During the past few decades, law schools have made significant strides in developing their “skills” curriculum, so as to better prepare students for the actual practice of law. Today, however, technology is bringing enormous and, perhaps even fundamental, changes to the delivery of legal services, such that we are in far too many instances preparing students to practice law yesterday, instead of tomorrow. Touro Law Center is one of a small, but growing, list of schools responding to this challenge with the addition of a significant “digital lawyering” curriculum and practice opportunities.1 While no one can say with certainty what legal service delivery models will look like tomorrow, there is no question that the law graduate with a solid foundation in technology-leveraged law practice will be far more likely to adapt to the coming changes and prosper as “Tomorrow’s Lawyer.” This article seeks to explain how and why.

Employing Technology to Deliver “More for Less.” Richard Susskind speaks directly to “Tomorrow’s Lawyers” in his seminal work of the same name. In doing so, he describes three primary drivers of change in the market for legal services: (1) the “more-for-less” challenge; (2) the “liberalization” of the regula-
tory environment; and (3) the effective use of “information technology.”2 In this article, we will focus on the use of technology to meet the more-for-less challenge.3 Delivering “more-for-less” simply requires one to choose the most cost-effective approach to any given legal task performed in solving a legal problem. Susskind breaks down such tasks into five distinct categories: (1) bespoke; (2) standardized; (3) systematized; (4) packaged; and (5) commoditized, and he emphasizes the importance of each in efficient legal service delivery. However, law schools focus almost entirely on the first—bespoke, individualized problem solving—with the occasional brief reference to the second in the form of standardized contract terms. In contrast, cost-effective legal service delivery will often require a primary focus on the latter three categories, each of which rely on concepts, skills, and values with which too many current law graduates are wholly unfamiliar.

Why has the legal profession not moved more quickly to embrace technology-leveraged legal service delivery? The answers are likely manifold, but at least two undoubtedly play a major role—the billable hour and the basic partnership compensation model. Delivering more service for less money is anathema to the billable hour model, because it reduces revenue (at least in the short term, though long-term impacts are considerably more debatable), and additional expenditures on technology only further reduce net revenue available for distribution to firm partners. Today, however, due in large part to market demands, law firms are beginning to change, and the pace of this change is accelerating. Moreover, the use of technology to deliver more cost-effective legal services is by no means limited to law firms.

Technology-leveraged legal service delivery presents at least two other areas of extraordinary opportunity to tomorrow’s lawyer. First, the technology-leveraged solo or small firm is often far better equipped to compete with larger firms on substantial matters. While the large firm has a distinct advantage in the number of people it can assign to a legal matter, the solo or small firm can do this just as effectively as the large firm—especially when such technology can often be “rented” on the cloud (thus avoiding the need for capital intensive investment, which might favor the larger firm). Second, the delivery of “more-for-less” through effective use of technology gives us the best opportunity to bridge our enormous access-to-justice gap (and, in the process, gainfully employ far more of today’s law graduates in financially rewarding work). Chief Judge Jonathan Lippman and the Task Force to Expand Access to Civil Legal Services in New York have expressly recognized this opportunity by convening the inaugural Statewide Civil Legal Aid Technology Conference to be held in July 2015.

Why Is Technology Such a Big Deal Today? To be clear, the impact of technology on law is nothing new. The 15th century printing press brought dramatic changes to law over the next two centuries, and, more recently, word processing and technology assisted legal research have dramatically changed the ways lawyers work. What is different today is the pace of change brought on by technology-driven innovation. This pace of change is something the profession has never seen before and is largely driven by a simple premise called “Moore’s law.” At bottom, Moore’s law tells us that computer processor speed will double roughly every 18 months, and we have also discovered analogous corollaries relating to the cost of data storage and bandwidth for transferring data. All of this is driving improvements in technology at exponential rates of change. The key to understanding the effect of exponential growth is that it is constantly accelerating. Change does not simply continue, but happens faster and faster over time.

