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“Whether we like it or not, the state courts are in the eye of the storm; we have become the emergency room for society’s worst ailments—substance abuse, family violence, mental illness, mortgage foreclosures, and so many more.”

ACKNOWLEDGMENTS

The editors of Future Trends in State Courts 2009 extend a grateful thank you to each of the many individuals who contributed to this year’s report. Throughout the following pages, these NCSC colleagues, consultants, and court experts have provided their unique insights and perspectives by identifying strategies for court innovations, as well as techniques to improve judicial outcomes, notwithstanding the daunting economic picture that the courts must confront.

Contributions to articles published in Future Trends in State Courts 2009 once again reflect assistance from many internal and external contributors for whose efforts we are sincerely grateful. It is through the dedicated efforts of individuals such as these that modern judicial administration has embraced efforts to continually renew and improve our courts. Our sincere thanks to Tina Amberboy, Judy Amidon, Sharon Astorino, Robert N. Baldwin, Kate Black, Shirley Bondon, Bud Borja, Pam Burton, Linda R. Caviness, Jake Chatters, Thomas M. Clarke, Tim Coffey, Stephanie Cole, Kathy Mays Coleman, Katherine Dabney, Denise O. Dancy, Zelda M. DeBoyes, the Honorable Paul J. De Muniz, John Doerner, John W. Douglas, Paul Embly, the Honorable Philip G. Espinosa, Michael Evans, Claudia J. Fernandes, Kala Finn, Victor E. Flango, Malcolm Franklin, Carola E. Greene, Gordon M. Griller, Daniel J. Hall, Nathan Hall, Paula Hannaford-Agor, Roger A. Hanson, First Lady Anne Holton, the Honorable Peggy Fulton Hora (ret.), Claudia C. Johnson, Dale F. Kasparek, Jr., Ingo Keilitz, Peter Kiefer, Laura G. Klaversma, the Honorable Dale R. Koch, June B. Kress, the Honorable Cindy S. Lederman, the Honorable Steven Leisman, John A. Martin, Deborah Mason, Ernest Mazorol III, James E. McMillan, Mary Campbell McQueen, John Meeks, Daniel C. Melega, Katia Miller, Lorri W. Montgomery, Jude Del Preore, Carl Reynolds, Wanda Romberger, David B. Rottman, the Honorable Robert T. Russell, Jesse Rutledge, Mary T. Sammon, Christine Sisario, Bob Smith, Steven A. Somogyi, Suzanne H. Stinson, Karl E. Thoennes, Brenda K. Uekert, Richard Van Duizend, Lin Walker, Lawrence E. Walton, Steven Weller, and Richard Zorza.

Our gratitude also extends to members of the court community who willingly and enthusiastically shared information about their court projects. These contributions are reflected in the content of the articles and demonstrate the value of networking and collaboration within the state court community—one of the major goals for which the National Center for State Courts was founded.

The editors would like to thank VisualResearch, Inc., especially Neal B. Kauder, Patrick K. Davis, Kara Humphreys, and Kimberly Langston, for their assistance with the layout and graphics for the 2009 edition of Future Trends in State Courts.

We would also like to recognize LexisNexis for their ongoing provision of online legal resources and research support.

Defining a Trend for the Purposes of this Publication

Future Trends in State Courts 2009 takes a somewhat broad view of what a trend is. Trends require us to determine first which is working; how it started; how it is catching on; and only then how we anticipate it will spread in the future. Since proven practices are much more likely to be adopted and to spread than the very latest innovations, the reader will find proven practices being highlighted as “trends” in this report. The reader will find many of the articles presented here focusing on those “trends” that may represent innovations or best practices that would benefit courts that have not tried them yet.
We sincerely thank the members of the *Future Trends in State Courts* Review Board, who always manage to find time in their already overwhelming schedules to read and comment upon “just one more article.” The editors also acknowledge the commitment and dedication of the KIS Advisory Council for their recommendations and ongoing support of *Future Trends in State Courts.*

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<td>Court Administrator, 26th Judicial District Court, Louisiana</td>
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<td>Circuit Court Administrator, 2nd Judicial Circuit, South Dakota</td>
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### KIS Advisory Council Members

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<td>Executive Director, KIS and Association Services, NCSC</td>
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<td>Court Research Associate, Research, NCSC</td>
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<td>Director, Public Information Office, Supreme Court of Ohio</td>
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Budgets are a constant consideration for courts—even more so during chilling economic times. When state governments ask all branches and agencies to share the economic pain, courts are included.

How are state courts responding to the current economic crisis? The National Center for State Courts (NCSC) and Conference of State Court Administrators (COSCA) conducted a national survey to assess the financial health of state courts at all levels and explore their future plans for improving their bottom lines. As of this writing, courts in 27 states have experienced budget reductions, and 12 additional states are anticipating budget cuts as their legislatures finalize their 2010 budgets. Ten state court systems have seen budgets reduced by at least 5 percent. State courts are trying a number of cost-cutting measures:

- 28 state courts have imposed hiring freezes, and 13 have frozen salaries
- 7 states have encouraged judges and staff to accept salary reductions or have imposed salary reductions
- 6 states have mandated furloughs of court staff
- 6 states have reduced court hours

So, it should come as no surprise that the “economy and the courts” is the central topic of Future Trends in State Courts 2009. In our lead article, Dan Hall, Vice President of NCSC Court Consulting Services, discusses “How State Courts Are Weathering the Economic Storm,” using the NCSC/COSCA survey as his jumping-off point. It’s apparent that this recession will affect courts for years to come, so judges and court administrators are looking at long-term systemic changes to leverage limited resources. Dan’s observations provide the perfect introduction for the articles that follow.

Articles focus on the effects of budget cuts on those who work in the courts, as well as those who depend on services the courts provide—for example, challenges to labor relations and services to self-represented litigants and even jurors. While some courts may be tempted to forgo “luxury items” such as strategic planning during an economic downturn, others maintain that strategic planning is even more essential for justifying court budgets and improving operations—this year’s featured “state of the judiciary” address, by Chief Justice Paul J. De Muniz of Oregon, really brings this point home.

But there are rays of light amid the economic gloom as courts seize the opportunity to improve their operations and provide essential services while remaining fiscally solvent. For example:

- Shared-services agreements in New Jersey;
- Outsourcing of routine functions, such as accounting and fee collection, so that court staff can concentrate more on the administration of justice;
- The use of commissions to improve how courts and child welfare systems work together; and
- Use of technology to improve outcomes and processes (and cut costs) in numerous areas, such as data exchange between courts and child welfare agencies, court interpretation, and problem-solving courts.

While the economy continues to be the number-one concern for courts, this year’s edition also considers environmental “green” issues. Two articles discuss how to design a courthouse using more environmentally friendly building principles and how to improve the environment (and save money, over the long term) by using “greener” technology. The latter article is complemented by another about the Arizona Court of Appeals’ work to become “paperless.” Future Trends 2009 also marks the first time that a book in the series has been printed on largely recycled paper.

Other important topics in Future Trends 2009 include veterans treatment courts; public guardianship; the possible future of drug courts and of problem-solving-court techniques in general; court security; and the effects of immigration on courts. Performance evaluation has always been a part of Future Trends, and this edition continues that tradition by examining performance measurement and management in state appellate and supreme courts.

I hope you find Future Trends in State Courts 2009 useful as you strive to improve your court’s performance.
WEATHERING THE ECONOMIC STORM

“As you know, the Judicial Branch does not have programs that it can cut or delay. Respectfully, we are the program.”

New Hampshire Chief Justice John T. Broderick, Jr.

“You start with fat, then you go to muscle. We’re at bone now.”

Lee County, Florida Circuit Judge Margaret Steinbeck, July 26, 2009.
Well into the first year of the recession, state courts have taken cuts that are affecting the way judicial services are being delivered. As it becomes apparent that the breadth and depth of the recession will impact courts for several more years, courts are looking at policy options that could shape the face of courts for years to come.

**Revised State Revenue Projections and the Impact of the Federal Stimulus Package**

Forty-seven states, not necessarily state courts, face shortfalls in their budgets in FY 2009 and FY 2010, influenced primarily by the worst decline in state and local sales taxes in 50 years (see map at right; Lav and McNichol, 2009). In calendar year 2008, sales taxes, which are usually the largest or second-largest source of state tax revenue, declined 6.1 percent—this includes those sales taxes collected by local governments. Income growth has slowed at the same time that the consumption of consumer goods has declined (Marchand, 2009). Data for the first quarter of 2009 suggest that fiscal conditions have deteriorated even further. According to the Rockefeller Institute, state income taxes, which are the second major source of revenue for states, are expected to weaken dramatically in April 2009. Tax revenues for the first two months of 2009 declined 12.8 percent over the same period a year ago.

Finances for locally funded courts, which rely primarily on property and sales taxes, are in jeopardy too as real-estate values drop nationwide. In February 2009, the price of single-family homes in 20 major metropolitan areas fell 18.6 percent from the year earlier, compared with a record drop of 19 percent in January. In metro Phoenix, home prices have fallen by half (Streitfeld and Healy, 2009). As property-tax assessments catch up with market values, funding for local courts will likely deteriorate.

Based on revenue estimates by the Center on Budget Policy and Priorities (see chart next page), this recession is shaping up to be deeper and longer than the previous one. Consequently, state fiscal problems are likely to be worse. In the spring of 2009, unemployment stood at 8.1 percent. Economists expect it to rise to at least 9 percent, consequently reducing state income taxes and increasing demand for Medicaid and other governmental social services. This, coupled with falling sales taxes, suggests that the budget gaps will be larger than the last recession. Forty-four states expect deficits for 2010 and beyond. Deficits currently are estimated at $105 billion—17 percent of state budgets. Estimated shortages for fiscal year 2010 could rise to $145 billion if the economy does not improve until the end of calendar year 2009, as expected (Lav and McNichol, 2009). Under this scenario the deficit could total $350 billion over the next 30 months.¹

State governments have addressed these shortfalls through a combination of spending cuts, withdrawals from reserves, revenue increases, or use of federal stimulus. Fourteen states have closed their budget shortfalls by increasing taxes
or raising other new revenue (Johnson, Oliff, and Koulish, 2009). The American Recovery and Reinvestment Act includes $140 billion for state governments to help meet budget shortfalls. However, recovery act funding will only fill 40 percent of the $350 billion shortfall that states face in the next 30 months (Johnson, Oliff, and Koulish, 2009).

Status of State Court Budgets
In March and April 2009, the National Center for State Courts (NCSC) conducted a survey of the administrative offices of the courts (AOC) in all 50 states and four territories to determine whether funding for courts has been reduced, what courts are doing to operate with fewer resources, and what state court administrators anticipate to be the impact on judges, court staff, and members of the public who depend on the courts to resolve disputes in a fair and timely manner. As of this writing, 34 of those surveyed have responded.

The survey confirms that the economic recession has impacted the courts. Twenty-five of the thirty-four AOCs that have responded to date are facing a reduced budget appropriation in fiscal year 2010. From what we know is happening in other states it is more likely to be 30 out of 40 state court systems that are facing cutbacks. Ten of the twenty-five state courts reporting deficits expect reductions of 1 to 4 percent; seven anticipate reductions of 5 to 8 percent; six expect reductions of 8 to 12 percent; and two states are facing reductions of more than 12 percent. The chart above and map below summarize the survey findings.
Impact of Budget Shortfalls in State Courts

With less money to spend, one-half of state court systems will not be filling judicial vacancies or calling in retired judges to sit on the bench. More than half anticipate reductions in staff that provide direct adjudication support and judicial office support. Most respondents to the survey anticipate that these cutbacks will result in increased backlogs in civil, criminal, and family/juvenile cases. Half anticipate an adverse impact on clerical operations and, in particular, recordkeeping and service to the public.

Respondents are very concerned that these budget reductions will limit access to the courts. In particular, half envision reduced hours of operation and increased filing fees. Resources are likely to be diverted from civil adjudication to meet constitutional and statutory mandates to adjudicate criminal, juvenile, and family matters. A few states anticipate reduction in jury trials.

Particularly troublesome is the impact on the development of alternative adjudicatory programs. State court administrators are concerned that programs that have developed in recent years, in particular problem-solving courts and alternative dispute resolution, are likely to be cancelled or restricted.

A number of court administrators are considering changes to their court organization to address the budget shortfall. Changes include consolidation of courts, altering venue and jurisdictional lines, and creating more flexibility to allocate judges and court personnel across those jurisdictional lines. Many states are looking at standardizing financial, administrative, and clerical functions to facilitate the centralization of the performance of those functions.

An overwhelming 90.3 percent of the state court administrators indicated that they anticipate new or additional technology changes to enhance efficiency. Many courts (65.4 percent) are implementing an integrated-case-management system. Tools most commonly being implemented are electronic filing, electronic records, electronic document management, integrated case management, and video arraignments and videoconferencing.

What’s Next

Many court administrators recognize the length and depth of this recession may require long-term strategies term if, as expected, budget cuts continue for several years. In February 2009 the NCSC conducted another survey of court constituent groups to determine what the court community believes to be the most pressing issues facing courts. With over 800 respondents, the top two issues identified were technology and economic conditions. Within the topic of economic conditions, chief justices and state court administrators believe it is very important to look at the way judicial services are delivered to meet budget

NCSC Assistance

To assist courts in these difficult economic times, the NCSC has launched a number of initiatives, including:

- Tracking the depth and duration of the recession and how courts are dealing with budget shortfalls.
- Maintaining a clearinghouse through the online Budget Resource Center at www.ncsc.org/brc.
- Creating the State Courts and the Economy electronic newsletter to keep constituents, the media, and the public current on the impact the recession is having on state courts. http://ncsconline.org/newsletters/
- With the assistance of the State Justice Institute, identifying eight jurisdictions—state court systems and local trial courts—to track how they respond to the shortfalls, clarify the principles by which courts can be funded, highlight the “best practices” with respect to long-term strategies, and provide technical assistance.
- Developing a methodology and templates for courts to address the shortfalls from a reengineering perspective.
- Working with the American Bar Association and other organizations, such as American University and the Institutes for the Advancement of the American Legal System, to identify and publish the principles on which courts should be funded.
- Developing a “High-Performance Court” framework that will incorporate principles, best practices, and performance measures that courts can use as they pursue adequate funding and streamline their processes.
shortfalls. Minnesota and Vermont have taken steps to significantly change the structure and methods by which they are operating to deliver quality judicial services in constrained financial times.5

ENDNOTES

1 Three organizations that track the states’ fiscal conditions (the National Conference of State Legislatures, the National Association of State Budget Officers, and the Center on Budget and Policy Priorities) differ on the projected amount of the budget shortfalls but do agree that the fiscal crisis will last for several years. The Center on Budget and Policy Priorities projects a $350 billion shortfall based on economic relationships to tax revenue, while NCSL and NASBO project a $90 to $100 billion shortfall. See Lav and McNichol, 2009, for an explanation of the different projection methodologies.

2 The survey was also sent to 30 local trial court administrators. However, at the time of publication, results from these respondents had not been tabulated.

3 For many respondents, the budget for fiscal year 2010 has not yet been established; for some, the budget for FY 2009 may still be adjusted. The impact on backlog and on services at the counter are projected.

4 At the time of publication there were six other states that are known to face shortfalls that had not yet completed the survey: Colorado, Connecticut, Florida, Oregon, New Hampshire, and Washington. This means that 31 of 40 states that we have been in touch with are looking at shortfalls in FY 2010.

5 For further information, see the Vermont Commission on Judicial Operation (2009) and Access and Service Delivery Committee (2008).

RESOURCES


Court Innovations to Consider in a Tight Economy

“The measures we have taken are strong. You will see evident strains on the system. But there is one thing on which we will not economize: our core mission to do justice. The cruel irony is that in difficult economic times the demands on our courts intensify.”

Massachusetts Chief Justice Margaret H. Marshall, Address to Massachusetts Bar Association, October 22, 2008
Court Innovations to Consider in a Tight Economy

**IMPACT OF BUDGET SHORTFALLS ON LABOR RELATIONS**

John W. Douglas  
Senior Court Management Consultant, National Center for State Courts

Forty-seven states are facing budget shortfalls for 2009 and will face severe fiscal problems into fiscal year 2010. Given that personnel costs consume up to 90 percent of a court’s budget, this leaves hard choices for court managers working with reduced resources.

**Current Status**

States are facing a great fiscal crisis requiring all branches of government to take immediate steps. The judiciary, no exception, must develop and implement action plans to deal with present-day budget shortfalls, in addition to developing long-term processes and service-delivery changes to accommodate projected budgetary deficiencies. Some states have taken immediate actions, including layoffs, furloughs, and pay cuts. As these adjustments to wages, staffing levels, and process changes roll out, the real and potential impact on future labor relations can be measured by how courts prepare for and implement these changes. The savvy court manager will realize the potential for negative consequences on present and future labor relations if changes are implemented without appropriate consideration. This article primarily addresses those courts with employees operating under union agreements; additionally, circumstances may vary for those jurisdictions that operate under local, state, or county human resource management.

“L.A. County court system begins worker furloughs”  
- Headline, Los Angeles Times, July 16, 2009

The Center on Budget and Policy Priorities reported that as of March 13, 2009, “at least 47 states faced or are facing shortfalls in their budgets for this and/or next year, and severe fiscal problems are highly likely to continue into the following year as well. Combined budget gaps for the remainder of this fiscal year and state fiscal years 2010 and 2011 are estimated to total more than $350 billion” (McNichol and Lav, 2009). A budget shortfall occurs when projected state revenue obligations exceed projected revenues generated from taxes, fines, and fees. When shortfalls occur, judiciaries normally endure a heavier impact than other state branches and agencies because court budgets are overwhelmingly composed of personnel expenses. When a state judiciary cannot adjust to the crisis by cutting spending, increasing court revenues, or increasing efficiency, reductions in staff and court services are generally the result.

**NCSC Survey**

In the fall of 2008, the Court Consulting Services Division of the National Center for State Courts surveyed each state court administrator’s office to determine their anticipated response to their respective, projected budget shortfalls. The survey asked, “What personnel actions are being taken (or considered) if your state is facing economic cutbacks?” The survey allows each state to comment upon the categories below as to where they were exercising or considering any budget savings by instituting any of the listed options.

Although only 18 states responded, it is projected that the states’ revenues will continue to plummet

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<th>Personnel Actions Considered or in Place by Courts</th>
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<td>Furlough</td>
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<td>Layoffs</td>
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<td>Early Retirements</td>
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<td>Cost-of-Living Raises</td>
<td>3</td>
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<tr>
<td>Step Increases</td>
<td>2</td>
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<tr>
<td>Other Related Actions</td>
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Source: National Center for State Courts, 2008 Budget Survey
Impact of Budget Shortfalls on Labor Relations

for the next two years. This leaves little doubt that the survey data would not reveal any significant changes if conducted today.

The majority of states that responded (15) have instituted some type of hiring freeze. No vacancies are being filled in concert with the dismissal of temporary and contract employees. Eleven states say they are instituting “other” actions, which include a combination of reduction in hours, travel restrictions, court consolidations, budget holdbacks, and employee-benefit-rate increases. Eleven states also responded that they are instituting some type of action regarding wages other than or in addition to not providing raises, cost-of-living adjustments (COLAs), or merit or step increases. Seven states indicated that they will or have instituted furloughs. The remaining responses, in order of popularity, are layoffs (4), no raises (4), no cost-of-living increases (3), general budget cutbacks (2), and no step increases (2).

It is interesting to note that all the states that have responded are using a multifaceted approach to their budget shortfalls, except Idaho, which reported that no action has been taken to date.

Potential current and future implications can include the following (adapted from Sullivan, 2001):

Labor-Relations Implications

As illustrated above, “general economic downturns lead courts to initiate policies to streamline court processes and to enhance existing revenue streams. Personnel costs consume upwards of 90 percent of judiciary budgets, so any significant reduction in spending will inevitably impact personnel through reductions in workforce, salaries, and benefits. States may opt for new or increased court fees and may intensify their collection efforts during a recession. . . . Even though FTE judge positions seem somewhat immune from cuts . . . , the real impact is felt by freezing, delaying, or eliminating court-support staff, functions, or operations” (Kauder and Davis, 2008:17).

Naturally, morale can decline under these circumstances. Establish constant communication to dispel rumors and develop other communication mechanisms. Start with a “call-in” line. If you have an intranet, use a moderated chat room or anonymous e-mail system to allow employees to get fast, direct answers. Re-publicize your Employee Assistance Program counseling services. Do pulse or e-mail surveys of a sample of your key workers to identify their issues and concerns. Use that information to modify your communications and morale-building approach.

The potential to lose good employees, who may choose to seek more secure employment, is a great risk. Recognize and reward top performers during and right after layoffs; this reduces anxiety and allows employees to see that they are important and needed.

Unions and employees will “dig in” on issues of perceived violations of contract rules and regulations. Once again, building a closer relationship with the union will assist in resolving these issues at the lowest possible level. Policies in practice are management-accepted behaviors or levels of performance that are contrary to written rules and regulations. Policies must be formally reintroduced to be reestablished.
The implications and issues that these personnel actions may cause on labor relations will vary depending upon the proper preparation; political climate; the current labor-relations environment; the history of budgetary impacts; and the existence of labor unions, employee associations, and their negotiated labor agreements. Astute court managers must recognize and prepare for potential fallout from making what could be construed as an adverse personnel action from an employee’s perspective.

Proper planning, and becoming scientific and disciplined in the way personnel actions are initiated, will help deflect many potential labor issues. Whenever possible, adverse personnel actions should be administered so that they affect all employees as fairly and equitably as possible and allow for employee challenges to ensure compliance with due-process considerations. Managers should be prepared to fiscally justify personnel actions that affect process and departmental reorganization.

**Accepted Strategies for State Courts**

The Conference of Chief Justices has outlined accepted strategies state courts can employ when dealing with fiscal crises (Conference of Chief Justices, 2004). These strategies should be considered by court administrators:

- Firm insistence that the judiciary be treated as a coequal branch of government in the context of court funding is both appropriate and necessary.
- Cuts in costs/services cannot rise to the level where courts become mere “case-processing centers.”
- Sharing in across-the-board cuts hurts the judiciary disproportionately because the courts are personnel-heavy, cannot turn away cases, and therefore have little spending flexibility.
- Where austerity measures are taken, courts should make their sacrifices known, in an effort to build public support and strengthen their budget position.
- Courts should consider whether to raise revenues by increasing fees and fines but must avoid sending a message that they are responsible for self-funding.
- Courts must have significant input concerning their response to a budget crisis, rather than others managing the crisis for them.
- Budget crises may well present opportunities for reform that could not be pursued in more favorable economic times.

**Conclusion**

Courts nationwide are faced with the challenge of providing continued good service to their constituents with fewer resources. Consequently, court managers must employ critical thinking in devising ways in which they can provide their constituents with unfettered access to our courts in the most cost-efficient, equitable fashion. Court managers should be committed to ensure this process is transparent and as inclusive as possible. The strategies suggested above can assist in preserving and maintaining a positive labor-relations environment. Although no one can predict the future, the courts have endured economic downturns in the past and have emerged efficient and intact, and the current economic environment, though challenging, should be no exception.

**RESOURCES**


How is the economic crisis impacting the need for access to justice, the self-represented, the courts, and programs that respond to the need? What can courts do to ensure that self-represented litigants get the help they need?

It is no surprise that the economic crisis is dramatically impacting both the numbers and proportion of self-represented litigants. In a 2009 survey conducted by the Self-Represented Litigation Network, between 50 and 60 percent of judges reported higher caseloads and a higher percentage of the self-represented as a result of the crisis (with many reporting both). Only 27 percent reported no impact, and many of those were criminal-court judges (see figure below).¹

Some courts and judges are also seeing many more middle-class litigants coming to court without lawyers. Some of these litigants are reported to have higher expectations of how they will be treated and to be more prone to frustration with the situation and how courts are managing it.

Courts, however, are not currently cutting their self-help services budgets as heavily as they are cutting the overall court budgets. Almost 65 percent of court self-help programs responding to a separate survey reported cuts in the courts (see figure below). However, only 39 percent reported cuts in self-help services budgets. A smaller gap exists for plans for the net fiscal.

There is a very important message in these numbers. Even though these are new programs, courts are valuing them sufficiently to protect them against the overall rate of cuts. Courts that are cutting or planning to cut self-help programs at the same or greater levels than the overall court budget should be asking themselves if there is a reason they are behaving differently from other courts.

What Is the Impact in the Courtroom?
As would be suspected, these cuts have a significant impact on litigants and court processes. Ninety percent of judges reported that cuts in self-help programs had caused greater litigant frustration and anger, almost 80 percent reported additional litigant confusion at the hearing, and 50 percent reported additional adjournments (see figure on next page)—this last obviously having a significant additional financial impact on the whole court’s operations, as well as on litigants.
How Are Self-Help Programs and Courts Responding to this Need?

We are seeing a broad range of immediate, cost-effective program modifications and innovations. Among those reported in the surveys:

- Instituting an eviction-defense workshop in coordination with the local law library;
- Producing a fact sheet on whether responding to a debt-collection lawsuit is a good idea (meritorious defenses vs. higher attorneys fees) and alerting litigants to the availability of post-judgment relief;
- Improving referral information and adding evening and weekend hours to the self-help center;
- Contracting with the local 2-1-1 provider (phone-based resource information system) to provide community referrals;
- Developing “take away” packets and requiring people to attempt to use these on their own first;
- Recruiting more volunteers to work in the self-help centers;
- Instituting small-claims mediation;

- Opening a self-help after-hours program at a local library;
- Increasing the number of court days;
- Creating a foreclosure answer packet; and
- Starting a special pre-conferencing program to assist those facing foreclosure by helping them get all their paperwork in order and then bringing both sides together to try to work out a compromise.

A strong theme emerging from these reports is the importance of collaborative work, often with local law libraries and legal-aid programs. Some courts have moved their self-help programs into the law library, while others have cooperated with the law library to create a joint program.

What Are the Most Cost-Effective Ideas for Responding to the Expanding Need?

In the medium term, the Self-Represented Litigation Network recommends the following as highly cost-effective, well-tested innovations. These can all be put in place with relative ease even when resources are tight and the staff is under pressure.

**Law Library Partnering**

Law libraries offer staff, resources, and skill. In many more states they are now working closely with courts to establish and support self-help programs, clinics, and information-access points. In Austin, Texas, library reference attorneys even sit in the courtroom to help “unblock” cases that are not moving. This is all highly cost-effective.

**Unbundling—Discrete Task Representation**

This concept—that attorneys and clients can agree that the attorney will handle only a part of the case, such as preparing the papers, or the actual court appearance on one issue—is spreading rapidly. It is a win-win-win situation. The litigant gets a lawyer when he or she really needs it, the lawyer gets business, and the court gets the lawyer’s focus in moving the case. In some states, such as Massachusetts, the courts have taken a major role in working with the bar to pilot and promote the concept, in part by making the rules changes, issuing the orders that facilitate adoption of the rules, and organizing training for attorneys. In others the technique
is used with volunteer “attorney-of-the-day” programs, in some cases leveraging the availability of those whose hiring by major law firms has been deferred.

Clerk and Staff Training
Many states have trained their clerks and other staff on what can and cannot be done to assist the self-represented. Model curriculum materials are available. This costs very little, is much appreciated by the clerks and staff, and has a very major impact on the assistance that can be, and is, given. It saves time by reducing frustration, erroneous filings, and unnecessary adjournments and returns to court.

Judicial Education
Courts around the country continue to focus their judicial education programs on self-represented-litigation issues. When judges apply recently researched techniques in the courtroom, they are able to obtain more information about the case and move more efficiently to decision. The result is less wasted time and better, more easily enforced decisions. A wide and expanding range of PowerPoint curricula, video, and activity training materials are available from the National Center for State Courts.

Justice Corps Student Volunteer Program
This idea—leveraging AmeriCorps resources so that students can work in the courts assisting the self-represented—is spreading quickly in California, and there is now wide talk about making this a national AmeriCorps initiative. The result could be transformative. Even without such a Washington imprimatur, it would still be easy for a state to apply through the existing processes.

Plain-English Forms
With good reason, courts are also continuing to focus on plain-English forms. It costs very little (indeed, nothing if you use thoughtful staff and pro bono assistance from the bar) to simplify the language and layout of forms. But the payback in terms of ease of use and less wasted time are very significant.

Translation of Plain-English Forms
Moreover, in the changed political climate, there is likely to be greater recognition of the parallel need to translate these forms (and the integrated instructions). This too can be very cost-effective, assuming the availability of bilingual staff or pro bono attorneys, but consultants can also be found.

What Is the Recommended Long-Term Planning Response?
For the long term, some states are taking advantage of a time of fewer resources to refocus their priorities. The very absence of money makes it possible for state courts, access-to-justice commissions, and others to focus on more transformative changes. At the spring 2009 gathering of board chairs and staff from the approximately 25 access-to-justice commissions from around the country, it was noticeable the extent to which the conversation has moved beyond a focus on fundraising for legal aid to a broader leadership responsibility for access-to-justice innovation in all its manifestations, including court services and bar changes.

Similarly, the so-called Elkins Family Law Task Force in California is taking a step back and looking at the entire operations of the state’s family courts, hoping to develop a new model that is simultaneously accessible and cost-effective.

For such initiatives to be effective, they must be established with a broad mission, include committed and high-level stakeholders, be staffed by experienced and independent individuals, and be held responsible for developing products and plans that can be used by the court and other decision makers.

Low-Cost Innovations
The Self-Represented Litigation Network Web site, www.selfhelpsupport.org, has created a special library of resources to go with this article. The link is http://www.selfhelpsupport.org/library/folder.223114-Low_Cost_Innovations. This folder is dedicated to the seven described innovations in assisting the self-represented public that can be implemented at nominal cost. It will be kept up to date. Selfhelpsupport.org is a free membership site, open to court and other access-to-justice practitioners. People who access the above link will be prompted for a username and password. If they have not previously registered and do not have this login information, they will have the opportunity to fill out a membership application. Membership applications are reviewed for authorization daily.
ENDNOTES

*The Self-Represented Litigation Network is a grouping of major national organizations working on access to justice for the self-represented. Participants include the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management, the Legal Services Corporation, and the National Association of IOLTA Programs. The network is hosted by the National Center for State Courts, which is also a participant. The author would like to thank Katia Miller for her valuable assistance in pulling data and statistics for the graphics used in this article.

1 Surveys of judges and self-help programs were distributed by e-mail online to contacts of the Self-Represented Litigation Network. Contacts included judges and others who had attended the Harvard Judicial Conference on the Self-Represented in 2007, the state key contacts of the network, and those included in a national directory of self-help centers. Numbers reporting are approximately 100 for each of the two surveys. Obviously, these numbers are subject to significant sample errors.

2 These commissions are broad groups of access-to-justice stakeholders, usually appointed by state supreme courts, tasked with improving access to justice (see National Legal Aid and Defender Association Web site).

3 The task force was established by the California Judicial Council to "conduct a comprehensive review of family law proceedings and recommend to the Judicial Council of California proposals that will increase access to justice, ensure due process, and provide for more effective and consistent rules, policies, and procedures" (see California Administrative Office of the Courts, 2008; Elkins Family Law Task Force Web site).

RESOURCES


Self-Represented Litigation Network Web site. www.srln.org
Why Not Now?—Strategic Planning by Courts in Challenging Financial Times*

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Kathy Mays Coleman
Of Counsel Consultant, National Center for State Courts

Strategic planning should not be considered a luxury to be indulged in when times are good. During these difficult fiscal times, states, local governments, and trial courts around the nation are using strategic planning as a tool to identify and better manage their core missions.

Strategic planning has been defined as “a systematic, interactive process for thinking through and creating an organization’s best possible future” (Martin, 1992). It is an essential element of sound management for any organization. Over the past two decades, strategic planning has become a fundamental component of court management in judicial systems throughout the United States and around the world.

Visioning and strategic planning can help court leaders shape their courts and organizational environments by:

- Challenging court and justice system practitioners to think beyond day-to-day problems and crises;
- Fostering, developing, and sustaining internal and external cooperation, collaboration, and partnerships;
- Allocating and using limited resources strategically;
- Improving day-to-day court management practices;
- Enhancing court-community communications and increasing public understanding of and satisfaction with the courts and the justice system; and
- Creating futures driven by the judiciary’s deepest commitments: equal justice under law; independence and impartiality; equal protection and due process; access to justice; expedition and timeliness; accountability; and public trust and confidence (National Association for Court Management, 1999).

Yet the announcement of a project to create a new court strategic plan amid acute fiscal woes may be regarded, at best, as counterintuitive or, at worst, potentially wasteful of precious time and resources. Many would ask, “Why now?” The more appropriate question, however, is, “Why not now?” The two-sided coin representing crisis and opportunity is relevant in court administration as never before. The current economic crisis can stimulate the requisite senses of urgency and institutional will needed to effect positive change in business process and court culture. Indeed, on a daily operational basis, the only thing more challenging than current conditions is trying to lead and manage a court or justice system without a clear plan for the future, without carefully conceived justifications for expenditure requests, without evidence-based criteria for success, and without the collaboration of justice system partners to address mutual problems.

A structured process of priority setting with eyes to the future is important for every organization at any time, even when budgets are tight and cuts in services have been mandated or are imminent. Several court systems and individual jurisdictions recently have used various forms of strategic planning successfully to:

- “Triage” operations and services to ensure that the court can continue to perform its constitutional functions effectively;
- Identify functions that can be improved, eliminated, or automated without significant cost or reduced services to the public;
- Suggest potential revenue enhancements and cost elimination;
- Redesign systems, operations, and services;
- Address specific caseloads that increase during an economic crisis, such as foreclosures, landlord-tenant cases, and family-law matters;
• Devise better means of responding to the increased number of self-represented litigants needing services from the courts; and
• Articulate a clear vision and concrete measurements for what the judicial branch could achieve if adequate funding is provided.

For example, the **Commonwealth of the Northern Marianas (CNMI)** has faced substantial reductions in government revenues for the past five years. In their attempts to reduce expenditures, the commonwealth’s executive and legislative branches have cut the judicial branch budget to the bone and sought additional reductions that threatened the independence of the judiciary. Court arguments regarding the need to maintain daily operations were not successful. Another approach was needed. Accordingly, CNMI judiciary and staff leaders created a vision statement for the judicial branch, together with a set of strategies, for achieving key elements of that vision over the next decade and measures for demonstrating progress.

In furtherance of this plan, the CNMI courts are implementing a comprehensive set of time standards for all types of cases (Timeliness and Accountability); developing court user surveys (Sensitivity to the Needs of the Public); and considering how to streamline the judicial branch’s governance and administrative structure.

The **Alabama Administrative Office of the Courts** undertook strategic planning after an extensive reorganization and in anticipation of significant budget cuts due to the worsening fiscal condition of the state’s economy. It sought to achieve ongoing excellence and define specific long-range organizational goals. During a series of facilitated workshops, the leadership of the office and each of its divisions formulated:

• a bold vision;
• a set of strategies that focused on what could be done to operate more efficiently, maintain and when possible enhance existing services without increased resources, and identify nontraditional sources of revenue; and
• a detailed action plan for implementing those strategies.

Within six months of formulating its plan, the Alabama AOC staff had already taken action in almost all areas, with several of the initial steps identified already completed, many close to completion, and almost all the others in progress.

The most far-reaching recent application of strategic planning was undertaken by the Access and Service Delivery Committee of the **Minnesota Judicial Council** in 2008. “The Council’s charge to the Committee . . . was to develop options for restructuring delivery systems, redesigning business processes, expanding the use of technology and prioritizing functions to provide appropriate levels of access and services statewide at the lowest cost” (Access and Service Delivery Committee,
2008:2). The committee explored how Minnesota’s court system could redesign the methods through which it delivers service and provides access to justice by taking advantage of new technologies and the flexibility offered by state funding. It drew an analogy from the experience of the banking industry:

The banking industry has experienced tremendous consolidation of companies in the last two decades, reducing costs through greater economies of scale, but at the same time adding electronic services so that today bank clients actually have greater access to their accounts and other banking services. . . . In the future, courts will provide an increasing proportion of their services using the telephone and Internet rather than provide them solely by court employees at physical court locations. Redesign of this sort may help improve service to the public while providing opportunities to save costs (Access and Service Delivery Committee, 2008:5).

Included among the proposed strategies for achieving this vision are centralizing or regionalizing certain administrative services (such as financial services, records management, and transcript preparation) and relying on electronic filing and in-court updating of court records and issuance of orders.

For example, if E-citation is used in combination with other electronic options . . . to assess and disperse payments, . . . automatically refer over-due cases to a collection agency, and [permit] payment through the web or phone, approximately 1.2. million of the 2 million cases filed with the courts each year would be processed with little or no human intervention . . . without a corresponding decline in service to the public. . . . It will free up local court staff to focus on those services that cannot be entirely automated such as walk-in pro se help (Access and Service Delivery Committee, 2008:8).

The Richmond, Virginia, Juvenile and Domestic Relations District Court has successfully used its court-planning process to advance the aims of the court in good times and bad. In the current severe funding crisis affecting the city and state, the plan has provided a defense against haphazard budget reductions by demonstrating that budget requests are based on well-researched needs, carefully drawn priorities, and input from multiple partners. As a result of the manner in which the court has implemented its plan, every budgetary line item—both requests and the eventual actual expenditures—now is directly related either to a core/mandated function or one of the court’s priorities in their strategic plan. The court reports that this, in turn, has built trust with many local officials and enabled it to save money in a fiscally responsible manner while maintaining service levels and addressing previously defined priorities. In addition, having demonstrated its

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### Strategies to Implement Alabama AOC Vision

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<tr>
<th>Efficient Administration</th>
<th>Innovative Management</th>
<th>Education</th>
<th>Accountability</th>
<th>Service</th>
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<tbody>
<tr>
<td>Establish uniform policies and procedures</td>
<td>Identify alternative funding sources</td>
<td>Require continuing education for the judicial branch</td>
<td>Use Smart-Plan approach</td>
<td>Create a unified helpdesk</td>
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<td>Strengthen hiring and training practices</td>
<td>Enhance technology to lower costs</td>
<td>Increase use of videoconference-</td>
<td>Strengthen use of state bid and</td>
<td>Post FAQs on Web site to reduce</td>
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<tr>
<td>Data-based allocation of resources</td>
<td>Improve communications through technology</td>
<td>and computer-based educational programs</td>
<td>procurement procedures</td>
<td>help-desk calls</td>
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<tr>
<td>Audit existing data to ensure quality</td>
<td>Increase management flexibility</td>
<td>Transfer institutional knowledge</td>
<td>Start a suggestion box or court report cards</td>
<td>Install searchable index on Web</td>
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<td>and meaningfulness</td>
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<td>through enhanced mentoring</td>
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Why Not Now?—Strategic Planning by Courts in Challenging Financial Times
ability and commitment to follow through on prior strategic plans, the court has earned a reputation as a disciplined, reliable public entity, in which limited public funds may be invested with the confidence that they will be effectively spent.

In Richmond, as in most court strategic plans, a sizable number of objectives do not require funding and, thus, are not affected by the economic downturn. What several do require is something equally challenging: achieving seamless coordination and cooperation between the court and court-related agencies. The court reports that the planning process has provided an improved forum for multiple entities to articulate their specific communication and coordination needs and then work to achieve them. Further, based upon increased collaboration with numerous agencies, the court has become more creative in seeking support from nontraditional sources when funding has been required. Finally, it has helped to ensure continuity of and adherence to court-wide priorities as the judges and staff have changed over time.

