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Law Firms Of The Future Will Be The Lawyers Of The Past

Law360, New York (March 17, 2014, 10:24 AM ET) -- The movie "Her," which just earned Spike Jonze an Academy Award for best screenplay, has earned less than \$30 million at the box office. There's a reason for that. "Her" is a thought experiment, playing out the idea that someday, computer operating systems will become smart enough to serve as romantic partners for humans. In the movie, Scarlett Johansson breathily voices the operating system, making the concept highly palatable to large swaths of the male movie-going audience.

Still, the masses have resisted "Her," and I think the reason lies not in the outlandishness of its premise, but rather in its believability. Our technology has come close enough to the imagined future of "Her" to make it unsettling. We may titter comfortably enough at the notion of an OS capable of having phone sex. But as the film plays out the scenario — as when, for instance, the couple enlists a “surrogate” human to stand in for the OS in the bedroom — it turns more and more upsetting. One watches the film with a sense of vertigo that ruins the appetite for popcorn.

To answer your question: yes, this has something to do with the legal industry. In fact, I think "Her" — and the uncomfortable feelings it provokes — has a lot to do with the way we think about the future of the legal profession.

We've been doing much of that lately. As technology has infiltrated the profession to greater and greater degrees, the legal industry has developed a penchant for navel-gazing exercises directed toward the “future practice of law.” They are worthy enterprises, and I am proud to be a member of the Law2023 group that is doing valuable thinking on the subject. An entire cottage industry has grown up around it, spawning conferences like ReInventLaw, FirmThink 2020, Harvard's tremendously well-done “Disruptive Innovation in Legal Services,” Stanford's FutureLaw, and others. I am left to wonder, though, whether in all of our talk about the future practice of law, we have been as bold in our imaginings as Mr. Jonze.

Consider the idea that in the near future, software could effectively replace lawyers. Despite all the thinking being done about the future of the law, I've yet to hear this idea suggested with any vigor. Is it our fear of this scary proposition that makes us avoid it, as the masses have avoided "Her"?

If so, we will have to get over it. It is a far more realistic possibility, after all, than software replacing our romantic partners.

How realistic? For one thing, there is widespread agreement that the legal industry is on the brink of radical change — change driven by applying technology to legal work in ways we have not before imagined. Richard Susskind, the influential thinker on the future of the legal industry (his new book is "Tomorrow's Lawyers: An Introduction to Your Future"), claims that “legal institutions and lawyers are poised to change more radically over the next two

decades than they have over the last two centuries.” Clayton Christensen, the noted thinker on innovation, has co-authored a compelling argument in the Harvard Business Review (“Consulting on the Cusp of Disruption”) that “the same forces that disrupted so many businesses, from steel to publishing, are starting to reshape” the delivery of consulting services, including legal services. Bill Henderson, the University of Indiana law professor and one of the organizers behind the recent Forum on Legal Innovation, has also identified the legal industry as being in early stages of a sea change.

As all of these authorities know, legal work, unlike romantic pairings, is built largely on logic. It is therefore highly susceptible to being performed via algorithms — in fact, a growing number of legal tasks are being performed through algorithms, which are replacing humans. Ray Bayley’s Novus Law can perform document review with more than 99 percent accuracy, a far better number, unfortunately, than that achieved by law firm associates or outsourced workers. And as Tim Hwang of the delightfully forward-thinking and whimsical Robot Robot & Hwang (his partners are an Apollo Cluster and an XR-1029) has noted, more than three years ago, collection firms were already using software like Collection Master to automate the collection process, from summonses to lawsuits.

It’s not difficult to see that if we continue in this direction — and we will, with ever-greater speed — it may not be long before software goes beyond merely helping lawyers to replacing them entirely. In fact, that point may not be far off. Google’s Ray Kurzweil has identified the year 2045 as the “singularity point,” the point at which “machine intelligence will dominate human intelligence to the extent that men will no longer understand machines.” We don’t have to get even that far for machines to replace lawyers. They don’t have to surpass our intelligence; they merely have to replicate it. And according to Ed Walters, the CEO of Fastcase, Moore’s Law dictates that computers will have the processing power of a human brain in three short years.

While all of this is scary to think about for young lawyers, it could be tantalizing indeed for law firm leaders and, especially, their corporate clients. Since at least the recent recession, that group has done endless hand-wringing (more, even, than the hand-wringing that has gone into predicting the future of law) over the tremendous expense of training associates. But why worry about that tortuous process — the culling of 35-member associate classes down to perhaps one or two eventual partners, the drama over salaries and bonuses, the human foibles that can turn off clients or land a firm in Above the Law — when a firm can develop an algorithm that pumps out masterful briefs and contracts with the reliability and (eventual) economy of McDonald’s hamburgers?

For a notably risk-averse profession, such a future has a lot of appeal. Identifying and developing the next superstar partner is a process fraught with error and expense, as any managing partner will tell you. It looks like a fool’s errand next to simply spending that capital to recreate the skills of an established legal genius from the past or present. Forget the endless quest for the next blockbuster lateral; a firm will put that recruiting budget to work programming a David Boies, Daniel Webster, or Thurgood Marshall algorithm. In this future world, one can imagine the offices of the most prestigious firms being overrun by scruffy, skateboarding programmers (and their dogs), while the ultimate career goal for the lawyers will shift from making partner to “making algorithm.”

Yes, it’s a world that’s scary to consider. Then again, if our lawyer algorithms sound like Scarlett Johansson during meetings or oral argument, maybe we won’t mind so much.

—By John E. Hellerman, Hellerman Baretz Communications

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