

Technology in Law Schools and the Profession: Narrowing the Gap

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Background

In 1992 the MacCrate Report shook up legal academia by identifying a gap between skills needed by modern lawyers, and the doctrinal emphasis of most law schools. MacCrate recognized a series of fundamental skills, including: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. To the extent these skills were underrepresented in law school curricula, the report suggested that they be taught within existing doctrinal courses.

In the 21 years since MacCrate, the practice of law has continued to evolve, with perhaps its greatest transformation arising from technological innovation. We have seen, among many others, the birth and maturation of the Internet; the spread of mobile computing, from laptops to netbooks to tablets to smartphones; the introduction of law firm automation systems; the emergence of electronic filing in courts; and the rise of digital communication such as email, SMS, and web conferencing. Today's lawyers are implementing paperless offices and cloud-based practice-management systems, starting up virtual law practices, and fending off challenges from document preparation services like LegalZoom. Hundreds of blogs, magazines, conferences, listservs, and forums have developed to advise lawyers on effective and efficient ways to utilize technology in their work. Legal technology consultants now occupy a successful niche, especially for lawyers working in solo or small firm settings.

Despite these profound changes, legal education has never considered technological proficiency to be a key outcome. Law professors may debate the merits of audiovisual tools: do they work when they should?; do they facilitate learning objectives or are they just toys?; who should we call when something breaks?; and so on. We use course management sites like TWEN and Blackboard to share information and manage basic course functions. We continue to worry that laptops and other devices distract students in class, and sometimes institute outright bans.

Among many law teachers, technology is warily accepted for the purpose of achieving certain educational objectives. But what if we view technology as a competency that students need to master in order to succeed in practice? In this workshop, we will identify gaps between use of technology in practice and what is taught in our classrooms; suggest ways that we can change what we teach, and the way we teach, to address the disparity; consider the benefits / drawbacks of developing new courses, or infusing technology-related outcomes throughout the curriculum; and propose methods to encourage professors to teach with technology in ways that model the practices of successful attorneys.

Discussion Questions:

- In what ways do you think technology has had the most profound impact on the practice of law?
- What technology skills, if any, do you think should be taught in law school?
- Do you have any observations about law students' technology skills?
- Do you teach, or have you seen others teach technology skills in law school classes?

Example: Drafting and Negotiating Skills Curriculum

Most lawyers do at least some drafting and negotiating regardless of their practice area. Whether they are resolving a dispute or ongoing litigation, helping a client put together a business transaction, or creating a will for the senior matriarch in the client's family, lawyers consistently draft, revise, negotiate, resolve conflict, and perform other related activities using these skills.

And they do so now in very different ways than they did years ago because of technology. Most negotiations take place at a great distance and use telephonic or email communication. Drafting involves redlining with "track changes" and "document compare" in MS Word, for example. Sample forms and example agreements are available on paid sites as well as through a Google search. The practice of law using these basic, core skills has changed as radically as the technology lawyers now utilize.

In two of Professor Hilbert's courses, Transactions & Settlements (which is about drafting, negotiating and client counseling) and Negotiation (which is an advanced negotiation course), students must learn how to use these new technologies for drafting and negotiating and practice using the technology. Course assignments include:

1. Negotiating simulations through email (where Professor Hilbert is copied on each email to monitor student performance and generate examples to share in class);
2. Exchanging drafts where students must provide their colleagues (or opponents) with "mark-ups" using track changes; and
3. Finding sample agreements online and revising (and/or critiquing) the samples for use in a specific fact scenario.

What is so hard for students about using email and telephones, for example, since it is something they use daily and have used extensively for years? Students may have comfort and even expertise using these communication tools for personal activities, but they often leave a lot to be desired for using these tools professionally. Negotiating via email is entirely different than casually sending messages to friends, and the many differences in personal and professional email protocols are not always obvious. Students are often surprised to see what level of detail is required, for example, in painstakingly crafting professional emails in a negotiation where every word matters (and will be scrutinized and potentially used against you at a later time).

