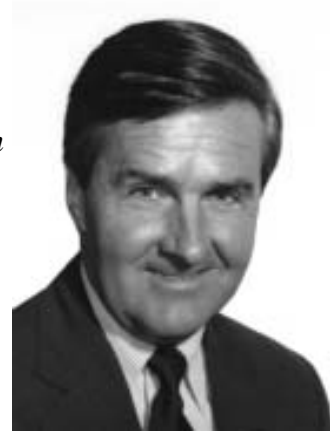


# Assessing the Risks, Judging the Benefits of Automation

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*Judge Edward W. Nottingham was appointed to the District Court for the District of Colorado in 1989. A member of the Judicial Conference Committee on Automation and Technology since October 1994, he became committee chair in October 1997.*



**Q:** How would you characterize the state of automation in the Judiciary today?

**A:** We are in the midst of swirling change in the way the Judiciary and other institutions, public and private, conduct their work in this country. Through the Office Automation Program, we have made available some 40,000 computers to courts throughout the country. Over the past three or so years, most of those computers have been networked through the Data Communications Network (DCN). The remainder will be connected by the end of this calendar year.

We're at a point that we need, first, to assess and protect what we have achieved so far. Second, we need to educate ourselves concerning the daily developments in technology and understand how technology can be used and abused.

The DCN links us all together. The weakest link in the country is a link that exposes us all to potential abuse or alteration of information belonging to the Judiciary. We need to be conscious of security, not only by taking actions to protect the network, but also by exercising informed caution about the types of information that we put on the network.

**Q:** What role do you see your committee playing?

**A:** I think the role the committee can play is partly an educational one making sure that the Judiciary has places where judges can learn how to use technology and that judges are informed about the benefits and risks posed by technology. The committee also should have enough technical expertise to assess the new technology and to direct it in a way that's most useful to the Judiciary.

**Q:** Have judges generally accepted computer technology?

**A:** It's difficult to speak for all judges. I think the acceptance varies depending upon the court and the judge. I can speak for myself. I think computers and technology have enormous beneficial uses.

I think the way to deal with a fear of computers is to understand how computers can be used and abused. There are means of protecting against many of the abuses.

**Q:** Where does your own interest in automation come from?

**A:** Like most members of the committee, I fell into it. I did not have any formal computer education or take a computer course in college. When I was in private practice, the firm I was with made a decision to install personal computers for lawyers who wanted them. I've always been fascinated by gadgets so I proceeded to learn how they operate. When I was appointed to the court, that interest deepened.

**Q:** Do you have a computer in your chambers?

**A:** Yes, and I've had a home computer for about 12 years.

**Q:** How have emerging technologies, such as the Internet and intranet, changed the way the Judiciary does business?

**A:** An intranet is a network of computers linked together by some connection internal to an entity or institution, such as the DCN. The Judiciary intranet, commonly called the J-Net, is composed solely of those computers on the DCN. By contrast, the Internet is the name used for an unorganized, world-wide assortment of computers that originated with a few universities and governmental entities. It now includes individuals, government institutions, and private institutions. An entity's site on the Internet is wholly insecure and can be reached by anybody who has a modem, computer, and a piece of software called a web browser.

The J-Net has vast possibilities for changing the way the Judiciary does business. The most obvious is a change from paper transmission to electronic transmission. For example, we're in the process of placing in electronic form and putting on the J-Net the *Guide to Judiciary Policies and Procedures*. Those materials and supplements now go out from the AO to the courts in paper form. Somebody has to distribute those materials and keep them current. You're never sure whether you have the latest update or whether you put it in the right place. When the *Guide* is posted on the AO's J-Net site, a person at the AO will do the updates for everyone, saving paper, postage and time. That's just a small slice of what's available on the J-Net. Local rules can be posted. Directories are posted.

The Internet also will change the way the Judiciary does business. Electronic filing may be done by means of the Internet. There's also a considerable amount of information available on the Internet that's useful to people operating the courts.

**Q:** Are there national guidelines for accessing and using the Internet?

**A:** In September 1997, the Judicial Conference adopted a policy that for any personal computer connected to the DCN, access to the Internet would be achieved only through certain gateways approved by the AO pursuant to procedures and policies promulgated by the automation committee. (A "gateway" is a point of ingress and egress between the Internet and an entity's internally networked computers.) The purpose of that policy is to make sure that the information on computers networked together by the DCN is protected by the most current, technologically feasible firewall. (A "firewall" is a mechanism that limits access to a network from outside.)

There also are IRM bulletins that talk about proper use of the Internet and suggest that each court establish formal policies for use. The Judicial Conference has adopted a resolution encouraging local courts to come up with their own guidelines. Everybody should understand that Internet use can be monitored, if not by the AO or the gateway administrator, then at the visited websites. A website records both the number of times somebody has visited and the identity of the visitor. Everyone should understand that, when they go out to visit a site on the Internet, they are leaving footprints.

**Q:** How is the Judiciary safe-guarding security of the Judiciary's electronic information?

**A:** The National Security Agency has indicated a willingness to conduct, and already has begun in several courts, an assessment of the adequacy of computer security measures. With the results of that assessment, we expect to publicize any deficiencies so that courts can know their vulnerabilities.

**Q:** As a committee member, you were very involved in the committee's electronic courtroom initiative and now the study. Can you tell us more about it?

**A:** The electronic courtroom has a lot of elements. It involves the electronic means of taking the record, either by digital recording or real-time reporting; in-court access to legal research databases such as WestLaw; and in-court access to the CHASER/UNIX case-management database. The electronic courtroom also involves the use of video, document cameras, and CD-ROM technology for evidence presentation.

The electronic courtroom study is an effort to determine the feasibility of procuring and installing these various electronic technologies in courtrooms nationwide. Courts taking part in the study have agreed to gather certain information as to which technology has been found most useful by all participants in courtroom proceedings.

By June 1998 we expect to have preliminary results of the study. By December 1998 or January 1999, the committee expects to be able to make some recommendations on nationwide funding for electronic courtrooms.

**Q:** Given the great interest in electronic filing, how is the Judiciary, and specifically your committee, moving forward on this initiative?

**A:** Currently, the committee has provided funds for two prototypes operating in a total of nine courts, including bankruptcy courts and district courts. We're studying the problems involved in implementation. One of the problems with electronic filing is that, of all the initiatives that we talked about, it has the greatest potential for cultural change in the courts. It means that you don't go down to the court to file a paper.

The committee has in place some technical standards for electronic filing. These standards will be refined as a result of the experience of these prototype courts. Eventually other Conference committees will need to make decisions concerning electronic filing rules changes, for example. Right now, all we're doing is studying in a very limited way the possible problems involved in full implementation.

**Q:** Are there opportunities to apply electronic technologies to libraries?

**A:** Yes. The amount of information that is available and the speed with which we can recover that information have both increased dramatically in the last three years or so. Many, if not all, courts of appeals place their opinions regularly on an electronic bulletin board or perhaps their website. An opinion can be accessed immediately.

Most publishers are putting their book libraries on CD-ROM, and this offers another significant advantage. As many as eight users can be on the same page of a CD-ROM at the same time. Shared libraries are a convenient possibility, and we could perhaps save some money on book funds. The committee is going to be studying whether this is feasible.