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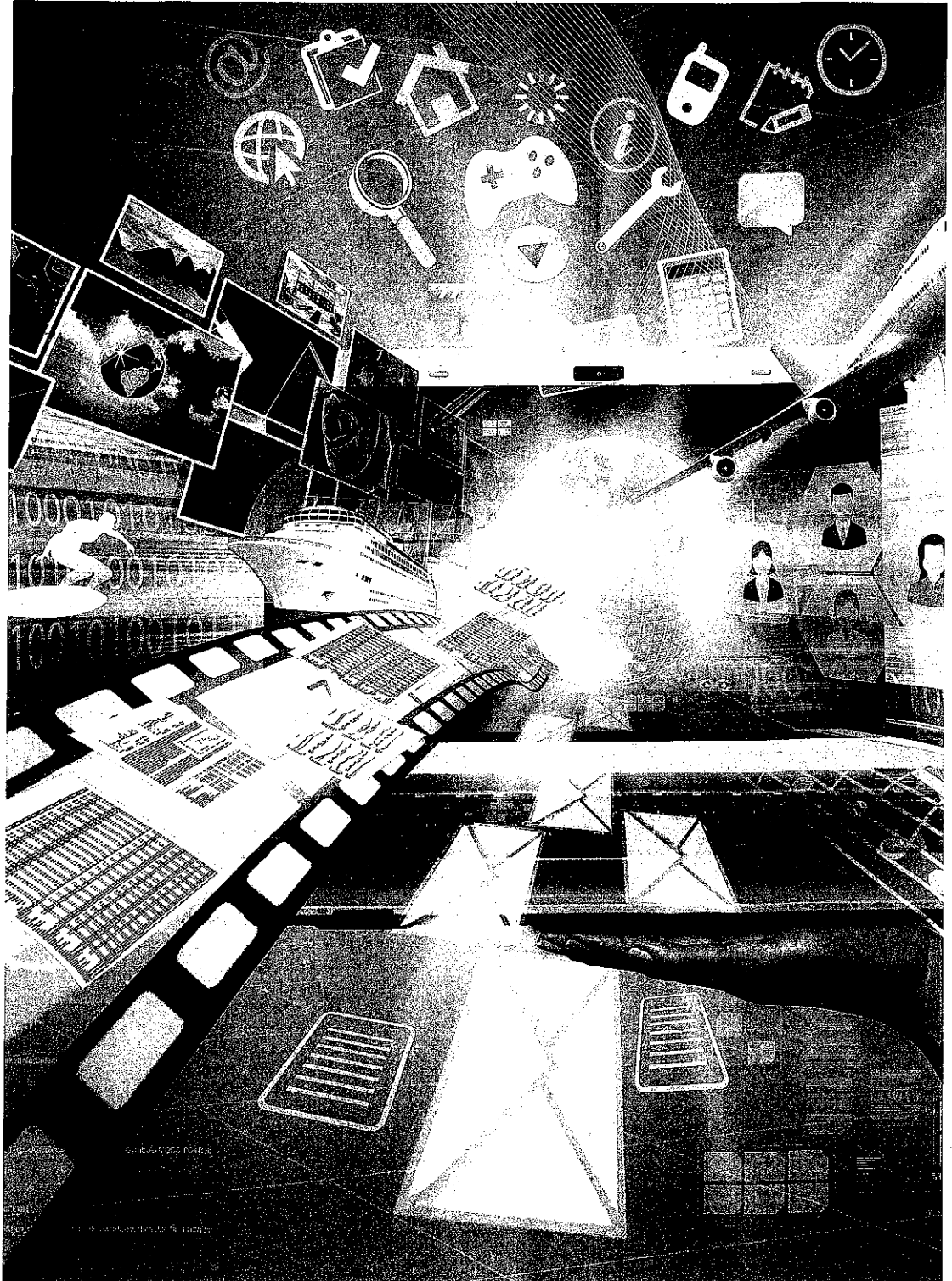
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