

Position Paper on The Emergence of E-Everything

Conference of State Court Administrators

December 2005

Board of Directors, 2004-2005

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The Conference of State Court Administrators (COSCA) was organized in 1953 and is composed of the principal court administrative officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands.

THE EMERGENCE OF E-EVERYTHING

I. Motivating Issues

Many judges and court administrators can recall a time when the courts operated without modern technology. But since the first computerized case management systems were tested decades ago, technology has revolutionized the work of the courts and has become an essential tool of the judiciary in meeting its obligation to serve the public as efficiently and effectively as possible.

As people around the world have embraced the Internet and other advanced technologies into the fabric of their personal and professional lives, the demand on government organizations for technology based services has increased. The public expects no less of the courts. Today, the judicial branch is expected to use modern technology to increase convenience, reduce costs, and improve access to justice.

Technology has also changed the scope of the judiciary's responsibility to preserve the American tradition of open courts. Now, thanks to the World Wide Web, courts have the opportunity to enhance the public's ability to meaningfully observe and participate in the judicial process. In this modern age, citizens have the option of going to the courthouse to access court records or documents, or visiting a virtual courthouse where information is available at the click of a mouse. Parties can participate in virtual hearings and meetings, retrieve court records, track the progress of their cases, complete and file complaints and other court documents online, obtain legal information if they are unrepresented, and pay fees and fines via credit card - all without having to leave their homes or businesses.

This electronic access revolution presents important challenges for the state court community. Courts must determine which electronic access projects to undertake, how to balance public access with rights of personal privacy and how best to pay for electronic access technologies. To meet these challenges and ensure public confidence in the judicial system, judges and court administrators must develop effective governance policies that address the issues, advantages and difficulties presented by integrating electronic access technology into the court environment. Although technologists provide the expertise for implementing electronic access to the courts, judges and court administrators are the ones who formulate policy and determine which best practices should be followed in any electronic access implementation plan.

This paper addresses some of the policy and logistical issues surrounding the electronic access revolution in the state courts. COSCA believes that it has an important role in initiating discussion and offering guidance regarding development of electronic access projects. In view of the complexity of the issues and the widely varying circumstances facing different jurisdictions, the goal of this paper is not to provide definitive solutions but to offer suggestions, instructive examples from other states

and an overall policy framework within which state courts may establish their own electronic access strategic plans.

II. Core Principles

1. Court information and services should be open, accessible and convenient through the use of electronic access technology

The principle that courts are presumptively open to the public has long been embodied in statutory and common law. Indeed, the public character of court proceedings is a distinctive trademark of the American justice system. This traditional principle takes on new meaning with the advent of the Internet and the latest remote access technologies. Thus, as a threshold issue, the judiciary and court administrators are confronted with the question: what is the court's obligation to implement electronic access technologies?

Electronic access enhances our citizens' fundamental right to an open judicial process, facilitates access to court services, improves the public's awareness of the judiciary's role as the guardian of the rule of law and advances the court's ability to justly resolve society's disputes.

Electronic access also provides added conveniences which the community expects, if not demands, from the courts. The public presumes that the courts should provide the same kind of technology based services which they enjoy in the private and public sectors - they believe that if they can pay their income taxes and file their tax returns with the IRS electronically, they should be able to pay traffic tickets online.

Centuries before the promise of technology, the nation's first Chief Justice, John Jay, stated that, "Next to doing right, the great object in the administration of justice should be to give the public satisfaction." By implementing electronic access to court data and providing electronic services, courts have an unprecedented opportunity to use technology to provide public satisfaction in the modern world.

Thus, while there is no definitive directive covering the state court community's responsibility to implement the latest or most advanced electronic access technologies, one thing is clear: courts have the obligation to carefully examine the issues, advantages and disadvantages surrounding electronic access in the court environment, and to the extent practicable, implement electronic access initiatives to better serve the public.

2. Electronic access should be free or inexpensive

How should electronic access projects be funded? Who should pay for the technology that supports electronic access? In the Internet Age, the public tends to assume, perhaps unrealistically, that everything on the web should be free. Therefore, state courts should make an effort to provide some free electronic access services. For example, almost all courts have made their court forms available

online at no charge.¹

While electronic access may provide added convenience and cost savings to the public, it is not a given that there will be cost savings to state court systems. Therefore, courts must consider whether the efficiencies attributable to new electronic access technologies will result in operational savings and whether ongoing maintenance costs can be absorbed in existing operational budgets.² It may be necessary to develop strategies to provide funding for implementing and maintaining electronic access initiatives, including reallocating existing resources or freeing up old resources from customary but less critical tasks.

Funding for initial implementation of electronic access initiatives may also be provided by programmatic grants or the executive branch. Legislatures may permit the judicial branch to participate in funding initiatives for qualified projects or be willing to fund court technology innovations that are especially popular with constituents such as online payments and hearings. Where executive branch agencies share in the benefits, such as by receiving services or data, they may be persuaded to share in the cost of providing the technology. Without question, legislation mandating electronic access projects must provide for adequate funding for court implementation.

Whether electronic access initiatives are funded through existing budgets, legislative appropriation or grant funding, it is critical that courts ensure accountability by developing detailed economic analyses for any new project. By presenting sound projections of costs and benefits, including new efficiencies and labor savings, courts are more likely to persuade the legislative branch and other grantors of the value of electronic access initiatives and ensure continued funding.

