The Court Administrator

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"THE COURT ADMINISTRATOR"

Dear Members and Friends of IACA,

Sheryl Loesch, IACA President

As IACA's new President, I want to tell you what a privilege and honor it is to serve IACA. Having recently returned from IACA's 14th conference in Nur-Sultan, Kazakhstan, I am still feeling the excitement and energy from that conference. For those of you who attended, you know what I mean! For those of you unable to attend, you missed a wonderful conference. The Supreme Court of Kakakhstan and Madiyar Balkan, IACA's own Regional Vice President of Central Asia/India, were outstanding hosts. Luis Maria Palma, assisted by Markus Zimmer, put together an outstanding education program that included subject experts from around the world. IACA attendees had the pleasure of being invited to the i-Justice Forum on the day following IACA's conference. IACA attendees joined with attendees from the International Association of Judges which culminated in around 800 attendees meeting together at the Congress Center in Nur-Sultan to hear from judges and court administrators on many topics relevant to our respective court systems. Although countries have different laws and procedures, we learn that we have many things in common and we can learn from each other.

I would like to announce some changes in IACA's executive board membership. Luis Maria Palma is IACA's new President-Elect. Rolanda Van Wyk joined IACA's board as the new Regional Vice President for Africa and Flavia Podestá has joined IACA'a board as the new Vice President for South & Latin America. We have two new Co-Managing Editors of The Journal, Dr. Tim Bunjavec and Ms. Gar Yein Ng, who will be assuming this role occupied for many years by Philip Langbroek. Philip and Markus Zimmer are the original creators and inspiration behind The Journal and its success is attributed to them. Kim Osment has joined the IACA board as IACA's Secretary/Communications Officer. IACA's executive board comprises a highly energetic group of volunteers who dedicate much of their time to furthering the mission of IACA.

I want to congratulate Ralph DeLoach, Eileen Levine, Dr. Susan Moxley, and Kersti Fjørstad, on yet another fine edition of The Court Administrator! I cannot believe this excellent resource is starting its third year of publication. The efforts and dedication of these three individuals is much appreciated. I know you will enjoy reading the fine articles in this edition.

As always, thank you for your support of IACA!

Sheryl

EDITOR'S MESSAGE

Ralph L. DeLoach
Clerk/Court Administrator
Kansas District Court (retired)

This is the 6th edition of The Court Administrator. It is hard to believe we have come this far. When Sheryl Loesch asked me to become the executive editor, I thought it would be a temporary position. I thought that I might assume the responsibilities of the executive editor of The Court Administrator for a year or two at the most before someone would take the helm on a more permanent basis. Suddenly, we are in our 3rd year and about to publish our 6th edition. That accomplishment is due in large part to the editorial board, as well as all of our esteemed contributors. I would like to recognize Eileen Levine in particular for her excellent work in putting this publication together. Also, we just added a new board member, Kersti Fjørstad of Norway. In addition to adding some international presence to our editorial board, Kersti will take the lead in encouraging the membership and other court administration professionals to submit articles for our publication. Sheryl, our new President, will hopefully continue to consult and advise our publication.

The editorial board extends our congratulations to Sheryl Loesch on becoming the new President of IACA. We all wish her luck. We have no doubt that she will do a great job. We would also like to congratulate Luis Maria Palma on becoming President-Elect.

I would like to take advantage of the opportunity provided by The Editor's Message to emphasize the importance of membership to the viability of our organization. I challenge the membership to recruit a new member before the end of the year. If each of us would recruit one new member, we would double our membership overnight. You might even want to gift a membership to a new court administrator. As I have previously indicated, some of the benefits of IACA membership include attending international conferences and presentations provided by very knowledgeable and accomplished individuals regarding court administration best practices and procedures. For me, the less obvious but more important benefit of attending an international IACA conference is the opportunity to meet and get to know folks from other cultures. Participants are exposed to alternative judicial organizational structures and many participants develop professional relationships with newfound colleagues that sometimes last well after the conference has ended. Invariably, the host city rolls out the red carpet introducing everyone to the best their city and country have to offer. This happens because the conferences are generally planned and organized by well-respected local judges and court administrators. Another benefit is having an excuse to visit great cities of the world, such as Istanbul, Turkey, Lubjana, Slovenia, Jakarta, Indonesia, Verona, Italy and Iguazu Falls, Brazil. I have always found the cities and the people who live in those cities to be extraordinary. Visiting the cities and getting to know the people and their cultures, even for a few precious days reminds us once again that we are much more alike than we are different. If you are lucky enough to attend a conference, please take the opportunity to get to know, if only briefly, the city you are in, the people and their culture. You will be much richer as a human being and much more effective as court administrator.

ESTABLISHING A CULTURE OF RESPECTFUL INTERACTION IN THE COURTROOM

Our perception of one another is determined by what we do, and what we don't do

By Kersti Fjørstad, Norwegian Courts Administration

Kersti Fjørstad has served as Deputy Director General for the Norwegian Courts Administration, Service Development Department from 2002 until the present time. Mrs. Fjørstad has worked extensively in the field of Service Development promoting trust, due process protection and rule of law. The 2017 European Crystal Scales of Justice prize, organised by the Council of Europe, was awarded to this Administration for innovative judicial practices on the field of Witness Service in Norwegian Courts.

Mrs. Kersti Fjørstad has also been closely involved with the Norwegian courts through the project Service & Interaction. Mrs. Fjørstad has obtained a good understanding of the everyday life of the courts through surveys, in-depth interviews, talks and her own observations during court hearings, as the system of criminal justice is best comprehended and understood in the courtrooms where it comes to life.

In her article, Mrs. Fjørstad focuses on attitudes and conduct and how to create an arena for a good atmosphere during court hearings. Mrs. Fjørstad shares with our readers some practical pointers in how to establish a culture of respectful interaction in the courtrooms, all in the interest of ensuring trust and confidence in the judicial process!

Mrs. Fjørstad reminds us how it is important for appropriate and proper conduct by the judges as the court room is also a workplace for the prosecutors and lawyers. It is crucial to maintain a good tone between the participants.

Since the courtrooms also are filled with clear and obvious symbols (the gown of the judges, the Arms of the State on the wall behind the judges, the elevated position of the judges etc.) Mrs. Fjørstad shows examples of how symbolism gives the judge some leeway to be informal and pleasant without anyone interpreting this as a sign of weakness or lack of control.

Mrs. Fjørstad currently serves as a member on the European IACA Board. From 2011-2013, she served as Vice President of the European IACA Board.

The Court Administrator Editorial Board is pleased to welcome Mrs. Fjørstad as our newest member!

A frequent contributor to "The Court Administrator", Mrs. Fjørstad may be reached at kersti.fjorstad@domstol.no

THE PROCEDURE USED FOR GATHERING INFORMATION

The procedure used for gathering information is inspired by various design research models, through surveys, in-depth interviews, talks and observations during court hearings. The design research process may be illustrated in different ways, including as shown in Figure 1. In this figure, it is divided into different levels: explicit knowledge (what people say/think), observable knowledge (what people do/use) and latent knowledge (what people know/feel etc.).

