

Technology and the Future of Legal Services

By Judge Herbert B. Dixon Jr.

The Commission on the Future of Legal Services established by ABA President William C. Hubbard has stimulated enthusiastic discussions across the country about the future of legal services and the legal profession. Numerous participants have said that the traditional model of providing legal services must change to address the huge market of unmet legal needs. Many believe that the Commission's work presents the best chance yet of sparking that change.

New legal services models that have been urged upon the Commission, including old ideas recycled from years past, are:

1. licensing nonlawyers to provide limited legal services and advice and to help fill out appropriate legal forms;
2. permitting other professions and entities to own and partner with law firms, which could include allowing corporate ownership by companies ready to enter that line of business;
3. unbundling legal services;
4. loosening regulations to allow attorneys licensed in one state to practice in another state in which they are not licensed; and
5. standardizing legal forms for acceptance in all jurisdictions.

Many more ideas have been submitted to the Commission. If you have not joined these discussions, become a part of the dialogue immediately, before the opportunity passes you by.

As the *The Judges' Journal* technology columnist, I thought about the Commission's work and wondered what type of recommendations it might make concerning technology and the future of legal services. (Readers should know that I have no inside information on the Commission's deliberations.)

One of my first questions about the future of legal services was, what type of lawyer would the Jetsons seek if they

believed that their newly purchased flying car was a lemon? Would George and Jane Jetson consult a savvy, high-tech lawyer, or would they go to their trusty IBM Watson-like computer to determine if they had a case? This same computer controls their sky-pad apartment and servant robots, monitors their health, and prepares their tax returns. It also monitors the use of household supplies and groceries and places new orders when they run low. If the computer determined they had a case against the flying car dealership, would the computer prepare the paperwork for the Jetsons to sue in space court and generate a comprehensive report of the law for the Jetsons to argue their case? If you think these questions are far-fetched, think again! If Watson can win a contest against two previous *Jeopardy* champions, surely Watson, or a similar computer, could provide or enhance legal services. More about that later.

Unmet Legal Needs in the Internet Age

In December 2013, the Legal Services Corporation (LSC) issued its report, *The Summit on the Use of Technology to Expand Access to Justice*, which reached several conclusions. The report provides startling insight into the fact that 80 percent of the civil legal needs of low-income people in the United States are not being met. Wow!

The report notes that the U.S. population is accustomed to remote delivery of banking, shopping, information retrieval, and other support services and suggests that access-to-justice service providers may need to adopt remote service approaches for legal services delivery.

A recent Pew Research Center report, *U.S. Smartphone Use in 2015*, found that:

- 64 percent of all American adults now own a smartphone;
- 50 percent of adults earning less than \$30,000 own a smartphone;



- 62 percent of smartphone owners have looked up information about a health condition;
- 57 percent have used their phone to do online banking;
- 44 percent used their phone to seek real estate listings or other information about a place to live;
- 43 percent used their phone to find job information;
- 40 percent used their phone to access government services or information;
- 30 percent used their phone to take a class or get educational content; and
- 18 percent used their phone to submit a job application.

Does anyone out there still think using a computer, smartphone, or some other mobile device to obtain legal services is far-fetched?

Online Dispute Resolution

Another form of legal services relates to online dispute resolution (ODR), where parties voluntarily submit to an electronically facilitated process for mediation of ongoing disputes. There is no requirement that a mediator must be a lawyer. Although

many court institutions offer mediation and arbitration services and require the parties to participate in some type of alternative dispute resolution as a part of the normal litigation process, many private interests have moved into this line of work to offer that service as an alternative to the traditional legal process. The number of companies entering the ODR business is increasing yearly.

Although one might think online dispute resolution is conducted entirely on the Internet, it also includes meeting by email, videoconferencing, Internet and mobile applications, or a combination of these methods. Indeed, ABA President Hubbard cites the report of one ODR company that, of 60 million annual disputes on eBay, 90 percent are resolved using software with no human intervention and the results are almost never appealed in court.

