IACA

The Court Administrator

OFFICIAL PUBLICATION OF THE INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

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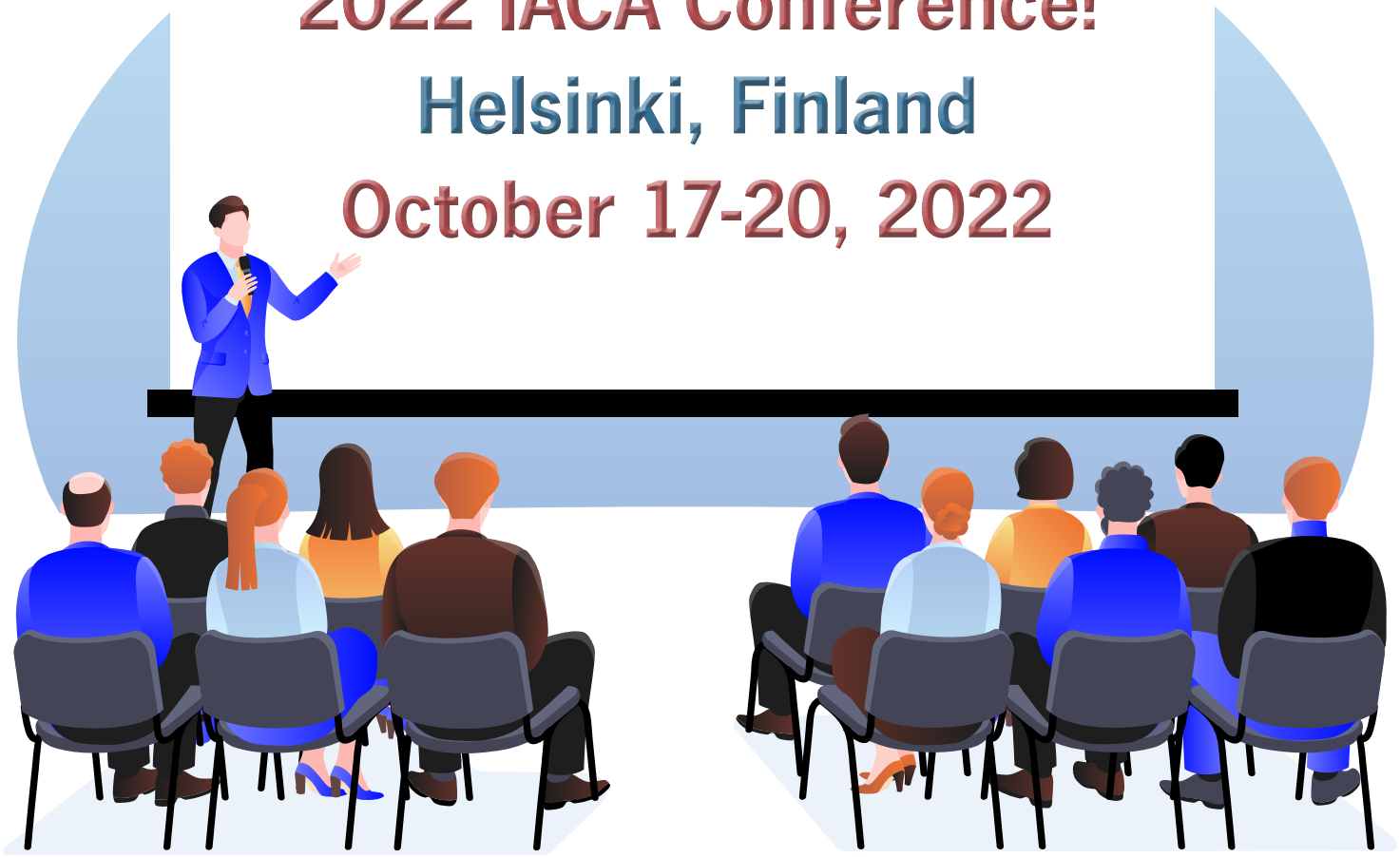
Helsinki, Finland

October 17-20, 2022



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"THE COURT ADMINISTRATOR"

Sheryl Loesch, IACA President

I am pleased to present the 12th edition of IACA's The Court Administrator. It includes a number of articles of relevance to the field of court administration written by various subject matter experts. I know you will find the articles enlightening, relevant, and worthwhile.

I want to thank all the authors who took the time to submit articles for this publication. IACA appreciates the time they took to share their experience with the readership. I also want to thank the Executive Editor, Eileen Levine, and the Associate Editors, Dr. Susan Moxley and Kersti Fjorstad for their fine work in putting this edition together. It takes a lot of work and time to put together a publication such as this and this fine group of professionals (who are all volunteers) do an outstanding job.

As the summer months are almost upon us and vacations/holidays start to be on the minds of everyone, I want to remind you of the upcoming IACA conference scheduled for October 17-20, 2022 in beautiful Helsinki, Finland. Please don't forget to register. This will be a well-attended conference and will likely be at capacity so don't miss out and register asap. Please watch the IACA conference website for updates on the educational program. Besides a fabulous opening plenary session on People-Centered Justice that includes a panel of renowned experts in the field, a distinguished plenary panel of Chief Justices is also planned. An added "surprise" is a very special plenary speaker, Mr. Frank Martela, who will be speaking about happiness, well-being and how to uphold them and lead them in these challenging times (after all, we will be meeting in the Happiest Country in the World!") Dr. Martela is a philosopher and researcher of psychology specialized in meaningfulness, human motivation and how organizations and institutions can unleash human potential. He is a University Lecturer at Aalto University, Finland, and has two Ph.D.'s from organizational research (2012 Aalto University) and practical philosophy (2019 University of Helsinki). He has authored numerous scientific publications, been interviewed by various media around the world, Courbesides authoring his book, A Wonderful Life – Insights on Finding a Meaningful Experience. These are just a few highlights of what you will experience at the conference. It is a conference not to be missed!

Please enjoy this publication of The Court Administrator. I look forward to seeing each of you in Helsinki in October!

Sheryl

EDITOR'S MESSAGE

Eileen Levine
Court Administrator
Eastern and Southern
Districts of New York

Just when we believed that our lives are finally calming down, and as we are all trying to return to a world that we knew before this global pandemic- a world before masks and shutdowns and lock downs and social distancing- and that we were finally settling back into our customs and schedules, the world took an unexpected spin around again.

Collectively, we have just about turned the corner on the most horrible pandemic of the past 100 years that affected every single one of us, no matter where in the world you may live. We are all still trying to rebuild our lives, to pick up the pieces, to forge ahead. We can't put everything behind us, but we can, and we must move forward. I don't think it is too much to ask to be able to live a healthy and happy life and to have our children grow up in a peaceful world.

There are unimaginable events going on in our 2022 world. Our colleagues around the world have taken on new roles, in addition to everyday judicial responsibilities. It is like they have taken up acting parts in a movie, although this movie has taken on the realities of life. Instead of an adventure movie with a beautiful ending, our friends are fighting for their lives, the lives of their countrymen, the lives of their country and perhaps, ultimately, the entire world. Unfortunately, this new reality has taken on a life of its own and nothing is routine. Judges and clerks and just about everyone who is able to do so, have taken up arms to protect their homeland.

We are all hoping and praying for a swift end to this horror. We have all learned and all have taught. Let us teach the next generation that life can be beautiful. Next time we speak of suits, trials, tribulations, and battles, I pray that these will be fought in courtrooms with gloves on in respectable ways. We cannot let the acts of some, destroy our futures and ideals. Let us continue our dreams and goals; that if you work hard, you will be rewarded, not bombed, destroyed, starved, and tortured.

Please read our dear friend Natalia's front line heartbreaking reports. Natalia relates details and stories firsthand from Kyiv. She shares how she and her family and colleagues are trying to continue their work in their judicial system despite, and in spite of the inconceivable, unspeakable, and unthinkable acts that are going on all around. Meet our IACA colleague and friend, Anna Adamanka, a former judge for over 17 years in Poland. Anna is working as part of court reform programs on projects to improve the court systems in various parts of the world. For the past three plus years, she and her colleagues have been helping to develop and update the Ukrainian court system, by working with the EU Provo-Justice Project. As court officials all over the globe, we know that we will all continue our duties to the best of our abilities no matter what the world situations are. We will send support to Natalia and Anna and their coworkers, family's friends, and neighbors however we can.

Nothing can sum up the past three months like the words that Anna wrote to me in an email a couple of weeks ago: "We all hope that this war will end soon, and Ukraine will recover from its wounds."

Eileen

IACA Welcomes our Sponsors!

The success of IACA's conferences is not possible without the sponsors and vendors who support it. Each sponsor will have an area to display information and speak with conference attendees in the hallway outside the plenary and workshop session rooms. They will be available during coffee and snack breaks Tuesday and Wednesday, October 19 and 20. Platinum sponsor company principals will give a 15-minute presentation by company principals preceding the plenary sessions on Tuesday and Wednesday morning.

I am pleased to announce the following sponsors are confirmed for the 2022 conference which will be held October 17-20, 2022, in Helsinki, Finland:

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Thank you to all of the sponsors for their continued support; IACA looks forward to your participation and sponsorship for our upcoming conference!

Michele Oken Stuart
Vice President - Corporate Sponsorship

Courts Online: The Future is Now

By Judge Jerome Abrams, Minnesota District Court

Judge Jerome Abrams, served as a state court judge in the First Judicial District Court in Minnesota, until his recent retirement in March 2022. He had a distinguished 14-year career on the state court bench, handling hundreds of complex, diverse and multi-district assignments. Judge Abrams currently serves as an arbitrator, mediator, and special master for JAMS, which is the largest private provider of alternative dispute resolution services worldwide. In addition, Judge Abrams is an Advisor International Programs Division, National Center for State Courts; and he serves as Director for the American Board of Trial Advocates. To quote from the JAMS website, "As a national leader for the improvement of civil justice, complex case management, court technology and e-discovery, Judge Abrams has presented on over 100 occasions to groups in the U.S. and abroad on these and related subjects. He continues to author texts on insurance coverage for business torts and e-discovery, and he wrote a bench book for business courts published by the American Bar Association."
Assisting Judge Abrams with this article is Debra Lewis, Sr. Case Manager JAMS. Located in Minneapolis, Minnesota, Judge Abrams may be reached at jbabrams@comcast.net or JAbrams@jamsadr.com for those wishing to follow up with the author.

"Courts have developed a reputation for adopting yesterday's technology tomorrow."

Tom Clarke, Former VP, Technology NCSC

Courts everywhere have the same obligations to the people they serve - to provide access to justice and ensure fairness in its application. Much can be said about the wide range of services delivered through the Courts, but at rock bottom, Courts are in the access and fairness business.

Not surprisingly, by reason of the importance of the Courts to the vital functions of the communities in which they are located, there is a natural resistance to change. The understanding of how the law works and its impact on these communities is centered on the functions of the Courts. How well Courts work as perceived by those who use the many Court services has been reinforced by the consistency in their operations. Stated another way - What isn't broke shouldn't be fixed. Changes in Court operations and procedures have been historically resisted on this rationale.

Along comes Covid-19, and its complete displacement of all manner of essential activities historically held in person. As everyone knows, Courts were not spared from the overwhelming need to avoid being in close proximity with its users, yet in most places, nearly all Courts have always relied on its users coming to its location of operation. Not unlike the religious temples of ancient civilizations, Courts as "temples of justice" base their operations on people coming to them. In Covid-19 avoidance terms, this created unacceptable risks for the spread of the virus. Also, for better or worse (according to some), this compelled action by the Courts to change the historic routes for access to justice.

