

Opportunity to Influence at the Intersection of Dispute Resolution and Technology

Theory-of-Change Symposium

indisputably.org/2019/11/theory-of-change-symposium-part-3/

November 12, 2019



[Alyson Carrel](#) argues that technology innovation and dispute resolution should go hand in hand. She presents three pathways for the DR field to influence the diffusion of technology in the practice of law. She is a clinical associate professor at Northwestern Pritzker School of Law and was the assistant dean of law and technology initiatives from 2017-2019. [Click here for more information about her.](#)

There is [plenty of evidence of innovation in legal practice due to technological change](#). Experts in legal technology / legal innovation agree with the dispute resolution (DR) field about the importance of human connection and empathy, and they often focus on the interplay between lawyers' adoption of new technology and practical problem-solving. With this common ground, the DR field should take a more active role in legal technology innovation, both learning from and influencing the diffusion of innovation in legal practice.

The adoption of these changes in legal practice is in an early stage, and it relies on thought leaders and influencers to encourage others to participate. The [diffusion of innovation theory](#) suggests that innovations are adopted over time according to different groups' openness to change. People who are most open to change need little to no convincing that the innovation is worth trying and are the first to adopt innovations. The adoption of innovations starts slowly with a small number of people most open to change, and it accelerates as mainstream users influence people who are less open to change. Bill Henderson, a law professor at Indiana and founder of the Legal Evolution blog, wrote, "For roughly 5/6th of the legal market, the [adoption of new innovations is more a social process of imitation than a mental process of analytical reasoning](#). ... Adoption decisions are more than a rational, explicitly stated risk calculations; they are also strongly influenced by the often-unstated desire to fit in or, alternatively, the fear of being left behind."

This spring, I participated in a symposium at Georgia State University School of Law on the [impact of artificial intelligence on the law](#). Throughout the day, presenters spoke convincingly about the opportunities that artificial intelligence provided for legal practice. I was the last speaker on the last panel of the day, and I planned to talk about the [growing importance of emotional intelligence in the face of increasing reliance on artificial intelligence](#). Instead of following my plan to cite research supporting the importance of emotional intelligence in the law, I ended up sharing quotes from all the day's previous presenters where they, the legal technologists and futurists, talked about the value of emotional intelligence and the role of trust and empathy in lawyer-client relationships. They didn't need any convincing at all – they had already accepted it and were doing the convincing.

It is heartening to know that thought leaders in legal technology and innovation recognize the increasingly important role that emotional intelligence and practical problem-solving will play as the legal profession adopts more artificial intelligence. Unfortunately, DR rarely is part of the conversation, and, when it is, it often is relegated to a narrow discussion of online dispute resolution (ODR). Similarly, the DR field rarely talks about technology and innovation, and when it does, it is equally relegated to a narrow discussion of ODR.

Yet there is tremendous overlap in the skills being taught in legal technology and DR courses because both have a shared focus on a better understanding of and relating to clients. There is a [growing number of legal technology programs and initiatives](#) in law schools, which represents an opportunity for the DR field. To leverage this opportunity, academics should recognize the role that technology will play in DR processes and the role DR skills do play in legal technology innovation.

The DR field should enter the conversation about technology & innovation and help shape the future of the legal profession. We successfully played this influencing role when ADR was the shiniest innovation in legal education. We can take on this role again now that the shiny new thing is legal technology and innovation.

Here are three entry points where we can join the conversation and become influencers:

