The Court Administrator

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"THE COURT ADMINISTRATOR"

Dear IACA members and friends,

It is a pleasure to introduce this first edition of The Court Administrator for 2019, and to wish you, albeit belatedly, a very happy New Year. This is proving to be a hugely exciting year for IACA, and please allow me to mention a few recent developments which might be of interest.

Mark Beer, IACA President

IACA 2019 in Astana

Following on from the success of our 2018 conference in Brazil, IACA is delighted to be heading to Astana for our 2019 conference, taking place from 16th - 18th September (inclusive). This will be IACA's first conference in Eurasia, and the first to overlap with the International Association of Judges', which is holding its annual conference in Astana at the same time. More details will follow, and please do block your diary and join us in Astana later this year, where courts from around the world will gather to exchange best practices and share knowledge.

IACA Publications

This leads me to the wonderful articles that comprise this edition of the Court Administrator, with thanks to all contributors, and to Ralph Deloach, Eileen Levine and Susan Mosley for their considerable efforts to make this publication a reality.

Topics include court technology; judicial independence; enhancing access to justice; jury trials in Argentina; how good customer service enhances public trust and confidence in courts; and the reform initiatives taking place in Serbia. The diversity of the articles, and the geographies from which they have been sourced, is an indication of the international scope that IACA has to act as a platform to bring Courts together and to exchange ideas.

Please do feel free to send us any articles that you would like to share with Court Administrators around the world, and we will do our best to include them in the Court Administrator, as well as to share them via our LinkedIn platform.

Membership

IACA has simplified its membership structure and fees, with a new 'basic' membership offered at no cost, and an enhanced 'full' membership being offered at only USD50. Please do share this information with all your colleagues involved in Court Administration, who can sign up via IACA's website (www.iaca.ws), and let us continue to grow IACA to become the most valuable, vibrant and respected international court association in the world.

Lastly, may I thank everyone who works so hard for IACA, including everyone on its Executive Committee and Executive Board. Your efforts are greatly appreciated.

Happy reading.
Yours faithfully,
Mark

EDITOR'S MESSAGE

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

In the United States a poll from the University of Pennsylvania's Annenberg Public Policy Center reveals how shockingly little people know about even the most basic elements of our government and the Constitution that formed it.

* More than one in three people (37%) could not name a single right protected by the First Amendment. THE FIRST AMENDMENT.
* Only one in four (26%) can name all three branches of the government. (In 2011, 38% could name all three branches.).....

"Protecting the rights guaranteed by the Constitution presupposes that we know what they are. The fact that many don't is worrisome," said Kathleen Hall Jamieson, director of the Annenberg Public Policy Center (APPC) of the University of Pennsylvania. "These results emphasize the need for high-quality civics education in the schools and for press reporting that underscores the existence of constitutional protections."

There are many more examples. I encourage you to read the study. I wonder if this is a similar problem in the rest of the world.

Most of us who work in the courts promote the importance of the rule of law and it is commonly understood to be the backbone of a successful society. Is informed participation and a basic understanding of our respective constitutions/forms of government important to sustaining the rule of law? If so do the courts have a role in promoting that understanding?

It is hard to believe that this is our 5th edition of The Court Administrator. Thanks to Eileen Levine and Dr. Sue Moxley for their excellent work in editing each edition of The Court Administrator and to Sheryl Loesch for her advice and counsel. Also, and most importantly, I want to thank the IACA membership for being so responsive with an excellent and diverse array of articles. If you have not written an article recently, please consider writing one for our next edition. Those of you who have been thinking about contributing an article now is the time. Our guidelines are very simple. The article should address some aspect of court administration and should be as close to 1500 words as possible. If you have any questions or concerns, please do not hesitate to contact me at courtadministrator@iaca.ws.

The Jury Trial In Argentina
A Necessary Change Of Paradigm

By: Judge Matías Mariano Deane

The Honorable Matías Mariano Deane is currently a Judge of Oral Criminal Court, Judicial Power of the Province of Buenos Aires, Argentina. In this capacity, Judge Matías Mariano Deane carries out oral judgments in a collegiate court, in a unipersonal form and he also presides over jury trials.

His Honor emphasizes to our readers that despite appearing in the National Constitution since its first sanction in 1853, only in recent years the jury trial has begun to be implemented in some jurisdictions in Argentina. This forces us to rethink the functions of the operators of the system of administration of justice, trained in the culture of civil law, and the organization of the courts.

Located in the City of San Justo, Judicial Department of La Matanza, Province of Buenos Aires, Argentina, Judge Matías Mariano Deane may be reached at matias.deane@pjba.gov.ar

At the end of 2013, with the entry into force of law 14,543, Buenos Aires became the second province of the Argentine Republic to comply with the Constitutional mandate to institute jury trials for the resolution of criminal cases, a momentous fact if one takes into account the specific weight that the province of Buenos Aires has, both by its size and number of inhabitants in the architecture of the Nation[1].

