

LINKING IN-HOUSE AND OUTSIDE COUNSEL: HOW CAN ELECTRONIC COMMUNICATION MAKE YOUR OPERATION MORE COMPETITIVE AND EFFICIENT?

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I. INTRODUCTION

Large and medium-sized companies have been using electronic communication for several years to facilitate coordination among different departments and locations. What is "electronic communication," and how can outside counsel use it to be more "competitive" and "efficient"? This article looks at these issues in the context of internal communication within a law firm, external communication between outside counsel and clients' in-house counsel, and external communication between outside counsel and others.

First, I am using the term "electronic communication" to mean users of computers linked together in such a fashion that they can "talk" to one another through a computer-to-computer hookup and thereby exchange information electronically rather than in person or by telephone or facsimile. One of the most common means of electronic communication is electronic mail, or e-mail. E-mail permits a person at one computer terminal to type a note or a longer document and, at the touch of a button, allow that note or document to be read, shared or downloaded by one or more other computer users at other locations, either in the same office or halfway around the world.

Second, I am using the term "competitive" in the sense of maintaining the minimum skills necessary to remain in the marketplace. Over the next few years, those attorneys who do not gain a basic familiarity with electronic communication will no longer be able to retain or attract medium and large companies as clients, as the need for electronic communication will become a skill and service necessary to compete. Thus, the lack of electronic communication, either internal electronic communication within your office or external electronic communication with clients and others, will be viewed as a competitive disadvantage as serious as the lack of a word processor or a facsimile machine.

This relatively new means of electronic communication is being viewed, and will be viewed, as an indicator that you, the outside practitioner, are committed to delivering legal services of the necessary quality at the lowest possible cost to the ultimate client. In-house attorneys, who have generally worked with internal electronic communication for several years, will more and more require outside counsel to become part of the team by using both internal and external electronic communication to expedite and simplify the process of information transfer in connection with the provision of legal services. Electronic communication will also permit head-to-head competition between, on the one hand, large law firms in the big cities and, on the other hand,

the smaller law firms in smaller cities, where the quality of the legal services is not very different, but where the overheads may be considerably less.

Third, I am using the term "efficient" to describe both (a) providing legal services sooner, or at a lower cost, and (b) providing better legal services at the same cost. Electronic communication permits outside counsel (1) to make better use of the collective knowledge and experience of the lawyers in that firm in addressing and responding to novel issues, and (2) to minimize the time, effort, and cost of reinventing the wheel on projects similar to work done by the firm or its attorneys in the past.

II. THE CORPORATE EXPERIENCE

Over the past ten years, more and more medium and large corporations have begun to rely heavily on electronic communication as a preferred method of internal communication, replacing in many instances the use of the ubiquitous interoffice memorandum. For the larger corporation, this may have started before the widespread availability of personal computers, when main frame computers facilitated sharing corporate information in centralized data bases. For many medium corporations, this move was not economically feasible until the advent of the personal computer and low-cost communication pathways that enable users of those personal computers to communicate with one another and to share data.

Prior to the introduction of facsimiles, corporate operations that were international in scope used telexes to deal with the problem of communicating with operations in numerous foreign locations. This bridged the time differences that made telephone conversations difficult, and was relatively low cost. Further, recipients whose native tongue was different than the language of the telex found it easier to understand written text than the same words spoken over the phone. But not everyone in every office could operate the telex machine, and few corporations in the United States used telexes for routine domestic correspondence.

With the introduction and widespread acceptance of facsimiles beginning in the mid-1980's, there was a move to facsimiles for long-distance communication where speed was a factor. The equipment was relatively inexpensive and easy to operate. As the ability developed to move information more quickly, the client's expectations as to rapid response time increased dramatically. But if the communication involved parties in more than two locations, sending multiple telexes or facsimiles to all the parties involved was somewhat cumbersome. The introduction of e-mail allowed parties to exchange large amounts of data from different sources separated by considerable distances and, perhaps, languages, easily and somewhat informally. And the client's expectations as to immediacy of response increased as well.

