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**COMPUTERS & TECHNOLOGY  
IN THE YEAR 2000**

*1998 Warren M. Anderson Legislative Breakfast Seminar Series*

**JUNE 10, 1998**



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Albany, NY 12208

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**Gary Davis**

*New York State Office of Technology*

**Robert A. Heverly**

*Government Law Center of Albany Law School*

**Richard Moran**

*Moran and Pronti*

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## **WARREN M. ANDERSON**

Warren M. Anderson is a distinguished alumnus of Albany Law School and an active member of the Government Law Center Advisory Board. Having served in the New York State Senate for thirty-five years, he is perhaps best known for his leadership during his tenure as President Pro Tem and Majority Leader from 1973 to 1988.

Warren Anderson began his legal career as an Assistant County Attorney in Broome. He then joined the law firm of Hinman, Howard & Kattell where he is currently practicing law. Throughout his career he has received numerous honors and awards.

## **PROGRAM DESCRIPTION**

In furtherance of its mission to serve as a resource to all levels of government in the resolution of specific problems, the Government Law Center is pleased to present the seventh annual Warren M. Anderson Breakfast Seminar Series. Monthly breakfast programs feature experts addressing the legal aspects of a variety of policy issues pending before the Legislature. The seminars are designed to provide access to current legal information on a given topic. The Government Law Center welcomes your suggestions for future programs.

# 1998 HONORARY CO-HOSTS

The Government Law Center is grateful to the Leadership of the New York State Senate and Assembly for serving as honorary co-hosts of the 1998 Series:

**Honorable Joseph L. Bruno**  
*Senate Majority Leader*

**Honorable Sheldon Silver**  
*Speaker of the NYS Assembly*

**Honorable Martin Connor**  
*Senate Minority Leader*

**Honorable John Faso**  
*Assembly Minority Leader*

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## **INTRODUCTORY REMARKS**

**PATRICIA E. SALKIN, ESQ.**

**Associate Dean & Director, Government Law Center  
Albany Law School**

I would like to welcome our friends, old and new, to the 7th Annual Warren M. Anderson Legislative Breakfast program.

The Government Law Center of Albany Law School celebrates its 20th Anniversary this year. We are pleased to provide this Series and other beneficial programs during this commemorative year.

The Government Law Center was established at Albany Law School in 1978 to facilitate multi-disciplinary study of government and the problems facing government, to introduce law students to methods of policy analysis and to public service, and to serve as a resource to government at all levels in the resolution of specific problems. It is this last role which brings us here today.

This breakfast program was designed to provide policy makers and law makers with current information on the state of the law and its practical applications in New York and across the country. Each month the Government Law Center presents a discussion focusing on legal and policy aspects of an issue which is awaiting legislative action here in New York.

The Series is named in honor of former Senate Majority Leader Warren M. Anderson who is not only a distinguished alumnus of the New York State Legislature but also an alumnus of Albany Law School and a member of the Government Law Center Advisory Board. Senator Anderson is particularly pleased that the four legislative leaders agreed to serve as honorary co-hosts of the 1998 Breakfast Series. Albany Law School is proud and honored to have this bipartisan support.

We are pleased to make the contents of this year's Anderson Series available to a wider audience through this publication. Within it, five major issues before the New York State Legislature—Court Restructuring, the Sexual Assault Reform Act, School Reform, Brownfields, and Computers & Technology in the Year 2000—are examined. It is our intention that the information will serve as an effective resource to law makers and policy makers throughout the State, as the debates on these consequential topics continue in the months ahead.

# **COMPUTERS & TECHNOLOGY IN THE YEAR 2000**

**June 10, 1998**

## **PANELIST**

### **GARY DAVIS**

**Year 2000 Project Manager**

**New York State Office for Technology**

Good morning. I would like to thank the Government Law Center for this opportunity to participate in the Warren M. Anderson Legislative Breakfast Program to discuss New York State's Year millennium compliance efforts. My name is Gary Davis and I am the Year 2000 project manager with the Office for Technology (OFT).

The Year 2000 is a worldwide problem that impacts every organization that is dependent on computer technology. I will not try to chronicle the past two years of effort in the next few minutes but rather attempt to answer some fundamental questions.

Since its inception, the computer industry has used a two-digit date number. The two digit date convention was used as a means to conserve storage space when costs were at a premium. While these computing costs have dropped dramatically, the two-digit date convention has remained in widespread use for over 30 years.

