

## Coming soon to a courthouse near you: electronic filing

**I**n 1988, THE PRESIDENT, FEDERAL SUPREME COURT, FEDERAL COURTS OF APPEALS, and the federal government, along with the federal courts and the state and local courts, were to agree on a plan to use electronic filing systems. This plan, known as the "Plan for the Future of the Courts," was developed by the Federal Judicial Center (FJC) and the National Center for Judicial Services and Research (NCJS).

But the plan has not yet been implemented. The reason is simple: The courts have not yet agreed on a system. The plan calls for the courts to use a common system for filing cases. Without a common system, it is difficult to get cases filed from anywhere in the country, as well as to get at other filings," says Redgrave.

By David Brauer

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E-filing is on the upswing after several years of experimentation. Since January 1998 the U.S. Bankruptcy Court for the Southern District of New York has required electronic filing of all Chapter 11 bankruptcies. The court posts the filings on a searchable Web site: [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). "Once people use it, you're hard-pressed to take it away from them," says chief clerk Cecelia Morris. "If I even tried [to take away] a system like this, I'd be drawn and quartered."

When electronic filing is good, it's very, very good. But when it's bad, it's . . . well, just ask Ameritech Corp. In 1994 the phone company tried to automate the filing of court documents in the sprawling Los Angeles County court system. More than \$6 million later, Ameritech pulled out, and Choice Information Systems, Inc., with the assistance of Microsoft Corporation, stepped in. The project is still embryonic.

Good or bad, electronic court filing is the future. Whether it takes two years or ten, lawyers will be delivering documents electronically to courts. More than just eliminating a paper parade, electronic filing will shape the ways lawyers and courts manage their cases.

**C**COURTS—AND A FEW FARSIGHTED lawyers—have hoped to banish paper filings for years. Paper binds courts in a way that only a Stalin-era plant manager or Kafka could love. Clerks wait behind counters, manually handling hundreds of pleadings like legal postal clerks. They take information that has already been typed by a law firm and robotically retype it into a court's tracking, or case management, systems. They stuff court files into cardboard boxes, and haul boxes to warehouses hoping that, in the future, they will find them.

Judicial law clerks, supposedly hired for their

reasoning ability, spend a fair chunk of time as cola-powered search engines, paging through one case file after another for needed facts before they can even start to write.

The inverse of this happens as a firm prepares to file a court document. Firms pay bike messengers to beat filing deadlines, and loiterers to stand in long filing lines.

Labor cost isn't the only overhead. An eight-gigabyte hard drive will hold 200,000 pages of scanned images, enough to fill 16 four-drawer file cabinets. The hard drive costs \$169, about the same as one of the 16 file cabinets.

When all costs, including the time wasted finding and retrieving documents, are included, the National Center for State Courts estimates that it costs \$500-\$700 a square foot annually to store documents. At those rates, a firm can easily spend thousands of dollars to store documents for each of its complex cases.

Now imagine this. A lawyer drafts a document. It is vetted on computer within the firm and by the client. No one hauls it anywhere. No one places it in a binder, or reenters the docketing information. Instead, the document flows securely over the Internet or some other network to the courthouse. A computer automatically pulls the docketing information from the documents and it flows into the court's databases.

Parties receive instant filing receipts. Court calendars update themselves automatically. Lawyers view the updated calendar from their desk on a Web browser. They also are able to link their electronic filing system to their internal document management software for even greater efficiency.

Too bad most lawyers won't file this way for at least another five years, say e-filing experts. Seamless integration is "the pot of gold at the end of the rainbow," says Henry Givray, chief execu-

