Tech-wary lawyers told to innovate or perish

By Brandon Gee
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Between sweeping new electronic discovery amendments, a proposed addition to the Rules of Professional Conduct stating “a lawyer should keep abreast of ... relevant technology,” and the recent public reprimand of a Newton attorney who failed to do just that, members of the bar in Massachusetts are being told loudly and clearly that they can no longer afford to be Luddites.

It’s a message that two law schools in Boston have wholeheartedly embraced, even as practicing attorneys continue to debate whether it’s worth devoting time to learning new technologies at the expense of writing, reading, thinking and other traditional lawyerly tasks.

Luke Bierman is the associate dean of experiential education at Northeastern University School of Law. A third-generation lawyer, Bierman believes his grandfather would be perfectly comfortable sitting in most law school classes today, nearly a century later.

That’s a problem, Bierman says, “considering what the world was like in 1922 and what the world is like in 2014.”

Since law schools were confronted with a critical assessment of legal education — in the form of a 2007 report by the Carnegies Foundation for the Advancement of Teaching — they have been engaged in the existential struggle of trying to figure out how to churn out lawyers who are prepared for a brave new world of legal services. Both Northeastern and Suffolk University Law School believe they have found their answer in technology.

The result most certainly isn’t your granddaddy’s law school.

For starters, aspiring lawyers of the past couldn’t “major” in technology, an option Suffolk Law School announced late last year.

They also weren’t taught about design thinking or invited to “Meet-Ups.” Instruction didn’t involve video conferencing. They were never offered courses about “smart machines.” They didn’t develop litigation apps or use Twitter in class. And their professors certainly weren’t wearing Google Glass when they lectured.

“We’re taking many steps that go well beyond just window dressing” in response to mounting criticism of law schools, says Andrew M. Perlman, professor and director of Suffolk’s Institute on Law Practice Technology and Innovation. “If graduates have this kind of background, they’ll be more attractive to clients than if they came out of law school just knowing how to practice law in the traditional sense.”

Debatable

The approach has its critics, which was driven home to Perlman in January when he took to a popular online legal ethics forum to argue that, because technology is transforming the delivery of legal services, lawyers who fail to keep up “may suffer through an increased likelihood of discipline or an inability to compete effectively in the legal marketplace.”

Perlman concluded that “law schools that fail to prepare their students for these changes are doing their students ... a disservice.”

The post prompted a spirited debate and a fair amount of pushback. Stephen Gillers of New York University School of Law warned that “every hour taught about how to manipulate a spreadsheet is an hour lost to substantive law
Douglas R. Richmond, a managing director in the professional services group of Aon Risk Solutions in Chicago, wondered why lawyers wouldn’t simply delegate tech tasks to others, writing: “I think we are some distance away from needing to teach ‘tech skills’ in law school.”

Proponents of tech-centric legal training point to a growing body of evidence that suggests the writing is on the wall, including an October article in the ABA Journal that notes while revenue has been essentially flat in recent years at large, traditional law firms, business is booming for many legal vendors that use technology to more quickly, efficiently and cheaply do work typically done by such firms.

“It’s not a matter of whether or why lawyers should take advantage of this; it’s about survival,” Perlman says. “The law is not immune from these trends. Lawyers ignore them at their peril.”

Perlman and Bierman are adamant that what their schools are teaching students is just as important for practicing lawyers to learn, too.

“In the old days, what lawyers brought was the ability to find, convey and understand the law,” Bierman says. “You had to know how to use the books and do research and follow things up. That, increasingly, is available to everybody through the wonders of technology. That genie’s not going back in the bottle.”

Before Perlman was tapped to head Suffolk’s new institute, he was chief reporter for the Ethics 20/20 Commission, a review by the American Bar Association of its model rules of professional conduct. One of the commission’s accomplishments was an amendment to make clear that lawyers have a duty to be competent in technology. That language may soon be added to Massachusetts’ Rules of Professional Conduct. The Supreme Judicial Court’s advisory committee on the rules is accepting comments on it and other proposed revisions through March 2.

If approved, the change would come on the heels of not only new electronic discovery rules that took effect this year, but also the public reprimand of Newton lawyer Kenneth P. Reisman in October for mistakes made during a business lawsuit involving information stored on a laptop computer.

The Board of Bar Overseers noted in the reprimand that Reisman “was relatively inexperienced in the relevant area of discovery practice”; one of the conditions of his discipline was that he attend a CLE program on electronic discovery.

Local law firm leaders confirm the marketability of tech skills.