In my experience, engineers as a group were more computer literate, and led the acceptance of electronic communication, followed shortly by accountants, who also had familiarity with

computers and who needed to move large amounts of data securely and quickly. The more that this speed became possible, the more that everyone came to expect it.

In-house attorneys were often among the last to realize the potential that this medium offered for the exchange of information rapidly over long distances, and the ability to involve several parties in essentially immediate communication of the identical message. Now, however, at least at Amoco, internal e-mail communication within the law department, and between individual lawyers and their various clients, is a normal pathway for communication of routine information, and often is used more than the telephone for internal conversations with remote locations.

The other attorneys I work with within Amoco use e-mail to share information about recent legal and corporate developments, and e-mail is used to disseminate corporate news internally throughout the corporation. I can easily check to see if another lawyer in our work group has addressed a similar problem in the past. If the problem is a new one, it is a matter of a few seconds at the keyboard to send a note to ten attorneys asking them for their collective thoughts or comments. I also use e-mail to send notes to my secretary and to legal assistants with whom I work, and have found that this practice makes it easier for everybody to keep track of the minor projects and requests. Unless speed is critical, this is my preferred method of routine administrative correspondence, such as project assignments and requests for status reports or travel arrangements.

III. ELECTRONIC COMMUNICATION OF INFORMATION WITHIN A LAW FIRM

One of the problems that all groups of lawyers working together have in common is how to communicate necessary information on a timely basis to all the attorneys in the group who have a need to know. It does not matter if the information to be shared is as simple as developments in a case of interest to all, or as complex as coordinating how multiple lawyers address a common project, such as a piece of complex litigation. The problem is how to make sure that everyone is up to speed with the most current developments, and that different people are not unknowingly doing or redoing the same thing.

One of the ways to solve this problem is to have lots of meetings or conference calls. These can be difficult to arrange, given conflicting schedules. And they may not be the most efficient manner in which to exchange information.

Another way is to create a mechanism whereby all the attorneys can have instant access to a common collection of information. One such mechanism is electronic mail, either by itself or as part of a larger package of software products, such as Lotus Notes,[®] or similar softwares offered by others, such as Microsoft, Novell or WordPerfect. A common connection, through a local area network (commonly referred to as a LAN), is often the way that this is accomplished. A local area network is a mechanism by which multiple users of computers can

be linked together so that they can communicate with one another through the computers and thereby share information.

In the law firm context, the simplest analogy for a common data base maintained on a computer is the central file room, versus a system in which each lawyer keeps his or her files in his or her office. Central file rooms have most of the information in one place, but it may be difficult to find (especially after normal working hours) unless all the files are organized in a common scheme, and maintenance of the files can become somewhat people-intensive. The people handling the files do not necessarily have the same understanding of the files as the responsible attorney or his or her assistant might have. On the other hand, keeping files in individual attorney's offices leads to unnecessary duplication of effort, if one attorney does not have a way of finding out that another attorney in the office has done the same or a similar project in the past. The movement to maintaining a common data base on a computer has most of the benefits of the central file room, and fewer of the downsides, although the chance of the entire system crashing does exist. There are common file management software systems that help manage the files.

With electronic communication, and a common data base, it would be possible for all the attorneys in the office to have reasonably quick access to the written work product of every other attorney. With a little prior planning, and some commercially available software packages, it would be possible to search the entire computer history of the firm's documents for every document containing the phrase "Acme Consolidated Widgets," or "Rule 34(d)." The firm could also keep a common file on "Acme Consolidated," so that each lawyer who needed to know the names of the officers, or the place of incorporation, or last reported earnings, or the phone number of the General Counsel at home, could get that information by way of the computer. Communications through a common data base might also ease the process of checking for conflicts, and can be used for keeping attorney time records for billing purposes.

Such a computer data base, available through computers that are electronically linked, could also be used to easily retrieve form motions or memoranda on similar points of law. This could expedite the drafting of similar documents in new matters. A similar approach has been taken by DuPont, who reportedly has linked more than twenty different law firms together in "The Wheel," a centrally located data base to which each of the firms has access and can contribute work product. These law firms have the ability to share pleadings and factual information developed in one DuPont case with lawyers representing DuPont in similar matters elsewhere in the country. Thus, lawyers handling similar matters for DuPont in different cities can have shared access to a common data base on experts and trial exhibits. The sharing of information is not an all-or-nothing proposition, and can be limited as required. AIG, a large insurance group, reportedly uses a Lotus Notes-based system for similar purposes, including billing.

