HAS TECHNOLOGY IMPROVED THE PRACTICE OF LAW?

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John Stuart Mill once observed, "It is questionable if all the mechanical inventions yet made have lightened the day's toil of any human being." A similar question might be raised about the myriad technological devices which are now de rigueur for even the most pedestrian law office. Today's fully automated law firm is a marvel of modern machinery, outfitted with computers, networking, voice mail, e-mail, fax, Federal Express, pagers, cell phones, copiers, scanners, shredders, and sophisticated software programs which chart every action, every expense, every phone call, every copy, and every billable moment in every day. But has this orgy of technology brought us happiness? Has it made the practice of law better, or easier? Wasn't that the point of all this stuff in the first place? Like many lawyers, I suspect that the recent advances in technology have made the practice of law much more difficult than in former times.

By way of example, I would suggest that the fax machine causes more problems than it solves for the great majority of lawyers. In fact, I have seen lawyers driven to near madness by this now commonplace device. In a high-pressure law office where I used to work, there was a very successful fifth-year associate who suffered the extreme misfortune of being assigned the office closest to the "fax room." Every time a bell went off announcing an incoming fax, the associate would stiffen in his chair and a look of misery would flash across his face, much like a dog who knows through hard experience that a punishment is sure to follow a high-pitched sound. After watching this physical transformation take place several times a day for weeks on end, I ventured into his office and asked him why he reacted so strongly to the fax machine. I'll never forget his response:

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I became a lawyer to have independence and control over my work, but I’ve become a slave to the fax machine. It ruins my life. I send something out to a client, go to the bathroom, and by the time I get back, the document has returned with changes. I send out a redlined version and it comes back again—the document is never finished. I might as well be chained to the fax. I have degrees from Princeton and Harvard so I could work in a civilized profession, not to be enslaved to a machine like a factory worker. I’d love to smash it to bits.

Was this man crazy, unbalanced? I think not. In fact, he had inadvertently put his finger on what I would like to call the Paradox of Technology, which is that many of the recent inventions promising to save time for attorneys actually have the unintended effect of consuming additional time. More accurately, technological inventions create new tasks and raise expectations, thereby canceling out the time which they save. With regard to the practice of law, this much is painfully clear: the law office of the 1990s is full of time-saving devices (fax, Federal Express, voice mail, Internet access, software billing programs), yet we are working harder than ever. It sounds bizarre, but perhaps if we had fewer time-saving devices, we might spend less time at the office!

Now most rational people recognize that technology is inevitable, that it cannot be obliterated, and that we can’t turn the clock back to a golden age (assuming it ever existed!). But if lawyers can’t go back to a golden age, then perhaps we can make some minor changes to make our lives more balanced and more humane. In what follows, I want to explore how technology has changed the practice of law, and I will recommend that lawyers reconsider how they presently use technology in their practice.

I. THE PARADOX OF TECHNOLOGY

Earlier I alluded to what I called The Paradox of Technology, which is that the technological apparatuses which are designed to save time actually consume time. The irony of this phenomenon was not lost on Sigmund Freud, who explored the question of whether advances in technology would bring happiness to mankind:

One would like to ask: is there no positive gain in pleasure, no unequivocable increase in my feeling of happiness, if I can, as often as I please, hear the voice of a child of mine who is living hundreds of miles away or if I can learn in the shortest possible time after a
friend has reached his destination that he has come through a long and difficult voyage unharmed?

But here the voice of pessimistic criticism makes itself heard. If there had been no railway to conquer distances, my child would never have left his native town and I should need no telephone to hear his voice; if traveling across the ocean by ship had not been introduced, my friend would not have embarked on his sea-voyage and I should not need a cable to relieve my anxiety about him.²

Freud makes the point that technology seems to bring people together, yet at the same time it separates them. For example, the advent of railways makes it easier to visit one’s relatives in a distant part of the country, but the relatives probably wouldn’t be living so far away in the first place if the railway hadn’t brought them there. So the railway solves the problem of distance, but it was also partially responsible for creating this problem.

