What's Holding <u>You</u> Back?

Inhibitions to Legal Knowledge Technology

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From the forthcoming book, <u>Working Smarter with Legal Knowledge Tools</u>, © 2005

Knowledge technology involves software that does significant intellectual work. It applies or processes knowledge, doesn't just store or move it. In law, it can help practitioners organize facts, do legal analysis, draft documents, and plan actions. Examples include conceptual retrieval, document assembly, and interactive checklists. Used appropriately, tools like these can skyrocket your professional effectiveness, making work more satisfying and more profitable.

Note: By not counterbalancing the parade of barriers and inhibitions excerpted here with material on the great *benefits* of knowledge tools, or how to *overcome* obstacles to their enjoyment, I realize this might strike a pessimistic tone. But sometimes we need to look negatives in the face in order to get past them.

However wonderful knowledge tools might sound, the reality is that few lawyers are clamoring for them. Why? What are the obstacles to law office adoption?

It has long been utterly clear to me that knowledge technology can radically improve the lives of lawyers and clients. Properly applied, its benefits can dwarf its costs. I hope by now that you agree this is true in at least some circumstances. But I've also come to appreciate how deeply counter it is to many of our practices, arrangements, and attitudes.

Why don't more lawyers use knowledge tools? What's stopping them? Who *wouldn't* want to get better work done in less time for more money and happier clients?

I'm afraid that this is like asking: Why do people overeat and underexercise? Why do lawyers under-delegate and under-market? We routinely fail to do many things that are "good for us." They often require inputs that are in short supply, like faith, effort, discipline, and trust.

I've encountered lots of obstacles and inhibitions to knowledge tool adoption in my years as a practice systems evangelist. Here are the common ones I've identified. Collecting them has become a bit of a hobby. Some of these barriers only apply to private law firms, or only to larger offices. And some only apply to specific stages of knowledge technology, such as building, using, financing, starting, or sustaining. But they are all worth acknowledging. If you know of other good ones, please let me know!

Explanations vs. excuses

For the most part, lawyers are not stupider or lazier than the average human – there are good reasons why some have not yet adopted this technology. You can be motivated by a rational comparison of costs and benefits, and reach a position on the merits. You might honestly conclude that knowledge tools are of too limited applicability to your practice, or are too costly or risky. You may feel that the net gain is not that clear. You may have competing investments with higher returns, better things to which to devote organizational energy and scarce funds.

Resistance can be legitimate, even if not narrowly rational. The perceived advantage might not be substantial. "That doesn't seem much better than what I'm doing now." Or you may say "I'd just rather not do this." Or maybe you accurately perceive your inability or unwillingness to use knowledge tools effectively. It's foolish to pay for membership in a fitness club you won't visit.

But there are also lots of bad reasons.

Too busy bailing

A fundamental reality is that many legal professionals find themselves "too busy bailing to patch the hole in the boat." Or, to change metaphors, we're so busy cutting, we don't have time to sharpen the saw. Or yet again, we're too busy driving to stop for gas.

People don't feel they have spare time to ramp up, let alone to ramp up for ramping up.

This may be due to pressure to meet billable hour quotas, concern to meet client demands, or a sense of needing to get while the getting's good.

Part of this is the triumph of the urgent over the important. Many lawyers are urgency addicts. This greases the way for procrastination: "it'll be cheaper next year." And knowledge tools by definition are not things you can build or buy at the last minute, producing the "quicker to do it myself" reaction.

People in law offices seem to have especially limited attention and bandwidth for things out of the ordinary. You might call it a mindshare famine.

Instant gratification is the general message of our culture, media, advertising. This present-obsession hinders future-oriented projects like knowledge codification. Things that require deferred gratification and un-maximized current income get short shrift.

Ch-Ch-Ch-Changes

If you wear a watch, humor me for a moment and put it on the opposite wrist. (If not, relocate your wallet or a piece of jewelry.)

Change is constant, but it's often unpleasant. It takes us out of the comfort zone. We have an innate resistance to change, as humans. We stick to routines in most precincts of

our lives. We don't always welcome "progress." There's a narcotic dimension to doing things the way you've always done them. Few lawyers want to reinvent themselves (let alone continuously).

The same goes for organizations. They develop methodological inertia, or momentum; they slide about in well-worn ruts.

It's natural and good for people and groups to have some resistance to change. But certain forms are quite pernicious. You may have heard about learned helplessness, exemplified by a young elephant tied to a stake that an adult would find easy to pull up. (Guess what they don't do when they grow up?) I've seen similar behavior in former engineers turned lawyers who don't deign to touch a keyboard or insist upon print-outs of email. Or a classmate with a million-dollar-plus annual draw who could barely grab a quick lunch because a client had him on a "short leash."

All knowledge tool initiatives involve some disruption, some derailing. They accordingly bump up against strong instincts and vested interests.

