

Legal business faces computer test

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same, he'd quote him \$3,000," Komaiiko said. "I thought, 'Wow, I needed to have started this website.'"

Some firms have already gotten on board. Reed Smith LLP, for example, built an alternative fee method team that utilizes contract automation software to address clients' needs for more efficient legal services.

The software, designed by KM-Standards LLC, helps generate and edit legal documents and contracts to create a standard model — much like an outline — with common language and clauses already pre-written.

"The first thing we're trying to do is set up quality," said Kingsley Martin, president and CEO of KM-Standards. He said the standardized documents enable clients to assess the work lawyers do on a contract or other document.

"That's what they need, in all honesty," Martin said.

Martin said he is chasing efficiency. By streamlining the contract-writing process, he said lawyers can spend more time on human negotiation and less time on double-checking and re-reading the clauses of agreements.

Despite the opportunities for increased efficiency, Martin said some attorneys have heavily pushed back — in his opinion, because it would lower their profits. Software that automates contract-writing dramatically cuts down on the number of hours a law firm bills for legal work.

"Some attorneys say, 'But you must understand, we bill by the hour, and if we're more efficient and bill less hours, this is not good for our firm,'" Martin said. "I mean, what an argument."

And it's true that a lot of legal work is complex and computerized

systems haven't yet been created to simulate the value a human's judgment adds to the equation. Observers expect automation to at first put pressure on commoditized legal work.

Thomas W. Baldwin, chief knowledge officer for Reed Smith, said the firm started using Martin's software as clients began demanding more fixed-fee services and cost predictability. He said those demands coincided with the economic downturn in 2008.

"You've got to look at a variety of options, and one way is speeding up the time it takes to produce certain types of work," Baldwin said.

The opportunities new legal technologies create must ultimately be supported by the courts and regulatory bodies like the American Bar Association.

"Despite cool innovation, there's always this risk that the regulations

on lawyers are going to come down the pipe and make it impermissible to act on," Hwang said. He said the legal community needs to have a backup plan in case new methods of contract creation and law automation are limited by courts or regulators.

Already courts are wrestling with the issue. In May 2010, client Katherine Webster filed a class action against LegalZoom after using the site to generate a will and living trust for her dying uncle. After his death, no financial institution found LegalZoom's documents to be valid. The case has since settled.

Hwang said these types of cases will increase until a final federal decision is made on the validity of automated document review and generation. He suggested attorneys propose legislation supporting such technologies.

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Testimony: No signs Jackson was ill in 2009

By Anthony McCarthy
Associated Press

LOS ANGELES — An associate choreographer who worked on Michael Jackson's planned comeback concerts testified Monday that she didn't see any signs that the pop superstar was ill or might die in the final days of his life.

"I just never in a million years thought he would leave us, or pass away," Stacy Walker told jurors hearing a lawsuit filed by Jackson's mother against concert promoter AEG Live LLC. "It just never crossed my mind."

Walker, who is testifying for AEG, said Jackson appeared thinner than he had been in previous years and wore multiple layers of clothes while rehearsing for his "This Is It" shows planned for London's O2 arena. She said despite Jackson missing multiple rehearsals, she was convinced based on his performances the last two days of his life that he was ready for the series of shows.

Previous witnesses have testified that Jackson was shivering, had to be fed by others and appeared unprepared.

Walker said she never saw any of that behavior, although she acknowledged that her job was to work with other dancers and not Jackson directly.

"I wasn't looking for things at the time," she said. "I wish I was."

She said she attributed Jackson's multi-layered wardrobe to a personal preference. She said she recalled one incident in which Jackson may have appeared

groggy or drugged, but she said she couldn't remember whether she witnessed or heard about it from others on the show.

Walker was the first witness called by AEG in a trial filed by Jackson's mother, Katherine, against the concert promoter. Her suit claims AEG didn't properly investigate the doctor convicted of involuntary manslaughter in Jackson's death and that its executives missed signs that the singer was unprepared for the "This Is It" shows.

AEG denies all wrongdoing, and contends Jackson hid his struggles with prescription drug addiction. Jackson died in June 2009 from an overdose of the anesthetic propofol, which he had been using as a sleep aid.

Walker, who worked with Jackson on three projects beginning in 1996, was called to the witness stand Monday because she is slated to leave the country for work. The trial is expected to last several more weeks.

AEG is expected to call choreographer Travis Payne, who worked with Jackson directly in preparation for the "This Is It" shows, and tour director Kenny Ortega is also expected to testify.

Jurors last week heard from a dancer and also Jackson's long-time makeup artist, who testified that the singer appeared thin and at times unprepared for the concert tour. Another dancer, Alif Sankey, told the panel she expressed concerns that Jackson might die and sent an email about his appearance to Ortega.