As a result, in the Year 2000, most computer systems will fail or produce incorrect results. For example, a person born in 1935 could be calculated as 35 years old, not 65. As a result, this person may be

denied benefits to which they are entitled. While the concept is simple, the scope and complexity of the problem is not.

New York State faces a serious challenge because of the diversity of technology we employ and the sheer volume of computer transactions we process. The problem is not limited to just programs but the hardware, software and the networks they operate on. In addition, any equipment that contains embedded chips such as building security, telecommunications systems, vehicles and medical equipment, may also be at risk.

Governor Pataki has identified Year 2000 compliance as New York State's "number one technology priority." In April 1996, the Year 2000 Date Change Initiative was established to facilitate New York State's millennium compliance efforts. Under the direction of Jim Natoli, the Director of State Operations, the Office for Technology is responsible for coordinating a statewide effort to address the Year 2000 problem. While we are responsible for facilitating solutions, each agency is responsible for bringing their own systems into compliance.

We have implemented a statewide organization structure to support the project. An inter-agency steering committee is responsible for developing strategies to address the Year 2000. Each agency has designated a Year 2000 project manager who serves as the primary contact for all Year 2000 activities. We meet with agency project managers on a regular basis to provide training, share information and report compliance progress. In addition, platform-based work groups have been established so agencies with similar computing technologies can share common approaches and solutions. In January 1998, we formed an embedded systems work

group on which every agency has a representative.

Agencies have completed a standardized risk assessment and identified over 700 systems that may be at risk. The systems are categorized as high, medium and low priority based on their impact on an agency's ability to fulfill their mission.

Experts agree that there are neither enough time nor resources available to fix every system. New York State has sought to minimize its risk by identifying our mission critical systems and focusing our efforts to bring these systems into compliance.

As a result, we have identified the State's "Top 40" Priority Systems that have a direct impact on public health, safety and welfare.

Examples of these systems include child welfare, State aid to schools, criminal history, inmate population management and tax processing systems. A complete list of the State's "Top 40" Priority Systems is available on our WEB site. State Operations has delivered a clear and consistent message to agencies: "The Top 40 systems must be compliant, no matter what."

In addition, agencies have identified 308 high priority systems. These include systems for grants and scholarships, licensing, court administration and patient care. Agencies have prioritized these systems and are doing everything they can to bring them into compliance.

The remaining 364 medium and low priority systems are being addressed based on available time and resources. Agencies will be required to develop contingency plans to continue to do business absent these systems.

New York State's statewide Year 2000 estimated cost is \$250 million dollars. While earlier estimates were based on the number of

lines of code, agencies have now provided detailed cost estimates broken down into four categories: application systems, computer infrastructure, personal computers and embedded systems. Some agencies are still finalizing embedded chip costs. This total does not include major system replacement projects funded outside of Year 2000 such as Welfare Management and Medicaid Management systems.

The Office for Technology is tracking compliance progress on a quarterly basis. Compliance progress is being measured by the number of person years required to be completed each week to bring systems into compliance.

The "Top 40" systems will require a total of 581 person years of effort to bring them into compliance. As of March 1998, we have completed 316 years of effort and five systems are done: child abuse registry, prison release dates, business tax systems, corporation system and professional licensing systems. The remaining "Top 40" Priority systems are now 54% compliant and are on schedule to be completed by January 1999. It will require approximately 7 person years of effort each week to stay on schedule.

In addition, it will require a total of 441 person years of effort to bring the 308 high priority systems into compliance. We have completed 179 years of effort and 69 of these systems are done. The remaining 239 systems are now 38% compliant. It will require approximately 6 years of effort each week to stay on schedule.

The Office for Technology has been working together with the Division of the Budget, the Department of Civil Service, the Governor's Office of Employee Relations and the Office of General Services to assist agencies with the resources they need to address the Year

2000. These resources include funding, staffing and Year 2000 products and services.

While agencies have been directed to reallocate existing resources to the Year 2000, we have also requested a total of \$100 million dollars in centralized funding to augment agency projects. The \$10.1 million dollars approved in the 97-98 budget has been allocated to those agencies that maintain "Top 40" systems. The Governor's 1998-99 Executive Budget requested an additional \$70 million dollars.

The Legislature cut that request by \$30 million dollars. OFT has been working with the Division of the Budget to develop contingency funding plans utilizing Certificates of Participation to ensure that agencies have the resources and flexibility they need to accelerate compliance efforts.

