

PRACTICING BUSINESS LAW AT THE SPEED OF CHANGE

How technology is changing the practice of business law.

BY ALAN J. BORSUK AND DAVID A. STRIFLING

Justin P. Webb, L'14, began the continuing legal education session with a question: "How many of you think you understand what blockchain is?" About 75 people had gathered in the classroom at Marquette Law School for the one-hour, lunchtime program on June 6, 2019.

No hands went up.

That spoke to the reason the people had come. They shared a strong sense of the need to understand—or at least have some grasp of—the rapidly changing world of technology as it affects legal practice. And the attorneys present knew that they weren't at that point, especially when it came to matters such as the often-heard but challenging term *blockchain*.

Webb, of Godfrey & Kahn in Milwaukee, explained in broad terms that blockchain is a sort of cyber spreadsheet or business ledger that many parties can access at the same time. As applied to the cryptocurrency market (Bitcoin and so on), it means that there is no central clearinghouse or bank. Blockchain technology has many other potential applications, or "use cases," as Webb called them: "smart contracts" that are fulfilled in real time as transactions occur, real estate dealings, even tamper-proof records of financial transactions, just to name a few. But blockchain is in an early stage. "I'm still waiting to see really good implementation of it," Webb said.

Do lawyers need to understand the technical details of blockchain, artificial intelligence, and data analytics? Maybe not. But are they wise to have some grasp of how technology and other forces are changing or will change daily life for attorneys who provide counsel to businesses, either through law practices or on an in-house basis?

Yes, in many cases. As is true in so many other economic and social sectors, automation is reshaping the practice of business law. It is changing the way clients and attorneys communicate, what clients want or need from attorneys, what is most valued by clients when it comes to legal services—and it is changing businesses themselves, which lawyers also need to understand.

Smart lawyers and firms know that they need to stay on top of all of this because tech-driven change keeps coming, and coming fast.

What is now the state of high tech's impact on the practice of law, and what lies ahead? In what other important respects is legal work for businesses changing? How have the daily routines of serving clients changed in a world so filled with computerized tools?



We asked questions such as these of the heads of several large firms, in-house lawyers for major corporations, lawyers who are tech-savvy and at earlier stages of their careers, and some general experts. While it is impossible in these early days to draw any firm conclusions about the future of the practice, here are a few observations about what has changed and some perspectives on lessons already gleaned from lawyering at the speed of change.

"We're All Living Transformation"

Milwaukee-based Northwestern Mutual is going through a large-scale transition, focusing increasingly on helping people with comprehensive financial planning that combines digital tools and a human advisor, a move beyond its traditional life insurance identity. And when it comes to finances, people want things that can be almost contradictory, whether that's easy access online to their information at the same time as maximum data security, or personal relationships with people at the company coupled with 24/7 availability of the latest in technological tools for managing money.

What does this say about the roles of lawyers within the company? A great deal, says Ray Manista, L'90, chief legal officer at Northwestern Mutual. Manista also plays a major role in corporate planning.

"We're all living transformation," Manista says. "The way that you lawyer has to change dramatically." Corporate planning cycles used to be measured in years. Now they are measured in months or weeks. "It's test, learn, modify," says Manista. Northwestern Mutual expects its in-house lawyers—and its outside counsel—to deeply understand the company's plans and goals, Manista says. Agility and efficiency are prized in every role, including that of lawyers. Lawyers have to understand

where developments are headed and to anticipate legal issues. "The clients may not know when to call you," Manista says. "As an advisor, you can't wait for the client to call."

Instead, today's lawyers must anticipate problems and offer potential solutions to clients rather than adhere to older, process-driven models, when clients and lawyers might not connect until an issue was ripe or a dispute was in full bloom. "It's not about 'Yes' or 'No' any longer," Manista says. Lawyers and clients must work together more closely than ever iterating through problems.

Under that model, despite the onrushing advent of technologies that may change legal practice, Manista is confident that "lawyers don't become extinct at all." No machine can do what a good lawyer does. "The foundational principles and concepts don't change dramatically, but the context in which you need to apply them does."

When it comes to technological change, Manista recognizes that the business sector is well ahead of the law in areas such as privacy, data usage, information sharing, and blockchain. "Lawyers need to be conversant" with these developments to address client needs, he says, even if the changes aren't immediately incorporated into a law department's operations.

