The Future of Law – What's It Going to Look Like?

I recently listened to a conference call on the future of the law. The speaker was a prominent luminary in the estate planning field, but not known as much of a futurist. I was VERY disappointed in the presentation. He spent most of the time talking about how the law had ALREADY changed in the past 40 years.

Heck, he spent a couple minutes talking about the adoption of punch cards to do word processing back in the 1960s. He acknowledged that things WOULD change, but gave little insight into how.

So, I paid $159 to hear about the future, and I didn't get my fix. So, I figured I'd bring it here and see what turns up. I'll go first...

To begin with, I think the practice model that relies on attorneys being the "keepers of secret knowledge" is going to die. We can't keep the information trapped in a bottle. We have to assume that the answer to just about any legal question is going to find its way onto the internet. I also think we aren't going to be able to maintain a position as the "sole provider of legal documents."

So, what then? What will we do?

I believe that lawyers will fall into two broad categories: (1) litigators and (2) risk managers. I think the litigation part is obvious. But, the risk management part is not.

Let me make the point using a different field - nutrition. I think it's an apt analogy. There is lots of information online about nutrition. Some of it is even true. Everyone has unique tastes and dietary needs. So, how does a person select a diet?

Well, they can either search through the voluminous, often conflicting, information online and design their own dietary plan, or they can consult an expert. In that scenario, there is tremendous value in an expert who can tell me which information I can trust, which information applies to me and my goals, and then helps me implement that plan in my life. It would be an added bonus if they could provide me with some way to track my progress and make sure that I'm on track and safe.

In other words, the future expert isn't someone who KNOWS things. He is someone who can SORT that knowledge in a meaningful way and assist others in applying it.

We have heavy pressure from LegalZoom and other online services. For some reason, attorney insist on calling this "do it yourself" planning. I'm not sure why people allegedly trained in the precise use of words would somehow look at a situation where the consumer pays someone else to type a document and call that "do it YOURSELF." I bring that up to make a point. Most attorneys are analyzing the future from a very self-centered viewpoint. When doing it WITHOUT ME necessarily means doing it YOURSELF, then we are absolutely not seeing it from the customer's viewpoint.

As long as we persist in this wrongheaded labeling of our non-lawyer competition, we will fail to win the race for the future of the law.

So, what is left? Well, I think the answer is: education, coaching, risk management and implementation assistance. The successful lawyer of the future will provide information, help people understand and apply the information to the decision-making, manage the effects of those decisions and help the client implement the things that the client cannot handle himself.

To illustrate the point, suppose that an attorney had a complete dossier on a client. The attorney had complete knowledge of everything in the client's life. Now, suppose that client needs a simple document. Why can't an attorney provide simple document creation services at a price similar to LegalZoom? The actual creation of the document has never been the expensive part. It's the selection of the terms. But, if we know everything about someone, that can be turned into a very routine task.

And, in the future (i.e. by 3:30 p.m. today), it will be possible for clients to share everything about themselves using online collaboration tools.

So, I think the lawyer of the future will use information-sharing and collaboration tools to remove most of the fact-finding and analysis from the process. Our job will involve helping clients use those tools. That's the only future-proof service we can provide.

In other words, our job will become telling people what matters, and what doesn't. Then again, that's been our job all along.

Cheers,

David Allen Hiersekorn, California

David, isn't the information already outside of the bottle? Given enough time, the client can learn what you already know. They are making the trade off of their time and money for your knowledge.

Anyway, I like thinking about collaborative aspects of the practice in terms of offloading some my organizational tasks to others. I like the idea of webforms that allow clients to give me the info that I need and feeding that info directly into my process which will spit out a document that I can work with and tweak as needed using my knowledge of the legal stuff. But I think we are already there.

Mike Wright

I see a future where the cost of litigating claims under $25,000 is cost-prohibitive. People will go pro se or not at all and businesses will just write off the debt for tax purposes.

Brian J. Hughes, Massachusetts

How far into the future should we speculate? By 2050, I think there will be very few lawyers left. I predict no more courthouses; all appearances by virtual conference from your computer. No more transporting prisoners or courtroom security required. All domestic disputes will be resolved by a computer program which assembles all the data from each party, reviewed by a magistrate without a hearing or argument, and a decision that is entered into a central registry for all States and US Territories. Appeals handled same way, except decision is reviewed by a tribunal. Also, by this future date I think we will have new legislation requiring everyone to have personal liability insurance affectionately known as ChelseaCare. This will result in no further litigation between private parties or businesses; merely arbitration between respective insurance adjusters. The Smithsonian will add a lawyer display replete with suitcase, legal pad, and smartphone.

D.A. "Duke" Drouillard, Nebraska

A couple of thoughts.

Attorneys most certainly can provide simple documents at legal zoom prices. But we don't and there is a reason for that.
We are held to a much higher standard then LegalZoom when it comes to those documents. Yes, we have to cover our rears, Legalzoom doesn't. What's going to happen to Legalzoom if someone takes a document from them and fails to properly execute it. Or discovers too late that the document doesn't fit what they want.

When that person goes to an attorney, we have to take their needs, including those needs they don't even know they may have, and what the client's goal is and create the proper document that is going to accomplish the client goal and meet their needs.

A good example is all those single parents who come in and want to make a will and want to name someone other then the other parent the guardian if die. Well I can certainly do what Legalzoom does, hand them the document they asked for and keep my mouth shut. I'm also likely to get sued, legalzoom isn't. So instead, I have to inform them that sorry but if other parent is still alive they get the kids automatically. And then we can have a discussion about what options are available to avoid that, including letting the potential guardian know they need to file for guardianship immediately upon the parent's death.

And I think it's been almost a decade since attorneys were thought of as the keeper of secrets. We have several jobs, from correcting myths and misunderstandings, brainstormers who come up with all those different scenerios on how something might go wrong (or right), to coordinators. I spends as much time trying to coordinate all the different benefits and options for a client as I do fighting for disability win. I have to get them into the the medicaid office, food stamps, SSA, get the info on their workers comp, LTD/STD, housing assistance, even getting them to proper doctors for their conditions or into free/low cost medical care.

Whether we like it or not, part of our jobs are to hold a client's hand and just guide them through the steps, avoid the pitfalls and traps. It is also to let them make informed decisions, thus we have to translate into language they understand.

Erin M. Schmidt, Ohio

I'd look at the investment management business and see how that change might be mirrored in the legal services field. I think there are more dimensions than litigator and risk manager. And some of the resulting delivery models are going to be driven by people's preferences, rather than cost, logic or what's possible. I never thought we'd still be seeing banks springing up in 2013!

Oh, I love this kind of thinking, but right now it would count as entertainment, so I'm leaving while I still can! I'm not done with Friday yet.

Barbara Nelson
Notta lawyer. New Jersey

In my view, the future of the law will involve only about 20% of the lawyers that exist today, legal materials freely available in terms of access and cost (as they should be), legal materials in machine-readable formats, courts using the most modern technology available, pro se litigation as the norm, judges concerned with their "stats" much like baseball players, deregulation of bar, the ABA as a minor and inconsequential player, the >$100/hour billable hour as a relic, and a few legal software companies

making more revenue than law firms by a factor of one thousand. Legal education will involve basic courses in 11th and 12th grade, and some more involved courses in college. Law school will be two years at most.

This is about twenty years out.

