LegalTech: Time for Intermediaries

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I have the dubious privilege of serving on a faculty curriculum committee that, among other things, is trying to work out whether and how to integrate new technologies – e.g, AI-driven legal analytical and drafting tools and data-driven litigation assistance – into our teaching.

Much like many law firms, as a faculty and staff we have very little (arguably, no) in-house experience with any of the plethora of legal automation products being marketed or projected, other than perhaps for document review/e-discovery. We look out at the remainder of the technology landscape, and we see only murk and chaos. Even more than law firms, law schools tend to be cautious about change. We are risk-averse in part because we're fiduciaries for our students' education and their education dollars. We see curricular content as a limited, valuable, contested resource; we can never staff all the courses we'd like to offer in the Platonic ideal of a law school. We don't want to impose or encourage something that could prove to be tomorrow's Betamax. On the other hand, we do recognize, more than ever, that the economics of the profession demand that we make all reasonable efforts to equip our graduates with skills they will be called upon to use in practice. We do not want or expect many of our graduates to be coders (although we do in fact offer classes in coding for lawyers); we do want our students to be ready to make intelligent use of the tools that their future employers will put at their disposal. And, increasingly, we hear that hiring partners want their young lawyers to guide them through the thicket of new technology and help them decide what they should invest in.

Thus, proponents of a course that purports to teach technology beyond document management need to believe, and if pushed need to be prepared to make a case, either that the technologies they are offering to (and if the course is required, then force-feeding to) students, will actually be useful, or that the experience of working with what they cannot promise will avoid being the Betamax of AI will nonetheless create reflexes and habits of thought that translate well when a VHS or recordable DVD analogue emerges. That is hard to do, given the very wide range of products being marketed.

As a law school in the middle of the prestige bell curve, we recognize the dangers of having graduates turned into the future 'task rabbits' of the legal profession, doing legal piecework for entities that will pay low hourly wages with no benefits for doing routinized portions of more complex tasks. We recognize the possibility of outsourcing to foreign lawyers, even cheaper task rabbits, although early experiments in this direction do not seem to exhibit indicia of massive success.

We do not want to sit around and wait for some market-driven standards to emerge; we'd rather our graduates have some mastery of new technology rather than

be replaced by it, or by the people who do. That means we must take some risks. Ideally, however, they would be at least somewhat informed risks – and not too expensive either. As a curriculum committee we've been sounding out experts on legal technology asking them what products we should expose our students to. Not only is there no consensus, but some of the most informed people, the ones who've looked at multiple tools and platforms, are the least willing to make guesses.

Perhaps the market will shake out in the next two or three years. But the technology seems to be moving quickly and there is a lot of investment. That could be a recipe for a longer period of ferment and uncertainty. What we need, therefore, are intermediaries, people without a financial interest in selling us and our future graduates on their product, but with hands-on experience. We need them to tell us whether products are (1) (relatively) easy to use, and what the learning curve looks like; (2) whether the outputs are reliable; (3) whether they are secure; (4) and something about the cost-benefit case.

The first and last of these four are likely the easiest: evaluating usability of LawTech is much like what hobbyist magazines do for software, stereos, and computers, only with higher stakes. Presumably either you interview users, get a copy and try hands-on, or both. And one hopes that the value proposition will be sufficiently unsubtle as to be evident; if it is not, that's a warning flag right there.

But the other two are much harder.

Reliability is a subtle thing, and it likely isn't evident from a hands-on test period, even one of several weeks. How do you tell if a tool that purports to write briefs does a good job? You run some tests and judge the results. But that is not very scientific, and may fail to detect all sorts of edge and other cases where the system performs less well. Designing good tests is not easy. In this connection, consider Paul Hellyer, *Evaluating Shepard's, KeyCite, and BCite for Case Validation Accuracy*, 110 LAW LIBR. J. 449 (2018), which found that in 85% of cases where at least one of three citators flagged negative subsequent history, at least one of the other two did not agree. That's not something you could detect from kicking the tires of WestLaw.

Worse, working out whether a tool is secure takes some expertise. Part of the story can be gleaned from a careful read of the user agreement – does the tool, for example, promise to copy everything the user does, including client confidential information, and aggregate it into the Big Data pile that will form the basis for the next release of a Machine Learning system? What representations are made about cloud and other data security? That covers honest suppliers; but some apps cheat, even unknowingly (e.g., using libraries and code that turn out to be malware). A real security analysis requires some tests to see what the tool actually does with its data, and that requires specialist skills few lawyers have.

What sort of intermediary can provide this information? I can envisage three basic models. The key to each is whether there is a plausible funding model.

Free-Standing Reviews. Whether a commercial entity, working on the *PC Magazine* model, or a non-commercial project like Consumer Reports, the revenue model would be selling reviews to subscribers. (Given the volume of products, relying on, say, a monthly feature in *The American Lawyer* seems unlikely to meet our needs.) The key issue is price. There are some private services, such as Gartner, that price their reports starting in the low four figures and rising. While large firms can perhaps afford those prices, neither small firms nor law schools will pay them. It is doubtful, however, that the market for reports would be big enough to sustain a reliable rater at a lower price point.

A second model is a commercial or non-profit enterprise that would issue some sort of 'Good Housekeeping' certification. There are certainly many models of this, but the most viable in this space likely would have to charge recipients either to be tested or to exhibit the certificate. Charging to be tested creates an inevitable risk of bias in favor of certification – if you're too tough you go broke. (Consider the supine state of credit ratings agencies before the financial crisis.) Charging to exhibit the (trademarkable) certificate may carry less risk of bias, but also may produce far less revenue.

A third model is a pure NGO doing it for the good of the legal academy and the legal profession more generally. The testing entity could be free-standing, or might be housed in an existing entity (the American Bar Foundation), or might be housed in a law school. I'm sure our school would love to house a Practical LawTech Initiative -- if only we could find someone to defray the startup costs. Even in this third case, however, some funding models create a risk of real or perceived bias. The University of Miami School of Law has, or had, a deal with MiamiLex, a subsidiary of United Lex. If Miami's testing center started extolling United Lex's services, someone somewhere is sure to suspect a Holmesian bad person at work.[1] In time we might even transition to a certificate system of our own, that would provide at least some of the money needed to ensure continuity. And in the very long run, AIs might even put us out of business.

[1] At some point the FTC might step in, much like it has with online 'influencers' who are paid to endorse products; but FTC regulation would at most require the sort of disclosures few people actually read.