However, at a time when court budgets continue to be austere and legislatures are reluctant to provide new funding streams, many judiciaries are struggling to find ways to fund electronic access implementation. Accordingly, some courts charge fees to pay for the technology infrastructure and the associated costs involved in providing electronic access to court services.³ In many cases, the precedent for payment currently exists in the paper world and these courts need only recalculate the cost of providing the service electronically. Other courts have contracted with private vendors which charge users for electronic access to the courts. This approach raises various concerns such as entrusting confidential information and security to external organizations and being able to monitor the quality of services provided. Court administrators must also ensure that waiver provisions exist for the indigent so that the virtual courthouse is equally accessible to all users.

¹The Maricopa County, Arizona courts make forms available online which can be printed or downloaded and completed using word processing software from their Self-Help Center (http://www.superiorcourt.maricopa.gov/ssc/info/gen_info.asp)

²A survey of state court systems may demonstrate actual savings realized in implementing electronic access, including those savings attributable to a reduction in staffing levels.

³The Federal Courts have been directed by Congress to fund electronic access through user fees.

There is no one right answer to the question of whether electronic access to the courts should be provided at no charge or for a fee. This question must be answered by individual court systems based on their circumstances and the expectations of their constituencies. Clearly, by charging prohibitive fees for electronic access, courts will limit their success in expediting open access to the courts and fostering public satisfaction in their communities. Therefore, state courts, consistent with their missions, objectives and fiscal circumstance, should use their best efforts to provide free or low cost electronic access to the courts.

III. Electronic Public Access Best Practices

The obligation to serve the public effectively and preserve the American tradition of open courts in today's technologically advanced world may be fulfilled through various means of electronic access, including placing court data on the web and providing E-services both on the web and inside the courthouse. This section discusses the challenges faced by court administrators in these areas and suggests some emerging best practices.

1. Providing Court Information on the Web

Over the past few years, there has been an explosion of court data on the Internet. It is useful to categorize these data into three types - court system information, case data and case documents or records - and to consider the associated issues and best practices separately.

a. *Court system information*

Traditionally, news and information regarding the courts has been provided to the public through print and the media. Now, the Internet provides court administrators with a powerful tool for communicating with the public. Most court systems have developed websites where litigants, attorneys, jurors and the general public can access a wealth of information about the courts.⁴ Court websites commonly post news releases, employment information, court rules and legislation, judicial directories and court forms which can be completed online. Some court websites make jury service more convenient by providing answers to frequently asked questions about jury service or giving prospective jurors a virtual tour of the courthouse and jury room to make them feel more at ease.⁵

⁴For a listing of the 2005 "top ten" court websites, see <http://justiceserved.com/top10sites.cfm>. See also <http://www.ctc8.net/toptenentry.asp> (NCSC top ten websites from the 2004 technology conference); <http://lib.law.washington.edu/ref/bestprac.html#Ten> (Ten Criteria for Building a Terrific Court Website); <http://www.court.state.nd.us/AALL> (Court Websites that Work - Justice Dale V. Sandstrom, North Dakota Supreme Court).

⁵ A growing number of court websites permit jurors to complete qualification questionnaires online and request postponements or receive reporting instructions via the Internet, including Utah, Wisconsin, Delaware, Pennsylvania, D.C., Florida, California and New York. The San Diego County Superior Court

From basic information such as courthouse addresses to interactive tutorials for self-represented litigants, these websites provide a doorway to the court system, in the process fostering improved public access and confidence in the courts, particularly for jurors and the self-represented. Online access to court system data benefits the courts by decreasing the frequency of inquiries made by phone or in person.

Most of these web-based information services are uncontroversial, but court administrators should always be conscious of the potential for misuse of information. For example, judges may raise security concerns about providing biographical information on the court's website. Moreover, court systems must be extremely diligent in protecting the confidentiality of juror information and identities on the web.

Court websites should be accessible to the disabled, certain non-English speakers, the self-represented and court users of all education levels. Many courts are committed to making their websites accessible for individuals with disabilities by reviewing and redesigning their sites to ensure that they comply with the Web-based Internet Information & Applications guidelines⁶ as well as Section 508 of the Rehabilitation Act of 1973.⁷ State court systems have the options of developing their own accessibility guidelines,⁸ using specialized software programs to test for website accessibility⁹ or hiring consultants to make sure the website content meets relevant standards including those discussed above.

How much information should be available on the website? What court services should be provided online? What are the court's responsibilities in this regard? State courts must act within their fiscal constraints and cannot be expected to implement every available feature or service on their website. Consequently, the overall best practice is to apply the core principles set forth above and strive to provide information and services to the fullest extent possible in order to better serve the public.

In doing so, it is recommended that court administrators provide "one-stop shopping" for court information and services by establishing access through a single statewide court website. Indeed, the average court user finds it difficult and inconvenient to navigate through various websites for different

website provides a simple schematic of a typical courtroom with descriptions of the roles of the various parties and areas of the courtroom.

⁶See <http://www.access-board.gov/sec508/guide/1194.22.htm>

⁷The Rehabilitation Act, as amended in 1998, requires federal agencies to make their electronic and information technology accessible to people with disabilities.