It is also possible, through a local area network, for lawyers to conduct computer research through Lexis or Westlaw directly from their desks. It is possible to have network-wide access to legal materials on CD-ROM. Numerous legal materials by the major legal publishers are available in that format. This avoids having to set aside the space for a large and expensive collection of reference books in a firm library. For example, I use BNA's Environmental Law on compact disk. If I get a

phone call from a client in Virginia with a question about a particular local environmental regulation, I can pull that regulation up on the computer screen at my desk in less than a minute, and discuss it with the client without having to call him or her back after I get the regulation out of the library. I have found that, after you have demonstrated this capability to a client a few times, the client tends to expect you (and others) to be able to do it all the time. Similar document collections are available on compact disk for forms, various state statutes and regulations, and Federal law and administrative materials.

Further, local area networks can be used to send facsimiles directly from an attorney's desk, without the need to go to a paper copy. Depending on the attorneys' needs, arrangements can be made to send computer files electronically to remote locations, such as a lawyer out of town who needs immediate access to a document in the system.

This level of interoffice communication is not necessary in every type of practice. But I, for one, look at the extent of technological acumen on the part of a law firm or an attorney as a sign of how efficiently they will be able to accomplish my work. If the attorney with whom I am dealing has a computer on his or her desk, and he or she knows how to turn it on, I get some idea that they may be able to efficiently use their prior knowledge and experience to deliver me a routine document without having to start from scratch. I am more comfortable with outside attorneys who understand the pressures I am under to reduce costs but still deliver a quality legal service to the ultimate client. Familiarity with and use of electronic communication is just one way that outside counsel can demonstrate their understanding to me.

There are some practical limitations on the use of an electronic communication system. If both parties to the e-mail communication are not on-line all the time, receipt of messages back and forth may be delayed. If one or more of the attorneys on the system is out of the office a great deal, you need to make arrangements to allow access to the system from outside the office. This adds an additional level of complexity but can be worked out. And remember the need to backup the system frequently and to keep extra copies of critical documents on diskettes or tapes in a safe place. Remember that, as a general guideline, the same rules of discovery apply to electronic communications as apply to hard copies.

There is a tendency to be somewhat more informal in electronic mail communications. Some people find that their humor does not translate well into e-mail messages. Typographical errors are acceptable, to a point, and abbreviations are useful. Studies have shown that men use e-mail more readily than women, as a rule.

IV. ELECTRONIC COMMUNICATIONS LINKS WITH IN-HOUSE COUNSEL

Even if your firm has not yet made the decision to establish an internal system for electronic communication between and among the firm's lawyers, you may nonetheless want to give serious thought to establishing a separate electronic communications link with in-house counsel at your established corporate clients. If you already have a computer, you can do this on an individual basis at a surprisingly low cost.

Think of it as an opportunity essentially equivalent to having an office next door to the general counsels of your established clients. From a marketing perspective, you would like to be as easy to reach as possible, and you would like to make it possible for those established clients to contact you as easily as they contact people inside their own company. If this is the first line of communication, it is also often possible to have a few moments to read the client's question and reflect before you need to respond to the client with an answer or an estimate. The client does not need to know that you spent a half hour boning up on the rule against perpetuities before answering the question. He or she may think that you knew this already, and you may have.

Electronic mail connections help avoid phone tag. Every day that I am in my office, the first thing I do before I take off my coat is to turn on my computer. The computer stays on until I leave at the end of the day. While e-mail does not necessarily reach my desk immediately upon transmission, it will normally arrive within the hour. Most communications can wait that long. If the message is more urgent, there is always the phone. If I am away from my desk for a meeting, or am out of town, I will get the message that day, as I take a portable computer with me when I travel; otherwise, I could have my secretary check and read the messages into my voice mail. The message will be in your own words, without the filter of a receptionist's note taking skills. And it makes me feel you are part of my team. I can also pass along to you electronically notes that I have received from my internal clients, and attach my request for legal services and my projected budget for the task.