Aaron Greenspan, NaL = Not a Lawyer, California

And the role of lawyers will be to clean up all the unforeseen and unintended messes those pro se litigants, one size fits all software etc create! And we will be able to charge even higher fees!

Erin M. Schmidt

That is the common mantra, but I doubt it will become a reality. Fewer lawyers will increase competition and is likely to drive fees downwards to remain competitive. Software will improve geometrically as we move into the future and there will be fewer unintended consequences. Lastly, those potential clients who didn't want to pay a lawyer in the first place, aren't likely to hire one later.

D.A. "Duke" Drouillard

To be clear, I'm not talking about providing documents at LegalZoom prices. Not exactly. I'm talking about charging FULL PRICE for legal counseling. If we've done that part, then there is no reason to charge a lot for simple documents.

If you want a modern-day analogue, consider a long-time client who calls you up and says "I need a bill of sale for a used car I'm selling." Most of us would fire up Westlaw, find a document, add in the client's information and then bill for our time. If we had a secretary do the work, we'd bill at the secretary's rate.

Right?

I'm not talking about anything different from that situation. The only different part is that I'm suggesting we can have that "long-time client" information about everyone, all the time.

Cheers,

David Allen Hiersekorn

There will always be unintended consequences because people will always think they know exactly what they need, get that and then find out down the road that it doesn't do what they thought it did.

Missouri's form 14 for child support is widely available on the web, with ALL of the instructions on how to do it.

The family law judges consistently reported that they would have to recalculate child support in almost ever single pro se case because they filled it out wrong.

They would do net income, not gross. They would put down the weekly not monthly numbers. They would put down their total health care costs instead of just the childs. They would give themselves deductions for kids not in their custody. They would make step parent pay child support for step kid, The list goes on.

And it is a fairly simple form where they don't have to make any choices on which form to use, or do anything else put plug in the appropriate numbers

How do we expect a general public that cannot properly put numbers in the blanks be able to decide if they need this will or that will, if they need this divorce form or another divorce form, whether they need a paternity action or not. Because I have sat across from these people who walk in after doing research and tell me they need xyz and then I ask there story and what they really need is abc, which they never even heard of or discovered in their search.

Erin M. Schmidt

Probably the same way millions of Americans use interactive interview software like Turbo Tax to navigate the complexities of filing their State and Federal taxes. We are talking about the future in this thread Erin, not the problems you are experiencing today.

D.A. "Duke" Drouillard

Aaron,

I agree that there will be a few law firms that will dominate the consumer legal market through systematization and process innovation. And, pro se litigation may take hold, but only if the legislatures pass laws designed to make the law easier to navigate.

But, lawyers will still be required to interpret and apply the nuance of the law. Non-lawyers routinely see the law as overly "black and white" and hyper-technical.

For example, I once had a client ask me - at 1:34 p.m. - whether he could "just leave" a court hearing that was scheduled for 1:30. His reasoning was that the hearing was set for 1:30. He was there at that time and "the judge was late." He was not ordered to stay past 1:30, etc. He was serious. And, he was wrong. There is ZERO chance that he could leave and get away with it.

Another example of pro se litigation can be seen in the tax protestor and sovereign citizen movements. They, too, show the folly of allowing non-lawyers to interpret the law for themselves.

Look at your own motion that you posted recently. While you are undoubtedly a super-smart dude, that motion has exactly ZERO chance of being granted. You did not articulate, nor could you, the materiality of the error that the judge made. You argued prejudice, which is PART of the story. But, absent a showing that the error was somehow material to the court's decision, it's not going to work.

I'm not trying to beat you up. In fact, it's quite the opposite. You are crazy smart. I know that. It's probably fair to assume that you are in the top 1% of the population in terms of brainpower. And, even still, you made a legal argument that few, if any, attorneys would consider to be valid. In spite of all of your smarts, you missed the forest for the trees.

And, if YOU can't do it, then there is no way we can expect the untrained masses to pull it off.

I want to be clear, this is not about smarts. You could go to law school and become a butt-kicking attorney. I don't doubt that. But, you would actually need to go to law school. There is a certain "can I expect the judge to care about that?" aspect to practicing law. It can't be found in the law books. It's found in the law school experience.

Cheers,
David Allen Hiersekorn

I understand what you’re pointing out and the problems of today are still the problems of tomorrow. There are people who do turbo tax who don't know which form the filed (1040ex, 1040a, 1040) and who, when presented with choices in the software, make the wrong choices, which costs them money. A good example of this is that they choose to take the standard deduction and not to the walk through for an itemized deductions. Or they assume something does not apply to them and so skip that section instead of walking through it

That behavior does not change and when you start doing that across the legal proverbial board, you are going to start running into major issues because the person self-limited what they told the software.

If today we can't get clients to always give us all the details and information and to not make the determination themselves on what is/isn't important or relevant, why do you think 20 years down the road they are not going to do that to a software program.

But you're right, those that don't want to pay for legal services won't and they will live with the consequences, for good or bad

Erin M. Schmidt

Whether you think I'm right or wrong, I think this is a really important discussion to have in the legal community, actually, which is why Iâ€™m bothering to respond. And I'm guessing that my viewpoint is not widely shared around these parts, which is what makes it interesting.

I am going to (respectfully) throw your argument right back at you and argue that i/s you and virtually all other lawyers who are missing the forest for the trees.

Yes, it is true, lawyers will still be needed to interpret the apply the nuance of the law, as you say. The law's ambiguity will never vanish and become "computable" as some claim. (I'm not one of those people. I've met some of them and they're crazy.) All I'm saying is that for every five lawyers there are today, there will only need to be one in 20 years. That's roughly 200,000 lawyers nationwide in the United States of 2033—more than enough, I think, to interpret the law's complexity.

As for pro se litigants thinking or doing dumb but well-intentioned things, well, what do you expect with a system like ours? Where, despite the fact that the world is connected by fiber optic cables and DSL and cable modems and wireless devices everywhere, lawyers still have to apply to file pro hac vice—presently, by scanning in paper—so they can fly in persons to a hearing to accomplish what most businesses figured out ten years ago can be done instantly with an error-checking web form. Where you write a motion, which is an extremely structured document, by starting with a blank page in Word, even though the structure is widely known and dictated by a central authority. I'm not saying that pro se litigants will get any smarter or that the danger of their naiveté. all other things being equal, will become any less acute. All I'm saying is that all other things will NOT be equal: technology will evolve, and is already evolving, to put bumpers in the bowling lanes so to speak. It will still be possible to screw up, but it will be much, much harder, and as it gets harder to screw up, systems that allow for screw-ups will be frowned upon. That's not today's legal culture, to say the least.

As for my motion, submitted as perhaps an unusual pro se litigant: this is where the forest/tree analogy really takes hold. Regardless of whether or not you believe I explained the material nature of the judge's error (and I did explain it, and I know that not everyone quite got it), why did I have to submit that motion to re-open? Because of a host of ambiguous legal rules (FRCP, local rules) that affected my case earlier on, that make it harder for pro se litigants (and lawyers and judges!) to function in the system, regardless of the merit of the claims at hand. For example, I can think of a few changes in the PACER user interface

that would have drastically altered what I filed earlier in the case had I known what I know now. (I'm being vague intentionally here.)

So forget my motion and my own capacity to make what you think is a good legal argument. The point is that the system presently only pays lip service to an important principle, which is that pro se litigants are to be granted the benefit of a liberal interpretation since they are at a relative disadvantage to trained lawyers. Why does this legal principle exist? Because there's no point in having a system that simply rejects every syntactically-imperfect or half-pled document it receives. That's not a justice system, it's a overly-sensitive document processing system that one has to debug very, very slowly. And that's what we have now.

