JTC Resource Bulletin

Considerations for Procuring and Implementing Digital Evidence Management Software

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Abstract

More and more state judicial branches and courts are seeking technology solutions to receive, display, access, store and manage digital evidence. This Joint Technology Committee Resource Bulletin shares considerations, benefits, challenges, and information from courts that have implemented these solutions to help inform efforts for other judicial branches and courts interested in procuring and implementing digital evidence management and display software.

Document History and Version Control

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Acknowledgments

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To improve the administration of justice through technology

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Introduction

Digital evidence has been around for decades. The Joint Technology Committee (JTC) previously released two papers on digital evidence. The first, published in 2016, entitled "Managing Digital Evidence in Courts", focuses on how the enormous increase in the quantity of digital evidence was challenging, and would continue to challenge, the courts’ ability to properly handle all of it.¹ It is a call to action to the courts, discussing potential challenges and steps to help courts find solutions. JTC’s second paper on digital evidence, “Managing Evidence for Virtual Hearings”, published in 2020, provides guidance to help courts manage and present evidence in virtual hearings necessitated by the Covid-19 pandemic.²

Building on those publications, the impetus for this third JTC Resource Bulletin addressing digital evidence management software is the continuing growth in the quantity of digital evidence and the enhanced use of technology. Spurred by the Covid-19 pandemic, configurable commercial off-the-shelf (COTS) solutions have been specifically designed to securely manage this ever-growing amount of digital evidence in remote, hybrid, and in-person proceedings. These solutions provide a single system to collect, manage, review, and present digital evidence before and during a court proceeding. A small number of courts have implemented this software and have experience using the software to manage digital evidence effectively, efficiently, and securely. This paper’s goal is to provide courts background information, based on experience from courts that have already implemented these solutions. The information provided is intended to help and inform the court community in procuring and implementing digital evidence management and display software, including when considering and drafting a request for proposal (RFP) or similar effort to procure these systems.

Considerations

Terminology

The basic terminology courts use when discussing digital evidence can be easily overlooked, but is important. The Orange County, California Superior Court has termed it “electronic evidence” as it fits better with the existing nomenclature used in Orange County. In Minnesota, they use the term “digital exhibits”. These options, as well as “digital evidence” used in this paper, are equally valid. Courts considering the types of procurements discussed here should standardize terminology that makes the most

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sense in the context of their court and to ensure it will resonate with the intended end users of their systems.

**Data Storage and Security Policies**

One of the most important factors courts must consider when determining what specifications and requirements to include in an RFP is whether their jurisdiction has existing laws, rules, or policies requiring on-premise or cloud storage of digital evidence.

California has a statute requiring courts maintain ownership and chain of custody of evidence. Accordingly, the Orange County Superior Courts store all their data on their tenant of Microsoft’s Azure Cloud. Their evidence management software, Omnigo, runs separately on Amazon Web Services (AWS).

The Texas Judicial Branch stores the data from their digital evidence management system, the Thomson Reuter’s product, Case Center, entirely in the cloud. The copy of record for each item of evidence is downloaded and stored in the case management system (CMS) of each jurisdiction in Texas’ non-unified system. The Arizona Judicial Branch uses the same digital evidence management system as Texas, although calls it by its previous name CaseLines. As with Texas, Arizona stores all its data in the cloud through CaseLines. The Alaska Court System will soon implement Case Center with cloud-based data hosting.

The Minnesota Judicial Branch’s digital evidence management system, Minnesota Digital Exhibit System (MNDES), uses the ImageSoft product. MNDES has (but is transitioning away from) a data storage and security policy that allows only public exhibits to be stored in the cloud and requires all others to be stored in on-site data storage. The current cloud and on-site policy required Minnesota to procure services from two vendors to manage their digital evidence. When an exhibit is uploaded through Minnesota’s ImageSoft system, depending on what it is, different logic and rules were developed to ensure the exhibit is placed in the correct location. This creates significant manual and complex work for employees with, at times, inconsistent results. To remedy this, Minnesota is changing its data storage and security policy starting Fall 2023, where nearly everything will be stored in the cloud, with few limited exceptions for sealed records (cases involving pornography, adoption cases, child abuse cases, etc.). This will allow Minnesota to use only one vendor (ImageSoft) resulting in workload efficiencies and consistent results.

