

# TECHNOLOGY IN LAW PRACTICE AND IN THE CLASSROOM

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Introduction

M. Bloom: Hi, I'm Michael Bloom from the University of Michigan Law School.

R. Sobelsohn: I'm Richard Sobelsohn, from Brooklyn Law School and New York Law School.

## **Richard Sobelsohn**

Good morning everybody. Today, we hope to go over with you what are some issues that are facing law schools today and what we think are some solutions to this current law school dilemma. We are going to discuss with you why we are at a pedagogical precipice, and how we can cross it successfully.

I am going to first delve into the how's, the what's, and the why's. Then Michael is going to go into some of the how too's. Afterwards, we will discuss the various categories of transactional type tools presently available on the market.

So, how do we get there? Most law schools today recognize that it is time for a change because the days of only teaching students how to think like a lawyer are over. To better prepare graduates for the practice of law, the Carnegie Foundation for the Advancement of Teaching issued a paper calling for law schools to rethink curricula. We have been hearing this same recurring message in the sessions that occurred yesterday and this morning. Fortunately, law schools appear to have taken the cue. According to a recent survey conducted by the American Bar Association, 76% of law schools surveyed were modifying their curricula to be more practical. The ABA report stated that retooling of law school curriculums included an increased commitment to clinical education and an increased commitment to professionalism, which would produce practice-ready professionals.

So, why are we making these changes, when as a rule most law schools rarely make endemic modifications to entire curricula? For example, when do you think was the last time we had this organic change in law school curricula?

Audience: 1890.

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The advent of online legal research. That was really the first time we observed tremendous change and an incorporation of a new teaching skill into the classroom. Later today, Michael and I are going to discuss some tools that are presently available in the market to get us into the next level of real-world practice-based proficiency and efficiency.

At the outset, it is imperative that law schools refocus their curricula and create more skills-based training to give their graduates better preparation for the workforce. Stanford Law School Dean, Larry Crammer, stated law firms are reporting directly back to the school: “You are sending us people who are not in the position to do anything useful for our clients.” That is part of what we are trying to change.

Law firms of all sizes realize the training of the junior staff has to become more efficient or they are going to lose business, because clients are no longer willing to pay for first year learning curves. Many in-house attorneys are similarly chiming in by demanding that their outside counsel reduce fees.

Even more compelling than the legal workforce efficiency dilemma, is the present job outlook for law school graduates. An interesting article, written by Debra Castin Weiss, stated that by 2020 there will only be 73,000 jobs for only 432,757 law school graduates. In another article, it was noted that nationally there were nearly twice as many persons passing the bar exam than there were job openings for them. Clearly the impetus for law schools to change their educational model is increasing rapidly, and their response should be proactive rather than reactive.

Therefore, a modification of curricula will not only benefit the graduates who need an edge against all other graduates applying to law firm jobs but also for those who will begin their career as solo practitioners. Further, the spike in law suits against law schools by students unable to find employment adds to the pressure for curricula change. Obviously, the time to act is now and many of us have started doing that already.

The ABA came out with a report September 20, 2013 from the Taskforce on the Future of Legal Education. The report stated that while there are many current problems related to legal education, the law school culture is at the root of many aspects of current conditions, and the culture can only change by influencing attitudes and behaviors to create a positively reinforcing cycle.

Now that we know the what’s and the why’s, the next question is how. It is evident the present market demands newbies straight from the swearing-in ceremony to already possess some practical background and experience. This is regardless if the graduates are heading out on their own or are first-year associates with large law firms.

As previously mentioned, in the context of large law, partners no longer have time to adequately train their junior associates and clients are not willing to pay for their learning curve anyways.

I'll use myself as an example. When I started, my whole legal career was atypical. I started as a solo practitioner, then I went in-house, and then I worked at Stroock, Stroock, Lavan, Kaye Scholer, and Moses and Singer, a New York mid-market firm. In those days Stroock was considered a large law firm with fifty real estate attorneys in its real estate department, including myself. But now it is more mid-sized, with a national presence rated somewhere between 350 to 370 total.

During my second week at one of the firms, a partner pulled me into her office and says "I need you to draft this document." I asked her if she had a form for me to use as precedent, and she instructed me to look on the system, which I did. There were 300 forms with that title on the system, most of which with versions 12, 13, 14, etc. Naturally, I did not peruse through all of them, however, after reviewing dozens of them, I chose one to use as my precedent form. I drafted it through most of the night, and put it on her chair the next morning.

The next night at around 7:30 to 8:00 p.m., she calls me into her office and tells me, "This is all wrong. You used the wrong form to start from. Now, I'm really annoyed because I have to write off your time and the client is pissed off because he has to wait for the document. They wanted the document today or tonight, and we have to start all over. She then gives me a different form and says "Here, use this." Meanwhile, I think to myself "My gosh, why didn't you just give that to me to begin with?"