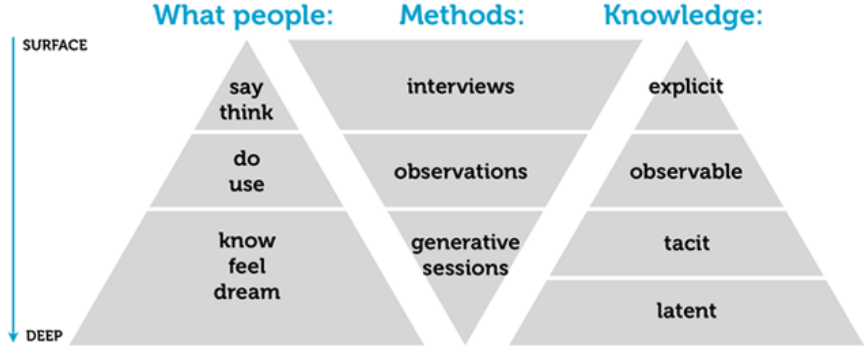

Figure 1. Illustration of Design Research. Grow Design.

continued

THE SYSTEM OF CRIMINAL JUSTICE COMES TO LIFE IN THE COURTROOMS

The stakes are often very high in court cases. Thus, the parties and witnesses are vulnerable and extremely sensitive to what takes place during court hearings. Many therefore feel that it is important for them personally to be listened to when they speak in court. This places special demands on the court hearing setting and especially the person who will be presiding over the court hearing. Thus, a key topic on the agenda of all Service & Interaction seminars is attitudes and conduct during court hearings. It is usually the sum total of the many big and little things that create the final, lasting impression. It is therefore important to be aware of what we should do and what we should not do. The system of criminal justice is best comprehended and understood in the courtrooms where it comes to life.

PRACTICAL POINTERS

Establishing a good atmosphere

There will always be a bit of tension between keeping things formal (rituals, formalities, dignity) and relaxing somewhat and being more genial. Authority is not to be exercised just simply for the sake of authority. The function of authority, whether necessitated by law or by the circumstances of the case at hand, is to ensure the best possible illumination of the case, in a manner that safeguards all parties in the courtroom. The courtroom is filled with clear and obvious symbols: the gown of the judges, the Arms of the State on the wall behind the judges, the elevated position of the judges, the fact that everyone must rise when the judges enter the room, nobody is allowed to speak unless allowed by the judge, nobody sits down until the judge says, "please be seated". However, this very symbolism also gives the judge some leeway to be informal and pleasant without anyone interpreting this as a sign of weakness or lack of control. Thus, the symbols give a judge the opportunity to be more pleasant than perhaps would be possible without the physical emphasis on authority (e.g. in the form of the gown). Very little is required to further emphasise the authority.

Showing respect

The court is also a workplace for the prosecutors and lawyers, and it is important to maintain a good tone between the participants. But it is not always easy to view one's own conduct realistically.

The conduct of the judges does not take place in a vacuum but occurs in interaction with the other participants. Since the mid-2000's, there are several examples of an increasingly clear and strong focus on the soft values of service, respect, openness, etc. in the courts in Norway. A conceptual and value base was prepared by the Norwegian courts in 2006, and the Service & Interaction concept was developed based on this. In 2007, the Supervisory Committee for Judges stated the following in a decision concerning an outburst from a judge, cf. case 67/07: Conduct during a court hearing. Criticism.

"Based on an overall assessment, the Supervisory Committee found that the conduct of the judge had been in breach of proper conduct of judges. Reference was made to the fact that the modern role of judge is not primarily focused on demanding respect or ensuring that you are respected, but about showing respect for the people served by the court."

Acting in a polite and natural manner

The first and maybe lasting impression is created during the first few seconds and minutes. Acting in a polite and natural manner, looking at the people and saying "please be seated" inspire trust and confidence. It is also important for a judge to remember to show that he or she is listening to the defendant and witnesses, and to deliberately establish eye contact from the very beginning. In this manner, the judge shows that he or she is treating the defendant and witnesses in a respectful manner. To have a positive attitude and initiate a confidence-inspiring contact with all parties from the very beginning and to quickly get the case under way is always a positive and proactive sign. A judge who disappears behind the PC monitor, spends a long time logging on and perhaps also complains about technical issues does not create a positive impression.

Experience indicates that the defendants watch the judges closely. There is reason to believe that the defendants have a stronger focus on everything the judges do – whether it is being busy with other matters,

continued

whether they have eye contact with them, etc. – than any of the other participants in a courtroom. The body language becomes obvious in a formal setting such as a courtroom. This applies not only to facial expressions, but also to the extent of eye contact with the person talking, how interested one appears to be, how one is seated, etc. Being patient is also important, e.g. avoiding unnecessary challenges concerning the right to an interpreter.

Avoiding potentially alienating elements

For most people involved in a court case, this will be the first and only time they will go through this. It is part of the responsibility of the judges to ensure that the court case will not result in a feeling of alienation. The presiding judge is charged with the task of conducting the hearing in accordance with established rules, and everybody is obliged to comply with the instructions of the presiding judge; when to rise, how the indictment is to be read, the language and terminology to be used, who is to say what and when, etc. All of this may in itself contribute to a feeling of alienation. There may be situations where a defendant should be allowed to remain seated when he or she states the personal data; a very uncertain and afraid witness who enters the room and sits down in the chair, need not be told to rise again, as this may prove intimidating. In certain instances, it may even be justifiable for a witness or a defendant to be allowed to keep their headgear on while making their statement. Another potentially alienating element is the judicial terminology. Terms such as 'impartiality' and 'giving an affirmation' is probably not understood by everyone. Instead of 'giving an affirmation' etc., one may simply promise to speak the truth.

A court case will never become an ordinary experience, as it is a very extraordinary situation. People are the midst of very fateful circumstances:

"One forgets how insistent the counsel of the opposing party or a defence counsel can be, how solemn the occasion is, that there is an audience in the courtroom, how close they are to the defendant or the opposing party, how easily one becomes uncertain and mess up the explanation, and how difficult it is to remember things in specific detail."

Summary of statements obtained in interviews of witnesses with previous court experience who recounted their previous experiences. Witness Survey 2018.

Ensuring trust and confidence in the judicial process

Trust and confidence in the legal process is created when the parties feel that their contact with the court is characterised by dignity, respect and a good tone. Serving a society based on the rule of law is a privilege. We should also keep in mind that this is a privilege that we must safeguard with the utmost humility and be very aware of what we do – and do not do – by always keeping in mind the importance of establishing a culture of respectful interaction in the courtroom. All in the interest of ensuring trust and confidence in the judicial process!