These examples demonstrate that strategic planning is a tool that courts can and are using to meet their obligations to provide justice and improve access and service at lower costs and during times of fiscal crisis. The “early wins” achieved through the implementation of a well-crafted plan tend to reverberate throughout the entire organization. They manifest in a court culture and operation more energized, confident, and capable of adapting to rapidly changing conditions.

Judges and court professionals interested in pursuing organizational change efforts can find help from the National Center for State Courts (see NCSC’s CourtTopics database, CourtTools Trial Court Performance Measurement System, and Self-Help Support.org) and from the products of SJI-funded projects issued during the past decade that describe and provide practical suggestions for conducting court-strategic-planning processes (Wagenknecht-Ivey, Martin, and Lynch, 2000). Perspectives about successful change efforts also have been featured in publications such as the National Association for Court Management’s Court Manager. Finally, reviewing strategic plans and planning processes completed in other states and judicial systems can be particularly useful.

Successful change can come as a result of a crisis, an opportunity, or one compelling new idea. Today, more than ever, it is the result of multiple and simultaneous external forces. Whatever the impetus, the future of the courts is too important to be left to others or to chance. Thus, rather than a luxury, strategic planning may play a more central role in ensuring that courts can continue to fulfill their core mission.

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**Why Not Now?**

Perhaps the best place to begin asking question “why not now?” is within the court itself. That conversation can begin around a conference table or a brown-bag lunch with judges, court administrators, clerks, staff, and other stakeholders, posing questions such as:

If funding shortages and constraints continue into the foreseeable future…
- what functions, job responsibilities, or work can we (1) start doing; (2) stop doing; or (3) do differently without reducing services to the public?
- how can we use technology more effectively?
- are there other revenue sources we have not tapped?
- what are the recurring problems that might be addressed differently?
- should we redesign court services in a fundamental way consistent with court values to improve operating efficiencies while maintaining or improving services to customers? (Hall and Clarke, 2008.)
ENDNOTES

*The authors would like to thank Tricia D. Miller, Chief Operating Officer, Richmond Juvenile and Domestic Relations District Court, Virginia, for her contributions to this article.

RESOURCES


To many, outsourcing is a dirty word—contracting with an outside organization to perform in-house functions and then reintegrating their work back into your overall operation. Would it surprise you to learn that courts have been doing so for many years and likely will do more of it in the future to hold costs down and improve service?

In his international bestselling book, now in its third printing, The World is Flat: A Brief History of the Twenty-First Century (2005), Thomas Friedman explains that the advance of technology, where digitized data, voices, and images are sent at light speed over fiber-optic cable or wirelessly from one electronic device to another, has profoundly changed the way people and work relate. One of his observations is that “any service, call center, business support operation or knowledge work that can be digitized” can be outsourced in a collaborative partnership with others. Essentially, a business partner, outside the confines of your immediate operation, can be linked or embedded through technology in your business process and do work for you. All that is necessary is a digitized workflow. It is an entirely new way of doing business. “World flattening” means multiple forms of collaboration are possible, all directed at improving efficiencies and customer service, regardless of whether the organization is a business or government, or whether the customer is an individual or organization.

Business process outsourcing (BPO) and information technology outsourcing (ITO), targeting office, finance, and technology services, will grow faster than all other categories of technology in the next few years predicts Forrester Research Inc., a premier business trend forecaster. Outsourcing is attractive to business and government because it provides significant advantages, in addition to greater efficiency and better customer service mentioned by Friedman. These include expanding services, gaining access to updated technologies without heavy up-front investment, improving operational flexibility, and redirecting scarce internal resources to core business needs rather than routine operations (accounting, collections, data entry, imaging, scheduling, help desks, and the like).

Interestingly, executive-branch government agencies have been effectively outsourcing services to private companies for years without controversy, provided service contractors are performing work at stateside (onshore) locations, not in foreign countries (offshore). Services such as parking-ticket management, including citation processing, scofflaw noticing, delinquent-fines collection, parking-meter service, maintenance, and even meter ownership, are handled by private companies for cities such as Washington, D.C. Child-support-payment processing is outsourced to private companies in most states. Many toll-boo.th operations for government-built and -maintained highways, including bypass technology (EZ Pass, SMART Pass, etc.) for those who have automatic deductions from personal bank accounts, are privately operated. In some instances, entire government technology systems are outsourced to and operated by BPO/ITO companies. Orange County and the City of Riverside, California, are examples.

Not so you say in the world of courts? You may want to look again.

For years, courts have outsourced selected business and judicial activities. Court leaders have just not thought of it in those terms. ADR (alternative/appropriate dispute resolution), private judging, security services, facilities management, probation and community-based treatment programs, print-shop operations, court-reporter transcription services, case/cash management information services, e-filing, imaging, drug testing, public relations, employee assistance and counseling, and payroll services are frequently outsourced by courts across America. Carried to the extreme in the purist of definitions, if you embrace the position that the...
judicial branch and its trial courts are required to operate as an independent, separate branch of government managing their own affairs, one could conclude that in many instances courts have either consciously chosen or quietly acquiesced to outsource a number of their basic services to their “host governments” — cities, counties, or states.

Obviously, there are both practical and economic reasons why courts partner with other governments to perform essential and vital services for them, but the mere fact that such partnerships exist—especially in the most intimate of digitized workflows such as purchasing, accounts receivable/payable, e-mail, budgeting, collections, personnel services, and information systems—validates Thomas Friedman’s conclusions about outsourcing as applied to courts. Any workflow that can be digitized and segmented can be electronically transmitted from one organization or individual to another, whether inside the same courthouse or thousands of miles across the country. Once transmitted, value-added work can be done, and then, depending on the business process, data can be transmitted back.

The importance of digitized workflow connections in today’s world cannot be underestimated. As Friedman says, the very nature of work and who does that work become limitless.

With many advances in technology, business is leading the way in creative applications of BPO/ITO to electronic workflows. Among interesting illustrations is a new call-center phenomenon called “homesourcing.” Americans dialing customer service are increasingly being connected to agents working from home, not at giant, specialized call centers either within the United States or abroad. It is one way to take advantage of a series of converging interests: more people desiring home-based work; high-speed, reliable networks connecting residential neighborhoods to the Internet; a proliferation of powerful electronic workstations in dens, bedrooms, and home offices throughout America; and well-educated, stay-at-home workers that want jobs with flexibility and convenience. Examples of companies that have chosen virtual call-center solutions include Office Depot, JetBlue, Wyndham Hotels, 1-800-Flowers.com, and the Vermont Teddy Bear Company. Business likes this new approach too. Most home-based agents are independent contractors who require no health insurance or benefits and little training, and who are better qualified and more content than those in traditional call centers. From a customer-service standpoint, domestic outsourcers better understand American culture and subtleties in the English language, a complaint many companies get in dealing with offshore services. One of every 10 U.S. call centers is likely to shift at least partly to homesourcing in the next few years says Gartner, Inc., a major technology trend forecaster.

What are the implications for courts? In a growing number of probation departments, pre-sentence-report writing is done by home-based officers. Results show the work is as good as (if not better than) reports done in a central office. Could case scheduling be done using a homesourcing solution? Only time will tell. Another type of digitized workflow occurs where one company is embedded in the business processes of another. Here, we are no longer talking about individuals or companies electronically connected to organizations to do work, but organizations within organizations transparently collaborating with each other. Thomas Friedman offers many illustrations in his book. One is UPS, the parcel-delivery company. Scratch the surface of UPS, look into its workings, and you’ll find it does not just deliver packages anymore; it synchronizes and manages supply chains for companies

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**The Fight Against Offshoring**

- In 2004, at least five governors took action to curtail the offshoring of state work.
- Legislators introduced more than 100 anti-offshoring bills in almost 40 states.
- More than half sought to forbid states from contracting with companies that would do any of the work overseas.
- More recently, the Obama administration decided in February 2009 to offer an annual tax shield of $5,000 per employee per year to companies that keep jobs in the United States.

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**Advertisement in the Chicago O’Hare Airport for a Homesourcing Firm**

April 2009

I’m Mary. I’m a full time mom. And I work for a customer call center. Good thing I don’t have to leave home.
Court Innovations to Consider in a Tight Economy

## The Many Forms of Outsourcing

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventional Outsourcing</td>
<td>Substituting outside services for inside services</td>
<td>IT infrastructure, call centers, help desks.</td>
</tr>
<tr>
<td>Transformational Outsourcing</td>
<td>Adding new services, functions, and features to work done outside</td>
<td>Business process reengineering, embellished technology</td>
</tr>
<tr>
<td>Offshoring (Bangaloring)</td>
<td>Moving an entire function to another country to reduce labor costs</td>
<td>Lawyers in India doing legal work for a U.S. law firm</td>
</tr>
<tr>
<td>Onshoring</td>
<td>Outsourcing work stays within the United States and its territories</td>
<td>Imaging and data entry done for courts in another state</td>
</tr>
<tr>
<td>Homesourcing</td>
<td>Contracting with people in their home offices to perform work</td>
<td>Home-based call centers and help desks</td>
</tr>
<tr>
<td>Insourcing</td>
<td>One organization embedded in another organization to do specific work</td>
<td>Human resources, benefits administration, Medicaid</td>
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</table>

worldwide. Among the clients are Papa John’s pizza, where UPS dispatches the drivers and schedules supply pick-up (including getting the pizza dough from bakeries to outlets at the right time), and Nike shoes, where an electronic order via Nike.com is routed directly to a UPS employee at a warehouse in Kentucky to be filled (Friedman, 2005: 143).

In these new relationships, UPS has reinvented itself to compete on a new digitized playing field. The old employer-contractor connections are passé. Where one company ends and another begins in this horizontal, electronic integration of work is hard to distinguish. New, more trusting associations are necessary. It’s not “us” and “them”; it’s now “we.”

Courts find these intimate, digitized collaborations difficult, even though they have mingled workflow and data with outsiders in numerous previous situations. Here, however, courts are dealing with two different circumstances, court leaders say. First, the partnership is with a private company, not a governmental agency. Judicial systems are comfortable, in most instances, with integrated information systems that share guarded public and confidential records with justice agencies. They are unruffled in having to interchange operational data with host governments regarding accounting, budgeting, purchasing, and other day-to-day workings of the court. Some courts have even taken steps to open information flows with private vendors in closely controlled employer-employee contracts governing such things as e-filing or imaging to store, transpose, or transmit data. But few have invited the private sector to embed itself in their digitized workflow and perform tasks as an invisible backroom.

The second different circumstance, many court spokespersons claim, centers on the nature and character of court work itself. Courts deal with sensitive public, private, and confidential data and have an ethical and statutory fiduciary responsibility to protect that data’s integrity, use, and modification. Where data are digitized, many courts become doubly guarded, permitting controlled view-only access often accompanied by strict rules and regulations regarding data availability on the Internet or at the courthouse.

These precautionary measures are founded on the best of intentions and serve the public interest in many respects. However, the world has changed in dramatic ways, and courts, together with their numerous publics, should equally be concerned about how to improve themselves in an increasingly digitized world and leverage the private sector to help judicial systems increase revenues, reduce expenditures, serve customers better and faster, and conduct business more efficiently. Such objectives become increasingly important in times of financial stress during economic downturns, such as America and the world are facing today.

It all can be done responsibly while staying true to the sanctity of public records and ensuring a sensible division of labor between court employees and private contractors. The Arizona Judicial Branch is an example of a court system that has quietly opened the door to outsourcing beyond commonplace levels found elsewhere. They have done so with neither fanfare nor major problems. The target: enforcement and compliance of court monetary orders, one of the ten CourTools measures (National Center for State Courts, 2005), or as some have described it, “debt flow management.”

In Arizona, a program called FARE (Fines/Fees and Restitution Enforcement) was implemented in 2003, offering Arizona’s 168 trial courts strategic, embedded,
The Growth of Outsourcing: Courts Are Becoming Flatter

The outsourcing contract is open-ended, permitting trial courts to opt-in for an array of compliance and enforcement services; one size does not fit all. A number of courts have requested collection vendors to process back-end debt as well, but the heart of the BPO/ITO partnership, and biggest payoff for the judicial branch, is the digitized debt flow process. Examples abound.

At the Phoenix Municipal Court, Arizona’s largest-volume justice operation, a pilot program has permitted a private vendor to implant noticing technology in the court’s dataflow during the pre-adjudication stage of a case, sending a courtesy, court-approved reminder outlining both payment options and court appearance times if a customer wants to contest a citation. Should a violation be resolved in a timely manner, violation data is cleansed from the private vendor’s databases. But if the citation slips into default, the digitized workflow quickly triggers a delinquency notice followed by a series of other progressive steps to promote resolution. Early attention to delinquent debt has significantly increased compliance. This approach, dubbed “Full FARE,” has been so successful it will be replicated throughout the state.

Other Maricopa County courts have initiated further public/private partnerships under the omnibus FARE provisions to image and electronically transmit traffic citations to private-vendor offices in another state for data entry; the digitized data and imaged ticket are automatically forwarded to the contracting court’s case/cash management system. The result: courts avoid hiring extra clerical staff and redirect existing personnel to more critical jobs. Phoenix officials have adopted the same solution, which has resulted in cost savings for them as well.3

In exploring public-private BPO and ITO partnerships in courts, broad self-examination is required by asking two important questions: How do we best serve our customers? What core business and judicial functions must court staff perform, and what could be better performed by outsourcing digitized, horizontal workflow? Such advances will require time, understanding, creativity, and a willingness to take calculated risks. The results are startling. Significant productivity improvements are possible. Huge leaps in customer service can occur. New, better business practices develop. All stimulated by embedded technology in imaginative and value-added ways. Welcome to the flatter, faster future for trial courts.

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Survey of Chief Information Officers, April 2009

<table>
<thead>
<tr>
<th>Top Factors Influencing Decisions to Outsource</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost Savings</td>
<td>63%</td>
</tr>
<tr>
<td>Meet Needs Through Variable Capacity</td>
<td>34%</td>
</tr>
<tr>
<td>Access to Expertise</td>
<td>27%</td>
</tr>
<tr>
<td>Improved Effectiveness</td>
<td>22%</td>
</tr>
<tr>
<td>Enable Organization to Focus on its Core Function</td>
<td>21%</td>
</tr>
</tbody>
</table>

Source: CompuCom Systems Inc. and IDG Research Services

integrated technology outsourcing in debt flow. Debt flow is the movement of a fine, fee, surcharge, or court costs from imposition to initial default, and eventually old collectables. Just as caseflow management has demonstrated that successfully attacking the problem of court delay requires programs and techniques to ensure early and continuous control, consistent monitoring, and multiple options for settlement throughout the life of the case, so it is true for debt flow management. Over the last five years, FARE contributed greatly to the more than $480 million state, county, and city courts collected, Arizona Chief Justice Ruth McGregor (2009) recently announced.

In exploring public-private BPO and ITO partnerships in courts, broad self-examination is required by asking two important questions: How do we best serve our customers? What core business and judicial functions must court staff perform, and what could be better performed by outsourcing digitized, horizontal workflow? Such advances will require time, understanding, creativity, and a willingness to take calculated risks. The results are startling. Significant productivity improvements are possible. Huge leaps in customer service can occur. New, better business practices develop. All stimulated by embedded technology in imaginative and value-added ways. Welcome to the flatter, faster future for trial courts.
ENDNOTES

1 In 2007, 40 states contracted with outsourcing companies to administer electronic benefit cards for their Food Stamp programs. The Council of State Governments (2007) has predicted that state and local government outsourcing expenditures for information technology services will likely reach $18 billion by 2010.

2 Further “digitized flattening” can result in citation processing where law-enforcement officials move toward handheld, automatic ticket-writers, permitting an issuing officer to digitally record person, license, and auto information in the field and wirelessly upload it to police and court databases. As a result, paper processing is greatly reduced; the violator is issued the only paper record at the scene of the offense.

RESOURCES


The foreign-born population living in the United States now exceeds the all-time highs previously recorded between 1890 and 1910. As a result, state courts throughout the nation are developing strategies to meet the challenges posed by the size, diversity, and complexity of the unprecedented numbers of both the legal permanent residents and the undocumented immigrants they must serve.

Key Immigration Trends Challenging the State Courts
Numerous long-term global and U.S. economic, demographic, and policy trends have led to the nation’s foreign-born population of over 38 million people, which now accounts for about 15 percent of the entire U.S. population. These trends carry significant implications for the state courts (see boxes at right). We will explore three of those trends in this article.

First, the rapid increase over the past decade in the number of immigrant families with one or more illegal-immigrant parents and at least one child who is a U.S. citizen has greatly increased the complexity of juvenile and family cases in the state courts. Specifically, a recent Pew Hispanic Center demographic assessment indicates that:

- 16.6 million people in the U.S. live in unauthorized families where the head of the family or the spouse of the head of the family is undocumented.
- 8.8 million people live in unauthorized families with U.S. citizen children.
- As of 2008, 5.5 million children live in families with at least one parent who is an illegal immigrant. Of these children, about 1.5 million are undocumented, but an additional 4 million are U.S. citizens by birth.

* Immigration Trends of Significance for the State Courts
• Increasing numbers of mixed-status immigrant families with family members of lawful and unlawful immigration status are living in the U.S.
• There is sizable immigration from Mexico to the U.S. A record 12.7 million Mexican immigrants lived in the U.S. in 2008, up from 760,000 in 1970.
• By 2008, there were about 12 million undocumented immigrants in the U.S., 13 million legal-permanent-resident immigrants, and 13 million naturalized-citizen immigrants.
• The size of the undocumented-immigrant population in the U.S. increased rapidly from about 3.5 million in 1990 to 12 million in 2008.
• Even though California, New York, Texas, Florida, and Arizona remain leading locations for new immigrants, states with historically smaller immigrant populations, such as Georgia, Minnesota, Washington, and North Carolina, are also experiencing rapid growth in immigrant populations.
• 84% of the foreign-born U.S. population of 38 million people speak a language other than English at home, and 52% say they speak English less than “very well.”
• The U.S. citizenship eligibility status of the nation’s 12 million legal permanent residents and their U.S. residency status can be affected by numerous types of local justice system and state court activity, such as criminal charges, convictions, and imposed and suspended sentences.

* Legislative Trends Related to Immigration
• As a result of federal legislative trends over the past decade, there are mechanisms available to local justice systems and the courts to protect immigrant victims and juveniles.
• Although the regulation of immigration traditionally has been under the exclusive purview of the federal government, over the past decade state legislatures across the nation have become increasingly active in adopting immigration-focused legislation. The National Conference of State Legislatures reports that 300 immigration-related bills were introduced in 2005 and 38 were enacted, while activity skyrocketed to 1,562 bills introduced and 240 laws enacted in 2007. Already in 2009, by March 31, 1,041 bills have been introduced across 50 states.
• Of special significance to the state courts has been the increase in state legislation regulating bail eligibility; human smuggling and trafficking; ability of undocumented workers to work; employer sanctions for employing undocumented workers; fake drivers’ licenses and other forged documents; eligibility for education, treatment, and medical benefits; state and local law-enforcement officers co-serving as immigration officers; eligibility for professional licenses; and eligibility for hunting and fishing licenses.
Court Innovations to Consider in a Tight Economy

The younger children of undocumented immigrants are far more likely to be U.S. citizens than are older children—among children under age 6 whose parents are undocumented, 91 percent were born in the U.S., while among those ages 14-17, 50 percent were born in the U.S.

7 percent of all unauthorized families include both U.S. citizen and non-U.S. citizen children.

Approximately 10 percent of all children now being born in the U.S. are the children of illegal immigrants.

Children of undocumented immigrants are 6.8 percent of students enrolled in kindergarten through grade 12.

In Arizona, California, Colorado, Nevada, and Texas, more than one-in-ten students in grades K-12 have parents who are undocumented immigrants.

Second, it is likely that that there will be an increased emphasis on enforcement activities against all immigrants, including undocumented people and lawful permanent residents, who have contact with the state criminal-justice system. Not only do most states now have document-fraud and other criminal laws targeting immigrants, but in recent testimony before Congress, David Venturella of the federal Immigration and Customs Enforcement (ICE) unit of the U.S. Department of Homeland Security noted that Secretary Napolitano has made the identification and removal of criminal aliens a top priority for ICE. This redoubled federal enforcement effort includes four strategic goals:

- Identify and process all criminal aliens amenable for removal while in federal, state, and local custody.
- Enhance current detention strategies to ensure no removable (i.e., deportable) criminal alien is released into the community due to a lack of detention space or an appropriate alternative to detention.
- Implement removal initiatives that shorten the time criminal aliens remain in ICE custody before removal, thereby maximizing the use of detention resources and reducing cost.
- Maximize cost-effectiveness and long-term success through deterrence and reduced recidivism of criminal aliens returning to the United States.

Third, the Obama administration has made immigration reform a priority, and as a result it is likely that there will be a comprehensive review of federal immigration policy in the next couple of years. A critical component of this review needs to be a national dialogue on immigration law and policy involving state court systems, federal courts, and federal enforcement agencies. Topics for that dialogue should include:

- Problems for the state courts resulting from the complexity and ambiguity of federal immigration law, such as ambiguities in federal law that can affect a state court’s ability to determine appropriate dispositions in juvenile and family cases.
- The impact of state court criminal convictions and sentences on immigration status, in particular criminal convictions that can put a lawful permanent resident at risk for deportation.
- State v. federal authority, such as authority of prosecutors to tailor criminal charges to achieve immigration results or for judges to tailor sentences for immigration purposes.
Promising Strategies for Addressing the Impacts of Immigration on the State Courts

Even though the nexus of federal, state, and local immigration law, policy, and practice poses significant challenges, there is a lot that the state courts can do to address these challenges. In particular, the ongoing State Justice Institute-sponsored Immigration and the State Courts initiative now being conducted by the Center for Public Studies in cooperation with six trial court learning sites has revealed that state courts can:

- Revamp state trial court records preparation and management practices to include criminal- and family-law case information in formats that could be used readily in concurrent or subsequent federal immigration proceedings.
- Work with justice partners to increase access to interpreters early in the justice process to ensure that non-English-speaking litigants have an opportunity to assess whether their immigration status might be a factor in their case before the state court.
- Work with defense counsel and prosecutors to ensure that the implications of immigration status are well known throughout the legal community.
- Address the complicated interplay among immigration status and eligibility for the types of local, state, and federally funded services often associated with state court cases, such as substance-abuse and mental-health treatment, parenting assistance, and medical assistance for children.
- Establish information links between courts and justice-agency litigant-assistance services and resources for immigrants, such as national consulates and legal- and family-support organizations.
- Establish mechanisms for locating the family members of individuals involved in state court cases.
- Redesign self-help services that assist litigants to self-identify whether their or a family member’s immigration status might be a factor in their state trial court case.
- Work with state and federal justice partners to improve communications practice so that state court and local detention officials can determine quickly if state court litigants are in Immigration and Customs Enforcement custody or have been removed from the country and, thus, are no longer able to meet state court requirements, such as appearances for hearings, and other probation conditions.
• Revamp plea-acceptance practices to ensure that defendants have been advised of the immigration consequences of their plea.
• Prepare training materials and establish education programs throughout the court to ensure that judges and court personnel are aware of the connections between immigration status and criminal, family, and juvenile case processing.

Conclusion
Much of what happens in the state courts can result in significant unintended consequences for lawful permanent residents and even U.S citizens, particularly children, associated with immigrant families due to collateral federal immigration issues. Further, these problems are increasingly appearing nationwide and in both urban and rural communities. The combination of increasing dispersion of the immigrant population and the complexity of immigration circumstances, coupled with the ambiguity of federal law, makes it important for state courts to be proactive in dealing with these issues.

ENDNOTES
* For details about the State Justice Institute-sponsored Center for Public Policy Studies Immigration in the State Courts Initiative, see Martin et al., 2009.

RESOURCES


The field of courthouse planning and design is currently undergoing a transformation in the process by which buildings are conceived and built. Among the driving forces behind the current transformation is the changing environmental and economic landscape, which has created a national trend to build courthouses that incorporate sustainable building principles.

Changing Public Awareness
There is no doubt that the rising public awareness of global environmental issues has had a great impact upon the field of architecture and planning. In fact, concerns about climate change and environmental degradation seem destined to occupy the spotlight for the foreseeable future (Burns, 2008:5). In light of this new reality, many court facilities are now being built in an ecological and resource-efficient manner. These new “green” courthouses are being designed to protect occupant health; improve employee productivity; use energy, water, and other resources more efficiently; and reduce the overall impact to the environment.

The development of the Leadership in Energy and Environmental Design (LEED) Green Building Rating System has made it increasingly possible for court-facility stakeholders to incorporate sustainability principles into their courthouse projects effectively. The LEED program is administered by the U.S. Green Building Council and is intended to “encourage and accelerate global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria” (USGBC, 2009). Many local and state courthouse projects around the country are achieving LEED certification and are gaining recognition within their communities and from the public at-large.

Planning Principles
The implications of green courthouse planning and architecture are broader than most people realize. According to the American Institute of Architects (AIA) Sustainable Justice Committee, “Sustainable courthouse design addresses three scales of development: The urban or community scale; the building itself; and the environments for individuals using the spaces within.” Furthermore, these different scales of sustainable development can be likened to three parts of an interconnected whole: “One cannot understand the building without reference to the community that it supports; likewise, one cannot appreciate the building without understanding the people for whom it is intended” (Greene et al., 2009:1).
A common theme raised by the various architects interviewed for this article is that to realize a green courthouse, the identification of sustainable practice goals must happen early in the life of the project, typically during the pre-design planning phase. Courthouse projects are very complex and involve a great variety of operational and architectural planning considerations. Because of the complexities involved, green courthouses demand a large degree of upfront planning and stakeholder collaboration to identify and quantify how sustainability practices will be a part of the new building process. It is equally important for planners to help court managers determine how future court operations may affect and be affected by the green-courthouse vision in terms of technology and caselaw management.

**Seattle Justice Center**, Seattle, WA
- Architect: NBBJ (www.nbbj.com)
- Building Size: 300,000 sf
- LEED Certification: Silver
- Completion Date: 2002
- Construction Budget: 92 million
- Sustainability Highlights: Thermal buffer wall; vegetated green roof system; flexible floor plan; emphasis on daylight and views; use of low-emitting and recycled materials; high-performance HVAC system.

**Franklin County Court of the Common Pleas**, Columbus, OH
- Architect of Record: DesignGroup (www.designgroup.us.com)
- Design Architect: Arquitectonica (www.arquitectonica.com)
- Building Size: 325,000 sf
- LEED Certification (Anticipated): Gold
- Completion Date: 2010
- Construction Budget: 91 million
- Sustainability Highlights: Vegetated roof system; enhanced stormwater management and rainwater harvesting; optimized energy performance and enhanced commissioning; use of certified wood and regional construction materials.

**The Courthouse Context**
Tim Dibble, Assoc. AIA of Francis Cauffman Architects, points out that courthouses have historically been a key component of urban centers in American town planning, often occupying a prominent location and sitting on an open courthouse square. Unfortunately, the automobile has been the main determinant of planning policy since World War II, and in these decades many communities have favored building sites located away from urban centers (Dibble and Cousins, 2007: 2-4). In more recent times, however, there has been a re-recognition among planners and architects that courthouses play an integral part in civic life and should occupy a prominent place in the fabric of communities, towns, and metropolises.
Many site-development principles espoused by the LEED rating system go hand-in-hand with the role of courthouses in community planning. For example, the availability of alternative transportation is a criterion for obtaining LEED credits but also contributes to the idea of equal access to the judicial system. Another is the promotion of open green space on development sites. The provision of open green space is both a strategy for gaining LEED accreditation and the main component of the traditional American courthouse-square typology. An unexpected benefit of the traditional pattern is that the provision of open space in front of courthouses is also considered a necessary security buffer from adjoining public rights-of-way (Dibble and Cousins, 2007:8).

The Built Environment

Today’s green courthouse buildings are highly resource efficient and use recycled and environmentally sustainable materials. As alternative sources of energy become more economically viable, some future courthouses may even become net electricity exporters, generating their own power through on-site technologies such as wind generators and photovoltaics. New HVAC technologies are dramatically improving building performance, and architects are finding it easier to qualify for LEED energy credits while simultaneously reducing the long-term building operational costs associated with inefficient HVAC systems.

Among the new and proposed courthouses surveyed for this article, most are being planned to last 100 years. Through the use of durable, quality materials, it is possible that the green courthouses built today can serve their communities for generations to come. However, the growing life expectancy of courthouse facilities presents additional challenges for court planners in envisioning court needs far into the future. Green courthouses are being carefully planned for greater programmatic flexibility and adaptability. This practice is helping facilitate longer courthouse life spans as future unforeseen uses can be more easily incorporated. Taken as a whole, green design and building techniques are fundamentally changing the way in which courthouses are conceptualized.

The User Perspective

A significant body of research shows that indoor environmental quality correlates with job satisfaction and worker productivity (Hobstetter, 2007). Researchers have shown that environmental comfort variables, such as temperature, air quality, and access to natural light and views, all can have a significant impact. In contrast to many courthouse buildings constructed in previous generations, today’s courthouses maximize the quality of the indoor working environment.

With approximately 90 percent of a court’s operating budget devoted to personnel, court managers are seizing upon the idea that quality workplace environments have a cost impact over time in terms of worker productivity and absenteeism. In fact, in a study commissioned by the state of California to measure the impact of indoor environmental quality upon worker productivity, it was found that as much as one third of the variables that affect worker productivity can be attributed to the workplace physical environment (Heschong Mahone Group, Inc., 2003:135).

Durham Consolidated Courthouse, Oshawa, Ontario

- Architect: WZMH Architects (www.wzmh.com)
- Building Size: 461,600 sf
- LEED Certification (Anticipated): Silver (35 points)
- Completion Date: Fall 2009
- Sustainability Highlights: Redevelopment of a contaminated site; optimized use of existing urban infrastructure; enhanced energy performance and controls; commitment to LEED certification for existing buildings during operations phase.
Specific strategies that are currently being employed by courthouse planners and architects to improve the quality of indoor working environments with relative ease include promoting the availability of natural light and views to the general, open-office work environment; increasing natural ventilation to the building; using low-emitting building materials to reduce the quantity of potentially harmful indoor air contaminants; and improving the user controllability of thermal and lighting control systems. In addition, HVAC systems are becoming increasingly technology driven and continue to evolve into highly efficient and complex systems that utilize “smart” building envelopes and indoor environmental control components (U.S. Dept. of Energy, Building Technologies Program, 2009).

Although there is now considerable emphasis on promoting natural light in the workplace environment, designing a courthouse that provides enough daylighting to attain LEED credits is a challenge. The web of circulation required to separate public, judges, and detainees required in modern courthouses has an unintended effect: courtrooms can easily become interior rooms cut off from access to daylight and views. Determined designers have found ways to introduce daylight into these important spaces, but it takes a committed client willing to accept the tradeoffs, particularly the costs are associated with this feature. In any case, modern green courthouses are planned with much greater proportions of natural light than seen in previous generations of courthouses.

The Cost of Being Green

Faced with economic hardship, it is exceedingly important that stakeholders who are planning a new courthouse understand the cost implications of building a green courthouse. Unfortunately, there is no straightforward answer to this question. Some strategies have a big environmental impact with little or no cost, while other strategies have a small environmental impact yet carry relatively high costs. Further muddying the financial picture are the long-term life-cycle cost benefits that typically accompany today’s green courthouses. The long-term savings gained from reduced operational, maintenance, and replacement costs are significant but can only be addressed through detailed analysis during the building-design process.

Regardless of the geographic and project-specific variables involved in any one project, there have been attempts made to understand the initial hard construction costs involved in LEED-certified buildings. A study commissioned by the U.S. General Services Administration in 2004 examined the costs of LEED certification for a newly constructed federal courthouse and a retrofitted and modernized office building. This study found that hard building costs vary considerably between levels of LEED certification, with basic certification having minimal or no cost impact, while Gold certification can add up to an additional 8 percent premium (Steven Winter Associates, Inc., 2004:2).

Although it is clear there are upfront costs associated with building LEED-certified courthouses, these must be weighed against the long-term benefits gained by all the stakeholders involved. Some stakeholder incentives for building green include...
operational and maintenance cost savings over time, which benefit city and county governments who are responsible for the facilities; improved worker health, productivity, and job satisfaction, which benefits the court itself and ultimately improves the quality and efficiency of justice administration; and, finally, the overall benefits to the community in terms of resources left for future generations.

Courthouse planners and architects can help courts understand the cost/benefit ratio of different sustainable strategies so that educated and informed green-building strategies can be implemented. Along with other critical operational and programmatic considerations, the development of sustainability goals is now an essential component of the courthouse visioning and conceptualization process. Despite the complexities involved, it is clear that there are real opportunities for implementing green-building strategies in all courthouses built today regardless of geography, size, or even project budget.

ENDNOTES

1 The LEED program certifies buildings and systems based on credits obtained in the following categories: site development, water efficiency, energy and atmosphere impacts, material and resource utilization, indoor and environmental quality, and innovation in green building design (USGBC LEED Reference Guide, 2007: 12-20).

RESOURCES


Courts can use improved technology to reduce their impact on the environment. But going "green" can also cut costs and improve service, as well.

Kermit the Frog once lamented that "it’s not easy ‘being green.’" But that is exactly the direction that many courts and organizations are taking. The "green" revolution is a combination of many ideas to reduce energy consumption, along with more ecologically responsible acquisition, recycling, and operational policies. This article highlights ideas and trends that have come to light in recent years, many that are court-specific, and concludes with an action list courts can consider in their plans for a greener future. Going green can be very budget friendly.

Electronic Storage
There is a significant effort underway in courts around the world to convert from paper to electronic storage of documents. Better known as e-Courts, electronic storage of documents encompasses electronic filing and public access to these documents via the Internet. The elimination of paper has significant environmental and budgetary benefits, as does the elimination of the need to travel to the courthouse to view court documents. Before its “eCourt” project, the Oregon Judicial Department estimated it consumed over 50,000,000 pieces of paper per year (see Borja, 2009).

The reduction or elimination of paper documents and files:

a. Reduces or eliminates the entire cycle of tree cutting/recycling and the carbon emissions needed to produce and transport the paper.
b. Eliminates the need to provide a secure, environmentally controlled file room or archival storage. This lessens the introduction for mold and related environmental contaminants into the courthouse HVAC (heating, ventilating, and air-conditioning) system.
c. Reduces or eliminates the need to physically transport documents using land and air vehicles.
d. Reduces or eliminates the need to build parking spaces and structures.
e. Reduces the amount of physical security scanning of deliveries for dangerous contents. In an ideal courthouse-security situation, all physical items delivered by mail, courier, or express delivery should be x-rayed. By moving to e-filing the court avoids some of this work and, again, the carbon fuel used to deliver the items.

Computer Equipment Acquisition
There are many green issues to consider when it becomes necessary to purchase new or replace existing computer equipment, such as power use, power supplies, and environmental ratings.

a. Consider converting from computer CRT (tube) displays to LCD flat panels, which reduces power use by 50 to 70 percent (plus the additional advantage that the images are generally easier on the eyes). By way of comparison, a large 23” flat-panel LCD monitor uses 44 watts of power versus 115 watts for a slightly smaller 21” CRT monitor.
b. Look for low-wattage power supplies. For example, laptops use 20 to 80 watts of electricity versus desktop computers that use 100 to 400 watts.
c. Consider thin client computers as another option for a workstation using the laptop design that lessens the power load (see “Thin Client,” 2009). Some of the thin client machines do not even include a cooling fan. And since all of the data is stored on the servers, there is no need for an uninterrupted power supply, or UPS.
d. Consider computer workstations that are Energy Star 4.0 and EPEAT rated. Energy Star is a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy helping to “save money and protect the environment through energy efficient products and practices” (see www.energystar.gov). The Electronic Product Environmental Assessment Tool (see http://epeat.net) “is a system to help purchasers in the public and private sectors evaluate, compare and select desktop computers, notebooks and monitors based on their environmental attributes.”
Data Center Considerations
Many courts operate their own data centers, where the server computers are housed. It was reported in the July 7, 2008, edition of eWeek Magazine (p. 44) that data centers consume 1.5 percent of electrical power in the U.S.A. These servers are vastly underused, spending 70 percent of their time idle. This is not surprising since the normal workplace is used only 50 to 60 hours per week.

Server consolidation and virtualization technologies are being applied to better use these resources. Virtualization is software that emulates multiple computer systems on one physical computer server (see “Platform Virtualization,” 2009). Consolidating multiple systems to one physical computer obviously saves the electrical power that is consumed by the multiple systems. One recent court project consolidated three court systems to one computer server, with a second complete system for backup redundancy. The backup server is turned on only for system updates, thus saving power, but is available in case the first server fails.

<table>
<thead>
<tr>
<th>% of Time Server is Used</th>
<th>Hours/Week</th>
<th>Power (watts)</th>
<th>Watt Hours/Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Idle to 1% busy</td>
<td>118</td>
<td>172.6</td>
<td>20,367</td>
</tr>
<tr>
<td>2 to 20%</td>
<td>50</td>
<td>179.4</td>
<td>8,970</td>
</tr>
<tr>
<td>21 to 40%</td>
<td>0</td>
<td>186.0</td>
<td>0</td>
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<tr>
<td>41 to 60%</td>
<td>0</td>
<td>198.0</td>
<td>0</td>
</tr>
<tr>
<td>61 to 80%</td>
<td>0</td>
<td>199.2</td>
<td>0</td>
</tr>
<tr>
<td>81 to 100%</td>
<td>0</td>
<td>202.2</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>168</td>
<td>202.2</td>
<td>29,337</td>
</tr>
</tbody>
</table>

Source: Neal Nelson, Neal Nelson & Associates

Court Operations Energy Savings
Court operations and procedures have an impact upon energy consumption and court budgets.

Videoconferencing / Teleconferencing
The transport of accused or convicted persons from jails or prisons consumes large amounts of fuel each year. (Each gallon of gas emits approximately 20 to 28 pounds of CO₂ into the air.) Transport also requires a large number of persons to escort and otherwise secure detainees. These persons must travel to the detention facility to begin work and, again, use fuel to do so. Similarly, calling jurors to appear requires fuel to create and transport the notifications, and then for the jurors to physically move to the courthouse. And if the court calls many jurors at one time, large parking lots or structures are needed.

In response, courts are increasing their use of teleconferences and videoconferences to conduct proceedings. Videoconferencing between courtrooms and detention facilities is found in all states, primarily for initial-appearance or release hearings. The courts in British Columbia have allowed police officers to “appear and prosecute over the phone for Traffic Court hearings” (Allen, 2007:4). The report noted that this was to “reduce time that police officers spent travelling to, and waiting in, Traffic Court.”

Courts are finding many additional uses for video equipment. Correctional institutions in Georgia and Arizona draw on their equipment for telemedicine and telepsychiatry (Gramlich, 2009). Parole boards conduct remote parole hearings, while witness may testify remotely during a trial.

e. Consider an electrical audit of your courthouse or other facilities. Courthouses over 15 years old were likely not designed for computer use and consummate power draw. Therefore, your courthouse might be overloading the electrical circuits resulting in a potential fire hazard. The wiring also may not be properly grounded for computer use, making it a possible hazard for the users and for the computer itself. Dedicated electrical circuits with built-in or supplemental power-surge protection for computers are the ideal for new or renovation installations.

f. Recycle obsolete equipment.
Web Applications
Web applications are cost-effective and offer many greening opportunities. Applications such as public access to court records and online payment of traffic and parking violations help to keep traffic away from the courthouse.