I spent some, but this time not most of the night drafting the new document. After I completed it, I put it on her chair again. The next morning she calls me into her office. This time, she approves and said "This is what I wanted!". Still irritated, I think to myself, "Genius all you had to do was give this to me yesterday." If she would have provided me with the correct form at the outset, my stress level would have been lower, my relationship with this partner would have been better, and there would have been no writing off time or anything along those lines. So, one way that we'll be able to get there in terms of adequately training our students and we'll be able to help our students get there in terms of legal workforce efficiency is by giving them a more practical-based learning.

Law schools have litigation that they are dealing with. In connection with training, employment, and job placement readiness, law schools have been named as defendants in class action lawsuits filed by disgruntled law students. For example, in 2011, a group of law students alleged: that law school graduates received no value from their degree; that law schools were committing fraud and releasing false employment data

and starting salaries; and that there's a great lack of gainful employment by law school graduates.

So, what were the lawsuits about? Most of them were filed as class action lawsuits. So, because the claims and allegations of each of these class actions were roughly identical to each other, I'll walk you through one of them very briefly. It begins with a preliminary statement that the action "sought to remedy a systematic, ongoing fraud that is ubiquitous in the legal education industry and threatens to leave a generation of law students in dire financial straits. The plaintiffs want to require that law school defendants make material disclosures that give both prospective and current students a more accurate picture of their post-graduate financial situation as opposed to the status quo. The plaintiffs claim that law schools are incentivized to engage in all sorts of deceptions when tabulating employment statistics, including uniform and written misrepresentations in their print and internet marketing materials."

Specifically, the law students allege first, that employment numbers for recent graduates were false and misleading because the law school numbers included any type of employment. This included temporary positions, occupations failing to require a JD Degree, and/or jobs completely unrelated to the legal profession. The complaint further alleged that if the defendant law schools disclosed the actual number of graduates who secured full-time permanent positions for which a JD was required, their numbers would probably be 40 to 50 percent. By the way, none of the suits take into account that out of our classes there is a percentage, and in some of schools higher than others, of those students who are going to law school for non-direct legal working jobs thereafter.

Second, the law students allege the defendant law schools grossly inflated their graduates reporting starting salaries by calculating them based on a small, deliberately select subset of graduates. "If the defendants were to disclose salary data based on broad statistically meaningful representation of its graduates including those graduates who fail to secure full-time permanent legal employment, the reported mean salaries would decline precipitously."

The complaint further states there is really no place for perspective students can otherwise find these numbers. For the most part, these cases represent the disappointment of graduates in obtaining gainful legal employment, which is largely attributable to the market. But, if these plaintiffs' education were more practical, then they may have had a better chance of being hired or at least felt confident enough to practice law on their own. At a minimum, their frustration levels with the schools may have been diminished..

Although law school administrators and faculty may not initially connect placement rates with practical law school training, many are starting to do so. As illustrated by this slide, the issues that I just discussed are really in the papers every single day.

We know there is a solution, but what is it? I have been hearing in a lot of the sessions in this conference of what our jobs as attorneys are. Are we dealmakers or are we deal breakers? I have always believed in my practice that if we are good attorneys, we are dealmakers. We figure it out, or if it is not this deal then it is another deal, but we figure out what we need to do to get it to work for our clients.

As previously mentioned, I am a real estate attorney, with a subspecialty in sustainable building law. I am also an adjunct faculty member at the Brooklyn Law School and New York Law School. The problems discussed here today are discovered by understanding what the law firm market requires from recent graduates. The market is changing. Our job is to prepare students so they can work as attorneys. So, how do we do this? We find out what the market is looking for, and also what law school administrators and faculty are grappling with, because it is no easy thing to make endemic changes.

Forging ahead, the easiest way for law schools to implement the real-world, or practice-based, pedagogical legal training is by taking cues, I think from their adjuncts. Unfortunately, some law schools have cut out their entire adjunct faculty.

So, why am I saying look to the adjuncts for help? We teach because we love it, and that is a labor of love. Equally important, if not more so, most of us incorporate skills training into our curriculum already, because what we teach is what we do for a living every single day. We are telling our students this is what we did yesterday, giving real-life examples ranging from corporate decisions to transactional practice norms. Many of us also use forms, checklists, practical guidance and various other teachings so that our students will have the requisite tools to practice once they graduate.

Now, one way law schools can remedy the aforementioned issues is by having their full-time faculty incorporate practical examples. But keep in mind, many of them have not practiced for years, if ever. So, we want them to use the same tools typically utilized by adjunct members to teach their own courses. While this may not work in constitutional law courses, it likely will work in courses like property. Really, why can't we use a simple easement agreement in a property course when we are teaching the concept of real property easements.

As noted in the last session, Professor Bogart has already implemented this strategy. For example, in his property course, he shows his students what a survey looks like to bring the real world into the classroom.

To reiterate, I am recommending that we use sophisticated documents in our upper level courses. For instance, I teach greenleasing in my upper level Sustainable Building Law attorney course. In that course we use a full lease, and the various ancillary

documents that go along with it, including the subordination, non-disturbance, and attornment agreement (“SNDA”), the Estoppel certificates, and letters of credit. That is the real legal world today.