How can we prepare our graduates to survive and even prosper in the rapidly changing world they will likely face? First, we recognize that teaching students to deliver legal services yesterday is of limited value going forward. Second, we recognize that while our ability to predict the future is limited, we still have the ability to prepare our students to anticipate, mold, adapt to, and prosper within a yet-to-be-defined technology-driven future. Finally, we can provide our students with the tools and perspective to embrace, rather than fear, a technology-driven future that will, in many ways, redefine the delivery of legal services.

Our Fixation on the Rear-View Mirror. Far too often, today’s legal educator remains wedged to yesterday’s pedagogy. We not only fail to teach our students how to make appropriate uses of technology in law practice, but often directly thwart students’ own attempts to do so. Many argue in favor of banning computers from the classroom (as well as tablets and smartphones) based on negative effects on traditional pedagogy. However, this arguably amounts to throwing the proverbial baby out with the bathwater. There are plenty of other ways to reduce student distraction, and we can often harness the technology to help us keep students focused on the task at hand. Tomorrow’s lawyer will likely be even more reliant on technology in performing his or her job than today’s. We should therefore consider fully integrating it into the law school classroom.

If we do make technology an integral part of our classroom, this of course presents additional challenges and opportunities. Our same old tired questions (the same ones we asked of last year’s class) will be of little value when a student may be able to find the answers instantly online. On the other hand, a classroom full of technology enabled students presents us with powerful problem solving opportunities. While a law school class need not be turned into a full-fledge “hackathon,” the concept of connected group problem solving presents an enormous array of learning opportunities.

Of course, one of the reasons we remain fixated on the rear-view mirror is the very nature of the common law as backward, rather than forward, looking. Stare decisis requires us to decide tomorrow’s cases consistent with yesterday’s rules. In fact, our basic notions of the “rule of law” require such an approach. However, solving legal problems does not necessarily require a backward looking approach. In fact, a forward looking, outside-the-box (at least the past “box”) approach may be the most effective in solving a client problem.

Law schools must continue to teach students to read, understand, and apply the rule of law (i.e., to “think like a lawyer”). However, we owe tomorrow’s graduate much more. He or she must also fully understand that this newly mastered legal expertise is of little value tomorrow’s lawyer will likely be even more reliant on technology in performing his or her job than today’s. We should therefore consider fully integrating it into the law school classroom.
to anyone (including the new law graduate), unless it can be delivered cost-effectively in the form of legal services. That cost-effective legal service delivery will increasingly require a sound understanding of the effective use of appropriate technology. Moreover, our focus on the future of lawyering should begin at the earliest possible juncture on a student’s lengthy path to practice.

Law faculty and administrators often debate the best selections for a prospective 1L’s summer reading list. While these selections typically vary between classic lawyering novels, jurisprudential essays, and “how-to-succeed” guides, they are all invariably backward looking. Few recommend Susskind’s “Tomorrow’s Lawyers,” which might be among the most useful in painting a forward looking portrait of the road awaiting the successful law graduate.

Teaching Our Students to Thrive in a Technology-Driven Future. For those not yet steeped in the details of the increasing impact of technology on law practice, a very brief overview may be useful. Modern e-discovery undoubtedly represents the most “disruptive” technology-driven change in legal service delivery to date. As the information subject to discovery in legal proceedings has become increasingly digitized, so has the most effective means of dealing with it. Armies of law firm associates reviewing boxes full of paper documents are to a large degree being replaced with computer algorithms capable of doing the same job far more cost effectively. While e-discovery certainly still requires some lawyering and legal expertise, much of the work is moving to machines and legal process outsourcers (the “LPO” is a new breed of business that serves clients or law firms, but does not technically “practice law” as such). While much of the current technology buzz is focused on e-discovery, this is really only the tip of the technology iceberg.