The "untrained masses" argument is bogus. It's not them that's the problem. It's the system comprised of individuals who refuse to accommodate them.

I spent a year at Stanford Law School and I spent a small amount of time at Harvard Law School when I was in college. What they teach there has nothing to do with what judges care about. Students learn that in firms during summer internships. The law school experience is great for some and terrible for others, but either way, it's quickly becoming obsolete.

Aaron Greenspan, NaL

> Whether you think Iâ€™m right or wrong, I think this is a really important
> discussion to have in the legal community, actually, which is why Iâ€™m
> bothering to respond. And Iâ€™m guessing that my viewpoint is not widely
> shared around these parts, which is what makes it interesting.

Your opinion that FRCP and local rules are ambiguous or unnecessary is unconvincing. Those rules were developed through experience to keep the focus on legal issues rather than have rambling legal arguments not on point or supported by legal authority cluttering up the proceedings. Pretty irrelevant that you were unprepared or uninformed earlier in the case. That is your responsibility, not the system's.

Where does that legal principle exist, except in your own imagination? Why should a pro se litigant, who has not invested either the money to hire a lawyer or the time and effort to educate himself, have any special consideration? That would be like saying local building codes should be relaxed for those who construct their own homes because they are not a trained carpenter, mason, plumber, or electrician. Kind of defeats the whole purpose of the code which is to insure all buildings meet certain construction standards and facilitate insurability, public safety, and the transfer of real property to others.

Words are important; they can convey a precise meaning. Because you have difficulty adapting to or functioning within the system does not make the system flawed. Litigants may hire help or become qualified themselves; the courts do not need to lower their standards to meet individual capabilities.

Once again, this is unsupported opinion. You are entitled to hold that opinion, but it is unconvincing to others.

D.A. "Duke" Drouillard

Let me start by telling you something that, no matter how smart you are, you just can't know this....

We lawyers get calls from the public. They ask us questions. Some people ask really good questions. Most folks, though, we hang up the phone and pray that they don't try to go it alone. They ask some really, really scary questions. We lawyers experience first-hand just how ill-equipped most folks are when it comes to legal matters.

You're not arguing that YOU don't need a lawyer. You're arguing that THEY don't need one.

Also, keep in mind that there is no such thing as a fair fight between a lawyer and a non-lawyer. It is the rarest of occasions when a self-represented party gets a win over an attorney. So, this notion that someone can self-represent assumes that the opposing party will play along. Because if one side lawyers up, then the other side only has two options. Hire a lawyer, or lose.

There is no legal principle that requires courts to give the benefit of the doubt to unrepresented parties.

And, your argument is internally-inconsistent. First, you argue that lawyers are unnecessary, and then you argue that they wouldn't be necessary if the system would take it easier on people without lawyers.

You appear to be suggesting that technology will somehow narrow the gap between lawyers and non-lawyers. That might be true in some instances, particularly transactional matters. But, there will always be the problem that to get the right answer, you have to be asking the right question.

I'll give you a simple example. The tax protestor movement is based on misinterpreting various statutes and rules. One of the main protestor arguments relates to the definition of "income" and the claim that it only refers to corporate profits. That argument is absurdly stupid. They're reading the wrong section of the code. But, if you read that section, ignore everything else in the code, etc., then you could reach that conclusion. That's not just some potential issue. There are thousands of people who have made that same exact mistake. Wesley Snipes went to jail over it.

I will say this. I think the future of the law will involve people doing smarter and better things for themselves in the legal arena. However, they will be empowered to do so by LAWYERS. Technology will make it possible for lawyers to serve more people. That is the way of the future.

Cheers,
David Allen Hiersekorn

Well, until the robots turn on us.

Steven O'Donnell, Pennsylvania

Rather than three replies, I'm going to try to synthesize my thoughts into one long one. First of all, we're talking about the future of law, and although pro se representation is in my opinion a major and pertinent issue, it's by no means the only issue. But just to get it out of the way…

I have no doubt that lawyers get scary phone calls and that many people in serious trouble need serious advice to get out of situations that they are completely ill-equipped to handle on their own. I have no doubt because I have been in such a position on more than one occasion and have hired lawyers each time. So to be clear, again, I am not arguing that people universally do not need lawyers. Put another way, I am not arguing, as David alleged, that "lawyers are unnecessary" across the board. At the same time, it is also simply not true that people universally need lawyers. It's somewhere in the middle, and I'm saying that as time goes on toward The Future, that balance is going to shift away from "do need" toward "do not need," as it already has been for years. I expect than in criminal law lawyers will be a must-have, or at least should-have, basically forever.

Still, every argument you have collectively made about pro se litigants suffers from selection bias on a macro scale. We all live in a time when the market for legal services has an average price tag somewhere in the $200-$400 per hour range. Exactly where it is in that range is not really that important for the purposes of this discussion. What is important is that it's higher than many average people and businesses are willing to pay for legal services they need. They also have (or frequently think they have) no alternative since most people do not consider pro se representation as an option (and in many cases for businesses, it's not by local rule). Historically speaking, the average price of legal services hasn't gone down at all. So as alternatives to lawyers begin to pop up in the market, the market for legal services will expand, except that lawyers won't be making those extra revenues. Selection bias is present because that the pro se litigants you see now—the ones who Erin says "judges HATE" and who "take 10x longer then any other case" and who speak about irrelevant nonsense—are only the tip of the iceberg. The rest of the American middle class is underneath with pent-up demand that you don't see because the legal industry has collectively priced them out of the market. But the American middle class is not completely full of crazy people. So the characterizations you make today only tell a small part of the story.

On rules, I did not say anywhere that they are unnecessary. Obviously rules are a crucial part of the system and should be in place. But I did say they are ambiguous, because they are. One example: nowhere is Twombly reflected in the Federal Rules of Civil Procedure. Yet Rule 8(a)'s "short and plain statement" language is nowhere close to satisfying the actual post-Twombly requirements for pleading. It is not a pro se litigant's fault for reading that rule and believing that a short and plain statement is what is required.

The fact of the matter is that the Rule just hasn't been updated to reflect Twombly yet. On the opposite end of the spectrum, the Supreme Court's own pleading rules are some of the most poorly-worded and convoluted I have ever seen. Petitions are supposed to be "Not less than 60 pounds in weight," but as I point out here (http://www.aarongreenspan.com/writing/essay.html?id=87), there are actually three different types of paper measured in pounds: TEXT, BOND, and COVER. The Supreme Court clerk didn't even know exactly which one the rule referred to when I called. And again, that does not mean that the petitioner or even the clerk is unprepared or stupid or has "difficulty adapting to or functioning within the system" as Duke implied. It means the rules are confusing and ambiguous. Duke's apparent presumption that the present system is perfect, and that anyone who has a problem with it must be an idiot, is contradicted by the fact that rules are constantly updated because it often turns out that even the committees that draft them don't find them clear enough, especially as circumstances change over time.

Which gets to my next point: special accommodation. There are many established legal principles (not just "[my] own imagination" as Duke says), pre- and post-Twombly, concerning liberal treatment for pro se documents. This comes from Estelle v. Gamble, 429 U.S. 97 (1976):

"The handwritten pro se document is to be liberally construed. As the Court unanimously held in Haines v. Kerner, 404 U. S. 519 (1972), a pro se complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears " `beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " Id., at 520-521, quoting Conley v. Gibson, 355 U. S. 41, 45-46 (1957)."