As with any change or incorporation of new methods, the full-time professors who may be lacking in real life law practice experience are going to need some help. What we are doing is showing them a new tool focused on how to get the job done. We already accomplish this with innovative methods or as we heard last night, by bringing in practicing attorneys. Full-time faculty members bring in a practicing attorney as part of their course because they’re bringing the real world into the classroom. This practicalizes the law school education, thereby enabling both the full-time faculty and the law students to understand and gain from real life law practice experience shared with them.

Teaching students how to think like a lawyer and how to practice law are not mutually exclusive. I am not suggesting teaching legal theory should be discarded, however, our job should be to teach students how to think like a lawyer and give them the tools they need to practice like one. Once law school administration philosophy changes, our discipline can move onto the actual methods necessary to achieve this daunting task.

Again, I am a sustainability attorney, and I teach the sustainable building law course with two sessions on green leasing. Pedagogically, I start students off with assignments; this includes reading a lease agreement and having them present various provisions of the lease to the class. Although we examine the entire lease, I emphasize the sustainability provisions and their nuances, and we finish with a simulation session involving landlord-tenant negotiations. In the negotiation session, the students represent either the tenant or the landlord, arguing for or against the green provisions, if any. This is because in the real world buildings are becoming green. Landlords that have green buildings are requiring tenants to comply with their sustainability provisions, so for practitioners that’s the real world. That’s what’s being done out there.

But then what do I get out of this? I have the class engage in the negotiations, and from this I can tell if the students actually understand the green lease provisions and if they are able to articulate their client’s positions with respect to those clauses. By the way, green leasing can be tenant-driven as well. For example, in my practice, I represented Deutsche Bank, which had a corporate mandate to rent office space only in a LEED GOLD building. In my representation, Deutsche Bank often used their leverage as a large tenant to dictate what the landlord was doing vis-à-vis sustainability. My students then had this in their mindsets when they’re negotiating later on behalf of other tenants with similar leverage.

In my mind, any instructional materials available to facilitate the transfer of practice-based information to the students should be employed. If we are teaching them about purchasing an office building, we should use a commercial purchase and sale

agreement. If the topic is financing of real estate transactions, we should use loan agreements. When I took real estate finance in law school, we used the casebook, and we discussed case. That was it. While I became very knowledgeable about real estate finance case law, I still had no idea what a loan agreement looked like. So, am I saying we throw away the cases? Absolutely not, but I am saying we need to incorporate more real-world practice into what we've been doing thus far.

Primary model agreements are a good start. The next step, however, is to introduce students to the myriad of those ancillary documents commonly in use, some of which I have already mentioned. Ancillary documents are critically important for students to understand because if they are working as a summer associate or as a first-year junior associate, the partner or the senior associate they're working for is not going to say, okay we want you to draft this purchase and sale agreement for a million square foot office building. They will, however, be tasked with drafting some ancillary documents. For example they may be assigned to work on an estoppel certificate or an SNDA, if not some much shorter ancillary document. So, let's give them an idea of what these documents are all about.

In recognition of time-constraints and to assist my students, I have them read overviews and review the sample transactional forms prior to class, so by the time we have class and refer to provisions in those forms, they already have a basic idea of what we are talking about.

When law school graduates start out on their own immediately after being admitted to a state bar, it can be a little scary. This is the real world. If they are not going to work at a law firm, and they have student loans, in addition to their bills to pay off, they might hang out a shingle. It is not uncommon for students to be solo practitioners. Therefore, part of our job is to ensure they are as practice ready as is possible. It is incumbent upon all of us who educate future attorneys to be vigilant in making certain our curricula not only teach the legal theories underpinning our respective subject matters but also provide checklists, guidance, sample agreements, drafting notes, and legal analysis directly related to the topic taught.

We should be using whatever tools are available on the market to get this job done. At this point, I am turning it over to Michael, who is going to share with you some of the tools presently available, and then we will talk more.

### **Michael Bloom**

Thank you, Richard. I am going to get more in the weeds and focus on existing transactional tools you might want to be aware of. As we cover this material, think about how you might want to use these tools for the following three purposes: (1) how you would use these tools in doing deals; (2) how you might want to implement these tools in

teaching your students how to do deals, and (3) how you might want to teach your students to use these tools.

It is important to note that while I have used some of the tools for all three purposes, some of the other tools I have only read about in articles. I do not hold myself out as an expert in any of these.

My hope is that this presentation becomes conversational. If you have used any of these tools before, or have certain experiences with any of them, let's start a conversation around it. Also, if there is any relevant tool I have not mentioned, please share it with the group.

The first category of tools we are going to discuss today are those that provide a general overview and help our students to identify precedent documents for a particular type of deal. You are likely already familiar with Bloomberg, Westlaw, and Lexis Practice Advisor. Each has great tools for your students to identify precedent documents and strengthen their understanding of the range of approaches and the range of issues in a particular type of document. Further, all have search engines that will crawl publicly available documents, so that your students can find examples of any kind of document that is out there. The search can be limited to certain types of law firms, industries, and deal sizes.