A similar point was also made by the well-respected sociologist Thorstein Veblen in the early part of this century, when he raised the scandalous question of whether the typewriter actually saves time. Veblen said that at first blush the typewriter seems to save time because it allows documents to be produced in less time in comparison with handwriting. But here is the catch: by making it easier to produce documents, the typewriter places a higher volume of letters, documents, and junk mail into circulation, with the result that the volume of correspondence blows up beyond all actual need and necessity, thereby wasting our time.³

Both of these thinkers drew attention to a little noticed fact about technology—that each new device raises our expectations, and once raised, our expectations are rarely lowered. Here is an example to which most lawyers can relate: the client wants a document now, not because he really needs it now, but because he can get it now. In a world of quicker-faster-stronger-open all night, the production of law and legal practice is no different from the marketing of consumer goods: the customer wants everything now or he will take his business to someone else. As a result, lawyers are forced to produce documents immediately and send everything by fax or Federal Express to create the impression of efficiency, even when there is no real need to have the documents delivered so quickly.

³ See Thorstein Veblen, The Instinct of Workmanship and the State of Industrial Arts (Huebsch 1914).
If you are an attorney over the age of thirty-five, you probably look back with some fondness on the ancient days when each client had a "file" which contained all of the relevant information in one central location. Back then, every note and every document involving the client was placed in this file. Those days are long gone. While there is still a file for every client in what might be called "hard copy" (that is, paper), there are now additional bits and pieces of information floating around in several different formats. For example, there may be e-mail messages about the matter that are not in the file, voice mail messages which were never written down and placed in the file, notes and phone messages floating around in computer message boards, drafts of letters sitting in cyberspace, and so on. The spreading of information across so many different formats gives rise to tremendous confusion, often between people who work in the same office and who could easily communicate more efficiently in person.

Consider the following scenario, which is not uncommon these days: The lawyer in office A sends a voice mail message to the lawyer in office B to the effect that they need to talk about Client C. Attorney B responds with an e-mail message to lawyer A, who has meanwhile left B a handwritten note. These attorneys have still not connected, so A decides to send B a message in the "Notes" library of the client’s WordPerfect subfile, while B awaits word from A by scanning the message section of Day-Timer. Meanwhile, Client C calls and the message is placed by a secretary in the Phone Log database, where it is ignored by both lawyers. All of these messages are placed in very different formats, in what might be called different "dimensions" (if we consider paper to be one dimension, WordPerfect another, voice mail another, e-mail another, and Day-Timer another). The end result is that each person remains isolated in her own office, surrounded by her computer, voice mail, and e-mail, busily scanning every port of entry for the latest missive to arrive. Nobody knows when the next message will arrive or what format it will arrive in, but there is always a gnawing fear that it will be stored where nobody can find it.

The irony in all of this is that the very technology which promised to bring us closer together has driven us farther apart. In the previous era, attorneys were forced to communicate in person or through the ancient art of writing messages using paper and pen. But this practice, which worked well for hundreds of years, is slowly giving way to the use of computers to store all information. As a result, law has become less of a collegial profession, with each office becoming a mini-law firm, replete
with its own computer terminal, printer, and phone message system.

An important aspect of the new telecommunications technology is that it allows for increased mobility, so a lawyer can be “connected” to the office and “reachable” even if she is not physically present. But here again the disadvantages may outweigh the benefits. Lawyers who remain constantly connected to the workplace by cell phone, fax, and e-mail sometimes feel, justifiably, that a cloud is hanging over their head. On the one hand, there are obvious advantages in being “connected” to the workplace, since it allows an attorney to be consulted at any time of the day to lend advice to ongoing projects. But on the other hand, this “connection” can be horribly intrusive. Consider for example the attorney who leaves the office but stays connected by cell phone, pager, car phone, call-forwarding, or laptop computer. The existence of these connecting devices ensures that the attorney is never totally free, never in a non-work space. Because of the new technology, the line between workplace and non-workplace diminishes to the vanishing point, where the lawyer often cannot tell whether he is really at work or not, since he occupies a sort of netherworld between work/non-work and office/home. The very devices which allow the attorney to take time out of the office are also the same devices that connect him to the office like an invisible umbilical cord. As a result, there really is no chance to get away completely from work: it is as if the attorney is living in a walled city. This lends a certain claustrophobic quality to the practice of law. The feeling is so pervasive that an attorney friend of mine recently took me aside and confessed to the mortal sin of turning off his pager at times, saying “There are times when I don’t want to be reached.” This perfectly normal reaction was not looked upon favorably by his employer.