And this comes from the Second Circuit in Chavis v. Chappius, 618 F. 3d 162 (2nd Cir. 2010):

pro se complaint â€˜should not [be] dismiss[ed] without [the Court] granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated. Branum v. Clark, 927 F.2d 698, 705 (2d Cir. 1991).â€

Comparing the pool of all pro se litigants to the so-tiny-it's-statistically-insignificant portion of the population that refuses to pay taxes on bogus ideological grounds, as David does, or comparing the above Supreme Court precedent about liberal treatment to lax building codes (which actually hurt people, unlike the act of trying to understand what someone with likely limited education is saying in an intimidating and complex environment) is lawyering at its worst. For one thing, neither analogy actually holds. For another, it's not helpful to anyone, and it's elitist, prejudiced and disrespectful, even though I know there are grains of truth embedded in every stereotype.

To Erin's point, what do pro se litigants believe they should be accommodated for, it's everything I have (and you have) described. The unrepresented public should be accommodated for the fact that representation is so overpriced as to be unaffordable for most Americans, and that the only alternative is to embark on what David has argued is a futile journey into a morass of confusing rules and procedures where the represented adversary has every advantage. David said, "there is no such thing as a fair fight between a lawyer and a non-lawyer." If that's true, which it basically is at present, then there's clearly a need to level the playing field.

This kind of massive imbalance cannot hold. It's why the legal industry is imploding. And though it's unlikely and absurd to think that a mass uprising of pro se litigants will ever happen, it's actually incredibly likely that only a few individuals could leverage computer software to drastically change the

legal landscape. Aaron Swartz was one such individual. There are more like him; some of them are friends of mine. And they are all working very hard on this.

Aaron Greenspan, NaL

You know in Missouri they have divorce set up to help pro se litigants. They are fill in the blank forms that just need to be turned in. Over and over they are WRONG, not because the forms are bad, but because the people make poor choices about what goes into those forms.

And many of the pro se litigants can fairly easily afford attorneys (at least in the area I was in). We aren't talking poor people. We are talking couples making 50-100k a year, that decided they could do it themselves. It is a matter of priorities, and they did not think having a lawyer was one.

Computer software cannot encompass the full range of issues that a person can have in a legal matter because the issues are not finite. And they change over the course of litigation. Exactly how is your computer software going to deal with the person who used it to file for divorce and then 4 months into it discovers the wife is pregnant. Is the software going to be able to not only get the motion to amend correct, but also the proper way to file both the new divorce petition and the adjoining paternity suit, following not only the appropriate state rules but the local courts?

Or how about something as simple as making sure the proper forms that go along with the petition are properly filled out, given the correct case code and filed with the local court. In my little area of Missouri alone (STL City, STL County, St. Charles County mostly) we had approximately about 100 different courts. All with different rules, procedures, forms. (3 county courts and about 97 municipal courts) And that is only about a 50 mile radius. And the local rules from STL city to STL county to St. Charles are vastly different. For example STL City has model interrogatories you must use, St. Louis County puts a specific limit on the number of interrogatories you can ask before needing court approval (and the requirement that you must answer all the questions first) and St. Charles county free reign to go at it.

So your talking computer software that will have to make decisions on what facts need to be put into pleadings (versus what is required), when a motion should be filed and how to set that motion to be heard, what questions or documents should be asked in discovery, what the proper motions are to file for trial and what the proper post trial motions are.

No computer program will be able to do that. What it will do is spit back at the person a standardized set of things that they will then need to decide whether or not it is or isn't appropriate to file or ask. And then you have the exact problem all of us already mentioned. Pro Se litigants

wasting the courts time by putting stuff in front of it that they should never have been filed. And even worse, it's highly likely that the computer program will overlook something important to the individual case, which will harm the person.

Again, taxes have a finite set of things that can happen, most other things have an infinite amount of options. Even something like a will there are so many different ways you could do the exact same thing and the consequences of which you choose can result in very different results that the person who made the will never intended.

I get that you think the courts should go easy on pro se litigants. I disagree. Representation in many places is not beyond the realm of affordability. I've done enough family law cases, seen enough peoples finances to know. It is about priorities not about money.

And you cannot level the playing field between a pro se and an attorney, even with leniency. There is only so far the courts can bend. I did a case where the pro se litigant could not get a continuance (we were on our THIRD, each time to accommodate him) so night before trial he checked himself into psych ward. The doctor confirmed he was admitted and would not be released in time for trial. Trial at 9:00 AM, he was released at 9:30AM within minutes of the court notifying him the continuance was granted. When we finally had the trial we spent over 3 hours of him asking questions to me client. My questioning took 15 minutes. His 3 hours and not a single question he asked was relevant to any of the issues (I have never objected so much in my life). And this was a litigant who HAD an attorney, who was willing to basically work for free (and take a lien against the property he was getting free and clear and a written promise not to collect until the guy dropped dead) and he refused because he was going to present his case himself.

What you continue to discount and leave out of your projections is the emotional aspect of human nature. There is a reason why the saying he who represents himself has a fool for a client. 95% of people needing legal services are extremely emotional when it comes to their matter. And that emotion clouds not just their judgment, but their thinking and their perception of what the case is and how it should be presented. A computer cannot talk a guy who just wants out of his marriage from giving everything to his wife, that he WILL regret when he's got a much cooler head. A computer cannot convince or even lead a person who has been cheated on from spending their entire time in front of the judge ranting and raving about what a horrible person the soon to be ex is, when the judge needs to know how much each of them make for child support. And it is that same emotional blindness that will prevent them from making "good" choices on any software.

Erin M. Schmidt

Very well constructed answer Aaron, but here your focus is limited to the consideration granted the initial complaint when considering dismissal. That is much narrower than your original focus. The petition for Gideon v. Wainwright was written in pencil on prison stationery. Then SCOTUS appointed a lawyer to represent him.

You stated, "We all live in a time when the market for legal services has an average price tag somewhere in the $200-$400 per hour range. Exactly where it is in that range is not really that important for the purposes of this discussion. What is important is that itâ€™s higher than many average people and businesses are willing to pay for legal services they need."

What is your point? A lot of people buy Hyundais instead of BMWs too. If that works for them, fine, it is their choice. Many doctors charge far more per hour, but because many patients are covered by insurance or indigent, it doesn't discourage them from seeking their services. Plumbers charge in excess of $100 per hour in some areas. What is important, is that each person must decide whether to pay for a service, do without the service, or learn to perform the service themselves. The latter two options aren't recommended for a bowel obstruction. If your legal matter can't be resolved in small claims court, then proceeding pro se may well be the most expensive option in terms of the net result.

I would disagree with David that it is never a fair fight between a pro se and a lawyer; even it isn't a fair fight, it doesn't mean the pro se won't win. Aside from the parallel to David & Goliath type stories, in most cases the facts determine the outcome. Lawyers can package the facts nicely, sometimes distinguish between similar facts, or even obfuscate the facts if it is that kind of lawyer; in the majority of cases though, it is the facts more than the advocacy that determines the outcome. I've seen a handful of pro se litigants who did a better job than many attorneys would have done, but that is the exception rather than the rule.