Pain is more of a driver than opportunity. If you're lucky enough to already be making a couple hundred thousand per year, you're not likely to want to rock the boat. "If it ain't broke … ." Successful people are especially prone to overlooking their inefficiencies.

Okay, you can put your watch back. But remember how awkward it felt on the "wrong" arm.

Financial practices and organizational structure

I used to suspect that hourly billing was the biggest obstacle to legal knowledge tools. It can certainly be a formidable challenge: why spend money to acquire tools that will result in your doing work faster when you charge by the hour? But there are lots of good answers to that question. And hourly billing is only one aspect of an entire syndrome of arrangements and attitudes that get in the way of practice modernization. Many of these are embedded in the typical financial practices and organizational structures of law firms.

It's a commonplace of organizational theory that you get the behavior you reward. And most lawyers are compensated and promoted based on how many hours they clock. They don't generally get paid for creating or sharing knowledge. (Before going on, let me acknowledge that time tracking has its clear uses and advantages. Detailed time records provide metrics that are useful in any billing regime, and especially appropriate in the absence of clear value standards.)

No one likes to feel stupid, or lose their power, indispensability, or strategic advantage. It can be rational to hoard knowledge and persist in inefficient methods if you lack confidence that you will be fairly rewarded for changing. There's low incentive to build skills in others.

Law firms have little tradition of knowledge capitalization. There's great reluctance to invest in things clients don't see – like carpets, fancy furniture, and offices illuminated late into the evening.

The inability of firms (under ethical rules) to fund internal investments with outside capital likewise hampers innovation.

Finally, in most offices it's not yet anyone's job to pay attention to knowledge technology specifically. No one's in charge. This tends to produce sponsor apathy.

> The Pulitzer time capsule was buried in 1884. In 1954 the building was demolished and people spent 16 months sifting through the rubble before finding it. Among its contents was the only copy of the building plan that showed the capsule's location.

Power structure

Beneath the surface of financial practices and organizational charts lies a deeper complex of processes and values. Structural characteristics of a firm like partner-associate ratios likely accommodate old ways of doing things. There are generational conflicts: partners near retirement don't want to spend money on investments that won't pay until after they're gone. Outdated rules for dividing up the pie can lead to a "tragedy of the commons" in which everyone want to take out, but no one wants to put in. Diminished loyalty to firm and greater mobility among professionals threatens to make this even worse.

Organizations tend to evolve structures, elicit behaviors, and groom leaders who perpetuate reigning organizational values. People are invested in the value structure implicit in current work arrangements and processes. There are intricate payoff systems – social hydraulics – that sustain the status quo. When disrupted, organizations tend to return to equilibrium, like the human body does under the mechanism of homeostasis.

More than other technologies, knowledge systems intrude upon very fundamental aspects of how work is organized and how rewards are divided up. You can't get far without recognizing and dealing with the pre-existing internal knowledge economy. We need to evolve new mechanisms for allocational fairness in a world of shared knowledge tools.

Lawyers are reluctant to be replicated – even in part – in a system that might reduce their monopoly value. They hoard knowledge because it gives them power. They think "if I allow too many of my precious intellectual fluids to be sucked out and be put out into a system, I'm relinquishing some of that power." It requires a leap of faith in most organizations to buy into contributions to the central good. That runs counter to the predominant ethos we see in law offices.

The legal personality

Part of the legal profession's resistance to using machines for our knowledge work is that we're not disposed or trained to think that way. Lawyers can be arrogant, provincial, change-averse, and technophobic.

Experts differ over what personality types are most commonly found in law.

But the #1 personality trait of lawyers, according to a study done by Larry Richards of Altman Weil, is skepticism. Lawyers are trained arguers and nit-pickers. They can be strong-willed, stubborn, know-it-alls. Not-invented-here = not-good-enough.

Lawyers are often rugged individualists. They are jealous of professional freedom, protective of turf, territorial. They hate being managed and resist being held accountable. Many are autonomy cravers and control freaks. But they also have a high incidence of depression, defeatism, substance abuse, divorce, and suicide.

Many of us chose the law because it is a learned profession. Most of us did well in school, and enjoyed our educations. We became "professionals" because we didn't want to be "business people" and deal with the crass details of commerce. And if we had wanted to become engineers, we wouldn't have slept through math.

So how might these self-selected skeptics, non-techies, non-business-people instinctively think about knowledge tools?

- Some will feel about their knowledge being "captured" the way aborigines fear their souls being stolen by being photographed. They hear 'repository' and think 'suppository.'

- Some will resist getting drawn into knowledge system projects because they don't want to *appear* to have free time. ("You must not have real work to do.")

- Some will resent having what they do automated (faster, better, cheaper) because of what that says about the work they *have* been doing up until then. It's threatening to ego, status, and compensation if a machine might be able to do some of that work.

- Some lawyers don't *want* to be "liberated" from routine or repetitive "drudgery," and have to do hard thinking all day.

- And, let's admit it, many lawyers find this stuff boring. Building or maintaining software systems is *not* intrinsically interesting for most.