⁸ e.g. Washington.

⁹ See <http://www.watchfire.com/resources/bobby-overview.pdf>.

court levels and jurisdictions. By establishing a central homepage or portal for state court information and e-services, the court provides unified services in a manner more closely oriented with customer needs and expectations.

Court administrators should also consider establishing a comprehensive plan to phase in new content and enhanced services over time. Helpful strategies to develop the future direction of the court's website include appointing a committee of lawyers and lay persons to recommend improvements. These user committees may unduly press court administrators to do the impossible - to stay ahead of the information explosion - but they may provide an important outside perspective.

It is fundamental that court administrators establish procedures to ensure that their websites are well managed and kept up-to-date. Wrong information or missing links erode public confidence in the ability to provide effective services. The original model, still in widespread use, is to place website management under the court system's technology group. However, given that the court website increasingly represents the public face of the state's judiciary, it is advisable to transfer website management to operational staff or have web development staff report directly to the state court administrator. In any event, a clear best practice in this area is to develop effective procedures to routinely review changes in laws, rules, judicial assignments, staff, addresses, telephone numbers and any other court information provided on the court's website.

b. *Case Data*

Case data refers to information entered in case management computer systems regarding individual cases, such as names of parties and their counsel, filing dates, assignment of judges and scheduled appearances. Many courts publish case data on their web sites (although court rules or statutes may exclude personal identifiers) and update this data regularly. This data is made available to court users around the clock, seven days a week. The most basic case information that courts can provide on the web is the calendar of scheduled cases. Calendar information is part and parcel of most automated case management systems and the technology to display this information on the web is relatively simple. Thus, at a minimum, providing basic calendar information is recommended as a definitive best practice for all courts - large and small. Courts should also strive to build websites which permit viewers to search for cases using multiple criteria and allow the results to be flexibly sorted and formatted in useful ways.

Even in the seemingly innocuous area of web-based calendar information, there are a number of policy issues for court administrators to consider, such as the importance of having a clearly articulated system for correcting errors and protecting litigant privacy. Funding is also a predominant concern. Some states offer basic calendar information for free.¹⁰ Some states also offer

¹⁰ The Alaska courts (www.state.ak.us/courts) provide trial court calendars, updated hourly (except for Juneau), at no charge; the Florida courts (www.flcourts.org) provide free searchable Supreme Court online dockets and a listing of opinions, plus archived briefs and press summaries; the Virginia courts (www.courts.state.va.us/scv/home.html) offer a free searchable database of opinions from the Supreme Court

free email alerts and other services,¹¹ while others offer free calendars on the web but charge for extras such as email alerts.¹² Some court administrative offices sell their case information to vendors who offer web-based court information services, a practice which can generate significant court revenues. Some courts do both - the court system provides basic case information on their web site and also sells case information to vendors who, for a fee, offer more comprehensive web-based information services.¹³ These vendors often market their services to attorneys with multi-state and/or federal practices by packaging case information from the federal courts and other state courts and by providing advanced features such as enhanced email alerts and a variety of legal reference materials. Court administrators must consider whether it is advisable to invest time and resources in competing with vendors committed to selling deluxe services.

Court administrators are learning a number of lessons as their experience with web-based case information increases. First, the more information and services the courts offer for free, the less attractive that data will be to small vendors who do not offer enhanced services. Secondly, to safeguard against “mining”¹⁴ of court data by vendors and others with improper motives or who would prefer to help themselves to court data without paying for it, court administrators must carefully monitor system usage and consider employing safeguards¹⁵ to defeat mass data mining efforts.

Finally, while not an open access issue or a direct public service, the demand to send or receive court information between courts and local, state and federal agencies is growing at a rapid rate. Electronic data access technology which interfaces across agencies and branches of government, such as integrated justice information systems, fosters greater efficiency in the courts and enhances public confidence in the entire legal system. This technology bridges the gap between the courts and other agencies, such as law enforcement, prosecution and corrections by allowing them to communicate

and Court of Appeals.

¹¹ The Texas courts (www.courts.state.tx.us) offer opinion and case searches, plus a free e-mail notification service for the Supreme Court and Court of Appeals.

¹² The New York courts (www.courts.state.ny.us) offer free public access to active civil Supreme Court cases and select decisions and a fee-based service for email alerts and additional functions.

¹³ e.g., Kentucky and New Jersey.

¹⁴ Data mining refers to the use of software designed to extract hidden predictive information from large computer databases, often for marketing purposes. Vendors have been known to mine and resell free data from court websites. Others improperly mine web sites to obtain email addresses for spam attacks. Mining can place an extra burden on network traffic and slow down court computer systems.

¹⁵ Web security techniques have been developed to defeat these automated data mining programs, most notably the “Captcha” tests used by Ticketmaster and others. See e.g., www.captcha.net. These techniques are not foolproof and can limit access by the disabled.

electronically and efficiently track offenders through the criminal justice system from arrest to incarceration.¹⁶ Specialized courts, such as drug treatment courts, have also utilized integrated systems on a smaller scale, which link the courts with partner agencies to facilitate access to treatment and other participant data.

