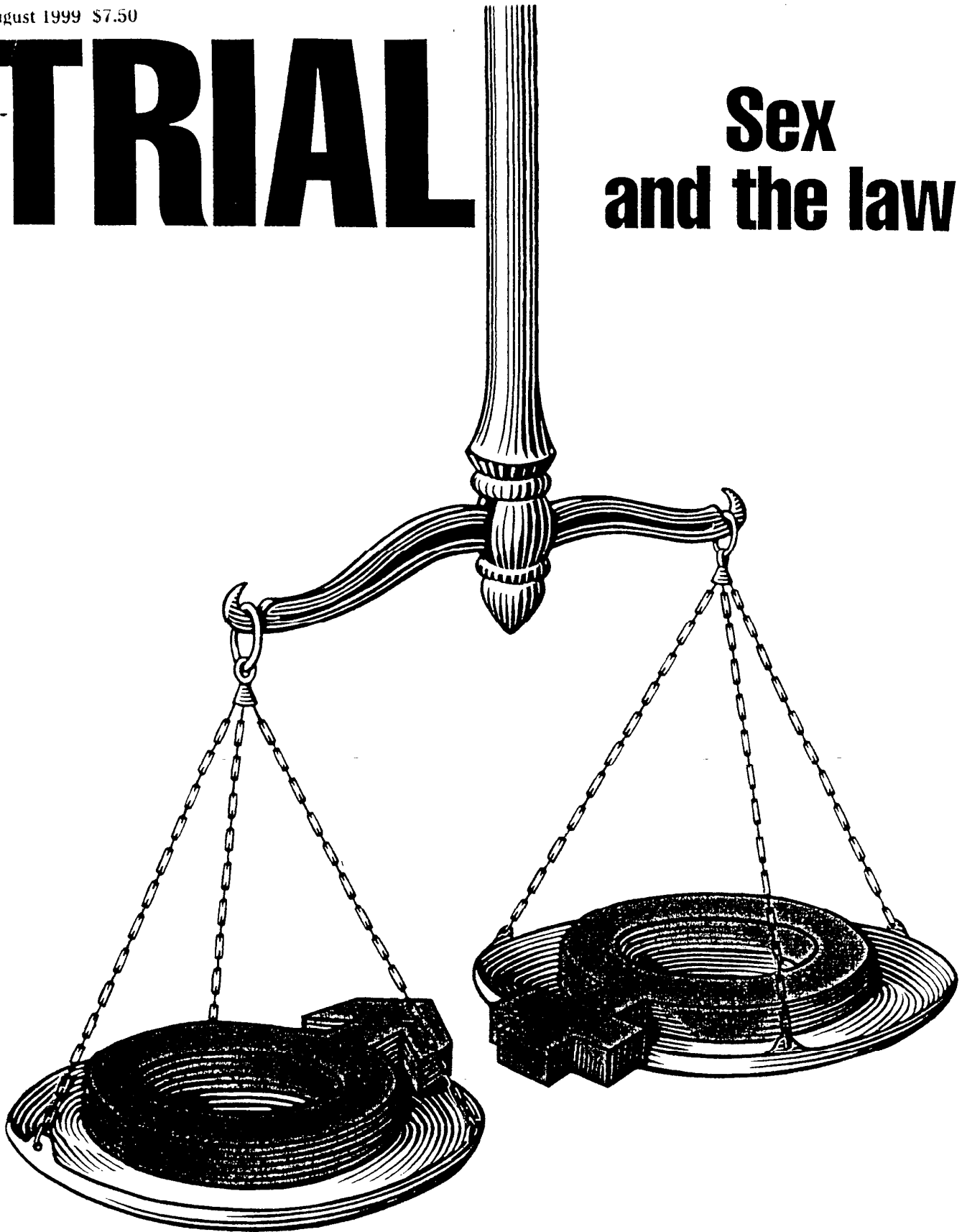


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TRIAL

Sex and the law



My clients, my heroes ■ Building a successful legal team

You're on trial. Your opponent? Y2K.

C. Grant Dixon III

As the third millennium approaches, many have expressed concern about the effect of the changing of the date on computer systems. Some people are running about like Chicken Little screaming, "The sky is falling!" Others say the concern is "much ado about nothing." What happens is likely to be something in between.

Developers of the first computer systems were presented with a dilemma—memory was limited, literally, by the size of the room in which the computer sat. And that memory was expensive. Programs functioned (at least in part) based on dates and years. Four-digit years when multiplied hundreds of times took up lots of memory. The solution was reducing years to the two-digit format. In the following decades, programmers used this format in virtually every program.

In doing this, programmers created a problem. (The Y2K problem is not a "bug." A bug is an unexpected problem or error that occurs in a program. In this case, the date coding that may cause a Y2K problem was intentionally created.) Computers using the two-digit date format are "taught" to assume that every year is between 1900 and 1999. The Y2K problem may occur when dates beyond the millennium are entered.

Date-sensitive computer programs are everywhere, from simple ones like word-processing or accounting programs to difficult ones embedded on microchips. These microchips are pervasive—they are in your watch, telephone, and car. They are in airplanes, elevators, medical devices, pumps, motors, and power plants. If a machine has cycles, then it probably has a date-sensitive chip in it.

The problem can strike close to home. What will happen when you go to work on January 3, 2000? Will your computers run? For that matter, will your telephone, fax

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machine, copier, and heater run?

Think *now* about not being able to access the information in your computer for a day, week, or month. Your due dates would be inaccessible; your telephone numbers and addresses to your clients, gone; your calendar, absent; and, most important, your statutes of limitation, unavailable to review or print. Whether you like it or not, you are vulnerable to Y2K problems. And many insurance policies for law firms do not cover or have specific exclusions for Y2K-related problems.