It might be noted that a similar effect has taken place throughout society as a whole. Consider the famous French artist Paul Gauguin, who traveled from Victorian France to the South Sea Islands. Try to imagine, if you will, the conceptual change occasioned by such a move, and what a totally different way of life he encountered. We can truly say that Gauguin got away to a different dimension of experience. Now we might wonder what would happen if Gauguin tried to make the same trip today? The picture is less romantic: no doubt he would be sitting at the beach, “connected” by e-mail, phone, fax, and Federal Express, watching HBO, CNN and Court TV. Just as there is no longer an “outside” to Europe and America because there is now an international culture of television, rock n’ roll and Coca-Cola, there is no longer an outside to the workplace: one is always either at work or, to use the modern parlance, “reachable.” But
isn’t it possible that there is a human downside, an emotional cost to being perpetually reachable?

II. THE VIRTUAL OFFICE, AWASH IN PAPER

Technology is advancing at such a rate that the very concept of the “law office” may become a thing of the past. In an era of “profits over people,” it is inevitable that somebody begins to wonder whether it is cost-effective for each attorney (especially associates!) to have a separate office when the basic lawyering tasks can be done “on the road,” as it were. Sounds unlikely? Well, consider that the Wall Street Journal published an article a few years ago on the “virtual office,” which is technospeak for “no office.” The article profiled a series of workers who had been relieved of their offices and were now performing the same tasks at home or wandering the highways and byways, armed with cell-phones, laptop computers, scanners, and portable fax machines — everything but the actual office itself. Several accounting firms have made the move to a virtual office system, and one wonders if lawyers are next. One Michigan CPA firm “exists only in cyberspace,” which has led to worries about a “sense of isolation and a loss of team spirit.”

This disturbing scenario is perhaps less frightening than a similar negative utopia which was played out recently in the pages of Inc. Magazine, which profiled a man who ran his company out of his Lexus. The car was fully loaded with a computer, fax machine, phone, and other high-tech gadgets. According to this man, who somehow manages to drive his car amid the distractions of running a business from the driver’s seat, “The office of the 1990s has four wheels, not four walls.” Amazingly, one of the magazine’s pundits felt that this Orwellian set-up did not go far enough because the man lacked a PowerBook 100 and a portable shredder: “By itself, a car with a fax, a notebook computer, and a cellular phone is just a gadget-filled car, not a mobile office.” If this trend reaches the practice of law, we may be witnessing the end of the law office (at least, for associates), and the rise of a flex-office, perhaps

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6. Id. at 63.
7. Douglas Stewart, The Office to Go, INC. OFF. ADVISOR, Fall 1992, at 27.
8. Id.
in the form of a general office area outfitted with movable carrels, available on a day-by-day basis for those lawyers who need a home base for a few hours. The bottom line is that privacy costs money, so the private law office may be one of the first casualties in the push among law firms for greater profits. I don’t mean to depress you, but try to picture what it would be like to work as a flex-time associate with no benefits, operating out of a "virtual office" that you carry around in your briefcase like some sort of secret agent in a B-movie.

One way to test whether technology has helped the practice of law is to compare how things stood before and after the introduction of a particular piece of technology. Let’s begin with the most important piece of technology for the law office, the computer. The beauty of the computer (versus the typewriter) is that it allows documents to be revised on-screen and then stored as forms for future legal work. One would think that the computer must be a blessing for the legal profession, that it has improved our lives immensely because documents can be drafted from previous documents, thus shortening preparation time. But is this really the case? If you ask lawyers who have practiced for a long time they will tell you that, strangely enough, things were easier before computers. How can this be so? For one thing, prior to the use of computers, lawyers used shorter documents, and in addition, they relied more heavily on forms. Lawyers knew that it was physically impossible to type every possible provision into a document, so they made the document the best that it could be under the circumstances, and then sent it to the client by regular mail. The client received the document a few days later, knowing that wide-scale revision would be cumbersome, so they requested minor adjustments, and basically used the document as drafted. A lawyer recently told me that in the 1960s, the “turnaround” time for a corporate document (say, an employment agreement, lease, or shareholder agreement) was ten days to two weeks; nowadays, many clients expect to see something overnight.

Notice how the technology of that era placed a limit on what lawyers could accomplish, thereby ensuring that things could not be done at a pace or on a scale that outstretched human endurance. Put simply, since the document could not be fifty pages long, nobody tried to make it that long. And since the document took several days to reach the client, there was time for a breathing space between revisions, which meant that there was a period during which nothing more could be done, when the lawyer could rest. To be sure, lawyers worked very hard in those days, but there was a technological limit to what they could achieve, and this limit kept
the practice on a more human scale.