In 2000, COSCA issued a position paper on court leadership in Justice Information Sharing.¹⁷ Court administrators should revisit that discussion and make it a priority to continue the implementation of data and information sharing electronic access technologies to enhance efficiency in operations.

c. *Case Documents*

The concept that court records should be accessible to the public has been explored in depth by COSCA and CCJ.¹⁸ This policy remains unchanged, irrespective of whether court records are in paper or electronic form. Many courts throughout the country have begun implementing electronic access to court documents. They face the difficult challenge of how best to ensure the protection of individual privacy rights while providing public electronic access to courts processes.¹⁹ Obviously, some court records contain personal or sensitive information which should not be broadcast electronically, and other court records contain information which should not be public at all, unless the court orders otherwise. To maintain public confidence in the judicial system, adequate privacy safeguards must be built into the courts' electronic document access projects and budgets. Moreover, jurisdictions should carefully examine state statutes, court rules and decisional law to ensure

¹⁶ Early successful integrated systems were Colorado's CICJIS program and Pennsylvania's Justice System Network, JNET.

¹⁷ See COSCA, Position Paper on Court Leadership in Justice Information Sharing, 2002 (<http://cosca.ncsc.dni.us/PositionPapers/CourtLeadershipJusticeInfoSharing.pdf>); National Consortium for Justice Information and Statistics (SEARCH) Justice Information Exchange Model (<http://www.search.org/programs/info/jiem.asp>).

¹⁸ COSCA, Concept Paper on Access to Court Records, 2000 (<http://cosca.ncsc.dni.us/PositionPapers/courtrecordaccess.pdf>); Steketee and Carlson, Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts, 2002 (www.ncsconline.org/WC/Publications/Res_PriPub_GuidelinesPublicAccessPub.pdf).

¹⁹ The Vermont courts addressed privacy and electronic access issues, concluding that the same rules apply to paper and electronic records (<http://www.vermontjudiciary.org/rules/publicaccess.htm>); see also Wisconsin's Access to Information on the Internet Policy (<http://wcca.wicourts.gov/AB0304.xsl;jsessionid=1C1545454188D687E3A46761EB2F93F4.render4>); Florida's Committee on Privacy and Court Records Draft Report and Recommendations, May 6, 2005 (http://www.flcourts.org/gen_public/stratplan/bin/public_comment.pdf); Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files (<http://www.privacy.uscourts.gov/Policy.htm>).

compatibility with new access technologies and policies.

As a practical matter, even in this electronic age, the “paperless court” remains a distant goal for most courts. The majority of case documents are still filed, stored, accessed and read in paper form. However, many courts have begun posting appellate court opinions online. These can be prepared in an electronic format and are easily posted and maintained on the court’s website. A smaller number of courts also publish trial court decisions on their websites.²⁰ Trial court decisions can involve redaction issues. In addition, court administrators must decide whether they can be directly sent to the website from judges’ chambers (without signature), or whether they must be signed by the judge and stamped and “entered” by the county clerk before being scanned to the website. Some courts take the easier, former approach, recognizing that the web copy is unofficial but better than nothing. Others follow the more labor intensive approach of scanning the decision after it is signed, stamped and entered.

Fewer courts publish pleadings, motions and other trial court papers. This undertaking can be complicated because often the documents are voluminous and must either be scanned by the court or e-filed. Trial court papers also have the greatest potential of containing confidential information that must be redacted before being placed on the web.

Courts are addressing privacy concerns in different ways. Some states are as open as statute and court rule permit and make no distinction between documents available at the courthouse or remotely over the Internet.²¹ Other states are prohibited by law from publishing certain case information and thus restrict the range of documents that they publish online, typically excluding domestic relations, child protective and domestic violence cases. Some courts have issued guidelines or local rules to judges and attorneys about how to prepare decisions and orders without revealing sensitive information about children, social security numbers and bank accounts.²² Some states build in a time lag to account for sealing requests that may not occur immediately. But most courts²³ essentially publish in real-time, except where sealing has been requested and not yet ruled on. Some courts are also considering the use of redaction software to eliminate personal information, particularly in paper files that are later scanned and made available electronically.²⁴ However, this approach presents cost, reliability and liability issues.

²⁰ The E-Government Act of 2002 requires that all federal courts have websites that provide access to the substance of all written opinions in a text searchable format.

²¹ e.g. Washington and Maryland.

²² See, e.g. <https://ecf.cand.uscourts.gov/cand/faq/tips/redacting.htm>.

²³ e.g. Colorado.

²⁴ See, e.g. Intellidact (<http://www.csisoft.com/applications/intellidact.php>), RapidRedact (<http://www.rapidredact.com>) Redax (<http://www.appligent.com/products/redax/redax.php>).

Moreover, it is important to recognize that once information is put on the web, it can be copied and saved by anyone. Even if a document is later removed because of sensitive information or sealing, it may well continue to live on in some search engine or corner of the web.

Court administrators must address whether users should pay for document access. The general public prefers that this service be provided free of charge, but attorneys and other organizations who routinely use this service are accustomed to paying appropriate fees in the paper world, fees that judicial systems have long ago built into their business models. Thus, courts may well choose to extend these user fees to the electronic world. However, fees for online documents should be relatively inexpensive or the goal of promoting public access will be defeated.²⁵

Paying for scanning projects, document management systems and online querying and e-commerce applications can be expensive. After the initial investment, however, these technologies have the potential to pay for themselves by introducing new efficiencies and cost savings.²⁶ Courts must make it a point to document these cost savings through standard economic analyses to justify projects to executive branch leaders.

