

PRESENTED AT

The University of Texas School of Law
28th Annual Conference on State and Federal Appeals

June 14-15, 2018
AT&T Conference Center, Austin, TX

Deep Ethics:
How I Learned to Stop Worrying and Love the Internet

Kendall M. Gray

Author Contact Information:

Kendall M. Gray
Hunton Andrews Kurth LLP
600 Travis, Suite 4200
Houston, TX 77002

kgray@HuntonAK.com
713.220.4200

Kendall M. Gray
Partner
Hunton Andrews Kurth L.L.P.

713.220.3981
kgray@HuntonAK.com

Kendall has over 20 years of experience as an appellate lawyer, beginning with his service as a briefing attorney for the Supreme Court of Texas. He has been Board Certified in Civil Appellate Law since 2005 and served two terms on the board certification exam commission. Kendall has been selected as a Texas Super Lawyer in Appellate every year since 2007 and has been recognized by Benchmark as a “Local Litigation Star” in Texas and the Fifth Circuit.

Kendall has represented clients in scores of appellate matters across the full gamut of the substantive law in the United States Supreme Court, the U.S. Courts of Appeal for the Fifth, Ninth, Tenth, and Federal Circuits, the Supreme Court of Texas, and the intermediate state appellate courts. Kendall’s practice has a particular focus on complex health or managed care issues including ERISA preemption and medical provider billing fraud.

Away from the law office, Kendall is a Level 1 CrossFit coach, a runner, and a four-time Ironman triathlon finisher.

HUNTON
ANDREWS KURTH

600 Travis, Suite 4200
Houston, Texas 77002
(713) 220-4200

Deep Ethics:
How I Learned to Stop Worrying and Love the Internet

by

Kendall M. Gray
kgray@HuntonAK.com

HUNTON
ANDREWS KURTH

**600 Travis, Suite 4200
Houston, Texas 77002
(713) 220-4200**

Copyright © 2018

TABLE OF CONTENTS

I. Introduction..... 1

II. The Dawning of Age of Distraction..... 2

III. Habits of Distraction Change Your Brain 5

 A. Short Term Costs of Multitasking..... 5

 B. Structural Damage to Linear Thinking 7

 C. Potential Impacts on Mental Health..... 9

 D. Shallow Distracted Work is Ethically Sketchy 11

IV. The Answer: Deep Work..... 13

 A. Deep Work Creates Real Value 13

 B. Deep Work is Essential for Achieving Mastery 15

 C. Deep Work is Good for You..... 18

V. How to do Deep Work in an Ecosystem of Distraction..... 21

 A. Segregate Deep Work and Drain the Shallows..... 21

 B. Turn Off and Go Dark 23

 C. When not Working, Use Your Mind with Care 25

VI. Conclusion..... 29

Deeper Reading 30

The views expressed herein are those of the authors and do not necessarily reflect the views of Hunton Andrews Kurth LLP or any of its clients.

Deep Ethics: How I Learned to Stop Worrying and Love the Internet

I. INTRODUCTION

“But lo! Men have become the tools of their tools.”¹

Imagine how the practice of law would change if we discovered that something seemingly benign and ubiquitous in the workplace was harming us and degrading the quality of our work.

For example, what if you were confronted with evidence indicating that yellow legal pads and fluorescent lighting caused structural changes in the brain that were associated with depression, anxiety, and the inability to concentrate deeply? How strong would the connection need to be before you switched to white legal pads and LED lighting? What would the ethical risks be if you insisted upon doing things the way you had always done them? Would you be fulfilling your duties of competent and diligent representation if you insisted on methods that ensured you were working at a lower quality and billing for a longer period of time?

Our value as knowledge workers resides in our ability to think in a unique way with advanced information. Each of us has spent tens of thousands of dollars and hundreds upon hundreds of hours learning to “think like a lawyer.” We sell that ability for real money, and (in a pure market) the better we can think, the more we can charge. Yet, the default method for using our work tools (including the tool I am typing on right now) is fundamentally changing how our brains are wired.

Our networked tools are intentionally designed to facilitate multitasking in an ecosystem of distraction. Even more than that, they are programmed to notify us and interrupt us with distractions and novel stimuli that our

¹ HENRY DAVID THOREAU, WALDEN AND OTHER WRITINGS 30 (Barnes & Noble 1993).

brains crave, promising addictive releases of endorphins. Using these tools in this fashion erodes our ability to do deep, linear, creative thinking. To be sure, we are getting better at surfing and scanning, visual acuity and rapid judgment, but distracted multitasking has been linked to the kinds of things we would ordinarily avoid—depression, anxiety, and the inability to concentrate.

There is a strong case to be made that deep, linear, and creative thought is how we create real value for our clients. If so, we should be trying to maximize that quality. How should we adjust our work practices to promote good mental hygiene and high productivity? Our ethical standards are not much help in answering such questions because they are more focused on defining the limits of bad lawyering rather than setting best-practices for good lawyering.

Still, positive values such as competent and diligent representation, are strengthened and served by making some changes in how you and your networked tools interact. By adopting some of the work rules that follow, and by developing some of your own, you too can stop worrying and learn to love the internet.

II. THE DAWNING OF AGE OF DISTRACTION

The mid-1970s saw a change in technology that would profoundly impact not only the way we work but the physical structure of brains in the First World. At the time, no one could have imagined it.

Xerox held a meeting at its Palo Alto Research Center (PARC) to demonstrate a new operating system that allowed users to “multitask” by dividing the screen into “windows.”² To demonstrate the *advantages* of the new system, the

² The tale of Xerox’s watershed moment is recounted in NICHOLAS CARR, *THE SHALLOWS: WHAT THE INTERNET IS DOING TO OUR BRAINS* 113 (W.W. Norton & Co. 2011); see also DAVID LEVY, *SCROLLING FORWARD: MAKING SENSE OF DOCUMENTS IN THE DIGITAL AGE* Ch. 6 (Arcade 2001).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Deep Ethics: How I Learned to Stop Worrying and Love the Internet

Also available as part of the eCourse

[2018 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the
28th Annual Conference on State and Federal Appeals session

"Deep Ethics: How I Learned to Stop Worrying and Love the Internet"