competition also created a structural challenge for the notion of partners in law firms. Having partners spread across many cities had an impact on collegiality between partners. Increasingly, firms did not see a place for an owner who just practiced law. If they weren't making some other significant contribution, they could be "income" or contract partners (non-equity partners) or "of counsel" or any of a dozen or so other titles that have come into vogue for those who do the legal work.

The arc of the partner specialization is now curving back upon itself. While specialization of substantive law continues, equity partners are once again expected to do it all (or at least manage a bunch of lawyers while bringing in a lot of work to keep lots of lawyers and staff busy). The case for "do it all" partners is harder and harder to make as the practice continues to become more specialized and the numerous support roles in firms get more specialized and increasingly, delegated to trained professionals who do not have law degrees.

The Challenges of Having Partners

Assuming that you have decided that you need one or more partners and you successfully find the right individuals, what are the challenges that you face? The challenges are many and at least three deserve some attention as they all will significantly impact your fulfillment as a lawyer.

First, you are typically jointly and severally liable for their actions as members of the firm. While this liability does not apply to behavior beyond the scope of their role in the firm, the economic risks alone are significant. We've seen firms lose massive malpractice lawsuits (while typically covered by insurance many firms have significant deductibles or self-funded initial coverage). Personal guarantees on leases and/or operating capital loans are another source of economic risk. Claw backs and lawsuits that tie up the firm's capital can also create serious problems for individual partners. Add to that economic risk is the scorching public relations risk of law firm partners' sexual harassment and/or sexual discriminatory behavior and other serious and common character flaws. There is also a significant risk that malpractice

carriers will no longer provide coverage based on certain claims. More than one partner has had their law license suspended or revoked for actions that initially appeared to constitute nothing more than supporting a trusted colleague. Eventually, the disciplinary action happens because the lawyer's loyalty to their partner often exceeded their loyalty to their client(s).

Second, you have to share decision making with other people who are not as smart or savvy as you think you are! Think about it, you love running the firm the way you like to and making decisions based on whatever criteria are important to you. Most firms from two person shops to the largest international firms often split up operational authority amongst various staff and attorneys. While this often makes for a more efficient and effective way to run the firm, it also means that your firm uses PC's while you prefer Mac's, the firm won't recruit at your alma matter because it is not "good" enough, the philosophy of hiring support staff who want to go to law school gets bright people in the door who disappoint you when they leave two years later and so on and on. There is almost no aspect to the firm's operations that don't drive some lawyers crazy and if you don't have control over that area, you are stuck.

Finally, and perhaps most importantly, philosophical differences are the part of the iceberg that lies below the water line. You often can't see them and don't consider them until you run into it and then it is too late. These differences show up in all sorts of important places:

- you only want "quality" clients and your partner wants anyone with a check book
- you want associates with proven writing ability and your partner wants associates with T14 credentials
- you care about your partners' success and are willing to make sacrifices to support them and they are focused on maximizing their revenues
- you think profits are paramount and your partner thinks revenues should drive compensation
- you desire a collaborative approach and your partner advocates for policies that encourage individualized approaches to everything
- you want to do good work for good people while making a good living and your partner wants to maximize income and retire to Boca in 5 years

This short list highlights just some of the philosophical challenges that all partners face. Unfortunately, philosophical viewpoints, once well-established, rarely ever embrace their partner's alternative view.

The Paradox of Partnership

Suppose you have found the right person and successfully recruited them to join you. You may still be sailing into stormy seas, especially in larger firms where there are staff with highly specialized functions.

Any longtime observer of the legal industry will readily conclude that law firm partners LOVE the benefits of ownership and LOATHE the responsibilities. In fact, the average partner secretly lives for the status, prestige, compensation and whatever other benefits they personally derive from being a partner and yearn to have the limited responsibilities of an employee. While there does not appear to be a case on

point that has gone to trial, there have been numerous claims and lawsuits alleging that law firm equity partners are nothing more than employees and should be entitled to all of the benefits and protections provided to employees.

Partner meetings, therapist's couches and John's voicemail box are all littered with stories of partners who not only don't bring in enough business to keep other people busy, they don't bring in enough business to cover their own expenses (don't forget your share of overhead when you do the math and try to dispute this claim). Understanding whether this is a "won't" issue or a "don't know how" issue is incredibly difficult. Lawyers are a well-educated and proud bunch of people, few if any want to acknowledge they don't know how to do something.

This paradox makes it especially hard to identify, recruit and retain people who may be the right partner for you. The person who is perfect on paper and in the interview likely still harbors this paradox.

There is actually a second paradox that makes finding great partners even harder. The private practice of law has evolved into a business that has a very simplistic advancement model. You go to law school, you become an associate, you kill yourself and many of your personal relationships while trying to make partner and then you make partner. This model works in part because the profession buys into the idea of "golden handcuffs" and fails to grasp the concept of sunk costs.

One reason that people are willing to play along with the firm advancement model is the perceived prestige of being a partner at a law firm (although more realistically it is somewhat akin to being a vice president at a bank). Another reason is that firms typically pay more than other sources of legal employment. As you advance you move closer to the coveted equity partnership and the share of the pie that you have fantasized about for years. The so called "golden handcuffs" get tighter and tighter the closer one gets to becoming a partner. It becomes an unbearable thought to leave a firm before making partner even when one has been passed over one or more times for partner. The notion of sunk costs doesn't exist for many lawyers. They justify staying on a path they don't like and may no longer want because they have invested so much in pursuit of this goal. Ironically, many lawyers finally reach the brass ring of partnership and discover it is not what they thought it was going to be. Doubling down on those sunk costs ends up as a source of bitter regret.

Do You Need Partners or Another Resource?

At this point you may be thinking (or rethinking) the idea of having partners. That is actually a great place to be. If you conduct a thorough analysis of your needs, you may discover that there are alternatives that are better for you. Alternatively, you may realize that alternatives may help in some areas and that you still need a partner.

Go back up to the section on *Why Lawyers Have Partners* and create a checklist of reasons that you think you need a partner. Here's a short list of common reasons and some alternatives.

- I hate "sales" and am terrible at business development, so I need a partner.
    - You can incent non-partner lawyers to sell through your compensation model. Many firms with large numbers of people and one or a few partners use this approach.
    - Hire a professional salesperson. Many large firms have done this for very sophisticated matters. Most national personal injury work is actually sourced through marketing entities and then funneled to individual law firms and lawyers.

- Business is growing too fast for me to handle it. I don't want to say "no", yet I'm concerned that I'm stretched so thin I can't appropriately manage it all.
    - Find a lawyer who loves doing the work and isn't interested in doing business development. For some types of work, you don't even need someone who is good at client relationships if they consistently get the work done on time and on budget.
    - Find a lawyer who loves doing the work, loves building client relationships and doesn't want any of responsibilities of the other responsibilities of being a partner. Pay that person well to manage client matters.
- The firm is growing/has multiple offices/virtual practices and needs a partner to manage all of this operational activity.
    - This is another area where you can outsource everything that is non-legal to a professional staff person
    - If you need a partner level person to do this job be sure to provide that person with training, a detailed job description and most importantly, superior support staff so that the partner spends only the time legally necessary to ensure that the firm's offices operate appropriately. Staff can make sure they operate efficiently.

- If a professional staff person cannot ethically or legally handle some aspect of your practice and a lawyer without partner status will not work, you can outsource all of the non-partner legal work and all other non-legal work this person does.
    - Non–partner legal work – this can be outsourced to junior people within your firm or if there isn't sufficient consistent demand it can be outsourced to the myriad of legal entrepreneurs who love writing briefs, drafting demand letters, reviewing corporate minutes, enforcing judgements, etc. This is an area that is already quite large and growing. These entrepreneurs love what they do and only want to do that specific work and they want to work for themselves.
    - Non–legal work – this can all be outsourced even if you have little to no support staff. The virtual assistant industry is booming. You can find a top notch executive assistant, bookkeeper, tech support person, copy writer, marketing specialist and much more all at an hourly rate. Most importantly, you can build a long term relationship with virtual support staff and essentially have an additional member of the firm without the cost.

In many cases you may discover that the work that you think absolutely, positively needs a partner's attention is actually something that can be outsourced to another lawyer or a professional who specializes in that task.

Onboarding Partners to Ensure Success

You've decided that you need a partner, you've screened people, thoroughly vetted the most promising candidates and made an offer which was accepted. Time to get the new partner into your practice management system so she can start billing clients, right? Not so fast! Bringing a new partner on or bringing on 200 partners as part of a merger are actually very similar.

Here's a quick (non-exhaustive) checklist of some steps you can take to make the onboarding process more successful for you and your new partner:

- Bring in a professional to help you with the process. There are consultants and coaches who work in the legal industry and have vast experience helping firms large and small integrate new partners into the firm. They can help you make this process more likely to produce the desired results. [If you've read this far in the materials you probably are committed to doing all of this yourself rather than hiring an expert. OK, then here are some additional things to consider.]

- Have each partner draft a list of their expectations. How they see the partnership working, who will do what, how authority is split, etc. (ignore whether this is already in a partnership agreement or other document – this is about uncovering perceptions and expectations). Once these lists are completed exchange them, sit down in the same room and discuss the lists. Decide how to reconcile the inevitable differences **before** the new partner starts (and ideally before an offer is made).

- Use one or more assessments to learn about things like communication styles, motivations, etc. There are many assessments that can shed useful light on things we may or may not know about ourselves and regardless are not likely to think to reveal in a partnership courtship dance. (e.g. I like to start every conversation with some social chit chat before moving on to business; I am a big picture thinker and don't want to be swamped with detail; deadlines are my friend and I'll meet them when they arise and not a minute before.)

- Create a 90 day, 180 day and 1 year plan (not just business development but all of the things that we want to see from the new partner. Include resources that partner can use and identify any special needs (education, tools, etc.) that will be helpful.

- Create a similar plan for partners and staff who will regularly interact with the new partner. Determine who will do internal and external introductions, help with basic orientation issues and who will serve as a mentor to help with not so basic political and other "below the waterline" issues.

- Schedule regular meetings to check on progress against the plan. Determine what is working, what is not and what needs to be done. If done frequently, these meetings can be quite short and head off painful and expensive problems down the road.

The bottom line is that the more proactive and deliberate you can be with your communication the more likely you are to reach a meeting of the minds. When in doubt, over communicate – your new partner can always tell you that you've said too much!

Saying Goodbye without an Ugly Divorce

Inevitably, even the best partnerships come to an end. When they end earlier than you or your partner expected you want to make sure that it ends on the best note possible and that you learn something that helps you with the next partner if there is going to be one.

There are two very important things that you can do to avoid a partnership breakup looking like a tabloid divorce. First, hire an attorney who deals with partnership matters to review your partnership agreement BEFORE you and your new partner get married. A good partnership lawyer won't just draft strong legal documents. She'll interview you both and understand the "voice of the client" to make sure that the document clearly reflects your mutual intent rather than simply protecting the incumbent partner's interests. This is definitely not an area where you want to be your own attorney. You are likely to overly focus on the legal protections and under focus on the mutual intent. If you focus on the mutual intent, you are much less likely to need the legal protections.

Second, after any partner leaves whether it is for retirement, health, death or disability, or due to a dispute, it is important to take a deep breath and process what happened and what you can learn from it. Unless you are about to retire yourself, taking the time to consciously learn everything you can from your most recent experience guarantees that you can make better mistakes next time around and decrease the likelihood that you get involved in a bitter business divorce.

If you can follow the simple steps laid out above, you too can Partner like a Pro!

LAW FIRM BUSINESS STRUCTURES

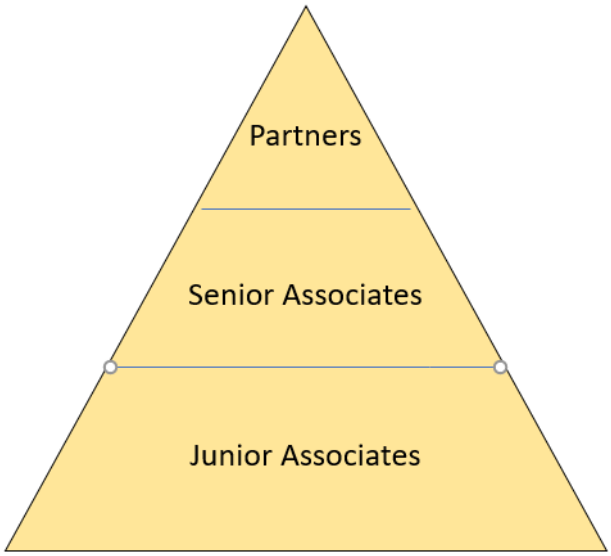
Many observers lay much of the blame for challenges and disfunction in the profession directly on the partnership business structure.

A few observations related to the history of the law firm partnership model are appropriate.

Lockstep anyone?

For many decades, the traditional law firm associate-to-partnership program looked generally the same at many large law firms. The traditional structure could be visualized by a pyramid divided into three sections with the partners at the top and the associates at the bottom.

The leverage generated by profitable associates doing a large amount of billable work provided a significant part of the law firm profits that the partners enjoyed.



The large law firms interviewed at law schools and recruited the top students, frequently from the law review. They paid top dollar and many students participated in the interview process. Those who received offers and went to work for these firms founds themselves with salary and benefits more than they could have imagined and an extremely heavy workload to match. The "catch," however, was that the bottom of the pyramid had to include many more lawyers than the top. So, after a fixed period of perhaps seven years working in the firm, only one-third or so of the associate class would be offered a partnership with the rest being asked to take some time to find a position with a different law firm.

In an age of limitless employment opportunity for lawyers, there was little stigma for not making partner in a well-known "brand name" firm and many of these well-respected lawyers could find other employment opportunities with other law firms. There were personal repercussions for many who were experiencing their first major personal failure.

This system has lasted for many decades. Some would say the recession of 2008 was the first real threat to the system as many associates were quietly laid off then as much of the corporate work (and therefore the leverage they provided the firm) dried up. But since then, many of the very largest firms have bounded back, while medium-sized law firms were all over the map, some growing and some contracting.

Recruiting Associates Then and Now

The recruiting pitch for the old-style lockstep associate track might have gone something like:

"Get paid the highest salary while working on some of the most important legal matters for the biggest corporations in the world. Incredible benefits, including paying for meals when you have to work in the evenings, and the opportunity to work with some of the smartest and most talented lawyers in the profession make this a dream job. And, if you make partner, there are more financial rewards while you supervise teams of lawyers and shift your focus toward client development on the golf course and at the country club."

The anti-recruiting pitch would be more like:

"You get paid well because the life of an associate is essentially working, billing and sleeping. If you are lucky, you still might get to attend your sister's wedding, but other than that, keep billing. Try to disregard to the fact, that unlike that memorable scene from Professor Kingsfield in *The Paper Chase*, where you look at an associate on your right and on your left, two of the three of you won't make it to become partner. But at least, if you make partner, you should make more money—as long as you keep billing as much as when you were an associate. They may even pay for your country club membership, but don't think you will get any credit for hanging out there if it doesn't generate new originations. Your family will enjoy it, though, even if your children sometimes are not clear on your role in the family."

As the saying goes, being an associate trying to become a BigLaw partner is like a pie eating contest where the prize is more pie.

Our attempt to be humorous with the above examples is perhaps not entirely accurate about the state of many larger firms' associate-to-partnership program today. Summer associate programs and other screening mechanisms help larger law firms stem associate turnover. And it is difficult to get the "smartest people in the world" to sign up today if the bottom line is still only one out of three will make partner, while the rest are shown the door.

Working seven or more years for a one-in-three chance at partnership does not seem very attractive to today's new lawyers. Most of them do not believe that they will work at one firm for life anyway, and many of their friends and acquaintances are working in the "gig economy" instead of being employed full time by a single employer.

Other perspectives

Noted legal futurist Jordan Furlong (@jordan_law21) tweeted on Fri, Jan 10, 2020:
Too many law firm partners are a lethal combination of smart and selfish. Smart enough to recognize their firm's business model is increasingly unsustainable; selfish enough to block attempts at structural reform that could address the problem but would reduce their income. (https://twitter.com/jordan_law21/status/1215739977679675393?s=09)

Marc A. Cohen, who has long written the Bloomberg "Big Law" column, recently concluded one of his columns with this dire prediction:

> If this is beginning to sound like the last days of Rome, it does to me, too.
>
> Most large firms — and there are a few salient exceptions — are hollow brands with interchangeable parts. Yes, they boast well-credentialed and skilled lawyers. But they are, for the most part, a collection of individuals with little institutional loyalty for institutions that, equally, offer them no loyalty.
>
> Top lawyers will always command a premium. But is the additional surcharge for their firm necessary? That will be a rhetorical question when scalable alternatives appear."
>
> ---- Perspective: What Kirkland Departures Signal About Law Firm Branding https://www.legalmosaic.com/perspective-what-kirkland-departures-signal-about-law-firm-branding/

He arrived at that conclusion based on his career spent observing and advising the large law firm side of the profession. He continues:

> "BigLaw is in a Darwinian struggle where the rich get richer and everybody else gets bigger, disappears, or – maybe soon – both. The AmLaw 200 is no longer a relevant benchmark; there are about 50 or so firms that are head and shoulders above the others financially. And PPP is king in this market. Is it any wonder, then, that PPP [Author's note: PPP = Profits Per Partner) continues to rise even if the means to achieve it is undermining longer-term sustainability?
>
> **"PPP is no longer the same carrot at the end of equity partners' long stick dangled before young lawyers. It's a statistical long shot for any lawyer to win the partnership lottery, and its also unlikely that the next generation will wait their turn to achieve it. The partnership model had a long run, but it is no longer built to last."** *id*. [Emphasis added]

Mr. Cohen has written extensively about the traditional partnership model.

In his piece *Are Law Firms Sustainable? It's The Model That Matters* (Forbes August 19, 2029) https://www.forbes.com/sites/markcohen1/2019/08/19/are-law-firms-sustainable-its-the-model-that-matters/#107c71e2628f he notes that many law firm models are, in his opinion, destined to fail in the digital age.

He also states:

> "The more important question is: which law firm--or legal service provider-- models will thrive in the digital age? Spoiler alert: client-centric, collaborative, data driven, tech-enabled, multidisciplinary, diverse, agile, constantly improving, scaled, capitalized, and digitally transformed ones." *id*.

We strongly suggest to those attending this session at ABA TECHSHOW should read both of his columns at the links above.

As you can see, when we discuss the partnership model, we are not discussing business entity selection. Many of the law firms impacted by the challenges of the partnership model long ago changed their business structure to a corporation or limited liability company.

Current discontent is just caused by the fact that for many of today's young lawyers the idea of years of drudgery with a promise of perhaps "more pie" in the future does not meet their needs or expectations. The competitiveness caused by the associate retention track concept has created its own problems particularly when associates should be working together in a collaborative environment.

The problem includes the leverage itself and the power being invested in the hands of the few with both decision-making and communication of partnership decisions done with a complete lack of transparency.

We've also seen the toxicity of the billable hour culture lead to suicide and mental health problems for some within our profession.

So, what is a partnership model built to last?

Simply put, the smart firm will examine everything about its business operating structure and compensation plan to determine if the behavior the firm wishes to encourage is properly incentivized. As the management cliché states, people do what you inspect, not what you expect.

Here are some things to consider.

Handling origination fees

A necessary, and potentially controversial, part of compensation plans and law firms is that there has to be a financial incentive to bring in new clients. This is commonly called an origination fee and is typically calculated by giving a certain percentage of all fees billed by all lawyers on this particular client to the originating lawyer.

While there is no hard and fast rule to calculate the origination fees, there is a sort of Goldilocks aspect to it. Set it too high and everyone may spend too much time chasing new client engagements and not enough time working on existing client files. This also means a management decision to decline a particular inappropriate client may lead to a pitched battle and have unanticipated consequences. Set the fee too low (or ignore originations entirely) and the long-term health of the law firm could be endangered because no one pays attention to seeking new client engagements.

Data-driven compensation agreements

Today there are tools to generate great data about billing, realization, costs and other aspects of business operations that might be useful in compensation decisions. No law firm today can afford to be without these tools and without examining the reports they produce.

There is more to law practice efficiency than just billable hours, which is why a deep dive into the data is warranted and other factors might also need to be considered.

Transparency

Unless you are working for one of the firms that likes to broadcast its PPP, some decisions will need to be made about what data is communicated to those in the firm who are not partners. Certainly, associates are curious about many things and the profits the law firm generates are of great interest.

We are living in an age of greater transparency for many operations, but not necessarily law firms.

Billable hours and alternative billing.

While the number of hours billed and collected has traditionally been a leading metric of law firm associate achievement, we are seeing more matters with Alternative Fee Agreements or AFA's. Law firms are also likely to have fee-generating services that involve few or no billable hours. For example, after creating a new business entity for a client and offering the general "Here's how to operate your new business entity" advice, some law firms may offer a corporate services package where staff in the law firm provide routine annual services, including drafting of minutes. It may not make sense for the attorney to be involved with those annual services, but if the firm wants the attorney to recruit the client for those services, there should be some incentive for the attorney to do so.

The impact on women lawyers

The ABA commissioned a study last year on why women lawyers in mid-career leave the profession in such significant numbers. The Lawyer to Lawyer podcast interviewed ABA President Judy Perry Martinez and attorneys and study authors Stephanie Scharf and Roberta Liebenberg as they discussed this recently released research on why women are leaving the law and how it is impacting firms. https://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2019/12/a-study-into-women-leaving-the-law/ (There is also a transcript of the interview at the site.)

Millennials, as we have previously noted, have many perspectives on the world of legal employment that are remarkably different from previous generations. See *The Next Wave of Practicing* Lawyers by Michael Zhang, Jenny Mittelman, Christina M. Jones and Dolores Dorsainvil.

Finally, we conclude this paper with an interview from an anonymous lawyer who has been through the compensation restructuring with two different law firms.

A Senior Partner Interview

We interviewed a lawyer who has been through two rounds of changing his law firm's partnership model— once with a larger firm employing an outside consultant and once with his current medium-sized firm. We have withheld the name to respect the other lawyers' privacy.

Q. You have been on the management team of two law firms that went through a partnership and compensation package reorganization. So, you have survived two sets of "interesting times"?

A. Yes. With one we had help from a nationally-recognized consulting firm and the second time, since I had that experience, we did it without outside input. There are primarily a few types of compensation packages. There is 1) the "eat what you kill" approach, 2) the lockstep system many larger firms have used for years and years and years or 3) a completely subjective system where the decision-maker or makers hopefully use lots of data but ultimately it is a decision by committee or by a "benevolent dictator" as to who gets what.

Both firms really had an "eat what you kill" approach to compensation. We had a formula based on production, origination and other kinds of variables. From my perspective you need a formula for the "eat what you kill" approach for it to work. Otherwise you are just sharing office expenses.

Q. How does that work?

A. At the larger firm, the partners who brought in the work got 20% of the fees as an origination credit for life, and attorney or attorneys doing the legal work got the remaining 80%. Of course, that was after the overhead associated with the lawyers was satisfied. We ended up keeping that concept, but also setting aside some funds that didn't directly relate to the money that was brought in. For example, some weeks I would spend half my time on managing partner duties, not doing billable hours. So, we added a component of that to the formula in the system to reward people for what I'll call "above and beyond the call of duty" efforts-- whether that is a big case settling, a landmark deal or being a president of a state bar association. We also called it our "hero fund." It was a significant chunk of change and at the end of the year, the partners voted which people would get that money and if there wasn't anybody than it was then it went back in the pool to be divided up using the formula.

Q. Did you do other things to improve the experience of being a partner.

A. A major reform was to take a lot of the things off of the agenda at the partner's meeting. There are still firms that have monthly partner meetings and debate everything, even minor items like the quality of ink pens the firm ordered.

We changed how we managed ourselves by instituting the 10 Commandments— the 10 things that every partner should have a right to vote on— things like a firm name change, admitting new partners or buying a building. Now we were all still lawyers and I believe we actually ended up with the 12 Commandments, instead of 10 Commandments. But the point is everything else went to the management committee of the three partners and the firm administrator. So, we stopped having these two- or three-hour meetings talking about trivial things. The partnership meetings became shorter and a lot more productive.

Q. Does firm size have that big an impact?

A. In the largest firms, you may be a partner, but it is different. You may only meet 5% of the other partners and you can be fired tomorrow, just like any other employee. That certainly impacts the collegiality and is one of the reasons there isn't the permanence and longevity of a partnership that our predecessors and we thought there was when we started practicing law.

That meshes with many younger people's view of the world today, which is convenient.

Many younger lawyers now believe that becoming a partner isn't necessarily what they want anyway. They may want the money. They may appreciate the prestige. But quite frankly, in many law firms today the reality about billable hours between partners and associates is that partners are putting in more time than associates are. Associates here are generally more concerned about quality-of-life issues than previous generations. They don't want to be here six days a week for 10 hours a day. Our associates generally get in at about 8:30 a.m. and they leave at 5:00 or 5:30 p.m. Obviously deadlines and big projects might impact that temporarily. But we recognize the fact that if one of our younger lawyers needs to leave at 10 o'clock in the morning for an hour to go see their child in a grade school play or something like that it is a good business policy for us to encourage that, because if we don't do that, they're less productive and may be more likely to take another position somewhere else.

Q. Back around to origination fees, you mentioned 20% for life and we've heard a lot of criticism from people that idea of the "dead hand" origination fee stretching on for decades can become counterproductive over time and that some people think that it should shrink over the years, perhaps 20% for a few years and then15%, and so forth.

A. There are pluses and minuses to every approach. You can compare what many call the Hale & Dorr system and the "eat what you kill" system in law firms. With the latter, in every law firm I've observed the danger it's never "our client" but "my client." So, an approach with a different type of formula can better demonstrate that it is the firm's client.

So what we ended up doing informally at the old firm (and what we do very much formally here at this firm) is if someone brings in the business, they get the origination credit and if they are the ones that continue to stay on top of the client, monitor the work, hold the client's hand and be actively engaged,

they will continue to get that. But if somebody else becomes what I'll call the responsible attorney because you the originator does oil and gas work and all the work being done now is corporate work, so the oil and gas partner doesn't see them that much. With the corporate partner handling everything, then that origination credit should be split. Maybe instead of 20% for the originator, it should be 10% for the originator and 10% to what I'll call the minder who is actually keeping the client. If that partner walked out the door tomorrow would the client follow them or not. That's the important question. And often it's not about who brought the client but who keeps the client.

There's an old saying. There are four kinds of lawyers: finders, minders, binders and grinders. And they all have different functions within the firm, and you should reward them all appropriately.

I've seen several law firms completely dissolve because the originating attorneys wouldn't share their origination with the attorneys that actually bound the client to the law firm. So the attorneys left and took the client.

In our firm, we don't have a pyramid with the partners at the top making a lot of money and the associates at the bottom. If our associate work makes money in excess of the overhead for the associate (which is certainly the goal), then in effect what that does is it reduces all of our share of the overhead, which certainly is good for everyone.

Truly it's a lifestyle issue whether you want to grow be much bigger or stay relatively small.

Q. One final question relates to transparency. I know at a lot of smaller law firms, the lawyers go to great effort to make sure the staff doesn't know what their compensation is while others like it that the staff knows exactly so they appreciate the business side of the firm.

A. Well obviously our partners look at everything. The result is often that most of the partners don't look at much financial data because they know they can.

Associates here can look at a lot of material, including client billing, but not the firm's financials.

We also believe in bonuses when we get large fees that everyone knows about.

If a case settles for $300,000 and the secretary gets a $500 bonus while a lawyer walks away with $295,000, there's nothing "wrong" with that ethically or businesswise, but don't be surprised if your firm becomes one of those with a lot of staff turnover. It is just how people behave.

Q. Any other question we haven't covered?

A. I just want to stress that none of these decisions can be effectively made if your firm doesn't have good data on billing, payments, write-offs, overhead expenses and everything else that should impact these decisions.

ADDITIONAL READING

- Collaboration Is the Future, Not Competition

https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2018/SO2018/SO2018Bridgesmith/

…The lawyer turned clinical psychologist Larry Richard has given personality assessments to over 5,000 lawyers over 20 years. As a "tribe," lawyers are disproportionately low in the personality traits of resilience and sociability. Resilience is the mark of emotional intelligence that allows one to accept failure, rejection and loss. We're not so good at that, it turns out. That may be, but what does that have to do with the economics of a successful legal practice or law department? It might surprise a few of us who subscribe to the zealous advocacy theory of legal practice that collaboration is more economically sustainable than exclusive competition.

- Smart Leaders Set Smart Visions

https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2018/ND2018/ND2018Corcoran/

…'Too many law firm strategies are predicated on flawed or incomplete data, or unproven platitudes that can't be quantified. As one practice group leader stated from the podium while listing his group's accomplishments at the annual partner retreat, "At the end of the day, clients hire us because we're simply nicer and better than the competition." That's an excellent sentiment for a bumper sticker, but it conveys nothing that can't be said by every other law firm in town and certainly doesn't provide any guidance for how to navigate an increasingly challenging market.

- An Innovative Option: The Professional Benefit Corporation

https://www.americanbar.org/content/dam/aba/publications/law_practice/2017/JulyAug/LPM_JA17_Final.pdf

"… Most states offer lawyers two corporate forms in which to incorporate their law firms: the professional corporation and the limited liability partnership. Here we explore a third option that has recently emerged: the professional corporation incorporated as a benefit corporation, known as the professional benefit corporation. A historical context for the benefit corporation is also provided so that you can deter - mine whether it makes sense to incorporate your law firm in this new corporate form…"

Book- Passing the Torch without Getting Burned: A Guide to Law Firm Retirement and Succession Planning https://www.americanbar.org/products/ecd/ebk/218108/

For law firms, succession is a fact of life: founding partners retire, rainmakers depart, and in the meantime, client relationships must be preserved. Passing the Torch without Getting Burned: A Guide to Law Firm Retirement and Succession Planning is a comprehensive examination of the key economic issues typically encountered by law firms when they consider how partners end their careers, as they inevitably must. Peter Giuliani, an experienced law-firm management consultant, illustrates common retirement issues and their resolutions through "real life" case studies from his years of consulting experience. This book will help you:

- understand the basic economics of retirement and succession planning;
- take care of founding partners upon their retirement;
- bring new partners into the firm;
- select a retirement plan that's best for your firm--and make it affordable for employees;

- weigh the costs and benefits of mandatory retirement;
- consider "emeritus status" alternative retirement plans;
- integrate compensation plans with retirement policies;
- think about selling your law firm; and
- understand special considerations for contingency-fee practices.

Passing the Torch without Getting Burned: A Guide to Law Firm Retirement and Succession Planning also includes retirement policy forms and sample language for partnership agreements.

- Evolution of a Law Firm Compensation Plan: A Parable

https://www.lawpracticetoday.org/article/evolution-law-firm-compensation-plan/

Law Firm Compensation Systems

- Partner Compensation Systems in Professional Services Firms

Michael J. Anderson

- Marketing, Origination and Formulaic Law Firm Compensation Systems

Alan R. Olson

- Trends in Partner Compensation Systems in Law Firms

Colin Cameron

- Dealing with Tensions Surrounding Partner Compensation

Joel A. Rose

- Rethinking Partner Compensation Criteria

Howard L. Mudrick

All these article are available online at:
http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20-%20Featured%20Articles%20-%20LF%20Compensation%20Systems%20-%202-25-13.pdf

- SPLITTING THE PIE: PARTNER COMPENSATION

http://www.managingpartnerforum.org/mpf/index.cfm/Compensation/publication-details/?pkid=455

- The Ideal Law Firm Compensation System

https://www.carltonfields.com/getattachment/Insights/Publications/2005/The-Ideal-Law-Firm-Compensation-System,-the-Profes/The-Ideal-Law-Firm.pdf?lang=en-US

- How compensation plans are wrecking law firms

https://www.law21.ca/2018/09/how-compensation-plans-are-wrecking-law-firms/

- Firm Management: When It's Time for Tough Conversations

https://osbplf.org/inpractice/firm-management--when-its-time-for-tough-conversations/

- An interesting trend that has been emerging in small firms is not to continue to grow the firm, but instead of building the firm to expand its reach through a network:

  Law Firm Networks Compete with the Biggest Players

https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/MA2019/MA19Bodine/

TECHSHOW2020

Does It Compute: The Limits of AI

WRITTEN BY:

Chris Bentley & Genie Doi

PRESENTERS:
Chris Bentley: @Chris_Bentley
Genie Doi: @PureGenieUs

February 28, 2020

DOES IT COMPUTE: THE LIMITS OF AI

INTRODUCTION

Artificial Intelligence is revolutionizing life. Law is affected. AI's impact is already substantial, and will be increasing exponentially over the coming years. With AI's computational power, and its' ability to learn from its actions, lawyers might be tempted to wonder where they will find their future.

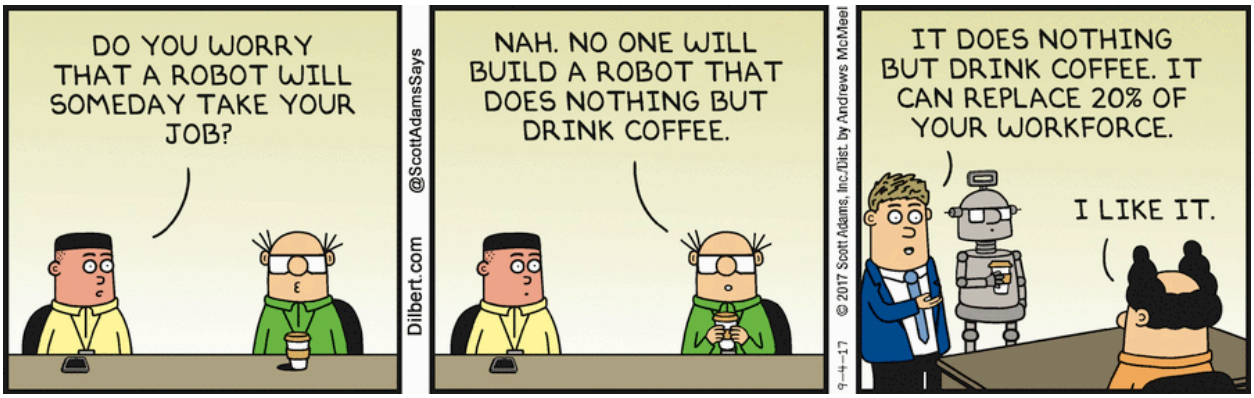
The answer to that question is both a challenge, and an opportunity. The opportunity is in recognizing how many skills used in the practice of law are not immediately or easily replicated. If you expand the definition of practice, the skillsets expand. The challenge is that many of these skills have been identified as being important for years. Lawyers have too often dismissed their importance, or undervalued the skill. Will the discussion be any different today?

Lawyers, both new and seasoned, have an opportunity to create a strong and prosperous future by developing the skills that will be required. That future, like the past, will start with the consumer/client. What value does the lawyer bring to the relationship? The value in the future may look very different from the value lawyers thought they were bringing in the past.

AI will not immediately replace most of what lawyers can do. Like most technological change, however, it will replace lawyers who refuse to change. There should be an urgency about this endeavour. Relatively few people were speaking about the accelerating power of AI five years ago. The time for action by lawyers is now.

This short paper should help you start thinking about what the future might look like from a skills perspective, and hopefully will provide some ideas on how to develop those skills. It is divided into three sections.

In the first section we have developed a chart outlining the Future Skills and Knowledge Base lawyers should ensure they are developing- the space where AI isn't – yet. The chart is not intended to be comprehensive. You may well have additions, or express things differently. It should help to further the thinking that many of you have already been doing. The second section is a very brief comment about some of the strategies available. The third section is simply a tool to help you get from here to there in a practical way.



1. FUTURE SKILLS AND KNOWLEDGE BASE

Future skills may look to some of you very much like past skills. What is changing is the importance some are now seen to have, and the urgency to develop them. Some of the skillsets identified may look more like baseline knowledge than a skillset. Others are a combination of both.

Skill and Knowledge Base	*Why are they necessary?*	*Skills/ Knowledge Development*
Know your client	Simple. A detailed and in-depth understanding of the client, what they need, why, and the context in which they need it will help you better position your value proposition. It will better enable you to tailor the approach to their need, using the appropriate combination of people, process and technology	Listening Asking Understanding
Consumer Knowledge Generally	Statistics tell us that most people with legal problems are not assisted by lawyers. Many of those people have money, but are not willing to spend it on a legal process they almost universally find to be too complex, too slow and too expensive. Starting to better understand the potential consumers of legal services will help you translate them from a potential to an actual market.	Start with the obvious Ask the hard questions

Legal Baseline Substantive and Procedural Knowledge	Yes. It would be tempting to think that AI and related technology will eliminate the need for the more traditional knowledge we associate with lawyers. In fact, while technology may enable us to access this information quickly for a given case, the baseline knowledge required for lawyers is likely to go up, not down. Can't anyone turn a machine on?	Usual More depth
Financial Literacy	We know. Many lawyers don't like math. Fact is, little time is spent on working your way through financial statements before you become lawyers. Since the legal service markets in the future are likely to become ever more competitive, it's important to better understand the money so you can compete for business.	Reading Courses. Seminars Engaging other professionals across disciplines
Technological Competence	Yes. This is one of the key problems facing lawyers today. We have spent so much time doing our job in the way we always did it, that we didn't notice the world had changed. Others might now be able to do it differently, and in some cases with a better value proposition from the client perspective. You don't have to be Bill Gates, but it does help if you know who he is and what he did.	Reading Courses. Seminars (ABA Tech Show :)) Engaging other professionals Look around

Context	So much of what we do is not really about the law, but about broader issues affecting relationships, business, money, and power. Developing a better understanding about what is going on outside the office will be helpful.	Look around How do you live the other parts of your life? Online.
Relationships - Teamwork	The work we do often narrows our focus. It can tend to be solitary, even when we are working in large organizations. There is not enough in our education or post licensing training that encourages or develops teamwork. Many of life's tasks require working with others. Teams that function well are invariably stronger than a collection of individuals working alone.	Build and value teams Learn about and develop team building skills Encourage cross-disciplinary collaboration Pro bono work Mentorship Delegation Leadership
Relationships - Cross Disciplinary Collaboration	Everyone has a skillset and knowledge base. Time for lawyers to look around and value others.	Speak with others Ask advice Listen
Relationships- Diversity	Obvious. Virtually every study emphasizes the importance from every possible perspective, including profit.	Just do it

Listening	It is at the heart of what we do, yet how many would describe themselves as great listeners. Just listen to other lawyers listening (or not). How many who are not lawyers would describe us as good listeners?	
Creativity	While AI is optimal for producing repetitive or quantitative results, AI cannot (yet) replace the creativity required in developing approaches suited to client needs, or tasks such as negotiations, litigation or narrative-style writing.	Cross-disciplinary collaboration Reading (both legal and non-legal) Writing (both legal and non-legal) Talk to other practitioners (both legal and non-legal) in non-transactional settings. Attend conferences or seminars.
Decision-making	The ability to incorporate other perspectives and other voices into the decision making process will both improve and strengthen the decision.	Cross-disciplinary collaboration Mentoring Increase client communication or touchpoints via phone calls & face-to-face meetings

Empathy	The fast paced, and extremely demanding environment we work in often leads to attorneys losing touch with the "human" side of lawyering. Our work affects people.	Listen Increase client communication or touchpoints via phone calls, video conferencing & face-to-face meetings. Mentorship Cross-disciplinary collaboration Reduce stress
Integrating and synthesizing disparate sets of information	The demands of our profession can sometimes cause us to live within our "work bubble" and we can lose sight of the big picture—why is my work important? How is my work going to affect the client? The community? The legal profession? Taking some time to read non-legal content or collaborate with non-legal staff can help refocus your work on the bigger picture.	Cross-disciplinary collaboration Reading (both legal and non-legal) Writing (both legal and non-legal)

2. DEVELOPING SKILLS AND KNOWLEDGE BASE

Many of the suggested strategies might appear obvious. They are. If you examine what you do on a weekly basis, however, you might find that you spend relatively little time on skills or knowledge development outside what is specifically required by the cases you are working on. Outside skills and knowledge development require additional effort. It will not usually be billable time. That time, however, must be spent to better position you for a future where AI, other technological advances, and new business methods have removed much of the past.

Don't try to boil the ocean. Be purposeful, open-minded, consistent in effort, determined in your goal and prepared to challenge yourself. It might be difficult to see results early in your journey, but persistence will pay off.

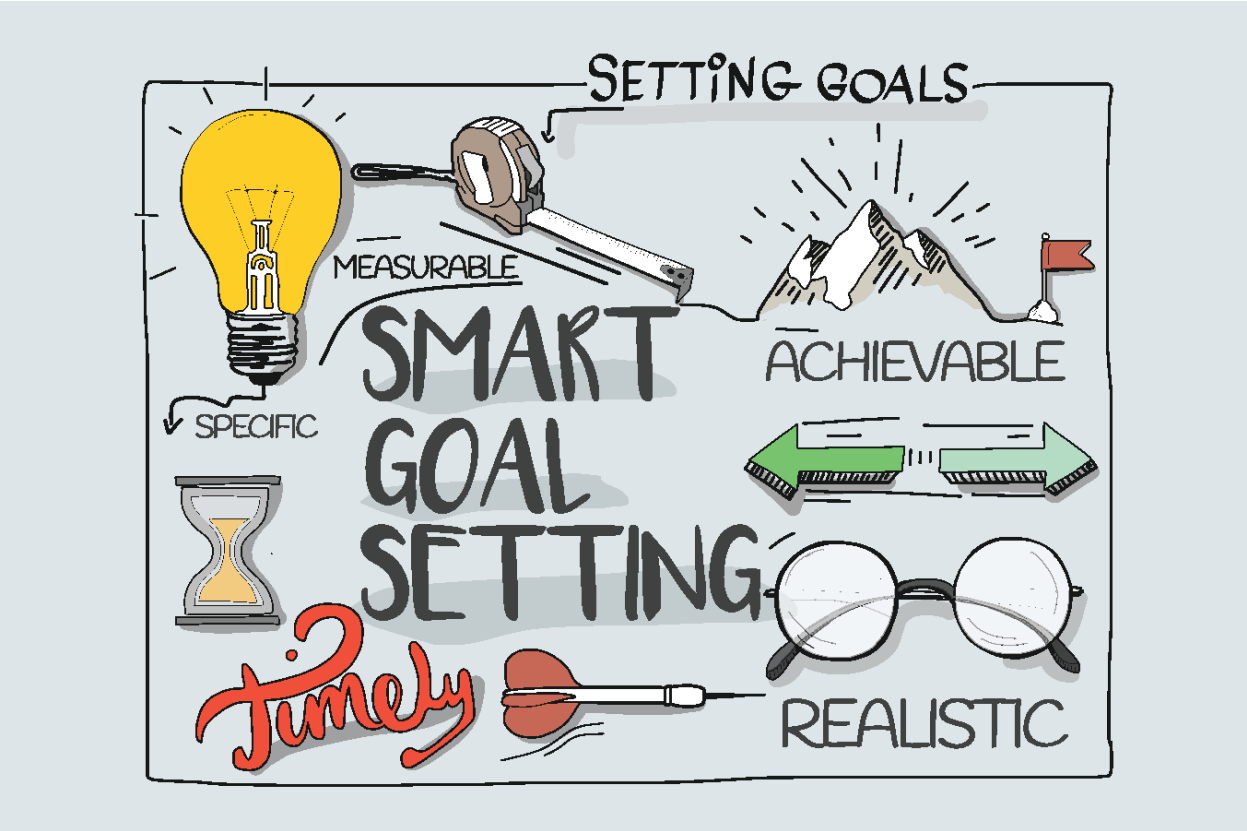
3. MAKE AN ACTION PLAN

The best intentions don't always result in tangible progress. Changing culture is hard. It is never easier when you work long hours under pressure. So, how do you get from here to there? We suggest that you develop a simple action plan.

For example, start by listing the skills you want to develop or the knowledge base you want to expand. Then, develop a very specific plan of action to attain them. Ambition is noble, but tangible action is better. Be realistic on what you can achieve. You can build on progress.

It's also important to measure your progress or define how you will determine when your goals have been achieved. Again, be realistic.

PRO TIP: Sharing these goals with a friend, colleague or mentor will increase accountability and increase the likelihood of achieving these goals. Added bonus—your friend, colleague, mentor (or employer) will think you are an amazing human being.



© https://blog.flock.com/set-smart-goals

EXAMPLE

Skill I'd like to improve on this year	***Practical steps I can take to develop the skill***	***How will I measure my progress? When?***
Example: *Integrating and synthesizing information from the Finance Department with the Legal Department*	*Stay abreast of current economic trends by increasing financial literacy (read up on current affairs)* *Ask Finance stakeholders to lunch* *CC Finance stakeholders on emails*	*Ask head of Finance to meet for quarterly lunches and get feedback*
Skill I'd like to improve on this year	***Practical steps I can take to develop the skill***	***How will I measure my progress? When?***

TECHSHOW2020

Hitchhiker's Guide to AI

WRITTEN BY:

Warren E. Agin

PRESENTERS:
Warren E. Agin: @AnalyticLaw
Thomas Hamilton: @TJHammy

December 23, 2019

A SIMPLE GUIDE TO MACHINE LEARNING

By Warren E. Agin[1]

Introduction

Lawyers know a lot about a wide range of subjects--the result of constantly dealing with a broad variety of factual situations. Nevertheless, most lawyers might not know much about machine learning and how it impacts lawyers in particular. In this article, I provide a short and simple guide to machine learning at a level understandable to the typical attorney.

The phrase "artificial intelligence" usually refers to machine learning in one form or another. It might appear as the stuff of science fiction, or perhaps academia, but in reality machine learning techniques are in broad use today. Such techniques recommend books for you on Amazon, help sort your mail, find information for you on Google, and allow Siri to answer your questions.

In the legal field, products built on machine learning are already starting to appear. Lexis and Westlaw now incorporate machine learning in their natural-language search and other features. ROSS Intelligence is an "AI" research tool that finds relevant "phrases" from within cases and other sources in response to a plain-language search. Through the use of natural language processing, you can ask ROSS questions in fully formed sentences and immediately receive highly relevant answers directly from primary law in a way that no other legal research tools can. Elevate Services' ContraxSuite uses machine learning to quickly analyze large numbers of contracts. These are just two of dozens of new, machine-learning-based products. On the surface, these tools might seem similar to current legal products, but you will see by the end of this article that they do something fundamentally different, making them not only potentially far more efficient and powerful, but disruptive as well. For example, machine learning is the "secret sauce" that enables ride-sharing services like Uber, allowing it to efficiently adjust pricing to maximize both the demand for rides and the availability of drivers, predict how long it will take a driver to pick you up, and calculate how long your ride will take. With machine learning, Uber and similar companies are rapidly displacing the traditional taxicab service. Understanding what machine learning is and what it can do is key to understanding its future effects on the legal industry.

What Is Machine Learning?

Humans are good at deductive reasoning. For example, if I told you that a bankruptcy claim for rent was limited to one year's rent, you would easily figure out the amount of the allowed claim. If the total rent claim were $100,000, but one year's rent was $70,000, you would apply the rule and deduce that the allowable claim is $70,000. No problem. You can determine the result easily, and you can also easily program a computer to consistently apply that rule to other situations. Now reverse the process. Assume I told you that your client was owed $100,000 and that the annual rent was $70,000, and then told you that the allowable claim was $70,000. Could you figure out how I got that answer? You might guess that

[1] Warren E. Agin is Managing Director of Digital Strategy and Solutions for Elevate Services, Inc. and Chair of the Business Law Section's Legal Analytics Committee. Mr. Agin thanks Michael Bommarito of Elevate Services and Thomas Hamilton of ROSS Intelligence for kindly reviewing and commenting on an earlier version of this article, but emphasizes that any errors are his, not theirs. This article is adopted from one previously published in the ABA Business Law Section's Business Law Today.

the rule is that the claim is limited to one year's rent, but could you be sure? Perhaps the rule was something entirely different. This is inductive reasoning, and it is much more difficult to do.

Machine learning techniques are computational methods for figuring out "the rules," or at least approximations of the rules, given the factual inputs and the results. Those rules can then be applied to new sets of factual inputs to deduce results in new cases.

Here is an example that is easy to understand. You all know the old number series games. For example:

2 4 6 8 10 _?_

The next number is 12, right? Here, the inputs are the series of numbers 2 through 10, and from this we induce the rule for getting the next number—add 2 to the last number in the series. Here is another one:

1 1 2 3 5 _?_

The next number is 8. This is a Fibonacci sequence, and the rule is that you add together the last two numbers in the series.

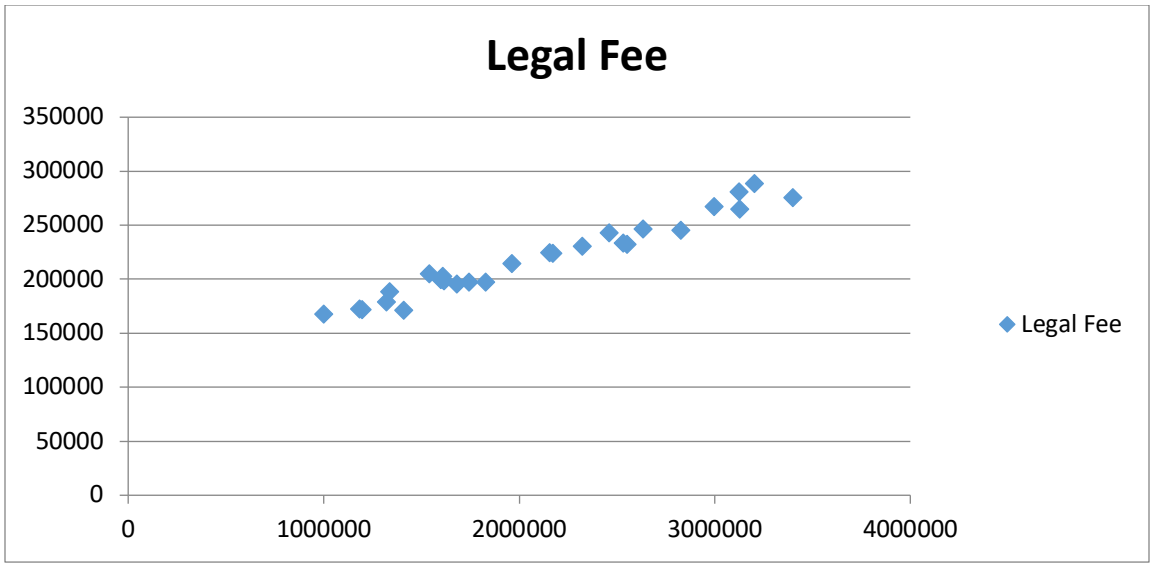
With these games what you are doing in your head is looking at a series of inputs and answers, and using inductive reasoning to figure out the rule. You then apply that rule to get the next number. Broken down a little, the prior game looks like this:

Input	Result
1 1	2
1 1 2	3
1 1 2 3	5
1 1 2 3 5	_?_

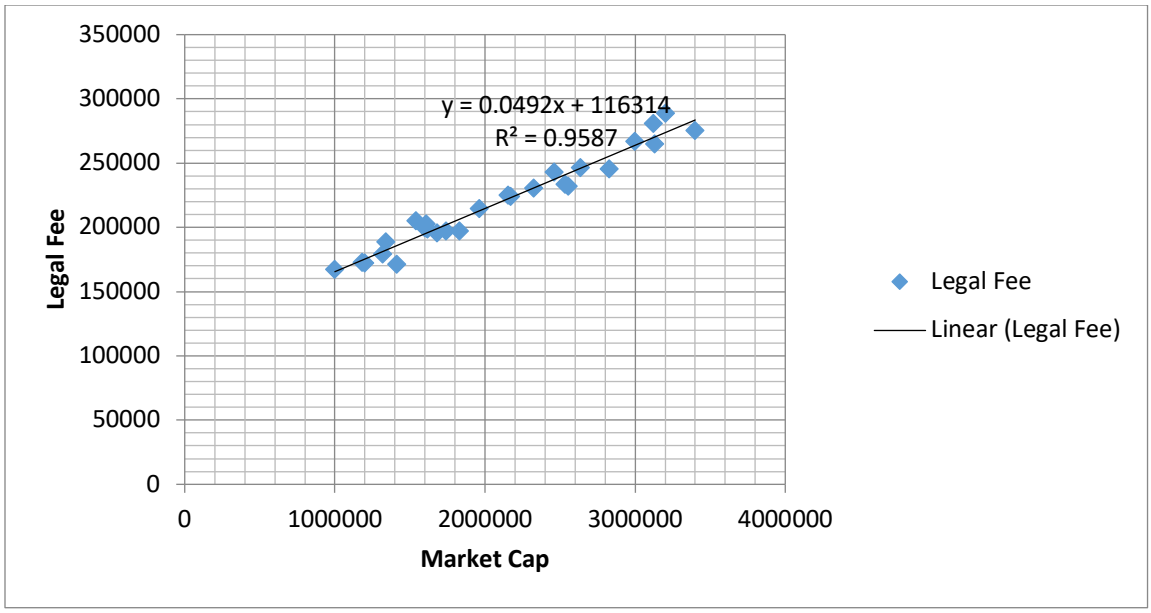
We look at the group of inputs and induce a rule that gives us the shown results. Once we have derived a workable rule, we can apply it to the last row to get the result "8," but more importantly we can apply it to any group of numbers in the Fibonacci sequence. This is a simple (very simple) example of what machine learning does.

Let's take a more complex example.

Assume we wanted to predict the amount of a debtor's counsel's fees in a Chapter 11 case. We could take a look at cases in the past and get information about each case; such as the number of creditors, the debtor's market capitalization, where the case was filed, and, of course, the eventual fee awarded to debtor's counsel. We might compare these numbers and discover that if we graphed the fee awards against the debtor's market capitalization, it looks something like this (purely hypothetically):



There seems to be a trend here. The larger the company market capitalization (the X-axis), the higher the legal fee seems to be. In fact, the data points look sort of like a line. We can calculate the line that best fits the data points using a technique called linear regression.



We can even see the equation that the line represents. You take the market capitalization for the debtor, multiply it by 4.92% and add $116,314. This is called a "prediction model." The prediction model might not perfectly fit the data used to create it – after all, not all the data points fall exactly on the line – but it provides a useful approximation. That approximation will provide a pretty good estimate for legal fees in future cases (that's what the R2 number on the graph tells us.) For the record, the data here is imaginary; hand tailored to demonstrate the methodology.

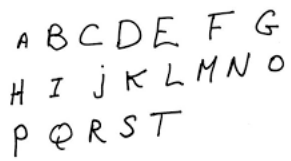
Naturally, real-world problems are more complex. Instead of a short series of numbers as inputs, a real-world problem might use dozens, perhaps thousands, of possible inputs that might be applied to an undiscovered rule to obtain a known answer. We also do not necessarily know which of the inputs are the ones our unknown rule uses!

To solve a more complex problem, we might begin by building a database with the relevant points of information about a large number of cases, in each instance collecting the data points that we think might affect the answer. To build our prediction model, we would select cases at random to use as a "training set," putting the remainder aside to use as a "test set." Then we would begin to analyze the various relationships among the data points in our training set using statistical methods. Statistical analytics can help us identify the factors that seem to correlate with the known results and the factors that clearly do not matter.

Advanced statistical methods might help us sort through the various relationships and find an equation that takes some of the inputs and provides an estimated result that is pretty close to the actual results. Assuming we find such an equation, we then try it out on the test set to see if it does a good job there as well—predicting results that are close to the real results. If our predictive model works on our test set, then we consider ourselves lucky. We can now predict debtor's counsel's legal fees ahead of time; at least until changing circumstances - perhaps rules changes, a policy change at the US Trustee's Office, or the effect our very own model has on which counsel get hired for cases – renders our model inaccurate. If our model does not work on the test set data, than we consider it flawed and go back to the drawing board.

For real-world problems, this kind of analysis is difficult. The job of collecting the data, cleaning it, and analyzing it for relationships takes a lot of time. Given the large number of potential variables that affect real-world relationships, identifying those that matter is somewhat a process of trial and error. We might get lucky and generate results quickly, we might invest substantial resources without finding an answer at all, or the relationships might simply prove to be too complex for the methods I described to work adequately. Inductive reasoning is difficult to do manually. This brings us to machine learning. Machine learning can efficiently find relationships using inductive reasoning.

As an example of what machine learning can do, consider these images:



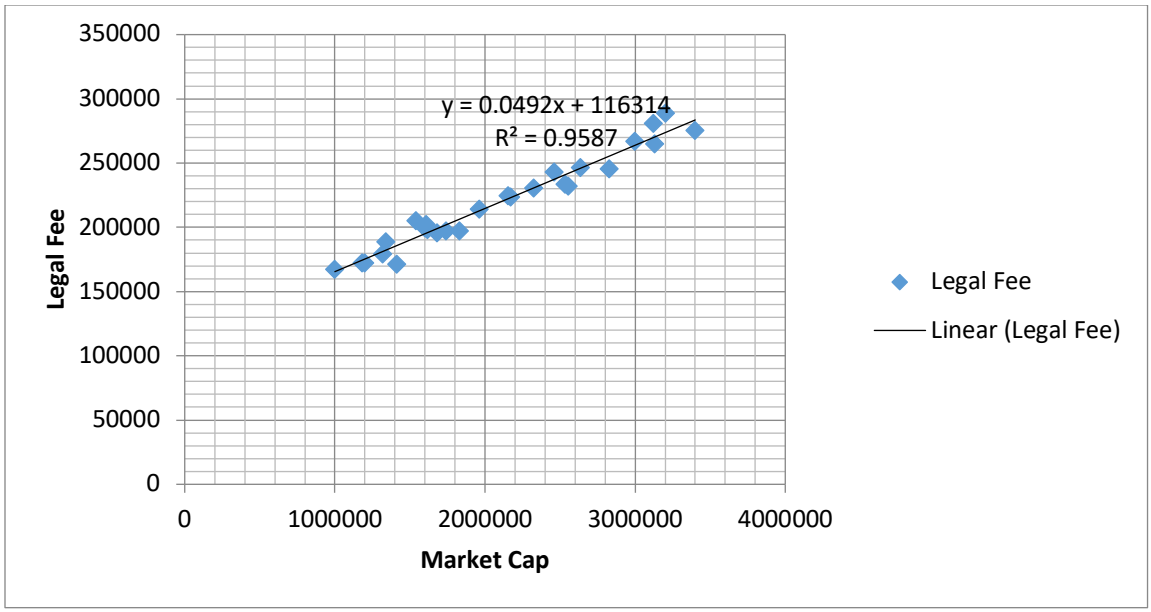
Assume we want to set up a computer system to identify these handwritten images and tell us what letter each image represents. Defining a rule set is too difficult for us to do by hand and come up with anything that is remotely usable, but we know there *is* a rule set. The letter A is clearly different from the letter P, and C is different from G, but how do you describe those differences in a way a computer can use to consistently determine which image represents which letter?

The answer is that you don't. Instead, you reduce each image to a set of data points, tell the computer what the image is of, and let the computer induce the rule set that reliably matches all the sets of data points to the correct answers. For the image recognition problem, you might begin by defining each letter as a 20 pixel by 20 pixel image, with each pixel having a different grey-scale score. That gives you 400 data points, each with a different value depending on how dark that pixel is. Each of these sets of 400 data points is associated with the answer--the letter they represent. These sets become the "training set," and another database of data points and answers is the "test set." We then feed that training set into our machine-learning algorithm—called a "learner"—and let it go to work.

What does the "learner" actually do? This is a little more difficult to explain, partially because there are a lot of different types of learners using a variety of methods. Computer scientists have developed a number of different kinds of techniques that allow a computer program to infer rule sets from defined sets of inputs and known answers. Some are conceptually easier to understand than others. In this article, I describe, in simple terms, how a couple of these techniques work. Machine learning programs will use a variation of one or more of these techniques. The most advanced systems include several techniques, using the one that fits the specific problem best or seems to generate the most accurate answers.

In general, think of a learner as including four components. First, you have the input information from the training set. This might be data from a structured, or highly defined, database, or unstructured data like you might find in a set of discovery documents or in a collection of websites. Second, you have the answers. With a structured database, a particular answer will be closely identified with the input information. With unstructured information, the answer might be a category, such as which letter an image represents or whether a particular e-mail is spam; or the answer might be part of a relationship, such as text in a court decision that relates to a legal question asked by a researcher. Third, you have the learning algorithm itself—the software code that explores the relationships between the input information and the answers. Finally, you have weighting mechanisms—basically parts of the algorithm that help define the relationships between the input information and the answers, within the confines of the algorithm. Once you have these four components, the learner simply adjusts the weighting mechanisms in a controlled manner until it finds values for the weighting mechanisms that allow the algorithm to accurately match the input information with the known correct answers.

Let's see how this might work with my hypothetical system for estimating debtor's counsel's fees. Here, for reference, is the graph again.



In the example, the market capitalizations are the input information ("X"). The known legal fees for each case are the answer ("Y"). For purposes of illustration, let's assume the algorithm is Y=aX+b (a vast simplification, but I'm going to use it to demonstrate a point). The weighting mechanisms are the two variables "a" and "b." Instead of manually calculating the values of "a" and "b" using linear regression, a machine learning program might instead try different values of "a" and "b," each time checking to see how well the line fits the actual data points mathematically. If a change in "a" or "b" improves the fit of the line, the learner might continue to change "a" and "b" in the same direction, until the changes no longer improve the line's fit.

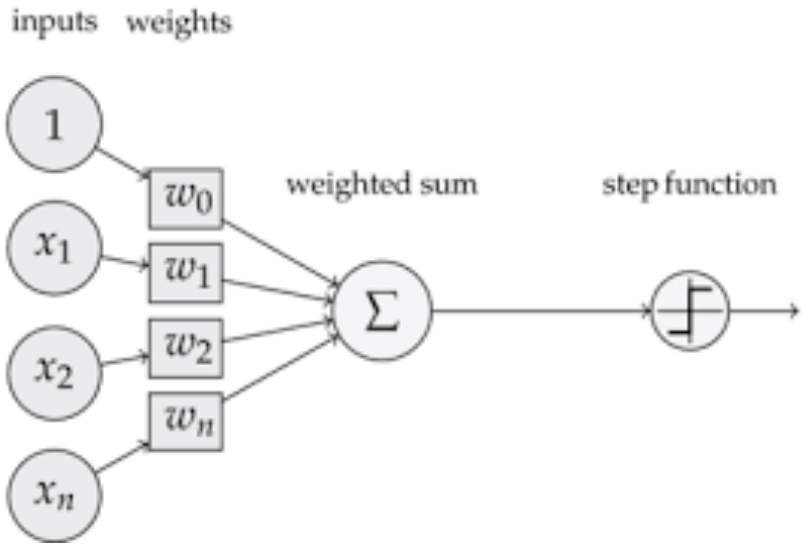
Of course, in my example it is easier just to calculate "a" and "b" using linear regression techniques. I don't even need to have math skills to do it – the functionality is built right into Microsoft Excel and other common software products. Given a spreadsheet with the data, I can perform the calculation with a few mouse-clicks. Machine learning programs, however, can figure out the relationships when there are millions of data points and billions of relationships—when modeling the systems is impossible to do by hand because of the complexity. Machine learning systems are limited only by the quality of the data and the power of the computers running them.

Now, let's look at a couple of types of machine learning systems.

Neural Networks

The term "neural network" conveys the impression of something obscure and mysterious, but it is probably the easiest form of a machine learning system to explain to the uninitiated. This is because it is made up of layers of a relatively simple construct called a "perceptron."

Meet a perceptron.



Credit: https://blog.dbrgn.ch/2013/3/26/perceptrons-in-python/
This perceptron contains four components, the first being one or more inputs represented by the circles on the left. The input is simply a number, perhaps between 0 and 1. It might represent part of our input information, or it might be the output from another perceptron.

Second, each input number is given a weight—a percentage by which the input is multiplied. For example, if the perceptron has four inputs of equal importance, each input is multiplied by 25 percent. Alternatively, one input might be multiplied by 70 percent while the other three are each multiplied by 10 percent, reflecting that one input is far more important than the others.

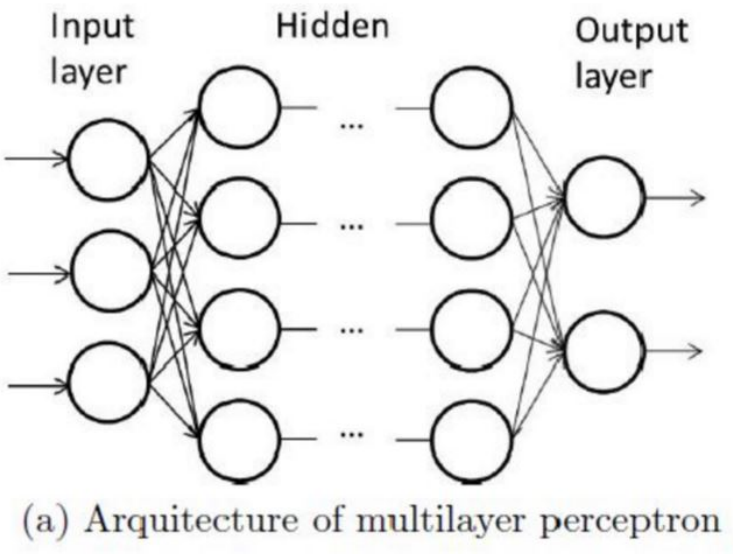
Third, these weighted input numbers are added to generate a weighted sum—a single number that reflects the weights given the various inputs.

Fourth, the weighted sum is fed into a step function. This is a function that outputs a single number based on the weighted sum. A simple step function might output a "0" if the weighted sum is between 0 and .5, and a "1" if the weighted sum is between .5 and 1. Usually a perceptron will use a logarithmic step function designed to generate a number between, say, 0 and 1 along a logarithmic scale so that most weighted values will generate a result at or near 0, or at or near 1, but some will generate a result in the middle.

Some systems will include a fifth element: a "bias." The bias is a variable that is added or subtracted from the weighted sum to bias the perceptron toward outputting a higher or lower result.

In summary, the perceptron is a simple mathematical construct that takes in a bunch of numbers and outputs a single number. That output number might be fed to another perceptron, or it might relate to a particular "answer." For example, if your learner is doing handwriting recognition, you might have a perceptron that tells you the image is the letter "A" based on whether the output number is closer to a 1 than a 0.

In a neural network, the perceptrons typically are stacked in layers. The first layers receive the input information for the learner, and the last layer outputs the results.



Credit: http://www.intechopen.com/books/cerebral-palsy-challenges-for-the-future/brain-computer-interfaces-for-cerebral-palsy

In between are what are called “hidden layers” of perceptrons, each taking in one or more input numbers from a prior layer and outputting a single number to one or more perceptrons in the next layer.

