

## TECHNOLOGY ON TRIAL

# Snow Job Doesn't Work

Tyco's titans bury prosecutors in evidence, but still get convicted.

By John Bringardner

**I**N the rapidly expanding boys club of corporate criminals, L. Dennis Kozlowski stands head and shoulders above his peers. The former chief executive officer of Tyco International Inc. became easy fodder for the tabloids with stories of his \$6,000 shower curtain and the \$2.1 million birthday party he threw for his wife on the island of Sardinia.

Kozlowski and chief financial officer Mark Swartz allegedly stole more than \$150 million by giving themselves enormous bonuses and misusing company loan programs. They gained another \$410 million combined by inflating the company's stock price, the prosecutors claimed.

Their trial (*People of New York v. Kozlowski and Swartz*, 2002 Cr. 5259, State Supreme Court, New York County) lasted six months, including

12 days of jury deliberation, before ending in a mistrial. A second trial, lasting five months, began on January 18, 2005. Kozlowski's team of six attor-

including contracts, spreadsheets and e-mail — could prove that Kozlowski and Swartz had authorization for their finances.



**Kozlowski exits the courtroom in defeat.**

neys from Bryan Cave, lead by New York City solo practitioner Stephen Kaufman, used a sophisticated, high-tech arsenal to defend against the Manhattan District Attorney's Office, led by assistant D.A. John Moscow in the first trial, and assistant D.A. Owen Heimer in the second. Five lawyers from Stillman & Friedman represented Mark Swartz.

The prosecution's case hinged on whether company documents — mostly from computer hard drives,

“I think at the end of the day we went through 10 million pages,” said Matthew Browndorf, a Bryan Cave associate who served as lead technologist for the Kozlowski team. The defense was overwhelmed with data from Tyco, he recalls. “We received multiple hard drives — in the beginning at least 200 — hundreds and hun-

dreds of gigabytes and we had no idea what it was.” Processing and reviewing the electronic data, then making sense of it, was a huge task. All hardcopy documents and electronic data had some form of coding done to them. A team of coders handled the hard copies while the electronic data was sorted automatically, stripped of metadata and converted into .tiff format. San Francisco's [CaseCentral \(www.casecentral.com\)](http://www.casecentral.com) did a majority of that work for the Kozlowski

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team, with the rest handled by Gilbert, Az.-based inData Corp. (www.indatacorp.com) and White Plains, N.Y.'s DocuServe (www.edocuserve.com). DocuServe provides transcription services to LTN.)

**CaseCentral** created a secure online repository for Bryan Cave, to facilitate review from remote offices. This also gave the attorneys access to the entire database from within the courtroom without having to haul the actual hard drives with them. A permission system allowed a central administrator to restrict an individual's access to a single document or database without worrying about revealing privileged material, explained Browndorf.

The online repository contains folders where data could be organized and reviewed. Document review was divided among three Bryan Cave offices, with much of the work processed through its Kansas City office to take advantage of the lower market rates, said Mark Brennan, a Bryan Cave partner and head of client technology for the firm.

The criminal trial presented **CaseCentral** with situations it was not used to, recalled spokesperson Hinda Chalew. For example, the litigation in

the first trial moved so quickly that sometimes the litigation support team did not know until 9 p.m. which witnesses the lawyers would be calling the next day.

The trial team kept a scanner in the courtroom because the prosecution often provided exhibits the defense had never seen before, as few as 10 minutes before court started, says Todd Goldberg of Array Technology Group, which supported the Swartz team. "This is sort of trial by ambush."

Browndorf noted the defense team's habit of calling **CaseCentral** at all hours of the night, including Sundays. "That's the way the case played out," he said. "For a lot of big tech vendors it was something new."

The second trial was not as difficult to manage, he added. There were limits to pretrial discovery, and little to no "at night new witness scrambling."

The D.A.'s office would not comment for this story, citing ongoing litigation. But the prosecution clearly had an easier job the second time around. They narrowed their strategy, removing the emphasis on the conspicuous consumption of the Tyco executives, and focusing on evidence that money was taken illegally from

the company. In Round Two they also scanned paper documents into TrialDirector, the defense team explained, rather than keep documents in boxes and displaying pages using an ELMO document camera, as they did in Round One.

Kozlowski took the stand in the second trial, something he did not do in the first trial. According to juror commentary after the trial, this was his downfall.

"We all thought he was a bad witness," juror Audrey Hodge told reporters. "Some of the things he said on direct he changed on cross."

Over the course of its 11-day deliberation, the jury of six men and six women requested documents dozens of times, in addition to reviewing exhibits and testimony or asking for explanations of the law.

They returned a guilty verdict for both Kozlowski and Swartz. Sentencing, which according to recent precedent could be severe, is scheduled for September 19th. Both men plan to appeal their conviction.

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