That ODR has gained a foothold in society is no surprise given the proliferation of computers, laptops, mobile devices, and Internet use. ODR appeals to the public because the services are faster, more efficient, and less costly than the traditional legal process, and ODR provides an acceptable method for avoiding the cost and inconvenience of travel.

Technology and Our Future Lawyers

One presentation to the Commission that caught my attention focused on the readiness of law students to use technology in the beginning of their practice years. It was submitted by Michael Mills of Neota Logic, a provider of expert system software platforms to law firms, law departments, and other businesses. The submission noted that there were 205 law schools accredited by the ABA at that time, of which fewer than 25 had any significant education for law students about technologies that will relate to their practice. Mr. Mills further projected that after five years, when the students are young lawyers, they are likely not to understand the application of technology to the practice of law that will assist in delivering legal services in a cost-efficient way.¹ My experience leads me to predict the same thing. My sense is that many legal technology

advocates have found that millennial law professionals will not, more than any other age group, demand technology that facilitates their practice of law.

Added to those observations, long-time followers of ABA presidential initiatives may recall the eLawyering Task Force established in 2000. That task force received early recommendations that law schools update their law practice management and legal technology courses to reflect the Internet's impact on the practice of law. Unfortunately, 15 years later, it does not appear that many schools maintained those courses. In fact, numerous law schools have neglected courses concerning the technology of practice entirely.² There is, however, some good news. A 2014 report by Gartner, Inc. predicts that by 2018, legal IT courses will be required for the graduates of at least 20 tier 1 and tier 2 U.S. law schools.³

Keep your fingers crossed, techies!

Technology, Lawyers, and the Future of Legal Services

In 2011, the State Bar of Wisconsin authorized a study and report outlining challenges facing the legal profession. The report noted the rapid advancement of technology and observed that the pace of practice and client expectations was forcing lawyers to adapt or face extinction. The report also noted that clients were often ahead of lawyers in implementing new technologies and that many clients wanted to complete some legal tasks themselves to reduce overall fees. The report starkly outlined the technology issue that lawyers must address in the new age:

If the focus is value, who will determine how the services are actually provided? These questions raise additional concerns as client demands and economic realities intersect with ethics rules. Clients will continue to demand efficiency and responsiveness from their lawyers. They expect lawyers to create efficient internal processes, completing work quickly and for less cost. They expect lawyers to use technology to perform tasks

previously done by junior associates, and some corporate clients refuse to pay for the work of first-year associates.⁴

The ABA Commission on Ethics 20/20 also considered issues of technology and legal services. One of its notable recommendations, adopted by the ABA House of Delegates at the 2012 Annual Meeting, was an amendment of Comment 8 to Rule 1.1 of the ABA Model Rules of Professional Conduct. The amendment provided that, to maintain the requisite knowledge and skill (i.e., competence), a lawyer should keep abreast of changes in the law and its practice, "including the benefits and risks associated with relevant technology."⁵

The Future of Legal Services Is Not Only About the Young

Some remarks to the Commission on the Future of Legal Services concerned needs of the aging population, such as estate planning, Medicare and Medicare Supplement Insurance (Medigap), and Social Security eligibility. Given that the fastest growing demographic of Facebook users is people over age 60, I predict an increase in the number of older users of smartphones and other mobile technologies. The future of legal services must include recognition that the adaptation to new technology by the young will continue, the percentage of older adults using technology will grow, and lawyers must be ready to provide services in the client's



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format of choice or risk being replaced by others that will meet the need.