The computer scientist building the neural network determines its design--how many perceptrons the system uses, where the input data comes from, how the perceptrons connect, what step function gets used, and how the system interprets the output numbers. However, the learner itself decides what weights are given to each input as the numbers move through the network, and what biases are applied to each perceptron. As the weights and biases change, the outputs will change. The learner’s goal is to keep adjusting the weights and biases used by the system until the system produces answers using the input information that most closely approximates the actual, known answers.

Returning to the handwriting recognition example, remember that we broke down each letter image into 400 pixels, each with a greyscale value. Each of those 400 data points would become a input number into our system and be fed into one or more of the perceptrons in the first input layer. We add some hidden layers in the middle. Finally, we would have an output layer of 26 perceptrons, one for each letter. The output perceptron with the highest output value will tell us what letter the system thinks the image represents.

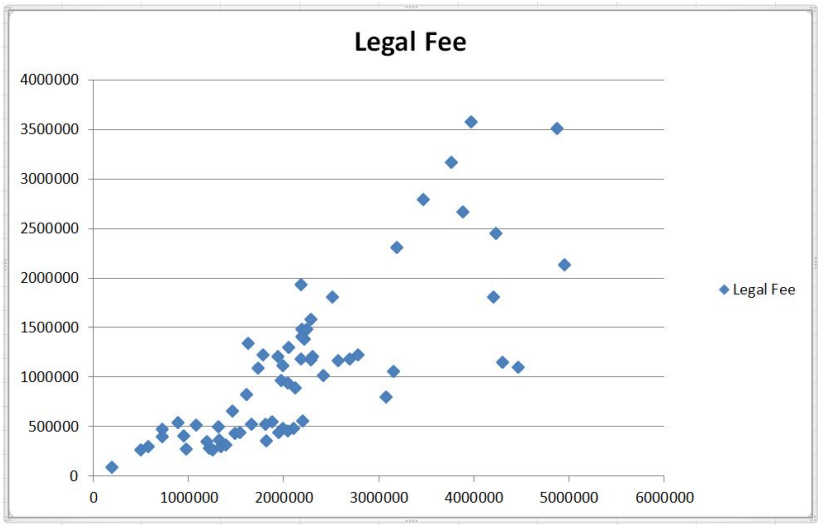
Then, we pick some initial values for the weights and biases, run all the samples in our training set through the system, and see what happens. Do the output answers match the real answers? Probably not even close the first time through. So, the system begins adjusting weights and biases, with small, incremental changes, testing against the training set and continuously looking for improvements in the results until it becomes as accurate as it is going to get. Then, the test set is fed into the system to see if the determined set of ideal weights and biases produces accurate results. If it does, we now have an algorithm that we can use to interpret handwriting.

It might seem a little like magic, but even a relatively simple neural network, properly constructed, can be used to read handwriting with a high degree of accuracy. Neural networks are particularly good at sorting things into categories, especially when using a discrete set of input data points. What letter is it? Is it a picture of a face or something else? Is a proof of claim filed in a bankruptcy case objectionable or not?

Nearest Neighbor

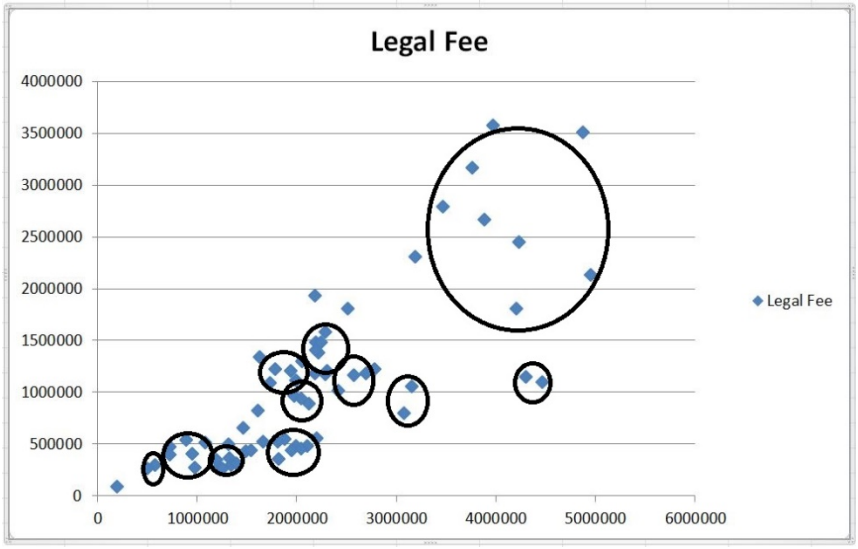
The k-nearest neighbor or k-NN algorithm makes a good second choice because its name at least makes it sound easy to understand. But, it is, in fact, one of the simplest of machine learning algorithms. k-NN algorithms group items into categories based on similarity of characteristics. We can analogize k-NN to the way that we humans actually think about qualitative objects. For example, we hold a reference set of accessible, salient memories (e.g., fruits). These memories are encoded along a certain set of dimensions (e.g., color, size, shape). When you are asked to categorize them or recall a similar fruit, you're essentially carrying out k-NN (though each of our encodings and reference sets may vary based on experience).

To explain how it works, let's go back to a variation of our examination of debtor's counsel's fees. Instead of that nice linear relationship we saw before, let's assume the data looks more like this:

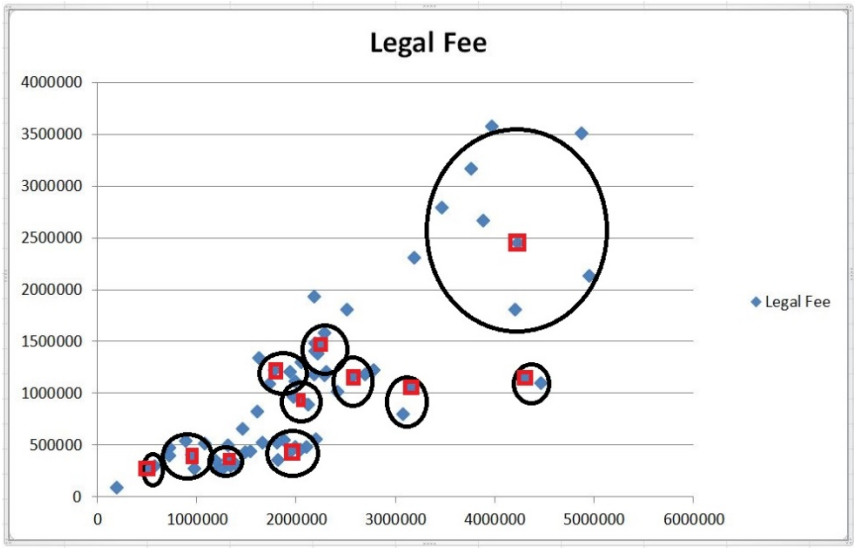


Again, the Y axis (on the bottom) is the debtor's market capitalization, and the X axis (on the left) is debtor's counsel's legal fee. This relationship is still pretty linear, but with a lot of variation, especially for the larger companies.

k-NN would start by measuring the linear distance between the data points. Each data point would be compared with the other data points near it, using the "k" variable as a threshold to determine how far out the algorithm will look. The algorithm will discover that some dots are surrounded by lots of close neighbors. Others are on the outside of a grouping, with a few close neighbors. By seeing how far away and in which direction a dot's neighbors are, the algorithm can start to determine which dots are similar to each other, and can start to group them. A particular dot will be assigned to the group of dots to which it has the closest relationships.



Once the algorithm reaches this point, it can start to reduce the data set to a reduced set of reference points, each of which represents a group. These reference points will be the dot or data point located closest to the mean value for the grouping.



The learner has now completed its work, building a set of known reference points that each represent a different category of potential data within the entire data set.

This particular learner doesn't help us predict the legal fees in a case given the company's market capitalization, as much as it does something equally interesting – it helps us categorize cases given both the market capitalization and the amount of debtor's counsel's legal fees. When the next case comes around, we can categorize it and group it with similar cases, based on the spatial distance between the new case's data point and the various reference points. We assign the new case to the grouping or category represented by its nearest neighbor. We might not know why the case is the same as the others, but we can identify the existence of a relationship.

This might be very helpful. For example, we might note that the cases in a particular group always end up back in a second Chapter 11 case. Now, even without having any particular knowledge of why this might be, we might conclude that future cases assigned to this group will also end up in a second Chapter 11 case.

In real life situations, the learner isn't working with just two dimensions – or data inputs. It might be working with dozens of characteristics for each data point. Machine learning takes place in a multi-dimensional environment, which makes it very hard to visualize, even if the math doesn't change all that much.

k-NN and algorithms like it play an important role in interpreting unstructured data and tasks like natural-language processing. They can identify relationships among words or concepts. The computer does not understand the words, what the concepts are, or what they mean, but it can identify the relationships as relationships and, like a parrot that repeats what it hears, convey the impression of understanding.

Machine Learning in Action

My examples are basic, designed to provide some understanding of what are fairly abstract systems. Machine learners come in many flavors—some suitable for performing basic sorting mechanisms, and others capable of identifying and indexing complex relationships among information in unstructured databases. Some systems work using fairly simple programs and can run on a typical office computer, and others are highly complex and require supercomputers or large server farms to accomplish their tasks.

To understand the power of machine learning systems compared with non-learning analytic tools, let's revisit an earlier example in the article: ROSS Intelligence. While ROSS was originally partially built on the IBM Watson system, over the years it has developed its own completely proprietary machine learning techniques to perform its tasks. These search tools employ a number of machine learning algorithms working together to categorize semantic relationships in unstructured textual databases. In other words, if you start with a large database of textual material dealing with a particular subject, machine learning tools can begin by indexing the material, noting the vocabulary and which words tend to associate with other words. Even though these systems do not actually understand the text's meaning, they develop, through this analysis, the ability to mimic understanding by finding the patterns in the text.

For example, when you conduct a Boolean search in a traditional service for "definition /s 'adequate protection,'" the service searches its database for an exact match for those terms applying the Boolean search logic provided. ROSS does something different. It looks within the search query for word groups it recognizes and then finds the results it has learned to associate with those word groups. If you search for "what is the definition of adequate protection" the system will associate the query "what is the definition" with similar queries, such as "what is the meaning of" or just "what is." It will also recognize the term "adequate protection" as a single concept instead of two separate words, and likely, given the context, understand it as a word found in bankruptcy materials. Finally, it will have associated a successful response as being one that gives you certain types of clauses including the term "adequate protection." It won't understand specifically that you are looking for a definition, but because others who used the system and made similar inquiries preferred responses providing definitions, you will get clauses containing similar language patterns and, viola, you will get your definition.

You should not even have to use the term “adequate protection” to get an answer back discussing the concept when that is the appropriate answer to your question. So long as your question triggers the right associations, the system will, over time, learn to return the correct responses.

The key is that a machine learning system learns. In a way, we do the same thing ROSS does. The first time we research a topic, we might look at a lot of cases and go down a lot of dead ends. The next time, we are more efficient. After dealing with a concept several times, we no longer need to do the research. We remember what the key case is, and at most we check to see if there is anything new. We know how the cases link together, so the new materials are easy to find.

A machine-learning-based research tool can do this on a much broader scale. It learns not just from our particular research efforts, but from those of everyone who uses the system. As the system receives more use, it continues to use user feedback to assess how its model performs and allow for periodic retraining. As a result, it will become extremely adept at providing immediate responses to the most common queries by users. It might also be able to eventually give you a confidence level in its answer, comparing the information it provides against the entire scope of reported decisions and its users’ reactions to similar, prior responses, to let you know how reliable the results provided might be. Even though the system doesn’t understand the material in the same manner as a human, its ability to track relationship building over a large scope of content and a large number of interactions allow it to behave as you might, if you had researched a particular point or issue thoroughly many times previously. This provides a research tool far more powerful than existing methodologies.

Legal tools based on machine learning have enormous application. Learners already in use by lawyers help with legal research, categorize document sets for discovery purposes, evaluate pleadings and transactional documents for structural errors or ambiguity, perform large-scale document review in M&A, or identify contracts affected by systemic change—like Brexit or the LIBOR crisis. General Motors’ legal department along with other large companies are exploring using machine learning techniques to evaluate and predict litigation outcomes and even help choose which law firms they employ. Machine learning is not the solution for every question, but it can help answer a large number of questions that simply were not answerable in the past, and that is why the advent of machine learning in the legal profession will prove truly transformational.

TECHSHOW2020

Problems with AI

WRITTEN BY:

Damien Riehl
Thomas Hamilton

PRESENTERS:
Damien Riehl: @damienriehl
Thomas Hamilton: @tjhammy

January 27, 2020

PROBLEMS WITH AI
BY DAMIEN RIEHL

In legal circles and in other communities discussing artificial intelligence, some questions have consistently surfaced: “How good is it?” “How good will it become?” Increasingly, a common question is “How can AI fail?”

For every prognostication regarding AI’s benefits and rewards — however “AI” is defined — many have increasingly questioned its potential problems. To best assess AI’s potential pitfalls, one should first determine to which standards should apply:

- Must the system’s results be as high as humans? Higher than humans?
- Or will society accept the tradeoff of AI’s efficiency and accuracy for performance slightly below that of humans — or an error rate that is slightly higher?

The axiom says that to err is human. Machines sometimes err, too. Strangely (but not surprisingly), most of those errors are also because of humans.

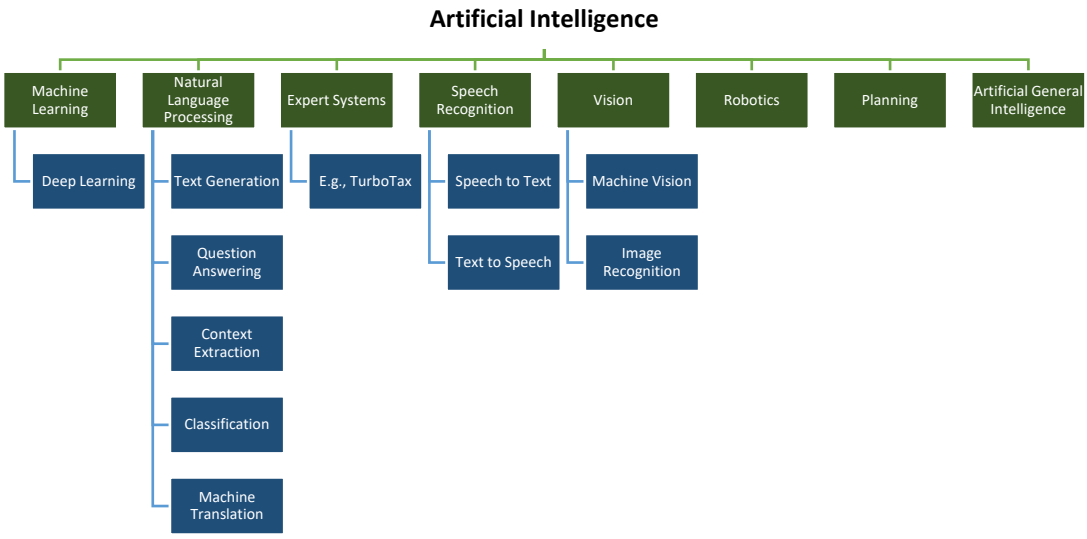
Biases and Definitions

A foundational issue: defining artificial intelligence. What many laypeople refer to as “artificial intelligence” is mere software. Many have noted that it's only “AI” until you know how it works; then, it’s just software. In that way, laypersons often use the term “AI” synonymously with “magic.”

Here, we will take the position among most experts: that artificial intelligence encompasses several distinct fields:

1. Machine Learning
2. Natural Language Processing
3. Expert Systems
4. Speech Recognition
5. Vision
6. Robotics
7. Planning
8. Artificial General Intelligence.

Placed into a graph, here are those categories, coupled with sub-fields and examples.



Because the fields all have different benefits and use cases, as well as different capacities for biases and errors, it would be a mistake to believe that all err (or are biased) in the same way. Rather, each field has its own benefits and potential pitfalls.

Machine Learning: Training data can lead to systemic biases

Two ways to train machine learning (ML) systems are through (1) supervised learning and (2) unsupervised learning.

- In **supervised learning**, the operator will feed the ML system examples of data, coupled with human annotations of whether that data is accurate or inaccurate. For example, the humans would annotate a photograph to answer the question: “Is that image a dog: yes or no?”

- In **unsupervised learning**, the ML system is fed data without any such human annotations. In this way, the machine learns about the source dataset alone, without any human intervention.

Under both types, the ML draws its “intelligence” from data that already exists in the world.

“How the world is” vs. “How the world *should* be.”

Because any machine learning system will look back at what exists currently (i.e., its source dataset), the ML system can fail by either (1) reflecting *latent errors* present in that existing dataset or (2) errors in *selecting* ingested data.

One example of such an error is through a combination of ML and Natural Language Processing (NLP). In some implementations, the ML/NLP system will ingest entire literary corpuses algorithmically determining how words are used together (and in what frequency). But depending upon the literary corpus, the ML may ingest outdated or outmoded concepts. Words are usually created by humans; humans can be (and historically have been) biased.

Doctor = Man. An example: After ingesting 20th-Century books, some ML/NLP systems have correlated the word "doctor" with male words — finding that "doctor" is most-frequently associated with words like "man," "he," "him," and "his."[1] So when the ML/NLP system uses the word "doctor" in a summary sentence (or to answer a question), the ML/NLP likely provides results that use "him." Of course, the ML/NLP system is not sexist. Its results are merely based on math. Under data the ML/NLP model was provided — perhaps from decades or hundreds of years earlier — the word "doctor" is usually located near male pronouns. As such, the system's response isn't sexist; it's statistics. The system is merely trying to provide the "statistically most likely to be correct" result.

While the machine isn't sexist, it is biased. But it's not really the machine's fault; arguably, the fault lies with human societal history (and the language it used).

In this way, because the ML/NLP systems ingest data that *has existed* in the world, those systems sometimes reflects the way that the world ***is*** (or at least has been, historically), and not the way that people would ***like*** the world to be.

As such, if you were an ML/NLP researcher, and you discover this "doctor/man" problem, what should you do?

- **One potential solution:** Throw your hands up in the air, exclaiming "The machine is what it is; who am I to modify the math?"

- **A more likely response:** "Correct" that doctor/man result — modifying the thresholds to result in the machine equally considering the possibility that the doctor could be either male or female (e.g., "he or she").

But that act of "correction" itself reflects bias. It's putting the thumb on the scale. The mathematical algorithm resulted in a conclusion based on statistical probability of the language (i.e., a given doctor is probably male), but the researcher has now modified those mathematics to suit a worldview: doctors can be either gender. I think that's the right worldview. (And I'd like to think that nearly every modern human agrees with me.) But that correction arguably constitutes bias, nonetheless.

Another potential correction: One could feed the machine only ***recent*** data — containing language where the doctors' stated genders are more equally balanced. But with that solution, you've then created *another* problem: recency bias.

Every "AI" model must be run, tested, tweaked (e.g., thumbs on scale), re-run, re-tested, etc. — until those researchers determine that the system consistently reaches a "reasonable" result. But what is "reasonable" is also a matter of human judgment.

[1] https://towardsdatascience.com/gender-bias-word-embeddings-76d9806a0e17

In current AI systems, as with human systems, true objectivity is rare — if it exists at all. At this point in AI's evolution, humans remain in nearly every part of the chain. And humans frequently succumb to bias.

So when determining the efficacy of an "AI" system, at least two questions should be asked:

1. What is the source dataset?

2. How has that dataset been "smoothed," "normalized," or modified (as in our doctor/gender example)?

Those questions won't necessarily help with "black box" AI — where even the AI's *builders* don't know ***how*** the system works; just that it *does* work. But where a system has "explainable AI," the answers to these questions might lend themselves to finding potential biases.

Non-malicious Human Bias

Another example of non-malicious bias is where data scientists attempt to create unbiased datasets, but build bias into the system inadvertently. The most widely discussed example is where court risk-assessment tools — which frequently determine, for example, bail amounts — were reported to inadvertently introduce racial bias. While those systems did not ***explicitly*** consider race data, they ***did*** use ZIP codes — which, given many cities' de facto segregation, can be used as a ***proxy*** for race. So although race wasn't explicitly included in the algorithmic dataset, racial minorities were still given a higher risk score (as a result of their ZIP codes).

This is an example of bias that is potentially non-malicious. (The researchers may have thought that they were doing the right thing, working with the data they were given.) But malicious or not, the risk-assessment system was still racially biased.

Researchers have proposed one potential response: explicitly build race and ZIP codes into the system, eyes wide open, then compare the results with a control group — to achieve better accuracy and predictivity.[2] But as you can imagine, explicitly including race in a predictive model can prove unpopular and politically untenable. So policymakers and model builders must be careful how they place their thumbs on the scale — even in correcting known biases.

Human Error

A separate error type is where the machine learning data set is skewed by human annotation. Anyone who has ever worked in quality assurance can tell you that even with the best workers, the error rates can sometimes be high. And those error rates can be even higher when reasonable minds can differ as to the "correct" result.

In some applications, this is fine. For example, when creating a training set of whether an image is a dog or not, humans will often have a high degree of accuracy. (Who doesn't know what a dog looks like?)

[2] https://www.cityandstatepa.com/content/brewing-battle-over-what-factors-will-determine-jail-time

But as the systems become more complex, especially systems involving language, questions are more likely to be ambiguous, and the answers can be less clear-cut.

If you were to create an ML/NLP system to identify sentences with passive voice, you'd face some questions:

1. What level of education would you need for workers to correctly annotate whether a sentence is in the passive voice?

2. At what price per hour? Would you pay more for native English speakers?

3. How frequently would moderately educated native English speakers misidentify passive voice — as active — or vice versa?

All workers (even AI-training workers) can have bad days. And workers who toil on boring, hard, or ambiguous problems — as is often the case in AI system training — can make mistakes even more frequently. That's to be expected: after all, to err is human.

But when human errors are brought into a machine learning model, those errors can be amplified. One person's bad day can result in a bad model. And after the model is complete — after the AI cake is baked, if you will — how can one determine where, in the recipe, things went wrong?

Out of a haystack of annotations, finding the human-error needle can be very difficult or impossible. That's because after the annotated training set is baked into the model, those training set results might be stowed away deep in a hard drive (never to be accessed again) — or perhaps they're even thrown away. So if errors are discovered years later, one might never be able to determine ***why*** the system has been giving bad results. One might never discover the source training errors resulting from the annotators' collective "bad day."

Human biases are everywhere, and they always have been

But before we start flogging machines too much, let's consider the current state of affairs for humans. We frequently accept human error as a matter of course. Should we expect any more from our machines?

Require better than our current world? Or our historical world?

Let's look to the example of our corpus of judicial opinions — as they have existed for more than 100 years. Upon first blush, that judicial-opinion dataset might appear largely objective, free of bias. After all, the law is the law. But look a bit deeper, and human bias abound.

Published or Unpublished? A foundational question: How did each opinion make it into the research dataset at all?

Appellate decision publication

Many appellate courts will determine, as a panel, whether the decision will be published or unpublished. That, determination itself, reflects bias (albeit learned bias). Is the case important/precedential, or not? If important/precedential: publish. If not: unpublished. But in an age where published and unpublished decisions have been equally available on nearly every judicial dataset for the last 30+ years, is that a distinction without a difference? And should a system ingest only published opinions?

District court decision publication

The publication status of district-court decisions are even more fraught with potential bias. When a particular district-court judge decides whether (or not) to publish a decision, what criteria does that particular judge use? Because of its importance? Or its wide applicability? Or its interpreting a matter of first impression? Or perhaps the judge wants to publish one decision for each of the judge's clerks — so that clerk can be proud that that clerk's work product has been "published."

Each district-court judge has an individualized publication-system rationale — or perhaps those publication decisions are ad hoc. Regardless, the decision to publish (or not) reflects that judge's personal biases.

Legal topics (e.g., civil and criminal) published

Similarly, the topics covered in the published judicial-opinion corpus does not fall proportionately. For example, federal courts receive ~350,000 new filings annually.[3] About 81,000 of those are criminal matters. Similarly, the number of new cases in state courts can exceed 100 million annually.[4] So even the most-expansive legal-research dataset contains only a fraction of the courts' decisions. They are limited to:

- The most "important" and "precedential" decisions
- Topics (e.g., civil or criminal issues) that are probably disproportional to their court frequency.

Of the 100+ million new cases filed each year, we currently research only a fraction. And those tend to skew toward civil decisions. (When did you last read a "run of the mill" criminal decision?)

That selection subset represents reasoned human judgment. Another word for judgment: bias.

[3] https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018
[4] https://www.bjs.gov/index.cfm?ty=tp&tid=30

Garbage in; Garbage out. Bad law in; bad results out.

The law is an ever-moving entity: evolving every day — creating new rules, as well as deprecating old rules. Determining what constitutes "good law" might depend upon the historical point in time. "Good law" today? Or "good law" in 1940?

For example, if an ML system ingested all cases from 1800 to the present, that dataset would include about 50 years' worth of judicial opinions where *Plessy v. Ferguson* and its "separate but equal" doctrine remained good law — the law of the land. So if the ML system incorporating sentiment analysis might determine that while some cases (post-*Brown*) acknowledge the striking of "separate but equal," other cases (before 1954) viewed "separate but equal" favorably. As such, the ML results might be skewed as uncertain or equivocal.

Faced with this result, researchers might consider limiting the dataset to recent decisions (1950 to the present?). But even then, the ML will likely misunderstand the law as it relates to a precedential rule that was overruled this morning.

The law is a moving train. At some point, ML researchers need to board. Datasets need to be uploaded. But by deciding ***where*** to board, and how to interpret those results, researchers could inadvertently introduce bad-law biases.

For the most-accurate results, how much data should we analyze?

If one were to ask a data scientist to determine a court's statistical probability to rule a particular way, and then ask how many judicial opinions that data scientist would want — that data scientist would almost certainly say "As much data as I can get." Ostensibly, that would mean *every* judicial opinion.

But what if we don't do that? Instead, what if we just analyze ***published*** opinions? Would that reflect reality? Would that accurately represent a given litigant's risk? Or is that limited dataset (i.e., published decisions) biased?

For over 100 years, our legal system has accepted that considering the cost of paper, printing, and distribution — as well as the limited marginal value of having ***all*** of the decisions, rather than a curated selection — we as a profession would make do with that artificially limited subset. That is: A subset selected by human judgment (i.e., bias).

In nearly every other field (e.g., medicine, business, finance), we demand precision and accuracy — which require as much data as possible. Try to tell a stock-market data-scientist that they should be satisfied with a dataset of stocks that was human curated — just a few handpicked stocks on certain handpicked days. Over their laughter, try to exclaim "But the humans would be sure to pick the most important ones!"

Query whether our legal profession should continue "making do" with a limited handpicked subset. Or since nearly every decision has been natively digital for over 20 years — and as our clients emphasize that our profession needs to be more data-driven — should our ability to accurately analyze legal risk similar mature? Like business, medicine, and finance: should we properly be able to analyze ***all*** the data? Or just an incomplete subset?

Systemic Bias: Female Litigators

One last example: I have spoken with researchers who have analyze a broad swath of court cases — separating the lawyers into men and women. The result? According those researchers:

- Women lawyers are more statistically likely to lose
- The percentage margins are significantly large.
- Those results are similar, even controlling for any given judge's gender.

Correlation, of course, is not causation. So here are two potential explanations:

1. Courts suffer from bias against women lawyers
2. Female lawyers aren't as good as male lawyers

Of those, I'd put my money on #1. Because my personal bias is that #2 is untrue.

As a member of the legal profession, how do you respond to those data, which appears to demonstrate that women lose more often? Some potential responses:

- **Judge #1:** "Wow — I'm going to check my biases, trying to better ensure that I'm fairer."
- **Judge #2:** "I'm not biased; I call balls and strikes. If women lose more often, that's meritocracy."
- **Senior Partner #1:** "Knowing that data, I'm not going to hire as many women. And for the ones I ***do*** hire, I'm not giving them my *most-important* cases. I'm just following the data!"
- **Senior Partner #2:** "Client, I know you told me to encourage diversity, but statistically, that's against your interest."

Data can be a mirror and a spotlight. AI can *reflect* human biases, but data can also objectively *identify* human biases. And it can do so in ways that, in yesteryear, would have been conjecture.

Importantly, if you were asked to fix that problem (i.e., women lawyers lose more frequently), how would you remedy it? How would you respond to those who might argue that it doesn't need remedying? How would you put your thumb on the scale — though in a way that you're not accused of bias?

Conclusion: To what standard should we hold AI fallibility?

As shown above: If one tries to fix *human* biases, remedies are unclear. With AI biases, it's even harder.

We understand humans — since our species has been around for millennia. In contrast, AI is new.

- Few understand how AI systems work (sometimes not even their creators).
- Even fewer understand the AI systems' potential biases.
- Even fewer have *access* to closed AI systems (especially black-box, unexplainable AI), to even permit assessment and identification of biases.
- And even fewer yet know how the best ways to place thumbs on the scale — at just the proper amount, but not too much — to *remedy* those biases.

So given those realities, to what standard should we hold AI systems?

- Must they be perfect?
- Or perhaps "as good as humans"?
- Or is "slightly worse" still okay?

Chapter 2:
The richness – and bias – of legal data

By Thomas Hamilton, VP strategy and operations, Ross Intelligence

Introduction

As a former attorney and now the VP of strategy and operations at a technology company doing groundbreaking research in artificial intelligence (AI), I've had an advance view of both the benefits – and the pitfalls – of the current wave of AI technology that is now beginning to transform the practice of law. Because of this privileged vantage point I would like to speak to the importance of data in the creation of AI systems – a concept that becomes more important every day as the scope and power of AI software increases exponentially.

I felt the best way to explore the importance of data sets would be to examine them in the same way that I initially came to learn of their importance – by starting with the basics. We'll first define AI broadly before examining the four pillars that comprise modern AI. From there we'll discuss how breakthroughs in deep learning, many of which were pioneered in my home province of Ontario, Canada, have in the last few years dramatically advanced what is possible with AI systems. From there, armed with a proper foundational understanding, we'll then turn to the role that data plays in both supervised and unsupervised learning systems, both at a general level and then specifically to law. Lastly we'll consider the risks and enormous possibilities that this data provides, now that we live in a world where the AI systems relying on it to make their decisions are becoming increasingly powerful.

Part 1: What is AI?

In 2019, Artificial Intelligence is generally defined by AI researchers as software that learns to perform intelligent tasks we previously believed only a human could perform. This is a useful definition in that it implicitly takes into account the fact that what society considers as AI is a constantly moving target. When Apple debuted its Siri voice recognition

AI software in the iPhone 4s in 2011 it was seen as revolutionary technology. Now, less than a decade later, a smart phone coming equipped with voice recognition technology is simply a given and no longer considered by lay people as AI.

Broadly, when AI is being discussed in 2019, it is referring to four interrelated concepts – machine learning, natural language processing, vision recognition and speech recognition. Let's briefly examine each of these, before diving into the details.

Machine learning underpins everything that is possible with modern AI systems. Machine learning describes the capacity for a software system to take data points, process them to improve performance of a task, and then create an improvement feedback loop wherein it can continue performing the task while continuously improving. The power of machine learning systems is that they now allow for software to learn to perform tasks they were never explicitly taught how to perform.

The second category is vision recognition, which is the capacity for software systems to interpret images, identify them and describe them. Through machine learning feedback loops, these vision recognition systems, are now becoming highly sophisticated, but are not without error.

The third category is speech recognition, which is the capacity for a software system to speak and interpret oral language, allowing for back and forth interaction. Apple's Siri would be a great example.

Lastly is natural language processing, which is the capacity for a software system to understand human language. This means that the AI can interpret the actual meaning of human communication, allowing it to decipher intent and return highly relevant answers and search results to even very complex queries. It is recent advances in machine learning methods (described below) and natural language processing that have opened up enormous opportunities for AI technology in law.

While these four concepts have existed for some time, their real-world applications have been severely limited due to insufficiency of computing power, data, and theoretical understanding of machine learning. While the purpose of this chapter is to ultimately describe and discuss the role of training data in AI systems, this cannot be easily separated from the role of computer power and theoretical breakthroughs. Consequently, let's examine those in some detail, along with their interactions with Big Data, before then moving on to a substantial discussion of the role of training sets. Let's begin by examining the importance of recent breakthroughs in machine learning theory.

Part 2: What has made the AI revolution possible?

The deep learning revolution

Deep learning is a field of machine learning focused on designing algorithms that learn how to do things by looking at examples of how to do them (training data) rather than being instructed how to do them through explicit programming. As a subset of machine learning, deep learning focuses on computer algorithms that can both learn and improve on their own. These algorithms are called deep neural networks and are loosely inspired by the network of neurons in the human brain.

Neural net definition

Traditionally, programmers enable computers to perform a task by explicitly writing the instructions of how to do it, using a computer programming language. The inherent limitation in this process is that computer programmers can only program tasks that they know how to articulate logically, resulting in computer applications that solve only problems that their programmers already understand and know how to solve. In the past this was sufficient, but as the scope of our ambition with respect to what we expect software to be able to do has increased, this has proven a major limiting factor.

How do you tell a computer to recognize objects such as tumors in CAT scans, for instance, and provide solutions to problems the programmer has never seen before and has little understanding of? In the past this sort of programming would have been impossible, but it is exactly these types of challenges that neural networks were built to tackle. On a high level, neural networks function as a black box. Data is input on one end and the neural network then renders a response on the other end. Inside of this black box is a network of artificial neurons. When data is input, pathways in the network fire, producing a response.

At first, these responses are random like those in the brain of a newborn baby, but with time programmers are able to teach or "train" a neural network to intelligently respond. Returning to the CAT scan example, with sufficient training a neural network that is fed a CAT scan with a tumor present will return "positive". During training, machine intelligence engineers tune and refine how a neural network's pathways fire by comparing its responses to our desired responses in its training data (human-generated examples of correct responses). With the arrival of sufficient computer power, it is important to note that this tuning is not done by hand – it is done automatically by a training algorithm that analyzes millions or even billions of training examples. Once it finishes

training, the network can give "intelligent" responses to similar inputs it has never seen before.

The concept of deep neural networks, then, is a marriage of the above concepts. In a similar way to the nerve cells (i.e. neurons) that make up the human brain, neural networks comprise layers (neurons) that are connected in adjacent layers to one another. The greater the number of layers, the "deeper" the neural network is.

Supervised and unsupervised learning

Neural networks learn through two separate and distinct methods (although in reality, often a hybrid approach is taken). Looking in a bit more detail about how these neural networks learn will inform our later conversation on training sets, so let's dive a bit deeper by first looking at what is known as supervised learning.

Supervised learning is the method of instructing a neural network through specifically labeled training data. To illustrate, let's imagine that we want to use supervised learning to train our neural network to recognize photos that have at least one bird. The problem, of course, is that there are so many different types of birds, and very few of them look alike. Additionally, different photos of the same type of bird still might not show those birds at the same angle, resolution, or even in the same light. In order to get around this, we'll create an enormous training set of thousands of images, some of which include birds and some of which do not. Each of those that include birds will be labeled "bird", and those that do not include birds will be labeled "not bird".

These images are fed into the neural network, which then converts each image into data, as neurons within the network assign different weights to different elements. Ultimately, the final output layer assembles and aggregates these elements and states either "bird" or "not bird". If it gives the wrong answer, then the neural network will make note of its error and go back and adjust the weightings that its neurons have provided. This process, repeated at scale ad infinitum, will begin to train the neural network on identifying birds all without having ever been explicitly instructed how to do so.

Let's now take a look at unsupervised learning. Unlike with supervised learning, which involves intensive labeling of data, unsupervised learning uses completely unlabeled data. Because it does not involve training sets, the goal of unsupervised learning is to discover hidden trends and patterns in the data or to extract desired features, which is why it has such enormous potential in the face of massive data sets. In situations where it is either impossible or impractical for a human to

propose trends in the data, unsupervised learning can provide initial insights that can then be used to test individual hypotheses.

At a high level, this is generally done using methods drawn from statistics, such as clustering, anomaly detecting and probability. Interestingly, as these systems have increased in sophistication and following high profile breakthroughs by groups such as Google's Deep Mind team, knowledge from biological neuroscience is now being successfully used to push the boundaries of what is possible in computational neuroscience.

Because of the pros and cons of both approaches, many complex solutions require a solution that falls somewhere in between the two methods. This semi-supervised learning solution is able to access reference data where it exists, while leveraging unsupervised learning techniques to make best guesses in the short-term while also unearthing unexpected insights.

Recently, the above theoretical work gathered significant momentum and practical application through the creation and refinement of convolutional neural networks, as well as the continued pioneering work by a number of researchers in the field.

The Big Data revolution

Big Information and Big Data are pretty much synonymous. They refer to the vast volumes of data that our computers have collected and produced, such as financial transactions, videos, emails, texts, call records, medical records, and so on. Analytics refers to the set of techniques that we have to analyze and model this data. Deep learning is just one of these analytical methods.

We'll examine the role of data in more detail below, but for now the key takeaway should be that prior to the arrival of computer systems collecting and sharing enormous quantities of information, AI systems rarely had sufficient data to perform complex tasks even if the theoretical breakthroughs in deep learning, and sufficient computing power, had both been present. Additionally of note has been the proliferation of large, standardized data sets such as those created through Image Net.

The continued computing power revolution

The final concept that has led to the current surge of AI technology is the arrival of sufficient computer power at affordable rates. The famous Moore's Law states that the number of transistors on a microchip have historically doubled every two years while at the same time the cost of computers has halved. At present, the doubling of transistors occurs

roughly every 18 months. This means that the hardware powering the AI algorithms discussed above continues to improve at such a speed that even with no additional theoretical breakthroughs we would continue to see the power of AI systems increase.

Part 3: What is the role of data in AI?

Raw data is the input of an ML system, and is the fuel that makes AI systems run. Without data there is no AI. As discussed above, it wasn't until the arrival of Big Data that many of the modern breakthroughs in AI application became possible.

Big Data refers to the vast volumes of information that our computers collect and produce. Since the internet revolution, Big Data has grown exponentially in size and scope and includes but is not limited to records of financial transactions, videos, emails, text messages, call records, medical records, publicly available government records, vast troves of information on online search and click patterns, and many other varied sources of data.

Because of the exponential growth in both Big Data as well as computer power, the potential for deep learning methods continues to grow at a blistering speed, as do the size and scope of the risks created by these systems as they scale enormously in their capabilities.

Risks with data

Risks with bias in training data for supervised learning systems

Broadly, there exist two risks with the data used with your AI system. Let's begin with the simpler of the two – issues with training data used in the supervised learning of an ML system.

Training data serves as the textbook that teaches a supervised learning system how to perform a specific task. Training data can be used in a number of different ways, all with the ultimate goal of increasing the accuracy of an AI system's predictions. It accomplishes this goal through the variables outlined in the data, and in identifying and categorizing these variables and evaluating their impact on an AI algorithm, data scientists are able to strengthen a supervised learning system through many rounds of subsequent adjustments. Consequently, the best data will be extremely rich in detail, which will allow it to continue improving your AI system even after hundreds of rounds of training cycles.

There are generally three risks associated with the use of training data. The first is poorly labeled and messy data.

You'll remember that the majority of training data will contain pairs of input information and corresponding labeled answers (i.e. in our

example earlier, this would be "bird" and "not bird"). In some fields, it will also have highly relevant tags, which will help your AI to make more accurate predictions.

The first risk is that your data set itself was poorly labeled due to human error and forgetfulness. For instance, perhaps you were using unpaid summer interns to tag your photos with "bird" and "not bird" and some of the labeling was done sloppily and includes false positives. More importantly, imagine a substantially more complex set of training data, and how much attention to detail would be required. Perhaps the underlying information wasn't properly compiled as well, meaning that some of the students never received the photos they were expected to be labeling. There are a myriad of ways in which human error or organizational issues can unintentionally skew data sets.

A common refrain, which will apply to a number of the examples we will be discussing, is the concept of "garbage in, garbage out". Remember that if data is the fuel of an AI system, if you put in messy, incomplete, or outright wrong data, the accuracy of your AI system's prediction models will suffer accordingly.

If issues with messy data are our first step into the world of data risk, the next would be a complete training data set, that is biased. To illustrate, let's once again begin with a simplistic example – in this case, text recognition.

Neural networks are now being created to suggest the topic of a sentence. Let's imagine two sentences:

"Down the first 11 rounds, heavyweight champ rallies to deliver a crushing KO in the 12th."

"New legislation means that online gambling is now sometimes legal in Kansas."

Most readers would agree that these two sentences fall fairly cut and dry into obvious high level buckets. The first would be categorized as "sports" and the second as "legal". But let's now imagine that these examples become a bit more complex, and are being tagged by someone who is required by their job to tag hundreds of these sentences per hour. Imagine the sentences now say:

"Down the first 11 rounds, heavyweight champ rallies to deliver a crushing KO in the 12th to an opponent who was no longer defending themselves and is still in intensive care 48 hours later – police investigation into foul play now underway."

"New legislation means that online gambling on college sports will be legal in Kansas with tax proceeds to provide scholarships for elite athletes to attend Kansas division 1 schools."

Here it becomes more difficult to agree on how you might tag these sentences as one category. Certainly the first is still about a sporting event, but it appears to be veering into a criminal investigation so could conceivably be tagged as "legal". The second sentence still involves the legality of online betting, but that discussion now could be viewed as secondary to the impact that legislation will have on college sports in Kansas.

These simple examples show the issues inherent with subjectivity in creation of training sets, and the difficulty in controlling for this bias.

Lastly, insufficient amounts of training data can also cause problems as a supervised learning system will not have sufficient data to make intelligent decisions. While this risk has decreased over time as AI systems become more sophisticated and consequently require less training data, it is still an important consideration.

Risks with data for unsupervised learning systems

Just as the potential for unsupervised learning systems is enormous in the law, the risks are equally large. Let's begin with a simple example before looking at broader implications and some real-world examples.

The law, especially in common law jurisdictions where so much of the legal logic supporting a decision is written down and available to a researcher, is an extraordinarily rich data set for machine learning systems, especially those with a strong basis in natural language processing. By simply uploading all published and unpublished case law from a given state in the last 100 years, our AI systems could give us correlations and probabilities for different sentencing verdicts that could potentially save overworked judges, clerks, attorneys and paralegals thousands of hours per year. This could have the benefit of both reducing the workload of the overburdened judicial system, while also reducing the burden shouldered by tax payers while in fact increasing the accuracy and thoroughness of judicial decision-making.

Unfortunately, the above would only be true if the data (in this case, the sum total of all case law over the past 100 years) was free of any bias. As we saw above – garbage in, garbage out. So just as a supervised learning system will run into issues where patterns of sloppy tagging or unintentional bias creep into the creation of the training data, so too will unsupervised learning systems fail to provide objectively accurate and fair predictions when the underlying data that is being input is rife with bias. There are numerous, well documented examples of bias in judicial decision-making.

While the legal profession has rightly steered away from fully automating decisions based on past case law, one need look no further than

the recent disasters in automated loan approval systems or AI hiring algorithms to understand the speed with which pernicious biases built upon decades of implicit sexism, racism, homophobia and any number of other biases hidden in past codified decisions will wildly skew the decisions of an AI system basing its decisions on that biased data.

The scope of this risk increases exponentially as we move away from the current era of narrow applications of artificial intelligence (AI software that can outperform a human at a very narrowly defined task such as winning a game of chess, flagging problematic provisions in contract review, tagging photos that include a car, etc.) into what is known as general artificial intelligence (AI software that can outperform a human at complex, multi-faceted tasks that also involve some degree of "intuition" or "common sense"). While the claims of the impending AI apocalypse are sensationalized and in many instances irresponsibly spread by the vendors of out of date legal technology, they do include a kernel of truth and should not be taken lightly.

On the other hand, law as a profession should not stand idly by as AI transforms other industries, professions, and cultural forces for the better. Chat bot technology being used to increase the speed and quality of service for major airlines should be adopted where possible to do the same for legal aid clinics. Sentiment analysis technology used to identify rogue actors inside of a large corporation should also be used by lawyers and researchers to unearth previously hidden trends of judicial bias. Lastly, natural language processing technology breakthroughs that are changing journalism and web search should also be available to attorneys no longer interested in slogging through hours of unproductive and inaccurate research.

Conclusion

The field of AI research, while many decades old, is undergoing a kind of renaissance through the confluence of several factors and appears to be only beginning to reach its full potential.

While we are likely many years away from even primitive forms of general AI, the current era of strong narrow AI systems is already dramatically streamlining and modernizing the practice of law in ways in which even a few years ago lawyers across the world told me were impossible. Within a few more years, these AI systems will have not only continued to improve by virtue of being machine learning systems, but will also have moved beyond the "early adopter" phase into mainstream usage.

I see the publication of this book as a wonderful sign that we are well on our way towards this very near future where AI provides a set of tools

that are both understood by the average lawyer but also employed by them to provide better, faster, and more accurate client service. The law is a wonderfully abundant source of data that if harnessed correctly and ethically can bring about almost unimaginably positive change for the average citizen's access to both legal information as well as affordable and high quality legal services.

TECHSHOW2020

Bridging the Justice Gap: AI and A2J

WRITTEN BY:

Chris Bentley, Kristen Sonday, Quinten Steenhuis, and Matthew Stubenberg

PRESENTERS:

Chris Bentley: @Chris_Bentley

Kristen Sonday: @kristensonday

Quinten Steenhuis: @QSteenhuis

Matthew Stubenberg: @MatthewLawTech

February 28, 2020

BRIDGING THE JUSTICE GAP: AI AND A2J

INTRODUCTION

Artificial intelligence, other types of technology, and new business approaches offer exciting possibilities to deliver justice to the many who do not now receive it. here are four perspectives that should help stimulate the discussion.

AI TO FIND LEGAL ISSUES
MATTHEW STUBENBERG

The way non profit legal service providers (LSP) find clients with legal issues is going to dramatically change in the future thanks to artificial intelligence and expert systems. Currently, LSPs obtain the majority of their clients through walk-ins, a call center, or online intake. Once the client starts the intake process it is largely up to them to identify their legal issue and give accurate facts related to their case. For example a client may call because they were evicted, an intake system determines if the LSP can help with that eviction case, and the case is passed on to an attorney. The process is slow, casts a wide net, and most importantly relies far too heavily on the client understanding their own legal needs.

The intake of the future will ask the client for basic personal identifiable information and search public and private databases to see if a client has additional legal issues. Some of these databases may be obvious, like searching Court records to see if they have an open case. However, there are thousands of other data sources which by themselves are not particularly useful but when combined can be powerful. For instance, some cities will allow anyone to look up a property's water bill online. By itself a water bill is not all that useful except to maybe determine if they are behind on their water bill which would carry potential liability. However, water usage can identify whether a house is occupied and by how many people. This could be an identifier in determining whether a client has been evicted, had a child, or split up with a partner.

Once the system is able to tap into all of these databases, the LSP can build artificial intelligence models based on prior clients. The system would review every eviction case the LSP has ever taken, adding in data from various outside databases, building a profile of what an eviction case looks like. Eventually the AI will be able to identify trends indicating a likelihood of certain legal issues. The system will be legal issue agnostic, allowing it to identify legal issues the client was unaware of. A client applying for assistance with unemployment benefits may be flagged as having an additional landlord tenant action, and a case eligible for expungement. Some LSPs are already experimenting with scaled down versions of this. For instance, the Maryland Volunteer Lawyers Service (MVLS) will check several databases to see if a client has eligible cases for expungement regardless of why the client came in.

Eventually, these systems will become sufficiently accurate and trusted that they will be used to find potential clients who have legal issues but never applied for help with the LSP. The system will be able to search everyone in a particular city to see who is about to face eviction. With some additional factors

to identify income levels, there will be an endless supply of potential clients identified as having a potential legal issue. In order to trim the list the LSP will tune the system to find those cases with the highest likelihood of winning, providing the most benefit while costing the least resources. The ability to identify "winnable" cases would be a combination of artificial intelligence built on past client data and subject matter experts. For example, the system would identify tenants who were evicted less than 30 days ago having a higher likelihood of winning while a subject matter expert would add in factors like a notoriously bad landlord.

The reliance on AI intake systems will change the makeup of the LSP's workforce. The LSP will become so good at handling the cases identified as easily winnable, they will develop streamlined systems to process these cases. The result will be a heavier reliance on paralegals and non attorney legal professionals who will do most of the legal work that would have today been carried about by an attorney. The natural result of this will be the hiring of fewer attorneys and more non attorney legal professionals.

While the number of clients helped will go up, this will not be good news for everyone. Funders will come to tie the raw number of people helped with the amount of funding. This in connection with the LSP's internal procedures being streamlined to help clients with winnable cases will mean clients who have difficult cases will find it harder to receive legal assistance. To the utilitarian the good will outweigh the bad. However, this will be a large departure from the mission of most legal service providers, helping the client not because they can be helped easily but because they need help in the first place.

AI FOR PRO BONO
KRISTEN SONDAY

As identified by the Legal Services Corporation, only about 86% of low income individuals receive adequate legal assistance, most often through legal services organizations as described above. In addition to these organizations, every lawyer in the U.S. has a professional responsibility to do 50 hours/pro bono per year on his or her own. That's *65 million hours* mean to help others. Yet, only about a third of attorneys actually hit their goal due to systemic complexities.

While lawyers alone cannot close the justice gap, studies repeatedly demonstrate the value of having legal assistance while navigating the judicial system. For example, in 2015, an estimated 1.8 million people appeared in the New York State courts without a lawyer. About 98% of tenants in eviction cases and 95% of parents in child support cases were unrepresented in these courts in 2013.

Across the board, about 37% of all immigrants and only 14% of detained immigrants go to court with lawyers on their side, according to a 2016 American Immigration Council (AIC) study. Those who are not detained but have attorneys are five times more likely to pursue relief and are nearly five times more likely to win their cases than those without. Detained immigrants, on the other hand, are 11 times more likely to pursue relief when they have legal counsel and are twice as likely to obtain relief than detained immigrants without counsel. For children and other vulnerable populations, having a lawyer is even more critical. Among unaccompanied children with representation, a Syracuse University analysis of

immigration court data shows that 73% are allowed to remain in the United States, whereas only 15% of unrepresented children are allowed to stay.

At Paladin, our focus is to leverage technology to increase pro bono and human resource capacity for legal service providers, and ultimately, broaden resources for the individual him or herself. Until technology and AI is advanced enough to identify and serve clients directly, we can intelligently route clients to the most well-aligned pro bono attorneys based on data, and start replicating basic casework, to increase the number of clients served.

In the current system, after intake, a client's case will be hand matched to an attorney within the legal service provider's office or emailed out to a volunteer panel to those with interest or known expertise to take it on. After a lengthy back and forth and both in which the client and volunteer are vetted, the match is made and case proceeds. The laborious nature of the matching process is not only timely and costly, but significantly limits the number of clients an organization can serve.

Through Paladin, we've started leveraging technology to categorize inbound cases across criteria like practice area, communities served, key skills required and acquired, and training offered (for the first time, consistently across referring organizations), to understand the full scope of inbound needs. On the attorney side, we use tech to more deeply understand prospective volunteers' backgrounds, interests, and skills to overlay them with case needs and facilitate better pro bono matching. This can we expanded to catalog criteria like attorneys' pro bono (and billable) trainings, pro bono case histories and outcomes, and special licensures to even better optimize for engagement and outcome.

In the future, we'll have even more data around case outcomes that will help inform which organization or specific attorney should take on a matter to deliver a positive outcome. We'll be able to automate a lot of the pro bono process up front to facilitate faster, more accurate paperwork, and ultimately serve more clients. This is just the beginning of how AI can assist both pro bono attorneys and the organizations that support them, but with every piece of data, the system becomes more intelligent in terms of what we can build to help more people.

If we want to meet our society's need for legal help at their most vulnerable times, and not only the needs of our wealthiest or largest corporations, we need to apply technology to the problem. One of the technologies that deserves more investment is the humble expert system. A lot of modern AI talk focuses on statistical learning approaches. Yet expert systems, which were part of the first wave of AI and date to the 1970s, have a lot of life left in them, especially when it comes to the law. See Susskind, Richard (1986). Expert Systems in Law: A Jurisprudential Approach to Artificial Intelligence and Legal Reasoning. Modern Law Review. 49 (2): 168–194.

The Legal Services Corporation survey showed that our current legal system is only helping meet about 14% of the needs of the poor. Legal Services Corporation, Justice Gap Report: Measuring the Civil Legal Needs of Low-income Americans. 2017. Available online at https://www.lsc.gov/media-center/publications/2017-justice-gap-report.

An astounding, overwhelming 86% of those needs are never met. Many more people in the large middle class who don't qualify for legal aid are still unable to hire a lawyer.

What does that mean? The biggest areas of need are in housing and family law. Right at the top of Maslow's hierarchy of needs. But the needs are diverse. This means tenants losing their homes, victims of domestic violence being kept in harm's way. Veterans losing benefits, persons with disabilities being left without financial support or in vulnerable situations.

I work in legal aid, and more resources for legal aid would certainly help, but increasing by a factor of 7 might not be realistic. Part of the solution might be more lawyers, or simply more pro bono. James D. Abrams and Ann Hancock – February 14, 2017. The Justice Gap and Pro Bono Legal. https://www.americanbar.org/groups/litigation/committees/commercial-business/spotlight/2017/justice-gap-pro-bono-legal/. But others have made compelling arguments that pro bono alone cannot be the solution. The problem is simply too vast. See, e.g., Gillian Hadfield. Why legal aid and pro bono can never solve the access to justice problem. (2016) https://gillianhadfield.com/2016/12/11/why-legal-aid-and-pro-bono-can-never-solve-the-access-to-justice-problem/. Helping everyone who currently can't afford a lawyer with one-on-one assistance would require a vast number of new lawyers, and still might not meet the affordability test.

What's more, we need to recognize that one-to-one legal assistance by an attorney might not be what every person wants or needs. If the rich are receiving the equivalent of tailored suits, perhaps some less well-off members of society are left unclothed for want of someone who can deliver a quality mass-manufactured shirt. Many people who receive no legal assistance right now need relatively simple legal advice or slightly customized forms.

Every week for years I have sat at Rosie's Place, a women's shelter in Boston, taking the cases that come in one at a time and offering the advice that I can. My role as an attorney at Greater Boston Legal Services focuses on housing law advice, but the questions that came in through Rosie's Place often are hugely varied. Yet, a few minutes of research, a kind ear, and sometimes a letter, a call, or a bit of advice are enough to leave the client satisfied and happy at the end of the interaction. As I participated in this

clinic over the years, I realized that one form that was really too long to be completed in these brief sessions could be automated in a way that would serve our clients better.

Evictions in Massachusetts are civil cases with many tenant protections. This has led to a long checkbox Answer form, with more than 180 questions to cover all of the more likely defenses and counterclaims a tenant might have. Greater Boston Legal Services runs a weekly clinic that generally takes about 4 hours to help a tenant through the forms. One-on-one, a lawyer still takes at least an hour to fill out the paperwork by hand.

In response to this long, complex form and clinic process, I created Massachusetts Defense for Eviction, or MADE (gbls.org/MADE), a guided online expert system that walks a tenant through the forms in as little as 20 to 30 minutes. That made it possible for me to use in our Rosie's Place clinics. And it's allowed us to cut down the length of our group clinics to an hour and a half without making the forms less protective of tenants' rights. Tenants can work at their own pace; the questions are translated into 5 languages and target a 6th grade reading level. Tenants also receive automated reminders of follow-up forms and court dates by text message.

MADE is now helping an average of 200 people a month respond to an eviction case in court. Almost all of those are tenants who GBLS would never have seen. By filing a response, each tenant gains at least two weeks to work out a solution with their landlord.

Tenants have used MADE at all hours of the night and in many different circumstances. One tenant literally leaves their home only with the help of an ambulance. A social worker with a cellphone was all it took to allow them to deliver their answer to court and access a reasonable accommodation for their disability. Another tenant, the first to use MADE to submit an online intake to GBLS, finished their Answer at 12:30 AM. We didn't even know who we were leaving unhelped before we had this new way to give them assistance.

Rohan Pavuluri, a Harvard College undergraduate student, joined Harvard Law professor Jim Greiner's class and learned about an odd catch-22 in bankruptcy: millions of Americans are too poor to declare bankruptcy. With the average bankruptcy costing more than $1,000, he helped found Upsolve (upsolve.org), a non-profit that uses technology to automate filling out most of the 100s of pages of bankruptcy forms on their own and allow debtors to declare bankruptcy for free. A lawyer comes in at various points to help answer questions and review the final forms before they are submitted to the bankruptcy court.

All across the legal space, there is room for expert systems like MADE and Upsolve to help expand access to justice. These systems take the knowledge embedded in a lawyer's years of practice and distill it into a series of questions and answers. By no means are expert systems free to create. They take painstaking work and validation before they can be unleashed on the world. Just like a good lawyer, an expert system needs to be kept up to date with changes in the law and respond to feedback to improve its delivery of information. But millions of Americans will benefit from the help of an expert system when they are participating in a mostly static but confusing to navigate area of law.

Expert systems are not risk free. Expert systems are qualitatively different from the old form books, or other lay law books aimed at non-attorneys. Those systems try to translate the law into plain text, teach a person what that law says, and then asks them to apply the law to their own facts. Expert systems can

guide a person to the correct application of the law in a realistic way that form books never can. They are both safer and more dangerous for this reason. Expert systems provide the appearance of certainty. Yet, they can also be tested in a rigorous, ongoing way that one-on-one legal assistance never can. Standards, with adequate disclaimers, mitigate this risk. Marc Lauritsen and Quinten Steenhuis. 2019. Substantive Legal Software Quality: A Gathering Storm?. In Proceedings of the Seventeenth International Conference on Artificial Intelligence and Law (ICAIL '19). ACM, New York, NY, USA, 52-62.

As at attorney at Greater Boston Legal Services, and recently as an independent consultant, I have tried to apply expert systems and technology to automate not only my own work, but to help my fellow attorneys. I've also opened up the door to train other attorneys in the basics of building their own expert systems. Some of those attorneys have been inside Greater Boston Legal Services, and some have joined virtual training sessions from around the world using the wonders of video conferencing. Anybody can learn to create an expert system; I have helped dozens of non-programmers achieve that goal with Docassemble (docassemble.org), the platform that powers both MADE and Upsolve. As this community grows, we all need to work together to share our best practices and ensure we continue to meet substantive quality standards.

As I said at the beginning of this essay, expert systems have existed since the 1970s. Why have they not taken over the law yet? Putting regulatory issues aside, the truth is that the old expert systems, locked up in a physical computer that was too expensive for a legal aid office to own, can't compare to the modern, web-based expert systems that every consumer can access on their smartphones. We also have a new generation of consumers who are familiar with computer-based wizards and web forms and have come to expect simple guided help on the web. We're poised for a chance at a very different wave of consumer-friendly legal help.

MADE has been embraced by the Supreme Judicial Court in regulatorily-cautious Massachusetts. See Ruth Adjartey v. Central Division of the Housing Court Department, 481 Mass. 830 n. 12 (2018). Upsolve too has seen success around the country. Yet regulatory change, including reducing the risk of running into unauthorized practice of law, will be an important part of any expert system revolution. Those changes might also trickle down into allowing the provision of more types of assistance by non-attorneys, including perhaps limited technicians who have the assistance of an expert system.

Artificial intelligence may be a bit of a misnomer when it comes to expert systems. I see their role as taking the very human intelligence of a lawyer, coaxing that knowledge into a form that covers all of the possible scenarios, and translating it into computer code. Yet the more we can repeat this process, the more easily we can deliver that very human intelligence at a scale that a human could never achieve on their own.

Can AI, other types of technology, and new business approaches bridge the justice gap between those who get 'justice' under the existing system, and those who don't? The answer is both No, and Yes.

No, if we think of that gap in terms of the existing legal system and its approach to resolving justice issues. The gap is simply too great. The structural challenges too many. For most people and businesses, the 'system' does not function effectively. It never will. Far less time should be spent on trying to adapt consumers and their issues to a system that will never work for them.

Yes, if we are prepared to rethink the approach to justice, begin with the consumer and what they need, and ask how to get them what they have a right to most effectively. It's time for a different approach. Where should we start?

The Justice Gap

There have been thousands of lawyers, judges, professionals and others who have spent countless hours to help those who have a right to justice get some measure of their right. Thank you to all of you for your individual and collective efforts. It is hard to imagine where we would be without those efforts. The fact is that the crisis is worse than ever. The system has ceased to function for the overwhelming majority of people and businesses.

An indication of the enormity of the challenge from a Canadian context is provided by two studies. First, the Access to Civil and Family Justice: A Roadmap for Change, October 2013, suggested (p. 4) that between 70 and 90% (citing American Studies) of those with legal problems requiring advice and intervention did not receive it from lawyers. Disturbingly, that same report suggested that those with legal support are between 17 and 1380% more likely to get a better result.

Then Chief Justice of Canada, the Honourable Beverley McLachlin, said in the Forward:

> "Let me start by saying that the problem of access to justice is not a new one. As long as justice has existed, there have been those who struggled to access it. But as Canadians celebrated the new millennium, it became clear that we were increasingly failing in our responsibility to provide a justice system that was accessible, responsive and citizen-focused. Reports told us that cost, delays, long trials, complex procedures and other barriers were making it impossible for more and more Canadians to exercise their legal rights."

The Law Society of Ontario, in its Technology Task Force: Update Report, Nov 2019, suggested that 88% of people's justiciable issues do not receive legal advice or support (p. 6). Lawyers serve 12% of the issues.

You can quibble with the statistics, but you cannot escape the enormity of the problem. It's time to rethink the approach.

The Starting Point - The Consumer

The starting point to a new approach is the consumer, the people and businesses who have a right to justice. The question is not how to get them some measure of what the existing system provides, but how to justly and most expeditiously resolve their issue. Consumers of legal services, like consumers of other services, are interested in the result. They are not as fascinated with the journey. They would like perfection of course - but that is rarely achieved in life. What consumers expect is a reasonable result that is consistent with the issues involved, the money or other principles at stake and the time available for the process. In other words, make the process fit the consumer.

Consumers are virtually unanimous in their evaluation of the existing justice system: it is too slow, too complex and too expensive. They have said this for decades, regardless of background, economic situation, or reason for needing justice. Whatever approach is taken to improve access to justice should start with the consumer and what they say about the existing approach. Address the heart of the problem. If you do not, it won't matter what you do.

To this end we need to simplify the process. Time, complexity, and cost have their roots in too many steps, forms, and procedures. We need to significantly and substantially reduce the forms, steps and procedures in order for any new initiative, including technology, to have the type of impact that it could/should. There is often substantial resistance to this.

Next Steps

Building a new approach is beyond the scope of this short piece. Several steps could be taken relatively easily and immediately. They do require that we stop thinking about every case being unique, because, at their heart, most of them aren't.

1. Choose high value issues: Choose several issues that occur frequently where the consequences for consumers from an adverse result is significant, for example eviction and family issues.

2. Break it down: Break down the issues and the approach to their resolution from the governing statute forward. Simplify. Reduce. Clarify.

3. Use Automated Processes: Chatbots or similar technology can be employed so that the various forms are completed expeditiously. My colleagues have spoken of easy and currently available ways to do this elsewhere in this paper. I would only add that the new approach envisions simpler forms with fewer steps.

4. Develop Databanks: Leveraging the power of AI, or other vehicles, develop databanks of answers to the key legal problems that will arise. These are constantly updated, and are available to all for free, online.

5. Triage: Use AI to triage cases early and often. They can predict issues, challenges, and likely outcome. Should AI be used to predict results? Everybody appreciates economy of effort. Knowing your case has little prospect of success might encourage you to seek other avenues, spend your time elsewhere, or prepare for the inevitable. Information is power for the consumer, and they should be able to make informed decisions should they choose to do so.

6. Develop ODR Opportunities: You can develop ODR opportunities for all who choose to use them. Governments will decide whether they must use them in certain circumstances.

Develop Data Maps

If you think more broadly, you could start to use the power of AI to develop data maps of certain issues and areas. Who are the litigants, where do they come from, what issues are most common, when do they arise, how are they resolved, what statutory wording is most problematic, etc. Much of this information might be available now. AI will enable you to develop a real time picture of how the system is working, and then restructure it to increase justice and decrease conflict.

Conclusion

AI in its various forms and other technologies, together with new business approaches, provide opportunities to address long-standing access to justice challenges. For any of them to be effective, however, we need a new way of thinking. Wrapping old procedures with new technology will not achieve substantial progress. First, we need to simplify the process, removing as many steps and forms as possible. Second, need to properly inform consumers of their rights and responsibilities. Third, we can triage cases early and often. Applying AI to a simplified approach will enable the continued acceleration of the simplification process.

The next step, which involves redesigning the system, begins with the areas of greatest consumer need. By analyzing the huge amounts of data available in justice, we can identify trends, challenges, issues. Then we can rewrite laws, or develop pathways of resolution that are consistent with consumer need, not simply existing practice. The future is promising. Are we prepared to embrace it?

Talking Heads: Using Video to Communicate with Clients

WRITTEN BY:

Temi Siyanbade
Mike Ko

PRESENTERS:
Temi Siyanbade: @toslegal
Mike Ko: @GroundworkTC

January 6, 2020

"If a picture is worth a thousand words, then a video is worth a million."
Troy Olson, Digital Advertising Manger &
Jeff Loquist, Search Marketing Manager

INTRODUCTION

Today's world has been transformed by the surge of technological advances. Where we once needed brick and mortar locations to house confidential conversations, we now use secure lines and PIN guarded video meeting rooms. Our world has gotten smaller and our reach wider.

For attorneys, this changes the paradigm from where we once worked. We are no longer limited to connecting with our clients in the traditional grand office with mahogany wood, and frankly, many of our clients are no longer interested in that grandeur. Our clients are instead interested in results and authenticity. One of the primary tools we can use to achieve these results and share our authenticity is video.

As you will see, video allows us to see, hear, and feel in a way no other medium can. Video can break down the walls that keep attorneys closed off from their clients and the rest of the world. As attorneys, we can harness this tool to change the way we engage with potential clients and enhance the way we serve current clients. Video can be used everywhere from your smartphone to the courtroom and beyond. And there is no catch. All we must do is explore.

The materials that follow will share some of the things to keep in mind as you begin or continue your video journey. Use them as a tool to evaluate where you can add video to your practice and wow your clients.

THE WONDERFUL WORLD OF VIDEO

One of the biggest challenges for attorneys wanting to incorporate more video technology into their law practice is deciding what exactly to do. In the legal profession, attorneys struggle with finding methods of merging our conservative industry with the freeform and creative nature of video. The truth is the options are endless. It seems as though people are discovering new, meaningful ways to incorporate this technology into their lives every day.