At the E-Courts 2008 Conference, Amalia Rodriguez-Mendoza, clerk of the Travis County District Court, Texas, reported that their I-Jury project allows jurors to reschedule themselves for jury duty via the Internet (see http://www.co.travis.tx.us/district_clerk/). This system has resulted in an 85 percent plus yield rate of jurors called to jurors serving and was recognized locally as reducing vehicle emissions in Austin by eliminating unnecessary travel to the courthouse.

Green Awareness
To improve energy efficiency, it is necessary to enlist the help of judges and court staff. Several tips and tools are available. One software program, “GreenPrint,” is designed to reduce the number of pages printed by “looking for typical waster characteristics (like that last page with just a URL, banner ad, logo, or legal jargon).” The product also provides additional control over printing by previewing and allowing easy selection of the pages that one needs to print (see http://www.printgreener.com).

Finally, many specialists recommend that the court or agency include goals and measures of “green efficiency” in their annual budgets and reports. This shows that the court is sensitive to both the environment and to efficient operations.
RESOURCES


EPEAT Web Site. http://www.epeat.net/


Travis County District Clerk Web Site. http://www.co.travis.tx.us/district_clerk/

LEVERAGING TECHNOLOGY TO MEET THE NEED FOR INTERPRETERS

Carola E. Green  
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Wanda Romberger  
Manager, Court Interpreting Services, Research Division, National Center for State Courts

About 44 percent of the population of the United States speaks a language other than English at home. State courts, faced with the steadily increasing necessity to provide interpreting services, are identifying innovative uses of technology to maximize existing interpreter resources, while remaining fiscally responsible.

Background
A lack of sufficient qualified interpreters remains a challenge to the state judiciaries. As more states (currently 40) become members of the Consortium for Language Access in the Courts (formerly known as the Consortium for State Court Interpreter Certification) and implement standards for identifying proficient, qualified interpreters, attempts to make the most of these scarce resources vary. It is becoming commonplace to see the integration of remote interpretation via telephone and video in the courts as part of their ongoing effort to provide equal access to justice to linguistic minorities and to deliver quality language services.

As far back as 1993, when the Courtroom 21 Project (a joint effort of the National Center for State Courts and the College of William and Mary School of Law) unveiled a computer-integrated courtroom, it was evident that the effective use of technology could enhance the efficiency of the courts. Courts throughout the nation already provide interpreter services via speaker telephones, but as recognition of the importance of quality interpretation has increased, so has the need for more advanced technologies to play a role in providing those services.

Metropolitan courts often enjoy sufficient numbers of qualified interpreters to meet their needs, while rural courts face mounting language needs with no increase in the number of available interpreters. Geographically isolated courts could reap considerable benefits if they could be remotely linked with the larger pools of interpreter resources in the metropolitan areas.

What Technology Is Being Used?
Every two years the Professional Issues Committee of the Consortium for Language Access in the Courts conducts a survey of its members. In 2006 and in 2008, members were asked to provide information about their use of technology to provide interpreting services. Thirty-four of the 36 members responded to the survey in 2006, and 29 of 40 members responded in 2008. In 2006, members were asked whether interpreting services were provided via technology. In 2008, the question was expanded to ask members to qualify the types of technology being used to provide interpreting services.

In 2006 consortium members were already using technology, primarily through telephone, to provide interpreting services, particularly to rural courts (see chart). By 2008, the courts’ use of technology for interpretation expanded to include videoconferencing. (For inquiries regarding the cited surveys, please contact Carola E. Green at cgreen@ncsc.org.)

Telephonic Interpretation

Speaker Phone. The most often used technology in the courtroom to provide interpreter services is the speaker telephone when no interpreter is available on-site. There are a variety of telephonic interpreter agencies and vendors, who can readily be accessed by a simple telephone call. The one advantage to using commercial telephone-interpreter services is quick access to an interpreter. The disadvantages, however, are many, including:
• the court has no way of knowing the qualifications of the interpreter;
• there is no opportunity for confidential attorney-client communication;
• the interpretation can only be conducted in the consecutive mode;
• the background noise and lack of visual cues can make it difficult for the interpreter to accurately interpret the message; and
• there is minimal quality assurance.

Digital Audio Platforms. One technological step up from the speaker phone in the courtroom is the use of digital audio platforms. While still using the existing telephones in the courtroom, this system can provide enhanced audio quality and allow the off-site interpreter to control the call, even providing the opportunity for confidential attorney-client discussions. Again, the qualifications of the interpreter being used must be determined by the court, and it is strongly recommended that in-state, tested interpreters provide this service.

Specialized Telephonic Equipment. Continuing with the progression, there is technology capable of providing interpreting services in both the consecutive and simultaneous modes of interpretation. Some companies that offer these services have minimal requirements for setting up telephonic equipment, such as dual-handset telephones and installation of the equipment in all courtrooms. Conversely, other companies have higher technology requirements. The courtroom must have broadband technology and wireless connections to provide these enhanced audio services via live remote broadcasts. The advantages, of course, are that confidential attorney-client conversations can take place, the interpreter has a better audio feed to listen to, and the interpreter can use the mode of interpreting best suited to the circumstances. In addition, courts can use internal qualified interpreters and share them with all court locations, potentially maximizing the efficient use of resources and minimizing the cost. The financial savings might be degraded, at least in the beginning, by the cost to upgrade the courtroom and train staff to use the new technology.

Videoconferencing
The most advanced application of technology in courts at the moment is the use of video teleconferencing. This technology allows courtroom personnel to see and interact with the interpreter via video in real-time, usually through a high-speed internet connection. States that have integrated videoconferencing into the courtroom report the advantage of expediency in providing language services when no interpreter is available on-site, and when they use credentialed in-state interpreters, there is no question about the quality of the service. In addition, most of the systems available are portable, mobile, wireless, and fairly simple to incorporate into the existing courtroom network. This method is already being successfully used by courts for arraignments and jail interviews, and the possibilities of additional areas of use are limitless.

Scheduling Management Tools
Besides using technology to provide language services, courts can also use technology to enhance management information and scheduling systems, which are necessary to ensure the interpreting program’s success. Some electronic scheduling tools collect data about the existing need for interpreter services, including...
language, proceeding, case type, event type, and duration of the proceeding. This level of data collection is invaluable when courts are analyzing the cost of services, reviewing internal budgeting practices and trends in language needs, and determining projections for the future.

**Additional Technology to Consider**

One of the fastest growing ways of communication is using computer software applications to make telephone calls over the Internet. Calls to other users of the service and to toll-free numbers are free, while calls to other landlines and mobile phones can be made for a low cost. Additional features may include instant messaging, file transfer, and videoconferencing.

One example of this application is commonly known as the Voice-over Internet Protocol (VoIP), which is sometimes referred to as the Internet Protocol (IP) Telephone. If a courtroom is set up with a computer with a microphone and speakers and a good Internet connection, free communication can take place using VoIP (or for the same monthly fee that is paid for the Internet connection). One of the main advantages of VoIP is that it brings additional value from the already existing infrastructure without additional costs. One disadvantage is that VoIP is not free if you want to use it away from the computer. VoIP can be used with a telephone set or a mobile phone for a service fee. This fee is, however, less costly than standard phone calls. Other possible disadvantages include poor voice quality, insufficient bandwidth, power failure, and potential inability to make 911 emergency calls when the user does not have the proper configuration or the system is down.

There are basically three ways of using VoIP:

- Have a computer with a microphone and speakers at both communicating locations;
- Have a telephone at one location and a computer with the microphone and speakers at the other; or
- Have two dedicated VoIP phones that allow VoIP calls without the use of a computer. Instead they connect directly to the IP network (using technologies such as Wi-Fi or Ethernet). One thing to remember is that making connection usually requires a VoIP service provider; therefore, most people also use them in conjunction with a paid service plan.

VoIP is a relatively new technology, and it has already achieved wide acceptance and use.

**Conclusion**

Remote interpretation via technology allows the courts to better maintain court calendars and to provide interpreting services in a timely and cost-effective manner. When a courtroom is set up to provide interpreter services using technology, the delays in providing language assistance to court users with limited English skills can be dramatically diminished.

Cost is certainly a factor when considering the use of technology. There is always a dollar amount attached to the upgrade of existing technology, and any renovations required for the housing of that technology; sometimes, a significant initial outlay is needed from the much-stretched court budget. If courts upgrade courtrooms and implement new technologies, they must also develop business rules and protocol for using the technology, think through definitions and constraints that apply to the upgraded systems, and ensure that a clear record of the proceedings is maintained.

On the other hand, another factor that can be just as important is the potential savings in the long-term cost of unnecessary delays and wasted time for the court while waiting for an interpreter to arrive. Courts that strategically implement such changes by incorporating technology into their interpreter-service platforms can save money over time.

**For More Information**

Courts can conduct a search on the Web using key words such as “remote language access” “remote interpreting,” and “remote communication” to identify vendors and research the cost of the technologies mentioned in this article.

Courts can also consider looking at the states of Wisconsin, California, Florida, Pennsylvania, and New York, to name a few, for models where courtroom technology has been integrated into the provision of language services.
Courts should consider different types of systems when determining how to invest wisely and enhance existing court technologies while remaining fiscally judicious and reducing the overall cost of providing language access. As technology becomes more accessible, so does the potential for providing immediate language services, thereby increasing access to the courts for limited-English-proficient court users while conducting court business as usual.

RESOURCES


Hon. Philip G. Espinosa  
Judge, Arizona Court of Appeals, Division Two

The future of court technology has arrived at Division Two of the Arizona Court of Appeals. It is an integrated digital environment that approaches a true paperless court, resulting in greatly increased efficiency and significant cost savings benefiting all court personnel, the Arizona legal community, and ultimately the public.

When I introduce myself to groups interested in my court’s technological initiatives and progress, I often enjoy letting them know that I am actually from the future. This not only grabs their attention, but is also pretty accurate. I work in the kind of technologically enhanced environment that most courts are headed for, and where, I believe, they will find themselves in the next ten years or so, by economic necessity if not by choice. And, as I tell everyone, I am very fortunate because the future is good! Although most courts have embraced technological advances to one extent or another, the future I’m talking about is the rapidly approaching world of totally integrated digital information technology, and it is happening now at Division Two of the Arizona Court of Appeals in Tucson.

So, what’s so great about the future? Lots of things. In my case, it is an appellate court environment where the majority of appeals and related matters are electronically filed over the Internet directly into the court’s robust yet easy-to-use Electronic Document Management System (EDMS). It is the time-and-labor-saving convenience of having the entire record on appeal, including trial transcripts, exhibits, and anything that can be digitized, similarly transmitted to the court for easy and simultaneous fingertip access by all court personnel. It is having three ergonomic, flat 19-inch display screens on the desks of all legal writers, from law clerks to staff attorneys to judges, where briefs, computerized research, and record documents can be instantly accessed, viewed together, searched, copied and pasted, and simultaneously shared throughout the court, or remotely from any other location in the world that has Internet access. With what I sometimes refer to as “reverse e-filing,” it is no longer having to photocopy opinions and other documents generated by the court, or shuffle papers, fill envelopes, apply postage, or load mailing trays, when all court decisions, notices, and related matters are distributed to lawyers, litigants, and the public alike almost exclusively by automated electronic transmission. And, most important, it is the seamless integration of all these systems through a simple, intuitive, user-friendly, standard Web-browser interface. Welcome to the paperless court of the future!

The court environment I have described did not, of course, appear overnight. It began taking shape in 1998 with my court’s development of an innovative yet relatively simple system for scanning and imaging and transmitting the record on appeal via the Internet from our local superior court to our clerk’s office at the court of appeals. From that seminal effort grew remote e-filing for selected public-agency lawyers and then court reporters. At the same time, we began imaging all paper documents filed with the court and automatically converting those images to manageable and searchable text files. Next came expanding the database to all case types and opening up our e-filing program to all attorneys in the state. Along the way, the court’s old Electronic Case Management (ECM) software was upgraded to a powerful, configurable program that was developed in-house. That required wholesale conversion of all our case data, and we had to decide how far back we needed to go, that is, where to draw the line for accessing previously decided and closed cases. Enabling the integration of all these components was the installation of a robust EDMS, essentially a sophisticated database.

In 2003 it had become clear the system was efficient, reliable, and secure, and I persuaded the Arizona Supreme Court (or the chief justice simply gave in to my constant hounding) to accept petitions for review electronically over the Internet for cases originating in southern Arizona. Of course, he then had to get the clerk of the supreme court on board. A key selling point was that, like for attorneys from around the state who e-file in my court, no training or special software was required for the entire court to enjoy the benefits of our system, such as having on-screen access to the complete index of record and the ability to click on any index entry and immediately have the entire document available for viewing and searching, whether originally filed in digital or paper form. All they needed was their standard browser for surfing the Web and whatever they were using for e-mail. At my court’s
The “Paperless Court”

Electronic Filing
- Attorneys
- Court Reporters
- Pro Se Litigants
- Briefs
- Exhibits
- Motions
- Transcripts

Case Management
- Pleadings
- Decisions
- Orders
- Notices

Imaging
- Scanner

Electronic Distribution
- Decisions
- Orders
- Notices
- Internet E-mail

Supreme Court Access
- COA Orders & Decisions
- Record on Appeal

Court-to-Court Transfer
- Superior Court
- Record on Appeal

Petitions for Review

Public Access
- Decisions
- Docket
- Court info
- Public

Electronic Document Repository
- WEBDocs
- WEBDocs
- WEBDocs

Public Access
- WWW
- COA WWW Server
- WWW

A Word from the Future: The Virtually Paperless Court of Appeals
end, when a petition for review was filed, we simply sent the supreme court a “hot link” to the case in our system and they were instantly “in” for all purposes relating to that case. By all accounts, the project was an unqualified success among the justices and supreme court staff attorneys, and it helped galvanize the court to plan for e-filing across the state.

As you might expect, these revolutionary changes at Division Two did not come without a price. Not so much a price in dollars and cents (more on that later), but the high cost of professional and personal change. Most of us, at least of the generation that are now appellate court judges, “grew up” through law school and the legal profession doing our research and writing manually. We were surrounded by paper—lots of it. Probably none more than the judges in my court were entrenched in the way we did our work and administered our case-processing and chambers procedures. Paper is tactile, familiar, comfortable, predictable, and simple. It rarely disappears and never has to be rebooted. But it is also bulky, inefficient, awkward and expensive to store, and cumbersome when trying to quickly find needed information; it also occasionally cuts you. We were all just fine, however, with our existing work habits, and not one of us, myself included, was anxious to give up our treasured paper.

But giving up our paper “security blanket” and emulating computer geeks is exactly what I asked my judges and our legal staff to do. And, being in the leadership position at the time as chief judge, I attempted to set the example. Fortunately, it was easier than expected, once the ball started rolling, and some anxiously anticipated problems, like “hackers,” viruses, and other security issues, never materialized. Having instant access to files and documents that once took some time and effort to retrieve from the clerk’s office or track down in another chambers quickly proved to be far preferable to sending a law clerk or secretary to locate and retrieve and then having ten pounds of accordion files deposited on my desk. Instead of plowing through page after page of lengthy transcripts and attaching yellow sticky notes, it was possible to instantly search for and locate particular subjects, words, phrases, names, or dates and highlight relevant text, or copy it into a separate compilation area or document. And new flat-screen “flicker-free” monitors were proving much easier on the eyes than the old, bulky CRT monitors. Then, to help avoid any neck-and-shoulder fatigue from orienting

Electronically filed documents are not only exponentially more efficient in terms of processing, access, and storage, but, as a result of the way our system handles them, easier to read, use, and search than documents that have been imaged.

toward a desktop computer screen and keyboard for hours, we also obtained for our judges “tablet” PCs that can sit flat on your desk or lap, or travel with you to the conference room or across the country.

I would be glossing over much, however, if I said it was all a walk in the virtual park from there. Although most of our law clerks shifted over pretty easily, some judges and one or two staff attorneys had more trouble than others. For example, the first month after we threw the digital switch, one of our more “seasoned” judges went to the clerk of the court and instructed him to print out anything and everything destined for his chambers. When I learned about this, I immediately put that directive on hold and had a heart-to-heart with my colleague. He reluctantly but graciously agreed to go “paperless.” To the surprise of many, he adapted so thoroughly over the following months that he not only became an ardent adherent to the new way of working, but also, because of his proficiency, eventually gave presentations about our system to interested groups.

Electronically filed documents are not only exponentially more efficient in terms of processing, access, and storage, but, as a result of the way our system handles them, easier to read, use, and search than documents that have been imaged. So we began some public-relations work to persuade our legal community to stop giving us paper. A great incentive was the fact that, by special dispensation in our local rules for e-filing, no duplicates, colored covers, special delivery fees, or postage were necessary when e-filing. Moreover, briefs, motions, petitions for special action, or what have you can be e-filed any time of day or night and directly from any PC connected to the Internet. They also may be electronically served on opposing parties in the same manner. And once attorneys e-file their cases, they are permitted online access to the electronic record on appeal for their cases. Most important, we offered this service free of any costs to users. The program gained enthusiastic adherents in our legal community by leaps and bounds, and
just last year, we opened the e-filing system to self-represented litigants. About 70 percent of all documents coming into the court are now e-filed, and we expect that percentage to continue to grow.

I said I would get back to costs. The dollars and cents kind have been relatively low. Most components of our system are made up of commercially available programming and software products, and they reside in three standard, high-capacity computer servers that cost the court around $3,000 each, including one for e-mail. The most expensive part of our system was the EDMS (the database I mentioned). Such software, while complex and sophisticated, and, in our case, commanding an annual “maintenance” fee, is readily available from several vendors around the country. And there are a number of these platforms now developed specifically for courts, utilizing standardized programming tools and techniques to make them adaptable to almost any court environment. Total costs will vary, of course, with the size of the court and its specific needs.

Developing a full-featured “Cadillac” system in our relatively small court, consisting of six judges and about 30 support staff, including the clerk’s office, was in retrospect quite affordable. Our initial start-up costs back in 1998 were in the neighborhood of $20,000 and that included our EDMS, a server, digital-signature costs, and the bulk-imaging scanner we gave the skeptical clerk of the Pima County Superior Court to help persuade her to begin digitizing all superior-court case files and transferring them to us electronically. Our recurring database upgrade and maintenance fees have run around $12,000 per year, but we are currently preparing to substantially reduce this fee by about two-thirds. In describing our costs, I’m not including the cost of our full-time IT manager because he was part of our personnel lineup in any event. Most other costs have been one-time expenditures, which, over ten years, have totaled about $30,000, including those multiple flat-screen monitors, but not including other desktop PC equipment, which would be there anyway. But all our expenses have been more than offset by the substantial hourly, daily, weekly, monthly, and annually accumulated savings to the court in time, labor, and efficiency, along with vast reductions in outlays for recurring things like paper, envelopes, copying, postage, and file storage. Accordingly, costs should not be a formidable issue, unless a statewide system is contemplated. Even then, greater volume should result in economies of scale if IT leaders are smart about it.

I hope the future where I work is soon part of your future too. Although I have provided an overview of our appellate court system, I believe most, if not all our discrete “modules,” and most importantly their courtwide integration, are highly relevant to other types of courts as well. The significant gains and cost savings to Division Two, our “client courts” across the southern half of the state, our appellate practitioners, and ultimately the citizens of Arizona cannot be overestimated. If you are interested in more information, particularly of the technical type, I probably cannot be of much help, but our talented IT director is always pleased to talk to your IT people and we are happy to share anything we have developed in-house.

For more information, contact Division Two Information Technology Director Mohyeddin K. Abdulaziz, abdulaziz@appeals2.az.gov; Division Two Clerk of the Court Jeffrey Handler, handler@appeals2.az.gov; or Judge Philip Espinosa, espinosa@appeals2.az.gov.
RESOURCES


REDESIGNING FOR THE CUSTOMER: SELF-SERVICE SITES CAN HELP THE COURTS AND THE PUBLIC IN A TIGHT ECONOMY

Pam Burton
Web Content Editor/Manager, National Center for State Courts

Lean budgets provide more reasons, not fewer, to invest in a more customer-driven court Web site. Evolving more self-service, accessible online resources can save the state courts money in the long run—and may become a matter of survival.

To no one’s surprise, the growing use of the Web for finding information and conducting business has placed the same demands on the courts that it has on other service providers. The public—as well as court employees—increasingly ask why the ease and utility they are used to in their everyday transactions on amazon.com, travel and airline Web sites, and even social-media sites like Facebook are often nowhere to be found on present-day court Web sites.

Recognizing this, court Web managers and IT departments have responded, to the point that some sites exist in a near-perpetual state of redesign as developers add applications and create new interfaces with existing court data systems to bring information online. Such advances are not without costs.

Self-service court sites, often dependent on electronic documents and e-filing, for example, do not come cheap. “It requires an investment in people, procedures and technology,” says Richard McHattie, associate clerk for strategic planning and information technology with the Maricopa County (Arizona) Clerk of the Superior Court. “Given the current financial crisis, resulting in a hiring freeze and significant budget reductions, the economic and financial efficiencies you can gain make it almost an issue of survival.”

The biggest challenge, McHattie says, is delivering.

Below are a few useful approaches to serving the online court audience that should be considered during the planning phase of any redesign effort, as well as some specific features that are serving court site visitors well in some states now—while more are on the horizon.

Gear Your Site to the General User

Approaching www.sccourts.org from the perspective of a South Carolina resident, “I realized I would probably never come to our site unless I got a traffic ticket or had been called for jury duty,” says Winkie Clark, internal applications manager. With that firmly in mind, Clark and a small team at the South Carolina Judicial Department redesigned the site accordingly for a November 2007 launch.

Below are a few useful approaches to serving the online court audience that should be considered during the planning phase of any redesign effort, as well as some specific features that are serving court site visitors well in some states now—while more are on the horizon.

**South Carolina Judicial Department Web Site**

Highly trafficked content like South Carolina case records, trial court rosters, and offense codes, of interest to the courts’ specialty users—attorneys, judges, law enforcement, and the media—also may be easily found on the site, but takes a back seat to content most frequently queried by the general public. That pecking order makes the site more efficient for the public with court business to transact—while reducing the time and effort court staff spend answering the same routine queries by phone or at a counter.
“Making your specialist users do a little more work to find what they need is okay,” says John Wooden, director of usability services for Fredrickson Communications, Inc. (www.fredcomm.com), an agency that has done work for the Minnesota Judicial Branch intranet and Internet sites, as well as those of other government agencies.

For example, when developers sought to add calendar information to the WebCivil Local section of New York’s e-Courts site, clerks were enlisted to review the online interface “to check that the calendars in the database synched with the way people used the printed versions when they actually came in to get them,” says Geoffrey Vincent, e-systems development specialist in New York’s Office of Court Administration, Division of Technology. “Contact Us” links are part of the persistent navigation of the site, and Vincent relies on the resulting feedback e-mails to troubleshoot and fix problems on the site, as well as to flag him to new-content requests.

The South Carolina Judicial Department’s Web team compiled over a year’s worth of e-mailed requests from court staff, the legal community, and the public to help design the site’s e-mail notification system, through which Web visitors can sign up to receive opinions, orders, rules, forms, court news, and more.

The benefits of these simple feedback loops may seem obvious, but they can get overlooked in favor of content that users have not said they want but is easier to supply. Or lack of feedback leads to a navigation scheme, site

Push It to the People

Though getting the basics right—navigation, information architecture, and content—is always the top priority for Web sites, Web managers with an eye on accessibility are increasingly offering products to serve those who are nowhere near a desktop or laptop.

Subscription-only e-mails “blasted” to users who have signed up to receive specific content are popular on many court sites. E-Track, a service offered in New York, pushes updates to subscribers whenever their civil supreme, local civil, or criminal case of interest is updated by court staff—for example, if an appearance is moved to another date. Subscribers can also receive reminders of their scheduled appearance 1, 7, 15, or 30 days before the date. Other court systems offer subscriptions to e-mail news releases, opinions, and monthly reports.

RSS feeds employ a format for delivering regularly changing content to anyone subscribed via a feed reader. RSS saves subscribers time, since they do not have to check the site themselves to see if new information is there yet, and ensures their privacy because they do not have to sign up with their e-mail addresses. RSS feeds for opinions, court news, and job openings recently have been added to the South Dakota Unified Judicial System site (www.sdjudicial.com) and are becoming more widely used to disseminate both scheduled and “breaking” information.

Smart-phone-friendly mobile versions of sites were optional in any redesign five years ago—less so now. South Carolina’s launch of a mobile site last year right before a judicial conference was partially motivated by the standard-issue devices judges would be carrying: BlackBerries. As cell phones get smarter and their numbers grow, sending people to a site that displays poorly on a tiny screen makes less and less sense.
structure, or nomenclature that makes complete sense to court staff but is perfectly opaque to nonspecialists.

Free Web survey tools like SurveyMonkey and Zoomerang make it easy to query Web audiences about their transactional needs and a site’s usability. And any large-scale change or addition to a site always benefits from a few tests with real-world users, says Frederickson’s Wooden, who says testers should be asked to flag terms that they do not understand and to first find, then use, key information on the site. Identifying and removing user-unfriendly roadblocks as early as possible tends to save time, and money, down the road.

**Know Your Interfacing Options—They Are Expanding**

Faced with tight personnel budgets, many courts and technology departments are long adept at interfacing existing court systems with their Web content management systems so that sites are fed by the same “content creators” who originally populated the data in the case management or other administrative systems.

Interest in interfacing existing e-filing systems, as well as document-assembly software like A2J Author and Guided Interviews, with case management systems as the latter evolve toward statewide standards seems driven by two aims. First, that such linkages will improve the efficiency and quality of court processes, statistical reporting, and public accessibility. Second, that such enhanced technology will reduce costs.

California’s Court Case Management System, a Web-based service which will be accessed via other sites (either a court’s or the California Courts Web site) is set to launch mid-2010. The e-service is designed to allow receipt from third-party e-filing providers, justice partners, and a state-owned e-filing provider.

Using either courthouse self-service kiosks or a regular Internet connection, the public will be able to search for case information; view case documents; and, of course, pay fines and fees. In addition, if the public/justice partners establish a secure account, individuals will be able to update case participant information.

On New York’s site, self-represented litigants in civil court can assemble their forms with A2J programs available in the CourtHelp section. The forms cannot be filed electronically—but it is hoped that those and other pro se documents could join the larger e-filing system once the state’s planned case management system goes online, according to Chip Mount, the Department of Technology’s research director.

E-filing in Arizona’s Superior Court in Maricopa County began with a civil complex-litigation pilot program in 2003, then criminal and civil cases. Through a statewide initiative, e-filing will expand to all jurisdictions over a four-year period beginning in 2009 using the state Administrative Office of the Court’s chosen software vendor, Intresys (TurboCourt).

**Web Site Services: From Routine to Rare**

**Widespread Services (fairly common)**
- Electronic filing
- Access to hearing information (case calendar)
- Access to case dispositions
- Jury summons
- Pro se self-help information on court processes and filing requirements
- Pro se document assembly (forms)

**Midrange Services (not radical, but not yet widespread either)**
- Subscriptions to “bulk” case data and document downloads
- Online payment of all fines and fees
- Online traffic mitigation hearings
- Electronic filing of assembled pro se forms
- E-mail push subscriptions (opinions, orders, rule changes, news, case updates)
- RSS feed subscriptions (opinions, orders, news, case updates)

**Radical Services (very new or rare; business application unknown, uncertain, or controversial)**
- Comprehensive jury management (summons, recusal, orientation, assignment)
- Judicial officer performance measures
- Court performance measures (including dashboards)
- Case dispositions by lawyer and case type (lawyer effectiveness)
- Case dispositions by judge (judge shopping)
- Public-facing social-network sites
- Public-facing wikis (wikis are Web sites using special software that allows easy, collaborative creation and editing of interlinked pages)
McHattie says his organization studied the budgetary impact of e-filing versus paper and discovered the former to be approximately 40 to 50 percent more efficient. “The staffing that’s necessarily involved in accepting, preparing, bar-coding, scanning and docketing paper filings is just so much less efficient than a complete electronic file that is e-filed with the Clerk’s Office,” he notes.

**On the Horizon: Social Media**

Courts benefit from their business being online; the public wants to transact it there. And the Web, of course, is World Wide.

In December 2008, a court in Australia approved the use of Facebook, a popular social networking Web site, to notify a couple that they had defaulted on a home loan. In March 2009, a judge in New Zealand also allowed court papers in a suit over business dealings to be served to a man via Facebook. In both instances, the parties being served were deemed by the courts to be highly unlikely to be reached by conventional methods (see McGuirk, 2008; Chapman, 2009).

Though these examples—uninvited, one-way communications of last resort—are the antithesis of the Facebook norm, they illustrate how ubiquitous the social networking site has become in its five short years of existence.

For the New York courts, Chris Mount and Joe Gervais (the courts’ public access Web manager) have been exploring possible uses for social media for some time,

The court system’s human resources and technology departments, and staff in some of its judicial districts, use wikis—Web pages that any user can add to and update using their own Web browsers—for collaboration, project management, and scheduling.

Though the information sharing takes place on servers behind the firewall for now, Mount says they are looking at a number of vendors who offer Web-based social-media tools with robust security and permissions settings, making them useful as a backup to the main network or as secure spaces for, say, a discussion among judges.

Most of the vendors being vetted by the New York staff offer custom workspaces, filesharing and document management, chat, RSS feeds, dashboards, and project analysis tools. The promise that the resulting increased collaboration will boost productivity and slash operating costs are also part of the standard package.

For those in communications roles, social media tools are not just for the office intranet.

Frederickson’s John Wooden, who recently gave a presentation at the Conference of Court Public Information Officers annual meeting on how and why social media should be incorporated into a court system’s communication strategy, says government agencies are looking more closely at social media these days.

Though only in the exploratory stages, “People want to interact with government through the Web, and social media offers the big benefit of allowing end users to have a conversation with you,” Wooden says. These Web tools can level the playing field for some people by getting their voices heard. In some situations, it is feasible to think that the consumers of court services could become active producers of some kinds of content on sites, Wooden believes.

It is hard to imagine the day when social media will be a fixture on court Web sites in the same way that online payments, e-filing, and e-mail subscriptions are now. If the social-media trend joins other advances in self-service elements that broaden the range of cheaper, faster transactions online, court Web sites will have come a long way from their beginnings as simple document repositories.
RESOURCES


New York State Unified Court System. E-Courts case information services site. http://iapps.courts.state.ny.us/webcivil/ecourtsMain

SAVING MONEY FOR EVERYONE:
THE CURRENT ECONOMIC CRISIS IS AN OPPORTUNITY TO GET
SERIOUS ABOUT IMPROVING JUROR UTILIZATION

Paula Hannaford-Agor
Director, Center for Jury Studies, National Center for State Courts

The current economic crisis provides an opportunity for courts to improve juror utilization, potentially saving tens of thousands of dollars per year in unnecessary expenses incurred for unused jurors and hundreds of thousands of dollars in lost income and lost productivity incurred by jurors, their employers, and their communities.

The single biggest complaint that people have about jury service is the seemingly interminable waiting involved. Waiting for everyone to arrive in the morning so juror orientation can begin. Waiting for the judges to begin requesting jury panels. Waiting in the hallways outside the courtroom for the judges and lawyers to finish last-minute motions before voir dire. Waiting during trial recesses. A number of courts have made valiant efforts to make the waiting more tolerable by setting up work areas, installing wireless systems in the jury assembly room, and providing cable television, reading materials, puzzles, and other diversions. Although well-intentioned, these gilded cages seem to concede that waiting is an inevitable part of jury service.

This is unfortunate news for jurors, most of whom recognize the importance of jury service, but understandably resent the court’s apparent lack of consideration for their time, the disruption to their daily schedules, and their unreimbursed expenses (lost income, child care, transportation) related to jury service. What court officials too often fail to recognize is that poor juror utilization is at least as much of a problem for court management as it is for jurors. Every person who reports for jury service, but is ultimately not needed to impanel a jury, represents a number of “hidden” administrative costs beyond the juror fee and mileage reimbursement. The current economic crisis has prompted many courts to cut services related to jury trials, including the amount of the juror fee, the amenities offered to jurors, and even, in some cases, the availability of jury trials to litigants. A more productive approach, however, would be to recognize the extent to which poor juror utilization inflates costs unnecessarily. In many instances, improvements in juror utilization would pay for themselves entirely and could possibly generate additional savings that could be put to use in other areas of court operations.

How Many Jurors Are Really Needed?
In an ideal world, courts would be able to anticipate the exact number of jurors needed on any given day and would summon and qualify jurors accordingly. The NCSC recommends that courts summon only enough jurors to ensure that 90 percent are sent to a courtroom for voir dire, and that 90 percent of jurors sent to a courtroom are actually “used” (sworn as a trial juror or alternate, excused for cause or hardship, or removed by peremptory challenge) during jury selection. This standard provides for an overall utilization rate of 81 percent, ensuring enough “extra” jurors to accommodate most unanticipated circumstances, but not so many that substantial numbers of jurors are unused during voir dire or, worse, left waiting in the jury assembly room each day.

A useful way to calculate the number of jurors to summon and qualify is to start with the jurors needed for any given trial and work backward (Munsterman, 1996:101-09).

<table>
<thead>
<tr>
<th>How Many Jurors Should Be Sent to a Courtroom?</th>
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<tbody>
<tr>
<td>Example of a routine, nonviolent felony trial in a jurisdiction that requires a 12-person jury and provides each side with 6 peremptory challenges:</td>
</tr>
<tr>
<td>Jurors to be seated</td>
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<tr>
<td>Prospective jurors likely removed by peremptory challenge</td>
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<tr>
<td>Prospective jurors likely removed for cause or hardship</td>
</tr>
<tr>
<td>Extra jurors</td>
</tr>
<tr>
<td>Alternate jurors</td>
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<tr>
<td>Total Jurors Sent to Courtroom</td>
</tr>
</tbody>
</table>

Source: Center for Jury Studies
Most courts should be able to impanel a jury with alternates from a panel of 35 prospective jurors. Lengthy or high-profile trials will normally require a larger panel as more jurors are excused for cause or hardship. In those cases, a panel of 40 to 45 prospective jurors might be more appropriate. Similarly, trials involving difficult or controversial evidence (e.g., sexual assault, crimes against children) may also require larger panels. In most instances, the trial judge will be sufficiently familiar with the case to predict when a larger panel is needed.

A common characteristic of courts with good juror utilization rates is an established and enforced policy that sets standard panel sizes for case types based on current information about the number of jurors needed to impanel juries in those cases. Under those policies, judges who want a larger panel must submit a written request explaining the need for a larger panel to the chief judge or court administrator (not the jury manager, who rarely has sufficient authority to deny a judge’s request with impunity).

Once the court has determined the appropriate panel size for different case types, it is then possible to calculate the number of jurors needed to report to the courthouse each day based on the number of trials scheduled. For example, if three felony trials requiring panels of 35 jurors each and one civil trial requiring a panel of 45 jurors is scheduled for a given day, the court will need 165 to 170 jurors to report for service that day (150 jurors for panels plus a few extra, just in case). Courts typically summon jurors three to six weeks before the reporting date—well before the court has finalized its trial calendar. Consequently, they typically summon many more jurors than are needed to report, even after accounting for the expected jury yield. To secure optimal juror utilization, it is necessary for the court to have a mechanism such as a telephone call-in system to cancel or “waive off” summoned jurors or to place them on standby. This prevents the court from having more jurors report than are necessary to fill jury panels, leaving excess numbers of jurors sitting in the assembly room for the day.

The NCSC-recommended standards for juror utilization are ambitious, but achievable. On a statewide basis, for example, the Pennsylvania Court of Common Pleas boasted an impressive 81 percent of jurors sent to courtrooms for voir dire in 2006. Individually, 42 out of 67 counties exceeded the NCSC-recommended standard of 90 percent (Pines, 2007:76-82). In 2007 the U.S. District Courts collectively sent 87 percent of jurors to courtrooms for voir dire (Duff, 2008:Table J-2). Unfortunately, most courts do not meet the NCSC standard, but rather err on the side of summoning too many jurors. In a 2007 evaluation of juror utilization in the Massachusetts trial courts, for example, an average of only 50 percent of jurors were sent to courtrooms, and more than half of those were not used during voir dire (Hannaford-Agor and Munsterman, 2007:15). Only 64 percent of scheduled trials actually started in the first six months of 2008 in the Eighth Judicial District Court in Las Vegas, Nevada, resulting in more than one-third of jurors being left in the jury assembly room (Hannaford-Agor, 2004:9). Based on unpublished data for the first six months of 2008, approximately 54 percent of jurors reporting to New Mexico courthouses were ultimately used. A 2002 study of voir dire in California Superior Courts found that more than one-third of jurors sent to courtrooms were “not reached” (questioned and impaneled, challenged or excused) during voir dire (Hannaford-Agor, 2004:11-12). In each of these cases, the courts expended additional time and resources to summon and qualify jurors who were not ultimately needed to impanel juries.

Fiscal and Other Impacts of Poor Juror Utilization
One of the reasons that juror utilization has traditionally received less attention than other court performance measures is the pervasive belief that the costs of poor juror utilization are relatively inexpensive, particularly in light of the costs of keeping busy judges, lawyers, and other trial participants waiting in the event of a shortage of jurors. To the extent that costs of poor juror utilization include only the juror fees and mileage reimbursements paid to jurors, regardless of whether they are used, the pervasiveness of this belief is understandable. Nationally, juror fees average less than $25 per day (25 percent of daily per-capita income), and only half of courts reimburse jurors for transportation expenses (Mize, Hannaford-Agor, and Waters, 2007:11-13). Many jurisdictions, especially those employing one-day/one-trial terms of service, have adopted a graduated juror-fee system in which jurors are paid a minimal fee or nothing for a limited period of time (typically one to five days). In most courts, however, juror fees and mileage are only the tip of the iceberg in terms of operational costs. Courts rarely take into account the staff and physical resources expended to summon, qualify, and bring those jurors to the courthouse in the first place. Although precise figures are unknown, anecdotal reports suggest that these “upstream” administrative costs of jury management

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Saving Money for Everyone: The Current Economic Crisis Is an Opportunity to Get Serious About Improving Juror Utilization

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range from $20 to $25 per juror reporting for service in reasonably efficient courts. Administrative costs in excess of $100 per juror reporting have been found in less efficient courts. Few courts take these administrative costs into account when assessing the fiscal impact of poor juror utilization.\(^6\)

The limited focus on costs incurred directly by the courts, however, ignores the reality that jury service is heavily subsidized by in-kind contributions of jurors, their employers, their families, and their communities. Because these costs rarely, if ever, appear in court budgets, court policy makers often underestimate their magnitude. But the fiscal impact on individual jurors, their employers, and their communities is very real and often substantial. The daily per-capita income in the United States is $100.68.\(^7\) For jurors, this is the average lost income they incur as a result of jury service or, if they are fortunate enough to work for employers that continue compensation for employees during jury service, the wages/salaries paid by those employers.\(^8\) In addition, employers lose the value of their employees’ productivity for a day, which according to the U.S. Department of Labor was $1,350 in 2008.\(^9\) As a practical matter, most employers will not lose the full value of an employee’s productivity as other employees will be engaged to compensate for the absent employee or that employee will make up for some or all of the lost productivity on their return to work. Nonetheless, even half the Department of Labor estimate—$675 in lost productivity—for each day that an employee reports for jury service, but is not ultimately needed, is still substantial.

