What Our Clients Face -- High Tech Corporations and Government and the Impact on the Poor

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Summary: Corporate and Governmental Use of Technology Offers a Model, a Danger, and an Opportunity.

As corporations and government rush to embrace technology, they are creating a web of high speed interactions and massive databases which threaten both to exclude the poor from meaningful participation in economic and political life.

This is not just a matter of access to the Internet – important though that issue is. Rather, it is a matter of technology and access to information enabling those with economic power to structure the flow of economic transactions in a way that, unless policy forces a change, risks an increase in exclusion.

An effective response to this challenge requires much more than the broadest possible Internet access for the poor; it requires a multi-part strategy that uses both technology and traditional organizing to counter this exclusion.

Corporations and Government Are Going Through a Four Stage Process of Integrating Technology Into their Operations and Restructuring Their Role and Relationships.

The integration of current technology into corporate and governmental organizations' operations is generally considered to have four main stages made possible by the roll out of PCs to every desktop, the consolidation of networks, full integration with the web and the development of tools that manage huge volumes of data. In the first, corporations and government use the newest technologies to provide information about their products and services; they put up web pages and send e-mail, they provide promotional videos and the like. Go to your car company's web site, and that is what you will see. Many governmental web sites are at this stage. The sites provide information on the agency's hours of operation, summaries of governing laws, and the like. The Legal Services analogy is the informational web site that a large number of programs now offer.

In the second stage, the company markets and sells over the Internet, allowing people to buy its products and services. Thus bookstores and record stores, auto auctions, stocks and bonds and airline tickets. This stage sees the first restructuring of the economy, as those companies that can both have a base of either unique information or broad credibility – Sabre, the old airline reservation system used by travel agents in the airline business for example – build on that base to create a radical increase in market share. An analogy in the Legal Service context is on-line document assembly and form

fill-in like the family law, domestic violence and housing court projects discussed in the Granat and Calkins paper.

In the third stage, the functioning of the corporation and that of its clients and partners become integrated. In the corporate context, this is when the book seller generates orders as a byproduct of other organizations' on-line interactions. This is what occurs now with the amazon.com on-line bookstore when you use a search engine. To be precise, every search you make on most search engines now offers you an appropriate book search automatically. Thus the software alone generates customers and money for both entities for essentially no work, leveraging the accumulated knowledge of the search engine and, perhaps, the buyer's on-line histories showing both their book purchase preferences and their intellectual interests as betrayed by search engine use.

Similarly, just like the computers, the staffs of organizations can communicate constantly about their work so that they are working together. The communication is between organizations at all levels, rather than just at the top.

An analogy in the Legal Services context might be on-line integration of a legal services organization with the local social services organizations. To reach this stage, the integration would have had to reach the point that intake was being done at remote sites and legal need diagnosis was being performed online by the remote social service organization, using the client and neighborhood historical database of both organizations. Referrals to the legal services program would be dependent on the outcome of that online diagnosis. Similarly, the actual delivery of service can be integrated by constant on-line communication between the case handling staffs of both organizations.

In the fourth stage, not just the delivery mechanism, but what is offered by the corporation itself, fundamentally changes because of the universality and interactivity of the Web. It is hard to know just what this will be like, because it has only just started to happen. Examples might be an entity that offers processing power by the second, or access to integrated databases about customer preferences and targeting that can only exist because of the massive size of the web.

Examples in the legal services and community context might be electronic job creation or governmental behavior analysis and prediction based on a database of prior behavior. Another example might be the repositioning of legal services into on-demand technology assisted preventive counseling made possible by constant electronic interaction with clients, rather than after-the-event problem solving into which we are too often forced.

These Forces Are Fundamentally Changing the Corporate Players and Their Relationships and Relative Power.

The point of all this is to suggest how fundamentally this revolution is going to change the players and the relationships between them. Those organizations that know how to position themselves as critical to other players will become dominant. Those that

do not position themselves in this way will be forced to the margin. The essence of success will be interposing an organization into the information flow, making itself critical to other interactions.

Thus portal organizations – those that people go to first on the Web – acquire enormous power. Those that can generate or pass off demand and business to others acquire such power and may do so without providing any other service. Because of the universality of the market, those that can retain uniqueness or market power monopoly will be able to leverage the effectiveness of that market power far more than in the past. This positioning will require massive investments in Internet capacity, databases, programming and relationship building. Once built, however, a company's system will be able to deliver additional service at almost zero cost – a major force towards monopoly.