To be clear, using video in your law firm does not mean you must become a YouTube celebrity. On the other hand, it does not preclude becoming one either. Below is a list of eleven (11) different ways you could use video in your firm.

1. Introducing your firm story
2. Sharing client testimonials
3. Developing case studies
4. Answering frequently asked questions

5. Educating potential clients
6. Presenting evidence in a trial
7. Conferencing with clients
8. Sharing your life through vlogging
9. Hosting webinars
10. Marketing on social media
11. Training members of your team

Introducing Your Firm and Purpose

Using video to introduce your firm on your website allows potential clients to feel an instant connection to you. With one video, clients are allowed to hear your authentic voice beyond the words written on the page. You no longer blend in with the other lawyers in your city who have the same headlines on their websites. You become a real person with real solutions for their problems.

Sharing Client Testimonials

Potential clients also value hearing the voices of those who have worked with you before. As a result, video testimonials from past clients are golden opportunities to incorporate videos into your firm. These videos are the helpful reviews your potential clients are looking for as they try to choose an attorney. Allow your star clients to share their enthusiasm about working with you by sharing a video testimonial.

Developing case studies

Case studies provide two-fold benefits. For potential clients, these case studies allow them to evaluate whether your firm handles cases like the one they are thinking about bringing to you. For attorneys, on the other hand, case studies allow firms to capture the highlights of past matters they have handled. In both instances, clients and attorneys can obtain valuable information to help them going forward.

Responding to frequently asked questions

Are there little annoying questions clients and potential clients ask you over and over again? Here is the solution: record a series of short videos answering the questions you never want to explain again. Post them on your website and YouTube. When you engage a client or have someone reaching out to you regarding one of these questions, refer them to your list. Having a list like this allows you to show your experience, save time, and show your professionalism in one step. Additionally, depending on where you post these answers, you could potentially boost SEO results, but there will be more about this below.

Educating potential clients

One of the challenges our profession faces is overcoming the massive amount of misinformation available to our clients. One way to combat that challenge is by providing small snippets of educational content. Deciding how much education to provide is an essential question to ensure that you are not divulging more information than necessary to engage your audience. Typically, you want to give enough information and context to help your client understand their problem and to recognize that you can help them find a solution.

Presenting evidence in a trial

Trials can be very tedious for jurors. One way to break the monotony is to discover how to bring media like video into your trial. The words your client can't quite find to share their side of the story seem to gain expression through video. Furthermore, jurors watching the video are more likely to recall the scenes they watch over the statements they hear from witnesses. Of course, masterful attorneys know how to work both seamlessly together.

Video can also help you preserve evidence that may change over time. For example, injured plaintiffs can sometimes heal, and construction sites may be beautiful skyscrapers by the time your case goes to trial. Capturing video of the painful rehabilitation or of the condition of the worksite near the time of the accident can help jurors understand key portions of your case.

Conferencing with clients

A notable aspect of our culture today is pursuing convenience. When we discover ways to provide more comfort for our clients, we find more ways to add value. Providing the option of video conferencing with your clients increases the ways you can work with them. Your flexibility allows you to stand out as a more logical choice. Additionally, you can conduct more business in an environment comfortable for you.

Hosting webinars

Webinars are online presentations. Using this strategy allows you to take your community presentations into the digital world where you can connect with many more people who need what you have to give. With webinars as with community presentations, announcing your webinar to the right community is half the battle. If you position your event correctly, hosting a webinar is an excellent way to incorporate video and generate qualified leads for your firm.

Sharing your life through vlogging

Marketers know this to be true: your personality is your brand. There is no better way to showcase this personality than sharing snapshots of the day-to-day. For many of us, the notion of recording ourselves every day is daunting and perhaps even off-putting. However, for the outgoing personality, if you feel comfortable sharing, your potential clients could connect with a video vlog. This strategy is particularly helpful for individuals who serve a niche market with distinct lifestyles and interests. In these instances, clients relate to you on a personal level and trust that you understand their unique plights and are

better able to serve those needs. Additionally, you could focus your vlog on the particular shared interest that unites the community you hope to help.

Marketing on Social Media

Using short videos on social media platforms can increase your visibility before your audience without spending exuberant amounts of money. As you develop your advertising strategies, do not forget to comply with your local state board advertising rules. Unlike the other ideas mentioned above, this strategy may require state board approval depending on the ethic regulations of your jurisdiction.

Training Members of Your Team

Using video to train your organization does not necessarily directly connect to clients, but it can improve your firm efficiency and allow you to serve your clients better. The other great thing about using video to train team members is that you can build a library of resources to educate people as you bring them on board without recreating the wheel each time. Your firm receives the benefit of consistent training so that if life happens, other individuals can quickly learn your office's systems and procedures.

As you review the list above, begin to consider the ways you would feel most comfortable introducing video to your firm. What are the top three (3) ways you could use video today that aligns with your firm vision and your personality type? Do you have any other ideas? Keep track of each one and add it to the list above.

OVERCOMING OBSTACLES TO VIDEO CREATION

At this point, you have at least eleven ideas regarding ways you can incorporate video in your firm. However, you may still have some hesitations. The most common obstacles attorneys face regarding video creation are time, money, and resources. Most attorneys believe that they cannot introduce video into their firm without spending thousands of dollars, hiring fancy production companies, and purchasing expensive recording tools. These beliefs are incorrect. In this section, we will focus specifically on the idea that a lot of time and money is required. We will then explore various cost-effective options a firm can explore for bringing video into their offices.

Myths About Video Creation

Myth #1. You have to spend a lot of money to produce videos.

The truth is you can enter the video creation world at any budget. With camera phones becoming more sophisticated each release, we have some of the tools already. Every laptop produced today comes with a web camera built in. The real question is to what extent do you want to use video. Your purpose behind video creation as an attorney will determine your needs and, therefore, your budget.

Myth #2. You have to spend a lot of time to produce videos.

Once again, the truth is you can enter the video creation world without spending a ridiculous amount of time. Often what is needed is proper planning. It is not uncommon for video content creators to record numerous videos in one day. Of course, there is always room to go big and turn your video creations into large projects, and if you have the time and money to do so, you should feel free. On the other hand, successful video creation is not based solely on the cost of production. The content of the video is what makes the difference.

Making Video Work for You

Video creation is something that should be driven by intent. As an attorney, you should think critically about the purposes you want to achieve using video. By thinking about your goals, you can develop content aligned with the outcome you desire. For example, if your intention behind using video is to add authenticity to your brand, the type of video and the frequency of its development will vary from a firm using video to improve client relations.

When you identify your primary goals in using video, there are a few additional things to keep in mind.

Content matters.

Creating content topics that do not relate to your target audience will defeat the point of creating the content. Before recording anything, ask yourself, what is this audience interested in my practice area? What questions do they have? What are their pain points? How do they describe the problems that they are experiencing? That last question is critical for attorneys to answer. As a profession, lawyers are known for speaking in terms that the regular layman does not understand. Many times, lawyers can also fall victim to creating content that nonlawyers do not find relevant because of the way the content is shared. How you choose to title your videos and the way you address the topics you discuss have an impact on whether your potential clients understand that you can help them. For attorneys using video in court, again, you must ask yourself if your video conveys the message in a way the jury or judge understands. You must create content in the language your audience speaks.

Another consideration is how you can repurpose your content. If you create a video, feel free to share the same video in different spaces. One video can be created from a webinar and repurposed to share on YouTube, Facebook, LinkedIn, and Instagram. You can share various pieces at different times in different spaces to avoid becoming overwhelmed with content creation. It can be overwhelming to manage all the different kinds of social media options that are out there. As you begin using video as part of your law practice, it is ok to focus on the one or even two that you think will best reach your target audience.

The forum that you select impacts your reach and depth. For example, if you are trying to appeal to a younger millennial demographic, you want to think about sharing your video content on social media sites like Facebook and Instagram. If you are trying to attract new commercial clients, many may natural think that LinkedIn is the best place to focus your efforts. However, it doesn't necessarily have to be the only place. Decision makers at corporations or other attorneys who may refer cases to you are all regular people who consume regular social media as well.

Engagement is Key

When you create your videos, you want to share something that people will remember. Why they recognize your video is up to you too. For example, you can provide legal commentary or insight on current events. A huge pet peeve for attorneys everywhere is watching nonlawyers discuss the law on social media. Most lawyers see those conversations as annoyances. However, if these current events have broader implications that impact your practice area, these are opportunities to position yourself as a subject matter expert. (NOTE: Your local jurisdictional rules might preclude you from using terms like "expert"; however, you can use the word "analyst" because you are analyzing the law).

Also, be consistent. In many instances, consistency is an essential factor driving whether someone stands out as a thought-leader on a particular topic. If you create content that regularly shows you commenting on or engaging with a specific issue or subject, you assist your audience in associating you with that topic. Please note that you can pre-record many questions that a viewer finds relevant and release that content on a weekly or bi-weekly basis. The key is keeping it consistent — the small, steady steps matter.

GETTING STARTED

You are almost ready to start creating video content for your firm. The next step involves fine-tuning your content. As discussed above, the content you select matters.

Topic Selection

Here is a list of 10 potential topic starters to inspire you and help you develop your first ten (10) videos:

- The Anatomy of a ___
- 3 Lesson About ____
- ____: An Inside Look at ____
- What You Should Know About...
- The Truth About ____
- The Inside Story of
- The Consequences of____
- Want ____? Then Do This
- Why ___ (Famous brand or personality) Just _____ (action they took)
- ___ Mistakes that are Costing You Money

Another topic that performs well is providing "How To…" videos. These are excellent for answering questions that come up repeatedly. However, when creating how-to videos be sure to avoid giving away your own services. What you should provide guidance on should not undercut your own expertise. It should instead provide general insight regarding processes your audience might not understand.

Structure your conversations to show that you understand the situation, have experience with the situation, and are able to help the viewer navigate potential issues they haven't even thought of yet, in addition to the ones they are currently worried about. At the same time, you need to be mindful of what may constitute legal advice in your jurisdiction. It seems like a lot to manage on a video, but fortunately, you are already well experienced with these types of conversations, as you've likely had them numerous times before with other prospective clients in face to face conversations.

Tech Specs

When you decide to start creating video content, it is easy to become overwhelmed by the sheer number of options available when it comes to selecting the right tools for the trade. For someone just starting, it is critical to avoid purchasing overly complicated gadgets. Instead, start with the basics, and as you gain experience and develop more confidence, you can upgrade your tools.

What are the basic tools you need to get started?

- A camera
- A microphone
- Light
- A tripod, and
- video editing software.

These are the essential tools every video creator uses. However, their costs differ depending on the complexity of use desired. Here's a quick guide to various tools at different price points.

	Basic Budget-Friendly Options	Intermediate Options	Professional Creators Tools
Camera	• Your smartphone camera (FREE) • Your laptop web camera (FREE) • A Logitech C920 or C922 web camera ($50-$100)	• Canon EOS Rebel GII ($150) • GoPro Hero 7 or GoPro Hero 8 ($200-$400) • Canon EOS M6 ($300) • Panasonic Lumix G7 $500	• Canon M50 ($550) • Sony Alpha a6000 ($600) • Canon EOS 80D ($1500) • Polycom Video systems for Video Conferencing ($2000)

Microphone	• Your cellphone earpiece microphone • BOYA BY-M1 3.5mm lapel mic ($20) • Takstar SGC Shotgun Mic ($20)	• Rode Video Micro Shotgun Mic ($60) • Blue Yeti USB Mic ($100)	• Rode Wireless compact lapel mic System ($200) • Rode VideoMic Pro+ Shotgun Mic ($300)
Lights	• Natural Sunlight • Daylight lightbulbs • Bower Clip on Ring Light ($10)	• Sunpack Ring Lights ($40-$70) • Soft Box Lights from Amazon ($30-$60) • Studio FX240 Lighting Kit ($150) • Neewer 700W ($70)	• Neewer 8.5 x 10ft Kit ($250)
Tripods	• Stack of Books (FREE) • Amazon Tripods ($20)	• Victiv 72in ($50) • Neewer Profession 61 inches ($100)	• Manfrotto Befree Video Tripod ($200) • Manfrotto MVH502A ($500)
Video Editing Software	• iMovie for Macs • Windows Movie Maker for PC • HitFilm Express	• Wondershare Filmora ($40-$60) • Adobe Premiere Elements ($100)	• Final Cut Pro for Mac ($300) • Adobe Premiere Pro

Finally, you always have the option to outsource your video creation. If you have the budget for it, find a professional videographer in your local community. Review their work, discuss your vision and see if they can help you produce videos that reflect your firm's brand and mission.

Lights, Camera, Action! 5 Tips to On-Camera Video Success

1. When recording, select a non-distracting environment that allows the focus to remain on the speaker or the object. Also, you should record in a well-lit area. Lighting makes an incredible difference when it comes to creating quality videos.

2. Speak slowly and confidently in a conversational tone. Attorneys are often perceived to be standoffish and impersonal, but through video, you can dispel that myth and show your personality as discuss topics that matter to you.

3. Keep the camera at eye-level. A common mistake is setting the camera up below or above. Use these angles only if seeking a particular cinematic effect for a temporary period. If you are trying a simple setup, keep the camera at eye-level. This position creates a quality frame around your face and subconsciously allows your audience to develop a sense of trust because they can see directly into your eyes.

4. Pay attention to your personal decorum. Even if you are in a more relaxed setting, as an attorney appearing before clients and potential clients, you must maintain a level of professionalism. This

professional outlook means keeping your appearance neat and avoiding things like chewing gum on camera. Feel free to be human and show emotion but keep your purpose at the forefront of your mind.

5. Keep your videos short. There is no hard and fast rule about how long a video should be. Video creators can create engaging pieces at varying lengths. What is essential is not exhausting your audience's attention. If you are addressing a simple topic, spend 3-5 minutes. If you're explaining something a bit more complicated, you can record longer videos. It may, however, be more beneficial to divide your explanation into segments. Breaking your videos into parts helps you as a creator recognize the significant points of your explanation and helps you manage your viewers' attention span more intentionally.

Video Resources Toolkit

Here is a supplementary list of some of the other popular tools for using video in your law office.

Zoom
Zoom is a video conferencing tool used to help connect people online. Zoom can be implemented in your office to help you host client meetings and consultations from the comfort of your home. Zoom offers many integrations allowing users to schedule online meetings with clients quickly. When it comes to cost, Zoom offers a free limited plan. Additional access to more features is available for as low as $14.99 per month. Visit their site here: https://zoom.us/ent?zcid=2582.

Loom
Loom is a free screen and video recording software that is currently gaining traction in the video creation market. Creating videos with Loom is extremely simple and can be completed and shared within minutes. Many users are using Loom to provide a personal touch when corresponding with clients. The free Loom account allows video creators to record as many videos as they desire with access to twenty-five of those videos for sharing. If you would like unlimited access to your videos, you can upgrade to the pro plan which is $8 a month if paid annually or $10 for month-to-month transactions. Website: https://www.loom.com/.

Ethical Considerations

Confidentiality

As you create content, be sure to remember your confidentiality rules. Do not disclose confidential information about your cases in an attempt to gain traction. Keep in mind that the scope of confidentiality exceeds the scope of attorney-client privilege. In other words, there may be content that is not covered by attorney-client privilege but is covered by confidentiality. In such cases, err on the side of caution and keep details shared to a minimum. Rule 1.6 (a) governs the confidentiality of information between attorneys and clients or potential clients, stating, "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized

to carry out the representation..." Use your discretion when making decisions about any client information.

Attorney Advertising

When creating video content, keep in mind your state's rules concerning attorney advertisements. Many states require the state board to approve direct advertising before publishing. In some areas, what is the definition of advertising is broad, whereas there are other jurisdictions where attorney advertising is narrowly defined.

Attorney-Client Relationships

By using video, you will gain access to a broader audience. Be careful to provide value without providing advice or leading your audience to believe that you are their lawyer. Use disclaimers on the various platforms where you will share your videos will add another layer of protection.

Conclusion

Creating video content to connect and communicate with clients has the possibility to transform your practice. Like all great things, it requires risk and commitment. With the right mindset and dedication, you can engage audiences and serve your clients like never before.

Power in Your Palm: Make Your Practice Smartphone Friendly

WRITTEN BY:

Catherine Sanders Reach,
Erin Gerstenzang, Laura O'Bryan

PRESENTERS:
Erin Gerstenzang: @EHGLawFirm
Laura O'Bryan: @virtuallawlady

February 6, 2020

WHY BE PHONE FRIENDLY?

Whether we like it or not, the future of consumer legal services will be defined by convenience and affordability.

Price has, and always will be one of the primary factors clients consider when choosing an attorney. What has changed in the modern world is the currency of convenience. More than ever, today's consumers will choose products and services based on convenience.

Think about how much privacy we are willing to sacrifice for convenience. If you are willing to trade you privacy for convenience, you may choose to invite Alexa in your home. The convenience of having Alexa play music or tell you the weather in the most easy-to-use way possible. Convenience is king in the modern technology-enabled world.

> In the developed nations of the 21st century, convenience — that is, more efficient and easier ways of doing personal tasks — has emerged as perhaps the most powerful force shaping our individual lives and our economies. This is particularly true in America, where, despite all the paeans to freedom and individuality, one sometimes wonders whether convenience is in fact the supreme value.
>
> As Evan Williams, a co-founder of Twitter, recently put it, "Convenience decides everything." Convenience seems to make our decisions for us, trumping what we like to imagine are our true preferences. (I prefer to brew my coffee, but Starbucks instant is so convenient I hardly ever do what I "prefer.") Easy is better, easiest is best.

The Tyranny of Convenience, by Tim Wu, (Feb 2018)
https://www.nytimes.com/2018/02/16/opinion/sunday/tyranny-convenience.html?auth=login-email&login=email

For the forward-thinking lawyer, there are many opportunities to compete not just on skill and experience, but also on convenience to clients. For lawyers, this is a new way of thinking about the attorney-client relationship.

As many early-adopter-lawyers are finding, technology can make handling a legal matter not only easier for clients, but also for the practitioner.

> Lawyers seeking traditional lawyer fees and salaries are missing a great opportunity. Reimagining a legal practice can address the representation gap and enable a visionary, flexible lawyer to build and grow a thriving practice. Key to this reimagining is, as one might anticipate, leveraging technology to provide efficient and cost-effective services and embracing limited scope representation and unbundled legal services. Add to that flexibility about physical location and venue, with an agile and consumer-friendly website, and you have a recipe for a vibrant practice.

The Flexible Lawyer: Promoting Agility and Innovation, by Roberta L. Tepper (Jan 2019)
https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2019/january-february/JF2019Tepper/

Most lawyers don't spend much time considering their firm's 'client experience' beyond looking at case results and outcomes. But there are other meaningful metrics to pay attention to when it comes to measuring the value of legal services.

Malcolm Gladwell's book, *Blink*, offers us insights into why we should start paying more attention to what our clients *actually* value, and less time focusing on what we *think* they value. In his book, Gladwell discusses research that examined lawsuit trends in the medical field to identify which doctors would be most susceptible to malpractice claims. The expectation was that incompetent doctors would have more claims filed against them.

On the contrary, the data revealed that the patient's *experience* with the doctor was a much stronger predictor of malpractice claims. Patients who reported that they were "rushed, ignored or treated poorly" were far more likely to file suit, regardless of the doctor's competence.

There is a valuable lesson for lawyers here. Like doctors, lawyers are brought in to solve difficult, and sometimes impossible problems for our clients. Lawyers cannot guarantee favorable outcomes, and there are many factors out of the lawyer's control.

But lawyers can orchestrate a client experience that protects their clients from feeling rushed, ignored or treated poorly. And Gladwell's discussion in *Blink* goes so far to suggest that a good patient (client) experience is what the patient (client) values most.

One of the ways to dramatically improve the client experience in most firms is by finding ways to work with clients in a smartphone-friendly way.

As mentioned earlier, embracing technology and convenience for the consumer experience is also extremely valuable for the practitioner, their well-being and satisfaction with the practice of law.

Attorneys who embrace technology and smart phone friendly tools become more mobile, more organized and more valuable to clients which in turn makes them more profitable, efficient and happier with their practice. Lawyers can service clients in a less cumbersome way than we all learned in school. Consumers are pushing the need to embrace the 21st century and those attorneys on the forefront of this movement are benefiting from a previously untapped market by being simultaneously more accessible and spending fewer hours, either themselves or their staff, doing administrative tasks that can be handled by tech. Win win.

WHERE TO START

One of the places to start redesigning the client experience is by making a list of all of the touchpoints your client has with you and your firm.

When clients first contact the office how do they reach out- by phone, website submission, email? Can they schedule appointments online? Do they get a text/email/return call after reaching out? Can they hire you online or do they need to engage your services in person? What are the channels of

communication with your office? Can your clients text you or your team? Do you use a client portal? Can they make payments online?

Lawyers should think critically about their client's journey to find opportunities to make their experience easier and more convenient.

If you are not sure where to start, look for simple technologies that help streamline office workflow and improve client experience. Two of our favorite examples for people who are at the beginning of their technology journey are online schedulers and electronic signatures!

Let clients schedule with you online.

One great example of what forward- thinking businesses do is provide their customers the opportunity to schedule appointments online.

Tools like Calendly, Acuity and Client Rock integrate with most online calendars and will allow clients to book when the lawyer is available. Clients cannot see the lawyer's calendar, but rather they only see time slots that she has preselected for client appointments — e.g., Monday-Thursday between 2 p.m. and 5 p.m.

Sign documents electronically.

E-signature tools bring ease and convenience to the first formal exchange the lawyer will have with her new client — signing the fee agreement.

Working with a law firm should be simple. Few things are as simple as signing documents with e-signatures. They make for a great client experience and simplify the process for law firms.

Think about how inconvenient it would be if a business asked customers to print out a document, sign it, scan it, and email it back. Or worse, think about a business that required customers to physically appear to sign paperwork — in person — in real life!

These types of tasks seem onerous and outdated in the modern world. Life is busier than ever. Clients do not want to interrupt a hectic day to sign paperwork.

Not only are e-signatures great for clients, but they are great for lawyers too. E-signatures will help keep lawyers organized and paperless. Contracts will all be saved where they cannot be lost, and everyone automatically receives a copy. E-signatures support a streamlined workflow that makes the onboarding process easy, predictable, and incredibly efficient.

WHAT DOES SMART PHONE FRIENDLY LOOK LIKE?

One great way to imagine how law firms can become more friendly is to look at some of the free tools law firms make available to the public. Although these services are free, it does not take a great deal of imagination to see how these types of smartphone-friendly services could also be used to help paying clients!

- Hello Divorce https://hellodivorce.com/ A California based divorce tool with both online and app interface. Clients can choose from DIY options, tech driven document assembly assistance to legal coaching and strategy.
- Orbit Wills https://www.orbitwills.com/ offers an alternative to online form sites for simple estate planning in Washington state. This virtual platform provides attorney drafted documents based on intake questionnaires without the need for the consumer to struggle through a fill in the blank option.
- Madaan Law https://madaanlaw.com/virtual-wills-and-trusts/. This California-based law firm primarily works in estate planning and business law. One main focus they've created is a platform for virtual wills and trusts allowing their clients to work with them remotely without having to come in to the office.
- My Modern Law https://mymodernlaw.com/ This is a good example from a smaller firm -- an Arizona divorce law firm. This site offers a number of free tools to the public, including a child support calculator and a spousal maintenance estimator.
- Rosen Law Firm https://www.rosen.com/ A North Carolina family law firm, this site is rich with content, forms, tools, and more related to a broad range of family law issues. While many of the forms and tools on Rosen's site are free for use, the firm also offers a DIY divorce product for just $199.
- Chi City Legal https://chicitylegal.com/forms/ Chi City Legal is a Chicago firm that represents landlords. The site offers a number of free forms that landlords can use, such as free eviction notice. Their use of automation tools, including Zapier, help streamline tasks to make them more efficient.
- Palace Law https://www.palacelaw.com/ Palace Law is a worker's compensation firms in Washington State. They offer a large volume of free PDF forms on their site for free use.
- Robot Lawyer Lisa The website starts with this assertion: "If you need to create your very own confidentiality agreement or NDA, without the need for expensive human lawyers, LISA can help…". The LISA bot is designed to represent both sides, and her machine impartiality "means she can save both sides time and money". The end result of LISA's negotiation is to generate a legally binding NDA. The site lists Monsanto and Navada as "clients". This project is the combined efforts of the AI platform of Neota Logic, Adam Duthie of Duthie & Co LLP, and Chrissie Lightfoot, of AI Tech Support Ltd.
- DoNotPay - This chatbot dubbed "robot lawyer" started out as a way for consumers in the US and the UK to get out of paying parking tickets. It was created by non-lawyer Josh Browder two years ago. In July of 2017 Browder announces that he was pushing out 1,000s new bots to help with transactional legal problems. Simply go to the site and ask a legal question or describe a legal problem and you will be directed to the correct bot, which asks a series of questions and then generates a document and send the users a file. What types of issues can DoNotPay help with? Landlord-tenant, disputing credit card charges, workplace discrimination, terms of service, flight refunds, immigration issues, etc. Discrete issues that people sometimes have a hard time solving for themselves.
- Off the record - "Another thing that we have built into the app that is built in to try to save time… I'm a family law attorney. Every day it seems like that we get a call from a client who says, "Hey, I know I owe you a verification page signed and back to you. I don't have a scanner handy. I don't have a fax machine close. Is there an easy way for me to get this back to you?" Before the

app, they might take a photo with their phone and just send that to us via email and then we would have to process it that way. With our app, they now have the ability to take a photo using our scanner feature and that uploads as a PDF directly to their document folder in CLIO. And so, there's easier process to the mobility of the client and the way that they engage with our office if we just implement this tool." https://www.thelawsomepodcast.com/podcast/ep-44-law-firm-apps-does-your-law-firm-need-an-app/?utm_source=Directory

WHAT ARE THE TASKS AND TOOLS THAT TECH CAN HELP YOU DO?

How can you let tech help you? What are some options to explore?

Chatbots

Motion.ai
https://www.motion.ai/
According to their website: "we're bringing chatbots to the masses and enabling businesses to better engage, convert, close and delight their customers across every channel at scale." Motion.ai's recent acquisition by Hubspot indicates that this idea has potential.

Chatfuel
https://chatfuel.com/
Their tagline: "Build a Facebook bot with no coding." Law firms have built bots to correspond with clients via Facebook messenger, which gets the conversation started even when a human is not available.

Docubot
http://aux.ai/
With example bots for legal intake, expungement and legal wellness, 1Law's Docubot wants to help lawyers tap the estimated $45 billion dollar legal services market for "people who have too much for pro bono work, but can't afford private legal services".

Form.one
http://form.one/
Form.one is a collaborative platform to build, deploy, and monitor intelligent bots for your business.

DIY Document Creation/Forms

Doc Assemble
https://docassemble.org/
A free, open-source expert system for guided interviews and document assembly. In addition to the web interface it allows for interviews via SMS (text messages). Also collect documents, get signatures and much more.

Gravity Forms
https://www.gravityforms.com/ and Gravity Wiz/Perks https://gravitywiz.com/
Gravity Forms is a WordPress plugin that lets someone with no coding skills develop a custom contact form - but it doesn't have to stop there. What questions do you need to ask a client? Ask them through

Gravity Forms. Then leverage the myriad of integrations with tools like Zapier, MailChimp, Trello and many more to make the information you gathered actionable.

Typeform
https://www.typeform.com/
Typeform's website says: "engage your audience with conversational forms & surveys — and get more data.".

DraftOnce
http://draftonce.com/
DraftOnce lets users take their own documents, in any format, upload them to the DraftOnce engine and convert them to form templates. Users can then invite clients to provide information in a easy online interview format with contextual help to generate a document the attorney can review, finalize and return to the client.

HotDocs Cloud Services
https://www.hotdocs.com/products/cloud-services
You are probably familiar with HotDocs, but did you know they have added a client facing service? HotDocs Cloud Services enables you to embed HotDocs interviews (wizard-like sequences of data-gathering forms) in your own web pages or business applications and to generate virtually error-free, transactional documents (contracts, agreements, wills, trusts, etc.) on a subscription basis.

Client Portals

More often than not documents fly fast and furious between lawyers and clients. Many of these documents are sent via email. Email is an imperfect way to transmit documents as it creates copies of the document on both the sender and recipient's local machine and servers. It can lead to problems with version control, "lost" documents and general confusion. An option is to provide secure online access to your clients to access their documents. The attorney uploads the documents she wants to share with the client and the client accesses them via secure login. The benefit to the client includes having all the documents for a matter in a single repository, with the attorney taking responsibility for document management. The client does not have to wait for the attorney to email a document, and can access when it convenient to him. The attorney can update the document and replace it, thus eliminating concerns over versions. There are many, many ways for attorneys to incorporate a secure client document repository. Options include: Clio, PracticePanther, NetDocuments, DirectLaw. There are many options and many price points, but the high availability of these products suggest that online client document repositories offer logical benefit to clients, and their attorneys. Read Jim Calloway's article for on "Email Attachments vs. Client Portals" to get further proof that portals offer security and better client service.

Online Scheduling

Scheduling meetings is often more of an art than a science. Calendars must be consulted; changes occur at the last minute, delays occur. Online appointment calendars can help with some of these

hurdles. Do you offer free consultations? Make it easy for potential clients to take the next step by instantly scheduling an appointment online. Make it easy for existing clients to schedule some time to meet. Looking at the travel industry, your clients are used to being empowered by easy-to-use online booking for flights, hotel, and flights. Online scheduling and appointment booking products like Accuity, Bookings, and Calendly synchronize with your Outlook or Google calendar and display free/busy time to your clients and prospective clients. By simply clicking on a button from your website or secure portal a client can select a free time, and set up an appointment. Some offer the ability to send automated appointment reminders to the clients, others let you reschedule and automatically send out the re-scheduling information. Most of the full function vendors provide a free trial, though they do charge a monthly fee to continue.

- Calend.ly (https://calendly.com/) (free or starts at $8 user/month for premium), Acuity Scheduling (https://acuityscheduling.com) (starting at $15/mo) and Client Rock (https://clientrock.com) make it easy to connect your Outlook or Google calendar to show free/busy times when you send the link via email or put on your website to let people "self help" and book appointments without the friction of calling the firm and getting a voicemail or a distracted receptionist. These tools will also send meeting reminders and cancellations. A similar tool, Bookings, comes with Office 365 https://products.office.com/en-us/business/scheduling-and-booking-app

- Not quite ready to have automated bookings? Consider a virtual assistant through X.ai https://x.ai/ . You can work with "Amy" or "Andrew" and let them schedule meetings with your potential clients. The team version at $40 a month gives Amy and Andrew their own company email addresses and syncs them with all internal calendars. As you work with Amy and Andrew they get smarter and learn your preferences, since Amy and Andrew are artificial intelligence based bots. Don't miss an opportunity because you delayed setting up an appointment - let Amy and Andrew handle it for you.

Electronic Signatures

You probably ask your clients to sign documents. Depending on your practice area, lots of documents. In addition to signatures those documents also require certain fields to be filled, initialed, and signed. For some transactions this could include multiple signers in a certain order. The tools, until recently, employed to accomplish this workflow may have included traditional mail, email, scanning, faxing – only to find that someone forgot to initial a document and it must go out again. Enter the e-signature solutions. New tools on the market make this process much easier for your clients – and you – to get the job done. Companies like Echosign, DocuSign and RightSignature make it easy to upload documents, mark required fields and signature blocks, send to signers and reviewers, and ultimately allowing clients to "sign" the document with a mouse or stylus similar to signing for an express package from UPS or FedEx. These companies are developing apps for iPad-like devices, as well as iPhones. As with any technology used to share confidential information make sure you are comfortable with the security and privacy that the vendor has in place, and consider regulatory requirements for certain types of documents. That said, many lawyers have found ways to make these services work for them and their clients.

The federal law allowing electronic signatures is 15 USC Chapter 96 - ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE and the subsequent uniform law is UETA (Uniform Electronic

Transactions Act 1999). For a legal perspective on using electronic signatures see the article from Attorney's Title Guaranty Fund on Electronic Signatures and the article "Is an Esignature Legally Enforceable" from Bellas Wachowski.

Lawyers draft documents electronically, share them electronically, but when it comes time to sign – paper enters the workstream. SaaS-based electronic signature solutions offer a solution.

- HelloSign https://www.hellosign.com
- AdobeSign (https://acrobat.adobe.com/us/en/sign.html)
- Docusign (http://www.docusign.com/)
- RightSignature (http://www.rightsignature.com/)
- E-Signing with Adobe Acrobat DC

Requesting (or applying) an electronic signature is a great way to reduce reliance on paper, toner, and postage. It can help speed up acquiring signatures on documents like engagement agreements, contracts, and closing letters. The market is full of technology tools to make sending, signing, receiving and tracking electronic signatures easy, including RightSignature, Docusign, HelloSign, and Zoho Sign. Some of these tools are built into subscriptions you already have, like Adobe Acrobat DC. Are you taking advantage of all these tools have to offer?
One significant benefit in adopting Adobe Acrobat DC or Adobe Acrobat DC Pro is that, unlike the Acrobat 2017 software, it comes with a subscription to Adobe Sign, which has electronic signature features baked into the product. You can sign or request a signature from within the Acrobat software or from a browser. Acrobat DC is $13 a month and Pro DC is $15 a month. If you haven't upgraded Acrobat in some time keep in mind that older versions of the desktop software are no longer supported, including XI, which can expose your firm to malware.

Create a Transparent Image of Your Signature

While most of the electronic signature tools will let you draw or type your name in a document, you can also apply your actual signature. You can create an image file of your signature by signing a piece of paper, scanning it, making the image transparent and saving it. Then you can upload it and save it in Adobe Acrobat or insert it into a document. The reason to add transparency to the image is so that the signature image does not overwrite existing text on the document and appears as if you had printed the document and signed it with a pen. There are many graphic editing tools to help with this process including Paint in Windows 10, photo editors like Photoshop, online photo editors like LunaPic and Mac users can use Preview. For lawyers who are unfamiliar with graphic editing tools, Microsoft PowerPoint will suffice. To learn how to use a scanner, Microsoft's Snip tool and PowerPoint and Adobe Acrobat to create a transparent signature follow this video tutorial (note: the scanned PDF needs to be OCRed or made text searchable for this to work).

Sending a Document for Signature

In Adobe Acrobat DC or DC Pro open a document that you want to get signed, such as a fee agreement. Click the button for "Fill and Sign" and you will first determine "Who Needs To Fill And Sign First? Me Or Others?". If you need to sign the document first type any information you need to into the document,

such as date, address, etc. using the "Add Text" tool in the "Fill and Sign" toolbar that will appear. When you want to add your signature click on "Sign" in the toolbar. Choose between your initials or your signature. For your full signature, you will be given a choice to use a "signature" font, draw your signature with the mouse (or stylus on a tablet or touch screen), or insert an image (your transparent scanned signature created from the instructions above). Then in the toolbar click "Next" and choose "Request Signatures" and the "Get Started".

Now you can prepare your document for the recipient's signature and send it out. At the bottom of the screen click on "More Options". The next screen lets you choose what order the recipients must sign (if order is important), add the recipient's email, an email message, add additional documents, and add options like password protection and reminders. After selecting your options click "Next" to specify where to fill and sign. You can drag and drop text fields, signature boxes, checkboxes, date boxes, and more. At the very bottom of the lower right column choose "Advanced Options" to see all the field options. You can also save this to your document library to make it a re-usable template – excellent for frequently used forms.

Once you have added all the fields in the document click "Send". You will receive a copy of the document in your email. Your client(s) will also receive the document with instructions on how to fill it out. The client can easily fill it out and sign in on her computer or smartphone, with no additional software or apps required!

Once the document has been signed you will get an email with the signed document attached, as will the client. The signed document will show up as a certified document with a blue bar indicating that it was certified by Verisign. This lets you know that this is the official, final copy of the document and it cannot be edited or modified. The last page of the document has an appended audit report that includes time and date stamps for each stage of the workflow cycle with IP addresses and a transaction ID.

Signing a Document You Have Received

If someone sends you a document to sign, but it is a Word "form" or a non-fillable or image PDF you can still use Fill and Sign to fill it and send it back. Just convert the document to PDF (if in Word), open the document in Adobe Acrobat DC or DC Pro and click "Fill and Sign" and then fill in any form fields with the "Add Text" tool in the toolbar and insert your signature. Then click "Next". In the next step, instead of requesting signatures you can create a link to send to the document to the requestor, which will place the document in your Adobe Document Cloud. Or you can send a copy as an attachment. Either way, the document is converted to read-only so that once you apply your signature the document cannot be modified.

Tracking Documents Sent for Signature

If you use Fill and Sign a lot you will want to track what has been sent for signature. Log in to Adobe Sign using the same login as your Adobe account and you can see all the documents sent or received for signature, including what is in draft, what is waiting on you to sign, what is still awaiting signature, your document templates and more. You can filter by name, company, or document status. You can sort by date and, of course, search through the documents. You can also add notes about a document and send reminders to yourself or the recipient if you didn't set that up when you sent it out. You can also cancel a document sent out for signature if you realize you made an error.

Outlook Toolbar

Want to be able to initiate this workflow right from Microsoft Outlook? If you have MS Outlook 2016/2019 or MS Office 365 you get a few Acrobat tools in the Ribbon when you install Adobe Acrobat DC or DC Pro. If you receive a document via email the Adobe Sign tools in the Ribbon appear so you can initiate filling and signing from within MS Outlook. Sending a document for signature? Click "Send for Signature" in an outbound email with an attachment to easily launch the workflow from within Outlook. If you receive a document or an email confirmation of a document you have sent for signature the toolbar shows "Agreement Status" in the Adobe Sign toolbar to track recent activity. Want to see this in action? See the video archive of the CPM Learning Objectives: Outlook Tips and Add-Ons (skip to 53:52 if you just want to see this function).

Conclusion

Using electronic signatures will add efficiency to your office workflows and reduce bottlenecks caused by delays in getting signatures. Once you get the basic skills down you can think of other ways to take advantage of these tools, like handing a client a tablet with a document displayed to sign it and reduce paper and the need to scan it later. If you already have Adobe Acrobat DC or DC Pro you already have the tools you need to get started!

Communication and Collaboration

Video Conferencing/Web Meetings

Communicating via asynchronous technology like email can sometimes result in a perpetual and time consuming loop of correspondence. When a situation needs to be resolved with discussion or language in a document needs to be worked out and finalized sometimes taking an in-person meeting is the quickest way to achieve the end. However, getting together for a face-to-face meeting can be difficult, especially when it includes travel – even just across town. Having a live meeting can be productive when trying to come to conclusions and make decisions. A phone call will sometimes suffice, but to collaborate on a document or give a presentation it is extremely limiting. Enter web conferencing tools. Web conferencing tools provide the visual stimulation and human elements of a live meeting, allowing attendees to make decisions and communicate in real time. There are many web conferencing services at many price points. Free services like Zoom, Whereby and Join.me offer a lot of functionality, Other low cost services or upgrades to the free services mentioned before, add whiteboards, recording, and chat to the offerings. More expansive and expensive options, like Webex, GotoMeeting, and Adobe Connect, add videoconferencing and voice-over-IP. If you just need to see "eye to eye" Skype for Business, Google Hangouts and ooVoo will fill that need and all you (and your client) need is high speed internet and computer or phone camera. Most of these services offer trials so next time you need to really connect with a client try scheduling a virtual meeting.

Join.me
From LogMeIn, Inc. comes Join.me (https://join.me) is a super simple screensharing tool, which allows you to quickly share your screen with up to 250 people at once. The free version provides screensharing for 10, chat, VoiP calling. To share your screen simply go to the website, and click "Share". You will need to download an .exe file and once that is done you will see the control panel and a 9 digit number. Then invite anyone to also go to join.me, but instruct them to enter the 9 digit number where it says "join". The participants do not need to download anything, and even though it is Flash based there are apps for iPhone, iPad and Android – and they work! The business version costs $300/year and includes presenter

swap, meeting scheduler, meeting lock, user management, international conference lines, video chat and more. Join.me uses 256 bit SSL encryption and does not leave traces on the shared machine or recipients. This is a really useful, fast, and free tool for showing someone your screen, or your face, in an instant.

Zoom.us (http://zoom.us)

Video conferencing is a great way to connect with one or more people. In the past that usually you had to choose between a low end consumer product such as Skype or Google hangouts or professional level services with high costs such as GoToMeeting with HD Faces, Ciscso TelePresence or BlueJean Meetings. That has changed with the introduction of video conferencing from Zoom. Zoom was founded in 2011 by experienced leaders and engineers from Cisco and WebEx.
Zoom works on Windows, Mac, iOS and Android providing mobile collaboration and cloud meetings with simplicity and ease of use. Zoom provides a free account that allows you to host up to 50 participants for video conferences and desktop sharing sessions of up to 40 minutes. $14.99 per month gets you unlimited meeting length. You can record video and audio as well.

Online Payments

Clients want an option to pay online instead of in person. Options include LawPay, Stripe, PayPal where clients can pay fees by bank draft or credit/debit card.

Document Review

Document Review anywhere with tools and apps with Google Docs, Good Reader (Works with Dropbox, Documents to Go, Dropbox, and EzPDF Reader.

Reminders/Tasks/Collaboration

Phone apps include Apple reminders, Asana, Trello, and Missive

Photos

Turn photos in to PDFs with apps like Turboscan.

Time Tracking

Practice Management Apps

Practice Management tools like Practice Panther, Clio, Client Rock, Lawmatics either have mobile apps or are smart phone friendly to manage cases and client communication on the go.

OTHER CONSIDERATIONS

Ethics and "The Cloud"

Because many lawyers are relying on existing products that are hosted by a third party to accomplish many aspects of providing virtual services, firms should be fully aware of all aspects of the benefits and risks of using Software as a Service (SaaS) or communicating electronically.

A few states have tackled cloud computing ethics opinions directly, and many have provided some guidance on using cloud services indirectly. The ABA Ethics 20/20 Commission's proposal to add a new paragraph to the existing model rule on confidentiality (1.6) to require reasonable efforts to prevent inadvertent disclosure of, or unauthorized access to, confidential information including information in electronic form was adopted by House of Delegates in August 2012 and subsequently by over 20 states.

Other ethics opinions that touch on the tenants of cloud computing generally agree that lawyers should maintain reasonable care in evaluating the services of a cloud or third party provider. The ABA Legal Technology Resource Center maintains a list of cloud ethics opinions with a summary and links to the opinions at www.lawtechnology.org.

Client Data in the Cloud

One of the defining -- and for lawyers, the most alarming -- characteristics of SaaS is that SaaS solutions store data in the cloud rather than on the user's computer. In other words, when you use a web-mail service like Gmail, your actual emails reside on a remote served hosted by Google rather than on your own hard drive. If the emails in question are confidential client communication, or if they contain sensitive document attachments relating to an ongoing case, some concern is understandable.

20 Questions for SaaS Vendors:

It's important to carefully examine all technology before buying, whether it's SaaS or traditional. Here are 20 questions you should be sure to ask any SaaS vendor before committing your data to their hands. Vendors that aren't willing or able to answer these questions should be treated with caution.

1. Do you offer a trial period or demo of your product?
2. What training options are available for customers?
3. What kind of documentation (e.g. knowledge base, product manual) is available for your product?
4. How often are new features added to your product?
5. How does your software integrate with other products on the market, especially products in the legal market?
6. How many attorneys are currently using your product?
7. What hours is your tech support available?
8. Do you offer a Service Level Agreement (SLA) and/or would you be willing to negotiate one?
9. What types of guarantees and disclaimers of liability do you include in your Terms of Service?
10. How do you safeguard the privacy/confidentiality of stored data?
11. Who has access to my firm's data when it's stored on your servers?
12. Have you (or your data center) ever had a data breach?
13. How often, and in what manner, will my data be backed up?
14. What is your company's history – e.g., how long have you been in business and where do you derive your funding?

15. Can I remove or copy my data from your servers in a *non-proprietary* format?
16. Where does my data reside – inside or outside of the United States?
17. What happens to my data if your company is sold or goes out of business?
18. Do you require a contractual agreement for a certain length of service (e.g. 12 months, 24 months)?
19. What is the pricing history of your product? How often do you increase rates?
20. Are there any incidental costs I should be aware of?

Risk Management in the Cloud

Entrusting confidential client data and personally identifiable information to a third party has always held risk. Even in the days of paper and offsite storage of physical files there has been risk of exposure. The risks have shifted, have become more complex, and may have somewhat grown. However, per the updated comment [8] to the ABA's Model Rule 1.1 Competence the duty is "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology". In addition to maintaining awareness of any relevant ethics opinions on cloud computing, rules on unbundling, and a thorough investigation of any company you do business there are steps you can take to mitigate risk in the cloud, and using technology in general.

Maintaining firewalls and up-to-date anti-virus and anti-malware, maintaining vigilance when opening attachments and surfing the Internet, scrutinizing the security protocols of cloud providers, maintaining adequate backup files, and keeping operating systems patched are all vital whether or not your firm uses cloud based SaaS or storage.

CONCLUSION

Not every lawyer needs to build their own app, but sometimes being phone friendly means helping your clients get the technology that will make it easier for them to work with you. Think about your onboarding experience and consider canned e-mails with helpful instructions or videos explaining processes and how to best communicate with you. Think about the time you'll save by using technology and phone apps to handle tasks in between court, meetings, travel and more. As a profession, we have to move ourselves forward to meet our clients where they want us to be and continue to put our personal health and wellness at the forefront of making decisions on how we practice.

As Jeff Bezos says:

> "I very frequently get the question: 'What's going to change in the next 10 years?' And that is a very interesting question; it's a very common one. I almost never get the question: 'What's not going to change in the next 10 years?' And I submit to you that that second question is actually the more important of the two -- because you can build a business strategy around the things that are stable in time. ... [I]n our retail business, we know that customers want low prices, and I know that's going to be true 10 years from now. They want fast delivery; they want vast selection. It's impossible to imagine a future 10 years from now where a customer comes up and says, 'Jeff I love Amazon; I just wish the prices were a little higher,' [or] 'I love Amazon; I just wish you'd deliver a little more slowly.' Impossible. And so the effort we put into those things, spinning those

things up, we know the energy we put into it today will still be paying off dividends for our customers 10 years from now. When you have something that you know is true, even over the long term, you can afford to put a lot of energy into it."

Loving the Luddites: Serving Tech-Averse Clients

WRITTEN BY:

Annie Arbenz and Shantelle L. Argyle

PRESENTERS:
Annie Arbenz: @anniearbenz
Shantelle L. Argyle: @shantelle8

January 3, 2020

INTRODUCTION

Technology has significantly altered the practice of law and helped thousands (if not more) attorneys to streamline their businesses. It has also helped clients to better understand their cases and to participate more fully in the litigation process. Most would agree that technology has improved legal systems worldwide, yet there are some who are either unable or unwilling to use it to its fullest potential. This article will discuss issues and some potential solutions to serving these clients, including:

- Serving Tech-Averse Clients
- Online Alternatives
- Adaptability: Being the best advocate possible
- Access to Justice
- Be a Resource for Resources
- Fight the Fear

TIPS FROM ANNIE: SERVING TECH-AVERSE CLIENTS

In a practice where you serve clients who are elderly (read: didn't grow up with the technology that kids do today – it's a relative term) or are, generally, tech-averse, it is most important to understand that you need to accommodate your clients, not penalize them, for not using technology.

Making Accommodations

The following is a discussion of various new legal technologies from intake through the end of representation and ways that lawyers have accommodated or can accommodate clients who are not "feeling" the technology used.

When Making Appointments

Many lawyers have taken advantage of the opportunities to use online options to make appointments for their clients. These processes ensure that both the client and the lawyer/the lawyer's office have the same information. They also provide automated confirmation options, typically via email, which ensures the client will not "no show" his appointment. Finally, they provide the client with convenient rescheduling options

The online appointment has been one of the most positive changes I have made in my practice and I have had such wonderful feedback from my clients about how convenient and "nifty" it is. Here's how it works:

1. Client makes an appointment online (this requires them to give their name, email address and phone number).

2. Client immediately receives an email with confirmation of the appointment and a few tips from me, including a request to complete an online questionnaire and a link to a website that I've

created to give new clients information about what to expect at our first meeting and what they should bring to the meeting.

3. A client file is created on our server and the client created in our billing software.

4. 24 hours before the meeting, the client receives a reminder email and a reminder text message of the meeting.

The highlighted items are those steps that wouldn't be possible if the client does not have an email address (or, has one and doesn't use it). In my trusts and estates practice, this happens fairly often. Since we rely so heavily on the technology to automate other processes following the scheduling of the appointment, it is important that new client appointments are made online. When a new client tells our firm they do not have/use email, we make the following accommodations for that new client:

- My staff makes the online appointment and uses the client's name, phone number and an internal email address so we know the client doesn't have email and we have to use our non-email options to communicate with the client.

- We mail, via USPS, a letter confirming the appointment and a printout of the website with the tips for our first meeting.

- We create a client file and add the client to our billing software.

- We call and remind the client of the appointment 24 hours before.

- When the client comes in to meet, my assistant sits down with the client and helps them complete the online questionnaire on an iPad, which is then emailed to me automatically so I can walk into the meeting with a little background information on the client.

TIP! For the Email-Averse Client: Some phone providers allow their customer's phone numbers to be used as an email address. For example on T-mobile, you can email your client with phone number 801-555-1234 by sending an email to 8015551234@tmomail.net. This is an MMS text so you can include photos, but not necessarily document attachments.

When Meeting Remotely

I have clients all over Washington State but am unable to travel to meet with everyone personally. But, clients really like to see their lawyers and phone calls just don't cut it, particularly earlier in the relationship. I think it is for a couple reasons: (1) it's easier to trust someone when you can look in their eyes; and (2) lawyers are usually a pretty significant investment for people.

I have found that tech-averse clients are not into Zoom or other online meeting options. There is just too much involved – the correct camera, Wifi, creating accounts/passwords, etc. I have also found that most people have an iPhone or an iPad (or have a family member who can hook them up). So, the result is that I'll just call people on FaceTime on my cell phone or iPad. It's great! It's easy!

Bottom line: people who are tech-averse are not usually smartphone-averse!

When Sending Documents for Review/Signature

I love emailing documents to clients for review/signature. It's just the best. But there really isn't a great alternative if someone doesn't like/have email or doesn't have a printer. We just end up sending documents to them via USPS but I always send a self-addressed stamped envelope for them to send back easily. Sometimes people do email and are not tech-averse, but they would prefer physical documents. That's OK, too, but I think it's fine to push your internal processes a little bit in certain situations (i.e., still send via email if they'll accept it). They can print them at home!

The Bottom Line

We, as tech-forward lawyers, may have lovely technology-drive processes that make our lives easier that are foiled by tech-averse clients, but we must be willing to adapt our processes for all clients in a way that maintains our efficiency. I believe you will be happily surprised with clients' willingness to challenge themselves

Encourage Learning

I wouldn't know what I know about technology if I didn't learn from others and challenge myself to work with different technologies and incorporate them into my personal and professional life. Honestly, it's not always easy. Every time we get new software at the office, I know that we won't be fully adapted for at least 6 months. However, nearly every technological advance I've made has been better for my clients, my staff, my work product, and for my work-life balance.

While it isn't kind or "good for business" to force clients to do something they're not willing to try, I do feel comfortable encouraging them to use new technologies, particularly if they're interested but uneducated about the technology. When you can help someone use technology in a productive way, the client learns and may even be able to extend that experience to challenge themselves again!

Be Patient & Understanding

This goes without saying, right? As our own personal reliance on technology increases, we need to be patient with others who aren't as reliant on technology, just as those who are more advanced with technology are patient with us! It's important to be aware that your client may not have learned how to type in school or hasn't operated an iPad before. As crazy as that may seem these days, it's true. I recently taught a new staff member at my firm how to write a check! That seems crazy to me, but it's not that crazy these days, I guess!

Point is: times change, we need to be patient and understanding with all of our clients.

ONLINE ALTERNATIVES

Lawyers are, traditionally, averse to providing their services in any way other than the traditional way (i.e., in-person meetings and phone calls). I, too, have struggled with it over the years but have determined that providing online services is not only a necessary adaption we need to make for the benefit of our clients but can also be a very profitable for the lawyer.

There are other sections of Techshow more specifically focused on online alternatives for clients, but here I want to highlight the fact that I have been happily surprised by tech-averse clients' willingness to try online alternatives when it's cheaper and easier for them use. Truly, given the incentive, tech-averse people can do great things!

As an example, I have created a website called Orbit Wills to provide estate planning documents for clients, with the service provided completely online. It's much cheaper than the traditional way of doing estate planning and it's done much quicker. When new clients call with a quick need or don't want to shell out a pile of money to get a simple plan done, they can use Orbit Wills. Although they may be initially skeptical of the online-only option, once they use it, they love it! And tell their friends! It's amazing! To note, I have also included the option where (for an additional fee), I will print the documents and send to the client for signature. This way, if they don't have a printer (or ink!) they can still get it done.

The point here is that the increase of online options for clients is forcing/helping those who are tech-averse to adapt over time.

ADAPTABILITY: BEING THE BEST ADVOCATE

These materials have discussed various ways to accommodate tech-averse clients but we thought it would be helpful to share some specific tools that will help you accommodate your clients and encourage them to increase their use of technology.

Genius Scan

Genius Scan is a free app that you can download and use on your smartphone. In the app, the user takes a picture of the document to be sent and the document can be saved as a PDF and emailed or messaged to a third-party. You can batch several pages together and send as one scan. There are no watermarks or other branding. It's an incredible tool to have on the go. It's so wonderful, in fact, that I ask each of my clients to download the app when they hire me. Sure, they can send a photo from their cell phone but sometimes I need/prefer a clean PDF to file with the court or include as an exhibit, so the scan/PDF is much better. It's easy to use and free. Clients love it.

https://thegrizzlylabs.com/genius-scan

Typeform

I have always loathed the idea of sending clients a multi-page document to fill out in anticipation of an appointment with me. There are some clients who may want to do that, but most would be turned off by it. When my job is to make something (estate planning) easy for them, I don't find a multi-page questionnaire to be "on-brand."

The answer, for me, was to use Typeform, a website that hosts online questionnaires to send to third-parties. I have different kind of questionnaires for the different cases I take. The link to the Typeform questionnaire is emailed to the client and they take a couple of minutes to complete it. It's easy and short and clients actually love it. I get compliments all the time on the Typeform and how "nifty" it was! Love hearing that.

https://www.typeform.com/

HelloSign, Adobe Fill & Sign, DocuSign, etc.

Another marvelous invention is the electronic signature. In most jurisdictions, courts are accepting e-signatures. Also, it's convenient for all kinds of agreements that I need clients to sign quickly and get back to me. There are many affordable options for obtaining client signatures quickly and electronically, including

- HelloSign: https://www.hellosign.com/
- Adobe Fill & Sign: https://acrobat.adobe.com/us/en/mobile/fill-sign-pdfs.html

Mobile Notary

Many practices require notarized documents. If a client cannot make it into your office or if it is not cost-effective for you or your staff to visit the client to notarize their signature, you can look to hiring a mobile notary to meet the client wherever to get the notarized signature. This is kind of a low-tech accommodation, but it is a necessary one in certain circumstances.

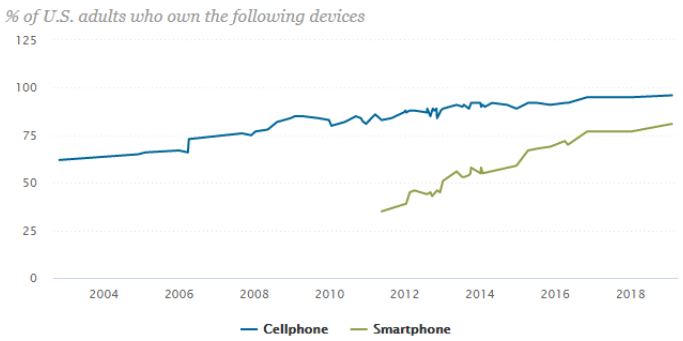
TIPS FROM SHANTELLE: ACCESS TO JUSTICE

Access to Justice is a common buzzword in the legal industry today (as it should be.) The concept stems from the acknowledgement that many do not have access to remedies available in our legal system, for several different reasons. If a client cannot access the system due to geography, language, financial issues, mental/physical issues, lack of education, or --in the case of this article – technology limitations, their ability to get relief is significantly impeded. Each year countless litigants represent themselves in every major jurisdiction in the United States and the world. Recognizing and, when possible, accommodating our client's technological limitations can increase Access to Justice.

Phones – Today's Computers?

When serving impoverished clients, it is surprising to some that the majority of American adults (96%) do in fact have access to a mobile phone.[1] Programs such as Lifeline (a program administered by the Federal Communications Commission) provide grant funding for subsidized mobile phone service. States also have various programs for free or inexpensive devices. Through these efforts, the average US citizen has more access to mobile phones than ever. So how does this impact a client in a litigation? As with most technology, there are both positive and negative implications.

[1] Pew Research Center, https://www.pewresearch.org/internet/fact-sheet/mobile/, Accessed January 6, 2020



Source: Surveys conducted 2002-2019.

PEW RESEARCH CENTER

Positive - Increased Communication

More access to a communication device means more ability to call and return calls to one's attorney. This can improve the pace of litigation by removing long delays when critical information is required. In addition, savvy lawyers who can (and should) provide a number to a client for texting purposes have seen marked reductions in phone traffic and dramatic increases in responses to requests for information and documents.

Positive and Negative - Increased Accessibility

An informed client is a happy client. The ability to update your client on the status of their case quickly and easily, using a method that they are likely to use often (as opposed to mailing a letter or – gasp! – faxing) means that they are informed. This reduces calls to the office to get updates and creates a sense of inclusion in the litigation process.

The downside of being more accessible is in today's era of instant gratification and instant communication, you need to teach your client what is appropriate and help manage their expectations. If a 2-minute phone call will eliminate a 50-text discussion, pick up the phone.

Negative – Incomplete Solution

While 96% of U.S. adults have at least one mobile phone, only 81% of them are Smartphones. In addition, for some families, that mobile phone is their only source of Internet access. These means that while those with Smartphones might have the ability to read emails, managing attachments (altering, signing, printing, transmitting, notarizing) can be difficult. For a pro se party (or limited scope client), being able to print and notarize documents can be critical to their litigation. Even in an e-file jurisdiction, few courts have authorized electronic signatures for non-attorneys.

Language Barriers

One barrier to Access to Justice is language access. State courts have committees to explore these issues and create solutions and have made significant strides to ensure that both civil and criminal litigants have interpreters. Websites have been updated to be translated into many languages, and some jurisdictions

even have information forms available in more than just Spanish and English. However, these solutions are not helpful when the client is not actually at the courthouse or on the court's website. What about clients who have language barriers when visiting their attorney's office? If a client knows your client portal or an email from you is not going to be in their native language, they may not use it. Here are a couple of suggested solutions to help get your non-English clientele in the loop:

Video Interpreting Services

If you need to instruct a client on a form or explain a process to them, you can use subscription video interpreting services such as Languageline. These can be expensive and attorneys may not want to pass the cost on to the client, but in a pinch they can help. Ask your local court if they use a similar service for less-common languages (for which an interpreter might not be available in-person). Your local Bar might also have a referral or even have a discounted member benefit.

On-Call Interpreters

In many jurisdictions, certified court interpreters are contractors and not court employees. This means they have a local business offering interpretation and translations and are often available to be hired for specific projects. Some will even be available for on-call services, in the event you need to have a phone call with client or someone is a walk-in that you speak to only briefly until you can have a formal appointment. Depending on the interpreter's availability and the demand for their services, this can be relatively inexpensive.

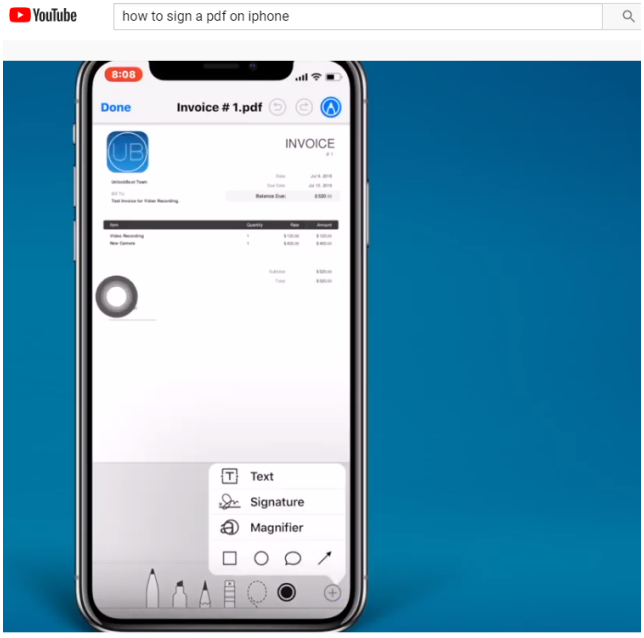
A great use for interpreters like this is to have them create mini versions of your website in a different language. It can include enough content to give information about your services and how to set an appointment, helping you capture a client that might otherwise not have found your website or who might choose not to use it. You can also have them create short emails for you to send in a different language (with much better grammar and sentence structure than you would get trying to do similar with Google Translate). These emails can include links to language providers, resources, and explanations that you might use Google Translate to read it but that they can text in their own language. If you need to be able to text a client, allowing them to do so in their own language can increase their willingness to do so. It also adds an extra touch to the level of service they receive.

A Special Note on Deaf Clientele

The deaf community has had a particularly difficult time with legal services, which has resulted in a wealth of remote services to help both providers and clients to communicate online or via phone. However, it is still a significant challenge for a deaf person who would like to appear in person to meet with an attorney. Attorney accommodation for deaf clients is a requirement under the Americans with Disabilities Act ("ADA"), which requires that you provide whatever resources are necessary to "effectively communicate." It is important to be aware of what that means and to have a list of providers that can provide interpretation services if the client does not have a friend or family member who will come with them to the appointment. Your local Court and Bar can likely provide a referral, as well as local advocacy organizations.

BE A RESOURCE FOR RESOURCES

Part of our role as counselors is to counsel. (Shocking, right?) When it comes to technology, if you want or need your client to be capable of using a tool you might need to be a resource for resources. This means that while you may not personally be able to teach them how to use their iPhone to download a PDF and sign it, you might need to be able to point them in the right direction for instruction. For commonly needed lessons, put together a cheat sheet of instructions from online or YouTube tutorials from reputable providers. There are countless free videos which walk you through the basics. You should also have a list of a few apps (such as mentioned previously) that you recommend to clients.



For heavy technology issues, be familiar with local libraries or senior organizations where classes may be available or where a community member can use a computer and get assistance from staff or volunteers.

One great resource is GCLearnFree where free lessons on everything from Internet and email basics to Microsoft Office are provided for free. https://edu.gcfglobal.org/en/

Lastly, create a fake client and try your technology tools yourself. You should be familiar enough to answer basic questions but also be able to see it from the client's perspective. For example, a client portal which has confusing invoicing or file uploading will look totally different when you log in as the attorney. Sign in as a client so you can see what they see. If you don't feel comfortable enough with a tool to explain it to someone else, you might reconsider using that tool in your office.

Human Interaction is Sometimes Necessary

Yes, it's hard to accept sometimes, but human interaction is sometimes the only way to get the job done. If your client struggles with technology or seems unwilling to try, it may be that what they really need is an understanding human to help them through. All the technology in the world cannot substitute a good

bedside manner, so keep that in mind if you or your client (or both) seems to be getting frustrated. Putting the time in can be very rewarding both for your state of mind and the attorney-client relationship.

Fight the Fear

Tech-averse clients (and even lawyers) often have anxiety over learning new tools or sometimes fail to adopt a tool into daily use when they have already invested in learning it. Here are some common issues and how to overcome them:

Fear of Data Breach

This fear is common for both attorneys and clients, particularly senior clients, who have not grown up with their personal date being shared anywhere (let alone on the Internet). Stories of hackers, identity theft, and companies we trust leaking our private information have certainly confirmed fears for clients. If you want your client to use your technology, you need to carefully discuss how the data is secured and what measures you take to keep it safe. You cannot guarantee their data is 100% protected so this is a fine line to walk. Answer questions to the best of your ability, refer them to experts if you don't know the answers, and educate yourself on the tools you are using.

For example, a big concern for attorneys is email. While the email may be safe on your computer, tucked behind a firewall, or even in your inbox on a secure (https) website, it can be unencrypted during the transmission process. Gmail correspondence is encrypted in-transit going out, but to be encrypted when receiving the sender must use a provider that can handle TLS encryption. This means that if you client uses an email provider that does not support TLS encryption, whatever they are sending to you is vulnerable until it hits your inbox. Learning these basic security issues can alleviate anxiety for both of you.

Insecurity About Ability

Anyone who has stood before an ATM or copy machine with a line of people behind them knows the anxious feeling that creeps up your spine. We are often nervous about people judging us for how long it takes to figure out something new, or that we will make a mistake with people watching. Part of this is just general "impostor syndrome" but for some it is a real discomfort with technology that is enhanced by pressure from others.

The best way to gain confidence with technology is to learn it. Familiarity reduces anxiety when paired with self-care, such as someone who is afraid of flying but does it more and more often while practicing breathing techniques. There are classes in person and online that can help increase that familiarity in a safe environment, without prying eyes, as well as books that offer step-by-step training.

The next tool to gain confidence is repetition. Using a tool once after you get a good grasp on it won't serve you very well if you never pick it up again.

For our clients, perhaps they won't need to ever e-sign a document again in their life, but they will very likely need to know how to download an attachment. Encourage them to practice in their non-litigation life so that they can keep up their skills. It may seem silly, but this positive interaction with their attorney will likely have a lasting impact.

Incentivize!

Anxiety over technology can arise from many places, but another issue is apathy. If someone doesn't see the benefit in expanding their comfort zone, they will stay where they feel safe. If it's truly critical for your client to use a tool (whether it's because it makes things easier for you or for them in the long run) you might want to consider incentivizing it. For example, perhaps you would love to get some positive reviews from your happy clients, but they tend to be elderly people who don't have a Gmail account. Consider offering gift cards to anyone who agrees to post a review, then be sure to request it from those who are likely to leave a positive one. (This is also a great tip for staff who you might be trying to convince to switch to a new system.)

CONCLUSION

We hope you found these tips helpful for service technology-challenged clients. Best of luck in your practice!