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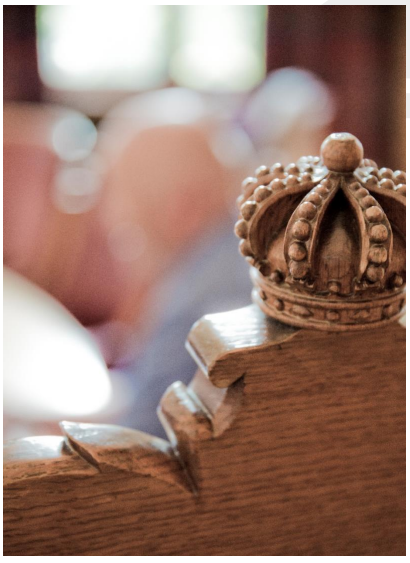

SERVICE & INTERACTION IN NORWEGIAN COURTS OF JUSTICE • CHECKLISTS




HOW	WHY
Ensure that a correct and appropriate notice of the court hearing has been sent to all parties with correct information about the hearing, unless they were all given the notice at the planning meeting. Let the judges look through the notice before it is dispatched, if applicable.	Creates realistic expectations.
Follow up with correct information at the courthouse.	Makes it easier for people to find their way and to start on time.
Arrive and start on time – also after recesses. Allow realistic times for recesses. Give notice of any delays.	Sets the standard of discipline for the rest of the court hearing and any subsequent hearings.
Spend sufficient time explaining the legal aspects to lay assessors prior to the case. New lay assessors should be shown the information video.	Makes it simpler for the lay assessors to familiarise themselves with the case more quickly and to understand the issues.
Check that all physical aids are in place (use a checklist for preparation of the courtroom or put an addendum on the case documents, if applicable).	Allows you to focus directly on the participants in the case.
Consider what you will allow in the way of drinks in the courtroom.	Normally, only water is offered – the same for everyone. This makes it simpler to clear up afterwards.
Establish eye contact with everyone present. Greet everyone equally pleasantly and politely.	Gives all those present a feeling of having been seen.
Go through all the necessary formalities and give information about how the court hearing will be conducted. The judge should present himself/herself to the other participants and persons present.	Gives all parties a feeling of predictability and security that they will be allowed to speak. Calms down witnesses.
Distribute eye contact and attention equally on all parties.	Gives everyone a feeling that the judge is completely neutral and impartial.
Use the same form of address to all the persons present.	Attends to all formalities.
Adapt the form to the seriousness of the case. Speak to, and not about, the parties.	Gives everyone the feeling that the judge is neutral and impartial. Remember that it is easier to create an atmosphere in the courtroom than to remove it.
Introduce the participants in the courtroom to each new witness, explain what is about to happen – take into account that many will be nervous.	Gives the person concerned a feeling that the court hearing is being performed in a correct and just manner.
If you have to write while a witness is giving evidence, lift your eyes as often as possible and establish eye contact with the witness.	Shows that you respect the person in question and that you are listening actively.

HOW	WHY
If someone talks a great deal about irrelevant things, ask clarifying questions along the way to lead the witness back to relevant topics.	Brings the case back in line, quickly and effectively.
Ask the witness to further explain anything that is unclear.	Brings the case back in line, quickly and effectively.
Stop any inappropriate behaviour.	Demonstrates respect for the court and the parties.
When the witness has finished, ask whether he/she has said everything they wish to say.	Demonstrates respect and creates confidence in the neutrality and thoroughness of the court.
When the hearing is over, explain what will happen from now on, and when the judgment/order will be ready.	Creates predictability and realistic expectations.
Take your farewells of the participants just as pleasantly and politely as you bid them welcome, regardless of how they have conducted themselves during the case.	Gives everyone the feeling that the judge is completely neutral and impartial.
Act professionally, also towards parties or participants that you know. Avoid "pats on the shoulder" and familiar comments.	Body language is powerful. It doesn't take much to leave an impression that one party is in a more favourable position when a judgment or order is to be pronounced.
Offer coffee when deliberating with the lay assessors.	Demonstrates that you appreciate the participation and presence of the lay assessors.

• • Difficult court hearings

HOW	WHY
Go through what you think will be the most difficult aspects of the hearing well before-hand. Discuss this preferably with a colleague who is well acquainted with the legal aspects of the case.	This makes you better prepared to tackle demanding situations and makes it easier to keep calm under stress.
Keep cool and act highly formally, even if you are personally provoked.	Retains your neutrality and authority as the presiding judge.
Argue and reason all decisions highly formally, even if it is tempting to be polemical.	Retains your neutrality and authority as the presiding judge.

• • Possibility for court-administered mediation?

HOW	WHY
Keep considering under way whether the potential for agreement exists.	May lead to a good solution more quickly.
Exploit actively and summarise points that may contribute to agreement, but do not hold back on points on which the parties disagree.	May lead more quickly to a result that both parties are satisfied with.

• • Cases attracting media attention

HOW	WHY
Ensure that the courtroom is sufficiently large. It may be appropriate to transfer the case to another courtroom.	If is important to ensure openness around the exercise of power by the courts. This means that the media must be admitted. If no space has been planned for the media, it may be disruptive for the court hearing or for the judge prior to the hearing.
It may be worth organising a meeting with the media prior to the hearing, for example by means of a press release/e-mail to the editors about the progress of the case and what is permitted.	This should reduce the fuss surrounding the actual hearing – and is good service to the media.
The main rule is that only professionals may film court hearings. Consult the media handbook for judges for more information on how requests from the media should be handled.	In criminal cases no audio or visual recordings may be made unless the court decides otherwise. Very special circumstances must exist if permission is to be granted for audio or visual recordings to be made of witnesses or indicted persons.
Notification of pronouncement of judgments (the parties shall be notified one hour before the media) and rapid distribution of the judgment.	This should reduce the fuss surrounding the actual hearing and makes for good service to the media.

Developing Bankruptcy Ecosystems: A Holistic Approach to Technical Assistance

By Adam Al-Sarraf, Attorney Advisor-International, and
Arezo Yazd, Attorney Advisor-International, Commercial Law Development Program (CLDP)[1]

Adam Al-Sarraf is an Attorney Advisor with the Commercial Law Development (CLDP) of the U.S. Department of Commerce Office of the General Counsel. Mr. Al-Sarraf works primarily on the North Africa, the Gulf and the Dominican Republic portfolios. For the Middle East and North Africa, Mr. Al-Sarraf focuses on capacity building and technical assistance in the areas of bankruptcy, public procurement and contract enforcement. For the Dominican Republic, Mr. Al-Sarraf conducts programs on transparency and small business development in public procurement. Mr. Al-Sarraf received his Juris Doctor degree from the George Washington University Law School, where he focused on international commercial law and government procurement. Mr. Al-Sarraf is a member of the District of Columbia bar and is fluent in Arabic and Spanish.

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Arezo Yazd, J.D., UC Berkeley School of Law 2009 is currently an International Attorney-Advisor with the Commercial Law Development., Office of the General Counsel, U.S. Department of Commerce. Ms. Yazd is assigned primarily to work on legal reform and economic development issues with countries in Southern and Eastern Europe and the Middle East. Prior to joining CLDP, Ms. Yazd was in private practice with a focus on International Real Estate and Structured Finance in New York City at Paul Hastings LLP and Weil Gotshal LLP, respectively. Ms. Yazd was also a Fellow at Human Rights Watch from 2009-2010. In 2008, Ms. Yazd clerked in the United States Senate Judiciary Committee, Subcommittee for the Constitution. Ms. Yazd has published on several news outlets, including CNN, Al Jazeera America and The Huffington Post on international law and foreign policy issues.