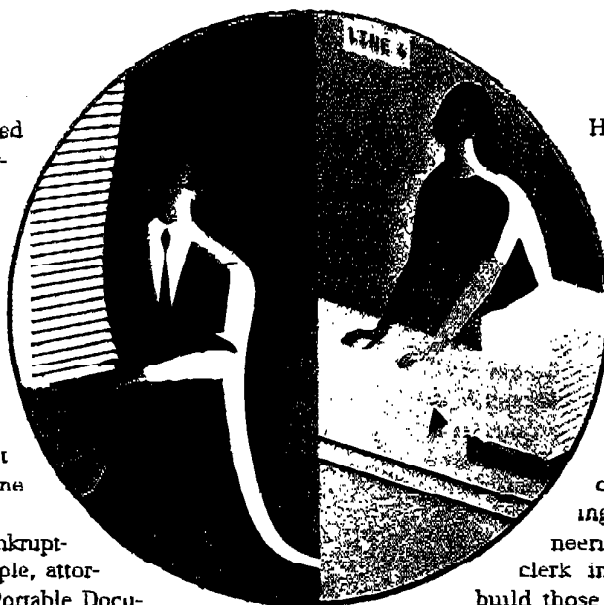
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tive of Dallas-based JusticeLink, Inc., (formerly LAWPlus).

Today's e-filing systems—still in fewer than 50 courts nationwide—are virtual Towers of Babel. The systems still could be easier to use, and they don't necessarily talk to one another.

In New York's bankruptcy court, for example, attorneys must create Portable Document Format files, and send those to the court via e-mail. PDF is a popular file format for exchanging documents. But firms need special \$150 software by Adobe Systems Incorporated to turn word processing documents into PDF files. And the ability to search PDF files is limited.

The New York system was built primarily to receive files. It wasn't intended to be the



Holy Grail of electronic filing, and it isn't. A PalmPilot does a better job of synchronizing information.

To build anything more than a mere document acceptance system requires a fair degree of sophistication. "It's like having to do reverse engineering on the smartest clerk in the country and build those rules into the system," says Martin Dean, a San Francisco-based e-filing consultant. "That's why people say it's five years from today."

Lexis-Nexis and JusticeLink are the two most experienced commercial vendors used by private lawyers for e-filing. They have handled 18,000 and 5,200 cases, respectively. Their systems have their own strengths and weaknesses.

The Administrative Office of the U.S. Courts has the most experience in electronic filing, with 20,000 cases handled. But commercial vendors are catching up quickly. Below, the major players:

Vendor	Courts Under Contract*	Courts In Operation	Cases Handled	Filing Fees
Choice Information Systems	10 (1 complete; 9 partial)		14,300**	
Lexis-Nexis	10		100	
JusticeLink, Inc.	16 (all partial)		5,200	
Lexis-Nexis (CSID)	9 (just for complex litigation)		18,000	
West Group	1		0	

\* Vendor handles all cases except where noted.

\*\* Number includes 9,300 cases in which attorneys use off-the-shelf software to file to a Choice-upgraded court computer.

They both produce files that are easy to search, a key benefit. But they don't yet let lawyers file through the Web, and they both force lawyers to learn specialized programs. (Lexis just began demonstrating WebCLAD; JusticeLink plans a Web version in May.)

Two-way data exchange with courts is limited. Lexis-Nexis's CLAD system and JusticeLink bypass, rather than integrate with, the case management systems that courts use to track cases and calendars.

The companies will soon face a traditional legal powerhouse: Eagan, Minnesota-based West Group. West plans to debut its Web-based Westfile Service in Orange County, California, within 18 months.

West hopes to leapfrog its more experienced rivals by integrating with existing court case management systems, a potentially faster way for the justice system to become fully e-filable. Attorneys then use Westfile to connect to the courts. West wants eventually to bundle electronic filing with other services that it sells to courts and lawyers.

One of the ironies of electronic filing today is that the vendors contract with courts to provide the service, but the lawyers ultimately pay for it. Let's call it the pay-to-play model. Attorneys usually pay the vendors, and occasionally the courts, to file electronic documents, the vendors give the courts whatever software and hardware is needed to accept the files.

Lexis-Nexis currently charges lawyers \$7-\$18 per document filed. In June, JusticeLink will introduce a rate that AT&T's long-distance huckster Paul Reiser could love: 10 cents per page per respondent, plus a copy for the court. "Our analysis is that if you file ten parties a ten page document, it will cost you \$36.30 using regular mail, but \$11 with

us," says chief executive Henry Givray.

West will also charge attorneys to file electronically. Although it has not yet set prices, West says that subscribers will pay approximately \$15 per filing, and occasional filers a bit more.