The "silver lining" as a result of the impact of Covid-19 on the Courts is the massive expansion of access to justice through remote means based on available and emerging technologies. Thinking has changed dramatically; services previously only available at a physical location now abound anywhere through technology-based access via the internet or phone. It appears revolutionary how quickly and dramatically access to justice has been transformed, especially considering the inherent resistance to change by the Courts.

As will be discussed over the next several pages, technology-based access to the core business of the justice system—the resolution of disputes—has been around for over two decades. It was the pandemic, and the fear that Courts themselves would become super-spreaders of Covid-19, that propelled Court conducted activities to finally move away from how business has been done since the 19th century to the 21st century.

continued

Broad Definition of Online Dispute Resolution (ODR)[1]:

Using technology to facilitate:

a. interactions necessary to resolve disputes in accordance with local law, procedures and/or contractual undertakings;

b. facilitating traditional methods of dispute resolution utilizing online communication tools;

c. processes which governments and the private sector have adopted allowing communications to take place directly, assisted by computer software, web portals, or through third-party facilitators engaging in electronic exchanges which result, or attempt to result, in a binding resolution of a case and/or disputed claim.

The appearance of Covid-19 as a public health menace in early 2020 coincided with two essential demographic features that allowed the potential for ODR to be unleashed. The first was a developing sense of ease using online portals for all manners of commerce, leading to reportable findings that many people preferred online participation to resolve many types of cases.[2]

The second was a documented proliferation of smart phones worldwide, not only in the developed world, but also in the developing world. The means to connect large numbers of people to justice systems adapted to an online operational mode was reliably established by the end of the last decade.[3]

Not only was there confidence in public support of broad deployment of online procedures for conducting Court business identifiable at the onset of the pandemic, many existing pilots and some existing remote programs were implemented in various locations[4] operated by the Courts. The recognition by governments to modify procedures already implemented by the private sector in managing caseloads of disputed claims[5] at some level can be seen as a starting point.

We cannot, however, escape the wisdom of the time-honored cliché - "that necessity is the mother of invention." The initial universal requirements of social distancing and masking as minimal mandatory public health measures to arrest the spread of Covid-19 created an absolute necessity for Courts to change their manner of operation if they were to operate at all. In a matter of months, what had begun decades earlier as a vision of 'virtual courts' became a functional reality.

For many Courts, the transition from in person to some type of remote access (ODR) took place quickly. The other time-honored cliché, "justice delayed is justice denied," became the mantra of justice systems worldwide. Numerous shifts in delivery of Court services have taken place. All types of procedures, hearings and trials are now conducted remotely.[6] Even jury trials have been conducted remotely in the US.[7] The rate and universality of these changes have come without precedent. The typical wait and see resistance to something new was not possible. Courts everywhere now function through full or partial reliance on ODR.[8] Equally, even Alternative Dispute Resolution providers have shifted to, and are sticking with, an ODR format replacing in person events.[9]

What has been lacking until quite recently are objective assessments of whether these online Court services are providing an effective replacement. It can be said that from most measures as the following discussion indicates, ODR—remote access to Court services is doing well. Many of the shortcomings are fixable by changes in procedures, resources, and most importantly, attitudes.

continued

1 Author's definition

2 https://www.ncsc.org/topics/court-community/public-trust-and-confident/resource-guide/2018-state-of-state-courts-survey

3 https://www.pewresearch.org/global/2019/02/05/smartphone-ownership-is-growing-rapidly-around-the-world-but-not-always-equally/

4 https://www.utcourts.gov/odr/ https://www.supremecourt.ohio.gov/JCS/disputeResolution/OH-Resolve/

5 Colin Rule, "Technology and the Future of Dispute Resolution," Dispute Resolution Magazine 21 (2015)

6 https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations

7 https://news.bloomberglaw.com/us-law-week/more-u-s-courts-plan-virtual-jury-trials-to-move-civil-cases

8 https://www.abajournal.com/magazine/article/courts-attempt-to-balance-innovation-with-access-in-remote-proceedings

9 https://www.jamsadr.com/online

The National Center for State Courts,[10] through funding provided by the State Justice Institute, comprehensively studied eight jurisdictions in the State of Texas "… to empirically investigate the implementation of remote hearings on the efficiency of judicial workload practices and to explore potential benefits, such as improved access to and quality of justice delivered through the courts."[11] This appears to be one of the first in-depth studies of its kind.[12]

The relevance for a broad application of the results from this study is derived from the data. Texas jurisdictions from large to small, and case types, including criminal, civil, family and juvenile, are included in the data, as well as all hearing types. The total time included in the applied judicial resource is over 1.25 million minutes. The results show what happened in these Courts over a specific period when approximately 85% of the actual judicial business was being done remotely.[13] Participating judges recorded their time by case type and event category; e.g., nature of proceeding. Following the time recording part of the study, focus groups were conducted among some of the participating judges which supported that time data was consistently collected to allow for comparisons between remote and in person hearings.

The key findings are summarized as follows:

1. Remote proceedings take on average 34% longer than in person hearings of the same type.
2. Access to the hearings for parties was more convenient, allowing far greater participation than having to take time off of work, find childcare, etc., to attend in person hearings.
3. There are a wide range of issues (some describe as the "digital divide") from inexperience with technology, lack of equipment, inability for pre-hearing conferencing, and language interpreter issues, among others, that contribute to the length of the proceedings.
4. Some case types are better suited for remote hearings than others.
5. Judicial stress is increased as the judges in the study reported they operated the technology as well as ran the hearings.

Arising from these key findings are several recommendations. Again, there is a universality to these recommendations. There is something useful for all Courts regardless of the legal system or location to improve remote access.

The principal recommendations are as follows:

1. Guidelines should be developed by leadership in the jurisdiction as to what case types are best suited to be conducted remotely, and those which are ill-suited for remote hearing.
2. Effective scheduling for remote cases should be implemented, which takes into consideration both Court efficiency and the litigant's time.
3. Court users need to understand the remote hearing process. Effective communication, including written, verbal, and non-verbal communication such as YouTube, needs to be conveyed to participants in advance of the remote hearing.
4. Court users also need to understand and adopt appropriate decorum, such as where to have the hearing, proper dress, etc. Again, all forms of communication should be used to effectively disseminate this information.
5. Paperwork that is subject to the remote hearing, such as agreements, stipulations in writing, etc., should be completed in advance. Dates of expected completion should be transmitted by the Court to the parties well in advance. Courts should consider the use of technology, which can allow for remote access to ease in the uploading of documents in real time.[14]
6. The digital divide is real. It should not be assumed that all parties asked to participate remotely can do so. Court

continued

10 https://www.ncsc.org/about-us/mission-and-history

11 The Use of Remote Hearings in Texas State Courts; The Impact on Judicial Workload, NCSC, Court Consulting Division December 2021

12 Texas is second largest state in the US with a population in 2021 at 29.5 million[census.gov]; over 2700 first instance courts handling approximately seven million cases per year [txcourts.gov]

13 https://www.ncsc.org/_mediate/_imported-ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report-pdf.

14 https://www.thomsonreuters.com/en/press-releases/2020/august/thomson-reuters-acquires-caselines.html

resources should include the means for court users to attend remotely. [15]

7. Court Language Interpreter participation imposes additional requirements on remote hearings. Many additional arrangements concerning access need to be shared with the parties and the Interpreter in advance of the remote hearing.
8. Judicial stress needs to be considered in the scheduling and conduct of remote hearings. Regular breaks at a minimum should be part of the daily remote hearing calendar.
9. Traditional court administrative staff should also include people who can assist with and coach the use of remote hearing technology, and the administrative staff should assist in scheduling and participate in remote hearings.

CONCLUSIONS

With unprecedented speed, Courts around the world have adopted methods to insure public access through remote means because of the Covid-19 pandemic. Online Courts that were only theoretically possible just a few years ago are now the norm. This transition to online Courts has been largely accepted for many case types in many places. Recent data tells us that there are opportunities for improvement. The data should be guide for these continuing efforts. Courts, being in the business of providing access to justice and fairness in its application, should embrace these challenges.

15 https://www.legalkiosk.org/news

Part 1 of a 2 Part Series:

Court Performance Management in the Republic of Rwanda: Leading the Way to People Centered Justice

By Niceson Karungi, Adam Watson, and Ingo Keilitz*

Niceson Karungi recently joined Synergy International Systems, Inc. as an e-Justice Expert after more than 10 years managing technology within the Judiciary of Rwanda. She is currently located in Kigali, Rwanda.

Ingo Keilitz is Principal of CourtMetrics, an independent consultancy in Williamsburg, Virginia, USA, and a Research Associate of the Global Research Institute at the College of William & Mary, Williamsburg.

Adam Watson is a Vice President of Account Management and Customer Success at Synergy supporting global e-Justice programs. Located in Tulsa, Oklahoma, he may be reached at Adam.Watson@synisys.com

In Part 1 of this series, the authors discuss People-Centered Justice focusing on those served by courts instead of those who "run" them – judicial officers, court administrators, and other officials. This is the first of a two-part article that discusses the role of technology in achieving this focus. The authors identify key approaches, based on their experience in Rwanda and elsewhere, that will align the practice of court performance measurement and management with the values and principles of people-centered justice.

There is today no longer much doubt whether good measures and indicators of court performance can help achieve worthy ends. The question is whose vision of justice and court excellence they advance. Performance standards and measures for courts are meaningless if they are detached from the people they are intended to represent. Though they may be grounded in historical understanding, democratic vision, and civic ideals, government performance measures are traditionally developed from the perspectives of government managers, not of citizens, and the two perspectives may differ greatly.

People-centered justice, the theme of the International Association for Court Administration's (IACA) 2022 conference in Helsinki, is an approach to international justice that shifts the focus from court rules, procedures, and processes to a results-based focus placing people, families, and communities at the center of justice service delivery. This requires court administrators to go beyond identifying operational improvements that work best for them, and identify what strategies, activities, and processes produce the best results for the people they serve.

Rwanda is a regional leader in people-centered justice, with a strong and developing culture of Performance Measurement and Management (PMM). This has been achieved through a strategic planning process based on country vision, international standards, and the expectations of the Rwandan people. It has been enabled through the implementation of advanced technology for data collection, analysis, and reporting, as well as a learning culture that quickly adapts and applies lessons learned.

continued

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What Do People Want from *Their* Courts?

The Rwanda justice system's effort to restore justice and order in an economically, politically, and socially shattered country after the 1994 genocide against the Tutsi is a remarkable success story of transformation that continues today. The seemingly insurmountable challenges faced by the Rwanda justice system twenty years ago when it began this transformation are all too familiar: inordinate delays; subjectivity and uncertainty in case disposal; severe resource constraints; prison overcrowding; high rates of recidivism; corruption; limited automation; fragmented communications and coordination across justice institutions; and, generally, lack of trust and confidence in the justice system.1

In Rwanda, like many other countries, citizens want an impartial justice system that listens to them, is inclusive of all, involves the public in planning and decision making, and protects them before the law, especially those with limited knowledge of legal procedures. These expectations are well understood. As the President of Rwanda, H.E. Paul Kagame, has said, "Rwandans have high expectations in the government in general, the leadership, and the different institutions, particularly the Judiciary. Citizens expect access to quality justice, and we must give them that."2

People centered justice was clearly articulated more than twenty years ago in the seminal Trial Court Performance Standard (TCPS) which includes 22 standards and measures in five performance areas: access to justice; expedition and timeliness; equality, fairness, and integrity; independence and accountability; and public trust and confidence. The TCPS recognize that people who have been charged with crimes or have business with the courts want ready access to the justice delivered by the courts. They want that access to be safe, relatively convenient, affordable, and fair. This means no inappropriate and unnecessary geographic, economic, social, or procedural barriers to judicial services, which may impede access through mysterious, unduly complicated, and intimidating court procedures. Once they have gained access, they want their cases handled in a just, timely, and expeditious manner. They expect courts to be independent of the executive and legislative branches of government and accountable to the people. And, finally, they expect the courts to maintain public trust and confidence.