(See page 14 for a story profiling Manista.)

Preparing Practice-Ready Lawyers for a Changing World

"Lawyers have always been problem solvers," says Nadelle E. Grossman, professor of law at Marquette University. But now more than ever, law school graduates must be ready to hit the ground running. Employers expect new lawyers to graduate with a practical skill set, not just doctrinal knowledge.



"Marquette Law School is rising to the challenge," Grossman says. The Law School's faculty members are using a variety of different pedagogies to better prepare students, including simulation-based classes and integrating traditional doctrine and theory into problem-solving scenarios.

For example, in Grossman's Business Planning course, students begin with a client's request to set up a new business entity. Throughout the semester, they must then navigate a variety of intensely practical issues associated with the transaction. These include choosing a business-entity structure, developing equity-compensation plans, protecting intellectual property, and complying with securities regulations. The course is entirely team based and emphasizes soft-skills development in addition to understanding doctrine, Grossman says. The class forces students to be "forward looking, anticipating and planning to avoid any issues that may arise," she says.

In a number of other courses, students use virtual "clicker" systems to give immediate feedback to professors. "It's a new era of formative assessment," Grossman says, allowing students to immediately evaluate their understanding of the material while faculty can gauge student progress.

Grossman, who came to the Law School in 2007 after eight years of corporate practice at a large Houston firm, is a firm believer in this form of pedagogy. She has even authored a newly published national contracts textbook, *Contracts in Context* (with Eric Zacks), which is problem based, as opposed to using the traditional case method. And her recent appointment as the Law School's associate dean for academic affairs gives her a broad perspective.

For example, she notes that students also can enroll in Marquette Law School's Law and Entrepreneurship Clinic, now in its sixth year and directed by Professor Nathan Hammons. The clinic immerses students in the representation of real business clients who have been selected based on need, in keeping with Marquette's Jesuit mission. Grossman noted that the clinic gives students the opportunity, while under Hammons's expert supervision, to work on issues that businesses face in getting started, dealing with regulatory and compliance issues, and operating soundly. "We're letting students experience what practice is really like," she says. "It's very consistent with the thrust of Marquette University's strategic plan, 'Beyond Boundaries."

Back to the Future

Holistic. That's a word that Jay Rothman says lawyers serving business clients should keep in mind. The chairman and CEO of Foley & Lardner, an 1,100-lawyer firm based in Milwaukee, is not talking about personal health care. He's talking about how lawyers need to understand the full range of a client's business—strategy, changing business dynamics, internal factors, what competitors are doing. Rothman says that lawyers increasingly have to help clients "look around the corner" at what is ahead and to ask clients, "How can I help you?"

The world of business law went through a period of increasing specialization, when many lawyers had relatively narrow focuses for their work, Rothman says. In the business climate of today, including the effects of changing technology, the pendulum has swung back toward attorneys who are capable and committed to serving clients in broad ways. Rothman calls it a "back to the future" aspect of change in serving corporations. To be sure, good overall service to clients was never out of fashion. "The great lawyers have always had that broader vision of their clients," he says.

Some things lawyers did for clients aren't needed in a higher-tech world. Rothman gave an example of lawyers going through dozens of boxes of documents to get ready for a deposition. Such things often can be done now using computerized tools. "We are aggressively trying to look at how we can apply AI," or artificial intelligence, in such work, Rothman says. Foley contracts to use AI to develop the first drafts of patent applications, he relates, adding that the tools for doing this are only going to get better.

Foley is working hard to find ways to use data for morepredictive purposes, Rothman says. That means compiling data on the outcomes of litigation so that clients can be advised about what has happened in situations similar to theirs or what percentage of contracts involving similar situations have particular provisions.

Training of lawyers within the firm has also become more tech oriented, including development of "gamification"—software that leads participants into taking part in scenarios that are intended to make training more realistic and more interesting.

"It's the Immediacy of What Needs to Be Done"

"We are in the service business," says Nic Wahl, president and managing partner of Godfrey & Kahn. The biggest change in the current (and future) environment for serving business clients is the emphasis on speed. "It's the immediacy of what needs to be done," Wahl says. In prior days, when a client had a question or need, you often had two or three days to respond, he recalls. "Now they want to know in 10 minutes." He may not have been speaking literally—certainly not of every instance—but in an electronic world, clients desire and believe themselves to need quick responses and decisions. Who is to say that they are wrong?

