

# *Keeping the Lines of Communication Open*

July 2004



A Publication of LawNet, Inc.

## About LawNet

---

Providing technology solutions to law firms and legal departments gets more complex every day. Connecting with your peers to exchange ideas with those who have “been there, done that” has never been more valuable.

For over two decades, LawNet has led the way in sharing knowledge and experience for those faced with challenges in their firms and legal departments. LawNet members come from firms of all sizes and all areas of practice, all sharing a common need to have access to the latest information about products and support services that impact the legal profession.

*LawNet's Statement of Purpose: LawNet is the premier peer networking organization providing information resources to members in order to make technology work for the legal profession.*

## Editors' Note

---

The idea for the theme of this white paper, “Keeping the Lines of Communication Open,” came directly out of a recent LawNet member survey from which we learned that communication was a topic on the minds of a large percentage of our members. Initially, we planned to focus the paper on the proliferating gadgets and technology that help us communicate within and outside our firms. But as we began gathering articles from volunteer authors for this publication we realized that this, like many of our publication themes, could go as deep and wide as we'd allow. That's why you'll find articles that run the gamut from communicating with clients in order to improve collections (something for the finance folks!), to Instant Messaging, to a suggested e-mail protocol for a busy IT support organization. And there are more expansive articles that talk about communication challenges in broad terms. We believe there's something to appeal to almost everyone who utilizes or supports your firm's communications technologies and practices.

Athelene Giesman of Stinson Morrison Hecker LLP, who serves as the Vice President of LawNet's Telecom Peer Group, titles her introduction to this white paper “It's All About Communication.” To which we insert the word “improving.”

*Andy Spiegel and Randi Mayes, Editors*

---

## Table of Contents

Improving Collections by Improving Communication . . . . .	5
<i>by James J. Hammond of RainMaker Software, Inc.</i>	
Convergence of Communications Technologies . . . . .	6
<i>by Greg Renza of Perfect Access Speer</i>	
E-Mail Protocol for IT Support Staffs: A Six-Point Plan . . . . .	11
<i>by Cael Weston of Legal MacPac</i>	
IM: Instant Communication — Benefits and Risks . . . . .	12
<i>by Denney Fifield of Bendinger, Crockett, Peterson &amp; Casey, P.C.</i>	
LawNet Can Direct the LegalXML Standard . . . . .	14
<i>by Athelene Gieseman of Stinson Morrison Hecker LLP</i>	
KM: Empowering Lawyers to Communicate Across Time and Space . . . . .	15
<i>by Ronald W. Staudt, Professor of Law, Chicago-Kent College of Law</i>	
The Disasterless Disaster: The Firm's Epidemic Within . . . . .	18
<i>by T. Jason Smith, Esq. of RealLegal, LLC</i>	
E-Mail Outages Cause Major Impact to Productivity and Communication . . . . .	23
<i>by Russell Sachs, Esq. of MessageOne, Inc.</i>	



## About the Authors

---

**Denney Fifield** is the IS Manager for Bendinger, Crockett, Peterson, Greenwood and Casey, PC in Salt Lake City, Utah and has been with the firm for five years. Previously, Denney was the Network Manager for a commercial real estate company in Salt Lake City, with offices in Dallas, Houston and Louisville. He is on the Steering Committee of LawNet's Novell Special Interest Group.

**Athelene Giese** is Director of Information Services for Stinson Morrison Hecker LLP. She has spent over 18 years in law firm IT management and has been a LawNet member for about 17 years. Athelene has attended the SPA certification course, and most recently, her team has implemented an IP Telephony system with approximately 1,000 phones. She currently serves as Vice President of LawNet's Telecom Peer Group.

**James J. Hammond** is President of RainMaker Software, Inc., a leading provider of financial management, practice management and business intelligence solutions for mid- to large-sized law firms since 2002. He has more than 23 years of legal market experience in the areas of software development, technology, implementation and consulting. He is a member of the ABA Associate Member Law Practice Management Section and a frequent guest speaker at industry events.

**Greg Renza** provides strategic vision and direction to guide Perfect Access Speer's overall development. His unique background blends his training experience, business knowledge and hands-on technical skills. His continued commitment to professional development is demonstrated by his membership in Elliott Masie's e-learning consortium and by his speaking engagements at numerous industry tradeshows, conferences and legal user groups across the country.

**Russell Sachs, Esq.**, is co-founder and vice president of legal solutions for MessageOne, a leading provider of affordable enterprise continuity, disaster recovery and crisis communication solutions. In this role, Mr. Sachs is responsible for the development and growth of the company's law firm customer base. Previously, he practiced law for nearly a decade in New York City in the area of civil litigation with Fishbein, Badillo, Wagner & Harding. Russell began his professional career at the Securities Exchange Commission (SEC).

**T. Jason Smith, Esq.** is a managing consultant at RealLegal, LLC, which develops litigation, practice and matter management software for legal organizations and corporations, including the enterprise legal solution, Practice Manager. Previously, he held positions such as Director of Consulting Services and President of Digital Video Operations for legal technology companies. He also consulted on some of the nation's largest trials, working with various Global 100 law firms.

**Ronald W. Staudt** is Professor of Law and Associate Vice President for Law, Business and Technology at Chicago-Kent College of Law. He has served as Vice President of Knowledge Management at LexisNexis and is now a LexisNexis consultant. Ronald teaches Internet law, computer law, copyright law and a seminar called Access to Justice and Technology. He co-founded and supervises the Justice Web Collaboratory, a law school center using Internet resources to improve access to justice.

**Cael Weston** works as a contract project manager and business developer with Legal MacPac. He has also worked as a trainer, training supervisor and user support manager with the former Graham & James LLP and as reporter for various daily newspapers. He is based in San Francisco.

---

### Disclaimer

This report is designed for use as a general guide and is not intended to serve as a recommendation or to replace the advice of experienced professionals. If expert assistance is desired, the services of a competent professional should be sought. Neither LawNet, Inc. nor any author or contributor shall have liability for any person's reliance on the content of or any errors or omissions in this publication.

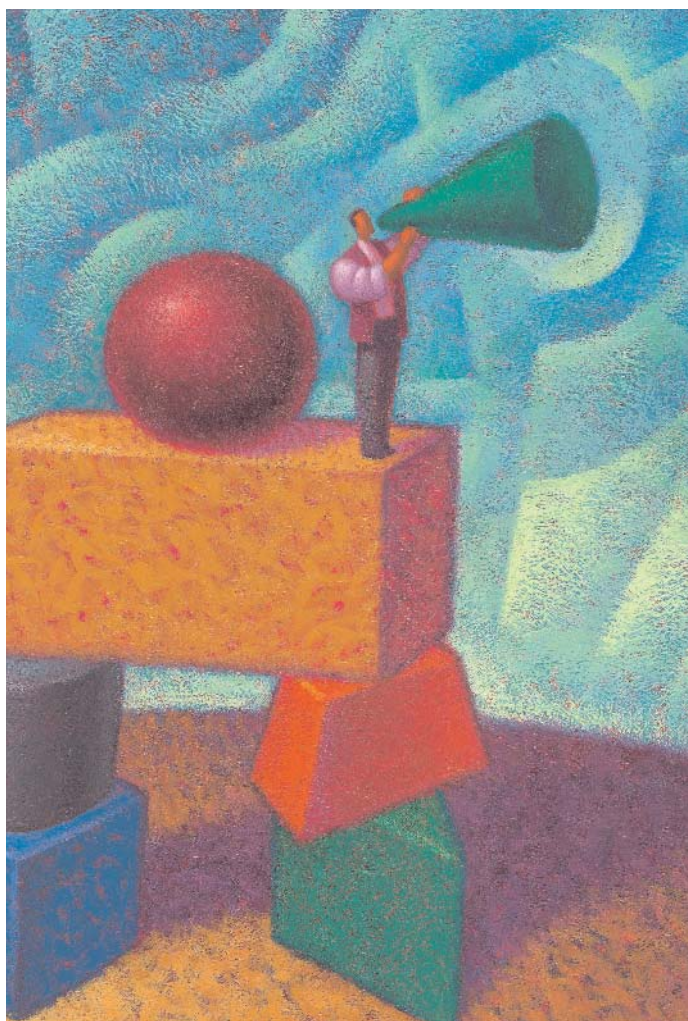
LawNet, Inc., a U.S.-based association, has no connection or affiliation with LawNet Ltd., which is a group of independent law firms operating throughout the United Kingdom and the Republic of Ireland. In the United Kingdom, LawNet, Inc. will be referenced as peertopeer.org. We regret any inconvenience that may have arisen as a result of the use of the name "LawNet, Inc." in the United Kingdom.

### Copyright Notice

Copyright © LawNet, Inc. 2004. All rights reserved. Printed in the United States of America. No part of this report may be reproduced in any manner or medium whatsoever without the prior written permission of LawNet, Inc. Published by LawNet, Inc. c/o Andy Spiegel, 2110 Slaughter Lane, #115, PMB 149, Austin, TX 78748.

# It's All About Communication

by Athelene Gieseman of Stinson Morrison Hecker LLP



The technological advances of the past few decades have changed our world, allowing us to communicate and collaborate in myriad ways. The seemingly trite phrase “communication is key” still resonates, however; for we’re finding that although the increased speed and methods for connecting have improved, and the sheer volume of our “chat” has exploded, perhaps the quality of our communication has suffered.

The ways in which we communicate have proliferated, and e-mail has certainly become the *de facto* standard for staying in touch. Beyond the ubiquitous presence of e-mail in our personal lives, the work place generates enormous amounts of e-mail. Chat, once associated with teen-talk, is being introduced into the workplace at a rapid clip. We now communicate using phones, videoconferencing, berries of all flavors, Treos, Palms, audioconferencing, SMS messaging, Web conferencing and cell phones that have morphed into PDAs and cameras. And let’s not forget that traditional written correspondence has not gone away.