These represent the easily quantifiable costs associated with poor juror utilization. Other costs that are not as easily measured in monetary terms are the lost opportunity costs for jurors who are not employed and who would otherwise be engaged in activities other than jury service (child care, volunteer activities, education, recreation). Public trust and confidence in the courts is also lost by those individuals who did not enjoy the meaningful participation in the justice system of their peers who were impaneled, challenged, or excused. Although not easily quantifiable, courts should not discount or ignore the existence of these costs. Adding these costs together, we find that typical costs for unused jurors can range from $800 to $1,000 each, the vast majority of which are absorbed by jurors, their employers, and their communities; courts typically incur $25 to $150 per unused juror, or less than 20 percent of the total costs. Chart at left summarizes these costs.

### Causes and Solutions

Studies of juror utilization have attributed poor utilization to three factors: excessive panel size; day-of-trial cancellations due to plea agreements, settlements, and continuances; and over-summoning practices. As discussed above, the solution to excessive panel sizes is simply to establish standardized panels based on historical juror usage for different types of cases. Cases that warrant larger panels generally include capital felony trials, crimes involving sex offenses, crimes against children, and lengthy civil trials. Cases that warrant smaller panels generally include nonviolent felony offenses, misdemeanor offenses, and routine civil trials. The optimal panel size for each case type should be sufficient to accommodate the substantial majority of trials (e.g., 90 percent) but does not necessarily have to accommodate historical juror usage for all trials provided that judges can request a larger panel for unusual cases, such as high-profile or very lengthy trials.

The problem of last-minute cancellations is more difficult to address insofar that it is essentially a matter of effective pretrial management, rather than effective jury operations. Thus, the onus falls on judges to encourage litigants to engage in timely plea and settlement negotiations. It may not be possible to eliminate all day-of-trial cancellations, but many courts have adopted policies that provide substantial disincentives for late trial cancellations. One approach is simply to assess the full costs of a cancelled jury panel against the litigants (see box at top on following page). For example, if the cost per juror is $50 ($25 juror fee plus

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**What Are Typical Costs for Unused Jurors and Who Bears the Costs?**

<table>
<thead>
<tr>
<th>Estimated Cost Per Day - Per Juror</th>
<th>Costs Born By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average U.S. Juror Fee Paid by Courts</td>
<td>$25</td>
</tr>
<tr>
<td>Administrative Costs of Jury Management</td>
<td>$20-$25 for an efficient court to $100+ for an inefficient court</td>
</tr>
<tr>
<td>Lost Income/Lost Wages Paid</td>
<td>$100.68</td>
</tr>
<tr>
<td>Estimated Amount of Lost Productivity at Work</td>
<td>$675</td>
</tr>
<tr>
<td>Total - Typical Costs for Unused Jurors</td>
<td>$800 to $1000</td>
</tr>
</tbody>
</table>

Source: Center for Jury Studies
$25 administrative costs per juror reporting) and 45 jurors report for a trial that is cancelled on the day of trial, the court would assess a fee of $2,250 equally against the litigants. This amount reflects the full value of costs incurred by the court for the unused jurors. In states that permit courts to assess costs against criminal defendants who plea or are convicted at trial, these costs can be assessed against the defendant and prosecutor. Of course, these costs can be waived by the judge if the litigants can provide a reasonable explanation for their inability to plea or settle the case before the day of trial.

Another approach that courts have found effective for preventing day-of-trial plea agreements is the development of a strict "plea cut-off policy." Under such a policy, prosecutors, criminal defense attorneys, and criminal defendants are given notice that they must inform the court of their intent to enter a negotiated plea agreement by a specified date and time before jurors are told to report for service (usually the day before trial). If they fail to do so, the defendant must plead to the full charges filed (see box on the right). This type of policy provides equal incentives for the prosecution and defense to engage in meaningful plea negotiations. Prosecutors are encouraged to assess the strength of their cases and make reasonable plea offers or face the prospect of having to prove all charges to a jury beyond a reasonable doubt. Criminal defendants are encouraged to accept reasonable plea offers or risk being convicted and sentenced on more serious charges. Again, the trial judge retains the discretion to permit a late plea agreement if the parties can show good cause why they could not inform the court of the decision to plead in a timely manner. To be effective, these types of incentive policies must be consistently and uniformly applied by all of the judicial officers of the court.

A third factor that contributes to poor juror utilization is over-summoning jurors. Unpredictable failure-to-appear (FTA) rates prompt some courts to compensate by summoning more jurors than needed. For example, a court that can predict with some level of certainty that 5 percent of summoned jurors will routinely fail to appear for service will summon 105 jurors for every 100 jurors it needs to impanel juries. However, if the FTA rate is less predictable—sometimes 5 percent of jurors fail to appear, other times 15 percent fail to appear, and other times all jurors report—the same court will adjust its summoning practice to compensate for the highest possible FTA rate by summoning 115 jurors, rather than 105 jurors, which will normally result in as many as 15 excess jurors per day. Finally, as many as one-third of state courts have no effective means to tell jurors not to report for service in the event that scheduled trials are cancelled before the trial date (Mize, Hannaford-Agor, and Waters, 2007:18-20). Jurors simply arrive at the courthouse only to be sent home. A dedicated telephone line and answering machine that permits jurors to call and find out if they need to report as directed is a simple and effective remedy that requires very little staff time or additional resources.
Conclusions
As this brief article demonstrates, the costs of poor juror utilization are substantial—to courts, to taxpayers, and to jurors, their employers, and their communities. But most of these costs do not appear explicitly in court budgets. Rather, they involve inflated "upstream" administrative costs to summons and qualify jurors who were not ultimately needed to impanel juries. These inflated administrative costs pale in comparison to the costs incurred by jurors, their employers, and their communities. In the current economic climate, courts would be better served—and would better serve their communities—by improving juror utilization and, thus, reducing the wasted resources associated with poor juror utilization, rather than by cutting other budgetary lines in the jury operations budget.

ENDNOTES

1 Jury yield is a basic measure of efficiency in jury operations that describes the proportion of citizens who are qualified and available for jury service.

2 Pennsylvania does not report the percentage of jurors questioned (used) during voir dire.

3 The jury automation system in the Eighth Judicial District Court did not document the percentage of jurors used during voir dire.

4 Based on trial court reports compiled and analyzed in preparation for a series of jury management workshops conducted by the NCSC Center for Jury Studies with court policy makers and jury managers in New Mexico (November-December 2008).

5 The median introductory and graduated juror fees for courts using a graduated fee program are $10 and $35, respectively. Based on unpublished data from the State-of-the-States Survey (Mize, Hannaford-Agor, and Waters, 2007).

6 Munsterman (1975:4-12) first estimated that typical administrative costs per juror ranged from $5 to $20 in 1975. The $20 to $100 administrative costs discussed above reflect inflation-adjusted values and are consistent with more recent NCSC observations from technical assistance projects with state and local trial courts.


8 This figure does not include non-income compensation such as benefits (e.g., pension, health insurance, workman’s compensation, disability insurance, vacation/sick-day accruals) that are also incurred by employers.


RESOURCES


A survey in 2007 revealed that there were 296 security threats to California judges between December 2005 and December 2006. A mandated, easily understood reporting system and coordination between law enforcement and the judiciary are essential to dealing with these and other security threats.

In February 2005, the judicial branch was rocked by the murder of the husband and mother of Judge Joan H. Lefkow, a United States District Court judge for the Northern District of Illinois. The murder apparently was perpetrated by a man who was upset with her ruling in a medical malpractice lawsuit. He later committed suicide during a routine traffic stop.

Closer to home, H. George Taylor, commissioner of the Superior Court of Los Angeles County, and his wife were fatally shot outside their Rancho Cucamonga home in March 1999. The case remains unsolved.

Personal threats against judicial officers and their families happen all too often. The visible role that judges play in trials makes them a target. With threats to federal judges on the rise and constant threats and assaults against judicial officers in California, we must take swift action to assess threats and manage threat data properly. A mandated and clearly understood system for reporting and tracking threats is vital to providing an effective level of personal security for California’s judicial officers.

In 2005, the Administrative Office of the Courts (AOC) formed the Emergency Response and Security (ERS) unit. The unit’s initial mission was to draft emergency-planning tools for the branch and, in particular, the trial courts as they prepared to transfer facilities to state ownership. By 2006, it was clear that security had become a major concern across the court system, both nationally and in California.

“Courthouses must be a safe harbor to which members of the public come to resolve disputes that often are volatile.”

- Chief Justice Ronald M. George, California Supreme Court

Safe, secure courthouses and effective response to threats are fundamental to ensuring the operation of the justice system. As Chief Justice Ronald M. George has said, “Courthouses must be a safe harbor to which members of the public come to resolve disputes that often are volatile.”

Efforts to Ensure Court Security

Court security has several objectives: (1) allocating funding for salaries, benefits, retirement, and equipment for all security providers, sheriffs, marshals, private security staff, and civilian court personnel; (2) operating, managing, and improving trial and appellate court facilities and security measures; and (3) securing the personal security of judicial officers.

A great deal of progress has been made toward the first two objectives. The Judicial Council formed the Working Group on Court Security to investigate and recommend financial standards and compensation for security providers. The AOC made weapons screening a priority after its 2005 survey of trial courts showed that 97 court facilities lacked entrance screening stations. In 2006 money was appropriated and equipment purchased for these sites.

At that time, little statewide work had been done to ensure the personal security of judicial officers. The need was evident. However, through discussions with individual judges, the California Judges Association (CJA), and other groups,
it became apparent that the response to individual threats was varied and differed vastly from county to county. Later in 2006 the Personal Security Ad Hoc Advisory Group, composed of judges, law enforcement personnel, and court executives and staffed by ERS, was formed to review the issues related to the personal security of judicial officers in California. From its initial meetings a number of specific issues surfaced:

- Lack of a unified and all-inclusive threat-reporting system for state trial court judges—little or no knowledge existed on the number of threats received by judicial officers in the state;
- Lack of educational information on personal security, travel security, and security for judicial officers’ families; and
- A general lack of understanding about judicial officers’ personal security and courthouse security programs, along with a compartmentalizing of security matters county by county.

Penal Code section 76(b) mandates that any threat made to any member of the judiciary be reported to the California Highway Patrol (CHP). The advisory group’s initial investigation discovered that few sheriffs knew of this requirement and that fewer still complied with it. The process for the trial courts to report threats is not clearly defined, and the information is rarely transmitted to the CHP. As a result, the judiciary lacks information and statistics on the types, severity, and frequency of threats made to our judicial officers. While the CHP does keep a database in Sacramento on threats to elected officials and appellate court justices, this information is generally not shared with the rest of the branch. According to the CHP, current staffing does not allow investigation of threats outside its primary mission.

During the course of the investigation, it also became apparent that, outside of the larger sheriffs’ departments, little in the way of personal security was addressed by court security providers. The ERS unit began to receive more reports from smaller courts that threats had not been dealt with to their judicial officers’ satisfaction. The ERS unit worked with local sheriffs, district attorneys, and other agencies in response to several incidents to ensure that information was shared and a full investigation conducted at the local level. This process allowed the ERS unit to obtain investigative updates from law-enforcement personnel and keep the individual under threat advised of any safety- and security-related developments.

The ad hoc group discussed the need for a comprehensive survey on the personal security perceptions of judicial officers. It was unclear whether a survey of this nature had ever been conducted in the state, but the need for raw data for future planning was of paramount importance. In January 2007, ERS conducted a statewide survey of justices and judges to obtain information about threats received between December 2005 and December 2006 and to determine the current levels of judicial officers’ confidence in their safety inside and outside the courts. The survey, designed to keep respondents’ identities anonymous, was conducted via the Internet and announced to justices and judges via e-mail, newsletter, and the Serranus Web site. It reached a total of 1,609 active justices and judges and achieved an overall response rate of approximately 53 percent with 855 completed questionnaires. At least one response was received from almost every court, and a total of 296 threats were reported.

The survey results were striking:

- Of the 296 threats reported, 72 were described as imminent (about to happen or threatening to happen).
- 75 percent of the threats were against a specific judge, justice, commissioner, referee, employee, or family member. Most of these threats were received in the courtroom or court chambers through oral or written communication.
- 69 percent of the threats were classified as general rather than imminent. When threats were related to a case, those cases were predominantly criminal, followed by family-law cases. In more than half of all the threats, the plaintiff or defendant in the case was the person making the threat.
- 80 percent of the threats were reported, most often to the sheriff. The most common precaution taken was to notify courthouse security or staff.
- 85 percent of the justices and judges said the threat had been investigated to their satisfaction, and 79 percent reported that they received feedback about the investigation from the person to whom the threats were reported.
Ways to Protect Yourself

As a judicial officer, what can you do to protect yourself against threats? Many of the steps are simple. Here’s a checklist:

1. Find out if your court security provider or local law enforcement agency will conduct a security review of your home.
2. Install a home alarm system in your primary residence and use it regularly. The alarm should be monitored by the alarm company or by local law enforcement. Find out if law enforcement responds to all alarms.
3. Make sure all doors and windows to your home, including your garage door, are locked when not in use. Do not leave keys to your home anywhere outside the house, such as under doormats, over doors, in mail slots, or in any other obvious place.
4. Do not put your name or title on the outside of your residence or mailbox.
5. Do not use your home address on any public records or publicly accessible records. Consider holding title to your property in trust.
6. Change your mailing address to your work address and use a post office box or business-address telephone number on your personal checks.
7. Apply for confidentiality on driver’s licenses and vehicle registrations owned or leased by you, your spouse, and your children from the state Department of Motor Vehicles. Forms can be obtained from your local security provider or the CHP.
8. Make sure your telephone number is unpublished and unlisted.
9. Do not give out identifying information such as home address or telephone number unless absolutely necessary or required for governmental purposes.
10. Ensure that your home address and telephone numbers are not listed on Web sites other than those secured by government agencies. The AOC has created a Judicial Privacy Protection Opt-Out Program to help new justices, judges, commissioners, and referees remove personal information such as home addresses and telephone numbers from Web sites. ERS staff handles the initial opt-out request for participating judicial officers and is collaborating on educational materials with the Court Security Education Committee (which is appointed by the Judicial Council’s Governing Committee of the Center for Judicial Education and Research).

Threats to judges may come in many different forms: in writing, by telephone, verbally through an informant or a third party, or through suspicious activity. Threats and inappropriate communications can be anything that harasses or makes ominous or unsettling overtures of an improper nature and can include inappropriate pictures or drawings. Any received threats should be reported immediately, even if they appear minor or inconsequential. Your security provider will determine whether a threat is credible and warrants investigation. Here are some tips to keep in mind:

- If you feel you may be in imminent danger, call 911 immediately.
- If the threat is not imminent, inform your court security provider as soon as possible.
- Ensure that your local investigating agency reports the threat to the CHP Dignitary Protection Section, Threat Assessment Unit, at 916-327-5451.

The survey clearly has shown the need for a statewide system to report threats, process threat information, and share that information with agencies that need it. In
order for that to be accomplished, law-enforcement agencies must come together to agree on a single format, a repository agency, and the information that can and should be shared.

In 2006, the ERS unit applied for funding through the Homeland Security Grant Program to develop software and obtain staffing for an initial test of a statewide system. The funding request was denied. In the long term, legislation is needed to develop a statewide system. However, it is critical that courts and their security providers work together on an agreement that would benefit the entire branch.

In 2008, the ERS unit...[brought] together the California State Sheriffs’ Association, the CHP, and the CJA to discuss how to proceed on this issue. In the interim, the ERS unit has delivered to courts across the state a number of training programs dealing with personal security, emergency planning, and courthouse security. Additional educational materials on travel security, pandemic preparedness, and radiation protection are now available, and the Court Security Education Committee is developing further personal-security-training materials.

As Judge Lefkow eloquently stated in her testimony to the United States Senate Committee on the Judiciary on May 18, 2005:

Our system is the role model for the world. Without fearless judges, where are we as a nation? I have no doubt that each of you is equally committed to this idea. Your voices as elected officials are magnified. Judges, by contrast, speak most often through their decisions. We need your leadership in this area, and the stakes are profound.

The branch has come a long way in a short time, but personal security is a team effort, and we must bring together sheriffs, marshals, the CHP, and judicial officers statewide if we are to succeed in creating a solid prevention-based program. Judicial officers’ support of and participation in information-gathering initiatives are important facets of the process and are greatly appreciated.

Checklist Summary – Judicial Protection Measures

- Security review of your home
- Install a home alarm system
- Control house keys and lock all doors and windows—all the time
- Do not put your name on your residence or mailbox
- Do not use your home address on any public records—hold title to your property in trust
- Change your mailing address to your work address and use a post office box or business-address telephone number on your personal checks
- Obtain confidentiality on driver’s licenses and vehicle registrations owned by you, your spouse, and your children
- Telephone number should be unpublished and unlisted
- Do not give out identifying information unless absolutely necessary
ENDNOTES

* This article was originally published in California Courts Review (fall 2008). Used with permission.

RESOURCES


Section 6254.21 (c), Government Code of California, California Codes. http://www.leginfo.ca.gov/cgi-bin/waisgate?W AISdocID=0886728547+0+0+0&W AISsection=retrieve
The current fiscal crisis might prompt local courts to consider some sort of shared-services arrangement to consolidate operations and cut costs. The New Jersey experience offers some helpful tips and cautions.

The state of New Jersey’s fiscal crisis has reached every level of government. Many New Jersey municipalities, faced with a significant reduction in state aid and a precipitous increase in operating expenses, have been forced to explore creative options that impact the bottom line, including that of shared services. This trend toward shared services has included New Jersey’s municipal courts, which are local courts of limited jurisdiction. This article focuses on that trend, treating this topic from a state, county, and local perspective.

The concept of shared services is not new. It has been studied extensively since the 1960s (Schmmerhorn, 1979). The theory behind shared services is simple: increased efficiency and cost savings can be realized through economies of scale (New Jersey Department of Community Affairs, 2006). It can also provide an effective way of containing costs and reducing service redundancies.

All 50 states have passed legislation allowing for shared-service arrangements by their local entities. The state of Washington, for example, recently passed a law that provides for municipal court contracting, which states in pertinent part: “A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities.” This language is consistent with that contained in the statutes of many other states.

In New Jersey, sharing services between local units of government is on the rise, with municipalities actively looking for ways to cut costs. This includes sharing everything from street sweepers and ambulance services to fire and police services. To provide for this, municipal leaders use courtesy or handshake agreements that allow for the sharing of facilities, equipment, or supplies, as well as formalized agreements that are sometimes required by state statute and that require the passage of local ordinances or resolutions. New Jersey has been at the forefront of the shared-services trend, especially as it relates to local or municipal courts; a sizable 21.7 percent of the state’s 526 municipal courts are part of a formal shared arrangement.

The New Jersey Experience

In New Jersey, the Uniform Shared Services and Consolidation Act (N.J.S.A. 40:65-1 et seq.) provides the statutory authority for municipalities to enter into an agreement to share services. A separate statute (N.J.S.A. 2B:12-1) provides the specific authority for municipal courts to be part of a formal shared agreement. This latter statute requires each municipality either to establish an individual court or to enter into an agreement with other municipalities to establish a shared or joint municipal court.
**Joint and Shared Courts**

A shared court in New Jersey is one in which two or more courts actually share resources, including staff, office space, technology, supplies, and even judges. In a shared-court arrangement, each court maintains its own identity. The caseloads, financial transactions, bank accounts, and other matters of court business are not commingled, but remain separate; they simply share resources.

A joint court, by comparison, involves two or more courts combining to form one larger court. Their cases, and all court business such as finances and administrative practices, are combined. They not only share resources, but become one entity, regardless of the number of participating municipalities.

Another important distinction between joint and shared courts involves the judicial appointment process. In a joint court judges are appointed by the governor, with the advice and consent of the state senate (New Jersey Constitution, Article IV, Section VI, Paragraph 1), while in a shared court judges are appointed by the local governing bodies.

There are advantages and disadvantages to establishing each type of court. In municipalities wishing to retain the ability to select their own judge, a shared court is obviously preferable, given the role of the governor in appointing the judge in a joint court. Conversely, joint courts are considered easier to operate, since cases and finances are commingled. Joint court staff need not worry about maintaining separate filing systems or financial accounts, depositing monies into the wrong bank account, or entering a disposition under the wrong court code. These are everyday issues confronted by staff working in shared courts. For these reasons, the establishment of a joint court is generally preferable when merging large numbers of municipal courts, since the greater the number of courts involved, the more complicated the day-to-day administration.

Finally, although joint courts are generally easier to operate than shared courts, they have one significant disadvantage: they are more difficult to break apart once merged. In shared courts that disband, each court simply moves its operations to a new location. This is made easier by the individual operations being separate and distinct. Joint courts have the added burdens of determining who retains jurisdiction over which cases and how collected monies should be distributed. Who, for example, should have jurisdiction over a matter originally disposed of by the joint court, but reopened by motion a year after the separation? Who reimburses the defendant if he or she is later found not guilty and monies must be refunded? Complicating these issues is the fact that most court computer systems are simply inadequate to provide the level of flexibility and sophistication needed to process these changes, especially when large numbers of cases are involved.

**Other Types of Shared Services**

It is important to draw a distinction between what is meant in New Jersey by shared municipal courts and courts that simply share services. As discussed above, a shared municipal court is one in which two or more municipalities have formally merged by passing ordinances or resolutions, pursuant to state statute (N.J.S.A. 2B:12-1). In these arrangements, all court operations are generally centralized in one facility.

There are, however, less formal types of shared-service arrangements in our courts that do not require a formal resolution or ordinance. Although these arrangements are not the focus of this article, they still bear mentioning. Many courts, for example, routinely share equipment, including videconferencing, sound-recording, and assistive-listening devices. Some municipalities even share security-related
equipment, including magnetometers and scanning wands. It is not uncommon for courts to share physical space, such as a courtroom or storage space. Although no specific data are kept on the number of such shared arrangements in New Jersey, they are fairly common, with some agreements lasting for a short duration and others lasting years.

**Looking at the Numbers**

There are 566 municipalities in New Jersey, organized into 21 counties. As of April 2009, 123 were part of a joint or shared court. This means that in the municipal courts, more than one in every five municipalities, or 21.7 percent, are currently part of a formal arrangement of a merged court.

Sixty-four municipalities have established a joint court, while 59 municipalities have established a shared court. In total, 18 of New Jersey’s 21 counties have one or more merged courts, either joint or shared. Of particular interest is that, with few exceptions, all of the joint and shared courts are low-volume courts, with the individual courts involved in the mergers generally having annual caseloads of a few thousand or fewer.

According to experts at the New Jersey Administrative Office of the Courts, many of the state’s joint and shared courts were established within the past 10 to 15 years, with a fair number being established within the past 5. In fact, in the short time between January and March of this year, six merged courts were created, comprising 15 different municipalities. During that same time, two merged courts comprising four municipalities were disbanded.

Burlington County, located in the southern half of the state, provides an excellent example of the recent growth of shared court services. Consisting primarily of farmland and small communities, Burlington County is considered by many to be a county ripe for shared services. Currently, 11 of its 40 municipal courts are combined into five shared-services arrangements. While one of the shared courts, Bass River/Washington, has been in existence for more than a decade, the oldest of the four remaining shared courts was established in 2005. Additionally, merger talks between other municipalities are ongoing. In fact, local leaders from one centrally located municipality recently sent letters to local leaders in all contiguous municipalities advising that they were interested in a shared-services agreement.

Burlington County is not alone. These same discussions are occurring throughout the state. Local leaders, for example, in Gloucester, another southern county, are even exploring the possibility of creating a regional municipal court. This "super" municipal court would provide court services for most of the municipalities in the county. Discussions between local leaders from the interested municipalities are ongoing.

Finally, several other things are happening on the state level that may affect shared-court services. Each county, for example, has a shared-services coordinator, who is responsible for identifying local entities that may benefit from shared services. In one county, this coordinator recently effectuated the merger of five municipal courts. Additionally, a report recently published by the state’s Local Unit Alignment, Reorganization and Consolidation Commission (LUARC), whose name aptly describes its role, noted the appeal of merging municipal courts. The New Jersey State Bar Association’s Judicial Administration Committee has also supported the fusion of local courts where appropriate.
The Effectiveness of Shared Services
When it comes to shared services, the all-important question is: Does it work? A growing number of municipalities in New Jersey are hiring outside firms to conduct feasibility studies to help answer this question. In fact, grants to conduct these studies are available in New Jersey through the “SHARE” (Sharing Available Resources Efficiently) Program, which is administered by the state’s Department of Community Affairs.

In New Jersey and elsewhere, the jury seems to be out on the effectiveness of shared court services. While many local leaders claim significant savings, others state that savings are far less than anticipated, if even realized at all. Some even claim they are losing money. A newspaper article appearing in the April 8, 2009 edition of the Star Ledger highlights the financial problems of several municipalities that are part of the state’s largest joint court, the North Hunterdon Municipal Court. Several local leaders of this eight-municipality joint court claim their municipality is losing money, since they are paying significantly more to operate the merged court than is being received in revenues.

The reality is that, similar to any business venture, the savings realized by a court merger are tied to many factors, with the most important being the financial stipulations contained in the merger agreement. Based on the agreement and related factors, some municipalities will realize significant savings while others will not.

Cost-Benefit Analysis
The best way to determine whether a proposed merger makes sense is to conduct a cost-benefit analysis. The relevant issues to consider when merging two courts, whether joint or shared, are lengthy and situation specific. In addition to the financial implications, there are many other issues that warrant consideration, including some that raise sensitive political or local control issues (see “Considerations for Merged Courts” checklist).

The Role of the Judiciary
The independent authority of a municipality to establish a single, joint, or shared court is clearly established, but there exists a larger framework in which a municipal court operates. Before concluding, it is important to clarify the judiciary’s role in this process. While New Jersey statute makes it clear that the decision to establish a joint or shared court rests with the local municipality, the state constitution and applicable court rules make it clear that the oversight responsibility for the efficient

Considerations for Merged Courts

- Will the newly merged court be a joint or shared municipal court?
- In which municipality will the merged court be located?
- Will the new facility be able to handle the increased volume, staffing, and filing needs? If not, what facility renovations will be needed?
- What impact will the increased court volume/traffic have on other offices in the building?
- What impact will the merger have on the public in terms of convenience?
- How will the merger impact the police department?
- How many staff members at what titles will be needed to properly staff the merged court? Will anyone be demoted or fired? If so, staff from which court(s)?
- Who will run the court? That is, who will be the judge and court administrator?
- Are caseloads for each municipality expected to increase or decrease in future years? What impact will this have on the facility and future staffing?
- Is the merger agreement static or will it change based on future operational needs?
- How often will court sessions be needed?
- Will the judge, court administrator, or other staff be given additional compensation to handle the additional responsibilities?
- Who pays for future facility upgrades or the purchase of new equipment? Who has control over these decisions?
- Who is responsible for providing court security?
- Who assumes liability risks?
- How much does it cost a municipality to operate its present court? How does that compare to the anticipated cost of being part of the merged court?
- How can the agreement be terminated? What are the town’s options if it is?
administration of the court rests with the judiciary, specifically, the assignment judge or chief judge, who is an appointee of the chief justice assigned to oversee all judicial processing in the vicinage, or judicial district. In this partnership between the local court and the state judiciary, a partnership that is not always amicable, the municipality is responsible for the staffing, budget, and physical-plant needs of the court, while the assignment judge is responsible for the judicial and administrative handling of all cases.

As a result of this dual responsibility, municipal leaders and assignment judges must work together to ensure that each court has the resources and expertise it needs to properly serve the public. This becomes even more important when a municipality considers establishing a joint or shared court. Too often, decisions are made without sufficient input from the judiciary. This can lead to decisions based more on economics than on the administration of justice. It is essential that when contemplating the establishment of a joint or shared court, municipal leaders involve the assignment judge in the discussions as early as practicable.

**Conclusion**

No one knows what the future will bring. It is clear, however, that in New Jersey and elsewhere, more and more municipalities are contemplating shared-services arrangements due to the weakened economy. Whether this will lead to an increase in the number of shared and joint courts remains to be seen.

For some, shared services represent an opportunity to do more with less. But as highlighted in this article, it is not always the panacea it appears to be. Mergers benefit some municipalities, but not all. Municipal leaders should carefully analyze the impact the consolidation will have on the entire community, rather than just focusing on the bottom line. Crafting a deal that is economically feasible and also serves the public is possible. The potential for cost savings and improved service is real. Decision makers must approach the shared-services choice with care, cognizant of the risks and aware of the substantial benefits that can be gained from doing it right.

**RESOURCES**


Increases in three populations—the elderly, persons with disabilities, and the homeless—will require courts to rethink and revise approaches to decision-making assistance.

Across the nation, the provision of public guardianship services—unlike well-established professions such as law, social work, and medicine—lacks a comprehensive body of knowledge, standards of practice, and code of ethics to guide performance. Thus, there is a great need to document what public guardians do for individuals served, to develop uniform policies and procedures for the provision of service, and to test the procedures developed over time through application and document how this work improves the quality of life of persons with diminished capacity. Developing this body of work requires collaboration between practitioners in the field, researchers, and policy makers.

In 2007 Washington joined the list of states providing public guardianship services with the passage of Senate Bill (SB) 5320, which established an Office of Public Guardianship (OPG) within the Administrative Office of the Courts (AOC). SB 5320 resulted from multiyear efforts of a task force established by the Elder Law Section of the Washington State Bar Association to propose a solution to the problem faced by Washingtonians who need guardianship services but could not afford them. A broad-based group of stakeholders, including members of the judiciary, the elder network, and advocates of persons with disabilities, supported the work of the task force and helped to pass legislation.

Implementation of the Washington State Office of Public Guardianship

Legislation directed the OPG to contract with certified professional guardians to provide public guardianship services in pilot programs in at least one urban and one rural area. To satisfy this requirement, the OPG issued a request for proposals (RFP) encouraging certified professional guardians to identify preferred service areas and propose methods to provide public guardianship services. Limited response to the RFP slightly delayed implementation as the OPG pursued another avenue to identify pilot sites and to contract with certified professional guardians for the provision of public guardianship services.

The OPG used a two-part process to identify pilot locations: (1) identify indicators of the need for public guardianship services and prioritize areas based on the indicators and (2) contact professional guardians working in the prioritized areas and conduct interviews jointly with stakeholders. The indicators used were (1) percentage of the population age 18 and over living in poverty, (2) percentage of the population age 65 and over, (3) disability prevalence of the population, and (4) percentage of adults within the population receiving Department of Social and Health Services (DSHS) long-term care services. The pilot locations selected were Clallam, Grays Harbor, Okanogan, Pierce, and Spokane counties. King County was added later in response to a documented need for public guardianship services.

In June 2008, professional guardians under contract with the OPG began providing public guardianship services to incapacitated persons age 18 or older whose income does not exceed 200 percent of the federal poverty level as determined annually by the United States Department of Health and Human Services (US DHHS), or
who receive long-term care services through Washington State DSHS. In addition, because the OPG is considered the guardian of last resort, it asks that there be no one else willing and able to provide guardianship services and assigns priority status to individuals satisfying the following criteria: (1) indigent/homeless; (2) at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and (3) imminent danger of loss or significant reduction in public services that are necessary to live successfully in the most integrated and least restrictive environment that is appropriate for a specific individual.

Lessons Learned
The team in Washington State consists of seven certified professional guardians who contract with the Office of Public Guardianship to provide public guardianship services; a community of concerned advocates in the elder network and the disabilities community; a handful of elder-law attorneys and judicial officers; and a small staff. Each individual contributes his or her expertise in data collection, assessment, policy and legislation, advice, or practice to ensure development of a successful program.

Each member of an effective team brings unique and valuable skills and perspectives to the collaboration. Working together the team should produce a body of knowledge addressing the challenges and barriers faced in providing services to this growing population. While the primary focus of the body of knowledge is guiding guardian action, a secondary use of the knowledge is to inform the decisions of policy makers for the elderly and for persons with developmental disabilities, physical disabilities, and mental illness. The body of knowledge is expected to be transferable from program to program and state to state, but should allow flexibility for modification to accommodate special circumstances.

The team determined that a thorough capacity assessment is a key element of an effective public guardianship program. In the past, theories of competency and capacity were based on the principle of all or nothing. An individual was believed to be either competent or incompetent, to have capacity or to lack capacity. Thus, the legal construct of guardianship was developed to accommodate this all-or-nothing theory. Advances in medicine and in the knowledge of brain function and functional ability have dispelled the all-or-nothing theory. Capacity is now believed to be specific to functional areas and not global. It is also believed to fluctuate (here today, gone tomorrow); to be situational and contextual, occurring as a result of environmental influences or other triggering events; and to have the potential to be enhanced with education, training, rehabilitation, treatment (mental health and medical), therapy (occupational and physical), services (home and social), and assistive devices or accommodation. The change-in-capacity theory provides an opportunity to modify how guardianship and alternative programs and services are structured and delivered.

The acknowledgment that capacity is not global begs for a comprehensive assessment process to inform judicial determination of capacity. Currently, guardians ad litem, or GALs (court investigators), are charged with investigating the need for a guardianship after a petition is filed. The GAL investigation is the primary source of information used to inform judicial determination of capacity. As part of their investigation, GALs must obtain a medical report and may request reports from other professionals. The medical reports rarely provide the level of detail contained in comprehensive assessments, and limited resources hinder GALs from regularly requesting reports from other professionals. Requiring comprehensive assessments by qualified professionals will address the inadequacies of the current process.
Medical, mental health, and legal professionals have responded to the call for more comprehensive assessments with the development of assessment tools and instruments that aid the assessment process. Currently, these tools are used by professionals in various fields of study and often come with a hefty price tag. The challenge is to incorporate comprehensive assessments into the investigative phase of guardianship petitioning and to provide more data to judicial officers and guardians. If the court determines that a guardian is needed, the comprehensive assessment can be used to craft a limited-guardianship order that affords the individual with diminished capacity the greatest possible autonomy and control while providing needed protections. The same assessment can be used by the guardian to develop a comprehensive plan of care, including specific treatments, services, or habilitation needed to address the specific capacity issues described in the assessment. Assessments, though expensive, have the potential to provide cost savings because they facilitate concentration of resources on the specific, diminished decisional domain (care of self, financial, health care, safety, civil, or legal), rather than the shotgun method of attacking all decisional domains.

Recognizing the value of comprehensive assessments, the OPG requires completion of a comprehensive assessment by an independent assessor for each person served. The assessor serves as a consultant to the public guardian, providing advice and guidance regarding the provision of public guardianship services.

**Plans for the Future**

The OPG executed a strategic-planning process that produced a modified vision statement encouraging provision of broad, customer-centered decision-making assistance to individuals with diminished capacity.

The new mission is: *To act as a conduit for the provision of qualified surrogate decision makers for low-income individuals.* The OPG envisions that within 10 years, qualified surrogate decision makers will be available statewide to meet the needs of low-income individuals with limited capacity who require assistance making decisions related to health, safety, and financial affairs.

To fulfill its mission and vision, the OPG plans to recommend a comprehensive statutory framework to provide decision-making assistance to persons with diminished decision-making capability who have no relatives or friends who are qualified or willing to be involved in the decision-making process. The act should cover major decisions about property and affairs, health-care treatment, and place of residence.

The shift from a global concept of capacity to a specific functional decisional concept made the mission modification possible and removed the barrier to service resulting from the requirement to label individuals “incompetent” or “incapacitated”

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**Potential Services Provided by Office of Public Guardianship**

**Money Management:** Assisting low-income individuals with budget creation, bill sorting and paying, checkbook balancing, and tax and benefit preparation.

**Representative Payee:** Individuals are appointed or authorized to receive and manage public benefits on behalf of another, e.g., Social Security, Supplemental Security Income (SSI), veteran’s benefits, or civil-service and railroad pensions. Funds are deposited in a designated account and managed by the payee, who pays bills and tracks bank statements.

**Care Management:** Trained professionals develop personalized care plans and evaluate, plan, locate, coordinate, and monitor services.

**Health-Care Surrogates:** Individuals are appointed or hired to assist with or make health-care decisions.

**Power of Attorney or Attorney-in-Fact:** A legal tool enables the principal or grantor (person authorizing another to act) to give legal authority, as broadly or narrowly as desired, to an agent or attorney-in-fact with a document (a power of attorney).
before guardianship services can be provided. The shift facilitated the development and provision of a range of supports and services focused on each decisional domain, without a finding of incapacity.

**Conclusion**

According to the U.S. Census Bureau, the number of Washingtonians age 65 and older will double over the next 20 years. This population and the population of persons with disabilities represent a potential tidal wave of persons needing assistance making decisions. The actions taken by the OPG position the courts to respond to the tidal wave.

The current financial downturn presents great challenges for the provision of decision-making assistance to low-income individuals. Faced with more than a 19 percent cut to the AOC budget, the OPG anticipates a significant budget reduction. In the future, other service providers, like the OPG, may be challenged to find effective methods to stretch limited resources to deliver the same quality service. Potential cost-saving initiatives to consider are better use of technology and effective recruitment and management of volunteers. Balancing the risks of providing no services and the risks of providing services in other ways will be critical.

**RESOURCES**


Utilizing the nonprofit sector to help secure financial and other resources may be beneficial to court systems, especially in times of fiscal uncertainty. While courts have not historically partnered with nonprofit organizations, the latter can augment court services, act as an advocate or conduit for funding, assist with community outreach, provide community education, and engage in research that results in needed justice policy reform.

Several articles in last year’s *Future Trends in State Courts* examined financial issues facing contemporary court systems, particularly court reactions to budgetary constraints in times of economic downturn. One article, “Delivering Judicial Services in Hard Times,” discussed the various ways that courts have reacted to funding restrictions in the past, most notably to cut spending, boost efficiency, and increase revenue (Hall and Clarke, 2008). A fourth option not mentioned in the article, and rarely implemented in practice, is to develop relationships and collaborations with the nonprofit sector to derive supplementary resources of mutual benefit.

Historically, the courts and nonprofit organizations have not taken advantage of the benefits that partnerships between the two could generate. In an effort to maintain standards and provide adequate services in times of economic downturn, state courts should consider cultivating and expanding collaboration with nonprofit organizations. Following a brief overview of the current economic climate, this article presents six advantages of nonprofit/court collaboration.

**Just How Hard Are the Times?**

In the recent past, budget cutbacks affecting the courts have run the gamut. The most frequent actions by states to curtail court expenses have been personnel related, resulting in only a relatively short-term fix. Such actions have included hiring delays or freezes, permanent layoffs, delay of pay raises, reduction in training, and restrictions on out-of-state travel. Other actions have involved the increased use of electronic communication, the reduction of capital expenditures, and cuts in funding to problem-solving courts (Hall, 2008). Cutbacks, however, have also meant reductions in hours of operation, court security, juror reimbursements, funding for interpreters, and alternative court programs such as mediation (Hall, 2005), all of which directly impact the public, not just court personnel.