In sum, all court systems should work to ensure that court records are available to the public in paper and electronic form, subject to individual privacy rights. And, if only one best practice can be undertaken by all courts at this time, it is to provide free public access to their appellate court decisions online.

2. E-Services

a. *Electronic Filing*

Electronic filing generally refers to the filing of case documents via the web. Increasingly, courts around the country are implementing e-filing to varying degrees: in individual counties, for specific courts or a statewide basis for certain case types only.²⁷ While many are planning e-filing projects, others have adopted a 'wait and see' approach to determine how successful these projects are elsewhere.

²⁵ The federal judiciary's Public Access to Court Electronic Records (PACER) system (<http://pacer.psc.uscourts.gov>) offers access to court data and records over the Internet for eight cents per page, with the total charge not to exceed the fee for 30 pages. Moreover, no fee is charged to users who incur less than \$10 of use in a calendar year, and no fee is charged to parties for documents they are entitled to receive as part of the legal process.

²⁶ For example, the Miami-Dade courts have been able to re-deploy considerable clerk resources after the implementation of their SPIRIT system (<http://www.miami-dadeclerk.com/dadecoc/Spirit.asp>).

²⁷ Besides the Federal courts, e-filing programs exist in Arizona, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Michigan, New York, Ohio, Texas and Washington, to name a few.

In most e-filing locations, state law and local court rules liberally permit, but do not require, e-filing. In some states, legislatures have only permitted e-filing for certain types of cases in selected jurisdictions for limited periods of time, thus severely restricting the e-filing audience.²⁸ In only a few jurisdictions is e-filing mandated, and usually only for certain case types. By contrast, e-filing is gradually becoming mandatory throughout the federal court system.

A recent survey conducted by the National Judicial College of 6000 state trial judges found growing momentum for e-filing.²⁹ The advantages of e-filing are obvious. It reduces paper usage and storage, reduces trips to the courthouse for litigants and attorneys, enables them to file, access and review court papers on a 24- hour/seven day a week basis, provides flexible options for payment of filing fees, reduces the courts' data entry effort, cuts down on the flow of paper and provides web-based access to court documents for judges, court staff, attorneys and litigants.

But while there is much talk about e-filing as the wave of the future in court administration, the majority of cases continue to be filed in the traditional way: in person, on paper, and at the courthouse. Moreover, e-filing presents technical, legal, logistical and policy issues which require court administrators to adopt new policies and emerging best practices.

Judges and their law clerks may find it difficult to review documents, especially inches-thick motions, in electronic format and may thus end up with the time consuming task of printing them out, or requiring the attorneys to also supply paper copies. Attorneys may be reluctant to have their case papers made available on the web in electronic format, even if they are in a "secure" format. Thus, some e-filing systems permit attorneys to withhold electronic documents such as pleadings and motion papers from the public part of the e-filing website or restrict access to the parties involved in the particular case.

In states which utilize vendors for e-filing services, the e-filed court data is kept by the vendor which means that court administrators and court technicians must develop policies and procedures to ensure that vendors comply with court rules governing the security, confidentiality, validity, storage, retention and backup of the court's data.

The recent National Judicial College survey identified budgetary concerns as a potential barrier to e-filing. Some courts have found that they derive internal efficiencies from e-filing and thus do not charge fees. Under this "no fee no vendor" model, the court provides funding from its budget. Other courts have used a vendor fee model which permits implementation of e-filing without dedicated project funding from their operational or capital budgets. In the vendor fee model, vendors establish

²⁸ e.g., New York

²⁹ The National Judicial College Judicial Survey: Electronic Filing in U.S. State Trial Courts, 2005 (<http://www.lexisnexis.com/efiling/NJC-E-filing-Survey-060705.pdf>)

public-private partnerships with the courts and return a portion of the funds generated by the project to mitigate any financial impact to the courts. As open standards³⁰ for e-filing become established, courts will be able to permit vendors to compete for the e-filing business of litigants.³¹

Where fees are charged, attorneys generally find the cost worthwhile because the vendors provide value-added services, such as better interfaces and access to multiple jurisdictions. Although charging a fee for e-filing may be appropriate, court administrators must be careful to avoid creating access to justice barriers.³² Furthermore, economic incentives for continued manual filing will persist if courts charge, or permit vendors to charge, excessive fees.

Under the vendor model, courts and vendors work together to provide a web-based “front-end” system to e-filers that eventually feeds the court-based automated case-processing system on the back end. Building this “back-end” interface may require court resources or, in some instances, can be built by the vendor.

Many of the current e-filing implementation projects use a “vendor-hosted” model.³³ However, the federal court system hosts its own application and a growing number of courts are now working with vendors to host their own applications which are installed by vendors based on a standard filing engine.³⁴ In addition, a few jurisdictions have built their own e-filing applications from scratch or with open source software.³⁵ Courts building their own e-filing applications are increasingly basing court interfaces on open standards³⁶ and following existing industry standards for web messaging.³⁷

Another key policy issue is whether e-filing should be mandatory or voluntary. As a threshold matter, court administrators must evaluate whether mandatory e-filing requires legislative action and, if so, whether there is sufficient support in the legislature to mandate e-filing. Court administrators should

³⁰See COSCA/NACM Functional Business Process Standards for Electronic Filing and the Global Justice XML Data Model (GJXDM) for XML content.