Lawyers: Experts diagnose Holmes' mental illness

By Dan Elliott
Associated Press

Lawyers for Colorado theater shooting suspect James Holmes formally told a judge on Monday that he wants to change his plea to not guilty by reason of insanity after outside experts diagnosed his mental illness.

The attorneys, however, did not specify the diagnosis. Judge Carlos Samour Jr. indicated he would not decide whether to approve the new plea until the end of the month.

A judge entered a standard not guilty plea on Holmes' behalf in March, and he needs court permission to change it.

Holmes is charged with more than 160 counts of murder and attempted murder in the July 20 shootings that left 12 people dead and 70 injured.

He appeared at Monday's hearing with bushy brown hair and a full beard. He entered the courtroom with eyes downcast and didn't speak.

Prosecutors are seeking the death penalty, and the insanity plea is widely seen as Holmes' best chance to avoid execution.

No motive has emerged in nearly 10 months of hearings, but Holmes' attorneys have repeatedly said he is mentally ill. He was being treated by a psychiatrist before the attack, but the reason for the treatment hasn't been disclosed.

Before Samour decides on the change of plea, he must rule on questions raised by the defense

about the constitutionality of Colorado's insanity and death penalty laws. Holmes' lawyers have argued that a wrinkle in the laws could cripple their ability to raise his mental health as a mitigating factor during the sentencing phase.

The move by the defense to change Holmes' plea was a significant step as the case slowly creeps toward a trial or possible plea agreement.

With Holmes' life at stake, even the smallest details take on more importance. Samour even notified lawyers in court on Monday that he was removing two commas from a document.

The insanity plea carries risks for both sides. Holmes will have to submit to a mental evaluation by state-employed doctors, and prosecutors could use the findings against him.

Efficiency is not *the* competitive advantage for law firms

By Patrick J. McKenna
and Edwin B. Reeser

Efficiency in any firm, in and of itself, is not the competitive advantage. There is a big difference between being efficient and being effective. Far too many firms only seem to be investing in efficiency — at the expense of being effective.

Management thinker Peter Drucker addressed this topic decades ago in his book, "People and Performance".

"Efficiency means focus on costs. But the optimizing approach should focus on effectiveness. Effectiveness focuses on opportunities to produce revenue, to create markets, and to change the economic characteristics of existing products and markets. It asks not, how do we do this or that better? It asks, which of the products really produce extraordinary economic results or are capable of producing them? Even the most efficient business cannot survive, let alone succeed, if it efficient in doing the wrong things, that is, if it lacks effectiveness. No amount of efficiency would have enabled the manufacturer of buggy whips to survive."

Law firms are all too often focused on being efficient at doing the wrong things.

Producing commodity work

Every firm is dealing with clients striving to get more for less. As a leader you can easily get stuck in an efficiency mindset and become totally reactive. Today it is hard to find many firm leaders that aren't encouraging their attorneys to embrace initiatives designed to make their individual practices and their groups more efficient. Indeed, these tactics are included in most firms' formal strategic plans and can quickly evolve into a firm's primary focus.

Thinking about efficiencies is easier than developing effectiveness. You simply focus on the way you do things now and make doing them a little bit better. It is relatively safe, measurable and satisfying. Alternatively, effectiveness requires that we transition from an operational (internal) lens to the strategic (external) lens and requires that we consider the leadership imperative — are we even doing the right things in the first place?

This can be a stressful question to answer. It may mean questioning the

kinds of work that we are accepting and doing for clients. Many partners don't want to deal with this issue. They simply want to keep their heads down and continue with what they're already doing. For these partners, thinking about effectiveness is too long term.

However, real competitive advantage is built on effectiveness, not efficiency. Consider whether you have invested so much time being efficient that you missed the opportunity to invest some of that time in building your skill-set. Have you focused so much attention on project management and incremental gains that you've failed to engage your partners in seeking opportunities to be entrepreneurial or constructively disruptive?

Alternatively, effectiveness requires that ... we consider the leadership imperative — are we even doing the right things in the first place?

Take general litigation, for example. At a time when in-house law departments will willingly pay bonuses to avoid litigation, where is your firm's investment in developing sophisticated tools and systematic techniques to rigorously help clients manage risk and avoid disputes? At a time when most lawyers are unfamiliar with online dispute resolution, in spite of the European Commission having already formulated a draft regulation on ODR, have you thought of investing to build your litigators skills in this emerging and potentially important market space?

Firm leaders should be constantly questioning: What needs are emerging in our particular markets? How can we get out ahead of the curve to anticipate clients' needs before clients even know those needs exist? Most importantly, how can we build our skills in new and emerging areas that may prove to be highly profitable market niches in the years to come and allow us to meaningfully differentiate ourselves from competitors?

Constant obsession with efficiency becomes contradictory to pursuing excellence, innovation and

dynamism.