In doing so the local legislators were faithful to the historical origins of the jury trial model, adopting what we can call the classic version of it, that is, twelve citizens who based on the evidence received in the trial and with the right instructions given by the professional judge, must decide, without being required any motivation, on the guilt or no guilt of the accused; thus, not foreseeing an appeal by the Prosecutor before the verdict of not guilty, while the defense can only appeal in case that the instructions given by the judge unduly influenced the jury or that the guilty verdict decided by it clearly departed from the evidence rendered.

The incorporation of jury trial is far from being one of the many reforms that have been made to the criminal procedure of the province and we dare to say that, quite the contrary, it constitutes a true paradigm shift in the administration of justice, which necessarily will have an impact in several branches of our activity since, being a traditional institution adopted from the common law system, our legal culture and the cultural and social roots of the country draw on the sources of continental European law, which generates a resulting tension that system operators will have to know how to solve.

This divergence between the program provided by the Constitution and the way in which local and federal states decided to dictate their regulatory laws in compliance with it is not new, and dates back to the dawn of the birth of Argentina as a sovereign nation. So not only in 1888 was established the Criminal Procedure Code of inquisitive and scriptural nature that ruled the federal judiciary for more than a hundred years but, already in Civil matters, it is known the controversy between

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1 The province of Buenos Aires is the largest of Argentina, with 16,6 million inhabitants that represents almost 40% of the population of the country.

two of the most outstanding relevant Argentine legal thinkers, Juan Bautista Alberdi and Dalmacio Velez Sarsfield: Alberdi, intellectual author of the National Constitution, critiziced Velez Sarsfield, who authored of the Civil Code, arguing that such a code contradicted the liberal republican spirit of the Argentine National Constitution having taken as its main sources the imperial models of Brazil and Napoleonic France.

The former description shows the undoubted relationship that exists between the law as a human creation and the social and cultural roots in which the law is born and develops. It makes sense, then, that in Argentine territory, which was a Spanish colony and received most of its immigration from Italy and Spain itself, the jury trial appeared for the first time as a practice developed by the populations formed by the Welsh settlers in the current Argentine Patagonia, when this vast space was still federal territory and the central power was too far away to make its influence felt.

It is known that beyond the time of the ordeals or "judgments of God" the three great European legal traditions - English, German and French - will handle the renunciation of the supernatural in a different way. In England such belief was substituted by the intervention of the jury and the judge was kept outside the process of enunciating the judicial truth; the facts escaped his work, which focused instead on solving legal issues related to the presentation of the facts, with the parties gaining a prominent role. On the contrary, in France and through it in Spain and its colonies in South America, a different path was followed; the functions of pronouncing the law and enunciating the judicial truth were concentrated exclusively in the hands of the judge, who thus accumulated all the powers, all the functions that distinguished the old process.

Only having in mind this general and historical context will the operators of the "new" system be able to perform according to its principles and rules, avoiding that such a fundamental guarantee is distorted when working with criteria that recognize its origin in a substantially different model. And so as a result, we cannot conceive the trial by juries without in turn deepening the accusatory system, modifying the regime of incorporation into the trial "of proof by its reading" - true inquisitive feature that displaces the centrality of the oral and public debate - incorporate a different dynamic in the hearings held in the previous stage and review the scope of the appeal against the ruling, among others.

At the building infrastructure level, old concepts that in the best of cases were designed for a process that was integrated with the accumulation of papers in "the file", which were materially stored in different offices of judicial agents. Such infrastructure does not have any type of functionality for holding oral hearings, much less with the presence of the jury. Then, as the legal reform was not accompanied by any provision in this regard, jury trials are being addressed through reconditioning existing spaces.

This complex situation forces us then -as around three hundred trials that have been developed up to the present confirm it- to rethink not only our roles but the entire architecture of the Buenos Aires justice administration system. The formers, because prosecutors and defenders should get used to developing properly their "theory of the case", which implies not only a deep knowledge of the uncontroversial facts from which to build it but also to carry out an active attitude tending to obtain the evidence that best suits their interests. For this to happen, both agents need to develop a legal strategy from the very beginning of their interventions, which is complicated because the custom is imposing cases that are "processed" in a bureaucratic manner, generating an unnecessary waste of resources and a modest preparation of the trial. Meanwhile, judges must be and behave as a true impartial third party, equidistant from both contenders, who does not participate in the search for "the truth" but conducts due process ensuring the guarantee of the jury's indemnity.