The Measurement and Management of Justice Delivered

The most important question justice system officials should ask themselves is, How are we doing? Fortunately, today we have well-developed tools of PMM at our disposal to help answer this question.3 PMM is defined in the Global Measures of Court Performance (GMCP), a companion to the International Framework of Court Excellence (IFCE), as the discipline of monitoring, analyzing, and using performance data on a regular and continuous basis (ideally in real or near-real time) for the purpose of improvements in efficiency and effectiveness, transparency and accountability, and public trust and confidence in the judiciary.

Several parts of this definition are worth emphasizing.4 First, PMM is a discipline -- a system of ideals, concepts, methods, techniques, and processes. Second, recognizing the truism that performance measurement is of no use if it is not actually used, the term "measurement" is paired explicitly with performance "management" to emphasize that in order to be used effectively measurement must be infused into the very DNA of justice systems' governance and operations management (e.g., budgeting, resource management, and strategic planning). This expansion of the definition of performance measurement to include performance

continued

1 Kampire, Marie Thérèse et al. Assessment of the Judicial Sector in Rwanda. November 2002. https://pdf.usaid.gov/pdf_docs/Pnacr573.pdf [Last accessed March 31, 2022].

2 Edmund Kagiri (2020). Rwandans Have High Expectations In Us- President Kagame To Gov't Officials. KT Press, September 21, 2021: http://www.ktpress.rw/2021/09/rwandans-have-high-expectations-in-us-president-kagame-to-govt-officials/ [Last accessed April 1, 2022]

3 When the developers of the TCPS began their work in August 1987 no standards for trial court performance existed. See: Ingo Keilitz (2000). Standards and Measures of Court Performance. In Criminal Justice 2000, Volume 4, Measurement and Analysis of Crime and Justice. Washington, DC: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, July 2000, 559-593, 583: https://www.ncjrs.gov/criminal_justice2000/vol4_2000.html [Last accessed March 31, 2022].

4 See International Consortium for Court Excellence. Global Measures of Court Performance, 5-6: https://www.courtexcellence.com/__data/assets/pdf_file/0030/54795/GLOBAL-MEASURES-3rd-Edition-Oct-2020.pdf [Last accessed March 31, 2022].

management is a new development widely seen as a major step in transforming measurement into management for real organizational change.[5] Third, the discipline of performance measurement and management is practiced on a regular and continuing basis, ideally in real time or near real time as performance occurs. Finally, the definition aims performance measurement and management toward specific purposes defined by the judiciary.

The continuous improvement approach built into the IFCE directs the Judiciary to assess, analyze, and implement methods to help achieve accountable people oriented PMM. With the 2004 judicial reform, the Judiciary of Rwanda introduced rigorous strategic plans to help implement and monitor judicial strategies aligned with the nation's vision and priorities. Every year, the Judiciary reports its performance in relation to international standards and targets of performance to the country's citizens, empowering the public to expect a high level of service from the courts.

It is important to stress that PMM is an essential tool, i.e., a means to an end, not an end in and of itself. It is analogous to the set of indicators on the dashboard of a car. A speedometer, odometer, gas gauge and other indicators on the dashboard do not guarantee a safe, efficient, and effective journey to a desired destination, but it is unlikely without them.

The Right Measures, the Right Delivery, and the Right Use of Performance Data

Developing the right performance measures and making sure that they are used effectively, can be translated operationally into three requirements:

- **The Right Measures** – The right measures are measures that matter and count what counts, measures that are aligned with agreed-upon success factors aimed to deliver timely, quality, accountable and accessible people-centered justice. The key measures of the GMCP are court user satisfaction, case clearance rate, backlog, access fees, on-time case processing, pre-trial custody, court file integrity, trial date certainty, employee engagement, collection of fines and fees, and cost per case. However, each jurisdiction should identify and develop performance measures to reflect its unique vision and values. In Rwanda, some of these performance measures are more essential or commonly used than others – such as the rate of case backlog, case clearance rate, and on-time case processing. Other key measures are different – such as the rate of case adjournment.
- **The Right Delivery and Distribution of Performance Data** – Data related to the selected measures should be collected and delivered to the right people, at the right time, and in the right way. This is increasingly enabled by IT, through performance dashboards, business intelligence, and data visualization applications that let users view critical performance information at a glance. Users navigate easily through successive layers of strategic, tactical, and operational information on-demand, allowing them to spot patterns, anomalies, proportions, and relationships that they otherwise would miss. This requirement also involves making performance findings publicly available through reports and web-based platforms for citizen engagement. In Rwanda, this is being done through the Integrated Electronic Case Management System (IECMS) and the Judicial Performance Management System (JPMS).
- **The Right Use** – Adopting, implementing, and learning from measures of performance requires a delivery and distribution system (e.g., performance "scorecards" or "dashboards") that must be integrated with key management processes and operations, including budgeting and finance, resource and workload allocation, strategic planning, organizational management, and staff development. Tracking these measures and adopting changes for better performance is an integral part of PMM. If the right measures are developed, and accurate real-time data is generated and interpreted but is not acted upon, effective judicial performance can never be achieved. In Rwanda, the Judiciary's strategic plan is broken down into annual action plans that define specific activities and targets to be achieved. Findings lead to course corrections for ongoing plan implementation, or changes incorporated into the next annual action plan. This might include new reforms, automation, trainings, or legal services that advance people centered justice.

continued

5 Harry P. Hatry (2010). Looking into the crystal ball: Performance management over the next decade. Public Administration Review, 70: s208–s211.

Managing the Performance of People Centered Justice in Rwanda

Even when compared to the justice systems of countries with far more technical and human resources, the progress made by Rwanda is worth sharing. An important element of this transformation is an innovative case management system –the IECMS launched in 2016. Powered by modern information and communication technology, it augments the judicial system's human capacities and competencies to provide judicial services to the people of Rwanda. The IECMS is a single point of entry for all Justice, Reconciliation, Law & Order Sector (JRLOS) institutions in Rwanda – the Judiciary, Civil Litigation Services, Rwanda Correctional Services, National Public Prosecution Authority, Rwanda Investigation Bureau, and the Bar Association – automating workflow and facilitating real-time and seamless information sharing.6

After five years of successfully tracking performance measures through the IECMS7 including internationally recognized measures such as case backlog, on-time case processing, rate of case adjournment, and case clearance rate, the Judiciary implemented JPMS to track the implementation of the Judiciary's seven-year strategic plan. The JPMS helps users to break down court performance to the case level tracking each step of case processing from case filing to registration, to hearing, to judgment, and to closure while measuring court and staff performance as the case progresses. This ensures that organizational performance and staff performance (both that of judicial officers and administrative staff) are well aligned.

Adapting to People Centered Justice through Continuous Improvement

Consistent with the demands of people centered justice, at each stage of service delivery, court users in Rwanda are able to provide feedback or express their concerns directly through the IECMS. These comments are then systematically addressed and responded to by the Judiciary in a timely and transparent manner. As Rwanda embraces the concepts of performance monitoring to improve service delivery in courts by consistently analyzing issues, they have regularly adopted necessary changes, good practices, proposed reforms, and adapted laws and procedures to conform to the hopes, expectations, and aspirations of the Rwandan people. In 2018 and 2019, Rwanda modified civil8 and criminal9 procedural laws respectively to accommodate innovative justice delivery.

One of the reforms adopted was advancing the utilization of IECMS and other court technologies to improve court service delivery. As a result, access to justice by citizens was improved especially during Covid-19 when the number of cases filed in court, rather than decreasing because of restricted access to physical government services, actually increased by 1.7% between 2019/2020 and 2020/2021. The filing of cases on merit increased by 5%.10 And most importantly, according to Rwanda's Citizen Report Card from 2020, 88.7% of citizens have expressed their trust in the courts, while 79.1% trust that the Judiciary is operating independently.[11] In the annual report of the Judiciary (2020/2021), the Hon. Chief Justice of the Republic of Rwanda, Dr. Ntezilyayo Faustin, expressed his conviction that investment in the use of technology played a major role in the year's achievements

continued

6 Adam Curtis Watson, Regis Rukundakuvaga, and Khachatur Matevosyan (2017). An Information Systems Approach to Justice Sector Case Management and Information Sharing. International Journal for Court Administration, 8(3), pp.1–9. DOI: https://www.iacajournal.org/articles/abstract/10.18352/ijca.233/ [Last accessed March 31, 2022].

7 Ibid pp.1

8 Official Gazette nº Special of 29/04/2018: Law relating to the civil, commercial, labour, and administrative procedure.https://www.rwandabar.org.rw/attached_pdf/Law%20relating%20to%20the%20Civil,%20Commercial,%20Labour,%20and%20Administrative%20Procedure%20(CPCCSA)-1614248406.pdf. [Last accessed March 31, 2022].

9 Official Gazette n° Special of 08/11/2019: Law relating to the criminal procedure. https://gazettes.africa/archive/rw/2019/rw-government-gazette-dated-2019-11-08-no-special.pdf. [Last accessed March 31, 2022]

10 SUMMARY OF THE PERFOMANCE OF THE JUDICIARY DURING THE YEAR 2020-2021. https://www.judiciary.gov.rw/fileadmin/Publications/Reports/Annual_Report_-_Summary.pdf [Last accessed March 31, 2022].

11 https://www.judiciary.gov.rw/fileadmin/Publications/Reports/CRC-2020.pdf [[Last accessed March 31, 2022]]

which improved access to justice, timeliness and quality of the judicial services delivered. While this promoted good governance of the courts,[12] it more importantly promoted a people-centered culture with tangible results for Rwanda's citizens, families, and communities.

In Part 2 of this article, forthcoming in the next issue of The Court Administrator, we will focus on the more technical aspects of converting data tracking, performance measurement and management to service delivery outcomes in Rwanda. It will highlight not only what works but what does not. We will explore the results achieved, lessons learned, and recommendations for moving forward.

12 Rwanda Citizen Report Card, 2020. https://www.judiciary.gov.rw/fileadmin/Publications/Reports/Annual_Report_2020_-_2021.pdf [Last accessed March 31, 2022].

Examining the Problem of Having Full Access to Justice: Economic and Legal Perspectives

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1. Introduction

The argument of this article is that the legal process in courts can be likened to a market. Buyers and sellers do not trade in goods but in ideas about what should happen in society. In this quasi market, the participants try to promote their interests, signal about problems to the authorities (judges). In other words, this is a market in which ideas compete. The price is determined not by bargaining (unless there is out of court settlement of the dispute) but by the judge who determines who gets what. The judiciary has to consider carefully how to achieve a higher level of access. That is not something that comes easily or naturally to the judicial system in modern societies. It is a complex task that requires thoughtful regulatory choices. Thus, this short article defends the position that the full access to courts cannot be introduced with a simple legal provision. Rather, the judicial organization must be carefully designed in order to have the best possible level of court access with the resources available.

2.2 How is does that quasi market work?

The two parties to the legal process are the sellers. They try to sell their ideas about what should have not happened and what should happen in the future in similar decision-making choices that they find themselves in. The judge is the benevolent planner who tries to determine the price. As a result, this is only a quasi-market that can easily achieve the results of a perfectly competitive market. The reason is the judge cannot make a price determination that is Pareto optimal as a competitive market would. As Jean Tirole put it: "a benevolent and fully informed social planner could not replace the competitive allocation of goods with another feasible allocation that would increase all the consumers' welfare"[1]

What happens in a situation when the two competing parties to the process (the buyers and sellers) reach an out of court settlement?[2] Then, their relative strength of bargaining power plays a main role. As John Nash explained, in what is called Nash bargaining solution, when players in a game do not have equal bargaining power, the distribution is always heavily influenced by the player with higher bargaining power. That is what happens often in out of court settlement. So again, because there is no perfectly competitive market

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1 Tirole, The Theory of Industrial Organization. Cambridge, Mass.: MIT Press 1988 p.25
2 Binmore, Natural Justice Oxford University Press 2005 p.25

even the bargaining between the parties cannot achieve the distribution the parties deserve. A judge might be able to do so sometimes better than a direct bargaining between the parties if they have unequal bargaining power.

