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Teaching Legal Technology

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TEACHING LEGAL TECHNOLOGY

A critical conversation
on legal technology
skills and training.

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Over the past few years it has become abundantly clear that technological competency as well as technological fluency is fundamental to the practice of law. Discussion on the impact of technology on law practice—from proficiency in using the entire Microsoft Office suite to understanding eDiscovery, artificial intelligence (AI), Technology Assisted Review (TAR), and Watson—dominates many journals and blogs. (View the full reading list prepared for the program held during the American Association of Law Libraries (AALL) 2016 Annual Meeting in Chicago at bit.ly/AALL2goLegalTech.)

In 2012, the American Bar Association (ABA) House of Delegates amended Comment 8 of Rule 1.1 of the *Model Rules of Professional Conduct* to state: “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* [emphasis added], engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.” Incorporating technology skills into all professional development and training is imperative for both lawyers and law students.

Many attorneys are not as fluent as they should be in using technology to its fullest capacity for the benefit of the firm or the client, as evidenced by results of the KIA Audit—a basic legal technology skills audit administered by KIA Motors to potential outside counsel. A well-attended 2015 AALL Annual Meeting program discussed the results of the KIA audit and was an eye-opener for many in the room. (View the AALL 2015 Annual Meeting program at bit.ly/AALL2goKIA.) Recognizing the importance of continuing the discussion on teaching legal technology, another Annual Meeting program, presented in July 2016, invited librarians representing firms, law schools, and courts to talk about the issues, the challenges, and the obstacles librarians face in helping law students and attorneys learn, hone, and become self-sufficient with their technology skills. Below are reflections and highlights from the program.

The Firm

The practice of law is changing rapidly as firms react to the economic realities of the last decade and the explosion of new law practice technologies. This trend includes a shift in the role and deployment of support staff in firms. Staff is being shifted to areas requiring broader knowledge and technical skills while purely administrative and

clerical tasks are losing staff support. New attorneys who are seen as “digitally native” lawyers by partners should come to the firm ready to use technology to accomplish many of their own administrative and clerical tasks.

Law firm management makes several major assumptions about the skills of new lawyers. Management often assumes that “digital native” millennial lawyers will instinctively know how to use any technology and all computer programs. Or, barring instinctive know-how, firm management assumes that by the time new lawyers get to the firm they will have learned all necessary technology skills, and therefore do not need to be taught. In short, new lawyers need to be ready to use or learn how to use technology on day one.

However, as most firm librarians can attest, there is no such thing as a “digital native” when it comes to knowing about law practice software and technology, or how to use these practice tools efficiently. Just because a law student has used a computer throughout school or has taken classes in using legal research tools like LexisNexis or Westlaw does not mean that the resulting new associate is an effective technology user. Further, just because an attorney can type, that is, touch keys and make words appear, does not mean that he or she understands styles or other word processing features and tools that can save hours of billable time. In addition to word processing, attorneys must also understand spreadsheets, document storage, billing and accounting software programs, and ediscovery programs, as well.

According to a *LegalTech* news article from April 2016, beyond saving time and aggravation, understanding how law practice software works and knowing its limitations allows attorneys to use technology as an ally in creating value for clients. Additionally, technology proficiency is rapidly becoming a requirement to practice law ethically. As mentioned above,

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the ABA *Model Rules of Professional Conduct* require attorneys to maintain competence on “the benefits and risks associated with relevant technology.” The Florida Bar now requires its members to complete three hours of technology-related continuing legal education (CLE) in addition to existing requirements. Other states will likely follow suit as the constellation of ways to get in trouble with technology grows.

Preparing students to practice law means that everyone tasked with teaching must put aside assumptions about law student technology skills and prior training. Just as no one would expect a student to write a brief on the first day of law school, we should not assume that a new lawyer knows how to insert footnotes in a brief on the first day at a firm.

The Court

From a government law library perspective, any successful approach to teaching legal technology skills must be broad based. The legal profession today is reacting to, if not defined by, a rapidly changing technical landscape. Classes or programs that concentrate on any one tool, or one developer’s approach to the deployment of their own tools, risk under-preparing new lawyers for the competent practice of law and performance in the courtroom.

Students entering law school bring various technical preferences with them. An Apple advocate and a PC person do not share the same skills, much less the awareness necessary to

A new AALL Teaching Legal Technology Caucus has been formed to bring together librarians interested in teaching legal technology in law schools and other settings. Who better than librarians to take the lead in helping design appropriate technology training programs?



transition from personal preferences to practice prerequisites. At a minimum, law school graduates should be comfortable with the basics of web searching, word processing, legal researching, and the file management skills necessary to authenticate, update, preserve, and retrieve documents in confidential and non-confidential versions, as appropriate pursuant to court rules.

Since a new law graduate might work in a different city than where they went to law school, they should be prepared to practice in a variety of jurisdictions, the courts of which might have different rules related to filing practices and software program requirements necessary to satisfy them. With the emerging requirement of electronic filing, lawyers will need to follow strict guidelines required by the legal filing software program in use by the Clerk of Court where a given case was filed. Further, while electronic filing might present new skills to be

mastered, court-mandated style guide requirements are not new. Students need to understand the concept and be prepared to follow the rules—in print and online.