Culture

An organization's culture is not cleanly separable from the personality types of its inhabitants; both reflect each other. But cultural resistance to knowledge technology seems to have a life of its own.

Anthropologist Jennifer James makes a compelling case for viewing law firms as frat houses or lodges. Not exactly institutions that foster routinely high standards of collective behavior.

Many firms acknowledge that they are little more than solo practitioners sharing overhead. Their traditions sometimes are little more than recitations of heroic personalities from the past, reminding me of the plaintive (but presumably apocryphal) oral poems of New Guinea, which consisted of nothing but the names of tribal poets who contributed to them.

A knowledge sharing culture is the sum of countless little actions by individuals. If you have few of those actions, you aren't going to have much of that culture.

Fear

For some, knowledge tools are downright scary. Putting aside general technophobia, there's

- fear of the unknown, of uncharted waters
- fear of setting things in motion that might lead to broader change (Pandora's box, slippery slope)
- fear of failure (maybe based on the recent memory of unsuccessful efforts)
- fear of "what else I'll have to do if I delegate the easy stuff"

Involvement in *building* knowledge tools can raise special kinds of concern:

- fear of accountability or liability – being too candid about how something was previously handled and having it come back to haunt you
- fear of embarrassment or exposure – lawyers often don't want other people critically examining their work.

Difficulty

Let's not underplay the complexity and subtlety of knowledge that many legal professionals wield. Trying to surface and codify even elementary forms of tacit knowledge can be a daunting challenge. Being explicit is hard work.

There are two kinds of tacit knowledge: the inarticulable and the unarticulated (or selectively disattended). Some people are alarmed to discover they can't really articulate what they've been doing. You might be a truly great expert, but be incapable of formalizing even parts of your knowledge.

We don't just *know* things tacitly, we *think* things through at an unconscious level. Lawyering involves a lot of tacit deliberation and unconscious strategizing that is not easily surfaced. Lawyers are (usually) good at lawyering. They're not usually good at systematizing or automating their knowledge.

Difficulty also arises from the multidisciplinarity of this work, both in terms of individuals needing to be knowledgeable in several domains, and in terms of projects requiring coordinated effort across teams consisting of representatives from various disciplines. The disciplinary melting pot can include technology, management, lawyering, education, and librarianship.

Besides the cognitive difficulty of some knowledge tool projects, there are social and emotional difficulties. It can be painful to harmonize practices across a work group, especially if it derived from groups at several predecessor firms or it has more than a couple strong personalities in it. (Partner A insists upon underlining defined terms while Partner B capitalizes them.)

And it's always hard to change the tires while the car is moving. Law offices don't have the luxury of shutting down for a couple weeks to retool the production line.

Ignorance and misconception

The biggest barrier to knowledge technology adoption in law offices is likely ignorance. Most legal professionals have just not yet learned much about it and its benefits. Blame those of us who ought to be doing a better educational job. But there are also some troublesome misconceptions – you might say myths – afoot. Some of these reflect the professional chauvinism touched on earlier. But mostly they represent unfortunate overgeneralizations.

- "What I do can't be systematized." My work is idiosyncratic, custom. Every client engagement is unique. Software tools may be appropriate for those folks down the hall who do a lot of routine work, but they're not suitable for the high-rate, high-value work I do.

The reality is that some kinds of knowledge tools make sense for virtually every practice. No one argues that the entire job most lawyers do can be automated. But inevitably large parts of the work turn out to be improvable through systems.

- "We tried it and it didn't work."

You can say that about just anything. Just what was the "it" that didn't work? Can you fairly draw absolute conclusions from one episode of failure?

Losing our inhibitions

Motives, motivation, emotion, motion, motor, dynamo – all of these words share a root sense of movement. If we're convinced a knowledge tool destination is worthy, how do we get moving in that direction?

When you're dealing with stuff that might be perceived as important but not urgent, someone has to persuade people that personal involvement is essential. Doing so requires finding both rational and emotional motivators. Put more crassly, it requires recognizing that most folks have their radio dials tuned to WIIFM (what's in it for me?)

After many years of tilting at these windmills, I'm more convinced than ever that it all comes down to personal values, habits, attitudes, and mindsets. No amount of brilliant business planning or space-age technology will produce enduring improvements unless enough *people* embrace the need for personal and organizational change. And that's largely a matter of culture, character, ethical maturity, and emotional intelligence.

So what's in it for you? Regardless of your practice, you can likely get better results with less effort through the appropriate use of knowledge tools. They can help you have happier clients, more money, *and* more job satisfaction.

If you and your colleagues aren't already enjoying many (or any) of these benefits, consider the possibility that you are the one holding you back. Look back over the inhibitions reviewed above. Think about which may apply to you, and whether you want them to govern your future.

The more lawyers find ways to live satisfying and balanced lives, the better off will be the rest of humanity. Take time to attend to your personal transformation, to "sharpen the saw." Become the change you want to see in the world.

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