TECHSHOW2020

Bespoked: What Design Thinking Can Bring to Your Practice

WRITTEN BY:

Susan Letterman White, JD, MSOD

PRESENTERS:

Susan Letterman White: @SusanLetterman

Kelly Street: @kellyannstreet

February 28, 2020

THE DESIGN THINKING PROCESS

Design thinking is a human-centered, visual approach to group problem-solving. The process emphasizes improving situations by first understanding the full context of the people affected by the problem. A person's context is the set of major forces affecting that person's life. To understand context, consider where they spend their time, the activities they engage in, how they engage in those activities, how they think, what they feel, and the relationships that affect them.

Solving problems often also requires involving people, who will be expected to change their behavior to address the problem and those, with the power to make changes to any processes (how people do things) and structures (how and to whom people are connected) affecting the problem.

The design thinking process assumes:

- All problems are solvable.
- Diverse groups are better at solving difficult problems than is a single person.
- Visualizing data is better than just reading it.
- We collect better information about a person's motivation and behavior through exploration of the person's entire context.
- Exploring context means observing, asking good questions, and listening without judgment.
- Finding the right solution is a consequence of brainstorming prototypes and then experimenting with them to see what works.

Unlike traditional problem-solving, the focus is not on the cause of a problem. There is no assumption that the solution rests in understanding and eliminating the cause.

The process is creative. It aims to create many different and surprising ideas, so it benefits from a diverse group of people with different perspectives on the problem and how to solve it and a collaborative approach. People work in design teams with a team leader. Brainstorming for generating and capturing new ideas and empathy are integral to the process. Group brainstorming processes benefit when the group adopts certain norms, such as:

- There are no bad ideas.
- We will suspend all judgment until all ideas have been generated and everyone has a chance to contribute.

- We will build on the ideas of others, hold one conversation at a time, stay focused on the topic, and encourage wild ideas.

Give people time to think about the brainstorming question or prompt and make a few notes before the group conversation. Use one or a combination of techniques for the group conversation:

- Popcorn style – blurting out ideas;
- Writing ideas on post-it notes and putting the notes on a wall;
- Give each person a chance to talk.

Extraverts, people energized by being in a group, may prefer an immediate popcorn-style session, while Introverts, people energized by their internal thoughts, may need quiet time to generate ideas and the space to share their ideas.

A design refers to the main features of anything. Besides the obvious opportunities, like redesigning your office space, design thinking can be used to improve the design of any system, from the largest communities to organizations and groups. It can be used to improve processes and structures.

Which processes, structures, or resources of your law practice could use a redesign: client intake; a work-flow; compensation system; your associate or partner retention; or something else? Start by identifying a significant problem that matters to the people, who will be asked to change something. Once you have selected a significant problem, use the Design Thinking steps

The steps of the Design Thinking process are:

1. **Keep empathy front and center:** Every problem involves people. People, whose behavior contributes to keeping the problem in place and people, whose behavior will lead to a solution. Empathize to understand what is motivating them. Why do the problem "owners," those who want a solution, want a solution? What do they want to be different? Why? What are they doing to perpetuate the problem? Why? Do the people, who will be expected to make changes care enough about the problem to change? What do they want? Why? Which questions can't you answer? Who would be a good source of information? What could you ask them?

2. **Frame the challenge:** How could you word your significant problem to inspire many possible solutions. Go through several rounds of revisions and encourage team debate before landing on your challenge statement.

3. **Explore the challenge in its context:** Find inspiration for solution ideas by building empathy with the people needing a solution and those, who will need to change their behavior or use their power to change a process or structure as part of the solution. A deep understanding of

the people, especially their hopes and dreams, is the fodder for creatively designing an effective solution. Designers find inspiration through research, including observing, listening to, and asking questions of the right people.

4. **Develop ideas into prototypes:** Make sense of the research data, generate ideas for approaches, identify design opportunities, and design prototypes.

5. **Experiment with prototypes:** Bring your ideas to life and test them. What do you learn when you test a prototype? What could you apply to the next iteration of this process?

Case Study: Client's Job Search

Keeping empathy front and center is easy to forget when stress and anxiety is on the front burner. Susan's client, Pete expressed frustration and anxiety about finding the right new job after interviewing for position, he was certain he could handle. During our coaching session, he blurted out, *"I just saw an ad and applied to the position but didn't get the job and I'm not sure I even wanted it."* Pete admitted that he had done no research to understand what the job entailed, what the organization was like, and who was giving up time for the interview.

He had not kept empathy front and center. Designing and implementing every phase of your job search begins with understanding the problem from the viewpoint of a person who needs help. What are the everyday experiences of the person hiring and interviewing? Empathy means seeing yourself as the solution to a problem faced by people who have too much to do and not enough time to do it themselves. Keeping empathy front and center should make a difference to your approach.

FRAMING THE CHALLENGE

"How might we…?" What is your problem to be solved? The first step in the Design Thinking process is to frame the challenge. The phrasing you select should give you a starting point for a brainstorming session, imply the outcomes you want, and be broad enough to spur many creative ideas.

A design challenge should be short and easy to remember; a short sentence phrased as a question that conveys what you want to do. Properly framed challenges imply the impact you are seeking, while allowing for many solutions, acknowledging constraints, and considering context.

It's easy to write a too narrowly or broadly-worded design challenge. If you are struggling to come up with ideas of where to start your research of step 2 of the design process, then your challenge is likely too broad. A challenge too narrow won't offer sufficient space to brainstorm research ideas and explore creative solutions.

Framing the challenge is an iterative process. Repeat the four steps below until you have landed on the right question. You'll know you have the right question if you can quickly come up with 3-5 possible solutions in a few minutes.

The steps to frame your challenge are:

1. **Frame it as a design question.** Design questions begin with "How might we…" to convey what you want to do.

2. **State the ultimate impact you want.** If your solution works, what will be different and better for whom?

3. **Think broadly about possible solutions.** Start with a hunch or two and allow for surprises.

4. **Identify any constraints and the explain the context you're facing.** Reality counts. Are there geographic, time-based, cost-based, or other obstacles you expect to face? What about the economy? What's the culture? Are there any processes or structures that affect the problem? How do the people involved like to communicate? Is the location where you plan to deliver your solution conducive to your aim? Are you facing any entrenched thinking? Do the Individuals involved have the power to do what you want?

Case Study: Succession Planning

Susan works with firms and other organizations on a variety of succession planning problems. One of her institutional clients One of her law firm clients called her for help after several senior partners and the firm's office administrator announced plans to retire.

"Tell us what to do." Their request for help needed to be reframed. This was the first step. Define the problem. To be able to frame a design challenge, the people involved in the problem and those expected to address it must consider and discuss the situation.

Why is it a problem? *They explained their concerns about who would run the day-to-day operations and was there a risk of losing clients?*

What are you interested in and concerned about? What are you assuming to be true with no evidence? What do you want to be different and better once this problem is solved? Who is contributing to the problem? How? Who will be expected to contribute to the solution? How?

1. **Frame it as a design question.**
   How might we accomplish this set of changes so that at the end of it we keep all of our clients, continue to grow, and have a competent managing partner and office manager?
2. **State the ultimate impact you want.**
   We want to attract strong associates interested in becoming partners and have a managing partner and office administrator focused on running the business side of things.

3. **Think broadly about possible solutions.**
    - *Explore the cost-benefit analysis of paying a managing partner a salary.*
    - *Explore what makes an offer attractive to the associates we want.*
    - *Design a plan to maintain and strength client relationships during and after senior partners retire.*
    - *Research job market for office administrators.*
    - *Develop a plan to train the next managing partner to take over current managing partner's responsibilities.*
4. **Identify any constraints.**
    - *The business model may not be attractive to the associate we want.*
    - *The most likely replacement for the retiring managing partner wants to be compensated for managing, unlike the current one.*

After several sessions, the partners talked and planned to address their challenges.

Frame Your Design Challenge

1. **Frame it as a design question.**

2. **State the ultimate impact you want.**

3. **Think broadly about possible solutions.**

4. **Identify any constraints and the explain the context you're facing.**

Explore the challenge and its context

Empathy is the inspiration of great human-centered design. The better you understand the wants, needs, preferences, interests, concerns, hopes, and challenges of the people involved in the problem, the more likely your solutions will be embraced. Better understanding comes through research – talking to people, observing them, asking questions, and listening without judgment. Talking directly with the people, who will be asked to change the way they think, how they feel, or what they do, is the best way to understand a person's desire, fears, and opinions.

When you better understand the people, you are asking to change, you can better appreciate the obstacles and barriers to their making the change you want. This applies whether you are asking associates to stay with your firm, partners to cross-sell, or a prospective client to become a client.

To understand a group of people, do your research!

Explore the *status quo* in depth to understand the problem. What do you know about it? Observe and see how people behave in the current context. Experience the situation yourself. Talk to the people, who are part of the problem or who could contribute to its solution. Ask them for feedback: What is working well, could be improved, is going wrong, and could go wrong? Ask why they do what they do, think what they think, and feel how they feel about the problem – the situation you're trying to change – your challenge.

Who? How? And What?

If you are asking people to change their behavior, you can better appreciate the obstacles and barriers to their making the change you want, when you understand and can empathize with them. This applies whether you are asking associates to stay with your firm or a prospective client to become a client.

Who should you approach for your research?

The people with information and perspectives bearing upon your challenge have the best information: the people you want to change their behavior; the people with the power to make structural and process changes; the people, who are experiencing the problem; and people, with insights into those people. If you think of perspectives falling along a bell-curve, approach people in the mainstream and those at the extreme ends of the spectrum. Consider a variety of age, gender, ethnicity, class, social position, behaviors, beliefs, and perspectives.

Who will you approach?

How should you gather your research?

Use a combination of approaches. You can:

- Observe people
- Ask questions

- Use written feedback surveys
- Ask individuals or groups

It often worth using multiple approaches. Regardless, it is imperative to prepare in advance. Explore the most recent news that is relevant. Seek recent innovation in your area to understand the edge of what is possible. Discover if existing solutions that have worked in situations similar to yours.

List background research you will conduct here:

You've found your subject, what should you ask?

Ask the questions that will lead to insights into whatever you want to learn about why people are doing what they are doing and where the motivation to change their behavior might originate. If you are wondering how to turn prospective clients into clients, discover why people aren't spending money on lawyers? What are they doing and why? Is there anything that would motivate them to change their behavior? The point is to ask questions to understand the full context of your challenge.

Who are you subjects?

Where will you talk or observe them?

What will you ask?

DEVELOP IDEAS INTO PROTOTYPES

Once you have gathered significant, rich information, make sense of it and discover meaningful insights into people's motivation. Those insights will help create a focused perspective for designing new and effective solutions. In this stage, share information as a team, make sense of what it means, and then use that information.

Case Study: Teaching Lawyers Communication and Sales Skills

Susan designed and teaching an 8-hour program on business development. The program is spread over two or four days. Lawyers want to know what to say to convince prospects to hire them. They are given communication and sales frameworks, but then are told to brainstorm ideas

to make the frameworks personal. In addition, they must practice noticing their and others' communication styles, what to say, how to adjust their body language and tone of voice, and timing. Practicing and adjusting their communication style is developing ideas into prototypes and then testing out those prototypes.

They share their past experiences, dissect them for insights, and then put their ideas into action. They practice with each other and in the real world between classes and reflect on those experiences to refine their prototypes. Practice is testing prototypes. Reflecting is exploring data about how well or poorly the prototype worked.

Explore data

The first step is to make sense of all data collected. A diverse team, with its variety of perspectives and experiences fuels different ways of making sense of the data and ultimately different meanings. The sense-making stage should take place in a context, free from distraction and where people look at and listen to each other.

For some, this work can trigger the impulse to analyze the information, deduce conclusions, and summarize findings. Avoid that approach. The objective is to explore possibilities and infer meaning – discovering more than what's at the surface. This requires a continued posture of curiosity.

In design thinking there are myriad tools for exploring data. Each aims to better understand what people are doing, how they are doing it, and why they are doing it rather than something else.

Describe the people, whose behavior you want to change.

Describe the entire context that bears upon their behavior.

What are they doing now that bears upon the problem?

Why are they doing what they are doing, rather than something else?

Generate possible solutions

Once you understand the viewpoint of these people, brainstorm innovative possibilities. Create "How might we…" questions to address the opportunities or obstacles discovered. This is a similar

process to framing the challenge. Think of each obstacle or opportunity as another challenge. Select ideas to try. For each idea, explain how it works and why it would matter to the people.

When you design possible solutions, don't forget to identify any constraints you expect. Who is involved and what are their time, technology, financial, or space constraints?

IMPLEMENTATION

Perfect is the enemy of prototyping. Variety is her friend. The goal of this stage is to try out your prototype with the people involved and discover more meaningful and useful information about their viewpoint.

When you test out your prototype, avoid trying to sell your idea by explaining your reasoning or why you thought you would receive more favorable feedback. Whatever feedback you receive, it's data to infuse into the next iteration. William Edward Hickson popularized this apt proverb,

> *Tis a lesson you should heed: try, try again. If at first you don't succeed, try, try, try again.*

That's the heart of the implementation stage. Review feedback as a team. Develop your new ideas into a new prototype and implement again.

MOVING FORWARD

Each iteration of the Design Thinking process moves you forward, closer to a better understanding of the problem and a solution. Incorporate the feedback into a revised prototype, generate new solution concepts or features of a solution, or think about where you need to do more in-depth research to find insights.

Additional material that may be of interest

Redesigning Legal: A Leader's Responsibility article by Susan Letterman White

Legal Innovation: The Biggest Myth or a Path Forward? Article by Susan Letterman White

Bad Actors: The Year in Breaches

WRITTEN BY:

Sharon D. Nelson
John W. Simek

PRESENTERS:
John W. Simek
Lincoln Mead: @lincolnmead

January 6, 2020

Disasters and Data Breaches: The ABA Speaks

by Sharon D. Nelson, Esq. and John W. Simek

DID THE PARADE PASS YOU BY?

In 2018, the ABA released two very significant ethical opinions. One was Formal Opinion 483: Lawyers' Obligations After an Electronic Data Breach or Cyberattack (October 17, 2018). The other was Formal Opinion 482: Ethical Obligations Related to Disasters (September 19, 2018).

To our surprise, we rarely find CLE attendees who are aware of these opinions. Even those who are aware of them do not seem to know their details or understand their implications. Hence the inspiration for this article. Both opinions should be carefully read by lawyers seeking to understand their ethical duties in the event of a disaster (natural or man-made) or a data breach (which is of course a very specific form of a disaster)!

DATA BREACHES AND HEADLESS CHICKEN MODE

In our line of work, we see a lot of law firms who have been breached. "Headless Chicken Mode" is our name for the reaction of those who have not prepared for a breach – they have no incident response plan. They run in circles, hysterical, with no idea what to do. Sadly, there are a lot of law firms without an incident response plan –a 2018 study by IBM Resilient and the Ponemon Institute revealed that half of all organizations described their incident response plans as informal, ad hoc, or completely non-existent.

Today, for law firms, not having a formal incident response plan is inexcusable – and unethical under these new opinions. With respect to cyberattacks, our own experience has shown:

- The faster you catch a cyberattack, the less it will cost you and the faster you can recover.
- You are no stronger than your weakest link (usually your employees).
- With a good incident response plan, preparation is 2/3 of the effort, and the remaining 1/3 is solving the problems when an attack occurs.

THE CLOUD IS YOUR FRIEND

Whether you have a data breach or another form of disaster, the cloud is your friend. Opinion 482 talks about the duty of communication required by Rule 1.4, which requires lawyers to communicate regularly with clients and keep their clients reasonably apprised about their cases. Following a disaster, a lawyer must evaluate available methods to maintain communication with clients. The opinion instructs that lawyers should keep electronic lists of current clients in a manner that is "easily accessible."

The opinion also references Rule 1.1, which requires lawyers to consider the benefits and risks of relevant technology. It also notes that lawyers "must evaluate in advance storing files electronically" such they can access them after a disaster.

If your office is flooded (and maybe your home where you leave your backups), the best way to access client contact information is via the cloud. More and more, ABA opinions are not so gently pushing law

firms toward the cloud. We agree completely that essential law firm data should, at the very least, be backed up in the cloud. Keep your data on premise if you like with an on premise backup, but make sure there is a copy in the cloud. Today, that is just a common sense precaution and almost universally accepted by legal technologists.

Yes, you need a reputable cloud provider, and you need to read the Terms of Service and ask questions regarding the security of client data, but there are many acceptable and respected cloud providers available to lawyers today – the fear of the cloud has faded. In fact, law firms tend to fear NOT being in the cloud.

SAFEGUARDING CLIENT PROPERTY

There was a time – and not so long ago – where lawyers obeyed Rule 1.15 (safeguarding client property) by locking up paper files. It is a whole new world today. If client data is destroyed, the opinion says lawyers can attempt to reconstruct files by obtaining documents from other sources. If they cannot, they must notify the clients of the loss of the files. To prevent such losses, "lawyers should maintain an electronic copy of important documents in an off-site location that is updated regularly." Yup, we're back to the cloud again.

In many law firms, cloud backups are updated as frequently as every 15 minutes. While that may not be ethically required, most firms at least perform daily cloud backups.

MONEY, ATTORNEY WITHDRAWAL AND GREED

As we saw with Katrina in particular, disasters can impact financial institutions and, therefore, client funds. Thus, the opinion says that lawyers "must take reasonable steps in the event of a disaster to ensure access for funds the lawyer is holding in trust." This largely presupposes that you are doing electronic banking, which most firms are, and can therefore access client funds once you have an internet connection (which means you need a redundant internet connection). You may also need to have another trusted signatory or, if the worst happens, have a successor lawyer to wind up your practice. Gloomy thoughts, but it's like having a will – simply a necessity of life and your profession.

In a true disaster, you may not be able to perform legal services and may have to withdraw. Under Rule 1.16, "In determining whether withdrawal is required, lawyers must assess whether the client needs immediate legal services that the lawyer will be unable to timely provide." Again, we harken back to Katrina, where many lawyers were forced by circumstances to withdraw from representation. Needless to say, you must seek the court's permission to withdraw as required by law and court rules. A good practice tip is to address in your engagement letter how to contact you in the event of a disaster.

When the U.S. Virgin Islands firm Bolt Nagi lost its St. Thomas office during Irma and Maria, our friend and colleague Tom Bolt had the law firm website temporarily altered to display his cell phone number. Tom, the firm's managing partner, certainly went the extra mile to make sure firm clients could contact him.

Many people seek to gain from disaster victims. The opinion warns lawyers that they should not take advantage of disaster victims for personal gain. "Of particular concern is the possibility of improper

solicitation in the wake of a disaster." While the warning is well taken, the authors note anecdotally that they were never prouder of the legal profession than after Katrina, when so many lawyers and legal professionals reached out to help lawyers (and their clients) impacted by the flood waters of Katrina.

PRACTICING IN OTHER STATES

On this issue, you should read the opinion itself carefully. If you are displaced from your jurisdiction and seek to practice elsewhere temporarily, in accordance with Rule 5.5(c), you must obtain approval from the new jurisdiction.

The opinion cites a key provision of the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster. That rule provides in part that a lawyer displaced by a disaster "may provide legal services in this jurisdiction on a temporary basis if permitted by order of the highest court of the other jurisdiction."

Many lawyers simply want to volunteer to help disaster victims. The opinion states that, "Out-of-state lawyers may provide representation to disaster victims in the affected jurisdiction only when permitted by that jurisdiction's laws or rules, or by order of the jurisdiction's highest court."

The ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster requires that "the supreme court of the affected jurisdiction must declare a major disaster and issue an order that allows lawyers in good standing from another jurisdiction to temporarily provide pro bono legal services in the affected jurisdiction through a nonprofit bar association, pro bono program, legal services program or other organization designated by the courts."

Just make sure you follow the rules. It is also helpful to volunteer your time through the ABA or other pro bono services providers. A good many of our ABA colleagues went down to New Orleans to help lawyers reestablish their practices. Even from Virginia, we took five Tulane Law School students under our wings and purchased/configured new laptops for them, which they took to Georgetown, which generously allowed them to continue their legal education there.

There is always a way to help without getting yourself in ethical trouble!

THE MOST LIKELY DISASTER: A DATA BREACH

The Cyber Readiness Report 2019, commissioned by global insurer Hiscox, found that 61% of global firms have been breached in the past year. While not specific to law firms, that is a dramatic increase – and law firms are by no means immune. It fact, we are a target-rich environment because we hold the data of so many clients. And, to be frank, law firm security remains weak, especially in solo/small/midsized firms.

Data breaches are silent and deadly – not at all like the disasters recounted above. If you want to feel your blood pressure rise, Google "FireEye Live Cyber Threat Map" and watch the attacks in real time. In the last several years, we have witnessed cyberattacks routinely conducted by bots and seen attacks powered by artificial intelligence.

THE ABA SPEAKS TWICE IN TWO YEARS ON CYBERSECURITY

The ABA's Formal Opinion 483, "Lawyers' Obligations After an Electronic Data Breach or Cyberattack" builds on the Standing Committee on Ethics and Professional Responsibility's Formal Opinion 477R released in May 2017, which set forth a lawyer's ethical obligation to secure protected client information when communicating digitally.

The new opinion states: "When a breach of protected client information is either suspected or detected, Rule 1.1 requires that the lawyer act reasonably and promptly to stop the breach and mitigate damage resulting from the breach."

The opinion discusses Model Rule 1.1 (competence), Model Rule 1.4 (communications), Model Rule 1.6 (confidentiality of information), Model Rule 1.15 (safekeeping property), Model Rule 5.1 (responsibilities of a partner or supervisory lawyer) and Model Rule 5.3 (responsibilities regarding nonlawyer assistance). Where we have gone through these rules with respect to Opinion 482, we will not repeat ourselves here unless there are additional aspects to cover.

There is a "rule of reason" overtone to the opinion, which states, "As a matter of preparation and best practices, however, lawyers should consider proactively developing an incident response plan with specific plans and procedures for responding to a data breach. . . The decision whether to adopt a plan, the content of any plan and actions taken to train and prepare for implementation of the plan should be made before a lawyer is swept up in an actual breach."

Wait – didn't we say that earlier in the article? In fairness, this is what all cybersecurity experts have said for a very long time – and, in our experience, all large firms tend to have an incident response plan. The smaller firms? Not so much. No one is saying that a law firm need to be invincible because that is not possible. As the opinion states, "the potential for an ethical violation occurs when a lawyer does not undertake reasonable efforts to avoid data loss or to detect cyber-intrusion, and that lack of reasonable effort is the cause of the breach." There you have it in a nutshell.

ZOMBIE DATA

Is there anything not somehow affiliated with Zombies these days? For those of you not familiar with the term, zombie data is also known as "dark data," – data you don't know you have until after you have a data breach. The opinion takes a "throw out the trash approach" and recommends, in a footnote, that firms should have data retention policies that limit their possession of personally identifiable information. What you don't have can't hurt you.

As an aside, zombie data pops up all the time in e-discovery and causes a huge amount of expense, not to mention the negative effects it can have on a case when it is suddenly discovered. If you don't need it, and are not legally required to preserve it, get rid of it!

COMMUNICATING DATA BREACHES WITH CLIENTS

Since data breaches cannot entirely be avoided, the opinion says, "When a lawyer knows or reasonably should know a data breach has occurred, the lawyer must evaluate notice obligations. Model Rule 1.4. Rule 1.4(a)(3) provides that a lawyer must "keep the client reasonably informed about the status of the matter." Rule 1.4(b) provides: "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

First, law firms must halt the attack, mitigate the damage and then make reasonable efforts to assess the data that may have been exposed. Not so easy. You can contract ransomware which exfiltrates your data before encrypting your files (therefore a data breach) or ransomware which only encrypts your files and then asks a ransom for the decryption key (therefore not a data breach). The opinion notes that your efforts in determining what happened and fixing it may be through qualified experts.

If you need to report an incident to a government agency, you are still bound by Rule 1.6. We sense there may be some tension over trying to report and trying to maintain client confidential data. How do you know if the disclosure is "impliedly authorized?" Read the opinion fully to understand all the nuances of this dilemma.

Under Rule 1.4, the opinion says bluntly that you must inform a current client of a data breach that impacts their material confidential information. Forgive us for how we say this, but this duty is often honored "in the breach." Typically, law firms say they have no evidence that the confidential information was accessed or used. It's often a rusty nail, but that's where they frequently hang their hat.

What exactly are you supposed to tell clients in your disclosure? The opinion is a little vague, saying that "the disclosure must be sufficient to provide enough information for the client to make an informed decision as to what to do next, if anything."

The opinion dodges a bit when it comes to former clients, finding no duty to notify former clients unless there is something mandating notification.

FINAL WORDS

These are good opinions, worthy of a careful read. As is now customary with all opinions dealing with technology, modification of these opinions may need to be made over time. The two opinions are good roadmaps – and we hope many law firms who are woefully unprepared for disasters, including data breaches, use them as intended to prepare for the worst before it happens.

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She a co-author of 17 books published by the ABA. snelson@senseient.com.

John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com.

Anatomy of a Data Breach

by Sharon D. Nelson, Esq. and John W. Simek

"I could have evaded the FBI a lot longer if I had been able to control my passion for hacking."

- Kevin Mitnick (the first hacker to make the FBI's 10 Most Wanted List)

Introduction

Hacking can indeed be a passion, proving that you can outfox governments and big league corporations. The thrill of the chase can be addictive – and the addiction is fueled by the monies to be made.

Breaches come in many variants, far too many to cover in a single article. But there is a general flow to a breach. Since we make a living investigating breaches and remediating the vulnerabilities that caused them, let us take you on an anatomical tour of a typical breach, highlighting some of the common elements.

To make the reading more fun, we have offered up "quotes" from the players typically involved in a breach. Many are taken from real-life incidents.

Hackers: "Let's plan our attack."

Whether there are massive attacks of automated bots looking for vulnerabilities and exploiting them or spearphishing attacks (tailoring a phishing email to a specific target), there is planning. When state sponsored hackers from China attack governmental facilities in the U.S., the planning is intense – and highly coordinated. These hackers are often working in government buildings. Other hackers, primarily cybercriminals, belong to loosely affiliated groups – they are often working together in the ether, not in a physical location.

Many cybercriminals are looking for a known vulnerability to exploit – this was the case with the WannaCry ransomware, which succeeded so well because Windows 7 users hadn't timely patched their operating system.

If you want to, you can go on the Dark Web and buy a vulnerability. It is not quite as simple as an Amazon 1-Click purchase, but it's not hard either. Some hackers will pay big money for a "zero-day" piece of malware (one that has never been used and therefore no specific defenses exist against it). Some will pony up a lot of cash (or cybercurrency) for a previously undisclosed vulnerability, again with a high probability of success.

Do they want to attack through the weak security of Internet of Things devices? Do they want to exploit all the entities, including law firms, which have moved to Office 365 without properly securing it? There are many decisions to make. They involve targets, attack surfaces, tools, objectives, dates, methodologies, etc.

If they are crafting phishing e-mails, the more sophisticated hackers will hire native English speakers to help them – that means that poor grammar and wrong forms will not give them away.

Like the old-time grifters used to say, there's no con without a plan. And part of the plan is not getting caught, right? So you use a sleight of hand. If you're Russian and you want to hide the source of the attack, you do some technical magic and now it looks like the attack came from China. Hackers are all about smoke and mirrors.

Hackers: "3-2-1 – FIRE!"

When it is time to push the button, the hackers involved are usually pretty intense in watching their attack proliferate across the globe – or if they are spearphishing, they are on high alert watching for a response to their bogus or spoofed e-mail. Or they are waiting for an unthinking employee to click on an attachment (containing malware) or click on a link to a website (containing malware).

Some results are fast, some less so. But you can be sure the watchers are riveted, monitoring the results of their handiwork. The truly sophisticated don't even watch. They have automated systems that notify them automatically when a target has been breached.

Hackers: "We're inside. Let's pwn everything we can!"

If the point of the breach is to purloin data, the hackers will try to use their malware to move laterally across your network and "pwn" ('hackerspeak' for 'own') everything they can. Imagine the value of data in a mergers and acquisition law firm. You could sell the data to others or use it yourself to get rich on the stock market. State-sponsored hackers can give their countries a competitive advantage against the U.S. Economic espionage is more and more common.

The longer a hacker is inside the network, the more the hacker learns about the network itself and its users. That knowledge can be a springboard for figuring ways to compromise more user accounts and gain access to more data. One primary objective is to keep the attack hidden.

We haven't made a lot of progress in discovering data breaches. According to the *2018 Ponemon/IBM Cost of a Data Breach Study*, it still takes an average of more than six months to discover a data breach – and the mean time to contain the breach is 69 days. This gives hackers a lot of time to gather your data.

Law firm managing partner: "Oh crap, we've been breached."

'Crap' may or may not be the exact word choice, but we have heard many such utterances. They are generally made in a nervous (sometimes hysterical) voice – and the stress of dealing with a data breach is immediate – and runs throughout the investigation and remediation. The stress is worse if knowledge of the breach becomes public.

If the law firm has an Incident Response Plan, it is the first resource for those within the firm in charge of dealing with the breach. They begin picking up the phone to call the regional office of the FBI, their insurance company, their data breach lawyer, their digital forensics company, their bank, and the list goes on. All 50 states now have data breach notification laws, so those will be carefully read to determine if a report (or reports) must be filed and when.

Rarely, if ever, does a law firm notify clients at this juncture. In most breaches, it is not immediately known what data may have been compromised – and there is natural reluctance to tell clients anything until the investigation is well underway. The exception is when the breach goes public – and then there is little choice but to talk to clients.

Law firm receptionist: "The FBI agents are here."

There is something about the arrival of the FBI agents that unnerves those delegated to meet with them. In our own experience, the agents are polite but somewhat humorless. Understandably, from their point of view, it is a Joe Friday "Just the facts ma'am" kind of meeting.

If it makes you feel better (at least slightly), the agents do not arrive in marked vehicles and they are not wearing the emblazoned FBI jackets. They are also not loose-lipped – you will not find an account of their meeting with you leaked to the press or elsewhere. They are in the business of keeping things confidential.

But be forewarned, it is not their place to do the actual investigation and remediation of the breach – that job belongs to private digital forensics investigators. This seems to disappoint some law firm leaders, who hope that the FBI can "fix the problem." The FBI agents are there to gather data. This is how the government gathers facts which may help everyone, for instance by sharing information about hacking methods, tools, groups, etc. through such vehicles as the FBI's Infragard program.

If there are national security implications to the breach, the FBI may bring in colleagues from other agencies, notably the Department of Homeland Security. At that point, they may go beyond information gathering and take actions – but that is the exception rather than the rule.

Digital forensics investigator: "Yeah, we know how they got in. You pretty much sent them an engraved 'hack me' invitation."

OK, the investigators will probably be more diplomatic. But between themselves, this is often the conclusion they reach – that the client's security was sloppy. It is exceedingly rare for qualified, highly certified digital forensics investigators not to find the cause of the breach, though it may take time. As noted above, the average time to contain breaches is 69 days – 69 days of long, hard, excruciatingly detailed work, with every step carefully recorded.

Progress reports will be given regularly to law firm management. Once it is known how the hackers got in, you will be informed. Remediation steps and their costs will be presented for approval. Given that there has been a breach, there's usually not a lot of deliberating about spending the monies.

Typically, breaches are traced to a long list of possible causes (the engraved 'hack me' invitation), including users clicking on a link in or attachment to an email, sharing of log-in credentials, reusing of passwords, weak passwords, failure to update/patch software, lost or stolen devices, privilege misuse, insecure websites, malicious insiders, social engineering, etc. But at the end of the day, there is generally some kind of malware which must be rooted out of the network – and this process can be time-consuming and complicated.

Longer term recommendations usually include employee training, phishing tests (with consequences for multiple failures, up to and including termination), regular security assessments and penetration testing, in which the security company acts as though it were an attacker.

Law firm insurance company: "We don't cover 'stupid'."

The cyberinsurance world remains the Wild, Wild West. With a notable absence of historical data to guide the industry, even Warren Buffet, CEO of insurer Berkshire Hathaway, is skeptical. He said in May of 2018, "Cyber is uncharted territory. It's going to get worse, not better . . . There's a very material risk which didn't exist 10 or 15 years ago and will be much more intense as the years go along." He went on to say, "We don't want to be a pioneer on this ... I think anybody that tells you now they think they know in some actuarial way either what [the] general experience is like in the future, or what the worst case can be, is kidding themselves." We could not concur more.

Buffet's views are reflected in more and more cyberinsurance policies, which now often include requirements for security audits and also include language about conforming to industry cybersecurity standards, The case we refer to above because it became known in the press as the "We don't cover stupid" case is *Columbia Casualty Co. v. Cottage Health System*. There are now more cases in the judicial system where insurers are saying the insured did not take the reasonable security steps required by the policy. We certainly know a lot of law firms whose cybersecurity practices wouldn't stand up to some of these new insurance requirements of "best practices" or "industry standards."

Law firm client (whose data was compromised); "We need to reevaluate our association with your firm."

The sound of clients beating a path to the law firm exit door is a scary thought but in light of all the law firm data breaches that have become public, we know that more and more clients are not taking even long-term relationships with law firms as a continued certainty where cybersecurity is lacking.

Ten years ago, only a handful of clients seemed deadly serious about demanding that their law firms demonstrate that they were focusing – and spending money - on cybersecurity. That has markedly changed. Now clients are demanding that law firms fill out security questionnaires and sometimes demanding a third-party audit which certifies that any critical vulnerabilities found have been remediated.

In 2017, the Association of Corporate Counsel upped the ante when it released *Model Information Protection and Security Controls for Outside Counsel Possessing Company Confidential Information*. The gauntlet was effectively thrown down, identifying the standards outside counsel are expected to meet with a hint of "or else."

Law firm management meeting: "Anyone think we need to spend more money on cybersecurity NOW?"

From our foxhole, there is a bit of "We told you so" in seeing law firms, given a well-thought cybersecurity proposal, reject the proposal and then suffer a breach because of the very vulnerabilities that were addressed by the proposal. From our colleagues in the cybersecurity industry, we understand

that this happens all the time. It is frustrating. Much of the time it has to do with spending money (hence the subhead above) or simply a wrong-headed belief that "it can't happen here."

On a regular basis, you probably see CLEs advertised focusing on how to get cybersecurity buy-in from law firm management. Data breaches have a marvelous way of getting law firm ostriches to remove their heads from the sand. With perfect clarity of vision, they now see that cybersecurity is an integral part of any law firm's risk management planning. And they do tend to crowbar open their wallets, especially when their clients or their insurance company require various reassurances.

Final thoughts

At the end of the day, hackers want your data or your money and sometimes both. Their motivations are not complex. You may remember the movie "Bonnie and Clyde" and the scene where Clyde announces to strangers, "We rob banks!" Simple, to the point, and said with pride. Hackers, who are also criminals, are generally equally enthused about their work.

When you are up against an expert hacker with a wide array of hacking tools and sufficient funding, you don't have much of a chance. Your best defense is being prepared and making cybersecurity a priority. The hacking community is gunning for you – of that, you can be quite sure.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, cybersecurity and digital forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

TECHSHOW2020

Red Pill vs. Blue Pill: How Deepfakes are Defining Digital Reality

WRITTEN BY:

Sharon Nelson, John Simek and Michael Maschke

PRESENTERS:
Sharon Nelson: @sharonnelsonesq
Lincoln Mead: @lincolnmead

January 6, 2020

Video and Audio Deepfakes: What Lawyers Need to Know

by Sharon D. Nelson, Esq., John W. Simek and Michael C. Maschke

TWO SCARY SCENARIOS

If some nefarious person has decent photos of your face, you too (like so many unfortunate Hollywood celebrities) could appear to be the star of a pornographic video. If someone has recordings of your voice (from your website videos, CLEs you have presented, speeches you've given, etc.), they can do a remarkably good job of simulating your spoken words and, just as an example, call your office manager and authorize a wire transfer – something the office manager may be willing to do because of "recognizing" your voice.

Unnerving? Yes, but it is the reality of today. And if you don't believe how "white hot" deepfakes are, just put a Google alert on that word and you'll be amazed at the volume of daily results.

Political and Legal Implications

We have already seen deepfakes used in the political area (the "drunk" Nancy Pelosi deepfake, a reference to which was tweeted by the president), and many commentators worry that deepfake videos will ramp up for the 2020 election. Some of them, including the Pelosi video, are referred to as "cheapfakes" because they are so poorly done (basically running the video at 75 percent speed to simulate drunkenness), but that really doesn't matter if large numbers of voters believe it's real. And the days when you could tell a deepfake video by the fact that the person didn't blink are rapidly vanishing as the algorithms have gotten smarter.

In August 2019, the Democratic National Committee wanted to demonstrate the potential threat to the 2020 election posed by deepfake videos so it showed, at the 2019 Def Con conference, a video of DNC Chair Tom Perez. The audience was told he was unable to come but would appear via Skype. Perez came on screen and apologized for not being in attendance—except that he had said no such thing. It was a deepfake.

Another deepfake video surfaced of Facebook CEO Mark Zuckerberg in June 2019, with him supposedly saying: "Imagine this for a second. One man, with total control of billions of people's stolen data. All their secrets, their lives, their futures. I owe it all to Spectre. Spectre showed me that whoever controls the data controls the future." It was hardly a credible fake, but since he appeared to be talking to CBS, CBS asked that Facebook remove the video, complaining about the unauthorized use of its trademark.

Deepfakes are capable of influencing elections and perhaps the rule of law, which should certainly compel the attention of lawyers, especially since many lawyers regard the rule of law as already under fire.

Legislation has been introduced in Congress to do something about deepfakes to prevent an impact on our elections. It has gone nowhere. The First Amendment is often cited as an obstacle to legislation, as is the fair use provision of copyright law, existing state privacy, extortion and defamation laws, and the Digital Millennium Copyright Act, all for different reasons.

The Malicious Deep Fake Prohibition Act, introduced in Congress, would make it a federal crime to create a deepfake when doing so would facilitate illegal conduct. It was not well received. The DEEPFAKES

Accountability Act requires mandatory watermarks and clear labeling on all deepfakes (oh sure, the bad guys will respect that law!). It contains a very broad definition of deepfakes, which almost certainly would guarantee that it would face a constitutional challenge. In short, we haven't gotten close to figuring out how to deal with deepfakes via legislation.

And yet, according to a June 2019 Pew Research Center survey, nearly two-thirds of Americans view altered videos and images as problematic and think something should be done to stop them. According to the survey, "Roughly three-quarters of U.S. adults (77 percent) say steps should be taken to restrict altered images and videos that are intended to mislead." The survey indicated that the majority of Republicans and Democrats believe that.

What Is a Deepfake Video?

No worries, we'll get to deepfake audios later. The audios are a new phenomenon in the toolbox of criminals, but deepfake videos have become—quickly—terrifyingly mainstream. Remember the "old" days of video manipulation when we were all amazed, watching Forrest Gump as he met President Kennedy 31 years after the president's assassination? Ah, the days of innocence!

We are writing here for lawyers, so we are not going into the weeds of how true deepfakes are produced. It is a remarkably complex process when well done. But we can give you a 10,000-foot picture of what deepfakes are and how, in vastly simplified terms, they are created.

We actually like the Wikipedia definition of deepfake: *"a portmanteau of 'deep learning' and 'fake' is a technique for human image synthesis based on artificial intelligence. It is used to combine and superimpose existing images and videos onto source images or videos using a machine learning technique known as generative adversarial network. The phrase 'deepfake' was coined in 2017. Because of these capabilities, deepfakes have been used to create fake celebrity pornographic videos or revenge porn. Deepfakes can also be used to create fake news and malicious hoaxes."*

If you thought Photoshop could do bad things, think of deepfakes as Photoshop on steroids!

Deepfake video is created by using two competing (and yet collaborative) AI systems—a generator and a discriminator. The generator makes the fake video and then the discriminator examines it and determines whether the clip is fake. If the discriminator correctly identifies a fake, the generator learns to avoid doing the same thing in the clip it creates next.

The generator and discriminator form something called a generative adversarial network (GAN). The first step in establishing a GAN is to identify the desired output and create a training dataset for the generator. Once the generator begins creating an acceptable level of output, video clips can be fed to the discriminator. As the generator gets better at creating fake video clips, the discriminator gets better at spotting them. Conversely, as the discriminator gets better at spotting fake video, the generator gets better at creating them. If thinking about that makes your head spin, you are not alone.

Yes, it is technical and not especially easy to understand, though there are (of course) Ikea-like DIY toolkits that will do most of the advanced work for you.

Hany Farid on Deepfakes

Hany Farid, a professor who is often called the father of digital image forensics, is a special hero to the authors. His incredible work on detecting altered images has inspired us for years. Here is what Farid says about deepfakes:

"The technology to create sophisticated fakes is growing rapidly. Every three to six months, we see dramatic improvements in the quality and sophistication of the fakes. And, these tools are becoming increasingly easier to use by the average person. Deepfakes (image, audio and visual) can have broad implications ranging from nonconsensual pornography to disrupting democratic elections, sowing civil discord and violence, and fraud. And more generally, if we eventually live in a world where anything can be faked, how will we trust anything that we read or see online?"

That's a darn good question for which, at the moment, no one has a satisfactory answer.

Farid doesn't believe, and we agree, that we can truly control the deepfakes situation. To exercise any degree of control, according to him, "will require a multifaceted response from developing better detection technology to better policies on the large social media platforms, a better educated public and potentially legislation."

New photo and video verification platforms like Truepic (full disclosure: Farid is an advisor to the company) use blockchain technology to create and store digital signatures for authentically shot videos as they are being recorded, which makes them easier to verify later. But today, that is the exception and not the reality.

By the way, sharing deepfake revenge porn is now a crime in Virginia (effective July 1, 2019), the first state to make it a crime. We hope many more will follow. How do we combat the spread of $50 apps like DeepNude (thankfully defunct as we write, but there will be others), which could undress women in a single click? DeepNude was trained on more than 10,000 images of nude women and would provide the undressed woman within 30 seconds—and of course the image could be shared to smear reputations (sending it to the woman's employer or friends and family) or to post online as revenge porn.

How Do We Tell If a Video Is a Deepfake?

Researchers can now examine videos for signs it's a fake, such as shadows and blinking patterns. In June 2019, a new paper from several digital forensics experts outlined a more foolproof approach that relies on training a detection algorithm to recognize the face and head movements of a particular person, thereby showing when that person's face has been imposed onto the head and body of someone else. The drawback is that this approach only works when the system has been trained to recognize particular people, but it might at least keep presidential candidates safe from attack.

Progress has been impressive. Still, the deepfakes are getting better all the time. Are we ready for a barrage of deepfake videos before the 2020 election? The almost unanimous answer of the experts is "no."

To return to Farid's colorful expressions of futility, "We are outgunned. The number of people working on the video-synthesis side, as opposed to the detector side, is 100 to 1." Those are daunting odds.

Audio Deepfakes

As if deepfake videos weren't driving us crazy trying to discern the real from the unreal, now voice-swapping has begun to be used in artificial intelligence cyberattacks on business, allowing attackers to gain access to corporate networks and persuade employees to authorize a money transfer.

Business email compromise (BEC) attacks have become woefully common. Generally, they start with a phishing email to get into an enterprise network and look at the payment systems. They are looking for the employees authorized to wire funds and the entities that they usually wire funds to.

It is a theatrical game, as they emulate the executive, scaring or persuading the employee. This is really ramping up the success of the acts as using the phone to impersonate an executive is a powerful tool.

As with video deepfakes, the AI has GANs that constantly teach and train each other, perfecting the outcome.

Also emulating the fake videos, the bad guys come up with a convincing voice model by giving training data to the algorithm. The data might come from speeches, presentations or law firm website videos featuring the voice of the executive. Why is deepfake audio more flexible? Well, with video, there needs to be a baseline video. Not so with audio deepfakes. Once there is a credible audio profile created, the attacker can use "text-to-speech" software and create any script desired for the phony voice to read. However, deepfake audio is much more flexible than deepfake video at present. With deepfake video, the training model still needs a real base video. But once a robust enough deepfake audio profile is built, it can be used with specialized "text-to-speech" software to create scripts for the fake voice to read. This means you don't need to have an exact recording of the words you want to use in the deepfake audio.

Creating deepfake audio is not easy or cheap—it takes time and money, which is a bar to many attackers. The most advanced of these systems can create a voice profile by listening to just 20 minutes of audio, but in most cases the process is longer and resource intensive.

Dr. Alexander Adam, a data scientist at AI training lab Faculty, estimates that you can spends thousands of dollars training a very convincing deepfake audio model. Added to the mix? Background noise of some kind, traffic noises, for instance – that sort of gloss over imperfections in the audio. Dr. Alexander Adam, a data scientist at AI training lab Faculty, estimates that training a very convincing deepfake audio model costs thousands of dollars in computing resources. But real attacks we've seen thus far cleverly used background noise to mask imperfections, for example, simulating someone calling from a spotty cellular phone connection or being in a busy area with a lot of traffic. We've got to admit—these people are crafty.

How Can We Defeat Audio Deepfakes?

Who can authorize wire payments might want to take a look at the audio footprints they have in the public realm to assess their degree of possible risk? If the risk is consideration, they should tighten requirements before funds are sent.

Naturally, researchers are working out ways to review the audio of a call authorizing the release of funds to assess the probability that it is real or fake. We are not sure yet about the implementation of a certification system for inter-organizational calls, but it's a possibility. Another possibility would use

blockchain technology in combination with voice-over-IP (VoiP) calls in order provide caller authentication. Upper-level law firm personnel who have the authority to issue payments should review their available body of public audio to determine their level of risk and perhaps implement added verification requirements. Of course, the possibility that an attacker might engage a target in a phone or in-person conversation to obtain the voice data they need should also be considered as this takes its place among the more common AI cyberattacks. Yikes.

Defenses against these attacks summon all the rules of cybersecurity, including the wisdom of educating employees. There is little knowledge among employees about these deepfakes, particularly the audio fakes. After training, employees are much more apt to be suspicious of an unusual payment request or – another frequent ploy – a request for network access. While we wait for new technology, protection against these new AI cyberattacks ties in with basic cybersecurity in handling all forms of BEC and invoicing fraud—the foundation is employee education. Most employees are not currently aware of what deepfake audios are, let alone the possibility that faked audio can be used to simulate a call from a superior. Education can motivate an employee to question an unusual payment or network access request. Putting additional verification methods in place is wise.

Baseline BEC defenses such as filtering and authentication frameworks for email can stop these attacks in their tracks by snagging phishing emails before delivered. As always, require multi-factor wherever you can. We always advise law firms to require that an employee who receives a wire funds request call the authorizing party back – at a known good number – never at a number given in the audio message. Verify everything!

Final Thoughts

We tried to keep the information above as readable and informative as possible. The truth is, very few lawyers understand the risks of deepfake audios and videos and how to address them. More and more, we are asking law firms to accept a homework assignment, which is now an important piece of the ever-evolving cybersecurity threats. While it is fairly expensive to generate credible deepfake audio and video today, as the cost of computational horsepower goes down, we're sure that deepfakes will become more affordable to the masses.

116TH CONGRESS
1ST SESSION

S. 2065

IN THE HOUSE OF REPRESENTATIVES

PASSED OCTOBER 28, 2019

Referred to the Committee on Energy and Commerce

AN ACT

To require the Secretary of Homeland Security to publish an annual report on the use of deepfake technology, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deepfake Report Act of 2019".

SEC. 2. DEFINITIONS.

In this Act:

(1) DIGITAL CONTENT FORGERY.—The term "digital content forgery" means the use of emerging technologies, including artificial intelligence and machine learning techniques, to fabricate or manipulate audio, visual, or text content with the intent to mislead.

(2) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

SEC. 3. REPORTS ON DIGITAL CONTENT FORGERY TECHNOLOGY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually thereafter for 5 years, the Secretary, acting through the Under Secretary for Science and Technology, shall produce a report on the state of digital content forgery technology.

(b) CONTENTS.—Each report produced under subsection (a) shall include—

(1) an assessment of the underlying technologies used to create or propagate digital content forgeries, including the evolution of such technologies;

(2) a description of the types of digital content forgeries, including those used to commit fraud, cause harm, or violate civil rights recognized under Federal law;

(3) an assessment of how foreign governments, and the proxies and networks thereof, use, or could use, digital content forgeries to harm national security;

(4) an assessment of how non-governmental entities in the United States use, or could use, digital content forgeries;

(5) an assessment of the uses, applications, dangers, and benefits of deep learning technologies used to generate high fidelity artificial content of events that did not occur, including the impact on individuals;

(6) an analysis of the methods used to determine whether content is genuinely created by a human or through digital content forgery technology and an assessment of any effective heuristics used to make such a determination, as well as recommendations on how to identify and address suspect content and elements to provide warnings to users of the content;

(7) a description of the technological counter-measures that are, or could be, used to address concerns with digital content forgery technology; and

(8) any additional information the Secretary determines appropriate.

(c) CONSULTATION AND PUBLIC HEARINGS.—In producing each report required under subsection (a), the Secretary may—

(1) consult with any other agency of the Federal Government that the Secretary considers necessary; and

(2) conduct public hearings to gather, or otherwise allow interested parties an opportunity to present, information and advice relevant to the production of the report.

(d) FORM OF REPORT.—Each report required under subsection (a) shall be produced in unclassified form, but may contain a classified annex.

(e) APPLICABILITY OF FOIA.—Nothing in this Act, or in a report produced under this section, shall be construed to allow the disclosure of information or a record that is exempt from public disclosure under section 552 of title 5, United States Code (commonly known as the "Freedom of Information Act").

(f) APPLICABILITY OF THE PAPERWORK REDUCTION ACT.—Subchapter I of chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act"), shall not apply to this Act.

Passed the Senate October 24, 2019.

California Prohibits Deepfakes Within 60 Days of an Election

Assembly Bill No. 730

CHAPTER 493

An act to amend, repeal, and add Section 35 of the Code of Civil Procedure, and to amend, add, and repeal Section 20010 of the Elections Code, relating to elections.

[Approved by Governor October 03, 2019. Filed with Secretary of State October 03, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 730, Berman. Elections: deceptive audio or visual media.

Existing law prohibits a person or specified entity from, with actual malice, producing, distributing, publishing, or broadcasting campaign material, as defined, that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed, unless the campaign material contains a specified disclosure.

This bill would, until January 1, 2023, instead prohibit a person, committee, or other entity, within 60 days of an election at which a candidate for elective office will appear on the ballot, from distributing with actual malice materially deceptive audio or visual media of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate, unless the media includes a disclosure stating that the media has been manipulated. The bill would restore the existing provisions described above on January 1, 2023. The bill would define "materially deceptive audio or visual media" to mean an image or audio or video recording of a candidate's appearance, speech, or conduct that has been intentionally manipulated in a manner such that the image or audio or video recording would falsely appear to a reasonable person to be authentic and would cause a reasonable person to have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

The bill would authorize, until January 1, 2023, a candidate for elective office whose voice or likeness appears in audio or visual media distributed in violation of this section to seek injunctive or other equitable relief prohibiting the distribution of the deceptive audio or visual media. It would also authorize a candidate whose voice or likeness appears in the deceptive audio or visual media to bring an action for general or special damages against the person, committee, or other entity that distributed the media, and would authorize the court to award a prevailing party reasonable attorney's fees and costs.

The bill would provide exemptions for all of the following: (1) a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast materially deceptive audio or visual media, (2) materially deceptive audio or visual media that constitutes satire or parody, (3) a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, that broadcasts materially deceptive audio or visual media as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledges through content or a disclosure that there are questions about the authenticity of the materially deceptive audio or visual media, and (4) an internet website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest, and that publishes the materially deceptive audio or visual media, if the publication clearly states that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the candidate.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 35 of the Code of Civil Procedure is amended to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, election contests, and actions under Section 20010 of the Elections Code shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

SEC. 2. Section 35 is added to the Code of Civil Procedure, to read:

35. (a) Proceedings in cases involving the registration or denial of registration of voters, the certification or denial of certification of candidates, the certification or denial of certification of ballot measures, and election contests shall be placed on the calendar in the order of their date of filing and shall be given precedence.

(b) This section shall become operative January 1, 2023.

SEC. 3. Section 20010 of the Elections Code is amended to read:

20010. (a) Except as provided in subdivision (b), a person, firm, association, corporation, campaign committee, or organization shall not, with actual malice, produce, distribute, publish, or broadcast campaign material that contains (1) a picture or photograph of a person or persons into which the image of a candidate for public office is superimposed or (2) a picture or photograph of a candidate for public office into which the image of another person or persons is superimposed. “Campaign material” includes, but is not limited to, any printed matter, advertisement in a newspaper or other periodical, television commercial, or computer image. For purposes of this section, “actual malice” means the knowledge that the image of a person has been superimposed on a picture or photograph to create a false representation, or a reckless disregard of whether or not the image of a person has been superimposed on a picture or photograph to create a false representation.

(b) A person, firm, association, corporation, campaign committee, or organization may produce, distribute, publish, or broadcast campaign material that contains a picture or photograph prohibited by subdivision (a) only if each picture or photograph in the campaign material includes the following statement in the same point size type as the largest point size type used elsewhere in the campaign material: "This picture is not an accurate representation of fact." The statement shall be immediately adjacent to each picture or photograph prohibited by subdivision (a).

(c) (1) Any registered voter may seek a temporary restraining order and an injunction prohibiting the publication, distribution, or broadcasting of any campaign material in violation of this section. Upon filing a petition under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure.

(2) A candidate for public office whose likeness appears in a picture or photograph prohibited by subdivision (a) may bring a civil action against any person, firm, association, corporation, campaign committee, or organization that produced, distributed, published, or broadcast the picture or photograph prohibited by subdivision (a). The court may award damages in an amount equal to the cost of producing, distributing, publishing, or broadcasting the campaign material that violated this section, in addition to reasonable attorney's fees and costs.

(d) (1) This section does not apply to a holder of a license granted pursuant to the federal Communications Act of 1934 (47 U.S.C. Sec. 151 et seq.) in the performance of the functions for which the license is granted.

(2) This section does not apply to the publisher or an employee of a newspaper, magazine, or other periodical that is published on a regular basis for any material published in that newspaper, magazine, or other periodical. For purposes of this subdivision, a "newspaper, magazine, or other periodical that is published on a regular basis" does not include any newspaper, magazine, or other periodical that has as its primary purpose the publication of campaign advertising or communication, as defined by Section 304.

(e) This section shall become operative on January 1, 2023.

SEC. 4. Section 20010 is added to the Elections Code, to read:

20010. (a) Except as provided in subdivision (b), a person, committee, as defined in Section 82013 of the Government Code, or other entity shall not, within 60 days of an election at which a candidate for elective office will appear on the ballot, distribute, with actual malice, materially deceptive audio or visual media, as defined in subdivision (e), of the candidate with the intent to injure the candidate's reputation or to deceive a voter into voting for or against the candidate.

(b) (1) The prohibition in subdivision (a) does not apply if the audio or visual media includes a disclosure stating: "This _____ has been manipulated."

(2) The blank in the disclosure required by paragraph (1) shall be filled with whichever of the following terms most accurately describes the media:

(A) Image.

(B) Video.

(C) Audio.

(3) (A) For visual media, the text of the disclosure shall appear in a size that is easily readable by the average viewer and no smaller than the largest font size of other text appearing in the visual media. If the visual media does not include any other text, the disclosure shall appear in a size that is easily readable by the average viewer. For visual media that is video, the disclosure shall appear for the duration of the video.

(B) If the media consists of audio only, the disclosure shall be read in a clearly spoken manner and in a pitch that can be easily heard by the average listener, at the beginning of the audio, at the end of the audio, and, if the audio is greater than two minutes in length, interspersed within the audio at intervals of not greater than two minutes each.

(c) (1) A candidate for elective office whose voice or likeness appears in a materially deceptive audio or visual media distributed in violation of this section may seek injunctive or other equitable relief prohibiting the distribution of audio or visual media in violation of this section. An action under this paragraph shall be entitled to precedence in accordance with Section 35 of the Code of Civil Procedure.

(2) A candidate for elective office whose voice or likeness appears in a materially deceptive audio or visual media distributed in violation of this section may bring an action for general or special damages against the person, committee, or other entity that distributed the materially deceptive audio or visual media. The court may also award a prevailing party reasonable attorney's fees and costs. This subdivision shall not be construed to limit or preclude a plaintiff from securing or recovering any other available remedy.

(3) In any civil action alleging a violation of this section, the plaintiff shall bear the burden of establishing the violation through clear and convincing evidence.

(d) (1) This section shall not be construed to alter or negate any rights, obligations, or immunities of an interactive service provider under Section 230 of Title 47 of the United States Code.

(2) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, that broadcasts materially deceptive audio or visual media prohibited by this section as part of a bona fide newscast, news interview, news documentary, or on-the-spot coverage of bona fide news events, if the broadcast clearly acknowledges through content or a disclosure, in a manner that can be easily heard or read by the average listener or viewer, that there are questions about the authenticity of the materially deceptive audio or visual media.

(3) This section does not apply to a radio or television broadcasting station, including a cable or satellite television operator, programmer, or producer, when it is paid to broadcast materially deceptive audio or visual media.

(4) This section does not apply to an internet website, or a regularly published newspaper, magazine, or other periodical of general circulation, including an internet or electronic publication, that routinely carries news and commentary of general interest, and that publishes materially deceptive audio or visual media prohibited by this section, if the publication clearly states that the materially deceptive audio or visual media does not accurately represent the speech or conduct of the candidate.

(5) This section does not apply to materially deceptive audio or visual media that constitutes satire or parody.

(e) As used in this section, "materially deceptive audio or visual media" means an image or an audio or video recording of a candidate's appearance, speech, or conduct that has been intentionally manipulated in a manner such that both of the following conditions are met:

(1) The image or audio or video recording would falsely appear to a reasonable person to be authentic.

(2) The image or audio or video recording would cause a reasonable person to have a fundamentally different understanding or impression of the expressive content of the image or audio or video recording than that person would have if the person were hearing or seeing the unaltered, original version of the image or audio or video recording.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(g) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

TECHSHOW2020

Cloudy, With a Chance of Sanctions (or Success)

WRITTEN BY:

Jim Calloway and Nicole Black

PRESENTERS:
Jim Calloway: @jimcalloway
Nicole Black: @nikiblack

January 6, 2020

Author's Note: For our written materials for this session we have assembled several different papers on cloud computing written by your co-presenters.

Safe in the Clouds

By Jim Calloway

"Safe in the clouds" sounds peaceful and dreamy, unless of course you have a fear of falling.

Lawyers, for better and for worse, are trained to examine everything with an eye toward fear of falling, or more accurately, fear of failing. This starts in law school with the high-pressure Socratic method, high-stakes single exams and class ranking. In law practice, there is an important need for critical examination skills, whether it is "Could that oddly drafted contract provision harm my client?" or "Are they trying to gain an advantage with that ambiguous phrase?"

Among the most frequently asked questions I receive from Oklahoma lawyers are questions about cloud computing. This has been true for several years. Lawyers are concerned about the risks of using cloud computing because these data security risks seem hard to appreciate and quantify for those untrained in information technology.

Is my data safe in the cloud? Can other people see my data in the cloud? Is it safe to keep my clients' data in the cloud? Are there legal ethics concerns about keeping client data in the cloud?

The answers to these are clear, as far as I am concerned. Your digital data is safer in the cloud.

Safer.

Digital data on any device you own connected to the internet in any way cannot be deemed "100% safe" because of the possibility of a user making a mistake or falling for a scam. The device might fail or there might be a breach from an outsider. This lack of 100% certainty of safety applies to data on all of your connected devices, including computers, tablets and phones.

The Oklahoma Rules of Professional Conduct (ORPC) recognize this as do the ABA Model Rules of Professional Conduct. ORPC Rule 1.6 (c) states that "a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Comment 16 to that rule provides, in part:

> The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).

So, the lawyer who wants to use cloud computing tools is guided by the determination of whether the tool is reasonable. It is always good lawyerly advice to read the Terms of Service, particularly as to under what circumstances, if at all, your data can be accessed by the provider.[i]

However, for the lawyer who doesn't want to use cloud computing tools, my response is that these tools are safer – and why wouldn't you want to use safer?

I should note that there are unsafe ways to implement any technology tool, including those in the cloud. If done correctly, cloud computing can be viewed as outsourcing your data security needs to someone more qualified while also making accessing your data quicker and more convenient.

OUTSOURCING YOUR DATA SECURITY

Today we are at a time where the major cloud service providers can essentially guarantee an impenetrable vault.[ii] A service like Amazon Web Services (AWS), Microsoft Azure or Google Cloud Platform can provide this for you – a data "fortress" which is not going to be breached by a hacker. (Most cloud computing providers lease space from one of those primary hosts.) The challenge is you oversee the drawbridge and the gate – along with everyone and everything that you allow access.

In other words, you are as secure as your most careless user and, if you have other online services connected to your vault, you are depending on them to be secure as well.

The challenge is training that most careless user— the one who keeps the passwords on Post-its near the workstation, takes the company laptop home and lets the kids play on it or clicks on attachments or links in emails from everyone, known or unknown. That person is your greatest vulnerability. A few lawyers might even admit it is them.

Recently, one cloud hosting company was itself a victim. Insynq was the target of a ransomware and malware attack in July 2019. Insynq specializes in providing cloud-based QuickBooks accounting software and services, so many accounting firms found themselves offline for time ranging from hours to days. Apparently some Insynq employee made errors allowing the attack. This is newsworthy because it is so rare. If your office network is crippled by ransomware or malware, the attack is generally not going to make the leap to encrypt your data in the cloud.

So, what about not keeping your data in the cloud?

The careless user is still your security risk, but the consequences from that person's mistakes are arguably worse. Click on an infected file or bad link and the office network may be encrypted with ransomware or just destroyed with some other malware. There is an increasingly smaller chance you can pay the ransom and recover your data. Normally the best outcome is being down for a few days, paying an outside consultant and only losing the data created after your last backup was saved. A firm that isn't doing regular backups may experience more catastrophic damage.

Other dangers of not using cloud computing are risks we can all easily understand: the office (and equipment) catches fire or is destroyed by natural disaster along with the backups you have been methodically creating and storing in your office, burglary or a hard drive or server dying unexpectedly.

Another set of risks associated with not using the cloud is that the lawyers and others employed by the law firm are in charge of digital security. If you have full-time IT staff, that's one thing, but if you are doing it yourself or have a local contractor who comes to the office only when you call with a problem or you need new hardware, you likely have a less qualified security officer than the engineers and security experts on the staff of a cloud provider around the clock. You won't be aware if some new threat emerges while you are asleep or during a two-day jury trial. It's up to you to select and keep updated your firewall, anti-virus and other security tools. Keeping software updated is often automatic. However, if your credit card is compromised and the card's number changed, mistaking a security provider's renewal "bounce" notice for an advertisement could expose your law firm to the risk of out-dated protections.

LAW FIRM DOWN TIME

Let's discuss "down time." Taking reasonable steps to protect your clients' confidential information is your ethical obligation, but keeping the law firm operational is important for the law firm's interests as well as the clients.

In August in Oklahoma City, we had what some called an "inland hurricane" with straight-line winds recorded at 95 mph. In the aftermath, some were without electrical power for several days. A law firm without power is challenged. To reach cloud-based tools, one only has to locate power anywhere, along with internet access. I've heard of law firms temporarily without electricity sending people home to work remotely or opening up shop in a partner's home. If all of your data and tools are powerless in the office, that approach is much less effective.

Even though the cloud is safer, a law firm should still do data backups. You keep data in the cloud, but not all of your software. A backup can restore a workstation to operating order.

CONSENT

Do you have to inform your clients of data stored in the cloud and obtain their consent? All of the jurisdictions that have issued ethics opinions on the issue of lawyers using cloud computing have found it to be ethical, as long as law firms take "reasonable care" when implementing a cloud service. Only a few states have opinions discussing obtaining client consent and those do say it is not routinely necessary but could be in certain sensitive situations. There's no direct authority on point in Oklahoma. My advice is including a reference to cloud data storage in your attorney-client engagement agreement and always make certain new clients read that agreement before signing. If clients have any concerns or questions, they can be addressed at that time.

It is also noteworthy that Comment 16 to Rule 1.6 also provides: "A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule."

CONCLUSION

Cloud computing is a critical part of most law firm operations now. In the future, more law firms will make use of cloud-based automation tools and virtual assistant services in their practice workflows and operations. Even lawyers who consider themselves low tech often use cloud-based email services like Gmail. Some Office 365 tools require online access. So, it will be increasingly difficult to avoid the cloud. This is not to say one cannot decide to keep your copies of completed clients' estate plans in offline storage or that handling a divorce case where the opposing party regularly attends hacker conventions might not require special measures. However, all business tools will increasingly be cloud-based going forward.

ENDNOTES

[i] Some believe the best plan is an encryption scheme where only the law firm has access and if the login credentials are forgotten or lost, all data will be irretrievably lost. Others believe there ought to be some way a lawyer can retrieve a lost password or a judge could order that an appropriate individual be allowed access to a deceased lawyer's files.

[ii] For readability, I am using some absolute terms in this column but the "not 100%" rule applies to all of them. Even for the ones that actually are 100% today, there might be a new development tomorrow.

Originally published in the *Oklahoma Bar Journal* — October 2019 — Vol. 90, No. 8 Reprinted with permission

Cloud Computing for Lawyers – 2019

By Jim Calloway

"Is it really OK for a lawyer to use the cloud?" is one of the most commonly asked questions I hear from lawyers both today and over the years.

The answer is what has been referred to as every lawyer's favorite answer to any legal question – "It depends."

In my opinion, the expanded answer to that question is, today not only is it appropriate for lawyers to use the cloud for both the lawyers' and clients' information, but there are many situations where using the cloud is the absolute best method of storing, utilizing and protecting both lawyer and client data. (Let me note that I am not the OBA ethics counsel nor does my opinion constitute any policy of the Oklahoma Bar Association.)

Of course, being a lawyer, I'm also quite certain I am correct about the subject.

Let's begin with a very simple definition of cloud computing:

Cloud computing is a fancy way of saying stuff's not on your computer. It's on a company's server, or many servers, possibly all over the world. Your computer becomes just a way of getting to your stuff. Your computer is an interface, but not where the magic happens.

This definition is from "Byte Rights" by Quinn Norton, published in a now-defunct magazine Maximum PC in September 2010. She wrote articles for Maximum PC for five years and has written on hacker culture and technology topics. She probably had no idea when she wrote the above words that she would be cited in state bar ethics opinions and many other publications for lawyers.

Most computer users use cloud computing every day. Some services are obvious examples of cloud computing like Dropbox, iCloud, Gmail (and everything else provided by Google) and Facebook (along with all other social media).

If one wants to dive into the weeds, there are now many types of cloud service models including Software-as-a-Service (SaaS), Platform-as-a-Service (PaaS) or Infrastructure-as-a-Service (IaaS), but we are not going into the weeds today.

WHEN IS THE CLOUD THE ABSOLUTE BEST CHOICE?