A second change for businesses is the growing governmental and consumer focus on privacy policies and data protection, both of which often raise legal questions and call for the expertise of lawyers. Wahl's firm, headquartered in Milwaukee, helps clients develop protocols for what happens when there is a breach of protected data, and it can coach businesses through responses to such breaches. "Usually, we're going to be the first phone call" if something goes wrong, Wahl says.

Godfrey & Kahn is among the generally larger firms that have developed cybersecurity and data protection groups. Wahl points to Justin Webb, who presented the blockchain seminar at Marquette Law School, as an example of the kind of person the firm is looking for. Webb worked in data security before deciding to go to law school.

"We Constantly Feel Like We're Always Going"

That sense of immediacy comes down to the level of individual lawyers in big ways. Kristen Hardy, L'14, says she wakes up in the morning, and one of the first things she does is look at her phone. On vacation? She has her phone with her. Hardy is an in-house attorney for Briggs & Stratton, a Milwaukeearea based company with customers around the globe. This means that issues requiring her attention can come up just about any time. "We constantly feel like we're always going," says Hardy.

Nicole Willette, L'11, is an in-house lawyer for Franklin Energy, which provides energy-efficiency services to clients, many of them utility companies, throughout the United States and Canada. The company is based in Port Washington, Wis. Given the nearly constant presence of your phone and your computer, "you are always on," she says.

Willette's and Hardy's practices and workdays are heavily shaped by technology—but not the cutting-edge aspects such as blockchain. What technology gets the most use by Willette? Microsoft Office Suite, she says, including options for longdistance sharing of screens with coworkers and clients. And Hardy? She says she counts on Microsoft OneNote to get a lot of her work done-and, without doubt, on email.

But both see the impact of technological innovation changing their businesses and how they do their work. A lot of mundane work that used to be done by lawyers, such as checking documents and searching records of prior work, is being done electronically.

Both Hardy and Willette say a big thing they like about their jobs is that they are able to get involved in discussions and decisions within their companies that go beyond strictly defined legal work—in other words, the kind of strategizing and problem solving that experts say is increasingly a valuable role for lawyers.

Still at early points in their careers, both see that the computer world has already changed the businesses they work for, and that there is more to come. "We're getting a front row seat on how things are changing," Hardy says.

The Fast-Developing Push for **Privacy and Data Protection**

Mindi Giftos says that she had a credit card compromised recently. The good news was that the card company notified her quickly of a suspicious charge, and the card was promptly cancelled. That's a sign of an improving picture for awareness and response to data breaches. But it's also a sign of how common and urgent those breaches are.

Giftos is managing partner of the Husch Blackwell office in Madison, Wis., and her practice focuses on an array of big things happening as technology changes both the business world and the world of lawyers who counsel businesses. Blockchain, data security, the "internet of things"—Giftos is involved with each of these. She says that lawyers in general need to have a handle on what these things mean for the present and future of their practices.

"Every company now, without exception, is handling personally sensitive data," Giftos says. She is called on frequently to help clients who need to navigate data breaches such as the one she was caught in.



For a lawyer serving the needs of business clients, "all of the classic things are still there," Giftos says, such as what needs to be done to close a deal properly. "On top of that, there's another layer now that companies need to consider," namely privacy. "I do think there's a real shift in thinking for both companies and consumers around privacy," she says. "There's a sea change. In the next decade or so, there will be a lot more developments involving protections around privacy and security."

And there are tech-connected changes in how a law firm can provide services to clients. For example, Giftos says, Husch Blackwell offers higher-education clients techoriented help in complying with the Clery Act, a federal law that requires colleges to disclose security policies and data on crime. The technology speeds up the process of meeting clients' needs, Giftos says, but clients still want lawyers involved and not just automated services.

Giftos strongly advocates for lawyers and firms of all sizes doing whatever they can to stay up on developing technology changes that are going to be as "disruptive," she predicts, as the rise of the internet. They're coming more quickly than many law firms realize. Do lawyers really need to understand more about blockchain, for example? "It is coming. It is here; it's going to be used more and more because there are significant benefits to it. If you don't understand the basics of it, you're falling behind."

