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Building an Online Court Records Program

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Introduction

Inspired by the 1994 Court Technology Conference, a group of Washington state trial court judges, court administrators, county clerks and data systems/technical staff from the Office of the Administrator for the Courts met for over a year to explore the potential for electronic court records. With a shared vision of eventual "seamless" data systems enabled in part by moving Washington courts from paper-based systems to electronic court records, and encouraged by technology developments in electronic commerce and hypertext markup, the group began actively seeking an Electronic Court Records (ECR) program for the King County Superior Court. The Court approached the State Justice Institute (SJI) with a grant proposal to help find expert process and planning support as the project began.

The King County Superior Court has 75,000 annual filings, an average of over 600,000 case folders on open shelving at any given time, and more than 7,800 documents filed each working day. This means over eight feet of paper enters the clerk's office daily. This volume has created the logistical crisis that forced the Court to seek alternate record-management solutions. The court clerk studied all the alternatives, and found that short of a 24-hours-a-day/six-days-a-week filing operation that would cost an extra $200,000 each year, papers simply cannot be processed any faster than the current five-day standard (from filing to having the updated file available for public and court access). This standard is becoming less acceptable to the Court and file users, especially those whose expectations are shaped by today's high-speed computers and Internet usage.

To manage the many elements of ECR, it was necessary to develop a multiple-phase plan, allowing the first steps to begin without inhibiting progress in other phases of the program.

The Phases

(1) Core ECR: This established the basic infrastructure of ECR. Document imaging and workflow are now implemented in the clerk's office. Paper files will be retained until subsequent phases are completed.

(2) Law, Safety and Justice (LS&J) Connectivity: This follows Core ECR and gives judges and other King County law, safety and justice agencies direct access to images. This phase is expected to be implemented in late 2000.

(3) Electronic Filing: This will be developed in 2001, enabling the public and attorneys to file digitally signed, word-processed documents with the clerk. The basic ECR vision emphasizes the supplanting of hard copy and images by allowing digital filing that uses standard formats, forms and templates.

(4) Document Access and Distribution: This phase will make court records accessible electronically for the public and attorneys.

Phase one (Core ECR) has been implemented in King County. Phases two and three will provide connectivity with electronic files for the Court and the County's law, safety and justice business partners in late 2000.

The project makes a distinction between "digitized" and "digital" documents. The distinction has been pivotal to understanding the issues and benefits of electronic court records. "Digitized" documents originate in hard copy and are made into electronic images through scanning. "Digital" documents are created electronically through word processing and are the ideal format for electronic records. We doubt we will ever see a "paperless court" or have "paperless offices," but we are intent on having a "paperless court record" where the legal original record is the electronic document, whether digitized or (preferably) digital.

There is some value in merely digitizing court records, but this alone is too similar to keeping hard-copy records. Images are only partly suitable as online records. A fully digital court record will take advantage of all the features of electronic documents. It will permit text searches, use data tables, allow for hyper-linked references, enable electronic transmission, protect with computerized security, and more. Digital documents and signatures, the dynamics of the World Wide Web, and other features of new technology will make ECR programs truly valuable to our courts.

Infrastructure

While the technology for electronic court files is here now, the business infrastructure is not. Many electronic court-records projects leave business infrastructure issues undiscussed. Where issues like the following are raised, they must be resolved individually within projects. Solutions are court-specific and projects are not easily transportable. These are critical issues for lawyers and litigants. Unless we rethink basic legal practice questions that relate to electronic files, we will force our electronic court-records projects to act like hard copy systems. Some critical questions follow:

• *What is the record?*

An online file involves new features of electronic tools and techniques which digital documents enable, and it requires rethinking what the "file" is. An electronic court file is a fundamentally different thing. What needs to be in the record, how does it need to be presented, and to whom? What information is important to mark up for searches and self-execution in our automated environment?

• *How can one navigate an online electronic court record?*

Electronic records demand new navigation tools. With paper files, there are physical cues people use to find the information they need (e.g., paper color, typical file locations, or special cues like "blue backs"). In electronic files, familiar cues are gone. To use electronic files, we need new kinds of indexing and search tools to make them user-friendly.