Today our challenges include helping our users reduce the amount of e-mail clutter they receive. We deploy filters and storage systems to allow users to get to just what they need. We worry about the e-mail that is sent without regard to how the messages can be interpreted at the other end or to whom those messages can be forwarded. Privacy and security issues are a big concern. In most cases, it is still not clear what the impact of new technology will be to attorney-client privilege. Is it possible that an attorney could commit malpractice because of a lack of knowledge about these topics? It’s a growing concern and a very serious issue.

Many of us will be tasked with helping our users work their way through these great new technologies in the context of our industry and the unique responsibilities we have to our clients. Law firms and legal departments tend to have quite a few people with opinions and ideas about how things should be done. Coming up with a unified and risk-free plan to meet all of the business needs of your firm will likely keep you busy for quite some time.

Take a few moments to read through this white paper to find out what challenges others are facing. You are likely to find great suggestions that you can use or build on for your firm. The Telecom Peer Group has been created to facilitate that goal for all of your electronic communication needs. In the LawNet tradition, we will work together to find solutions, and we’ll share our successes along the way.

# Improving Collections

## by Improving Communication

There are many reasons why invoices don't get paid — from misunderstandings about matter pricing, to billing glitches, to client cash flow issues. Don't wait until there's an issue to initiate a dialogue with clients. Rather, consistently communicate expectations to clients from day one.

**Establish Parameters Upfront.** *Payment terms should be discussed and agreed upon as part of the intake process. For example, is the client on a 30-day, 45-day or 60-day payment schedule? Will a retainer be required for all work or just business over a certain dollar amount? Take into consideration the client's credit rating and reputation (new clients) or look at the historic payment pattern and outstanding A/R (existing clients). Then, before new billable work starts, the attorney should discuss rates and provide a time estimate for completing the project so that there are no surprises when the invoice arrives. These preventative steps will help reduce payment issues and write-offs.*

**Bill Swiftly and Accurately.** *You can't receive payment on invoices that haven't gone out. Every day counts. Issuing bills in a timely and consistent manner sends a message that the firm is on top of things — work was completed as promised and payment is due as promised. Be sure to provide invoices in client-specified formats, along with appropriate backup and narrative, as needed, to help speed payment turnaround.*

**Collect Promptly and Professionally.** *When a client does not adhere to the agreed-upon terms, it's time for the collections process to kick in. Address overdue collections immediately; otherwise, you're inadvertently "training" your clients to pay late. The action to take may vary depending on the client relationship, billing attorney, amount due, etc. In some instances it may be more appropriate for the billing attorney to contact the client directly (e.g., a well-placed comment during a client call, "By the way, did you know there's an outstanding balance for the trademark matter?"). In others, it's best to start with the collections department (first-wave reminder e-mail or letter). There is no widely held protocol of how this needs to happen. What's important is to keep track of the communication regardless of where it comes from so that the firm does not appear disorganized.*

According to Mary Lou Shefrin, a partner in the financial consulting firm of Shefrin Lynch Associates, LLC, located in Connecticut:

by James J. Hammond of RainMaker Software, Inc.

*The collections process will vary from firm to firm and even within a firm itself — depending on the client, the attorney and the firm's culture. The goal is to strike a balance between getting paid and maintaining the client relationship. Today's available technology goes a long way toward assisting firms in their collections efforts.*

## Leveraging Technology to Improve Collections Communication

Collections technologies should be used to deliver information needed to make informed decisions, take appropriate actions and communicate effectively among all involved parties. For example:

### Collections Department to Attorney Communication

*Provide each attorney with trend data. What are the oldest receivables? What clients aren't paying? What WIP is building behind those clients? What do the payment histories for those clients look like?*  
*Documentation of collections follow-up actions taken to date*  
*Notification of problem clients*  
*Follow-up reminders*

### Attorney to Client Communication

*Single-click access to client/matter information for use in intake decisions, pricing negotiation or collections follow-up*  
*Drill-down capabilities for informed decision-making*  
*Ability to send e-mails or letters with invoices automatically attached*

### Collections Department to Client Communication

*Mail-merged e-mail reminders*  
*Follow-up letters with embedded A/R summaries*  
*Tracking of payment promises and payment plan agreements*  
*Documentation of actions taken*

Using technology to professionalize your firm's collections process will undoubtedly pay off. However, there is no standard protocol or right way to collect. Take the time to further research the software and toolsets available today and look to incorporate them in a way that makes sense for your firm. Communicate and collect!

# Convergence of Communications Technologies

by Greg Renza of Perfect Access Speer



It is a paradox that with so many methods for the exchange of ideas now available to us, effective communication is one of today's biggest challenges. Ubiquitous connectivity keeps us accessible, but are we really communicating effectively? Once we have mastered the mechanics of the new communications technologies, do we really know how to use them to increase our productivity — or are we merely adding to a din in which important information cannot be heard?

How do we master not just the purely technical aspects of communications technologies, but also their effective use as tools for collaborative enterprise? Should guidelines be established? Should additional education be provided? Is your firm leveraging its investment in technology in a way that results in a productive convergence of technologies rather than a multiplicity of disruptions?

This article explores the many varieties of communications technologies that converge in the workplace and their impact on modern communication methods, including telephone, voicemail, cell phones, e-mail, Instant Messaging and others.

## Communication Methods

Following are some commonly used communication methods. This is not intended to be a complete list; instead it focuses on collaborative methods, their benefits and limitations.

### ***In-Person Meetings***

In-person communication remains one of the best forms of interpersonal exchange. Responses and reactions are immediate, augmented by audible and visual nuances that are not conveyed in electronic media. Humor, sarcasm, understanding, acceptance and other subtleties are more easily expressed in person through tone, facial expressions and body language.

Challenges to in-person communication can be geographic and logistical. The higher quality experience of meeting in person may be outweighed by considerations of time, cost and convenience. Other than casual, *ad hoc* communication in the an "old fashioned" office, this method has become reserved for only the most important meetings.

### ***Videoconference/Online Meetings***

Videoconferencing and online meetings attempt to capture the benefits of in-person meetings using technology. Overcoming the barriers of geography and logistics, these methods provide synchronous communication with the added visual element of live video or a shared desktop. However, costs and comfort with the technology can be a barrier to its use. Most people are now familiar with this technology having attended online meetings, but few have mastered its usage.

### ***Telephone***

Although devoid of body language and other visual cues, the synchronous nature of telephone conversations allows for rapid information exchange with instant acknowledgment of

understanding. Although we may remember the old days of rotary phones and poor quality long distance connections, there is a high degree of comfort with the telephone as a long-standing technological staple. Caller ID has added a new dimension to calls, as the caller is no longer a mystery and conversations can begin more quickly between familiar parties. It is surprising however, how few are comfortable with more advanced features such as conference calling.

### ***Cell Phone***

The cell phone revolutionizes standard telephone communication by providing a single point of contact and freeing the cell phone user from any specific location. For better or worse, calls can be made and received from anywhere. Cell phones can provide a sense of comfort and reduced stress by removing a level of separation anxiety when out of the office. Challenges to this technology continue to be network coverage, poor connection quality and battery life of phones.

### ***Instant Messaging***

Also known as “IM” or “chat,” Instant Messaging is becoming more popular for business purposes. It allows for quick query and response, and it also provides some insight to availability, showing if users are online or have set their status to “busy” or “away.” There are many secure systems now available that can be integrated with existing messaging systems. Challenges with this method include standardization and security, along with education on its proper usage and appropriateness.

### ***Voicemail***

Voicemail remains a reliable messaging source for all voice communications. No phone calls are missed and messages may be accessed remotely or through unified messaging inboxes. Voicemail can be used to divert incoming calls that cannot receive proper attention at that moment.

### ***Paper-Based Correspondence***

Paper-based letters and memos are utilized less and less in favor of quicker, electronic media. However, the lower time-efficiency of this method also yields benefits of quality and appropriateness. In the past, paper communications were dictated or written longhand, to be typed by another party. The rewrites, edits and collaboration inherent in this process enhanced the quality of the message. Distribution via standard post or interoffice mail kept the focus on the appropriate recipients. In contrast, electronic media allow messages to be easily composed by a single person, requiring less processing and instantaneously distributed to large audiences.

### ***E-Mail***

E-mail has become the primary business communication tool. A large amount of information can be conveyed in a clear and comprehensive manner. As an asynchronous medium, e-mail allows for well thought-out composition and revision prior to sending or responding. E-mail has evolved into a transport tool for digital information in the form of file attachments. Accessibility to e-mail has also become very easy, first with dial-up from configured computers, to generic Web-based e-mail systems with as much functionality as their desktop counterparts.

### ***Discussion Forum/Bulletin Board***

Online discussion forums provide a perfect place for the exchange of information among groups of people when instant responses are not necessary. Often e-mail threads including many recipients can resemble discussion forums, but they lack the efficiency of an online forum. Single message posts are stored in a single place, reducing the amount of messages to the expanding inbox. Also, these forums can be accessed by individuals not originally part of the initial conversation, providing a knowledge base of information that can live beyond the messaging moment.

### ***Wireless Handhelds***

Wireless handhelds provide ubiquitous access to e-mail and information. These devices have liberated the mobile professional, who is now no longer tied to an office or phone line. Since these devices often offer a limited feature set compared with full e-mail clients, the majority of e-mail exchanges are basic messages and responses. Input is mostly limited to thumb keyboards or pen shorthand, yet most users become quite proficient at data entry, and messages are kept brief. Despite limited reading capabilities, attachment support and lack of composition tools, these shortcomings are far outweighed by the benefit of constant access.