2.3 The Main Legal Provisions Regarding Access to Courts

There is a substantial amount of literature in the U.S. that supports full access to courts. "The American citizen's access to the courts is one of the pillars of a government of laws,"[3] argue some authors. Other state that the Constitution supports parties that cannot afford access to courts.[4]

In France, the right to access justice is recognized as a fundamental right with diverse legal mechanisms and guarantees supporting it. The French 1789 Declaration of the Rights of Man and of the Citizens, the 1950 European Convention on Human Rights, and several codes such the Civil Code in its Article 4 support that right.

2.4 Identifying the Problem of Full Access to Courts

This full access to courts view is commendable. Every judicial system should strive to achieve a situation in which everyone can go to court and resolve their legal issues. Put differently, that means full access to courts is the purpose of regulating the judicial machine with which this chapter is preoccupied. However, it is suggested that it is practically impossible to have such full access and it will not become reality by enacting legal rules, even if those rules contained fundamental constitutional provisions. The question of this chapter is how to achieve optimal position of the lever that gives the best possible access to courts in reality?

2.5 The Optimal Access to Courts

This article will show that the maximum position is a combination of methods in order to improve access to justice. Doing that requires an examination of the issue first from a legal perspective in order to establish the current problems that the judicial system faces. Then it requires using an economic analysis of law to determine a path to get close to an ideal situation with full access to courts.

3.0 The Ideal Society

The following imaginary example describes a situation in which there appears to be an ideal position of the policy lever at which everybody in society has equal access to the justice system. The question is what are the elements of this ideal society that can serve as reference points, those that can be implemented in a complex modern society?

Imagine a small hunter-gatherer group or small farming community with an equal contribution to hunting and gathering or farming activities. Such a society will turn to a wise person for judgment whenever there is a conflict. It will reward him or her with an equal portion of their work. The condition for the wise adjudicator to pass judgments is that he or she receives equal contributions from each member of the society so that nobody can influence unduly the decision-making process.

The characteristics of this ideal society are: 1) full equality of its members in general economic and social terms. There is also complete equality in access to adjudication services; 2) equal contribution of the members of society in order to have access to adjudication services; 3) The members of this society are perfect gossipers—everyone knows everything about their neighbours because of the small size of the society; 4) Simplicity in the legal disputes and legal system because small agricultural or hunter-gatherer societies do not have a sophisticated economy that in turn requires complex legal rules. That means there will be no additional costs to the parties in presenting their respective cases in front of the adjudicator that complex legal provisions inevitably require; 5) The adjudicator is easily replaced by someone else. The reason is the adjudicator will start asking special treatment and more of the society's resources. As a consequence, there will be no issues related to legal representation. To summarize it all in economic terms, the transaction costs to dispute resolution in this imaginary society are low.

4. The Reality

Mark Galander has elaborated an explanation of the defects of the judicial system when providing access to courts. He has maintained that, "[m]ost analyses of the legal system start at the rules end and work down through institutional

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3 Rosenberg, Smith, and Dreyfuss, p. 46; Shavell, p.229.
4 Brickman, 1973; Leubsdorf, 631 -37.

facilities to see what effect the rules have on the parties."[5] However, that type of analysis does not give us the full picture of what happens in reality in a judicial system. To expose some of the practical truths of the judiciary he has completely changed his examination angle: "I would like to reverse that procedure and look through the other end of the telescope. Let's think about the different kinds of parties and the effect these differences might have on the way the system works."[6]

This different perspective has allowed Mark Galander to reach the basic conclusion that not everybody receives equal consideration from the judicial system. For this work, that conclusion is important because it shows that the model of the ideal society where everybody is supposed to have equal access to the courts is not easily reached in practice.

Mark Galander has found the following practical deficiencies when different groups of litigants try to use the judicial system. First, the "haves" possess superior resources that allow them to hire the best available legal representation. That means they are under less pressure to accept a disadvantageous pre-trial settlement and if there is a trial, they can handle delays in the legal process and deal with the other opportunity cost associated with litigation.

Second, more often than not, the "haves" are "repeat players" in the legal process whereas the have-nots usually take part in a legal process just once. Consequently, they enjoy a superior experience in handling cases that results in freedom to choose which cases to take to court and where to take them. Thus, they are able to choose whether to go to court in particular instances and, more importantly, to choose their forum.

Third, repeat players have strategic advantages in shaping the case law because they can settle cases that can lead to disadvantageous new rule outcomes. At the same time, they can afford to push cases that can create advantageous to them rules. Have-nots, on the contrary, should be willing to trade off the possibility of making "good law" for tangible gain. The question is, can the repeat players dictate the rules? Can they set up substantive or even procedural rules that are in their favour? Galander has maintained that they can. Overall, that means that upper-dogs can implement an all-encompassing strategy for dealing with cases.

5. Explaining the Difficulty of the Task

Why is so hard in a modern society to attain the ideal of full access to courts that existed in our utopian society. The argument is that courts function as imperfectly competitive markets. So how can courts function as a hypothetical market that allocates resources when the transaction costs are too high to use the normal market mechanism? The limited resource allocation function of courts in Tort law, for example, demonstrates one very important problem: the market for legal services is not a perfectly competitive market the way it is in the utopian society. That means that the plaintiff and defendant, who can be compared to a buyer and seller in a normal market, do not function under perfect competition as they would have in a real market. That difference is the main reason full access is not possible in real modern societies as opposed to our ideal small community.

The characteristics of a perfectly competitive market are the following:

- All firms sell an identical product
- All participants are price takers
- All firms have a relatively small market share
- Buyers have complete information about the product and prices
- The industry is characterized by low barriers or no barriers to enter and exit an industry

As Hadfield has put it, "The economic framework for analyzing the operation of markets is essentially comparative: we assess the extent to which the market deviates from the hypothetical benchmark of 'perfect competition.'"[7] In our utopian society, there is perfect competition. Thus, that is why that society is so useful to use as a benchmark.

Thus, examining each point of a perfectly competitive market in order to find the deviations would be useful. The perfectly competitive market is one in which goods are distributed by sellers with no ability to influence market price to buyers who also have no ability to influence market price; everyone is a price taker under conditions of full information.

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5 Galander, 1974.
6 Ibid.
7 Gillian Hadfield, "Exploring Economic and Democratic Theories of Civil Litigation" Stanford Law Review (2005).

For the court analogy, that means that the plaintiff and defendant know everything about the facts of the case they are involved in. Price is equal to marginal cost and output is the quantity demanded at that price.

The reason perfectly competitive markets are of interest to our argument here is because economic analysis shows that these markets function optimally. They result in prices that are as low as possible and the output is as good as it can be. That means that in such conditions, the adjudication system functions as cheaply as possible and produces maximum results. That is exactly the case in our imaginary society of farmers/hunter-gatherers where the adjudicator provided services at low cost to everyone and rendered decisions based on full information which everyone involved had access to. Since there many of these requirements are not fulfilled by courts functioning as markets, the result is that they depart from the perfectly competitive benchmark and thus cannot be assumed to achieve the best outcome possible.

6. The Solution

The solution to this hard problem is working on methods to make the market for court services competitive. There are a number of methods that can achieve competitive market for judicial services. That process can greatly be enhanced by the introduction of technology. For example, creating Artificial Intelligence systems that bring courts closer to being perfectly competitive markets is possible and desirable. In such a way courts can reduce the transaction costs that the current way of operating the court system does not achieve. More practical guide on how that can be done is subject to another article.

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Reshaping of the Legal Business: Digital Litigation & Case Management Systems

By: Amna Al Owais, Chief Registrar, Dubai International Financial Centre (DIFC) Courts

In her capacity as Chief Registrar of the DIFC Courts, Amna Al Owais oversees operations and quality management, supervising the Courts' Judicial Officers and Registry personnel, as well as the delivery of a comprehensive suite of court public services. Amna Al Owais also spearheads special projects across DIFC Courts operations, particularly in the field of technology and innovation, harnessing digital transformation for core courts services, including a major partnership project across blockchain with Smart Dubai and a court tech R&D initiative with Dubai Future Foundation.

In addition to her role as DIFC Chief Registrar, Amna Al Owais is also Registrar of the Special Tribunal Related to Dubai World, Chairwoman of the DIFC Courts' Users' Committee, Chairwoman of the DIFC Courts' In-House Counsel Committee, and a member of the Consulting Council for the University of Sharjah College of Law. In 2014, Amna was appointed to the Advisory Board of the International Bar Association's Access to Justice and Legal Aid Committee.

Amna Al Owais practiced as a lawyer in the litigation department with Hadef Al Dhahiri & Associates, now known as Hadef & Partners. She holds a bachelor's degree of Law from the University of Sharjah and obtained a Masters (LLM) with Commendation in International Commercial Law from Kingston University, London.

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Does society want people to feel confident in solving their problems in a court? If so, give them access to one from their mobile phone. Let them beam into a court room and give evidence from a smartphone. But there are those that would argue that, of all the industries that are most critical in delivering open, secure societies, the legal profession has arguably been the most resistant to digital disruption.

The physical nature of traditional courtrooms has cemented their place over time as an intimidating, restricted institution that is growing increasingly unfit to solve complex and far-reaching disputes. How do you establish a court that can solve these problems? The only way is through technology. We need technology to allow parties to come together in a forum which best serves their interest in finding a solution – in other words – we need to stop making the courts a place and focus more on making it a service.

For too long courts in many jurisdictions have taken the view that they are a necessity, that citizens must use them, and, with that mind-set, many have lost sight of their role in serving the community. Significantly, research shows that the settlement rates in commercial cases are higher where the courts provide a positive user experience.

As commerce becomes ever more global and countries ever more connected, it is imperative that judicial systems keep pace and remain able to support and protect businesses. And it was this basic requirement that led to the creation of the DIFC Courts in 2004.

The DIFC Courts are Dubai's English language, commercial common law judicial system, and form a key part of the legal system of the United Arab Emirates. As a world-first, they were established with the specific objective to enable the international community in Dubai to have greater confidence in the Emirate's legal framework, and further strengthen the trade relations with Dubai. We are capable of resolving all commercial and civil disputes, ranging from sophisticated, international financial transactions to simple domestic contractual and employment disputes.

At the DIFC Courts we believe that courts at large have a moral obligation to comfort the afflicted, and to instill

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widespread faith in a country's legal system. This means being a trustworthy service provider, not an intimidating punishment mechanism. Courts are meant to provide a service, which is to help people answer a question that they can't answer themselves.

In an era of significant disruption, companies are investing massively in emerging technologies to stay ahead of the curve. Instant access to information has perhaps had the biggest influence on the way businesses run their operations, particularly within the legal sector where hordes of data need to be easily available.

Perhaps because of their relative youth, judiciaries in the Middle East have proven themselves to be early adopters of the latest technology. With innovation one of our four key drivers, investment in technology was arguably the catalyst that enabled the DIFC Courts to go from a start-up court, to one of the world's leading English-language commercial courts in less than a decade.

Technology allows for greater fairness, for instance by ensuring both sides are informed of court matters at the same time, while enhancing accessibility through a modern Case Management System (CMS) that allows for 24-7 operations and the ability to conduct hearings via video link from anywhere in the world. Increasingly sophisticated smartphone/device technology means this trend is only likely to accelerate in the future.

