

Internet Tool Kit – Tools, Tips and Technology to Leverage Your Practice

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THE MARCH OF TECHNOLOGY

An essay by Roger Winters

OUR PERSPECTIVES ON TECHNOLOGY ARE DIFFERENT

The impact technology is having on the courts and the judicial process is substantial. It is happening as fast here as in most any other field. In the public arena, the courts, the views on what technology should be used for vary with the perspective of the speaker.

Some of the things that attorneys have told us they want from technology are:

- relief from some of the time pressures imposed by court processes;
- savings on document preparation costs;
- eliminating the costs of delivering and serving hard copy to the courts and to opposing counsel;
- electronic discovery;
- easy-to-use systems and software that don't require extensive technical knowledge;
- allowing for pleadings to be filed at any time: around the clock, "twenty-four by seven" (24 X 7);
- remote electronic access to the case(s) in which they are involved, even when sealed or confidential;
- consistent practices in courts at all levels.

Litigation support staff have concerns that the practicing attorneys don't always mention:

- systems providing easy retrieval of information required to prepare legal documents;
- access to case files and discovery material so records in the firm can be complete and up to date;
- document management software to track versions, shows changes, and automatically measure time and effort;
- electronic indexing, storage, and records management tools that support the firm's litigation and business needs;
- clear, accessible forms, data definitions, and formats.

Litigants, particularly *pro se* (self-represented) want technology to help them, too:

- relief, as litigants, from some of the time pressures of court processes;
- savings in document preparation, delivery, discovery, and service costs;
- easy-to-use systems and software that don't require extensive technical knowledge;
- allowing for pleadings to be filed at any time: around the clock, "twenty-four by seven" (24 X 7);
- remote electronic access to the case(s) in which they are involved, even when sealed or confidential.

Judges want technology to help them with:

- access to documents and information they need, whenever they need them, and wherever they need them;
- remote electronic access to the case(s) before them, even when sealed or confidential;
- hyperlinks in documents that let them reference internal links, external links to case law, and more;
- more informative naming of pleadings with the help of "intelligent" software;
- reliable security for confidential information and sealed materials;

- easy-to-use systems and software that don't require extensive technical knowledge.

Court Clerks want technology to help them overcome the insurmountable problems of hard copy management:

- relief from the situation where growth in litigation means, because it is easier to create documents and affix attachments than ever before, that more and more documents are being filed and attached to more filed cases than ever before;
- electronic storage for records, exchanging the limits and high costs of physical space for the potentially unlimited and inexpensive electronic storage media available today and tomorrow;
- electronic document management, eliminating the misfiled or "lost" papers and the staff-intensive work to locate them by implementing reliable, electronically indexed document image and electronic filing systems;
- electronic data management, exchanging today's labor-intensive data entry work from hard copy into case management systems (like SCOMIS) for automation of routine data entry and enabling clerks to be more value-adding knowledge workers;
- electronic commerce systems, enabling the collection of fees and payments and the disbursement of funds to take place through credit cards and electronic funds transfers;
- easy-to-use systems and software that don't require extensive technical knowledge;
- easy, Web-based access to case files for the judges, attorneys, litigants, and public, with reliable security for confidential information and sealed materials.

Finally, the Public want technology to help them access court information they need:

- members of the press want quick, direct, remote access to filed court documents that are newsworthy;
- businesses interested in court records, like title companies, want speedy access to up-to-date information about court actions that affect ownership and business;
- researchers want to be able to obtain reliable, speedy access to the records important to their interests;
- genealogists want family history information in a well organized and accessible fashion;
- the public in general wants an open, accessible court record they can scrutinize for any reason;
- the public in general also wants sealed or confidential records to be truly secured so they can rely on the court to protect them and keep people's confidences.

EARLY APPLICATIONS OF TECHNOLOGY IN COURTS

Many courts invested in technology long before the Internet arose. In Washington, the best examples of such applications are the mainframe databases within the Judicial Information System (JIS) under the management of the Office of the Administrator for the Courts (OAC). They include SCOMIS, the Superior Court Management Information System, developed in the late '70s. King County implemented SCOMIS in July of 1979 by eliminating the hand-written entries in large ledger books that had constituted case indexing and docketing, in favor of placing that information into the mainframe (then running Adabase) through data entry from dumb terminals. By now, SCOMIS is used in all 39 counties, alongside other systems serving district and municipal courts (DISCIS), appellate courts (ACORDS), juvenile matters (JUVIS), and financial record-keeping (CRS, JASS). SCOMIS was recently upgraded to a relational database, DB2. A new interface to SCOMIS, which is now accessible through emulation software on clerks' desktops, is in development.