### ***Smartphones***

These new all-in-one devices embody the true technical convergence of communications. Some unite e-mail devices with cell phones, where others add full Web browsing and instant messaging. A contemporary Smartphone, loaded with included and third-party software, is capable of the following communication methods:

*The reading and composition of paper-based materials using compatible word processing applications*

*Cell phone communication (available for CDMA or GPRS networks)*

*Voicemail*

*E-mail (with message attachment options)*

*Discussion forum reading/posting (via Web browser)*

*Instant Messaging*

These devices can provide individuals with many communication methods anytime, anywhere. Imagine this scenario:

While waiting in the airport, you review your calendar, which has been synchronized with your firm's e-mail and scheduling system. A colleague sends you an instant message asking you to review an important document. You check your e-mail, download the attached Microsoft Word file and begin reading it. With your Web browser, you visit the client's website for more information needed in the document. After making a few additions, you send the document back to your colleague and copy a few others from your address book. Your colleague is working in a remote office and includes his number in his e-mail message. You click on the new number and make a voice call to confirm the changes and that the document is ready to go. When your boarding call is announced, you turn off the device with which you have done all of this and clip it to your belt.

But despite the breathtaking convenience of this kind of technological convergence, it is important to keep in mind that productive communication is not a guaranteed outcome. While technology brings the communication methods together, these methods still need to be mastered individually.

## General Observations and Guidelines

***Quantity does not replace quality.*** *It is a common complaint that the convenience of modern communication has reduced the quality of the message as the quantity overwhelms us. To truly leverage the convergence of communications technologies, we must learn to develop standards that match quality and quantity with appropriate methods.*

***Quantity of communications can disrupt quality of life.*** *The ability to manage our e-mail and telephone communications anytime, anywhere can have a negative impact on our lives. By diverting our attention away from colleagues and family, we risk them feeling less important than our e-mail recipients. Rules must be established.*

***Multitasking is a myth.*** *Although the term "multitasking" is used freely to describe the juggling of priorities and multiple tasks, all communication suffers without focused attention. It is important to give undivided attention to synchronous interactions and appropriate consideration to asynchronous messages.*

***The concept of "Out of Office" is becoming obsolete.***

*Access to Internet-based business systems, voicemail and e-mail has actually enabled employees to work effectively while out of the office. The desire to stay informed keeps people available anytime and anywhere. Statements such as "I am out of the office with limited access to e-mail and voicemail" are beginning to sound antiquated. With mobile phone numbers being used as primary reach numbers, combined with Web-accessible e-mail and handheld devices, a truer statement is, "I am out of the office, but I have just as much access to e-mail and voicemail as I have in the office."*

***We are not as fast as our technology.*** *Expected turnaround times for asynchronous communication should be established and adopted inside and outside the firm. At the speed of Internet time, 24 hours seems to be the longest anyone would wait for a reply to e-mail, voicemail or message post. However, many have expectations of much shorter times and expectations need to be properly set.*

## Suggested Guidelines

Following are some rules on how and when to use each of the methods just described:

### ***In-Person Meetings***

Meeting in person should be done whenever communicating sensitive information or anytime it is necessary to get immediate confirmation of understanding. Performance review, disciplinary actions and employee terminations should all be done in person.

As time and logistics are challenges to in-person meetings, be sure to set high standards on scheduling, promptness and attention to agendas and meeting goals. When meeting, focus 100 percent on the conversation. Do not answer telephones, read e-mail messages or review schedules. Look at the other person and always be sure to listen to what he or she is saying. These simple points will keep your meeting focused, short, fulfilling and appreciated by others.

### ***Videoconference/Online Meetings***

These methods work well when an in-person meeting is not available. Meeting attendees and moderators first must become comfortable with the technology so that it is not a barrier. Until users become efficient at using these tools, extra time should be built into the agenda.

### ***Telephone***

When a phone rings, we feel compelled to answer. But shouldn't an in-person meeting take precedence over an

incoming call? If you are expecting an important call during an in-person meeting, forewarn your guest that your meeting may be interrupted. And although Caller ID aids us in deciding when to answer, avoid imposing a hierarchy of importance on people with whom you are interacting.

### ***Cell Phone***

Although we have the ability to use a cell phone nearly everywhere, anytime, it's better to delay using it in an inappropriate place or time. Your surroundings can influence your attention to the call and communication will suffer. Also, let the other party know you are on a cell phone and may be distracted, interrupted or dropped.

### ***Instant Messaging***

The term "buddy list" suggests familiarity with the persons with whom you chat. This method of communication is often brief and curt, with little room for formality. It should be used when quick answers are needed at the expense of pleasantries and therefore should probably not be used with clients (unless requested).

Unlike e-mail or forums, IM'ing is a synchronous conversation and should be treated as such. Single sentences and thoughts should be sent and replies waited for and read. It is inappropriate to send a paragraph of information and expect an instant response. If the recipient needs to be prepared for the conversation, send the information via e-mail prior to chatting.

Although informal, an instant message should still begin with a brief "hello" and request to chat. Without establishing this connection, you run the risk of transmitting the contents of your IM at an inopportune time and where others may see it. A simple "Can you chat?" or "Can you talk?" works well to check someone's availability for instant messaging or prior to calling them on the telephone.

Instant Messaging isn't always effective, so divert to telephone or e-mail as necessary. Although IM appears a more casual communication, never type anything you would not write in an e-mail message, as these chats can prove embarrassing — and they can be saved and often discovered as necessary.

Most IM systems allow users to set status messages to let others know if they are available to chat, away from their computer or not to be disturbed. Use these away messages appropriately. A "Do Not Disturb" on your buddy list tells a person not only to refrain from Instant Messaging, but not to call or visit as well.

*Inbox clutter has become a problem of epidemic proportions, and attempts should be made to limit the amount of e-mail messages sent.*

### ***Voicemail***

Where telephone conversations are a two-way exchange, voicemail is one-way. When the caller does not answer, the mental transition from intended conversation to leaving a message can be a difficult one if unprepared. It may be best to try calling again before leaving a voicemail. This gives you another opportunity to reach the party and prepare a concise, well thought-out message. Most voicemail systems have a recording limit, and if you reach the limit you have probably said too much. Follow up with an e-mail message if more information is needed.

Always leave your name and callback number at the beginning and end of the message if you are uncertain that the recipient does not have them. This makes it easier for the recipient to follow up instead of navigating a confusing voicemail system, especially from the road. Include an ideal time to call back to avoid "phone tag;" after a few "tags," scheduled call times should be discussed.

### ***Paper-Based Correspondence***

Written materials still remain the most formal of communication. From legal documents to wedding invitations, paper-based documents can make the biggest impact in this day of electronic media. Also consider the use of a formal, hand-written thank you note to clients or employees. As this method becomes increasingly rare, its effectiveness as a means of standing out is enhanced.

### ***E-Mail***

There have been many articles written on suggested e-mail protocols and etiquette. E-mail should not be used as a synchronous conversation or instant message because an immediate response may not be received. Inbox clutter has become a problem of epidemic proportions, and attempts should be made to limit the amount of e-mail messages sent. Limit "courtesy copies" recipients to only those in need of receiving particular messages. Often, the more recipients of a message, the less attention is given by any one recipient. When replying to a message with many recipients, give thought if the reply should be sent to all or just the individual sender.

Try to make e-mail messages as brief as possible. As managing your inbox becomes more time consuming, large messages are often left for later review and easily forgotten. Also avoid making file attachments with content that could easily have been placed in the body of an e-mail message. Consider this point when interacting with parties on slow connections or limited handheld devices.

### ***Discussion Forum/Bulletin Board***

Like e-mail, message posts should be given appropriate subjects for easier browsing and searching. Prior to posting messages, you should spend some time browsing the forum to understand the tone and style of the group. Before posting questions or messages, be sure to review or search the boards for redundancy. Discussion boards are not the forum to have personal conversations with individuals. Most systems integrate e-mail addresses for this purpose.

### ***Wireless Handhelds***

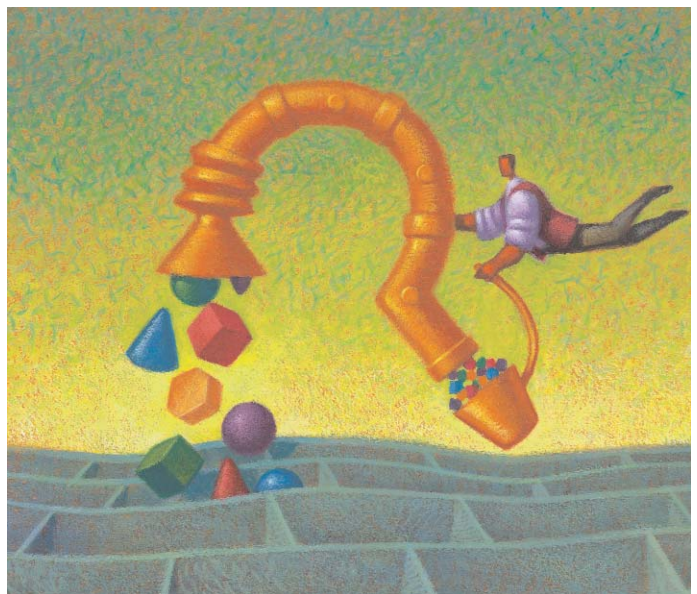
Small handheld devices, while convenient, have limited input capabilities. Pen-based handwriting recognition and thumb keyboards tend to keep messages less verbose, for better or worse. E-mail signatures stating, "Sent from my wireless handheld," do more than just promote the technology; they ask the recipient to forgive the brevity, and perhaps quality, of the message. Consider waiting for access to a computer if a larger message is needed than what can be entered on a small input device.