In 2017, the DIFC Courts went one step further and developed a cutting-edge Case Management System (CMS) inhouse, providing users with a faster and superior way to find case information. In line with UAE Vision 2021 and the Dubai Smart Government initiative to develop a knowledge-based economy, the DIFC Courts' new CMS utilises the latest technology to connect various departments and functions within our organisation and allows the public to access even more information as soon as it becomes available.

But aside from strengthening the accessibility of case documents, the upgraded software provides a unified platform for court user registration, case filing, payment processing, managing case events and reporting. It has been carefully developed based on industry best practices for courts and arbitration centres and designed specifically for the DIFC Courts — it is extensible to all claim types, including our Small Claims Tribunal, Court of First Instance, Court of Appeal, including arbitration and enforcement cases.

Nevertheless, being user friendly is more than simply offering a streamlined process with more doors to new data. It also means providing additional convenience and accessibility. Building on existing eRegistry capabilities, the new CMS is now compatible with mobile phones, tablets, and other electronic devices in real time, anywhere in the world. Furthermore, it is fully integrated with the UAE's Emirates Identity Authority, helping us verify the identification of court users through their Emirates ID.

In addition, there is an exclusive portal designed specifically for judges and legal representatives so they can access relevant information about any ongoing cases they are handling. This makes work faster, simpler, and more efficient, ultimately increasing productivity. Similarly, the speed in which parties can search for data has improved, as documents can now be easily filtered with a search function by using keywords, just like a Word document.

But with new innovations, there are of course, concerns. The rate of cybercrime appears to be consistent with the growth of technology, as hackers become more skilled at finding holes and cracks in security systems to gain access to protected files. In the legal sector, we understand this better than anyone, so when it comes to confidential information, safety and privacy can never be compromised.

Fast, efficient, and professional service can make a real difference to outcomes and achieving court excellence. While a new CMS can be comprehensive, flexible, extensible, and scalable piece of software, it is just one of the tools to support the cost-effective efficient and final resolution of commercial disputes. By allowing the public to interact with the courts and instantly obtain information using real-time data and analytics, the ultimate aim is to become more user friendly.

The Courts of the Future was launched by the DIFC Courts and the Dubai Future Foundation (DFF) in 2017 with a mandate to explore diverse legal tech topic areas and to provide research and thought leadership on promoting and encouraging contemporary methods of greater accessibility and efficiency to court users across the globe.

This think tank has enabled the DIFC Courts to streamline its major legal tech. projects under the Courts of the Future, pooling talent and resources from global partners and experts across the fields of law, technology, IT, and

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business, assembled to help legal systems accommodate the accelerating growth of technology.

In 2018, as an initiative under the Courts of the Future, the DIFC Courts partnered with Smart Dubai to create the world's first Court of the Blockchain. Building on existing dispute resolution services, the alliance is exploring how to aid verification of court judgments for cross-border enforcement. The partnership is the first step in creating a blockchain-powered future for the judiciary which will have far-reaching benefits, including streamlining the judicial process, removing document duplications, and driving greater efficiencies across the entire legal ecosystem.

Future research will combine expertise and resources to investigate handling disputes arising out of private and public blockchains, with regulation and contractual terms encoded within the smart contract. Currently, blockchain-based smart contract transactions are irrevocable and there is no technical means to unwind a transaction. The joint taskforce models smart contracts across the blockchain that incorporate logic and allow for various forms of exceptions and conditions for seamless and more efficient dispute resolution.

In 2018, as part of ongoing CMS infrastructure, the DIFC Courts became the first courts in the Middle East to introduce a new secure cloud-based technology to allow court documents to be uploaded from anywhere in the world. The e-bundling service enables judges, lawyers, and courts staff to access case information in various formats, across multiple locations and share with numerous users.

We also pushed the boundaries again in 2019, establishing the world's first Court Tech Lab in partnership with Dubai Future Foundation. In exploring how judicial systems can be strengthened through technology, the Court Tech Lab will unite individuals and companies helping to prototype and launch the advancement of court-based technology, such as Blockchain-powered initiatives, AI-enabled programmes, and cloud-based solutions.

With all this technological implementation, we haven't stopped there. But where next? What should we as Courts be focusing on for the future?

Expectations from the private sector increasingly require the bold engagement of public service and of regulatory agencies. Through continued outreach to global judicial systems, Courts can contribute to create a level-playing field between businesses, by re-engineering the way commercial justice is designed and delivered.

As goods and services travel across the world (global supply chain), they will seamlessly cross borders, so we need a seamless judicial platform that can do the same. The answer is to make sure that when the dispute comes into the "real world," the court system can understand that virtual supply chain and deliver a decision that can be executed around the world.

The future of commercial courts will be one of supporting supply chains operating virtually, with dispute resolution encoded into the blockchain, with virtual currency and with the most likely dispute being one of coding. Those supply chains will develop and advance to the point that smart contracts will replace traditional contracts, and we'll see them become ubiquitous even for small- and medium-sized enterprises (SMEs) operating on a public blockchain.

Soon we'll see not only the contract encoded into the supply chain, but also the applicable laws and regulations. At that point, it will be the blockchain itself which resolves most contractual disputes. This allows companies to scale up faster than ever, with suppliers and customers knowing disputes can be resolved (and decisions enforced) in seconds versus months or years –

and without the need for human intervention, with AI and machine learning making the system smarter.

AI can reduce clerical burdens, help streamline the case review methodology, create a realistic virtual presence, remove document duplications, and unlock time to take on significantly more complex tasks.

But as exciting as the many new technologies at our disposal may be, it is important to remember that they are just vehicles to help us on our journey. We must not forget that judicial excellence and serving the court user is the ultimate destination, whether it's through innovation or face-to-face engagement.

Organizational Maturity in Court Administration: A New Evaluative Standard for Court Administrators[1]

By Jarrett B. Perlow, JD, CCE, CMQ/OE

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Summary

Quality management has long been an effective tool for driving organizational excellence however current standards are geared primarily toward private, cost-driven entities. A new standard for public sector agencies now exists that addresses the inherent challenges in applying cost-driven, quality management focuses to public entities by using maturity modeling and best practice models as the evaluative bases. This article explains how the Clerk's Office of the U.S. Court of Appeals for the Federal Circuit has used this new standard to enhance its operations and has since been awarded certification under this standard, which is a useful tool other courts can use to review and adapt their own processes.

Introduction

For the past two years, courts around the world have both struggled with and had to make rapid changes to their operations in the face of the COVID-19 global pandemic. Whether it was using new technologies to continue court proceedings remotely or struggling to determine how continued legacy paper-based systems could function in the face of mandated closures and physical distancing, critical changes happened very quickly. Some court administrative structures showed considerable resilience while others struggled and needed more time to adapt to the new reality. What made the difference? For those court administrative structures that struggled, what can be done to prepare better for the next challenge? Additionally, as the world enters the third year of this pandemic and we look toward the future, how can court administrators evaluate which of these new systems and processes should stay and which should go?

Those courts, as well as other government entities, with robust, mature processes and systems that were designed to be adaptable and resilient likely experienced more favorable outcomes than those without. Organizations that possess and maintain strong quality management systems increase the level of sustainable operations during normal times and their ability to manage the risks of crisis. New quality management maturity measurement standards for government agencies offer a path forward for courts to assess their current state so they can improve operations today and start planning now for future challenges.

continued

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Quality Management in the Judiciary

Quality management systems, long in use in the private sector, offer several resources and tools that can be used to develop, enhance, and deliver effective services within judicial administration. The application of quality management principles to court administration began as part of general trends in government in the 1990s to "reinvent government" through the introduction of performance measurement and improvement concepts into the public sector.[2] Within the United States, there has been considerable focus and attention on identifying and measuring court performance and then applying this data to evaluating and enhancing court performance.[3] Notably, the National Center for State Courts developed CourTools to provide uniform accountability performance measurements for trial and appellate courts. CourTools identifies ten performance measures for trial courts and six performance measures for appellate courts that can be used to "clarify performance goals, develop a measurement plan, and document success."[4] More broadly, the International Consortium for Court Excellence has created the International Framework for Court Excellence, which is an international standard quality management system that courts and judicial agencies can use to improve judicial administration based on seven "areas of court excellence."[5]

Currently, ISO 9001 from the International Organization for Standardization (ISO)[6] provides the internationally-accepted standard for organizations looking to design and to implement a total quality management system.[7] The latest version of ISO 9001 looks beyond data-based decision making and evaluation and increases the need for risk management awareness and planning into effective quality management system requirements.[8] Unfortunately, ISO 9001 is designed for the private sector, which unlike public sector agencies such as courts, focuses much on cost-savings and reduction efficiencies. While effective court administration requires good stewardship over public funds and resources, the end objective of court administration is the effective administration of a government's judicial system. The International Framework for Court Excellence provides effective standards and measurement tools within the spirit of ISO 9001 quality management system standards, but the International Framework relies on self-assessment to evaluate implementation and does not offer a mechanism for independent validation, as is available under ISO 9001.[9]

New Quality Standards in Government

After several years of development within the American Society for Quality (ASQ) Government Division by a team

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2 See generally Alexander B. Aikman, Total Quality Management in the Courts: A Handbook for Judicial Policy Makers and Administrators (National Center for State Courts 1994).

3 See National Association for Case Management, NACM Core®: Accountability and Court Performance Competency, https://nacmcore.org/competency/accountability-and-court-performance/ (establishing competency standards for court professionals in the areas of accountability and court performance); see also National Association for Case Management, The Core® in Practice (2015), https://nacmcore.org/app/uploads/The-Core-Guide-FINAL.pdf.

4 See National Center for State Courts, CourTools, http://www.courtools.org. Examples of trial courts and appellate courts that have implemented CourTools are also available at the CourTools website.

5 See International Consortium for Court Excellence, International Framework for Court Excellence (3d. ed. 2020), https://www.courtexcellence.com/__data/assets/pdf_file/0021/51168/The-International-Framework-3E-2020-V1.pdf; International Consortium for Court Excellence, https://www.courtexcellence.com/. The International Framework is based around the Plan-Do-Study-Act cycle, which is the generally accepted model for quality management systems.

6 Based in Geneva, Switzerland, ISO is an international membership organization of national standards bodies that develops international standards to facilitate compatibility between products, to promote safety and compliance, and to share and promote best practices within various industries and management areas. See ISO, ISO in Brief, https://www.iso.org/publication/PUB100007.html (2019), https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100007.pdf. Within the United States, the national standards body is the American National Standards Institute (ANSI). See ANSI, About ANSI, https://ansi.org/about/introduction.

7 See ISO, ISO 9000 Family Quality Management, https://www.iso.org/iso-9001-quality-management.html.

8 See American Society for Quality, "What Is ISO 9001:2015- Quality Management Systems," https://asq.org/quality-resources/iso-9001 (explaining the new 2015 standard and highlighting the changes since the 2008 standard).

9 At least one court, the Klaten District Court in Indonesia, has been accredited under ISO 9001 and has also implemented the International Framework for Court Excellence. See Hon. Alberta Usada, "Framework Actualized: The Implementation of the Seven Areas of Court Excellence at Klaten District Court, Central Java, Indonesia," International Consortium for Court Excellence Newsletter, 6-7 (July 2018), https://www.courtexcellence.com/__data/assets/pdf_file/0026/7298/icce-newsletter-no-11-v1-aug-2018.pdf

of government practitioners from around the world, a new uniform, objective standard now exists by which government agencies can develop and independently validate the level of sustainable quality and performance of their operations and services to support the implementation of their mission. Adopted by the American National Standards Institute on March 21, 2021, the ASQ/ANSI G1:2021 Guidelines for Evaluating the Quality of Government Operations and Services ("G1 Standard")[10] addresses the inherent challenges in applying cost-driven, quality management focuses to public entities by using maturity modeling and best practice models as the evaluative bases.[11]

The new G1 Standard promotes three objectives: (1) to provide an objective standard by which public entities can confirm the level of sustainable quality of their operations and services, (2) to provide a simple and clear framework for public entities to evaluate the organizational maturity of critical processes and systems on a macro (i.e., overall) or micro (i.e., a specific department or office) level, and (3) to fill the missing gap in the public sector for implementing quality management systems such as Lean Six Sigma or best practice management techniques such as the Baldrige Excellence Framework.[12] Overall, the G1 Standard assigns a maturity rating to the organization based on the use of quality practices and effectiveness of addressing organizational risks.