The trend does not appear to be improving. According to the Center on Budget and Policy Priorities (Lav and McNichol, 2009), at least 44 states are facing shortfalls in their FY 2009 or FY 2010 budgets, a tendency that is likely to continue into the future. Indeed, the U.S. Government Accountability Office (GAO, 2009) recently reported to the Senate Finance Committee that “the long-term fiscal challenges faced by state and local governments are exacerbated by the current recession. The magnitude of these challenges affects all levels of government.”

State courts, in particular, are facing severe budget reductions as a direct result of the current economic situation. A recent *New York Times* article described how the New Hampshire courts halted all jury trials for a month because of the current budget crisis in that state (Goodnough, 2008). The Vermont judiciary closed its district and family courts a half day per week for the remainder of the fiscal year. In addition, the National Center for State Courts reports that at least 20 state court systems are currently facing budget deficits. Given that 90 percent of state court budgets are personnel costs, it is not surprising that courts are reducing staff, as evidenced in Florida where the court system recently laid off 10 percent of its workforce (Goodnough, 2008).
Furthermore, many special court programs may face elimination due to budget cuts. Specialty courts, such as those that divert drug users to rehabilitation instead of jail or come up with creative solutions to foreclosure cases, may face the chopping block. Short-term savings here will result in longer-term costs (Marks and Goodman, 2009).

**How Nonprofit Organizations Can Help**

Courts faced with budget cuts must consider all options. One option is to call on nonprofits to assist in augmenting resources or cutting court expenses in several ways.

**Providing a Service**

Courts can benefit from a relationship with the nonprofit sector when the latter can offer or provide a service that is advantageous to the court. For example, Court Appointed Special Advocates, or CASA, was founded in 1977 in Seattle by Judge David Soukup of the superior court. Originally composed of 50 volunteers, the organization has evolved into 954 offices nationwide providing judges with firsthand information on behalf of abused and neglected children. Understanding what is in the best interest of a child can be very difficult for a judge without someone to provide neutral information, and as neither judges nor the courts may have the time or resources to conduct checks for the hundreds of cases they hear on these matters, a qualified individual providing such information may be invaluable.

Youth court is another example of a public/private partnership that can have a positive impact on court systems by diverting some of the case volume. Youth courts are run by young people, who serve in the positions of judge and jury to try minor juvenile offenses. In New York City, for example, the Center for Court Innovation has advocated for and helped to establish the youth-court system. Supporters believe that teenage offenders will be more responsive to a peer-run institution than to the traditional judiciary (Mason, 2007). A similar youth court has had a good success rate in Washington, D.C. (Cahn, 2000).

**Conduit for Funding**

A second way nonprofits can assist courts, and stand to gain themselves, is by serving as a conduit for grant funding. When nonprofits are partnered with courts, they may be more likely to receive aid or grants. A report produced by the Conference of State Court Administrators, “State Judicial Branch Budgets in Times of Fiscal Crisis” (2003), discussed the collateral damages that can result from cuts in court services. As the third branch is deeply dependent on the executive and legislative branches in securing its resources, its vulnerability is amplified in an economic crisis, from nonprofit or private sources. As one example, early in this decade, the Council for Court Excellence secured a large grant from a national foundation and passed some of it through to the District of Columbia Superior Court to fund both an attorney-advisor and a pilot mediation project, and its evaluation, for child-neglect cases.

**Community Outreach and Constituency Building**

In recent years, courts have developed more of a relationship with their communities. Many jurisdictions around the country have created community courts; such courts have “implemented a new way of doing business that imposes immediate, meaningful sanctions on offenders, truly engages the community, and helps offenders address problems that are the root of their criminal behavior” (Meadows, 2009). Community courts get out into the community through town-hall meetings, and residents serve on advisory panels in the planning stages. Some jurisdictions even give residents jurisdiction over setting schedules and priorities, authorizing sanctioning options, and determining building sites. Because communities recognize that these courts are accountable to them as residents, civic involvement increases. Nevertheless, state courts, by virtue of their role as the third branch of government, do not have established networks comparable to those of nonprofit organizations that provide services to the community, engage in community education, raise funds among community residents, and generally involve the broader public in their work, more so than courts. Thus, courts ought to consider using the nonprofit sector to expand their community-outreach and constituency-building efforts.
Community Education
A public that is well-informed about the roles and responsibilities of the courts is important to the third branch. While community education may not seem a direct way to save the courts money, educating the public about court operations, priorities, and procedures has at least two benefits. First, informed court users will enable the courts to run more efficiently, likely saving time and money. Second, an informed and engaged community, including stakeholder nonprofit organizations, is more likely to support the courts’ priority budget requests when legislators are grappling with competing demands. Nonprofit organizations, with funding from the Department of Justice, provide a great deal of education about judicial functioning. For example, the Center for Community Corrections, with support from the Bureau of Justice Assistance, has developed a training module to prepare staff to engage the public (Del Preore, Robinson, and Lindsay, 2008). As another example, nonprofit organizations frequently publish informative guides to court procedures at no cost to those courts. The Council for Court Excellence has published a variety of such guides for the District of Columbia court system using foundation grants and other private funding throughout its 27-year history.

Providing Research
The nonprofit sector is a powerhouse of information available at no cost to court systems. Courts should take advantage of the wealth of research and analysis published by nonprofit organizations. For example, a RAND Corporation study (Ridgely et al., 2007) showed that mental health courts save money. This study encouraged the creation of more mental health courts around the country, saving money for jurisdictions nationwide. In Albany, Georgia, a judge became frustrated by the recidivism of many defendants with mental illness, so he asked the local mental health care community for help. Working with them, a mental health court was established in the area and it became a model system, according to the Bureau of Justice Assistance (Council of State Governments, 2002). While there were many steps to implementing this reform, the first was discovering and analyzing the advantages and applicability of such programs. It is often the nonprofit sector that has a track record of best-practices research.

Advocating Policy Reform
The final and perhaps most significant advantage the nonprofit sector brings to the court is its ability to advocate for policy reform, often a corollary to research that makes effective policy reform possible. A study by the American Political Science Association has found a positive correlation between nonprofit research and successful policy implementation (Hale, 2007). Throughout its history, the Council for Court Excellence has engaged in research of numerous issues in the District of Columbia justice system, from jury service, probate procedures, and sentencing guidelines, to crime victims’ rights, criminal-case scheduling to reduce police overtime, and child-neglect-case processing. Besides increasing the public’s understanding and support for the justice system, CCE’s policy reform efforts have had a positive impact on both the local and federal courts and related justice system agencies.

Conclusion
Utilizing the nonprofit sector to help secure resources is an option frequently overlooked by the courts, especially in a period of growing fiscal uncertainty. As budgets contract, courts are faced with tough decisions regarding their expenditures. When a court resorts to cutting services or raising fees, a heavier burden is placed on the community as a result. Access to justice, equity, and fairness may be hindered.

Courts can and should turn to the nonprofit sector in general and to nonprofit organizations in particular in both good and bad economic times. Working together, many challenges exacerbated by budget cuts and dwindling resources might be met through more of a collaborative relationship that brings to bear the best from both sides of the equation and accrues benefits to both.

If more courts would consider partnering with nonprofit organizations, some of the problems described above might be resolved or at least reduced. Many nonprofit

“Many nonprofit organizations have qualified staff and committed voluntary boards of directors, they produce high-quality materials, and they can frequently take on challenges that the courts have neither the time nor the resources to tackle.”
organizations have qualified staff and committed voluntary boards of directors, they produce high-quality materials, and they can frequently take on challenges that the courts have neither the time nor the resources to tackle. More important, nonprofit organizations have deep roots in the community, understand community-based justice, and can achieve efficient and effective results—and perhaps a greater degree of justice—by working in common purpose with court systems across the country.

ENDNOTES

* The author wishes to thank Peter Willner, Angelica Moss, Andrew Evans, and Brent Eliason for their assistance in the preparation of this article. The Council for Court Excellence is a 27-year-old nonprofit, nonpartisan civic organization that works to improve the administration of justice in the local and federal courts and related justice system agencies in Washington, D.C. CCE accomplishes this goal by (1) identifying and promoting court and agency reforms; (2) improving public access to justice; and (3) increasing public understanding and support of our justice system.

RESOURCES


The Changing Face of Judicial Elections: Can the Past Tell Us About the Future?

David B. Rottman
Principal Court Research Consultant, National Center for State Courts

There is concern that changes in the way judges run for election, abetted by federal court decisions weakening traditional restraints on judicial campaign conduct, are politicizing the state courts. Trends in how judicial campaigns are conducted and in the methods by which states choose to select their judges merit close scrutiny.

This essay reviews evidence on whether 2008 maintained, accelerated, or reversed recent trends toward more politicized judicial elections. Attention is focused first on evidence concerning changes in the way in which campaigns are being conducted and then on the fortunes of legislative and other efforts seeking to change the methods states use to select their judges, either toward or away from contestable elections. The conduct of the 2008 judicial elections sets the scene.

The Tenor of Judicial Election Campaigns in 2008
Judicial elections in 2008, in some respects, confirmed their transformation into "high dollar free-for-alls marked by dueling campaign salvos by organized interest groups, often located outside the state of the election" (Conference of Chief Justices, 2008:8). Elections were competitive. Twenty supreme court incumbents out of 33 holding seats filled by contestable elections, either partisan or nonpartisan in nature, faced challengers. Six were defeated, including the chief justices of Michigan, Mississippi, and West Virginia.

Some of the contested races featured negative, even scurrilous, television advertising, marked partisanship, and under-the-radar clashes between powerful economic interests. Nearly $20 million was spent on television advertising in supreme court races, an increase of 24 percent over 2006. Many of the ads run were paid for by interest groups or political parties rather than by the candidates. As in past elections, television advertising, particularly when run by interest groups, tended to be negative in tone and dubious in accuracy.

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The stories underlying the defeats of incumbent chief justices capture some aspects of the changing face of judicial elections. In Michigan, which nominally has nonpartisan judicial elections, the incumbent chief justice, a Republican, lost his bid for reelection in a landslide few predicted. Partisanship and dueling economic interests added venom to the race, particularly a long-running feud between the incumbent and the state’s Democratic Party, which ran television ads attacking the incumbent long before they found their own candidate. Television ads used a look-alike actor to show the incumbent nodding off during a case that involved the deaths of six Detroit youths and labeled him as the “good soldier” of business groups. Ads run by or on behalf of the incumbent included claims that the challenger was a “terrorist sympathizer,” who wanted the job to allow her to spend more winter vacation time in Florida, and as having made “dangerous rulings” that set free a “sexual predator.” The candidates spent a combined $1.3 million, interest groups spent $805,000, and the parties spent $1.6 million on television ads. The incumbent’s defeat ended a nine-year conservative lock on the Michigan Supreme Court (Eggert, 2008).

In Mississippi, with nonpartisan judicial elections, three of the four incumbent justices running were defeated, at least one by a huge margin (his opponent received two-thirds of the votes). The real campaign, one commentator explained, was “a power struggle” between plaintiffs and defendants: “The pro-business lobby wants to maintain high invulnerability to lawsuits, while attorneys want to be able to take a chunk out of them” (Lynch, 2008). Claims were made that in recent years, the Mississippi Supreme Court reversed 88 percent of all jury verdicts in favor of plaintiffs (Lynch, 2008).

In West Virginia, the incumbent chief justice was defeated in his party’s primary. The incumbent raised the most campaign money but could not counter the release of photographs showing him on vacation in Monaco with the CEO of Massey Coal, which had cases pending before the court. The state’s chamber of commerce and
medical association ran television and radio ads in support of the incumbent, while a labor group ran ads that featured the photographs of the incumbent arm-in-arm with the CEO (Urbina, 2008).

The election outcomes in Mississippi and other states suggest a possible break in the recent trend in which candidates backed by the business community generally fared particularly well. They also made clear that the backing interest groups provide to candidates indirectly through independent expenditures is a two-edged sword. One national group with a close interest in judicial elections observed, “While expensive advertising helped candidates get their message out, it came with a cost” (Justice at Stake, 2008). Some targets of these ads were able to make the sources of the expenditures on the ads into a campaign issue. For example, Supreme Court candidates in Alabama and West Virginia ran television ads distinguishing themselves from their opponents by declaring that they “can’t be bought” and promising to restore integrity to the state’s judiciary (Brennan Center for Justice, 2008b,c).

2008 in Context: Recent Trends in Appellate Elections

One marker of stability or change in the nature of judicial elections is their competitiveness: the rate at which incumbent judges face opponents and how they fare against those opponents on Election Day. The four charts that follow examine separately the fate of incumbents in election challenges in courts of last resort (COLRs) and intermediate appellate courts (IACs) since 2000. Since 2000, at least one half of all COLR incumbents are challenged at each election year, but the lowest challenge rates are in 2006 and 2008, 50 percent and 62 percent, respectively, compared to the approximately 70 percent rates prevailing in the three previous election years (see chart to the right). Incumbent intermediate appellate judges are far less susceptible to being challenged (roughly one half as likely in all five election years). There is no evidence here that appellate elections are becoming more hazardous for incumbents in terms of the likelihood of attracting challengers.

As noted by Streb and his colleagues (2007), while supreme court incumbent justices are more frequently challenged than their counterparts on intermediate appellate courts, they generally fare better at the polls (see chart next page, top left).

That difference, however, is reversed in 2006 and 2008, suggesting that incumbent defeats are becoming more common for the supreme court bench. Indeed, defeat rates are at their highest level for supreme court justices in 2006 and 2008, while those years evidence the lowest defeat rates for intermediate appellate courts. Are these trends equally present when partisan election results are compared to those for nonpartisan elections? Looking first at COLR races, in all but one year the defeat rates are higher in the states that use nonpartisan elections than in states with partisan elections (see charts next page, on the right). That pattern characterizes each year considered except for 2000. In 2006 the differential is considerable (23 percent versus 8 percent), but it is only slight in 2008. IAC incumbents are slightly more prone to defeat where nonpartisan elections are practiced, but the pattern is not consistent.

No chart is needed to assess whether change is taking place in the fate at the ballot box of judges running against their own record in retention elections. Since 2000, in no year did COLR incumbent justices or IAC incumbents garner less than 70
percent votes to retain. The low for COLR justices ranged from 72 to 75 percent, while IAC judges in each year considered received an average “retain” vote of 73 percent. (All but two states using that method require 50.1 percent of the vote for retention. Illinois and New Mexico set higher thresholds.)

In sum, the trends examined provide no clear evidence that the competitiveness of appellate elections is now on the rise or, for that matter, that it is on the decline. Fewer incumbents were challenged in 2006 and 2008, but of those facing a challenger, a higher proportion were defeated. Indeed, contestation rates from 2006 and 2008 seem, if anything, to provide evidence of lower levels of competition than earlier in the decade. Only the results of the 2010 and subsequent appellate elections can tell us if something of note is taking place.

Candidate Behavior: Responses to Boundary-Stretching Questionnaires

The narrowly aimed U.S. Supreme Court’s 2002 decision in Republican Party of Minnesota v. White was greatly expanded by lower federal courts to find that key limits on judicial candidate conduct are unconstitutional infringements on a candidate’s free-speech rights. Are judicial candidates taking advantage of opportunities to express their views on hot-topic social and economic issues? The evidence offered on White’s impact on how candidates campaign to become judges is often anecdotal.

There is, however, some solid empirical evidence. The willingness of candidates to respond to questionnaires by conservative or liberal interest groups that solicit previously prohibited speech is one indicator of how much has changed. In the 2006 judicial elections, few candidates in any state featuring such questionnaires chose to respond except with a letter explaining why it was inappropriate for them to do so. (The overwhelming majority of judicial candidates choose to campaign...
as if governed by canons that the federal courts had rendered null and void; see Rottman, 2008: 1315-17.)³

Candidate responses to provocative questionnaires designed to get them to speak out on once forbidden topics are a useful index of how much has changed on the ground. Candidates have two basic decisions. First, they must decide whether to complete and return the questionnaire. Second, candidates may choose to answer only some of the questionnaire. Florida offers relevant evidence on the continuing resilience of the norms underlying the Code of Judicial Conduct. In both 2006 and 2008, the Florida Family Policy Council (FFPC) sent the identical questionnaire to all trial court judicial candidates. The questionnaire responses, posted online by the FFPC, indicate whether a candidate chose to complete and return the questionnaire and, if completed, answered the six “hot button” questions.⁴ Other questions requested basic biographical information and asked candidates to indicate the U.S. Supreme Court justice with whom their own views are closest.

No unopposed candidate returned the questionnaire in either year (see chart). Of candidates in contested races (128 in 2006 and 86 in 2008), few candidates returned a completed questionnaire or one that answered some but not all of the “hot button” questions: 20 percent in 2006 and 9 percent in 2008. Data from two such close points in time cannot define a trend, but it is of note that the proportion of candidates responding declined sharply between 2006 and 2008. Of all candidates in 2008 (those with and without an opponent), only 2 percent responded to the questionnaires in a meaningful manner. Ironically, the actual responses (agree or disagree) were not made public, presumably because of concerns that a successful candidate sympathetic to the FFPC’s viewpoint might feel obligated or required to recuse themselves if they answered the “hot button” questions.

The likelihood of completing a questionnaire is based, no doubt, in part on whether the advantages of doing so are viewed as exceeding the disadvantages that might accrue. The persistence of traditional norms on campaigning means that many, perhaps most, candidates will campaign similarly to how they did when the canons restricted what candidates could do or say. Indeed, candidates who flout those norms may incur costs associated with the loss of respect and standing within the legal community.

### Moves to Change Methods of Selecting Judges

From a bird’s eye view, changes in methods of judicial selection occur in waves, often with decades of predominance by a single method giving way to sudden burst of adoption by many states of a new method that transforms the selection landscape. Historians debate the degree to which these switches were governed by reasoned attempts to improve the quality of the bench or the products of political agendas aimed at gaining advantage.⁵ After the Revolutionary War, all but one state followed an appointive process. After 1832 most states switched to an judiciary selected

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### Responses by Florida Trial Court Candidates to an Interest-Group Questionnaire: 2006 and 2008*

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<th>Answered some but not all “hot button” questions</th>
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*The identical questionnaire was distributed by the Florida Family Policy Council in both 2006 and 2008. The analysis presented above is based on all responses submitted. Questionnaire is available online at http://www.flfamily.org/uploadfile/2008%20Judicial%20Voter%20Guide/Florida_Voter_Guide_2008_v3.pdf. The online survey includes only a sample number of the total responses received while the above analysis represents all returned questionnaires in each year.

**The percentage includes those candidates that returned the questionnaire but consistently marked the response options of “refused” or “declined” to respond. The responses published by the FFPC do not indicate how a candidate answered the six “hot button” questions, only that they had either “agreed” or “disagreed.”
through partisan elections. Early in the 20th century, the dynamic changed to either new states adopting or older states switching to nonpartisan elections. After 1932 the trend was toward the use of retention elections. The last state to make that switch was Tennessee in 1995 (and narrowly survived a challenge in 2008 and early 2009). Changes since 1990 have mainly been toward nonpartisan elections, but they do not constitute a wave. Are we poised for another period of change? Some say it will be toward merit selection, others back to partisan elections.

What did the 2008 elections say about the prospects for a new wave of change in how states select their judges? Proponents of non-contestable judicial elections could take some comfort in rare ballot victories. Voters in counties or districts in Alabama, Kansas, and Missouri either rejected bids to switch to contestable elections or took affirmative steps to end them. That these states tend to be politically conservative made them, arguably, difficult targets for reformers interested in reducing the voters’ role in selecting judges.

In Alabama, the change enacted was modest but nonetheless significant in a highly partisan state (currently the state’s appellate bench has one Democrat). In two counties, the voters approved by large margins the creation of judicial nominating commissions to submit potential candidates for filling a vacancy when a judge dies or retires. Six other counties had taken the same step, starting in 1950 with Jefferson County (Birmingham). The new commissions will each consist of five members, two selected by the county commission, two by the local bar association, and one by the state’s chief justice. When a vacancy occurs, the commission will forward three names for the governor to consider, and the person appointed then serves until the next scheduled judicial election. Even in states with partisan elections, one half of their judges first join the bench through an appointment to fill a vacancy (Emery and Holmes, 2006).

In Kansas, 59 percent of voters in affluent Johnson County (a suburb of Kansas City, Missouri, just over the river) rejected a proposed return to partisan judicial elections, opting instead to keep their system of appointments followed by retention elections. The Kansas Constitution allows each of the state’s 31 judicial districts to choose whether it will select its trial judges by partisan election or by appointments followed by retention elections.

The sweetest victory for proponents of non-contestable elections came from Greene County, Missouri (the Springfield area), where 52 percent of the voters approved a change from partisan elections to appointments vetted by a nominating commission followed by retention elections thereafter. Intense campaigns were mounted, both in favor of keeping and of changing the method of selection. As noted, this was the first affirmative move nationally in the direction of merit selection in over two decades and its first expansion in 35 years for Missouri.

While no state changed its method of judicial selection in 2008, there was considerable legislative activity in many states proposing a change. A scorecard would probably show that more efforts were made to move toward contestable elections than to abandon them. In Nevada, legislation passed, first in 2007 and again in 2009, that paved the way for a constitutional amendment in 2010 that would switch all judges to a retention model. In 2008 the Mississippi legislature started a similar process on a smaller scale, passing legislation switching from partisan to nonpartisan elections for limited-jurisdiction judges, the method already used for the state’s other judges, a change that will require approval by the electorate of a constitutional amendment. The prospects for success in the two states seem daunting as the last three statewide attempts to move away from contestable elections at the ballot (in Ohio, Florida, and South Dakota) all failed by two-to-one margins, and two previous efforts in Nevada were rejected by the voters.

In recent years Arizona, Kansas, and Missouri have been the scene of intense efforts to attack the Missouri Plan on a statewide rather than a local basis. The attacks and counterattacks were particularly intense in 2008 and 2009 in Kansas and Missouri. The fight is for high stakes. A group called Better Courts for Missouri filed an initiative petition with the secretary of state on July 13, 2009 to place on the ballot a constitutional amendment that would replace the Missouri Plan with one modeled on the federal system, with the governor appointing with senate confirmation judges to the supreme court, appellate courts, and select circuit courts. The group seems to be taking this route because legislative efforts by Republican lawmakers have failed in past years—most notably when a measure passed in the House failed to make it through the Senate.
The continuation of the Missouri Plan model was most at risk in Tennessee, where the legislation enacting the Judicial Selection Commission “sunsetted” on July 1, 2009, followed by a one-year “wind-down” period. Proponents of contested elections took the opportunity to argue against the continuation of the 15-year-old system, citing, among other considerations, that the state constitution requires the supreme court to be “elected by the qualified voters of the state” (Article VI, Section 3). Proponents of the current method defended its efficacy and fairness. After intense legislative maneuvering, a stop-gap measure was crafted creating a revised nominating commission that will itself sunset on June 30, 2011.

A new nominating commission was mandated, consisting of 17 members, with 8 chosen by the senate leader and 8 by the assembly speaker (5 of whom must be lawyers) and an at-large member who is not a lawyer to be jointly selected. The primary change from the old system is that the state bar and other lawyer groups lost their official role in appointing commission members (Mercer, 2009). Indeed, the traditional role of the organized bar in judicial nominating commissions is under attack in a number of states. (See, especially, Miller v. Carpeneti, filed July 2, 2009 in the U.S. District Court for Alaska.)

In 2002 the U.S. Supreme Court in Republican Party of Minnesota v. White held unconstitutional a restriction in that state’s Code of Judicial Conduct that barred judicial candidates from “announcing” their opinions on “disputed legal or political issues” (122 S.Ct. 2528 [2002]). Subsequent litigation at the district and circuit court levels challenged the constitutionality of an array of restrictions imposed on judicial candidates. The future of such litigation may be affected by the Supreme Court’s second decision related to judicial campaign conduct. On June 8, 2009 in Caperton v. Massey Coal, the Court (in a 5-4 decision) provided support for the restrictions in the Canons, holding that “these codes of conduct serve to maintain the integrity of the judiciary and the rule of law” (129 S.Ct.2252 [2009]). Lower federal courts may as a result interpret the White decision more narrowly, giving codes of conduct a new lease on life in respect to judicial elections.

Conclusion
The current era of uncertainty and anxiety about judicial selection dates back at least to the 1990s. Subsequent events, including the White decision, have shaped the manner in which that is expressed. Some veteran observers are convinced that the “the genie cannot be put back into the bottle” (Tarr, 2007:69) and that the future will almost certainly bring greater politicalization regardless of the particular selection method a state employs (Kritzer, 2007). Others hold out the promise that the negative aspects of the new politics of judicial elections will propel a new trend in selection methods through the renewed spread of the Missouri Plan.

It is possible that dissatisfaction with current methods of judicial selection will bring forth another method of judicial selection. Kermit Hall, the preeminent historian of American judicial selection, proposed a hybrid model in which judges are elected to an “extended, nonrenewable period, perhaps twelve years, somewhat longer than the average eight years now served by state supreme court judges” (Hall, 2005:80). Such a move seems highly unlikely, but it remains within the scope of possibility, if not probability, that another burst of innovation will once again sweep the nation, transforming the landscape of judicial elections.

Looking back on the 2008 elections and subsequent developments, the evidence points to more of the same in several senses. Thus far, judicial candidates have not taken up the opportunities to campaign in a manner comparable to legislators and executive-branch officials, and there is no trend toward greater competitiveness in judicial elections. The forces opposing and supporting non-contestable elections for judges seem evenly balanced in most states, and at the national level organizations are active supporting both agendas with money and passion.
ENDNOTES

1 Statistics on intermediate appellate court elections in 2000-06 are from tables published in Streb, Frederick, and LaFrance, 2007. Statistics for 2008 were calculated from state election board Web sites using the methodology described by Streb et al. However, the statistics reported here on state supreme court elections were adjusted to include results from elections in Montana, Nevada, North Dakota, and West Virginia, states that do not have a permanent intermediate appellate court. Like Streb, Frederick, and LaFrance, I classify elections in Michigan and Ohio as “partisan” based on the heavy involvement of the political parties in nominating and supporting judicial candidates, even though party labels do not appear on the ballot.

2 A relevant table from Streb et al. is not updated here; it examines changes in the average proportion of votes incumbents receive (2007:76). That proportion was essentially unchanged between 2000 and 2006.

3 The questionnaires arguably filled another role, that of providing the standing for litigation attacking the Canons. The contract-like format of the questionnaires may, in and of itself, have disinclined judicial candidates to return the document.

4 All statistics are based on reports posted by the Florida Family Policy Council (http://www.flfamily.org/voter_guides.php). The relevant spreadsheets are on file with the author.

5 For a test of the explanatory power of the “conventional story” that emphasizes the good intentions of reformers against one that emphasizes the political motives of those driving the changes, see Epstein, Knight, and Shvetsova, 2002: 191-226.

6 All of the counties mentioned voted by significant margins for John McCain.

RESOURCES


“I make no apologies for the revolutionary introduction of best management practices in all of our courts. Across-the-board time standards, case management, judicial professional development, rational staffing models, the collection and analysis of hard data—these have one purpose and one purpose only: the prompt, fair and effective delivery of justice.”

Massachusetts Chief Justice Margaret H. Marshall, Address to Massachusetts Bar Association, October 22, 2008
BUILDING TOMORROW’S COURTS TODAY*

Hon. Paul J. De Muniz
Chief Justice, Supreme Court of Oregon

The mission of Oregon’s state courts is to provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and maintain the public’s confidence in our justice system. I am pleased to report to you that the 1,900 staff and nearly 200 judges of Oregon’s state courts strive every day to fulfill that mission, and that they continue to provide quality and effective justice services to Oregonians.

Strategic Priorities: Oregon Courts Tomorrow
I now would like to talk about the judicial department’s vision for the future of Oregon’s courts, and our strategic priorities to create the courts of tomorrow. In this upcoming legislative session, many of the court’s previous accomplishments . . . could be at risk, and it is critical for people to understand why Oregon cannot afford to disinvest in its state courts. . . .

The strategic planning process identified five judicial branch goals. . . .

Our first goal is ensuring the public’s access to court services. That goal means that we must be available for all persons—not just those who can afford it—to obtain decisions and solve problems in a public forum that allows community input through juries or elected judges. In that regard, we have initiated eCourt, identified access barriers in our court facilities, are addressing financial and language barriers to court services, and have an active program to assist the growing number of self-represented litigants—which includes at least one party in 86 percent of Oregon’s marriage dissolution or separation cases.

To maintain the public’s trust and confidence—our second goal—we strive to be a transparent and accountable branch of government. That means that we are committed to being careful stewards of public resources, excellent producers of our assigned work, and that we continue to reach out to all parts of Oregon so our citizens better understand what their courts do. The Supreme Court and Court of Appeals continue to travel throughout the state to hear oral arguments in high schools, community colleges, state universities, and all three law schools. . . .

Our third goal is helping people resolve their disputes. We accomplish that goal by providing a range of alternatives—from mediation, to jury trials, to . . . specialty courts . . . —in order to meet the needs of the parties for an appropriate, timely, and public forum to resolve disputes.

Building strong partnerships—our fourth goal—recognizes that although we are an independent branch of government, we must work in concert with many partners to meet the needs of the communities and the people we all serve. In that regard, judges are encouraged to be active members of their community, contributing their knowledge and leadership within the appropriate bounds of judicial impartiality.

Our fifth and final goal—enhancing judicial administration—means making sure our presiding judges, trial court administrators, and other professionals have the training and skills they need to effectively manage the resources and authority entrusted to us and to function as a modern court of law.

The Role of the Courts, and Decisions to Come
The goals established in our strategic plan . . . are a tangible demonstration of our commitment to accountability in the judicial branch and they are an integral part of achieving our vision for the future of the courts. . . . When the 75th Oregon Legislative Assembly convenes, we will take the next step in the process of asking Oregonians to join in that vision. So let me now describe the decisions the 2009 legislature will be making.

I am sure everyone here is aware of the grave economic situation that the legislature faces. I want to emphasize to everyone that being an equal and independent branch of government does not immunize the courts from these budgetary realities (let me
repeat that). As a responsible partner in government we accept our obligation to share in the reductions that must be made to balance the state budget.

However, Oregon’s courts are the legal equivalent of the emergency room. We do not control what comes through our doors. We rely on highly skilled professional and modern technology to accomplish our work, and we need safe and adequate facilities in which to work.

People come to us when they are in distress or have urgent problems that need to be resolved quickly and fairly, so time is of the essence. If courts do not or cannot do their jobs, then many costs are transferred to others.

When the economy goes down, the need for court services is likely to go up. If people without jobs turn to crime, they come to our courts. If they steal, physically assault, or sexually abuse others—whether it’s their children, their spouses, or strangers—they come to our courts. If they abuse drugs or alcohol, they come to our courts. If they seek to establish or modify child support orders, they come to our courts. And if their homes are foreclosed, if they are evicted from their apartments, or are sued for failing to pay their obligations, they come to our courts.

We cannot ignore these problems when they come to the courthouse—our Constitution, our statutes, and our consciences all require that our courts be able to resolve these issues in a fair and timely manner.

Currently, our courts are responding with energy and innovation to the increasingly complex and difficult problems that need judicial resolution. That energy and innovation, along with our careful management of public resources, can provide some shelter during a budgetary storm. However, we are not stopping there.

At my direction, the judicial department already has identified how we can reduce general fund expenditures by $3.9 million, which is about 5 percent of our remaining general fund budget. This is consistent with what Governor Kulongoski has directed the executive branch agencies to do, and what I anticipate the legislative branch will do. This is an important contribution that we can make, but it is not something we can automatically absorb or carry forward into the next budget period. That is why I will be working with our justice system stakeholders and the legislature to identify other longer-term strategies and approaches for 2009-11.

I have directed judicial department staff to revise our plans to implement Oregon eCourt so that we can bring more benefits to more court users sooner and reduce our eCourt Certificate of Participation requests for 2009-11 by up to 50 percent—about $20 million. Although that strategy will postpone replacing our internal

**The Oregon Courts Today**

- Oregon’s state courts accepted 600,000 new cases of all types in 2008—or one case for every six Oregonians.
- Preliminary data show that despite this large influx of cases, the Oregon courts have reduced their pending caseload.
- Oregon enjoys very low recidivism rates from its problem-solving courts. The state legislature supports drug courts, and voters passed Measure 57, which calls for not only increased sentences for criminal offenses, but also increased funding for drug courts.
- The Oregon courts are on track to collect a “record” $287 million in fines and fees. These funds are used to train police officers and provide other special services, and about $27 million will be distributed to crime victims for restitution and other money owed to them.
- When Oregon’s eCourt is fully implemented, it will be the first state in the country to have a statewide electronic courthouse. The Oregon eCourt will expand and simplify access to courts, allow electronic document filing and payment of fees, and provide numerous other benefits.

“We will be offering to the legislature innovative approaches to supplement the judicial department’s budget and the state general fund by improving our collections.”

- Chief Justice Paul J. De Muniz, Supreme Court of Oregon
case management systems and will defer some work efficiencies until later years, I believe it is an appropriate contribution to make in this time of fiscal distress.

I have again asked our United States senators and representatives to support federal legislation that would allow Oregon to intercept the federal tax refunds of people who have not paid their financial obligations ordered by state courts. The federal government should be an active partner in collecting court-imposed obligations, and not passively return money to people who have not paid their fines and fees. We already can attach state tax refunds for these purposes. Creating that same authority at the federal level would generate up to $61 million a biennium with minimal cost and without interfering with child support and other payments. That amount alone is enough to make up for the judicial department budget reductions called for in the governor’s recommended budget and still return tens of millions of dollars to the state general fund. Congress should help support struggling state and local government budgets and help hold criminal offenders and other people accountable for court-ordered payments.

We are constantly looking for additional ways to increase the collection of the more than $1 billion in outstanding court-ordered payments. We will be offering to the legislature innovative approaches to supplement the judicial department’s budget and the state general fund by improving our collections.

And finally, we are developing proposals to expedite both the most complex and most simple business litigation lawsuits. For simple cases, we are working on a fast-track process in which the parties can agree to a streamlined motion-and-discovery process. Jury trials could occur within four months on these numerous, but relatively simple, cases. We also are looking to expand statewide the model commercial court from Lane County. Both of these actions would increase the speed with which these cases are resolved and make the process more cost-effective for the parties and taxpayers.

These are just few of the actions we have taken to address the state’s budget situation. And although I understand why the governor and the legislature call on the judicial branch to share in state budget reductions, I would caution against a unilateral approach that confuses across-the-board cuts for everyone with providing equity. We will provide alternative policy choices for the delivery of justice system services; however, the judicial branch must have an adequate budget.

Like the legislative branch, the vast majority of our costs are for people—they are not pass-through funds. But the nature of our constitutionally mandated duties limits the reductions the courts can absorb. The Constitution creates the courts as a check and balance—an integral part of government accountability. The courts are responsible for ensuring that public officials meet their legal responsibilities—we review decisions made by the legislative and executive branches to ensure they comply with our Constitution and statutes—and we must have the capacity to fulfill our responsibilities.

Like the executive branch, we provide many different kinds of direct services to Oregonians. However, unlike much of the executive branch, many of the services we provide are required by law or have legally mandated timelines. In short, we are not just expected to be timely and fair—we are required to operate that way by the Constitution and by statute. . . .

I very much want to avoid the situation the judicial branch faced just six years ago, when the judicial department lost the equivalent of one-fourth of its staff, which forced my predecessor to close courts one day a week, reduced work hours for the remaining employees, and delayed processing some types of cases.

We did that to respond to deep, but short-term, cuts. We knew that in six months we could begin catching up. However, we don’t have that luxury this time. . . .

To give you some context to the budget discussion, the judicial department constitutes about 2 1/2 percent of the governor’s recommended general fund budget for 2009-11, and less . . . represents just 2.5% of recommended general fund budget for 2009-2011 . . . is less than 1% of total funds budget for the state . . . costs just $88 per year in general funds for every Oregonian – less than $1 per week.
than 1 percent of the total funds budget for the state. That is $88 in general funds for every Oregonian—less than one dollar a week.

Our discussion with the legislature will emphasize that not sufficiently funding the courts will do little to balance the state’s budget and often will simply transfer the cost to other parties. If we no longer compensate people who serve on our juries, then they bear the financial burden of time off work and traveling to the courthouse. If we do not verify that people are eligible for court-appointed counsel, then people who could pay for their own attorney get a free ride from taxpayers and use scarce state funds that could be better spent elsewhere.

If we don’t approve appropriate placements for abused or neglected children, then they suffer from endless placements in our foster care system or may be subjected to additional abuse and neglect. If we don’t adjudicate suspected criminals, then they threaten our citizens or clog up our jails. If we don’t have drug courts, addicted offenders will commit more crimes. If we don’t assist self-represented litigants, then they slow down other cases pending before the court. And if we don’t interpret contracts and enforce financial obligations, then our already stumbling economy slows down even further.

The potential impacts of severe budget cuts to our courts could go beyond temporary problems and could threaten some of the fundamental principles of our society. We have seen other states taking actions that we must avoid here in Oregon. New Hampshire has postponed jury trials because of budget cuts. The judicial branch in Utah has eliminated all their court reporter positions—something we did in the last budget crisis—and in collaboration with their governor, which has chosen to leave some judicial positions vacant. That would be very difficult to do here when a state bar task force report again has shown that we need 13 more trial judges just to keep pace with our existing workload.

Drastic budget cuts might mean we must stop accepting cases or postpone processing them—and we all know that justice delayed is justice denied. More than 70 Oregon laws create specific deadlines or establish priorities for court actions in various types of cases. We must issue timely ballot titles, speedily establish placements for dependent children, and meet a variety of criminal law deadlines to review charges and hold criminal trials.

Although the judicial branch values its independence, we also recognize our interdependence. We recognize that children depend on us for timely placements, and that the public depends on us to impose sentences and sanctions on criminal offenders. We know that businesses and consumers depend on us to enforce financial obligations and the rules of our economic system. And we know that dozens of state agencies and local governments depend on us for funding, and thousands of individual victims of crime depend on us to collect financial obligations owed to them.

The indispensable role that our courts play in our system of government, one that is based on the rule of law, is the reason why I will be working closely with the legislature and the governor to avoid turning our courts into case-processing machines. That means I will be advocating for adequate resources to meet our statutory and constitutional obligations. It means that I will support the court’s role to collect court-ordered financial obligations that provide hundreds of millions of dollars to the state, to local governments, and to victims of crime.

It means that I will support appropriate revenue strategies such as the federal tax intercept that maintain judicial integrity and protect access to the courts. It means that we will continue to implement Oregon eCourt, but will reduce our budget request and defer our own technology needs to meet the needs of the public first.

It means that I will support creating a long-term improvement plan for safe and secure court facilities, and continue to advocate for judicial salaries that acknowledge the responsibility of the courts and the need to attract and retain qualified candidates from all areas of law practice to serve on the bench.
It means that I will support Oregon’s drug courts and other treatment courts, and look to create a statewide commercial court to bring similar benefits to cases having large-scale financial impacts. It means that I will support mediation and other forms of alternative dispute resolution that prevent the cost and delay of jury trials. . . .

If our courts fail, or if we fail our courts, we risk losing respect, not just for government, but for the law itself. That is something we all agree that Oregon cannot afford.

ENDNOTES

* This is an edited version of a speech given by Chief Justice De Muniz to the City Club of Salem, Oregon, on January 9, 2009.

RESOURCES


Oregon eCourt will transform the business operations of the court and its users. Court operations will be streamlined through electronic document management, management-reporting capabilities, and data sharing with partners, which will give courts the tools they need to provide just, prompt, and safe resolution of civil disputes; to improve public safety and the quality of life; and to improve lives of children and families in crisis.