Personal safety should be mentioned. There are now explicit laws preventing people from using cell phones while driving without the use of a hands-free option. Handheld devices, which demand constant visual attention, are even more dangerous to use while driving and crossing busy city streets.

### **Conclusion**

We expect professionals to be equipped with talent to express their ideas successfully, and we expect our organizations to provide them with up-to-date communications technologies and technology training. But a narrow focus on the technical skills required to utilize communications tools does not properly leverage either the technology or the talents of professionals. By establishing and training users on simple protocols, our convergence of communications technologies will have the opportunity to actually result in improved communication. When considering and deploying communications technologies, it is important to develop an education plan integrating technical skills with practical application and adopted protocols.

Ultimately, the responsibility of effective communication rests with the sender, not the receiver. More than ever, effective communication requires choosing both the medium and the message with care.



*When considering and deploying communications technologies, it is important to develop an education plan integrating technical skills with practical application and adopted protocols.*

# E-Mail Protocol for IT Support Staffs

## A Six-Point Plan

by Cael Weston of Legal MacPac



A firm's IT support staff can be rendered inefficient in responding to e-mail queries and requests unless some "netiquette" policies are established. Consider the wasted time and resources inherent in sorting through a half dozen e-mail threads as a result of asking six people the same question, trying to make sense of all the replies to the replies to the replies. IT departments typically have overlapping skills and responsibilities among staff. It's sometimes tough to know whom to ask what.

Add the urgent nature of our work and the sometimes murky reporting practices within legal IT departments, and this inefficient shotgun e-mail method can be unnecessarily complex at best — downright crippling at a time of crisis.

The following six-point protocol is suggested as a means to streamline e-mail communication in legal IT departments by more precisely targeting e-mail recipients, clearly naming the person responsible for following up and providing rules that should foster the unambiguous transfer of information.

### First Things First

1. **Know who does what.** Create a list of individual responsibilities within the IT department and keep it up-to-date. This sounds obvious, but if you don't know who maintains the firm's accounting database in the New York office or who's the designated contact for a vendor's support desk, you don't know to whom your e-mail message should be sent.
2. **Never send an e-mail message to more than one recipient.** This is the hardest rule to follow, but following

it can drastically reduce the number of messages you have to sort through in a day.

Copy as many people as you think necessary, but, remember, only the primary addressee is required to respond. And if you're copied on an e-mail message and would like to respond, be sure there is only one recipient. That way, the responsibility for following up remains clear. You can go a step further and only reply to the sender. This will make the original sender the holder of all information and will prevent multiple threads from starting up.

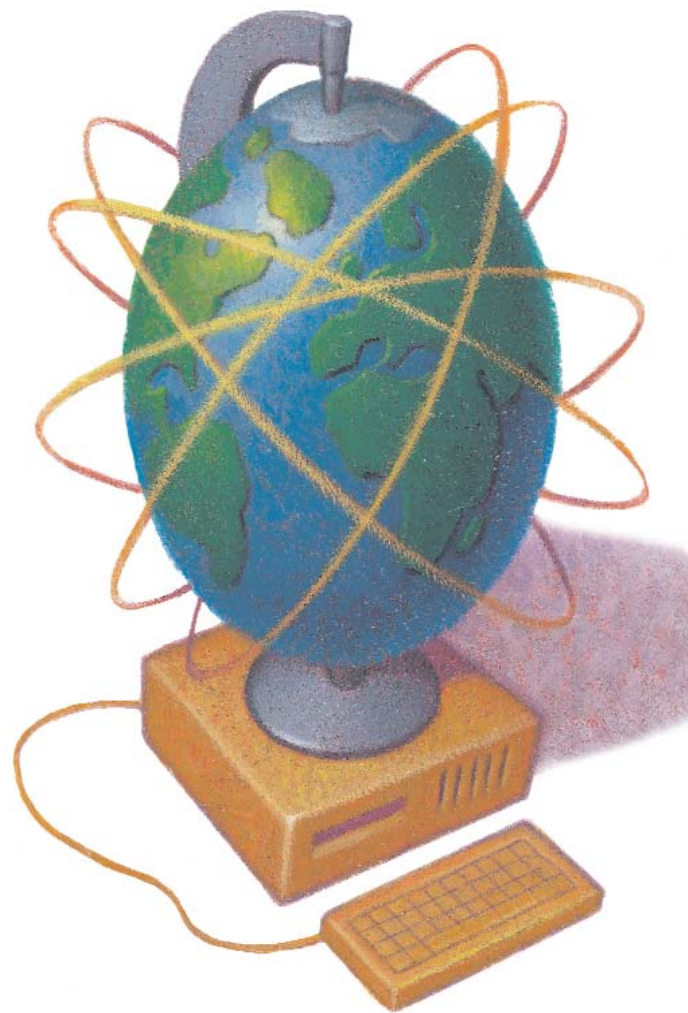
3. **Respond quickly.** If your firm has adopted the one-recipient rule, respond immediately to every message. Knowing that you are the only person required to respond will help set your priorities. If you have 50 messages to review, sort them by recipient and answer first those sent directly to you.
4. **Be clear.** Use punctuation and short, clear sentences. If your recipient has to read your message twice, you've wasted his or her time. Avoid single-word responses — they force recipients to re-read earlier messages and can appear curt or impolite. Oh, and throwing in a 'please' and 'thank you' now and again is always appreciated.
5. **Restrict your e-mail message to a single topic.** This will allow you to keep your threads separate. If you must include several topics or questions, separate them with numbered paragraphs. Recipients should respond in kind.
6. **Include all information.** Always include the original message in your reply. That way, if someone new has to pick up the thread, he or she can do so by reviewing a single message. Finally, include your signature block in every message and reply. If a recipient wants to respond by phone, you save him or her the step of looking up your number.

### It's All About Better Communication

Besides talking face-to-face, no form of communication is easier and faster than e-mail. But just as we've all learned to follow rules when speaking to improve our communication, so should we follow these and other rules when e-mailing. Doing so improves communication immensely, and your recipients will appreciate it. So will you when you are the recipient.

# IM: Instant Communication

## Benefits and Risks



Nowadays, the question of whether your organization is going to use instant messaging (IM) or not is largely academic. According to an Osterman Research report, 90 percent of enterprises now actively use IM or have it on their networks.

Business use for IM is continuing to grow as well. Last year, there was a 44 percent growth of IM as a business application. IT support for IM is also growing and will continue to do so.

by Denney Fifield of Bendinger, Crockett, Peterson & Casey, P.C.

However, this growth does not suggest that IM has been embraced as a formal business application. It has mostly entered the business sector as a result of individual employee initiative, mainly to communicate with friends, family and colleagues.

This is possibly a reason why IM still has the reputation of being more informal and not requiring the same management and monitoring styles of IM's more mature relative, e-mail. IM is still in its infancy and lacks the management controls available for use in today's corporate e-mail systems.

So, what are the benefits of IM, and what are the risks an organization will have by using it?

### IM Basics

In a nutshell, IM is the action of sending a text message to another person via a client-server connection. Both the sender and the recipient must have the same IM client in order to communicate with each other. What makes IM so popular is that fact that communication is instantaneous. The "Status" icon alerts the sender as to whether the recipient is available for communication. The sender may then write a message and receive a reply from the recipient within moments, if the recipient responds.

Another nice feature of IM is that it can show if the recipient has used his computer within the past 10 minutes. If no activity is shown, he/she may not be at the computer, even if the status icon shows otherwise.

With e-mail, the recipients need to actively open the e-mail application to see if there is new mail. When you send e-mail, it is not known if recipients have the computer on, if they are in the office, or if they are on vacation and won't be answering e-mail for two weeks unless they have a vacation rule active. It could be days, weeks or months before a message is read and you receive a response.

### Risks and Disadvantages of IM

By far the largest strike against IM is that it is a security risk for any organization that doesn't actively manage it. According to a published Symantec Internet Security Threat Report, 19 of the top 50 virus threats in the first half of 2003 targeted AOL, MSN, Yahoo, ICQ and peer-to-peer technology. That is a 400 percent increase over the previous year.

Dan Keldsen (Delphi Group) summed up the risks of IM thus: “Unmanaged employee use of IM . . . introduces tremendous security risks that allow hackers and viruses full access to corporate networks and make it easy to accidentally expose confidential information.”

Bryson Gordon, a senior manager with McAfee Security’s Consumer Division explains, “People tend to let their guard down when it comes to instant messaging, while we have more healthy skepticism when it comes to e-mail.”

Another drawback of IM is the fact that messages are transmitted in clear text and pass through public servers operated by the IM networks. IM clients can easily penetrate firewalls and evade network security. When messages and files are sent, anyone “sniffing” Internet activity has full access to the message and the attached file. Also, these messages and the files that may be sent with them are not easily scanned for viruses, which adds yet another risk of infection on computer systems.

As a final note, a significant disadvantage of IM is the fact that clients from differing companies are not able to talk to each other. Because there are no standards set for IM as there are for e-mail, companies are not required to be interoperable. Ironically, this detriment for compatibility creates an inherent benefit because some viruses that plague the public systems will not attack a closed system.

## Benefits of IM

In response to some of these security threats and to help boost their appeal for the business community, AOL, MSN and Yahoo offer corporate instant messaging services that provide built-in security. These will send and receive instant messages without the threat of someone “sniffing” them out.

These secure versions of the popular IM’s are better at keeping the viruses and the spam out because they are generally going through a hosted server that is dedicated to monitoring IM traffic. The other benefit of using the secure IM clients is that one can IM with “buddies” who are not on the secure systems. However, messages sent from a secure client to an unsecured client will lose the security once it enters the public system.