In case of jury trial definitively rooting in all the national scope, as we expect it to happen, we can venture that it will be essential to modify even the way in which the law is taught in law schools. Accustomed to the readings of the writers that explained the scope and meaning of each and every one of the legal concepts, the method of hard sciences has been applied for years to the study of legal discipline, leaving aside the practical philosophy and the case analysis. Thus, not only will

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procedural law programs have to be revised, but also those of criminal law, as diffuse concepts such as the intensity of the response to an unlawful aggression or the level of representation necessary for the attribution of an action as fraudulent, among others, will be completed from the way in which juries decide to apply the law in each specific case; in fact this is already happening if we remember decisions taken by juries in recent cases of public significance.

Before I finish, I would like to add, as a reflection from my personal experience, a consequence that I had not particularly taken into account when the jury trial law was passed: this law "befriends" society with its judges. Aware that in Argentina the image of the judiciary is not even reasonably good, we have had the satisfaction that citizens appointed as jurors have been able to appreciate and experience how difficult it can sometimes be to decide on the life and fortune of their peers. Juries with whom I had the honor of participating have shown a high level of civic commitment, they adhered to the instructions received, acted with conscience and dedication, arrived at the time they were summoned - and even before - thus contravening a deep-rooted Argentinian "vice". To such an extent was the commitment assumed that more than one juror has regretted when he knew that could not be designated as such in the immediate future, while many times substitutes were interested in the fate of what jury members had decided, even approaching the court to know how the trial had continued.

What else could we ask then those who are interested in the courts as institutions facing the people, where citizen participation in the administration of their conflicts is a reality that makes possible, without violating the rules of due process, that the demand for justice be satisfied, and the notion of respect for the law takes roots. In turn, all this entails a high ethical commitment of the judges.

By judicial ethics I allow myself without going too deep to take that discipline - the teaching is of Dr. Rodolfo Vigo, Argentine professor from the province of Santa Fe who was one of the two co-authors of the "Iberoamerican Code of Judicial Ethics" - who aims to the ideal of judicial excellence, to the search of trying to be the best judge as far as possible. Thus, those who resolve are no longer in the solitude of our offices or in the room of agreements among "colleagues", and instead we must act before the attentive and direct gaze of 18 citizens who neither do know us nor have any kind of commitment to us. This turns necessary that judges, and also parties, leave aside certain vices that should not be such but we know that exist.

Even when the foregoing may seem strange to those who are accustomed to operate within the orality and publicity of jury trial, it is not so for those who have been trained in a written and ritualistic system with a mixed accusatory one of which many times - partly because of the resistance to change that every bureaucratic structure generates, partly due to laziness to leave a "comfort zone" - we are reluctant to give up.

As it can be seen, the challenge that we face is very great; however, although more than 150 years later, the path we started is irreversible, as well as the satisfactions that await us at the end of it.

Maryland Court Self-Help Centers: A Unique Resource that Enhances Access to Justice in Maryland

By: Pamela Harris, State Court Administrator

Pamela Harris currently serves as the Chief Executive Officer of the International Association of Court Administrators (IACA) and she previously served on the IACA Board as Vice President, International Associations.

Ms. Harris was appointed as the Maryland State Court Administrator in 2013. She has served in the Maryland court system since 1989 as the first female court administrator for the Montgomery County Circuit Court and she is the first woman to ever serve in her current role. The Maryland state court administrator provides oversight and strategic planning, direction and monitoring of court administrative activities for all Maryland state courts. The position is responsible for Human Resources, Facilities Administration, Budget and Finance, Procurement and Contracts Administration, Legal Affairs, Family Administration, Office of Problem-Solving Courts, Access to Justice Commission, Program Services Unit and Judicial Information Systems. The state court administrator also serves as the principal policy advisor to the chief judge.

Ms. Harris has completed the Court Executive Development Program of the National Center for State Courts' Institute for Court Management (ICM) and is certified as a fellow. She has experience in teaching national programs on ethics, leadership, differentiated case management, and is certified as ICM faculty for case flow management. She also has worked extensively in the field of differentiated case management and court administration both nationally and internationally.

Ms. Harris has served on the Board of Directors of the National Center for State Courts' Programs Committee and International Committee; the Board of the Maryland International Coordinating Council, Inc., (MICCI); and the Maryland Sister States Program Legal Affairs Committee within the office of the Secretary of State and she was a Past President of the National Association for Court Management (NACM) She has served on the Board of the Russian American Rule of Law Consortium (RAROLC) and worked for more than a decade promoting the Rule of Law and improving the capacity of local Russian legal institutions to implement reform.

For additional information on Ms. Harris, please see the IACA website at: https://www.iaca.ws/pamela-harris.