In short, we are at a period of change similar to that of 19th century industrialization. Those that can position themselves to take advantage of this new technologies will shape relationships just as surely as the industrialists knew how to take advantage of volume and capital intensive production in their era

The Corporation as Employer: Exclusion and "Rational" Discrimination Against the Poor.

Corporate adaptation of technology is already turning corporations into far more effective and rational discriminators. Because they have so much more information, they are able to draw lines about who they want to hire and how to justify those lines if challenged. They are engaging in far more detailed tracking of employee behavior and are sanctioning employees based on that behavior. The already utilized capacity to track employees' every keystroke is truly frightening.

At least early in the process, as technology is deployed, high level employees become ever more valuable, since only they understand and can maintain knowledge based systems, while the work of low level, that is to say poor, staff becomes ever more routinized and monitored. The low level staff become easier and easier to replace, and it becomes easier and easier to obtain the information with which to select and justify termination. To a very large extent, this trend is in the short term being hidden by the overall tight job market.

Corporations are depending more and more on short-term employee and consulting relationships. As more and more of the knowledge on which they depend is compartmentalized, this trend is extending into skill-based areas such as computer programming.

The Corporation Can Use the Net As a Redefining Gateway to Services and Products.

Just as massive department stores and malls restructured the relationship between providers and consumers earlier in the century, electronic commerce will already change the relative roles of consumers and providers. In particular, electronic gateways, even if not ultimately requiring a high level of technical knowledge for their use, will behave differently for the informed and the uniformed consumer. Just as the unsavvy ghetto consumer with little bargaining power is the victim of credit exploitation, so the Internet-unaware on-line consumer will have potentially much less choice and be subject to exploitation.

Moreover, corporations are as intense in their collection of data about their consumers as they are of information about their workers. Corporations will engage in intense and hidden discrimination based on the desirability of the consumer, their own history of a relationship with that consumer, and whatever other information they can obtain about the potential consumer from the web of computer systems. Already, car rental companies obtain driving records from state computers.

Just as airlines now practice demand and yield management, offering radically different prices for the same service, corporations, except where forbidden, will create invisible price structures that respond to the cookie on your computer and your predicted value to the company. This value will correlate very highly with income and assets, information already effectively available notwithstanding privacy concerns and prohibitions. As a representative of Gay Men's Health Crisis once said in explaining the use of computer data to allow for discrimination against those perceived to be at risk of AIDS, "Insurance companies can spot a limp wrist at 3,000 miles."

Finally, the potential for monopoly accentuates all of the above. At least in a competitive economy there is an incentive to find a way to grab every last consumer. The monopolist becomes lazy, feeling less reason to justify discrimination. Yet the potential for intensification of monopoly is great when the technology can give one player overwhelmingly dominant access to its potential consumers or create huge additional barriers to entry.

Government's Integration of Technology Is Creating Risks of Access Discrimination and Misuse of Integrated Data.

While technology is similarly having a broad restructuring effect on government, two important areas should be emphasized. The first and most obvious impact of this technology revolution upon the relationship between citizens is the capacity of the technology to provide gateways to government – gateways that will go through the same stages of development described above. Government is already providing massive information about its functioning to those citizens able to use the technology to access it. As time goes by, technology will allow first of all true two way interaction between citizens and government, and then a reshaping of the services government provides. This

reshaping can meet the needs of instantaneous service to the people and become fully integrated with other online processes, both governmental and non-governmental.

The census bureau, for example, started off providing data for download, then provided a tool that allows for the building of customized on-line statistical maps over the Internet. In the future, it might allow its databases to be linked automatically to litigation analysis software in legal services offices, allowing advocates to show the absence of jobs in neighborhoods or the change in demographics as a result of governmental actions.

More immediately, every use of the Internet as a gateway to government, whether to apply for welfare, to file in court or to obtain a license or pay a fine, creates for the poor both access opportunities and massive problems of potential access discrimination. While the evidence of penetration of the Internet into poor communities is in some conflict, there is agreement that it moves more slowly than among the rich. Moreover, whatever the numbers, and no matter how "user friendly" the technology becomes, it will always provide some barriers to some portion of the population. Thus, to the extent that government comes to rely on the technology to provide access there is always the danger that it is effectively excluding some from access to services. As advocates we can and will insist that the studies be done, that the technology is developed to be as accessible as possible, and that there *always* exists a non-tech access alternative. It may be, indeed, that the emphasis on access that this debate brings will increase access even for those who can not use what are now seen as access technologies.