In conjunction with the Department of Civil Service and the Governor's Office of Employee Relations, we have implemented numerous strategies to recruit, retain and compensate staff for the Year 2000. These strategies include providing agencies use of compensatory overtime, extra service, project management positions and temporary employment of retirees. A staffing "SWAT team" comprised of the control agencies was established to work with agencies to identify staffing requirements and expedite requests. The Office of General Services has established over 30 Centralized State Contracts for Year 2000 consulting, tools and "code factory" services. We recently hosted a vendor day to showcase these to agencies and provided an overview of how to purchase them using an expedited mini-bid process.

We have been working with the federal, local and other state governments to coordinate our efforts. We represented New York

State at an October 1997 Federal/State Year 2000 Summit Meeting where 43 states and 17 federal agencies established standards for exchanging and testing data. We participate in monthly conference calls with numerous states to discuss and compare approaches and progress.

OFT has established a local government workgroup comprised of representatives from various municipalities, state-wide associations and state agencies. This workgroup has raised awareness and provided assistance through presentations, mailings and newsletter articles. We produced a comprehensive "Guide to Solving the Year 2000 Problem" which was distributed to over 2,000 local government officials. There is a statewide teleconference scheduled for September 10, 1998 to continue to provide local government with information and assistance.

Managing the risk of failures and potential liability is a critical component of our Year 2000 project. OFT has been working with the Attorney General's Office regarding the State's liability and legal issues. We are reviewing legislation that has been passed by other states to limit liability. We have developed standard New York State Warranty Language and procurement guidelines, in conjunction with the Office of General Services. OFT has also established a "risk assessment" team comprised of State internal auditors to meet with agencies and work to mitigate risk associated with their specific technology and data exchange dependencies. We will be requiring agencies to document contingency plans for systems that will not be compliant prior to failure dates.

OFT is also meeting with the State Emergency Management Office (SEMO) this month to begin a review of statewide utilities

preparedness and to develop disaster response plan.

While New York State has accomplished a lot, there is still a substantial amount of work to be done and not much time. New York State needs to remain focused and dedicate the necessary resources to bring mission critical systems into compliance. OFT will continue to provide overall coordination and provide agencies with the tools they need to accelerate compliance efforts.

## **PANELIST**

**ROBERT A. HEVERLY, ESQ.**

**Assistant Director**

**Government Law Center**

**Albany Law School**

There is a scary movie currently in theaters that focuses on the potential end of the world from a dangerous and little understood threat that only a highly qualified, brave and skilled group of people can stop. Called "Armageddon," it is based on the idea that a meteor is on a direct collision course with earth. What they do not mention in the ads is that the core of the meteor is an old 386 PC that will not run past the change in the century because it is "infected" with the millennium bug. The reason they do not tell you that is because, if they did, you would know that the earth loses this battle. No one can overcome an old PC with software and hardware that is not year 2000 compliant!

I am going to talk briefly about the legal and policy issues raised as we move to intercept or at least understand the difficulties that could befall us once January 1, 2000 is upon us.

Types of legal disputes might include: lawsuits between developers and purchasers based on defective software; lawsuits between users of software and companies hired to correct the Year 2000 problem; lawsuits involving insurance coverage for both the costs of remediation and losses suffered as a result of failure to become Year 2000 compliant in time; employment related litigation involving scarce programming resources capable of correcting the

Year 2000 problem; shareholder litigation against directors and officers of companies that do not become Year 2000 compliant in time; investor lawsuits asserting that companies failed to make adequate financial disclosures regarding the scope and the likely impact of the Year 2000 problem; and third-party actions between companies whose computer systems are compliant and those who are not, over such issues as the provision of corrupt data.

And keep in mind we are not waiting for January 2000 to start suing. We have started now. Computations going beyond the year 2000 are currently being done, paper trails are being avoided or saved, companies have been put on notice of potential liability, and lawsuits have begun. "When the flood of Year 2000 litigation arrives, the survivors will be the companies that took steps now to manage and control the creation of documents that will make or break their cases," according to Ira T. Kasdan and David K. Monroe. For example, there are reports of a class action Intuit lawsuit right now in the New York courts concerning the popular Quicken program (versions 5 and 6) that allegedly cannot recognize "00" and Quicken's intent to require users to buy new software.

Over the last six months, a number of Year 2000 cases have come down the pike. To give you an idea of the issues, in February, a suit was filed against Symantec on behalf of customers of Norton AntiVirus software, alleging breach of warranty and other claims in connection with Symantec's flagship product, which the complaint says can not recognize the year 2000. That suit was filed a month after a New York hardware company filed a similar suit seeking \$50 million from software maker SBT Accounting Systems. Both suits seek class-action status, meaning other aggrieved parties also could

become plaintiffs in the litigation.