With the dawn of the computer, it became quite easy to push a button and crank out a long document, replete with exhibits. My guess is that at first blush clients were impressed with the newer, longer documents, because for all they knew, the lawyer drafted the documents from scratch. But once it dawned on the clients that lawyers could crank out the documents at the push of a button, the clients had the reverse reaction—they now suspected that the lawyer had done very little work, and that the real work lay ahead, in revising the documents. After all, if a document is sitting in the computer just waiting to be revised, why not put it through another draft? One result of this is that lawyers anticipate that a document will be put through redrafts, so they begin by sending out a rough draft, with the idea that it can be revised time and again. When this happens, many redrafts and redlined versions are sent back and forth, which hardly seems like an improvement in efficiency.

Now when we complete this picture by considering the use of the fax machine as a way for the client to send his revisions back to the lawyer immediately, the verdict is inescapable—the computer not only does not save time, but in fact makes the process of lawyering a never-ending task, because there is no technological end-point to the drafting process, which now extends forever. I have belabored this point slightly, but it should come as no revelation to any attorney who has spent an entire afternoon faxing a document back and forth to a client for countless revisions, with the inevitable calls that “I didn’t receive page 3,” or “Page 5 came out blurry.”

But if the computer doesn’t really save time, perhaps it has other advantages. One promise of the computer age was that lawyers would eventually use less paper, because communication, negotiations, and the revision of documents would take place on-line or be stored on disks. The idea is that we would use paper only when it was time to print out a perfect final document, thus eliminating the need for hard copies of drafts, unsightly pasting-and-cutting, and the use of corrective fluid (“white-out”). How well has this prediction panned out?

With regard to the idea that we will no longer use white-out, I can report that my hands were recently stained with white-out from making last-second changes to a Stock Purchase Agreement which had already been heavily revised by both sets of attorneys and their clients. As for pasting-and-cutting, it has gone high-tech: a company is now marketing a paste-and-cut apparatus for lawyers which allows inserts to be typed on a clear background so that they can be pasted onto documents without
giving the appearance of having been pasted. This venerable tradition, then, continues. But what about the ideal of a paperless society? An article appeared in the early 1980s in *Crain's Chicago Business*, in which a well-known columnist predicted that the widespread use of computers would lead to a paperless society. He envisioned a world where everybody was connected by computers and telephones, so there would be no need to communicate by paper. This predication was put to the test in the late 1980's as law offices became fully computerized. By 1989 the evidence was in, and the columnist retracted his prediction and admitted that he was completely wrong—computers were not saving paper, but were in fact churning out more paper than we previously used:

I hereby retract the whole [prediction]. Let's face it, all of us are drowning in paper. And what is the cause of this new flood of paper? It's obvious. The technological marvels that were supposed to remove paper from our lives are spewing it out at such a ridiculous rate that I fear for the tree population of North America . . . . If you don't believe me, then consider some of the whizbang hardware that you undoubtedly have in your shop, [like] the computer: Rather than cut down on paper, this monster generates a blizzard of paper.  

This observation should ring true with those attorneys who put documents through ten drafts and keep all of the prior versions.

With regard to the needless proliferation of paper, you might want to conduct the following simple experiment: go to a major law firm and look at the so-called "binders" which hold the closing documents for corporate or real estate transactions, and compare the transactions that were closed before 1970 with recent transactions of the same relative size and complexity. You will find that a very large transaction in the 1960's was documented in one medium-size binder, whereas a similar transaction from the 1990s extends over four or five large binders. Is all of this additional paper really necessary? Why do we need so much more paper to close a deal? One would think that if we were moving toward increasing technology, we could get more information in less space. With the new technology, *cars* are taking up less space, so why should legal documents take up greater and greater space?

Part of the problem here is the general overproduction of law, which is evidenced by the growth in the Illinois statutes over the years. The

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1901 Illinois Revised Statutes were collected in one volume; the 1971 Statutes took up three volumes, and the 1992 Statutes fill six volumes. In other words, it seems that statutory law has doubled in the last twenty years. One would expect that this would make the practice of law easier, that the law would now be clearer and more exact. But paradoxically, the reverse has occurred. There are now so many rules to comply with and so many forms to submit, the simplest matter easily turns into a complicated research project.