Docracy is a tool that takes a crowd-sourcing approach, with both lawyers and non-lawyers providing documents and information. When users find documents they like, they add them to the central repository that can then be critiqued, expanded, and leveraged over time.

The Association of General Counsel ("ACC") Contract Advisor Tool is a similar database. It includes clause outlines, a clause library and model forms. These are all based on documents that were submitted by in-house counsel at companies that are members of the ACC.

Exemplify.com is another tool. It runs comparisons of language with similar provisions and documents from EDGAR. There are a number of search engines out there now that crawl publicly available documents on EDGAR.

In the context of specific deal points, Bloomberg, Lexis Practice Advisor, and Westlaw's Practical Law enable greater precision than just pulling the document itself. These tools allow the user to synthesize and compare specific provisions from executed agreements with the click of a button. For example, if you want to produce a spreadsheet that summarizes the indemnity terms in private acquisition deals for the pharmaceutical industry that are over \$100 million, you merely enter that into your search parameters and press go. Then, a spreadsheet pops up that summarizes all the information.



At Michigan, I teach the Transactional Lab. It is similar to a clinic, except we work with Fortune 500 companies, drafting contracts and working with in-house counsel. For students without experience doing this, it can be an intimidating prospect.

One way they can make up that experience gap is to do this research and find out what is available in the market. They can see the actual precedent documents, what the range of approaches are, and what is, for example, the most common type of indemnity term in this certain type of deal. This builds their confidence, because they have the data to support their understanding of approaches to the contract issue. Their data may even be better than the attorney that is anecdotally figuring out what they think market is just based on the last five deals that they have done.

Another category of tools, which many of you likely already use—but if you don't you might want to think about using and encourage your students to think about using—are newsfeeds for keeping current with recent developments in the law and for understanding what new resources are coming online. The ACC's Lexology is one such service. ALM provides a number of email newsletters. For example, ALM has a legal technology newsletter that will send you bulleted emails that explain the latest developments in technology and law. I encourage my students to subscribe to these newsfeed services so they can stay current.

The next category of tools is crowd-sourced knowledge repositories, such as My Learned Friend, Casetext, and Moodest. These are not specific to transactional work, and they are relatively new in the field. Crowd-sourced knowledge repositories are platforms where individual lawyers or other users can contribute knowledge and gradually build content collectively. It is different from a Westlaw or Lexis model, where you have certain specific authors producing articles to be part of the library. Instead, with crowd-sourcing, individuals build knowledge collectively, by contributing articles or certain tidbits of information that amass to something useful. It's similar to a Wikipedia model.

These can also present an opportunity for individual lawyers to build out their brand as someone who's an expert in an area. This can be something that you introduce your students to as a way to market and brand themselves.

Another category of transactional technology is proofing tools designed specifically for contract drafting available on the market. Proofing tools can be useful—for example, for first-year associates oftentimes charged with proofing documents. So, are all the cross references correct? If you create a definition, is it used? Are all the key terms defined? Are you defining any term more than once?

Westlaw has a program called Drafting Assistant, and another is Eagle Eye, which is an add-on for Microsoft Word. These tools will review a document for common drafting errors, akin to a spell and grammar check with a transactional focus.

Audience: Where's the quality control in any of the things you've discussed so far? How is the student to know that any of these sources are producing something that is actually good?

That's a good question. For example, we might have our students use tools that retrieve agreements and clauses from publicly available precedent. Of course, just because it's "market" doesn't mean it's appropriate for your particular client's needs.

Again, I run a lab where my students and I are drafting contracts for in-house counsel at Fortune 500 companies. Part of that process includes the students finding precedent that's available in the market on databases such as Bloomberg or LexisNexis. We talk about how they may use precedent effectively and how to avoid some of the pitfalls of using precedent. For example, if a student finds a contract that was already executed and negotiated, but we're drafting a contract that our client wants to offer to the other side, is that really going to be apples to apples? Part of the conversation regarding how we teach these tools is how do we teach our students to use these tools effectively to serve our clients.

Moving forward, the next category is coming out of the e-discovery space: computer-assisted/automated contract review and analysis. With e-discovery, there are already tools that can do what lawyers have historically spent a lot of time doing in reviewing documents on the litigation side. Seal, for example, recently released what they call Contract Analytics, which they claim reviews contracts across an enterprise to identify specific terms and risks. I don't know how well it works, but that's what they're saying it does.

Another example is DiligenceEngine, which is software that combs several contracts and pulls out provisions the user requests, assembling these retrieved provisions into a table. This could be used instead of, or to improve the accuracy of, a lawyer doing diligence review of contracts.

Those are just a few of the transactional technology tools presently available. What do we do with this information? Which of these tools do we want to teach our students how to use? How do we help our students to think about where the profession is headed and how to stay relevant?

Audience: Do you know whether any schools implementing these tools are creating an IT faculty to teach these tools? Because I could never teach this.