Supercomputing power, such as that employed by IBM’s Watson to beat the best humans at Jeopardy, is being employed to perform predictive analytics on “big data” that goes far beyond traditional statutory or case analysis, and is being developed to answer legal questions far more nuanced and complex than the traditional online research query. Automated expert legal systems can provide the lawyer generalist, or even the client, with the benefit of deep legal expertise delivered entirely by interaction with the automated system. Contracts can be drafted, reviewed, and managed by automated systems. In fact, “computable” contracts can even execute themselves automatically.

Beyond its use in e-discovery, technology is beginning to change the underlying dispute resolution landscape. Online dispute resolution is currently being employed to resolve millions of high volume-low value disputes—the vast majority of which are resolved by computer algorithms. Moreover, online dispute resolution providers are increasingly exploring the use of similar processes and technology to resolve higher value disputes—all without need to resort to courts. In fact, the courts themselves will almost certainly find the need to embrace technology in function effectively and efficiently.

At Touro Law Center, we have begun to develop a digital lawyering curriculum to better prepare students for this technology-driven future. This digital lawyering curriculum is built around an entire new course in “21st Century Law Practice by Design: Leveraging Legal Expertise With Technology for More Cost-Effective Delivery of Legal Services.” As its name suggests, the course is intended both to introduce students to the concept of technology-leveraged legal service delivery and to think about ways in which this knowledge can be used to deliver legal services to traditionally underserved markets—individuals of modest means and micro/small businesses (and addressing our chronic AJI problem in this country). Around this hub, we currently offer three additional courses with more specific focuses: (1) E-Discovery; (2) Expert Legal Systems; and (3) Privacy and Data Security in a Connected World. Finally, we have added a strong dose of law practice technology to our traditional course in Law Practice Management. As one might reasonably expect, the intersection between technology and the rules of professional responsibility is also thoroughly examined in addressing all of the above subjects.

We also provide additional practical opportunities for our students and recent graduates to learn how to leverage technology in delivering legal services. Our course in Expert Legal Systems interacts directly with a number of our clinics (using automation to deliver clinical services more efficiently). Our new lawyer incubator program, the Community Justice Center of Long Island, is partnering with Legal.io in a pilot project to use technology to connect new lawyers with traditionally underserved legal markets.

Giving students the tools they need to flourish in a technology-driven future is essential. However, it is not alone sufficient. Students also need to learn to embrace the opportunities provided for this future, instead of fearing its threats.

Embracing the Uncertainty That Comes With Innovation. For most of us, change comes with a healthy dose of fear. Technology-driven change often gives rise to even greater fears, because it has the capacity to reduce the need for jobs filled by humans. However, it also creates new opportunities at the same time it displaces the old.

No one can say with precise certainty how the use of technology will affect the totality of opportunities for human beings to solve the legal problems of tomorrow. However, the effective use of technology will very likely grow the overall market for legal services, as well as provide broader opportunities for law graduates beyond the traditional practice of law. In addition, the law graduate trained to leverage technology in the delivery of legal services should have an enormous advantage over those without such training. All of this should provide tomorrow’s properly trained lawyer with a high degree of confidence as he or she enters the marketplace for legal services.

Does this Mean Lawyers Must Also Be Software Engineers? Should a law student learn to write code? Maybe, but not necessarily. For example, a business lawyer might find a working knowledge of accounting or finance useful, or a patent lawyer might find a working knowledge of medicine or engineering useful. However, what is more likely to be essential is a level of understanding of accounting, finance, medicine, or engineering sufficient to communicate and interact effectively with the relevant professional. In a similar vein, tomorrow’s “digital lawyer” will require an understanding of the power of current information technology sufficient to communicate and interact with an appropriate IT professional. Along with “thinking like a lawyer,” tomorrow’s lawyer will require the “digital literacy” to leverage that thinking through the appropriate use of technology.

3. The potential liberalization of the rules regulating law practice in the United States is also a very interesting discussion, but one that is beyond the scope of this article.