

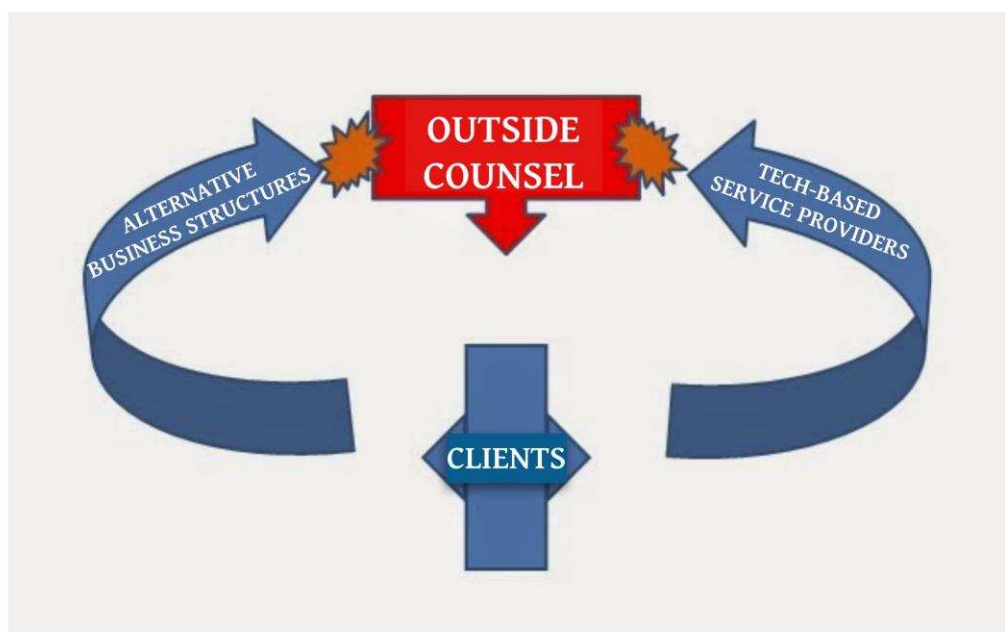
PRESENTED AT
50TH ANNUAL WILLIAM W. GIBSON, JR.
MORTGAGE LENDING INSTITUTE

September 29-30, 2016
Austin, Texas

October 20-21, 2016
Dallas, Texas

THIRTY TECH TIPS FOR YOUR CREF PRACTICE

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In five years (2021), technology will significantly impact the basic skills set of commercial mortgage lawyers. This is a difficult topic for mortgage finance lawyers. We deal with topics “as old as dirt.” Indeed, while technology has significantly impacted many industries and professions, the exception seems to be lawyers and legal teams who focus on commercial mortgages.

Dirt never changes. Right?

On a broader perspective, all lawyers are slow to adopt technology.¹ It is a stipulated fact; so much so, William Hubbard in his President’s Message (in the August 2015 ABA Journal) asked the bar to “embrace technology and innovation.”²

Hubbard’s call is not asking lawyer to become technology innovators, which would be laughable. Lawyers are not technology innovators. David Perla, the President of Bloomberg NBA Legal,³ bluntly articulated this at a recent Penn Law event: “There is no expertise, competency and capacity to innovate within American law firms The industry, by any measure, is entirely stagnant.”⁴

This paper responds to Hubbard’s call to “embrace technology.” This paper is directed at commercial mortgage professionals who (somehow) suspect that we are not above and beyond the reach of technology, and plan (hope) to be handling commercial mortgage transactions in 2021 and beyond. The suspicion is that dirt will be leveraged for new uses, and perhaps mined for new value.

For those of us who are suspicious or hopeful, then we need to understand:

- The players using technology now handle work traditionally owned by legal teams;
- The technologies developed and used by these players;
- Tips to enhance or alter our technology skills, or to act on new opportunities created by technology
- Clients will be the innovators

¹ These two podcasts explore “why” lawyers are slow in adopting new technology: [The Human Barrier to LPM Technology: Will Lawyers Get to the Future?](#); and [Adopting Legal Technology: A Human Problem?](#) Of course, we are skeptics, trained to look “backward” (legal precedents steer us clear of unimaginable traps), and focused on perfection. Beware, this mindset can be dangerous, and even drives us into burnout and anxiety (ABA Journal piece): <http://bit.ly/2aa25HV> .

² Link: <http://bit.ly/29YUMSe>

³ Perla co-founded Pangea3, which is a global legal process outsourcing provider (purchased by Thomson Reuters) (<http://tmsnrt.rs/29ISbd8>)

⁴ The reasons for this are familiar: a business model founded on annual disbursement of profits (no retained earnings for innovation); a pricing model (the hourly rate) that promotes poor business processes; an ownership model that excludes non-lawyers (no investment capital for innovation); etc.

- Sometime in the 2020s, these factors will replace the focus on human beings as the dominant ways to reduce legal costs (through cost service centers, off shoring, use of paralegals, subcontracting, etc.) with new technology capable of performing new services – “The 20’s is going to be the decade of disruption” in the words of Richard Susskind.⁵ In other words, technology will not simply “sustain” lawyers by allowing us to do what we’ve always done. Instead, technology will be transformative by performing new services that minimize the role of lawyers.

With this knowledge, we will position ourselves to survive and even thrive in a new technology-driven mortgage finance practice. It positions us to be responsive to our clients, who in the next five years will be making new choices in “how” and from “whom” they purchase legal services based upon the use of new technology tools. And when faced with transformative services created by new technology, to stake out a new role in services to our clients.

Ultimately, this perspective frames our approach to legal technology as a Hobson’s choice: work with (embrace) technology or simply don’t work.⁶ Or at the very least, we’ll have less work.

We can wait for that day, and simply experience “how” it impacts our practice; or we can be a “first mover” and a survivor. I favor the surviving approach.

I. A Pincer Movement

In the military, a “pincer movement” occurs when forces attack both sides of an target at the same time.⁷ Sometimes this is done by “inviting” the target to move forward. The forward movement of the target could be induced by engaging the target with resistance, in order to make the target believe that forward movement is the path to engagement. At the same time, the primary forces assemble at the sides of the target – slowly gaining strength and unleashed to the surprise of the forward moving target.

For the legal profession and legal teams, the “light” resistance has been the slow disappearance (over years) of various types of work, such as:

- Lease reviews
- Due diligence on property acquisitions

⁵ Link to Susskind’s perspective in Bloomberg Law: <http://bit.ly/2c411Tq>

⁶ Take it or leave it. Wikipedia on Hobson’s choice: <http://bit.ly/2a4nSkx>

⁷ Link to Wikipedia explanation: https://en.wikipedia.org/wiki/Pincer_movement

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Title search: Thirty Tech Tips for Your CREF Practice

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First appeared as part of the conference materials for the
50th Annual William W. Gibson, Jr. Mortgage Lending Institute session
"Thirty Tech Tips for Your CREF Practice"