In her article, Ms. Harris shares with our readers the history, development and goals of the Maryland Courts Self-Help Center, ensuring fair, effective, and efficient access to justice for all. Ms. Harris may be reached at pamela.harris@mdcourts.gov

The Maryland Judiciary has enhanced, modernized, and fine-tuned self-help center service delivery systems in recent years, with the goal of improving accessibility for self-represented litigants. Maryland's self-help program is unique for three notable reasons:

1. Remote services provided via the Maryland Courts Self-Help Center make civil legal advice available at no cost to all Marylanders, regardless of their location or ability to travel to a walk-in center.
2. A collaboration with the Maryland Center for Legal Assistance, LLC, a subsidiary of Maryland Legal Aid, permits attorneys at self-help centers to provide legal advice to litigants seeking help.
3. In 2016, the Judiciary undertook a paid advertising campaign to increase public awareness of self-help services statewide. Since the first transit advertising campaign launched, volume at the Maryland Courts Self-Help Center increased by 94% percent.[1]

The Maryland Judiciary's vibrant network of self-help services is modern, innovative, successful, and meets all the following criteria:

1. Improved the leadership, customer service, access, productivity and communications skills of the organization;
2. Improved the competencies, skills and knowledge of the members of the organization;
3. Created a greater sense of teamwork in the organization;
4. Provided all members of the organization with

1 Comparison: volume of litigants served remotely in May 2016 to May 2018.

continued

a greater understanding and appreciation of the mission of the organization; and

5. Been innovative, creative and utilized the most current technologies.

Each criterion is addressed individually in this application.

Introduction

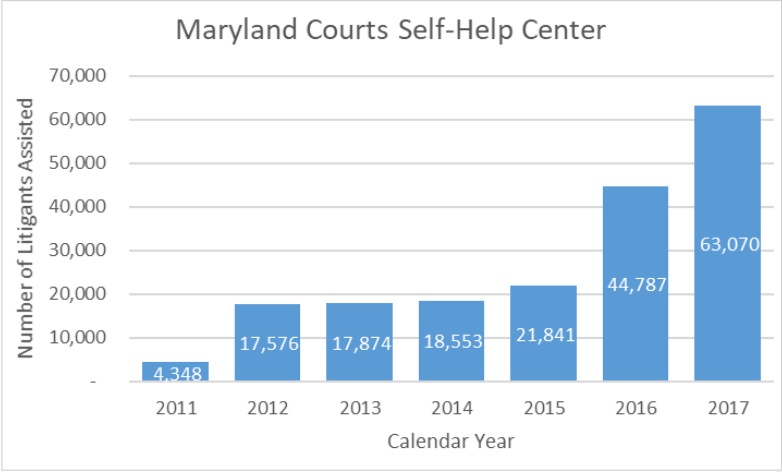
The Maryland Judiciary is committed to ensuring all Marylanders have fair, effective, and efficient access to justice. Maryland ranks fourth among states for access to justice, according to the Justice Index.[2] As the number of litigants without counsel continues to climb, the Maryland Judiciary has responded by launching new programs and services to help meet the unique needs of self-represented litigants.

These programs and services include self-help centers, online videos for the self-represented, online classes, form finders, tip sheets, the Maryland Law Help App, and more.[3] The Judiciary continues to respond and adapt to changing community needs and makes significant investments in new resources for self-represented litigants each year.

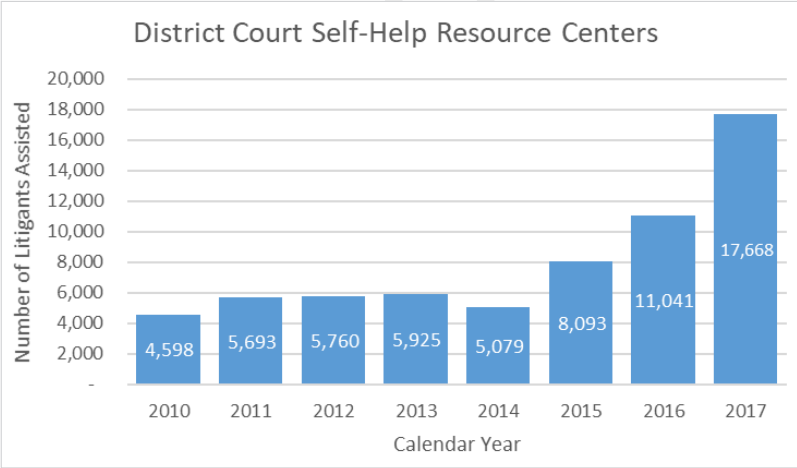
Background and History

In the 1990s, the Judiciary launched the first Family Law Self-Help Centers, which still operate in every Maryland county. The first District Court (limited jurisdiction) Self-Help Resource Center opened in 2009, assisting unrepresented litigants with high volume District Court matters such as landlord and tenant, small claims, debt collection, and domestic violence. In 2011, the Maryland Courts Self-Help Center launched, providing self-help services remotely, via phone, live chat, and email. Help is offered during extended hours, weekdays from 8:30 a.m. until 8:00 p.m. Remote services permit greater access for litigants who are unable to visit a walk-in center. The Judiciary continues to improve existing programs and identify new areas in which to expand access.