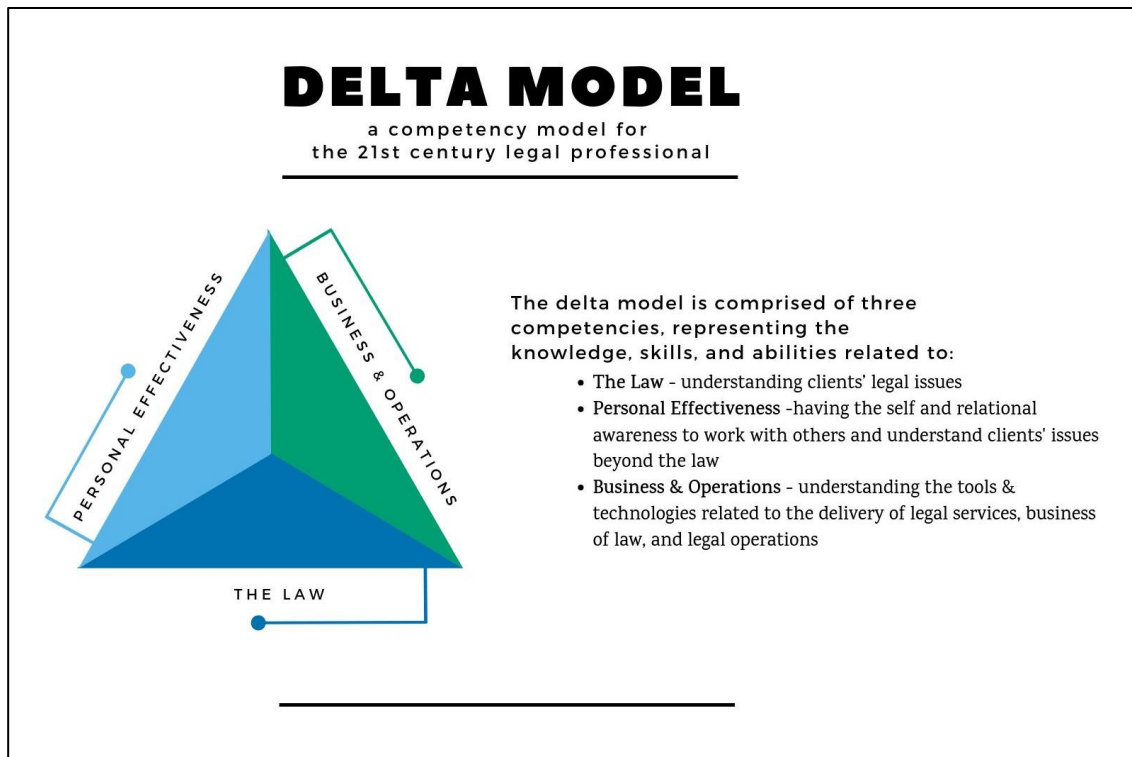
1. Adopting a new competency model integrating skills from both DR and technology
2. Exploring the use of legal technology & innovation platforms in OFFline DR processes
3. Teaching DR skills in legal technology & innovation courses

Using the Delta Model to Define Legal Competencies

We should adopt a new competency model for 21st Century legal professionals that recognizes the interplay between technology problem-solving, data analytics, and emotional intelligence – and that provides law schools, law firms, and other organizations a model to visualize and understand the relationship between these skills.

For the past 18 months, I have been part of a working group developing the [Delta Model](#) – a new competency model that shines a spotlight on the important role problem-solving skills, communication, and empathy play given the increased focus placed on technology & innovation.

It is comprised of three competency areas: The Law (understanding clients' legal issues), Business & Operations (understanding the tools and technologies related to the delivery of legal services, business of law, and legal operations), and Personal Effectiveness Skills (having the self and relationship awareness to work with others and understand clients' issues beyond the law).



© 2019, @DeltaModelLawyr, <https://www.alysancarrel.com/delta-competency-model>. The Delta Model working group is comprised of Alyson Carrel (Northwestern), Cat Moon (Vanderbilt), Shellie Reid (Michigan State), Natalie Runyon (Thomson Reuters), and Gabe Teninbaum (Suffolk).

Including all three competency areas in a single model is intended to show that each area is important in the development of legal professionals. Every lawyer must have some of each of these skills to be successful, but not necessarily an equal skill level in each area. The balance of the three areas that particular individuals need will vary depending on their role and the organizations where they work.

By distinguishing the skills associated with personal effectiveness, the model strategically creates space in which the DR field can play a significant role as the legal profession shifts focus to technology & innovation. This model provides an avenue for our field to connect with legal technologists.

The Delta Model, which provides a platform for DR scholars and practitioners to influence the adoption of technology in the law, is [receiving a lot of attention](#) and it is still in development. We hope that law schools, law firms, and organizations will consider adopting it to inform their curricular and professional development efforts.

Using Legal Technology & innovation Platforms in OFFline DR Processes

Although discussion of technology in dispute resolution typically is limited to ODR and is understood almost exclusively as the use of DR where the parties are meeting in an online environment (e.g., text, email, video conference, synchronous or asynchronous), legal technology can do a lot more than just recreate our processes in an ONline environment. It can enhance our OFFline processes when parties meet face-to-face (F2F) as well.

