

On the Changing Prominence of Computers in Legal Education

By Josh Ard

Computers apparently are increasingly prominent in legal education, yet this might depend on the precise sense of the word *prominent*, which has two primary meanings: (1) visually obvious and (2) important. Paradoxically, while the second sense is growing, the first may be shrinking. Let us begin with a larger perspective on technology.

A century ago, law students learned by hand copying law books and other legal documents. That depended on technological advances, in particular the invention of the printing press and manufacturing of paper. Both came from East Asia and slowly worked their way westward. An ethnic Korean invented paper in the second century A.D. but it didn't become widely used in Europe until more than a millennium later.

University students learned quite differently a millennium ago. Because all books had to be laboriously hand copied by scribes, they were understandably scarce and students couldn't buy them. They did not have paper either, but used slate tablets, which don't allow a large archive of notes. Students had to develop techniques of rote verbal learning because there were no other memory supports.

Changes in how students study also have been motivated by technology in the past century. In the middle of the 20th century, students could photocopy pages rather than having to transcribe passages. These changes pale compared to those motivated by computer and computer-related technology. Nowadays students do not have to go into a library. Instead they can download relevant passages from the Internet and print or save them.

Computers have multiple influences on contemporary legal education:

- Students use computers in legal research and as a study support.
- Students use computers to prepare projects and assignments.
- Instructors use computer technology to enhance the educational experience.
- Computers or direct results of computer technology provide content of law school courses.
- Students submit written work and take exams on computers in both alternative and traditional classrooms.
- Computer technology has assisted distance education in offering an alternative to traditional classroom instruction (addressed in this column in August 2000).

Now we are at a high tide for the obviousness of computers in legal education. For example, Thomas M. Cooley Law School, the law school with the largest enrollment in the state, offers many computer-related courses in its catalog: advanced computer assisted legal research, computer law (covering patent and copyright aspects of computer programs, protection of privacy, confidentiality of information, the use of evidence produced by computer, computer-related crimes, and tort and contract issues relating to computers), and the law of cyberspace (covering essentially Internet-related topics, such as First Amendment issues and intellectual property). Other basic courses, such as research and writing, teach computer skills.

Various scholars criticize this onomastic trend in legal education. In other words, they ask why we should name courses based on

technology, arguing that privacy, free speech, and contracts predate computers. Wire transfers go back to early days of the telegraph.

The analogy some raise is with the automobile. Automobiles have had an enormous impact on the law. Automobile-related crimes, such as carjacking, have become common. Automobiles have led to many changes in insurance law, such as no fault insurance, which is now an area on the Michigan state bar exam. Many consumer protection laws are specific to automobiles, including lemon laws, the motor vehicle sales finance act, and federal odometer regulations. One of the categories advertised in the State Bar of Michigan *e-Journal* is Automobile Warranty Law. Michigan considers itself the automobile capital of the world. Nevertheless, as far as I am aware, no Michigan law school offers a course with automobile in its title.

Why are computers different? It may simply be a matter of marketing. No one wants to receive, or, perhaps more important, to offer, a legal curriculum that is not up-to-date. Perhaps computers have changed the law more drastically than automobiles have. This is an interesting intellectual argument, but might not be critical for curricula. After all, there is no reason to assume that a course focusing on automobile law would not provide valuable legal training. It may simply be that traditional courses on constitutional law, commerce, crimes, and torts do not yet adequately include computer-motivated topics and that special courses are useful until they do. If this analysis is correct, arguably classes with *computer*, *cyber*, or *Internet* in their title will seem dated and archaic a few years into the future, except perhaps for cybercourt practice, if Governor Engler's suggestion is implemented.

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Computers may affect the legal environment much more pervasively than is emphasized in most computer courses. Authorship becomes murkier and interestingly might return to its status before the printing press. In those days, the scrivener was often just the last commentator and assembler of preexisting material. Digital sampling has created many disputes about creative credit in the music industry. Attorneys who incorporate bits of sample pleadings and other sources in their briefs can appreciate the difficulty of applying traditional copyright notions to written work. Likewise, the ongoing race between surveillance and encryption engenders shifting reasonable expectations of privacy.

There may be more subtle effects. Consider that some scholars argue that the Protestant Reformation is a byproduct of the introduction of the printing press to Europe. One could argue that railroads are responsible for administrative law, because the purpose of the first federal agency, led by Judge Cooley, was to regulate railroads. Although well beyond the scope of this column, scholars such as Marshall McLuhan and Jacques Derrida have suggested that technological changes fundamentally affect our ways of relating to our lifeworld, our world as it is perceived.

One thesis of this column is that as computer-related technology affects our lifeworld, computers will move from the foreground of our attention to the background, something assumed. Simultaneously, however, the role of computer-related technology will increase.

Many technological companies are offering products for legal instruction. West Publishing, for example, actively promotes TWEN[®], The West Education Network. This product allows the creation of course pages supplementing regular instruction. Microsoft itself has not ignored the market. A recent column in JURIST,¹ the webpage supported by the University of Pittsburgh, discusses the advantages of Microsoft's Agent program in designing instructional support.

Similarly, any law school bookstore or periodical directed toward law students offers many computer- and Internet-based products to help students prepare for classes or the bar exam. For example, it used to be a major challenge for students to create the correct ci-

tation format. Now one can buy a computer program that greatly eases this task.

Although technology is making many changes in legal education, we can still largely recognize the technology because it is not yet seamless. We can still see that virtual reality is not real. For example, in current video courtrooms, monitors do not create the impression that distant participants are really in the room. Also, we can recognize that computer technology is the driving force behind the innovations.

Things may be different in the future. Current research is underway that creates much greater verisimilitude in Internet broadcasts. A recent issue of *Scientific American* describes technology that makes it appear that a person thousands of miles away is really sitting nearby beyond a glass window. Moreover, it is increasingly difficult to recognize the presence of computers in the technology. Most drivers do not notice the computer chips in their cars. As a mundane

example, my rice cooker works its magic due to computer chips, but I don't think I am programming a computer when I tell it to have brown rice ready for dinner 12 hours later. Finally, as older attorneys die and memories fade, it will be harder to recognize what computers have wrought. ◆



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FOOTNOTE

1. See <http://jurist.law.pitt.edu/lesfeb01.htm>.