Under the G1 Standard, maturity "refers to the degree of formality and optimization of processes and systems, from ad hoc practices . . . to formally defined . . . to active and continuous improvement."[13] The G1 Standard establishes six-level maturity models for both processes and systems.[14] Processes are evaluated based on their level of standardization, whether adherence to requirements is evaluated, and whether quality improvement is incorporated across the process.[15] Systems are evaluated based on whether they have a defined and documented structure, the extent system outputs are goal-directed through performance measurements, if risk is actively managed and mitigated, and evidence that the systems are regularly aligned with management and evaluated for effectiveness.[16]

Simplified System Maturity Model of the G1 Standard

- Level 0 – Not Using Quality
- Level 1 – Initiating
- Level 2 – Standardizing
- Level 3 – Streamlining
- Level 4 – Capable
- Level 5 -- Excellent

For example, a court administrative office that has neither begun to implement any quality practices nor identified any risks is likely at a level 0 maturity, which is the lowest ranking under the G1 Standard. A court administrative office that has adopted basic quality practices, such as the Plan-Do-Study-Act Cycle or DMAIC,[17] and has defined all its major risks would be in the measuring and testing maturity phase, or a level 3. At the highest maturity level of a 5, the court administrative office is innovating through its quality practices and actively managing its risks.

Among the anticipated benefits to court administrative entities applying the new G1 Standard include (1) providing a framework for continuously improving the quality of operations in carrying out approved mandates and achieving program objectives; (2) creating a culture of quality for the purpose of improving cost-effective delivery of services; (3) providing a tool and framework for court managers at all levels to confirm and demonstrate that

continued

10 ASQ/ANSI G1:2021 Guidelines for Evaluating the Quality of Government Operations and Services is available at https://asq.org/quality-press/display-item?item=T1574E (hereinafter "G1 Standard"). Like all ANSI standards, the document is copyrighted and requires purchase to view. However, those interested in learning more about the Standard and its requirements can view an online information session about the Standard. See ASQ Government Division, The ANSI: G1 Standard – A New Beginning Point for Efficiency and Effectiveness in Government, WebEx Presentation (Aug. 26, 2021).

11 See Richard E. Mallory, Quality Standards for Highly Effective Government, (2d ed. 2018), cited in G1 Standard, "Foreword."

12 Baldrige Excellence Framework, https://www.nist.gov/baldrige/publications/baldrige-excellence-framework.

13 G1 Standard at 12.

14 Under the Guidelines, a process is "a set of interrelated work activities that transform inputs [something obtained by the agency] into outputs [something provided to internal or external customers]," and a system is "a group of interdependent processes and people that together perform a common mission." Id. § 3.

15 Id. § 5.2, Table 5.2.

16 Id. § 5.2, Table 5.3.

17 See ASQ, The DMAIC Process, https://asq.org/quality-resources/dmaic.

key work units follow a documented best-known practice in all primary court administrative business areas; (4) an empirical, professionally recognized tool for court managers to demonstrate key systems processes capability and maturity; and (5) establishing a uniform basis for development of a quality scorecard of key systems and processes throughout the court.

Once a court decides to use the G1 Standard, there are two options for evaluation. First, courts can perform a self-evaluation using internal staff who have been trained as designated examiners under the G1 Standard or other internal staff with auditor training and knowledge of the G1 Standard. Second, courts can request formal evaluation by external ASQ designated examiners, who have been trained in the G1 Standard and who have either formal training or experience in quality management and program evaluation.[18] Courts who complete the formal evaluation process are then eligible for registration by the Center for Quality Standards in Government of the ASQ Government Division.

However, the benefits of the G1 Standard can be realized either well-before or even without going through the formal evaluation process.

Use of the G1 Standard in the Clerk's Office of the U.S. Court of Appeals for the Federal Circuit

Following a leadership change in 2016, the Clerk's Office of the U.S. Court of Appeals for the Federal Circuit has spent the past five years redesigning its processes; adopting proven quality-based methods to evaluate and enhance operations and services; and developing a staff culture focused on delivery quality services to the court's judges, members of the bar, unrepresented litigants, and the public.[19] Based on a G1 Standard precursor system management maturity model, and then the actual G1 Standard, the Clerk's Office has used this framework to guide its maturation process.

One of the first tasks taken was forming a business unit focused on quality management that would then identify data measurements to evaluate the success or failure of Clerk's Office programs, services, and performance targets. Performance standards based on legal and court-directed requirements were adopted and integrated into staff training programs.

The Clerk's Office identified 12 principal activity groups,[20] such as motions process and scheduling hearings, with corresponding performance metrics aligned with the purpose and inputs and outputs for each group. Performance metrics are reviewed quarterly by management and staff and resources and improvements are adopted as needed.

The Clerk's Office initially focused on tracking and improving the quality (timeliness and accuracy) of the work of its case managers, who are responsible for reviewing and processing most case filings and entries on the public docket. Initial assessments in 2017 showed an average case manager accuracy at 84.3%, including a high degree of variability between individual case managers. This initial data demonstrated a significant risk, public visibility, and mission impact of permitting such a performance level to continue. As a result, initial continuous improvement efforts focused on shoring up existing case manager training and creating a new case manager training program to provide a permanent, preventative process to ensure new case managers would begin their work with the court with a validated, high level of accuracy.

Three years into the training program and after incorporating verified quality management processes, the Clerk's Office reported an average case manager accuracy of 96.1%, and after five years of data (including the hiring of new entry-level case managers), the Clerk's Office had an average case manager accuracy of 95% (or about a 13% sustained increase in accuracy from the original baseline).[21] After working on case manager accuracy, the Clerk's Office next focused on decreasing internal processing times, which

continued

18 Courts may opt to perform a self-assessment before seeking formal evaluation. As part of the formal evaluation process, the Center for Quality Standards in Government will also provide action plans for continued process improvement aligned with the Standard, as well as identify public agencies as appropriate for participation in case studies evaluating the effectiveness of the Standard.

19 The U.S. Court of Appeals for the Federal Circuit is one of the thirteen intermediate appellate courts in the federal judiciary. The Federal Circuit has nationwide jurisdiction over a variety of subject areas, including international trade, government contracts, patents and trademarks, monetary claims against the United States, federal personnel matters and veterans' benefits claims. For more information about the court, visit the Federal Circuit's website at https://www.cafc.uscourts.gov.

20 Under the G1 Standard, a "principal activity group" "represent[s] a business purpose or function that deliver[s] outputs with defined requirements, and that may be incremental parts of the business system aim or purpose." G1 Standard § 3.

21 Jarrett B. Perlow, Patrick B. Chesnut & Greta Mun, Training the Next Generation of Case Managers, (Oct. 29, 2021), at https://govwhitepapers.com/whitepapers/training-the-next-generation-of-case-managers.

would impact both the overall disposition time of cases before the court and the time for cases to be assigned to merits panels. After a yearlong focused approach in FY 2021, the Clerk's Office averaged a 49% reduction in overall processing time and averaged a 58% reduction in the time from the end of case briefing to calendar and panel assignment.

In the areas of management of risk and program alignment and evaluation, the Clerk's Office implemented after-action review programs into all office activities,[22] SWOT (strengths, weaknesses, opportunities, threats) analysis in annual planning and program development efforts, and a root cause analysis-based corrective and preventative action program. The office launched an annual planning and initiative development program in 2018, which has allowed the office to focus on many of these improvement efforts. The annual program includes a formal evaluation system of new initiatives and adopts standard project management concepts and tools to drive meaningful change within the Clerk's Office.

In March 2022,[23] the Clerk's Office received a silver level award (level 3) validation under the G1 Standard, becoming the first government entity both to seek and to attain an award-level validation under the new standard. As courts look for new ways to integrate quality and performance improvement into their strategic planning, using the G1 Standard provides a new, validated opportunity for court leaders to differentiate the excellence of the performance of their organizations, to support their missions through continued resource challenges, and to demonstrate to their stakeholders and funding entities the value and quality of services provided by the courts.

22 The After-Action Review tool was developed by the U.S. military to identify following an event and then identifying how those lessons might be applied to a future event. See generally "Learning in the Thick of It," Harvard Business Review (July-August 2005), available at https://hbr.org/2005/07/learning-in-the-thick-of-it (last accessed Feb. 8, 2022).

23 U.S. Courts, "Clerk's Office Earns Award for Cutting Case Processing Time in Half" (Mar. 8, 2022) at https://www.uscourts.gov/news/2022/03/08/clerks-office-earns-award-cutting-case-processing-time-half; see also Jarrett B. Perlow, Patrick B. Chesnut & Jason Woolley, Journey of Excellence: A Case Study on the Use of the ASQ/ANSI G1:2021 Standard in the Federal Judiciary (Mar. 23, 2022) at https://govwhitepapers.com/whitepapers/journey-of-excellence-a-case-study-on-the-use-of-the-asq-ansi-g12021-standard-in-the-federal-judiciary; U.S. Court of Appeals for the Federal Circuit Clerk's Office Journey to Silver Award for Performance, WebEx Presentation (Mar. 23, 2022) at https://youtu.be/PFfwr3HNy4o.

Shared by Sheryl Loesch
President, International Association of Court Administration

As the world has its eyes on the tragic events taking place in Ukraine, we want to share a personal appeal from one of the long-time members of the International Association for Court Administration, Natalia Chumack, leader of the Association for Judicial Administrators of Ukraine's Court Management Institute. In the appeal below, Natalia offers a first-hand glimpse into what is happening in Ukraine and offers some ways we can help.

Dear international professional community of court administrators!

I am Natalia Chumak and I am a leader of the Association of Judicial Administrators of Ukraine "Court Management Institute". Today the whole world knows that on 24 February 2022, Russia launched a full-scale invasion of Ukraine. Not only military facilities, but also civilian areas and objects (residential buildings, hospitals, kindergartens, etc.) are under the indiscriminate attack of the Russian forces.

The brutal and cynical war started by Russia not only threatens the sovereignty of Ukraine, but also jeopardizes the security system of the entire world. The ongoing heroic battle of Ukrainian soldiers and all Ukrainian people currently prevents the expansion of Putin's tyrannical dictatorship further into Western Europe.

Today, my colleagues continue to serve Ukraine. Most perform their professional duties in the courts in the realities of wartime. Someone took up arms in defense of Ukraine and its citizens. Some became a volunteer.

My friend Olena, a court administrator from Kharkiv, has endured the horrendous intense bombardment of her hometown for several days, along with her newborn granddaughter, who came into this world three days before the start of the Russian invasion.

I remain in Kyiv, fulfill my professional duties and I'm ready to help my city survive.

I am writing this appeal between air raid alerts, and my family is now in my hometown near Kyiv.

The name of this small defenseless town is Borodyanka. This town was wiped off the face of the earth by Russian tanks and planes just because it was on their way to Kiev.

Its name has become a symbol of the genocide of the Ukrainian people, and the whole civilized world must know about it.

We are deeply touched by that expression of the solidarity and support of Ukraine, the assistance provided to our country and the severe sanctions already imposed on the aggressor by foreign states and organizations.