There are also a number of other third-party vendors that have secure IM applications. The one this author has used extensively is e/Pop from WiredRed Software ([www.wiredred.com](http://www.wiredred.com)). Not only does it do instant messaging securely (up to RSA with AES), it also provides voice conferencing and application sharing; and for technical

*IM clients can easily penetrate firewalls and evade network security. When messages and files are sent, anyone “sniffing” Internet activity has full access to the message and the attached file.*

support issues it will allow remote control and remote administration of other computers on the system.

Viack Corporation ([www.viack.com](http://www.viack.com)) also has an IM service that will launch secure Web videoconferencing. There is no hardware investment on your part as their servers manage the traffic and conferences. The instant messaging component is free, but if you want to be able to launch meetings there is a subscription required; and you will need to purchase Web cameras for the video portion. Viack also allows for online document collaboration that enables a group of people to edit a document regardless of location as long as they have an Internet connection.

Ipswitch’s product, Ipswitch Instant Messaging ([www.ipswitch.com](http://www.ipswitch.com)) is another secure third-party IM option. It uses 3DES encryption to encrypt all communication between the client and server. Moreover, the server can be placed behind your firewall to stop conversations from going out over the Internet.

The three big collaboration products on the market, Microsoft Exchange, Novell GroupWise and Lotus Notes, offer IM solutions as part of their products or as additional add-ons. Plans for these products include tight integration with their associated application so that you will have the choice to either e-mail or IM the recipient.

## Things to Consider

Perhaps the first thing to do when looking at an IM option is to decide upfront how it will be used. One policy suggestion is that IM be used only or mainly for emergencies or when one needs to communicate and receive immediate feedback — and *not* for telling a co-worker down the hall the latest joke. Many firms have spent a great deal of time establishing e-mail policies. The policies that govern e-mail can also be applied to IM.

Will there be a need to communicate with individuals outside the firm? If so, then look at the solutions from AOL, MSN or Yahoo. Each has the ability to communicate with both their non-secure and secure clients.

If the need to communicate with people on the outside is unnecessary, then some of the solutions that are not connected to the public systems will be sufficient. Also, what level of security is needed? Viack, WiredRed and Ipswitch all offer security levels well above U. S. Government requirements.

If the choice is to use a solution other than AOL, MSN, Yahoo or ICQ, what can be done to prevent these services from being used on the network? It is, after all, these public IM's that are the most dangerous. Port blocking at the firewall generally will not work because most IM clients are programmed to use common destination ports like port 80 (HTTP) and port 21 (FTP). The latest IM client versions will even bypass protocol analysis firewalls by embedding their traffic in HTTP requests.

Akonix Systems ([www.akonix.com](http://www.akonix.com)) has a product that will simply monitor IM traffic or two other products that will block IM traffic altogether. Their L7 Enterprise has an add-on that will monitor for compliance with HIPAA, SEC/NASD and Sarbanes-Oxley regulations.

### Set a Policy

It is better to be proactive than reactive, so be sure to establish a policy for use that will ensure employees understand how they can use IM beneficially and safely. This might include what types of communication are allowed, which are not and to whom, and the types of attachments that are acceptable. IM can help your employees communicate more effectively, but only if they follow the rules of the Instant Messaging road.

## *LawNet Can Direct the LegalXML Standard*

by Athelene Gieseman of Stinson Morrison Hecker LLP

In my work with Cisco's IP Technical Advisory Board, I'm introduced and exposed to many standards organizations. Since the Cisco phones are really nothing more than XML devices, Cisco is naturally involved in the ongoing and evolving XML standards. When I started looking into this further, I learned that there is already a consortium working on the LegalXML standard. It's called OASIS (Organization for the Advancement of Structured Information Standards), and it's the organization that oversees all XML standards groups for the various vertical markets.

I went to the OASIS website to see what has been done. I was immediately (and not pleasantly) surprised to see that there are currently no law firms represented in the consortium, only vendors are currently designing the standard; and while vendors are certainly key partners in the process, I'm very concerned that the people it will most impact are not currently represented.

Then it occurred to me that LawNet would be the perfect vehicle for representing law firms and legal departments of all sizes and practice types in this process. LawNet's staff quickly got everything in place, and I'm happy to say that LawNet is now a member of the OASIS LegalXML consortium!

### So Why All the Fuss?

XML uses a set of standards. The idea of XML is to define how information traditionally stored in documents will be formatted. In an environment like ours, presentation and format have always been important (can you say "styles?") So a standard will be an exciting move in the right direction for most. XML uses tags that are similar to HTML tags.

For example, how much easier would life be if a pleading were to be filed using XML? You would know in advance that there would be a tag for the court in the caption, the defendant in the case, the plaintiff, the case number, etc. So you would simply output the information within the appropriate tags. You might think of XML as being like the current court standards on documents on steroids. Attorneys will spend less time — perhaps no time at all — worrying about the formatting of a document. Instead, the focus will be on the content only. XML will also provide standards for sharing information with clients. Look for this standard to come into play with electronic billing, payments, records management and more.

### Big Opportunity for LawNet

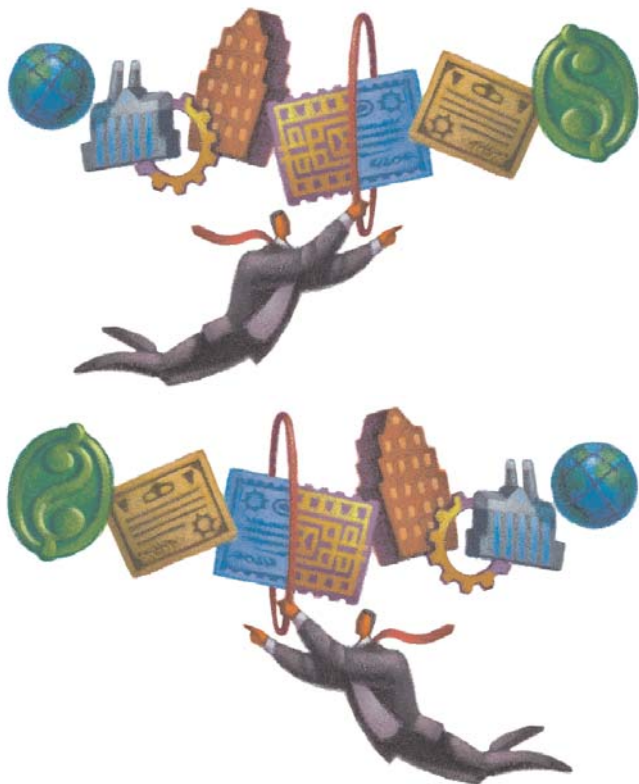
LawNet is in a unique position — and it's the right time — to help determine what this standard should be. Maybe for the first time we have an opportunity to determine what we law firms and legal departments need — *before* the vendors write the applications.

If you are interested in working on this project for LawNet or you have any feedback on the subject, please contact me either by e-mail at [agieseman@stinsonmoheck.com](mailto:agieseman@stinsonmoheck.com) or via the Telecom Peer Group listserv. It's like an election process: if you want to make a difference, you need to vote. If you don't vote, you can't complain about how things go. So c'mon, get involved. NOW!

# *KM: Empowering Lawyers to Communicate*

*Across Time and Space*

by Ronald W. Staudt, Professor of Law, Chicago-Kent College of Law



Legal research, by its very nature, is a conversation with the past in which lawyers seek the written work of judges, law professors and other lawyers to help uncover legal information and to make predictions about the direction of changes in the law. From the very beginnings of their careers, all successful lawyers develop a sophisticated set of individual competencies and habits to help them find the law, locate important facts and apply the law to the facts in creative ways to advance the cause of their clients. These habits and skills require open lines of communication across time and space.

Knowledge Management for lawyers can be described as a set of tools to keep the lines of communication open at law firms. The “lines of communication” at the heart of traditional legal research are found in the firm’s library and the firm’s file room. From the law firm library, judges, law professors and lawyers with deep experience and expertise speak to the legal researcher from the past through appellate opinions and books and journal articles. Similarly, the file room and its electronic equivalents can be the source of voices from the past that describe and illustrate the accomplishments and knowledge of the firm. Firms with many offices can bridge the past and distance by communicating with the file room resources of their many offices.

This article describes Knowledge Management and some of the technology tools available to help lawyers communicate the benefits of their individual competencies across time and space.

## What Is KM?

Knowledge Management has been the rage in a variety of businesses for the past 10 years. The essential idea is that employees and the record of their work have knowledge that makes the business function. KM as a concept promises that if the best knowledge is captured, shared and reused rather than starting each engagement from scratch, then time will be saved, efficiency created and costs of production will drop as quality improves.

KM theory and its practical applications find the greatest resonance in the “knowledge fields” like legal practice. Lawyers are innately and ultimately “knowledge workers” who use and reuse the information they learned in law school from colleagues in practice and through continued experiences within their own practice. KM, at its core, is devoted to creating practical approaches to harness the knowledge that is essential to successful legal practice.

Practical application of KM requires an effective review of the way the law firm and individual practice areas go about their daily work. Tools employed to further the strategy must fit into the way legal professionals practice law. Toward this end, firms should begin their strategic planning by focusing on a particular area of need within the firm.

For example, legal professionals consistently cite the need to find the law firm's best practices when they begin a new research or drafting task. An effective KM strategy would identify tools allowing the firm to combine information from disparate knowledge stores with ease. In this example, KM might involve implementing an advanced searching technology to empower its researchers to locate, in a single process, both external content (*i.e.*, collections of cases, treatises and codes) and the firm's existing internal knowledge stores (*i.e.*, briefs, pleadings and transactional documents). Such a tool would allow the researcher to locate and utilize relevant information quickly from the sources most often relied upon in drafting or research work.