- M. Bloom: Stanford is one school, with programs like CodeX and the Program on Law and Design, that I know is actively trying to involve their students in law and technology, but there are likely others.
- Audience: Do you think that's the way this field is headed? People are going to have to do this?
- M. Bloom: I think there's an opportunity here, especially (but certainly not only) for schools that have strong programs in engineering, business, or information. I think, more than ever, being interdisciplinary and partnering with those other schools will be beneficial. We can help our students to develop skills to make and use technology to improve legal practice. We can give them opportunities, for example, to work with engineers to become more comfortable and adept at collaborating and building technology.
- Audience: When electronic research became available, faculty embraced it, but they didn't start by teaching electronic research. They started by teaching book research, and then showed students how to do electronic research. For the tools we've discussed, do you start by doing more basic stuff and then bring them into this electronic age, or are you suggesting that we dispense with what we've been trying to do and start with the electronic?
- M. Bloom: A lot of my students are deathly afraid of technology the same way they're deathly afraid of numbers. And one response to that has been, let's teach accounting in law school (which, by the way, I think every law student should take). I do think that we should be exposing our students to technology and forcing them to face their fears because technology is always changing. So, you can't be afraid of it. You have to be willing to get your hands dirty and try to learn what the new tools are, or you will potentially become irrelevant at some point.
- So, I don't know that they have to be fluent with every single tool that I've mentioned today, but I do think that, at a minimum, we should get them out of their comfort zone by having them play with some of these new tools. I don't think that's terribly ambitious.
- R. Sobelsohn: We do not live in an all-or-nothing world. There's nothing here that says I am going to sit down and I am going to let a video take over teaching a course, whether it's commercial leasing or it's sustainable building law. Practitioners use these tools, but they're not using

these tools sitting at a desk, pushing a button, and then walking away. I do suggest that you use just one small portion of one of these tools to start with

Look, how many of you, by a show of hands, have students that take a look at their assignments on Blackboard, or Connect, or some other electronic method that your law school has? See, almost everyone. The concept of students using technology isn't new, and the concept of you directing them to websites or directing them to documents isn't new for them. This is just another layer. It's another type of teaching tool.

So, to go back to your original question, because I don't know if we fully answered it, how do you know what to choose, because how do you know what's good out there? Well, how do you choose a casebook?

M. Bloom: See, part of what I want the students to be able to learn is exactly that. Instead of me moderating and vetting this scary world out there, they're going to have to live in that scary world soon. How do they figure out which tools to use or not use?

R. Sobelsohn: Yes, but it depends on what type of course you have.

M. Bloom: Right, that's true.

R. Sobelsohn: And in a clinic, we have more luxury to be able to do something like that.

M. Bloom: That's right.

R. Sobelsohn: For instance, I'm teaching two separate, two-credit courses. I barely have enough time to cover all of the material. For one of my courses, I designed the material myself, because there's nothing out there in the market that I could use and have the students use.

M. Bloom: That's a great point. For a lot of this, I'm coming from a clinical perspective. I do not want the students to drown, but I do want to put them in the deep end a little bit so they can struggle through it and reflect on what they learned.

Audience: Okay. To the merits of students' struggles, you have to connect what Steve is talking about to what Sue discusses in her book on contract drafting assignments. And I'm going to quote you Sue. She

uses this method referred to as “drafting naked,” which she said is not drafting in the nude, but actually drafting without a precedent. So, the very first contract in the basic contract drafting course, which is not a particularly complicated contract, though it’s very challenging for students, tells them that they’re drafting without any precedent at all. So, they understand that you can do it no matter what. This is similar to using the books first. You can do it. No matter what it is that’s in your deal, all you have to do is be able to use your head and think about the language and what you need to do, and you can draft it.

That then empowers them to go on to the second contract, which there’s some precedent provided for, and that’s the limit.

Finally the third contract, where they’re free to use whatever precedent they want. I don’t remember if you did this Sue, but I’ve been having the students post onto a Dropbox site all of the precedent they find so that everybody has access to all the precedents, so it’s not a competition to see who gets to use the best precedent but it’s really very collaborative. And they have to cite to whatever precedent that’s posted on that Dropbox site they use when they’re drafting their contract.

But, the foundation is this: no matter what you are doing, no matter what the technology will tell you, or if the terms in the precedent or the terms that your technology produces don’t exactly reflect your deal, you can do this. You can draft it. Look at what you are getting by having the precedent but know that there is nothing that prevents you from doing it on your own. Sometimes this is going to be better because it’s going to actually reflect your deal.

Checklists are great, so you don’t forget stuff, and maybe electronic checklists are fine too. And again this is probably me drawing on what I’ve learned from Sue, but I think that the students need to leave the class and that they really need to learn to be able to draft.

M. Bloom: And they have some independence. They’re not dependent on a particular tool --

Audience: Right, they’re not dependent on a form, whether it’s in the form files or whether it’s in some of the software that you’ve described.