The Tech World Enters the Courtroom

A generation ago, a courtroom during a trial was a place where electronic gadgets were unknown and, in fact, generally would have been prohibited. Randall D. Crocker, L'79, who was president and CEO of von Briesen & Roper, based in Milwaukee, participated in numerous trials during his career. [As this issue was going to press, the death of Crocker was announced by the firm. See page 59.]

What changed over the years in the courtroom? Crocker said computer screens became widely used. Generally, there is one big screen serving the whole room, and the judge, witnesses, and attorneys for the parties have their own screens. The court reporter is providing a real-time transcript, using computerized equipment. Exhibits are often presented both on paper and electronically. Documents may have electronically marked highlights. Passages can be blown up to give them more visual impact. "You see very effective use of video depositions," Crocker said. "You see video and audio excerpts used in opening and closing arguments." In general, you see technologically advanced presentation.

"It's very effective," Crocker said. "It's more vivid, it's very real time, it focuses on the specific issue that a lawyer wants the jury or court to hear about." And it hasn't been hard for lawyers to become adept at using these tools. "It's natural; it's how we review documents now," Crocker said.

That said, he emphasized that "lawyers' traditional skill sets continue to be valuable." Knowing how to be a good lawyer

adds a lot more than technology can add. "The key continues to be that relationship of trust and responsibility between a lawyer and a client, and I think that's a very effective tool for getting good results," Crocker said.

No Immunity from Societal Changes

"Disruption is clearly coming to the legal industry," says Jerry Janzer, L'82, CEO of the Milwaukee-based firm of Reinhart Boerner Van Deuren. "The only question is how fast it will happen." Janzer likens the changes coming to legal practice to the broader disruptions that have brought our society into the digital age, citing the transformation wrought by smartphones as an example. "The idea that lawyers are somehow immune to the changes fostered by technology is naïve," Janzer says. Even traditionally risk-averse lawyers and law firms "are going to have to continue to evolve."

Reinhart has begun exploring artificial intelligence tools in a variety of practice areas and contexts, such as creating the first drafts of deal documents, but Janzer believes that automation will never supplant a lawyer's good judgment or ability to "read" her opponent's objectives. Instead, the firm has found avenues to integrate technology into legal operations. For example, it uses data analytics based on past work to help estimate the legal cost of a particular transaction or a piece of litigation. Reinhart, like many large firms, also now employs dedicated legal-operations professionals, sometimes known as legal project managers, to create efficiencies in the practice. Janzer also sees a future in which "virtual" law firms made up of individual lawyers in different locations become a market force due to the relative ease with which today's lawyers can work remotely.

Janzer notes that many young lawyers are "digital natives," having grown up in a technology-rich environment. This will help in keeping abreast of the changes coming to the practice, and in staying competitive in the legal industry. But he also cautions that substantive knowledge of the law and traditional lawyering skills such as personal communication and legal writing shouldn't be lost in the transition.

Translating Information Output to Strategic Advice

"The access to information is so much broader than it was even 5 to 10 years ago," according to David Krutz, managing partner of Michael Best & Friedrich. Information management systems are creating and analyzing data about expected transactional and litigation outcomes in all areas of practice. Harnessing such "big data" to benefit both law firms and their clients has been the biggest change in the practice over the past five years, Krutz says. Looking ahead, some attorneys may become "assemblers of information," primarily collecting and reporting the results from data and artificial intelligence analysis. But the real leaders in the law will be those who can translate that information into "practical, strategic, and business advice to a client."

In the past, business clients perhaps were better at formulating and executing "long-term visions," Krutz says, while lawyers operated in the here-and-now of deal closings and litigation deadlines. Even now, thinking 5 to 10 years ahead is not always top-of-mind for lawyers, he observes, especially when attorneys trained to see risk are assessing the downsides of new technologies. This makes some



attorneys more reactive than proactive. "Sometimes law firms aren't at the cutting edge," he says, and this might frustrate younger attorneys who have grown up in a technologically advanced world.

But there's a bright side: "That's an opportunity for younger attorneys to lead," he says. In recent years, Michael Best, whose largest office is in Milwaukee, has launched a digital technology group and now also employs engineers, accountants, and experts in digital technology. Krutz is hopeful that blockchain presents a "real opportunity" for law firms to connect clients with new use cases even as they simultaneously explore the legal issues associated with the new technologies.