A court’s data storage and related security policies have a significant impact on where the evidence from the digital evidence management system will be stored and should be carefully considered when making decisions in acquiring such a product.
**Courtroom Equipment**

Implementation of a digital evidence management system may require the purchase of new courtroom equipment depending on what technology is already in place. This could include screens to display digital evidence, a speaker/audio system, control panels for those systems, power/data cabling for those systems, and wifi access. In Minnesota, the judicial branch is in the process of developing a system to enable juries to view exhibits in the jury room. A shared device, either a desktop or a laptop projected on a screen, will display digital evidence using MNDES software. In Arizona, the Mohave County Superior Court implemented new technology to display evidence in their courtrooms along with their implementation of their new digital evidence system. Purchasing new digital evidence presentation technology often requires monetary resources, but that one-time or infrequent cost may be mitigated by the potential of allowing jurors to review evidence themselves without it having to be manually and physically produced. Coupled with the benefits a digital evidence management software can bring, upgrading courtroom technology can further enhance and streamline court processes.

Before launching their phased rollout, the Orange County Superior Court determined that they did not have the necessary equipment to display digital evidence using their new software. They then purchased and installed technology in select civil and family law courtrooms so they could display digital evidence with their new software, allowing the rollout of their new system to proceed successfully. It is important for courts to account for their courtroom hardware needs when procuring, implementing, and rolling out their digital evidence systems.

Alaska is installing large screens in all jury deliberations rooms to allow jurors to view evidence using a shared tablet.

**Retention of Evidence**

Courts will need to evaluate existing laws, rules and policies and develop a plan for how long they retain digital evidence before it is destroyed. Many jurisdictions have evidence/document retention plans in place, but if they are based on paper-based evidence, they will need to be re-evaluated and updated to account for digital evidence. The process in which this occurs is also important to consider, given digital evidence systems provide opportunities for automating the retention and deletion process. Consideration must also be given to how long admitted evidence needs to be preserved in the event an appeal is filed (or for collateral challenges in federal courts) and, in that event, if appellate or federal courts will have access to the digital evidence system and/or what form digital evidence will be shared with them.
In Minnesota, for example, the Judicial Branch is currently implementing an automated system for the retention and destruction of digital evidence as part of MNDES. The tool they have designed compares the disposition date to the established retention schedule. When retention is reached, the system notifies the parties to the case to access their exhibits from MNDES if they would like a copy of it before it is destroyed. An automated retention/deletion system may provide opportunities for reducing staff workload and to further enhance and streamline workflow.

**Account for The Continuing Need To Receive Physical Evidence**

Considering, procuring, implementing, and maintaining any digital evidence management system also will need to account for the fact that some evidence (particularly physical evidence) will likely continue to be received in a non-digital manner. Although parallel to a digital evidence management system, ensuring that non-digital evidence is accounted for along the way will help make sure the transition is as smooth as possible.

**Benefits**

The procurement and implementation of a digital evidence management system presents a court with many potential benefits. When done correctly, implementation of digital evidence management software can ensure that all participants in court proceedings – remote, hybrid, or in-person – can view the evidence, improve a court’s cybersecurity, increase ease of use and convenience for court users, and present an opportunity to rethink and streamline current court workflows.

**Viewing Evidence in Court Proceedings: Remote, Hybrid, and In-Person**

During the pandemic, courts switched to remote hearings. How to present evidence and ensure all participants were able to view the evidence posed many problems in this new virtual setting. After the pandemic, when many courts are continuing with remote and hybrid hearings, these challenges persist. Using an evidence management system in which the parties upload their evidence they may wish to use before the proceeding begins provides the platform for all users to see the same evidence projected on a screen in the courtroom, and displayed on a personal device used by those participating remotely.