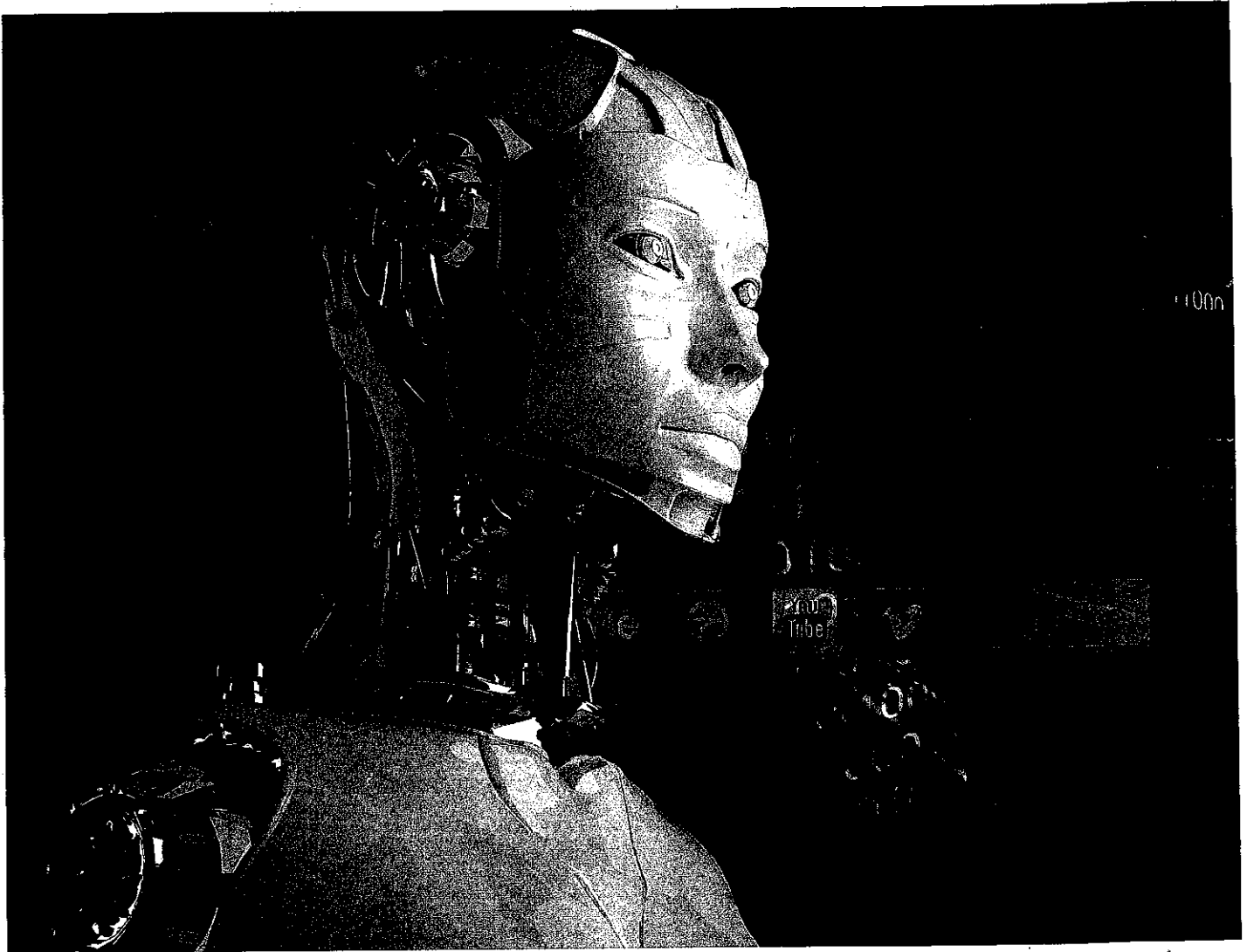
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Legal Tech Tools: Social Media & Artificial Intelligence



