Making Law Practice Technology More Simulation-Based

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While many articles list which topics should be included within law practice technology instruction, how law practice technology should be taught remains relatively underdiscussed. An instructor embarking on teaching law practice technology for the first time may default to an approach common to law school seminars: leading students in a discussion of law practice technology topics every week, with the primary assessment of students’ learning coming in the form of research papers they submit. This contrasts with a more experiential approach to instruction, specifically in the form of simulation courses as defined by the American Bar Association. Within these frameworks, legal research instruction is a useful model for ideas of how to teach law practice technology. One reason is that legal research can be considered a subset of law practice technology today, even though legal research instruction in law schools long predates discussions of law practice technology. Another reason to look to legal
research instruction is the potential overlap of instructors and the methods they usually employ: many law practice technology instructors are law librarians who also have experience teaching legal research. Considering the model of legal research, two examples of other topics commonly found in law practice technology schema follow, with options for simulation‐based approaches to their instruction.

Case Management Systems

Case management systems (sometimes known as matter management systems and practice management systems) are platforms designed to help firms efficiently organize and manage client and case information. These systems can assist with scheduling, timekeeping, and document creation via automation of some elements of these tasks. They can also assist with collaboration by facilitating communication and access to case information and documents for different members of the firm. For these reasons, case management systems appear on some lists of law practice technology topics.

Because these platforms are often cloud‐based and store privileged information, their competent (or incompetent) use has ethical implications. The big source for attorneys’ ethical duty of technological competence is found in Comment 8 to Model Rule 1.1, but additional guidance on the competent use of such platforms can be found in several ethics opinions. Classroom discussions of the problems detailed in these ethics opinions may frighten a student beyond the intended goal of practicing caution when using these case management systems. Instead, this approach could lead to

6. See Brunette, supra note 1, at 15; see also Haight, supra note 1, at 205.
7. See Brunette, supra note 1, at 15; see also Haight, supra note 1, at 205.
8. See Brunette, supra note 1, at 15; see also Haight, supra note 1, at 205.
9. See Brunette, supra note 1, at 15; see also Haight, supra note 1, at 205.
10. Model Rules of Prof. Conduct r. 1.1 cmt. 8 (Am. Bar Ass’n 2020).
11. For example, Florida attorneys are allowed to use cloud‐based platforms “if they take reasonable precautions to ensure that confidentiality of client information is maintained, that the service provider maintains adequate security, and that the lawyer has adequate access to the information stored remotely.” Fla. Bar Prof. Ethics Comm., Formal Op. 12‐3, at 1 (2013). Louisiana attorneys are instructed to “review and consider the service agreement” whenever they use “various technology vendors for things such as a cloud‐based practice management system.” La. State Bar Ass’n Rules of Prof. Conduct Comm., Op. 19‐RPCC‐021, at 7 (2019). In Alabama, attorneys must “ensure that only authorized individuals have access to the electronic files” of their client’s files. Lawyers have a “duty of reasonable care in selecting and entrusting the storage of confidential client data to a third‐party vendor.” This requires the “lawyer to become knowledgeable about how the provider will handle the storage and security of the data being stored and to reasonably ensure that the provider will abide by a confidentiality agreement in handling the data.” Ala. State Bar, Ethics Op. 2010‐02, at 15‐16 (2011).
reluctance to use these systems at all. Resulting hesitation could undermine the goals of the organization and efficiency behind a future employer’s choice to implement such systems.

Instead, classroom lessons on these platforms should revolve around their actual implementation and use. Assignments could require students to evaluate different vendors’ security protocols, backup procedures, and service agreements. After this, students can set up one of these case management platforms for a fictional law office, including establishing different authorizations and access to information for various practice groups and firm employees. Assignments could also require students to complete simple research and writing exercises while using the case management platform to collaborate, organize client information and case documents, and explore advanced features like timekeeping and billing. Actual use of these systems can be the core focus of their class time, instead of an afterthought left to when students graduate and begin practicing. This would give students a greater understanding of exactly how these tools may streamline collaboration and other workflow related to their cases.