Conduct discovery

You should contact each manufacturer and/or seller and ask if the product is Y2K compliant.

You should already be aware of the potential for Y2K disruptions in your practice—if you are just now addressing the problem, you are starting late. But as you dry the beads of sweat off your brow, fear not. A solution does exist.

You are on trial

Think of preparing for Y2K as you would for any case. There are elements you must prove to prevail over a tortfeasor. Y2K presents the same dilemma. You have invested hard work and money in office technology. But as with any case, you don't just show up at trial and start putting on evidence.

You must do discovery to learn what the proof will be. You must test that evidence with motions. You must try to downplay harmful evidence and present your best case. Then, and only then, can you expect (or even hope) to obtain a good result.

Elements of the case. The elements of the Y2K case are your hardware and software. You must establish that every machine and computer-reliant thing in your office will work in the year 2000. That is your burden of proof.

Discovery. To discover what your problem is, you can hire a consultant or do it yourself. It may even be cost-effective to do the work yourself, then hire a consultant to double-check it. Which path you select will depend on the technology you have.

If you have a lot of custom software and specialty systems, you will probably need a consultant. Since most firms that represent plaintiffs are fairly small, it is likely that your office functions on the standard off-the-shelf programs and computers that thousands of other lawyers use. If so, you or the technocrat in your office may be able to handle the project. But caveat emptor—like most things in life, you generally get what you pay for. Choose wisely.

In either event, you need to "discover" what you have. Start by making a list of every computer and computer program you use. For software, your inventory should include program name, version, release dates, serial number, and modification dates (updates). For hardware, the list should include make, model, serial number, date purchased and/or

manufactured, processor, all peripherals (modems, graphics cards, sound cards); and any add-on hardware like memory upgrades. For both, make note of manufacturers' help-line numbers or Web site addresses. You will need them.

Motions in limine. What you have done so far is equivalent to preparing and receiving answers to interrogatories—you have the basics. How do you discover if these programs and hardware are Y2K compliant and will work in the year 2000? In your last case, you filed motions in limine to gauge the admissibility of your evidence. In the Y2K arena, you must also analyze the admissibility of your technology.

Start from the premise that everything you have examined is *not* compliant. You must obtain proof that your assumption is false. To make that determination, contact each manufacturer and/or seller and ask if the product is compliant.

The Internet will be invaluable. It is hard to imagine any computer or technology company today without a Web site. Most have riddled their sites with compliance notifications. Visit company sites and find the notification that corresponds to each piece of hardware and software you have. Then print it and save the hard copy. If something goes wrong, you will need to show what you relied on. If the initial manufacturer search does not unearth what

you need, there are dozens of Web sites, chat rooms, and mailing lists dedicated to Y2K compliance. Search them, too.

If you cannot find anything on the Web, call the manufacturer. Say you are searching for a Y2K compliance statement regarding your machine or program. Then demand the statement in writing—by fax, letter, or e-mail that includes the company letterhead.

Still having problems? If so, send a letter to the manufacturer by certified mail asking for compliance information. Send another letter asking for the same information to the place where you bought the product. Follow up with a call to the people who signed for the letters. Keep on them and demand answers.

Billions of proofs. What if a software supplier says it cannot assure you the program will work properly in the year 2000. First, be glad you determined there may be a problem now instead of in several months.

Second, print out all the material, for and in that program. This covers out and back of all data now into something you can hold on to in hand and call on later. At the same time, get an attorney involved with the Y2K contract. Get one of the attorneys who has mostly good references. You can find a lawyer by looking at the Yellow Pages or by asking a friend for a referral.

Third, get the attorney to write a letter to the manufacturer. The letter should demand that the manufacturer provide you with a written statement of the program's ability to run in the year 2000. The letter should also demand that the manufacturer provide you with a written statement of the program's ability to run in the year 2000. The letter should also demand that the manufacturer provide you with a written statement of the program's ability to run in the year 2000.

Fourth, if the manufacturer does not provide you with a written statement of the program's ability to run in the year 2000, then you should consider the program as being defective. You should then consider the program as being defective. You should then consider the program as being defective.

that you may survive. That step is manual backup. These "just in case" procedures are critical, not because you may have missed something (though you might have), but because someone else might.

Computers do little good if there is no power. A modem does not work without a phone line. And though the chances of losing these capabilities are slim in the United States, a malpractice carrier will not be sympathetic to a lawyer who missed a statute of limitations deadline because the computer system was down.

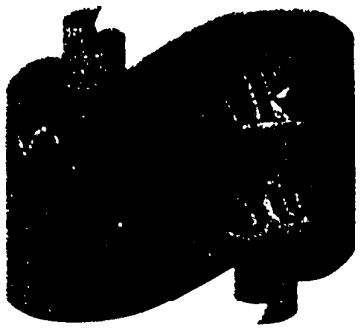
To be prepared, back up everything computerized. It is good practice to have at least weekly backups of all data. With Y2K looming, this is doubly good. Today, tape backup systems are cheap and fast. Make one copy and store it at the office. If you prefer the "bet and suspenders" approach, make a second copy and store it off-site in a place you have access to at all times (not a brick safe deposit box).

Critical information

Unless you have access to the database, you cannot conduct your practice. That means keeping critical data on a hard drive. A system which can be used to retrieve data is more important than a system which can be used to store data. You should have a backup of your data on a hard drive. You should have a backup of your data on a hard drive.

And when doing a backup, you should make a backup of your data on a hard drive. You should make a backup of your data on a hard drive. You should make a backup of your data on a hard drive.

Finally, if you are a lawyer, you should consider the program as being defective. You should consider the program as being defective. You should consider the program as being defective.



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