Located in Washington, D.C. Ms. Yazd may be reached at ayazd@doc.gov

Abstract:

Working with U.S. Federal Bankruptcy judges, international institutions and bankruptcy practitioners, the Commercial Law Development Program (CLDP) has been assisting countries in the Middle East and North Africa (MENA) for the last five years in a holistic effort to support the efforts of these countries. The MENA region has witnessed a wave of reform of its insolvency regimes as countries seek to attract foreign investment and reduce unemployment, especially in the aftermath of the Arab Spring. Countries throughout the region have changed their

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1 The views expressed in this article are those of the authors and do not necessarily represent the views of, and should not be attributed, the U.S. Department of Commerce or the Commercial Law Development Program.

laws and judicial frameworks to provide new alternatives to failing businesses other than liquidation.[2] Working with US Federal Bankruptcy judges, international institutions and bankruptcy practitioners, the Commercial Law Development Program (CLDP) has been assisting countries in the Middle East and North Africa (MENA) for the last five years in a holistic effort to support the efforts of these countries. CLDP's engagements have been characterized by the incorporation of international best practices, the specialization of judicial training and the strengthening of bankruptcy institutions, and the inclusion of civil society and private sector stakeholders.

Key words: justice sector, bankruptcy, court administration, Saudi Arabia, Bahrain, Morocco, civil society, private sector

Introduction

Between 2016 and 2018, at least five countries in the MENA region passed new bankruptcy statutes, including the UAE, Saudi Arabia, Morocco, Tunisia and Bahrain. According to the World Bank, prior to the passage of these laws, the legal frameworks of these countries deterred debtors from declaring bankruptcy due to their overly punitive provisions and lack of restructuring provisions in most countries.[3] In response to government requests for technical assistance, CLDP launched a multi-phase bankruptcy program[4], which started with a regional bankruptcy workshop in Dubai to "develop a comprehensive insolvency regime," for officials, judges and lawyers from the UAE, Bahrain, Yemen, Saudi Arabia and Morocco.[5] Reform efforts aligned with several countries recent policy reforms, such as Saudi Arabia's Vision 2030, in an effort to modernize commercial and economic legislation to diversify local economies and promote small-medium size enterprise growth.

The goal of the workshop was to showcase international best practices, including US and European models, in the modernization of the region's bankruptcy statutes while also emphasizing the importance of judicial capacity building and institutional development to ensure the effective implementation of the new bankruptcy statutes. Since the 2014 workshop, CLDP has been providing technical assistance, primarily to Saudi Arabia, Bahrain and Morocco, to not only finalize their legislation but also to support their capacity building efforts to create successful bankruptcy ecosystems.

Legislative Technical Assistance

In terms of the legislative reforms, CLDP's technical assistance has varied depending on the needs and specific weaknesses of each country's legal frameworks. However, the main pillar of the assistance was the strengthening of the restructuring and rescue provisions being proposed by each country. While Saudi Arabia essentially lacked entirely a formal judicial restructuring provision, Bahrain and Morocco had ineffective restructuring or punitive provisions that deterred both debtors and creditors from utilizing the statutory mechanisms.[6] For example, in all three countries, debtors were prevented from filing for bankruptcy protection

continued

2 Al-Sarraf, A, "The Wave of Insolvency Reform Across the MENA Region: Analyzing Saudi Arabia's New Bankruptcy Law", Lexis Nexis 2018 Second Quarter #02.

3 World Bank, Survey on Insolvency Systems in the Middle East and North Africa (World Bank, 2009) at 16, available at www.oecd.org/daf/ca/corporategovernanceprinciples/44375185.pdf. The survey, which analyzed insolvency systems in 13 MENA countries and was completed in 2009, found that insolvency systems in the region were among the least developed in the world. At the time of the report, the found that creditors recover under 30 cents on the dollar on defaulted debts compared with nearly 70 cents in OECD countries.

4 CLDP had incorporated insolvency principles in its commercial law programming throughout the Gulf region since as early as 2010 under CLDP Senior Counsel, James Filpi.

5 Regional workshop in Dubai on Insolvency Reform, Organized by former CLDP Attorney Advisor, Hamada Zahawi and International Program Specialist, Sana Akili. http://cldp.doc.gov/programs/cldp-in-action/details/1364

6 The wave of insolvency reform across the region: Analyzing the new bankruptcy laws in Morocco and Bahrain* Adam Al-Sarraf, Attorney Advisor – International, Commercial Law Development Program, US Department of Commerce, INSOL Technical Paper Series No. 43.

if they were not already in default. Also, debtors were prevented from accessing financing during a bankruptcy process, which is often critical to giving a company the best chance of survival during a reorganization process. In Morocco, creditors were not allowed to vote on debtors' restructuring plans and in Bahrain, debtors were blacklisted from conducting business in the country after declaring bankruptcy and liquidating their businesses without evidence of fraud or criminal convictions.[7] Moreover, all three countries' statutes lacked consolidated provisions on the enforcement of cross-border bankruptcy decisions and judgments, which is addressed by the UNCITRAL Model Law on Cross-Border Insolvency.[8]

Between 2015 and 2018, CLDP organized bilateral and regional events with US and international bankruptcy experts to provide Saudi, Bahraini and Moroccan stakeholders with legislative solutions to strengthen their draft statutes[9]. CLDP engagements focused on the importance of expanding debtor eligibility to include non-insolvent debtors, instituting an automatic stay, allowing for debtor financing, protecting creditor rights and guarantying their inclusion in restructuring procedures, clarifying the prioritization of creditors and incorporating cross-border provisions. The US bankruptcy code featured prominently in these engagements given its reputation globally as the gold standard for restructuring regimes, however CLDP also included experts and guidelines from the UK, Singapore and UNCITRAL, including frequent references to the UNCITRAL Legislative Guide on Insolvency.[10]

While several of these best practices have yet to be adopted, significant improvements were made to each country's legislation that will contribute to better chances of restructuring and rescue by debtors and in the case of a sale or liquidation, higher recovery rates by creditors, which will lead to more investor confidence in each of these countries. For example, Morocco's World Bank ranking for "resolving insolvency," increased by more than 60 places and its score jumped by more than 50%.[11] Also, Saudi Arabia and Bahrain are seeing an increase in bankruptcy filings since their statutes have come into force, including cases for which courts have granted[12] the opening of reorganization procedures.[13]

Judicial Capacity Building

CLDP's approach to bankruptcy reform in the region has focused on judicial participation and capacity building to supplement and build on its legislative reform efforts. Even prior to the enactment of the region's new statutes, CLDP's technical assistance events included judges as part of the audience of stakeholders. The reason for this approach was to introduce new concepts to judges as early as possible and to solicit their feedback given their critical roles and experience with resolving conflicts with debtors and creditors. Prior to the enactment of the Saudi and Bahraini statutes, CLDP organized several bilateral and regional workshops for judges on the role of courts in administering reorganization procedures. These workshops were led by US Federal Bankruptcy judges and practitioners and co-organized with the judicial training institutes in both Saudi Arabia and Bahrain. The workshops emphasized the critical role that a court plays on the first day of a bankruptcy filing to address

continued

7 Ibid.

8 https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

9 CLDP initially began technical assistance on insolvency reform in Bahrain and the UAE as early as 2013 with consultative workshops, while reforms in region were initially slow to change, in 2017 the UAE moved to reform its insolvency law to conform to UNCITRAL standards, taking into account CLDP consultations to include reorganization provisions.

10 https://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf

11 Saudi Arabia and Bahrain's reforms were not accounted for in the last Doing Business report, however a significant improvement is also expected in their rankings for the next report.