To me, it is online backup.

Since the beginning of cloud computing, lawyers were concerned whether these services appropriately protected confidential and privileged client information. That is clearly an important concern, which I'll cover momentarily.

There are other types of risks to our practices and our clients as we use technology tools. A hard drive crash could wipe out important and valuable client documents. If a brief that was 90 percent done and is due tomorrow is lost, it would create a problem for the lawyer and possibly for the client. Today, we are all just one ill-advised click on a link or attachment from a potentially devastating malware attack. At worst, the attack could wipe out not just one computer hard drive, but every computer hard drive, portable hard drive and server attached to the network.

If you practice in a large firm with full-time IT staff and they have a different backup strategy, that's fine. However, for most, a continuously operating cloud-based backup service should be one of your two backup methods. (Yes, two backup plans, operating independently, is the standard of care today.) Since most online backup services both compress the data and hold it very securely, the chances of an information data breach are quite limited.

Online backup works well if you have computers corrupted by malware or a hard drive with corrupted data that is undamaged.

Restoring from an online backup is more challenging if the computer has been destroyed by natural disaster and you cannot purchase the exact same model as a replacement. The lawyer is still in far better shape than if there was no backup, but you will first have to buy a new computer and then professional assistance may be required to retrieve the data and make it usable. Some customizations will likely be lost.

You may also want to inquire with your backup provider on how long a complete data restore might take. I once heard from a lawyer who used the "home" grade of a backup service rather than the business class and, in his second day of an estimated three days to restore the data, he wasn't exactly a satisfied customer.

PRACTICE MANAGEMENT IN THE CLOUD

Every OBA member who has heard me discuss this subject knows I am a big fan of cloud-based practice management solutions. I particularly like cloud-based practice management for solo and small firm lawyers because the tech support is handled by the provider as a part of the subscription. In addition to making law firm operations run more smoothly and efficiently, these tools serve as the cloud-based backup service that doesn't need to be restored.

Just imagine you are looking at firefighters pouring water on what is left of your smoldering law office or you are on high ground looking down on your flooded place of business. Having a backup is great comfort then, but you are a few steps away from having access to your files. With cloud-based practice management tools, you can be logged in with your phone looking at documents in client files and rearranging your calendar for tomorrow while watching the firefighters.

Many lawyers now sometimes work from home. Many lawyers also travel frequently as a part of their practice and work from hotel rooms or other locations. Using a VPN to securely log in to a practice management solution is a much more secure way of remote working than emailing documents back and forth with the office. This provides access to every document in every client file (assuming you scanned them into the digital client file) and other things you need like time and billing tools.

The benefits of having data in the cloud are likely why 52 percent of lawyers responding to the 2017 ABA Tech Report survey stated they were using cloud computing, with solo and small firm lawyers leading the way. It is probable many lawyers in larger firms who responded to the survey were unaware of the ways the firm was using the cloud. (I still chuckle about the time a lawyer sent me a strongly worded email from his Gmail account outlining why he would never use cloud computing.)

Another benefit of using the cloud is that well-designed cloud services are quite secure and provide protection for a law firm's data and client data. Today, being connected to the internet means you are a target for online scammers, criminals and other wrongdoers. I've heard of many law firms having all or some of the office computers crippled by a malware attack. I have not heard of any instances where a cloud-based service designed for the lawyers has had such an attack reach their stored data.

I've often referred to using a good cloud computing provider as outsourcing your digital security to those better trained to handle it.

Last summer, the OBA recognized six cloud-based practice management solutions as OBA members benefits, which generally means new subscribers will get a discount. The services are Clio, CosmoLex, MyCase, PracticePanther, Rocket Matter and Zola Suite. They all provide client portals for secure communication with clients in addition to many other features.

THE RISKS OF CLOUD COMPUTING

Many lawyers are concerned about the ethics of keeping client data in the cloud. There's no doubt that randomly using any cloud-based data storage for client information may not be the best plan, but most commercial grade cloud-storage service providers are quite concerned about security. After all, the viability and continued existence of their businesses depend on it.

I would also note that the cloud-based practice management systems were designed for lawyers to store client data and so client confidentiality and security was upmost in mind.

Legal technology journalist Robert Ambrogi compiled a list of 19 states that have issued legal ethics advisory opinions (with links to each) and he noted:

The good news here is that all 19 of the states that have considered the issue agree that lawyers may ethically use the cloud, provided they take reasonable steps to minimize risk to confidential information and client files.

I'm not going to regurgitate all of those opinions that are linked from Mr. Ambrogi's column, but if you want to do some research I'd suggest you start with the one from Pennsylvania. There are some improved ways to protect this data, such as two factor authentication that were not commonly available when these opinions were written.

Certainly, we have all heard of hacks to online data that someone thought and hoped was secure, but that is only one risk and it applies to your office's internet-connected computers as well as cloud-based providers.

a significant risk today is that the end user will not protect their passwords well or have adequate security tools on their computer, allowing access to their client data through that method as opposed to a hacker breaching the system. Phishing emails of all types are another substantial risk to your office computers.

Oklahoma does not have a legal ethics advisory opinion on cloud computing, but in 2010 then-OBA Ethics Counsel Travis Pickens wrote about cloud computing in the Oklahoma Bar Journal. He noted:

But rock-solid certainty is not required. Significantly, in the few ethics opinions that have addressed it, the consensus appears to be that the law firm is not required to guarantee that the system will be invulnerable to unauthorized access.

There are many risks today. I am concerned about the lawyer who has a computer crash or malware attack and hadn't backed up his or her data. I am concerned about the lawyer who cannot handle a client emergency that requires access to documents in a client file when their law office is closed and the lawyer is out of town. I'm concerned for the lawyer who loses a briefcase with an irreplaceable client file or whose office is destroyed by a natural disaster. I'm concerned about the lawyer who loses a business client because the lawyer seems unfamiliar with secure online file management and information sharing.

As professionals, we each bring our experience and training to each engagement. Some of us have different appetites for risk. None of us would risk our client's confidential information. Protecting our client's confidences is a core value of our profession, but there is no completely risk-free alternative for business operations that require internet access.

I'm a lawyer who once drove off with my briefcase full of client files on the top of my vehicle's trunk instead of inside it. I saw the resulting disaster in my rear-view mirror. I recall thinking I needed to buy a new briefcase anyway and being quite grateful it was not a windy day. That illustrates that having critical client information stored only in physical client files is not risk-free either. In earlier times that was a lawyer's only choice. Today you need a backup of the data – and a way to keep your law practice operating in the face of any disaster.

Originally published in Oklahoma Bar Journal January 2019 Reprinted with permission

Cloud and mobile computing trends for lawyers in 2020

-By Nicole Black

I started writing about cloud and mobile computing and their potential benefits for the legal profession in 2009. Within two years I began to work on a draft of my book "Cloud Computing for Lawyers," which was published by the American Bar Association in 2012. Back then, convincing lawyers that cloud computing was the future and that its benefits far outweighed the risks was a tough sell. This is because at the time many lawyers were understandably skeptical, and expressed concerns about the ethical and security issues presented by the use of cloud computing by lawyers.

Fast forward to 2019 and how times have changed! The majority of lawyers are now using cloud and mobile computing tools as part of their day-to-day practices and are reaping the benefits offered by mobile law practices. For proof you need look no further than the latest ABA Legal Technology Survey Report, which was released earlier this month.

According to the survey results, 58% of lawyers now report that they use cloud computing tools for work-related tasks, compared to 38% in 2016. Small firm lawyers from firms with 2-9 lawyers were the most likely to use cloud computing software at 61%. Next up were lawyers from firms of 10-49 attorneys at 60%, followed by 59% of solo lawyers, and 51% of large firm lawyers (100 or more attorneys).

Notably, 8% of the lawyers surveyed indicated that their firms had plans to replace traditional server-based software with a cloud-based alternative within the next 12 months. Lawyers from firms with 2-9 lawyers were the most likely to plan to make that move (12%), followed by lawyers from firms with 10-49 lawyers at 8%. Next up were 6% of lawyers from firms with 100 or more attorneys, and solo lawyers came in last at 5%.

According to the Report, lawyers use cloud computing software for many different reasons. The top reason they provided was easy browser access at 65%, followed by 24/7 access to their law firm's data at 61%. 48% reported that the low cost of entry and predictable monthly expenses were important benefits. 45% of lawyers indicated that robust data backup and recovery was a top benefit. For 35% a strong selling point was that cloud-based software is quick to get up and running, followed by the fact that cloud computing software eliminates IT and software management requirements at 31%. And last but not least, 34% shared that they used cloud computing software because it offers better security than they can provide in-house.

The results of the survey also showed that the majority of lawyers (55%) now telecommute on a regular basis. Of the 55% of lawyers who reported that they telecommuted in the past year, lawyers from firms with 100 or more attorneys were the most likely to do so (60%), followed by 56% of solo attorneys, 53% of lawyers from firms with 2-9 attorneys, and 49% of lawyers from firms with 10-49 attorneys

One way that lawyers access their information stored in the cloud while on the go is through the use of smartphones, so it's no surprise that smartphone use by lawyers continues to increase. A whopping 79% of lawyers reported that they used an iPhone for work-related tasks, while 18% use an Android smartphone. Up next is Blackberry at 7%, and only 1.5% of lawyers reported that they never use a smartphone for work-related purposes.

One place that lawyers often use their smartphones is in court, and when asked how they used smartphones while in court, 54% shared that they used them for checking email. Next up was calendaring at 40%, real-time communications at 32%, and legal research at 22%.

According to the survey results, 29% of lawyers also use tablets in the courtroom. Some of the activities that lawyers conducted on their tablets included email (25%), legal research (19%), calendaring (14%), real-time communications (13%), and accessing court dockets and documents (10%).

Lawyers also regularly use laptops when they're in the courtroom, with 44% of survey respondents indicating that they regularly did so. The most popular tasks accomplished with laptops while in the courtroom were email (34%), legal research (33%), accessing court dockets and documents (26%), and editing document (24%).

So that's how today's mobile lawyer gets work done on the go. How does your usage compare? Are you taking full advantage of the many benefits offered by mobile and cloud computing tools in your practice? If you're not already using cloud computing software at your firm, maybe it's time to consider an upgrade. After all, there's no better time than the present!

Originally published in the Daily Record 2019 Reprinted with permission

Lawyers and Cloud Computing: It's Not So Complicated Anymore

- By Nicole Black

Cloud computing is a concept that most lawyers are familiar with in 2019. But it wasn't always that way. I've been writing about cloud computing and encouraging lawyers to use it for more than a decade now, and when I first started writing and speaking about it my ideas where greeted with suspicion and skepticism. For many years, it was an uphill battle, although that's changed in recent years.

To the best of my knowledge, I began my advocacy when I first wrote about cloud computing in March of 2009. In that post, Law Practice Management in the Cloud, I explained why I believed that lawyers should consider cloud-based law practice management software:

> "Taking advantage of SaaS law practice management software allows firms to focus on the ever-important task of practicing law while the SaaS provider operates, updates and maintains the practice management software…Advantages include lower costs due to reduced overhead, less hassle related to maintaining and upgrading the case management system and greater flexibility, since the Web-based system can be accessed anywhere, at anytime."

From that point on, in addition to encouraging lawyers to use cloud software, I also began to track ethics opinions that addressed the issue of whether it was permissible for lawyers to use cloud computing tools to store confidential client data.

In 2010, I wrote about one of the first ethics opinions on this issue, which was handed down by the New York State Bar Association's Committee on Professional Ethics in September 2010.

In that opinion, Opinion 842, the Ethics Committee green lighted the use of cloud computing by New York lawyers, concluding that "a lawyer may use an online data storage system to store and back up client confidential information provided that the lawyer takes reasonable care to ensure that confidentiality is maintained."

Since then, more than 20 jurisdictions have considered this issue and all have concluded that lawyers can ethically use cloud computing. These include: Alabama (Formal Opinion No. 2012-184), Alaska (Ethics Opinion No. 2014-3), Arizona (Opinion 09-04), California (Opinion 2010-179), Florida (Proposed Advisory Opinion 12-3), Illinois (Opinion No. 16-06), Iowa (Opinion 11-01), Maine (Opinion 194, Opinion 207), Massachusetts (Opinion 12-03), New Hampshire (Opinion 2012-13/4), New Jersey (Opinion 701), Nevada (Opinion 33), North Carolina (2011 Formal Ethics Opinion 6), Ohio (Informal Opinion 2013-03), Oregon (Opinion 2011-188), Pennsylvania (Opinion 2011-200), Tennessee (Formal Ethics Opinion 2015-F-159), Vermont (Opinion 2010-6), Virginia (Legal Ethics Opinion 1872),Washington (Advisory Opinion 2215), and Wisconsin (Formal Ethics Opinion EF-15-01).

The most recent to do so was the State Bar of Texas, which issued Opinion 680 in September 2018. At issue was whether Texas lawyers may "use cloud-based client data storage systems or use cloud-based software systems for the creation of client-specific documents where confidential client information is stored or submitted to a cloud-based system."

The Committee concluded that Texas lawyers may indeed use cloud computing in their practices: "Considering the present state of technology, its common usage to store confidential information, and the potential cost and time savings for clients, a lawyer may use cloud-based electronic data systems and document preparation software for client confidential information."

Also of interest was the Committee's confirmation that Texas lawyers have an ethical obligation to stay abreast of technology: "(A) lawyer should remain reasonably aware of changes in technology and the associated risks—without unnecessarily retreating from the use of new technology that may save significant time and money for clients." Notably, a few months later, in February, Texas officially adopted the duty of technology competence into its disciplinary rules of professional conduct.

When I learned of this opinion, I was struck by the fact that it was the first to address the ethics of cloud use by lawyers in more than a year. This is notable since, beginning in 2010, cloud ethics opinions were issued quite frequently, with as many as three or four being handed down by various jurisdictions in some years. But beginning in early 2017, after the Illinois opinion listed above (Opinion No. 16-06), there was a noticeable lull, with no opinions being issued to the best of my knowledge until Texas addressed the issue a full year and a half after the Illinois opinion.

I would suggest that the reason for this is simple: cloud computing is now an accepted, trusted technology. As a result lawyers are comfortable using it, and thus don't feel the need to submit inquiries to their bar associations' ethics committees regarding whether it's ethical to do so. In fact, according to the latest ABA Legal Technology Survey report, the majority of lawyers (55 percent) have used cloud computing software tools for law-related tasks.

If you've been thinking about using cloud computing software in your law firm — or are already doing so — rest assured, you're not alone. In 2019, the benefits of cloud-based software far outweigh any perceived risks, so if you haven't already taken advantage of cloud computing tools (and you probably already have even if you don't know it), what are you waiting for? No better time than the present!

Originally published by Above the Law Reprinted with permission

Questions to Ask Cloud Computing Providers

By Nicole Black

- When was the company founded? Has it received funding from or has it been acquired by an established company?
- What rights do I have in the event of a billing dispute or other issue with the vendor?
- If there are integrations with the company's product? How does the company screen the security processes of the other vendors and of the product that integrates with the software?
- If there is a problem with a product that integrates with the vendor's software, which company will be responsible for addressing the issue?
- Does the contract with the vendor address confidentiality?
- Does the contract with the provider include a guarantee of uptime?
- What remedies does the contract provide?
- Does the agreement with the provider contain a forum selection clause or a mandatory arbitration clause?
- What rights do I have upon termination of the contract?
- Can I retrieve a copy of my law firm's data, and in what format will it be provided?
- If there is a data breach, will I be notified? How are costs for remedying the breach allocated?
- Where are the servers located? Will all my firm's data always stay within the boundaries of the United States?
- What type of facility will host my law firm's data?
- Who else has access to the cloud facility, the servers, and the data? What mechanisms are in place to ensure that only authorized personnel will be able to access my data?
- How does the vendor screen its employees? If the vendor doesn't own the data center, how does the data center screen its employees?
- Is the data accessible by the vendor's employees limited to only those situations where I request assistance?
- How often are backups performed? Is data backed up to more than one server?

- What type of security is used at the data centers where the servers are located?
- What types of encryption methods are used? Is my data encrypted while in transit and while at rest?
- Are there redundant power supplies for the servers where my data is stored?
- If a natural disaster strikes one geographic region, would all data be lost or are there geo-redundant backups?

Originally published by The ABA GPSolo Magazine 2017 Reprinted with permission

2019 Cloud Computing

By Dennis Kennedy

Most people use many cloud applications daily in their personal lives, from Gmail to Dropbox to Netflix. In large business enterprises, the average number of cloud applications used by each employee is 36.

In the legal profession, it's still a much different story. The very slow pace of growth continues. That's not the big news. In 2019, the biggest concerns from the ABA 2019 Legal Technology Survey were the poor—and worsening—cybersecurity approaches lawyers are taking to the use of cloud applications.

The terms "cloud" and "cloud computing" have become much more familiar to lawyers in the last few years, but there can still be some confusion about definitions and acronyms. In the enterprise IT world, you will find public, private, and hybrid clouds, and many flavors of "as a service": software (SaaS), infrastructure (IaaS), and platform (PaaS), to name the three most common.

To keep it simple, the 2019 Legal Technology Survey has focused on the basic concept of a "web-based software service or solution," including SaaS. In practical terms, you can understand cloud computing as software or services that can be accessed and used over the internet using a browser (or, commonly now, a mobile app), where the software itself is not installed locally on the computer or phone being used by the lawyer accessing the service. Your data are also processed and stored on remote servers rather than on local computers and hard drives. Cloud applications might also be referred to as "web services" or "hosted services."

Cloud services might be hosted by a third party (most commonly Amazon or Microsoft) or, more commonly in the legal profession, by a provider running its services on Amazon, Microsoft, or another cloud data center provider. It's also possible, though unlikely, that a law firm could host and provide its own private cloud services.

The cloud approach has become quite popular in the business world (e.g., Salesforce.com, BaseCamp, Microsoft Office 365, LinkedIn, Facebook, and Slack), and for individuals (e.g., Dropbox, Gmail, and Evernote). There are also a growing number of legal-specific cloud services, such as Clio, Rocket Matter, NetDocuments, Practice Panther, MyCase, TimeSolv, and many more.

The 2019 Survey results again show lawyers still moving much more cautiously to the cloud than the rest of the business world. The 2019 Survey reports that cloud usage bumped up very slightly, up to 58% in 2019 from 55% in 2018. Those not using cloud services dropped slightly—from 33% to 31%. The "Don't know" category decreased slightly to 11%. Solo and small firms continue to lead the way in cloud adoption at around 60%, with the lowest reported adoption in firms with 50-99 lawyers (44%).

The 2019 Survey highlights a major concern that, while lawyers talk the talk about security concerns in cloud computing, to a shocking degree they do not walk the walk. The poor results in the cybersecurity category should be a major concern for the profession. If you take only one thing from this TECHREPORT to add to your 2019 technology agenda, it should be to up your game on cloud security, for your sake and, even more so, for the sake of your clients.

The key cloud computing benefits have remained constant over the years. Lawyers and law firms see the cloud as a fast and scalable way to use advanced legal technology tools without the need for a substantial upfront capital investment in hardware, software, and support services. Cloud services are generally made available in the form of a "subscription," with a periodic fee (typically monthly) per user.

A popular example of a cloud service is Dropbox, a cloud service for file storage and sharing, that many lawyers report that they are already using. The standard Dropbox business account currently costs $150 per user per year. Many traditional software providers have moved to cloud models and offer hosted versions of their products, joining a large number of companies that focus solely on the cloud. The EXPO Hall at ABA TECHSHOW 2019 again had a noticeable increase in the number of exhibitors with cloud products over prior years.

Despite slow growth and wariness of lawyers, cloud computing appears to be moving toward becoming a standard approach in legal technology, with more than half now using cloud services.

SURVEY HIGHLIGHTS

1. Cybersecurity may be reaching a crisis point in lawyers' use of cloud services. There were significant drops in the use of very standard cybersecurity practices. Although lawyers say that confidentiality, security, data control and ownership, ethics, vendor reputation and longevity, and other concerns weigh heavily on their minds, the employment of precautionary security measures is quite low, with no more than 35% (down from 38%) of respondents actually taking any one of the specific standard cautionary cybersecurity measures listed in the 2019 Survey question on the topic. Seven percent of respondents reported taking NONE of the security precautions of the types listed. Only 41% of respondents report that the adoption of cloud computing resulted in changes to internal technology or security policies. These are troubling numbers.

2. Cloud usage grew only slightly from 2018 to 2019, from 55% to 58%. Solos and small firms continue to lead the way.

3. Despite some reservations, lawyers continued to use popular consumer cloud services like Google Apps, iCloud, and Evernote at higher rates than dedicated legal cloud services. Clio and NetDocuments ranked the highest among the legal cloud services.

4. Lawyers are becoming more familiar with cloud technologies and are attracted by anytime, anywhere access, low cost of entry, predictable monthly expenses, and robust data backup. Notably, almost 30% indicate that cloud services provide the benefit of giving greater security than they can provide on their own.

5. Concerns about confidentiality/security and lack of control lead the worry list by a wide margin. Almost 94% of lawyers rate the reputation of the vendor as important in their decision-making process.

6. The 2019 Survey results also suggest that client-focus is not a driving factor for lawyers using and considering the use of cloud computing. The consideration of client needs, expectations, and desires should be a key target area for innovative lawyers and firms.

7. Solos, small firms, and medium-sized firms have higher cloud usage than large firms. These results might reflect a lack of familiarity with the tools used in large firms or the dependence of large firm lawyers on IT departments.

8. Only 8% of respondents indicated that they expected to replace an existing software tool with a cloud tool in 2018. 48% have no plan to do so and 40% don't know.

9. A third of lawyers are at firms with extranets. Extranets are used primarily for firm lawyers (91%) and much less likely for clients (36%).

1. CYBERSECURITY: AT A CRISIS POINT?

Although lawyers have a lot of concerns and wariness about cloud services, especially security, confidentiality, and control issues, their reported behavior about precautionary measures simply does not reflect what they express their level of concern to be. In fact, the results are shocking and reflect little, if any, positive movement in the past year or even in the past few years. The lack of effort on security has become a major cause for concern in the profession.

Of 13 standard precautionary security measures listed in the 2019 Survey, the measure most commonly used was used by only 35% (using secure socket layers aka SSL) of the respondents. Given the emphasis on data privacy in 2019 because of the European Union GDPR and "hacking" by state actors, the jaw-dropping decrease from 38% to 28% of respondents reviewing vendor privacy policies is alarming. The next most widely-employed precautions were making local data backups (27%, down from 36% in 2018), reviewing Terms of Service (27%, down from 34%), and reviewing ethical decisions on cloud computing (25%, down from 34%). Would lawyers recommend that their clients take these approaches?

The numbers only get worse from there.

A meager 17%, down from 30% in 2018, sought advice from peers and only 23% evaluated vendor company history, despite the stated importance of vendor reputation (94%) in selecting vendors.

At the very bottom of the results are things that lawyers should do quite well. A mere 4% negotiated confidentiality agreements in connection with cloud services, and, in the next to last place, only 5% negotiated service legal agreements (SLAs). Using data escrow was in the last place (1%). If security and confidentiality are lawyers' biggest concerns about cloud computing, does this behavior make any sense in an era of state-actor intrusion concerns? What questions does this raise about meeting technology competency requirements?

2. USAGE NUMBERS

The percentage of the 2019 Survey participants answering "Yes" to the basic question of whether they had used web-based software services or solutions grew slightly, from 55% to 58%. 31% said "No," a small decrease. "Don't know" responses stayed roughly the same at 11%. Solos (59%), small firms of 2-9 lawyers (61%), and mid-sized firms of 10-49 lawyers (59%) continued to lead the way in usage. Larger firm "Yes" responses ranged from 44-53%. These overall results, however, can be confusing given answers to other questions, suggesting the possibility that actual usage might be higher than the reported usage. For

example, many mobile apps are also essentially front-ends for cloud services. Many lawyers who do not think that they are using the cloud may, in fact, be using it every day, especially through mobile apps.

3. CONSUMER CLOUD SERVICES MORE POPULAR THAN DEDICATED LEGAL SERVICES

The 2019 Survey asked respondents what cloud providers they had used. Google Docs topped the list at 37%. Other consumer cloud services also remained popular (notably, iCloud at 27% and Evernote at 16%), despite a lot of discussion about encryption and other security concerns about consumer cloud services in the press and among lawyers. Surprisingly, Office 365 usage is reported at only 7%.

Legal-specific cloud services have not reached the same levels of popularity as consumer services. Clio continues to be the most popular legal cloud service named by respondents (11.4%, up from 9.7% in 2018), followed by NetDocuments (8%), and MyCase (6%). These results might reflect both the difficulties lawyers and others have with determining what exactly is a cloud service and the increased number of legal cloud service providers, especially in the case management category. Note that services that many would consider "cloud"—WestLaw, LexisNexis, FastCase, to name a few—do not show up in the results, except possibly as small components of the "Other" category (17%).

In the last few years, the collaboration tool Slack has become extremely popular in small businesses and technology companies. As of now, there is still no indication of its uptake in the legal world.

4. WHERE IS THE CLIENT-FOCUS?

Largely missing in action in the results were clients and client concerns. Here are a few numbers to consider. Extranets are probably the classic example of a secure cloud tool that can help clients and help collaborate on projects with external parties; the results show that 91% of firms allow access to their lawyers and 57% to their staff. Access to clients, who potentially benefit the most from extranets, was only provided by 36%. Collaboration for "friendly" outsiders was permitted by 25%.

5. CLOUD BENEFITS

There was not a lot of change in the perceived benefits of cloud computing shown in the 2019 Survey. Anywhere, anytime access is the biggest perceived benefit of cloud computing for lawyers. Low cost of entry and predictable monthly expenses are also highly rated benefits. Other economic benefits, such as eliminating IT, software management requirements, and quick start-up times are also seen as important benefits by almost half of the respondents. Only 30% of lawyers see "better security than I can provide in-office" as a benefit of cloud computing—a striking number, especially to anyone familiar with data center security procedures as compared to standard security practices in law firms.

6. BIGGEST LAWYER CONCERNS

While more lawyers reported using the cloud, they continue to express reservations and concerns about the cloud. When current cloud users were asked to identify their biggest concerns, they cited "confidentiality/security concerns" (65%) and concerns about losing control of data (45%). Concerns about losing control over updates (25%) and vendor longevity (24%) were other significant concerns. Only 14% listed client concerns about lawyers using the cloud. The changes from 2018 were not significant.

There were similar concerns among those lawyers who have yet to try the cloud. When asked a question about the concerns that had prevented them from adopting the cloud, 50% cited confidentiality/security concerns, 36% cited the loss of control, and 19% cited the cost of switching. "Unfamiliarity with the technology," was listed by 35%. Again, the changes from 2018 were not significant.

7. NAME AND REPUTATION OF CLOUD VENDOR

Ninety-four percent of respondents using cloud services considered the name and reputation of the cloud vendor as either very important (72%) or somewhat important (22%) to their decision, down slightly from 95% in 2018. Only 23% of respondents, however, reported that they evaluated the vendor's history and only 17% sought out peer advice/experiences in connection with the vendor. This area is definitely one in which lawyers can improve their due diligence efforts.

8. REPLACING EXISTING TOOLS WITH CLOUD SERVICES

Even though interest in cloud services is high, the interest does not seem to translate into substantial action at this point, at least in terms of replacing existing software tools. Only 8% of respondents indicated that they expected to replace an existing software tool with a cloud tool in 2019. Lawyers might be looking to the cloud only for new tools or to supplement existing tools. They also might not be thinking of mobile apps as cloud tools.

9. INTERNALLY-FOCUSED EXTRANETS

Extranets are the premier example of a client-facing tool. Lawyers, perhaps ironically, have focused on extranets as internal tools. Extranets are private websites for which a user—internal or external—must have authorization to use. A law firm extranet could be used to allow a client to access files or gain other information on matters.

A third of lawyers are at firms with extranets. Extranets are used primarily for firm lawyers (91%) and staff (57%) but much less for clients (36%). These numbers suggest opportunities for lawyers to open up these tools for clients.

CONCLUSIONS

The 2019 Legal Technology Survey shows that for a small, but slowly growing, majority of lawyers and firms, cloud services are now part of the IT equation. Overall, reported growth in cloud use stayed relatively flat in 2019. The continuing lack of actual attention to confidentiality, security, and due diligence issues, however, remains a serious and disturbing concern, especially with the growth in mobile apps running on cloud services. The results on security procedures will continue to fuel client concerns about whether their outside law firms are making adequate efforts on cybersecurity, and the numbers indicate that they should be worried.

There is much that law firm IT departments and technology committees, legal technology vendors and consultants, corporate law departments, clients, and all legal professionals interested in the adoption of technology by lawyers can learn from these results. They give us much to think about and some indications where firms might want to move their technology strategies in the coming year and beyond. Applying basic common sense, diligence, and increased attention to cybersecurity efforts might be the

biggest lesson to learn for the upcoming year. In short, cloud cybersecurity must be at the top of the list of questions for clients to ask their law firms. The current state of cloud security among law firms is a train wreck waiting to happen.

This originally appeared in the ABA Division's TechReport and is reprinted here with permission. Available online at

https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/cloudcomputing2019/

Dennis Kennedy

Dennis Kennedy is an information technology lawyer, a legal technology author and speaker, and a member of the ABA Legal Technology Resource Center Board. He co-hosts the legal technology podcast, *The Kennedy-Mighell Report*, and has co-authored books for lawyers on LinkedIn, Facebook, and collaboration tools and technologies.

TECHSHOW2020

Of PEN Tests and Policies: Firm Security Audits

WRITTEN BY:

John Simek
Sharon Nelson Esq.
Maria Phillips

PRESENTERS:
John Simek
Maria Phillips

01/06/2020

A Roadmap for Lawyers With Cybersecurity Paralysis

by Sharon D. Nelson, Esq. and John W. Simek

We understand why lawyers have cybersecurity paralysis. They don't understand cybersecurity, experts disagree on the best steps to take, the majority of cybersecurity measures involve spending time and money – and to top it off, the threats and defenses against those threats change daily. Here's a brief roadmap to where you should be going.

1. By the Numbers: Where We Stand Today

Thanks to the ABA's 2019 Legal Technology Survey Report, we have some solid numbers to ponder as we construct our roadmap. Looking strictly at the big picture statistics, these were the ones we found most significant.

- 26% of respondents reported that their firm had been breached at some point.
- Of those reporting that they had been breached, the percentage breached generally increased with firm size until you got to large firms - 14% were solos, 26% for firms with 2-9, 42% for firms with 10-49, 31% with 100-499 attorneys, and 32% with 500+ attorneys.
- The percentage of those that "don't know" increases with firm size. 2% for solos, 6% for firms of 2-9 attorneys, 24% for firms of 10-49 attorneys and 53% from firms of 100 or more. It is important to note that it is extremely possible that many firms experienced a breach and never detected it.
- 9% of those breached notified clients and 9% notified law enforcement.
- Of those breached, 35% reported downtime/loss of billable hours, 37% reported consulting fees for remediation of the problems, 15% reported loss or destruction of files, and 20% reported replacement of hardware/software.
- 4% reported unauthorized access to other (non-client) sensitive data and 3% report that it resulted in unauthorized access to sensitive client data.
- 36% reported experiencing an infection with viruses/malware/spyware, with the greater number (48%) occurring in firms with 10-49 attorneys and the lowest (22%) in firms with 500+ attorneys.
- 33% reported having cyberinsurance coverage, which is down slightly from 2018.
- 22% reported using full-drive encryption, a low number in these days.
- 38% reported using encryption of email for confidential/privileged data sent to clients.

Without bombarding you with numbers, the smaller the firm, the less likely it was to have a policy covering document retention, acceptable computer use, remote access, social media, personal technology use and employee privacy.

Perhaps most startling to us was the fact that only 31% reported having an incident response plan, a critical cybersecurity component. The good news is the number is getting larger each year. Larger firms were more likely to have such a plan. In general, larger firms have a bigger attack surface, but they also have more resources to devote to cybersecurity. We will focus in this article on solo/small/mid-size firms as we try to lay out a roadmap to cybersecurity.

2. Security Assessments Are Essential

You can't fix what you don't know is broken. That's a fact. We are now at a point in time where 11% of attorneys have received from a client or prospective client a request for a security assessment. 26% have received a request to provide a client or prospective client with their firm security requirement requirements document/guidelines. While the survey didn't ask about assessments required by insurance companies in order to get cyberinsurance, we know from our own clients that these are becoming more prevalent.

Even if no one requires you to do an assessment, you absolutely need one – and it should be done at least annually. Why don't firms have an assessment done? Mostly because lawyers fear the costs of the assessments – and the costs they may incur in fixing what's wrong.

So let us try to allay some fears. While it's true that large law firms will generally seek out large (and therefore expensive) cybersecurity firms, it is equally true that there are many smaller cybersecurity firms with reasonable fixed-fee prices for doing an assessment and giving you a report identifying your vulnerabilities.

What should you be looking for besides a reasonable price? References from colleagues (who have no dog in the hunt) are useful. Make sure the company has true cybersecurity certifications. IT certifications are not cybersecurity certifications. Also make sure the report will follow the guidelines of a reputable organization such as the Center for Internet Security.

What you want as an end result is to know what critical vulnerabilities you have so those can be fixed right away. After that, the report will identify medium and low risks. Address medium risks as soon as you can. The idea is to plan a timeline, often constructed around budget constraints or impact on productivity. The low risks should of course be addressed, but they don't carry the level of concern that critical and medium risks do.

Remember that a vulnerability assessment is not the same thing as a penetration test. Pen tests are exercises where the tester acts as if they are hackers trying to infiltrate your network, exploit any discovered vulnerabilities and compromise your data. In other words, act like a hacker would act. We recommend that firms start with a vulnerability assessment as they are much more affordable and will provide a baseline of your security posture. Pen tests are much more expensive and could be considered at a later date if warranted.

3. Train Your Employees!

Your most valuable asset (your employees) are also a great threat. They are often moving too fast and easily duped by phishing emails. Phishing emails often and successfully target law firm. Perform phishing simulations where employees receive carefully constructed emails specific to your firm. If they do not see the red flags and click on a link or attachment (or answer an email leading to a follow-up conversation asking for monies, gift cards etc.), you will see how much training – and retraining - is needed.

Training should be annual, mandatory and without mobile devices present. The partners should be there, leading by example. Believe it or not, training is not very expensive – again, stick with smaller companies with cybersecurity certifications. Don't use your in-house folks – they simply don't carry a big enough stick – outsiders are invariably a better solution. Again, it's a good idea to get referrals from colleagues. You want trainers who can both educate and entertain. If they cannot keep the attention of your employees, you are probably throwing money down a rat hole.

Happily, we are seeing more and more firms of all sizes investing in training. It might surprise you, but the employees generally enjoy the training and feel more confident in their ability to spot phishing emails, recognize social engineering attacks, etc. This is an excellent way of creating a culture of cybersecurity.

The Power of Policies

Policies in law firms tend to be static. There is a big push to get some policies in place and then nothing happens – sometimes for years. But policies are invaluable in all sorts of ways. They set the expectations of your employees. If employees disobey them, they will expect consequences, up to and including termination, depending on the severity of the violation.

As the world invariably changes (think of the policies that sufficed twenty years ago!), all policies should be reviewed yearly and revised as needed. Train employees on them every year – they will invariably forget portions of policies that are very important.

Many policies involve cybersecurity but they have different names, which can be confusing. The most common, by whatever name, are:

- Acceptable use policy
- Social media policy
- Remote access policy
- BYOD (Bring Your Own Device) policies
- Access control policies (passwords, multifactor authentication, biometric authentication, etc.)
- Backup policy
- Vendor access policy

- Retention and destruction of data policy (let us interject here that minimizing the data you retain is free – and greatly reduces your risk)
- Disaster recovery policy
- Encryption policy
- Reporting lost or stolen device policy
- Employee privacy (which may mean the absence of privacy on your network)

4. The Critical Incident Response Plan

If you don't have an incident response plan and you then suffer a breach, you will invariably be running around in headless chicken mode. We have borne witness to this reaction many times – you don't want to be in that mode.
The way to avoid it is to have a good incident response. The elements of such a plan are not all that complicated. Here are the essentials:

- Contact information for your regional FBI office
- Contact information for a data breach lawyer
- Contact information for the attorney who will oversee the breach response and any others in the firm who may be involved
- Contact information for a digital forensic company (to investigate and remediate the breach)
- Contact information for your insurance company (you may be required to report a breach/incident in a given period of time or lose benefits)
- Contact information for your bank (in case you need to warn them to be wary of suspicious transactions - banks are accustomed to this)
- Contact information for a public relations firm (small firms are less likely to use these services)
- Who needs to be informed? Clients? Vendors? The state attorney general? Make sure to have a copy of your state's data breach notification law kept with the plan.
- Plans for preservation of information to assist in the breach investigation such as gathering all logged data and taking impacted devices off-line
- Steps to resume operation

You should do annual reviews of the plan, including (at least) tabletop exercises where you go through various scenarios, adding and subtracting issues and problems (managing partner is climbing a mountain in Asia and inaccessible, the electric grid is down, etc.).

5. The Right Technology at the Right Price

So . . . you're not a mega law firm and you are budget conscious. No worries, it's a big club. So here is our basic technology advice with this stern warning: No technology is invincible.

Let's start with some simple and free advice. Make sure you apply all patches and updates as they become available. Failure to patch leaves you vulnerable to a security incident. Trust us, the bad guys are constantly scouring the Internet looking for those that are vulnerable to a known hack.

Obviously, you need some sort of endpoint protection. This means there should be some sort of security software installed on all your computers, servers and mobile devices. In the old days it was called anti-virus software, but today's endpoint protection is really a security suite that contains such things as a firewall, anti-malware protection, anti-virus, encryption, etc. Endpoint protection is a good start, but you really need some vision into events happening at the endpoints. According to a report by Sophos and market research company Vanson Bourne, one in five IT managers didn't know how an attacker got in, even after discovering the threat. This has given rise to Endpoint Detection and Response (EDR) tools to provide vision into security events.

Another important concern is edge protection. This is where you would install some sort of firewall appliance. One of our favorite products (no we don't get any commissions) is the Meraki product line by Cisco. The Meraki is a combination firewall, intrusion detection system (IDS), intrusion prevention system (IPS) and wireless access point (AP). The device itself is only a few hundred dollars and the annual subscription for the software is only a few hundred dollars as well. Best of all, the subscription includes continuing updates to your protection as new threats are discovered – and they happen automatically – you don't have do a thing or spend another dime. You may recognize the combined functions from the old days of unified threat management (UTM) devices. You don't see the UTM term used these days, but effectively that's what devices like Meraki are.

Another area to focus on is mobile device management (MDM). It is no secret that we are a mobile society and our smartphones are really powerful computers that can also make phone calls. Larger firms will invest in MDM solutions such as Airwatch, Mobileiron or Microsoft's Intune. We would suggest that the solo and small firm lawyer look to the built-in controls contained in Active Sync. If you have your own Exchange server or use Exchange Online with Office 365, Active Sync is a free feature that can enforce device encryption, enforce lock codes and even remotely wipe the device.

6. Final Thoughts

As we continue to hear about more and more data breaches, we are reminded that much of the cybersecurity advice above was echoed at ABA TECHSHOW last year. One of our favorite slides had the words "Store Less. Delete More." That might have been the best, most succinct advice we heard during the conference. Words to live by!

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She a co-author of 18 books published by the ABA. snelson@senseient.com.
John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com.

Incident Response Plans Come of Age

by Sharon D. Nelson, Esq. and John W. Simek

1. *WHY DO ONLY 31% OF LAW FIRMS HAVE INCIDENT RESPONSE PLANS?*

One of the most striking findings of the ABA's *2019 Legal Technology Survey Report* was that only 31% of law firms had an Incident Response Plan (IRP). In a world struggling daily against cyber incidents and data breaches, that is a piteous statistic. We don't know why so many law firm fail to create incident response plans, but it is time to come to grips with the necessity of having an Incident Response Plan. The last time we focused on this subject in an article was in 2015. It is definitely time to revisit the topic and issue a rallying cry for the adoption of IRPs.

Let us be clear at the outset that we are zeroing in on solo, small and mid-sized law firms. While large law firms will include all the elements we reference below in their IRPs, theirs will be far more complex and with many moving parts. As ever, we are trying to craft a solution that is reasonable and not financially overwhelming to meet the ethical rules which govern lawyers.

2. *WHAT DOES AN IRP PREPARE YOU FOR?*

An Incident Response Plan prepares you for data breaches and cyber incidents. And we'll stop right there because we know many folks are confused by the difference. There are lot of cyber incidents that are not breaches. A common example is ransomware, where your data is encrypted, but not (in almost all cases) compromised. However that is changing. The whole point of conventional ransomware is to get you to pay a ransom, not to access and take your data. The latest ransomware trend is to threaten exposure of your data if you don't pay the ransom. In order to do that, the attacker must first exfiltrate your data. In other words, it is becoming more likely that a ransomware attack may also be considered a data breach and subject to data breach notification laws.

Another common cyber incident involves someone pretending to be a law firm managing partner (spoofing their email) and asking the recipient to buy iTune gift cards. This happened to a local law firm on a new employee's first week of work. Because the email promised reimbursement and appeared genuine, she bought the cards. She was out $1200.00. No, the law firm did not make good her losses. Hopefully, her job at the law firm improved from there.

A true data breach is where your confidential data is actually accessed – and often transported (or exfiltrated, as the cybersecurity experts call it) to servers elsewhere. This is the ultimate nightmare, triggering all manner of legal and ethical requirements. We previously mentioned that ransomware is starting to go down this path.

An IRP can also prepare you for disasters, natural and manmade. Earthquakes, fire, floods, terrorist attacks, extended power outages, total system meltdowns, damage done by disgruntled employees, epidemics, biological attacks – the list goes on and on. In many law firms, there is a separate Disaster Recovery Plan or sometimes it is called a Business Continuity Plan to cover disasters. For our purposes, we are going focus on an IRP as dealing **solely** with cyber incidents and data breaches.

3. A STATISTIC, A QUOTE AND AN ANECDOTE

The 2019 ABA report referenced above showed that 26% of law firms have been breached at some point. In all likelihood, the percentage is much higher because many lawyers, especially in big firms, haven't the slightest clue that their firm has been breached unless the incident becomes public. The truth is that most law firm breaches never become public.

Some years ago, the authors attended a meeting in DC involving a number of AMLAW 200 law firms. While we were asked to keep all identifying details private, we can say that every law firm represented at that meeting had been breached, some more than once. It takes a lot to shock us, but we were shocked that day.

As for the quote, it is an oldie but a goodie – and by a man everyone knows today. "I am convinced that there are only two types of companies: those that have been hacked and those that will be. And even they are converging into one category: companies that have been hacked and will be hacked again." Those words were spoken by former FBI Director Robert Mueller at the RSA Cybersecurity Conference in March 2012.

From our foxhole, that prediction has come true.

4. WHAT DOES ETHICS HAVE TO DO WITH INCIDENT RESPONSE PLANS?

When you have a cyber incident, a number of ethical requirements may come into play. On October 17, 2018, the ABA released Formal Opinion 483, "Lawyers' Obligations After an Electronic Data Breach or Cyberattack." That opinion built on the ABA's Formal Opinion 477R released in May 2017, which set forth a lawyer's

ethical obligation to secure protected client information when communicating digitally.

The new opinion states: "When a breach of protected client information is either suspected or detected, Rule 1.1 requires that the lawyer act reasonably and promptly to stop the breach and mitigate damage resulting from the breach."

The opinion discusses Model Rule 1.1 (competence), Model Rule 1.4 (communications), Model Rule 1.6 (confidentiality of information), Model Rule 1.15 (safekeeping property), Model Rule 5.1 (responsibilities of a partner or supervisory lawyer) and Model Rule 5.3 (responsibilities regarding nonlawyer assistance).

There is a "rule of reason" to the opinion, which states, "As a matter of preparation and best practices, however, lawyers should consider proactively developing an incident response plan with specific plans and procedures for responding to a data breach. . . The decision whether to adopt a plan, the content of any plan and actions taken to train and prepare for implementation of the plan should be made before a lawyer is swept up in an actual breach."

Cybersecurity experts have said the same thing for a very long time – and, in our experience, all large firms tend to have an incident response plan. The smaller firms are much less likely to have one. The 2019 Legal Technology Survey supports our experience. While overall 31% of law firms reported having an incident response plan, the number was only 11% for solos, 23% for firms with 2-9 attorneys, 35% for those with 10-49, 44% for firms with 50-99, 51% for those with 100-499 and 79% for firms of 500+ lawyers.

No one is saying that a law firm need to be invincible because that is not possible. As the opinion states, “the potential for an ethical violation occurs when a lawyer does not undertake reasonable efforts to avoid data loss or to detect cyber-intrusion, and that lack of reasonable effort is the cause of the breach.” Everywhere we go to lecture, we stress “reasonable efforts” – and that has a whole lot to do with the size of the law firm as well as the sensitivity of the data it holds.

Both opinions should be read carefully – and probably more than once.

5. THE NUTS AND BOLTS OF IRPS

There are certain things common to all IRPs and we will discuss them. But let us begin with a caution: Don’t just grab a template from the internet and call yourself done. Templates can be useful starting points, but not more than that. Every law firm is unique in its structures, procedures, etc. Its IRP should reflect that.

Cybersecurity consultants can help with developing an appropriate IRP and so can data breach lawyers. It makes us chuckle to think that, not many years ago, no one called themselves data breach lawyers. Now data breach lawyers are spawning like rabbits. A short visit to Google will produce one near you.

6. WHO'S IN CHARGE?

One of the first things to identify in the IRP is the person who will manage a cyber crisis. You want a steely-eyed, calm individual who will keep a floundering ship steady in rough seas. Our experience is that such individuals exist, but are in short supply.

The person in change is going to receive a lot of bad advice. That means they must be true leaders, able to sift the good advice from the bad and yet make everyone feel included in the process. No easy task.

If you're a solo lawyer, your selection process is easy. You do it all and have no choice. But for everyone else, this is a choice of critical importance. Moreover, you need a backup in case the selected individual is unavailable for whatever reason.

7. YOUR FIRST FIVE CALLS

Before disaster strikes, hopefully you have already established a relationship with a data breach lawyer and a digital forensics firm (often the lawyer will recommend a firm). Here, as ever, there is a difference between large firms and smaller firms. The large firms tend to select a large firm data breach lawyer with a hefty price tag. Smaller firm are better served by a data breach lawyer from a smaller firm with a smaller price tag.

That same reasoning applies to the selection of a digital forensics firm. In selecting both a data breach lawyer and a digital forensics firm, the best advice we can offer is to consult your colleagues for recommendations if you don't already have these folks on board. However, if you have cyberinsurance coverage, the insurance company may designate law firms or companies.

There are arguments about whether to call the data breach lawyer or the digital forensics firm first. That's actually a close call in our judgment. You want to get

preliminary advice from your lawyer as soon as possible, but you also want the digital forensics folks to jump on board quickly because they may be able to take rapid measures to stop or limit the impact of the cyber incident.

Make sure these first two steps are in your IRP with contact info for the professionals you will be using.

Your data breach lawyer will advise you about whether it is necessary to call your regional FBI office or the FBI's Internet Crime Complaint Center (known as IC3) and located at https://www.ic3.gov/default.aspx. The IC3 has been particularly effective in cases involving wire fraud.

The next part of your plan will include calling your bank (if appropriate) to alert it in case there is any possibility that your funds are at risk – for instance, if the credentials to log into your operating or escrow account may have been compromised. Don't let this unnerve you – banks are used to getting these calls today. They are happy to flag your account so that they are especially alert to suspicious activity. That's a win-win.

Finally, you want to include contact information for your insurance company. Hopefully, you have by now secured cyber insurance (if not, put that on your priority list!). Most policies require notice within a certain amount of time and you may lose benefits if your notice is not timely.

8. NETWORK DIAGRAMS, LOGGING ETC.

Your IRP needs to reference a number of things about your infrastructure. Attached to the plan should be a network diagram, a detailed inventory of your hardware, and all relevant logging information – critical to an investigation of a cyber incident. You should always log as much as possible to create an audit trail of what may have happened – greatly appreciated by your digital forensics investigators.

This part of the IRP always creates a lot of headaches because this information tends to grow stale. At a smaller firm, it may be fine to update this annually, but a larger firm may need to revisit this information more often.

9. DATA BREACH NOTIFICATION LAWS

All the states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands now have data breach notification laws. Lucky you if you only practice in a single jurisdiction. Just make sure you've read the law and place a copy of it with your IRP.

For those of you who practice in multiple jurisdictions, across the country, or internationally, you have a much bigger headache. This is where a data breach lawyer is invaluable. Beyond telling if you need to comply with state data breach notification laws (and what each law requires you to do), a data breach lawyer can assist with international compliance.

In all likelihood, the majority of folks reading this are practicing law only within the U.S. But beware, the laws vary widely – and carry penalties. Good legal advice is worth its weight in gold. Why don't we have a national data breach law? A very good question to which we have no good answer. A national data breach law has been proposed many times only to die in Congress. We imagine it will come one day because it is terribly confusing and expensive to comply with the national patchwork of laws.

COMMUNICATING DATA BREACHES WITH CLIENTS

Since data breaches cannot entirely be avoided, Formal Opinion 483 says of lawyers, "When they do (have a breach), they have a duty to notify clients of the data breach under Model Rule 1.4 in sufficient detail to keep clients 'reasonably informed' and with an explanation 'to the extent necessary to permit the client to make informed decisions regarding the representation.'"

So yes, this goes on the list of things to do if you have a breach, rather than a cyber incident.

First, law firms must halt the attack, mitigate the damage and then make reasonable efforts to assess the data that may have been exposed and the duty of disclosure. This is not so easy. There is ransomware which exfiltrates your data before encrypting your files (therefore a data breach) or ransomware which only encrypts your files and then asks a ransom for the decryption key (therefore not a data breach – and the much more common kind of ransomware at the present time). The opinion notes that your efforts in determining what happened and fixing it may be through qualified experts.

If you need to report an incident to a government agency, you are still bound by Rule 1.6. There is some tension over trying to report and trying to maintain client confidential data. How do you know if the disclosure is "impliedly authorized?" Read the opinion fully to understand all the nuances of this dilemma.

What exactly are you supposed to tell clients in your disclosure? The opinion is a little vague, saying that "the disclosure must be sufficient to provide enough information for the client to make an informed decision as to what to do next, if anything."
The opinion dodges a bit when it comes to former clients, finding no duty to notify former clients unless there is something mandating notification. The IRP cannot possibly cover every scenario so it must simply provide for an analysis of whether and what to communicate to clients – and possibly third parties which may also be impacted by your cyber incident or data breach.

10. TESTING THE PLAN

You don't want a cyber incident to be your first test of your IRP. Annual tabletop exercises simulating a cyberattack are common and very useful. Adding and subtracting complications to a scenario is also helpful. What if your data breach lawyer is unavailable? What if the power grid is down? If the attack is on your cloud provider rather than on-premise servers, how does that change the plan itself?
Beyond tabletop exercises, security assessments are always a wise precaution – and yes, annual ones are optimum even for smaller firms. Penetration tests are where a good guy – hopefully a Certified Ethical Hacker, certified penetration tester such as GPEN or someone with a similar certification- simulates being a bad guy and attacks your firm to discover and exploit vulnerabilities. As we tell folks, this is not for the faint of heart and it tends to be considerably more expensive than a security assessment. Under the "reasonableness" standards of the ethics rules, we believe that the security assessment will suffice for most small to mid-sized firms
.

FINAL WORDS

There is nothing magical about IRPs. They are "Plan A" and we all know that Plan A never survives first contact with the enemy. But at least you have a roadmap when a cyber incident strikes. We have seen hapless panic and foolish steps taken in the

wake of a cyber attack many times – not a pretty sight and not useful under dire circumstances.

Inevitably, the plan will morph over time. There will be new threats, new defenses, new methodologies for investigating and recovering for a breach, etc. That's why these plans need regular review. But if you are part of the 69% of law firms without an IRP, it's time to roll up your sleeves and create one.

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She a co-author of 18 books published by the ABA. snelson@senseient.com.
John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com.

TECHSHOW2020

Google My Business

WRITTEN BY:

Gyi Tsakalakis
Kelly Street

PRESENTERS:
Gyi Tsakalakis: @gyitsakalakis
Joy Hawkins: @JoyanneHawkins

January 20, 2020

BE SKEPTICAL OF YOUR LAW FIRM'S GOOGLE ANALYTICS, GOOGLE MY BUSINESS & SEARCH CONSOLE DATA

Gyi Tsakalakis · Attorney Sync Blog Aug 29, 2019

Your law firm's Google Analytics, Google My Business & Search Console Data might be misleading you.

When you see spikes in traffic to your law firm's website as reported by Google Analytics data, I suggest you pause to corroborate the data with other sources. The same is true for Google My Business, and Google Search Console data. Most cases of spikes reported on social media are not actual spikes in qualified traffic. For the purposes of this post, we're going to focus on Google Analytics.

First, with respect to Google Analytics code, there are a myriad of explanations for spikes that have absolutely nothing to do with "real traffic." Before you start traveling down rabbit holes, take some time to learn how the GA javascript tracking code actually works. Next, consider what configurations make the most sense for your law firm. Think about what metrics actually matter to your practice. Hint: it's not bounce rate. It's probably also not pageviews, session duration, or other user behavior that doesn't translate into improvement of conversion rate of a meaningful metric. People at law firms, like so many other business owners, spend way too much time focusing on Google Analytics reports that have little real business value. Most law firms aren't ecommerce sites. If you manage your firm's Google Analytics account, be sure to build custom reports that provide meaningful insight into how people find your pages, use your pages, but most importantly, convert into something meaningful (i.e. qualified phone call, live chat, contact form fill, etc).

Second, beyond issues inherent to Google Analytics, to make matters worse, many unscrupulous law firm internet marketing vendors intentionally mislead clients with GA reports. Some common examples include:

- Reporting on all traffic from all sources (i.e. direct traffic from countries in which you don't do business).
- Manipulating the date range to compare unequal time frames.
- Fake firing GA code.
- Failing to properly configure GA to filter common spam / bot issues.
- Limiting access to Google Analytics account data.

I can't count the number of times I've talked to lawyers who were told by their SEO consultant that their traffic from search engines has been steadily climbing only to find out it's either completely fake or not from search engines at all.

You should also be cautious about who you give admin access to and whether you have authorized a WordPress plugin to access your GA data. We regularly see law firm Google Analytics accounts that have admins who don't work with the firm. This can be a huge issue, particularly if the admin is working with a competitor. You should audit access to Google Analytics, Search Console, Google My Business, and Google Ads accounts on a regular basis.

If you're looking for analytics help, we're happy to take a look. If you're interested in learning more about Google Analytics tracking I suggest the following resources:

- Google Analytics Academy (A lot great information for beginners and FAQ)
- Google Developers Analytics Resources
- Jeffalytics
- Annielytics

Each of these have advanced step-by-step instructions for configuring Google Analytics accounts, tracking, and reports.

Admittedly, these issues can seem overwhelming. I've been doing this for over a decade, and I still regularly learn something new about issues related to analytics data. Here's my version of the minimum viable Google Analytics knowledge you need to avoid some of the most common problems:

- **Acquisition Report > All Traffic > Source / Medium:** This is essential for distinguishing organic search traffic from Google Ads (formerly AdWords) from social media, from other traffic sources without a basic understanding of sources and mediums, you can't really know where visitors are coming from.

- **Audience Report > Location:** If your law firm serves anything less than a global audience of potential clients, you need to understand the geographic location of visitors. In fact, my hunch is most of you should be filtering down to Region (state) and City.

- **Behavior Report > Site Content > Landing Pages:** This report helps you understand the specific page your website traffic landed on. Ideally, you couple this data with acquisition, event (i.e. phone calls), and Goal conversions to see which are the top pages that are producing clients.

- **Conversions > Goals > Overview > Source / Medium:** Ultimately, understanding which sources / mediums are converting into a valuable goal for your law firm is the only way to have any sense of whether or not your law firm website is actually "working." And really, this is only the first half. The second half requires marrying this data to client relationship management (CRM) data so that you can tie fees back to their original online source.

If you understand these basics, you'll be in pretty good shape. You'll also be able to sniff-out GA data issues and hold SEO vendors accountable. If you're already a Google Analytics pro, push the envelope by learning how some of the more advanced features can bring value to your firm. But don't waste time on reports that don't add value. Unless you do web analytics for a living, most of what's available in Google Analytics and Google Tag Manager will probably be overkill.

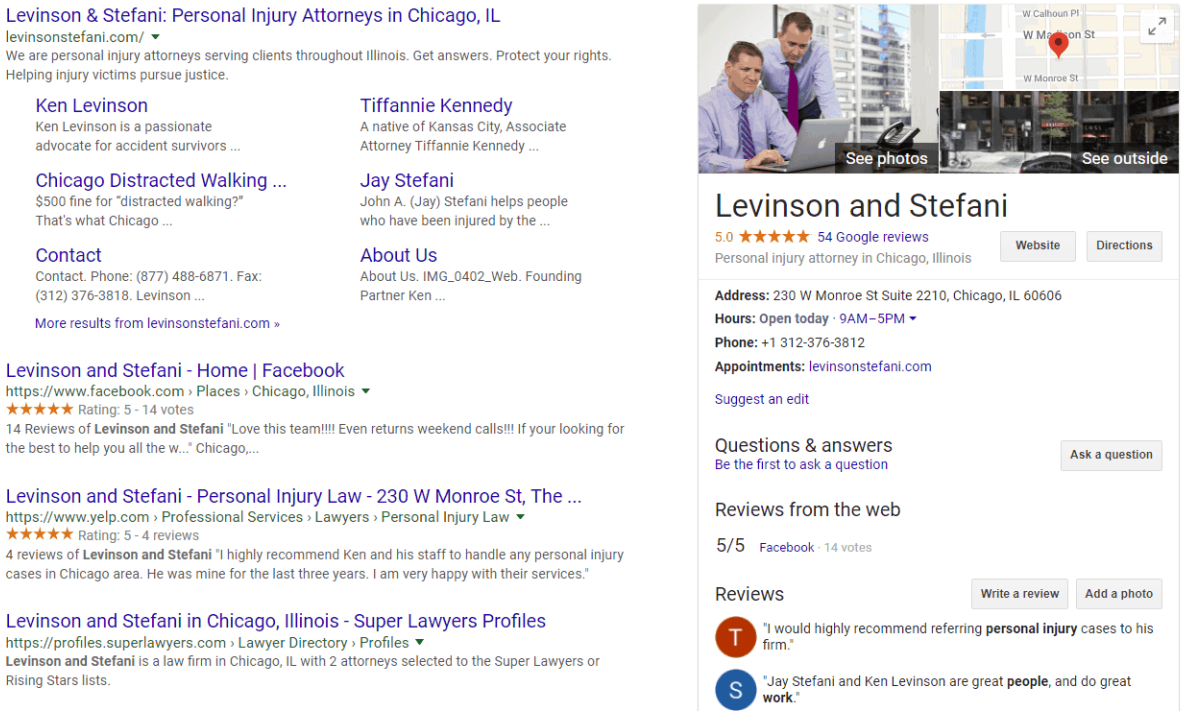
How Google My Business Can Help Law Firms

Gyi Tsakalakis · Jan 10, 2018 · Leave a Comment

—

Google My Business is a tool that can help lawyers manage their online presence across Google Search and Maps. By verifying and editing your firm's business information, you can help clients find you and tell them about your practice. It might actually be the most important online legal marketing tool. Here's why:

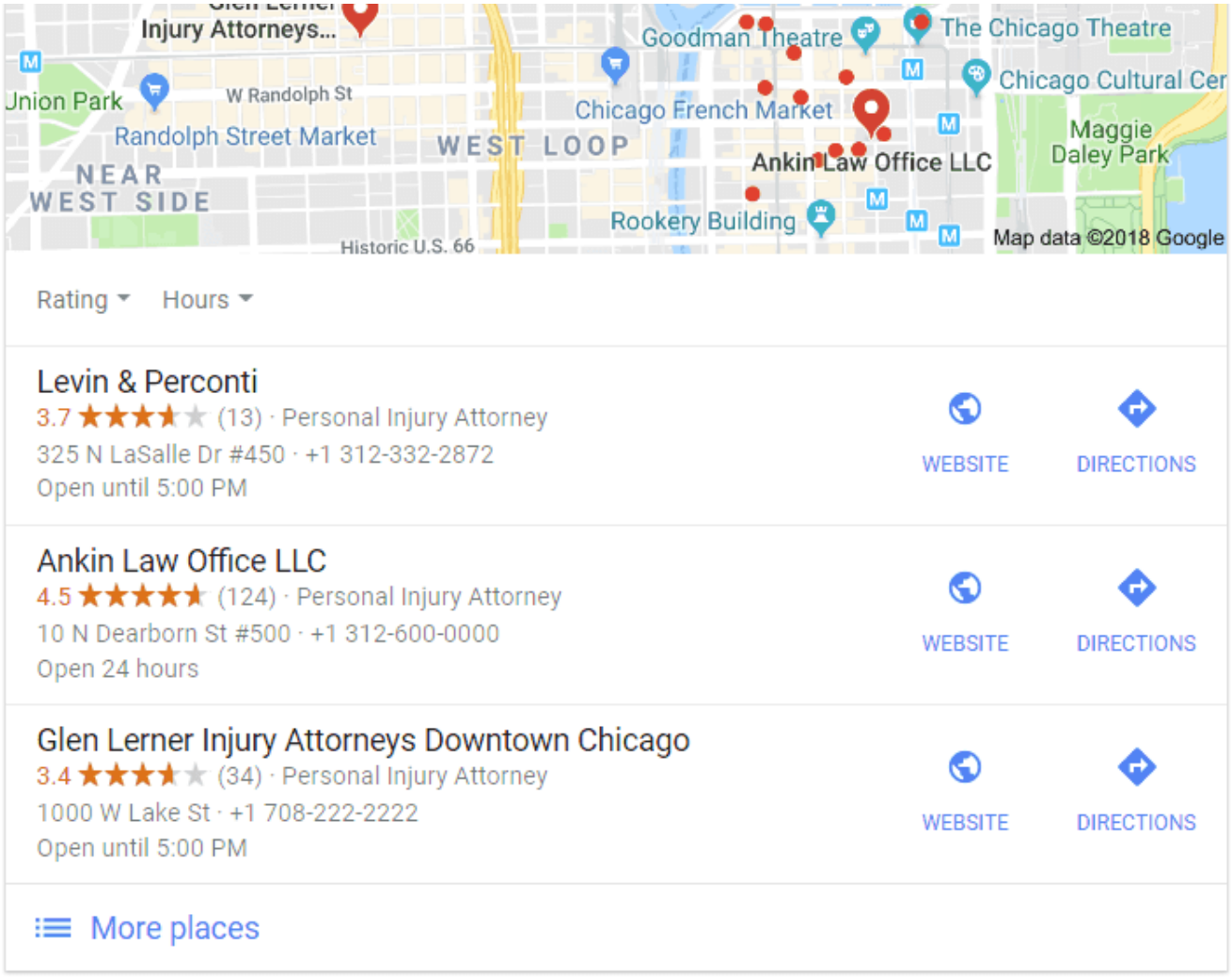
It's likely to command the best SERP real estate for searches on your name:



In many instances, it plays a significant role in a prospective client's first-impression of your practice. No matter how someone hears about you, at some point, they're likely to look you up online. One of the first things they're likely to see is information populated by Google My Business. Information like:

- What former clients think of you and your law firm.
- What times of day your firm is open for business.
- Your firm's contact information.
- Questions and answers about your practice.
- Images of you and your office.

It's also the cornerstone of local pack listings, you know, like these:



Recently, Google has been making some serious updates to its My Business tool. Let's take a look at some of these new features and how you can best leverage them at your firm.