³¹The e-filing technical standards in California support this approach.

³² Colorado has contracted with a vendor to charge attorneys for filing, but permit free filing for pro se litigants and other categories of cases (<http://www.courts.state.co.us/iis/projects/efile/iisefile.htm>).

³³ e.g., Colorado.

³⁴ e.g. Utah.

³⁵ e.g. Nebraska, Georgia and New York.

³⁶ COSCA/NACM Functional Business Process Standards for Electronic Filing and the Global Justice XML Data Model (GJXDM) for XML content.

³⁷ Web Services-Interoperability family of profiles.

work closely with Chief Justices who have a critical leadership role in building the framework for e-filing. Courts must also assess the attitude of the legal community. Will the bar object to mandatory e-filing or is it the only way that e-filing will ever be universally accepted? If given the choice, will attorneys actually utilize voluntary e-filing? In jurisdictions where e-filing is mandatory, court administrators have worked hard to enlist the support of the bench and the bar. In generating momentum for e-filing, it is helpful to implement pilot programs with respect to particular cases or in specific target areas within the state court system. While many pilot programs have focused on civil litigation cases, court administrators should not overlook the advantages of instituting e-filing for other types of matters, such as traffic and domestic relations cases, particularly in rural areas where e-filing will significantly reduce litigant travel or where savings can be documented and attributed to the e-filing pilot with less difficulty. If these pilot programs prove successful, it is much easier to implement a statewide program. Finally, to allay the bar's anxiety over e-filing, it is critical that the courts offer training programs and ongoing technical assistance.

b. *Electronic commerce*

Electronic commerce refers to any moneys transacted with the court by litigants using Internet technologies. E-commerce increases convenience by allowing litigants to pay their fines and fees online and by credit card, improves court efficiency and facilitates revenue collection. Many courts implementing e-commerce applications use standard e-commerce infrastructure for all e-commerce transactions and implement industry standard security features.³⁸

The prevalent issue facing court administrators in implementing e-commerce technologies is whether local or state laws prohibit courts from passing credit card fees on to litigants. In jurisdictions where courts cannot collect these fees from litigants, courts have resolved the issue by contracting with third-parties and vendors who process payments and collect the extra fees. The vendors then remit payment of the original fine or fee to the court.³⁹ Where e-filing vendors host filing applications, the vendor typically handles the e-commerce transactions and passes on to the court only the necessary accounting information.

Courts which do not hire vendors generally “reuse” the state, county or municipal e-commerce engine for their court payments and integrate it directly into their applications. These courts usually absorb the fee, based on a belief that the convenience of online payments will result in enough additional

³⁸Providers for e-commerce credit card processing include VeriSign (<http://www.verisign.com>), Authorize.Net (<http://www.authorizenet.com>), and Official Payments Corp. (<https://www.officialpayments.com>).

³⁹Third parties and vendors used by courts to collect fines and fees online range from general payment vendors such as PayPal (<https://www.paypal.com>) to government-specific vendors such as EzGov (<http://www.ezgov.com>).

revenue collection to offset the cost or in the hope that with the increase in revenue the legislative branch will eventually support a change in the local law or rule.⁴⁰ Whether or not this becomes the predominant payment model remains to be seen, but it does suggest that a possible best practice in regard to e-commerce is for courts to absorb credit fees as a cost of doing business.

c. *Electronic appearances*

Electronic appearances may range from video conferences to online hearings and other court proceedings. Many courts have implemented electronic appearances to increase court access, improve efficiency and promote convenience and safety. While judicial officers may devote the same amount of time to electronic appearances, this technology can greatly reduce costs to litigants. Electronic appearances are often provided for free or at a nominal cost.

The most common type of electronic appearance is video conferencing.⁴¹ Video conferencing is being used around the country to conduct arraignments, appellate court arguments, probation interviews, and pretrial conferences without requiring personal appearances.⁴² While video conferencing projects have long been in existence,⁴³ the vast majority of state courts have used this technology primarily for prisoner arraignments to reduce transportation and security costs. However, video conferencing can benefit other litigants by eliminating attorney travel and waiting time. It also enhances the efficiency of court operations by eliminating travel associated with judicial and non-judicial staff meetings, education, and administrative matters. Further, video conferencing can be used to address security concerns and facilitate sensitive testimony for witnesses such as children and victims of domestic abuse.

Video conferencing can be very beneficial to the courts if implemented in the types of simple proceedings and situations described above. However, this service can raise significant concerns, principally in criminal proceedings, ranging from the adequacy of legal representation when defense counsel participates from a separate location to the right to confront witnesses. Traffic mitigation hearings are a popular form of electronic appearance based on their convenience. When such online hearings are integrated into court operations, courts should pay careful attention to underlying

⁴⁰The courts in Lake Havasu City, Arizona, where there is considerable tourist traffic, found that credit card payments have increased revenue significantly and decreased the number of cases where defendants failed to appear. Courts in Utah also absorb the cost of credit card fees.