The courts do not want more business (litigation), in fact they want far less. Part of a lawyer's job is to discourage or refuse to represent what they consider to be a frivolous complaint. That filtering is absent when people represent themselves pro se. Those barriers, roadblocks, and persnickety rules you dislike are there for precisely that reason. They want to discourage you and they don't care if you stuff the complaint box; they don't care if you go away mad as long as you go away. On the other hand, the courts are becoming friendlier for pro se divorces, custody, and support cases. Volunteer lawyers often assist in filling out forms and coaching the pro se on how to conduct themselves. Perhaps some day that concept will expand to other cases, but it is unlikely with current caseloads and staffing.

In any case, I am impressed with how you present yourself, even if I note flaws in your argument. Good luck to you in your future endeavors.

D.A. "Duke" Drouillard

Erin I know you have a high opinion of the services you provide, but apparently you know little about computer programming. Computers have been playing chess for over 50 years at a level you will never achieve. Once again we are talking about the future, not the software you might have used in the past. It isn't a matter of capability to program everything you know about law and court practice into a computer, it is a matter of economic viability. Because courts are fragmented all over the country with their own peculiar rules, it would be extremely expensive to write a program that would work for every venue. Similarly, if a program were written for just one venue, there probably aren't enough people who would subscribe to or purchase it to pay back the development cost. I believe that looking toward the future, we will see more homogeneity between venues from coast to coast that will make development of such programs commercially viable. I may be guessing wrong, but it is not a question of whether computers could handle the task.

D.A. "Duke" Drouillard

Erin,

Your point about emotions clouding the judgment of those who self-represent is a good one. Not having an objective third party in that case is a real problem. It’s one of the reasons lawyers will always be necessary to some extent, and especially in criminal proceedings as I said.

You’re also correct that the present legal system is so complex and convoluted that it would be basically impossible for a computer program to get everything right 100% of the time even given IBM’s most sophisticated technology. It’s actually much easier in some ways to write a program for a system with simple and consistent rules, like chess, than it is to write a program with sprawling and confusing rules, like law. But keep in mind that it’s also so complex that it’s impossible for a human to get everything right even 90% of the time. So you are correct that today, computers won’t replace lawyers.

But we’re talking about tomorrow. And the day after that. And after that. Tomorrow, like every day, PlainSite (which I run) is going to have a few thousand more cases on-line, accessible to the public and indexed on major search engines. You’ll no longer need Lexis or Westlaw to find them. By the end of next week, it should have an entirely new jurisdiction on-line, with about 200,000 case dockets and links to millions of documents. And the week after that, a few million patent applications from the USPTO PAIR database will become accessible for what I think may be the first time ever.

These kinds of incremental, open changes I expect will have a serious cumulative impact over years. They will crush the Lexis/Westlaw/Bloomberg Law business model of charging for public information based on withholding it from the public. The public (and especially large businesses) will be able to decide

when it wants to bring in expertise from lawyers having had the chance to review a lot more data ahead of time. Everyone will have higher expectations of government once they see what's possible. Rules will change; forms will be eliminated or consolidated; court budgets will be adjusted. Gradually, technology will make the law simpler. What was once a motion or a declaration with a notary seal will be a single check box on a web site and a "digital signature" that just requires you to type slashes around your name. E-mail proof of service will be mainstream. Just the other day, PACER in the Northern District of California added the ability to file an initial complaint on-line (finally).

I'm not saying it will all happen overnight. But as I said before, give it 20 years, and things will look much, much different than we're all used to.

Aaron Greenspan, NaL = Not a Lawyer

Duke,

To use your car analogy, I'm saying that middle class Americans are choosing to completely forego their car purchases because the only thing on the market, or the only thing they can find, is a BMW, or for the truly well-off, various models of Teslas and Ferraris.

Many doctors do charge more per hour than lawyers. They tend to be surgeons who don't work for months on end on a particular operation; maybe 12 hours tops for an exceptionally difficult surgery. Also, I wouldn't advise using the U.S. health insurance system as a solid basis for comparison right now…
As far as courts wanting less litigation, this is certainly true, which is why a lot of the changes I foresee coming down the road, in terms of revisions to standard forms, web sites, and procedures, will involve frequent suggestions that parties consider what is now termed Alternative Dispute Resolution or On-Line Dispute Resolution—something that has been very successfully automated at enormous scale by companies like eBay and its spinoff, Modria. So that filtering you describe won't necessarily be absent from future processes.

Aaron Greenspan, NaL = Not a Lawyer

And while all those changes make it more efficient, they do not change the change the user.

I deal with lots of non attorney reps and advocates. Some are very good and well trained. Others are not. I have seen them read cases and state the case says x, read the case and it was obvious that is not what it said. Told them it didn't and the response, like so many pro se was your wrong because I READ THE CASE.

Duke I am certain a computer program could be written that can do some of these things. But I am also certain that it is the USER you will fail to put in the correct information, click the wrong buttons, make the right choices.

I know because I already deal with this every darn day. What do you mean I was supposed to put ALL my doctors information into my SSA app? Well the computer program does say please list every doctor, hospital, clinic or medical provider you gave seen since 1 year prior to the date you became disabled.

But that is not what their internal filter tell them to do. Their internal filter tell them their case is 1) easy and clear and 2) thus that really doesn't apply to them. And it happens in all cases.

The computer is only as good as the input. You can have the best damn program ever and if Johnny doesnt give it the information because Johnny has deemed it unimportant, irrelevant or forgot than it won't work right. And i am confident both of us have sat across from clients, months into litigation and had that conversation.

And just think how lovely these programs will work for spouses who are abusers, who hide money, who take off with the kid.

And while yes I judge my services highly I also tell clients when I think they could do things alone. I worked to make simple divorces affordable, even with kids involved. And I constantly explained and reminded clients that 75% of the time they controlled the cost of litigation. My clients don't stand in front of a judge and argue over who gets the coffee pot.

But this issue isn't about judging our services highly. It is about recognizing human behavior and the choices people make, which is not likely to change. It is wonderful that all those cases will be free (I haven't ever paid for legal research, I have used what the bar provides) but a person has to have the capacity to read, understand and then apply and to that I saw see above (and the advocate I mentioned represents other people and of course, filed pro se to the supreme court on her own case, it made arguments that were not fully developed and in some cases were the well this isn't fair make them do it.

What said program may do is be the tool the lawyers use to spit out documents. But that will depend on what is easier. Handmade or not (sort of like replacing all the forms we already have).

And I am sorry your district is so behind Aaron. Federally, back in MO they have been electronically filing for years now. Even out state courts have full electronic filing in every county (it went live in 2011 in the most active counties and then to the rest over the next year) . They are also one of the few states with a complete state wide court database that is free to use.

I just don't see tomorrow's legal consumer being any more sophisticated then today's. And computers aren't going to change that. Heck most people

can't do a proper word search in Google to even find the information they are looking for.

Erin Schmidt

Great point. Change is not just technology driven but regulatory as well. I think we all know that a computer could transcribe depos and made copies available in real time Would be a huge savings for litigants. Yet reporters lobby keeps a lock on the need for an actual reporter and $10/page production costs - for EACH party. Ridiculous

Carolyn Elefant, Washington, DC

That's the wrong Q IMO. For lawyers, the question should be how do we want the future to look? What systems will expand access to justice? How can we improve the delivery of legal services - maybe to do so we give up the administrivia that consumes lawyers and focus more on substance? And how do we ensure that when computers and big box providers assume more significance in the practice of law that at least a few solos/smalls survive? I think that in any vision of future, we still need our Atticuses and lawyer-Heros

I don't think the future is a run away train where we have no choice but to stand like a deer in the headlights The future to belongs to those who create it. Lets get busy.