- M. Bloom: And students need those skills because every deal is different and nuanced. When students get out there, they may have the greatest precedent, but if they don't have those skills to begin with, they can't do it.
- R. Sobelsohn: Again, it's not an all-or-nothing situation. It's like the practice of law. I've used the same lease for the last 20 years. I'm really comfortable with it. But, there's sustainability issues that are out there now that were not out there 20 years ago, and if I'm not current, some potential client is going to go to the next attorney down the road and pay their legal fee, because I don't know what I am doing. Also, good luck negotiating the agreement if you don't actually understand why those provisions are there, and what they are doing in there. You will rapidly become a very uncreative lawyer if you can't get to that same place by employing another way, but that is what happens if you don't understand the concept, or the whys and what's. I think that makes all kinds of sense.
- Audience: I was just going to make a point that there are other schools that are teaching some combination of what you're talking about. Georgetown Law has a class where they develop apps for common problems, with the idea of serving poor people. And Chicago–Kent College of Law has been using technology in teaching for a number of years, in addition to some classes that are technology-based. However, they don't teach coding.
- M. Bloom: For the Georgetown Law classes you just referenced, are the law students producing the apps?
- Audience: The law students are producing the apps, at least at Georgetown, and I think they have an agreement with some company that provides a relatively simple platform the students use.
- M. Bloom: That's great. Thank you. Is there anything else that anyone knows about other schools doing things in this space?
- Audience: I was just going to ask you, if you had to pick from the approximate 8 categories of things that technology does, which are the ones that you think you need to be most aware of right now?
- M. Bloom: I think our students need to be thinking about where the puck is going to be so they can skate to it. If they want to be marketable lawyers, they need to develop an awareness of macro trends and how they can position themselves to have a skill or a practice that is going

to be valued. Now, maybe that's its own seminar class, and maybe it's not relevant for what each of you teach. But somewhere in their law school education, students should be exposed to technology's role in the evolving profession.

I think absolutely they should know how to use Bloomberg Law, Practical Law, and Lexis Practice Advisor. I suspect that these are basic tools everyone is aware of and is teaching. They should know how to find and use effective precedent. They should know how to draft without precedent, but the reality is that if they are going into practice, they are going to be drafting using precedent or by marking up a document they received from the other side. So, the key is being able to work through language that's not their own to accomplish the objectives that they're seeking to accomplish for their clients.

Market deal data is great too. Practical Law and Lexis Practice Advisor have that, and students are empowered by it. Students sometimes wonder, who are they to draft a contract? They don't have that experience. With market data, you can give them that experience in a single spreadsheet. Maybe it's better than somebody who is experienced for whom "what's market" is "what are the last five deals I worked on."

Audience: They say that when they're in their first year writing course and they're drafting a memo. You know, "How can I tell them what to do? I really don't know the law." But, I mean you've got to start somewhere.

M. Bloom: Right, with market data and precedent, students can have a foundation from which to build, to go from thinking to actually doing—including identifying all the potential issues, seeing a range of approaches, and then thinking critically about what's appropriate for their situation.

In the context of the lab, when we're making recommendations to our clients, oftentimes we're providing that information to our clients. We say this is the 25<sup>th</sup> percentile and this is the 75<sup>th</sup> percentile for different contract terms. And you said you want to stay middle of the road, so here's middle of the road.

Audience: By the time the students are in practice for three years, it's going to be different, and they have to continue to keep up with it. I mean,

we can make them aware of the fact that there's electronic tools out there, but that's something that's going to be more relevant when they're practicing because they have to deal with what's there, and they have to maintain their knowledge of everything new that's coming down the pipe; including what's good and what's bad.

M. Bloom: That's right. You can sign up for email groups, newsletters, and listservs and stay up to date on latest developments. Practical Law will send you emails every week if you want them to about the latest resources they have. As a teacher, I want to know about that, in case it is relevant to what we are doing in the classroom.

Audience: Especially for smaller size firms, you need to know also how to use EDGAR. If you don't have Bloomberg to do all the work for you, how can you actually roll up your sleeves and figure out, okay how do I find a 10K? Or, what's attached to a 10K that I can search and find?

M. Bloom: That's a great point, even if you at a super big law firm, law firms are still pretty sensitive about folks spending a lot of time using a lot of these sites. Attorneys need to be aware of the costs, the internal constraints, and thinking about how to use these technologies efficiently from a cost perspective.

Audience: You're talking about sort of automated deal points. This is almost on a lower tech level, but to fulfill a regular course requirement, my students have to do original research in writing when we're not doing cases. So, I make them go out and use tools like Bloomberg at the front-end, or Knowledge Mosaic, which used to be stand-alone, but now Lexis has bought them --

M. Bloom: And what's Knowledge Mosaic?

Audience: It's where you can view forms, review regulations and stuff like that. We used it primarily to search and for doing deal points. But, I don't think that's very practical because like you said, there are some automated tools out there, but I'm taking students who may not even have taken BA first. We don't have any prerequisites. So, to get them to read through maybe 15 full fledged negotiated stock purchase agreements to pull out six terms to give the students exposure is really valuable.

M. Bloom: I agree. I think that's right, and that's a great point to pull into the conversation. So, the learning value of going through some of these



tasks in a non-automated way might justify having our students do that.