## KM Tools

In the world of Knowledge Management, one size definitely does NOT fit all. Each firm's KM needs are firmly rooted in the way its attorneys practice law. KM strategies and the tools to implement them must be powerful, scalable and geared to meet each firm's unique content-sharing culture and practice needs.

Knowledge Management tools for lawyers extend from document assembly technology through creative uses of the conflicts database. Knowledge Management tools include the following types of innovations: portals, intuitive search tools, data mining, automated document assembly and combined work product, citation and online research products. These technological innovations draw on information systems like the file room, the document management system, the conflicts database and the time and billing system. Each of the following technologies may be considered part of the Knowledge Management resources in law firms.

### Portals

Client information, existing work product, the record of firm activities on behalf of specific clients, new developments inside a firm, as well as breaking news can be gathered and shared through an Internet browser using modern portal technology.

*Portals can play an essential role in Knowledge Management by delivering content resources when and where lawyers need them. Sophisticated firms understand that portals must be designed not only to aggregate applications and filter information but also support legal work processes, thereby delivering applications and information at the point they are needed within the flow of a project that a legal professional is performing.*<sup>1</sup>

“Portals now play a significant role across the Knowledge Management spectrum. Besides the ability to serve as the single entry point to multiple sites on the Web and within the firm's applications, portals provide features for managing:

*The knowledge content: captured information and knowledge residing in the various databases;*

*Communities and shared workspaces: places for experts or project team members to collaborate and communicate — share information and manage in-progress work documents — in real time;*

*Information aggregation: the capability to mine among different databases for specific records or content, then combine information to create new information or knowledge; and*

*Infrastructure: a platform which is Web-hosted separately or combined with other IT operations.”<sup>2</sup>*

### Intuitive Search Tools

Remarkable new search tools can extract knowledge and information from unstructured data, like e-mail repositories. “Folding e-mails into [a KM strategy] isn't like folding in research memos that are already organized by topic.”<sup>3</sup> For example, electronic discovery applications allow lawyers to search e-discovery data, including e-mail, using the power of intuitive search technology. These tools help attorneys search, organize and tag electronic documents so that they may find the most relevant ones, easily and quickly, and employ them in the discovery process or the research or drafting task. Emerging technology will help lawyers explore the e-mail repositories of the firm itself (within the permitted privacy policy the firm establishes) to open lines of communication to those colleagues who have just the right experience to meet a new client need.

### Data Mining

Vast repositories of court filing data and current docket databases can be mined for connections among judges, clients and lawyers. For instance, data mining and information presentation tools tied to these repositories allow legal professionals to use court records and filings in new ways to support legal research. These tools also allow legal professionals to perform due diligence on clients and engagements, support business decisions and enhance client development strategies. Firms are now using these tools to conduct online docket research and to develop strategic profiles of the litigants' histories, research opposing counsel's trial strategy in related cases and investigate arguments and pleadings a judge found compelling in a similar case. The same tools can help find work product of colleagues from their

years in other firms that have not been captured in a current work product retrieval system.

### ***Automated Document Assembly***

Automated document assembly tools can restructure the methods lawyers use for repetitive drafting tasks such as routine complaints in divorce cases or documents prepared in uncomplicated real estate matters. Document assembly can also support more complicated transactions if the documents needed to complete the deal contain a lot of boilerplate and the text does not require large amounts of customized drafting. The automated practice system is itself a line of communication expressing the firm's explicit judgment about the best practices in a specific area.

### ***Combined Search Systems***

New online search systems are able to combine research into cases and statutes and other indexed databases of published material with a compatible database of the law firm's own documents, briefs and internal memoranda. These tools help integrate KM with more traditional research and point lawyers in a seamless and intuitive way to the work of their colleagues that might bear on a current research task. In this way, the combined search tools enhance and encourage open communication within the firm.

These tools, in their proper application for lawyers, are examples of technologies that go beyond research to help facilitate communication between lawyers about current research activities. Each of these technologies requires careful analysis of setting, expected value and cost of implementation. Different parts of each law firm will find different tools to be valuable depending on the type of work, the practice objectives and the mix of lawyers in the practice.

Various tools can work together, but they do have different purposes and different impacts on the "front office." A terrific portal will not produce a set of automated document assembly templates for high volume transactions. The inescapable conclusion for law firms looking to open or improve the lines of communication using Knowledge Management capabilities is that there is no substitute for the hard work of examining the costs of each potential innovation and then predicting, with as much reliability as possible, the likely benefit to the firm's profitability of adopting that innovation.

### **KM: The Answer to Open Communication**

Three decades ago, most large firms had less than 100 lawyers. Each firm had a law librarian whose job included the maintenance of paper files in file drawers that contained the work product of attorneys in the firm. These file drawers

*The lessons of the history of law firm technology in the front office tell us that any new technology must be extremely easy to use.*

were organized using professional indexes prepared by the librarian. In addition, nearly every lawyer had some files or three ring binders that stored a copy of motions, subpoenas, memoranda and pleadings, as well as deeds and contracts and powers of attorney that the lawyer had prepared for prior clients.

Lawyers talked to each other and stayed in one firm for most of their careers. Attorneys in a practice group knew the type of matters handled by their colleagues. In this idyllic setting, if a lawyer were asked to draft a certain type of motion in a personal injury case, the assigning partner usually pointed to one of the partner's files to find a model or a starting point for the work. In other words, the lines of communication were open due to the simple nature of the business.

But things have changed a lot in 30 years. Law firms are larger today. Lawyers are mobile and move from firm to firm during their careers. Firm clients are sophisticated consumers of legal services, and the buyer is often an attorney who spent years in a law firm before joining the corporate law department. In response to these changes, individual lawyers today work on many levels to achieve efficient reuse of their own work and to capitalize on the work product of both colleagues and strangers.

The lessons of the history of law firm technology in the front office tell us that any new technology must be extremely easy to use. The new tool must not unnecessarily change or upset the patterns of research and analysis that successful lawyers have already established in their work. A tool that seamlessly integrates into existing research and drafting methods would be the ideal innovation.

Additionally, firms must consider the cost/benefit with any technology deployment (an integrated search tool, for example) to further the KM strategy of the firm. A thorough analysis of the cost and the return is essential to assuring a successful deployment. For this to prove valuable to the firm, benchmarks, milestones and expected return must be established in the strategic plan for each tool to be deployed.

The cost and burden of implementing the new tool must be low enough and the proposed benefits high enough to justify

the decision to move forward. Increasingly, as law firms have become more and more technically sophisticated the key metric in determining cost of implementation has been the ease of integration of a new innovation within the current technical infrastructure of a firm. Even if the price of software licensing and hardware purchases is reasonable, if the innovation takes hours of staff time to implement, install and train, then the innovation may be too costly to justify the proposed benefit.

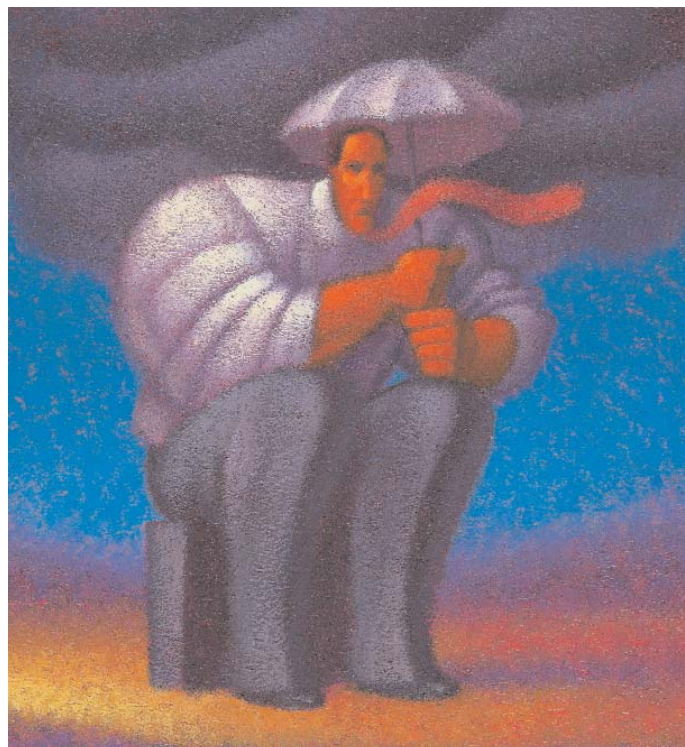
A solid and adaptable Knowledge Management strategy can open lines of communication and knowledge-sharing. Firms will see the benefit of KM in all aspects of the practice of the firm — from winning briefs, pleadings and motions to the timesavings achieved in assembly of complex transactional agreements. With such a KM strategy in place, a law firm can be assured of open communications and a profitable, successful business.

### Endnotes

- <sup>1</sup> Sally R. Gonzalez, *The Knowledge Business*, *The Recorder*, 4 (March 1, 2002).
- <sup>2</sup> Ken Mitchell, *Introducing the Portal*, *The Public Manager* (September 1, 2001).
- <sup>3</sup> Ashby Jones, *How Do You Capture Knowledge from E-Mail?*, *Legal Times*, 19 (June 17, 2002).

## *The Disasterless Disaster: The Firm's Epidemic Within*

by T. Jason Smith, Esq. of RealLegal, LLC



Often we hear about the destruction and mayhem caused by outages of e-mail servers, downed phone lines and the lack of proper business resumption planning. But a more sinister force lies within law firms, working toward disrupting business on a daily basis: the lack of communication and shared information among law firm staff. This article will detail the problems inherent in the legal community, an environment that does not traditionally embrace open lines of communication, and will offer suggestions for overcoming this hidden threat to a firm's success. Further, it will explore the culture behind, the burdens from and the remedies for what can aptly be called the "disasterless disaster."