Carolyn Elefant

Erin, I've read your posts for a long time and I am certain you are a dedicated attorney who cares about her clients, but you keep missing the point and going off on a tangent. If people are unable to enter the information correctly they will get a bad result; tough. You aren't in a position to counsel everyone now; only your clients and then only if they listen to you. Other lawyers may not be as good as you, a few might be better. Doesn't really matter where it relates to domestic cases because my projection was to remove them from the litigation process. What I predicted was:

All domestic disputes will be resolved by a computer program which assembles all the data from each party, reviewed by a magistrate without a hearing or argument, and a decision that is entered into a central registry for all States and US Territories. Appeals handled same way, except decision is reviewed by a tribunal.

The future I predict would make domestic disputes more formulaic and less dispute oriented. Arguments would be limited to a personal statement that the magistrate would read and make a decision based on that together with the other information submitted.

D.A. "Duke" Drouillard

Aaron,

You raise some good points and argue them well. But, I realize that we aren't really even talking about the same thing. I'm talking about overhauling the profession of lawyering, and you are talking about overhauling the legal system itself. And, still, I think you are grossly underestimating the scope and impact of the kinds of overhauls you are suggesting.

You called part of my argument "lawyering at its worst." I'll come back to that. First, I'll address a couple of points you raised:

First, regarding the rules, you have to understand that "ambiguous" means something. Rule 8(a) isn't ambiguous, not as written and not as interpreted by Twombly. It might be VAGUE (mushy meaning), but it's not ambiguous (two equally valid meanings). Second, the paper weight issue isn't nearly as confusing as you suggest. When you buy paper for an unbound document, you buy it in bond weight. And, when it's going to be bound - as with Supreme Court filings - you buy it in book weight. Bond weight 24# is equivalent to book weight 60#. The page-size strangeness that you complain about on your blog is actually a very convenient size for a book-binder. If you buy 60# paper in the standard size for book paper - 25" x 38" - then that gives you exactly 4 pages by 4 pages after accounting for the losses due to cutting and trimming the paper. And, if you're buying paper in that size, then 60# is exactly the specification that you would use.

You have to realize that this is the SUPREME COURT. No citizen has a right to have their case heard there. The Court's decisions have a profound and lasting impact on all of society. I think it's reasonable that if someone wants to rewrite the American law books, then they ought to at least have to print a couple books of their own.

But, regarding the rules, your premise is the real problem. You are basically suggesting that the rules should be continuously updated to reflect judicial interpretation - that the legal system only works if a lay person can read the rules and discern the law from the rules alone.

We've already tried that system. It was called the Justinian Code, and it was a colossal failure. In fact, our legal system was born in 11th Century Italy when a group of monks tried to "fix" the Justinian Code. They developed a system of "glossing," or summarizing, the Code in light of Greek philosophy and Biblical morality. They devised a system of law by principle, as opposed to law by code. And, that system grew into our Common Law.

Like it or not, lay people have a hard time understanding how to argue and apply legal principles. They want to "look up the answer." There isn't an answer. There is a principle. The judge's decision is the answer.

The problem is that, in order to create a legal system where the answers are all in the code, it would require that we have omniscient/prescient legislators who could anticipate every possible variation of every possible problem. I'm not going to fit it all into a single email, but a couple semesters of jurisprudence class would lead to that inevitable result.

Suffice it to say that our system is the way it is, for a reason.

On relaxed standards, you are citing cases that deal with a dismissal for failure to state a claim. That is essentially a ruling saying that "this case can't be won." The cases you cite don't stand for the general principle that pro se litigants get a pass. They stand for the very specific rule that pro se complaints won't be dismissed on the basis that they can't win, unless the court actually determines that they can't win.

Now to your comment that I engaged in "lawyering at its worst..." Screw you, buddy!

No, just kidding. I'm not offended. But, you're wrong. I didn't offer tax protestors as an ANALOGY. I offered it as an EXAMPLE. There is a difference. I said "this happens" and then offered an example of it actually happening. That's not an analogy.

Further, your attempt to dismiss my example as insignificant also fails. The relative numbers of tax protestors versus the general public aren't relevant to my point. My point is that people are ill-equipped to interpret the law. I offered an example of people who misinterpret the law, badly, and when their own freedom is on the line. They are actually willing to commit a crime based on a misinterpretation of the law. Wesley Snipes, who can afford lawyers, fell for the tax protestor argument and went to jail.

The problem isn't really with the rules. It's with people. One of my favorite quotes is from marketing guru Dan Kennedy: "Most people are just walking around with their umbilical cords in their hands, waiting for someone to tell them where to plug in."

And, truthfully, people aren't going to read the rules and apply them. They are going to watch a YouTube video where someone tells them the rules, and they're going to do what that guy says. And, they're going to keep searching YouTube until they find a guy who tells them what they want to hear. It is law by lowest common denominator. It's the movie Idiocracy<http://en.wikipedia.org/wiki/Idiocracy>applied to our judicial system.

Now, here's where you and I would likely agree. I think there are certain tasks that are sufficiently simple that it is not necessary to involve a lawyer in the task. Somewhere on the scale between filling out a drivers license application and petitioning the Supreme Court for certiorari, there are two lines. The first line lies at the point where a lay person should have help, but not necessarily from a lawyer. The second line is the point where a lawyer is absolutely required. The two mistakes lawyers are making are: (1) pretending that the first line doesn't exist; and/or (2) charging for the first-line tasks as if they were second-line tasks.

I think the future will belong to the lawyers who find those lines and build their services and pricing accordingly.

Cheers,
David Allen Hiersekorn

Excellent discussion ! Keep up the Good Job !

Thomas McShane, New York

But shouldn't we, as lawyers, be concerned?

And putting domestic cases down to a formula is pretty scary, at least to me. There are so many things that just aren't there in numbers. How do you deal with a case where one party is abusive. No trial, no testimony he said she said. So what we just give the parents joint/joint and let said parent keep abusing because we didn't bother to look past some numbers.

Or the spouse that hides funds in another's account, or lies on the documents. How will the numbers judge credibility? How will they judge best interest of the child? How can a magistrate make credibility determinations from a piece of paper?

I am not sing this can't be done in some types of cases, but it will leave loads of people not just unhappy but spitting mad that a decision was made and they were never heard.

Shouldn't we be concerned that a computer deciding the length scope and decision, even with a person reviewing the final document, violates the fundamental right of due process. The simple idea that a person gets to present relevant evidence and cross examine the other side. Your idea strips this element from the case. It only works if both people are honest, forthcoming, and acting mature.

And guess what, when both sides act like that they tend to have more minimal fees and more positive outcomes.

I disagree it is a tangent to discuss the plausible outcomes of such a system. As a whole lawyers should be concerned with all outcomes. We should want our legal system to get it right. And when presented with a concept we don't think will do that we should speak up and do so loudly.

Do you think your formulaic program would have resulted in your drug court lady getting help and her child back? If you have even a single inkling of a doubt that would be the result, then in my mind it fails. Better that 10 guilty go free then 1 innocent convicted doesn't just apply to criminal cases.

Erin Schmidt

An excellent example of first line task

Name changes, at least half are done pro se, it is pretty simple and the clerks are able to help with how to get it publicized.