12 https://www.reuters.com/article/us-saudi-debt-ahab/saudi-court-accepts-ahabs-bankruptcy-filing-rejects-liquidation-sources-idUSKCN1SS1ZW

13 Under the Saudi and Bahraini statutes, courts must decide if the filings meet certain criteria to be eligible for a protective settlement or reorganization procedure. Unlike in the US system, these procedures cannot begin without the approval of a court.

urgent issues facing the debtor. Transparency, efficiency and predictably were the core principles that were discussed as crucial to the effectiveness of any court-supervised bankruptcy procedure. Neither Saudi Arabia nor Bahrain had specialized courts for bankruptcy cases, however both countries have made an effort to specialize their judges for bankruptcy cases through training and the channeling of cases to their dockets.

In 2018, CLDP organized an extensive week of meetings and workshops in New York for a high-level delegation of Saudi judges and Ministry of Justice officials. The US Bankruptcy Court for the Southern District of New York (SDNY) hosted the delegation for technical sessions on how to supervise reorganization proceedings including the opportunity to observe a hearing on a valuation dispute in a major US restructuring case. Later that year, once the statutes in Saudi Arabia, Morocco and Bahrain were passed, CLDP conducted a regional conference in Morocco that was led by US Federal Bankruptcy judges and international experts from UNCITRAL. The workshop faculty also included accounting experts who provided an overview of valuation and complex financial concepts that are critical to complex reorganization cases. In April 2019, CLDP facilitated the participation of Bahraini and Saudi judges in the INSOL judicial colloquium, which was the first time in these countries' history that their judges had been included in the 42-country colloquium. In May 2019, CLDP partnered with the newly created Saudi Bankruptcy Commission[14] to support the Kingdom's first ever country-wide conference, which included over 800 participants, on the implementation of the new Saudi bankruptcy statute and regulations. The conference[15] was ground breaking not only in its size but also in its inclusion of both lawyers and judges. Historically, judges and lawyers have not participated extensively in joint events and this conference was a major step in building the lines of communication and feedback between judges and users of the legal system.

Court Administration

A main component of CLDP's capacity building programming over the last three years has been the focus on court administration. CLDP's judicial counterparts, particularly in Saudi Arabia and Bahrain, have been eager to improve the bankruptcy litigation process as part of their broader efforts to streamline commercial litigation procedures. For example, both Bahrain and Saudi Arabia have launched new electronic filing systems[16] and Bahrain has created a case management office and a new specialized commercial court over the last two years. Bahrain is also in the process of hiring and training case managers for the new system Saudi Arabia is also in the process of creating a specialized procedural code for commercial cases that will help to streamline the litigation process.

To support and complement these efforts, CLDP has included technical sessions in its bilateral and regional workshops on effective court administration practices. Relying on Chief Judges from US Bankruptcy Courts and Clerks of Court, these sessions have covered court planning and policies, use of law clerks, management of court resources, case management, use of technology and communication with stakeholders. These issues are typically managed by the Ministries of Justice or the Chief Judge in the context of Saudi Arabia and Bahrain and judges often lack the resources needed to effectively administer cases. CLDP trainings addressed these challenges in Bahrain for case managers and judges by focusing trainings on practical solutions such as various electronic platforms that would efficiently allow for case managers to quality control documents submitted to the court prior to being reviewed by a judge and calendar proceedings for the court.[17] In the

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14 http://cldp.doc.gov/programs/saudi-arabia-cldp-partners-saudi-bankruptcy-commission-first-bankruptcy-conference

15 http://scori.sa/en/

16 https://Services.bahrain.bh and https://www.moj.gov.sa/ar/eServices/Pages/Details.aspx?itemId=11

17 Benefits to online platforms for calendaring such as Chambers Automation Program (CHAP) and document quality assurance such as Assisted Quality Assurance Program (AQUA) were reviewed with participants in the context of bankruptcy proceedings in the Middle District of Florida during trainings held in 2018.

bankruptcy context, court administration is particularly critical given the need to respond to urgent motions and to resolve disputes quickly to ensure that assets are not lost or that critical contracts are upheld. Also, outreach to the legal and business communities by the justice sector is often very limited, which prevents the justice sector from effectively addressing the bottlenecks in the litigation process. As part of its workshops held on court administration, CLDP often invites private sector attorneys and business community members to speak to judicial participants about challenges faced during proceedings to help narrow the gap in this dialogue.

US Trustee

A key aspect of CLDP's capacity building programming has been the inclusion of the US Trustee Program (USTP), which is an office within the US Department of Justice.[18] The USTP is an invaluable resource for Courts, which often do not have the resources to police the parties, supervise the trustees and review disclosures to the extent necessary for the many cases that are filed .The USTP is tasked with ensuring that bankruptcy proceedings are efficiently and economically resolved, and has the authority to monitor proceedings for fraud and refer matters for criminal prosecution. Additionally, USTP also appoints and supervises private trustees for liquidation proceedings and has the ability to appoint and convene creditors' committees for reorganization cases. The USTP plays an important oversight role that enables it to both monitor and convene with bankruptcy stakeholders.

Over the last two years, CLDP has relied on current and former officials from the USTP to lead sessions in Morocco, Saudi Arabia and Bahrain on how to effectively support the bankruptcy process. Saudi Arabia recently created a Bankruptcy Commission, which has similar but broader responsibilities than the USTP, and invited the USTP to train its members and members of the private sector on regulating trustee conduct and supporting the courts during the bankruptcy process. In Bahrain and Morocco, the role of the USTP will primarily be played by the courts and the public prosecutor's office. For example, Morocco has enhanced the role of its Public Prosecutor's office in its new bankruptcy statute to allow it to require disclosures CLDP has conducted programming with both of those entities on how to create specialized personnel that can effectively respond to the needs of bankruptcy cases. In CLDP trainings in Bahrain and Saudi Arabia, current officials form the USTP discussed with private sector trustee candidates the importance of economic integrity and prevention of fraud in bankruptcy proceedings under Bahrain's new insolvency regime.

Private Sector/Civil Society

The inclusion of civil society and the private sector have been critical elements of CLDP's support to the region. For example, prior to the enactment of the Bahraini statute, CLDP organized roundtables with business and civil society leaders to solicit feedback on their priorities for bankruptcy reform. Between 2015-2019, CLDP held several roundtables and consultations on the importance of modern insolvency regime to members of the Bahrain parliament, the Bahrain Chamber of Commerce and Industry, and several smaller roundtables and meetings with small business owners, including the Bahrain Businesswomen Society. Impetus behind these efforts were motivated by ensuring that legislation adopted took account the needs of local SMEs, as well as spreading awareness of how a new insolvency law could benefit both debtors and creditors. Efforts to continue public awareness about the law, as well as work with Bahrain civil society, judges and government officials are still underway. A key compromise to passing the Bahrain statute came from the demands of Bahrain's small and medium sized companies, who demanded that the new insolvency law include provisions that would allow for streamlined procedures and assistance with fees for small businesses

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18 C. White, Professional Fees, Corporate Governance, Predictability and Transparency in Chapter 11, AMERICAN BANKRUPTCY INSTITUTE JOURNAL at 3, available at www.justice.gov/ust/file/849381/download.

during bankruptcy proceedings.[19] The provisions to benefit small and medium size businesses was ultimately included in the final statute of the Bahrain insolvency law, while it is too early to analyze case law on these provisions, CLDP plans to monitor whether these provisions of the law will impact or lower barriers for small businesses.