**Background**

The Oregon Judicial Department (OJD) is an information-based business. OJD relies extensively on up-to-date, accurate, available information to provide fair and accessible justice services that protect the rights of individuals, preserve community welfare, and inspire public confidence.

The information management systems that OJD depends on today were developed internally over 20 years ago. Today, only a few remaining staff understand how to maintain these systems. The systems are siloed, inflexible, and unable to leverage new technologies or improve business practices. They inhibit our ability to promote new and improved ways to share court data with criminal justice and human service agencies, legal and business stakeholders, and the public.

In addition to the aging and inflexible computer systems, OJD’s business practices are inflexible and inefficient due to a continued heavy reliance on paper-based processes. OJD handles approximately 50,000,000 pieces of paper per year. This equates to about 10,000 boxes of paper that weigh in at 500,000 pounds, or about 250 tons. Over a ten-year period OJD handles and moves about half a billion pieces of paper. These paper-intensive, manual processes, combined with the very real threat of budget/staff reductions, threaten OJD’s ability to fulfill its mission.

**Oregon eCourt Overview**

Over the next ten years, OJD will transform the business operations of the Oregon state courts through the creation of a statewide electronic court. “Oregon eCourt” will be the largest and most accessible courthouse in the state—one that provides a common experience for all citizens and businesses of Oregon, no matter how they choose to access services or where they are located. It will be the one place that the public may visit to do business with any trial or appellate court in the state. The new technologies used to create Oregon eCourt will enable Oregon’s state courts to evolve business processes to serve judges, the legal community, and the needs of the citizens of Oregon more effectively.

The public will access the Oregon courts through Oregon eCourt using standard computer and Web-browsing technology via a “Web portal,” which will provide a variety of services to the general public, attorneys, and the business community, as
well as to other state and local court stakeholders. These services will include direct access to court information, e-filing, and a number of new interactive services.

The Web portal will provide access to documents related to cases and different courts, programs, and services. New interactive services will include components for paying traffic tickets or other fees and fines and for filing a small-claims case or other types of cases. A self-service legal center will help self-represented parties conduct business with any judicial district in the state from anywhere in the world.

The Oregon eCourt solution is an integrated system that will appear seamless to court personnel, business stakeholders, and the public.

**Enterprise Content Management (ECM) First**
The Oregon eCourt vision positions ECM as the foundation for a new case management system and other business-process changes. ECM will allow for the development of new business processes and workflows within the trial and appellate courts, using the technology to manage the courts’ judicial and administrative activities at a level of efficiency that is not possible in a paper-based environment. ECM is the foundation for putting court information and content on the Web. This focus inverts the current vendor paradigm about using ECM as a back-end solution for a case management system (CMS). Oregon eCourt will focus on the front-end business-process definitions and workflows for electronically captured information based on using ECM. E-filing will be integrated into the ECM system design since the ECM is the container for electronically filed documents. CMS procurement will be based on the requirements and selection of an ECM product suite that will be tightly integrated.

Oregon has elected to implement ECM first for the following reasons:

- Courts save significant staff time filing papers, searching for files, and responding to phone queries.
- Court documents are preserved from loss. Within the last several years, Oregon courts have suffered storms, floods, earthquakes, and firebomb attacks. The last event resulted in the loss of approximately 60 years of records from fire damage.
- Courts can reduce costs associated with buying forms and files and paying for storage space.
- Electronic access to court documents and information reduces dependence on court staff, improves customer service by enabling 24/7 self-service, and enables new revenues that can be reinvested in the maintenance and enhancement of the Oregon eCourt system.

**Web Portal Enables a “Virtual Courthouse”**
OJD initiated the development of a “virtual courthouse” two years ago when it implemented a statewide videoconferencing system. This system was installed in over 70 locations and enables video arraignment, reduces travel and transport expenses, and improves public safety by keeping potentially violent offenders in custody during hearings. A key element of the Oregon eCourt effort is the creation of a sophisticated, central Web portal that augments the existing “virtual courthouse” by allowing court stakeholders, case participants, and the public to conduct a significant portion of their court business online, without requiring them to travel to a courthouse.

Oregon’s Judicial Online Services WebSite
The new portal, currently under construction, has a common architecture and service-delivery model yet allows for unique presentation and personalization by each of the courts. The Web portal supports a customized view by account holders (lawyer, pro se filer, and researcher) to streamline business interaction and participation. In other words, a visitor to the portal can customize their page layout and available services to maximize their personal efficiency.

Consistent with best practices relating to the development of an enterprise service-oriented architecture, the portal will be used to create composite applications that include functions of multiple systems, including enterprise content management (ECM), a financial management system (FMS), and a case management system (CMS). For example, a staff person could choose financial, case, and document "portlets" for their page that would all respond to a single search phrase and retrieve information from multiple applications back to a single page.

The overall goal is to treat all business processes as if they originated via the Web portal and interact with all participants electronically. Steps in this process include:

- Establish the Internet Web portal as the foundation for the fully electronic court with both internal and external views. Position the portal as a virtual working courthouse and not simply a communication vehicle.
- Develop a general framework design that is extendable for future functionality.
- Develop the functionality through discrete stages of development that coincide with the delivery of other key components of the plan, such as the ECM or CMS system.
- Provide enterprise search to enable agency-wide person-based information retrieval.

Portal services will include direct access to information based on the user’s appropriate security and access authorization and a number of new interactive services, such as online video educational materials.

These new interactive services will include components for making online payments, including fines for traffic tickets or other violations, filing fees a variety of case types, or restitution payments. A self-service legal center will assist parties conducting business with any Oregon trial court in the state. Pro se filers will be presented with interview-style forms, similar to the popular TurboTax® software. This enables pro se filers to file correctly the first time, without requiring court staff assistance.

The service-delivery components of the Web portal include filing, document access, data access, online payment, scheduling, communications, and improved court case and opinion publication.

The e-filing solution will allow the Oregon State Bar, district attorneys, and pro se litigants to follow an interactive step-by-step process for filling out forms and other materials. The Web payment service will allow for the online payment of court fines, fees, and restitution. Litigants who e-file will by default be served electronically, receiving notices, updates, and schedules via e-mail.

The Web portal will also provide a search tool for all information repositories within OJD, and potentially other judicial partners. The portal portlet technology will aggregate the searches from disparate sources and present them in a uniform, organized way.

**Person-Based Model**

This initiative includes the analysis and prototyping needed to create a person-based model to provide a comprehensive view of case participants. A person-based system can link records by offender rather than by case number. Access to more accurate and comprehensive information about persons and families in judicial cases will result in more information for pretrial release decisions, appropriate sentencing, and other important judicial decisions (e.g., no-contact orders or weapons prohibition).

Enhancing Oregon’s systems from case-based to include person-based information increases public safety and reduces errors due to mistaken identity and files in suspense as a result of conflicting or missing identifying information. It also supports efficiency by allowing the courts to consolidate proceedings involving a single person so as to reduce the number of hearings necessary to lead to an
adjudication, to avoid duplication of appointed-attorney expenses, and to improve the convenience of parties, witnesses, and involved agencies. A person-based system facilitates the creation and maintenance of such innovations as family courts, in which related delinquency, dependency, family-violence, and criminal proceedings can be combined before one judge. This decreases the necessity of hearings in the pending matters and can avoid future proceedings.

Funding Challenges & Strategies
Like the rest of the nation, Oregon is facing unprecedented financial challenges. Although the Oregon eCourt Program has been delayed due to funding limitations, OJD has been able to move the program forward by:

- Clarifying the value proposition
- Building on and marketing successes—even the small ones
- Breaking the program into smaller deliverables that deliver distinct value
- Soliciting the involvement and expertise of court staff and judges
- Engaging stakeholders in outreach to decision makers

Benefits
The Oregon eCourt will be the largest and most accessible courthouse in the state—one that provides a common experience for all citizens and businesses of the state, no matter how they choose to access services or where they are located. It will be the one place the public may visit and do business with any court in the state. When completed, the Oregon Judicial Department anticipates the following benefits for Oregon courts and the citizens we serve:

- Timely access to justice services at all times
- Standardized delivery of services
- Improved use of resources through standard, efficient processes
- Informed decisions by judges, which will lead to better outcomes for individuals, families, and businesses
- Improved data sharing with stakeholders
- Streamlined court-system business functions
- Access to court data to measure and manage performance
- An electronic court environment (a transition from all paper to paper on demand)
- Ability to perform case- and person-based analysis

For more information about Oregon eCourt, see www.ojd.state.or.us/oregonecourt.
RESOURCES

CourTopics. “Electronic Filing.”

CourTopics. “Video Technologies.”
http://www.ncsconline.org/WC/CourTopics/ResourceGuide.asp?topic=VidCon


Enterprise Content Management Connection.
http://www.ecmconnection.com/?VNETCOOKIE=NO

http://www.ncsconline.org/d_tech/standards/default.asp


“Oregon eCourt” (n.d.). Presentation.
http://ctl.ncsc.dni.us/presentations/Borga-How-eCourt-Delivers.pdf


Oregon eCourt—Improving Judicial Outcomes and Services
Improving Outcomes and Services in a Tight Economy

Improving Outcomes through Better Data Tracking: The Use of Technology in Problem-Solving Courts and Beyond

Christine Sisario
Director, Technology, Center for Court Innovation, New York

With the 20th anniversary of the nation’s first problem-solving court upon us, it may be time to consider how the problem-solving approach can benefit all courts. This article discusses how technology is used in a variety of problem-solving functions in New York, and how the courts are looking at ways to apply these innovations statewide.

Problem-solving courts are moving out of the experimental phase, with many court systems now contemplating how to apply the problem-solving approach in conventional court settings. In fact, a BJA-funded survey of trial court judges nationwide found that 75 percent approved of using problem-solving techniques in their current assignment, with most indicating that they already use one or more specific problem-solving practices (Farole et al., 2008). With overcrowded jails and prisons, budget constraints, and public outcry for improvements to the justice system, it is understandable that court managers are looking at how the benefits of problem-solving justice, which have been documented by research, can be applied on a larger scale. Technology is an important tool that can support the integration of the principles of problem-solving justice: enhanced information, community engagement, collaboration, individualized justice, improved accountability, and an emphasis on measuring outcomes.

Problem-Solving Courts and Technology: An Overview

The U.S. currently has more than 2,000 drug courts, 200 mental health courts, 250 domestic violence courts, 30 community courts, and 500 other models (e.g., homelessess, truancy, teen, and sex offense courts), with dramatic growth expected in the years ahead (see Karafin, 2008; Huddleston et al., 2008). In New York State alone, there are nearly 300 problem-solving courts operating—at least one in each of the state’s 62 counties—with 49 more courts in planning for 2009, covering all case types and serving a majority of the state’s population.

These courts recognize that high-quality information, gathered with the assistance of technology and shared in accordance with confidentiality laws, can help practitioners make more nuanced decisions about both treatment needs and the risks individual defendants pose to public safety, ensuring offenders receive an appropriate level of supervision and services. The additional data required to screen, monitor, and evaluate these cases has necessitated expansion of existing technology, as well as the development of new applications.

In New York, dedicated problem-solving technology applications developed by the Unified Court System and its research and development arm, the Center for Court Innovation, have been created to support the work of the problem-solving courts, and there are plans to incorporate these components into the main case-management system used in criminal and family courts statewide. With these enhancements, judges and courtrooms across the state will benefit from gains in information technology first forged in the state’s problem-solving courtrooms.

In the New York applications, there are five key data-tracking elements that span all problem-solving case types, which can also be useful in courts of general jurisdiction:

1. A screening-and-assessment tool, consisting of numerous question-and-answer sets, to determine litigants’ problems and needs effectively;
2. A program rolodex, listing local social-service providers and other partner agencies, to assist the court with placing litigants in needed services;
3. Detailed court appearance and sentencing options, with all possible problem-solving mandates (including treatment, social services, batterers programs, mental health services, and job-training programs), providing judges, court managers, and partners with a complete picture of each case;
4. **A flexible compliance-tracking module** to track litigants' attendance and compliance within court-ordered programs, as well as completion status; and

5. **Secure access to the information for community social-service providers**, expanding the applications' user base outside of the court system, which allows providers to see case information and immediately provides the courts with program-status updates. Additionally, New York has developed secure data exchanges between state, local, and private agencies utilizing the NIEM and JIEM models. All agencies benefit by using nationally supported methodology, which allows faster data definition and integration.

**Benefits of Problem-Solving Data Tracking for all Courts**

Judges in conventional courts who use data-tracking technology will enjoy many of the same benefits as judges in problem-solving courts. Whether in or out of specialized problem-solving settings, judges who require defendants to participate in substance abuse or mental health treatment, GED classes, employment services, or other programs need the capacity to track this information. Expanded data collection provides some key advantages.

1. **Informed Decision Making: Screening and Assessment**
   The more a judge knows about a litigant’s history and issues—not just his or her criminal-justice history, but also substance abuse, joblessness, mental illness, education, etc.—the easier it is to make the best possible decisions about bail, sentencing, or placement in services.

2. **Stakeholder Collaboration: Third-Party Access and Data Exchanges**
   When criminal-justice and community-based partners are included in information sharing with the court, this improved coordination can result in more efficient and effective monitoring of offenders, better case outcomes, faster linking of victims to necessary services, and immediate notification of violations of court orders.

![Sample Screen Shot: Drug Compliance System—Assessment questions about drug use history.](image)

![Sample Screen Shot: Community Justice Center Application Out-of-Compliance Alert](image)
3. Improved Case Outcomes: Detailed Mandate and Compliance Tracking

To change the behavior of offenders, judges must provide careful oversight of problem-solving mandates. To ensure that a court order to attend and complete drug treatment has been accomplished, for example, it is necessary for a judge to see regular status reports and drug-test results and to require the defendant to return to court frequently.

4. Tracking Results Through Active Research

With more data comes the ability to analyze, study, and report the effectiveness of new approaches. Research can help document improved court outcomes and cost savings and help further improve upon existing practices.

Drug Cases and Technology

Drug-treatment courts currently work with only a small fraction of defendants who can potentially benefit from their combination of treatment and strict judicial compliance monitoring, strategies that have been shown to reduce recidivism among drug-addicted offenders (see Rempel et al., 2003). The research supporting the efficacy of drug courts helped contribute to the passage in April 2009 of a major reform of New York’s Rockefeller drug-sentencing laws that is expected to send more defendants into treatment. Currently, New York’s drug courts admit only 2,600 new felony offenders each year, which, Chief Judge Jonathan Lippman points out, is only “a small fraction of the 43,000 new felony drug arrests that come through the system.” Nationally, only 55,000 defendants were active in drug courts in 2005, compared with 1.5 million who were potentially eligible, according to a study by the Urban Institute (see Bhati et al., 2008). These numbers are staggering.

While the movement to promote the use of treatment as an alternative to incarceration seems to be gathering political momentum, there are some very real operational challenges that must be confronted if it is to be successful. Namely, how would all of these additional cases be identified, monitored, and tracked? It simply cannot be done without state-of-the-art technology. Any effort to use technology to expand the courts’ capacity to link defendants to drug treatment must have the following components:

1. Automated Eligibility Screening

In New York, discussions are under way to build an automated-screening component into the statewide criminal and family case-management system, allowing individual jurisdictions to set the system to search for cases that meet their local eligibility rules—such as particular charges, prior felony history, and the jurisdiction of the arrest. Any new arrests would be auto-screened, and those meeting the criteria would be presented to the court in a daily report for further review. This same automated-screening component could also be used to help quickly identify cases potentially eligible for a number of problem-solving case types: community courts (by charge and jurisdiction of arrest), sex offense courts (by charge), and domestic violence courts (by case type and relationship of the parties).

2. Monitoring and Tracking

New York’s Universal Treatment Application, which has been used to track drug court cases statewide since 1995 and was the first specialized problem-solving technology application developed in the state, includes the five key data-tracking elements of assessment and screening instruments, program roloDEX, provider-agency access, compliance tracking, and detailed mandate recording. Court administrators recognize that adding this established functionality to the statewide criminal and family case-management system will allow judges who...
divert cases to treatment to track and monitor all drug offenders effectively, regardless of whether they are participating in a specialized drug court.

**Beyond Case Management:**
**Other Problem-Solving Approaches Using Technology**
Applying a problem-solving approach in the justice system goes beyond the use of case-management systems. Following are a few examples of recent innovations in New York using technology to enhance decision making, hold offenders accountable, and improve outcomes for litigants, victims, and communities.

**Operation Spotlight**
Operation Spotlight is a New York City-wide project started in 2002 targeting persistent misdemeanants who commit repeated quality-of-life crimes. Before this initiative, studies indicated that 28 percent of all non-felony crime in New York City was committed by only 6 percent of the defendants, leading Mayor Michael Bloomberg to seek to enhance prosecution of these “frequent fliers.”

Specific eligibility criteria must be met for a defendant to be flagged as a “Spotlight” recidivist, including three or more arrests in the past 12 months, two of which must be a non-felony. Automated scanning of all statewide arrest data was developed by the Division of Criminal Justice Services to identify Spotlight offenders, and when identified, the first page of the rap sheet is automatically flagged with the warning “Alert: Persistent Misdemeanant.” The project goal is to improve the prosecution’s and court’s response to these offenders and to recognize patterns as they emerge. A specialized court hears the Spotlight cases, expediting narcotics laboratory reports, increasing trial capacity, and directly connecting offenders who are drug addicted or mentally ill to necessary services. According to studies conducted over the seven-year project, Operation Spotlight has led to an increase in the percentage of eligible defendants detained on bail and receiving jail sentences.

**“Fuzzy” Database Searching**
Several new initiatives in New York are built around identifying a common person across multiple databases, or even within the same database, to locate cases for domestic-violence-related and custody-related filings quickly. To accomplish this, the Unified Court System has obtained “fuzzy search” database software, which returns a list of results based on likely significance even when search words and spellings may not exactly match. Results are “scored” based on the likelihood of a match, so that exact and highly relevant matches receive the highest scores. An example of where a fuzzy search would identify a match is two dockets where the litigant’s first name is entered as Robert on one and Bob on another, but all other relevant search items match. Two high-profile statewide projects currently use this fuzzy-search tool, both of which will be incorporated in the statewide criminal and family case-management system:

**Statewide Registry Check**
Based upon recent legislation, family and supreme courts in New York are now required to perform multiple record checks in all custody/visitation matters before issuing a temporary or final order. These checks provide the court with background information on individuals seeking custody or visitation to help ensure the safety and well-being of the children who may be in their care. The checks include orders of protection history, open family-court warrants, and history of prior child-abuse-and-neglect cases statewide. Searches are based on the individual’s name, gender, and date of birth.

**Integrated Case Identification in Domestic Violence Court**
A new “one-family, one-judge” initiative in New York allows a single judge to hear multiple cases involving the same family where the underlying issue is domestic violence. Eligible cases include existing criminal, family, and matrimonial matters where there are common parties in each. Before the use of fuzzy searching across the statewide databases that contain the eligible cases, court staff had to search through each case-management system manually. The courts now receive a daily report of potentially eligible cases, saving them considerable time and allowing them to focus on the cases that meet their criteria.

By adding a few additional components to existing technology systems and applying the many lessons learned from problem-solving courts, all courts can greatly improve their response to crime, to their communities, and to the litigants who come through their doors.
RESOURCES


Collaboration between courts and child welfare agencies improves outcomes for children. Electronic data exchanges support this collaboration.

Accountability and Outcomes for Children
Courts and child welfare agencies are both involved in child abuse and neglect cases, and the public holds both responsible for achieving permanent homes for children. Courts do not play the same extensive role in the lives of children and families as child welfare agencies, yet their role is critical to determining whether children will be removed from their homes, the length of time children remain in foster care, and where they will permanently reside.

Performance measures are necessary to monitor the achievement of shared goals in achieving better outcomes for children. They also help courts and child welfare agencies identify best practices, diagnose areas where they need to improve, and establish a baseline to measure the success of their improvement efforts. Some process measures, especially timelines, can be generated by courts and child welfare agencies separately, but they must be added together to produce the total timeline of the child’s journey toward permanency. If either child welfare agencies or courts fail to meet timelines, the total time to permanency is affected. Therefore, it is not enough for courts and child welfare agencies to achieve their separate goals. Both partners must achieve their goals to improve safety, permanency, and well-being for children. Consequently, data from both courts and child welfare agencies are necessary to get a complete picture of how states are progressing in achieving timely permanency for children. Electronic exchange is the most efficient and effective way of sharing this information.

Much of the data required to determine the safety, permanency, and well-being of children are available from the child welfare system. Child welfare agencies are subject to the Child and Family Services Review (CFSR) process using outcome measures published in the Federal Register (65 FR 4040-4093). Court performance measures are less well established, but were designed to be compatible with CFSR standards. Key measures were further selected to represent the ASFA goals of safety and permanency and the important court goals of safety, permanency, due process, and timeliness.

The National Court and Child Welfare Collaborative, composed of the ABA Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges, with support from the Children’s Bureau and the Office of Juvenile Justice and Delinquency Prevention, published a set of performance outcome measures in January 2009: Toolkit for Court Performance Measurement in Child Abuse and Neglect Cases (see also ABA Center on Children and

Performance measures are necessary to monitor the achievement of shared goals in achieving better outcomes for children.
Many states cannot generate either the key measures or the performance measures unless they conduct time-consuming and labor-intensive interviews and case-file reviews. Unless performance measures can be produced efficiently and cost-effectively, they will not be used to promote best practices in child welfare or to effect policy change.

Benefits of Data Exchange

There are significant benefits to both courts and child welfare agencies if they produce their own information and exchange it electronically, such as using shared data elements to construct performance measures and management reports. Child welfare data can help courts to reduce continuances and to make timely and informed decisions, including whether removal is warranted, placements are appropriate, permanency goals are suitable, and case plans and services are adequate. The court, for example, could advance the timetable to permanency if they have current information that shows that a relative is available and qualified to serve as a guardian. Similarly, court data provides child welfare agencies with court notices and court orders and informs agency supervisors of court actions in a timely fashion so they can take immediate action and better schedule staff time.

Electronic information exchange reduces the burden of data entry for both agency caseworkers and court staff and, more important, reduces errors. Child welfare staff do not have to enter petition information, hearing dates, court motions, and orders into their systems, and court staff do not have to enter basic data about the child and family, including complex relationships among individuals and collateral parties, into theirs.

The NET Task Force concluded that data exchange in child welfare should be expedited so that each state would have a common template to work from. Data-exchange standards would make it easier for courts and child welfare agencies to exchange data elements to generate performance measures for child abuse and neglect cases and for private vendors to produce or modify case management software to contain the required data elements.

Implementation Issues for States

Data exchange can improve outcomes for children, and the federal government has provided financial incentives to encourage collaboration between courts and child welfare agencies. Nevertheless, states will still have to confront issues involving governance, strategic planning, and policy and technical challenges if they are to improve data exchange and outcomes for children.

The Court/Child Welfare National Exchange Template

Sharing data between courts and child welfare agencies is facilitated by data-exchange protocols and standards. The National Center for State Courts (NCSC) has experience in developing national standards for exchanging critical data using the national standard adopted by the justice community—the National Information Exchange Model (NIEM). By standardizing the semantics or meaning of content in data exchanges, NIEM ensures that different systems will understand data elements in the same way. NCSC obtained a small amount of funding from the Bureau of Justice Assistance to convene a meeting of state and national experts to extend the NIEM model to child welfare data, which developed into the Court/Child Welfare NET (National Exchange Template) Task Force.

The NET Task Force concluded that data exchange in child welfare should be expedited so that each state would have a common template to work from. Data-exchange standards would make it easier for courts and child welfare agencies to exchange data elements to generate performance measures for child abuse and neglect cases and for private vendors to produce or modify case management software to contain the required data elements.

The national template follows the NIEM process by

1. identifying the business process involved in taking a case through the courts;
2. identifying points in the business process where courts and child welfare agencies typically exchange data;
3. creating a set of scenarios to track the progression of cases to permanency;
4. creating maps of each scenario to show the points of exchange between courts and child welfare agencies; and
5. specifying the data elements necessary to meet data-exchange requirements.
**Governance**

“Governance,” in systems speak, translates to “collaboration” in the child welfare world—getting the right partners to the table to discuss data exchange, the obstacles to data exchange between courts and child welfare agencies, and the resources and support available to overcome those obstacles. Who are the stakeholders who should participate in the governing body for court/child welfare data exchanges? If a governing body exists already, how effective are they?

Data exchange is still a new concept for many states, and states need to know about the potential of data exchange for improving the lives of children. The NET Task Force has established an Outreach Committee to create a strategy to encourage states to participate in the data-exchange effort.

**Strategic Planning**

Assuming states know about the potential of data exchange for improving the lives of children, the next step is joint planning between courts and child welfare agencies. All stakeholders need to be involved in the planning early, and expectations need to be managed and time frames kept realistic.

To encourage joint planning, NCSC has promoted a series of regional meetings on data exchange sponsored by the Children’s Bureau of the U.S. Department of Health and Human Services and the National Resource Centers for Child Protective Services, Child Welfare Data and Technology, Family-Centered Practice, and Legal and Judicial Issues. These meetings provide “hands-on” technical assistance and are attended by state teams composed of representatives from both courts and child welfare agencies. States are expected to prepare an action plan describing the progress they expect to make in the next six months following the meeting.

**Policy Challenges of Data Exchange**

**Privacy and Confidentiality.** Confidentiality is an important consideration whenever information sharing is discussed in the context of children and families. Nevertheless, confidentiality and privacy issues need not be an impediment to data exchange.

**Ex Parte Issues.** In Colorado and other states that have made significant progress in data exchange, one of the most difficult issues was ex parte communication. “Ex parte” occurs when a party to a case, or someone involved with a party, communicates directly with a judge about issues in a case without the other party’s knowledge. The rule banning ex parte communication ensures that all parties have the same information as the judge, which allows a party who disagrees with some points to challenge them in court.

Electronic records sent by one party to the court but not sent or not accessible to all parties may constitute ex parte communication. Ex parte issues can be reduced if all parties have access to the information. In some states information sent to courts is not automatically sent to the judge hearing the case. Rather, it is placed in an electronic file or Web site, where it is available for access at the certain points in the case when the judge needs it.

With respect to privacy, the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec5106a(b)(2)(a), permits the disclosure of data to federal, state, or local government entities that have a need for such information to carry out their...
responsibilities to protect children from abuse and neglect. The U.S. Department of Justice’s Global Justice Information Sharing Initiative (2008) promotes standards-based electronic information exchange to provide timely, accurate, complete, secure, and accessible information.

As information sharing increases, technology itself has become increasingly useful in protecting privacy. The Global Technical Framework may be a partial solution because it lays out a standard approach for codifying business rules regarding privacy and specifies a process for enforcing those rules.

Access Beyond Courts and Child Welfare Agencies. There is a temptation to broaden access to include criminal justice agencies, guardians ad litem, attorneys for parents, and prosecuting attorneys. Increased access does improve both data exchange (by making it easier to avoid ex parte communication) and the quality of the data (because it allows other users to identify and correct errors). Expanding access to information also increases the risk of disclosure of confidential information.

Information Overload. Ironically, one of the practical issues emerging in states further along the path of information exchange is that the sheer volume of information available discourages access. In some cases, judges report that they do not have the time to access even the screens containing basic case information, such as removal date, placement date, and related cases involving the same children, let alone files that may contain more detailed information.

Candidly, some of the information on aggregate performance measures is of much more use to state court administrators and trial court administrators who need to have an overall picture of how the whole court is doing. Judges need information on specific cases that exceed timelines and are more concerned with their own particular caseloads. This suggests that the reports need to be tailored to provide different users with the information they want in a format they can use. For example, court administrators may need reports summarizing performance measures, while judges need reports showing which of their cases are nearing the time limits.

Technical Challenges of Data Exchange

Information System Capacity. The federal government has provided funding for the Court Improvement Program (CIP) to help state courts address a range of challenges in handling child abuse and neglect cases (ACYF-CB-PI-03-04). CIP funds enabled states to examine the strengths and weaknesses of courts in achieving timely permanency for children removed from their homes as a result of abuse or neglect, and addressing such concerns as timetables for proceedings, legal representation of all parties, and procedural safeguards for parents, guardians, and children. An initial CIP assessment and a later reassessment covered an evaluation of such things as successful practices, degree of collaboration between courts and child welfare agencies, frequency and length of judicial delays, quality of legal representation, the impact of caseloads on performance, and the quality of case-tracking systems.

In their National Evaluation of the Court Improvement Program for the U.S. Department of Health and Human Services, Pal-Tech found that 78 percent of the 50 states reporting addressed case tracking (U.S. Department of Health and Human Services, forthcoming: Figure 23). The most commonly stated purpose of automated information systems was to track ASFA timelines. Almost a third of the states (28 percent) provided judges with summaries of their cases and progress being made, and a quarter described work using automated systems to calendar cases. Less than 10 percent of the states mentioned using automated information systems to track key findings, continuances, notifications, or multiple filings. The existence of data-exchange standards and protocols will make these tasks much easier.

The National Evaluation of CIP reported on state-recommended next steps for court reform (U.S. Department of Health and Human Services, forthcoming: Figure 25). The most frequently recommended areas for future work were training (88 percent), legal representation (82 percent), and case tracking and information...
Improving Outcomes for Children Through Data Exchange

management (74 percent). About 20 percent of the states recommended better systems to monitor and remind courts about approaching AFSA timelines, hearings, and continuances.

**Data-Exchange Standards.** National exchange standards, protocols, and templates will greatly reduce the costs but will not solve all of the problems of data exchange. A national template permits states to evaluate a prepared, standard list of data elements for applicability to their particular situation and perhaps consider some that they may not have thought about. For example, Texas has prepared a comprehensive set of data requirements that could profitably be reviewed by other states considering data exchange (see TexDeck Web site). One set of data elements on the list considered the type and dosage of medications children were taking so that judges could consider the possibility of children being overmedicated. Part of that decision regarding what data elements to adopt involves demonstrating how the data elements can be used in reports to the court and child welfare agency. For example, with the basic data on relationships available, TexDeck can produce "genealogy" charts for complex cases that illustrate the various relationships and living arrangements of children with different caretakers. The chart can show a child living in a household with his or her mother and a significant other but also label the child’s biological and legal fathers.

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**National exchange standards, protocols, and templates will greatly reduce the costs but will not solve all of the problems of data exchange.**

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Data-exchange packages have been created for the dependency petition, the adjudication order, and the case or service plan (see NCSC Child Welfare Net Project Wiki). The next data-exchange issue to be addressed will be creating administrative exchanges between courts and child welfare agencies to assist with scheduling of hearings, appointment of counsel, addition of parties to proceedings, and changes of address and placement. Notification of parties of court proceedings, including parents, foster parents, guardians ad litem, attorneys, and prosecuting attorneys, is the next priority.

The data-exchange package for the dependency petition was recently field-tested in Vermont. The national standards proved to be very helpful indeed. Approximately 65 percent of the information in the template was used for the Vermont dependency petition. Another 31 percent of the information could have been used, but was not required in Vermont. Only 4 percent of the information required in Vermont was not contained in the national template. This bodes well for the value of having a national template—it saves time and money for states.

Once all of the data-exchange standards have been completed, they will go through the review process established by the Conference of State Court Administrators and National Association for Court Management to ensure they will be acceptable to the court community.

**How You Can Help**

The creation of data-exchange standards for various domains is moving forward rapidly. NIEM is considering forming a family domain with data from child
support and dependency exchanges. Both dependency courts and the child welfare community need to participate in the governance process of data exchange so that their concerns can be taken into consideration while the standards are developed (see NIEM Business Architecture Committee, 2009).

In addition, NCSC is looking for feedback from both court staff and child welfare agency staff on the process models developed so far, the data requirements, and the technical specifications. Note that at least three of the NIEM steps discussed above rely on an analysis of how courts and child welfare agencies process child abuse and neglect cases, rather than technology issues. Data exchange is not a process solely for technology staff.

We need to know how applicable the processes modeled so far are to the processes used in your states. We are also trying to create a dictionary of terms so that users will know that a “shelter care hearing” in one state is or is not the equivalent of a “preliminary protective hearing” or an “emergency removal hearing” in another. Readers are invited to visit the wiki at [www.ncsconline.org/childwelfarewiki](http://www.ncsconline.org/childwelfarewiki) and to review the data exchanges established so far and contribute their suggestions, ideas, and comments.

**RESOURCES**


Texas Data-Enabled Courts for Kids (TexDECK), Texas Office of Court Administration. [http://www.courts.state.tx.us/oca/txdeck/txdeck-home.asp](http://www.courts.state.tx.us/oca/txdeck/txdeck-home.asp)


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**ENDNOTES**

**Data exchange is not a process solely for technology staff.**
In just a few years, Virginia has made dramatic improvements in its child-welfare system, thanks to the leadership of its first lady, national experts, and a group of committed professionals. The transformation in Virginia offers a template for states seeking to improve permanency for older youth in care who are at greater risk for homelessness or incarceration soon after leaving the system.

Before my husband’s election as governor of Virginia in November of 2005, I served eight years as a judge in Richmond’s Juvenile and Domestic Relations Court. I had led the court’s initiative to improve foster-care and adoption outcomes through partnering with our local social-services agencies and other interested parties. Though I could have remained on the bench when we moved into the Executive Mansion, I resigned my seat, recognizing the opportunity I would have to spotlight an important issue and help make improvements in the lives of Virginians.

I knew coming into my role that I would focus my attention on some aspect of children’s services. Teens, particularly those in and out of the foster-care system, tugged at my heart and head during my time on the bench—I felt we could do better by them. Common sense, and my experience on the bench, told me that all children need the support of permanent families to be successful, even as they head toward independent adulthood. I had early discussions with child-welfare leaders in Virginia and found that they too recognized the need to improve Virginia’s foster-care system, particularly vis-à-vis older children. We agreed that the system was not fulfilling its potential in the lives of older foster children, as too many were aging out of the system without job or life skills and with little, if any, real support as they embarked into the world as young adults. We recognized that there was no overriding, clearly articulated vision for how best to serve older foster children, nor was there sufficient accountability. There was consensus that Virginia could improve its performance in helping these children achieve life success. We subsequently learned of national research that supported this conclusion as well.

It became increasingly clear that Virginia needed well-developed strategies to improve its outcomes, particularly with older foster-care youth. Some perceive older children as more challenging and less suitable for family placements. We had experienced some success in improving outcomes for younger children, through following the mandates of the Adoption and Safe Families Act—offering services up front and reuniting families where possible, and where not possible, moving quickly to free children up for adoption. Our performance with older youth did not appear to have benefited from the same success.

Virginia’s child-welfare system is different from most states and deserves some background. Basic child-welfare services (child-protective services, foster care, and adoption) are programs of the Department of Social Services, which also operates federal family-financial-assistance programs. Virginia is a state-administered, locally operated system, which means that each of the 120 local Departments of Social Services are units of local government, with employees who are agents of their respective locality. The local departments depend on the state for uniform program policy, compliance monitoring, and state and federal funds to operate their programs, but have much local discretion in how they carry out their responsibilities. Each locality must provide local matching funds to obtain the state/federal share.

An unusual feature of our child-welfare system is our Comprehensive Services Act for At-Risk Children and Youth (CSA). In the mid-1990s as a response to escalating costs for children’s residential services, Virginia combined all the state-funding streams for residential care, allocated the pool among the localities (with local matching-fund requirements), and shifted decision making for residential...
placements to interdisciplinary teams at the local level. Localities had the flexibility to use CSA funds for either residential or community-based treatment options. Children in foster care or at risk of foster-care placement and those in special education programs are automatically eligible for CSA services. Those involved with the juvenile justice or mental health systems are served at the localities’ option. The strategy was designed to provide localities with more control in determining local service arrays while also shifting financial accountability to the local level. As with local DSS programs, the state’s role was to provide broad policy guidance and compliance monitoring.

The intent of the Comprehensive Services Act was to “create a collaborative system of services and funding that is child-centered, family-focused and community-based” (Va. Code Section 2.2-5200). Unfortunately, this original intent was not widely fulfilled. CSA planners did not anticipate the high demand that materialized, straining state and local resources. The combination of unforeseen demand and lack of community-treatment options caused exponential growth in the group-care industry, and in the CSA budget.

The other significant difference from many states is that community mental health care for children is not mandated. Like many other states, Virginia’s mental health system is state supervised and locally operated. While crisis intervention and some adult services are mandated, a continuum of children’s mental health services are not, resulting in localities offering services based on ability to pay or working to generate revenue to support services to kids. The local differences in services at times have caused families to turn to the foster-care system for children with mental illness as a means to access needed treatment services. The lack of a mandate for children’s mental health consequently made the CSA the de facto children’s mental-health-funding agent, with local teams making decisions about treatment providers.

Unfortunately, children presenting mental health issues were often placed in residential treatment simply because local services were not available. Residential services used up the vast majority of CSA funding, which skyrocketed year after year. Older foster-care children perhaps were especially vulnerable to residential placement because they were often attitudinally and physically defiant and difficult to place. Rather than risk failure in a family foster home, and particularly without a wealth of available family foster homes, social workers often placed older children immediately into residential care, where they could be managed with perceived less risk to all involved. Often these children aged out of foster care at age 18 or beyond and left residential care to move directly out into the adult world on their own. Not surprisingly, they often ended up homeless, incarcerated, or on welfare rolls very soon after leaving care.

In early 2007, I formally launched my For Keeps initiative, with the goal to increase the number of older foster children who have permanent families when they exit Virginia’s child-welfare system. At the time, youth over twelve years old represented half of Virginia’s 8,000 children in care. Of Virginia’s older youth, 600 aged out of care annually, representing 20 percent of all who exited care.

The support for our work was overwhelming. The Martin Agency, a nationally recognized advertising agency in Richmond, provided pro bono services to develop the For Keeps name, logo, and slogan, “Families for All Virginia Teens.” The Freddie Mac Foundation, with its deep and effective interest in foster care, provided an initial grant that allowed us to complete our planning phase without using government funds. We recruited a cadre of visionary professionals and volunteers.
We commissioned a local university professor to complete an academic literature review to identify research-based best practices among programs that supported foster youth achieving permanency. That review, and a similar unsolicited project by two local doctoral candidates, informed us of the dearth of published research and program evaluation on the topic. We were surprised to learn that many of the programs touted as effective were not subject to objective evaluation.

We hired Child Trends, a child-welfare research organization based in Washington, D.C., to perform advanced analysis of the state’s foster-care caseloads. This project reinforced our suspicions about the quality of our data and the ease with which it can be extracted for analytical manipulation. Like many other states, Virginia’s child-welfare data systems need upgrades to prevent erroneous data from entering the system and allow ready access for analysis. We learned that establishing and maintaining data integrity is critical, but often overlooked.