⁴¹ While most video conferencing systems require cameras, monitors, and cables, newer technology allows video conferences to be transmitted over existing local area networks (LANs).

⁴²The courts in Delaware County, Pennsylvania have allowed attorneys to use them for depositions.

⁴³In 1972, an Illinois court first used video technology to conduct video phone bail hearings. In 1974, a Philadelphia court installed a closed-circuit television system for preliminary arraignments and in 1983, in Dade County, Florida, the court implemented video conferencing for misdemeanor hearings.

processes to ensure they are compatible with electronic appearances. For example, electronic hearings must be documented normally in the case management and document management systems for a proper record and courts must adopt policies to protect against ex parte contacts.

d. *E-Trial*” (the “*Electronic Courtroom*”)

The electronic courtroom⁴⁴ showcases how technology can improve the quality and effectiveness of court proceedings by providing the latest amenities in court technology to litigants, witnesses and attorneys. The electronic courtroom may also provide accommodations for the disabled through the use of video evidence presentation, voice-activated microphones, assistive listening devices and computerized real-time court reporting.

In an ideal world, all courtrooms would be equipped with the most advanced electronic technology. However, these systems require sophisticated and costly equipment⁴⁵ as well as appropriate infrastructure to accommodate the latest technologies. Although there are vendors that specialize in electronic courtroom equipment, some courts are now designing their own electronic courtrooms with off-the-shelf components.

Whether most courtrooms really need this level of technology and who should pay for it are subjects not often explored. Will lawyers actually use electronic evidence presentation systems or do they really need real time court reporting? Or is it necessary only in high profile cases? Should the cost of these systems be borne by the attorneys and the litigants who choose to use them? Should the court system devote its resources to providing only the “plumbing” for electronic courtrooms such as electricity and computer wiring? Should courts accommodate vendor-based systems or permit vendors to temporarily wire the courtroom (or use wireless) when necessary?

The answers to these questions will vary from state to state based on budgetary considerations and the needs of the legal community. Those court systems interested in pursuing electronic courtrooms should at a minimum consider using portable, off-the-shelf components which permit the equipment to be used throughout the courthouse and promise to dramatically reduce the cost of such systems.⁴⁶

e. *E-Courthouse*

⁴⁴The electronic courtroom has had numerous names: Courtroom of the Future, Courtroom 2000, and Courtroom 21, which was introduced in September 1993 by the College of William and Mary and the National Center for State Courts as the most technologically advanced courtroom in the United States. Courtroom 23 soon followed in Florida.

⁴⁵The technologies installed in a high-tech courtroom include video cameras, monitors, projection screens, enhanced sound systems, computer access to phone lines, and computer networking to databases.

⁴⁶Experiments with this technology are underway at the National Center for State Courts’ Courtroom 21. The New York courts have found this strategy to be more cost effective than upgrading the fixed facilities in every courtroom.

Free internet access is springing up everywhere - airports, schools, libraries, coffee shops, schools, parks. Even whole cities are offering free internet access.⁴⁷ Courts are also starting to offer internet access - both wired and wireless - to courthouse users.⁴⁸ Are these courts overusing technology or simply on the leading edge of a service that will be commonplace in years to come? Should court administrators jump on this bandwagon or simply wait to see if this is a passing fad? How will they find the funding for internet access?

Providing internet access serves the interests of many court users, including jurors waiting for jury selection, self-represented litigants accessing legal assistance internet sites, employees of court-related agencies accessing their information systems, and attorneys - both inside and outside of the courtroom - who want to continue working while waiting for appearances and trials.

Where court administrators have decided to provide internet access, their approach varies from providing wired or wireless access throughout the entire courthouse⁴⁹ to providing access in specific floors or rooms like court libraries and attorney lounges. In addition to providing web access, a growing number of courts are also offering "Court Help" kiosks and terminals which provide access to legal assistance sites for self-represented litigants.⁵⁰

Implementing e-courthouse services raises a number of cost, security and propriety issues. To reduce costs, some courts have installed surplus laptops for web access in jury rooms or particular areas within the courthouse utilizing existing wired connections. In some instances, vendors have installed the equipment and provided web access for a fee to attorneys and for free or reduced fee to jurors. A drawback of the vendor approach is that the court essentially relinquishes the courthouse air waves to the vendor and might be precluded from installing their own wireless solutions because of interference between the two systems. Security issues arise with court provided computers for public use which must not only be physically secured but protected against improper access. Finally, precautions should be taken so that public computers are not used to access improper web sites by using blocking software.

E-courthouse services provide a public service to jurors, attorneys, the self-represented and other court users and demonstrate that the courts are keeping pace with the modern world around us. Therefore, court administrators should explore providing internet access in designated court areas where court users wait or congregate, such as attorney waiting rooms and juror lounges, or in areas

⁴⁷ e.g. Philadelphia; Spokane; San Francisco; St. Cloud, Florida and Hermosa Beach, California.

⁴⁸ e.g. North Carolina. Also, an August, 2004 article in Computerworld Magazine described how the court in Bernalillo County, New Mexico had begun offering free internet access to judges, lawyers and jurors.

⁴⁹ e.g. Bernalillo County, New Mexico and Bronx Housing Court, New York.

