

Reflections of EWMI's Chief of Party: *Introducing Electronic Filing in Serbia*

By Brian LeDuc[†]

I moved to Serbia in June 2013 to manage the six months remaining on the Separation of Powers Program, a project awarded to East West Management Institute (EWMI) by the U.S. Agency for International Development (USAID) in 2009. The project had two main goals: (i) administrative independence for the Serbian judiciary; and (ii) increased efficiency of the courts. The second of these chiefly entailed reducing the number of older cases in the country's notoriously backlogged courts. With project assistance, a number of pilot sites had achieved notable success in this area.

Soon after I arrived, USAID sought to extend the project for an additional year. The European Union, which was slated to take over much of the project's work, had been delayed in getting its judicial efficiency project started. Although funds were limited, and further extensions seemed highly unlikely, USAID encouraged EWMI to propose something new.

I had visited many of the project's eight pilot sites and noticed two things. First, courts could connect to the Internet via a central network. Second, the IT equipment in these courts, in my estimation, would not have looked out of place in the U.S. federal courts when I worked there in 2000. But court staff and practicing lawyers in Serbia exhibited considerably more confidence with technology than their American counterparts had a decade earlier. All had smartphones, and most had significantly incorporated technology into their personal lives.

[†] Mr. LeDuc served as the Chief of Party of EWMI's USAID-funded Separation of Powers Program (SPP) in Serbia from May 2013 to December 2014. SPP's overall goal was to: (i) assist Serbia move closer to EU accession by strengthening the division of power and authority more equably among Serbia's three branches of government; (ii) assist the judiciary strengthen its defenses against executive and political influence and control; and (iii) assist the National Assembly build its capacity to respond to the needs of Serbia's citizens and conduct oversight of government operations. The East-West Management Institute (EWMI) is a not-for-profit organization based in New York dedicated to building just, prosperous and democratic societies worldwide.

Under the circumstances, a trial of electronic case filing, following the model used in the U.S. federal courts at the turn of the millennium, seemed workable¹. With minimal investment in infrastructure, a pilot approach might point the way to a paperless future in the Serbian courts. And the court presidents were eager to try. Many had ideas of their own, but they had been held back by a lack of both funding and national support. The Ministry of Justice, which oversees the administration of the courts, was similarly keen. Both groups, however, had been mired in lack of funds, as well as detailed negotiations over the details of accession to the European Union and the future of the judiciary. There had been no shortage of talking, but very little doing.

In January 2014, we sought approval for our pilot from the Serbian Supreme Court. Predictably, several of the Court's 24 judges opposed a change from the paper-based status quo. Their stance mirrored the opposition years before in the U.S. federal courts. Unlike the U.S., however, Serbia had passed a Law affording an electronic signature equal weight to a written version. Moreover, in 2014 the Serbian government had instituted "electronic signature cards," available for purchase through the post office. These cards, which used two-factor authentication to validate the user's identity, had not yet been widely incorporated into Serbian commerce, but they did have the blessing of the government and the backing of the law. In the face of available technology and statutory authority, the opponents capitulated, and the Supreme Court allowed the pilot to go forward.

At the outset, working with judges and staff in three participating courts, we established a very simple protocol for electronic filing. Each court set up a dedicated e-mail address to receive submissions of pleadings and other documents. In turn, participating lawyers registered an email address with the court and signed an agreement to receive correspondence electronically. After receiving an e-mail from a lawyer, a clerk would print and review the document, enter the relevant information into the case management system, and place the document into the file.

The process was much simpler than even the primitive interface of the Federal Courts' electronic filing module, known as CM/ECF. It still involved considerably more paper and was a far cry from the data-enabled exchanges advocated by stakeholders for the next generation of CM/ECF, who I had worked with from 2010-2012. Still, gains in efficiency and savings for Serbian courts and lawyers, both in time and money, were significant. And, by starting small and using open standards and mature technologies, we left room for add-ons. Once the courts overcome any procedural or administrative impediments and prove to the legal community that electronic filing can work in practice, there is room for all kinds of technological magic. As in the U.S., Serbian judges and lawyers are full of ideas of how the program might be expanded.

The Separation of Powers Program ended as scheduled in December 2014. But several of the project staff who had worked on the electronic filing initiative established a private consulting firm² and launched a proposal to create an XML-enabled exchange and a web-based filing portal, so that data from the document filed may be automatically uploaded into the court's case management system. They also envisioned adopting the PACER³ model, using revenues from participating attorneys to fund the effort and to provide courts with necessary equipment.

They are currently seeking funding for the initiative, and both USAID and the European Union are looking closely at their ideas for going forward. The Courts and the Ministry of Justice also continue to support the project.

Why it Worked in Two Different Situations

Having twice started “small” with changes to how courts go about their daily business, I believe that there is much to learn from these successes. The reason this model offers so much potential, is the same reason that so many e-government projects fail. Namely, it is simple in scope, incremental in design, and limited in implementation. If it fails, very little has been invested, and thus there is not much to lose. But if and when it works, the next steps become obvious and gain momentum from the success of the initial efforts.

Here are some additional conclusions, based on my experience with electronic filing over the last two decades:

Electronic filing has benefits even if all it does is eliminate the post office. Even though there may be increased printing costs at the court (assuming that documents are not docketed and archived in electronic form), data from Serbia suggest that these costs are offset by savings in postage. And the benefits to courts and lawyers, in terms of improved access and delivery, remain. Fears of fraud and spoofing in the federal courts proved unwarranted over ten years of operations, and, in Serbia, the simple check of only allowing filings from registered attorneys appears sufficient to provide adequate security. To put it simply, courts with computers, internet connectivity and management support can implement electronic filing today at essentially no cost. There will be issues to be addressed at the margins, but if these are handled incrementally (rather than trying to solve all potential problems in advance), they are more easily overcome.

The main benefit of the technology is the improvement of communications between lawyers and the courts. Although systems integration with case management software can carry significant benefits as well, it need not be addressed at the beginning, and may be added as the system matures, especially if the exchanges use mature technologies and industry standards.

An incremental approach can eliminate many procedural or regulatory issues. In the United States in 2000 and in Serbia more than a decade later, many court staff and judges doubted the viability—and even the legality—of a plan for electronic case filing. By working only with supportive courts and judges, and with specific exchanges that were not rife with procedural requirements or privacy concerns, project implementers demonstrated that the exchanges are reliable and secure. And as they grew accustomed to instant, anytime access to the court, lawyers and judges clamored for the extension of the service into other areas of court practice.

The Big Lesson

Without understating the importance of vision and planning, I believe that overarching and detailed plans often ignore the lessons of the many failures before them. If a project is going to fail—always a risk—it is better to do it early and quickly. Modest experiments in a limited

context can be a less threatening, less risky and cheaper way to test the viability of plans in a real way. And it is much easier to change course from a small trial, than after two years of planning and development.

This approach is particularly trenchant in donor-funded projects in developing countries, where the time available for implementation is often considerably less than the two decades it has taken to make this work comprehensively in the federal courts.

ENDNOTES:

1 See <http://www.iacajournal.org/index.php/ijca/article/view/URN%3ANBN%3ANL%3AUI%3A10-1-115911> and <http://www.uscourts.gov/FederalCourts/CMECF/AboutCMECF.aspx> for more detail. By accident, the courts used a more “agile” approach to development, starting small and building incrementally.

2 <http://www.4digitsconsulting.com/>

3 <https://www.pacer.gov/>