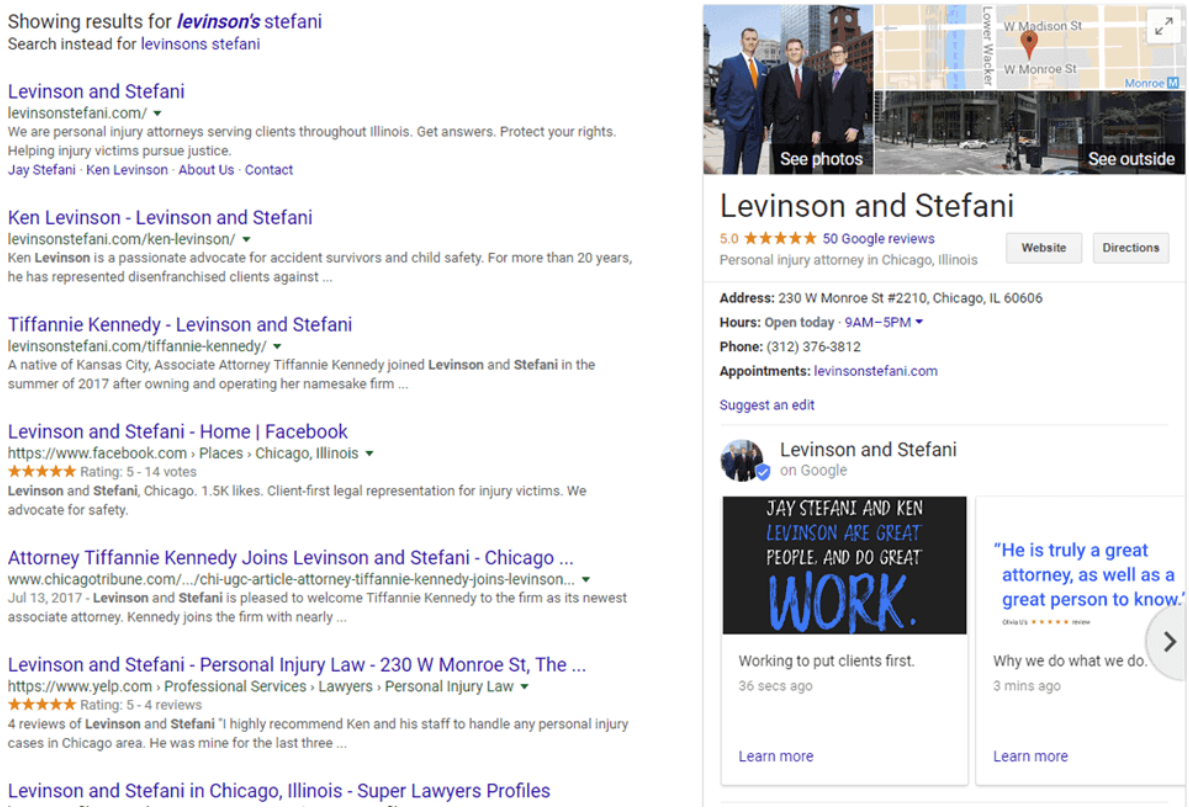
Google My Business Posts

Posts are a relatively new feature. They provide you with an opportunity to publish content directly to Google search results! Here's the view of the posts tab inside our Google My Business management dashboard:

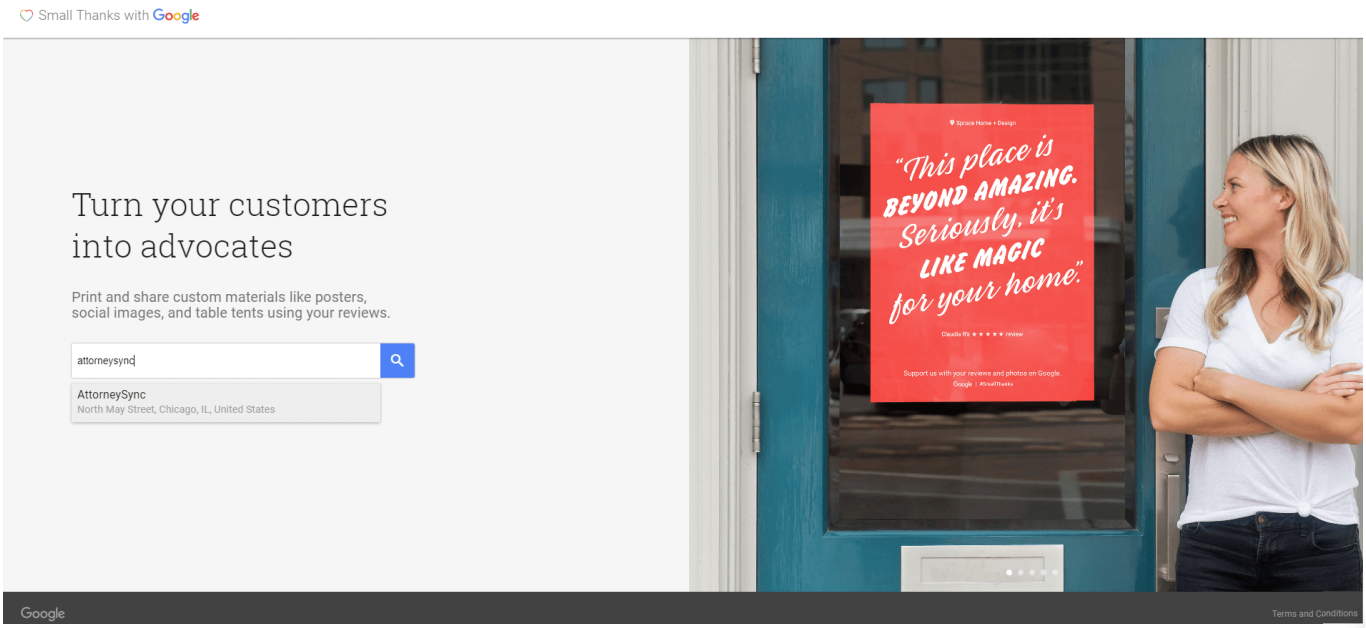
You can use Google Posts to publish a variety of content about your firm. Some of the more obvious examples include:

- Firm events.
- Community service and charity activity
- Speaking engagements.
- Professional organization leadership positions.
- Information about your services.

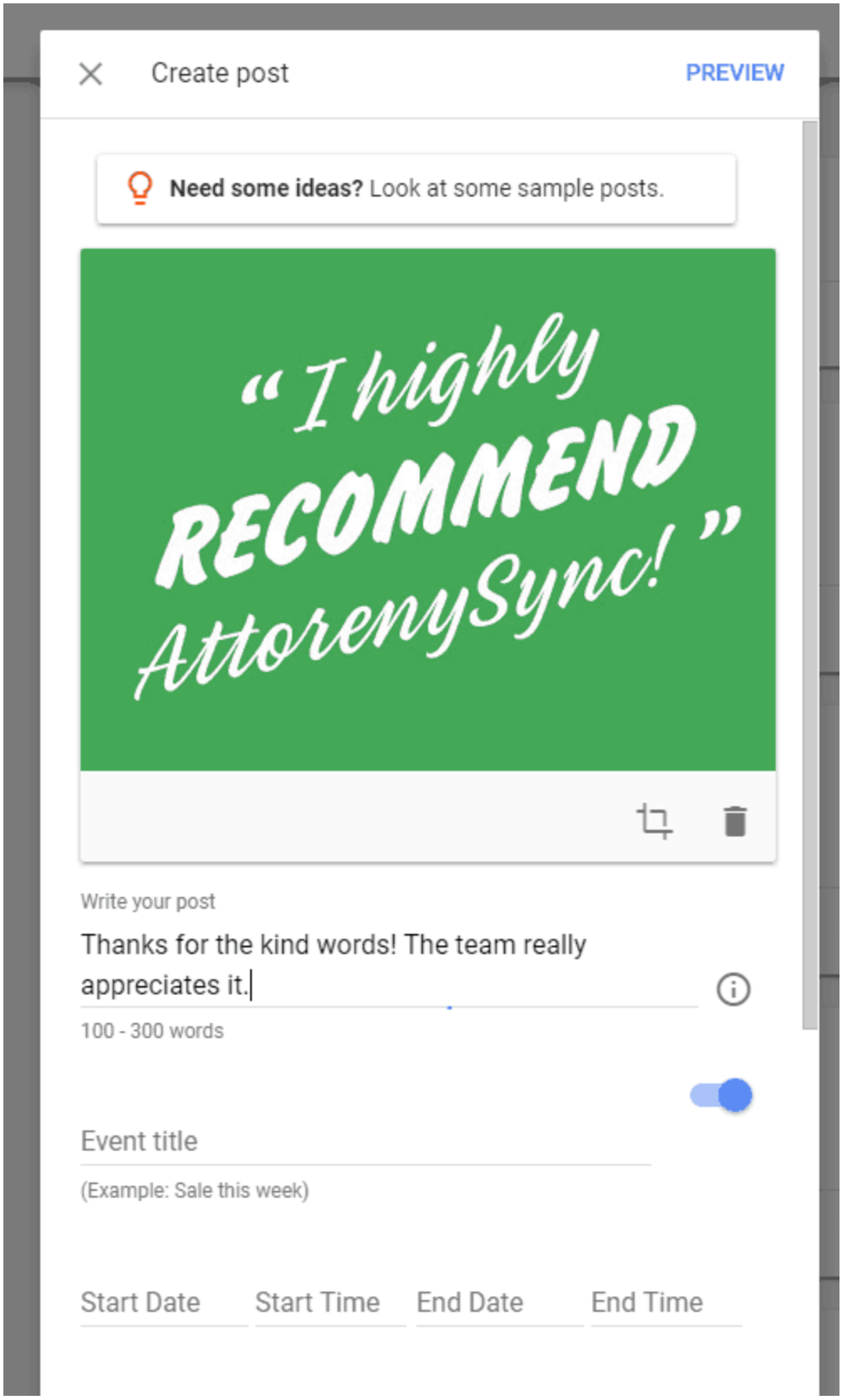
You can also use Google Posts to highlight content from your blog or website. However, one of the most effective uses involves highlighting happy clients:



Here's one way to do this. First, provide remarkable service that motivates a happy client to leave a review on your Google My Business listing. Second, head over to Small Thanks with Google. Next, search for your law firm or practitioner listing. Here's an example for AttorneySync:

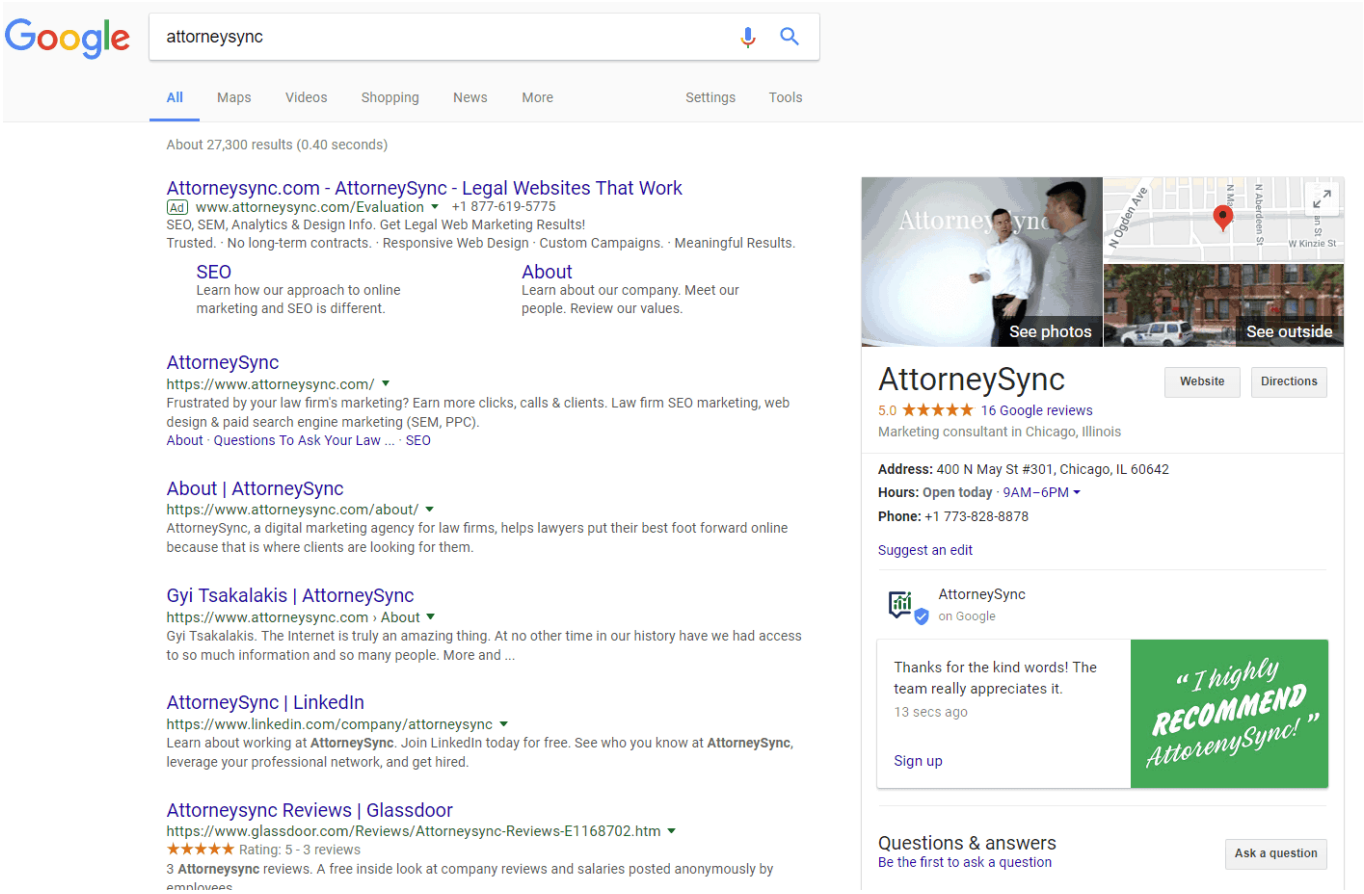


Extract your materials from your zip file. Now head back over to your Google My Business Posts interface. Click upload a post photo.



inside the post. Next, write your post. Be sure to consider your professional ethical obligations. If it's checked, be sure to uncheck the, "Make this post an event," button. Also, make sure the "Add a button," slider is in the "on" position. Select one of the provided calls to action (I tend to prefer learn more). Add a link to your site (maybe a bio page, service page, or contact page). Next, click preview. Finally, click Publish.

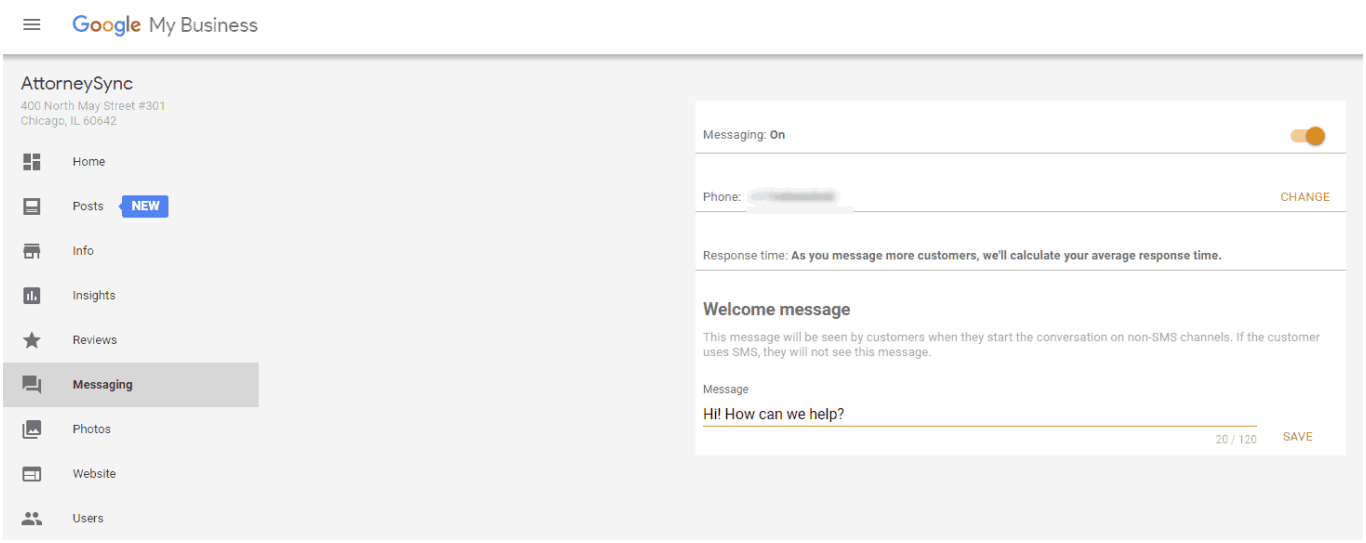
Now, go perform a search on your firm's name (or your name if you posted to your practitioner page). If all went well, you should now see the post underneath your firm information:



You just created an extra review spot!

Make sure you add Google Posts to your regular publishing workflow. It's probably one of the most visible places you can publish to an audience that is searching for you.

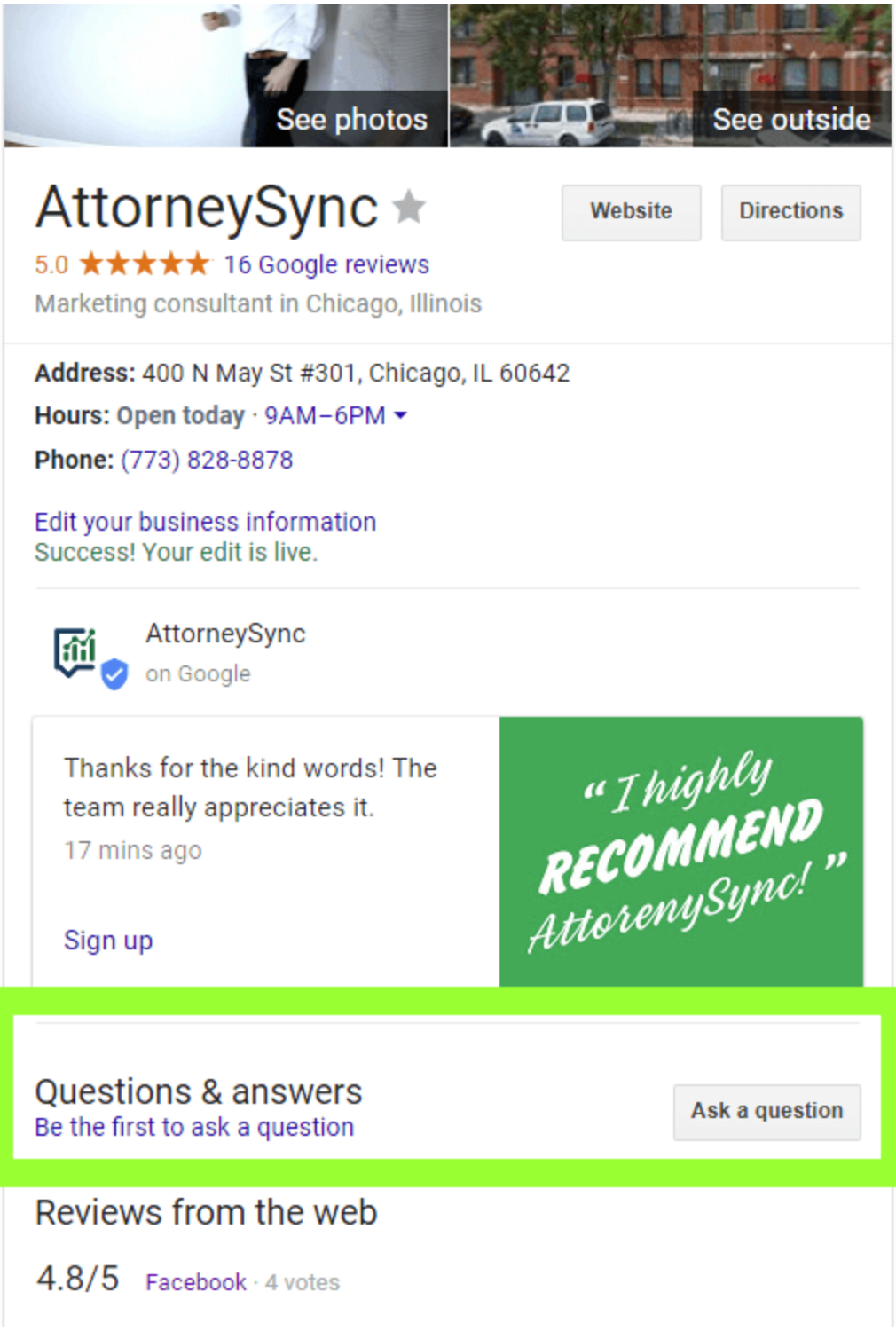
lawyers. The more difficult you make it for your next client to contact you, the less likely they'll actually become your next client. One way we've seen legal services consumers expect to connect with attorneys is through Google My Business's Messaging function:



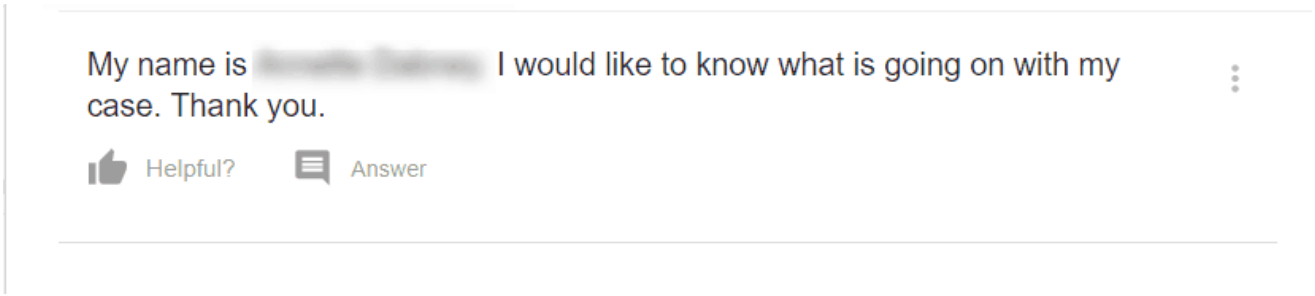
You can configure messaging to connect directly to a firm smartphone with text capabilities. Alternatively, you can use Google's Allo messaging app. Caution: if you choose to configure messaging, make sure someone is actually responding to inquiries there. Otherwise, you're more likely to motivate some unhappy reviews and questions in the q&a.

Google My Business Questions & Answers

Another Google My Business area to pay attention to is Questions & Answers:



Google recently opened the floodgates for users to be able to ask questions directly on Google My Business listings. While this presents a great opportunity to provide answers to commonly asked questions, it also presents a potential for "hidden negative reviews." Here's an example:



Yikes, how many potential clients is this question costing?

Hopefully, it's obvious that the best defense against hidden negative reviews is providing exceptional client service. But let's face it, if you practice long enough, you won't please all of the people, all of the time. So, your next best defense is providing answers to questions here. I also encourage to be proactive. Anyone with a Google account is eligible to ask questions here. Find ways to encourage folks to start asking. Whitespark's @DarrenShaw_ had a clever idea of hosting an AMA on his Google My Business Page and promoting it on Twitter:

Google My Business Videos (Coming Soon)

Local SEO super-genius, Joy Hawkins, recently noticed that the option to upload videos to a Google My Business listing finally arrived for one of her clients:

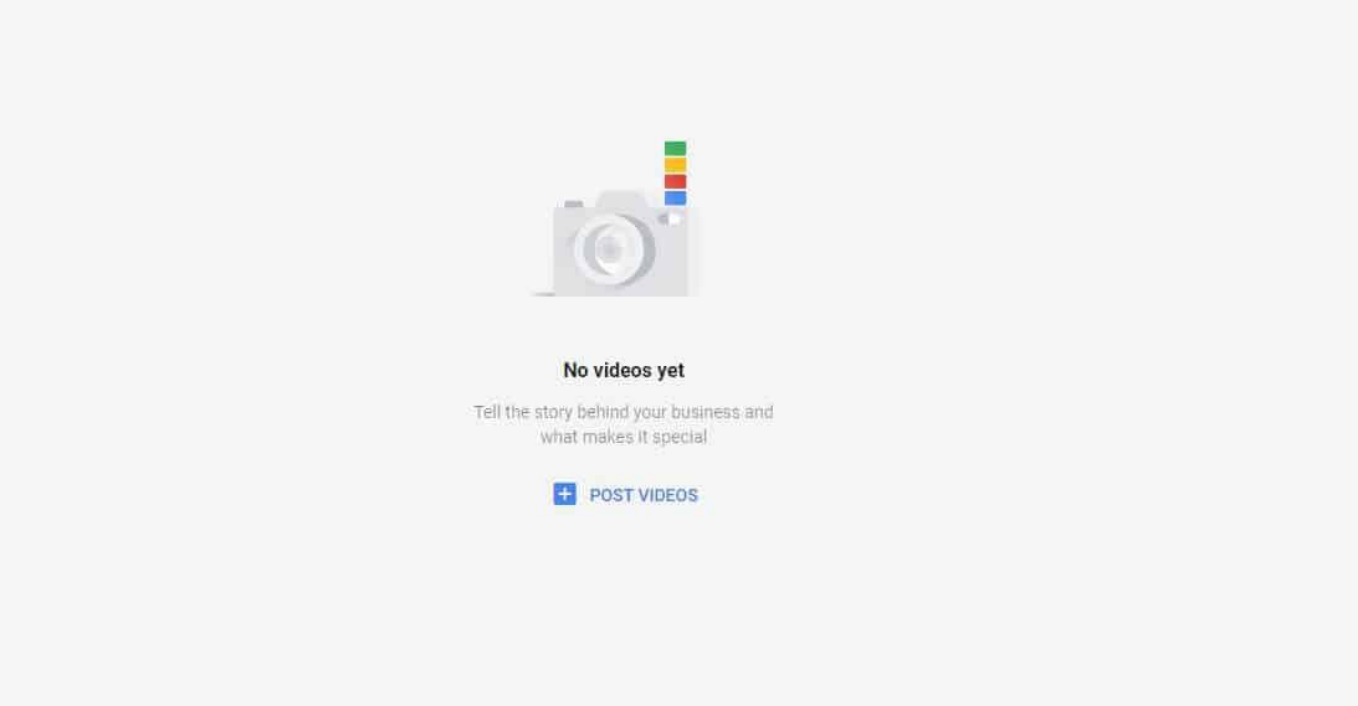


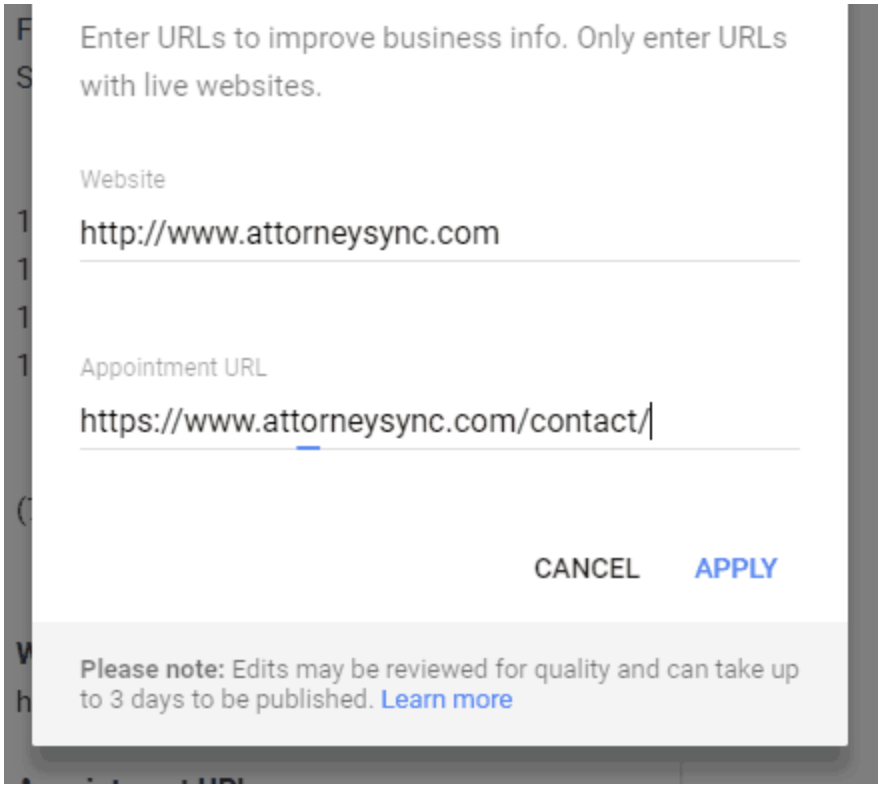
Photo Credit: Joy Hawkins

Needless to say, video in Google My Business will offer attorneys a powerful way to communicate with potential clients. Video posts that illustrate a lawyer's knowledge, skill, and experience can be particularly persuasive in terms of motivating a prospective client to inquire about the lawyer's services.

Google My Business Booking Button (Coming Soon for Law Firms)

Last fall, Google introduced Reserve with Google for select local business categories. While I haven't yet seen this option available for law firms, my guess is that it's only a matter of time before Google adds legal.

In the meantime, you should consider adding an Appointment URL:



This might be as simple as a link to your contact page. However, it could also be something else, like a live chat link that lives on your site. Again, the idea here is to make it easier for clients and prospective clients to contact your firm.

Tracking Parameters in Google My Business Listings

While Google My Business does provide some basic account data on the Insights tab, many SEOs have already recognized the value of adding tracking parameters to Google My Business URLs. Doing this allows you to independently track GMB listing data in Google Search Console! You can realize use any parameter scheme you like, however, keep in mind that if you use utm parameters, make sure you understand their impact on analytics data (i.e. source, medium, etc).

Google My Business Guidelines

remember to use your real firm Name, Address, and Phone. Don't try to stick category keywords into the name field. Yes, I know that this "works" to bump rankings, at least for a little while. Here's the thing, people are actively looking to report businesses that do this. Eventually, Google may up the ante and add a more serious penalty to businesses that do this. In my view, it's not worth the risk if you're in it for the long-haul. Second, use the more specific category for your practice. I know that some firms work in a variety of practice areas. Unfortunately, Google's world doesn't quite match the real world, at least not yet. Adding every category that's even loosely relevant to what you do, tends to negatively dilute the category signaling to Google, which can impact for which queries your listing appears. Third, carefully consider whether you should add practitioner pages for each lawyer in your practice. While practitioner can add additional real estate to your search presence, they can also compete with one another. Furthermore, it's worth considering what happens if/when a lawyer leaves your practice (Hint: They take their practitioner page with them and all the reviews.

Of course, staying active on Google My Business is just table stakes for local rankings. If you really want to improve your local ranking on Google, focus on Prominence:

> *Prominence refers to how well-known a business is. Some places are more prominent in the offline world, and search results try to reflect this in local ranking. For example, famous museums, landmark hotels, or well-known store brands that are familiar to many people are also likely to be prominent in local search results.*
>
> *Prominence is also based on information that Google has about a business from across the web (like links, articles, and directories). Google review count and score are factored into local search ranking: more reviews and positive ratings will probably improve a business's local ranking. Your position in web*

Put even more simply, focus on topically and geographically relevant local links from *real* websites.

Questions? Comments are open!

Blog

ABOUT GYI TSAKALAKIS

Gyi Tsakalakis helps lawyers put their best foot forward online because that's where clients are looking for them.

e: gyi@attorneysync.com o: (877) 792-1797

Basic Ways to Maximize Your Google My Business Listing

Kelly Street · May 29, 2019 · Leave a Comment

Video Transcript

Hi, Kelly Street here with AttorneySync.

you're getting results from having a Google My Business listing.

So let's start off with this is kind of what it looks like when you go to sign up for it. The background image is just where you go to sign in. If you have a business in general, you can just go into Google and sign in from it, especially if you already have a Gmail for your business or Google accounts for your business. This will be really easy. So you just go in and then I have shared here our attorney sync kind of homepage, basic setup for our Google my business. You see the kind of the big overview here, your latest posts, how you can advertise reviews.

All the good stuff is just on this main screen. Then next, the first thing you want to check for his accuracy, make sure that your address is correct. Make sure that you have the correct business hours listed. Um, and so potential clients know when you're closed. I also think it's really cool. One thing that we do is we put the dates that we know we're going to be closed for holidays ahead of time on our Google My Business listing. So then in case clients or potential clients are calling us, they know not to expect a call back on that day. Really important to make sure that those things aren't included. And then of course phone numbers, we have a toll free and then a local number listed. Uh, our local number that's listed and toll-free number actually both attract numbers so we know that they come from our Google my business listing for those particular numbers. Next, um, you just want to kind of have the overview of your Google my business sidebar. This is where you go to manage all the aspects. You can see the home is their go to post photos, anywhere on there. You can just go create an ad. All those awesome things.

photos of your business location are super important because this is what's going to let potential clients and current clients know where they're supposed to go and what it looks like. Even if you're in a shared coworking space, you want to make sure you put a couple of pictures on there to even let people know what your office looks like or just the building that they can expect to go to. Just to give people a little bit more comfort and feel like they know where they're going and it's not a weird mystery messaging. So this is a cool feature that you can turn on or off with. Google my business. You can decide to have messages come up on your business and have potential clients to be able to contact you or you can decide that's not for us.

We're not going to do that. So just market or mark that you don't want to do that. Reviews, super important to have reviews and get good reviews and manage them. Make sure that your either replying to negative ones with a really general, I'm so sorry for your experience. Let us know if there's anything we could do to help. Never giving away client information or case information about what happened in the situation. Um, you can respond to every positive one with thank you so much, but I don't think that's really necessary. You can kind of just let the good reviews speak for themselves categories. So in your Google my business listing, you want to make sure that you choose the right category that's going to drive people to your law firm when they're doing searches. So I recommend, and Google also recommends doing a general listing but making sure that you are kind of narrowing down the category a little bit.

You want to do family law services or family lawyer, family law firm. If you are indeed a family attorney or personal injury attorney leaving it just attorney, you're going to be dumped into a bucket and first search with all of the attorneys that are listed no matter what categories. So you want to make sure you narrow that down. So set your primary category and then I also recommend choosing other categories underneath that if possible. They may or may not, we're not really sure how much

actually go underneath the primary category.

Next, we have posts. I think posts are super important because this is your first touch point when a potential client Googles you to see how active you are online and if you're actually engaging with potential clients out there by putting new stuff up all the time.

If you only publish one post once a year, that's going to look like you're not really paying attention to what you have out there. You're not really keeping in touch with things. So I recommend publishing try for once a week, once every other week and just kind of posting about different things that you're doing. If you're hosting a or going to a fundraiser, you can post that. If you have a scholarship in your law firm's name, you can post about that. Um, you can post about different cool things you're doing. Uh, put a photo of just got out of court and won a great crazy case for my client or had a great outcome. All of those things are really interesting little posts that you can do to make sure that your kind of staying fresh and relevant and showing that you are kind of actively, always there for clients.

Next is description.

So there was a little bit of hullabaloo this week, a little bit of excitement because Google said, hey, we've updated it and added Google My Business description, uh, at the top of the listing. So it's a little more prevalent and it's actually a meaningful search aspect to your GMB listing as we in the search world college. Uh, but then when I look today, I saw that the listing, the description had kind of disappeared from the listing and wasn't as prevalent anymore. So watch for this, I would add a really great descriptor that encapsulates who you are as a law firm and what you practice just in case it comes up. Again.

am always here to help.

Blog

ABOUT KELLY STREET

Kelly Street is the Marketing Director at AttorneySync. She is passionate about all things marketing and small business, but especially creating authentic content that potential clients can identify with.

TECHSHOW2020

The Three Little Formats: Microsoft Character, Paragraph and Document

WRITTEN BY:

Ben Schorr with Introduction by Allan Mackenzie

PRESENTERS:

Ben Schorr: @BSchorr

Allan Mackenzie: @EfficientAllan

January 1, 2020

Contents

Introduction

I've been at this business since 1981, when I was putting myself through college as a legal word processor on Wang Word Processing systems. Things were simpler then and "pushing buttons" was my problem, not the attorney who did the creative part. In a way I still love Wang Word Processing, may it rest in peace. The keyboard was simple, and there was a button for each action you wanted to take. A little more than a glorified memory typewriter, without a doubt. But redrafts were easier, mail merge was almost black magic, and italics involved the change of a daisy wheel – but did not appear on the screen. As time and technology progress, these concepts will become dusty history and I fear becoming the ghostly Professor Bins droning on and on about the bad-old-days.

While many folks harken back to their first word processing system as "the best" (no mention of current packages available is made by me lest lighting strike), there are some truths that must be faced:

- Statistically, the chances of a law firm's clients using any word processing software are pretty much nil.

- Highlight-and-edit is a norm in most of them. But how those changes are registered within the document is still rather proprietary. Despite the move to standardized storage of documents (read XML), the tools still do their job natively and copying and pasting between documents created in different software can result in much wailing and gnashing of teeth

- Word "just doing stuff I don't want," when analyzed properly, is mostly due to misconstrued rules of word processing (they are NOT universal). Many say that Microsoft Word has too many automations turned on by default. For the legal profession, I agree. And yet, we will add extra software to oversee our weaknesses, such as actual artificial intelligence proof reading

- "Codes" have not really gone away – they're pre-packaged in Microsoft Word. They are simple to find and don't really get buried between two letters in the next. You already know how to reveal them, you just may not realize it.

In the end, those of us who either create, make minor modifications to or otherwise crunch words must make friends with Microsoft Word. It is essential for everyone's sanity to understand what you just did, what someone else did, and how what was done may cause someone's hair to fall out.

I, and other august people, have written many posts, articles and books to try to de-mystify the beast…er…powerful tool that is Microsoft Word. And the lecture series that I created just after leaving Microsoft in 1997 called *Life After Reveal Codes* is still in demand over 20 years later.

Enter one of my favorite co-presenters, former repeat Microsoft MVP and current possessor of an office at that hallowed Microsoft campus, Ben Schorr. Ben has graciously loaned us passages from some of his many books which we encourage you to use as a reference, not an outline of our presentation.

Allan Mackenzie
Co-Vice Chair ABA TechShow 2020

Formatting in Word

Word has two basic kinds of formatting: Direct and Indirect. Direct formatting is formatting that you apply directly to text – for example when you select a word, sentence or paragraph and then click the "Boldface" button on the Mini Toolbar. Or you select a paragraph and change the font from the ribbon.

Indirect formatting is formatting that is applied via a Style. Many of the formatting problems you'll encounter with Word come about because of a conflict between an underlying style and some direct formatting applied on top of that style.

Generally speaking you should use indirect formatting (styles) whenever possible. It'll make your life a LOT easier. (well, at least that part of your life that creates and edits documents in Word)

Styles

A style is a predefined collection of formatting properties; fonts, typefaces, spacing, text colors and so forth that you can apply to a word or paragraph. There are a lot of good reasons to rely upon styles for most of your formatting needs. Not the least of them is consistency and the ability to modify the formatting of vast amounts of text very easily. You can set a style to have 11 point text, for example, and apply it broadly across your document. If you later decide you want to change it to 12 point text you need only adjust the style and just like magic all of the text assigned that style will be updated.

Word gives you quick and easy access to some commonly used styles right on the Styles Quick Gallery on the Home tab of the ribbon.

To apply a style just click on the paragraph you want to apply the style to and click the style you want to apply, simple as that.

Depending upon the style you're applying, that style may persist as you continue to type succeeding paragraphs or it might not. How do you know? Right-click the style you want to apply and choose Modify. Notice the "Style for following paragraph"? That tells you that when you hit Enter to create a new paragraph the next paragraph will be in the designated style – in this example you can see that the Heading 1 style will be followed by the "Normal" style.

Can you modify that setting? You bet you can. That can be really handy if you want to save yourself a little time and you know that every time you use Heading 2 that you want to follow it with a custom "subtitle" style before you finally move on to "Normal" body text. Lots of possibilities here.

If you were to look at the "Style for following paragraph" setting for the Normal style you'd find that the following paragraph is set to automatically be…Normal. Makes sense, generally you'd be using Normal to bang out paragraph after paragraph of body text.

So what other settings can you modify in a style?

Fonts

A font is the combination of the typeface and other elements like size, pitch and spacing that determines the shape of the letters in your document. You can take a basic typeface like Times New Roman and apply other characteristics to it like Boldface, 13 point and underlined. One thing that can be a little confusing in Microsoft Word is that the font is sometimes used to refer only to the typeface (like "Courier" or "Times New Roman") and sometimes used to refer to the typeface AND the various characteristics applied to it (like "Calibri 12 points Italic"). I wish I had an easy answer for you on that one, you'll just have to try and understand from the context what is being meant. For the purposes of this book I'll try to use "Typeface" when I mean just the typeface ("Courier", "Arial", etc.) and "Font" when I mean the whole thing.

Paragraph Options

In Word the Paragraph is an important concept. Most of the styles you'll use will be paragraph styles and most of the formatting applied will be applied on a paragraph level. There are a number of options that apply to a paragraph in Microsoft Word.

- Line Spacing

Line spacing refers to the amount of space between lines of text. Single, Double, etc. You can control your line spacing on a paragraph by paragraph basis using direct formatting with the Line Spacing button on the ribbon or (better still) you can modify the line spacing for the style that your text is based on so that the line spacing is consistent across all of your paragraphs assigned to that style. Generally speaking in legal documents your line spacing is going to be specified by the court anyhow so you probably won't have a lot of discretion in what it should be. But for correspondence, marketing materials and other personal documents you can probably make your line spacing whatever you'd like it to be.

- Justification

Justification relates to how the text aligns on the page horizontally, or from left to right. Typically our text is left justified, which means that it aligns to the left side of the page. As you type your text moves across the page from left to right but it's always in a straight line down the left side of the page. The right end of the line can be somewhat ragged, as mine is here, depending upon the words in the line and how long it actually is.

Right justification aligns the text to the right side of the page. For illustration I'm right-justifying this paragraph and you can see that my text lines up perfectly along the right side…but now the left side is a bit ragged depending upon the length of the line.

The next option is center justified, like this paragraph is. Now the lines won't necessarily line up on EITHER side but they'll all be perfectly balanced along the horizontal center point of the page.

Finally you have full justification. A line that is full justified will line up both left AND right, but Word will play around with the word spacing in the line in order to make the line fit fully across the page if it can

Creating Your Own Style

My favorite way is to create a new style is to start with a style that is pretty close to what you want, use direct formatting to make whatever adjustments you need (bigger font, different color, italics, line spacing, whatever), then select your carefully crafted paragraph and click "Save Selection as a New Quick Style…" at the bottom on the styles gallery. Word will ask you to name your new style and then it will appear on the Styles gallery right along with the rest.

Sharing Styles

It may come to pass that you've created a style that you want to share with others in your firm. Or maybe just copy to another machine that you own/use (like a laptop). Luckily it's not too hard to do that.

The first thing I do, before copying the first styles, is create a new, blank, document called "Transfer". I locate it in my Templates directory to make it easy to find. Note – you only have to do that once, unless you want multiple transfer documents. I reuse the same transfer file over and over.

Next click the dialog launcher on the Styles group to get the Styles Task pane. Then click the Manage Styles button at the bottom(circled in green) to get the Manage Styles dialog box. In the Manage Styles dialog click the Import/Export button to get the Organizer dialog. Click "Close File" on the right side, then "Open File" to select your Transfer document.

Once you have Transfer selected on the right side, select the styles you want to copy from the left side and click the Copy button to copy them to the Transfer file. When you're done, click Close.

Copy that Transfer file to the computer you want to copy the styles to – then repeat the process. Open Transfer, go to the Styles Task Pane, Manage Styles, Import/Export…and now you should see Transfer on the left and Normal on the right. Unless you only want these styles to be available in certain documents/templates go ahead and copy those styles to the Normal template. Done.

Themes

One of the options that Word offers for formatting is Themes. Themes are sort of like the superset of styles – they control the colors and fonts and basic look and feel of the document. I don't think most lawyers are going to take any notice of Themes so, other than observing that they exist in Word 2010 and giving you the heads up about what they do (Control the color and font scheme) I'm not going to spend too much time talking about Themes. The vast majority of what lawyers and law firms do in formatting can be addressed with direct and indirect formatting; and especially styles in the default theme. I seriously doubt many of you will ever care to change the Theme.

Page Options

Just as you have options that apply on a paragraph by paragraph basis there are also options that are relevant on the page level.

Margins

Margins are a concept that's pretty familiar to anybody who has worked with documents in the past – they are the white space on the left, right, top and bottom of your document. Generally speaking in your legal documents your margins are probably going to be specified by the court. For your non-official documents, like letters or internal memos, you'll have a lot more leeway and there are a couple of considerations you may want to give when it comes to margins:

1. You almost certainly have to have SOME margins, especially if the document is going to be printed. Very few printers are capable of printing all the way to the edge of the paper so your printer will probably enforce some minimal margins.
2. If it's a document that is intended to be studied and/or commented upon you may deliberately want to leave ample margins for note-taking.

You control the margins on your page on the Page Layout tab of the ribbon. Look for the Margins button.

Columns

Columns help to break up the text in your document. You are probably most familiar with columns in the context of a newspaper or magazine. Some legal documents can make use of columns in the headings; for example pleading headers in many jurisdictions have traditionally been formatted with 3 columns (the middle column just being a container for a graphical border). They can be quite useful in other cases as well, to help break up large blocks of text for style and readability.

To set up columns in your document go to the Page Layout tab of the ribbon and click the Columns button.

Here you can choose from the gallery to have one, two, three or more columns. You can also do some unbalanced columns like left or right – which are excellent for setting up letterhead by the way.

Most of the time lawyers are happy with one of those default column choices presented in the gallery. For the rare instance when you need custom columns other than what you see there just click the More Columns command at the bottom of the gallery to get the Columns dialog box. Here you can set up some extremely specific columns, with custom spacing and everything.

There are two really useful settings in this dialog box that I sometimes use even when I've only created a basic two-column page, for example:

- Line Between: This will create a nice vertical line between your columns. Handy in pleading headers and other places where you want a vertical line to separate your columns. No need to create a bogus center column just for a graphical divider in your headings anymore.
- Apply to: The default is "whole document" but the other option in that box is "This point forward". I'll use that to turn off columns - by setting the columns to "One" - if I only wanted to have two columns for part of a page or if I want subsequent pages to have a different column layout.

Page Borders

Page borders sound like margins but they're actually quite different. Borders refer to a line that you draw around the page. Again, probably not something you'll have the option to use on a legal document, but in some cases, like brochures or certificates, you may want to use them as a stylized element of your document. Click the Page Borders control on the ribbon to get the Borders and Shading dialog box. This dialog box is actually somewhat more powerful than simple page borders, though we'll start there. Here you can set a border around the page, or even have the entire page shaded. The border can be a solid line or a broken line or a dashed line or a…you get the idea. And, of course, you can specify the thickness of the line. You can have the border apply to the entire document or just to certain sections of it.

If you click the Borders tab of the Borders and Shading dialog box you can create paragraph borders. For lawyers theses are actually somewhat MORE useful, though not something you'd use in a pleading most likely. They let you enclose a particular paragraph (or more) within a border, setting them off graphically for emphasis.

The other useful tool that's here is one that you might have used before and that you've spent a LOT of time looking for and that's Horizontal Line. When I create training or instructional materials, I sometimes like to divide sections of the page or document with a horizontal line. When I first started using Word 2007 I probably wasted far more time than I needed to trying to find out where this command had gone and it took me 2 or 3 uses before I remembered that it was now semi-hidden under the Page Layout | Page Borders command. (I kept looking for it under Insert | Shapes).

Headers and Footers

Headers and footers are text elements that appear at the top and bottom of each page. In some cases these may be empty or blank – simply margins. In other cases they can contain highly formatted or dynamic data such as a letterhead masthead at the top, page numbering, dates and document titles in the footer and so forth.

To create a header just go to the Insert tab of the ribbon, click the Header command on the Header & Footer group and you'll get the gallery with a number of standard headers you can add. You can use one of those; start with one of those and then modify it; or even start with a blank header and create your own content.

To delete a header from your document just click the "Remove Header" option.

Creating a footer is essentially the same process but with a slightly different gallery

In either case if you build a custom header or footer and think you'll want to use it again in the future you can simply select your custom header or footer, then pop the appropriate gallery (header or footer) as described above and then click the "Save Selection to [Header/Footer] Gallery…" button. The gallery is stored with the template so any future documents you create with the same template (Normal.dotm, usually) will have your custom header or footer in the gallery for your easy access.

When you have a header or footer in your document and you double-click the header or footer area to edit it another contextual tab is added to the ribbon and that's the "Header & Footer Tools: Design" tab.

The Header & Footer group contains the same tools that the Header & Footer group on the Insert menu does and those tools, naturally, work the same way here. The Insert group contains four commands that you'll also find on the Insert tab of the ribbon – these are things you might commonly insert into a header or footer. Honestly I doubt that many attorneys will be inserting too many pictures or bits of clip art into a header or footer (though you could use that to insert a firm logo I suppose), but Date & Time would be a pretty common thing to insert and the Quick Parts include document properties like Author and fields like the document's path which is quite popular with lawyers. You can also create and save custom quick parts like boilerplate text (a disclaimer perhaps?) that you want to reuse again and again.

The Navigation group has tools that make it a little easier for you to move around between headers and footers, though I rarely see these commands used by attorneys in practice.

The Options group, however, has some VERY useful commands in it; in particular "Different First Page" and "Different Odd & Even Pages" which lets you create documents which don't have to have the same header and/or footer on every page. That's especially handy if you're creating a document with a cover page (which you might not want the same header/footer on) or if you're creating a book-style document where the even/odd pages will face each other and you want to put unique information on those facing pages. We get a LOT of requests for how to omit the footer from a first page of a document and "Different First Page" is the answer.

The Position group includes two very useful but confusingly named commands: Header From Top and Footer From Bottom. These commands actually let you specify the height of the header and footer respectively. If you have a lot of information you want to fit into your header or footer you can make it larger, or if you want an especially svelte header or footer you can make it smaller. These are also handy if you're trying to match up the header or footer to a preprinted form or piece of letterhead. The third command in the position group lets you create an alignment tab in the header or footer. Alignment tabs were a new feature in Word 2007 and unlike other tabs which have an absolute position on the page ("at

2.5 inches" for example) alignment tabs are relative to the margins of your page. So if you create an alignment tab that is 2.5 inches from the left margin and you later change the margins, then the alignment tab will move as well. In theory it's a handy way to align text within your header or footer without having to worry about realigning it if you later change your page margins. In reality legal documents have fairly well-defined and inflexible margin settings anyhow, so the chances you'd be changing the margins in a way that affects your header or footer text are pretty slim.

Finally the Close Header and Footer button gets you out of the header and footer and back to editing your page. You can accomplish the same thing by merely double-clicking anywhere on your page (other than in the header or footer). If you want to get back into the header or footer…just double click it.

Page Numbering

Another area we get a lot of questions on with Word is how to do page numbering. To start with, click the Insert tab of the ribbon and go to the Page Number button. It's not a coincidence that this is located in the Header & Footer group. Click the button. Clicking any of the first four options will open a gallery of appropriate choices.

Top of Page puts the page number and Bottom of Page puts it in the footer. That seems pretty obvious. Current position puts the page number…well, where your cursor is right now. That's an intriguing idea, but I've never seen it used. The final option is Page Margins which, interestingly, will create your page number in either the left or right margin, as an accent bar or other effect. It's actually quite stylish and I've been meaning to use that in a document or article sometime.

Format Page Number lets you make some blanket changes to the page number format, including letting you force the page number to start at a particular value. That's handy if you're creating a document which will actually be part of a larger document and you want the page numbering to account for the 17 pages that came from the other document…so you can start your numbering at 18, for instance.

Sections

There may be times when you want certain parts of your document to have significantly different formatting from the rest. Different margins, different page orientation (landscape or portrait), different headers and footers, page numbering, etc. You could try and do that manually, but it would probably be a nightmare; especially if the document changed in any substantial way and you had to add or remove pages.

The better way to do it is to create a separate section. To create a section you have to insert a section break – which you'll find on the Page Layout tab, cleverly hiding under the Breaks button.

Click Breaks and you'll get the menu. Below the page breaks you'll find the Section Breaks.

- Next Page: Starts your new section on the next page. Similar to inserting a page break.

- Continuous: Starts your new section right there where the cursor is. You can actually have more than one section on a page by using continuous breaks. This is another good way to have a page where part of the page is in columns and the rest of the page is not, for example.
- Even Page/Odd Page: Starts your new section on the next Even/Odd page. This is handy if you have chapters broken out as sections and you always want your next chapter to begin on an even (or odd) page.

You can't actually SEE section breaks on your page normally. If you need to delete one (or just be reminded where it is) you'll want to turn on formatting marks by clicking the pilcrow (¶) on the ribbon or pressing CTRL+SHIFT+8. Click on the section break and press Delete if you want to delete it.

Tabs and Indents

Tabs and Indents are related, but different, concepts. Both are used to align content horizontally on the page but with a subtle difference. Tabs set anchor points for you to align text on the current line. Indents move the entire current line or paragraph. You can have text on either side of a tab, but the indent acts like a temporary margin that moves the text inward from the side of the page the specified distance. You can have multiple tabs across the line, but a given paragraph will have just a single indent setting. (well, one on the left and one on the right if you like)

Controlling how tabs and indents are set up in your document can be done one of two main ways:

1. Using settings on the horizontal ruler at the top of the page.
2. Via the Paragraph dialog box, clicking the "Tabs" button at the bottom left would launch the Tabs dialog box to control the tab settings.

Personally I prefer the Paragraph dialog box. I know the ruler is always there and I've seen people work their magic with a mouse and a few deft strokes but to be honest, I never quite seem to get the results I want from setting tabs on the ruler and after a few minutes of trying I usually give up and fall back to the tried and true, well-understood, paragraph dialog box. If you really want to use the ruler to set your tabs and indents though, let's take a moment to look at how you do that…

Using the Ruler to Set Tabs and Indents

First of all when you first look at the Word ruler you won't see any defined tab stops, but you know (or you will after you finish reading this sentence) that the Normal template in Word includes default tab

stops every .5 inches. And you can see that in action if you start at the beginning of a blank line and start pressing the TAB key…the cursor will advance to the right half an inch every time you press the button.

Each time you click it you'll get a different cryptic little symbol. The first three to be addressed are fairly standard types of tabs:

- Left tab: looks like an L, sensibly enough. If you set a Left tab then text that starts at that tab stop will continue, as you type, to the right. This is the sort of tab you're most commonly used to.
- Center tab: Looks like an upside-down T. Set a center tab and text you type will center off that point – in other words it will adjust left and right from that spot.
- Right tab: Looks like a backwards L. Set this tab and text will proceed from that point to the left as you type.

The next two tabs are a little different.

- Decimal Tab: The decimal tab character looks like the Center Tab character (the upside-down T) but with a decimal point to the right side of it. When you set a decimal tab the text (which is presumably numbers) will align along the decimal point. This is the way you can align a column of numbers with decimal places so that they align on the decimal.
- Bar Tab: [Pause for laughter] This is a type of tab that is different from the rest in that it's not designed to align text. It creates a vertical line on the page – the sort of thing you might use to create the vertical line in a pleading heading (if you didn't heed my advice to use the "line between" setting in columns). When you click the tab selector until it looks like a vertical line, that's the bar tab. If your waitress starts to look like a vertical line it's probably a good time to ask for your bar tab…and call a cab.

Tricks of the Pros

Using the Tabs Dialog to Set Tabs

To get into the Tabs dialog press ALT+O, T (or go through the Paragraph dialog launcher and click "Tabs" as I mentioned above). Here you can type in the placement of the tab stops you want and you can select what type of tab alignment you want.

The other setting you can select here that's interesting is the Leader setting. By default there's none, but if you want the tab to be prefaced by with dots, or a dashed line or an underline you can select that here.

Reveal Codes

Want to start an excited conversation in a group of Word and WordPerfect enthusiasts? Utter the phrase "Reveal codes". WordPerfect users will hoist their swords and claim it's the killer feature that WordPerfect has and Word lacks. And…they're sort of right. But Word does have an analogue of sorts: Reveal Formatting. Word doesn't really have codes so the best it can do is show you what formatting has been applied to the current paragraph section or selected text. The Reveal Formatting task pane can be launched by pressing SHIFT+F1 and it will show you everything you need to know about the formatting applied to the selected text, current paragraph or current section.

If you want to make a change to one of the formatting elements, just click the hyperlinked title of the element and the appropriate dialog box will be opened that lets you make the changes you want. Take some time to learn to use this tool – it's worth it.

Tables

One feature of Word that you'll probably use a lot are the Tables. They have a lot of utility and can help you add some nice formatting to otherwise rough content. Tables can contain all kinds of custom formatting and can even perform some basic calculations for you.

Creating a Table

Creating a table is a pretty simple matter. Go to the Insert tab and find the Tables gallery The quick way is to just start at the top left corner with your mouse and drag down and over until you have the number of columns (up and down) and rows (left to right) you need. You can make a table of up to 10 columns and up to 8 rows that way. If you need something else, or you just can't get the hang of using the mouse for this task you can click the Insert Table command to get the Insert Table dialog box and then you can specify however many columns or rows that you need. If you guess wrong…don't worry about it. It's not that hard to insert additional rows and/or columns later if you subsequently discover that you forgot one.

There are two other useful features you'll find in the Insert Table window. The first is a way to control how AutoFit is going to work in this table. That means whether or not Word will automatically adjust the width of the column to fit the content. By default Word will try to make some intelligent guesses about how the table should be laid out and will auto-size the columns accordingly. Those intelligent guesses will

be based solely on the number of columns and the width of available space though – they won't have anything to do with the contents of the columns. If you'd like the columns to resize based upon the content of the column here's your chance; just click the radio button next to "AutoFit to contents." The columns will automatically size to accommodate the widest bit of content in the column. Naturally there

> *"Any sufficiently advanced technology is indistinguishable from magic."*
> *-Arthur C. Clarke-*

are limits; you can't have five columns that are each 3 inches wide on a letter-sized sheet of paper for instance.

The second handy tool here is that you can tell it to remember these dimensions for new tables. If you think you're going to make several tables of the same size checking that box will save you a tiny bit of time on your next few tables you create.

Quick Tables

Word provides you with some tools to help you create some tables that are a little more than basic. When you go to the Insert tab on the ribbon and click the drop-arrow on the Table button you'll see "Quick Tables" listed at the bottom of the menu. Highlight it and the Quick Tables gallery, will appear. These are predefined tables you can insert – calendars, matrices, lists and so forth. The colors schemes may vary a bit because they depend upon which Theme you have assigned to your document but the basic content will always be there. If you want to create a fancy table check here first and see if there is a predefined Quick Table for that. If so you'll save yourself a lot of time trying to reinvent one.

The Table Tools Tabs on the ribbon

What's this? New tabs? Yes, one thing Word does to try and keep the ribbon a manageable size is that it does have the ability to do contextual tabs. There are a lot of tools for working with tables in Microsoft Word but you don't really need those tools if you don't actually have any tables in your document. So Word conveniently stashes them away by hiding those tabs from you until you actually insert a table into your document. Create a table and place your cursor anywhere within it and you'll magically be presented with two new tabs on the ribbon under the heading "Table Tools"

- The Design Tab

The design tab gives you tools to control the basic look and feel of your table. Colors, lines, shadings and so forth.

The first group of commands in the Design tab includes some checkboxes that let you specify if your table has special rows or columns in it. If you have a header row or first column that contains data labels check the appropriate boxes. If you have a total row or a last column that contains sums or summary data, check those boxes. Those will apply a bit of special formatting to set off those rows or columns a bit to make it clear that they're headings or summaries.

The checkboxes for banding just specify if you want the alternate rows to be shaded for easier reading.

The next group on this tab gives you a gallery of quick table styles. By default you've got a plain table (If you created your table with the Insert | Table tool) but you can pick from dozens of other choices in various styles, accents and even colors just by selecting it from the Gallery.

You also have the ability to customize the shading and/or borders of your table from the Design tab. Clicking the drop arrow next to Borders. Here you can do all sorts of tricky things with custom borders like adjust the thickness of the lines or have borders only along the sides or top/bottom of the cell.

- The Layout Tab

The layout tab is all about configuring the actual functionality of your table. Adding rows and columns, splitting cells, sorting or even inserting basic formulas. Let's take a moment to look at the most important features of the Layout tab.

- Properties

The table properties dialog lets you set various settings about the table as well as the individual rows, columns and cells. You can specify the width, alignment and how you'd like the text to wrap around it. If text wrapping is set to None (which it is by default) then the table will stand alone and no text will appear alongside it.

- Rows and Columns

The Rows and Columns group contains commands for easily adding rows or columns to an existing table. If you underestimated how many you'd need, this is your solution. (You can also right-click your table and choose "Insert" to get at those commands)

- Merge

The merge group lets you merge or split cells or even the entire table. Sometimes you might want to merge cells, for example if you wanted to create a heading above two columns of cells that spanned both columns. You'd merge those top two cells and type your heading into it.

If you decide your table would be better as two tables you can use Split Table to divide it in two.

- Alignment

The Alignment group gives you some tools to adjust how your text will sit inside the cells – aligned to the top, bottom, left, right, middle…you get the idea. You can also control text direction here, in case you want your text inside the cell to rotate 90 degrees and appear landscaped, for example.

- Data

The Data group contains some of the most interesting table features that Word has. First of the "Sort" tool lets you sort any column based upon the data. Sort alphabetically, numerically or by date depending upon the kind of data in the column. This is a great way to re-order data that you quickly input without having to worry about inputting it in a particular order to begin with.

Convert to Text lets you break down your table without deleting the data within it. Essentially this command will take a table and convert it directly to text.

The formula command gives Word limited, very limited, calculation capabilities. You can create formulas to do a lot of things, but don't get too carried away. Creating and maintaining more than a few simple formulas is a chore in Word.

Deleting a Table

Deleting a table is not quite as easy as you might think, but that's probably a good thing. If you took the time to create the table you probably really wanted it and you wouldn't want to just blow it away casually. The best way to delete the table is to click somewhere in the table, then go to the Table Tools – Layout tab of the ribbon (which only appears if you actually have a Table in your document and you are working with it) click the "Delete" button and select "Delete Table."

That's also where you can delete individual rows, columns or cells.

Introduction to Templates

A template is a starting point for a document. It generally includes formatting, layout (like margins and paper type) and even often contains boilerplate text to get your document started. One simple example might be if you print on a sheet of custom mailing labels frequently and you want to set up your page layout (margins, borders, etc.) to fit those labels then save that as a template for later reuse. Or a more advanced example might be if you have a standard retention letter that you send to clients to acknowledge the attorney-client relationship you could create the standard letter, minus the specifics like names, dates, addresses, and save that as a template. Then in the future when you want to send that letter you just start from the template, fill in the variables for that particular client, and you're ready to go.

Word has been based upon templates for years and there are two kinds of templates that you should be familiar with in Word:

- Global – Global templates are always open, regardless of what kind of template you based the document on. Normal.dotm, the default template in Word, is an example of a Global template.
- Document – A document template is the template that you base an individual document on. There are a couple of dozen of them that come with Word (Faxes, memos, letters, etc.) and hundreds more available (generally for free) from Microsoft Office Online. Or you can build your own as we'll talk about in Chapter 8. Document templates are probably what you're thinking of when you think about templates.

Summary

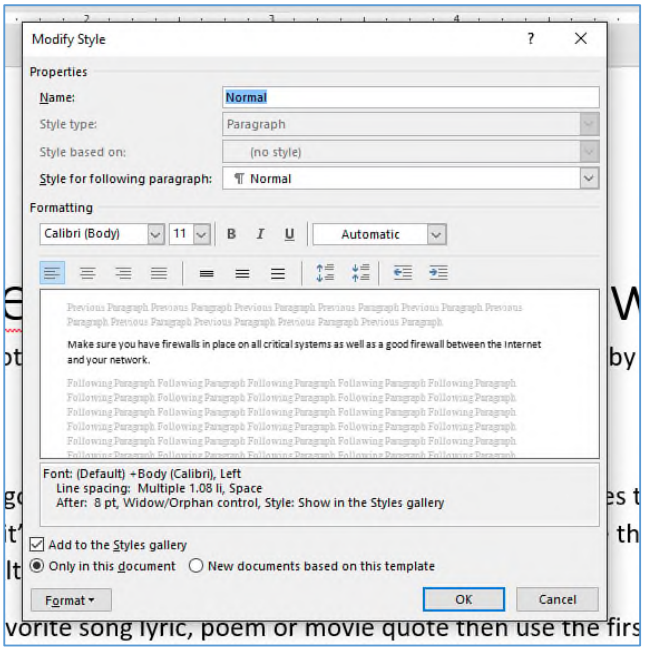
It's not just what you say, it's how you say it. Your content is critical, of course, but we all know that legal documents have very precise formatting requirements and you have to make sure you have complete control of how that content is laid out. It does you no good to make a brilliant legal argument if the court rejects it because it's improperly formatted.

Word provides you with some great tools to control formatting – Styles, tabs, tables, columns and more. Mastering those tools will give you mastery over how your work is presented. If you only have time to master ONE of these concepts though…spend that time on Styles.

Key Takeaways

Styles

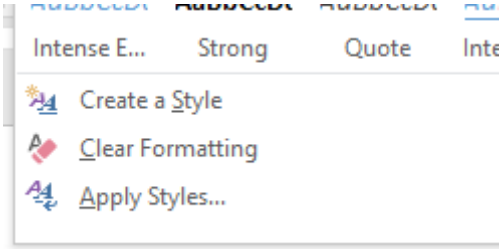
Styles are the best, and most reliable, way to format Word documents. With styles rather than applying formatting (Bold, Underline, Font Size, etc) directly to the text you apply that formatting to a style and then apply the style to the text. Updating the formatting of the document then becomes a simple matter of updating the style and that updated formatting is automatically applied to all of the associated text.



To update a style right-click the style on the Styles Gallery and choose Modify. A dialog box will appear that gives you access to all of the many settings on that style that you can change (see below). Don't overlook the "Format" button at the bottom left of the dialog box. A number of additional useful settings can be found under that button.

The styles gallery is prominently located on the Home tab of the ribbon.

To create a new, custom, style just type some random text, then format it using direct formatting – applying desired effects, colors, typefaces, etc. Select that formatted text, click the more button ( ) at the bottom right corner of the Styles gallery on the Ribbon and choose "Create a Style" from the menu that appears (see below).



Give your custom style a name and save it. Now it will appear on the Styles gallery for this document.

Paragraph Numbering

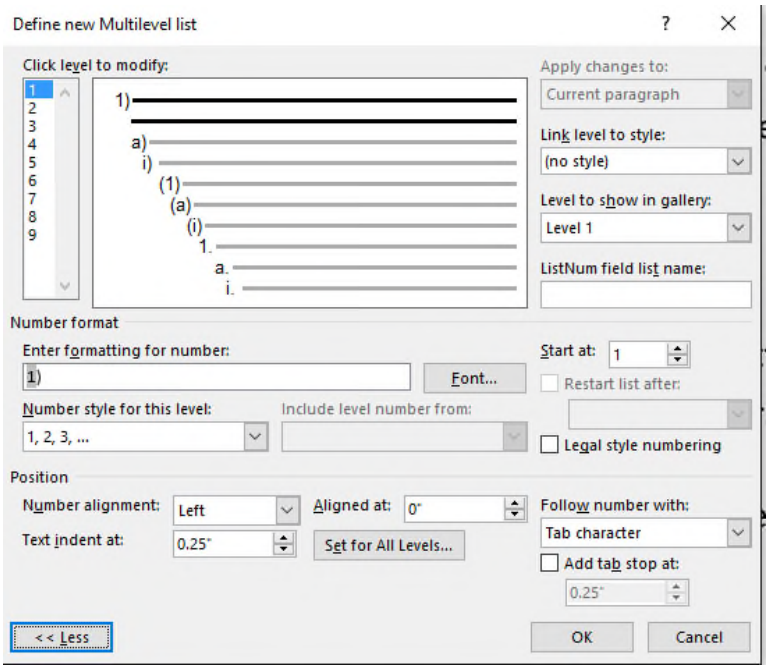
Numbered paragraphs is the bane of existence for many attorneys. There is a bulletproof solution to it, but it takes a little bit of work to get it going. I can break down the process into two steps:

1. Create custom styles for each level of numbering you want. "1.", "1.1", "1.1.1" and so forth. Name those custom styles with names that make sense "ParaLevel1" "ParaLevel2" or something similar that works for you.

2. Define a new multilevel list and associate those new custom styles with the appropriate paragraph levels.

To define a new multilevel list just click the arrow next to the multilevel list button on the ribbon ( ) and select "Define new multilevel list" from the menu that appears. Make sure and click the "More" button at the bottom left of the dialog box if it isn't already selected – you'll need those additional features displayed so you can link your new custom styles (see step 1) with the appropriate levels of the list.

Click where it says "Link level to style" (on the right) and for each level (1, 1.1, 1.1.1, etc.) link the custom style you created for that level to the level.



Towards the bottom you can modify the number formatting, so if you want Roman numerals instead of Latin you can change that. Or you can make "1.1" into "1.A" if you prefer.

You can also adjust the position and indent for each level if you want to.

To use your new numbering simply apply the appropriate custom style (ParaNum1, ParaNum2, etc.) to the paragraphs for the level you need.