Conclusion

Over the last twenty years over 100 countries have embarked on insolvency reform efforts to attract foreign investment and develop their economies. However, the success of these reforms has depended on how effectively these new laws are implemented. Given the complexity of bankruptcy and the number of stakeholders involved, the creation of statutory reorganization provisions is not enough to ensuring that debtors and creditors find practical and sustainable solutions to their financial difficulties. Debtors, creditors and the citizenry must have confidence and trust in a transparent, predictable and efficient process that is accessible to those in need. CLDP's multi-phase programming over the last five years has attempted a holistic approach not only to incorporate legislative solutions but also to develop the capacities of the institutions that will ultimately implement these solutions.

19 Article 190 of the Bahrain insolvency law allows for businesses with financial assets that amount to less than 10,000 Bahrain dinar to qualify for streamlined procedures at the court's discretion, Article 191 gives the Bahrain government authority to financially assist such small businesses with costs and fees associated with bankruptcy proceedings.

Is It Time For Courts To Expand Their Technology Horizons?

By David Jackson

Mr. Jackson currently serves as Senior Vice President Business Development for "CaseLines" a global company offering comprehensive Digital Evidence Management Solutions for courts, government and private entities around the world. He previously led the digitisation project for England's 78 criminal court houses. Mr. Jackson's article focuses on the technology questions and issues that face courts today: Technology systems presently used by courts were built in the late 90s and early 00s. Are these systems still fit for purpose? The cloud revolution has generated a shift & enabled new ways of working- courts need to support the efforts of law firms & prosecutors to digitize legal services.

Located in Washington, D.C., Mr. Jackson may be reached at david.jackson@netmastersolutions.com.

Today, the best framework for describing how court technologists think about their role and scope is captured by the Court Component Model (CCM). Established in 2017, the CCM from America's National Center for State Courts (https://www.ncsc.org) offers court technologists a valuable framework for planning the functional requirements of their court's IT.

According to the NCSC website, "Most courts have a traditional Case Management System (CMS) purchased and implemented as a monolithic system provided by a single vendor. An application component model (ACM) is an alternative to that current monolithic system. Under an ACM, all automation functions (components) are separately available in the market and courts can pick and choose which components they want to assemble for their Case Management systems and complementary applications, even components from multiple vendors."

While there are widely recognized benefits of the CCM we should also recognize that any framework risks trapping our thinking within its boundaries. Consequently, we are not often encouraged to think "outside the box". Our experience working with courts around the world leads us to believe that the time has come for courts technologists to evolve the CCM, to open our eyes to functions that world class leaders are delivering in their courts and use that insight to explore opportunities to improve our courts and justice systems.

Across the broader legal services market, both law firms and prosecutors continue to invest heavily in increasingly sophisticated IT, from eDiscovery to artificial intelligence. Sadly, when it comes to courts the interface is broken – it is still very rare for any legal system, especially those used by private law firms, to communicate seamlessly with a court system.

At the same time, the cloud revolution has resulted in a global paradigm shift within the IT industry. Yet many of the court systems used today were built in the late 90s and early 00s. Based on client server technology these systems are now incompatible with current court demands and the cloud. There are six major changes underway:

1. The concept of a court is rapidly evolving. Once inseparably identified with an imposing physical presence, courts now deal with online and virtual hearings and increasingly act as a vehicle for online dispute resolution. Tomorrow's courts may be more of a concept than a thing.
2. Home and remote working – today's judges are just as keen on remote working as the rest of us, especially on circuit. Many judges have worked

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in private practice and are familiar with modern office tools and are frustrated at the slow pace of technological innovation in this area.

3. End-to-end thinking – a succession of justice issues around the world have emphasized the need for joined-up communications from law enforcement, through prosecutors, courts and on to corrections and probation. Yet today's systems are fragmented and mostly connect left to right, that is to an input and an output system, when the real need is for common platforms sharing data end to end.
4. Multimedia evidence is beginning to dominate – and many courts may be unprepared. Predictable in 2017, the tsunami of digital evidence is now a reality. Courts are demanding access to evidence from body-worn-cameras (BWC), CCTV, mobile phone and social media platforms. The courts need the tools to cope with these demands.
5. Freedom of Information and access to records – Public access is a recognized component of the CCM. Courts need specialized software that simplifies redaction of court records. The systems need to be user friendly. There is a strong need for tools that helps to automate this process and delivers the result seamlessly, without hours spent scanning and sorting documents.
6. Cloud applications and storage – today we live our digital lives in the cloud, on social media and email. Many courts have not made this step. The United Kingdom manages its entire criminal justice system in the cloud.

Does it really matter if the CCM is out of date?

Yes, it is a mounting concern for technologists across the legal services industry for two key reasons. Firstly, the framework limits our thinking about what is possible, especially when it comes to procurement: If an RFI asks about how suppliers deliver against the CCM, then that is what the suppliers will respond against. Secondly, the framework reduces our attentiveness to world class innovations in other areas. In England, judges hearing juvenile dependency cases can read and review applications from home the evening before a hearing. In other cases, police can load interview evidence to the evidence file, hyperlinked to other documents in the file, share the whole file with prosecutor and defense and play video evidence in court. All of this can be managed from a single application. Updating the CCM is a mounting priority for justice in the 21st century.

The CCM needs to evolve to a modern model.

A model that reflects current technologies and builds upon the world class and practical experiences of courts in other countries. This evolved model introduces two new concepts and four new functional components. Firstly, let's consider the concepts:

- Cloud applications and storage – every single element of the CCM components should be delivered in

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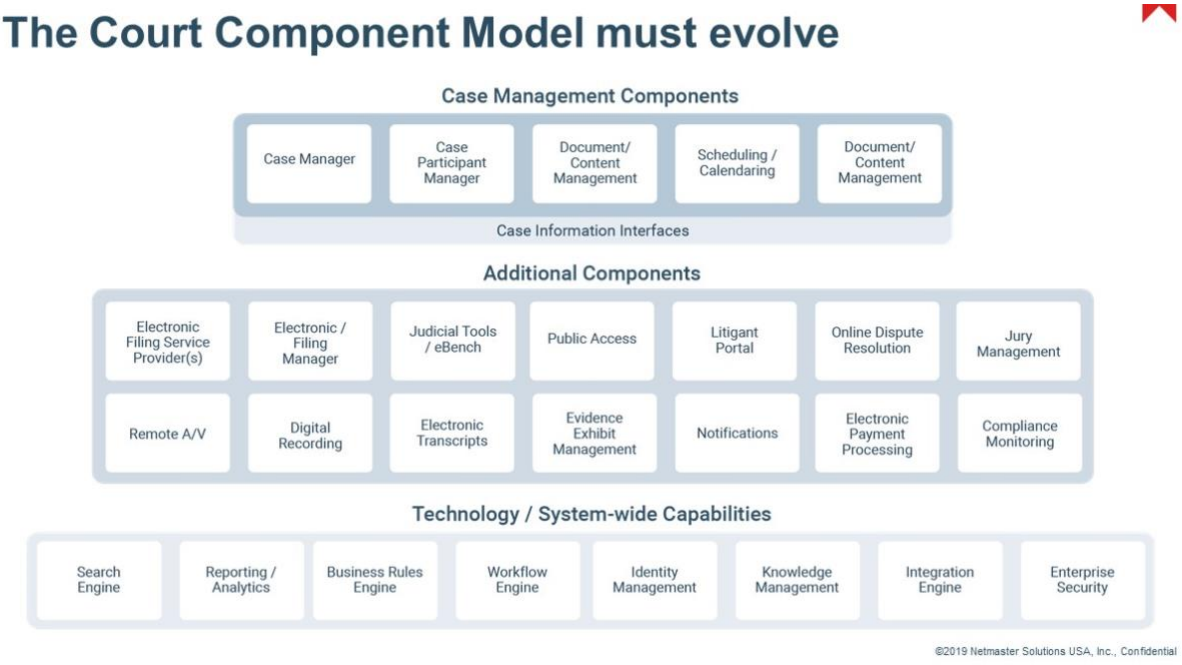