The data analysis confirmed what we suspected from the outset of the initiative—our performance with older children painted a grim picture. Additional confirmation came from a Pew Commission report, *Time for Reform: Aging Out and on Their Own*, which ranked Virginia last among the states due to our high percentage of youth aging out of care without permanent connections. On the positive side, Child Trends’ analysis told us that we perform consistent to national trends and are

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The Child Trends data analysis produced some disturbing revelations about our outcomes for older children in foster care:

- Only 72 percent of Virginia’s foster children exited to permanent placements, compared to 87 percent nationally
- Over half of the older children coming into care were placed initially into group care
- Only 2 percent of older children who enter care were adopted after seven years
- The prospects for permanency among older youth entering care declined dramatically after only two years, with only 40 percent ever achieving permanency, compared to 72 percent nationally

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*For Keeps* was created to identify and develop ways to find and strengthen permanent families for older children who are in foster care, or who might be at risk for coming into foster care. *For Keeps* is grounded in the belief that everyone deserves and needs permanent family connections to be successful. http://www.forkeepsvirginia.org

from across the commonwealth to join our *For Keeps* Steering Committee to offer their advice and guidance.

Our first priority was to understand the scope and nuances of the issue and to begin soliciting ideas that could shape future policy recommendations. I traveled the state in the spring of that year conducting a listening tour, talking to foster children, foster and adoptive parents, child-welfare professionals, and community leaders. I learned that those engaged in this important work were enthusiastic about changing the way we operated our foster-care system. They were eager to use *For Keeps* as a starting point to examine the fundamentals of our child-welfare system and work to improve the outcomes for every child who entered foster care.
relatively successful with young children. They are typically placed with families, are adopted or reunified, and are not likely to reenter care.

We engaged Virginia’s Juvenile and Domestic Relations Courts at every opportunity, sharing the findings from our research and data analysis at judicial training events and state and local Court Improvement Programs. We also initiated regional meetings with judges and local children’s services leaders to discuss the data for their jurisdictions and the role each could play in improving outcomes. The conversations allowed us to spotlight other Virginia localities where collaboration and judicial leadership have led to amazing results for children. The sessions also helped to demystify perceptions the attendees may have held about each other.

We were fortunate to attract the attention of the Annie E. Casey Foundation’s Strategic Consulting Group. Their selection criteria for working with states typically focuses on taking advantage of “opportunity moments” that follow a crisis in a state’s child-welfare system when state leaders are eager to make a commitment to reforms. While our system had not experienced a singular defining crisis, their interviews with state leaders established that Virginia was ready to collaborate with them and invest in the work necessary for system reform. Their selection of Virginia in mid-2007 coincided with the data-analysis phase of our plan and allowed them to dovetail with ChildTrends’ work. Since our selection, we have received the best consultation and technical assistance available from a committed team of full-time consultants.

The Strategic Consulting Group conducted additional quantitative analysis and gathered qualitative data through intensive interviews and focus groups with state and local staff. Their findings targeted systemic weaknesses and program practices that mitigate constructive outcomes.

The centerpiece of the Casey recommendations was to urge Virginia to develop a clear model for child-welfare-case practice. A practice model would broadly define our desired outcomes for children and families and unify the case-management practices of each of the state’s child-serving agencies. It would also bolster the state’s role with localities and shape the direction for program policy and worker training. The Casey team also recommended that we match our funding to the outcomes we desired. Virginia’s heavy spending on residential services undermined permanency for children.

We entered the 2008 legislative season equipped with an agenda for key system reforms backed by hard data and expert analysis. The governor’s office supported our agenda—without my having to lobby at home. Our recommendations merged those of the Casey Strategic Consulting Group and the For Keeps Steering Committee. Our proposals were well-received by the legislature and nearly all were approved.

Major items on our legislative agenda included:

- **Incentives for Serving Children in Community-Based Settings**
  As a strategy to reduce the number of children in group care, we developed a graduated program of incentives to localities to provide community-based services by changing the state/local match rate for residential and community-based services. Localities now pay a lower match rate for services provided in community settings and a higher match rate for services provided in residential settings. The strategy offered localities a year to enjoy the more favorable community-placement match rates and adjust their child-placement decisions accordingly before incurring increases to their residential match rates.

- **Increased Payments to Foster Care and Adoptive Families**
  In 2007 Virginia began increasing maintenance reimbursements made to foster-
family homes on behalf of foster children. We gained approval for a steeper increase that, when combined with the 2007 raise, resulted in an almost 40 percent increase over three years. The same measure increased adoption subsidy funding to ensure that adoption subsidies kept pace with foster-family rates. We anticipate the increases will facilitate stability in foster-home placements, enhance local departments’ ability to recruit families, and avoid placement in more costly residential facilities.

- **Improvements in the Recruitment and Retention of Foster Parents**
  To move toward a more child-centered, family-focused, community-based approach, we won funding to increase foster- and adoptive-family recruitment, support, training, and retention efforts and improve permanent connections for older youth in foster care. The funding will implement a relative-identification program and provide standardized training using the Parent Resource Information Development Education (PRIDE) curriculum.

- **Enhancements to Training for Child-Welfare Workers**
  In anticipation of developing a child-welfare-practice model, funds were approved to enhance worker training throughout the state to ensure that consistent messages and case practices are presented. An associated piece of legislation requires Virginia to establish minimum training requirements for foster-care and adoption workers to further imbed training consistency across the state.

Our legislative package also contained items that were consistent themes heard during our statewide listening tour. We gained approval for measures requiring that siblings be placed together, or have visitation rights if co-placement was not possible. The legislature approved a 60-day grace period for foster children between the ages of 18 and 21 who emancipate themselves from foster care, allowing a return to care with stipulations that they fully participate in an independent-living program.

The success of our legislative initiatives was a significant endorsement of reforming child welfare in Virginia beyond the focus of *For Keeps*.

The state’s administration capitalized on the growing momentum for change by launching a children’s transformation effort, to be led by a Council on...
statement, sets out the values that drive policy and case practice. Virginia’s practice model is:

We believe:

• That all children and youth deserve a safe environment.
• In family, child, and youth-driven practice.
• That children do best when raised in families.
• That all children and youth need and deserve a permanent family.
• In partnering with others to support child and family success in a system that is family-focused, child-centered, and community-based.
• That how we do our work is as important as the work we do.

Meanwhile, CORE committees focused on particular strategies, such as Managing by Data, Working with Private Providers, and Developing Resource Families. CORE localities experimented with a variety of techniques, such as family team decision making; new tools for recruiting more foster and adoptive families; and review of all residential placements to consider community alternatives for each if appropriate.

The reduction in the number of children in foster care is particularly telling. While this was not one of our stated goals—we want children in care if they need to be—CORE localities have found that in many cases children previously sent to residential treatment facilities can safely be kept with their biological families or other relatives if appropriate supportive services are in place.

The combination of legislative changes and CORE’s success motivated the remaining Virginia localities to begin making practice changes. The formal rollout of the state’s transformation efforts in those localities has just begun, but many have already been working toward the transformation’s goals and are beginning to show results as well.

The expanding role of the state administration, particularly through the CORE transformation effort, has caused my role to shift. I am now happy to use my experience and network to help enhance the relationships among public and private institutions whose involvement is critical to Virginia’s success. We have worked particularly hard to ensure that Juvenile and Domestic Relations Court judges, guardians ad litem, and local social-services attorneys understand how their cases and practices might change as part of the reform effort. We have begun work to help our private-provider industry recognize how the children’s services marketplace is changing and where they might develop new program opportunities as the emphasis shifts to community-based care. As always, I remain a committed cheerleader for Virginia’s children and the committed families and professionals who work with them every day.

I believe that the progress we are making in Virginia can be replicated elsewhere. My sense is that the common characteristic we share with other successful states is the quality of leadership at the state and local level and agreement to collaborate on improving specific outcomes. I anticipate that every state has the capacity to identify and rally the key children’s services leaders to initiate progressive system change, even in these challenging economic times.

I suggest that states considering similar initiatives identify a visible champion to advocate for change. My role as first lady was a helpful platform for convening people, bridging communication gaps across disciplines, and building momentum. Much of my early work was focused on simply talking to people about the challenges facing older foster youth and brainstorming opportunities for system change. The resident leadership in Virginia’s children’s services system seized the

CORE has exceeded the benchmarks established when it was created in early 2008. As of April 1, 2009, CORE localities have:

- Reduced the number of children in congregate care by 33%
- Increased the discharges to permanence by 8%
- Reduced the number of children in foster care by 11%

Source: CORE
opportunity to work with us to advance an agenda for change. It was their network of contacts, their staff resources, and their commitment to improving outcomes that led us to the results we enjoy today. Our focus on the data was a strategic benefit. It offered a gauge for our results and reinforced our system improvements along the way. We did not yield to simply declaring that more money would fix the problems we identified. The value of children’s services in Virginia easily approaches a billion dollars or more annually. Rather than beginning with an argument for additional funding, we found great persuasive value in using the data to build our case for policy changes that, in turn, allowed our state agencies and localities to use funding more effectively.

Let me close with a story. One young man whom I met originally in the courtroom has come back into my life more recently. I had removed him from his mother’s care when he was 8 years old; her schizophrenia had exacerbated to the extent that she refused to allow him and his sister to attend school because she was afraid bogeymen would snatch them away. She declined to comply with treatment recommendations—child-welfare and mental-health professionals were enemies to her paranoid eyes—and eventually we terminated parental rights, hoping the children could find new adoptive homes.

Last year I again met the young man at a holiday party we held at the Executive Mansion for local teenagers in foster care. He had been through some difficult years. He was never adopted and had experienced many different placements. He is now doing much better and getting ready to graduate from high school (I was honored when he asked me to write him a letter of recommendation for college!), but he still has no permanent family with whom to live. I’ve chatted with him some about who is involved in his life now, and was not surprised to learn that the only long-term constant in his world has been his mother. She has not overcome her mental illness, but she still loves him, and he knows that.

I am not sure what we could have done differently for that young man, but some of our truly exceptional child-welfare professionals are now engaging in extraordinary efforts to help all our children be successful in families. One locality is even experimenting with literally taking whole families into foster-like care together for an intensive time period, to help them overcome dysfunction that might otherwise necessitate long-term foster care for a child. When I think of communities undertaking such heroic and creative efforts, I wonder what could have been done to better serve the young man who has spent 10 years of his life in foster care and is now venturing forth into adulthood essentially on his own. I hope and trust our efforts to transform child welfare in Virginia will produce better results for the next generation of such youngsters.

For more information, please visit www.vafamilyconnections.org

ENDNOTES

* I offer special thanks to Mike Evans, my assistant for child and family initiatives, for his collaboration on this article.

RESOURCES


All states are required to demonstrate meaningful multidisciplinary collaboration between the judicial branch and the child-welfare agency, a challenge in good times, made more difficult with severe budgetary constraints. Some states have developed special commissions for this purpose, sustaining the energy and connections needed for systemic improvement.

Legislative and judicial processes are preordained. But what about all the business in between, where there is more discretion to determine the process and structure and much of the work of implementing public policy takes place? How best to pursue improvements in child protection; to structure the intricacy of shared federal, state, and local governance; and to navigate the shared state-local funding of courts that exists in many states? Texas and other states have worked to reap the benefit of multidisciplinary collaboration through commissions appointed by the states’ supreme courts to bring some measure of governance and strategic vision to this challenging arena.

In 2004 the Pew Commission on Children in Foster Care issued “Fostering the Future,” a report that made recommendations about how to move children from foster care into safe, permanent, nurturing families and prevent unnecessary placements. As part of the report, the Pew Commission recommended four key strategies for strengthening courts in the child-protection system:

1. Courts must have the ability to track children’s progress, identify children in need of attention, and identify sources of delay in court proceedings.
2. Courts and public agencies should be required to demonstrate effective collaboration on behalf of children.
3. Children and their parents must have a direct voice in court, effective representation, and the timely input of those who care about them.
4. Chief justices and state court leadership must take the lead, acting as the foremost champions for children and making sure recommendations of the Pew Commission are enacted (Pew Commission on Children in Foster Care, 2004).

In September 2005, the Pew Commission recommendations were the subject of the Judicial Leadership Summit on the Protection of Children in Minneapolis. This watershed event stimulated more focused judicial attention on the plight of children and youth in foster care. However, exercising visible judicial leadership as recommended by Pew is not necessarily easy, comfortable, or customary for a supreme court, nor does it come naturally to many trial judges who are called upon to handle and champion child-abuse cases. Several states have pursued the four Pew strategies through the formation of judicial commissions to develop policies designed to improve courts for children, youth, and families in the child-protection system.
Texas is an excellent example of the complexities and benefits of establishing a court-appointed commission. Since 1993, the Texas Court Improvement Program had been governed by the Supreme Court Task Force on Foster Care, chaired by Judge John Specia of San Antonio. This multidisciplinary collaboration had made significant improvements over the years and laid a solid foundation of interaction between a number of judges and the child-welfare agency, CASA leadership, the University of Texas School of Law, and others in the field. All it lacked was greater visibility and a more sustained connection to the Supreme Court of Texas.

Returning from the Minneapolis Summit and starting in November 2005, Justice Harriet O’Neill took the leadership role in Texas, bringing to bear her analogous experience with the creation of the Texas Supreme Court’s Access to Justice Commission and Foundation. She now serves as the chair of the Supreme Court Permanent Judicial Commission for Children, Youth and Families (commission), having launched a two-year consensus-building effort to establish a commission with the official status, credibility, and the imprimatur of the Supreme Court of Texas (see Permanent Commission on Children, Youth and Families Web site). Mindful of the many stakeholders already involved in child welfare in Texas, Justice O’Neill and the supreme court did not leap too quickly to create a commission. Inspired by Minnesota, the Texas team visited Chief Justice Judith Kaye and the New York Permanent Commission on Justice for Children, and Justice Moreno with the California Blue Ribbon Commission on Children in Foster Care. Then there was a study of the issue by a consultative group formed by court order (see Foster Care Consultative Group, 2007) and, in September 2007, a remarkable public hearing of the court to receive testimony from a myriad of stakeholders (see Public Hearing on the Children’s Commission, 2007).

One of the most important structural components of any commission is the willingness of judges to serve. Texas benefits from the leadership of Justice O’Neill and a broad representation on the commission of the major constituencies in Texas child welfare. The court order establishing the commission is deliberately detailed regarding history, process, problem identification, structure, and strategies (see Supreme Court of Texas, 2007). The 19-member commission brings together public and private institutions to work toward reducing the amount of time children spend in foster care and ensuring better outcomes for children and families.

Members include judges, Child Protective Services (CPS) and Health and Human Services officials, trial judges, attorneys, legislators and other elected officials, the vice president of a nonprofit foundation, and a former state bar president. Judge Specia, the former chair of the Task Force on Foster Care and a very active former board member of the National Council of Juvenile and Family Court Judges, has retired from the bench but stays heavily involved with the commission as the Jurist in Residence to the Office of Court Administration. Other members of the former task force have continued their service on the commission or its committees.

So, the deliberative process that built up to the creation of the commission worked well, as has execution of the commission structure and composition. The formal commission is a relatively small group with executive-level membership that retains a close relationship with the stakeholder community through appointment to a much larger collaborative council, with membership from foster youth and families, parents, attorneys, CASAs, juvenile justice, and many other child-protection advocates. Another process decision that began in Texas after the second summit, in New York, was the simple step of holding a weekly meeting to connect the judicial branch to the executive branch. This meeting developed into an opportunity for staff from the legislative branch to stay tuned in as well, with executive and legislative staff usually joining by conference call, saving time and money. Finally, the commission’s carefully developed procedures and process have been reduced to procedural guidelines to direct the staff in handling its grant-related duties, and providing notice to stakeholders and the interested public of how it all works (see Permanent Commission on Children, Youth and Families, n.d.).
The commission serves two primary functions. It oversees and administers the Court Improvement Grant, which funds the staff-directed and community-managed projects aimed at improving courts and court processes. It also serves as an umbrella organization to facilitate efforts of subject-matter experts, judicial and executive branch leaders, and key policy makers to discuss issues affecting child protection in the State of Texas, with the goal of advancing ideas that result in sound executive agency policy, carefully planned legislation, and improved judicial handling of child-protection cases. The tasks undertaken in both roles are done in compliance with the commission’s strategic plan, which has five primary goals.

The commission’s success since November 2007 has been notable. In less than two years, and with total Court Improvement Project funding of $2.0 million per year, it has expanded judicial and legal training and engaged in a number of projects designed to improve outcomes for underserved populations, such as youth who are aging out of foster care, children who remain in state custody indefinitely, and youth in the dual custody of the juvenile justice system and child protection.

In addition, funding has been provided to the Office of Court Administration to address the significant data challenges in an enormous state with 254 counties and a highly decentralized court system. Coming out of the Minneapolis Summit, that work has been guided by the publication *Building a Better Court: Measuring and Improving Court Performance and Judicial Workload in Child Abuse and Neglect Cases* (ABA et al., 2004) and its successor publications in the *Toolkit for Court Performance Measures in Child Abuse and Neglect Cases* (U.S. Department of Justice et al., 2008-09). A signal achievement of that effort has been the development of a functional-requirements-reference model to give vendors of court-case-management software an authoritative set of requirements for creating specialized modules for court software systems. The reference model consists of a number of Web pages presented in an interactive format, providing overviews of the court process, timelines, a feature to allow deep drill-down into the particulars of each subprocess, and detailed descriptions of the data requirements (see Texas Office of Court Administration, TexDECK Functional Requirements Home Page). The reference model has, in turn, been the basis for development of a case-management system for one group of associate judges hearing child-protection cases in Texas and has been enhanced by inclusion of the capability to measure progress on certain performance measures included in the *Toolkit*.

A commission is nothing more, or less, than an entity charged with managing the difficult job of bringing disparate voices together for the greater good, in other words, to structure collaboration. Having such a structure helps to identify issues, task people with addressing them, and hold them accountable. It requires dedicated resources and enormous effort, but the returns on that investment can be extraordinary.
<table>
<thead>
<tr>
<th>Resources</th>
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<tr>
<td>Permanent Commission on Children, Youth and Families, Supreme Court of Texas, Website. <a href="http://www.supreme.courts.state.tx.us/children.asp">http://www.supreme.courts.state.tx.us/children.asp</a></td>
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<td>Texas Office of Court Administration, TExDECK Functional Requirements Home Page. <a href="http://www.courts.state.tx.us/oca/texdeck/frd/texdeck%20functional%20requirements.htm">http://www.courts.state.tx.us/oca/texdeck/frd/texdeck%20functional%20requirements.htm</a></td>
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Performance standards and measures are taking hold in a number of state appellate courts. This trend developed primarily because (1) appellate court leaders have recognized that they need to practice what they preach, and (2) performance measurement can provide valuable information for purposes of transparency, accountability, and continuous improvement.

What Is Performance Measurement and Performance Management?
Performance measurement is a process of regular and continuous monitoring and analysis of results, outcomes, or accomplishments in relation to organizational goals and objectives. Performance management actively uses the insights gained from the monitoring and analysis of results for the purposes of transparency, accountability, and continuous improvement.

Appellate courts frequently identify their organizational goals and objectives, or key success factors, as quality of judicial process, timely and efficient case management, organizational effectiveness and integrity, and promotion and preservation of public confidence in the judicial system.

As groundbreaking work was underway in the Oregon Court of Appeals, the Montana Supreme Court, the Arizona Supreme Court and both divisions of the Arizona Court of Appeals, the National Center for State Courts released a working paper: “The Appellate CourtTools: A Performance Measurement System for Appellate Courts.” The Appellate CourtTools document builds on a foundation of substantive court performance resources (see the list of Resources at the end of this article) and the prior experiences of appellate and trial courts with various performance standards and measures. It includes seven individual performance measures explicitly linked to common values of most appellate courts (see box below).

During 2009, the Appellate CourTools working paper has undergone active review by the Joint Management Committee of the Conference of Chief Justices and the Conference of State Court Administrators, a performance measurement committee of the National Conference of Appellate Court Clerks, as well as individual appellate judges, clerks, and administrators. (Contact John Doerner at jdoerner@ncsc.org for a copy of the working paper.)

What Are the Benefits of Appellate Court Performance Measurement?
The hallmark of a high-performing organization is rigorous self-examination. The first important step toward improvement is organizational self-analysis. The hallmarks of a high-performing judicial system include the political will and the capacity to ask, How are we doing and how could we improve?—i.e., to measure performance on a regular and continuous basis; to gain knowledge and insight into new realities, opportunities, and necessities; and to convert the knowledge and insight gained into effective strategies for improvement.

Effective performance measures drive success. They are clear, focused, unambiguous, and actionable. They serve as both incentives and practical tools for improvement. They draw attention to the appellate court values in a clear and focused way that supports the court’s leadership.

Appellate Court Performance Measures and Common Values

<table>
<thead>
<tr>
<th>Performance Measure</th>
<th>Quality of the Judicial Process and Related Functions</th>
<th>Timely and Efficient Case Management</th>
<th>Organizational Effectiveness and Integrity</th>
<th>Promoting and Preserving Public Trust and Confidence</th>
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<tr>
<td>1. Constituent Survey</td>
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<td>2. On-Time Case Processing</td>
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<td>3. Case Clearance</td>
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<td>4. Age of Pending Caseload</td>
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<td>5. Cost-Effective Case Processing</td>
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<td>6. Integrity of Court Records</td>
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<td>7. Employee Engagement</td>
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An effective performance system is not designed to measure all things that can be measured. Rather, it emphasizes those meaningful measurements that provide an overall assessment, or balanced scorecard, of appellate court performance. The key is in identifying those performance measures that will help to achieve the appellate court’s desired results. Not uncommonly, the act of measurement itself will trigger positive actions.

**Performance measurement uses numbers but it is ultimately not about the numbers.** It is about perception, understanding, and insight. In the final analysis, it is not the measurement results per se that are important but, rather, the questions that the results compel the appellate court’s leaders to address.

**Why Should Appellate Courts Measure Their Own Performance?**

How well is the appellate court meeting its objectives? Whoever answers this question is in a position to control how the message is ultimately delivered. Appellate courts will need to do it for themselves or another organization will do it for them. Increasingly, appellate courts are concluding that they are in the best position to monitor, analyze, and manage their own performance—not the legislature, the executive branch, advocacy groups, or academia. But if appellate courts will not step up to the challenge, these groups will. For example, in May 2008, the University of Chicago Law and Economics Program ranked the nation’s high courts using three performance measures: the average number of opinions each judge writes per year; the number of times that court’s opinions are cited by other state courts; and the frequency with which members of the court are willing to dissent from other judges of their own political party. The study’s critics, including appellate judges in those states that were not ranked favorably, scrambled to deliver the message that the measures used in the study were wrong and led to erroneous conclusions. The critics of the rankings make a compelling argument, but they are simply playing catch-up.

The appellate courts that conduct and report their own performance measurement results will solidify their own independence and their leadership role within the judicial branch. The appellate courts that conduct and report their own performance measurement results will solidify their own independence and their leadership role within the judicial branch. Performance information can be used to further an appellate court’s commitment to organizational objectives, promote effective management of its operations, and demonstrate its value to funding bodies and the community at large.

**Which Appellate Courts Are Developing Performance Management Systems?**

At least five appellate courts in three states—the Montana Supreme Court, the Arizona Supreme Court, Division 1 and Division 2 of the Arizona Court of Appeals, and the Oregon Court of Appeals—are actively developing performance measurement systems. The development efforts in all three of these states are headed by the each state’s chief justice or chief appellate court judge and are guided by coalitions of judges, court clerks and other appellate court staff, and staff of the states’ administrative offices of the courts. The NCSC has provided consultation, facilitation of the design-and-development process, and technical assistance.

**How Have These Five Courts Used Their Performance Measurement Information?**

**Oregon Court of Appeals**

In the fall of 2005 the Oregon Court of Appeals began to identify a set of success factors and an accompanying set of core performance measures to measure its achievements. The court tentatively agreed upon the success factors of (1) quality, (2) timeliness and efficiency, and (3) public trust and confidence. Measurements related to these success factors would help to identify ways in which the appellate process could be improved.

The initial measurement process consisted of an online survey of attorneys and circuit court judges who were involved with cases decided by the Oregon Court of Appeals from July to December 2006. The survey was designed to provide insight into the quality of the court’s work. As one of the court’s three success factors, “quality” was defined to include the notions of fairness, equality, clarity, transparency, and integrity of the judicial process. Fifty-seven percent of judges and 46 percent of attorneys in the target population responded, providing the court of appeals with good confidence in the results (see Oregon Court of Appeals, 2007).
Overall, approximately 80 percent of respondents said the court is doing a good job, with the highest marks in response to questions about the treatment of trial court judges and attorneys; 90 percent reported that the Oregon Court of Appeals treats them with courtesy and respect. A lesser percentage of respondents, approximately two out of three, indicated that the court handles its caseload efficiently, is accessible to the public and attorneys in terms of cost, and does a good job of informing the bar and the public about appellate procedures.

As the court installed a new case management system in 2008, it also developed reporting functions for case-processing performance measures—an important component of effective performance management. Those measures were tested and implemented in January 2009. Going forward, the court will regularly monitor and analyze the information captured by these measures and apply it to enhancing the quality of its work, productivity, and timeliness, as well as its management and leadership capabilities. As Chief Judge David Brewer noted, the court was convinced that “asking those who use and are affected by the court for their views and perceptions about the appellate process—and learning from their responses—will ensure that the court remains a strong and accountable component of Oregon’s state government.”

Montana Supreme Court
In September 2008, the Montana Supreme Court surveyed nearly 1,000 appellate lawyers, all district court judges, and the University of Montana Law School faculty to assess the court’s performance. Respondents rated the court’s performance relative to its primary obligations, including whether decisions are based on the facts and applicable law, whether published opinions explain deviations from established law and the adoption of new developments in law, whether the court treats judges and attorneys with courtesy and respect, and timeliness in resolving cases and issuing opinions. About 46 percent of the appellate attorneys, judges, and law-school faculty responded (see Montana Supreme Court, 2008, for a summary of the results).

The survey is part of a larger project, which includes Montana’s trial courts, to develop a set of measures gauging court performance. In addition to measuring constituent satisfaction, the court has developed adaptations of the Appellate CourTools measures, including on-time case processing, case clearance, age of pending caseload, and employee engagement. The National Center for State Courts provided technical assistance in the development and implementation of the measurement tools.

In an October 2008 letter to the state’s trial judges, lawyers, and law faculty, former Chief Justice Karla Gray, who spearheaded the effort, stated that the survey results provided the Court with valuable insights about its strengths and weaknesses. “We will use these results,” she wrote, “together with the ‘hard data’ measures . . . to help us identify ways in which the Court can improve, and we intend to conduct the survey annually to obtain feedback from our primary consumers.” Preliminary results of all of the court’s core performance measures, except Employee Engagement, which is still being tested, are also available on the court’s Web site (see Montana Supreme Court, 2008).

Arizona Supreme Court and Court of Appeals, Divisions 1 and 2
The establishment of court performance standards and measures is designed to help achieve the goal of accountability, which is identified in the Arizona judiciary’s strategic plan (see Arizona Supreme Court, 2005). Under the leadership of Chief Justice Ruth McGregor and a statewide appellate performance committee, Arizona adopted and adapted five of the measures found in the Appellate CourTools: (1) a constituent survey of members of the appellate bar and trial bench; (2) on-time case processing; (3) clearance rate; (4) age of pending caseload; and (5) an online survey of employee satisfaction. The National Center for State Courts provided technical and logistical assistance to the appellate performance committee and to the AOC staff member supporting their efforts. Implementation of the measures began with both surveys being successfully administered and tested in early 2009. As of this writing, data-collection-and-reporting procedures for the three case-processing measures are being tested and refined. A sixth measure listed in the Appellate CourTools, Cost per Case, remains under consideration by the committee.

During June 2009, the appellate performance committee plans to make a report to the Arizona Judicial Council recommending annual constituent and employee surveys, ongoing case-processing measurements, public release of performance results, and the development of “Performance Oversight” plans in each appellate court.
To establish an effective system of performance measurement, an appellate court must identify its institutional values and objectives, i.e., its key success factors.

What Does the Future Hold in Appellate Court Performance Measurement?

To establish an effective system of performance measurement, an appellate court must identify its institutional values and objectives, i.e., its key success factors. Often, this is accomplished through the development of a mission statement or strategic plan. Once this is done, the planning process moves through three interdependent phases of development.

1. **Right Measures.** Identifying and developing the right performance measures.
2. **Right Delivery and Distribution.** Ensuring that the right measures are delivered to the right people in the right way and at the right time.
3. **Right Use.** Integrating the performance measures and the delivery system with key management processes and operations, including budgeting, resource and workload allocation, strategic planning, organizational management, and staff development.

In the future, as more appellate courts become familiar with the Appellate CourTools and gain experience with identifying and developing the measures that are right for them, they will focus increasing attention on the second and third phases of performance management. As an example, the appellate courts in Montana and Arizona are developing “performance dashboards” to deliver and distribute performance information. Performance dashboards are automated solutions that allow busy judges, court executives, and staff to view critical performance information at a glance on their computer screens, and then move easily through successive levels or layers of strategic, tactical, and operational detail. This process will be used to identify issues, solve operational problems, and improve court programs and services on a self-help, on-demand basis.

Recognizing that performance measurement and management are not self-executing, leaders in both Montana and Arizona are developing strategies for integrating performance measures with key management processes, thereby ensuring the **right use** of performance measurement.

**RESOURCES**

Defining Operational Successes: Measuring the Performance of a Court’s Front-Line Staff

Jake Chatters
Court Executive Officer, Superior Court of Placer County, and Former Deputy Executive Officer, Superior Court of Sacramento County, California

Court performance measurement systems are vital for management and planning. But “front-line” measurement of day-to-day work is equally vital for improving court performance.

Six years ago, the courts were facing a cyclical budget crisis similar to the one we face today. The Superior Court of Sacramento County chose to address that crisis, in part, by establishing a business-process-reengineering program. During the past several years I have been asked whether the program has been successful. I think the answer is yes, but for different reasons than I would have anticipated at the beginning.

While some concrete examples of hard savings and more intuitive processes arose directly from the reengineering projects, those are not the big changes. The major benefit of the reengineering program was to establish a culture willing to look for change. The program’s ultimate goal was to find ways to be more efficient and to challenge those processes that “we’ve always done this way.” Whether a manager implemented a specific change recommended by my team or found a new, perhaps better, solution on his or her own, the court benefited.

Having a culture in which managers and staff are willing to look for change does not guarantee that the culture accepts change. While there is a desire to improve and a drive to make a process easier for ourselves or the public, we, like most people, still fight the battle against aversion to change. But that desire to look and to question “what is” has proved invaluable over the past half-decade.

In 2007 we implemented the California Court Case Management System in civil law and probate while simultaneously transforming to a paper-on-demand environment. We have gone to paperless files in traffic cases and adopted Second Generation Electronic Filing Specifications (2GEFS) and 2GEFS-compliant e-filing for unlawful-detainer actions. Most recently, severe county budget cuts forced us to quickly revamp our entire criminal-pretrial-release processes. These changes were not easy, but a culture supportive of change, even if individuals struggle with the specific change, was invaluable in making these transitions.

The Need to Measure Operational Performance

If a culture of change was the great side benefit of the last budget crisis, what might we hope to improve as a result of the one we now face? Each trial court, presiding judge, and executive officer may answer that question differently. What I hope is that we leave this crisis with an organization that understands the need for and embraces the use of operational performance measures.

First, a quick differentiation: The trial courts in California and across the country have a growing history of strong justice-based performance measures. Measures like age of pending caseload and clearance rates fall into this category. These measures are expanding to include customer and employee satisfaction. The National Center for State Courts (NCSC) Court Tools project is designed to standardize these measures nationwide so there is a common base by which to measure court performance. These measures describe our organizations and provide accountability to the public we serve. They are vital for management and planning purposes.

But while these measures are extremely valuable for judges, court executives, high-level court managers, the Administrative Office of the Courts, and the general public, they often provide little value to most staff, supervisors, and line managers. This budget crisis presents a great opportunity to develop operational-level performance measures that will be meaningful to this latter group.
What is an operational-level performance measure? These measures should focus on the timeliness and quality of the activities performed by line staff—whether a mediator, a courtroom clerk, or the staff at the front counter. Operational measures are extremely valuable to front-line staff and supervisors for both motivational and measurement purposes.

Today in our court, the front lines generally report performance on “backlog reports.” When backlogs are low, there is a perception of quality performance. As court leaders, we should not be satisfied with “backlog” as our default definition of operational performance. Our use of this measure highlights our need for a greater focus on front-line statistics.

First, the use of “backlog” as a performance measure has an inherent negativity. It says to our staff that we don’t expect them to finish their work; that we acknowledge it isn’t possible before they even begin. While certainly we need to know if we have a backlog and how big it is, using that as the primary measure hinders motivation. Why try if everyone already knows they can’t possibly succeed?

Second, measuring only what has not been done and staying silent on both what has been done and its quality fail to give credit and emphasis on the key role that all staff play in maintaining the public’s trust. Our staff should be proud to work for the court, and we need to articulate why what they do is vital to our court system.

Third, as we enter another cyclical downturn in funding we need to determine where cuts can be made and at what price. But can we adequately answer that question? Eighteen months from now when positions have been held vacant and ancillary services have been reduced, will we be able to quantify the impact? Can we reasonably predict the outcomes? While we believe, or intuitively know, that reducing customer service staff could result in declining quality, we have no way to monitor this assumption or to mitigate impacts early. Instead, leadership can only react if problems create major complaints or impact the key justice measures. For example, as workload is spread over fewer staff, error rates may rise. Knowing early that, for example, minute-order accuracy is declining may allow us to address the problem before it begins to impact future hearings or delays in formal orders after hearing.

The need for operational-level performance measures is not new. Certainly some courts in California have strong systems of measurement and reporting already in place. Others may recall the NCSC’s Trial Court Performance Standards and Measurement System—the precursor to CourtTools—which included many operational measures. But this system failed to become the norm for courts because of the sheer volume of measures required and the cost to collect and maintain the information.

The collection and use of operational-level performance measures are constrained by the inherent cost of measurement. The previous NCSC effort, and perhaps previous efforts in many courts, failed because of its size and complexity. How do you run a courtwide performance-management effort in the midst of a budget crisis? When judges, management, and staff are working to deal with shortages, it is extremely difficult to divert organization-level attention to front-line statistics. On the other hand, a crisis presents a great opportunity for organizational culture change.

The Use of Measures to Celebrate Successes
There is no easy solution to this problem. A top-down approach to performance measurement may lead to concern that the measures will be used against those lower in the hierarchy. The key may be in how we look at defining the need for performance metrics. Do we want statistics so we can identify problems, or is the primary reason to identify and celebrate successes? If we truly support and embrace
performance measurement as a way to highlight successful programs and efforts and not as a punishment tool, they may become less threatening.

As an example, at a recent meeting of upper-level managers in our court, an individual lamented that we place greater emphasis on completing projects on our operational plan than we do on our day-to-day work. This happens, simply, because we know how to measure a completed project. We can say it is done. It is implemented. But we have not adequately defined our operational success. In the absence of information, we cannot celebrate the great work our staff does every day.

How are we going to change the culture and instill the need for front-line performance measures? This past May we discussed this question with the management and supervisory teams in two of our major divisions. We focused on the need to collect operational performance measures and to do so with several principles, which are summarized in the chart below.

**Operational Performance Measures: Implementation Principles**

- “Justice” measures do not always serve us well, and there is a need for “operational” measures.
- There is a demonstrated need to define success and develop related measures.
- Measurement can be a motivational tool—not a “gotcha” but an “atta team.”
- Start small. We have limited resources so we must focus on a small number of measures (three to five).
- Keep the measures balanced. Don’t measure timeliness in the absence of quality.
- Good measures are quantifiable and meaningful and can be influenced by our actions.
- What we measure influences behavior.
- Accept that we may not be able to measure exactly what we would like to measure.

We hope to let the units decide what to measure and then let them measure it. The intent is to allow the staff, supervisor, and manager to informally discuss what they think would be useful. The best possible outcome is to have the units define what success is and to build comfort with performance-based measurement.

We will know the outcome of this effort in a year or two. Six years ago, we did not know if our business-process-improvement projects would be successful, but now our culture is more open to change. With some luck, perhaps the silver lining of the current budget downturn will be an acceptance of the benefit of front-line performance measurement.
ENDNOTES

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RESOURCES


ELEVENTH JUDICIAL CIRCUIT CRIMINAL MENTAL HEALTH PROJECT

Hon. Steven Leifman
Special Advisor on Criminal Justice and Mental Health, Supreme Court of Florida
Associate Administrative Judge, Miami-Dade County Court, 11th Judicial Circuit

The 11th Judicial Circuit Criminal Mental Health Project (CMHP) diverts individuals with serious mental illnesses or co-occurring substance-use disorders into community-based treatment and support services. CMHP provides an effective, cost-efficient solution by eliminating gaps in services and by forging productive and innovative relationships among all stakeholders with an interest in the welfare of one of our community’s most vulnerable populations.

The Problem
Every day, in every community in the United States, law-enforcement agencies, courts, and correctional institutions are witness to a parade of misery brought on by untreated or undertreated mental illnesses. A recent study suggests that people with serious mental illnesses (SMI), such as schizophrenia, bipolar disorder, or major depression, are arrested and booked into jails in the United States more than two million times annually (Steadman et al., 2009). Roughly three-quarters of these individuals also experience co-occurring substance-use disorders, which increase their likelihood of becoming involved in the justice system (Abram and Teplin, 1991). As of midyear 1998, the U.S. Department of Justice estimated that almost 300,000 people with mental illnesses were incarcerated in jails and prisons across the United States, and more than 500,000 people with mental illnesses were on probation (Ditton, 1999). Based on the most recent data reported by the Department of Justice, it is estimated that there are currently 400,000 people with mental illnesses in jails and prisons and more than 800,000 on probation or parole.

Although these national statistics are alarming, the problem is even more acute in Miami-Dade County, Florida, which is home to the largest percentage of people with SMI of any urban community in the United States. Roughly 9.1 percent of the population (nearly 220,000 individuals) experience SMI, yet fewer than 13 percent of these individuals receive care in the public mental-health system (Perez, Leifman, and Estrada, 2003). As a result, law-enforcement and correctional officers have increasingly become the first, and often only, responders to people in crisis due to untreated mental illnesses.

On any given day, the Miami-Dade County jail houses approximately 1,200 individuals with mental illnesses. This represents 17 percent of the total inmate population, and costs taxpayers more than $50 million annually.¹ The county jail now serves as the largest psychiatric institution in the state of Florida, housing more beds serving people with mental illnesses than any in-patient hospital in the state and nearly half as many beds as there are in all state civil and forensic mental-health hospitals combined.² On average, people with mental illnesses remain incarcerated eight times longer than people without mental illnesses arrested for the exact same charge, at a cost seven times higher (Miami-Dade County Grand Jury, 2004). With little treatment available, many individuals cycle through the system for the majority of their adult lives.
The 11th Judicial Circuit Criminal Mental Health Project (CMHP) was established nine years ago to divert misdemeanor offenders with SMI, or co-occurring SMI and substance-use disorders, from the criminal-justice system into community-based treatment and support services. Since that time the program has expanded to serve defendants that have been arrested for less serious felonies and other charges as determined appropriate. The program operates two components: pre-booking diversion consisting of Crisis Intervention Team (CIT) training for law-enforcement officers and post-booking diversion serving individuals who are in jail and awaiting adjudication. All participants are provided with individualized transition planning, including linkages to community-based treatment and support. Services available to program participants include supportive housing, supported employment, assertive community treatment (ACT), illness self-management and recovery (Wellness Recovery Action Planning, or WRAP), trauma services, and integrated treatment for co-occurring mental-health and substance-use disorders.