Mistakes Lawyers Make with Microsoft Word

Over the last 20 years I've seen lawyers make a lot of mistakes with word processors – as the systems have gotten more powerful and easier to use the mistakes have become easier to make. Let's take a few minutes to look at some of the most common mistakes and how you can avoid them. Remember: the first step to recovery is admitting it!

Licensing

One big mistake firms make with Microsoft Office is they buy it from their hardware vendor with their computers. They just call Dell or HP and as part of the spec for the machine they include Microsoft Office in the thought that they're saving money that way. They're not! The software version you get that way is called an OEM Version. The software itself is identical to the retail or volume license versions but the LICENSE is different. Specifically:

- OEM software is locked to the machine it came on. If you ever replace that machine you cannot move the Microsoft Office license to the new machine. You have to buy a new license. Even if the machine dies in 15 months and you have to replace it – you'll need to buy a new copy of Office too.
- OEM software can only be installed on that single machine. No additional machines.

The better play for almost any law office, certainly any office with 5 or more machines, is to buy Microsoft Office through Office 365. The license can be installed on ANY 5 machines (PC or Mac) including laptops and tablets as appropriate.

Let's say Joe Attorney has a desktop computer. You install one of your Office licenses, obtained via Office 365, on that desktop computer. But Joe also has a laptop that he uses when he travels or visits clients. You can install the SAME Office license that you used on Joe's desktop…on his laptop. And maybe Joe has a Mac at home…he can install Microsoft Office from Office 365 on that Mac too at no extra charge.

Some people are concerned about getting locked into paying $8.25 a month endlessly but when you consider that you're likely paying $199 or more for the OEM office license AND can only install the OEM license on that single machine…Office 365 looks better. It would take you two years to spend $199 $8.25 at a time. And if you have Office 365 installed on multiple machines (Office desktop, laptop, etc.) the deal just gets better.

So why not just walk into Best Buy and pick up 5 Microsoft Office 2016 boxes? Those aren't tied to any specific machine, so you can move them when the machine gets replaced. And with the Retail license you CAN install on the desktop and a portable for the same primary user! But…with retail licenses you have to keep track of the licenses. You have to know which license you installed on which machine and if you ever have to reinstall…heaven help you if you got them mixed up.

With Office 365 there's no product key to keep track of because it's tied to the user account. You just login to that account and install Office from the portal. And if you later need to add additional users, you just

log into your administrative portal and add (or remove) however many (or few) additional seats you need. No need to keep track of multiple product keys. That will save you money in administration and management.

Last advantage – with Office 365 you'll get free updates and upgrades for the life of your subscription. No need to debate if you want to spend another $299 to upgrade to the next version of Office when it ships – you'll just get it as part of your subscription.

Document Naming

Lawyers and staff are often in a hurry when they create documents – so much so that when it comes time to save and exit the document they occasionally name the document "Memo" or "Letter" or some other quick thing they can type without thinking about it. The problem is that with a title like that it's almost impossible to find this document later or figure out what it's supposed to be. Worse yet if you don't have a good document management system you could end up with a folder full of documents called "Memo.docx", "Memo1.docx", "Memo2.docx" and that just doesn't help anybody. Word supports long file names like "Memo to Dr Sanders regarding Bruha claim.docx". Take the time to really name your documents and you'll be a lot happier and you'll save a lot of time in the long run.

Saving Over Old Documents

One thing most lawyers do is reuse old documents. The Smith will was so good that when Mr. Jones needs a will you just open the Smith will, make the necessary changes, and save as Mr. Jones's will. One problem with that arises when you open the Smith will, make your changes, then just click "Save"…and you've just saved over Mr. Smith's will with Mr. Jones's will. Oops.

We get 2-4 calls per month from law firms who need us to help them retrieve a previous version of a document because somebody saved over the old one with an incorrect version. Fortunately most of them have backup systems that allow us to retrieve the old version. In the case that happens to you however don't delay. Backups are in a constant state of change. Every night (hopefully) a new backup is done and in many cases it overwrites a previous backup. If you wait too long to request a restoral the correct file may be overwritten by the erroneously edited one. Let your IT staff know as soon as you realize the error – that will maximize your chances to get it fixed.

There are a couple of ways to prevent this. One is that when you open Mr. Smith's will, but **before** you make any changes to it, click File and do a Save As to save a copy of the document with a new filename. (if you prefer the keyboard, press F12) Then you're working with that new document and Mr. Smith's original will is untouched.

A second way, and we'll talk about it in more detail a little later in this article, is that after you open Mr. Smith's will, select all of the text by pressing CTRL+A, copy that text to the clipboard with a deft CTRL+C, then CTRL+N to start a new, blank document. CTRL+V pastes that text into the blank, new document and CTRL+S lets you save that now not-so-blank new document with a new filename and location if desired. You may then tap the CTRL key however many times you like to make yourself grin at how clever you were

to not only preserve Mr. Smith's will but probably significantly reduce your metadata issues in one (well, 4 or 5) swift strokes.

Not Saving Documents

Saving over old documents is one mistake with save. Another mistake is not saving often enough. I can't tell you how many times I've gotten calls from folks who lost a document (or at least part of one) because something bad happened and they'd forgotten to save during the last 1 or 2 hours. Give it a CTRL+S every now and then.

Tales from the field…
A few years ago I got a call from a client late on a Thursday afternoon. She had spent the better part of the day working on a brief for a case she was involved in and at the end of the day she went to close her word processor. (in fairness it wasn't Microsoft Word, but for our purposes the story is the same) It asked her if she wanted to save the document. In her haste she accidentally clicked "No" and her word processor quickly and dutifully closed down…discarding hours of her work in the process. She immediately realized her mistake and grabbed her phone to call me. After she explained her predicament the call went something like this:

> *Me:* O.K., well, how long ago did you last save the document?
> *Her:* <long pause> I didn't.
> *Me:* You didn't save it AT ALL today?
> *Her:* I know, I know. <sigh>
> *Me:* O.K., well, did you email a copy of it to anybody?
> *Her:* No.
> *Me:* Did you print a copy?
> *Her:* No. Is it gone?
> *Me:* <long pause> Maybe not. I'll be there in 10 minutes. DON'T TOUCH ANYTHING!

Pondering her problem I remembered that her word processor, like Microsoft Word, can make automatic backup copies every few minutes in the background. Those are there in the event that your computer (or even just your word processor) has an unexpected shut down. These can be due to power failure, system error, foot/dog/cat/child/spouse brushing up against the power switch…you name it. If that kind of unexpected shutdown happens, the next time the word processor starts it detects that the backup files are there and offers to let you recover them. That can be quite a relief in those instances when you really need them.
However, when you close the document normally (such as by closing the word processor and answering "No" to the "Do you want to save?" question) the word processor is a good computer citizen and cleans up after itself, which includes deleting all of those apparently unnecessary backup copies. It occurred to me in pondering her problem that perhaps there was a way to recover one of those deleted files.

A computer deleting files is not really as thorough as you might imagine. All the computer really does in those instances is mark that space as available. It doesn't actually clean off the bits on the hard drive that previously stored that file. It leaves them as is, but just indicates that the space is available to be used by

the next piece of data that needs to be stored. If I could get to her computer before any further data was written to that space on the hard drive I just might be able to get it back.

When I arrived at her office she was in a bad way…she was sure that all was lost and she was going to have to spend all night recreating hours worth of work. “It’s impossible, isn’t it?” she said with a pained voice. “It’s unlikely.” I responded “But don’t give up just yet.”

I fired up my handy undelete program (there are a number of them available from various vendors) and set to work browsing to see if I could find the deleted backup files. Sure enough, I found several files that were of the type we were seeking and by comparing the date and time stamps I identified one or two likely suspects. I restored them to her hard drive and started her word processor; which correctly recognized the presence of the backup files, assumed it had crashed and offered to recover them. She jumped up and down with glee when she recognized the first page of her lost document. Sure enough, she had lost only about the last 5 minutes of her work which amounted to a couple of minor edits she was able to easily redo. To say she was happy is an understatement and our firm earned our unofficial slogan: “We Make The Impossible Unlikely.”

Fortunately, modern technology has largely, but not entirely, minimized this problem. I have my computer plugged into an uninterruptible power supply so that if my electricity blinks momentarily my computer won’t notice. AutoRecover means that Word has frequent backup files so that if Word happens to crash for some reason I have a good shot to be presented with a recovery file the next time I start Word and I’ll only lose a couple of minutes worth of work.

And, now with Word 2016, you can recover an unsaved document – even if you closed without saving. Just open Word 2016, click File and on the Info tab at the bottom left of the screen you’ll find “Manage Document” which, among other things, lets you recover unsaved documents. Click that and you’ll see the Saved Drafts folder which should contain your document.

Note…these documents are only saved for a few days. If you’ve waited longer than that to recover them…you’re probably out of luck.

But honestly, how hard is it to press CTRL+S to save your document. Watch, I’ll do it right now. There, wasn’t that satisfying? Even though I know intellectually that the odds of losing my document are increasingly slim I’ve been in this business long enough to remember when it was a regular occurrence. And I’m in the good habit of frequently saving my work as I go, so that just in case the cat jumps on my keyboard at the wrong moment I still have a recently saved copy I can re-open. Right after I figure out whose cat that is.

Is it annoying or difficult to press CTRL+S every few minutes? Not at all. Look, I’ll do it again.

Note that with Office 365, if you save your document to OneDrive or SharePoint then AutoSave can save your work for you every few seconds as you go.

Metadata

Metadata is data about data. Simple as that. The text of your document is data. The TITLE of your document is metadata. The date the document was created, the name of the author, the number of words or characters within the document, any comments or tracked changes within the document…these are all metadata.

It's a popular misconception that metadata is strictly a Microsoft problem. In fact virtually all office productivity applications, including Corel's Word Perfect, use metadata and face potential issues with it. That's why Corel included a metadata checker/cleaner in WordPerfect X3 and all subsequent versions.

What's the Matta With Metadata?

Other than being a sort of cheesy section heading, the "matta with metadata" is that there may very well be information contained therein that would be damaging to your case, your client and perhaps your career if it should be leaked outside your firm.

For example: Let's say you have a Word document and you have Track Changes turned on. This Word document is going to be a settlement offer to opposing counsel. You decide that you will offer the other party $500,000 to settle the matter. Before sending the offer, and after discussion with your client, you decide to reduce the offer to $350,000. So you open your Word document, change "$500,000" to "350,000", save the document and promptly email it to opposing counsel. Opposing counsel opens the document in Word, makes sure that they have Track Changes turned on as well, clicks the Review tab on the ribbon and changes their view to "Final Showing Markup". At which point they discover that you had originally intended to offer $500,000 but later revised that figure down. Do you suppose that might affect your negotiating position?

Does it make your situation better or worse if you and the client collaborated on the document and used the comments feature of the document to discuss your settlement strategy as you prepared the offer letter?

Another scenario: You're assisting a client with a press release for a pending acquisition. It's all very hush-hush and not finalized yet so you're just holding on to the draft of the release. In the meantime, that client also wants your help with a press release for their new bond offer. Since you like the press release you did for the acquisition and it already has all of the client's contact information in it, you decide to reuse the pending acquisition release and just change the relevant bits. You've already read the bit I wrote about not saving over old documents so you know that you should open your original document and do a "Save As" to save the new version with a new name. You change the names, dates and amounts to reflect the bond offer and once you're satisfied that's all done you helpfully send it off to the local business press. The next day the front page of the local paper reads "BIGCO Inc. to Acquire SmallCo, LLC for $5 million!" Oops.

How Do You Discover Metadata

There are a number of tools available to discover metadata but the simplest is Word itself. With a Word document open and Track Changes turned on, go to the Review tab and make sure under Tracking that you have "Final Showing Markup" selected in the Display for Review field. Then you should be able to see the edits and changes made, if any were preserved in the document.

Alternatively, you can use third party tools like Metadata Assistant or Doc Scrubber to analyze your document (and remove potentially damaging metadata).

How Do You Clean/Prevent It

There are a number of methods available to clean metadata out of a Word document and a few ways to prevent it in the first place. The method you use to clean it should depend upon what the document is ultimately intended to do.

If the intention is to print the document and provide it in hardcopy, then your metadata worries are few. Very little metadata would appear in a printout – in fact you would have to deliberately set the print options TO print the metadata (such as comments and other markup) for it to appear. By default, Print Markup is NOT enabled in Word 2016.

So if your intent is to print the document and only provide it via hardcopy then don't worry about the metadata. Print your document, proofread it, then rest assured that they aren't getting anything you didn't intend to give them (unless they're going to be testing your printout for incriminating fingerprints or DNA).

If the intent is to send the document electronically, as it so often is these days, then you have to make another determination before you proceed: do they need to edit it? If the party you're sending to doesn't need to edit the document, then the preferred way to send the document -- and for them to receive it in many cases – is as an Adobe PDF file. PDF has a number of advantages:

First, the formatting is going to be consistent. The way the PDF looks on your computer is how it looks on their computer and how it looks on their printer. No questions about whether they have the right fonts or what version of WordPerfect they're using. A PDF is a PDF is a PDF. It's electronic paper. All they need is a compatible version of Acrobat Reader and they can get that from Adobe for free.

Second, it's portable. This relates a bit to #1 but there are PDF readers for nearly every platform. So if you're dealing with an attorney who is still running Windows 98 or an attorney who has gone over to the Mac or a real propeller-head who insists that Linux is the only true operating system…it doesn't matter. They can read and print PDF files you send them. Heck most mobile devices like Blackberries, iPhones and Android phones can read PDF files now too. You can even read a PDF on a Kindle.

Third, and most importantly for the purposes of this article, almost no interesting metadata goes with a PDF file. When you send a Word document to PDF you're effectively printing it and that means the same rules apply…unless you have explicitly told Word to include things like comments, tracked changes or

other markup in the PDF file, it won't. The worst you're likely to see in a PDF file is the document title, author and perhaps some keywords. You have to try pretty hard to get significant metadata into a PDF file.

That said Adobe does create just a little bit of its own metadata, like all files on a computer it will have an associated creation date for example. But I'd suggest that if you're really concerned with the simple creation date of the document you may want to reexamine the ethical issues of the matter.

Document Reuse

One thing that attorneys LOVE to do is reuse existing documents. It's a big time saver and can help to maintain a high standard of quality. If you already know a document is good, why not use it as the basis for a future document? You're really better off using templates and/or document assembly software and building a fresh new document with those tools rather than using an existing, completed, work product as the basis for a new one. Unfortunately, the practice of document reuse is widespread and old habits are hard to break. When you reuse that old document you risk also reusing the metadata from that document. So, in our scenario where you HAVE to send a Word document and you've succumbed to the pressure to reuse an old document then you want to try and minimize the chances that any metadata is transferred from the original document.

To do that open your old document and the very first thing you want to do is make sure Track Changes is turned ON in that document. Then go to the File and click New to start a new, blank document. In that document make sure that Track Changes is turned OFF. (Yes, OFF) Now go back to your original document (sometimes referred to as the "Donor Document") and press CTRL+A to select all of the text. Go to the new document (sometimes referred to as the "Recipient Document") and press CTRL+V to paste that text in. Now save that new document with a new file name. Close the old, or donor, document. Now you can go through and make any edits or changes you need to make to the new document. When you have it finished, go to the File, click Check For Issues, then Inspect Document and let Word's built-in Metadata Inspector take a look at your document.

If you haven't saved it lately, the metadata inspector will prompt you to save. That's a smart move. Then it will ask you what data to check for. Generally speaking, I would just let it check for everything. Except perhaps for Headers, Footers and Watermarks there probably isn't any of that other data that your recipient should have. Besides, the metadata inspector will ask you before it removes anything so I'd just leave them all checked.

After it's done inspecting you'll get a report.

Word's tool is reasonably primitive in two respects:

1. It's not going to show you the specifics of what it found. It just tells you it exists, that's all.
2. It doesn't let you selectively remove it. If you have Word remove comments, for example, it's going to remove all of them. If you want to selectively remove some you'll have to go back through the document yourself and delete just those comments you don't want to retain.

Configure Word to Warn You

If you use Track Changes a lot then you might want to have Word warn you if you go to save or send a file that has tracked changes in it – if nothing else it's a good reminder to run the built-in metadata inspector. To enable that just go to the File > Options > Trust Center and click Trust Center Settings. In the Privacy Settings group, halfway down the page you'll see what you're looking for.

The very first option lets you turn on the warnings that you want and I encourage you to enable it; again just to be on the safe side.

If you're collaborating on a document with others you may not even realize that a document has track changes turned it. It's possible that somebody else has enabled track changes without your knowledge – or even theirs. Better safe than sorry.

The third option is another one you'll want to enable – it makes sure that if you open a document that has tracked changes in it…that the tracked changes are shown. Even if you changed the Display for Review setting to be "Final" only the last time you worked on this document. It may seem like a nuisance but it's a valuable reminder that there is markup and tracked changes in the document that you may need to deal with before passing it along.

The final option here "Remove personal information from file properties on save" will change the author, manager and company names as well as dates and times associated with comments or tracked changes. That sounds really useful! But it was deprecated in Word 2010…it'll be greyed out unless you're working on a document that was created in an earlier version of Word and you had this option turned on in that earlier version of Word. Too bad.

Summary

Word seems like a pretty simple tool, but it's a powerful one as well. As any first semester law student can tell you, documents are a critical part of the practice of law and the word processor is an important tool for the law firm. There are a number of mistakes that lawyers and staff can make with Word, some of them merely efficiency issues but others can be very serious. Leak the wrong metadata to the wrong person and the consequences could be as severe as disbarment. And that's really not the way to move your practice forward.

Tricks of the Pros

- Pre-printed letterhead is just so 1997. These days all the cool kids are printing their letterhead on demand as part of their documents. Just create a template with the margins you want, put your firm header at the top, create a column on the left (or right) to list your addresses, partners, associates…all the stuff you've got on your preprinted letterhead now. A good graphic designer or Microsoft Word expert (heck, even a savvy legal assistant!) can set up a Word Template for you that looks almost identical to your preprinted letterhead. Now that you've got that template, create all of your letters and such using that template and just print on plain blank paper (or bond if you like). It'll look like you printed on pre-printed letterhead but it'll save you a lot of costs both

up front and in the future. Tell the truth…how many boxes of letterhead do you have in a closet preprinted with the names of attorneys who are no longer with your firm; or featuring the address of your old office? If you're printing your letterhead on demand, from a template, you make a simple change to the template when somebody joins or leaves the firm or when an address or phone number changes and voila…your new letterhead is ready. And, with Word 2010's new file formats you can even retroactively change the template applied to previously created documents – so if you ever reprint those documents in the future they can be printed with the current letterhead template; instead of the template that was in use months or years back when the document was originally created.

- If you like to insert horizontal lines you may want to just add this command to the Quick Access Toolbar (QAT). To do that right-click the QAT and choose "Customize Quick Access Toolbar…" Change "Popular Commands" to "All Commands" and scroll down until you find "Horizontal Line" to add it.

- There's a reason that tabs and indents are on the paragraph tab of the Page Layout group – they are assigned to paragraphs by default. If you set tabs on a paragraph then continue typing the next paragraph the tab settings will follow. If you select an existing paragraph in the middle of a bunch of paragraphs your new tab settings will only apply to the selected paragraph. Want to apply the tabs to multiple paragraphs? Select them, then set the tab settings. Want to apply it to the entire document? CTRL+A to select all, then set your tab settings.

- The first step in setting your tabs up is to place your insertion point in the paragraph that you want these tabs to apply to. For simplicity we'll assume you're just going to set up some tabs up to use in the current and future paragraphs. The next step in setting up your tabs is to click the tab selector at the left end of the ruler. By default it looks sort of like a capital "L".

- If you don't see the Ruler at the top of your document, you probably have it turned off. Go to the View tab of the ribbon and click the "Ruler" checkbox or click the View Ruler button which is at the top of the vertical scroll bar on the right side of your document.

- TIP: If you're not sure which kind of tab you're looking at in the Tab Selector, just hover your mouse over the top of it and you'll get a tool tip that tells you.

- After you've clicked through the five kinds of tabs the Tab Selector button will, curiously, offer you two types of Indent you can set up.

    - First Line Indent: The first line indent does pretty much you think it does – indents the first line of the paragraph the specified distance. The icon for this one looks like a downward pointing triangle.

- Hanging Indent: The hanging indent moves the entire paragraph over the specified amount. This icon looks like a small box.

- Once you've selected the type of tab or indent that you want to create, click on the ruler where you'd like the place the tabs or indents. You can place as many tabs as you like (within reason), but only one indent per paragraph.

- Want to quickly remove a tab you set manually? Just drag the tab indicator off the ribbon using your mouse.

- One question I get asked sometimes is how can I have some text on a line that's right-aligned and other text on the same line that's left aligned. We often see that in a header, for example. I've seen people muddle around trying to do it manually, but there's a MUCH easier way. All you need to do, is create a right-aligned tab, and set it all the way against the right-margin. To do that, click the tab selector to change it from Left tab to Right tab, then click on the ruler near the right-margin to place that Right tab. Now gently drag it from where you placed it, to the right until it's directly on the right-margin. Now…just type your left aligned text on the line. It'll naturally line up left. Press Tab and your cursor will jump to the right-margin where, as you type, your text will naturally right-align on that tab you created. Voila, left aligned and right aligned text on the same line.

- Want some centered text too? Just add a center-aligned tab exactly in the middle of the line.

- This is another example of Word 2010's live preview feature. Just by hovering your mouse over the sample tables in the gallery Word will change your table to show you what it will look like IF you select that option. No need to trial and error it, just move deliberately through the gallery until you find the look you like, then click on it.

- Lots of folks don't realize that you can actually sort lists of text that aren't in Tables in Word. Just select your list of terms and click "Sort" on the Home tab of the ribbon. You'll get the Sort Text dialog box. You can do a three level sort if your data is that complex but most of the time you'll probably just do a simple ascending or descending (A – Z or Z- A) sort. Notice the Header row options towards the bottom? That lets you tell Word if your list has a header row at the top that you don't want sorted into the text.

- Most Microsoft Office pros wouldn't spend a lot of time creating a complex table, especially with a lot of formulas, in Microsoft Word. The tables feature just isn't that robust. Instead we would create the table in Excel and just embed it into Word in the appropriate place. In Chapter 7 we'll dig into how to do that. Trust me, you'll like it.

-

Handy Keyboard Shortcuts

- CTRL+P – Print
- SHIFT+F1 – Reveal Formatting
- CTRL+S – Save
- CTRL+F1 – Hold/Show Ribbon
- CTRL+C – Copy
- CTRL+V – Paste
- CTRL+N – Start a new Word document

More Resources

- Microsoft's Word site: https://support.office.com/en-us/word
- Office Templates from Microsoft: https://templates.office.com
- Shauna Kelly's Word site: http://www.shaunakelly.com/

TECHSHOW2020

Create Your Personal Well-Being Plan

WRITTEN BY:

Roberta Tepper and Tharwat Lovett

PRESENTERS:
Tharwat Lovet
Roberta Tepper

January 6, 2020

THE MECHANICS OF PSYCHOLOGICAL AND EMOTIONAL WELLNESS
BY THARWAT FAHOUM LOVETT

If we were to take to task researching the definition of wellness, we may find ourselves running into a variety of definitional variations for the term. Amongst the definitions, however, there is a common thread of understanding which is the notion that wellness is not only something someone chooses with full conscious awareness and intentionality, but is also the proactive engagement of disciplined thoughts and behaviors specific to the individual aspects of wellness. Wellness is a tree that has many branches. Examples of branches include, but are not limited to, the various facets of our lives such as, social, physical, emotional, financial, psychological and occupational.

The scope of this workshop covers the creation of a personal well-being plan. Psychological and emotional wellness is cornerstone to all other aspects of wellness. In order to create an effective wellness plan, understanding the underpinnings of psychological and emotional wellness is paramount. Comprehension of the mechanics of our psychology and emotions will assist in building a springboard from which all other wellness may launch.

The first step in creating any effective change is awareness. In order for us to create lasting plans for change in our lives, we must first become somewhat aware of our patterns and habits. A habit is something we do repetitively or consistently that we remain unaware of. Key word here being unaware. Remember, wellness is the conscious and intentional application of awareness through proactive, positive decision making. When we feel the need to introduce wellness practices into our lives, odds are we are actively working toward dissolving the effect unhealthy, unconscious patterns of habit have had over us. The moment we pull a habit into the light of our awareness, it ceases to meet the qualifications of a habit and hence becomes a choice. Habits and choices both consist of patterns of thought and behavior. The difference between the two is that one, a habit, we are unaware of due to its subconscious nature, and the other, a choice, resides in the realm of our conscious awareness.

As human beings, we possess the ability to introspect. We are able to watch or observe our internal thinking, emotional reactions and feeling processes. This can be enhanced by employing practices such as journaling, reflection, coaching, therapy or meditation. When we become observers, we are able to initiate the process of consciously illuminating our subconscious patterns, habits or beliefs. Practicing this growing sense of self-awareness reveals the limiting beliefs and mindsets that are no longer serving us. We now begin the journey of self-discovery and self-mastery.

The conscious mind is our objective or thinking mind. It has no memory and can only truly hold one thought at a time. The conscious mind is an instrument that we use to direct our attention, like a spotlight. Conscious awareness is our ability to be aware of our awareness. It is the awareness we are utilizing at this very moment to read the words on these pages. Conscious mind also shuts down at night when we are asleep.

The subconscious is the brain and nervous system. It is the unique and complex network of neuronal circuitry programmed within our physiology by our experiences. Our subconscious has infinite memory, can access near infinite information or thoughts and never goes to sleep. The subconscious is where all

the automation, the programs, the habits, the patterns and the beliefs are warehoused. Every organ in our body has a specific function or role to play in the gestalt of our biology. The heart pumps blood, the liver filters toxins and the stomach digests. The brain also has its function. The brain's role is survival. It keeps us alive.

If self-preservation is the role of the brain, the subconscious is the brain's warehouse or library where the data accumulated throughout our lifetime of the thoughts, emotions and behaviors we have learned are necessary for surviving the conditions of our experiences, are stored. From womb to tomb, the subconscious records everything—even things we remain largely unaware of.

Everything psychological is simultaneously physiological. For every habit of thinking, feeling and behaving, there is a corresponding neural circuit that physically takes up mental real estate. Thought is a unit of awareness that activates biological electricity. It is literally the movement of positive and negative ions through a neuron. This electrical energy converts itself to chemical energy through the release of a neurochemical that then binds to and communicates with a receiving neuron. We experience the release of this chemical energy as emotion.

A belief is a thought we've been thinking over and over again. This repetition yields a neural circuit that has entered into a relationship with long term memory. Neural circuits rooted in long term memory become our habits. Our habits, patterns of thinking, feeling and behaving, are not necessarily based on true, objective reality. They are simply the conclusions we've drawn about reality based on the self-preservation mechanisms activated through the subjective conditions of our experiences.

Some say we spend up to 95% of our day on subconscious autopilot and only 5% in conscious awareness or presence. If this is truly the case, it is important for us to begin taking a deeper look at exactly what programs, patterns and habits are operating our lives. This is where wellness comes back into play. Wellness practices aim to not only shorten the gap between subconscious and conscious living, but it also assists us in overriding the circuitry of our automatic maladaptive habits.

Emotions are the biochemical consequences of the thoughts we think. Where we direct our attention determines the thoughts that play across the screen of our mind. The thoughts we are thinking yield emotional reactions. Our emotions influence the choices that drive our behavior. Our behavior effects how our environment interacts with and responds to us. Finally, our environment impacts where our attention is directed. Life is the cycling of feedback loops on both the micro and macro levels. A wellness plan assists us in breaking toxic cycles. It also introduces the potential for positive feedback loops that, through consistency and repetition, become the new, healthy circuits rooted in our long-term subconscious memory.

Creating a personal well-being plan is a powerful way to introduce many positive changes into our lives. We all have strengths and weaknesses. There may be facets of well-being that we have mastered and some that we struggle with. We may occupationally be thriving but emotionally be flatlining. We may be psychologically sound but socially struggling. An effective well-being plan must be based on the needs of the individual, must be consciously engaged through presence and active decision making and must be a commitment of will and discipline of mind.

Psychological Well-Being and Physical Health: Associations, Mechanisms and Future Directions. Rosalba Hernandez, Sarah M. Bassett, Seth W. Boughton, Stephanie A. Schuette, Eva W. Shiu, Judith T. Moskowitz. International Society for Research on Emotion.

https://journals.sagepub.com/doi/full/10.1177/1754073917697824

In this journal article the authors explore the link between psychological well-being and physical health. They specifically look for any significance between variables such as optimism, purpose and life satisfaction with variables such as mortality and chronic disease incidence and progression.

Your well-being: more than just a state of mind. Heidi Goldman. Harvard Health Publishing.

https://www.health.harvard.edu/blog/your-well-being-more-than-just-a-state-of-mind-201303065957

Heidi Goldman blogs about the results of the 2012 Gallup-Healthways Well-Being Index. This index measures the physical and emotional health of U.S. citizens residing in all 50 states using a well-being scale based on six quality of life categories. In addition, Goldman offers suggestions on how to improve your emotional well-being regardless of the state you live in.

What is Epigenetics? Bruce H. Lipton, PhD.

https://www.brucelipton.com/what-epigenetics

An introduction to a budding new science called Epigenetics. Epigenetics is the study of how the environment and external conditions influence cells by turning our genes on and off. Dr. Bruce Lipton is a stem cell biologist who has researched how cells process information.

The Six Dimensions of Wellness. National Wellness Institute.

https://www.nationalwellness.org/page/six_dimensions

The National Wellness Institute suggests six dimensions of wellness including emotional, occupational, physical, social, intellectual and spiritual. Not only does the NWI define wellness but they also suggest the interconnectivity of all six dimensions and advocate a holistic approach to wellness.

What is Wellness and Why Is It Important? Ryan Corte, OD. Intro Wellness.

https://introwellness.com/health/what-is-wellness/

Ryan Corte covers a variety of definitions for wellness in the introduction and suggests, that although there are some commonalities amongst the definitions, the varying reported dimensions of wellness have led to some confusion about a clear collective grasp of the concept. He goes on to list eight dimensions of wellness, emotional, spiritual, physical, social, intellectual, environmental, occupational and financial, offering suggestions on how to improve each of the categories.

The Biology of Belief: Unleashing the Power of Consciousness, Matter and Miracles. Dr. Bruce Lipton. 2015.

Dr. Bruce Lipton is a Cell Biologist who offers readers a glimpse into the study of the brain's biochemical effects on the cellular structures in our bodies. He introduces an emerging field of science called epigenetics and gives examples of how our bodies are affected by our thoughts.

Switch on Your Brain: The Key to Peak Happiness, Thinking and Health. Dr. Caroline Leaf. 2013.

Dr. Caroline Leaf is a Christian Cognitive Neuroscientist who has spent a great many years researching neuroplasticity and the effect our thought life has on our physiology. She offers readers insight into her many years of medical research and remedy for living a healthy more holistic life by learning how to switch on their brain.

Breaking the Habit of Being Yourself: How to Lose Your Mind and Create a New One. Dr. Joe Dispenza. 2012.

Dr. Joe Dispenza combines quantum physics, neuroscience, brain chemistry, biology and genetics research to show the true plasticity of our human potential. He offers suggestions on how to apply this information to our own lives in a way that maximizes well-being.

The Field: The Quest for the Secret Force of the Universe. Lynn McTaggart. 2008.

Lynn McTaggart strives to connect the dots of research conducted across disciplines in an effort to define and explore the zero point field. She also introduces the possibility of a new biological paradigm that suggests the fundamental connection between the human mind and body and the environment.

REFLECTIONS ON ENHANCING OUR WELL-BEING
BY ROBERTA TEPPER

Let's start with a simple premise. We are all different. We all, in one or more ways, are unicorns. Right, right, we all want to think we are the sparkly-est and most unique and most precious; let's leave it at saying that sometimes that is not exactly true. Certainly, there are many commonalities among us as human being, perhaps based on some common experience or characteristic (or set of characteristics). But the one thing we can probably all agree on is that there is no one single, fool-proof way to enhance everyone's well-being.

There's no "happiness pill" we can pop and suddenly be self-actualized and fully realized humans. Creating a plan to enhance our well-being is hard work.

To start, let's acknowledge that wellness and well-being are slightly different, if necessarily interrelated, concepts. While used interchangeably, there are distinctions. Wellness typically refers to physical and mental health. Well-being is a broader concept and is typically a more holistic concept that includes health, but also happiness and prosperity. It may include personal and professional satisfaction, striving for excellence . . . it's feeling good and feeling positive. Well-being includes the presence of positives, not just the absence of negatives (which is typically included in the quantification of physical or mental wellness – for example, the lack of illness) and may enhance physical and mental wellness.

So, for our purposes, for this exercise, let's consider them two sides of a vitally important coin. And given that what may enhance one person's happiness or satisfaction quotient may not work for everyone, let's agree to allow everyone their version of the path to wellbeing.

For lawyers, like many professionals, pursuing wellness and well-being can be challenging. Many of us work too long, too hard and too intensely on a day-to-day basis to consider doing the kinds of things that will increase either health or holistic "happiness." The Big Law mindset of billable hours may eventually go the way of the dodo bird, but it hasn't yet. For solo and small firm lawyers, the need to compete with each other and with the DIY movement may create an environment where taking time for oneself is the last priority. And let's not forget the large group in between – the mid-sized law firm, and those in other practice settings. Each has its own challenges in terms of creating and maintaining balance, in allowing us time for ourselves. Add to that the demands of family, friends, and other day-to-day challenges – commuting and traffic not the least among them for those of us living in urban areas – and it's a whirlwind.

The good news is that you have opted to spend some time thinking about this – whether it's at the 2020 TECHSHOW, or just reading these materials and checking the references when you get home. Remember, getting well – physically, mentally, spiritually or holistically – is not a one-time, quick fix. It is, like life, a journey. And like the saying goes, every journey starts with a single step. Just one – you don't have to do it all or do it all at once. Just pick one thing to start with and then, when that's a part of your routine, maybe add something else.

Here are some suggestions for getting started:

- Create a workable plan. The same plan will not work for everyone.

- Start gradually. Pick one thing, and a reasonable amount of time. Don't imagine that you will go from, for example, sedentary to running a marathon in a month. It didn't take you an hour or a day to get to where you are now, it won't take an hour or a day to get to where you want to be.

- Have a support plan – or a support buddy. It's hard to change your habits, and it's harder when you are going it alone, or without support. Enlist someone you like and trust to help and support you.

- It's not going to be easy. We all have great aspirations – there are thousands of new year's resolutions made and broken every year. It will take time to so fully embrace your new change or resolve, so go easy on yourself.

- Don't beat yourself up. If you miss your 30-minute walk, or 15-minute meditation one day you aren't doomed. You'll resume tomorrow. Maybe it sounds like a bumper sticker, but you can't drive forward looking in the rear-view mirror.

- Don't apologize. If you have decided to take time to spend on your well-being, or wellness, then take it. Don't feel that you have to explain, justify, or apologize for taking that time. Might you have to balance or adjust your schedule? Letting people know what you are doing is not the same as apologizing for doing it.

Resources

- **Well-Being Toolkit**
  https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf

Well-Being Toolkit Nutshell

- https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_Well-Being_Toolkit_Flier_Nutshell.pdf

Mindfulness in Law Society

- https://mindfulnessinlawsociety.com/

Benefits of Meditation

- https://www.healthline.com/nutrition/12-benefits-of-meditation

Meditation Resources

- https://chopra.com/meditation

Importance of Good Nutrition

- https://www.hhs.gov/fitness/eat-healthy/importance-of-good-nutrition/index.html
- https://www.healthline.com/health/food-nutrition
- https://www.niddk.nih.gov/health-information/diet-nutrition/changing-habits-better-health

Yoga

- https://www.nytimes.com/guides/well/beginner-yoga
- https://www.yogajournal.com/
- https://www.webmd.com/balance/guide/the-health-benefits-of-yoga

Time Management

- https://www.lifehack.org/articles/productivity/10-ways-improve-your-time-management-skills.html
- The Checklist Manifesto http://atulgawande.com/book/the-checklist-manifesto/
- Getting Things Done https://gettingthingsdone.com/ https://amzn.to/2RrXULH
- Five Time Management Tips For Lawyers, Law Technology Today https://www.lawtechnologytoday.org/2016/12/five-time-management-tips-for-lawyers/

Well-Being

- Work, Rest Repeat – Giving Yourself a Break https://www.lawpracticetoday.org/article/work-rest-giving-yourself-break/
- Balancing Act – Lawyers, Time, and Life https://www.lawpracticetoday.org/article/balancing-lawyers-time-life/

Tips for Improving Your Health at Work, Even When You Sit All Day

- https://www.themuse.com/advice/19-crazy-easy-ways-you-can-be-healthier-in-the-office
- https://www.webmd.com/women/features/10-tips-to-improve-your-health-at-work#1
- https://www.inc.com/kevin-daum/25-ways-you-can-make-your-life-healthier-in-the-office.html
- https://www.snacknation.com/blog/how-to-stay-healthy-at-work/

SELF CARE INVENTORY

Physical Self-Care

___ Eat Regularly (e.g. breakfast, lunch, dinner)
___ Eat healthily
___ Exercise
___ Get regular medical care for prevention
___ Get medical care when needed
___ Take time off when sick
___ Get massages
___ Dance, swim, walk, run, play sports, sing, or do some other physical activity that is fun
___ Take time to be sexual – with yourself, with a partner
___ Get enough sleep
___ Wear clothes you like
___ Take vacations
___ Take day trips or mini-vacations
___ Make time away from telephones
___ Other:

Psychological Self-Care

___ Make time for self-reflection
___ Have your own personal psychotherapy
___ Write in a journal
___ Read literature that is unrelated to work
___ Do something at which you are not expert or in charge of
___ Decrease stress in your life
___ Notice your inner experience – listen to your thoughts, judgments, beliefs, attitudes and feelings
___ Let others know different aspects of you
___ Engage your intelligence in a new area (e.g. go to an art museum, history exhibit, sports event, auction, theater performance)
___ Practice receiving from others
___ Be curious
___ Say no to extra responsibilities sometimes
___ Other:

Emotional Self-Care

___ Spend time with others whose company you enjoy
___ Stay in contact with important people in your life
___ Give yourself affirmations, praise yourself
___ Love yourself
___ Reread favorite books, re-view favorite movies
___ Identify comforting activities, objects, people, relationships, places, and seek them out
___ Allow yourself to cry
___ Find things that make you laugh
___ Express your outrage in social action, letters, donations, marches, protests
___ Play with children
___ Other:

Mark "X" for what you already do. Mark "O" for what you wish you did more.

Spiritual Self-Care	***Workplace or Professional Self-Care***
___ Make time for reflection ___ Spend time with nature ___ Find a spiritual connection or community ___ Be open to inspiration ___ Cherish your optimism and hope ___ Be aware of non-material aspects of life ___ Try at times not to be in charge or the expert ___ Be open to not knowing ___ Identify what you is meaningful to you and notice its place in your life ___ Meditate ___ Pray ___ Sing ___ Spend time with children ___ Have experiences of awe ___ Contribute to causes in which you believe ___ Read inspirational literature (e.g. talks, music) ___ Other:	___ Take a break during the work day (e.g. lunch) ___ Take time to chat with co-workers ___ Make quiet time to complete tasks ___ Identify projects or tasks that are exciting and rewarding ___ Set limits with clients and colleagues ___ Balance your caseload so no one day or part of a day is "too much." ___ Arrange your work space so it is comfortable and comforting ___ Get regular supervision or consultation ___ Negotiate for your needs (benefits, pay raise) ___ Have a peer support group ___ Develop a non-trauma area of professional interest ___ Other: **Balance:** ___ Strive for balance with your work life and work day ___ Strive for balance among work, family, relationships, play and rest

Developing a Compassion Fatigue Protection Plan

What components will go into my plan?

What are my warning signs and symptoms?

Who will I check in with to hold me accountable or to cue me?

What things do I have control over in my life?

How will I relieve stress in a way that works for me?
(Intervention)

What stress prevention/reduction strategies will I use?
(Prevention)

Adapted from Francoise Mathieu: Compassion Fatigue Train the Trainer Workbook (2008)

Commitment to Changes I could make in the next…

Week:

Month:

Year:

TECHSHOW2020

EASY CLIENT INTAKE: BUILD IT WITH GOOGLE FORMS AND ZAPIER

WRITTEN BY:

Chris Fortier and Matt Yospin

PRESENTERS:

Chris Fortier: @crflego

Matt Yospin: @matthewyospin

February 29, 2020

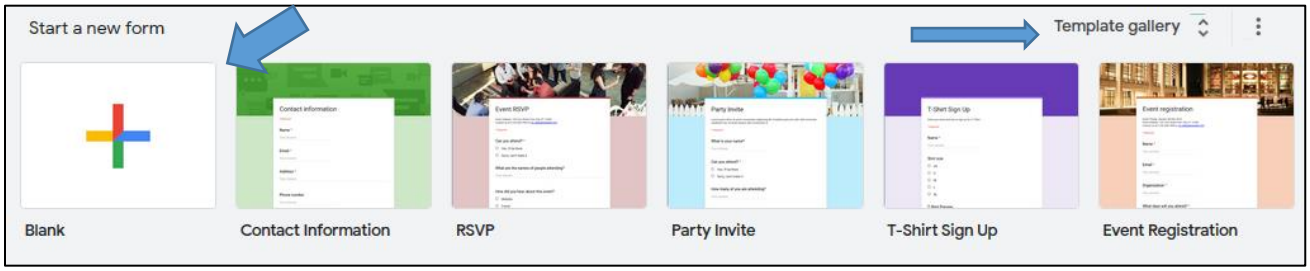
BEFORE WE BEGIN

Get free accounts with G Suite and Zapier. While there are many options that cost money and provide more robust services, we start with these free and freemium services to get you oriented on creating these tools for your practice.

> **Google (G-Suite)**: drive.google.com (Free account gives you access to all major services plus addons with 15 GB of services. These 15 GB are shared across all Google services).
>
> **Zapier**: zapier.com (Free account gives you ability to gain five zaps)

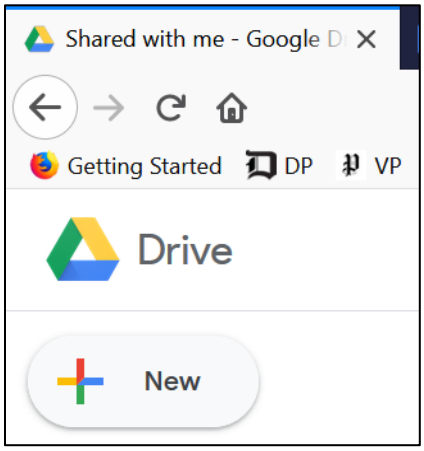
CREATE A BLANK GOOGLE FORM

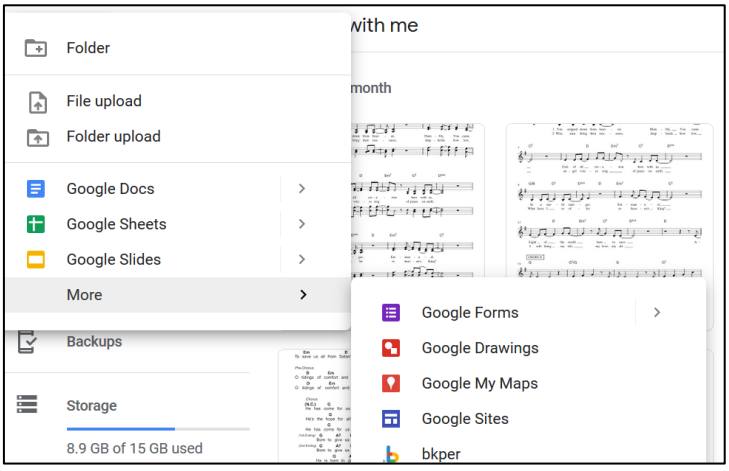
Now that you have a Google account, it's time to create your first Form. Head over to the Google Forms homepage and choose "Start a new form" with the plus sign (+), the first icon on the page. You open a new form instantaneously. You can also choose different templates beside the plus sign. "Template Gallery" expands your options on the screen.



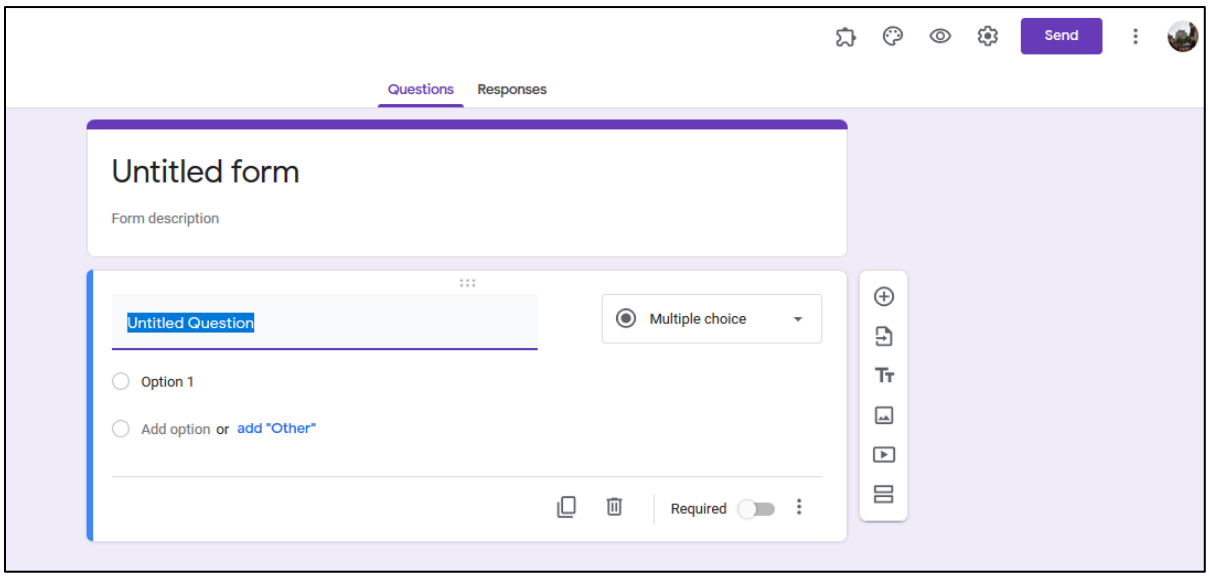
Access Tip: Type forms.new into the address bar from any browser and press Enter.

Access Tip: Or, you can do the menu, select: +New → More → Google Forms

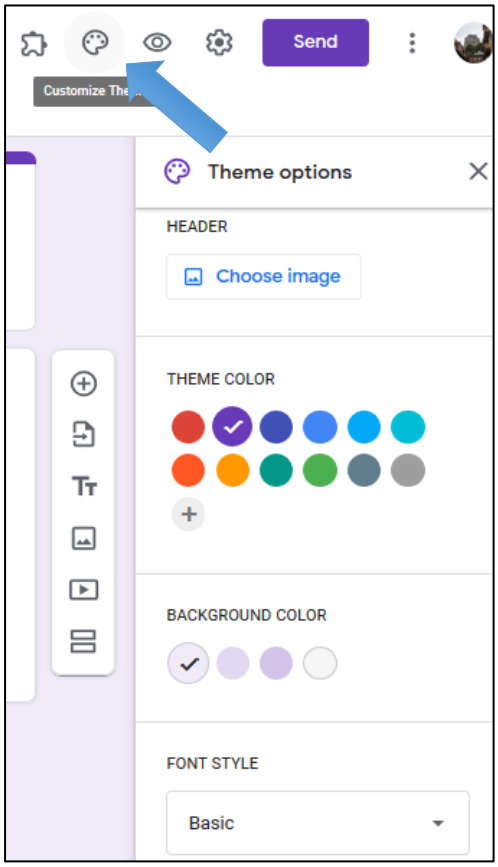




A Blank Form



Customize Your Form



Once you open the form, you get a blank slate. You get to choose a header image, backgrounds, color, fonts, etc.

Using the painter's board icon , you can access all these options. After you customize your form, close the theme options to return to your survey.

Your other options to customize the form:

Settings: Limit the number of responses from a user, set the webpage response to a form submission, and allow the user to edit responses

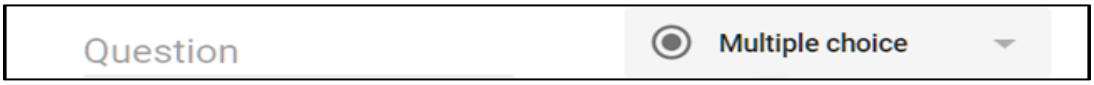
Preview: Want to know what your form looks like? Click here to see it live.

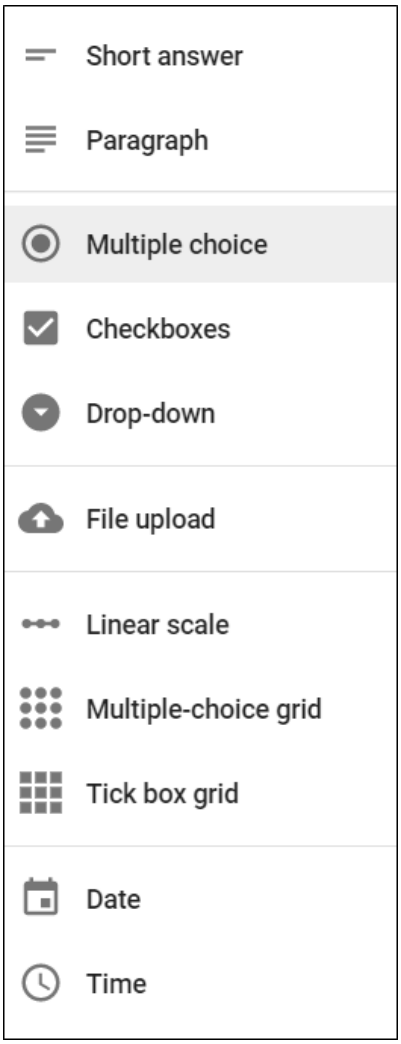
Add-Ons: G Suite comes with many additional features that have been developed by outside providers. Access add-ons here to manage them.

Send Send: Share your form with whom you choose.

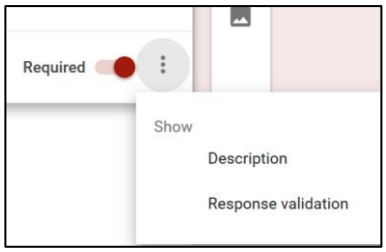
QUESTION TYPES

Set how a question gets answered. Create multiple choice, essay, or short answer questions. You can even create grids and have calendar style answer options. Access by clicking the menu next to "Question."





- **Short Answer:** Responses only require a few words. You can set rules people have to follow in their answer with data input validation. Great for email addresses or URLs.
- **Paragraph:** Longer answers of one or more paragraphs. Can use data input validation.
- **Multiple Choice (radio buttons):** Choose between a set of options (one per question). You can include "Other" and an option to input a short answer.
- **Checkboxes:** Responders choose one or more of a set of options, including the "Other" option for a short answer.
- **Drop-down:** People choose their answer from a set of options in a drop-down menu (one per question).
- **File Upload:** User uploads a file in response to a question, destination survey owner's Google Drive space. Specify the size/type of files to upload.
- **Linear Scale:** Rate your question on a scale of 1 to 10.
- **Multiple Choice Grid:** This creates a grid from which people can select one answer per row. Optionally, you can limit answers to one choice per column and shuffle the row order.
- **Tick box Grid:** Creates a grid from which people can select one or more answer per row. Limit answers to one choice per column or shuffle the row order.
- **Date:** Responder must choose the date as an answer to the question. The default is day, month, and year.
- **Time:** Choose the time of day or a duration.



- **Description**: Add more detail as to what exactly you are asking. Include examples or what you want from an answer.
- **Response Validation**: Set rules with how to respond to the question. When someone violates the rules, they see an error message. You can also set that message.
- **Required**: Make the question mandatory (or not).

MORE QUESTIONS AND SECTIONS

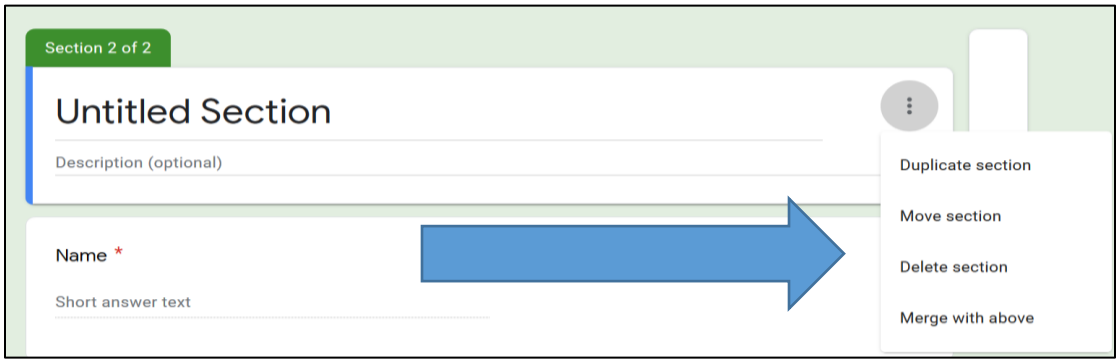
How to Add More Questions

If you're creating a survey or quiz, you're likely going to include more than one question on it. You can easily add a wide variety of questions to your form. You can include passages, photos, video, and links in your form. Separate questions into sections, so everything doesn't appear on a single page.

- (Plus Sign) - Add a question
- (Arrow within Document) - Import questions from another form on your Drive (or shared with you)
- (Double TT) - Add title or description to another part of your form. You have this at the top of the form.
- (Mountains within Square) - Add an image to the question. Create a diagram to visually explain your concept or add a photo.
- (Arrow within TV) - Add a YouTube Video. Use with tutorials or provide in person commentary on the question you ask.
- (Two Rectangles) - Add a new section. This creates a separation between questions that allows you to group questions based on their applicability to the client. Optionally, you can give the section a name and description to distinguish it from other sections later on.

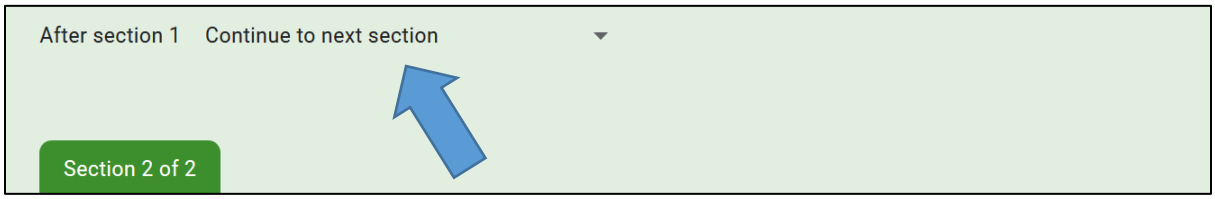
Sections

Do you have questions that some of your users may need to answer but not all? Consider using sections. This powerful tool allows you to customize the user experience based on their situation or need. As stated above, if you want to make a new section, click on the two rectangles icon ( ) on the right side of the screen.

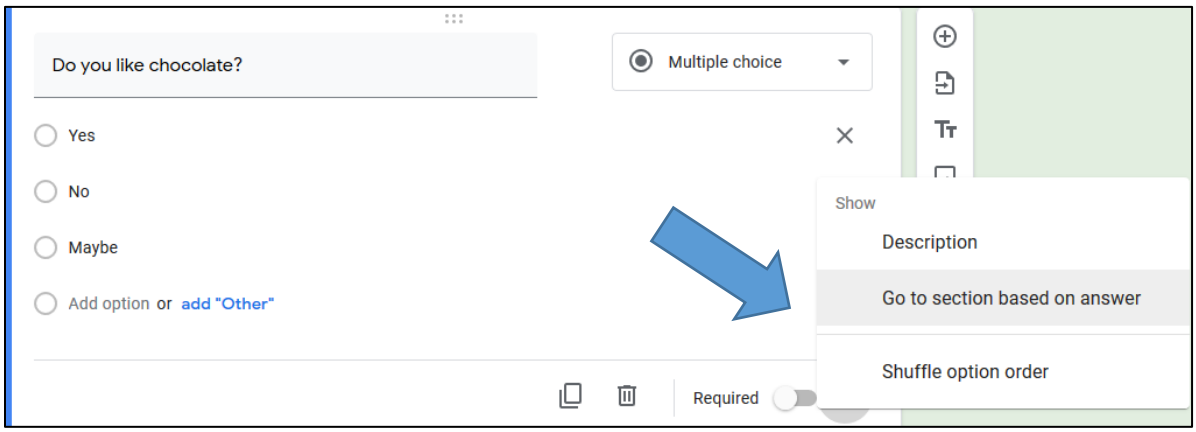


Easily add and move questions to a different section. Hold your mouse, stylus, or finger on the question and drag to the new section. You can duplicate questions and move them to a new section, or you can duplicate entire sections and make edits from there (a great timesaver, especially if you have lots of similar questions or potential answers). At the end of the section, click the drop-down menu to choose where the form should direct people next.

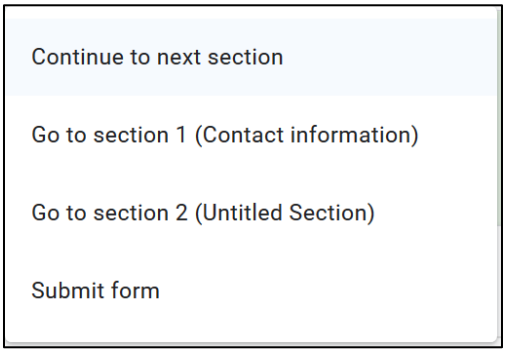
You can direct users to different sections by choosing where to go at the end of each section.



You can also direct users to new sections by answers to questions you have on the form. Go to the lower right corner of your question box, and choose "Go to section based on answer." You then can choose where someone goes based on a response.

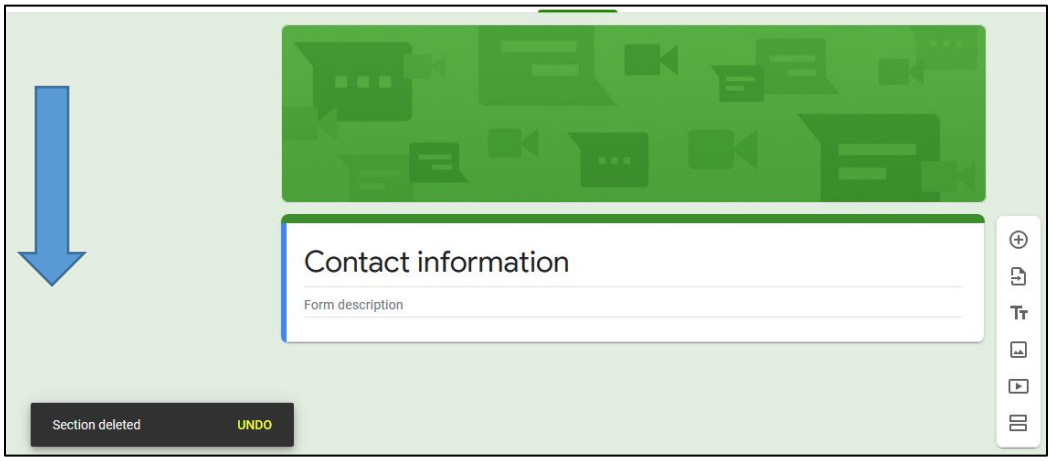


Your menu would look like this:

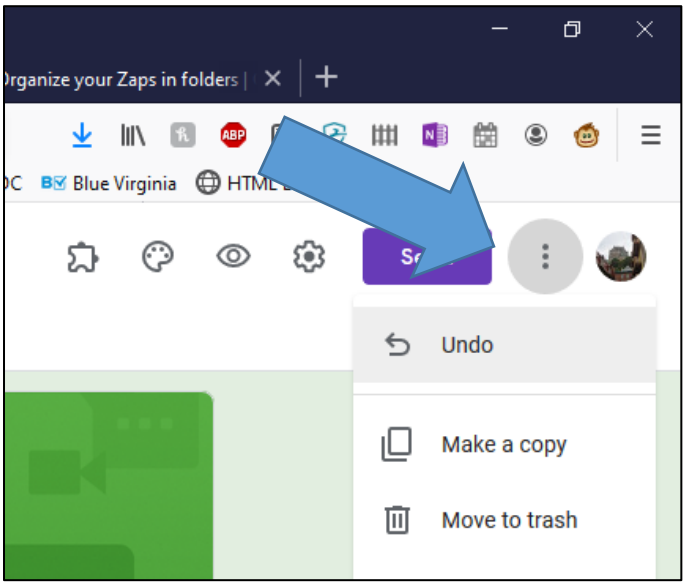


UH OH…I MADE A MISTAKE

Did you make a mistake? Look in the lower left corner for this symbol to undo:



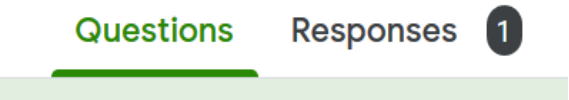
If you are slow to react and the icon disappears, you can always access the Undo command on the Upper Right "…" command:



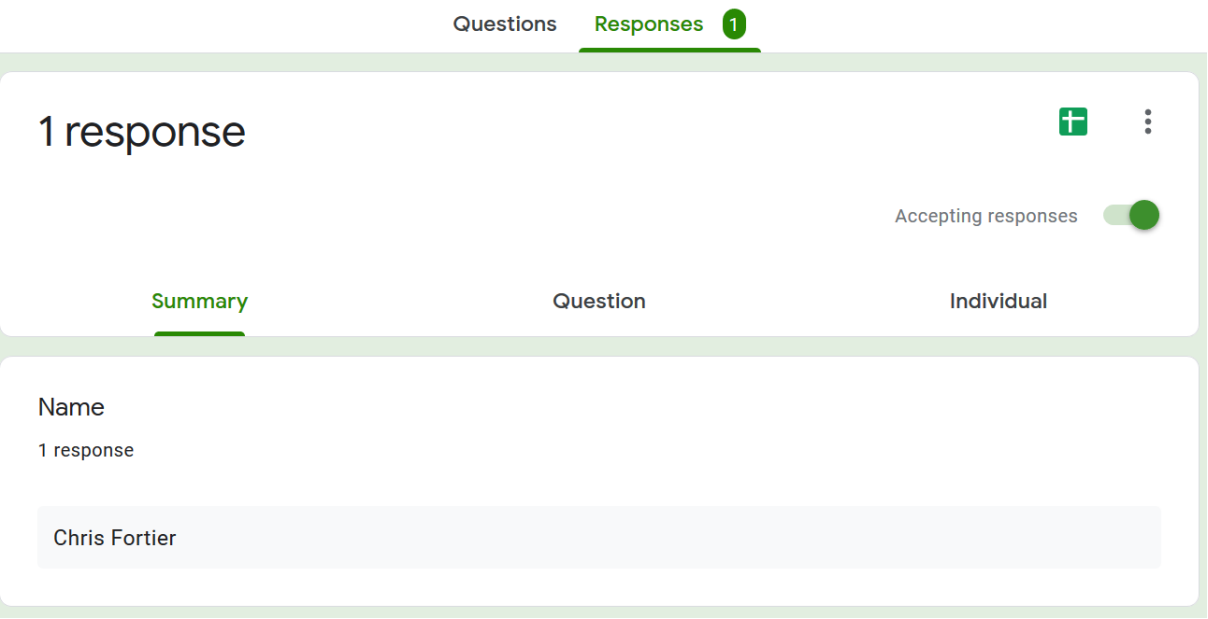
CAPTURE THE DATA

You have options to capture your data within Google Forms/Drive. You can see responses in a raw form or in a spreadsheet form. Use the spreadsheet for shorter bits of data and the raw form data for longer essay responses.

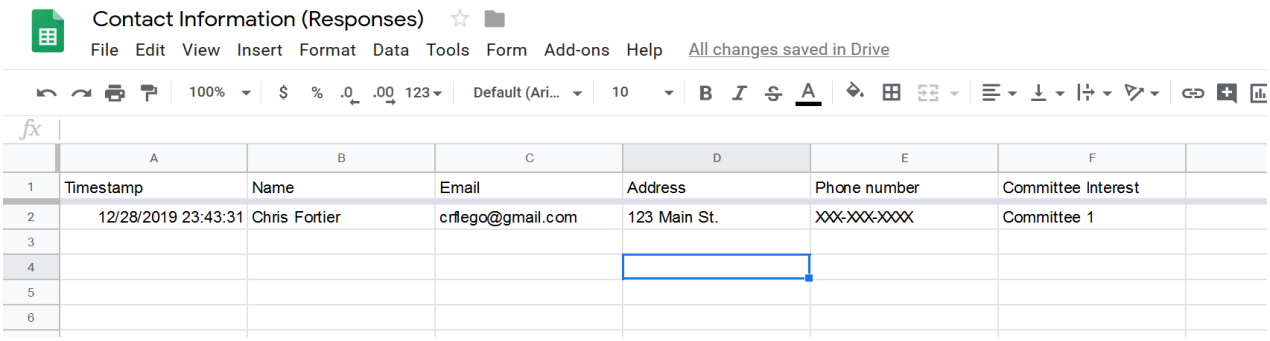
To find your options, click on responses, found here:



In the responses tab, you see the raw responses. You can see responses to all questions (Summary), responses by question (Question), and all individual responses (Individual).



You can also create a spreadsheet to house responses. This spreadsheet can be the basis of mail merges and document automation. It also allows you to search your responses for a particular answer. Choose this icon ( ) to get started.