For more information, see also:

- Noam Ebner, Negotiating Via Email in NEGOTIATION EXCELLENCE: SUCCESSFUL DEAL MAKING (2011) at <http://ssrn.com/abstract=1949088>
- Noam Ebner et al., You've Got Agreement: Negotiating Via Email in RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE (2009) at <http://ssrn.com/abstract=1392474>
- Melissa Nelken, Evaluating Email Negotiations in ASSESSING OUR STUDENTS, ASSESSING OURSELVES at <http://law.hamline.edu/dri/assessing/>

Other Examples from Our Colleagues at William Mitchell

1. Using state-of-the-art presentation technology (such as smartboards) in trial advocacy courses to simulate what is available in the more high-tech federal courtrooms, in particular.
2. Making presentations using laptop video hardware and software to prepare for video conferencing and presentations.
3. Developing websites for simulated law firms or as actual resources for practicing attorneys.

Teaching Resources

Technology has also transformed how we teach, which has been well documented for years. Less attention, however, has been given to how technology has enhanced how we collaborate as teachers. There are now many online resources that share teaching materials, simulations, ideas, videos, syllabi, sample lessons, and many other useful teaching tools. This new wave of collaboration – all of it facilitated by technology – has no doubt impacted our teaching in significant and positive ways.

As a sampling of these online resources, below are short summaries and links to some of the more helpful sites (leaving many other helpful sites off the list):

[Institute for Law Teaching and Learning](#)

A joint project of Gonzaga University School of Law and Washburn University School of Law, the Institute for Law Teaching and Learning (ILTL) is a clearinghouse of articles and information on law school education, including the semiannual publication *The Law Teacher*. The ILTL site offers a variety of valuable and proven teaching tools and resources.

[Center for Negotiation and Justice](#)

The Center for Negotiation and Justice at William Mitchell College of Law provides an online collection of its simulations with search functions for the specific skills addressed, the amount of class time

recommended, and the target audience. There is also a keyword search to look for specific topics (e.g., faculty as participants, multi-party, scored exercises, realistic documents, and the use of sample agreements or forms). Each simulation includes teaching materials with instructions, learning objectives, and suggestions for some debrief and discussion points.

[Center for Excellence in Law Teaching](#)

The Center for Excellence in Law Teaching, located at Albany Law School, serves as a web-based clearinghouse for materials on teaching and curriculum development, legal education reform and the ABA accreditation revisions based on the "Student Learning Outcomes" movement. The site provides a wide range of teaching resources and also hosts the Best Practices for Legal Education Blog.

[Inspiring Ideas for the Teaching and Learning of Law](#)

This resource collects videos and articles on teaching, learning, thinking, outcomes, assessment, skills, practice, and technology. There is also a thorough collection of resources specifically about how to use technology to improve teaching.

[Teaching and Learning Law Resources for Legal Education](#)

The Teaching and Learning Law Resources for Legal Education site is a clearinghouse for links to organizations, articles and other sites that focus on legal education. The site includes links to resources for teachers and students.

[Legal Education, ADR, and Practical Problem-Solving \(LEAPS\)](#)

This site is a project of the ABA Section of Dispute Resolution's Law Schools Committee to help law faculty incorporate more problem-solving skills instruction into their instruction of a wide range of courses, including doctrinal, litigation, transactional, and ADR courses. The website includes descriptions of various teaching methodologies, lists of consultants who can help on specific courses, and examples of course exercises and other teaching materials.

[Crimprof Multipedia](#)

This site is an online pedagogical resource for criminal law and procedure professors. The site shares videos, teaching materials, etc. It is password-protected, but any criminal law professor can get an account.

Selected Readings and Sites (topical)

Technology in Legal Practice

- ABA LEGAL TECHNOLOGY RESOURCE CENTER. <http://j.mp/17L5zGp>
- Jordan Furlong, *The Evolution of the Legal Services Market* (five part series), LAW21, Nov. 2012. <http://j.mp/17L79rP>
- INTERNATIONAL LEGAL TECHNOLOGY ASSOCIATION, 2012 TECHNOLOGY SURVEY. <http://j.mp/11l2cBl>
- LAW PRACTICE MAGAZINE, ABA Techshow Issue, Mar / Apr 2013. <http://j.mp/11kVWtf>