Other technology applications until recently were limited in scope and impact. Some courts implemented telephone information systems, with tree structures allowing callers to press buttons as they seek more and more detail. One of the most noteworthy systems of this sort is in the Maricopa County, Arizona, Superior Court, where information about forms and how to complete them is accessible in a “drill-down” telephone information system. King County helped to develop and manages a Domestic Violence Information Line which has this structure, at (206) 205-5555. Many offices now greet callers to their general phone lines with options to hear pre-recorded information or to get into the queue for the “next available clerk.” Our Clerk’s Office phone line is (206) 296-9300.

A number of technology experiments were undertaken around the country in the ‘90s. Some courts placed kiosks in the community, to provide basic information about the court system (given that few people had computers in their homes in the first half of the decade) or to allow people to obtain some basic forms they could complete as hard-copy or at the kiosk, usually for very limited purposes. These early experiments indicated the interest of the courts and clerks in opening electronic access to their services, but none went far enough to cause a general technology revolution.

CONTEMPORARY USES OF TECHNOLOGY IN THE COURTS

The ‘90s also witnessed the advent of document imaging technology in many courts, often including electronic workflow tools to help automate the steps of processing scanned documents. One of the earliest applications, in DuPage County, Illinois, continues to operate, though the paper file is still maintained as before. The first such application in Washington State was at the Clallam County Superior Court Clerk’s Office, again with hard copy records maintained alongside the images. Nevertheless, imaging has caught on, for many good reasons:

- when imaging alone is maintained as the official record, expensive hard copy systems will no longer have to be maintained (even though many choose to maintain them anyway);
- with imaging, the misfiled document or case file is no longer and the expense of extensive searching to find them is eliminated (a court administrator in Los Angeles Superior Court said this saving alone paid for the imaging they put in the Probate Department there);
- with imaging, more than one user at a time can use a case file, otherwise available as hard copy only to one person at a time;
- images can be secured against mischief or alteration in ways that hard copy cannot be protected (stolen pages and white-out are easier to accomplish than breaking into the well-secured systems that have been built or subverting back-up systems).

Many courts have purchased or individually developed in-house case management systems and other applications to meet day-to-day needs in managing a court. A substantial number of vendors provide products for almost every conceivable aspect of court processes, including court reporting and transcription systems, to video recording of court proceedings, electronic retrieval systems for microfilm and other records, desktop applications for judges and administrators, criminal identification systems, exhibit and file tracking systems (often using barcode technology), jury management systems, and more. Judicial technology conferences are more and more frequent. The Court Filing Conference #7 will be held in Baltimore this fall. The National Center for State Courts has established and continues to develop “Courtroom 21” where new technology is tested and displayed, trying to keep up with widespread innovation.

THE TECHNOLOGY OF TOMORROW AND THE FUTURE

Courts and clerks are now looking toward electronic filing and fully electronic documents, as the basis for an overall integration of technological architecture for the courts, and this in the near future. Much creative development, by courts, by administrators and clerks, by vendors, is taking place now, seeing the Internet and the World Wide Web as the basis on which to build such visionary systems.

Documents that can be constructed electronically, signed digitally, and submitted and retrieved securely over the Internet are the basic components of new and exciting systems of information management and record-keeping. Electronic filing and retrieval promises to maximize automated data transferal, greatly reducing the mechanical labor to be done. Information, in the law firm, in the courthouse, and for the public will become readily and quickly available, to build judicial knowledge and support the court's decision-making as never before. Extensive work is under way now to build data models and electronic document standards that will bring electronic filing systems into being over the next several years.

Beyond electronic filing, court and administrative visionaries see intelligent knowledge and intellectual property management systems that will integrate the power of the Internet with the case management, document management, and financial management aspects of court administration. A few are excited by the potential for "The Semantic Web" that would revolutionize our work processes even more by enabling our computers to comprehend data and documents through intelligent searches through an ever-expanding Web (see *Scientific American*, May 2001, pp.34-43). The concept of "document" is already being changed from a piece of paper to a dynamic record of compiled information from whatever sources are available. The capabilities of the individual, the litigant, the lawyer, and the law firm will be greatly increased as they gain ever more research tools and document authoring support to bring cases and information before the courts.