Use of Technology by Students in Law Schools

IBM's Watson has opened up new opportunities for teaching law students. Unbelievably, the Socratic method of questions and answers used in our first-year contracts class is a process similar to that of creating software applications that can teach the law and provide legal assistance. Instead of the professor asking a student "what if," the application requires students to consider all of the same possibilities. Amazing—programming a machine teaches students to think like lawyers! The Iron Tech Lawyer competition at Georgetown University Law Center provides an example of the technique. This contest involves teams of law students competing against each other to see which can design and implement the best legal app for use by a nonprofit entity. In a recent competition, students designed one app for unemployment benefits hearings. It reviews which evidence is admissible in hearings, specific issues the judge would likely consider, and the burden of proof applicable to the case. Other apps developed at the competition included a Children's Medicaid Appeals Advisor, a Triage and Intake Assessment System, and a Debt and Eviction Navigator for use by social workers to help elderly clients facing eviction or consumer credit difficulties.⁶

Not all the students had experience

with software development. However, they used commercial software that helps those unskilled at programming create webpages with decision trees to process information and issue "reports" useable by consumers or their advocates or lawyers. For each mouse click by a consumer or intake adviser, the law students worked out all legal possibilities to determine where the next click goes. They learn the law in an organic way by programming it into a legal tool.⁷

The Future of Legal Services Involves Technology

Richard Susskind, author of many books on the future of the legal profession, spoke at the Commission's National Summit on Innovation in Legal Services at Stanford University. He warned lawyers about the perils of ignoring technology and staying stuck in previous centuries. "Law should be affordable, accessible, and intelligible for all . . . It's not the purpose of the law to provide a living for lawyers," he said. He predicted that by the 2020s, technology will have fundamentally changed the practice of law, especially at the lower-priced end of the legal industry and that technology will be able to answer legal questions more easily and efficiently than humans. Finally, according to Susskind, "The legal industry is too costly, too slow, too forbidding, too unintelligible, too combative, and too out-of-step with the Internet society."⁸

As I am fond of saying, no longer can

we say that lawyers do not have to do science. Although I do not know what final recommendations the Commission will adopt, I have no doubt technology will be included. Stay tuned! ■

Endnotes

1. <http://www.neotalogic.com/assets/resources/Michael-Mills-Neota-Logic-ABA-Commission-on-the-Future-of-Legal-Services-February-2015.pdf>.
2. Richard Grand & Mark Lauritsen, *Teaching the Technology of Practice: The 10 Top Schools*, 40 L. PRACTICE MAGAZINE 4, July/Aug. 2014, available at http://www.americanbar.org/publications/law_practice_magazine/2014/july-august/teaching-the-technology-of-practice-the-10-top-schools.html.
3. http://blogs.gartner.com/french_caldwell/2014/02/28/gartner-legal-it-scenario-2020-smart-machines-and-lpo-radically-disrupt-legal-profession.
4. <http://www.reinhartlaw.com/services/bus-law/corpgovern/documents/art1111%20te.pdf>.
5. http://www.americanbar.org/content/dam/aba/administrative/law_national_security/resolution_118.authcheckdam.pdf.
6. <http://www.inhouseaccess.com/2014/04/24/georgetown-law-students-present-legal-help-applications>.
7. http://www.abajournal.com/magazine/article/at_iron_tech_students_bring_tech_answers_to_legal_issues.
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other mainstays of the legal/scientific professional world. The author wishes once again to respectfully suggest ways of differentiating between legitimate criticism and junk criticism.

1. What to look for:
 - a. The critic has formal training in forensic document examination.
 - b. The critic has training in statistics if providing statistical information.
 - c. The critic documents proper standards of procedure for processes.
 - d. The critic provides documentation in support of training.
 - e. The source of documentation is peer-reviewed scientific journals.
2. What to look out for:
 - a. The witness claims to or has claimed to be an "expert critic."
 - b. The witness claims expertise in some form of criticism or authority in weaknesses of sciences.
 - c. The witness cannot provide documented training.
 - d. The data are unsupported.
 - e. The source of data is law journals or other unscientific and non-peer-reviewed sources.

Conclusion

The purpose of expert testimony is to assist the trier of fact by explaining the evidence. A properly trained forensic document examiner has the training and methodology to provide reliable information to the trier of fact. Judges have the duty to filter out misinformation or partial truths laced into the mix by unqualified and underqualified "experts" or "critics." Qualified forensic document examiners stand prepared to team with the judiciary in a cooperative undertaking to help ensure scientific evidence is more reliable and effective. ■