Legal Research

- UNIVERSITY OF WASHINGTON SCHOOL OF LAW, *Legal Research Guides*, Mar. 2013. <http://j.mp/17L4tuf>
- Susan E. Hauser, *Teaching Civil Procedure with PACER*, ILTL SPRING CONFERENCE, Mar. 3, 2012. <http://j.mp/15idQSy>
- Patrick Meyer, *Law Firm Legal Research Requirements of New Attorneys*, 101 LAW LIB. J. 297 (2009). <http://j.mp/XRo08n>
- Jason Potter, *Google Scholar Bootcamp for Attorneys*, RESEARCH FREEDOM, Mar. 21, 2012. <http://j.mp/17L5aUx>

E-discovery

- DISCOVERY RESOURCES (Portal). <http://j.mp/15pg17g>
- *eDiscovery Guide*, FINDLAW. <http://j.mp/15pf0t>
- Christopher Danzig, *E-Discovery in Law School: Yes, You Need to Learn This Stuff*, ABOVE THE LAW, June 4, 2012. <http://j.mp/17L5Qt1>
- SEDONA CONFERENCE WORKING GROUP ON ELECTRONIC DOCUMENT RETENTION & PRODUCTION, COMMENTARY ON PROPORTIONALITY IN ELECTRONIC DISCOVERY (2013). <http://j.mp/XRq7sX>

Communications / Social Media

- Josh Blackman, *Bloggng Before, During, and After Class*, JOSH BLACKMAN'S BLOG, May 18, 2011. <http://j.mp/11DYsMh>
- COURT TECHNOLOGY AND TRIAL PRESENTATION BLOG. <http://j.mp/17Lfiwp>
- Mark Jacobsen & Brian Ledis, *How to Make Social Media Work for Your Law Firm* (Video), YOUTUBE, Mar. 18, 2013, http://youtu.be/SyU91XBdt_8
- LAW PRACTICE TODAY (special issue on social media), June 2012. <http://j.mp/17Ldy6j>
- Amanda J. Rockingson-Szapkiw & Michael Szapkiw, *Engaging Higher Education Students Using Twitter*, PROCEEDINGS OF GLOBAL LEARN ASIA PACIFIC (2011). <http://j.mp/11kSa34>
- Carli Spina, *Presentation Tools* (Research Guide), HARVARD LAW SCHOOL LIBRARY, Apr. 13, 2013. <http://j.mp/17L6kiQ>
- Ernie Svenson, *Social Media in Lawyering* (Video), TOPICS IN DIGITAL LAW PRACTICE, Apr. 2012. <http://j.mp/15ikHvk>

Web Design / Unbundled Legal Services / Virtual Practice

- ABA LAW PRACTICE MANAGEMENT SECTION: ELAWYERING TASK FORCE. <http://j.mp/17L6WEW>
- Heidi Alexander, *Website Essentials* (four part series on how to build a site for your law firm), LOMAP, Mar. 2013. <http://j.mp/17L9nYh>
- Richard Granat, *Unbundled Legal Services* (video), TOPICS IN DIGITAL LAW PRACTICE, Mar. 2012, <http://j.mp/15il9tq>
- Stephanie Kimbro, *Using Technology to Unbundle in the Legal Services Community*, HARVARD JOURNAL OF LAW & TECHNOLOGY OCCASIONAL PAPER SERIES, Feb. 2013. <http://j.mp/17L7zOQ>
- LAW PRACTICE MAGAZINE, Virtual Practice Issue, Sept / Oct 2011. <http://j.mp/mU8j9N>

Teamwork / Collaboration

- Jennifer T. Edwards & Credence Baker, *A Case Study: Google Collaboration Applications as Online Course Teaching Tools*, 6 MERLOT 828 (2010). <http://j.mp/11kQarr>
- LAW PRACTICE TODAY, special issue on collaboration, Jan. 2013. <http://j.mp/17Ldjbj>
- Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162 (2012). <http://j.mp/17LhTGK>

Hardware / Software / Mobile

- Jim Calloway, *Equipping the Law Office 2012*, OKLAHOMA BAR JOURNAL, Oct. 2012. <http://j.mp/17Lg90f>
- INTERNATIONAL LEGAL TECHNOLOGY ASSOCIATION, ADAPTING TO A MOBILE WORLD (White Paper), Apr. 2013. <http://j.mp/11l3iwZ>
- IPHONE J.D.: LAWYERS USING IPHONES AND IPADS (Blog). <http://www.iphonejd.com/>
- LAWYERIST (Blog). <http://lawyerist.com/>