I think due diligence gets a bad rap; you can learn a lot from doing diligence. You're just reading a bunch of contracts. Especially, if you're taking a class on the front-end where you've built a framework of understanding, so you understand the basic provisions and the basic structure of contracts. So, you build your muscle memory on these topics. I think there's a lot of value to that if you are someone who's going to need to go out and draft and negotiate contracts in the future.

Audience: I use mail merge. So, a lot of the key terms are in the spreadsheet that will print out around 15 contracts for them to do a diligence report on. The next semester, I can just tweak the spreadsheet a little bit, and it'll be different. Speaking of spreadsheets, that's one other thing I think, is really important. Literally, lots and lots of lawyers who were at the top of their class couldn't put together four hard-coded numbers, and they did not know how to do a sum. So now, I make them do simulations. For some students, it's done before the end of class, but for others, it's a two-day task.

M. Bloom: That's great, and it also brings up a good point. I think there's a myth that all our students are really great at technology, because most of them are probably not. They may be good with Facebook, but they're probably not proficient with Microsoft Word. I find that in drafting contracts with them, they are actually quite poor at using Microsoft Word, much less Excel.

I don't know if everyone here saw the Kia articles from a couple of years ago, where in-house counsel at Kia started giving a technology audit to its law firms to see if they were proficient in tools such as Microsoft Word, Adobe Acrobat Pro, and Microsoft Excel. Although this was actually on the litigation side, it's completely analogous to transactional practice. The audited attorneys did not perform well from the in-house attorney's perspective. Inefficiency with technology is costly if you're paying by the hour.

At present, the only technology I explicitly teach how to use in the lab is Microsoft Word and Excel in transactional work. For example, I will have the students manipulate a cap table in Microsoft Excel and edit different formatting aspects of a contract in Microsoft Word.

Audience: Another tool that students don't know about is redlining. I start them all with sort of the same precedent document, so when they turn them into me they have to turn a Redline in as well. I'm not going to grade 90 or 50 page SBAs. All I have to grade are the things that changed.

M. Bloom: I find that some students, when they find out that redlining is a thing that they're supposed to do, it becomes a thing that they do unthinkingly. They don't think about the purpose of it. Sometimes, a student will run a redline against outdated versions that are no longer relevant. They're not thinking about it from my perspective. They're not thinking about the information that I'm trying to tease out through the redline. And that's just teaching them to get out of their own heads, to be empathetic and to think about what your supervising attorney is going to need to be efficient with your work. That's just about being a good lawyer, really, at the end of the day or a good service provider.

It's teaching about the tool, but it's also about teaching students to think about how to use that tool toward better serving their clients and supervising attorneys. There's often a risk with technology to think of it as an end to itself, as opposed to a tool to accomplish particular goals.

Audience: Let me ask you a hypothetical question. What if a University of Michigan Law graduate ends up at Wall Street and is assigned to a capital markets group. In the first year there, he or she is given a precedent document by the partner, and instructed to fill in some of the blanks for a merger agreement. Well, he or she fills in some of the blanks, turns it in, but has substituted some terms or provisions that he or she has found on MNALaw.Com. What do you think that partner is going to say to something like that?

M. Bloom: Absolutely. If you're working for a partner who likes his legalese or just wants you to use the form, it doesn't make time-sense, and it doesn't make cost-sense to spend time other than just filling in a form right now. They've asked you to do X and instead you've done X plus Y, and now the partner gets to write that time off.

I use a very similar hypothetical to explain the importance of context in situations. When you want to make a document bleed versus when you want to just change the three data points you've been asked to change. I think that's critically important.

This goes back to a really good point. If you're working at a law firm, it is critically important to think about what your partner wants from you, how they're going to view your work from their perspective, and how you want them to view you.

Audience: Right, this raises the very interesting area of the stickiness of boilerplate. I mean there's been a lot of empirical work done on this. To me, as a practicing lawyer, it's fascinating. And you read it and say yeah, that's me.

R. Sobelsohn: The problem with boilerplate is when there is a term in a document, but no one knows what it means, yet but it's in everyone's form. And you don't want to be the person who deviates from the form. You cling to the form.

Audience: Especially if you're a first-year associate.

R. Sobelsohn: Right. So, first-year associates are scared to admit what they don't know. But also, if you're a 20-year partner, maybe you don't want to admit that you don't actually know why the clauses are there in the first place. So, it's this giant effort where no one admits they don't know what a particular provision is, or why it's in the agreement. Then, it becomes an issue of litigation that the court has to resolve.

It goes back to the point that we need to teach our students to fundamentally understand what these provisions do and what they mean before we turn them over to some automated program that will just do it for them. This way, students can exercise independent judgment; they can think about how best to draft it for their particular deal and their particular client. Also, this enables students to hopefully avoid the "my form versus "your form transactional-type negotiations," where I don't know why I want this, but I want it. Instead, students will be able to engage in good, creative problem-solving negotiation, where you understand what you're trying to accomplish and you're okay with taking this other approach to get there because you're confident that that serves your underlying interests. I don't know if anyone teaches a negotiation course this way, but it can be hard for transactional attorneys to negotiate integratively when they don't understand what it is they're trying to accomplish in the first place.