**Cybersecurity**

Existing workarounds to managing digital evidence, like accepting documents through email attachments or thumb drives, increases a court’s vulnerabilities by potentially introducing viruses or malware. By having a cloud-based evidence management
system, courts can reduce the risk of introducing viruses or malware because the evidence never touches the court’s network.³

**Increased Ease of Use and Convenience**

A well-designed digital evidence management system will have ease of use for all users, including those served by the court, justice partners, and court staff. The existing platforms include easy-to-use features like the ability to drag and drop files, redact and edit long videos to just the pertinent parts, and add electronic stamps for admitted evidence. A digital evidence management system eliminates the need to make multiple hard copies of exhibits to be viewed by the opposing party, the witness, the judge, and jurors. Instead, all involved view the same evidence provided digitally through screens in the courtroom or personal devices. It is important to identify whether the system will be used for evidence offered and admitted during a trial, or also for evidentiary hearings addressing motions. If both, the court must understand whether the platform can accommodate the different workflows for both types of proceedings. Adoption of a digital evidence management system allows courts to modernize the way evidence is provided to the court, providing a convenient way for users to upload and present their evidence no matter how they participate in their trial or evidentiary hearing.

**Improved Workflow**

Transitioning from a system of physical evidence to digital evidence provides courts an opportunity to rethink and simplify their current workflows and systems for managing evidence of all types. When designing their digital evidence system, the Alaska Court system took the opportunity to rethink their existing system of different stickers for physical evidence. Instead of trying to recreate the sticker system with digital stamps, Alaska simply notes “admitted” on digital evidence that is admitted into evidence, as that is the only status of evidence that would come from their system to be used at trial. Simply seeking to recreate the existing paper system online is a missed opportunity to improve workflow. Integrating a digital evidence management system with a case management system can also streamline workflow as well as reduce staff workload.

**Challenges**

The procurement and implementation of a digital evidence management system presents a court with many potential challenges. They include dealing with different file

³ For more information from JTC about cybersecurity, please see the JTC Resource Bulletin entitled “Cybersecurity Basics for Courts” and the accompanying webinar.
sizes and formats, cost, and possible pushback against the new system from staff, judicial officers, and attorneys.

File Sizes and Formats
A challenge that comes with designing and implementing a digital evidence management system is deciding on file size and format policies. Courts must establish a maximum file size that they will accept. Making it too high may result in running out of storage, especially if a court is storing their data on site, or paying more for increased cloud storage. It may also lead to trouble playing or displaying the file in the courtroom. But if the maximum file size is too small, it may force participants to edit or cut-down files (or split a larger file into many pieces) before uploading it, limiting the ease of use of the software.

Deciding which file formats to accept is its own unique challenge. Orange County, California, purposefully worked very closely with their vendor, Omnigo, to make sure that their system could support numerous file formats (and Omnigo has committed to work with the Court to support additional formats if issues arise). This helpful situation may not be attainable for all courts or solutions. Texas, by contrast, has a judicial committee on information technology that has adopted file format standards for digital evidence to be received by the court. For video, essentially anything that can be played in standard Windows on VLC (previously the VideoLAN Client) media player. The Texas judicial branch asks parties to submit the original file along with the executable one. If a video must be converted to be played, the converted video will be played unless the judge specifies using the original. Reasons for a judge to do so could be problems with the conversion, like dropped frames or altered brightness and colors. To play the original, Texas uses a laptop completely disconnected from their network. This is a well-thought-out yet somewhat complex system that is indicative of the challenge that file formats can be when it comes to digital evidence management systems.

Cost
Another consideration that comes with implementing a digital evidence management system is the cost of purchasing it from a vendor. While this paper aims to provide considerations to make the process of acquiring such a system easier, the purchase of the system itself is a significant financial investment with long-term consequences. Courts may need additional one time and ongoing appropriations from their funding sources to purchase and maintain a digital evidence management system.

Level of Clerical and Technical Staffing Required
Determining the level of clerical and technical staffing required for a digital evidence management system can be a challenge. It is important to understand what level of clerical and technical staff involvement the platform requires. Staffing will likely be
needed to implement the system and provide for any desired technical integrations (such as with a case management system), as well as maintaining it once operational. Some existing platforms require the court to send electronic invitations to lawyers and litigants to upload evidence for their case. If a court uses one of these platforms, they need to identify which staff member or members will send these invitations. Digital evidence management systems that require less clerical and technical workload are generally more ideal, but courts must consider whether their laws, rules, or policies require specific steps by clerks when handling digital evidence. If laws, rules, and policies allow parties and lawyers to do most or all of the work to upload and prepare their evidence themselves, the court should understand how user-friendly the platform is to determine whether parties and lawyers can navigate it on their own without support from the court. It is important to also understand if the vendor expects the court will have available technical support in the courtroom and to identify what level of technical and user support the vendor provides.