Pricing services

As economic pressures increase, the debates over legal fees will intensify. Most firms have reacted to these pressures by adopting various alternative fee arrangements, usually in those practices where it suited the firm and where the firm could be assured of still making a good profit. But even if you were incredibly efficient at developing AFAs, it would still not provide you with much of a competitive lead, for within a short time other competitors will match or better your position. Cutting costs and reducing prices rarely provides a long-term competitive advantage.

Unfortunately, AFAs seem to be failing to deliver significant savings for clients. In-house lawyers opine that their requests for discounts are largely being driven by their not seeing much of an overall reduction in costs. Indeed, law firms have built AFA proposals on billable hour metrics, thus making them "a rose by any other name is still a rose."

Those more focused on effectiveness have gravitated from obsessing over how to price differently to exploring how to do the client's work differently. These firms are examining both litigation and transactional work by breaking them into their different component pieces, and then determining how each of those pieces, from legal research to legal strategy, might be effectively handled — which could mean utilizing either the firm's lawyers or even alternative providers.

Net operating income

In the panic to maintain reported profits, law firms have become supremely efficient in de-equitizing partners to maintain profits per partner, accounting gimmicks to overstate income, lateral hiring and mergers/combinations to buy books of business to show "growth" in revenues, building a production caste of income partners, installing wide compensation spread systems for equity partners, coercing partners to make higher capital contributions, using debt to fund distributions, reducing promotions to partner from within, and building the partnership with newcomers

from sources outside the firm.

Firm cultures are sacrificed, training and mentoring of young lawyers essentially abandoned, lawyers are flogged for higher billable hours quotas, billing rates raised, and compensation systems built more on political power, and in some cases outright deception to the partners, rather than rational economics.

How much of that is effective at making a better law firm? More importantly, how effective is it at making the business a better provider of legal service to clients, which is critical to its medium to long-term survival?

Satisfying clients

Take the case of client satisfaction. Let's say you conduct a survey and discover that some clients are disgruntled about something your firm is or isn't doing. Perhaps some client didn't think that their lawyer is as responsive as they might wish. The lawyer in question isn't returning the client's calls fast enough. What would most leaders do? They would start investing time and resources focusing on how to make this situation better. They might explore wait times for answering the phone, returning calls, and whether the firm needed to introduce some kind of formal procedures to enhance efficiencies.

An effective leader, in contrast, might want to know how this satisfaction rating correlates to importance. If a client is dissatisfied about something, how important is that to them? If you are trying to understand the value drivers, you need to know how clients rate such things as your fees, responsiveness and quality in terms of satisfaction and importance. It is the combination of satisfaction ratings and importance ratings that really matter — but leaders don't always think about the second part.

For the purposes of our illustration, let's say that the client's dissatisfaction is combined with high importance. Now we do really have a red flag on the play. Again, an effective leader might look beyond this one expression of dissatisfaction to see how he or she might restructure the entire game rather than just fine

tune. Remember, efficiency in any firm, in and of itself, is not a competitive advantage. In one firm we're familiar with, the expressed dissatisfaction caused the leadership to dig deeper into whether there were any particular kinds of calls that were not being returned quickly enough. They discovered that indeed, a good number of these calls were stimulated by clients wanting to know where their particular matters were at, having not heard from the lawyer over a period of a few weeks — even though the lawyer usually really had nothing new to report. This insight stimulated the firm to develop a technological-based, completely transparent system that would allow clients to easily access the real-time status on any and all of their matters without necessarily even having to speak with their lawyer.

Are you being efficient or being effective, or do you even know?

Is your efficiency directed to the operation of the business and generating net revenue gains, or the consumption of your human resources for redistribution of a stagnant income pool, and thus hastening the demise of your firm? It isn't enough to be efficient on the right things, it is critical not to be efficient at doing

the wrong things.

As Drucker said, "Effectiveness is the foundation of success — efficiency is a minimum condition for survival after success has been achieved."

Things don't always have to boil down to either/or types of decisions. Balancing entirely different things is one of the critical success factors for good leadership. With the proper perspective and focus on the right things to be doing it is quite possible to be both efficient and effective. The two concepts can co-exist so long as the focus remains on more than just short-term results.

Patrick J. McKenna works with the top management of premiere law firms to discuss, challenge and escalate their thinking on how to effectively manage and compete. For more information, visit www.patrickmckenna.com.

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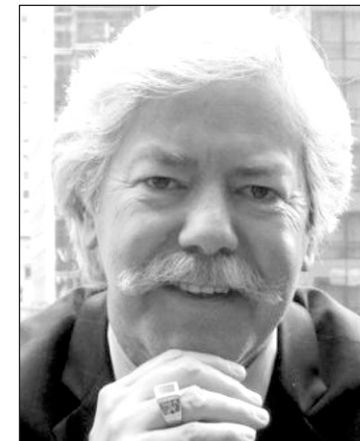
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