Technology doesn't have to take the place of the mediator nor the location of the mediation. It can enhance *parties' and lawyers'* abilities to access and analyze massive amounts of information. Consider this: I don't have dinner with Alexa or Google Home, but I regularly engage Alexa / Google Home when I have a dinner party to ask for information, play a game, or set a timer so that I don't forget the dessert in the oven.

Noam Ebner and I recently published an article about the [use of technology in offline mediation](#). We include examples of mediators using technology during a F2F mediation such as utilizing predictive analytics tools to help parties make BATNA assessments and decision-tree analyses. We predict that the next generation of DR users will demand that mediators use more effective technology tools to facilitate F2F dispute resolution processes. In a follow-up article, we introduce some [possible approaches for exploring these new platforms in a typical mediation training or class](#) to teach students to recognize when and how technology might enhance a traditional, offline, F2F mediation process instead of simply adopting or rejecting it. We want future mediators to assess when and how to adopt technology innovations and, when doing so, ensure the integrity of the mediation process.

Teaching DR Skills in Legal Technology & innovation Courses

There are a growing number of legal technology & innovation initiatives that share an interest in [practical problem-solving skills](#) and in which DR instructors could play a significant role.

One example comes from Dentons, the world's largest law firm, which has created [NextLaw Labs](#), an entirely new entity focused on innovation. NextLaw Labs Head of Product Maya Markovich said, "As technology begins to take on more of the quotidian tasks in industries like law, [the most valuable skills \[for teams\] will be those ... attributes like inclusiveness, emotional intelligence, and empathy](#)." To support their attorneys learning these attributes, Dentons launched a professional development initiative called [NextTalent](#), which highlights the importance of skills such as "leadership, team development, mindfulness, emotional intelligence, and resilience," to "enable every lawyer and professional in the Firm to develop and unlock human potential in the digital era."

The importance of emotional intelligence also is recognized by the [Institute for the Future of Law Practice](#) (IFLP), a non-profit organization, which trains law students in legal technology & innovation skills such as "business, design, project management, technology, and data analytics." As part of the IFLP application process, students must not only provide the traditional cover letter and resume, but they also must participate in a [structured behavioral interview](#) to demonstrate they have "the initiative and the problem-solving skills, and the interpersonal and teamwork skills, and the oral communication skills to have a good foundation to develop from."

In law schools, new [innovation lab courses](#) are pairing law students and computer science students to engage in "collaborative efforts responding to challenges posed by client partners involving the use of technology to improve legal services." The interdisciplinary

faculty running this type of course at Northwestern recognized that students must learn to collaborate and problem-solve in teams of diverse thinkers. For the past three years, the law school's Center on Negotiation and Mediation faculty provided a training module focusing on these skills.

At Suffolk Law School, students can enroll in courses taught through the #1 ranked Legal Innovation and Technology (LIT) Lab. In a recent [magazine article describing the successes of the LIT Lab](#), Suffolk alum [Sammie Elefant](#) implored future law students to take LIT Lab courses by highlighting the practical problem-solving skills she honed, not the new coding skills she gained. She wrote, "What a legal education should be about is learning to become a problem-solver. ... It will be a monumental disservice to not expose yourself to the part of law school that teaches law students how to [collaborate, communicate, and empathize](#) with their clients and business counterparts."

These examples just scratch the surface in describing how professionals who have focused on legal technology & innovation have embraced the importance of empathy, creativity, and problem-solving in legal practice and education.

Why are we leaving it to the technologists alone to spread this message of the importance of problem-solving skills? We should be integral to their classes and their initiatives. We should be part of their problem-solving sessions, hack-a-thons, and labs. Not only can we teach in legal technology and innovation courses, but we can invite legal technology & innovation faculty to teach in our courses as well.

Conclusion

The increasing spotlight on legal technology initiatives provides an opportunity for the DR field to be part of the development of the legal profession in the future. The spotlight is not only on technology, but also on problem-solving, communication, and emotional intelligence. It is about thinking creatively to better serve clients.

If anything, the DR field needs to step into this spotlight to shine the light on our role training future attorneys using the skills necessary to succeed in a 21st Century practice. We need to broaden our own understanding of what technology can offer by embracing technology in the OFFline settings in addition to the ONline ones.

The new Delta Model of lawyer competence can help administrators, colleagues, employers, and students understand the interplay between technology and emotional intelligence. We should encourage law schools, law firms, and other organizations to adopt it as a guiding principle for curricular and professional development initiatives.

The future is bright if we can see the opportunities before us and actively participate in the innovations resulting from technological developments.