If you have never sat through a pro se docket, you really should. What you see and hear is a real eye opener. It also shows you why a lawyer is just as much about being an investigator, efficiency, and presentation.

Erin Schmidt

I waited for this topic to flesh out. For now, I suspect it is no accident that the wily Duke selected 2050. Based on the rate of tech advances, that has been bandied about as the date when anyone can afford a computer that not only knows everything but can simulate other worlds. I picked this from the only lawyer I found who was writing in Futures Studies. His article is way out, but I he thinks that way he must have some ideas about the future of law. Send msg to his old email but no response.

If computer predictions are true, we could look up the outcome of our law suit or problem on our own computer. Presumably other affected parties would have computers that came to the same result, which would immediately be effectuated. No need for court or lawyers.

As he points out, the development of ethical and legal systems tends to lag significantly behind technological progress. We all seem to agree that the impact of the computer will be very great. We all seem to agree that there will always be a role for an attorney.

If I were planning to practice beyond the next 10 years, I'd take a very hard look at this question. If the need for attorney will be vastly reduced in 20-30 years, it will not disappear like bubble bursting--instead, there will be intense attrition year by year.

So we're trying to predict the outcome of a horse race. We have the record of many of the starters, but there may be new starters at any time. AND the track may change--even the rules.

I read all the posts. Everyone is right, everyone--including me--probably goes too far. For sure, we all are missing points that may become dominant. For a long time, I have been convinced that all the info needed to predict the short-term is known by someone. Problem is to know who is right and to construct a synthesis of that info. So we should listen very carefully to even the most far fetched ideas. This is brain storming--you have to let the storm run.

As to computer & intake. The computer will guard against errors. I see an intake like this.

IDENTIFY YOURSELF.--the computer will download more info about you than you probably know.

IF THIS DOES NOT INVOLVE A CRIME. HAVE BEEN HARMED PHYSICALLY?

DESCRIBE YOUR PHYSICAL HARM
Friend dropped brick and smashed my toe. --computer will find all cases related to such injury--every case, every jdx with all relevant facts and issues identified.

GIVE TIME, DATE, PLACE of occurrence.

DESCRIBE YOUR MONEY DAMAGES.

PLEASE FILE ANY DOCUMENTS THAT SHOW YOUR DAMAGES.

COMPUTER WILL CONTINUE INTAKE with questions based on the issues found in the relevant cases.

IDENTIFY OTHER PARTIES WHO HAVE KNOWLEDGE OF THIS.

IDENTIFY THOSE YOU BELIEVE ARE RESPONSIBLE FOR YOUR HARM. --computer will look up all parties.

COMPUTER WILL CONTINUE with questions based on information of parties.

DESCRIBE YOUR ATTEMPT TO RESOLVE THIS WITH THE OTHER PARTY.

COMPUTER will notify other party and do a similar intake.

COURT CLERK will review all intake to be sure it complies.

FIRST HEARING WILL BE IN A WEEK. Parties may retain counsel for that. Court will dismiss or, if not, order discovery of info the court wants. Parties may also request discovery. All discovery to be compete in 2 weeks. 2 weeks later, each party to provide written statement from experts and submit physical evidence, if any. And, 2 weeks after that each party to provide written argument. ALL EVIDENCE COMES IN but court grades it for reliability.

FINAL HEARING BY VIDEO 2 weeks after close of time for argument. Court will compare cases computer has generated, examine evidence, question experts, hear oral arguments based on briefs, ENTER DECISION.

JURY TRIAL WILL BE ALLOWED. At which court will present evidence--graded for reliability--to the jury. Each party will be allowed one argument and one rebuttal. JURY WILL DECIDE.

APPEAL WILL BE POSSIBLE. Will consist of comparison (done by computer) of cases found by computer. Written argument. IN RARE CASE oral argument may be granted.

Of course, this is mere outline, but most of the above could be done right now. It would be even easier to do such processing with divorce even business law. Point is the computer does all the intake, finds all the cases. Role of court and counsel will be to flesh out the "gaps" in the law and to apply evidence. For jury, court marshals and presents evidence, graded by weight, to jury. Timelines may need adjustment based on case, but there is damn little reason that most cases should last more than a few months.

BIG TAKE AWAY--rate of change is EVER INCREASING. We are already paperless, soon courts will be. Courthouse full of paper pushers no longer needed. Court staff will supervise intake --probably suggest outcome--to facilitate speedy decision by court.

IT'S YOUR BRAVE NEW WORLD...thank God, not for us on the margins.
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WARNING: This email is designed for discussion of legal questions and other matters. It shall not be used or relied on by anyone as legal advice.

John P. Page, Florida

OK, I know I'm late to this party, but here goes.

IMO, statutory law is becoming so complicated that it is rapidly approaching being gibberish, even for lawyers. For example, I recall reading that there are >45K(? at least, a whole lotta) sections of Federal statutes that establish acts as crimes. As another, who *really* understands the entire Tax Code???

I think that soon there will be artificial intelligences that will do nothing but answer questions about these statutes, and not the simplistic questions we can currently pose. Questions like "I want to drill offshore 60 miles west of Washington, DC. Help me get the necessary permits and permissions - by Wednesday." will be answered by the AI's.

I think the civil common law will be codified, or abandoned outright.

Litigators and negotiators will still be around, because there's a large degree of "art" associated with trials and negotiation, and because both ultimately involve people. People are inherently variable. They do irrational things for rational reasons, vice versa, and in any combo. People are not quantifiable. IMO, until people are standardized, there will be trial lawyers and negotiators.

Just my thoughts.

Good luck.

Russ Carmichael

Sorry if I am late to this discussion and missed an important part.
Without being political, if the TPP (Trans-Pacific Partnership) is enacted, then much of what we as attorneys do becomes moot and/or nonexistent work. Any and all suits against corporations, suits about copyrights, environmental regulations, labor regulations, etc. may simply go away.

Without being political, we can't all do criminal law, divorces, and probate disputes (what may be left after TPP is enacted).

Roberta Fay, California

What I've been considering, with respect to my field of probate and administration of decedent's estates, and to your point of legal knowledge becoming more accessible to the citizenry, is to offer a service wherein the client does not hire me fully and absolutely to handle the matter, but would come in with the will or death certificate and I would explain which forms were needed and how to complete them and so forth. The client would pay my regular hourly rate, and if they wanted to sit for the entire day going over the forms line by line, that's what it costs. Versus those who

want a general overview and require a lesser explanation of which forms were needed and how they need to be filled out. And then the client takes the forms to the probate office themselves, and if and when they need follow up advice with respect to marshaling assets and preparing accountings and reconciliations, they'll be charged accordingly.

This isn't using technology to its fullest as you've described, to serve more people more efficiently, but I think it does go to your point of lawyers not having a monopoly any longer on the ways and means (knowledge) of getting things done.

Rick Bryan, New York

Rick, is there not a potential litany of malpractice exposure in doing so. I feel even if my engagement letter was to spell out I am not handling the estate administration and you will be filing these pro se, the engagement of advising how to complete the form would create an attorney client relationship and a potential nightmare for claims, around filing dates, missed or improper tax elections,etc.

Am I missing the boat here?

Brian.M.Baillie

That, and being disfavored by bars and courts is why unbundled services have not taken off.

Its still too risky in today's environment

Erin M. Schmidt

No, I think I am.

