

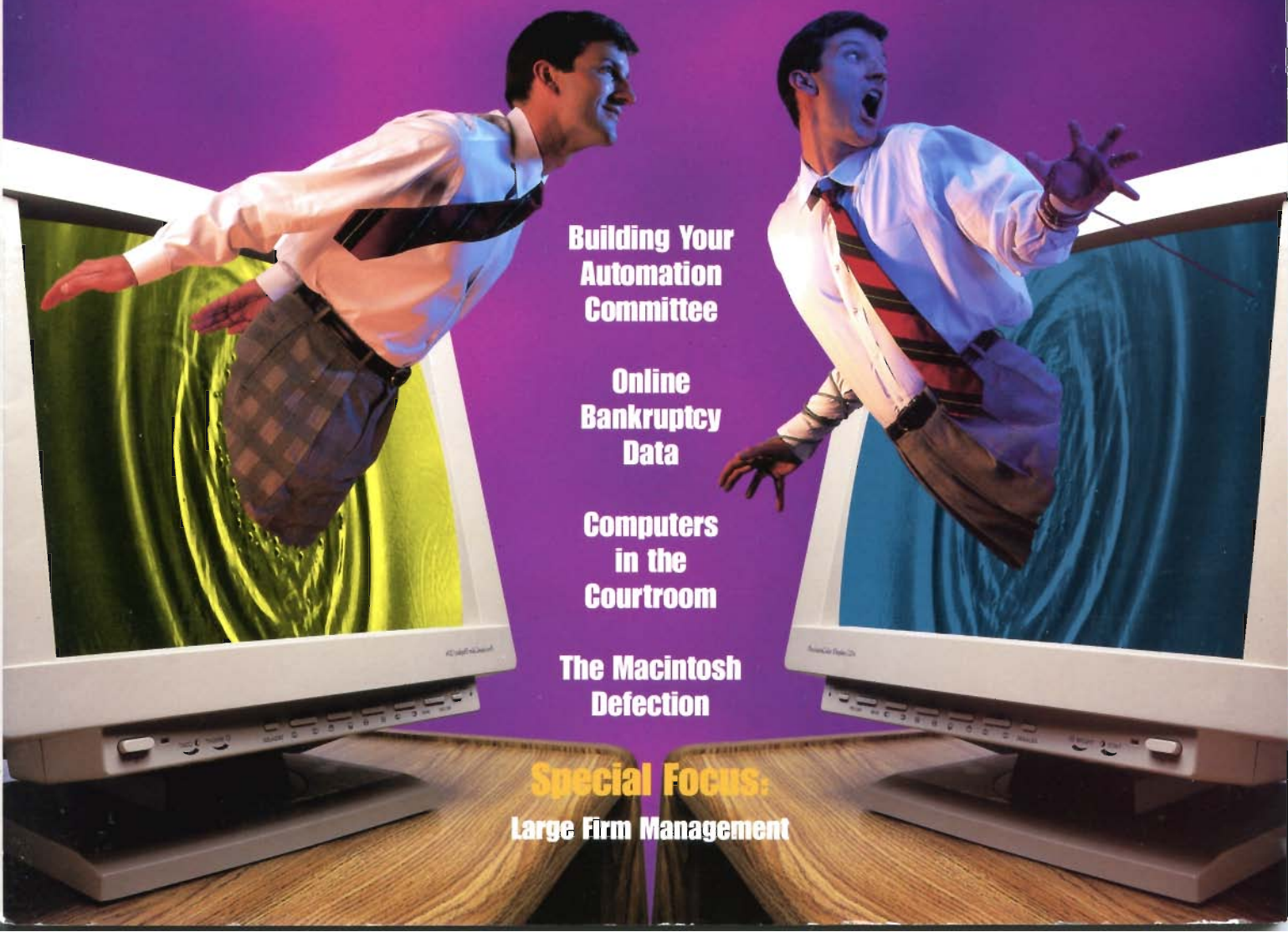
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# LAW OFFICE COMPUTING

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## Empowered or Enslaved?

Technology's Effect on the Profession



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# Empowered

## Technology's

Most agree technology's reign has been benevolent, but some see a despotic side, blaming technology for metamorphosing the profession into one obsessed with the billable hour, driven by accelerated deadlines and distrusted by the public.





# or Enslaved?

## Effect on The Profession

By Robert J. Ambrogi

**F**or a profession so guarded by precedent and tradition, lawyers did not put up much of a struggle when technology arrived at the castle gate, promising to change everything they do.