III. RECORD-KEEPING AD NAUSEAM

Much of the new technology for the law office, especially the new time-and-billing software programs, was designed with the goal of monitoring the minutiae of every day, which is theoretically possible but pragmatically absurd. As the result of this technology, lawyers have developed a kind of hyper-attention to time-keeping and expenses, such that every second of the day and every movement must be accounted for, invoiced, and documented, where the most innocent conversation gives way to feelings that one is wasting time, and the impetus toward efficiency is taken to surreal heights.

The new time-and-billing software was supposed to make billing more accurate, since it ostensibly allows the lawyer to assign every action and expense to a particular client, so no time is free-floating and wasted. This creates an incentive for lawyers to write down every task which they perform. The problem, however, is that no sane person can do this, or rather, that the entire process seems to have reached the point of absurdity. To see my point, let’s ask ourselves whether the highly technological, computer-driven programs are really an improvement over the previous methods of billing.

If you examine legal bills from the 1950s and 1960s, you’ll be shocked by the amazing lack of information. In many cases, the bill simply says, “For Legal Services Rendered in Connection with XYZ Matter: $10,000.00.” This bill (let’s call it “Bill 1”) contrasts sharply with the modern bill which is broken down into innumerable bits and pieces, often containing hundreds of the following entries, each of which covers a one or two hour period of a single day:

Call from client to discuss summons and complaint (.3); receive fax from client (.1 no charge, expense $10); call back to client to discuss counts I and II (.5); have associate retrieve annotated statute on motion to dismiss (.2); call to attorney Smith for plaintiff, not available,
left message (.2); conference with Partner X (.3); strategy meeting
with ABC, DEF, GHI (.8); call to client re: insurance (.2); call to
docket department to docket case (.2); read Jones case (.3) and
Shepard's for same (.1).

Let's call this "Bill 2." Now, which of these bills is better for the practice
of law, Bill 1 or Bill 2?

From the lawyer's perspective, Bill 1 takes much less time to pre-
pare, so it frees the lawyer from time which he would otherwise spend
preparing the bill itself. To be sure, it represents a sort of rough figure,
rounded off, so it is not entirely accurate down to the last penny. But if
the client calls to complain, the bill can be negotiated, re-examined, and
adjusted.

The ostensible advantage of Bill 2 is that it can be pulled up from
an electronic billing system with the touch of a button. But in actuality,
what gets pulled up is an unedited and haphazard compilation of entries
from various people at various times, with no sense of the whole bill. So
a "billing attorney" must now spend hours getting the bill presentable for
the client, a process which (it's no secret) involves the creative
recharacterization of various tasks so that they sound better. Entries like
"Spoke with partner X about the lawsuit" must be revised to "Strategy
meeting for aggressive responsive pleading." The problem here is that the
goal of the billing software—to measure every minute of every day—is
physically impossible for most human beings. Spending one's time reconst-
structing the day into little six-minute segments is a challenging psycho-
logical experiment for students in a college course, but it hardly seems
like something that a grown person should be doing day in and day out.
To top it off, the process cannot really be done with any degree of accu-
racy, but even when it is done correctly, it is a process which actually
wastes time because it takes the lawyer away from more lawyerly tasks.
Yet amazingly, lawyers are now being encouraged to divide their time
even further, into three-minute segments!10

But how does the client see things? On the one hand it might be
argued that Bill 1 has too little information on it, thereby allowing law-
yers to get away with billing for time which was not very productive. So
it would seem that the client is better off with Bill 2, which details what
the lawyer is doing at every possible moment, down to one-tenth of an
hour. But not so fast—Bill 2 may provide too much information, which is

10. See Brad Malamud, How Times Have Changed: A Systematic Approach to
sometimes worse than no information at all. Does the client really need to know that the lawyer made a six-minute phone call to the Clerk of the Court, or that he spent twelve minutes talking to a partner about the case? Perhaps Bill 2 overwhelms the client with details, and it is easy to imagine the client getting lost in the minutiae and throwing the bill down in anger (something which is not too uncommon, I’m told).

A final observation: lawyers often solve problems by sitting and thinking for an extended period, but the new software programs have no entries for this time-honored lawyer’s skill. Forcing a lawyer to sit in front of the computer with a dictionary of “power words” to recharacterize her time may be an exercise in creativity, but the very need to do this proves that the technology is not well adapted to what lawyers actually do, that lawyers are the ones adapting to the technology, not vice versa.