You're absolutely right and as Erin points out most definitely prohibited. But it's all in conversation, and setting aside that my idea is a violation of the rules and could open a can of worms on the malpractice side, you and I know in the overwhelmingly majority of cases my proposal would simplify the probate and administration process for most families. Which is my response to where I think David was leaning as far as the future of the legal profession in the original post. By and large most probate and administration cases are ho-hum and boring as hell and yes every now and then something comes up to make it interesting, but for the most part families would be better off and so would the probate clerks if pro se petitioners saw an attorney first for advice as to completing the forms.

My next idea I'm calling "pre-probate." How this works is that a senior comes in and I complete their will, and then for a discounted fee I'm going

to prepare the probate forms ready to be dated and signed by the executor and submitted along with the client's death certificate. Nice, huh? And I'll keep all that with the original will in my vault and just wait. Because as you know in the Will I can't write in that the executor is required to hire me rather than one of the other lawyers in my area. But I can generate extra revenues up front above the $75 which the senior is willing to pay me for their will (and they want the AARP discount on top of that) by offering my "pre-probate" service. Patent pending.

Rick Bryan

Yee Wah Chin, as you requested, here are a few articles about TPP -- The tv news programs do not even mention TPP. I won't say any more about this specific item --- the TPP ---
Roberta Fay
.....

Wikileaks Disclosure of Trade Deal Chapter Shows It Will Kill People and Internet; House Opposition is Widespread
http://www.nakedcapitalism.com/2013/11/wikileaks-disclosure-of-intellectual-property-chapter-of-trade-deal-shows-it-will-kill-people-and-internet-house-opposition-is-widespread.html#MCpuKEDeO8qbkHQS.99

KEI analysis of Wikileaks leak of TPP IPR text, from August 30, 2013
http://keionline.org/node/1825

House Pushing Back on Trade Deal; More Detail on How Secret Arbitration Panels Undermine Laws and Regulations
http://www.nakedcapitalism.com/2013/11/house-pushing-back-on-trade-deal-more-detail-on-how-secretive-arbitration-panels-undermine-laws-and-regulations.html#FQiMCv0iCTOvj2eX.99

Lawmakers Increasingly Realize Fast Track Is a Fraud
Posted: 11/13/2013 6:42 pm
http://www.huffingtonpost.com/james-p-hoffa/lawmakers-increasingly-re_b_4270072.html

The Secret Obama Effort Some Say Could Damage Internet Freedom
http://www.huffingtonpost.com/2013/11/13/wikileaks-global-health_n_4269337.html

Concerned Citizens Want Congress to Flush the TPP
http://www.huffingtonpost.com/kyle-mccarthy/concerned-citizens-want-c_b_4256373.html

The Trans-Pacific Partnership: A Threat to Global Public Health
http://www.huffingtonpost.com/maria-smith/the-transpacific-partnership_b_4254882.html

Watch: The Top Secret Trade Deal You Need to Know About
http://www.huffingtonpost.com/bill-moyers/watch-the-top-secret-trad_b_4220890.html

The Trans-Pacific Partnership: A Trade Agreement for Protectionists
http://www.huffingtonpost.com/dean-baker/the-trans-pacific-partner_b_4172087.html

TPP: Prescription for Galloping Corporatism
http://www.huffingtonpost.com/michele-swenson/trans-pacific-partnership-corporatism_b_3819197.html

Trade, Tobacco, and the TPP
http://www.huffingtonpost.com/simon-lester/trade-tobacco-and-the-tpp_b_3805584.html

Major Trade Deal 'Punch In The Face To The Middle Class'
http://www.huffingtonpost.com/2013/06/18/alan-grayson-trans-pacific-partnership_n_3456167.html

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Thank you, Roberta. Your references, especially to the text leaked in the last few days, spurred me to some quick research, and I offer the following links to provide additional information, including from the EFF and the USTR --

https://www.eff.org/issues/tpp
http://www.ustr.gov/tpp
http://en.wikipedia.org/wiki/Trans-Pacific_Partnership
http://venturebeat.com/2013/11/16/what-startups-need-to-know-about-tpp-the-secret-global-trade-agreement/
http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/11/15/five-key-questions-and-answers-about-the-leaked-tpp-text/

I am generally particularly interested in the IP-related provisions and agree that those provisions require much more thought and discussion than may have occurred.

Yee Wah Chin

I should shame Roberta for not including EFF in her otherwise impressive list of links, but I won't. '-)

Both our international team and our IP team have been involved with the TPP fight for years. Our most recent blog post, after the new leak, is at

https://www.eff.org/deeplinks/2013/11/tpp-leak-confirms-worst-us-negotiators-still-trying-trade-away-internet-freedoms

James S. Tyre, California

Hopefully this thread isn't dead yet. I think this group is particularly capable when it comes to thinking about the future of law, and I've learned a lot as I've read through the posts. Here's my two cents:

Jurisdiction specific. I see the future of law in the U.S. as being very jurisdiction specific. LegalZoom and RocketLawyer have captured a large market share and have spread themselves across all 50 states. I've used LegalZoom and one weakness I see is that they aren't very good and specializing in a particular jurisdiction. In order to compete in the future, players will have to write applications designed specifically for the quirks of one jurisdiction.

Browser based. The future of law will be in the browser for the simple reason that everyone has one. Browsers are everywhere, and we all have them on our person all of the time.

Propositional logic. Conditional statements. Areas of law that can be reduced to "if ... then ..." statements or "maps" will be programmed. There are thousands of areas of law where legal problems can be reduced to code. This is the low hanging fruit. AI and natural language processing is out there, but for now we should focus on the easy stuff.

User interfaces. We (lawyers) are absolute morons when it comes to design and user interfaces. I think those who design the future of law will either have to know about design or hire people who do. In my mind, presentation will be just as important as substance. (I hate that I just wrote that sentence, but when people interact with a browser I think it's true.)

Lawyers aren't going anywhere. I think people hire lawyers for psychological and emotional reasons. "My life is painful right now. I need someone who can tell me what my future looks like. Will this pain be manageable in the future?" Lawyers sell expectations about the future. An actual person is required.

Joshua Smith, Idaho

Joshua,

Good points both about browsers and user interfaces. I agree with both wholeheartedly.

I think a lot of laypeople don’t realize how a case actually gets to the Supreme Court, so I made a subway map diagram to help describe the process and make navigation easier. It doesnit work perfectly because a case could get appealed multiple times, e.g. District -> Appellate -> District -> Appellate -> Supreme, making the subway’s path slightly loopy, but it’s better than nothing. So it’s a metaphysical subway...

I’m also trying out something new as of today on PlainSite, where Latin and other less obvious legal terms are going to be part of an embedded glossary. On any docket page, a user just has to mouse over a term to see what it means in plain English. I’m starting out with "et al," "pro hac vice," "with/without prejudice," and "amicus." Other suggestions welcome.

Both user interface ideas can be seen at http://www.plainsite.org/flashlight/case.html?id=129678.

Also, Margaret Hagan at Stanford Law School, who is an amazing artist, is working on a Law and Design project. Her web site (one of many) is http://www.legaltechdesign.com for anyone interested. I think she's starting with immigration as a topic.

Aaron Greenspan, NaL

This sounds brilliant Aaron. One thing that would help me as a researcher would be mouse over definitions within statutes. That is, when a term has a specific statutory definition, it would be useful to have that definition with the citation available in a mouse over of the defined term.

Thank you for the link to Prof. Hagan's work as well.

Joshua Smith