• *What equipment is needed?*

Using an electronic record requires new tools for note taking and referencing. We must put technology resources into printers as well as monitors for those who will continue to rely on hard copy. In legal matters, there will not only be a need for hypertext to "jump" to legal and legislative references, but

there will also be a need for easily understood ways to make cross-references to information in other parts of a document, case or law book.

• *Is all case record information suitable for general access?*

Electronic files will break down both time and space paradigms. The public accessibility of legal files has been somewhat limited by the inconvenience of going to the courthouse to wait for a turn to review the one-and-only file. Multi-user and remote access to case records will be significantly different. This raises questions about whether or not some information in case files should be available to the public for searching and general review. The loss of the de facto privacy afforded by public files that can be viewed only with significant effort may require a rethinking of the availability of information in court files. Failure to deal with this shift in the perception of privacy may discourage use of court processes that have online records, or cause a backlash.

• *Is the pleading its content or its format?*

Given the software flexibility used to make digital documents, which the recently approved American Bar Association resolution calls for, we must face the tough issue of whether the "document" is its content or format, or both. Mass format conversions to meet standards for storage or retrieval, enhancement of images for the visually impaired, or reducing documents to ASCII might mean that pagination, special effects and other aspects of appearance and presentation will be changed. There is as yet no consensus developed about the vitally important issue of whether documents are content alone, or content and appearance.

• *What should the guidelines for records retention be ?*

Another key infrastructure matter relates to archiving electronic records. We know paper is not permanently archival, so we use microfilm or fiche to preserve documents over the centuries. Electronic records cannot be displayed without the operating system and software that created them. Must we bite the bullet and send images of our electronic records to microfilm or fiche storage at huge costs? Perhaps this is a time to focus on storing the most important parts of case files and disposing of the rest.

• *Who owns the electronic record, and can access be at a cost?*

There are other infrastructure issues to address, including the more obvious ones like security, confidentiality and privacy. The ways in which we resolve the issues of who owns the information and who pays for what kind of access will help determine whose work it is to mark up electronic documents or create templates and forms which will make them the most useful in an online file. A baseline issue for any court is whether the electronic court file belongs to the public, the judicial branch, the legislature or public-records archivists, for the answer to that question determines who owns the record for purposes of setting policy, collecting fees, and keeping the record and access methods current.

• *How should the electronic record be cited?*

How do attorneys cite to other electronic records if page breaks, line numbers and formats are allowed to change?

• *What authentication levels are needed?*

When is a personally affixed signature (pen-and-ink or digital) required, and when can we forego it or rely on less stringent authentication for some documents? What are the indices of authenticity in electronic documents, and how is validity proven in the face of a challenge?

• Can some court record information be a table?

Can data (appearances or scheduling information, for instance) be maintained in tables, without any actual counterpart in hard copy?

• Is multimedia record information acceptable?

Will multimedia be allowed as part of the future of court records (video depositions, phone message recordings or digital pictures)?

Conclusion

There are no successful large-scale court projects using fully digital court records. However, some courts, like King County, believe that goal is within reach. Many other Washington counties are implementing digitized court records and Internet access to their records. The Judicial Information System has begun a project for the electronic transmittal of traffic citations to the courts. The recent American Bar Association resolution calling for non-proprietary systems for government (court) records to be available on the Internet at no cost may serve as a beacon for the future of electronic court records. The principles are sound, but court leaders and clerks must master the details to mitigate the issues discussed here.

While the difficult issues could be resolved on a court-by-court basis, we are likely to find better solutions if there is more widespread dialogue on the issues. Serious thought must be given to what actually constitutes the legal record, what business infrastructure is needed to capitalize on the potentials of digital court records, and how to answer the legal practice questions that will allow the potential benefits of digital court files.

In the 1930s, model rules of court were adopted and brought a semblance of uniformity to court procedure. For court record maintenance and access in the electronic age, when the Internet shapes our expectations regarding the availability of information, a hodge-podge of digital record systems for our courts would be a setback for access to justice.

http://www.wsba.org/media/publications/barnews/archives/2000/may-00-building.htm