Knowledge / Practice / Case / Time / Project Management

- INTERNATIONAL LEGAL TECHNOLOGY ASSOCIATION, KNOWLEDGE MANAGEMENT (White Paper), June 2012. <http://j.mp/11l2V5s>
- Stephanie Kimbro & Tom Mighell, *Popular Cloud Computing Services for Lawyers: Practice Management Online*, LAW PRACTICE MAGAZINE, Sept. / Oct. 2011, <http://j.mp/o7vFtW>
- TECHNOLAWYER BLOG. <http://j.mp/17LfvzH>
- LEGAL EASE BLOG. <http://j.mp/17LhuUN>

Technology in Higher / Legal Education

- *10 TED Talks on eLearning*, ELEARNING INDUSTRY, Nov. 4, 2012. <http://j.mp/15itHAp>
- *50 Must-Read Higher Education Technology Blogs*, EDTECH, May 15, 2012. <http://j.mp/11l24BE>
- Jon Garon, *Legal Education in Disruption: The Headwinds and Tailwinds of Technology*, Apr. 15, 2012. <http://j.mp/17rRE53>
- Gene Koo, *New Skills, New Learning: Legal Education and the Promise of New Technology*, BERKMAN CENTER RESEARCH PUBLICATION No. 2007-04, Mar. 26, 2007. <http://j.mp/11lcem1>
- NMC HORIZON REPORT: 2013 HIGHER EDUCATION EDITION. <http://j.mp/11l3Piq>
- Roger Skalbeck, *Tech Innovation in the Academy*, AALL/ILTA WHITE PAPER, THE NEW LIBRARIAN, Oct. 2012. <http://j.mp/11lbXiK>

Courses on law practice technology

- CALI, *Topics in Digital Law Practice: A Free Online Course for Law Students and Law Faculty*. <http://tdlp.classcaster.net/>
- Duke, *Introduction to Technology in the Law Office*. <http://j.mp/11laDMM>
- Georgetown, *Technology, Innovation and Law Practice: An Experiential Seminar*. <http://j.mp/119HIy>
- Northwestern, *Trial Technology: High-Tech Trial Techniques*. <http://j.mp/15ivcij>
- Stanford, *Legal Technology and Informatics*. <http://j.mp/15ivqpy>
- Suffolk, *Lawyering in an Age of Smart Machines*. <http://j.mp/13mgL95>
- Yale, *Legal Research & Technology*. <http://j.mp/15iv2HD>
- Charles Harmon Oates, *Law Practice Technology: A Law School Course?*, Sept. 1, 2012. <http://j.mp/11lbnll>
- Ronald W. Staudt, *Justice and Technology Clinic: A New Model of Delivery* (2010). <http://j.mp/15iefEp>

Teaching Resources

- ABA ADR SECTION TASK FORCE ON LEGAL EDUCATION, *Legal Education, ADR, and Practical Problem-Solving (LEAPS)*, <http://leaps.uoregon.edu/>
- Aaron Dewald, *Blending the First-Year Legal Classroom*, LAW SCHOOL ED TECH, Dec. 18, 2012. <http://j.mp/15istp1>
- INSTITUTE FOR LAW TEACHING AND LEARNING, *Conference: Technology in and Beyond the Classroom* (Mar. 2012). <http://j.mp/11kPLFJ>
- LEGALED (resource for Teaching and Learning the Law), <http://legaledweb.com/>
- UNIVERSITY OF OKLAHOMA COLLEGE OF LAW, *Crimprof Multipedia*, <http://j.mp/11vwxyz>
- WILLIAM MITCHELL COLLEGE OF LAW, *Center for Negotiation & Justice Teaching Materials*, <http://j.mp/11vvTB3>
- WORKING GROUP FOR DISTANCE LEARNING IN LEGAL EDUCATION, *DISTANCE LEARNING IN LEGAL EDUCATION: A SUMMARY OF DELIVERY MODELS, REGULATORY ISSUES, AND RECOMMENDED PRACTICES* (2012). <http://j.mp/139fnl2>