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Introduction, Justice, Lawyering and Legal Education in the Digital Age (symposium editor with M. Lauritsen)

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JUSTICE, LAWYERING AND LEGAL EDUCATION IN THE DIGITAL AGE

INTRODUCTION

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The legal profession is endangered. Law schools are in trouble. New lawyers are unprepared for economic and technological reality. There is a vast unmet need for legal services for low- and middle-income people. This symposium explores new solutions that address these overlapping problems. They include new law school courses that teach relevant practice technology within rich intellectual contexts of doctrine, ethics, history, and theory. This issue provides a wide-ranging view of law school courses and projects in which students and faculty enlist the power of modern information technology to advance teaching, scholarship and access to justice.

Several cross-cutting themes clearly emerge in this collection:

- Advanced information systems have rapidly become ubiquitous both in the subject matter of legal work and in the processes through which that work is done. The legal academy can no longer afford to give those systems as little attention as it presently does. Lawyers can no longer afford to have as little understanding of algorithms, ontologies, and other computational concepts as they do.
- By studying—or better yet, *building*—software systems that perform some of the tasks that lawyers and judges do, future (and present) legal professionals gain insight into emerging technologies at the center of modern law practice and also develop core competencies across a range of new and traditional lawyering skills.

The authors of the nine articles/essays in this symposium are committed to the value of teaching law students about technology. All are optimists about the potential that technology offers for increasing access and lowering costs of legal services to the under-represented, low- and middle-income people facing justice problems. Most of the authors set up their arguments and their proposed solutions by agreeing with the attacks on the profession and the academy by critics of pyramid law firms and overpriced law school instruction. So take it as a given for these articles that the law firm economic model of the past

30 years is broken and that the U.S. needs fewer lawyers and lawyers who cost less. Take it as a given that modern information technology will drive efficiencies and increased access to services and lower costs. Take it as a given for these authors that law schools are too expensive, students have too much debt and the prospects for high paying jobs for new law graduates will be limited and constrained.

Not surprisingly then, the articles by Ron Staudt and Andrew Medeiros; Conrad Johnson and Brian Donnelly; and Tanina Rostain, Roger Skalbeck and Kevin Mulcahy each offer a range of solutions and innovations that have a solid core of consensus. These three articles argue that law schools should offer clinics or hybrid courses that teach significant doses of technology, and that such courses teach core competencies beyond merely the technical skills the courses demand.

Ron Staudt and Andrew Medeiros, in *Access to Justice and Technology Clinics: A 4% Solution*, argue that courses, modeled on Staudt's Justice & Technology Practicum at IIT Chicago-Kent College of Law, can both lower barriers to justice for low income people and significantly improve the practice readiness of emerging law students.[1] Students in the practicum learn traditional legal skills and soft skills while building A2J Guided Interviews® for use by statewide legal aid organizations. While writing these legal systems, students learn about emerging technologies that are becoming increasingly important in the legal profession as firms adapt to their clients' demands for more legal services at lower cost. Through the Access to Justice Clinical Course Project, faculty at six other law schools are adapting Staudt's course model, incorporating the use of A2J Author into their courses, and developing course kits so that faculty at other schools can easily develop similar courses.

Conrad Johnson and Brian Donnelly are educational pioneers whose Lawyering in the Digital Age Clinic has taught law students deep lessons in law practice and technology in a thoroughly professional setting. Along with Mary Zulack, they have focused the attention and learning energy of Columbia law students on building the analytical framework and practical skills needed for today's practice world. In *If Only We Knew What We Know* the authors explain their clinical education process as knowledge management.[2] Knowledge management is

1. Ronald W. Staudt & Andrew P. Medeiros, *Access to Justice and Technology Clinics: A 4% Solution*, 88 CHI.-KENT L. REV. 695 (2013).

