



## TechnoLawyer Archive Newsletter/Post

Seth Rowland  
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### Re: Automated Intelligence

DATE: 2/20/2001  
AUTHOR: Seth Rowland  
TYPE: Post  
TOPIC: Technology Industry/Intellectual Property; Automation/Document  
(S): Assembly/Macros

Bill Neubert wrote:

>This is an essay triggered by the expressed concept:  
>How do you automate intelligence to capture the  
>expertise of partners and senior associates? It is  
>my position that a Case Management paradigm provides  
>the best software solution for capturing active  
>intelligence of partners and senior associates during  
>the running heat of a case and that document templates  
>are only historical records with potential relevance  
>that are less significant to the outcome of the case  
>than the correct application of tactical intelligence  
>shared by team-members on an active, ongoing basis.  
>This is not to downplay the significance of retaining  
>document formats. But, each litigation or transaction  
>is unique. And, dinosaur footprints are not dinosaurs.  
>That is why we hire David Boies, not his pleading bank.

I worked with David Boies when both he and I were at Cravath, Swaine and Moore and would hire him in a moment for the right case. It was said that you bring Cravath in as counsel when "no one else" can do the job. Bill Neubert's response to my piece on "Automated Intelligence" is typical of lawyers who believe that each case is unique and should be handled freshly as a separate world.

I am sure Bill would support the use of programs like TimeMap and CaseMap, as well as various information sharing programs like Litigator's Notebook and other collaboration based tools. As a practicing Cravath lawyer, I was taught to handle each case freshly, searching for that insight that would turn the case around and accomplish the improbable and even the impossible. Nevertheless, I heavily used technology to manage case information.

And for many of the cases that Cravath handled, Bill is absolutely right: "document templates are only historical records" and "dinosaur footprints are not dinosaurs." But is it true that "we hire David Boies, not his pleading bank?" Is it not also true that the pleading bank of David Boies might contain some incredibly valuable gems that could be built upon and adapted by others. And if we could somehow capture and automate THAT intelligence, would that not be a value?

I am not major advocate of "document automation" tools for litigation. Few private practice attorneys have practices that lend themselves to their use. But I would not abandon hope. The Americounsel initiative looks to bring automation to the practice of litigation. Few people ten years ago would believe the progress of "docket automation" tools to manage case information and produce rudimentary pleadings.

Just last week I had lunch with a sitting Federal Circuit Judge. We discussed the issue of whether document automation tools could be used for Federal Appellate briefs. And would you believe it, he thought a proper application would be first drafts of prisoner and capital appeals. He thought such tools would create structure and form to the appeals so that they could be properly adjudicated on the merits ... and they would get judges out of the position of trying to discern the intent of the appellants. In other words, he believed that document automation tools would result in better written briefs. ... But of course, legal opinions would never be automated.

I have spoken to Insurance Executives ... those who hire and retain half the lawyers in this country about the application of automation tools to the practice of law. They are universally in favor of it. They see the attitude of "each case is unique" as highly destructive to the proper assessment and management of claims and one of the key reasons why legal fees take up such a large part of our GNP.

Each case is NOT unique. If they were truly unique, then few of us would be smart enough to practice law. We can only practice law because there patterns that can be discernable. Specialties can be developed and the thought processes can be translated and conveyed, whether by the "apprentice model" or by the "software model." Blind use of forms is always a mistake. However, intelligent use of forms as a starting point is something that both David Boies and my Federal Judge would highly approve of.

Seth G. Rowland, Esq.  
President, Basha Systems LLC  
"Redesigning the Legal Process Through Expert Systems"  
117 Oneida Avenue, Croton on Hudson, NY 10520  
<http://www.bashasys.com>  
mailto:sgr@bashasys.com  
Tel: (914) 827-9173 Fax: (845) 622-3689  
Certified HotDocs(r) Consultant & Reseller  
Certified SmartWords(r) Developer

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#### *Community Manager's Notes*

[CM's Note: To learn more about CaseMap and TimeMap, visit:  
<<http://www.casesoft.com>>. To learn more about Litigator's Notebook, visit:  
<<http://www.bowne.com/solutions/litigation/notebook.asp>>. -- Neil J. Squillante ]

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