

How to **Tame** the **Wild West**

by Miki Kim



"Accelerated Technology Development Will Continue

Based on our technical foresight...we see no indication that the accelerated pace of technology development is abating...."

RAND National Security Division

"The Global Technology Revolution 2020, In-Depth Analyses"

Riding Herd in the Wild West

Dateline June 15, 2020: The last technology decade has been a Wild West of development — unruly, messy, frightening, but also brilliant and breathtaking. There was fearless exploration — the explosion of PDAs, the onslaught of social networking and the rise of Google — at times lawless, but always incredibly exciting.

That Wild West feel has also been felt in the arena of legal software development over the past 10 years. With the rapid evolution of technology, law firms struggled to lasso the new developments while balancing fiduciary responsibilities and network stability. Firms threw millions of dollars at failover systems and loss prevention plans, implemented to address exposure concerns raised as a result of 9/11, rampant virus attacks and/or anticipated catastrophic events. The reality of employees selling client information to the highest bidder brought about Orwellian measures to physically control law firm environments. Big Brother security systems were installed in as many nooks and crannies of an office suite as possible.

Unfortunately, the most stable network and the best security system in Dodge doesn't guarantee that risk has been averted and the town is safe. On the contrary, risk has many incarnations. Risk exposures can be as grand as a shootout (failover plan) or as mundane as losing a pocket watch (an automated calendar and docketing system). If you don't have a pocket watch, you could miss the stage coach and lose your only chance to find gold in "them thar hills."

"Lawyers who do not use at least the minimum amount of technology may be committing malpractice per se . . . If you don't use technology effectively for research, file management and the like, you may be perceived as willfully less competent than your competitors. And that's malpractice."

Edward Poll

"Risky Business — Some Thoughts on Legal Malpractice Insurance"

New Frontier

Dateline June 15, 2010: So what is the legal industry going to look like in 2020? Today, law firms are feeling the effects of a tightening economy and are controlling costs wherever and whenever they can. They are looking at process improvements

that will leverage the workflow of their firms to increase efficiencies, allowing them to do more with less. Does this mean that 10 years from now, errors and legal malpractice claims will be non-existent? Absolutely not. If anything, technological projections indicate that errors and malpractice will rise unless prophylactic measures are taken today.

"While major oil companies have plans in place for the next 50 years, very few lawyers look beyond the next five. In fact, when honest lawyers are really pushed, most confess to being clueless about how their profession is likely to unfold in the long run."

Richard Susskind
"The End of Lawyers"

Despite Susskind's dim 50-year view, transformational forces of legal business processes for the individual consumer and for multinational law firms are already on the horizon. This metamorphosis will have a profound effect on the level of risk and how risk is managed for decades to come. Rather than risk decreasing by 2020, risk will rise because accelerated advances in technology will increase productivity, which will change the business workflow dynamics while promoting the client's demand for better cost control.

With our 2020 binoculars on, here are some visions of the future:

- **The Rise of the Global Walmart-Style Law Firm**

This is actually not a prediction but a current reality. Firms across the United States are merging with (or gobbling up) other firms in this country and beyond at record pace. They are becoming the megastores for their multinational clients. This presents a host of problems and engenders another set of predictions.

In order to keep costs down, larger firms will either outsource to third-party legal vendors or will open offices in regions with lower overhead (including attorney rates). These third-party vendors will take over rudimentary legal tasks for the client, such as drafting preliminary agreements or briefs.

- **The Boom of Online Legal Business**

We are already seeing the rise of the self-sufficient client in the plethora of online legal websites. Whether paid, free or governmental, these sites mean one thing: legal information is consumable by the general public. Couple this with the

meteoric rise in legal fees (especially for those at or below the poverty line), and it's understandable that, for better or worse, pro se numbers are growing. This doesn't mean the pro se litigants are successful; in fact, most clog the system. Courts could incentivize online legal tools, thus making rote legal services a commodity in order to handle the increasing numbers of pro se/pro-savings litigants.

This could further spawn more how-to sites (e.g. Legal Zoom), possibly even full-service legal websites staffed by online attorneys in a "pay-to-play" type system.

- **The Growing Popularity of SaaS or Web 2.0 Subscription Models**

Collection of data processes is sophisticated. Law firms need knowledge management or smart systems to manage the data. In the past, knowledge management software was prohibitively expensive to purchase or license and support for boutique and solo practitioners. Only the large law firms could absorb the large up-front costs. SaaS (software as a service), Web 2.0 options and the rise of the ubiquitous cloud are encouraging development or adaptation of software and workflows that were once beyond the pocket book of small to medium firms.

The Evolution of the Mobile Network

"More than four-fifths of respondents report using a PDA / Smartphone / BlackBerry while away from the office (82%, compared with 67% in the 2008 survey, and 53% in 2007)."

2009 ABA Legal Technology Survey Report

Remember when BlackBerrys were the devices of the well-heeled firms who could afford exorbitant data fees? Those days are dead and gone. In fact:

"The mobile device will be the primary connection tool to the Internet for most people in the world in 2020."

PEW Internet & American Live Project
"The Future of the Internet III"

There is no doubt that by 2020 we will be a mobile, wireless society. Work will no longer have to occur at a specific time, or, for that matter, in a specific time zone, or in a specific location like an office. Firms will discover that telecommuting will not only make for happy employees, but is also a cost-effective and efficient method for accommodating the business and technical realities of the New Frontier.

The Truth About Pocket Watches and Railroads

In truth, the reality may be a hybrid of the predictions expressed in the New Frontier vision. Whatever the case, one thing is clear: legal work will expand beyond a firm's walls whether it's

through regional offices, legal work on demand or online law firms. Exposure to risk will become a monstrous beast if it is only thought of in terms of security cameras and a big storage area network (SAN). A tight rein on the case management workflow must also be a part of the discussion.

Today, almost 30 percent of legal malpractice claims are directly attributable to deadline and calendaring errors, and if the New Frontier legal technology predictions materialize (and some already have), that number will balloon. Maybe this is part of the reason that, according to the 2009 ILTA Purchasing Survey, 40 percent of respondents planned purchases in 2009/2010 for solutions that include docketing and document management solutions. Owning a calendar and docketing solution for controlling all firm-related matters will no longer be a nicety but an obligatory element of a firm's risk management strategy. It's not only the pocket watch but the new railroad that offers safe passage through treacherous territory into the 2020 New Frontier.

It's the Journey, Not the Destination

Whatever predictions we choose to believe, there is little doubt that technology will grow exponentially by 2020. Even though the current economy is frail, and clients are asking for a reduction in fees while expecting the same high level of service, it doesn't mean you should throw up your hands and ignore realities. Preparation for the future can be as simple as implementing a docketing solution with automated workflow technology. Even if we can't tame all the technology promised for the Wild West of 2020, we can at least be prepared to travel into the New Frontier. **ILTA**



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