⁵⁰ e.g., California and Washington.

where traditional amenities for court users are located, such as court libraries.

IV. The Remaining Technology Policy Agenda

This paper has focused primarily on public access technologies in an effort to keep the scope reasonable and the policy discussion focused. However, a number of additional technology policies should be addressed by the state court community, perhaps in a future white paper. A brief summary of these topics is provided for courts wishing to take on a broader agenda.

1. Other Remote Services

Judicial email and Internet usage, including direct email and instant messaging communications with litigants and their legal representatives, raises issues about compliance with security controls, authentication, appropriate audit activities, ex parte behavior and proper documentation of case activities.

2. Out-sourcing

The pressure to cut costs and operate more efficiently is forcing some courts to consider various forms of out-sourcing to maintain adequate quality of service. Out-sourcing candidates include wide-area networks (WANs), local-area networks (LANs), wireless networks (Wife), electronic filing (e-filing), websites, email, file servers, personal computers and peripherals, desktop support, storage systems, backup systems, business continuity/disaster recovery services and case management systems. Many courts use municipal, county, or state information technology departments for these services.

3. Business Continuity/Disaster Recovery

Automated systems have become the life blood of daily court operations. Additionally, most courts have made it a priority to meet customer expectations regarding instant and continuous access to court services via the web. As these services become ever more critical, the courts must engage in planning for a range of problem scenarios.

4. Portfolio Planning

It has become a best practice in both private industry and among most executive branch agencies to engage in some form of "IT portfolio planning." Under this approach, agencies manage their IT resources and projects as one would manage investments in a stock portfolio. The IT portfolio is essentially a compilation of information about the agency's investments in its IT infrastructure and projects, with the information organized to show how these investments support the agency's mission and programs. The portfolio planning approach facilitates the ability of decision makers to align technology investments with agency business needs and priorities, and enables agencies to set clear goals, forecast future trends, identify technology alternatives, analyze and manage technology

investment risks, and modify the portfolio effectively in response to changes. Inherent in this concept is the requirement of identifying a business case for each project with measurable performance indicators.

5. Governance

Courts have long used well developed governance structures to run their business. In many states, the creation of a governance structure for technology has lagged. As technology becomes essential to court missions, a fully mature governance structure is mandatory. A possible emerging best practice is to have a two-level governance structure – a Court Technology Council which makes policy decisions at a high level and an Advisory Committee which makes recommendations to the Council on the more operational aspects of governance and is coordinated with the existing governance structure.

V. An Action Plan for Individual State Court Systems

The goal of this paper has been to provide an overall policy framework within which each state court system may establish electronic access policies. State courts must develop their own comprehensive and strategic plans tailored to the specific needs of their state court constituents and subject to their funding constraints. In meeting this important challenge for the state court community, state court administrators must carefully examine what types of electronic access should be provided, to what extent should each of these services be provided, how to balance public access with rights of personal privacy, and how best to pay for electronic access implementation and operational costs. Cost-benefit analyses should be included as part of any demonstration projects and court administrators should take time to develop comprehensive strategic plans that will ensure the efficient and effective implementation of best practices in integrating electronic access technology into the court environment. Moreover, state court administrators must consider the impact of new technologies on personnel practices and employ management strategies and implement new policies and rules designed to integrate new technologies into the workforce. State court administrators must ask themselves, what do we want to accomplish in the years to come? What is our 3-year plan? What is our 5-year plan? With this in mind, the following are offered, not necessarily as best practices, but as fundamental first steps to be considered by all state court administrators as they develop their own individual state court's action plan:

1. Develop integrated statewide court website that is ADA compliant.
2. Put website management oversight under state court administrator and develop protocols to keep court website up to date.
3. Appoint committee of attorneys and court users to review website and E-offerings.
4. Put all court calendars on the web for free; consider vendor role in displaying court calendars.
5. Develop protocols to ensure free.
6. Pilot e-filing; consider vendor role and adopting national data standards.
7. Offer online payment of fees and fines.
8. Pursue video conferencing experiments.

9. Construct mobile E-Courtroom for use throughout the courthouse.
10. Offer internet access to court users (attorneys, jurors) in targeted areas of courthouse.

VI. National Implementation Strategies

1. COSCA and CCJ should request that NCSC conduct a national survey of existing state court policies and strategies on implementing electronic access to court system information, case file data and court records, e-courtrooms, e-courthouses, electronic appearances, e-filing and e-commerce with particular emphasis on the ten fundamental steps outlined above. The survey should explore the issues presented by each of these services, the lessons learned, the wide range of implementation options, and the problems associated with specific implementation strategies. NCSC will act as a clearinghouse for information regarding state court electronic access initiatives received in response to the survey.
2. NCSC should convene a summit to discuss the results of the national survey and invite teams of judges, court administrators and technology staff from each state to explore methods of fostering implementation of state court electronic access initiatives. Following the summit, NCSC will prepare and distribute a report of the findings, conclusions and recommendations reached at the summit. The Joint Technology Committee will provide input and serve as a resource throughout.
3. The results of the survey and summit will be used to develop more definitive strategies for the state court community, including model policies for implementation of electronic access technologies and approaches for obtaining funding and other support from federal and state entities.