Over the past few years, we have witnessed disasters big and small, and most are horribly disruptive to business. The terrorist attacks of 2002 in New York and Washington, D.C. caused a virtual cessation of almost all communications in and out of those cities for days. With last year's power outage on the East Coast and rolling blackouts in the West came the suspension of business and a reduction in productivity. And natural disasters throughout the country from coast to coast have wreaked havoc on business at one time or another.

The common thread in all of these events is that forces beyond the walls of the law firm were the culprits, resulting in a loss of productivity and communication and thus, revenue. Whether it was the physical destruction of hardware in the collapsed buildings or the failure of telephone and computer networks under the stress of simultaneous emergency communications, these breakdowns significantly impacted business.

### Learning from the Past

If there is anything positive that can be taken from these types of disasters, it is that having survived previous disasters, we can learn to anticipate possible future ones and develop contingency plans accordingly. It may be an emergency process for communicating during and after an event, or it may be the existence of a backup system that will automatically activate when the main systems falter. An entire industry has arisen from the need for businesses to plan for and respond to business-interrupting disasters.

But within the legal industry, there lurks a more dangerous threat to productivity and success. Despite its enormity, it rarely receives the same attention as the aforementioned disasters. It's called "The Silent Killer."

Let's begin with an analogy to which we can all relate: healthcare. We constantly hear about the risks of heart attacks. We are constantly bombarded with advice on how to prevent them. We know others who have had them, and we can imagine the pain and potential tragic outcome of our own. We are warned that many people do not survive the first one, which instills in us a sense of urgency to take precautions and make changes to reduce the exposure.

When a heart attack does occur, it is generally a single, catastrophic event requiring special emergency care and extraordinary measures for recovery. However, many people recuperate with the help of recovery plans and a proper, timely response.

But many of us hear the same dire warnings, ignore the same bombardment of telltale signs and advice and live with the

growing danger of heart disease day in and day out without addressing the source of the threat.

A similar threat holds true for the practice of law. It is generally not the foreseeable cataclysmic event or the individual, earth-shattering tragedy that forces a firm out of business, but rather the constantly looming and lurking issue that everyone knows exists but few take the right steps to manage. As with a heart condition, the real danger lies in a lifetime of poor lifestyle choices rather than the relatively low risk of, say, being involved in an airplane crash.

Firms rarely see a "communications heart attack" coming. They have all the latest software solutions, the best IT staff and the most powerful computers available; yet they do not grasp why they are losing clients, market share and revenue. A law firm's most precious assets are the relationships it develops with clients and colleagues, and its most strategic asset is the collective knowledge and experience of its employees. Both of these require open lines of communication in order to realize the full benefits of either. Open lines of communication allow for the critical information to be accessed at the right time in the right manner. Too often, however, these assets remain in the possession of only a few, and they are not shared among team members. It is not necessarily malice or willful deceit; it is simply the nature of the business.

### We've Met the Enemy, and He Is Us

In his book, *Leaders' Digest*, J. Edwin Dietel points out that the culture of the legal profession stresses independence and individualism, and lawyers are trained and conditioned to be aggressive, combative and self-sufficient. From rainmaking and landing the biggest and best clients to managing files and important information, they covet the knowledge and experience they collect like trophies in a locker room. In such an adversarial profession, it is understandable that the concept of sharing strategic information is foreign. Many firms have a short-range production goal focused upon individual lawyer productivity, based upon billable hours and dollars billed and collected. "My needs" tend to have priority over the "firm's needs" or "client's needs," leading to a stockpiling of clients and the consideration that they are the attorney's clients as opposed to the firm's. Approaches to client problems tend to be more individualistic than collaborative. In addition, the concentration on maximizing the billable hour and the drive to prioritize time generally combine to reduce interaction among staff. Compensation structures and firm hierarchies are usually not well-suited to fostering teamwork in law firms either.

Only when collaborating on a big case or partnering on complex transactions involving multiple practice areas do legal professionals feel obliged to share information. For instance, a lawyer reviewing a client's real estate contract may not converse with another lawyer in the firm handling the same client's personal injury defense, even though each may possess information relevant to the other's engagement. Another example may be a firm representing a drug manufacturer where one lawyer is representing the company in a class action product liability suit and the other is prosecuting patents. While both represent the same entity, they are advising the client from polar-opposite positions in the life of a lawsuit. Information from one may help the other avoid future litigation, while a preventative strategy being employed by the other may assist in the defense of the suit.

The problems are not new; they have been around as long as the profession itself. Recent advances in technology, from the fax machine to the PC to the age of wireless, anywhere, anytime communications, have led to an understanding of just how prolific the communications problems are. It is not that lawyers have gotten progressively worse at communicating; it is just that we have multiplied the methods of communication and collaboration, exponentially exposing deficiencies that already existed in legal organizations.

### So What's the Problem?

One of history's oldest professions is not on its last legs or facing an apocalyptic end. But firms are learning the hard way that the paradigms have shifted. The outgrowth of technology is putting greater emphasis on the need for more effective client communication and increased collaboration within the firm itself; and firms now have the tools to achieve these goals. Yet they continue to focus on the low-risk catastrophic event while ignoring the chronic ailment that is impacting their business daily.

It is understandable, because when major disasters strike, computer systems and phone networks usually go down, preventing access to critical data and interrupting communication among colleagues and clients. In addition to the immediate impact of a catastrophic event, there are generally lasting effects such as complete loss of information, loss in productivity, a disruptive period of recovery and the resulting loss of billable time. Firms go into reactive mode, picking up the pieces, the success of which will likely be determined by the pre-event planning.

The key here is the word "planning." Planning evokes the idea that firms are expecting certain types of events and even showing they are aware of the potential for unexpected events.

They focus on the critical infrastructure and prioritize strategic investments based upon the most critical elements. So it seems logical that they recognize and address their information-sharing gap. But firms continue to invest in solutions that will keep communications portals open during disasters while overlooking the daily communications failures that exist during normal business operations. This opens the firm up to many issues.

#### 1. *Missed Opportunities*

*When lawyers do not share information on industry and client contacts, they miss opportunities. "Metcalfe's Law," a theory used to explain the power of computer networks, can illustrate the same exponential growth of adding resources to a business or professional network. Metcalfe's Law states that the value or power of a computer network increases proportionately to the square of the number of nodes on the network. Therefore, if you add four nodes (or in this case, colleagues) to a network, it would become valued at four squared or 16. If you added one more node taking it to five, it would become five squared or a value of 25. This theory suggests that as you add more colleagues to a network, the network becomes exponentially more valuable. As more colleagues are connected to a lawyer's network, it is more likely he or she will uncover unique facts or special relationships that will give him or her a competitive advantage in dealing with the contact. But if every lawyer in the firm maintains his or her own private Rolodex, key relationships throughout the network may never be recognized.*

#### 2. *Conflicts of Interest*

*It is imperative that a central collection of contacts be maintained across the firm for conflict checking. Some very serious consequences can arise from a proven claim of conflict, including disqualification from representation of one or more clients, forfeiture of fees charged, the inability to charge for work in progress and other time invested, a damage claim, which may include punitive damages, embarrassment, inconvenience and aggravation of defending a malpractice claim or investigation, and lost time from defending a malpractice claim or investigation.*

*There are many sophisticated software tools available today that allow for complex relationship analysis, requiring data entry as the only point of human interaction.*

#### 3. *Reinventing the Wheel*

*The legal industry is centered on research and analysis. Legal professionals spend vast amounts of time and money conducting research and then evaluating the information. But think of the redundancy created when lawyers work on*

*cases similar to those previously worked on by colleagues. If they continually reinvent the wheel, clients are effectively paying for the inefficiencies of the firm. Instead, if the firm had effective systems in place, a lawyer could reduce the time searching and increase the time analyzing and evaluating. In addition, the client can effectively benefit from a second analysis of the materials that could lead to new discoveries or fresh perspectives. When the firm is not passing along more research costs and is simply billing for counsel and advice, the client is receiving higher quality legal services while paying fewer bills.*

#### **4. Uninformed Clients Are Not Happy Clients**

*Distracted by billing time and winning cases, legal professionals may fail to keep the client fully informed. This is one of the prime reasons lawyers and law firms get fired. When lawyers do not share information with their clients, usually about some downside risk to a matter, surprise outcomes may occur that can be devastating to the client and strain or destroy the relationship between client and firm. Even though the lawyer is driving the case, he or she must remember the client owns the matter, and the full and complete exchange of information helps to maintain a healthy relationship. A recent study by The BTI Consulting Group shows that 49 percent of Fortune 1000 clients want an extranet with their outside law firm but do not currently have one. Fortune 1000 clients have come to expect the highest value when information technology solutions are integrated as a core part of the delivery of legal services. According to the study, corporate counsel view information sharing as the best way law firms can help them improve their performance, without cutting fees. New technology solutions provide the ability for lawyers to build portals or other online access mechanisms for clients to stay informed without the need to disrupt the lawyer's daily business with constant checkups. However, such tools are only as good as the information the lawyer captures and stores.*

#### **5. Uninformed Lawyers Make for Uninformed Firms**

*Lawyers are counselors providing advice based upon detailed assessments of facts, circumstances and particulars. It is crucial for success that they be fully informed. But how can a legal professional claim complete knowledge when he and his team do not share information? The benefits to a lawyer of being part of a firm — or the benefits to the firm of being a collection of legal professionals — are lost when the members of such firms treat business information and intelligence as if they are sole practitioners. The value of multiple contacts, experiences and skills is abandoned, which negatively impacts the firm.*

If law firms are going to pursue elaborate disaster recovery initiatives and make massive investments in solutions to maintain continuity of communication, they should also address the issues already present within their walls. Firms should take necessary steps to prevent the disasterless disaster before it affects them.