THE "NEXT BIG THING," ELECTRONIC FILING

Electronic filing is coming quickly onto the scene. Already in many federal courts it is encouraged (and sometimes required) that litigants present their documents in the Adobe PDF (Portable Definition Format) form. These documents, which retain the "look and feel" of their paper counterparts, are nevertheless easy for the court to access with computers and to store without expensive physical file systems. Other courts (Court of Appeals, Division 1 is an example) are substituting electronic mail for processes previously handled by filing documents. Still others are working with the proprietary products of individual vendors who are working hard to establish footholds in the legal profession and in the courts.

The form of electronic filing that will move us beyond the traditional concept of paper documents will be based in the emerging technology known as "XML," the eXtensible Markup Language. XML, like its relative HTML, the language used for creating pages on the World Wide Web, uses "markup" techniques to tell computer software something about the data in a page or document. HTML tells Web browsers how to display the content of Web pages by pointing out what text is a <Title> and where a new paragraph, <p>, begins. Its "markup" is about the *display* of information, and it is by now well known all over the world. XML, in contrast, is designed to use "markup" to give software information about the particular data elements within a document. Thus, XML might mark a <CaseNumber>00-1-12345-6</CaseNumber> in such a way that a program can distinguish it from a

<Judge>Hon. John Smith</Judge> or an <Address>123 Main Street, Seattle, WA 98101</Address>. This capacity makes it possible for software to locate data based on what the “markup” points out, so data entry can be accomplished by automated steps. This happens much more quickly and efficiently than when the work is done by people who have to read through text and locate information they must then re-type into their data systems. Computers also make fewer errors than people do when engaged in mind-deadening repetitive key-stroke labor. Computers don’t get repetitive stress injuries or suffer the effects of carpal tunnel syndrome.

The most significant work being done today in this field is the careful building of Standards for XML applications to legal documents. An international collaboration that began in 1998 has now grown to become a standards-development non-profit organization known as “Legal XML, Inc.” (See <http://www.legalxml.org>.) Work groups that include vendors, court administrators, clerks, and other interested parties, along with experts in XML technology, are building standards now, so the applications to come can be based on the same fundamental architectural principles. While the unique differences of each court will always be there, at least we can look forward to a way of handling electronic filing and legal data that is generally consistent regardless of the jurisdiction or locality.

The potential for XML technology is exciting and daunting at the same time. It shows both the potential and the large amount of work to be done in legal information technology development. There is no doubt that standards-based “markup” of data and metadata will greatly facilitate information exchange for all concerned. New systems will, in time, be paid for by the return of great savings in reduced human data entry and increased automation of processes. Documents will take on a new role as a repository for a “snapshot” of data taken at a particular time and made into an electronic “record” supporting judicial decision-making, legal business, and private use of judicial information. Data from multiple sources, software platforms, databases, and languages will be easy to combine and organize for presentation through the tools of new technology. The Web will continue to grow, as will the tools for validation, authentication, and security of documents and case files, as a means for ready access to information and for interacting with the courts.

ADDITIONAL BENEFITS FROM XML

There is little doubt that XML and related technology will constitute a large part of the basis for the integration of information systems in our justice system. Justice system integration will make data captured at the law enforcement level quickly accessible to the prosecutor, defense attorney, court, and others, without anyone finding it necessary to re-key data items after they are first entered. Court data will flow readily to appellate courts, detention facilities, probation services, and wherever needed within the justice system.

As new technology frees us all from paper-based, physically constrained systems and ways of thinking, we will evolve new ideas about Time and Space that will affect our ongoing business. As technology makes information readily accessible at any location linked to the Web, certain judicial processes will be conducted on-line, with parties separated geographically from each other. Many items of information will be available without waiting on a face-to-face encounter. Workers who have heretofore had to commute into the office in the central city will become able to telecommute from their homes thanks to Web-based links to their work and their work tools.

CONCLUSION

The march of technology is becoming more and more relentless. For some, that is cause for anxiety or even fear. For others, it is perceived as a rare opportunity in history where basic concepts can be re-thought and ways of doing things can be re-invented. As always, technology will not do everything for us. Technology will not make our decisions for us on what we should do with our technology.

However, so long as we individually remain outside the arena where technology decisions are being made, we will, each and every one, be separated from the opportunities we might have to contribute to that important process. Whether speaking as a judge, a lawyer, a clerk, a litigant, or a citizen, on matters of technological architecture, use of funds for technology, or the choices we make as individuals about the technology we are willing to use and, often enough, to buy, we can each lend our voice to this unfolding process and make sure that our values, concerns, and dreams are included in what is to come.

Seattle, Washington
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