Within the past three years, the number of litigants served at Maryland court-based self-help centers has increased significantly.



Demand has also increased at our District Court Self-Help Resource Centers, which provide walk-in information and legal advice in high volume District Court matters.



1. Improved the leadership, customer service, access, productivity and communications skills of the organization

Significant achievements in customer service, access, productivity, and communications have been made in the past three years, all of which enhance access to justice.

- **Outreach and Customer Service.** While Maryland Court Self-Help Centers serve tens of thousands of Marylanders each year, many more individuals are not aware of the services that are available. In 2016, the Maryland Judiciary launched the first public

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2 See Justice Index Findings 2016. https://justiceindex.org/2016-findings/findings/#site-navigation
3 See Resources for Self-Represented Litigants in the Maryland Courts. December 2017. https://mdcourts.gov/sites/default/files/import/accesstojustice/pdfs/fy17srlreport.pdf

transit advertising campaign to target unrepresented litigants in jurisdictions throughout the state.

Figure 1. Bus shelter in Baltimore City with Self-Help Center Advertising.

The Judiciary promotes remote self-help services from the Maryland Courts Self-Help Center by advertising in small, local print and online publications. Campaigns focus on rural jurisdictions where litigants may struggle to access walk-in self-help centers. This campaign reminds the public that they can receive legal help via phone, live chat, and email no matter where they are.

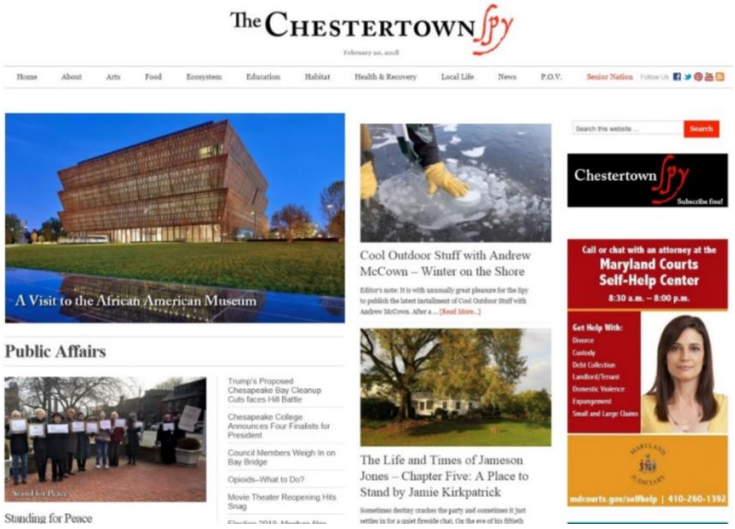

Figure 2. Screenshot of Online Kent County Community Newspaper with Self-Help Center Advertising.

The Judiciary promotes self-help center services and other resources for self-represented litigants by staffing community events and working with state and local organizations, including the Motor Vehicle Administration, Department of Parole and Probation, and nonprofit organizations. These collaborations encourage partners to refer unrepresented litigants with civil legal needs to self-help centers.

The Judiciary encourages local courts, justice partners, and nonprofit organizations to put the chat button on their websites. The chat button links litigants directly with attorneys at the Maryland Courts Self-Help Center.

Figure 3. Maryland Courts Self-Help Center Chat Button

- **Communications.** Many Maryland judges use a referral pad quickly and easily to refer self-represented litigants to programs and services, such as the self-help centers, from the bench. This system makes it easier for litigants to remember what they need when they arrive at a self-help center or other program, and it saves staff time when litigants arrive for assistance.

  Similarly, public law libraries and self-help centers use fillable referral pads for cross referrals. Writing down next steps may help litigants obtain better results when they arrive at a self-help center or law library for advice or assistance.

- **Language Access.** The Maryland Courts Self-Help Center recorded greetings in Spanish to meet the needs of litigants with limited English proficiency. Callers may press 4 to hear messages in Spanish, and attorneys know to connect with an interpreter when they take the call. The Spanish queue addresses approximately 50% of language needs at the Maryland Courts Self-Help Center. Attorneys use telephonic interpretation to serve litigants with language needs other than Spanish.

  All District Court Self-Help Resource Centers were recently equipped with laptops to provide real-time American Sign Language interpretation for

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litigants who are deaf or hard of hearing. Attorneys use telephonic interpretation for litigants who have limited English proficiency.

2. Improved the competencies, skills and knowledge of the members of the organization

The Access to Justice Department and Department of Juvenile and Family Services are planning a statewide conference for self-help center service providers, scheduled for September 2018. The conference will provide an opportunity for providers to learn new substantive topics, best practices, exchange ideas, network, and build a practice community. Staff from the five District Court Self-Help Resource Centers, the Maryland Courts Self-Help Center, and Family Law Self-Help Centers throughout the state, plus public law librarians and court administrators will be invited.