I recently read about another interesting use of computers and e-mail connections. It is possible, through the use of computer tools called "intelligent agents," to have a standing search of numerous data bases for pre-defined information. The closest analogue that I can think of is a newspaper clipping service. An example may help to illustrate the possibilities that these tools may offer you.

Say that you are a specialist in government contracts, and you have been working with me on a matter involving the termination of a contract for the convenience of the government. In the ordinary course of your professional reading, you come across a recent case or an article in a law review that deals with termination for convenience. You might, for a number of reasons, think that sending me that article would demonstrate to me that you keep current on topics of interest to me, and that you keep me in mind even when you are not working directly on my matters. So, you write me a short note on your letterhead saying, "Enclosed is a recent case/article that I thought might be of interest to you in connection with Project X."

Now I may or may not read the article, but it will no doubt find its way to my legal research file on terminations for convenience. And I will certainly benefit from seeing your letterhead again, and should I

have further need for an attorney in that area, I may remember you as someone who keeps current and also keeps me informed of things that I might want to know. And the next time I go (or another attorney goes) through the termination for convenience file, there will be your note and that case.

If you are like me, it can sometimes be a while before you get through all of your professional reading. So, in the normal course of events, you might not get the chance to send me that letter, as much as you would like to.

But what if I were to tell you that, depending on the type of information you are looking for, you could have a standing search of the major national newspapers and perhaps even some government contract journals and similar documents for any mention of either "termination for convenience," or "Amoco." Then, if either of those phrases appeared in any of those selected newspapers or journals, you would get a message in your electronic mail box that morning that says "I just found two articles mentioning Amoco and one mentioning termination for convenience. Would you care to read them?" Would that be useful to you?

That technology exists today. You could pull that article and send me an e-mail message. Maybe that message would say "I saw an article that might be of interest to you on termination for convenience in the Daily Government Contracts Reporter. I have attached a copy." Or you could send me a message that says, "I see that Amoco just opened a new office in NewTown. In case you are interested, one of the lawyers in my NewTown office used to be Mayor of NewTown. If there is something that we can do to help you, let me know."

Now these types of messages only work for existing clients. If I got such a message from a lawyer I do not know, I might be mildly offended. But most of the marketing texts say that holding onto existing clients is more economically important than finding new clients. While you need to do both, this certainly makes it easier to maximize your opportunity for repeat business from me.

Electronic communication also levels the playing field between counsel located right next door to the client and counsel located elsewhere. In my case, I work in Chicago. Therefore, lawyers in Chicago have an edge over lawyers in Rockford, especially if the case is in Chicago. But overheads in Chicago are different than overheads in Rockford, and I may be able to find equivalent counsel in Rockford who can handle certain aspects of the matter at a considerably lower cost than counsel in Chicago. If Rockford counsel and Chicago counsel are both connected to me by e-mail, I will make the decision based upon my specific needs and the specific talents of the attorneys involved, including the cost savings available. Electronic communication allows you to eliminate the natural locational disadvantage that Rockford counsel has in seeking my business for a matter in Chicago, and to maximize the commercial advantage Rockford counsel has if he or she can offer equivalent legal services at lower total cost to my client. You also save my client Fed Ex and phone charges.

How much does all this cost? Would you believe that, not including the cost of normal computer hardware, the on-line connection between my office and your office can be in place for less than \$25 a month? Maybe as little as \$8.95? And you can send notes to your other clients, and to your brother in Omaha who has America Online. Were I in a firm, it would certainly seem like a good investment.

V. ELECTRONIC COMMUNICATION WITH OTHER LAWYERS

In my opinion, a sole practitioner with any substantial corporate or business practice should be linked into his or her principal corporate and business clients through electronic mail. If your corporate clients do not have it yet, they soon will. And you may be viewed as proactive by suggesting that they get it, to facilitate and simplify routine communication with your office. Further, I believe any firm with more than three lawyers should have an internal e-mail system, and hopefully a local area network, in order to share the collective knowledge, expertise, and judgment of the attorneys in the most cost-efficient manner possible. But even if your own internal communication does not require this, and you do not have a need to be linked electronically with in-house counsel at specific clients, there is yet one more reason why you should be linked into the world of electronic communication.