Short-term benefits include reduced numbers of defendants with SMI in the county jail, as well as more efficient and effective access to housing, treatment, and wraparound services for individuals reentering the community. This decreases the likelihood that individuals will reoffend and reappear in the criminal-justice system and increases the likelihood of successful mental-health recovery. The long-term benefits include reduced demand for costly acute-care services in jails, prisons, forensic mental-health-treatment facilities, emergency rooms, and other crisis settings; decreased crime and improved public safety; improved public health; decreased injuries to law-enforcement officers and people with mental illnesses; and decreased rates of chronic homelessness. Most important, the CHMP is helping to close the revolving door, which results in the devastation of families and the community, the breakdown of the criminal-justice system, wasteful government spending, and the shameful warehousing of some of our community’s most vulnerable and neglected citizens.

Program Development
Initial support for the development of the CMHP was provided in 2000 through a grant from the National GAINS Center, which enabled the court to convene a two-day “summit” meeting of traditional and nontraditional stakeholders throughout the community. The purpose of the summit was to review the ways in which Miami-Dade County collectively responded to people with mental illnesses involved in the justice system. The GAINS Center provided technical assistance and helped the community map existing resources, identify gaps in services and service delivery, and develop a more integrated approach to coordinating care. Stakeholders included judges and court staff, law-enforcement agencies and first responders, attorneys, mental-health and substance-abuse treatment providers, state and local social-service agencies, consumers of mental-health and substance-abuse treatment services, and family members.

What we discovered was an embarrassingly dysfunctional system. Before the summit, it was readily apparent that people with mental illnesses were overrepresented in the justice system. What was not readily apparent, however, was the degree to which stakeholders were unwittingly contributing to and perpetuating the problem. Many participants were shocked to find that a single person with mental illness was accessing the services of almost everybody in the room, including law enforcement, emergency medical services, mental-health-crisis units, emergency rooms, hospitals, homeless shelters, jails, and the courts.
Furthermore, this was occurring over and over as individuals revolved between a criminal-justice system that was never intended to handle overwhelming numbers of people with serious mental illnesses and a community mental-health system that was ill-equipped to provide the necessary services to those most in need.

A common theme among summit participants was the frustration of repeatedly serving the same individuals and that seemingly little that could be done to break the cycles of crises, homelessness, recidivism, and despair. Part of the problem was that stakeholders were largely disconnected from one another, and no mechanisms were in place to coordinate resources or services. Everyone was so busy doing their jobs that no one was looking at the bigger picture to see the ways in which individual roles come together to impact the welfare of the system, and the individual, as a whole. The police were policing, the lawyers were lawyering, and the judges were judging. Treatment providers knew little about what went on when their clients were arrested and, because of barriers to accessing information and laws that prohibit reimbursement for services provided to people who are incarcerated, had little incentive to learn. For individuals who had no resources to pay for services (e.g., insurance, Medicaid), crisis units, hospitals, and the jail were often the only options to receive care. Ironically, while many individuals could not access the most basic prevention and treatment services in the community, they were being provided the most costly levels of crisis and emergency care over and over again.

The degree of fragmentation in the community not only prevented the mental-health and criminal-justice systems from responding more effectively to people with mental illnesses, but actually created increased opportunities for people to fall through the cracks. By the conclusion of the summit we began to realize that people with untreated serious mental illnesses may be among the most expensive population in our society not because of their diagnoses, but because of the way we treat them.

Using information generated from the summit meeting, program operations were initiated on a limited basis. Additional funding was secured from a local foundation to conduct a planning study of the mental-health status and needs of individuals arrested and booked into the county jail, as well as the processes in place to link individuals to community-based services and supports. Information from this planning study was used to develop a more formal program design and to secure a three-year, federal targeted-capacity-expansion grant, which enabled the CMHP to significantly expand its staffing and operations. At the conclusion of the federal grant period, the county assumed continuation of funding for all positions. Because of the early success of the program and demonstrated outcomes, the CMHP was recently awarded another three-year grant by the state of Florida to further expand post-booking diversion operations to serve people charged with less serious felonies.

Since its inception the CMHP has received ongoing support from the Florida Department of Children and Families. This support has included the funding of case-management positions, as well as resources to pay for housing, medications, and transportation for program participants. Early in its development, the program also benefited from a partnership established with researchers from Florida International University. This facilitated program planning and evaluation, as well as the preparation and submission of funding proposals.

The CMHP’s success and effectiveness depend on the commitment, consensus, and ongoing effort of stakeholders throughout the community. To this end, the courts are in a unique position to bring together stakeholders who otherwise may not have opportunities to engage in such problem-solving collaborations. In establishing the CMHP, a mental-health committee was established within the courts. In addition, a local chapter of the statewide advocacy organization, Florida Partners in Crisis, was formed. Both of these bodies are chaired by the judiciary and provide a venue and opportunity for discussion of issues that cut across community lines. This has been particularly effective in resolving problems that arise from poor communication and cross-systems fragmentation. Staff for the CMHP are employed through the
Program Overview

Pre-Booking
The CMHP has embraced and promoted the Crisis Intervention Team (CIT) training model developed in Memphis, Tennessee in the late 1980s (see University of Memphis Crisis Intervention Team and Crisis Intervention Team of South Florida Web sites). Known as the Memphis Model, the purpose of CIT training is to set a standard of excellence for law-enforcement officers with respect to treatment of individuals with mental illnesses. CIT officers perform regular duty assignment as patrol officers, but are also trained to respond to calls involving mental-health crises. Officers receive 40 hours of specialized training in psychiatric diagnoses; suicide intervention; substance-abuse issues; behavioral de-escalation techniques; the role of the family in the care of a person with mental illness; mental-health and substance-abuse laws; and local resources for those in crisis.

The training is designed to educate and prepare officers to recognize the signs and symptoms of mental illnesses and to respond more effectively and appropriately to individuals in crisis. Because police officers are often the first responders to mental-health emergencies, it is essential that they know how mental illnesses can impact the behaviors and perceptions of individuals. CIT officers are skilled at de-escalating crises, while bringing an element of understanding and compassion to these difficult situations. When appropriate, individuals are assisted in accessing treatment in lieu of being arrested and taken to jail.

Because CIT programs operate in jurisdictions and municipalities countywide, and officers are called on to respond to a variety of situations ranging from relatively minor incidents to urgent crises, there is no single point of entry and no standard intervention provided. Rather, officers are trained to quickly assess situations and assist individuals in accessing a full array of crisis and noncrisis services and resources across the community. These include providing transportation to hospitals and crisis-stabilization units in emergency situations; accessing the services of a mobile crisis team consisting of mental-health professionals providing on-site assessment and referral services in the community; and providing informational resources to assist individuals in locating and accessing health and social services throughout the county.

Analysis of data on individuals served by the pre-booking diversion program indicates that slightly more than half of individuals (56 percent) are female, with an average age of 38 years old. Approximately 53 percent of individuals are white and 41 percent are black, with the race of the remaining 6 percent unknown. Forty-four percent of individuals are Hispanic.

The pre-booking diversion program has demonstrated excellent results. To date, CIT training has been provided to more than 2,300 officers from 36 of the 38 law-enforcement agencies across the county. In addition, there are currently more than 900 CIT-trained police officers on duty. As a result of CIT, fewer individuals in acute psychiatric crisis are being arrested and booked into the jail, and more individuals are being linked to crisis care in the community. There has also been a dramatic reduction in fatal shootings and injuries of people with mental illnesses by police officers. From 1999 through 2005 there were 19 persons with mental illness that died as the result of altercations with law-enforcement officers in Miami-Dade County. Since 2005, there have only been two such incidents.

Post-Booking
The CMHP was originally established to divert nonviolent, misdemeanor defendants with SMI, and possible co-occurring substance-use disorders, from the criminal-justice system into community-based treatment and support services. Since that time, the program has been expanded to serve defendants that have been arrested for less serious felonies and other charges as determined appropriate.

All defendants booked into the jail are screened for signs and symptoms of mental illnesses by correctional officers using an evidence-based screening tool known as the Brief Jail Mental Health Screen. Additionally, defendants undergo medical screening by health-care staff at the jail, which includes additional assessment of
Improving Outcomes and Services in a Tight Economy

Those who are identified as being in possible psychiatric distress are referred to corrections health services’ psychiatric staff for more thorough evaluation. Individuals charged with misdemeanors who meet program admission criteria (SMI diagnosis and need for acute-care services) are transferred from the jail to a community-based crisis-stabilization unit within 24 to 48 hours of booking.

Individuals charged with felonies are referred to the CMHP through a number of sources, including the public defender’s office, the state attorney’s office, private attorneys, judges, corrections health services, and family members. All participants must meet diagnostic and legal criteria, as well as eligibility requirements for accessing entitlement benefits such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and Medicaid. All participants must voluntarily consent to mental-health treatment and services. At present, only individuals charged with third-degree felonies are eligible for program participation, and all referrals must be approved by the state attorney’s office, with the consent of victims when appropriate.

Jail diversion participants are assisted with community reentry and engagement in continuing-care services by a peer support specialist who serves as a “Recovery Coach.” These are individuals who identify themselves as having a mental illness and possible co-occurring substance-use disorder and are receiving or have received behavioral health treatment/services for their illness. Due to their life experience they are uniquely qualified to perform the functions of the position. A primary function of the peer support specialists is to ensure that participants have adequate access to treatment and support services that promote recovery and lead to improved functioning in the community. Peer specialists also serve as consultants and faculty to the project’s Crisis Intervention Team (CIT) training program.

Upon stabilization, legal charges may be dismissed or modified in accordance with treatment engagement. Individuals who voluntarily agree to services are assisted with linkages to a comprehensive array of community-based treatment, support, and housing services that are essential for successful community reentry and recovery outcomes. The CMHP uses the APIC Model to provide transition planning for all program participants. This is a nationally recognized best-practice model that provides a set of critical elements that improve outcomes for people with mental illnesses and co-occurring substance-use disorders who are released from jails. CMHP staff assess, plan, identify, and coordinate (APIC) transition plans that are individualized for each program participant. The goal is to support community living, reduce maladaptive behaviors, and decrease the chances that individuals will reoffend and reappear in the criminal-justice system.

Analysis of data on individuals served by the post-booking diversion program indicates that roughly 60 percent of individuals entering the program are homeless at the time of arrest and over 70 percent experience co-occurring substance-use disorders. Roughly 85 percent of program participants are diagnosed with schizophrenia or another psychotic disorder. Nearly 90 percent of program participants are male and the average age of program participants is 41 years old.

<table>
<thead>
<tr>
<th>Select Characteristics of State Prison Inmates, by Mental Health Status</th>
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<tr>
<td><strong>Percent of Inmates in State Prison</strong></td>
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<tr>
<td>Were homeless in the past year</td>
</tr>
<tr>
<td>Were employed in the month before arrest</td>
</tr>
<tr>
<td>Were ever physically or sexually abused</td>
</tr>
<tr>
<td>Received public assistance while growing up</td>
</tr>
<tr>
<td>Ever lived in a foster home</td>
</tr>
<tr>
<td>While growing up lived most of the time with both parents</td>
</tr>
<tr>
<td>Had parents or guardians that abused alcohol/drugs</td>
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<tr>
<td>Had a mother who was ever incarcerated</td>
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Source: United States Department of Justice, Bureau of Justice Statistics, 2006
Race is split evenly between black (51 percent) and white (49 percent), and about a third of participants are Hispanic.

**Access to Entitlement Benefits**

Stakeholders in the criminal-justice and behavioral-health communities consistently identify lack of access to public entitlement benefits such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and Medicaid as among the most significant and persistent barriers to successful community reintegration and recovery for individuals with serious mental illnesses and co-occurring substance-use disorders. The majority of individuals served by the CMHP are not receiving any entitlement benefits at the time of program entry. As a result, many do not have the necessary resources to access adequate housing, treatment, or support services in the community.

To address this barrier and maximize limited resources, the CMHP developed an innovative plan to improve the ability to transition individuals from the criminal-justice system to the community. Based on an agreement established between Miami-Dade County and the Social Security Administration, a Gap Funding program was developed to provide interim assistance for individuals applying for federal entitlement benefits, such as SSI/SSDI, during the period between application for and approval of benefits. Funding for housing is reimbursed to the county when individuals are approved for Social Security benefits and receive a retroactive payment.

Toward this goal, all participants in the program who are eligible to apply for Social Security benefits are provided with assistance using a best-practice model referred to as SOAR (SSI/SSDI, Outreach, Access, and Recovery). This approach was developed as a federal technical-assistance initiative to expedite access to Social Security entitlement benefits for homeless individuals who are mentally ill.

Access to entitlement benefits is essential in successful recovery and community reintegration for many justice-system-involved individuals with serious mental illnesses. The immediate gains of obtaining SSI, SSDI, or both for these people are clear: it provides a steady income and health-care coverage, which enables individuals to access basic needs, including housing, food, medical care, and psychiatric treatment. This significantly reduces recidivism to the criminal-justice system, prevents homelessness, and is essential to the process of recovery.

The CMHP has developed a strong collaborative relationship with the Social Security Administration to expedite and ensure approvals for entitlement benefits in the shortest time frame possible. All CMHP participants are screened for eligibility for federal entitlement benefits, with staff initiating applications as early as possible using the SOAR model. Program data demonstrates that 90 percent of the individuals are approved on the initial application in 51 days. By contrast, the national average across all disability groups for approval on initial application is 37 percent. In addition, the average time to approval for CMHP participants is 62 days. This is a remarkable achievement compared to the ordinary approval process, which typically takes 9 to 12 months.

The CMHP Post-Booking component serves approximately 300 individuals annually. The 12-month recidivism rate to the justice system, which had been in excess of 70 percent, has been reduced to 22 percent for program participants. It is expected that with the addition of felony defendants, approximately 500 individuals will be served annually. It is also anticipated that recidivism will decrease further.

**Conclusion**

The CMHP has demonstrated substantial, cost-effective gains in the effort to reverse the criminalization of people with mental illnesses. The idea was not to create new treatment services, which may duplicate existing services in the community, but rather to create more efficient and effective linkages to these services. The project works by eliminating gaps in services and by forging productive and innovative relationships among all stakeholders who have an interest in the welfare and safety of one of our community’s most vulnerable populations.

The CMHP offers the promise of hope and recovery for individuals with SMI, who have often been misunderstood and discriminated against. Once engaged in treatment and community support services, individuals have the opportunity to achieve successful recovery, to be reintegrated to the community, and to reduce their recidivism to jail. The CMHP is a national model of excellence and has received numerous recognitions, including the 2008 Center for Mental Health
Services/National GAINS Center Impact Award, the 2007 National Association of Counties Achievement Award, the 2006 United States Department of Housing and Urban Development’s HMIS National Visionary Award, the 2006 Prudential Financial Davis Productivity Award, and the 2003 National Association of Counties Distinguished Service Award.

The CMHP provides an effective and cost-efficient solution to a community problem. Program results demonstrate that individualized transition planning to access necessary community-based treatment and services upon release from jail will ensure successful community reentry and recovery for individuals with mental illnesses, and possible co-occurring substance-use disorders, who are involved in the criminal justice system.
ENDNOTES

1 These figures are based on unpublished information provided courtesy of the Miami-Dade County Department of Corrections and Rehabilitation. Average bed/day cost across all jail beds is approximately $125.

2 The state’s largest inpatient psychiatric treatment facility is Florida State Hospital in Chattahoochee. As of February 6, 2009, this facility was reported by the Florida Department of Children and Families to have a total of 1,018 civil and forensic treatment beds. The total number of civil and forensic hospital beds statewide is 2,718 (see Florida Dept. of Children and Families, 2009).

3 The National GAINS Center is a federally funded organization concerned with the collection and dissemination of information about effective services for people with co-occurring mental-health and substance-use disorders in contact with the justice system. GAINS stands for gathering information, assessing what works, interpreting/integrating facts, networking, and stimulating change (see Center for Mental Health Services’ National GAINS Center).

RESOURCES


A growing number of veterans, with a history of serious mental illness or substance abuse, have been appearing in courts. Over the past year courts across the nation have begun developing and implementing veterans treatment courts to help veterans get their lives back on track.

The first specialized veterans treatment court began operation in January 2008 in Buffalo, New York (Lewis, 2008; Daneman, 2008; Thompson, 2008). To date, there are eight veterans treatment courts in operation: Buffalo and Rochester, New York; Orange, Santa Clara, and San Bernardino counties, California; Tulsa, Oklahoma; Anchorage, Alaska; and Madison County, Illinois. In addition, more courts and states have expressed interest in developing their own veterans treatment courts and are in various stages of developing programs (Marek, 2008; Riccardi, 2009).

The Need

The advent of veterans treatment court came about as a response to a growing number of veterans on court dockets with serious mental-health and substance-abuse issues. Estimates indicate that, as of October 2008, the U.S. veterans’ population was 23,442,000 (National Center for Veterans Analysis and Statistics, 2008). Of those, 84,000 have already been diagnosed with Post-Traumatic Stress Disorder, or PTSD (Maimon, 2008). This does not account for the numbers of veterans with PTSD or other serious mental-health problems that remain undiagnosed. Research indicated that the actual number of veterans with PTSD or major depression is around 300,000 (Maimon, 2008). In regard to substance abuse, research indicates that in 2001 alone, 256,000 veterans needed treatment for illicit drug use; however, a mere 20 percent of those veterans had received treatment (Office of Applied Studies, 2002). In addition, many of these veterans are facing other issues that further compound the problem, including unemployment, strained relationships, and homelessness (Tanielian and Jaycox, 2008).

Either because of, or in addition to, these untreated diseases and compounded social issues, more and more veterans are processed through the criminal-justice system. Conservative estimates are that veterans currently make up about 12 percent of individuals in prisons and jails, and the 2000 Bureau of Justice Statistics report (cited in Department of Veterans Affairs, 2006) indicates significant rates of mental illness, substance abuse, and homelessness among veterans in the criminal-justice system. The first veterans court in Buffalo was a response to the growing number of veterans appearing on their mental-health and drug-treatment-court dockets. It became apparent that these traditional treatment courts were limited in fully serving the veteran population. Veterans derive from a unique culture, with unique experiences and needs. Research has found that traditional community services may not be suited to address these needs adequately and that veterans benefit from treatment provided by people who “are knowledgeable about and able to empathize with the military experience” (Department of Defense Task Force, 2007). Our experience also was that veterans tended to respond more favorably to other veterans in the court. As veterans are a unique population with unique needs, a unique program was needed; thus, the advent of a specialized veterans treatment court.

How Veterans Treatment Courts Operate—Buffalo’s Experience

Veterans treatment court is a hybrid of drug and mental-health treatment courts. Drug treatment courts typically accept individuals into their program who have
Veterans Treatment Courts Developing Throughout the Nation

Many veterans are known to have a warrior’s mentality and often do not address their treatment needs for physical and psychological health care. Many are homeless, unemployed, helpless, and in despair, suffering from alcohol or drug addiction, and others from serious mental illnesses. Their lives have been spiraling out of control. To assist with the veterans treatment court’s development and operation, the court assembled a coalition of professionals, including the Veterans Administration Health Care Network, Veterans Benefits Administration, the Western New York Veterans Project, the Veterans Treatment Court staff and team, volunteer veteran mentors, and various community health-care providers.

Eligible veterans for the court are identified using evidence-based screening and assessments and are then given the option to participate in the program. They have been assessed as having a clinical diagnosis of substance dependency or abuse, a clinical diagnosis of a mental-health disease, or both. These veterans, who are also charged with committing typically nonviolent felony or misdemeanor offenses, are diverted from the traditional criminal court to the specialized veterans treatment court. The treatment court program provides the veterans with the tools to manage their psychological, dependency, and social issues and to lead productive, law-abiding lives. The mission of veterans treatment court is to successfully habilitate veterans.

After eligible veterans are identified, assessed, and referred to the veterans treatment court, they are then linked with a program of services fashioned to meet their individual needs. The court’s staff and volunteer veteran mentors assist the veteran with an array of stabilization services, such as emergency financial assistance, mental-health/trauma counseling, employment and skills training, safe housing, advocacy, and other supportive services. At regular status hearings, treatment plans and other conditions are periodically reviewed for appropriateness, incentives are offered to reward adherence to court conditions, and sanctions for nonadherence are handed down. Completion of the program is defined according to specific criteria.

One unique component of veterans treatment court is the mentor program. The mentor program is composed of volunteer veterans and active-duty soldiers, who freely give of their time to mentor, peer to peer, the participating members of the...
treatment court program. These volunteer men and women are veterans who have served in Vietnam, Korea, Operation Desert Shield, Operation Desert Storm, Operation Enduring Freedom, and Operation Iraqi Freedom. Our experiences have shown that veterans were more likely to respond more favorably to another veteran than to others who did not have similar experiences. It is anticipated that the mentors’ active, supportive relationship, maintained throughout treatment, would increase the likelihood that a veteran will remain in treatment and improve his or her chances for sobriety and law-abiding behavior.

Social and Economic Impact
Research over the past decade has continuously shown lower rates of recidivism and higher rates of financial return for drug treatment courts than for traditional courts (NADCP, n.d.). A cost-benefit analysis of veterans treatment court should rival that of drug court. To date, approximately 100 veterans are enrolled in Buffalo’s veterans treatment court. Fifteen have successfully completed the program, two have voluntarily withdrawn, and two were unsuccessfully terminated. Thus far, graduates of Buffalo’s veterans treatment court have experienced drastic positive life changes. They are clean and sober and actively addressing any mental-health needs. All are either employed or pursuing further education. Many have been able to mend strained relationships with family and friends, and those who were homeless were able to attain stable housing. To date, graduates of Buffalo’s veteran’s treatment court maintain a zero percent recidivism rate. Perhaps most significant of all of this is the change in the demeanor and attitudes of these individuals. Graduates leave the treatment court program with a renewed sense of pride, accomplishment, and motivation.

The impact on court budgets will vary from court to court depending upon the population it serves, the specific design and components of the court, and the resources already available or those needed. For example, Buffalo’s veterans treatment court did not have any additional funding to implement the program and to operate its first year. While they are currently seeking funding to staff a veterans-court case manager, the Buffalo court was able to keep costs relatively minimal the first year by using existing drug and mental-health courts staff and resources that were already funded and available. In addition, the peer-mentor program, which is a major component of Buffalo’s veterans treatment court, is staffed completely by volunteers.

For those courts whose resources are already stretched too thin among their treatment courts, or those who do not currently have treatment courts in operation, federal financial assistance may soon be available to support the creation and operation of a veterans treatment court. Identical legislation was introduced in both houses of the United States Congress (Services, Education, and Rehabilitation for Veterans Act, 2008). These bills propose to allocate $25,000,000 in funding for each of the next five fiscal years, by way of federal grants, for the purpose of establishing veterans treatment courts. In some states, courts may actually save on treatment costs by implementing specialized veterans treatment courts. In states where courts have a budget to purchase treatment for defendants, they would not have to use a sizable portion of their budgets to pay for treatment for veterans because most would qualify for treatment services through the Veterans Administration, whereby the cost of treatment is covered.

Conclusion
The potential problems facing our nation’s veterans are numerous. These issues will likely require assistance and collaboration from countless professionals within our communities, including the courts, to even begin to combat them. Veterans treatment courts serve as a way for the criminal-justice system to do its part in helping our nation’s veterans to overcome these issues and obstacles in their lives. In addition to reducing crime and improving public safety, these courts provide the justice system the opportunity to do something proactive, to assist those who have served our country to get their lives back on track.
RESOURCES


Services, Education, and Rehabilitation for Veterans Act, H.R. 7149, 110th Cong. § 2 (2008); S. 3379, 110th Cong. § 2 (2008). (These bills, with modifications, were reintroduced in Congress in April 2009 and are now identified as H.R. 2138, 111th Cong. § 1 [2009]; S 902, 111th Cong. § 1 [2009].)

S. 3379, 110th Cong. § 2 (2008). (These bills, with modifications, were reintroduced in Congress in April 2009 and are now identified as H.R. 2138, 111th Cong. § 1 [2009]; S 902, 111th Cong. § 1 [2009].)


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What are the implications of the rise of drug courts, and other problem-solving courts, for the justice system? A retired drug court judge takes a look into the future of drug courts and how their techniques and operations could be applied in other courts.

I came to the bench with a background in civil law so, of course, my first assignment was to the criminal division. I spent the first year as a judge sentencing people convicted of crimes; telling them not to use drugs; telling them not to drink alcohol; and telling them to complete alcohol-awareness or substance-abuse programs, and, much to my surprise, they disobeyed my orders. I was shocked. If a judge told me not to drink anymore, well there goes the wine cellar. No problem.

As the year wore on and I saw the same people over and over, I began to ask questions. I wanted to know why these people behaved as they did. I wanted to know how to be more effective in my sentencing. I could see 20 years on the bench looming before me where I continued using ineffective methods. I needed to understand how to do a better job so I started taking chemical-dependency courses at my local college and learning everything I could about alcoholism and other addictions.

As luck would have it, other judges were asking similar questions and wondering how to do a better job so I started taking chemical-dependency courses at my local college and learning everything I could about alcoholism and other addictions.

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I cochaired the first state conference on drugs in California and the first that was interdisciplinary. Never before had judges sat down with prosecutors, defense counsel, treatment providers, and others in a professional-education setting to explore how we could work together to improve the lives of people in trouble. I helped develop a weeklong course on alcohol and other drugs for California judges and for the National Judicial College. Training on addiction is now mandatory at California’s judicial college. And I still teach a four-day course at NJC on co-occurring substance-abuse and mental-health disorders.

I’ve made scores of presentations all over the United States and in other countries on substance-abuse issues and have a particular interest in cultural competence and co-occurring disorders. The U.S. State Department has sent me to Israel and Chile to talk to judges about drug treatment courts, and I will spend 12 weeks in Australia advising the government on issues of therapeutic jurisprudence and restorative justice in 2009-10.
I have written 16 articles for journals and law reviews on drug treatment courts, other problem-solving courts, and the interplay between substance abuse and the justice system. You might say I have found my passion. Having been fortunate to see the beginning of this justice revolution where there are now more than 3,100 problem-solving courts, I decided to take a look into my crystal ball—that is, crystal gavel—to see what the future of drug treatment courts will look like.

**Drug treatment courts will go to scale and serve every individual who needs court-supervised treatment in the justice system.**

Just as the Center for Substance Abuse Treatment (CSAT) has adopted “treatment on demand,” so are advocates saying drug courts must “go to scale.” These combined themes mean that every person who needs substance-abuse treatment inside or outside of the criminal-justice setting should get it. Drug treatment courts, “the most effective criminal justice strategy for dealing with alcohol and other drug offenders,” only serve 5 percent of the criminal population (Bhati, Roman, and Chalfin, 2008). So, how then can we justify increasing funding for problem-solving courts in this economic climate? The fact that most drug treatment courts are in urban areas has recently been credited with sharply reducing the number of African-Americans who are incarcerated (Fears, 2009). If this trend continues, the large numbers of Americans who are currently disenchanted with a system they see as racist may be reduced. This will increase trust and confidence in the judiciary, and this situation alone could justify the expansion of such courts. However, there are hard economic facts that support expansion as well. “A $250 million [up from $15.2 million in 2008 and an average of $40 million since the first federal funding] annual Federal investment would reap staggering savings, with an estimated annual return of as much as $840 million in net benefits from avoided criminal justice and victimization costs alone” (NADCP, 2008: 3). Treating the proper criminal-justice target population would save $2.14 for every $1.00 spent totaling $1.17 billion in savings annually. Finally, drug courts are one of the most effective strategies in reducing recidivism according to Roger Warren, president emeritus of the National Center for State Courts. “Rigorous scientific studies and meta-analyses have found that drug courts significantly reduce recidivism among drug court participants in comparison to similar but nonparticipating offenders, with effect sizes ranging from 10% to 70%” (Warren, 2007:19).

Every innovation—from cars to computers—started small, and their naysayers said cost would prevent the average person from owning one. However, once the product is mass produced, there is no need to repeat the initial investment. So, too, is the case of drug courts because, if brought to scale, they can spread small incremental returns over large numbers of cases. Drug courts will be cheaper and more efficient. The 2009 Omnibus Appropriation Bill allocates $63.9 million for drug courts, a 250 percent increase over last year and the largest appropriation in the history of drug courts. Based on both the economic and social benefits of drug treatment courts, funding on both the federal and state level will continue to expand.

**Current promising practices of other problem-solving courts will continue to evolve and be evaluated for efficacy.**

Drug courts, it turns out, are only the beginning of the justice-system revolution that started 20 years ago. The first drug treatment court in Miami in 1989 spawned a movement of adult drug courts in the United States, which, as of December 2008, now number 2,301, plus some 1,191 other types of courts using similar principles (Huddleson, Marlowe, and Casebolt, 2008). These problem-solving courts, as they have come to be known, now number more than 3,100 in the United States, including at least one drug court in every state; federal district courts; and over 70 tribal healing-to-wellness courts. There are problem-solving courts in some 20 other countries, as well. Evaluations of the second wave of problem-solving courts are not nearly as numerous as those of adult drug treatment courts, but many show promise.

The verdict is in on drug treatment courts (Marlowe, 2008a, b). It has been proven beyond a reasonable doubt that drug courts work (U.S. General Accounting Office, 2005). Slightly less clear is the efficacy of family-dependency drug treatment courts where parents are at risk of losing custody of their children and agree to enter into...
substance-abuse treatment as part of their reunification plan. There have been fewer analyses, but we can say with clear and convincing evidence (or 75 percent certainty) that these courts are helpful in retention and completion of parents in treatment; result in less time for the children in out-of-home placements; and provide greater rates of reunification of families (Green et al., 2007).

The more than 300 driving-while-impaired (DWI) courts operating in the country do not have sufficient evaluation literature yet, and studies that have been published show mixed results (Bhati, Roman, and Chalfin, 2008). There has been one recent, quasi-experimental study but with quite small samples. DWI courts can only be considered as likely to be effective in reducing DWI recidivism.

Juvenile drug courts, where the minor is the participant, show extremely mixed outcomes. There have been two meta-analyses of evaluations, but both showed null results (Bhati, Roman, and Chalfin, 2008). This may be because less is known about the treatment of juveniles, juveniles themselves are very difficult to manage, or the adult-drug-court model may not be appropriate for juveniles. Likewise, there is a dearth of scientific evidence on the efficacy of mental health courts—diversion programs to keep people with mental disabilities from going to jail or prison (Thompson, Osher, and Tomasini-Joshi, 2008). We can say that both these courts are likely to help children who are in trouble with alcohol or other drugs or people with mental-health issues; clearly, both areas are ripe for more research to determine efficacy.

The problem-solving approach has been applied to all manner of behaviors from gambling to domestic violence and to special classes of people like college students or, in the latest initiative, veterans. The first veterans court began in Buffalo, New York, in June 2008 (Russell, 2009), and these courts are now found in Alaska, California, and Oklahoma, with 20 other states planning to start them (Riley, 2009). In addition to all the “specialty courts” mentioned thus far, there are community courts and reentry drug courts. But in the future we will see a different type of court. The need for these dedicated courts will eventually fade as more judges learn and practice problem-solving techniques in their courtrooms. Eventually, every court will be a problem-solving court, and every judge will use motivational interviewing and evidence-based sentencing while presiding over people’s lives, not just “cases.”

Evidence-based sentencing will be employed by every judge in every court, and mandatory sentencing will become obsolete.

The move toward evidence-based practices has been evolving since the 1990s. Drug treatment courts were among the first to apply some of these doctrines on a large scale. In the field of substance-abuse and mental-health treatment, interventions that have been rated and peer reviewed are eligible for inclusion in the National Registry of Evidence-Based Programs and Practices (NREPP) at the Substance Abuse and Mental Health Services Administration (SAMHSA). The goal of the registry is to “improve access to information on tested interventions and thereby reduce the lag time [currently 12 years] between the creation of scientific knowledge and its practical application in the field” (NREPP Web site). Similar to SAMHSA’s initiative, evidence-based sentencing is evolving to use problem-solving techniques to reduce recidivism and promote fairness in the courtroom. The chief justices of the 50 states were surveyed by the National Center for State Courts in 2006, and among their major concerns were 1) high rates of recidivism; 2) ineffectiveness of traditional probation supervision in reducing recidivism; 3) absence of effective community corrections programs; and 4) restrictions
Traditionally, judges were given limited tools in their criminal-justice kit—incarceration and probation. Yet we know that jail or prison is ineffective as a deterrent for many crimes, and without treatment for the underlying causes of criminal behaviors, recidivism rates are off the charts. Seventy percent of drug offenders, for instance, are rearrested within three years of release from custody (Hora and Stalcup, 2008:721). One out of every 31 adults is under supervision by probation or parole in the United States (Pew Center on the States, 2009), and caseloads so far exceed every standard that mass supervision is no longer an effective strategy.

Modern practices rely on scientifically proven risk-assessment tools, so the level of interventions afforded each individual is tailored to their needs and takes multiple factors, not just prior arrest history and the nature of the crime, into account. Thomas Jefferson is credited with saying, “Nothing is more unequal than the equal treatment of unequal people.” Imposing conditions beyond those directly related to an offender’s risks or needs is ineffective, is wasteful, and may be perceived as unfair, thus eroding confidence and trust in the judiciary.

Risk-assessment instruments measure the likelihood that a defendant will reoffend so that resources can go to the highest-risk offender, and low-risk offenders can be managed with fines, volunteer work, and other low-level sanctions. Clearly, the one-size-fits-all requirements imposed by mandatory sentences are at best outdated and ineffective, costly, and often counterproductive to the community and the individual (Wolff, 2008). There will be a move away from mandatory sentencing as was recently done in New York State with the elimination of the “draconian Rockefeller drug laws.” We will shift toward evidence-based sentencing that will include the problem-solving approach in all courts (Kerr, 2009).

Drug courts will be peer accredited and employ “industry” standards. What makes a drug court a drug court?The first use of the term “drug court” arose in Chicago, where a special “rocket docket” was initiated to send drug offenders to prison faster. The founders of the drug-treatment-court movement had something else entirely in mind in 1994 when the National Association of Drug Court Professionals was founded. They envisioned a process of court-supervised interventions that kept people out of jail and prison and fostered their recovery from the disease of addiction. In 1997, with the help of a grant from the Department of Justice, NADCP attempted to define a drug court for the first time. The resulting document, Defining Drug Courts: The Key Components (NADCP Drug Court Standards Committee, 1997), has become the Rosetta Stone for drug courts both nationally and internationally. Each “Key Component” is accompanied by “Performance Benchmarks,” which seek to further refine the principles set forth in the document. “While each drug court should maintain fidelity to the drug court model, the design and structure of drug courts are developed at the local level to reflect the unique strengths, circumstances, and capacities of each community” (Clark County Drug Court, 2008). Just as one of the strengths of the entire movement has been to eschew an imposed template of strict rules and regulations to define courts, this has led to some courts calling themselves drug courts that may not adhere to the underlying principles. To combat this issue, the field will develop standards and a peer-accreditation process to be sure that systems operating as drug courts truly do adhere to drug court principles. This process would allow funders to be more confident their money is going into the right budgets, and it would increase integrity for the whole justice system.

Wide acceptance of problem-solving courts in the government and in the community will continue to be the norm. The first national meeting of drug court professionals in Miami in 1994 was attended by about 100 judges, prosecutors, defense counsel, treatment providers, and probation officers who shared a vision of a better way to handle drug cases. There was no identified underlying jurisprudential basis for what they were doing,
and often no legislation specifically authorizing it. But these were the innovators, the pioneers, the “early adapters” who started the drug-treatment-court movement. Six years later there were 500 drug courts; 1,000 by 2002; and more than 2,000 today (NADCP Drug Court Standards Committee, 1997). The movement came into its own when drug courts received the imprimatur of the Conference of Chief Justices (CCJ) in a resolution approved 50-0 at its 2000 annual meeting. This commitment was reaffirmed in 2004 and expanded to include support of mental-health courts in 2006. In its commentary accompanying these resolutions, CCJ and the Conference of State Court Administrators (COSCA) said they would encourage the “broad integration over the next decade of the principles and methods employed in the problem-solving courts,” support national and local education and training on the principles and methods, and advocate for the resources necessary to advance and apply the principles and methods of problem-solving courts (CCJ and COSCA, 2000).

Federal legislation that funded the first drug courts began under the administration of President Bill Clinton. He said, “Three quarters of the growth in the number of federal prison inmates is due to drug crimes. Building new prisons will only go so far. Drug courts and mandatory testing and treatment are effective. I have seen drug courts work. I know they . . . make a difference.” Presidential support continued and funding increased under President George W. Bush, who said, “Drug courts are an effective and cost efficient way to help non-violent drug offenders commit to a rigorous drug treatment program in lieu of prison” (NADCP, 2007: 7, 16). And President Barak Obama not only made campaign promises about the expansion of drug courts, but also increased the 2009 drug court appropriation by 250 percent. Presidents Clinton and Bush chose directors of the White House Office on National Drug Control Policy who supported drug courts, and this endorsement was best articulated by Director John Walters: “Drug courts are a vital, essential element of our National Drug Control Strategy. While offering incentives to stay off drugs, they hold individuals accountable and simultaneously deal with the deadly disease of addiction. America is better off because of drug courts.” Finally, when introducing Seattle Police Chief Gil Kerlikowske in March 2009, President Obama’s choice for ONDCP director, Vice President Joseph Biden said, “That’s why the Drug Courts I spoke about are so important—as are prisoner reentry programs—because these can serve as the light at the end of a tunnel, a very long, long, dark tunnel, for those who are stuck in the cycle of drug addiction and incarceration” (NADCP, 2009).

Drug courts have support from the highest level of the judiciary and the federal government, but equally as important is their support by the public. In many ways, the citizenry was ahead of the politicians in support of treatment over incarceration. Voters are tired of building more prisons at the expense of education budgets and social programs. They realize “smart on crime” makes much more sense than “tough on crime,” and the appropriate way to “get tough” is to demand treatment for those offenders who have addictions. Hazelden, one of the oldest treatment centers in the United States, found in a recent survey that 77 percent of those questioned believe that substance-abuse treatment is effective, 79 percent believe the “War on Drugs” was not effective, 83 percent would like to see more prevention, and 83 percent favor treatment over incarceration for addicted offenders (Center for Public Advocacy, 2008). Given the outcomes achieved by drug courts and the fact that almost every family is touched by addictions, there is no reason to believe that public support will fade. In fact, just the opposite is true: increased funding and increased participation of criminal defendants in drug treatment courts will advance both the government’s and the public’s support of these innovative courts.

Results from the Fall 2008 National Study of Public Attitudes Toward Addiction

Percentage of survey respondents who ...

- favor treatment over incarceration for addicted offenders 83%
- would like to see more prevention 83%
- believe the “War on Drugs” was not effective 79%
- believe substance abuse treatment is effective 77%

Source: Results from the “Fall 2008 National Study of Public Attitudes toward Addiction Center for Public Advocacy,” Hazelden Foundation
RESOURCES


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• Accounting Policies and Procedures
• Budget Planning
• Budget Execution and Monitoring

Find this information at www.ncsc.org/topicsa-z.

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go to www.ncsc.org/services; call 800-466-3063; or e-mail Laura Klaversma at lklaversma@ncsc.dni.us.

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NCSC is launching a new Web site—ncsc.org. In addition to NCSC research projects, statistics, and state-by-state court information, the newly redesigned Web site contains new courses, career opportunities, and NCSC experts.

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