It was just 17 years ago that Tandy introduced the first personal computer. In the years since, technology has come to rule the realm. It has irrevocably altered the way lawyers communicate, litigate, research, market and manage. So powerful and complete has technology's takeover been that today we barely remember the once-ubiquitous typewriter or its cohort, carbon paper.

As technology continues to become ever more omnipresent, a growing number of lawyers are expressing the need to rein it in. In truth, technology is not only empowering the profession, in some ways it is enslaving it.

### Boon To Small Firms

Perhaps those most blessed by technology's benevolence have been lawyers in solo practices and small firms. For these attorneys, technology has meant a shift in the balance of power. "Technology has allowed the small guy to compete," says Barry Bayer, a suburban Chicago lawyer who has been using and writing about legal technology since 1979. "Twenty years ago, if the small guy got involved in a case against a big firm, they would bury you with paper — motions, memoranda, etc. But give me a PC and a laser printer, and I'll swing right back at them. If they want to get 10 motions out from their forms, I'll have 10 responses. And I'll get on Lexis and Westlaw and do the same research."

"The critical word is 'competition,'" agrees Richard M. Howland, who has a small firm in the rural Massachusetts college town of Amherst. "You can't be competitive without a computer. I use it for just about

everything — word processing, time and billing, accounting, desktop publishing."

Anyone who needs proof of technology's power to level the playing field need only talk to Sacramento, CA, lawyer Edward A. Smith. A sole practitioner, Smith has used technology to help him build and manage a successful personal-injury practice with a staff of nine paralegals and two administrators.

"I was dragged kicking and screaming into the computer age back around 1988," Smith recalls. "One of my paralegals convinced me to get a computer for him. I sat down and started playing and became addicted."

As a litigator, Smith draws his competitive edge from his use of online information services — not Westlaw or Lexis/Nexis, but CompuServe, Dialog and the Internet. When he gets a new case, he immediately goes online to find out everything he can about the issues and the players. He searches databases for background, posts queries in medical forums to learn more about a client's injury, monitors news groups and news services to keep abreast of the latest trends, and uses the Internet to locate experts. By his desk he keeps a directory listing more than 10,000 databases throughout the world: "I doubt you can name a subject that I can't find a database on."

This access to information has changed the way Smith thinks about his cases and his practice. "I feel that I am uniquely qualified to find information about difficult topics, where other attorneys might say, 'Where do I find this?'" he says. "It has expanded my vistas and given me a sense of power."

Technology permeates Smith's practice. One of his favorite tools is Ideafisher, a software program that pulls up lists of associations to ideas you feed in. "When a new case comes in, I use it as a brainstorming program," he says.

"Cases are stories and have to be put together in a certain way. This lets me look at all the angles of a case."

On the battlefield of personal injury litigation, technology is Smith's secret weapon: "I really work my cases. I use technology and computers to give a lot of attention and detail to my cases. Computers let me, as a sole practitioner, extend myself and replicate myself."

### A World Of Clients

While Smith employs the power of technology to gain access to a world of information, other lawyers use it to reach a world of potential clients.

Although barely a year old, Siskind & Susser is a successful immigration law firm with offices in Nashville and Memphis, TN. It was profitable after just four months and its partners have established national reputations as authorities in their field. Clients come from throughout the world — in fact, only a quarter of clients are local.

How did two Tennessee lawyers develop an international practice in just a year? The key was the Internet. Founding partner Gregory Siskind was an associate at a large Nashville firm when he began logging on to the Net's news groups and other services. He quickly saw the potential for developing a practice that made innovative use of this technology. In May 1994, he left his big-firm job to start a solo practice.

One of his first steps was to visit a local Internet provider. He bartered his legal services for the provider's skills. Soon, he was one of the first law firms to have established a home page on the Internet's World Wide Web (<http://www.Nashville.Net/~gsiskind/>). He came up with the idea of putting a monthly newsletter about immigration law on the Web site, so that visitors would have a reason to return. Later, he began distributing the newsletter via an electronic mailing list.

## Siskind & Susser is a successful immigration law firm with offices in Nashville and Memphis, TN. How did two Tennessee lawyers develop an international practice in just a year?

### The Internet!

Lawyers are also using technology to communicate with other lawyers and, if need be, the public.

