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McMillan, James E., "Court Review: Volume 42, Issue 3-4 - E-Courts: The Times They Are A-Changin'" (2006). *Court Review: The Journal of the American Judges Association*. Paper 23.

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E-Courts: The Times They Are A-Changin’

James E. McMillan

The title obviously comes from Bob Dylan’s classic song from 1964. That song captured the spirit of the times and again, in a small way, captures ours as well. This year’s upcoming E-Courts Conference (www.e-courts.org) in December will highlight both the changes that computers have brought to court operations and where things are going in the future.

Court operations have been impacted over the past decade with the implementation of electronic court document filing (aka E-filing). This year the U.S. federal courts will have electronic filing available in nearly all district and bankruptcy courts. We have seen that not as many court staff are needed to perform filing and case-processing procedures, and the staff working with the information have greater capabilities since they are working with the information rather than shuffling paper.

Security of court information has also been impacted by E-filing since it can be accessed literally worldwide as well as copied to multiple distant computer servers so that if a courthouse is physically destroyed, the information is safe. The 9-11 attack in New York City proved the security of electronic court information because many law firms housed in the World Trade Center asked the federal bankruptcy and district courts in New York City to use their electronic archives to help to rebuild their files. The federal courts store their E-filing information in multiple computer servers throughout the country, making it virtually impossible to destroy.

But the E-Courts Conference and concept is about much more than current technology. It is about taking advantage of the “digital opportunity” that continually presents itself. I believe that there is a radical change about to occur in how court automation systems will work, and how these systems will connect with one another. Technology advances have provided a new foundation that is significantly different than what we had to work with in the past. This article will list a few of these technology advances and why they will affect the way that court and legal automation systems will be built.

NEW DATABASES AND SMART DOCUMENTS

What could be more boring than a discussion of computer database technology? Apologies, but first, what is a computer database you might ask? It is simply the software that stores and controls data. Yet, there is big news here for legal processes now that databases can contain and search both data stored in fields and documents. You know what field data are from the process of selecting a date when making an airline or hotel reservation via the Internet. The field data pops up to display a list of possible

dates for that month. But document data are different. Traditionally one had to apply Google-like text searches to find data in documents. Lawyers who live with Lexis and Westlaw know how this works. But the advent of XML (eXtensible Markup Language), including the “Office Open XML” document format being standardized for word-processing documents with the support of Microsoft, will make it possible to create document templates that “mark” or identify data within the pleading, form, or notice. And so when a search is performed by the database, it can query both the data and document information. Since we live and breathe documents in the legal system, this is a significant sea change.

But what this change really means is that the ability to extend data capture is no longer the sole province of the computer programmer. It will now be possible for lawyers, judges, and court staff to extend the database by tagging information in documents. Thus, when some legislature thinks that it is a good idea to track some obscure piece of information, a form can be created by the court staff to do that function without waiting months for the database to be changed. As a result, the court case management database can focus on helping the courts process data, and the new smart documents can focus on helping judges and attorneys to present and make decisions.

SECURE AND VERIFIABLE DOCUMENTS

Last year I wrote a paper titled the “Verification, Validation, and Authentication of Electronic Documents in Courts: How Digital Rights Management Technology Will Change the Way We Work.”¹ The paper explored the concept that Digital Rights Management (DRM) software could be very useful to the legal system in that it both protects and verifies digital content such as documents. This is in diametric opposition to the popular view that DRM technology is inherently bad.² The current legal system is based on the anachronism of physical possession of documents and the concept of a paper “original,” verified with a signature and file stamps. When I visit the courts in Europe, I particularly enjoy viewing the file-stamp images that populate legal documents “verifying” that this person or that department has done something with a particular piece of paper. Today’s reality is that any piece of paper can be copied, manipulated, reprinted, and passed off as an original with current scanning, imaging software, and high-quality color printers. Therefore, I believe that any document produced by the legal system must use an “out of band” verification system, such as the ability to view a copy of the document online or, better yet, be verified with a digital sig-

Footnotes

1. The complete paper can be downloaded from: http://www.ncsconline.org/d_tech/courttechbulletin/Uploads/drm-whitepaper-v3.5.pdf

2. See Steve Gilmore’s interview in *InfoWorld* magazine of John Perry Barlow on one viewpoint of this issue at: http://www.infoworld.com/article/03/01/24/030124hnbarlow_1.html

nature using DRM technology. The digital signature controls whether the document is from a trusted source like the court and whether they are allowed to view and/or print the document. This enhances privacy of an individual's information and makes its controllable in the worldwide electronic world. The E-Courts Conference will contain several sessions that will focus on this issue.

STANDARDIZED COMMUNICATING SYSTEMS

Similar to the telephone and electrical systems of a century ago and railroads even earlier, current court and legal computer systems are extremely difficult to connect with one another. This is because, despite more than 40 years of work, there have been no standards on how to accomplish this. Hopefully, there is considerable work being led by the U.S. Department of Justice Bureau of Justice Assistance through their Global Justice XML Data Model (GJXDM) Projects. GJXDM, as you can see, applies XML and what is known as web-services technology to connect justice systems with one another. The National Center for State Courts has been involved in the creation of the E-Filing 3.0 standard, the creation of a number of GJXDM message standards for warrants, protection orders, and sentencing information. In addition, a current project is to create a test registry/repository system that in the future courts may connect to via the Internet; it would serve as both an electronic library for standards and a continual resource for software using the standards. A number of sessions at the conference will describe how this technology will be used by courts and the legal system to set standards so that connections can be made.

THE BOTTOM LINE

Technology in the courts and the legal and justice systems is not being designed and implemented for the sake of technology. Rather it is being used to solve real problems of improving information for the decision makers so that services to the citizen can be improved and justice done for all. The upcoming E-Courts 2006 conference is another in a long series of stops the community takes in our journey to the electronic court of the future. The discussion will continue next year at CTC10 (www.ctc10.org), set for October 2-4, 2007 in Tampa, Florida.



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Court Review Author Submission Guidelines

Court Review, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

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Articles: Articles should be submitted in double-spaced text with footnotes, preferably in Word format (although WordPerfect format can also be accepted). The suggested article length for *Court Review* is between 18 and 36 pages of double-spaced text (including the footnotes). Footnotes should conform to the current edition of *The Bluebook: A Uniform System of Citation*. Articles should be of a quality consistent with better-state-bar-association law journals and/or other law reviews.

Essays: Essays should be submitted in the same format as articles. Suggested length is between 6 and 12 pages of double-spaced text (including any footnotes).

Book Reviews: Book reviews should be submitted in the same format as articles. Suggested length is between 3 and 9 pages of double-spaced text (including any footnotes).

Pre-commitment: For previously published authors, we will consider making a tentative publication commitment based upon an article outline. In addition to the outline, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay, or book review has been received and reviewed by the *Court Review* editor or board of editors.

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