

Head in the Sand or a Walk in the Clouds?

By

Michael R. Arkfeld, Esq.

It is change, continuing change, inevitable change, that is the dominant factor in society today. No sensible decision can be made any longer without taking into account not only the world as it is, but the world as it will be This, in turn, means that our statesmen, our businessmen, our everyman must take on a science fictional way of thinking.

- Isaac Asimov (1920–92)

Isn't life complex? We are all called upon to play many different roles in our daily lives. Whether one is a lawyer, judge, associate, manager, father, husband, wife, son, daughter, coach, mediator, or arbitrator you take on some form of a "leadership" role. Leadership roles are bestowed or sought after for a variety of reasons. Whether it is prestige, control, money or the opportunity to achieve and make a difference you have a voice in how your organization adapts to the future. However, this is a tremendous responsibility as you contribute to the future direction of your firm or your company - what areas to specialize in, how to effectively and efficiently manage the firm, and whether information technology, *i.e.*, electronic discovery will impact your firm and your clients. As a leader it is essential that you pay close attention to the

information technology revolution we are living through.

In terms of periods of history our recent IT revolution has moved with lightening speed. 10,000,000 years ago we were hunters and gatherers of food. 8,000 years ago we began our agricultural economy and just over 200 years ago our cities and towns transitioned to a new urban economy. Suddenly in the last several years we are speeding toward an electronic global economy fueled by computers and the Internet. Electronic content, content, content is everywhere as we are receiving 400 times more data than that of a renaissance man.

As we transition into this new electronic discovery era understand that our profession is steeped in tradition and we will experience a denial and a deep nostalgia for what we are losing as we resist the new. For lawyers our tools of the trade have stayed static for over 1400 hundred years ever since the invention of the quill pen in 600 AD. and books in 868 AD.

Prior to the 1990s, most cases involved the discovery of *paper* documents. It was, and still is to a large extent, the norm to obtain printed discovery material, then copy and recopy, categorize, Bates-number, and file. However, in today's legal world, most discovery consists of technologically-based information: it is estimated that more than 30 percent of corporate communications never appear in printed form and more than 97 percent of information is created electronically. Peter V. Lacouture, *Discovery and Use of Computer-Based Information in Litigation*, 45 R.I.B.J. (1996); John H. Jessen, *Special Issues Involving Electronic Discovery*, 9 Kan. J. L. & Pub. Poly 425, 442 (2000). Yet, we yearn for our paper based world.

However, we cannot go backwards, we cannot stand still, we must adapt to this new evolutionary process. We can teach ourselves to adapt to these new changes. It is a tough assignment but as a leader one that you must accept. The key will be to not fight the future but embrace it. Leaders must be willing to confront the anxieties of their time - in this case electronic discovery - and leave behind a legacy that common sense can continue.

The challenge facing the sole practitioner as well as the large firm will be whether they will take a wait and see or head in the sand approach and hope the electronic discovery will not affect them. Or whether, in the face of overwhelming evidence, take a 'walk in the clouds" and secure your future and your firm's future. Always remember though that as you begin or continue your

walk to:

Be alert to the siren song of nostalgia; be patient with the missteps of transition; tread lightly; imagine the possibilities; look around; think ahead. - Jennifer James