As new court-based self-help centers are established, judges and court personnel all gain insights, competencies, skills, and knowledge about the needs of the self-represented. Self-help center staff conduct outreach and training for court staff on court-based resources for litigants without counsel.

3. Created a greater sense of teamwork in the organization

A high-level statewide workgroup steers planning and expansion of statewide self-help centers and allocates resources for the programs. The workgroup is comprised of the State Court Administrator, Chief Judge of the District Court, staff from the Access to Justice Department, the Department of Juvenile, and Family Services and local court clerks and administrators.

As each new District Court Self-Help Resource Center opens, local court staff become part of a team that is engaged in the planning process, build out, soft launch, and grand opening. There is often significant local media attention, which brings together the community and promotes solidarity among Judiciary staff. Local court staff take pride in their Self-Help Center and provide support to center staff throughout ongoing operations. Self-Help Center attorney supervisors focus on building relationships and establishing connections with local staff to encourage a positive working relationship between offices.

4. Provided all members of the organization with a greater understanding and appreciation of the mission of the organization

Self-Help Centers are a key part of the Maryland Judiciary's growing network of self-help resources. These resources help fulfill the fundamental mission of the Judiciary which is to provide fair, efficient, and effective justice for all. Maryland Court Self-Help Centers demonstrate the Judiciary's ongoing commitment to responding to the legal needs of litigants and achieving meaningful access to justice throughout Maryland.

5. Been innovative, creative and utilized the most current technologies

Remote services at the Maryland Courts Self-Help Center have proven to be an effective, and efficient way to eliminate barriers to accessing civil legal help. This advancement is significant because litigants can now get help at the Maryland Courts Self-Help Center in any civil matter, regardless of case type. The Judiciary is also exploring expanding the scope of help available at Family Law Self-Help Centers to include other civil, non-family case types.

Court staff use data gleaned from the Self-Help Centers continually to improve operations.

- **Reducing Wait Times.** Judiciary staff regularly monitor call center software in use at the Maryland Courts Self-Help Center. This software tracks the number of incoming and answered calls, wait times, call length, number of attorney agents taking calls, peak demand times and more. After review, staff determined that the "break" time between telephone calls was too long and reduced the time. This resulted in a significant decrease in average wait times for litigants, and an increase in the overall number of litigants served.
- **Culling Data Collection.** Non-identifying demographic data has been collected from each litigant using a Self-Help Center for many years. These data are useful for marketing and directing program improvements. It is not advantageous, however, to collect information that will not be used. Recently, we compared existing demographic

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data to newly collected demographic data and determined that it had not changed significantly. This review resulted in a change in data collection procedure. Staff now take a representative sample of demographic data each quarter. This simple change reduced call times by over 1 minute, enabling staff to spend more time assisting litigants and less time collecting data.

- **Webinars**. Noting trends in the substantive and procedural topics with which litigants struggle, staff at the Maryland Courts Self-Help Center began teaching monthly one-hour webinars for unrepresented litigants. Topics include filing for divorce, small claims, collecting on a judgment and rent court for landlords and tenants.
- **Expanded Case Types.** When the District Court Self-Help Resource Centers launched, they provided legal advice and information in high-volume civil, District Court matters. In recent years, demand for assistance with expungement and shielding of criminal records has grown significantly, and the District Court walk-in centers have expanded to meet this need. All of the District Court centers provide walk-in assistance with expungement of criminal records.
- **Pro Bono.** At one of Maryland's highest volume District Court Self-Help Resource Centers, staff has engaged the private bar via a pro bono program called *Justice for Lunch*. This program connects unrepresented litigants seeking help with expungement of criminal records with pro bono lawyers who help draft petitions and provide legal advice. Since it launched in September 2017, demand for services has increased significantly. This program enhances access to justice for litigants, while reducing errors in expungement case filings, which also saves time for court staff.

Our Self-Help Centers have become a central part of the Maryland Judiciary, and they are critically important for achieving our mission to provide fair, efficient, and effective justice for all.

Reform Initiatives In Serbian Judiciary

By: Dimitrije Sujeranovic, Team Leader – Court Reform Expert

Mr. Dimitrije Sujeranovic is currently Team Leader at the EU project in Serbia "Support to the Supreme Court of Cassation". As Team Leader, he oversees the three components of the project: 1) Backlog reduction in Serbian courts, 2) Improvement of Mediation (ADR) in Serbian judiciary and 3) Case Law Harmonization. The project is continuation of EU support to Serbia. The Project works with the Supreme Court of Cassation, Ministry of Justice, High Judicial Council and Judicial Academy.