We believe that our colleagues from the world are standing by us and seeking ways to help Ukraine. To facilitate this, we provide the non-exhaustive list of various actions that may help Ukrainian nation to get through these harsh times.

continued

1. Make donations to the international organisations helping Ukrainians during this time, in particular: (https://www.kernel.ua/support-for-ukrainian-army/)
2. Use and share only reliable sources of information. You may rely on the following official Ukrainian sources:
    - The President of Ukraine;
    - The Ministry of Defence of Ukraine;
    - The Ministry of Foreign Affairs of Ukraine;
    - The Parliament of Ukraine;
    - The Cabinet Ministers of Ukraine.
3. Please, write a few words of support for our Ukrainian colleagues in these incredibly difficult days. You can post your support post on our Facebook page (https://www.facebook.com/court.management.institute) or send a message to my email (chumak.icmi@gmail.com).

Your help would be much appreciated in this tough time for Ukraine.

Best Wishes, Natalia Chumak

Editor's Note:

I have personally been in touch with Ms. Anna Adamska, who is an international key expert on Judicial Reform. For the past several years, Ms. Adamska has been involved in efforts to support the Ukrainian judiciary by working as the Head of Component on Judiciary, Pravo-Justice which is an EU-funded Project. Ms. Adamska, a former judge in Poland for over 17 years, gave a presentation detailing the current status of the Courts in Ukraine and how they are continuing in their efforts to carry on despite the horrors unfolding in front of the citizens and the world at this time. Many of the courthouses have been bombed and looted. Their judges wear helmets and bullet-proof vests and continue to work, from various locations around the country. I share part of the email I received last week from Ms. Adamska: "It is really important for my Ukrainian friends and colleagues to share information about the war in Ukraine, to make the democratic world understand that it is not just Ukrainian war but a threat to all of us. Yesterday I participated in the meeting with the President of the Supreme Court who was telling about operation of courts in the time of war. Many court buildings have been destroyed, looted and robbed. To restore operation a lot of resources are needed, starting form furniture, IT equipment, actually everything. This is also a direction for help to be considered.

I am also sending you the links to the special accounts established by the National Bank of Ukraine for humanitarian aid:

https://bank.gov.ua/en/news/all/natsionalniy-bank-vidkriv-rahunok-dlya-gumanitarnoyi-dopomogi-ukrayintsyam-postrajdalim-vid-rosiyskoyi-agresiyi

In an email last week, Ms. Adamska wrote: "Thank you so much for your prayers and support. Each single donation is meaningful, and all of them together make a huge difference. We all hope that this war will end soon, and Ukraine will recover from its wounds."

Editor's note: This is a follow up to Natalia's article from the Ukraine received just as we are going to publication.

More than 2 months have passed since my first appeal to the international community of court administrators.

Ukraine's war with Russia has been going on for two months.

The Armed Forces of Ukraine set an example of courage, bravery, heroism and demonstrate military prowess.

Our society is united around the idea of our victory and demonstrates the ability to self-organization, mutual assistance and total support of our Army.

The enemy is inflicting devastating blows on the civilian infrastructure of our country.

The whole world knows about the cruelty and insidiousness of Russian soldiers.

The whole civilized world is experiencing shock and horror at the truth about the inhuman actions of Russian invaders in Bucha, Irpin, Borodyanka, Mariupol, Kharkiv, Chernihiv, Kramatorsk and many other cities in Ukraine.

I am at the moment when I visited Borodyanka immediately after its deoccupation.

continued

The destroyed house in Borodyanka

The building of the Commercsal court of the Nikolaev area was destroyed by Russian bombs.

Ukraine's judicial system is also suffering losses and destruction.

To date, 47 courthouses have been critically damaged, and 4 buildings have been completely destroyed. Courts in the occupied territories were looted by the occupiers.

The building of the Kharkiv Court of Appeal was destroyed as a result of constant artillery shelling of the city by the Russian army.

The building of the district court in Borodyanka was completely destroyed by Russian bombs.

***Olena Bezborodova, Chief of Staff of the Leninsky District Court of Kharkiv**, remains in Kharkiv, where she lives and works. The Russian army continues to carry out heavy artillery shelling and bombing of the city. The court building where Olena works is undamaged. But the beautiful old building of the Kharkiv Court of Appeal was severely damaged by the bombing.*

continued

Lyubov Kharechko

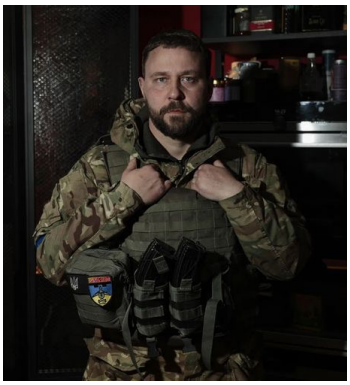
We lost several colleagues.

Thus, during the evacuation from Chernihiv, Judge of the Chernihiv Court of Appeal Lyubov Kharechko died. Her car was shot by Russian invaders.

The employee of the staff of the Commercsal court of the Nikolaev area Nastya Dolgova died from blow of the rocket which hit the court building.

45 judges and 192 employees of the courts of Ukraine went to serve in the Ukrainian army and they are defending our land with weapons in their hands.

Judge of the Commercial Cassation Court within the Supreme Court Ivan Mishchenko decided to change his judicial robe to a military uniform and join the ranks of the Territorial Defense



Each of us is contributing to the approach of victory.

We also feel great support from our colleagues around the world.

We need your support today.
We will need your help tomorrow, when the war is over and we begin to rebuild our courts.

We urge you to continue to help Ukraine and supporting our people!

Digital Transformation: Best Practice For Courts

By Mahesh Rengaswamy, Senior Director, Digital Courts Strategy at Thomson Reuters

Mahesh Rengaswamy is a senior product leader at Thomson Reuters. In this position, he is responsible for leading digital transformation solutions in the courts and litigation space. Mr. Rengaswamy's career spans more than 20 years of operations and strategy leadership experience, which includes leading global teams on delivering enterprise information and case management solutions for large government institutions in the administrative, justice and public safety segments. Located in McClean, Virginia, Mr. Rengaswamy may be reached at mahesh.rengaswamy@thomsonreuters.com

In his article, the author wants readers to take away the following:

Evidence review tools delivered through the cloud in a software-as-a-service (SaaS) model can be seen as an enhancement to — rather than a replacement for — existing IT systems. SaaS-based solutions are quick to implement, run on web browsers, and store all evidence securely in the cloud. Cloud-based solutions such as this can typically be adopted in weeks or months, rather than the years required for traditional IT investments. Courts are also freed up from making infrastructure choices and large capital investments and can benefit from increased protection against increasingly aggressive security threats, particularly from malware and ransomware.

By deploying evidence review tools— even on a small scale — courts will notice immediate, tangible benefits that will help them run both physical and virtual hearings. As we hopefully move past the restrictions imposed by social distancing and lockdowns, the courts will continue to move forward.

By pushing ahead with digital initiatives, they will be able to better serve citizens with justice that is not tied to one physical location. In a decade's time, we might look back and wonder why we ever thought that a court was just a building.

Over the last two years courts have moved rapidly to adopt new practices and technologies. Wider acceptance of the benefits of cloud and new technologies for evidence review and management have helped many courts work more efficiently. Of course, challenges still remain in improving the experience of all court users, reducing backlogs and democratizing access to justice for all. What has worked well for courts in different jurisdictions and where can ongoing improvements be made?

With so much of our lives spent online, especially over the past two years, the ability to handle current and new types of data exchange is necessary for any organization that deals with people. In a courtroom context, this means electronic documentation. E-filing and electronic case flow management are already commonplace. These systems exist to make it easy to submit and share documentation smoothly through the legal process. But when it comes to more complex files, courts have often struggled.

With around 70% of cases today involving multimedia evidence, it's important such evidence is collected, organized, and annotated like any other type of evidence. Video evidence, for example, is growing massively in volume as body-worn cameras become the norm among law enforcement. Add to this the growing prevalence of CCTV (the U.S. and China

continued

are estimated to have one camera for every four people) and the ability of any passer-by to film an incident on their mobile phone, it's clear that courts are facing a barrage of digital evidence.

Submitting multimedia evidence in court has historically been a clunky process. It typically means burning the video or audio onto a CD or USB thumb drive, then hoping that the courtroom has the necessary technology to allow that file to be played back during a trial.

Good digital evidence tools exist today that can allow for almost any multimedia type, including files that previously required a proprietary player for playback. By providing a single secure repository, courts do not need to use less secure cloud-based file sharing services that are not specifically designed for court use. Instead, parties can present video evidence just as they can with text documents or images. They can skip to points in a video so that everyone in the courtroom can follow along, and annotate video evidence before, during, and after a trial. With this all happening in-browser, it means evidence can be shared just as easily in virtual scenarios as in the courtroom, and there's no longer a need for courts to find dedicated technology to handle, store, and display multimedia evidence.

Benefits of innovation in evidence management

Our experience shows that the use of digital evidence review tools to prepare trial files and present documentary and video evidence electronically in the court room reduces the time and effort required to prepare trial files, eliminates the direct and indirect costs of paper, PDFs, and multimedia submissions. In court, it allows presentation of exhibits in physical and virtual hearings with personalized views for judges, attorneys, witnesses, and even the jury.

Handling evidence in a digital era requires three main capabilities. Firstly, the ability for all parties to submit evidence into one court-managed repository, with secure access granted to relevant parties as required. This eliminates discrepancies and ensures equitable access to a consistent evidence base. Secondly, rather than evidence being emailed between parties, good evidence management tools will be able to streamline, secure, and simplify the process.

Finally, it's crucial for everyone to be on the same page during a trial or hearing. Presenters need the ability to refer to evidence and instantly maneuver to exhibits or cue points in multimedia – both for in person and virtual trials. If everyone in the case is looking at the same material, without the need to navigate reams of paper, it can save significant time and reduce stress for all involved.

The Dubai International Financial Centre (DIFC) Courts is one example of a court that has benefitted from implementing technology that allows it to operate a mixture of virtual and in person hearings. Over the course of the last two years, they've seen that people's attitudes to remote hearings has changed, with people recognizing that justice can continue to operate remotely and to do so successfully.

Looking back, DIFC Courts not only maintained all services and access to justice throughout the COVID-19 restrictions, but simultaneously increased operational efficiency over the course of the first six months of 2020. The volume of cases handled in the DIFC Court of First Instance (CFI) grew significantly over this time period, increasing by 96% year-on-year. There was also a noticeable increase in the number of 'opt-in' cases for the first six months of 2020, with over 70% of claims in the CFI and arbitration-related cases originating from parties 'electing' to use the DIFC Courts to resolve their disputes.

"While the doors of the DIFC Courts and Registry offices were physically closed, the courts did not stop operating," explained Reem Al Shihhe, Chief Operating Officer, DIFC Courts. "The infrastructure put in place has enabled us to continue uninterrupted, without a single hour of downtime. It wouldn't have been possible to achieve this using traditional paper bundles. We needed the ability to share electronic case bundles and the associated evidence with judges in a secure, efficient way to allow case management to continue while everyone was working remotely."

Improving public perception and reducing backlogs

Conversations about the public perception of courts are often negative and those who work for and in courts acknowledge some truth behind this. In a 2021 'Voice of the Profession Survey' of members conducted by the National Association of Court Management (NACM) in the US, public confidence in the courts was the number one cause that members wanted NACM to advocate for on their behalf — a spot it has occupied for the past several years.*

continued

But where does this distrust come from? Even for those court users who are there of their own volition seeking justice, several factors combine to erode confidence in the system. Backlogs in many jurisdictions that stretch back years mean that people wait in limbo for legal issues to be resolved.

Fixing backlogs requires a substantial amount of hands-on work. The more efficiently courts can resolve backlogs, the quicker they can process cases, and the more people can pass through the system. The implementation of efficient evidence review tools is proven to deliver reductions in the numbers of hearings required for cases and in the amount of time it takes to prepare for cases.