The Closing of a Closing Era

A closing used to mean a lot of people gathered around a large table in a large conference room, with reams of paper all around, often with large accordion-like folders to organize all the papers each party was to get.

"Now that's done rarely," says Peter Faust, L'94, head of the corporate group of the Milwaukee firm of O'Neil, Cannon, Hollman, DeJong & Laing. Much of his work involves clients buying or selling businesses.

Instead, everything is done electronically and at distances that span the country, if not the globe. There are still times when a real signature is needed, such as on promissory notes, Faust says, but almost all documents can be signed via computer also. "Everything is done remotely," he says.

On the positive side, the rise of electronic closing means you can be more nimble in making adjustments, even up to

the last minute. And the electronic trail left is more reliable for spotting changes and problems. It keeps all involved on their toes, Faust says.

On the negative side, there were benefits to having everyone in a room together. And closings "don't have the same kind of celebratory feeling they used to."

Thomas J. Kammerait, chair of the business succession planning section at von Briesen & Roper in Milwaukee, adds one more aspect: "It's very easy to add hundreds of things as attachments [to contracts or closing documents] these days that might not have been added in the past." In prior times, there might have been 10 or 15 additions to the main document. Now, Kammerait says, there might be 40 or 50. The power of computers makes it easy to add such things as additional tax documents, lease papers, or financial paperwork. For lawyers, that means "everybody's got to pay attention. . . . There are bigger fish swimming under the bridge."

Faust says that one aspect of electronic closing seems to have lagged behind others. Money transfers can take hours or until the next day. He expects that this will change.

Does anyone write checks any more as part of closings? Faust laughs. Very rarely. That may be a good thing: He says he was part of a transaction where a young lawyer was asked to write a check and simply didn't know how—having never written one before.

What lies in the future for technology in the kind of practice he has? Faust does not expect law firms to be the leaders on that. Clients will set the pace. "If clients are doing it, we have to do it," he says. "It's going to be led by the clients, no doubt."





Leveling the Playing Field

Technology allows attorneys to work from anywhere at any time. In some ways, it has "leveled the playing field" between larger and smaller firms, according to Adam Brookman, president of Boyle Fredrickson, a midsize Milwaukee law firm focused on intellectual property practice. Jim Boyle, L'84, one of the firm's founders, agreed with Brookman that in the past larger firms enjoyed tremendous resource advantages such as maintaining their own law libraries and, later, access to specialized databases or research instruments. Now that similar tools are more commonly available online, small and midsize firms are better able to compete.

No matter the size of the firm or how much technology changes the practice, one thing will remain constant: the special connection between a lawyer and her client. "This practice of law is still built on trust and relationships," says Brookman, "and technology doesn't make that go away." Brookman believes that law students and less-experienced attorneys still need to focus on professional skills, legal writing, and client relations. "Those things haven't changed, and I don't see them ever changing," Brookman says. In fact, technology can interfere with the personal connections historically established between lawyers and their clients.

Career-Long Advantage for Innovators

"Lawyers are not trained to be innovators," says Ken Grady, an adjunct professor and research fellow associated with the Center for Legal Innovation at Michigan State University College of Law in Lansing, Mich. That has to change. Grady draws a distinction between the revolutionary use of technologies such as artificial intelligence and blockchain in the broader marketplace and their less-advanced (or nonexistent) use within law practice itself—mostly to automate fairly routine tasks such as document review. "Blockchain has gotten a huge amount of attention, but its applications are still fairly limited" in legal practice, Grady says. Grady believes that this presents opportunities for lawyers who understand something of the use cases because of the new substantive legal questions that those uses entail.

Grady believes that the law has largely been a stable profession without an innovative bent. For the most part, law firms are still dominated by older models of billing and practice. But clients are beginning to push for law firms to become more efficient and innovative. "While the legal profession has been agonizingly slow to change," he says, "it is changing—and the rate of change is accelerating."

"These things will affect the practice of every student coming out of every law school, and not in an insignificant way," Grady says. Those who are able to understand and adapt to change will have a significant advantage over those who are ignorant of it.