2. Conrad Johnson & Brian Donnelly, *If Only We Knew What We Know*, 88 CHI.-KENT L. REV. 729 (2013).

the science of making the tacit explicit. In this essay the authors make explicit the theories that guide their work. They describe the three essential lawyering tasks: to gather, manage and present information. Then they dive more deeply into the intersections between modern information technology and the "manage" task. They explain how expert systems technology, of a wide range of sophistication, can be used by law students to make tacit knowledge of experts explicit. Using A2J Author® their students made the expertise of Judge Fern Fisher available to underserved defendants in the New York Housing Court. "We see knowledge management applications like A2J [Author] as a practical and elegant means to promote the transfer of knowledge from tacit to explicit, thereby facilitating 'reflection-in-action.'"[3]

In *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, Tanina Rostain, Roger Skalbeck and Kevin Mulcahy argue that law students should prepare "legal apps" because of the powerful educational benefits that such work delivers.[4] Pointing to projects built by their students over the past two years creating expert systems in Neota Logic and A2J Author software, the authors assert that students learn to think about legal regimes as systems, but also learn legal analysis, empathy and plain language authoring. Most importantly, the authors argue that building systems has become a critical task central to the practice of law.

Submissions by Kevin Ashley and the tandem of Richard Granat and Stephanie Kimbro bracket these three clinic proposals in a theoretical/practical framework. Ashley carefully maps out the lessons that law students can learn from studying and working with artificial intelligence applied to legal tasks. Once so highly esoteric that only a handful of "law and" experts could follow the developments in the field, AI is now mainstream as courts, consultants and litigators struggle with e-discovery and predictive coding. On the other hand, Granat and Kimbro catalogue the challenges facing new lawyers who must master business and technology processes optimized for the Internet age. Once so practical that it was thought insufficiently rigorous for university law school curricula, law practice management is now deep and difficult and, according to Granat and Kimbro, a necessary part of a law school education.

3. *Id.* at 737.

4. Tanina Rostain et al., *Thinking Like a Lawyer, Designing Like an Architect: Preparing Students for the 21st Century Practice*, 88 CHI.-KENT L. REV. 743 (2013).

Richard Granat and Stephanie Kimbro are two of the leading authors, practitioners and evangelists for elawyering. Each has developed several successful online legal services enterprises and each has written extensively in the legal press about e-lawyering. In their article *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, they argue that current labor market conditions require that law students learn about law practice management and technology as a required part of law school instruction.[5] The article is less a description of a model or paradigm than a requirements study. The authors identify and describe topics that they deem to be essential if graduating law students are to be able to launch their own practices as solo and small firm attorneys. The requirement list is daunting and the argument is compelling. They urge law schools to establish law practice management courses that teach business planning, project management, outsourcing, technologies for law practice and the ethical implications raised by each of these topics.

Kevin Ashley is the country's leading computer scientist/legal academic working at the junction of law and artificial intelligence. He has written a tour de force thoroughly dissecting the topics that can be studied in a Law and AI seminar.[6] He maps each of these topics to specific lessons about legal reasoning and the insights about new technology for law practice that each topic can deliver in a carefully planned course. His analysis teases out lessons about legal rules, reasoning with cases, legal argument and digital document technology and maps those lessons to the readings and projects that he has structured into his seminar. For example, he describes the lessons he teaches about legal rules, including semantic and logical ambiguity of rules and the impact of structure and unstated conditions on the meaning and application of legal rules. His exploration of legal reasoning is full of examples and illustrations. His analysis builds to an important section explaining the lessons that students need to learn about the information revolution and the impact of the digital revolution on law practice with a special emphasis on the digital document technologies at the core of e-discovery and predictive coding. As the technology of legal practice catches up with the aspirations of researchers, such seminars play an important role in legal education.

5. Richard S. Granat & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757 (2013).

6. Kevin D. Ashley, *Teaching Law and Digital Age Legal Practice with an AI and Law Seminar*, 88 CHI.-KENT L. REV. 783 (2013).

Oliver Goodenough's powerful essay, *Developing an e-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise*, offers a compelling set of justifications supporting significant expansion of the law school curriculum to include the teaching of the use of technology by lawyers.[7] Goodenough's recent experience bringing a group of Vermont law students to the Legal Tech conference in New York City triggered the essay's initial insight: that the development and use of legal technology tools is not merely a form of support for legal work, but constitutes legal work itself. Building off this observation, Goodenough recommends that law schools should adopt an e-curriculum that includes not only specialty courses, such as those proposed elsewhere in this symposium, but also "across the curriculum" inclusion of technical instruction. This goal can be accomplished by bundling e-discovery instruction, for example, with doctrinal subjects such as civil procedure and evidence, or document assembly instruction with transaction-focused courses. Grounding his analysis in three principles—value added, values added and economic sustainability—the essay relentlessly draws the reader to the conclusion that law schools must teach the technology of legal practice.