The use of unbundled legal services presents another challenge. A lawyer practicing today must be prepared to satisfy reasonable requests to transfer client files to, or receive them from, a self-represented litigant or another lawyer. Each of these parties might have used a different software program or file type. Also, court deadlines and filing requirements may mean an accelerated timeline. In many instances, there will be little room for error on learning a new program and a premium will be placed on one's technology fluency.

The Law School

The recommendation to teach legal skills to students, including technology skills, is not new. In 1992, the *MacCrate*

Report described a disconnect between a law firm's need for lawyers with "real-world" skills and the law school's emphasis on teaching doctrinal law. (View the full *MacCrate Report* at bit.ly/MA17MacCrate.) In 2004, AALL members Kenneth J. Hirsh and Wayne Miller argued that law schools were not keeping up with teaching the key skills of being an attorney, particularly legal technology skills: "[A]lthough state-of-the-art technology is now commonplace in law offices, most federal courthouses, and some state courtrooms, until now, there has been little effort to contextualize the importance of technology for law students." (Read Hirsh and Miller's article at bit.ly/MA17Lawschooledu.) This assertion was supported in 2013, when the ABA's eLawyering Taskforce sent a survey to all 203 accredited institutions to determine the extent of legal technology instruction in law schools. Only 32 law schools responded to the survey (16 percent of those polled). (View the entire survey at bit.ly/MA17eLawyer.) However, the conversation is evolving. The University of Missouri-Kansas City hosted two conferences on Law Schools, Technology, and Access to Justice with a goal of providing direction for the teaching of technology in law schools. During the conferences, a set of principles, referred to informally as the 'Kansas City Principles,' was developed. An academic-specific discussion at the 2016 ABA TECHSHOW in Chicago used the principles as a basis to develop steps for advancing the teaching of technology in law schools, including how to leverage the information and opportunities provided by the ABA TECHSHOW. (Read the *3 Geeks and a Law Blog's* summary of the presentation at bit.ly/MA173Geeks.)

In his 2014 article titled, "Infusing Technology Skills into the Law School Curriculum," Simon Canick provided some context for why legal technology is not being taught at all institutions. "Conversations with professors about the possibility of incorporating technology skills into the law school curriculum have revealed a misperception that current students already 'get it.'" However, as noted, the 'get it'

presumption does not equate to an understanding of applying legal technology in practice. Canick also notes the academic assumption that new lawyers will learn law firm technology once they join a firm. This is the flip side of the assumption noted about law firm management. The *MacCrate* “disconnect” continues.

A review of the literature clearly supports a conclusion that lawyers with fluency and proficiency in the use of legal technology will be in greater demand and that firms or solo practitioners who can prove they know technology will have a better chance of survival. Law schools need to teach legal practice technology skills within the doctrinal scaffolding throughout the curriculum, not in isolation. It is imperative that we teach all students the legal technology skills they will need to survive and thrive in the “new” world of legal practice.

The conversation must continue. We will not get legal technology instruction into all courses in all law schools any time soon, but until we do, we can and should offer library workshops on technology skills and continue to push the curriculum committees at our institutions to add legal technology courses. We can do as Greg Lambert recommends in his October 2016 blog post, “What Tech Skills Should Law Schools Teach Future Associates?”: “Make sure they know the basics ... then we [law firms] can teach them the unique skills needed for our particular firm.” (Read the entire *3 Geeks* post at bit.ly/MA17Techblog.)

Next Steps

Technological innovation will continue to change the practice of law. Over the past 30 years, the profession has moved from an environment where very few lawyers used computers themselves to one where most lawyers have computers on their desks, to the current and unprecedented one with its cloud of smart connections between desktops and mobile devices. Although advances in technology may not mean the “end of lawyers,” it is certain that “tomorrow’s lawyers” will need to stay abreast of

changes and adopt a lifelong learning approach to incorporating new technologies and applications into their daily lives as practitioners. Ultimately, learning the required legal technology skills will depend on an individual attorney’s investment of time to move beyond personal preferences to adopt professional and workplace standards, including the ability to transfer skills between desktop and mobile devices. Current awareness of technology trends and continual training will become a practice requirement.

To help attorneys learn and update the needed skills, a teaching model will need to emerge. The most viable approach to teaching legal technology skills must be a collaborative effort of all segments of the legal profession. Ideally, the underlying skills will be introduced and reinforced through law school doctrinal programs, but all segments of the legal system will need to provide the additional training needed to supplement skills learning. Law firms will need to teach their own unique particulars; court administrators will need to keep the legal community apprised of court systems and requirements; and the ABA, along with local and state bar associations, will need to host CLE programs to address not only general practice skills but also regional court requirements.

Law librarians are perhaps uniquely situated and suited to accept the challenge of aligning forces and creating the technology training programs necessary to support the legal profession, our profession, and those who employ us. We share information and work collaboratively on a wide spectrum of projects to assist lawyers and society in the pursuit of justice. In fact, a new AALL Teaching Legal Technology Caucus has been formed to bring together librarians interested in teaching legal technology in law schools and other settings. Who better than librarians to take the lead in helping design appropriate technology training programs. We have started our conversations, let’s continue them and move forward in this very important and critical area. ■

AALL2go EXTRA

Watch the “Taking the Lead on Teaching Legal Technology: Opportunities and Challenges” webinar at bit.ly/AALL2goLegalTech.



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