the cloud. Courts are often suspicious of the cloud with many citing security concerns. The truth is quite the opposite. In today's world of persistent threat, courts can no longer afford the level of security that is delivered as standard by the leading cloud vendors. At the same time, cloud application providers can innovate at a blistering pace. CIOs take advantage of this and avoid expensive, risky and protracted capital projects. How about making your court completely digital in 12 weeks?

- Collaboration – The CCM is a stand-alone view of court technology, yet the justice system only works when it is properly integrated. Existing products connect inputs and outputs, but few systems deliver an end-to-end user experience irrespective of the underlying network domains. Without a common pathway, courts are faced with an endless integration agenda with barriers to evidence sharing at every step. Can today's Court Administrators imagine a system that builds on a common evidence data store, accessible by authorized parties and systems whenever and wherever the data is needed?

Next let's look at the new functional components:

1. Evidence review – the CCM has an 'evidence exhibit management' component, but currently, this serves to help courts track physical and media evidence for storage purposes. Judges and lawyers need tools to help them review vast amounts of documentary and media evidence, to be able to search the documents, to insert comments and to be able to share their notes. They require tools that work in and out of the courtroom, allowing thorough review and preparation.
2. Courtroom presentation – in the past few years, evidence presentation solutions have changed quite a bit. Solutions are now available that require no specialist setup or courtroom support – lawyers walk into court with their own iPad or laptop. Presenter modes allow lawyers to present automatically to judges, witnesses and other lawyers. Documents, media and recordings can all be presented from the evidence file. Courts in British Columbia today hear cases with tens of thousands of pages of evidence, with lawyers using nothing more than an iPad or tablet in court.
3. Multimedia – multimedia evidence from BWC, CCTV, first responder recordings and social media is becoming the new norm. Yet some courts may still depend on thumb drives and DVDs, adding to the burden of their evidence and record systems. Many technologically advanced courts work with police and prosecutors, with police officers logging in remotely to an evidence system from the courtroom, but, of course, this all depends on the tools the police have adopted. Now that tools exist that allow courts to pull in multimedia from

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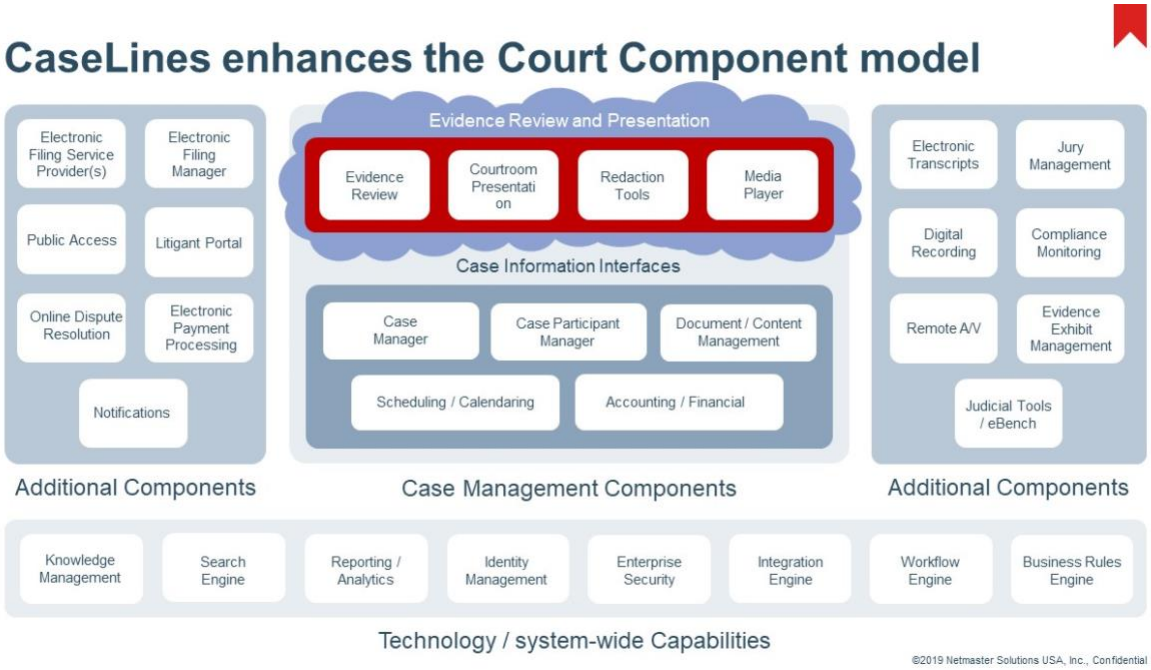

multiple sources to a single application, it may be the right time for courts to be considering this as a separate application component.

4. Publication and redaction – courts are primarily responsible for making the court record public, usually relying on labor-intensive redaction of scanned copies. The process may be slow and costly for courts. Now that the best evidence review tools deliver integrated redaction capabilities targeting specific groups and the ability to store publication-ready copies of the court file, this is another area for courts to consider. This all this amounts to a new layer for the Court Component Model – bringing Evidence Review and Courtroom Presentation into the model, evolving the CCM to the target that has been achieved in many court systems today.

The courts are oftentimes the leaders in technology thinking. Every participant in the litigation process, civil or criminal, gains from fresh thinking by the courts. We need to understand better these new capabilities, to explore what is on offer from technology and to analyze the cost benefit. By shifting our mental model away from a court-centered on-premise model of IT delivery we can gain a huge pool of collaboration efficiencies. By optimizing via cloud solutions, we can introduce change without major capital projects, tap into a fast-flowing stream of innovation, and often deliver operating savings in months, not years. One English county recently published its outcomes from moving to digital Evidence Delivery for the thousand or so juvenile dependency cases it handles each year – the result was the recovery of its investment in just six months.

The digital evidence revolution is already benefiting the courts of Canada and England. When we examine the new Digital Evidence Delivery layer, it is clear that:

- All courts, large and small, can use the cloud to deliver benefits at scale for rapid innovation.
- Collaboration improves efficiency and lowers costs.
- New evidence delivery functions make life easier for judges and clerks.