Other relevant issues are disclosure under SEC regulations; tax implications, and whether costs can be capitalized. In the banking industry, degree of compliance may gauge how “on top of things” companies are, evaluating whether they are a good risk or a bad one.

Labor issues are also being raised, as the experts who have been and are being brought in to fix this problem will outlive their usefulness once compliance has been achieved.

Antitrust issues are a concern, as companies try to share information that will help them come into compliance. On that note, the U.S. Justice Department has said that companies can cooperate on Y2k without fear of antitrust reprisals.

There are also potential problems because copyright law may prevent companies from taking the actions needed to fix software since it is considered a copyrighted work and can not be changed just because you want to do so. The distinction is between the owner and the licensee: most software is not owned by the computer user but, rather, is licensed to them. The right to undertake any changes to it, therefore, is governed by the license/contract.

Contracts may limit warranty applicability and may have shorter statutes of limitation. The implications of past contracts and licenses is sure to play a significant part in any litigation or legislative solution to the Y2k problem.

Another question raised is whether this problem will cause a crisis in the insurance industry. We do not know for certain. Litigation costs are being estimated at over one trillion dollars and global costs of software changes at \$300 to \$600 million. A recent Reuters story pointed out that just 10% of the changeover would eat up 20% of the

U.S. insurance industry's \$310 billion in policyholder surplus. Insurance coverage is a big issue.

The Federal and state legislatures are becoming involved. Some legislative options that have been identified so far include compulsory arbitration, caps on liability, and limitations on or exclusions from liability.

In early May, a California legislative committee defeated a bill that would have granted the state's software firms immunity from lawsuits related to the millennium bug. The California Assembly Judiciary Committee failed to support the bill that would have exempted software firms or related computer companies from Year 2000 lawsuits claiming fraud, negligence, or unfair business practices, provided the companies took steps to make their programs immune to the millennium bug. The bill was supported by a host of companies in the computer industry, including Intel, and was intended to stop what some see as an unavoidable blizzard of lawsuits against software companies regarding the Year 2000 problem.

Remember that wonderful sign that hung in your grade school classroom? It had the words "plan ahead" in large print. As you got to the end of the word "ahead," the letters got all scrunched up—indicating that someone did not do a good job planning ahead. This millennium bug fits in the same category. It also fits in with the saying that "experience is the name everyone gives to their mistakes." I am sure we will all gain much experience over the next year.

Burgess Allison, a member of the ABA's Law Practice Management Section and editor of the Section's technology column, noted that there is one good thing about the Y2k problem: it will likely provide some distraction from the coming millennium craze that is

predicted to overtake us in the coming year. I agree and offer one final observation of my own: if M&Ms are the official candy of the new millennium, the Y2k problem must be its official disaster.

Thank you.

## **PANELIST**

### **RICHARD MORAN**

#### **Moran and Pronti**

I am presently an employee of CNA Insurance Company, but I am not here to advise you of any position of CNA. This is my own personal opinion from my own personal experience.

I presently run two staff counsel operations for CNA Insurance, one in Saratoga Springs and the other in Syracuse. I have worked in the insurance industry for 25 years. What is happening in the industry is that the vast majority of the policies that would normally be coming due, will come up for renewal this fall and then run into the year 2000.

The insurance industry assesses the risk, then determines whether they want to underwrite the risk and, if so, at what price. When the underwriter said it was time to look at the year 2000, they looked at the year 2000 exposure and said "Oh my God!" The insurance industry as a whole is not interested in underwriting the year 2000 exposure. It is potentially an enormous and uncertain exposure. The insurance industry holds the position that any year 2000 damages are not covered by the present liability policies. This year, those individuals, businesses and municipalities that are insured with the industry will be receiving letters stating that it is the industry's position, for the most part, that what we call "Y2k damages" are not covered under present policies. The policies to be renewed in the fall will have a specific exclusion that year 2000 casualties are not, for the most part, covered.

There are certain carriers—such as A.I.G. and Marsh-McLennan—

that will be offering year 2000 coverage. These policies are aimed at the Fortune 1000 companies. They are very expensive. The A.I.G. policy offers a million dollars of coverage at a cost of \$800,000. After they assess the types of damages incurred, the insured may get back some money, if they are compliant and had few claims. Marsh-McLennan has taken another approach. They will charge anywhere between 5-8% of the coverage sought as the premium, but to get that a company must undergo quarterly audits and a software analysis, at a cost to the company of anywhere from \$150,000-250,000 per quarter. Failure to do so will result in the policy being revoked. My understanding is that both of these policies will not be available by this fall. The theory is that if a company is just now getting to its year 2000 problems, they will want nothing to do with it.