One who is doing this on a grand scale is Philip Dubois. A sole practitioner in Boulder, CO, he is lead counsel to a national team of lawyers who are defending Philip Zimmermann, developer of the popular encryption program Pretty Good Privacy (PGP). The U.S. attorney in northern California has spent nearly two years probing whether Zimmermann's development of PGP violates U.S. customs laws. Although prosecutors have not brought any charges against Zimmermann, his case has become a symbolic front line in the battle by civil libertarians and others against what they see as government threats to Internet privacy.

Dubois has assembled a defense team that includes some of the top criminal and intellectual property lawyers in the country. They are scattered from Boston to Washington to Silicon Valley.

"We could not be doing the job that we're doing on this case without the Internet," Dubois says. The defense team relies on e-mail to communicate among themselves, encrypting their messages using PGP. "A lot of lawyers don't seem to realize that e-mail is more like a postcard than a sealed letter," Dubois notes. "I have no real expectation that my e-mail is private unless I encrypt it."

The defense team uses the Net's mailing lists and news groups to keep the public informed about the case and to keep themselves abreast of related developments. They also use e-mail to communicate with members of the public who inquire about the case.

Most intriguing, however, is the defense team's use of the Net to raise money for Zimmermann's legal defense fund. Contributors most often learn of this fund through the Internet. It has been mentioned in various news groups, and there are now several Web pages devoted to Zimmermann's case or with links to information about Zimmermann and the defense fund.

Dubois has set up a system by which contributors can use encryption

to make donations by e-mail. The donor creates an e-mail message saying how much he wishes to contribute and giving the number of his charge card. The donor then encrypts the message and sends it to Dubois. No one can read it but him, so contributors need not fear credit-card theft. "A large number of our donations have come in that way," Dubois says.

Dubois had not been using the Internet before he took on the Zimmermann case, but once he started, "it instantly became a requirement. Now I can't do without it."

### Is There A Darker Side?


But for all its benevolence, for all the ways in which it has empowered lawyers and made them more efficient, does technology also have a darker side? Many lawyers believe so.

Take communication. Yes, technology has made it easier for lawyers to communicate with and respond to clients. But the flip side is that clients now expect — even demand — quick responses, depriving attorneys of one of their most important tools: time to reflect.

"When I started in 1981," says Mark F. Foley, a lawyer in Milwaukee, WI, "you would get a call from a client saying, for example, 'We were served with these lawsuit papers today. What do we do?'" The lawyer would ask a few questions and tell the client to mail the papers. In the day or two it took to get the papers, you could think and do some research so that you really had a chance to get your arms around the problem before you had to respond to the client's questions.

"Today when the phone rings, the client is likely to say, 'I faxed those papers to you at six last night. What's the answer?'" There is significant reluctance to permit counsel to check the law. We are expected to know it off the cuff."

John Harty, a lawyer in Pittsburgh, PA., with a national health law practice, puts it this way: "Modern telecommunications and fax machines place a burden on us to respond faster. [Clients] assume we're experts, they assume we



By November 1994, Siskind had formed a partnership with another immigration lawyer, Lynn Susser, and opened the second office in Memphis. Within four months the firm was turning a profit. Today, his newsletter is mailed to 4,000 subscribers and he attributes 75 percent of his clients to the Internet.

Siskind & Susser used the power of technology to market themselves to the world. The best evidence of their success may be in this simple fact: Today, many clients hear of and contact the firm before they even leave their native countries.

### Ease of Communication

If technology has made it easier for lawyers to communicate world wide, it has also facilitated communication on a more modest scale. "For the little, general practitioner like me," Richard Howland says, "there has been a greatly enhanced ability to do that which is the primary function of a lawyer — talk to the client."

Howland's rural practice means that he spends a lot of time in his car. For him, it is time well spent, because he uses it to keep in touch with clients via his cellular phone. "The most important thing to the client is the lawyer's ability to return the phone call, hold the hand, reassure that things aren't all that bad. So for me, as a country lawyer, the fact that I can get and receive phone calls, traveling between courts, has enhanced my ability to serve my clients."



have the answer, and they want us to give it to them immediately.

"The thing that we fight against is to take the time to give a thoughtful answer. That pressure is greater in a field where you are known to be national experts."

Mark Foley has a word for the impact this insistence on instant answers has had on law practice: "acceleration." Not only, he believes, has automation accelerated the pace of practice, it has also accelerated the trend towards specialization and away from teamwork.