The rise of technology in the legal workplace also gives rise to a new and strange behavior which I call the “billing reflex,” a psychological condition where an attorney is always writing down what he is doing while he is actually doing it. For example, while the attorney is talking to the client, he is also writing down that he is talking to the client so that he doesn’t forget to bill it. This is much the same as having a conversation with yourself in your head while talking to another person. Often this is done on the computer while talking to the client, because the newer software packages allow you to flip from one database to another. So when Client X calls, one can switch from word processing to the billing software, pull up the client’s account, and turn on the “meter” so that the length of the conversation is recorded and billed. Now, when a client calls a lawyer and hears her clicking away on the computer, the client may be inclined to ask “What is that clicking noise?” When the lawyer responds that he is entering notes and billing time on the computer, the client may feel that the lawyer is snubbing him, or that the lawyer is too busy to listen first and then write down the relevant facts later. In addition, the client may begin to feel like an impersonal number, a mere entry in the attorney’s billing system.

The perils of time-keeping hang over every lawyer’s life like the sword of Damocles waiting to fall. It is difficult to explain to non-lawyers the contradictory pressures to bill the maximum number of hours (to appear productive) while avoiding overbilling (to appear efficient). There is a disturbing feeling in the pit of the stomach after a day of work when the time which has been billed doesn’t quite measure up to the time you would have liked to bill, or the time that you thought you entered. At that
moment a wave of fear passes over you, and you wish that you could conjure up more time through some sort of magical act. The entire billing system is so reviled by so many lawyers that one is shocked to find that most lawyers see it as an inevitable part of law, instead of a culturally contingent practice which can be changed.

The best-selling billing software for lawyers is Timeslips Deluxe, which promises that “it turns time into money.” Unbelievably, and perhaps ironically, the Instruction Manual is decorated with a painting of a man in a suit who is struggling to push a gigantic clock up a very steep hill. It is fitting that the cover shows a man struggling with a clock, since every day is a battle against the clock, which ticks away mercilessly like some kind of super-presence in the sky. Obsession with time is an occupational hazard of the profession.

One of the strange things about the new time-keeping systems is that they allow each person to check up on everybody else: everything private becomes public. This lends a sort of Big Brother attitude to most firms where each person is cautiously watching the other in a sort of Panopticon of mutual observation which transforms the work environment into a low security, high-tech prison. Am I exaggerating? Ask yourself where else but in a low-security prison would people come up with the idea of putting access codes on copy machines, phones, and other services so that they can only be accessed after the client’s number is punched into the keyboard. This phenomenon can make a lawyer feel tremendously guilty and look both ways before copying something for his personal use, such as an article from the newspaper which he found interesting.

Record-keeping is doubtless essential for the practice of law, but it is gradually taking up more and more of the day’s work. Record-keeping is a tool, and we have surrounded ourselves with gadgets to make this easier, but it seems that the gadgets have taken over, so that we begin to think like the gadgets themselves. As sociologist Lewis Mumford once explained:

Time-keeping establishes a useful point of reference, and is invaluable for co-ordinating diverse groups and functions which lack any other common frame of activity. In the practice of an individual’s vocation, such regularity may greatly assist concentration and economize effort. But to make it arbitrarily rule over human functions is to reduce human existence itself to mere time-serving and to spread the shades of the prison house over too large an area of human conduct.”

11. LEWIS MUMFORD, TECHNICS AND CIVILIZATION 270-71 (Harcourt Brace, &
Sometimes people come to resemble the machines that surround them. A friend of mine once worked at a law firm with a partner who ran his life like clockwork: every second was accounted for, every "i" was dotted and every "t" was crossed. My friend was admonished by the senior partner to watch this guy and to adopt his habits, because after all, he had the habits of a "highly effective person." One day a fellow associate told my friend that she recently had a conversation with this lawyer in which she confessed her frustrations about the profession. A curious thing happened at the end of the conversation: he told her that she had just "cost" him an hour of work, and that he would have to build this hour back into his schedule. She was understandably upset at having her conversation viewed as a quantitative "debit" on this man's schedule. It came to light two or three weeks later that the partner and his wife had adopted a child six months earlier and had not told anyone at the office—"It just didn't come up." Here was the man whom my friend was supposed to emulate—completely automated, a human machine who sat in his office and cranked out the work. How could my friend explain that he didn't want to be like this man, when he was in a place where this man was worshiped? Most young lawyers eventually lose their innocence and come to realize that some genuine maniacs that would not be tolerated in any other walk of life are somehow elevated as shining examples in the legal profession.