Thus, the industry has taken the position that year 2000 damages are not covered under a general liability policy. I assume the agents and those insured will say in response, "We paid a premium for this coverage." There are arguments on both sides presently as to whether these policies cover year 2000 damages. This is going to generate tons of litigation. Large firms all over the United States already have Year 2000 Departments set up. Certain people say the vultures are circling. The Gartner Group, which has analyzed year 2000 problems across the breadth of our society, estimates the litigation exposure to be \$1 trillion. This amount is larger than tobacco, asbestos and fiberboard all rolled into one.

This figure does not take into account court rulings on exclusions. For example, the courts previously determined on pollution exclusions in favor of coverage, and a superfund was set up. Just because the insurance industry says something is not covered

does not mean that the courts are going to rule in favor of their position.

The other types of litigation we are going to see will be against directors and officers at certain companies that are seen as not addressing their Y2k issues. I think the litigation against them is clear. There are certain companies where the CEO has deemed it a technical problem that the technical people—the people with the pocket protectors and pens—will solve. They come to the CEO and say, “We need money to look at our year 2000 problems.” They are given a budget but, since they do not know exactly what the problem is, the budget may not be enough. They then go back and assess the problem and find out it will cost twice, three times, or four times as much as their first estimate. Certain CEOs understand that. Other CEOs say “No, I’m not going to spend that money because some people say nothings going to happen.” Those companies that do not adequately fund their year 2000 budget can have a failure that negatively impacts their business. If they are publicly traded, as the stock starts to go down, the shareholders will sue the directors and the officers for not properly handling the company’s Y2k problems or advising them of the risk, and how it will impact the business.

Other litigation that we’re going to see is year 2000 liability litigation. For example, some of our products, such as elevators, have a safety feature such that if the elevator is not maintained after “X” amount of time, it will shut down. Manufacturers do not want unserviced elevators running up and down buildings. You have to “prove” to the computer that the equipment has been maintained. If the computer chip reads “00” as the last two digits and assumes 19 as the first two digits, as we roll into the year 2000, that elevator will

“assume” that it has not been serviced for 100 years. It will return to the basement or the first floor, close down, and ask to be serviced.

Year 2000 problems have already surfaced. I will just mention two examples. There is a pharmaceutical company with a warehouse basically manned by robots. The robots go down the aisles reading bar codes for expiration dates. As they came to the dates “00” and “01,” they read them as the years “1900” and “1901,” as if they were 98 and 97 years old. The robots automatically took the products to a bin and destroyed them. In reality, these were the newest products that this manufacturer had produced. The person in charge of the warehouse read the daily report and said, “Why are we destroying this much new product?” He went out there and he found out that it was a Y2k programming problem. This has actually happened.

A CNA employee had a VISA card which expired in the year 2000. She went to a grocery chain which had about 12 outlets and they swiped her card at the register. The computer read the expiration date as “1900.” All the check out computers in that outlet went down as did the registers in all the other 12 outlets. Since all the computers “talked” to each other in this chain, the refrigeration units also thought it was “1900.” Figuring they had not been maintained in 98 years, down they went. The grocery store chain lost approximately \$300,000 in sales and inventory. The legal system is not ready for this: The grocery store thought they had been wronged and they sued this lady. She had just been issued a card from VISA, and now she has to go get a lawyer to defend herself. VISA in turn has now sued the grocery store, because VISA had sent notices out to all its suppliers stating that if their computers were not compliant and can not handle their cards, the first time the computers crash and impute something

negative to the card, VISA is going to charge \$16,000. The second time it happens, the supplier will be taken off the list and VISA will not be a card that you can accept at your outlets. This, of course, can cost a store much in lost business.

The health care industry has only recently realized that there are going to be year 2000 problems. One analysis of the health care industry asked 200 health care institutions to report if they have a year 2000 budget and, if so, what it is. Between 25-30% of them had no year 2000 budget. When you go into any modern hospital, there are computers as far as the eye can see. What happens to a date sensitive computer that sees the year "2000?" Either it will freeze up and shut down like the elevator, and then you know you have a problem or it may give you false data. Some of the computer chips in medical devices actually make sensitive and critical computations, such as how much and what mix of anesthesia you need for an operation.

The alarming part is the absolute lack of public awareness. My challenge to you today is to go out and try to find the good news about the year 2000, and then give me a call to let me know.

Thank you for giving me the opportunity to speak to you today.