"Technology is a double-edged sword," observes Colorado's Dubois. "One result is that we have great new tools with which to do our jobs. But at the same time, the pace of our work — and therefore of our lives — has increased with each new tool."

"I'm not convinced that's a good thing in the law. It's wonderful in science, in engineering, in education and in the media. But law is supposed to be a deliberative practice. When we get to the point where we as lawyers are constantly trying to keep up with the pace, we lose that deliberative part of the law," he says.

Dubois sees another problem with communication technology. "We get seduced by the technology and start hiding behind it," he says. "There is absolutely no substitute and never will be for face-to-face communication. People who think that the Internet and video conferencing and e-mail will eliminate the need for people to speak with each other face-to-face are wrong, and it is a harbinger of a world in which I don't want to live."

### Slaves To The Billable Hour

For some lawyers, the world of law has already become one in which they do not want to live, and it is all due to the use of technology to automate billing and accounting.

James L. Green, a legal administrator for 15 years and now a management consultant based in Athens, GA, argues that the computerization of billing and accounting has created too great an emphasis on the billable hour. That emphasis, in turn, has caused a loss of

civility among lawyers and a loss of respect for lawyers among the public.

"Before computers, lawyers generated bills manually," he says. "They were very involved in the billing process and, more so than now, they would take into account the outcome of the project they were working on. To some extent, they were doing what we now call 'value billing.'"

With computers, attorneys abdicated more responsibility for billing to support staff and began to place greater emphasis on the billable hour.

"Over the last 20 years, whatever the glue was that held attorneys and firms together has disintegrated," Green says. "That, by and large, is due to this emphasis on the billable hour. The computer cranks out monthly reports. The reports go out to the shareholders. There is tremendous competition within a firm. One section compares its billable hours to another section."

"Somewhere in all this number crunching, the enjoyment of the practice of law has diminished. Lawyers feel so constrained by this business of keeping up with each and every minute of the day. I hear repeatedly that the practice of law isn't much fun anymore, it's like a business."

"Lawyers have lost their focus, their reason for being. They've become fungible billing units as opposed to people," he says.

What lawyers should be doing, Green says, is handling cases according to what they believe is best for the client and then, at the end, saying, "I think this should be billed as X dollars, because the client will be delighted," or, "Things didn't turn out so well, so we're going to take a hit on this."

According to Green, it is this emphasis on the billable hour that has led pollsters to conclude that the public trusts lawyers even less than used-car dealers. It has also led to a loss of trust among clients. "People who use lawyers a lot, who are familiar with lawyers and how they operate, perceive them as trying to pad bills, waste time, involve too many attorneys in a case," he says. "Witness what's going on with insurance companies over the past five years. They now tell lawyers how they will

practice law. It has spilled over into other industries. Corporations now say, 'We don't like the way you are managing your cases.'"

"Technology took us down the wrong path," agrees Milwaukee's Mark Foley. "It created incentives to spend time, instead of incentives to solve the client's problem." When clients came to mistrust that approach, he says, lawyers were forced to reconsider fixed fees and other "creative" arrangements.

### Efficiency vs. The Hourly Rate

Foley's comment points to the irony of technology's impact on billing: Although it may for a time have steered lawyers towards too great an emphasis on the billable hour, it is now forcing them to explore other — possibly fairer — methods of billing. In part this is driven by clients' evolving mistrust of hourly billing, but it is as much driven by the profession's need to reconcile traditional notions of time-based accounting with the greater time savings achieved through technology.

"You cannot charge hourly for something that used to take two hours that you can now do in two minutes," asserts Jeffrey G. Wyner, a partner in a small Cleveland, OH, firm. Unfortunately, most lawyers still have not figured out how they should charge for services delivered using the tools of technology.

Wyner suggests that lawyers adopt value-based billing practices that combine flat fees and hourly rates. For example, if he is preparing a lease for a

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commercial client, he might charge a flat fee through the first draft and then hourly thereafter.

Questions about how to bill for the efficiencies of technology can rise to the level of ethical dilemmas, argues Alfonso C. Fuller Jr., a lawyer in Washington, D.C., who formerly taught business ethics at Wayne State University in Detroit, MI. "If you perform a computer search, should you bill for the couple of hours it would have been worth had you done it manually or do you bill for the 15 minutes that it actually took you?" Fuller suspects that most lawyers will bill for the two hours, believing that if they bill for only the quarter hour, they will go broke. Fuller disagrees.