I suppose that we are moving toward a paradigm of law where each lawyer is an isolated individual, sitting alone in her office, facing a computer screen, surrounded by high-tech gadgets and endless stacks of papers piled everywhere. At the center of this storm is a human being, a social creature with a real need to connect with others, to feel their closeness and emotion. But this is becoming increasingly impossible, according to avant-garde social critic Jean Baudrillard:

Just as the wolf-child becomes a wolf by living among them, so are we becoming functional. We are living the period of the objects: that is, we live by their rhythm, according to their incessant cycles. While objects are neither flora nor fauna, they give the impression of being a proliferating vegetation; a jungle whereby the new savage of modern times has trouble finding the reflexes of civilization. These flora and fauna, which people have produced, have come to circle and invent them, like a bad science-fiction novel.12

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12. Jean Baudrillard, Consumer Society, reprinted in Jean Baudrillard: Select-
Baudrillard's point is that we are adapting to our objects, not vice versa—each person sits in a bubble as it were, surrounded by his gizmos. This leads to a decline in what might be called "public space," and the isolation of each individual in a private space. If you don’t believe that this is happening, perhaps you haven’t read about Microsoft Chairman Bill Gates’ “cyber-dates,” in which he dates a woman from another town. First they talk on cell phone, then each of them sees a movie simultaneously in their own town, and then they call each other after the movie to discuss it. 13 I’ll leave you to imagine how they work out the intimacies of the arrangement. This coming isolation of the individual, and the associated isolation of the lawyer, would mean the death of the “law firm” as a cohesive unit, and the ascendancy of the individual rainmaker as the prototypical lawyer—self-sufficient, a one-man firm with his own clients and his own technology, an isolated atom who restlessly bounces off and combines with other atoms.

IV. A POSSIBLE SOLUTION?

If I am correct, then technology does not make the practice of law any easier. In contrast, it raises the expectations of lawyers and actually makes them work harder and longer to produce the same results. For many lawyers the boom in technology has transformed a civilized profession into one where lawyers sit at their desks waiting to be bombarded by faxes, voice mail, e-mail, and Federal Express packages. The lawyer longs for the end of the day, but it never really arrives, since the attorney is always connected and reachable. Ironically, at a time when lawyers are supposed to be more and more “connected” to each other, we find ourselves increasingly isolated. It is not unusual at times to sit at your desk and realize that in your workplace you are surrounded by objects instead of people, so that when somebody appears suddenly at your door and calls your name, you bolt upright as if shaken from a dream.

Technological inventions such as the fax machine were designed as a tool for us, which implies that we are the ones using the tool, not vice versa. But it seems nowadays that the tool is using us, that the tool is the subject and we are the object, that we are slaves to the beings which we


have created. Unfortunately these beings have no regulative capacity: the fax machine does not know when too much is too much, and the computer does not know how to shut itself off.

What I suggest, then, is simply that lawyers remember that technology is an option, not something which must be used in every case just because it can. We should ask whether a client really needs a document overnight or a fax right away. Of course, there are genuine cases in which something must be signed or filed in court the next morning, and these are cases where a fax machine is useful. However, it seems to me that these cases are the exception, and that in most cases we have fallen into the habit of using these means of technology routinely whether we really need to or not. A useful approach would be to distinguish between genuine cases of real need versus cases in which people are just impatient and pushing the envelope simply because they can.

One thing we cannot do is turn the clock back to an age before technology. As Thomas Wolfe wrote, “You can’t go home again.” And my point is not that technology is something we must reject, but rather that we have lost sight of its use as a tool which must be adapted to our lifestyle. It is useful recalling sociologist Lewis Mumford’s prophetic warning in his groundbreaking treatise on technology:

The machine itself makes no demands and holds out no promises: it is the human spirit that makes demands and keeps promises. In order to reconquer the machine and subdue it to human purposes, one must first understand it. So far, we have embraced the machine without fully understanding it.14

When technology becomes an end-in-itself, it rules over our lives. Technology isn’t human, so it has no sense of the humane: the fax machine, e-mail, pagers, and other devices can run non-stop all day and all night—it is up to us to decide when to use them and when to turn them off to make our lives better.

14. MUMFORD, supra note 11, at 6.