For example, a scheme in the Crown Courts in England and Wales saw a decrease of close to 50% in the number of hearings required to resolve a guilty plea. Prosecutors in England using evidence review tools report that they spend 80% less time preparing cases, meaning they can get through more of them, further reducing backlogs and ensuring that justice is no longer delayed — or denied. Lawyers are less able to waste court time by requesting continuations or extensions, too.

Lord Justice Fulford Vice-President of the Court of Appeal (Criminal Division), England and Wales states: "Thomson Reuters Case Center has completely transformed the ways in which I work. It has undoubtedly made me considerably more efficient, and it has meant that I have been able to deal with more cases than I would have done previously. It is a practical, easy-to-use tool, which gives you everything you had before and a very considerable number of additional benefits."

Excuses that parties have not received all evidence no longer work since a digital audit trail can show who has had access when to a particular piece of evidence. Confidence in courts rests on the assumption that the courts are doing the bare minimum that citizens expect, such as delivering timely justice. Good evidence management makes this more achievable.

Democratizing access to justice

Linked to the area of public confidence in courts, and just as pressing for court administrators, is the problem of equitable access to services. It's no longer feasible to go back to a world in which every hearing happens in the courtroom. Instead, we are seeing a fast-developing world of hybrid and remote hearings.

Modern evidence review tools can make it easier for juries, witnesses, and parties to attend both virtual and physical hearings and participate in cases on a level playing field. Surveys suggest that virtual trials are popular with professional and occasional court users. The benefits in terms of accessibility are clear: people who do not have to travel are more likely to appear.

Of course, there are crucial factors to consider, not least in the criminal courts, where there is an emerging body of evidence that remote criminal appearances disproportionately disadvantage the defendant. And such research should be considered seriously.

However, there is also plenty of evidence that remote hearings benefit most parties and specific evidence that disadvantaged groups can benefit disproportionately. One county in Arizona recorded a drop in "failure to appear" rates from 40% down to 14%. Source: Defendant Appearance Rates in Evictions Actions Maricopa County Justice Courts, July 2019-April 2021; Judge Samuel A. Thumma, Arizona Court of Appeals, Division One.

People who could otherwise not afford to travel to court can now access justice remotely. The contentious nature of some cases (for example, domestic violence) may mean that people would not want to be in the same room as the opposing parties — virtual hearings give them the privacy and peace of mind that they do not have to be. And people who only need to appear briefly in a trial can do so without having to take a day off work.

Enabling digital evidence management across hearings brings the digital and physical worlds closer, meaning courts can assure accessibility for all. Self-represented litigants, for example, can upload evidence from a phone or computer to the court's evidence review system in the cloud. From here, evidence can be shared with other attorneys or parties and annotated just like evidence used by professional attorneys. Courts can allow self-represented litigants full access to the system or restrict their use depending on their security policies.

Jury trials continued to proceed virtually in some jurisdictions during the pandemic. But many courts were not able to do so due to the difficulty of sharing and presenting evidence while physically distanced. Evidence review tools can digitize the entire evidence lifecycle — from submission

continued

through to post-hearing reconciliation — meaning that it becomes an integral part of virtual hearings. Witnesses can take part virtually too, as they are also able to access evidence through the cloud.

What's next?

Administrators will be familiar with some of the cumbersome and paper-heavy processes that remain in place to this day, leaving court users wondering why they cannot just do it all online.

There's an opportunity now for courts to solidify the gains they have made over the past two years. But anyone who has implemented a new IT system in a court (such as e-filing, document sharing, or case management systems) knows that smooth rollouts are not guaranteed and driving adoption among the court's diverse user groups can be a challenge.

In this context, evidence review tools delivered through the cloud in a software-as-a-service (SaaS) model can be seen as an enhancement to — rather than a replacement for — existing IT systems. SaaS-based solutions are quick to implement, run on web browsers, and store all evidence securely in the cloud.

Cloud-based solutions such as this can typically be adopted in weeks or months, rather than the years required for traditional IT investments. Courts are also freed up from making infrastructure choices and large capital investments and can benefit from increased protection against increasingly aggressive security threats, particularly from malware and ransomware.

By deploying evidence review tools— even on a small scale — courts will notice immediate, tangible benefits that will help them run both physical and virtual hearings. Benefits include helping trials run more smoothly with the integration of multi-media evidence and improving case flow through courts. In addition, improving virtual hearing capabilities can make court services more accessible to a wide range of users, and help increase public confidence in courts.

*Non-public NACM Membership Survey

How Courtrooms Are Evolving For The Future

By Elizabeth Vanneste

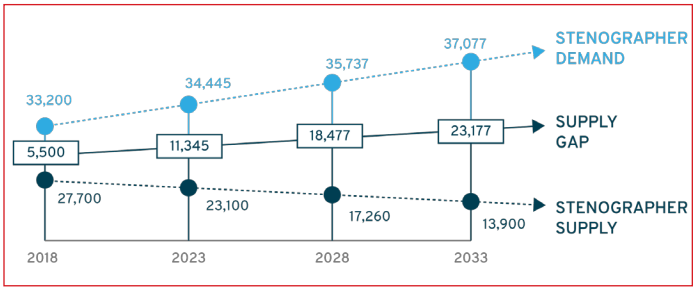
Elizabeth Vanneste is an Executive Vice President of Product and Strategy for VIQ Solutions, a global provider of secure, AI-driven, digital voice and video capture technology and transcription services. She has 30 years of leadership in telecommunications marketing, sales, product management and professional services. Ms. Vanneste received her BBA from the University of Notre Dame and an MS degree from the University of Tampa. Located in Tampa, Florida, Ms. Vanneste can be reached at evanneste@viqsolutions.com.

In her article, the author explores how technology solutions for recording, transcribing, and management of evidence are currently helping courts globally. It will highlight how solutions are integrated to streamline workflow and take advantage of remote resources in the United States and Australia to help with the current stenographer shortage and associated backlog. Her article will also highlight how real-time transcription helps accessibility of information in high profile cases in Australia and will soon be available in the US and UK.

Justice is delayed in courts across the globe after two tumultuous years of closures and staffing shortages. Now that courtrooms are open, courts are expanding their technological footprint and redesigning how hearings are held to better prepare for future challenges. The digital transformation in courts will create a more accessible system that improves transparency to facilitate the legal process.

Justice delayed is justice denied

The decreasing supply of in-house stenographers and court reporters along with the increasing number of cases is not new, but the pandemic exacerbated the issue. From the United States to Australia, many courts are under pressure to get ahead of backlog. Trusted court reporter agencies are also challenged with their schedules booked out for months. Now that the worst of the pandemic seems to be behind us, courts are focused on investing in the infrastructure needed to have an adaptable end-to-end solution for recording, storing, transcribing, collaborating, and distributing digital content with as little human involvement as possible.



According to 2013-2014 Court Reporting Industry Outlook Report by the Drucker Report

In the United States, the shortage was researched and documented by the National Court Reporters Association.[1] According to the 2013-2014 report, fewer than 1 in 10 students who enter stenography school become court reporters. With the shortage at about 9,000 in the U.S. this year, that means 90,000 stenography students would need to enroll to produce 9,000 court reporters. The latest numbers indicate that the total enrollment nationally is lower than 2,500[2]. This does not include stenographers who are retiring, which the Speech to Text Institute estimates is happening at

1 https://projectsteno.org/wp-content/uploads/2018/08/Ducker-report.pdf
2 https://www.law360.com/articles/1457442/a-dire-court-reporter-shortage-depends-on-who-you-ask

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a rate of 1,120 each year. The number of new stenographers added each year is about 200, resulting in a loss of 920 per year. Due to this, many courts have one court reporter covering multiple jurisdictions remotely to alleviate travel time and minimize scheduling issues.

While courts in larger metropolitan districts had the resources to adjust quickly, many others resort to creative means to avoid an increased backlog or have to find a different solution now that emergency rules are expiring. In the United States, the severity of issues faced and the ability to address them vary. VIQ Solutions recently spoke with a Court Administrator in Texas about the backlog of hearings. He shared that they lost their only court reporter who had covered four different courts in the district and have not been able to find a replacement. In Pennsylvania, a Court Administrator implemented remote technology to avoid a backlog of case hearings during COVID but is now struggling to find court reporters to fill demands with only one court reporter currently supporting four courthouses and eight judges.

This issue is not limited to the United States. Court stenographer contracts have been phased out in the United Kingdom and court reporting agencies and clerks are struggling to keep up with demand[3]. In Australia, talent shortages are impacting all industries. According to a recent survey of 1,200 full-time and part-time Australian employees, over 6 in 10 workers in Government (62%) desire change, which will likely influence court services this year[4].

While there is no quick fix to the talent shortage, innovative technology and updated workflows can create opportunities for court professionals to increase their productivity.

Connecting the courtroom of the future

Courts are addressing this issue by implementing integrated technology to streamline workflows, enhance productivity and improve accessibility of information. While each jurisdiction has unique needs, incorporating technology to assist in the court workflow is generating results.

Here is how it works:

1. Securely capture, manage, and store multi-channel audio and video content from multiple locations, utilizing court recording software.
2. A court monitor consolidates captured content with necessary notes and annotations, stored in a secure server (cloud or on premise) until needed.
3. When transcripts are requested, technology solutions provide more options to meet demand:

a. Court transcriptionists can utilize a transcription platform to create the final transcript using the AI-generated text, audio recording, and annotations.

b. Connected courts can utilize resources from different districts to assist and balance the workload.

c. Courts can outsource the transcript creation to a transcription services company to later be verified by a certified court reporter or notary if required.

4. Segments of the proceedings can be prepared in a near real-time draft transcript for review and sharing within minutes.

This end-to-end workflow with flexible recording options and expedited access to draft transcripts has been a gamechanger for courts by helping users make multimedia content verifiable, searchable, editable, and shareable.

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Real-Time and Same-Day Transcription

As courts work to expedite cases, the importance of real-time and same-day verbatim transcripts has become increasingly important, and digital audio and video recording plays a significant role.

Transforming audio to text makes it a "live" asset that allows keywords to be searched and evidence to be shared more quickly than listening to a whole recording to find something specific. A draft of the proceedings enables the parties to be more focused in their review and questioning, improving the efficiency of a trial. With the power of artificial intelligence, an accurate transcript can be available on the court professional's desk or PC same day, regardless of whether they were remote or in the courtroom.

In Australian courtrooms, real-time transcription is available for the court and legal professionals during the hearing on their laptop or tablet. Combining a network of highly skilled stenographers and a cloud-based collaboration platform, a real-time solution ensures access to the most accurate, up-to-date record immediately if needed. For example, in a recent highly publicized case, the expedited decision was made possible because the transcript was built progressively throughout proceedings, with a less than a three-second delay for text to be available. The dynamic transcript was able to be shared in real time with legal counsel on both sides, either in court or in remote locations. With the aid of advanced technologies, despite the proceedings being complex and involving multiple speakers across a variety of mediums both physically and virtually present, the urgent weekend proceedings concluded efficiently.

There are a host of tools at the disposal of the modern courtroom. High-quality digital recording, cloud-sharing for better collaboration, automated drafts, and real-time transcription improve court professionals' productivity and drive more expeditious proceedings. The revolution has only begun, but by providing courts with the technology they need, staff can become more productive with fewer skilled court reporters.

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If you or anyone you know has a job vacancy in the area of court administration that you feel would be of interest to IACA's members, you can now submit the vacancy notice for publishing in the new Job Search area on IACA's website. This will enable vacancy announcements to receive wide circulation in hopes of attracting interested candidates.

Information on requirements for posting vacancies can be found at:
https://iaca.memberclicks.net/jobs-bulletin-board

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