So, some of the tools that Michael mentioned before are good and they can help us in the classroom. This includes overviews, drafting notes, and optional and alternate provisions. So, students can discover exactly what a particular provision is all about and why it's important, which saves us time in the classroom. The best products on the market are those drafted by leading practicing attorneys working in the field.

Audience: I'm wondering if anyone's done a review of all of these tools and reviewed them on points like user-friendliness, which is my pet peeve. If it's not user-friendly, I'm not going to use it.

M. Bloom: The ABA has a legal technology resource center, which provides some of this information.

The last question I have, which we've touched on a bit, involves the model rule of professional conduct regarding staying up to date on technology. How can we teach our students to be adaptive and to be willing to learn new things? In theory, we could teach them every technology that exists right now, and they can become proficient in it, but it's not very feasible to do that. Also, we still wouldn't be able to teach them the technologies that are going to exist 20 years from now. But to be effective lawyers, they probably will need to know those in 20 years. Are there things that we can or should be doing? I'd love to hear what people think about that or anything that you might be doing.

Audience: That's similar to the advanced research world, and one of the things that I've discovered teaching research is that different firms have so many different tools we don't even know about in the law school world because they're practice-related. So, I think that whoever is going into practice needs to make contact with the firm librarian, or whoever is in charge of professional development, so they can be pointed in the direction of outside resources. For example, there may be a CLE to learn about these things, or perhaps the firm provides tutorials. Also, if there is a librarian, then the librarian is probably evaluating tools and you can get a quick one-on-one. But, there's no way that any single individual can do this alone, the key is to have a boiled down way to keep abreast of whatever it is that you're dealing with in the practice of law.

R. Sobelsohn: Both your solution and Michael's solution in subscribing to these listservs captures the market that works for the large and middle-market firms. But, what do we do about those 2 and 3 attorney

firms? They don't have a library. They don't have anybody that's doing any of this. So, somehow we need to get our students to at least jump on this escalator, so they understand that they need to be aware of changes in the practice. Otherwise, they risk malpractice and other disciplinary issues. Also, this is a service business.

M. Bloom:

I think we're teasing out there's at least two pieces to it. First, you have to be able to know that new technology exists, and maybe that's where the listservs or the news feeds come into place. But, the second possibly more difficult piece, is you have to be able to learn that new technology and be adaptive, or also think about how this new technology is going to affect your practice and what if anything you need to be doing to be prepared for that new world so you don't get rendered obsolete.

Are there any methods that anyone here uses to teach their students to be resilient and adaptive as new technologies might come on line?

Audience:

I feel like my students have a voracious appetite for new technology, but sometimes that is a problem. I noticed tremendous enthusiasm when Westlaw Next came out. It was like, oh it's too easy. You literally type in your question, how do I do X, and it just comes up. But, you don't understand the idea of even what sources it's pulling together. So, you have to maintain a little bit of clinging to the basics of what you're trying to accomplish before you even think about a tool. I do this by telling my students, you need to learn the tool first, because what will happen if it malfunctions? You need to learn what you're doing. How would you do it in the book? Someone said they teach their 1-Ls to do book research. We don't, although I will tell my students to use books for citations.

To me the technology is so good and convenient that you can be lulled into committing malpractice, especially if you can't even identify when the tool is malfunctioning. Students have to at least be able to think this way to avoid being burned by a tool.

M. Bloom:

That's another good theme that has been teased out of this conversation. There's a learning objective by having your students draft agreements or provisions the less automated way. This is analogous to learning to do math without a calculator even if you know you'll use the calculator in practice. You develop those fundamental skills, so you can identify when a calculator is malfunctioning.

- R. Sobelsohn: If you get to a real estate closing, and there's a post-closing obligation, you're not going to be able to go online and find what you need in just 20 seconds to draft that three (3) or four (4) line document that all the parties are going to sign. So, we've got to teach them the tools to be able to do that. Again, it's not all-or-nothing.
- Audience: To respond to your previous comment Richard, it seems to me, for the people whose students hang out their own shingle, that the calculator analogy may parallel what's happening relating to research in the law schools in those markets. Instruction has to teach students, whether they practice in a large market or small market, how to remain current with both the substantive law and with the various tools. So, I think you can look into specific markets to see their research capabilities and methods. A parallel may exist there that can be applied in terms of drafting contracts.
- M. Bloom: I think that's absolutely right and it's not specific to technology. Being plugged into the practicing bar in whatever you're doing is probably a good thing, so you can help your students be attuned to what is current. I think it's a great reason to put adjuncts into law schools. And I think it's a great reason to have professors with one foot in practice and one foot in teaching. To use myself as an example, I love that I both practice and teach because everything that I learn in my job goes right into my transactional contracts class. I'm working with law firms and in-house law departments. It keeps you tethered on the developments in practice, including on the technology side.

**End of Session**