Northern District of Illinois Celebrates 200th Anniversary of Federal Courts in Illinois

by Julie Hodek, Public Information Officer, Northern District of Illinois & Thomas G. Bruton,Clerk of Court, Northern District of Illinois

Thomas G. Bruton, is Vice-President of International Associations on the IACA Advisory Council. In this position, Tom serves as a member of the Executive Board and has the primary responsibility for identifying, connecting with and maintaining relationships with other associations and bodies connected, directly or indirectly, with justice and courts.

Mr. Bruton was part of the team that organized and coordinated the 200th Anniversary celebrations, including the creation of the Public Broadcasting System (PBS) video and the Court's soon to be released book, 'Court Rules.'

"A Court at the Heart of America," is a special one-hour documentary film that highlights the stories, cases, and issues that have shaped 200 years of justice in the federal courts in Illinois.

Mr. Bruton may be reached at associations@iaca.ws

On March 1, 2019, the United States District Court for the Northern District of Illinois launched its yearlong celebration of the 200th Anniversary of federal courts in Illinois with a day of festivities and special events. Bicentennial banners adorned light posts along Dearborn Street in Chicago's Loop as the day kicked off in the public lobby of the Dirksen U.S. Courthouse. The Everett M. Dirksen U.S. Courthouse in downtown Chicago, Illinois, is named for Everett McKinley Dirksen, who served Illinois as a U.S. Representative from 1933-1949 and as a United States Senator from 1951-1969.

The U.S. District for the Northern District of Illinois is the third largest district court in the U.S. The Northern District of Illinois stretches across 18 counties, covering an area of nearly 10,100 square miles, with a population of 9.3 million people.

Then Chief Judge Rubén Castillo and U.S. District Judge Rebecca R. Pallmeyer, the current chief Judge of the Northern District of Illinois, offered celebratory remarks to members of the bench, courthouse employees, attorneys, local media, and the public from inside the courthouse. District Judge Ronald Guzman unveiled an oil painting he painted of the courthouse and donated it to the court, in honor of its 200th anniversary, for display outside the court's new history museum.

The evening program at the Harold Washington Library Center, included a performance by the Chicago Children's Choir, remarks by then Chief Judge Rubén Castillo, an award to U.S. Senator Dick Durbin for his steadfast support of the federal judiciary, reflections and remunerations by Phil Rogers, Edward R. Murrow Awarding-winning Chicago Journalist, and a preview of a new documentary highlighting the people, places, and cases that have shaped the court, community, and the nation.

Bicentennial events continued throughout the month of March, 2019 as the court hosted a bicentennial panel discussion, "Judicial Firsts: Trailblazers on the Federal Bench." Panelists included then Chief Judge Rubén Castillo, the court's first Hispanic Chief Judge; District Judge Edmond E. Chang, the first Asian-Pacific American Article III federal judge in Illinois; Circuit Judge Ilana Diamond Rovner, the first female judge appointed to the Seventh Circuit Court of Appeals; Judge Susan Pierson Sonderby (Retired), the first woman appointed as a Bankruptcy Judge and as a

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Chief Bankruptcy Judge in the Seventh Circuit; Judge Ann Claire Williams (Retired), first woman judge of color to serve in a district court within the Seventh Circuit and the first judge of color appointed to the Seventh Circuit.

District Judge Thomas M. Durkin discussed Judge Stanley Roszkowski, the first full-time district court judge in the Western Division of the Northern District of Illinois. Attorney Willoughby Anderson discussed some of the first federal judges appointed in Illinois.

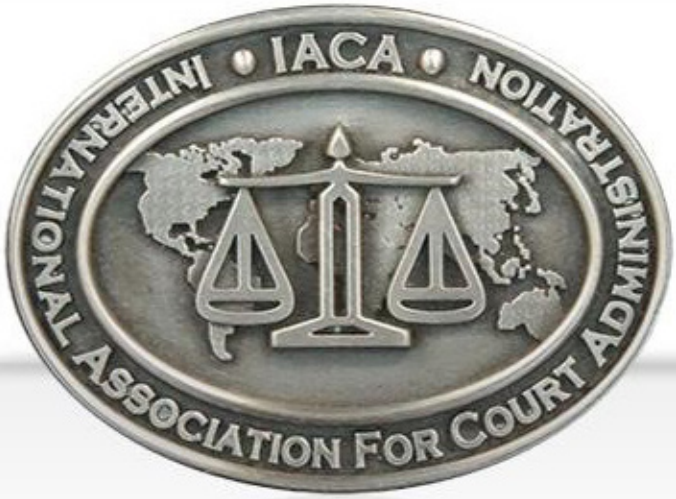
The Illinois federal court is where a young Abraham Lincoln argued that trains and not steamships, were America's future. Chicago, Illinois is where infamous 1920 & 1930's crime boss, Al Capone met his downfall. Alphonse Gabriel "Al" Capone, sometimes known by the nickname "Scarface", was an American gangster and businessman. Many books were written and movies were made about him and his gang members. During the Prohibition era, he was the co-founder and boss of the "Chicago Outfit." Al Capone's reign ended when he was sentenced to prison at age 33 after being convicted in the federal court of tax evasion. "Days of Rage" played out in the Chicago Conspiracy trial, the trial of eight antiwar activists who were charged with the responsibility for the violent demonstrations at the August 1968 Democratic National Convention. Criminal defendant, Abbie Hoffman butted heads with U.S. District Judge Julius Hoffman and defendant Bobby Seale was bound and gagged during the trial. Many trials in the federal court in Illinois have been, historically, high profile events.

The Illinois federal court is where thousands of individuals have taken the oath to become U.S. citizens; where everyday people pursue the ideals enshrined in the U.S. Constitution; and where dramas, big and small, play out every day.

Bicentennial events are scheduled for throughout the year 2019 and will include the "Reflections from the Bench" judicial interview series; a history lecture on the role of the Illinois federal courts in the debates over the scope of federal power in the early nineteenth century, the (Mock) Trial of Al Capone, the Federal Trials Institute for Teachers, and a panel on the impact of federal pro bono representation on the community.

On September 26, 2019, WTTW11 Chicago (a local PBS television station) debuted "A Court at the Heart of America," a special one-hour documentary film that highlights the stories, cases, and issues that have shaped 200 years of justice in the federal courts in Illinois. "A Court at the Heart of America" was produced by CourtMedia based in Wheaton, Illinois, and commissioned by the Northern District of Illinois Court Historical Association. This documentary film explores Illinois federal courts' impact on nation. A two-minute trailer is available at https://vimeo.com/337320676.

A GIFT FOR YOUR SUPPORT



Please show your support for IACA through a $25 (USD) voluntary donation. For each $25 donation, you will receive a solid pewter medallion of IACA's official emblem. The medallion, manufactured in America's cradle of liberty - Massachusetts - is 76.2 mm wide by 63.5 mm high by 15.8 mm thick. It is backed with felt to protect wood and other surfaces. Besides being a beautiful decorative piece to remind you of your commitment to IACA, the medallion also can be used as a paperweight to maintain order among your documents.

A small shipping and handling fee will be charged to cover the expense. For United States shipments, $8 plus $2 for each additional medallion shipping and handling will be charged. For international shipments, $13 plus $3 additional per medallion will be charged. A medallion will be shipped for each $25 increment of your donation. Please enter the number of medallions you would like to total your donation amount.

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