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Amicus Curious

How a lawyer became 'the computer guy'

By Jerry Crimmins
Law Bulletin staff writer

Asked how many lawyers today understand the hot topic of electronic discovery "to any useful degree," Patrick E. Zeller said, "less than 5 percent."

Zeller is vice president and assistant general counsel of Guidance Software in Chicago, which specializes in e-discovery and other digital investigations. And he teaches this topic at The John Marshall Law School.

Asked how he happened into the esoteric field, Zeller tells a quick story.

After he joined the Illinois attorney general's office straight out of John Marshall in 1996, someone "had brought in a couple computers from a search warrant. They were password-protected so you couldn't turn them on and get the data," he said.

"I suggested they remove a battery from the computer" temporarily, so when they put the battery back in and turned on the computer, "there wouldn't be a password. "So I quickly became the computer guy."

Zeller and his good friend, Keith G. Chval, started a specialized unit in computer crimes at the AG's office, "one of the first five in the country," Chval recalled.

"It was great. It was a riot," Chval said. "Everything was brand new. It was limited by our imagination and what we created. And Patrick has a lot of imagination and creativity."

Chval was chief of the high tech crimes bureau.

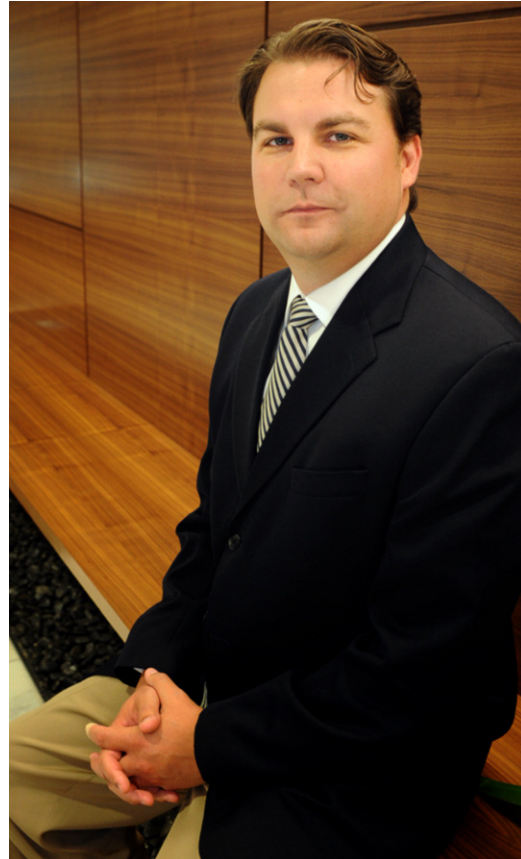
"During my time there," Chval said, "we had a 100 percent conviction rate" in computer-related crimes. Those crimes included, according to both Zeller and Chval, child abduction, online exploitation of children, financial crimes, gambling, drug cases and murders.

Zeller became director of the Illinois Computer Crimes Institute. He also was a prosecutor with the computer crime intellectual property section at the U.S. Department of Justice in 2000 and 2001.

If computer crime is still relatively new, electronic discovery is an infant.

Zeller said it burst onto corporations' and litigators' computer screens in a serious way only in 2004 and 2005.

"When Morgan Stanley was sanctioned" for



Marina Makropoulos

Patrick E. Zeller

e-discovery violations, "and then they had a judgment of \$1.45 billion..., that was really the shot heard 'round the world," Zeller said.

That case was *Coleman Holdings v. Morgan Stanley*, (Fla. Cir. Ct. Mar. 1, 2005), a decision reversed on appeal in 2007.

Before that case and a smaller, but similar, tobacco company case in 2004, corporations had a gentlemen's agreement on computer-stored data — "You don't ask for my data, and I won't ask for yours" — Zeller said, because of the massive expense.

But after those two cases, "you had individuals or groups of individuals suing large companies" in David vs. Goliath-type actions and demanding

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massive e-discovery, Zeller continued. The individuals and groups had little to lose.

Today, as an example of what can happen, Zeller said, his firm was recently hired to help deal with a case in which the amount of data sought was “a petabyte and a half.”

“That’s roughly in excess of 300 billion pages of text,” Zeller said.

One of the toughest problems is that any corporation or institution has to review its own data before giving it to lawyers for the other side to protect documents that are covered by attorney-client or work-product privilege or that involve industrial secrets.

Thus, the most expensive part of dealing with electronic discovery demands is to have attorneys for the company review the data first, Zeller said.

“Employees can have thousands of [e-mail messages],” he said. “A rough rule of thumb is, to take one e-mail [message] through the entire discovery process can cost \$5.

“If you have a billable rate of \$200 [per hour] to review,” which might be a blended rate for associates and paralegals, “the cost to review one gigabyte of data, which is 25 to 40 bankers’ boxes, can easily exceed \$30,000.”

When Zeller went into private practice, first with Seyfarth, Shaw LLP in 2003, he said he found that his background as a prosecutor of computer crimes “was a great gateway to e-discovery” work for a private law firm.

At Seyfarth, Zeller “helped me develop and found what is now a nationally know e-discovery practice group,” said Scott A. Carlson, who is co-chair of that group.

Zeller “offers such a unique mix of technology and the law, and he realizes that in many ways, tech is what leads it,” Carlson said. “He’s able to see the technology and understand it as it arrives in the marketplace and predict the impact on the law.”

Zeller said he regularly lectures on e-discovery to both companies and private lawyers.

At John Marshall, Zeller, Carlson and Chval together teach “what we think was, if not the first, then one of the first law school courses on e-discovery, digital evidence and computer forensics,” Carlson said.

Chval today is co-founder of Pro-Tek International, a computer discovery, forensics and investigations firm, and also name partner in Chval Law Group, which focuses on digital litigation.

Of Zeller, his old partner at the attorney general’s office, Chval said, “Patrick is first a communicator, a kind of real world people person. He kinds of transcends ... the stereotype of the technical guy that can’t talk to people.... He sees the big picture.”

Zeller, 39, said the study of the law came first in his life, at least formally. But he said he did get his first computer when he was in 7th or 8th grade, way back in about 1982.