“We’ve got 21st century technology and speed colliding head-on with 20th and 19th century institutions, rules and cultures.”

– Amory Lovins –

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#SOCIALMEDIA#HERE TO STAY

Social media is a tool that allows attorneys and clients to communicate, to share information and to develop personal and professional relationships electronically—not wholly different than, say, using the telephone or sending an email. Social media, however, has distinct advantages over other forms of electronic communication. It interactively engages the user's visual and auditory senses, allows legal professionals to relationship-build *en masse* but with focus, and can effectively foster the continuation and revival of relationships that may have otherwise languished with time and geography.

Social media facilitates communication with a diverse spectrum of clients with greater frequency, efficiency, immediacy and reach—mostly free of charge. Attorneys can even “ego surf” by googling themselves for “hits” on their various electronic profiles or meticulously track search engine optimization data by using Google® analytics. Internet companies now offer social media management services to assist with duplicate message streams and content management across various social media platforms.

Social media is also an effective means of fact investigation for substantive legal practice. Opposing counsels, witnesses, jurors and parties are immediately researchable online in addition to traditional discovery methods. It can also be used for impeachment or asset investigation. Social media evidence is likely not hearsay when properly authenticated and, therefore, is admissible at trial.

There are things that attorneys should consider when using social media. Information pertaining to minors or personal identification information, for example, should be redacted from social media exhibits. Rule 11 also applies to social media evidence requiring attorneys to make a reasonable and competent inquiry concerning the validity of the electronic information discovered on the internet (e.g. internet and social media searches often uncover individuals and corporations using similar, if not identical, names and manipulated visual images).

BEYOND SOCIAL MEDIA: ARTIFICIAL INTELLIGENCE TO TRANSFORM LAW

Peter Benchley's novel, *Jaws*, and A.I. might be said to elicit a common feeling between swimmers and lawyers: “wading in” can feel terrifying. However, artificial intelligence isn't necessarily so scary (or so deadly). Like social media, it, too, is a tool; and, if you have a smartphone, you already likely use artificial intelligence fairly regularly.

Think about map apps on your smartphone as an example. You provide the map app a starting and destination point, and it comes up with a variety of options for your journey including anticipated duration, traffic delays, speed limits, suggested detours, exits, re-routing, points of interest, hotel, restaurant and other information. It also knows where you are, saves your past routes and adjusts for new circumstances—e.g., like an accident or missing an exit. Typically, the app is very accurate—and may even provide a great route you might not otherwise have known to take.

It is the human user, however, that ultimately decides the best course—just with better, real-time information far exceeding what a good old-fashioned, paper atlas would have provided. Now, consider harnessing that same power, namely, usable, A.I.-generated information and predictive technology, in analyzing cases, court processes and legal information for clients. The

technology in the future may even be used to more effectively prevent a client from being sued? Consider further harnessing that same power in the management of workflow, staffing or case budgeting in a law firm. Just as artificial intelligence revolutionized Griswold-styled family vacations—that's precisely what artificial intelligence is anticipated to do for legal practice - internally and externally. Lawyering is not now on the verge of obsolescence. Lawyers do, however, need to prepare for and embrace change that will come from ongoing advancements in artificial intelligence.

Lawyers will have a place in an A.I. legal world for at least the foreseeable future. My reasoning relies on the map app analogy. When I travel I don't always take the smartphone-recommended route. I may be travelling at night and prefer to stop at a particular hotel chain or to visit a friend or a city along the way to my destination. Perhaps, an accident (e.g. an unfavorable court decision) creates an unanticipated road block but the alternate route is similarly problematic.

Some may disagree, but A.I. as a predictive technology cannot yet be a replacement for reasoned, professional judgment and consideration of matters of substance. A.I. presently represents no threat to lawyers' interpersonal relationships with clients under dynamic circumstances. Legal experience and emotional intelligence will also continue to be important in interpreting the data or trends that artificial intelligence provides.

WORKING KNOWLEDGE OF TECHNOLOGY IS A MATTER OF ETHICS

Attorneys never want to be the subject of any disciplinary matter; as a result, it's foreseeable that risk-adverse legal professionals would decline to immediately seize opportunities associated with social media and artificial intelligence. It really is not possible in 2018 for attorneys to simply “opt out” of social media and A.I. to avoid any trouble.

With regard to social media, attorneys who elect to “opt out” ignore the reality that 88% of adults 18–29 years of age and 79% of adults 30–49 years of age use social media sites like Linked-In®, Facebook®, Pinterest®, Snapchat® and Twitter®.¹ Social media is also not merely a young adult phenomenon as 61% of adults 50–64 are currently active on social media.² Moreover, there seems to be little difference between usage in urban, suburban or rural populations—and much of that use is *daily* and facilitated by smartphones.³ In general, social media usage (distinguished by age, race, gender, income, education and community) all note upward trends.⁴

In August 2013, the American Bar Association (“ABA”) made a material change to the ABA Model Rules of Professional Conduct.⁵ The ABA added comment [8] to Rule 1.1., Competence (as underscored):

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About the Author

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"To maintain requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education to which the lawyer is subject."⁶

Legal competency requires attorneys to know the benefits and risks of relevant technology—and social media and A.I. are already relevant and being used by law firms like Womble Carlyle and Bryan Cave, among others. As with social media, I expect that ethical guidance will be developed to assist lawyers with the use of artificial intelligence.