The second immediate impact is in terms of the amount of information that government can now hold, integrate, massage, and use. While massive government databases do exist, many of us are surprised at how poorly these databases are integrated and at how ineffective government actually is at making use of the data. While this is partly due to policy-driven fears, much of it comes from traditional incompetence. We would be foolish if we were to continue to rely on this incompetence, particularly in the light of hostility to our clients.

One way and another, government can, if it chooses, bring together immense information about any welfare applicant – information now far less likely to be viewed as legally irrelevant than it was before the passage of welfare reform. Advocates need to stay alert to the damage that can be done by such systems, both because the data is often inaccurate and unchallengeable, and because the very fact of integrating the data may be unfair to people trying to change their lives and escape prior mistakes. In both these areas, the poor are at greater risk than the middle class. There is more likely to be adverse information, it is more likely to be unfairly used, and it is more likely to be wrong.

Corporations and Government as Opposing Litigators: Technology Will Make them Far More effective Against Our Clients

As corporations and government store more and more information about our clients and acquire the ability to analyze and manipulate it, their ability to use this data

against our clients will escalate dramatically. Imagine the public housing authority that supports its eviction history with a full computer history of the misdeeds of the tenant, the welfare hearing officer who has the full (yes five year) history of the recipients workfare assignments, or the private landlord who can who all the other leases that the tenant has violated – all over the country. Imagine the court that can predict the liklihood that this parent will actually want to keep her child in three years, or the chance that she will complete the drug treatment program and stay off drugs. Imagine the Agency or landlord who uses that kind of predictive information in making decisions, long before the matter gets into a judicial forum.

Unless we develop parallel tools we will find ourselves completely outgunned in litigation. It will be as if they had a law library and we did not, or as if they could investigate and we could not. Moreover, many of the purportedly predictive systems that governments and corporations build will be profoundly defective. We will only be in a position to challenge and undercut the systems they use to make and defend their decisions if we also understand the dynamics of building such these systems.

The Role of Government as Corporate Regulator and Citizen-to-Corporation Intermediary Will Change in Unknown Directions.

It is far from clear how government will respond to all these corporate trends. Technology gives immense tools to regulators. The very discrimination-enabling data that corporations must collect in the new era becomes an anti-trust and anti-discrimination enforcement gold mine. But the sheer monopoly power of technology may provide too great a disincentive for intervention. It may be that the greatest hope comes from the internationalization of enforcement. Microsoft appears to face greater challenges from European regulators than American. The universality of the electronic market means that American markets will be regulated as much by foreign governments as by the U.S. government. The task of monitoring international law-making is a critical one for poverty advocates, who have traditionally completely ignored the potential and importance of international rule making.

The Likely Effect of Corporations and Government on the Internet Access Issue is Hard to Predict.

Early Internet equity attention has focused on the access issue. Although this is a threshold rather than an ultimate issue, it can not be ignored. There is a good argument that market forces will continue to bring more and more currently excluded users on line. As more and more Internet revenue derives from advertising and sales, and less and less from the access fee, the financial barriers to access will lessen. (Ever declining hardware costs will accelerate this trend.) In that sense, the "800" number model is relevant. A high percentage of all intestate calls are now billed through the 800 system and the only cost barrier is the basic monthly fee, a fee which, relative to inflation, declines all the time.

This does nothing about cultural barriers. Here our obligation is clear, to provide the content and services that makes Internet access compellingly necessary and useful to excluded communities. Then the access will follow, both from the home and from institutions such as schools, libraries and social centers.

We Can Use All of These Technologies to Protect The Poor Against These Trends.

Finally, however, every threat to poor people from technology contains the tools that poor communities and their advocates can use to restore balance. The networking, problem solving, connection, analytic and advocacy potential of technology allow us to link those affected by each impact, and to inform the world at large. Every tool used by large entities can be used by the excluded, provided they develop the capacity to connect together, to integrate their data and pool their deployment resources. Technology makes it easier for large entities to act against the poor. As described in many of the other papers, it also makes it harder for them to hide. It is the task of this conference to develop the ways of thinking that will allow us to take full advantage of this potential.