"If management science is correct, and if you can compare the operation of a service business such as a law firm to a manufacturing business such as making cars, there are certain operational theories that apply," he says. "One of them, loosely stated, is that if you price your product at just above your marginal cost, you will be most efficient and will maximize profits and market share.

"In other words, if you give the clients a break and only bill them for your actual time, you'll make it up in volume. And the clients love it."

According to Fuller, that does not mean, however, that the lawyer should not get paid for the value of the work, as opposed to the time spent: "I used to own a Jaguar restoration shop. The first time I did an engine swap, it took me 30 to 40 hours, even though the book said it should take 20. The customer was billed for 20. After that, we figured out how to do it in 10, even five hours. If I can replace an engine in five hours, why shouldn't I get paid the value of the job? It's the same in law. If I have accumulated knowledge, I'm not sure I should be deprived of revenues."

## Tools Or Toys?

Billing is not the only aspect of technology lawyers have yet to decipher. Many have yet to figure out how best to use the tools technology offers in their practices.

"It's real easy to get seduced by the toys," Philip Dubois says. "It is easy to forget that they are just tools — or in

some cases just toys. You can spend a lot of time making your toys work and not getting anything done with them."

Jeffrey Wyner sees it this way: "I believe that most firms collect and inventory technology, but don't take time to teach their own people how to benefit from it."

In Wyner's experience, many large firms hold themselves out as showcases of technology, but when he talks to the lawyers, he discovers that they are working on a computer with a 286 processor and a monochrome monitor. According to Wyner, to this day most lawyers associate the word "keyboard" with the word "secretary."

From its beginning, Wyner's firm — Conway, Marken, Wyner, Kurant & Kern — made a deliberate effort to fight that attitude. The firm was started five years ago by five lawyers who left a mid-sized Cleveland firm in favor of a suburban office closer to their clients. From the start, they set out to make technology an integral part of their practice.

Today, the firm has grown to nine lawyers, two paralegals and five secretaries. They rely on computers to communicate with clients, assemble documents, perform research, prepare spreadsheets and maintain databases. They even use computers to make their own trial exhibits.

The firm has been successful in using technology, Wyner explains, in part because it has continued to emphasize training. The firm employs a professional trainer, who comes in periodically and meets with secretaries and lawyers alike, one-on-one, behind closed doors, so that no one need be embarrassed by lack of skill.

## Too Much Information?

Another ill effect of technology, suggests Richard Howland, has been information overkill. As a small-town, small-firm lawyer, he benefits from the greater amount of paperwork technology allows him to produce. "But the downside," he says, "is that everyone else can push paper. Everyone thought that technology would reduce the amount of paper, but it has had the opposite effect — there's a great deal more paper."

And too much information can actually be counterproductive. "The O.J. Simpson trial is a metaphor for the worst it can be," he says. "We've confused ourselves between educating a

jury and totally infusing them with all of the knowledge of the world. Juries operate intuitively. Every attempt we make to saturate them with information only destroys their ability to work. The O.J. trial couldn't have happened 10 years ago; it is a consequence of technology."

## Empower Or Enslave?

It was not that long ago that many lawyers could still be heard wondering whether to adopt technology in their practices. They no longer have that option. Competition forces their hands. It is not so much that technology has imposed itself on lawyers, as that changes in the demands of law practice have required new solutions.

"The clients don't care about technology," explains Keith Watters, partner in a four-lawyer Washington, D.C., firm, and president of the National Bar Association. "They just know that the product must be delivered at a certain cost."

How, then, are lawyers to achieve a balance between using technology to empower themselves while not becoming its slaves?

In part, the answer may be in recognizing that technology, alone, does not a great lawyer make. Karen Braun, president of the National Law Firm Marketing Association and director of client services at Chicago's Kirkland & Ellis, puts it this way: "Whether you're trying a case or negotiating a deal, if you don't have it in your head or your heart, no computer will help you. But as far as taking the legal knowledge you have and applying it, that's where computers come into play."

Adds Richard Howland: "You hire me not for my technology, but for my intuition."

Or maybe the answer is simply that lawyers must retain control, must avoid being, as Philip Dubois put it, "seduced by the toys."

"It is a quality-of-life issue," says Jeffrey Wyner. "If you can do something in 20 minutes on a laptop in your backyard that used to take you a day, there's a lot to be said for that.

"And it's fun," he adds, "don't overlook the fact that it's fun." **LOC**

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