E-Discovery Platforms

In addition to the general duty of technological competence, problems with attorneys and e-discovery can arise due to specific procedural rules involving e-discovery. Ethics opinions offer good examples of attorneys mismanaging electronically stored information (ESI) and the importance of competent use of e-discovery platforms.

12. Clio is one example of a case management system offering free access to law schools through its Clio Academic Access Program. Partnering with Bar Associations, Industry Leaders, and Regulators, Clio, https://www.clio.com/partnerships (last visited Jan. 11, 2024).


15. For example, attorneys in New York County are advised that they must:

[A]ssess at the outset of e-discovery issues that may arise in the course of the representation, including likelihood that e-discovery will or should be sought by either side, identification of likely electronic document custodians, and preservation and collection of potentially relevant ESI in an appropriate database that will permit the lawyer to search for responsive ESI during e-discovery.


There are any number of vendors who purport to be “experts” in eDiscovery, some of whom are even non-practicing lawyers. Lawyers representing the client, however, are responsible to supervise not only lawyers and non-lawyers in their own firms but also the
E-discovery platforms are used throughout the many stages of the workflow outlined by the Electronic Discovery Reference Model (EDRM), including collection, review, analysis, and production. While not every lawyer involved in a case will undertake each of these tasks, any lawyer who supervises anyone performing this work will be better prepared if that attorney has developed competence using actual e-discovery systems and evaluating the work performed on these platforms. Some vendors behind popular e-discovery platforms have already developed “academic partner programs.” These programs help schools teach their students how to perform different e-discovery tasks while providing training materials, instructional sessions, and reduced-price or free access to the platforms for instructors and students. The provided training materials may even include assessments of participants’ mastery of the platform among the exercises. In this way, these programs resemble law schools’ relationships with legal research providers like Lexis or Westlaw. One of the more successful e-discovery vendors lists at least twenty-four law schools that signed up for its academic partner program.

Professor Paula Schaefer discussed simulation-based instruction of e-discovery in her 2011 article, “Injecting Law Student Drama into the Classroom: Transforming an E-Discovery Class (or Any Law School Class) with a Complex, Student-Generated Simulation.” Schaefer’s classroom outside vendors whom they hire. . . . [T]he only way an attorney who is not especially competent in the law and practice of eDiscovery can fulfill his or her ethical duty is by taking the time and considerable effort needed to become competent, or by bringing in legal counsel who is competent to assist her or him.


17. See The ZyLAB University Partner Program, ZyLAB, https://www.zylab.com/en/academic-partner-program (last visited Jan. 11, 2024) [hereinafter ZyLAB]; see also Bringing Ediscovery to the Classroom, DISCO, https://csdisco.com/disco-for-schools (last visited Jan. 11, 2024) [hereinafter DISCO]; see also Relativity Academic Partners, RELATIVITY, https://www.relativity.com/resources/academic-partners/ (last visited Jan. 11, 2024) [hereinafter RELATIVITY].

18. See ZyLAB, supra note 17; see also DISCO, supra note 17.

19. See, e.g., RELATIVITY, supra note 17; see also Everlaw Training Center, EVERLAW, https://training.everlaw.com (last visited Jan. 11, 2024).


21. See RELATIVITY, supra note 17.

22. See generally Paula Schaefer, Injecting Law Student Drama into the Classroom: Transforming an E-Discovery Class (or Any Law School Class) with a Complex, Student-Generated Simulation, 12 NEV. L.J. 130 (2011).
simulation required her students to perform many stages of the EDRM, including the use of the e-discovery software Concordance for some steps.\textsuperscript{23} Specific opportunities for potential attorney misconduct during this process, along with the rules guarding against misconduct and consequences for their violation, were interwoven into the simulation.\textsuperscript{24}

**Conclusion**

After embracing simulation-based instruction for their legal research courses for decades, librarians teaching law practice technology are well-suited to bring a similar approach to teaching case management systems, e-discovery platforms, and similar subjects.\textsuperscript{25} Students will benefit from hands-on access to this technology in the classroom, and the skill competencies they develop will help them practice law ethically.

\textsuperscript{23} See id. at 147–48.
\textsuperscript{24} Id. at 148.