Giving Law Students a Leg Up on Understanding Change

José Lazaro, a third-year student at Marquette Law School, maintains that lawyers and law firms can be good innovators, and he's not waiting for graduation to make his point. As a second-year student, Lazaro established a Cryptocurrency and

Blockchain Law Society at the Law School to help fill what he perceives to be a growing demand among students. In the broader picture, he suggests, some individual law firms and lawyers, particularly those from his generation and those in technology-friendly practice groups, are showing more agility in adapting to the changing tech world.

"Blockchain can be used for dozens and dozens of applications," Lazaro says, from sharing and storing information and real estate records to assisting with financial transactions. Law students should understand the fundamentals of blockchain and related technologies, he believes: "Even if we can't become experts, we should be well versed" in the technology to work with future clients. Doing so will make students much better prepared to compete at graduation, he believes. Lazaro is careful to note that blockchain may not be the right technology for every use case, and sometimes it is used as a marketing ploy.

Wanted: Lawyers Who Can Embrace Technology

Legal recruiters have also recognized a demand for a new kind of lawyer. Soon, new technology will "permeate every aspect of legal practice," says Brian Burlant, managing director at the legal recruiting firm of Major, Lindsey & Africa, in New York City. Many lawyers are averse to innovation. "Clients just won't accept that any longer," he says. In the near future, the use of artificial intelligence and data analytics may give rise to increased efficiencies and predictability in the outcome of litigation and other disputes, Burlant says. New lawyers who are able to use these tools effectively will have an advantage over peers who cannot. But despite this oncoming revolution, Burlant echoes a common theme: in what is becoming an impersonal age, the relationships between lawyers and their clients are more important than ever.

Staying Connected in the Age of Technology

What about the relationships among lawyers?

Technological change has had many positive effects on legal practice: greater efficiencies, reduced need for lawyers to perform rote tasks, and better remote-work options, just to name a few. But sometimes those benefits come at the expense of face-to-face human interactions and connections. As a result, Quarles & Brady has launched a "connectedness initiative," says Kevin Long, L'92, co-managing partner of the firm's Milwaukee office. It includes making sure that the firm's attorneys are interacting on a personal basis with each other and with others in their communities. "We need to do that more intentionally now," Long says.

The same is true of the firm's relationships with its clients. "It's not just about being a legal service provider anymore," says Katya Zelenovskiy, L'08, also co-managing partner of Quarles's Milwaukee office. "You become more integrated, more connected with clients by being part of their businesses." Clients want lawyers to focus less on delivering perfect legal advice after lengthy study and more on becoming an integral part of day-to-day business operations. This means that technology will never put good lawyers out of a job, she says. Clients want strategic business advice and analysis that machines can never provide, making lawyers more valuable than ever.

"Technology will continue to change," Long says, "but the attributes of a successful business counselor remain constant: curiosity, understanding your client's challenges, and caring about solving problems."

Yes, Speed; But Yes, Great Professional Service

Joseph E. Tierney IV comes from a long line of Milwaukee lawyers. He remembers visiting his father's firm when he was young. The lawyers used state-of-the-art technology: mimeograph machines and copiers that could produce a few sheets a minute.

"I always talk about it as how much the velocity of practice has changed," says Tierney, president of Davis Kuelthau, a Milwaukee-based firm. "Clients and everyone else expect your law practice to move very quickly. Sometimes that's good because it helps business get done and it brings focus. But other times, you're practicing law too quickly. It's just too fast. I think the law should be more thoughtful."

Is there a way to counter the demand for speed and quick answers? "Part of me says that's just the way things are now," Tierney says. "But if you have really good relationships with clients, you can tell them, 'Look, if you give me until next week, I can give you better answers than I can give you today."

But don't expect that to be the case often, Tierney says. "As much as technology has changed in my lifetime, it's going to change even more. The technology requirements on lawyers are just going to skyrocket." Coming issues and coming technology "are going to force lawyers to be almost as technologically proficient as they are legally proficient."

But there is a but that points to much more than technological proficiency. The changes, Tierney says, can—and will—call for high-quality human services that lawyers can provide. "It's going to focus us more on what we can provide that's unique," such as the judgment and wisdom to help resolve disputes, to bring deals to a close, to know whom to talk to, and how to talk, in order to help a client. At the same time that a high-tech future is a certainty, there is going to be need for "a return all the way to the beginning" of what a good lawyer provides.

His advice for lawyers just starting careers? Put yourself in "an environment that embraces learning and continuous development."

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