### **Collaborate, Communicate and Conquer**

According to Cindy Thurston, the application development manager for Shaw Pittman in Washington, DC, "It's important to recognize that you can have great technology, but if no one is rewarded for sharing information or using the technology, it does little good." Ms. Thurston's comment underscores the gap between saying and doing. In an industry where individual success is the norm and infrastructure barriers make information exchange more difficult, introducing alternative rewards and incentives for merely sharing information can have a profound impact on the practice. Once motivated to share, lawyers will come to realize the advantages of open communication and the success of the practice will ultimately encourage future sharing.

Perhaps legal professionals in the United States can take some guidance from their counterparts in the United Kingdom. Most UK firms actively promote an information sharing culture. This encouragement can entail material rewards for information sharing or considerable disincentives for the lack thereof or both. For instance, contributions to knowledge systems are, in some law firms, a substantial factor in a lawyer's performance evaluation for an invitation to join the partnership; and failure to use a current copy of a firm precedent (similar to a brief bank in U.S. firms), in at least one firm, results in termination of employment.

In UK law firms, information exchange and management is more likely to be tailored through a formal policy that is actively supported and enforced by the partners. All of the top UK law firms have a formal position akin to a knowledge or information manager. A lawyer rather than an IT professional typically holds this position. This creation of a stakeholder position who is solely responsible for managing and promoting the exchange of information in the firm shows a serious commitment to solving the issue. Since UK firms have a tradition of knowledge sharing, it is admittedly easier to build such consensus for sharing strategies. Law firms in the U.S. do not have such a legacy and therefore find the task of building knowledge systems daunting, perhaps to the point of avoiding it altogether.

The purpose of information management is to gain competitive advantage. The firms that succeed at it are likely

to be the survivors, while those that do not do it well or ignore it completely will find it hard to survive their competitors and impossible to grow. Even though the success of the firm is the goal of all members, certain incentives or even penalties are required to affect changes to the culture of the legal industry in the U.S. As the law firms in the UK have been able to do, U.S. firms will come to see the light over time.

## Conclusion

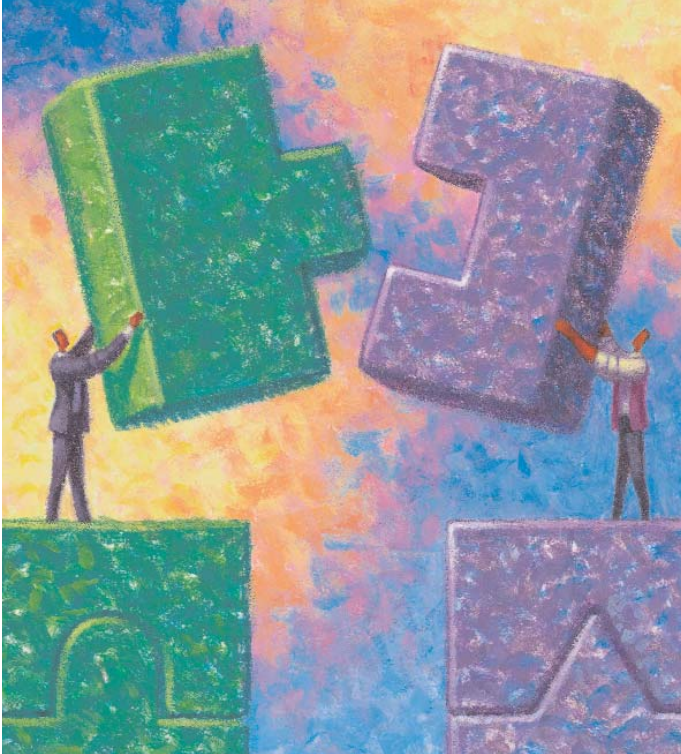
Effective information management pays off in fewer mistakes, quicker problem-solving, better decision-making, reduced research costs, enhanced client relations and improved service. The legal industry is one built on precedent, the ability to analyze cases based upon past decisions and arguments. One would think, then, that lawyers would more quickly understand the importance of a successful information management campaign within the firm. But as we have seen, there are cultural barriers to information sharing among lawyers, and these barriers must be removed for firms to enjoy the success inherent in a culture of open communication. As disasters occur, law firm leaders catch small glimpses of the dangers that lurk, but most eventually return to a process of complacency. The emergence of technological answers to business-disrupting disasters, combined with the trend of disaster recovery/business resumption planning and a strategy of providing incentives for sharing information, means law firms are on the verge of making information management a successful strategy in the U.S.

Law firms understand the nature of the problem; they treat it every day. Massive investments in recovery plans, backup systems and business continuity strategies as precautions to external dangers prove this. It is just that they too often are looking to prevent against a single catastrophic event rather than the chronic catastrophe slowly taking their firm down the wrong path. But when firms fully address the idea that cessation of communication can come from within during the daily operation of the firm's business and discover a way to open the lines of communication in their firms, then the epidemic lurking in the shadows will be treated once and for all.

# *E-Mail Outages Cause Major Impact*

*to Productivity and Communication*

by Russell Sachs, Esq. of MessageOne, Inc.



Despite e-mail's ubiquity and mission criticality at law firms, outages are on the rise, and continuity of e-mail remains an elusive goal. The good news is that the advent of e-mail has significantly and positively changed the way lawyers do business and communicate with their constituencies, replacing (at least in part) cumbersome letters, memos, expensive delivery services and lengthy phone conversations with quick, easy and affordable e-mail exchanges. The bad news is that many firms are not thoroughly prepared for potential e-mail outages that can often result in tremendous loss of productivity and costly breakdowns in communication.

## E-Mail Outages Rampant in 2003

In 2003, e-mail outages at law firms were a common occurrence, due to both natural and man-made disasters, as well as routine maintenance and hardware issues. In the wake of 2003's Hurricane Isabel, many national law firms were shut down in their Washington, D.C. and Northern Virginia offices. Similarly, the August 2003 Northeast power outage caused many national law firms to lose both data center and total office power. That was followed closely by the RPC Blaster worm, which wreaked havoc on a number of law firms as they were working to recover their systems. And law firm e-mail outages often snowballed to outlying offices not even in the disaster or outage area, when their corporate headquarters housed the afflicted e-mail server.

According to a 2003 survey of large law firms conducted by MessageOne (NLJ 250): 82 percent of firms surveyed reported at least one major (3-day) unplanned outage in 2003; 52 percent of respondents reported at least two major unplanned outages in 2003; and nearly one-half or 46 percent of firms surveyed reported three or more major unplanned outages in 2003. In another survey of law firms (ranging in size from 100 - 2,000 employees), 77 percent of all respondents said they had experienced an e-mail outage at their law firm within the last 12 months.

MessageOne survey data also revealed that the most common causes of law firm e-mail outages were configuration and change management errors; server hardware, storage hardware or software failures; viruses, spam or database corruptions; network/ISP connectivity failures; and natural/man-made disasters (power outage, hurricanes, etc.).

## Reliance on E-Mail Critical to Business

By 2005, IDC has estimated there will be 36 billion legitimate daily U.S. business e-mail accounts. It is no secret that law firms rely heavily on e-mail. For example, in 2003, in one medium-sized Houston law firm with 331 mailboxes using Microsoft Exchange, 293,686 messages were sent/received in a two-week period. The average weekday e-mail traffic for this firm was 22,353 messages a day. Of course, law firms are not the only organizations to have discovered the benefits of e-mail; businesses that law firms interact with also rely on it. According to a Meta Group survey in 2003, 80 percent of Fortune 2000 executives believe that e-mail is far more

valuable than the telephone, and 74 percent of Fortune 2000 executives believe losing e-mail would be far worse than losing their phone.

### Preparing for E-Mail Outages Is Key

With the increasing reliance of law firms on e-mail communication and its continued exposure to outages, law firms must be prepared. For most firms, it is critically important to have guaranteed, uninterrupted e-mail service. Fortunately, a wide range of e-mail continuity and recovery solutions are available that can be activated in less than one minute in the event of any outage. And having an affordable solution that is fast and easy to deploy and maintain makes good sense. This author also suggests that it is wise to select an e-mail continuity and recovery solution that is housed at a world-class data center to mitigate a single point of failure and reduce overall risk.

The best offense is a good defense — law firms must be prepared for a potential e-mail outage at any and all times, for their business communication depends on it. The deployment of an emergency messaging system will ensure e-mail is always there when needed — and in the legal world, that means all of the time.

RAINMAKER FINANCIAL AND PRACTICE MANAGEMENT SYSTEMS

## The Advantages Shine Through

Our clients have all of the advantages. They not only get practical, results-oriented software systems that are reasonably priced, but also knowledgeable account managers, on time and on budget installation and conversion, as well as superior support. No wonder so many firms are joining our list of esteemed clients. The advantages are crystal clear.

**RAINMAKER ADVANTAGES INCLUDE:**

- PROBLEM-SOLVING FEATURE AND MAINTENANCE FUNCTIONALITY
- COORDINATED BILLING AND INTELLIGENCE TOOLS
- ADVANCED BILL FORMATTING AND COLLECTION OPERATIONS
- SUPERIOR SUPPORT BASED ON MORE THAN 20 YEARS OF LEGAL EXPERIENCE

**Rainmaker**  
LEGAL SYSTEMS

PRO-SOFTWARE | PRO-VEH | PRO-COL

800.341.4012x247 www.rainmakerlegal.com legalinfo@rainmakerlegal.com

LawNet, Inc.  
2110 Slaughter Lane, #115  
PMB 149  
Austin, Texas 78748



PRST FIRST CLASS  
MAIL  
U.S. POSTAGE PAID  
PERMIT NO. 1149  
AUSTIN, TEXAS

• Address Service Requested