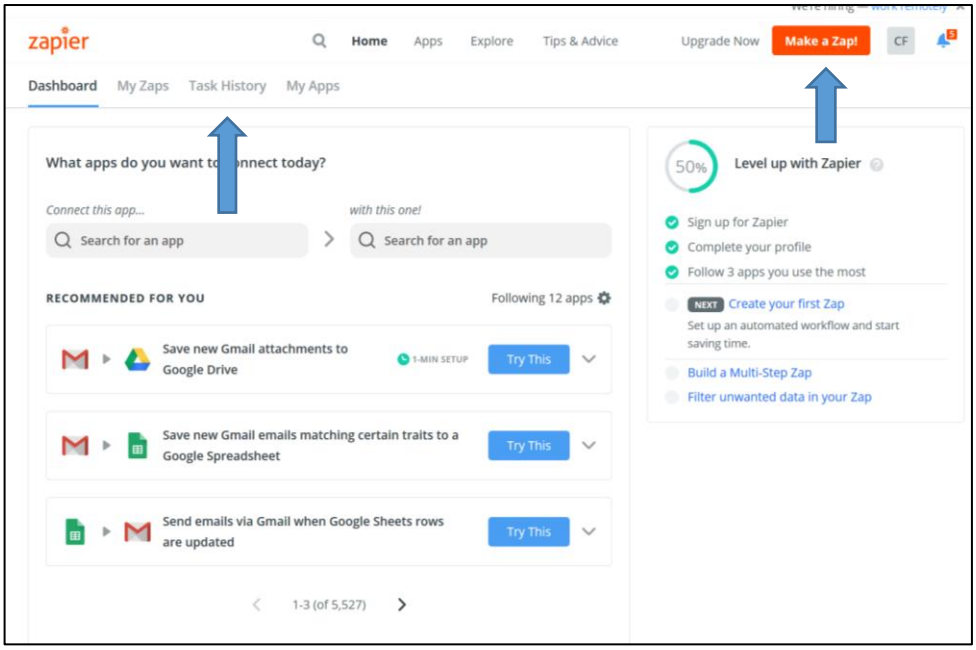


CREATE A ZAP WITH ZAPIER

Orient Yourself

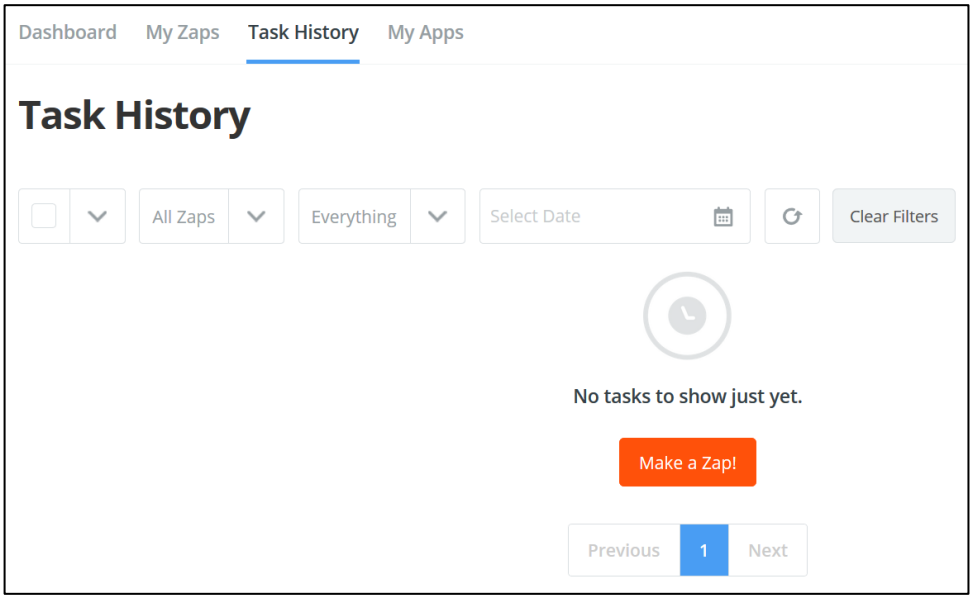
One you set up and log in for the first time, you will see a screen with recommendations to create a zap. Zapier integrates with many programs so your chances of creating a zap out of an idea are great. To get started, choose Make a Zap or go to "Task History" and choose Make a Zap.

Once you log in, you have your dashboard instantly accessible. You are also able to access your zaps and a list of the apps you have connected to your Zapier account.



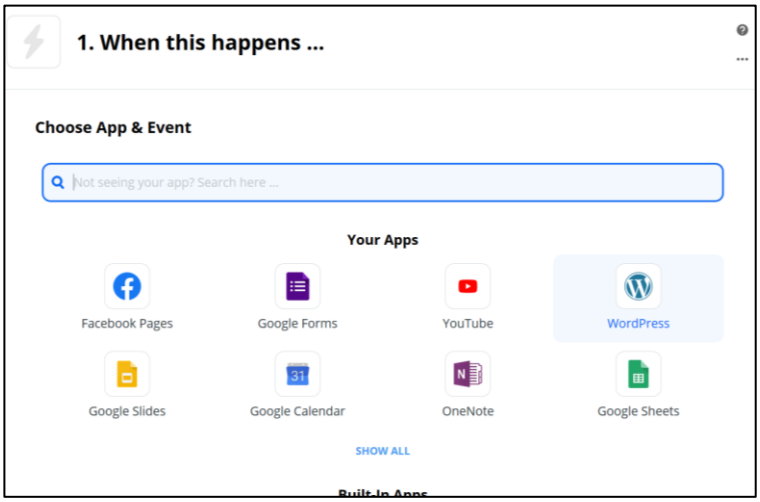
Are you stuck? Access Tips and Advice to get assistance.

Your task history details everything you have done. At the beginning, this will be blank. You are able to custom search your history by date or type of zap.



"Make a Zap!" gets you started with Zapier.

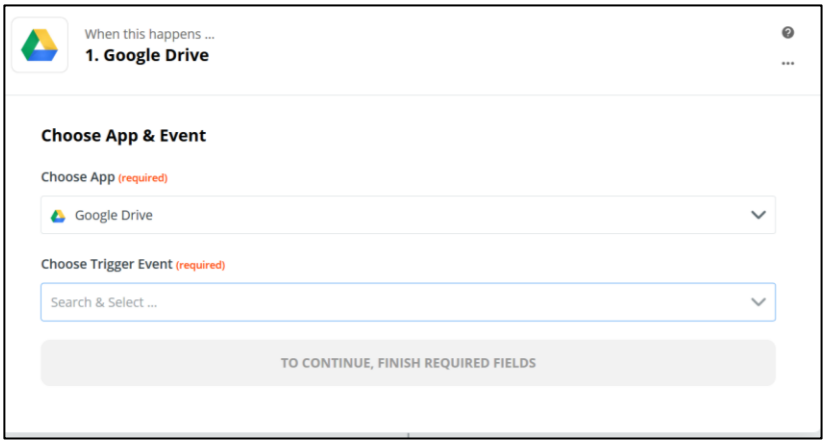
Create your triggering event.

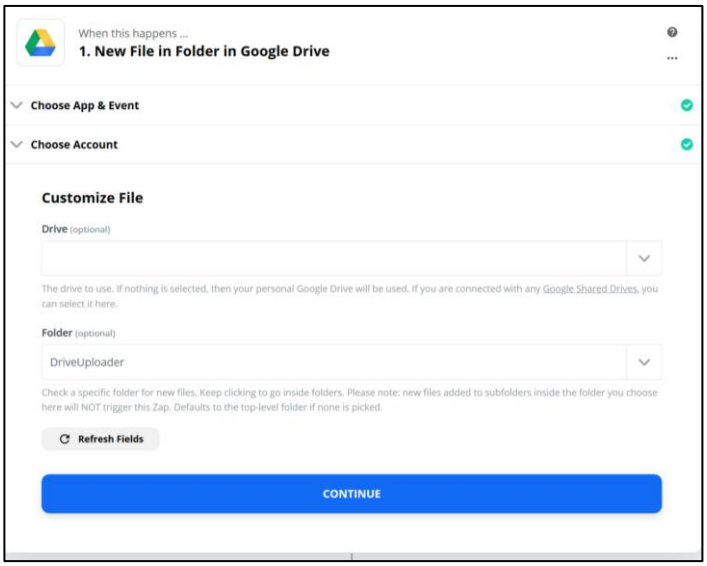


Zapier is built to understand each application. You have many options of applications to use. Paid plans have even more options. Use the search bar to locate your app. Choose the app that you want to trigger the sequence.

Don't see your app in the icons? The search bar is available for your use. Zapier auto-fills with its available options.

Tell Zapier what needs to happen in the triggering application. You follow a series of dropdown menus to tell Zapier what needs to happen. In this example, we are telling Zapier to look for a new file to be uploaded to the Google Drive folder "DriveUploader." Give Zapier permission to access your account automatically by signing in.





In this example with Google Drive, you can use "when a file is uploaded" as your trigger. You can specify a folder for Zapier to watch (which is recommended, especially if you are doing multiple tasks for different organizations or have personal files you use).

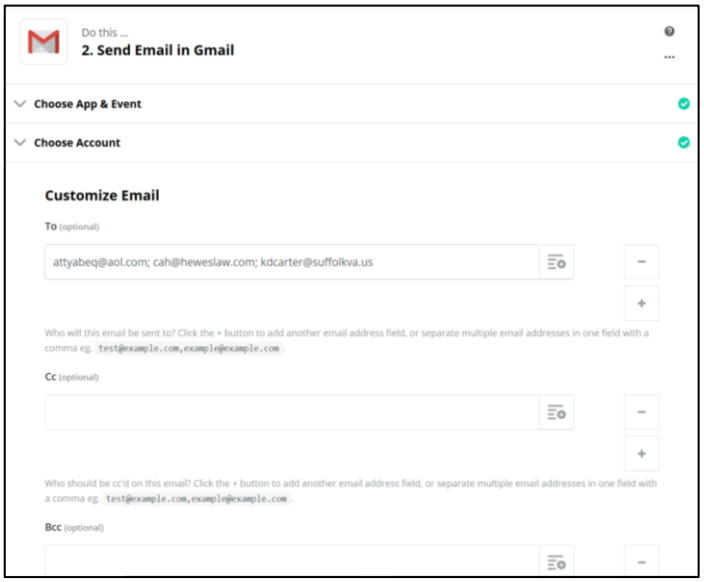
Press "Continue" to finish your description of the triggering event.

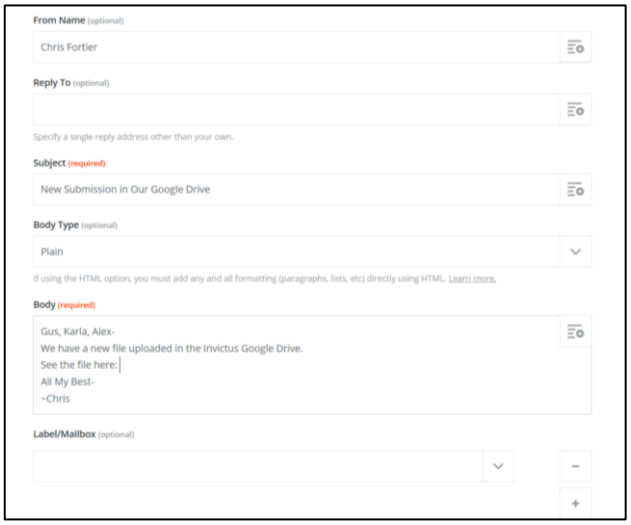
Choose Your Effect Event

Now, you can set the effect event. Just like with the triggering event, choose the software you want to activate and sign into your account to give Zapier permission to access your account. In this example, I will want to send an email to certain individuals notifying them that there is a new file in Google Drive.

You are able to customize the email you send (if that is what you want to choose). You can customize everything you want to happen out of your effecting software. You can have files moved between applications, and more. Paid plans allow for more than one effect action.

All the fields are set up similar to how your email program works. Add recipients, cc, bcc, and email text. You can even send attachments. When you wrap up, click "Continue."





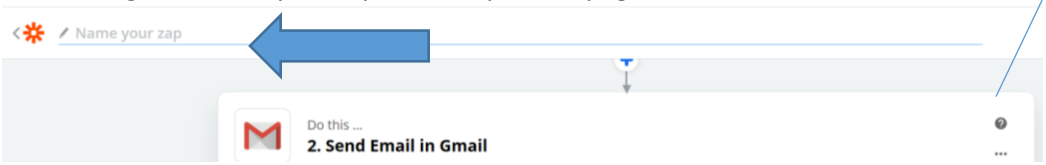
Setting up zaps is intuitive as Zapier aims to give you as much of your app's native functionality as possible.

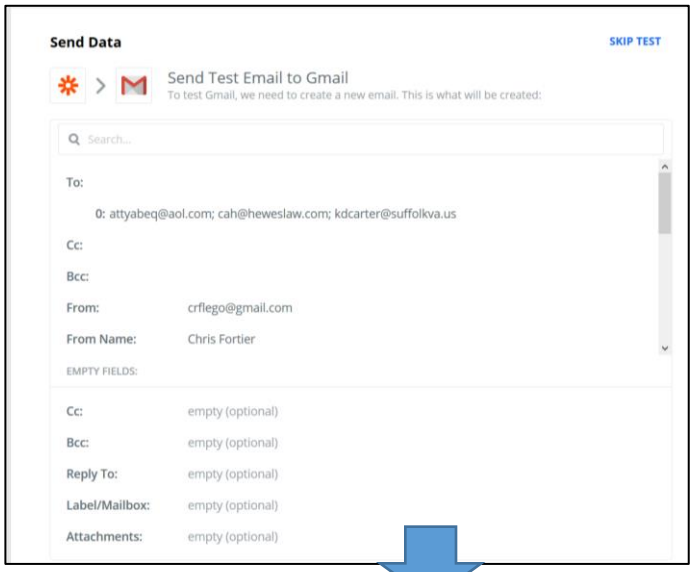
Test/Validate Your Zap

Test your Zap before publishing. Zapier will detect any errors (such as some command is missing) and let you know before you start testing. If you have an error, your side bar will turn light red.

Before you test, you can review the zap to ensure that it is doing what you want it to do. The review panel looks exactly like the panel when you were setting up your zaps.

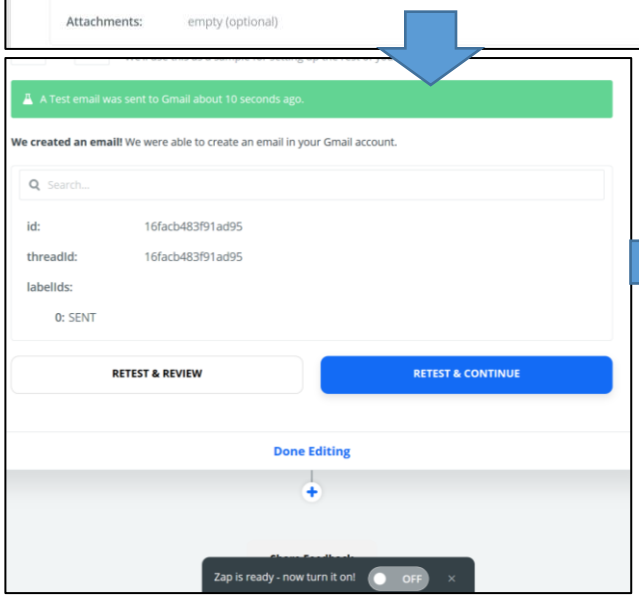
Do not forget to name your zap at the top of the page.

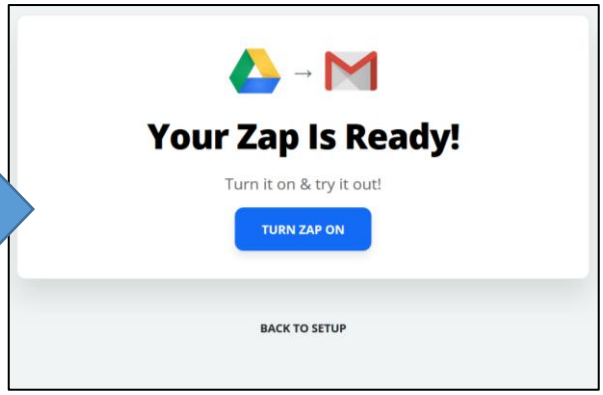




All proposed commands plus additional commands that you did not choose will show in a summary format. If you want to skip test, you can do that (but not recommended, especially if you are beginner. Make changes and continue to retest. You can view the results of your zap in your app.

When you are ready, you will receive a notification that your Zap is ready. Give Zapier permission to turn the Zap "on." Once the zap is on, you have completed your first zap. Congratulations!





Workshop: Social Media Audit

WRITTEN BY:

Kelly Street & Temi O. Siyanbade

PRESENTERS:
Kelly Street: @kellyannstreet
Temi O. Siyanbade: @toslegal

January 6, 2020

INTRODUCTION

When it comes to connecting with potential clients and increasing your reach as a firm, social media can truly set you apart. Unlike more traditional methods of marketing, social media has the ability to create communities, ignite meaningful conversations, and establish you as an authority on the topics that matter most to you and your audience. Unfortunately, many attorneys struggle with harnessing the opportunities made available to us today, and worst of all, people who could benefit from knowing who you are and the services you provide never find answers to their questions.

By reviewing and revamping your social media presence, you have the chance to help real people solve significant problems. You have the chance to serve the clients you prefer. You have the chance to make a difference.

As you set forth on this journey, it is essential to keep in mind that social media is about connection. It will not be enough to simply set up an account and leave it dormant. You will have to truly think about who you are as a person—not just an attorney—and discover where you fit in this social media world. You'll also need to rethink engagement. What are real people, not just lawyers, dealing with? How do your potential clients understand their current legal problems? How do they discuss possible solutions? Where can you help them bridge gaps in their understanding? These are some of the questions you want to ask yourself so that you are intentional and strategic with your social media platforms.

SOCIAL MEDIA CHANNELS

How do you decide where your business needs to be?

Bigger brands with large customer bases tend to have presences across multiple platforms but what should a small law firm or solo legal practitioner do with social media?

For the sake of narrowing down where you should spend your time, below is a quick overview of each of the major social platforms. Rather than try to dominate them all, you should consider which platforms make the most sense based on your industry and audience.

Twitter

Simple and straightforward, Twitter is a solid starting point for most lawyers. There are great accounts to follow that will get you into circles of legal cool kids and keep you in touch during and between legal conferences.

Twitter requires minimal setup and it provides a place to go back-and-forth with followers directly. If you're trying to master the social media marketing basics of hashtags, tagging and social media etiquette, spend some time here.

- Tweets could include:
    - Blog posts circulation
    - Engagement posts

    - Calls to action
    - Images or short videos
- Retweet influencers
- Follow new people everyday
- Monitor keywords and mentions
- Respond to tweets

A few Twitter accounts to follow:

- @JoshuaLenon
- @PalaceLawOffice
- @associatesmind
- @mitchjackson

Facebook

Facebook is somewhat of a mixed bag for business, but especially for law firms. The platform's recent algorithm change has made it difficult for some businesses to grow their Pages and stay in touch with followers consistently. Organic Facebook posts are dwindling and you may realize that you need to boost posts to get them seen.

In addition to boosting posts, Facebook's ad platform is the place for social media ads if your audience would be receptive to law firms ads on social media or you are trying to update your marketing from billboards.

Capitalizing on reviews can also help boost your Facebook business page, so make sure to offer this as an option when asking for client reviews. Since so many people have Facebook accounts, this could be an easier way for clients to leave a review.

- Figure out how many times you want to post a day
- Use paid ads to promote content, increase awareness and offer discounts
- Respond to fans
- Tag relevant pages if you're discussing them.

Finally, if you find that you have a really unique niche community that you serve, you could form a facebook group to help that specific community solve their problems. For the attorneys, who have the bandwidth to manage such groups, the returns have been profound. The most successful facebook groups for lawyers, do not limit conversations to purely legal or technical knowledge. They often engage with the various pain points of the community, and facilitate rather than dominate conversations. Groups like Ticora Davis's Revolutionary Creative, are thriving and help prequalify potential leads. Sonia Lakhany manages a facebook group dedicated to trademark lawyers. This group coupled with her experience have allowed Lakhany to stand out as a thought leader in this specific practice area.

If managing a group like this is overwhelming, simply join one and contribute. These groups and other facebook groups are often filled with people asking for recommendations. Become the person that everyone in your group names when looking for an attorney.

Instagram

Instagram is a network centered around visual content. If you enjoy photos, short videos, and engaging with people primarily in their 30's and 40's, this is a platform that you may want to explore. Instagram encourages brands to get creative and be honest, because followers are looking for curated content that tells a story.

Instagram can be a great tool to express your law firm's personality, create a network of potential clients or referral sources, and build expertise or trust within that group. Try it out, and if you feel uncomfortable sharing your personal life with potential clients, don't feel obligated.

This blog post dives into some Instagram profiles of lawyers who are using the platform well: https://www.attorneysync.com/blog/the-top-lawyers-of-instagram/

A few Instagram accounts to follow:

- @pilehvarlaw
- @iamcaez
- @josephwilsonesq
- @quirklaw
- @rachelbrenke

LinkedIn

LinkedIn is a network laser-focused on business trends and networking, which makes it the best platform to grow your network and hopefully, your practice. Too many lawyers use LinkedIn passively and scroll through posts, when they should be engaging with the posts, writing their own posts, and trying to connect with people.

Build your network on LinkedIn by adding new connections from conferences, join groups that relate to your practice area or your business goals, and publish content that could be interesting for your professional network.

One thing not to do? Don't spam people's messages.

Pinterest

This visual pinning platform may have dropped in general popularity but it can still be a place to share creative content like checklists and images. Not unlike Instagram, Pinterest thrives on imagery and inspirational content where products serve as the centerpiece but unlike Instagram, Pinterest is more of a visual search engine. Pinterest is one of the more trusted social media platforms and users are typically looking for ways to enhance their life, from parenting to business ideas.

In order to maximize this platform, make sure to optimize your images and add calls to action in the image description. Pinterest can be especially great for law firms who are trying to attract creatives or parents, which means that this platform can work for Business or IP and Personal Injury law firms.

- Add keywords in your pins
- Add boards clients would be interested in
- Follow new boards each week
- Make sure pins and linked back to your website

YouTube

Some might consider YouTube to be more of a search engine than a traditional social network but the platform's active and engaged community means that you can earn a following like any other platform. Considering that video represents the highest-engaging type of content across nearly every social networking site, YouTube is a great place to put videos that you're already producing.

If you are new to videos but would like to get started, the most important thing to do is start. Video can help you reach more people and mimics in-person communication, so you can record FAQ videos that will help you answer potential client questions and create a connection.

- Create a video that showcases your expertise
- Ask questions from fans and create videos to address them
- Add fun in your videos
- Use a videographer for events

Google My Business

This may be less of a social media platform and more of a local business tool, but it is such an important piece of your law firms online profile, we must include it in the overall plan. GMB is brought to you by Google and your law firm's profile could already exist without your knowledge, someone else or Google itself could have populated your profile. First things first here, search for your law firm and follow the steps to claim your business profile or search how to create one. After you've claimed your profile, make sure to fill out your business hours and information, add business categories, and photos or videos.

GMB is the best place to get reviews for your law firm, so make sure to promote Google reviews above all other platforms.

TikTok

TikTok is a social media platform where users combine video, music, and voice on a variety of trending topics.

This new platform is one place that is yet mostly unexplored in the legal industry but there are a few lawyers who are starting to use TikTok to engage with younger potential clients and be early adopters to this new social channel.

———

If your head is still spinning with choices and you're not sure where to start, ask yourself: where are your competitors putting time and effort on social media? What about your potential clients? Look at demographics or just ask them which social media platforms they prefer.

SOCIAL MEDIA BEST PRACTICES

Own your law firm's social media handles.

Even if you aren't going to use them, make sure that you are in control of your brand online. You want to own your brand name or as close to it as possible, because when people are searching for your business online, this can help create a robust presence and add social proof for your law firm.

Don't be afraid to try (and maybe even fail).

Start small and create a profile, then track your profile visits to see if you should use this platform versus another. You may not get very much interaction or engagement at first, but over time you will get better at it and could create a dedicated following, even if that following is only 15 people.

Tailor your content to the correct audience.

Make sure that your posts, shares, videos, or content are matched to the platform and the audience you are trying to engage with. If you are posting regularly on LinkedIn you will want to focus on business or network-building.

These are just a few examples and not the only options for posting, the idea is to understand how people are using each channel before you post and repost the same blog or article across the web. Image sizes are different across platforms and videos on YouTube should be widescreen but on TikTok they should be vertical.

Use social media to listen and understand your clients.

If you are getting engagement on your posts, read or listen to what they are saying. Are people asking questions? Create new videos or posts that focus on their questions. Are people leaving comments or reviews? Respond constructively to negative engagements and acknowledge the positive comments.

In addition to engagement, consider the age group and demographic of your clients to know which social media channels they may use. This should help inform the platform that your law firm focuses on.

Leverage the tools that your preferred platforms have to offer.

With Facebook and Instagram, make sure to add in occasional boosted posts or ads. LinkedIn is becoming known as a great place to use video but articles are great longer-form way to repurpose a blog post, by editing the content to a few main points and sharing with your network.

Authenticity matters more than everything else.

No matter which platform you choose to spend the most time on, make sure to tell your brand story and share. The old adage of give more than you take applies heavily to social media. The more influencers gain popularity, the more cynical audiences have become and people can see through your attempts to gain their business if you aren't sharing or providing value.

Set Goals, Create a Plan

If you don't have a plan all you need to do is get started. However, if you already have a social media presence and are looking to gain followers or add to your professional network, here are a few goals to keep in mind:

- If you want to increase brand awareness ► Track audience reach for each post and consider boosting posts to get in front of new people.
- To establish thought leadership and grow your professional network ► Track new followers or connections with your page.
- For staying top-of-mind with existing clients ► Track the percentage of returning visitors to your website or social media profile.
- If you are looking to foster new client relationships ► Work on increasing the number of online conversations and contact submission forms.

Finally, be consistent. As you develop your plan, determine what your pattern for participation or creation will be. Develop a schedule and stick to it. You may choose to post a video on YouTube once a month. On the other hand you may find that sharing an article on LinkedIn every other week produces better results for your firm. Choose the frequency that works best for you and stick to it.

ETHICAL CONSIDERATIONS

When it comes to social media, some lawyers forget that they still need to follow rules of professional conduct. Before you post, tweet, or follow someone, make sure to consider ABA Rules of Professional Conduct.

Consider these twelve rules for ethically dealing with social media by Daniel Siegel:

"

1. Attorneys may not contact a represented person through social networking websites.

2. Attorneys may not contact a party or a witness by pretext. This prohibition applies to other parties and witnesses who are either identified as a witness for another party or are witnesses the lawyer is prohibited from contacting under the applicable Rules of Professional Conduct.

3. Attorneys may contact unrepresented persons through social networking websites, but may not use a pretextual basis for viewing otherwise private information on those websites.

4. Attorneys may advise clients to change the privacy settings on their social media page. In fact, lawyers *should* discuss the various privacy levels of social networking websites with clients, as well as the implications of failing to change these settings.

5. Attorneys may instruct clients to make information on social media websites "private," but may not instruct or permit them to delete/destroy relevant photos, links, texts, or other content, so that it no longer exists. This rule is no different from the obligation not to destroy physical evidence, i.e., evidence is evidence, regardless of how it was created.

6. Attorneys must obtain a copy of a photograph, link, or other content posted by clients on their social media pages to comply with requests for production or other discovery requests.

7. Attorneys must make reasonable efforts to obtain photographs, links, or other content about which they are aware if they know or reasonably believe it has not been produced by their clients.

8. Attorneys should advise clients about the content of their social networking websites, including their obligation to preserve information, and the limitations on removing information.

9. Attorneys may use information on social networking websites in a dispute or lawsuit. The admissibility of the information is governed by the same standards applied to all other evidence.

10. Attorneys may not reveal confidential client information in response to negative online reviews without a client's informed consent. Thus, responses should be proportional and restrained.

11. Attorneys may review a juror's Internet presence.

12. Attorneys may connect with judges on social networking websites provided the purpose is not to influence judges in carrying out their official duties. "

Beyond these twelve points, here are a few practical, real world considerations. First and foremost, get client permission before posting any pictures or names. Second, even if you have the client's permission, consider if that post is in their best interest.

Are you sharing with the world that your client was released from a drug charge? This may not paint that client in the best light for future employers, so you shouldn't post their image or name and the charges, even if the outcome was favorable.

When it comes to social media, the golden rule is that the rules of professional conduct still apply. Be mindful of these but don't let them keep you from sharing or posting and increasing your online network.

TOOLS FOR SOCIAL MEDIA

There are new tools and technology available to help you manage, grow, and automate your social media, but how do you pick the right ones for your law firm?

First, you need to know how much time, money, and effort you'd like to and should put into your professional social media. If you don't enjoy social media, you may want to put effort into an automation tool that can help you post regularly. If you do enjoy social media, you may want tools that can help you manage and grow your following.

Second, you must have and follow a budget for these tools. It can be very easy to add several $19 per month tools and then find yourself spending $100 each month on technology you aren't actually using or don't need.

Third, you need to know how to use and maximize the tools. Without understanding and learning the tools, you won't be able to get everything out of them and will probably end up frustrated with your selections.

The takeaway here is not to get tech happy. Carefully consider what makes the most sense for your budget, your time, and your potential clients.

Automation & Social Media Planning Tools

- **Meet Edgar** ; Allows you to schedule, share and then recycle your higher-performing content.
- **Sendible** ; A robust option that integrates with more social media platforms, email, and SMS messages.
- **Hootsuite** ; Has a user-friendly dashboard and interface that makes this a great option for new and experienced social media.
- **Buffer** ; An equal competitor for Hootsuite, great scheduling interface.
- **Later** ; Best for Instagram and also allows video scheduling.
- **Sprout** ; More expensive but has more options for larger firms.
- **Mention** ; Monitors the web for mentions of your brand and name, then allows you to aggregate, post and schedule social media.

Social Media Ads

- **AdEspresso** ; A user-friendly tool for those trying to simplify and get more out of Facebook, Instagram, and Google advertising without having to learn all three systems.
- **Hootsuite Ads** ; Recently added an ads manager component, a nice benefit to have this tool with your social media planning.
- **Sprout Social Ads** ; Recently added an ads manager component, a nice benefit to have this tool with your social media planning.
- **Facebook Ads Manager** ; Sometimes it's best to stick with the original. You can manage your Facebook and Instagram ads from here.
- **MailChimp** ; Create Facebook and Instagram ads with landing pages that will help you collect data and potential client information.

Image Tools

- **Biteable** ; Create easy videos from scratch, 5-8 seconds at a time. Great for simple social media ad videos.
- **Canva**; The easy, free place to make graphics and images. They have both a desktop and an app, for easy computer to phone transition.
- **Ripple** ; An app video creator.
- **Over**; An ideal image and gif creator tool for Instagram, especially stories.
- **Clipomatic** ; This is a great, user-friendly that helps create story captions as you speak.

Review Tools

- **GatherUp** ; Consolidates online reviews for easier website publishing.
- **Podium** ; review consolidation and web chat tools.

SOCIAL MEDIA PROFILE REVIEW CHECKLIST

Social Media in General

- Do you know who you are trying to reach?
    - Lawyers (for connection and referrals)
    - Potential clients

    - Friends/Family
    - General Awareness
- Do you know where your audience finds their information?
- Where do your referrals come from? _____
- What is your goal for social media? _____
- Which social media do you prefer? _____
- Who will manage your social accounts? _____

LinkedIn

- Do you have a LinkedIn account?
- Your profile picture:
    - Is it recent?
    - Is it professional?
    - Do you want it to be professional?
    - Is it mostly your face or your logo?
- Do you have a personal LinkedIn URL?
- Does your headline include your official title?
- Have you filled out your profile entirely, including summary, job history, volunteer work, and links to publications?
    - Fill in your Education
    - Do you speak another language?
    - Do you volunteer or advocate?
    - Have you received any honors or awards?
    - Are there courses, test scores, or a GPA you would like to highlight?
    - Do you own any patents?

- Have you added your skills?
- Have you added organizations you belong to? (Add the NCBA under Organizations)
- LinkedIn Privacy Settings
    - Can people see you are looking at them?
    - What can people who aren't connections see about you?

Facebook

- Do you have a personal Facebook account?
- Do you have a Facebook business page?
- What category did you select for your page?
- How often do you post on the page?
- Are your map/hours accurate?
- Do you have an automated response to messages?
- Who at your firm is responsible for updating and responding to comments and messages?
- Does your page have a picture and cover photo?
- Have you set up your Facebook URL?
- Are you a member of any Facebook groups?
    - Ask questions.
    - Provide comments.

Twitter

- Do you have a Twitter account?
- Do you have a profile photo and cover photo?
- Have you filled out your bio?
- Are your clients on Twitter?

- Is your professional network on Twitter?
- Have you assigned someone to be responsible for tweeting, updating, and responding to comments or messages?

Instagram

- Do you have an Instagram account?
- Do you have a profile photo?
- Have you filled out your bio?
- Are your clients on Instagram?
- Is your professional network on Instagram?
- Have you assigned someone to be responsible for tweeting, updating, and responding to comments or messages?

TECHSHOW2020

Workshop Workbook:
Bring Design Thinking to Your Practice

WRITTEN BY:

Susan Letterman White, JD, MSOD

PRESENTERS:

Susan Letterman White: @SusanLetterman

February 29, 2020

THE DESIGN THINKING PROCESS

Design thinking is a human-centered, visual approach to group problem-solving. The process emphasizes improving situations by first understanding the full context of the people affected by the problem. A person's context is the set of major forces affecting that person's life. To understand context, consider where they spend their time, the activities they engage in, how they engage in those activities, how they think, what they feel, and the relationships that affect them.

Solving problems often also requires involving people, who will be expected to change their behavior to address the problem and those, with the power to change any processes (how people do things) and structures (how and to whom people are connected) affecting the problem.

The design thinking process assumes:

- All problems are solvable.
- Diverse groups are better at solving difficult problems than is a single person.
- Visualizing data is better than just reading it.
- We collect better information about a person's motivation and behavior through exploration of the person's entire context.
- Exploring context means observing, asking good questions, and listening without judgment.
- Finding the right solution is a consequence of brainstorming prototypes and then experimenting with them to see what works.

Unlike traditional problem-solving, the focus is not on the cause of a problem. There is no assumption that the solution rests in understanding and eliminating the cause.

The process is creative. It aims to create many different and surprising ideas, so it benefits from a diverse group of people with different perspectives on the problem and how to solve it and a collaborative approach. People work in design teams with a team leader. Brainstorming for generating and capturing new ideas and empathy are integral to the process. Group brainstorming processes benefit when the group adopts certain norms, such as:

- There are no bad ideas.
- We will suspend all judgment until all ideas have been generated and everyone has a chance to contribute.
- We will build on the ideas of others, hold one conversation at a time, stay focused on the topic, and encourage wild ideas.

Give people time to think about the brainstorming question or prompt and make a few notes before the group conversation. Use one or a combination of techniques for the group conversation:

- Popcorn style – blurting out ideas;
- Writing ideas on post-it notes and putting the notes on a wall;
- Give each person a chance to talk.

Extraverts, people energized by being in a group, may prefer an immediate popcorn-style session, while Introverts, people energized by their internal thoughts, may need quiet time to generate ideas and the space to share their ideas.

A design refers to the main features of anything. Besides the obvious opportunities, like redesigning your office space, design thinking can improve the design of any system, from the largest communities to organizations and groups. It can be used to improve processes and structures.

Which processes, structures, or resources of your law practice could use a redesign: client intake; a work-flow; compensation system; your associate or partner retention; or something else? Start by identifying a significant problem that matters to the people, who will be asked to change something. Once you have selected a significant problem, use the Design Thinking steps

The steps of the Design Thinking process are:

1. **Empathize:** Keep empathy front and center. Every problem involves people. People, whose behavior contributes to keeping the problem in place and people, whose behavior will lead to a solution. Empathize to understand what is motivating them. Why do the problem "owners," those who want a solution, want a solution? What do they want to be different? Why? What are they doing to perpetuate the problem? Why? Do the people, who will be expected to make changes care enough about the problem to change? What do they want? Why? Which questions can't you answer? Who would be a good source of information? What could you ask them?

2. **Frame:** Frame the problem as a challenge statement. How could you word your significant problem to inspire many possible solutions? Go through several rounds of revisions and encourage team debate before landing on your challenge statement.

3. **Ideate:** Explore the challenge in its context. Find inspiration for solution ideas by building empathy with the people needing a solution and those, who will need to change their behavior or use their power to change a process or structure as part of the solution. A deep understanding of the people, especially their hopes and dreams, is the fodder for creatively designing an effective solution. Designers find inspiration through research, including observing, listening to, and asking questions of the right people.

4. **Prototype:** Develop ideas into prototypes. Make sense of the research data, generate ideas for approaches, identify design opportunities, and design prototypes.

5. **Test:** Experiment with prototypes. Bring your ideas to life and test them. What do you learn when you test a prototype? What could you apply to the next iteration of this process?

Workbook Exercise – Consultant and Client

This exercise is done in pairs. One person is the consultant. The other person is the client. The consultant helps the client develop a strategy to better understand their problem using design thinking. At the end of the exercise, the client will have a strategic plan to take home and use to address their problem. The consultant asks the client to explain the problem.

Use the space below to write out a basic statement of the client's problem.

CLIENT'S ORIGINAL PROBLEM STATEMENT:

My problem is….

Next, there are four steps to this exercise.

1. Consultant **empathizes** by talking with client to discover useful and meaningful information about person and problem.
2. Consultant and client review findings together and collaborate to **reframe** client's challenge.
3. Consultant and client **ideate** options to approach the problem and share feedback on options.
4. Client and consultant select option to **prototype** and **test.**

STEP ONE: EMPATHIZE

In this step the consultant interviews the client and makes notes about the person and problem to better understand the problem, the people involved in maintaining and solving the problem, and the impact on those people.

Examples of questions to ask:

- Why is a problem? Why is it ***your*** problem? What are you interested in and concerned about?

- Who is bothered by the problem, contributing to the problem, or will be involved in the solution?
- Why are you interested in it or concerned about this problem?
- What are you assuming to be true without evidence?
- What conclusions should we test?
- How will you engage the people involved?

Consultant's Questions	Findings and Insights

STEP TWO: RE-FRAMING THE CHALLENGE

In this step, the consultant and client discuss the client's responses from the last step. It's a discussion about the data collected by the client during the interview. The purpose is to focus on

the hoped-for-outcomes, things the client is trying to do, obstacles, the context in which the problem exists, feelings about the problem and solutions, cultural strengths and impediments, and any insights.

Then, using the phrasing "How might we…?" the client and consultant discuss the actions that will move the client closer to a solution.

A design challenge should be short and easy to remember; a short sentence phrased as a question that conveys what you want to do. Properly framed challenges imply the impact you are seeking, while allowing for many solutions, acknowledging constraints, and considering context.

It's easy to write a too narrowly or broadly-worded design challenge. If you are struggling to come up with ideas of where to start your research, then your challenge is likely too broad. A challenge too narrow won't offer sufficient space to brainstorm research ideas and explore creative solutions.

Framing the challenge is an iterative process. Repeat the four steps below until you have landed on the right question. You'll know you have the right question if you can quickly come up with 3-5 possible solutions in a few minutes.

The steps to frame your challenge are:

1. **Frame the problem as a design question.** Design questions begin with "How might we…" to convey what you want to do.

2. **State the ultimate impact you want.** If your solution works, what will be different and better for whom?

3. **Think broadly about possible solutions.** Start with a hunch or two and allow for surprises.

4. **Identify any constraints and the explain the context you're facing.** Reality counts. Are there geographic, time-based, cost-based, or other obstacles you expect to face? What about the economy? What's the culture? Are there any processes or structures that affect the problem? How do the people involved like to communicate? Is the location where you plan to deliver your solution conducive to your aim? Are you facing any entrenched thinking? Do the Individuals involved have the power to do what you want?

What is the client interested in and concerned about? What is the client assuming to be true with no evidence? What does the client want to be different and better once this problem is solved? Who is contributing to the problem? How? Who will be expected to contribute to the solution? How?

1. **Frame it as a design question.**

2. **State the ultimate impact you want.**

3. **Think broadly about possible solutions.**

4. **Identify any constraints.**

Explore the challenge and its context

Your client's problem may involve other people. For example, a lawyer seeking new clients must learn about their prospective clients. A law firm leader seeking to hire new associates, needs information about prospective associates. A law firm looking for a succession plan needs to know about the people retiring and the people who will assume new roles.

Part of your client's strategy will be to gather information from those people, which takes us right back to empathy. Empathy is the inspiration of great human-centered design. The better you understand the wants, needs, preferences, interests, concerns, hopes, and challenges of the people involved in the problem, the more likely your solutions will be embraced. Better understanding comes through research – talking to people, observing them, asking questions, and listening without judgment. Talking directly with the people, who will be asked to change the way they think, how they feel, or what they do, is the best way to understand a person's desire, fears, and opinions.

When you better understand the people, you are asking to change, you can better appreciate the obstacles and barriers to their making the change you want. This applies whether you are asking associates to stay with your firm, partners to cross-sell, or a prospective client to become a client.

To understand a group of people, do your research!

Explore the *status quo* in depth to understand the problem. What do you know about it? Observe and see how people behave in the current context. Experience the situation yourself. Talk to the people, who are part of the problem or who could contribute to its solution. Ask them for feedback: What is working well, could be improved, is going wrong, and could go wrong? Ask why they do what they do, think what they think, and feel how they feel about the problem – the situation you're trying to change – your challenge.

Is at least part of your client's challenge to gather more research from people outside of this room? If so, it's time to revise that challenge statement.

5. Revised challenge statement

STEP 3: IDEATE

Strategic Plan for Gather More Information

If you are asking people to change their behavior, you can better appreciate the obstacles and barriers to their making the change you want, when you understand and can empathize with them. This applies whether you are asking associates to stay with your firm or a prospective client to become a client.

In this section, the coach and client discuss the key points of the strategic plan to gather more information about the problem for people connected to it.

Who should you approach for your research?

The people with information and perspectives bearing upon your challenge have the best information: the people you want to change their behavior; the people with the power to make structural and process changes; the people, who are experiencing the problem; and people, with insights into those people. If you think of perspectives falling along a bell-curve, approach people in the mainstream and those at the extreme ends of the spectrum. Consider a variety of age, gender, ethnicity, class, social position, behaviors, beliefs, and perspectives.

Subjects: Who will you approach?

How should you gather your research?

Use a combination of approaches. You can:

- Observe people
- Ask questions
- Use written feedback surveys
- Ask individuals or groups

It often worth using multiple approaches. Regardless, it is imperative to prepare in advance. Explore the most recent news that is relevant. Seek recent innovation in your area to understand the edge of what is possible. Discover if existing solutions that have worked in situations similar to yours.

You've identified your subject, what should you ask?

Ask the questions that will lead to insights into whatever you want to learn about why people are doing what they are doing and where the motivation to change their behavior might originate. If you are wondering how to turn prospective clients into clients, discover why people aren't spending money on lawyers? What are they doing and why? Is there anything that would motivate them to change their behavior? The point is to ask questions to understand the full context of your challenge.

Questions to ask

At this point consultant and client have discuss several facets of the client's problem, including the possibility of gather more data from the people connected to the problem. Now is the time to take a deeper dive into the insights and information discussed.

Explore data – Client back home becomes the consultant

Describe the people, whose behavior you want to change.

Describe the entire context that bears upon their behavior.

What are they doing now that bears upon the problem?

Why are they doing what they are doing, rather than something else?

Generate possible solutions

Create "How might we…" questions to address the opportunities or obstacles discovered. This is a similar process to framing the challenge. Think of each obstacle or opportunity as another

challenge. Select ideas to try. For each idea, explain how it works and why it would matter to the people.

When you design possible solutions, don't forget to identify any constraints you expect. Who is involved and what are their time, technology, financial, or space constraints?

Designing solutions means considering what to do to nudge people to behave differently.

Brainstorming Possible Solutions

Revised Challenge Statement:
Ideas to try:
Work-arounds for obstacles:

Ways to learn more about the people connected to the problem, their feelings, and motivations:

IMPLEMENTATION

Perfect is the enemy of prototyping. Variety is her friend. The goal of this stage is for the client to commit to trying out a solution with the people involved and discover more meaningful and useful information about their viewpoint.

Client's commitment statement:

On or before	I will do the following:

MOVING FORWARD

Each iteration of the Design Thinking process moves you forward, closer to a better understanding of the problem and a solution. Incorporate the feedback into a revised prototype, generate new solution concepts or features of a solution, or think about where you need to do more in-depth research to find insights.

Additional material that may be of interest

Redesigning Legal: A Leader's Responsibility article by Susan Letterman White

Legal Innovation: The Biggest Myth or a Path Forward? Article by Susan Letterman White

Build a Client Persona

WRITTEN BY:

Jessica Bednarz

PRESENTERS:
Jessica Bednarz: @jessicabednarz

January 6, 2020

INTRODUCTION

Having a deep understanding of your clients and their needs is critical to driving content creation, product development, follow up, and really anything that relates to client acquisition and retention. Building client personas is a great way to develop deep understanding. Use these materials to guide you through the process of building a client persona and understanding who your ideal client is and how you can help them.

What is a Client (or Buyer) Persona?

A client persona is a fictional, generalized representations of your ideal customer(s).

Why should attorneys build one (or more)?

- You are not your user!
- Helps you narrow your focus (i.e. where should I cast my net)?
- Helps you better understand your target market(s)
- Helps you design better products and services based on the wants and needs of your target market(s)
- Helps you create a more focused marketing campaign

How do I build one?

- Conduct user research (interviews, observation, focus groups)
- Who are they (what are their core characteristics)?
- What are their needs?
- How do they access the service?
- How do they interact with the service?
- What does the service help them to achieve?
- Distill and refine (look for common characteristics, trends, and categories)
- Personify (use quotes, images, etc.)

- Other helpful and related tools/exercises
    - Empathy maps
    - Journey maps
    - Build stories
    - Walk in the shoes of your client

Use this template to build your client persona(s).

Click the template above to view it!

ADDITIONAL RESOURCES

Legal

- How to Create Client Personas that Improve your Law Firm's Marketing

  AdInfusion Blog Post by Matt Roberts

  January 26, 2018

  https://www.adinfusion.com/how-to-create-client-personas-that-improve-your-law-firms-marketing/

- 4 Steps to Creating Client Personas for Your Law Firm

  JurisDigital Blog Post by Stephen King

  February 9, 2017

  https://jurisdigital.com/creating-client-personas-law-firm/

- Why Exactly Buyer Personas Matter in your Law Firm Marketing

  Gorilla Web Tactics Blog Post by David Juilfs

  https://www.gorillawebtactics.com/law-firm-marketing-buyer-personas/

Outside of Legal

- Empathy Map Template

  https://x.xplane.com/empathymap

- How to Create Detailed Buyer Personas for your Business [Free Persona Template]

  HubSpot Blog Post by Pamela Vaughan

  May 17, 2018

  https://blog.hubspot.com/marketing/buyer-persona-research

- What Information Should You Include in your Buyer Persona Customer Profile?

  GoDaddy Blog Post by Raubi Marie Perilli

  April 4, 2018

  https://www.godaddy.com/garage/what-information-should-you-include-in-your-buyer-persona-customer-profile/

- Top 20 Questions to Build a Buyer Persona that will Skyrocket Sales

  GoDaddy Blog Post by Bryan Caplan

  April 3, 2018

  https://www.godaddy.com/garage/build-a-buyer-persona/

- What to Include in a Buyer Persona [INFOGRAPHIC]

  Marketing Insider Group Blog Post by Michael Brenner

  October 12, 2017

  https://marketinginsidergroup.com/demand-generation/what-to-include-in-a-buyer-persona-infographic/

- Here are 10 Buyer Persona Examples to Help you Create your Own

  Alexa Blog Post by Kim Kosaka

  https://blo.alexa.com/10-buyer-persona-examples-help-create/

DIY: Video Creation

WRITTEN BY:

Catherine Sanders Reach and Chelsey Lambert

PRESENTERS:
Chelsey Lambert @chelseylambert
Ken Levinson @kenlevinsonatty

January 6, 2020

Contents

HOW TO USE AN ONLINE COURSE TO GENERATE BUSINESS FOR YOUR LAW FIRM
CHELSEY LAMBERT, FOUNDER OF LEX TECH REVIEW

Originally published in Technolawyer, 7/2017

Harness the Power of Video to Promote Your Law Practice

Video consumption is on the rise! But, how can lawyers best use this medium to attract clients without overstepping the ethical boundaries of advertising?

Understanding the Shift

Consumer buying behavior has changed. The success of social media platforms such as Facebook, Instagram and Snapchat have created a thirst for easily accessible knowledge. Plus the expectation that it will be provided to them by businesses and experts. Coupled with an understanding that once trust is built, the opportunity to purchase from the expert or source may be presented.

The Use of Video Marketing to Attract Legal Consumers

For almost every law firm I speak to, getting new business is a challenge. Referrals aren't what they used to be, and clients are price shopping more than ever. In other industries, the true champions of weathering the business development storm applied an 'outside of the box' solution to their sales or marketing challenge. In recent years, I have been studying the education video series market, social media icons and there is a huge opportunity for lawyers to harness the power of building expert notoriety through the use of video.

Education and Awareness

There are a handful of lawyers, producing educational video series. To both promote their practice, educate and qualify potential clients. Which makes perfect sense. When a client hires you to be their legal advocate, they want to feel like you are an expert in what you do. That you are easy to work with, and understand their situation. What better way to establish a rapport and convey those qualities than by demonstrating your knowledge by offering an on-demand educational videos about your case types, right on your website.

Another benefit of this model is that you are educating your clients on what they think they know, but really have no clue about. How many times has a prospect suggested solutions to you, or regurgitated information they found on Google as if they went to law school at the same time you did?

Let's set the record straight, and inform them of all the small nuances of the law so that when you quote your fee they understand why. An education video series, used as a lead generator, or provided as a service to existing clients is the most beneficial way to explain the services you provide and help the individual determine if you are a fit for their situation. A video series can be created for nearly every area of law a few examples include:

Example Law Firm Video Topics:

- **Estate Planning for Individuals Building Wealth for the First Time (Also known as the New Rich)**
  - o A course provided by an Estate Planning Lawyer that explains what happens when your business or career takes off. Dive into the tax advantages and purposes of a Trust, or a Holdings umbrella company for your real estate investments.

- **Basic Estate Planning for New Parents**
  - o Protect your family from the unforeseen with a quick educational course that outlines the basic of family protection through proper estate planning.
  - o *Extra Credit:* Charge for the videos as an online course, and offer a DIY Estate Planning kit with free attorney review as an incentive to buy.

- **First Time Business Legal Planning**
  - o New business owners often overlook all the legal documents necessary. Such as operating agreements, privacy policies, vendor contracts and non-disclosure or confidentiality agreements. In a few short sessions, you can break down the purpose of each and how affordable a small legal kit for their business would be to have created.
  - o *Extra Credit:* Charge for the video series as a course, and offer a Business Foundations Legal Kit, with free attorney review.

- **Employee Share Plans – How to offer stock options without giving away the farm!**
  - o A course that targets existing business owners, with a desire to use shares as incentives or bonuses, or a recruiting tool. But, without leaving themselves at risk.
  - o A great benefit of this program, is that it targets an audience who knows they must do things properly with legal safeguards in place.

- **First Time Home-Buyers "What Closings Are Really Like"**
  - o If first time home buyers knew what they needed to prepare for and the importance of having a well-prepared attorney before they got to the closing table more

- **First Time Real Estate Investors – Closing Your First Real Estate Investment Like a Pro**
  - o For first time, real estate investors, the purchase could be the biggest cash outlay of their life. In retrospect, many investors say; 'if I knew then, what I know now…" What are the things they would do differently? Outline the common mistakes and challenges that lead to deals gone sideways or legal advantages to setting up a corporation for investments to be executed under.

- **Adoption – Adoption Sherpa – Your Legal Companion through the Adoption Process**
  - o Thousands of children need loving homes, help break down the legal mysteries of adoption and promote this route to becoming a parent in your state.

- **Landlord Tenant – Renter Rights! Know Your Rights as a Renter!**
  - o Every year thousands of renters are taken advantage of, forced to live in unacceptable conditions or move at an inconvenient time.

- **Employment Law – Discrimination in the workplace. Awkward or offensive, what qualifies as harassment, discrimination?**
    - Where do the lines exist, and what are our rights as employees? Explain the most common gray areas and set the record straight about what happens if you file a false claim.

- **Personal Injury – How to properly document your medical issues, records, and ailments to best support your case.**
    - A great aid for your clients, short videos can remind them how to best document their case when you're not available to coach them through the process. You can also use the course as a selling point with potential new clients to convey the value you provide them with as an attorney.

- **Probate – Surviving the Probate Process - How to keep your family together after a loved one has passed away.**
    - Families can be torn apart by the probate process. Provide guidance on how to best maintain relationships, or use the attorney client relationship as a protection mechanism for sensitive information or conversations.

- **Family Law – Navigating the Child Custody Waters in __Your State__**
    - Child custody rules and schedules differ by state, some by county. Leverage your experience serving multiple geographic areas, and set ground rules for anyone in, or about to go through a child custody battle.

- **Family Law – Parenting through a Divorce**
    - Divorce can be one of the most difficult times for a child. Provide a course with suggestions or guidelines for parents who want the best outcome for their family. This course can also be done as a Co-Parenting post-divorce program.

Ready, set, go! It's time to create your videos!

To date, I have built and launched over a dozen education video series. Which provide additional revenue for my business, that I often re-invest in advertising to accelerate the growth of my core services client base. My students, also convert into higher value full service consulting, training or project revenue. A great pipeline of clients has come from the courses just being available.
In the process of building these, I was exposed to dozens of applications, software platforms, and tools made for course creators. And honestly, I lost about a month of my life researching them all paralyzed that I would make the wrong decision… sound familiar?

My takeaway from the 'build' experience is this; JUST DO IT!

There is no right answer, at the end of the day you need your videos to be LIVE. If it's not perfect, if you don't have a dedicated website, even if you **have only a portion of your material ready, launch it anyway.** Because, once you see the positive reactions, and engagement increase on your website you'll be sold. No longer paralyzed by your self-imposed to do list, and in the thick of making your first course even better. Here's the process I went through to start.

1. Write your basic outline. This should be a list of each 'section' of your course.

2. Write your sales copy; The problem you're solving, who you help, and why you are doing it.
    a. See book recommendations below for proven writing formulas.
3. Expand each section of the outline with a bullet point list of your talking points.
4. Note any handouts, forms, or pdf supporting materials you can include with each section. Think of e-Books or checklists you may already have on your website.
5. Don't get carried away, write out as much as you feel comfortable delivering right now. Nothing you have to go learn.
6. Decide your medium, will you self-record the videos at your computer or have a professional videographer record and edit.
7. **Promote!!!**
    a. Add the course to your website
    b. Post about it on social media
    c. Run paid advertisements
    d. Send an announcement to your newsletter list
    e. Inform local media or publications about your video series and the benefits
    f. Call previous or current clients offering it to them as a value add
    g. Call prospects who didn't retain you, or who didn't have the funds for full service representation and use it as a door opener to re-engage them in conversation.
    h. Reach out to all of your referral sources and share the video(s) and information with them. You may even craft a template email for them to send out to any of their contact who they think may benefit.

Facebook Live

Small Law Firm Managing Partners have recently taken to Facebook Live as a way to do a "Town Hall" Style video for the active Facebook Users. Most will have a casual discussion with a staff member about a Frequently Asked Question. Then Facebook Users can share the video in their feed, or submit a question. A couple of notes if you choose to use this avenue. 1) Be sure not to get into detailed advice or guidance with participants. Suggest an in-office consultation or take the conversation offline. 2) Download the video afterwards, and use it as a marketing asset the same way you would with a normally recorded video.

YouTube

Be sure to create a YouTube Channel for your law firm, and upload all of your videos there. Linking each to your website and adding contact information. While traffic from YouTube to your law firm's site might not be substantial, this material is indexed and prioritized by Google as premium content. Which helps increase the overall quality score of your website, and online presence.

Recommended Reading

These three though leaders have absolutely mastered the online course game. Each also owns and operates online courses of their own. It is because of their work I have become obsessed with this business model. Plus that hundreds of millions of dollars have been made in online course sales by their readers. Facts, and proof it's as simple as that.

- Expert Secrets – Russel Brunson

- Launch – Jeff Walker
- How to Write Copy that Sells – Ray Edwards
-

Software for online video courses:

(Use if you are doing a complete educational series)
There are dozens of software platforms. Here are a few, some have integrations with email systems, others have everything built into one place. Your first course must be published and working before you get fancy and spend hundreds per month in software. Pick something you can use, and create your course. If or when it takes off, then make the investment to upgrade. That's what we like to call a "High Quality Problem!"

- Coach/Podia
- Kajabi
- LearnWorlds
- Zippy Courses

In closing

This model works well, for lead generation but can also be used as a stand-alone revenue source for DIY legal clients. Maybe for you it could be both. With any advertising or educational program, include a disclaimer. Most importantly always offer a consultation to evaluate their problems further.

VIDEO MARKETING 101 FOR LAW FIRMS
BY CATHERINE SANDERS REACH
ORIGINALLY PUBLISHED IN AT THE CENTER, APRIL 2019

Getting to the top of the Google search engine rankings for your law firm web presence, especially for major practice areas in saturated markets, can be costly in time and dollars. However, law firms leveraging the power of YouTube have some untapped potential for web traffic. According to the ABA Legal Technology Survey Report 2018, less than 2% of lawyers use YouTube as a marketing channel. A total of 14% of firms have produced a video to market their practice, though the bigger the firm the more likely they are to have video marketing (from 4% of solos to 36% for firms with more than 500 attorneys). Looked at it another way, 77% of responding lawyers DON'T have videos. What can you do to leverage video marketing?

The Power of YouTube

YouTube is the 2nd largest search engine, processing over 3 billion searches a month. In 2019 80% of all internet traffic will come from video and the chances of getting a page one spot on Google search results increase by 53 times with video.

Consider user demographics for YouTube. Over 80% of 45 to 64-year-old American internet users watch videos on YouTube, and over half of those aged 65 and over. YouTube users are more likely to have a college degree than the general population and are more likely to have children than non-users. Seventy percent of millennial users (ages 21-37) watched a YouTube video to learn how to do something new or learn about something they are interested in. Is YouTube the right platform to reach your intended audience? Consider creating a few client personas to help determine if it reaches your target market.

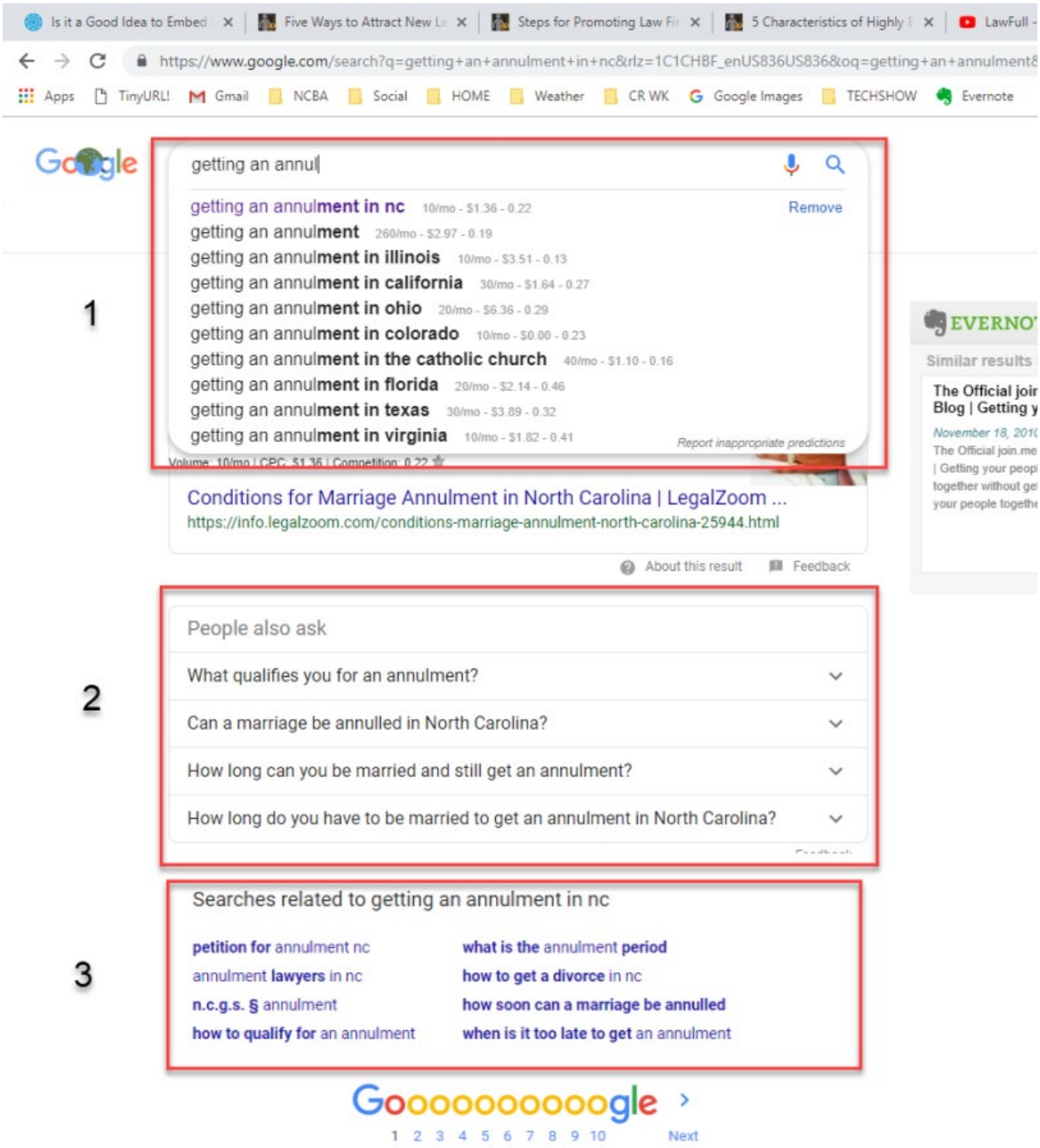
Content is King

Lawyer Gerry Oginski, who has a thriving YouTube channel for his New York Medical Malpractice and Accident Trial practice, advises "don't talk about yourself and don't talk about the law". While you *can* use YouTube to host a commercial for your firm, the categories that resonate with YouTube Users are not commercials, but "How To" videos, vlogs, and educational videos. The focus should be on providing information, not advice. Tell stories and highlight your value proposition. Review all NC Rules of Professional Conduct and ethics opinions regarding communication, solicitation, and advertising. Also, the Rules and opinions should be reviewed in each jurisdiction you practice in since the rules vary state to state.

You may think that the only popular lawyer videos are brash or shocking. However, there are plenty of excellent examples of law firms doing video well. Do a search (on YouTube of course) to get a sense of what seems effective in your practice areas by looking at the number of views different legal topic videos have on the platform.

Getting Started

What content will resonate with your potential audience? Start with keyword research. While there are many tools you can use for comprehensive keyword research a simple process includes using the Google search engine. For instance, Google has three different types of results for a keyword search:



1. Keyword suggestions – variants that stem from your text entry when you type into the Chrome address bar or in the Google search box
2. "People Also Ask" which often appears in the middle of the page of search results
3. "Searches related to" which appear at the bottom of the search results page.

After you have done a general Google search run the search on YouTube to see what videos already exist for your keywords. These are keywords you can then use to help focus your message, to title your video, and add to the description and tags areas in the YouTube Creators Studio.

Write a Script

No matter what type of video you make a script is essential. Effective videos should be short, about 3-5 minutes long. One way to ensure that you stay on point is to write a script. Use a script timer to find out how long it would take to read it. You want to be natural so practice reading your script! There are plenty of free teleprompters that let you set up your script on a computer screen or tablet so that you can read the script while you are making the video. By writing a script you can also easily convert it to a transcript and add it as captions in YouTube or "burned in" to the video using video editing software. While YouTube will attempt to automatically create captions, you may spend a lot of time editing them without a script. A script added to your video as a transcript will also make it more visible to the search engines since search is still mostly restricted to the written word, not audio.

Build It or Buy It?

Next, decide what type of video you want to make. A "talking head" video is common and depends on excellent lighting, high sound quality, and good production value to be effective. While you can do it yourself there are many companies that can help you make a professional video. However, due to cost and discomfort with being "on camera," some lawyers may seek other options. One simple way to produce a video is to create a slide deck in Microsoft PowerPoint and then add narration and save it as a video file. Another option is to create an animated video, either with cartoon-like characters or whiteboard animation. While there is sure to be a learning curve, you can create low cost or free animated videos with online tools like Vyond, Powtoon, or Moovly.

Optimizing Your Videos

Using YouTube's editor, a free video editor, or the built-in Windows video editor/Mac video editor you can add text overlays, captions, and calls to action as well as optimize the video for size and audio quality. You can also add music clips to begin and end your video.

Certain elements, in addition to captions, will help optimize and improve your video. Custom thumbnails, which you can create with free tools like Canva, create a still image of your video that doesn't inevitably show you mid-sentence in search results. If you plan on creating a YouTube channel YouTube cards can encourage viewers to subscribe or "like" your videos. End screens also help to promote your channel and your website. To see some good examples of fully optimized videos check out personal injury attorney Barry Zlotowicz' LawFull YouTube channel.

How Am I Doing?

The YouTube Creator Studio has full analytics reports, which provide in-depth information on audience retention, which videos are most successful, traffic sources and much more. As with all marketing efforts determine what your goals are to measure success.

If you already have a website, there are pros and cons to embedding YouTube videos on your site. It may drive traffic away from your site, as videos using the YouTube embed code can lead visitors to view your video on YouTube instead. You can always embed your videos on your site using a hosting platform like Wistia, and maintain the YouTube channel as a way to attract a different set of visitors and then drive traffic to your website from YouTube.

Conclusion

Whether you are an intrepid techie and decide to make your own videos or hire a company to help you it is a good idea to understand the power of YouTube, what makes a successful video, and the steps involved. Search Engine Watch has some basic advice for successful use of video marketing, which includes using the **TOP** approach: **T**argeting your videos – understanding searcher intent, keyword research and video creation; **O**ptimizing your videos – creating a branded presence, optimizing titles, tags and descriptions; and **P**romoting your videos – getting real, engaged views on your videos, building links and embeds to your videos. After some exploration, you may find video marketing is right for your firm.

TECHSHOW2020

Best Practices to Protect Your Firm from Financial Crime

PRESENTERS:
Tom Kestler

February 3, 2020

This session provides insights into the challenges law firms are facing in establishing an efficient anti-money laundering (AML) and counter-terrorism financing (CTF) compliance program. Learn the best practices to stay ahead of regulations to keep your firm's reputation intact.

- **Introduction – 5 minutes**
- **Regulatory landscape for law firms – 20 minutes**
  - **Sanctions explained**
  - **Why law firms are at risk**
  - **New OFAC framework**
  - **FATF - Financial Action Task Force**
  - **What to take away from the global landscape**
- **2019 Survey results -trends in financial crime compliance -20 minutes**
  - **Survey Overview**
  - **What are the most common AML compliance activities in law firms?**
  - **How do you currently conduct client screening for AML, sanctions or terrorist financing compliance?**
  - **Clarifying risk by specific categories**
  - **Top screening challenges for law firms in the U.S.**
  - **Activities and best practices**
  - **Challenges**
  - **Key considerations**
- **Legal Game – 5 minutes**
- **Q&A – 10 minutes**

Sponsored by ACCUITY