“Wearable technologies, like Google Glass, are not merely fanciful tools for the future,” says Lynn A. Kappelman, chair of the labor and employment department at Seyfarth Shaw in Boston. “Companies in all industries — including manufacturing, health care, retail, hospitality and pharmaceutical — will be using these technologies to gather data to improve productivity, efficiency and communication by 2015.”

As lawyers who are advising employers, Kappelman says the members of her firm would be remiss if they didn’t learn about the technology and look for ways to incorporate it in their own practices to drive innovation, productivity and efficiency.

“Any lawyer who is conversant with these tools will have an advantage at our firm,” Kappelman says.

Ronald W. Ruth, managing partner at Sherin & Lodgen in Boston, says lawyers essentially are in the information business and that those who are able to use technology to manage and manipulate vast amounts of information will have a leg up in fields from discovery to mergers and acquisitions.

“Being able to manipulate [data and information] and do so quickly is a great skill and asset that lawyers need today and will continue to need in the future,” Ruth says. “It would certainly be an attractive attribute in a job candidate.”

**Confronting skepticism**

One of the major aims of Suffolk Law School’s new “Legal Technology and Innovation” concentration is to turn out competitive graduates. Among other things, students learn about automated document assembly and legal project management.

Suffolk also introduced a class on “Lawyering in the Age of Smart Machines,” in which students were introduced to coding and document automation through programs such as HotDocs Developer and A2J Author, designed for use by non-programmers.

Marc Lauritsen, founder of a knowledge management software maker, was the instructor. He fielded questions from law students of all levels, skeptical of the applicability of the skills he teaches.
Lauritsen responded to his critics by sharing his vision of the legal profession, in which hybrid “cyborg” representation allows lawyers to thrive.

“To the extent that you can efficiently automate document assembly, you get rid of repetitive, unpleasant work and allow the lawyer to focus on wisdom and problem-solving,” he says. “It’s a much more pleasant career.”

Perlman is an early adopter of Google Glass and uses the technology when he teaches. For example, students submit questions via Twitter, which are seamlessly displayed for him via the glasses.

Northeastern has taken a different approach with its “NuLawLab,” which the school calls a cross-disciplinary “hub” for innovators to abandon the traditional model of practicing law to find new solutions for delivering legal services.

Bierman says the legal profession is just at the beginning of a transformation and that Massachusetts lawyers and institutions should take advantage of the state’s innovation and technology resources. That’s why Northeastern decided to launch a “lab,” instead of a more traditional program, with the hope of developing a community around the particular issue.

The lab has been a host to speakers, too, as well as “meet-ups” for lawyers and professionals interested in innovation in the law. Those have drawn increasingly more attendees, with recent numbers around 75 people.

Bierman and Northeastern Law Dean Jeremy R. Paul believe the wisdom of their approach has been reinforced by the recent announcement that Bierman has been hired to become the new dean at North Carolina’s Elon University School of Law, which was established in 2006.

“When I came here, there were less than 10 schools around the country that had someone on the faculty or in the administration who was responsible for experiential education,” Bierman says of his position at Northeastern. “There [are] now over 50. … I think [Elon’s] interest in having me come is a result of the approach I’ve taken here at Northeastern and out in the legal education community. It’s not just that it’s experiential, it’s that it’s responsive to what lawyers are going to be doing out in the real world at a time when technology is extremely important to us as a society and economically.”

Former Lawyers Weekly reporter Julie McMahon contributed to this story.

SIDEBAR:

By the numbers: Lawyers use of social media

Figuring out which technology skills need to be taught to lawyers and law students, which they can be expected to pick up on their own, and which should be reserved for IT specialists may take time to sort out, but Ari Kaplan rejects the assertion by critics that greater integration of technology into legal education must come at the expense of teaching the actual substance and practice of law.

“Exploring the promise of technology and embracing the art of legal education are not mutually exclusive,” the New York-based lawyer-turned-consultant says. “In the modern digital classroom, new tools will be used to enhance the learning experience, rather than replace it.”

While some amount of resistance is to be expected, Kaplan has anecdotal data that suggest practicing lawyers largely are, in fact, embracing technology. His surveying of hundreds of lawyers in recent years shows that while just 68 percent had an account on the professional networking site LinkedIn in 2011, 83 percent did by 2013.

The number of lawyers using Twitter saw a similar surge, from 12 percent in 2011 to 35 percent in 2013.

The figures now nearly match those Kaplan has gathered from law students, who were much more active than practicing lawyers on social media in previous years.

— Brandon Gee

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