In his article, Mr. Sujeranovic discusses how the Serbian judiciary successfully resolved over 1 million backlog cases in 2016/2017, with support provided by EU project. Local experts were in charge for this activity and introduction of methodology, which led to the successful resolution of such a big number of old cases. Also, new backlog prevention methodology has been developed and accepted by the judiciary institutions and the courts, so the courts will never again be in position to struggle with that many cases in the future.

Located in Belgrade, Republic of Serbia, Europe, Mr. Sujeranovic may be reached at dimitrije1000@gmail.com (private) or dimitrije.sujeranovic@eu4vks.rs (business)

As of 2001, the Serbian judiciary launched several initiatives and reform processes in order to improve the overall situation in the judiciary, as well as, to provide better service to its citizens. Most of these initiatives were related to normative improvements, overall court efficiency strengthening, access to justice, increased independence of judges, enhanced education for judges and court administrators, transparency of the judiciary and the introduction of Information and Communications Technology. (ICT) The main incentive behind these reform initiatives were the EU requirements for harmonization of Serbian judiciary with EU standards as a part of Serbia's accession to the EU. Therefore, it was no surprise that international organizations, such as: the EU, USAID, Council of Europe, OSCE, World Bank, GIZ and others, supported these initiatives and activities. Most of this support came through judicial reform projects, but in the last few years, the Ministry of Justice of the Republic of Serbia itself launched several projects from the government's own budget in order to co-participate on an equal level in reform process. It was a strong signal to all that judicial reform is embraced internally, and that judicial institutions understand the need for sustainability after donor support concludes.

After several years working with international donor-funded projects in the judiciary and public administration area, a group of local young lawyers and IT experts, decided to establish an organization, which will compete for the projects and continue their previous engagement in the reform process. The main motivation has been sustainability and a desire to help Serbian institutions on their way to EU accession and the acceptance of international standards and best practices. This is how our organization "4 Digits Consulting – judiciary and public administration support" (4DC)

continued

has been established in July 2014. Since 2015, 4DC participated in several projects sponsored by USAID, the EU and the Serbian Ministry of Justice.

The main areas of intervention have been recognized and agreed between Serbian judiciary institutions and international experts. It was crucial to act promptly to move further towards improvement of the Serbian judiciary, as Serbia's progress towards EU standards will be measured by Chapter 23 of the Action Plan. Equally important, activities have been coordinated with all relevant Serbian judicial institutions, including the Supreme Court of Cassation, the High Judicial Council, Ministry of Justice, Judicial Academy, the State Prosecutorial Council and Republic Public Prosecutors Office.

Concrete activities that 4DC have been engaged in include the following: backlog reduction and backlog prevention in Serbian courts, improvement and changes of laws and by-laws, better utilization of case law and case law harmonization among the courts, introduction of a case weighting formula in Serbian basic and higher courts, establishment of solid HR strategy for the judiciary, introduction and full utilization of ICT technology in the Serbian judiciary, improvement of normative aspect and use of mediation, as alternative dispute resolution solution.

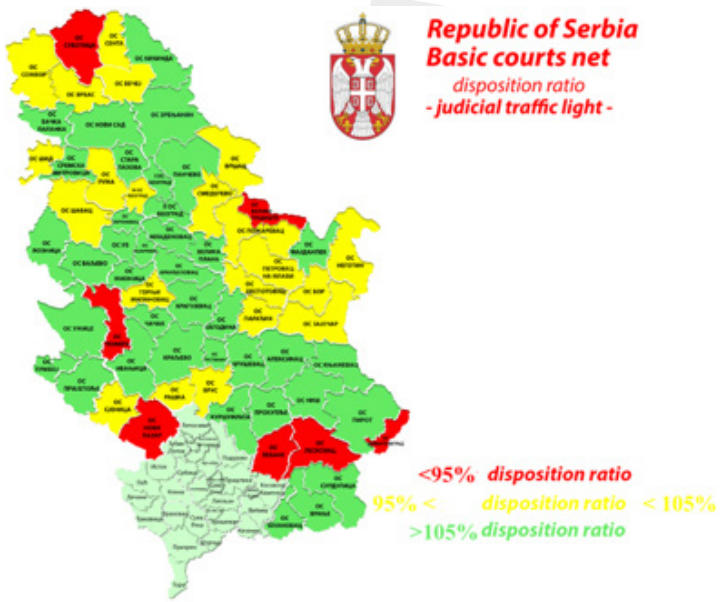
Backlog reduction has been the biggest challenge for Serbian courts before 2016, since most of the courts have been overwhelmed by "old" cases, mainly in enforcement departments (utility bill cases). At the moment when this initiative took place (beginning of 2016), Serbian courts struggled with around 1.8 million backlogged cases, which represented over 70% of all pending cases. Changes in legislation allow the creditors to declare whether they will continue procedures before the courts or before public enforcement agents. In a third situation, where creditors do not declare any of these two options, the courts should dismiss the case, due to creditors' inactivity. In many cases, the courts, which were already understaffed, needed to deal with 1.8 million cases, usually stored in warehouses or hardly accessible courts' archives. The main challenge was how to resolve all the cases in a relatively short period of time, with limited manpower. We decided to use existing ICT in the courts (existing case management systems) and human resources provided by the project, supported by short-term engagement of student interns. Creditors were requested to submit their declarations regarding the cases in electronic form so that collection of data would occur swiftly. Project and court ICT experts utilized these electronic files and compared them with existing case data in the CMS databases. Once the existing databases were consolidated, the students manually went through each and every paper cases file, ordered them by creditor, by year and by case number, and, most importantly, they updated the status of each case. Then, the students and ICT experts, supervised by court staff, compared the data from the paper case files and electronic database. At the end of this phase, an accurate inventory of cases was created. The main results of this phase was the determination of an accurate number of cases (some cases were not registered, some were already resolved, some missed documents, or documents were mixed among the cases).