It is possible, through any one of a number of different on-line services, to link up with "broader audiences." These audiences can be diverse in interest and geography, or they can be as limited as real estate practitioners in your state. These audiences can include consumers looking for lawyers for non-commercial legal matters. They can include lawyers looking for other lawyers in a particular geographic area with a particular expertise to serve as local counsel. Being on-line increases the chances of your getting found by a member of one of these audiences.

The various on-line services are all different. America Online, Prodigy and Compuserve have some discussion groups that are focused primarily for lawyers, and other bulletin boards that are used by much broader segments of the population. These pathways are becoming a part of our culture, as evidenced by the fact that news magazines are now inviting their readership to comment on various issues by sending messages to the magazines' addresses on the Internet, which is the so-called "Information Superhighway." Rather than one highway, however, the Internet is better described as a loose affiliation of thousands of different networks, all able to communicate with one another. The Internet has millions of addresses, or mailboxes, for individual and business users. The various commercial on-line services allow millions of customers to communicate with one another. It is a vast audience.

There are also the more lawyer-targeted services, including ABAnet, Lexis Counsel Connect, and Law Journal Extra. While each of these is different, and I have my personal favorites, it depends, somewhat, on what you are looking for. But one thing that they all offer is the opportunity to keep aware of what is going on in The Law, or in specific subsets thereof. You can get Supreme Court cases the Monday night the decision is published. You can discuss the case, or watch others from across the country (and indeed throughout the world) discuss the case, on-line Tuesday morning. You can discuss breaking issues of the day, or watch national experts argue fine points of ethics or discuss the latest innovations in law firm management.

You should explore these opportunities, to make sure you know what is possible and what is going on. Not all of this will be useful. But there will be enough that is useful that the exploration will justify your investment. Most of these commercial services are designed for people who have little technical computer knowledge. The first hour on-line is scary, but after that, it is a breeze. The term of art is

"user-friendly." Other folks on line are often happy to help newcomers. Some of the services allow you to keep an eye on what your competition is doing. You can keep current with developments. You can make new friends and reach a broader audience -- an audience that may need your services. You can find different data bases to search with your "intelligent agents."

And you can get the benefits of support on *pro bono* projects. I used a bulletin board for lawyers to get some assistance on a local consumer bankruptcy issue; I got responses from counsel in New York and California, who were all willing to share their knowledge and experience.

These types of connections between lawyers are like bar associations in cyberspace. Without having to travel. The downside is the reduced voice-to-voice and face-to-face contact with other humans, which we all need. But there are lots of good reasons to go explore.

Can I offer you proof that the move to electronic communication is cost-justified? No. But certainly, the more in-house and outside counsel who participate in these services, the more valuable these services will become to the participants. The more of your clients who are on-line, the more use you will make of the system. I am convinced that in the next two years, e-mail addresses on lawyers' business cards will be as common as facsimile numbers.

What is my interest in getting more lawyers to get on-line? This type of electronic collaboration makes it possible for the profession to deliver higher quality legal services at a lower total cost to the client.

CONCLUSION

In my role as in-house counsel, I have the responsibility for translating law terms into business terms for my internal clients. But I also have the obligation to translate my internal clients' business needs into instructions for the outside counsel with whom I deal.

In the present economic climate, in-house attorneys are under ever-increasing pressure to limit the amount spent on outside lawyers. In order to meet these pressures, the in-house attorneys will be looking for those outside attorneys who have demonstrated a commitment to rendering legal services as efficiently and as cost-effectively as possible. As a purchaser of outside legal services, I view this as one of my primary business needs.

Electronic communication, both within your office and as a way to connect to your clients' offices, will be required by corporate clients with in-house lawyers. Thus, moving to this technology is not a question of being able to operate more profitably by leveraging technology rather than associates. Rather, it is a question of what will be necessary to compete at all for the business of those clients who have themselves already discovered the efficiencies to be gained.

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