HOW DO ATTORNEYS PARTICIPATE IN SOCIAL MEDIA ETHICALLY?

A good starting point for considering the ethical use of social media in the practice of law can be found in the Pennsylvania Bar Association, Formal Advisory Opinion 2014-300. Among other issues, the Pennsylvania Bar Association ("PBA") generally adopted the following position with regard to certain social media issues:

- Competent attorneys should advise clients about content posted publicly and how it can affect a legal dispute. Attorneys should expect that opposing counsel is monitoring their clients' electronic presence.⁷
- Attorneys may connect with clients and former clients. The committee did not recommend using social media to discuss matters related to the representation of the client given the potential for privacy setting fumbles.
- Attorneys may not contact a represented person through social networking sites. An attorney must seek permission of opposing counsel.
- Attorneys may contact an unrepresented person through a social media site but may not use a pretextual basis for viewing otherwise private or non-public information. Attorneys have the duty to investigate but must do so openly and honestly.
- Attorneys may use information on social media in disputes if obtained ethically.
- Attorneys may generally comment or respond to reviews and endorsements, and may solicit endorsements. In the case of a negative review, attorneys may respond, but may not reveal confidential client information in so doing. Be mindful of the canons of ethics before responding to a negative review.

CURIOUS ABOUT ARTIFICIAL INTELLIGENCE?

A thoughtful analysis of the impact that artificial intelligence will have on the legal profession is found in the ABA Journal Article entitled "How Artificial Intelligence is Transforming the Legal Profession."⁸ The article depicts the current business model for the law profession as a "pyramid" structure with a great bulk of repetitive, administrative (but compensable) work of lawyers and paralegals at its base. The article predicts that A.I. will transform the business of law into a "diamond"—meaning the work at the bottom is likely to be automated with the engagement of attorneys sought for more specialized analysis. The article notes that the pressure at the bottom isn't just because of the increasing availability of automation through technology—law firms are and have been feeling pressure from clients with regard

to rate structures and pricing generally for more mundane tasks.

In terms of the ethical considerations A.I. may bring, one would expect issues of confidentiality to be significant. As in the map app example, the lawyer may potentially disclose client information electronically in order to reap the benefits of the predictive technology—but just where and by whom the confidential information is stored and, perhaps, how discoverable it may be from those third parties presents interesting questions for lawyers and courts as the technology marketplace rapidly evolves. Certainly, security breaches and hacking pose significant issues as well.

CONCLUSION

A short article only provides a brief opportunity to touch on the issues associated with social media and artificial intelligence. If you want to learn more, two blogs that I think are very interesting concerning artificial intelligence and law practice are:

Richard Tromans, Artificial Lawyer Blog,
<https://www.artificiallawyer.com/about/>

Robert Ambrogi, Law Site Blog.
<https://www.lawsitesblog.com/about/>

I tend to think that technology enhances most aspects of daily living - including the practice of law—making us more productive, smarter and creative for the clients we serve. Arguing against the use of social media or artificial intelligence at this point seems like it would be just as silly as arguing against the use of Lexis®, Westlaw® or any other electronic research tool in favor of manual research and printed books. Will there be uncertainty and hiccups in understanding and implementation? Absolutely. However, the really transformative power of these two technologies for the legal profession is how they will work together. Better data with better communication has revolutionary potential.

With that in mind, it will be extremely difficult to do anything less than to learn about and eventually embrace both of these technologies over time. In the spirit of the map app analogy, embracing technology, including social media and A.I., is just part of the career journey. Be fearless; wade in and adapt. ■

FOOTNOTES:

- ¹ <http://www.pewinternet.org/fact-sheets/social-networking-fact-sheet> (last visited January 15, 2018).
- ² *Id.*
- ³ *Id.*
- ⁴ *Id.*
- ⁵ http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/2012_hod_annual_meeting_105c.authcheckdam.pdf (last visited January 15, 2018).
- ⁶ *Id.*
- ⁷ Referring to the case of an employee who forfeited \$80,000 from a confidential settlement when his daughter posted about it on Facebook. "Girl Costs father \$80,000 with SUCK IT": <http://www.nydailynews.com/news/national/daughter-snarky-facebook-post-nukes-dad-80-000-settlement-deal-article-1.1709067> (last visited January 15, 2018).
- ⁸ <http://www.abajournal.com/magazine/article/how-artificial-intelligence-is-transforming-the-legal-profession> (ABA Journal, April 2016, Julie Sobowale)