**Difficulties with Implementation**

Like with all change in courts, there may be pushback by some, which can be a serious challenge to overcome for the implementation of any new program or system. The support and buy-in of judicial officers from the start is very important. If judges do not use the software and require its use by litigants and lawyers, then the implementation likely will not be successful. Judicial buy-in is of the utmost importance for a successful implementation and rollout. It can be helpful to start with one or more pilot locations involving judges and staff who are particularly open to change to work out issues that may arise during the implementation process. For example, consider piloting in locations where remote or hybrid hearings are common so the obvious challenges of submitting evidence will be made easier.

Minnesota has had a staggered rollout of MNDES. Throughout it, they have been intentional about gathering and incorporating feedback. In what they are calling the rollout to “MNDES 2.0”, the changes that resulted from feedback are clear and this clear acceptance and utilization of feedback has increased adoption and use.

In Orange County, California, their phased rollout has been very successful in the courtroom and very popular. As a result, the judicial officers in the selected courtrooms support the ongoing and expanded use of the digital evidence management software. In Mohave County, Arizona, they have found buy-in from attorneys to be the most difficult part of implementing their system. They offer trainings to attorneys to teach them how to use Arizona’s digital evidence software and have reported that nearly all attorneys liked using the system once they learned how to use it.
Current Implementations

This resource bulletin has drawn from four current implementations of digital evidence management systems to provide examples: the Minnesota Judicial Branch, the Texas Judicial Branch, the Orange County, California Superior Court, and the Arizona Judicial Branch. The Alaska Court System is soon to launch a statewide implementation after an initial pilot in several court locations.

Alaska

The Alaska Court System acquired the Thomson Reuters product Case Center through an RFP process. They wanted a cloud-based platform to address cybersecurity concerns and ease the management of evidence in hybrid and remote hearings. After finalizing the integration with its CMS, it will soon roll out its pilot program for all case types in several court locations, from small rural courts to medium and large courts. Clerical staff from those locations as well as technical staff from the administrative office have been involved with the planning, development and implementation since the vendor engagement began. Trainings are planned for attorneys when the pilot begins.

Arizona

The Arizona Judicial Branch uses the Thomson Reuters product Case Center and is in the middle of a statewide roll out. They began a pilot program in September 2021 and to date have implemented the use of the Case Center in 11 of their 15 superior court locations and several limited jurisdiction courts including two of the state’s largest municipal courts. The software is run and all data stored in the Judicial Branch’s tenant of Microsoft’s Azure Cloud. While some counties have had difficulty with attorney buy-in to the product, they have found that once attorneys learn how to use it, nearly all attorneys like using the system. To help foster buy-in, the administrative office and local courts offer regular trainings on how to use Case Center.

In Arizona, as a general proposition (with various exceptions), court hearings not involving live witnesses are presumed to be remote, and court hearings with live witnesses are presumed to be in-person. This practice, and other approaches relying on technology, necessitate a robust system for the management and display of digital evidence.

Minnesota

Minnesota’s MNDES was originally piloted in two counties. It is currently rolled out statewide, but different jurisdictions in Minnesota’s unified court system have varying levels of implementation. They are currently working on a soft relaunch termed “MNDES 2.0”.
Minnesota went through a competitive bid (RFP) process to procure their vendor, ImageSoft. They are currently transitioning from a combined cloud and on-site data storage policy that required an additional vendor, to one where the vast majority of evidence will be stored in the cloud.

Minnesota is in the process of updating courtroom and jury deliberation room technology, as needed, to integrate with MNDES.

Their system has been saving time for both their staff and justice partners. By diligently gathering and incorporating feedback (both successes and lessons learned), their MNDES 2.0 launch has been far more successful at getting judicial officers to come to the table.