West estimates that the average court filing now costs \$35-\$40 to prepare, deliver, and store, according to Philip Ytterberg, Westfile's national market development manager.

Not everyone says that these prices are such a bargain. Small-firm lawyers and solo practitioners

don't think that they will necessarily benefit. "Why spend all

that when a [33]-cent stamp and a 5-cent envelope will do?" asks Richard Lewis, of the Port Arthur, Texas, two-person firm Boneau & Lewis.

Lawyers also worry that current prices are introductory teaser prices. Once a vendor establishes a foothold in a court system, it will be free to raise prices. "We feel strongly that there should be freedom of choice," says Stephen Buehl, a

shareholder with Danville, California's Gagen McCoy McMahon & Armstrong, and chair of the Napa County Bar's Electronic Filing committee. "We want no preselected software vendor to allow us to interface."

Texas district court judge James Mehaffy—LAWPlus's first customer in 1995—says that such fears are groundless in the electronic-filing arena. "We have a 30-day cancellation with them," he says. "We own the information. If there's anything we don't like, we just turn the system off."

**T**HERE IS A SECOND BUSINESS MODEL starting to emerge to compete with pay-to-play. As envisioned, courts will build their own electronic filing systems and not necessarily charge lawyers to file. Lawyers will then flock to file electronically, and the courts

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will eventually reap great savings in labor, storage, and other costs. Let's call it the *Field of Dreams* model.

The proponents of this view are two companies—Newport News, Virginia-based Choice Information Systems and iLumin Corp. of Orem, Utah. (The Los Angeles-based Daily Journal Corporation owns a majority stake in Choice.) The two companies want to sell courts so-called "middleware." This software allows in-house systems at courts to process e-files. Lawyers could then shop among several vendors to interface with the system.

There is something to be said for an approach that encourages competition rather than locks in a single vendor. One possibility is to have all files written in XML, a more dynamic version of the HTML computer language used to publish Web pages. iLumin chief executive D. Brent Israelsen says that XML's detailed "tags" make digital information easier to sort and manipulate within databases.

"If you're a court, you don't have exclusive relationships with UPS, Fed Ex, or your local [delivery] service," says James McMillan, director of the Williamsburg, Virginia-based National Center for State Courts' technology lab. "We want to create an electronic in-box, then let the companies compete by selling value-added services."

Choice and iLumin are smaller and have much less history with lawyers than Lexis or West. They might be easy to ignore, except they have a powerful marketing partner: Microsoft.

Microsoft is interested in working with these vendors to sell its powerful back-office software to courts. "My focus is on the back-office side of things," says Cary Cooke, a Lexis-Nexis marketing veteran who is now Microsoft's business services marketing manager. Bill

Gates's powerful publicity machine helped Choice make news in 1998, when the company announced its eCourt initiative with six courts nationwide, including the massive Los Angeles County system.

A year later, though, lawyers still haven't been able to file to any of these eCourts. Even in relatively small Napa County, California, a Choice site, Buehl, the lawyer who chairs the bar's e-filing committee, says that making court computers talk to e-file systems has proven thornier than advertised. "Everybody was hopeful last spring that the system would be up and running in the latter part of 1998. I hesitate to come up with a new timetable," he says.

In L.A., Choice's effort marks a return to the scene of e-filing's biggest pratfall. In 1994 Ameritech spent \$6 million to sign up 200 law firms for an e-file pilot. The company's cutting-edge system relied on technology that now looks hopelessly out-of-date. Dean, the consultant, says that Ameritech also spent too little on marketing and training. In three years, he says, the system produced about 300 filings. "When one used to come in, the clerks would run to the terminal and say, 'Hey, we've got a filing!'" Dean laughs.

Not surprisingly, many doubt that the *Field of Dreams* model makes sense. "There's not a single court that could afford to install [a fully integrated] system for free," consultant Dean insists.

Even as he waits in Napa, Buehl remains a believer, noting that seemingly endless journeys often give way to unexpectedly quick endings. "Look at ATMs now, compared to their fledgling days," he says. "The best ideas will rise to the surface. In ten years, we're going to wonder why we even had these debates." ■

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