

## Future of Technology and the Practice of Law

By

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Since nearly the beginning of the profession, law firms have been users of technology.

From the time of the fountain pen to the years when attorneys replaced scriveners with court decisions bound in volumes, from shorthand to typewriters, Dictaphones to voice recognition software, technology has always eventually found its way into the legal profession.

Sometimes it can be too easy to look at the wonders of modern technology and think it novel that they might have a significant impact on the practice of law.

But just as they have in the past, so will they in the future—and at a faster pace than ever before.

The ABA recognizes this and, along with state bar associations, is looking at changes to the Model Rules in which they acknowledge that our obligations to our clients—of confidentiality, of privilege, and of competence—are not changed by technology, but must be applied to the environment in which we practice. This includes the technologies we use or, in some cases, fail to use.

As we move into the future, one of the first key recommendations from the ABA comes in the comments to Model Rule 1.1 on 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.”

To paraphrase what many of us have told our clients at one time or another, *ignorantia technologiae non excusat*. As lawyers, we have an obligation to make sure we change with the times and stay on top of available technology that can help us better do our jobs—and better serve our clients.

***Change is the law of life. And those who look only to the past or present are certain to miss the future. — John F. Kennedy***

Change is hard. And it becomes even harder when you’re in an industry that’s known for resisting change.

Whether out of habit or because of what we do, those of us in the legal industry tend to be more risk averse and cautious when it comes to rocking the boat or shifting course.

But that mindset is one that most firms can’t afford to have.



The good thing is that recent advances in technology make it far more accessible than it ever has been. No more do you need to understand “codes” to use a word processor; you don’t even need to use a word processor. Technology is evolving to work, more and more, the way we work.

So, for effective change to take place, you have to understand why it’s so challenging in the first place. With the financial industry suffering more, Big Law is also feeling the crunch.

Combine this with the erosion of small law from the bottom—e.g.: LegalZoom, NoLo press, unbundled services, overproduction of law grads—and the top with pressure from corporate clients, government downsizing, possible openings into corporate ownership and the recent disruptions in large law, the profession is facing a crisis that will force change.

While changing your firm might not be easy, it’s not impossible, either.

### **Process is a Form of Technology**

Peter Drucker wrote that organizations need to invest in changing, modernizing and simplifying processes. This was put forth almost 20 years ago, and yet within the legal industry we see technology adoption happen at a snail’s pace.

Meanwhile, the *pace* of change itself continues to accelerate.

There are certainly law firms who are the cutting edge: innovators and early adopters of technology. But too many firms use old technology i.e. pink while-you-were-out-slips; phone pads; recipe boxes to keep track of docketing, yellow sticky notes, and more.

But firms who continue to ignore the future won’t be able to survive, and there are five main reasons why.

### **Five Technology Trends Lawyers Can’t Ignore**

Of course one could argue that myriad forces are brining change to the modern law firm, but for our discussion we’ll focus on what I consider to be the big five:

#### **1. Alternative Billing (AFAs):**

You might ask what Alternative Fee Arrangements have to do with technology and impact of law. Technology is evolving to meet the needs of the ever-changing legal market.

In some regards, technology solutions are being developed to help firms meet these needs. Alternative Fee Arrangements is one aspect. It’s possible (but not pretty) to do this using pen and paper, or on a spreadsheet. There are technologies that firms are being forced to consider when they decide to go down the path of alternative fee arrangements.

The benefits of AFAs can't be ignored, and are here to stay for many practice areas. Their main advantage is better predictability and risk sharing for clients. Other advantages include more predictable revenues and expenses, and an increase in client demands "no surprises" management by the law firm.

## 2. Predictive Coding

The big craze of late is predictive coding, and all of the other cases being heard of what can and cannot be used for evidence.

Basically, predictive coding has three components:

1. **Predict** - Case experts use Predictive Analytics to find key documents quickly and irrespective of keywords;
2. **Code** - Keyword-agnostic machine learning finds other relevant documents;
3. **Process** - Proven workflow with integrated sampling delivers results to a statistical certainty.

(Source: <http://predictivecoding.com/predictive-coding-explained>)

*In lay terms: It makes electronic discovery more economical.* With the economic advantages of e-discovery just starting to be realized, it's clear that it will continue to become more common.

## 3. Social Media

Social media provides a means of information for potential clients, witnesses, and others. It's an easy, effective way to reach audiences you can't seem to reach via the phone book, print ads or the Internet alone.

Whether you're in the office, at lunch, in court, on vacation, or elsewhere, we can get access to just about anything, from our bank balance and phone bill to the latest sports scores and headline news via our cell phones, laptops and tablet devices.

For attorneys, programs like LogMeIn, GoToMyPC and others allow you to log into your work computer to access information. And mobile firm management solutions like LexisNexis Firm Manager® let lawyers bring their practice with them, anytime, anywhere.

Secure client portals are also gaining ground among large firms and smaller practices alike. The days of saying "its in the mail" is not something many clients want or expect to hear. Clients today want instant information about their case, quick access to documents, and a secure way to exchange information with their attorneys, and client portals provide this and more.

## 4. Big Data/Predictive Analytics

The accumulation and integration of disparate data sources allows us to better understand the business of law, and better react to the market and our clients' needs.

This has led to new FRCP Revisions effective December 1<sup>st</sup> – Changing the way lawyers who practice in federal courts comply with e-discovery. It's also leading to a higher use of forensic specialists, e-discovery experts, and data analysts.

### **Predictive Analytics**

- Early case assessment (ECA) refers to estimating risk to prosecute or defend a legal case. Global organizations deal with legal discovery and disclosure request for electronically stored information “ESI” and paper documents on a regular basis.”

#### **IMPACT:**

- Use of ECA Tools is changing the landscape for competition
- More business are selecting legal representation based on RFP

ECA becomes more important to keep up with competition and for lawyers to actually turn a profit on the legal services they provide clients.

### **5. The General Recession**

For more than four years now, the general recession has changed the way we have to do business as lawyers. We have to work smarter and more efficiently in order to bring in the same returns we used to.

In 2008, approximately 6,000 lawyers were laid off from large law firms. In 2009, another 4,600 lawyers were laid off. These numbers are not including legal staff. These demographic changes had alarming impacts on the legal industry and changed the competition landscape as we know it today.

### **The Upshot: Three Trends You Can Bank On for the Future—and How to Take Advantage of Them**

In May 2012, Forrester Research published an article for CIOs called “Plan Strategy Around 10 Business Trends.”

While not all may be applied to law firms, there are three which transcend industry and can serve as a guide for the future:

1) **Market trends will focus on the customer.** We hear this time and time again, and it's not going away: client service is paramount to future success in the legal industry. As discussed earlier, client expectations are rising, as is their ability to look elsewhere for other representation, both real and virtual. Treat your client like gold, and watch your billables correspond in turn.

2) **People trends will shape our future organizations.** For attorneys, evolving social technologies will change the way we communicate with our clients, our staff—even opposing



council. Mobile technology will continue to be more prevalent and more powerful than ever, truly allowing a virtual law office anywhere there's an Internet connection.

3) **Economic trends will shape market opportunities.** From emerging economies overseas to greater economies of scale closer to home, a global increase in business opportunities means a greater need for legal representation via contracts, M&As, LBOs et al.

In the end, the future of technology and the future of law are tied together, whether or not most firms are ready for it. The most successful attorneys and practices of any size will be the ones who learn to embrace the concept of change and adapt to evolving expectations vis-à-vis clients, people and markets.

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