In *Law Schools as Knowledge Centers in the Digital Age*, Vern Walker uses Hofstra Law's Research Laboratory for Law, Logic and Technology ("LLT Lab") as a model of a law school knowledge center, where legal practice, research, and education can be fused into a single program with the primary objective of resolving real problems in society.[8] Throughout the sciences, research laboratories at universities preserve and transmit knowledge of the past, while developing new knowledge necessary to address new problems. University researchers frequently collaborate with private enterprise by developing the basic knowledge to solve a problem, evaluating the effectiveness of the research, and disseminating the knowledge they've developed, which provides the spark necessary for private innovation and drives productivity. Traditionally, law schools disseminate the knowledge they generate by writing journal articles and lecturing at conferences. While law school clinicians also engage in resolving real problems for real clients as a method of instruction for some, Walker's discussion of LLT Lab projects highlights a great opportunity being missed by most law schools.

7. Oliver R. Goodenough, *Developing an e-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise*, 88 CHI.-KENT L. REV. 845 (2013).

8. Vern R. Walker et al., *Law Schools as Knowledge Centers in the Digital Age*, 88 CHI.-KENT L. REV. 879 (2013).

Walker's work demonstrates that a law school as a knowledge center should also address larger justice problems by creating new and effective legal knowledge, while simultaneously training law students.

Will Hornsby, staff counsel for the ABA and expert on the delivery of personal legal services, offers a new perspective on the causes of the failure of lawyers to serve the legal needs of moderate-income people. The usual explanation is that people in need of a lawyer for personal needs forgo those services because of the cost. Hornsby argues that even though increased technical efficiencies and competition have driven down the costs of legal services, many low- and middle-income Americans still fail to seek out lawyers to address their legal problems. He summarizes studies about why legal needs go unmet, noting that cost is sometimes a factor, but not always the factor in the decision to forego legal representation. In many markets legal services are surprisingly affordable. More forms of and channels for such services are available than ever. And law remains a central topic in hit movies, television shows, and novels. Why then do most potential clients not appreciate the relevance of the legal profession to their own circumstances? Hornsby blames the gap between supply and demand on the failure of lawyers to engage potential customers. In *Gaming the System: Approaching 100% Access to Legal Services Through Online Games*, Hornsby asks us to consider whether massively multiuser online games on legal subjects may be part of the solution.[9] Online gaming has become a powerful economic force, but has also shown an ability to shape how gamers think and act. Under Hornsby's proposal, online games targeting laypersons will expose gamers to the legal system and provide a better understanding of the legal services that are available to them. Games could provide an opportunity for law schools and legal services organizations to develop a larger market for the legal services that attorneys provide, while also opening a new revenue stream for those that engage in game development.

Finally, Marc Lauritsen takes up the social policy and constitutional issues involved when legislators and bar associations seek to regulate software solutions to legal needs. In *Liberty, Justice, and Legal Automata*, Lauritsen, co-editor of this symposium, reviews the scattered cases that consider the provision of automated legal systems to be the unauthorized practice of law.[10] Lauritsen argues that such a

9. William E. Hornsby, Jr., *Gaming the System: Approaching 100% Access to Legal Services through Online Games*, 88 CHI.-KENT L. REV. 917 (2013).

10. Marc Lauritsen, *Liberty, Justice, and Legal Automata*, 88 CHI.-KENT L. REV. 945 (2013).

conclusion not only is unwise policy, but also violates the First Amendment. "There should no more be limits about what we can code about and publish than what we can write about and publish," Lauritsen explains.[11] This conclusion seems like an obvious extension of the current free speech rights that protect publishers of legal information, but until this issue is resolved by courts and legislatures, the specter of UPL hangs over many law and technology initiatives.

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We have been honored to edit this collection, and have been awed by the power and range of its contributions. May they help accelerate sorely needed transformations of legal education and expansions of access to justice. We trust that even law professors who are not enthused about technology will find inspiration here.

11. *Id.* at 967.