**Orange County, California**
The Orange County, California Superior Court is currently in the midst of a phased rollout of their digital evidence management system they acquired via RFP from their vendor, Omnigo. Currently, the software is being used in select civil and family law courtrooms. They are in the process of equipping additional courtrooms with the technology required to further expand their digital evidence system. All of Orange County’s storage is in the cloud, but because of a California statute requiring that courts maintain ownership and chain of custody of evidence, their data is stored on their tenant of Microsoft’s Azure cloud, while their software, Omnigo, runs separately on AWS.

As part of their initial contract, Orange County’s contract with Omnigo was written with an agile approach and an iterative review process to changes to their system. They use three different case management systems, but Omnigo is able to integrate with all of them. Additionally, they spent a lot of time with Omnigo ensuring that their system could support numerous file formats (and Omnigo has committed to work with the Court to support additional formats if issues arise). Their phased rollout has been very successful in the courtroom and very popular. As a result, the judicial officers in the selected courtrooms support the ongoing and expanded use of the digital evidence management software. They are aiming to finish their pilot program in select civil and family courtrooms by mid-2024 and then have plans to assess expansion into criminal courtrooms.

**Texas**
The Texas Judicial Branch is currently in the process of rolling out their digital evidence management software to a group of 100 judges. They are using the Thomson Reuters product, Case Center.
Texas stores all of the data in the Case Center system in the cloud, though those copies of the evidence are considered not copies of record. Courts must download the evidence from the cloud to their CMS where the copy of record is stored. As a non-unified court system, the Texas digital evidence management system allows for at least some standardization across all the courts in the state.

**Conclusion**

The procurement and implementation of a digital evidence management system can be a great benefit to a court: ensuring all participants - whether hybrid or remote - can view the evidence, improving cybersecurity, reducing staff workload, streamlining workflow, and increasing ease of use and convenience for court users. Before procuring software, courts must consider data storage and evidence retention policies, whether new courtroom technology is necessary, and what types of file formats to accept and how to display them. As with all new policies, processes, systems, and technologies in courts, implementation can also be an additional challenge. The courts in Minnesota, Texas, Orange County, California, Arizona, and Alaska provide examples that courts interested in digital evidence management software can consider when making these important decisions for themselves.

For the purpose of learning, we have shared different vendors utilized by state courts. JTC does not endorse any of the products. You can reference the IJIS provider directory for a list of technology vendors providing digital evidence capabilities.

For more information, contact NCSC at technology@ncsc.org.
Appendix A: Recommended Considerations Checklist

- What is your current use of technology-based solutions (both internally and externally), including CMS, efiling, and document management systems?
- What is your current desire and willingness to change (personnel, financial, leadership, user demand, etc.) to consider adopting a digital evidence system?
- Are you looking for digital evidence management, digital evidence presentation, or both?
- What is your desired level of clerical involvement?
  - Will clerks need to send invitations to share evidence?
  - Can parties initiate themselves?
- Will parties be able to exchange digital evidence with whom they want on their side, or just between sides?
- Cloud-based or on-site storage?
  - What are the costs of either option?
- What types of cases will be involved? Civil, criminal, juvenile, family, probate, mental health, administrative appeals, and/or other case types?
- Are there different workflows to manage evidence for trials and evidentiary hearings?
- How long will you need to retain evidence?
- What file formats will you accept?
  - Will you convert all file formats to a preferred format or display in the original format?
- How can you design the user interface for ease of use?
- Will you have an ability to transmit to the appellate court if there is an appeal?
- Will you have an ability to transmit to federal court for post-conviction relief proceedings in criminal matters?
- Will you have the ability to redact information?
  - Will you have the ability to blur the identity of certain people if needed?
- Will you have the ability to cut a longer video into a shorter clip or clips?
- Will you have an administrative dashboard?
- Will your software integrate with your CMS, efiling, and document management systems? Or will clerks have to do that work manually?
- Will the software work on mobile devices?
- Who will do tech support: court staff or the hired firm?
Appendix C: Minnesota Judicial Branch RFP
Appendix D: Orange County, California Superior Court RFP