The next step was the separation of cases to be adjudicated by courts or transferred to public enforcement agents. The first group of cases was harder to process, since among those cases destined for court adjudication, information regarding the assigned judge and current case status needed to be updated. Some of these cases were older than eight years, and it was very likely that a judge in those particular cases was no longer at that court or department, so a new judge needed to be assigned. Once again, ICT tools were utilized to automatically assign judges in each and every case in the case management system based upon random case assignment methodology. ICT tools also enabled migration of cases from initial location, to another court or public enforcement agents, where needed. At this point, the situation became much easier, so the students were able to physically update case information, divide the cases into groups by judge or by public enforcement agent, and deliver

continued

them to the proper address ("case by case" method, for the sake of accuracy). The whole activity included several important moments: precise process planning in coordination with main judicial institutions (the Supreme Court of Cassation, Ministry of Justice, High Judicial Council and the courts), unconditional support of the main judicial institutions (they signed a Memorandum with the role for each institutions in accordance to their competencies, and the project roles, with clear deadlines for each phase), use of ICT to the greatest extent possible providing reliable and accurate tools, and in the end, full commitment of each party. Today, the number of backlogged cases is less than 600,000, and the trend of reduction has been continued.

In order to keep up the momentum, our team of local experts developed a new methodology for **backlog prevention** for all basic and higher courts in Serbia. The Backlog Reduction Working group, established by the Supreme Court of Cassation (already working for five years), accepted the suggestions for improvements. First, the new approach encompasses analysis of previously developed annual plans for backlog reduction in each individual court. Analysis should evaluate previous trends and fulfillment of each individual target, as well as, general judiciary trends in backlog reduction. Secondly, we proposed the use of ICT in order to anticipate how many pending cases will become "backlog cases" (in Serbia, cases older than 2 years are considered "old" backlog cases). This method of anticipation should be implemented by each individual judge, for courts' departments, and finally at the level of the whole court system. The main parameters for backlog reduction/ prevention plans, on individual or court level, are current number of pending cases in correlation with current number of backlog cases. If a particular judge can count ratio between existing pending cases versus backlog cases (existing and future, based on the date of case initiation), and add to that calculation expected inflow of cases (based on previous years' data), he/she can calculate how many cases should be resolved on monthly basis in order to meet the expected monthly norm, but also, how many backlog cases each judge should resolve in order to maintain the trend in backlog reduction. The precondition for implementation of this methodology is proper allocation of judges in each court department so that the disposition ratio can be realistic and achievable at the department level. In order to motivate courts to perform better and to inform the court users and the general public on court performance, we have developed and implemented an interactive map at the Supreme Court web site, internally called "Judicial Traffic Light", which shows the monthly disposition ratio by all basic and higher courts in Serbia.



In conclusion, there are several aspects of success in backlog reduction in Serbian courts. First, there is now proper planning and coordination among judicial institutions and unconditional support for the courts to successfully deal with cases. However, in order to meet those standards and requirements for transparency, the courts need to embrace new methodologies (efficient management, better planning, anticipation and faster responses to problems). Second, utilization of ICT tools, and enhanced and proactive management should become a daily routine in judges' every day work, consistent with circumstances. No doubt, judges will always be judges. But a 21th century judge may need

one more skill to add in order to meet requirements of a fast-growing economy and much more complex relationships among citizens and companies.

The citizens and companies –the court users-- are the main beneficiaries of efficient courts. In civil cases, private affairs are effectively resolved, and assets are back into productive use in the economy and are not stuck in court proceedings. In criminal cases, perpetrators are adequately punished, and the innocent are freed. Equally important, the courts reflect the values of society, both now and for the future.

BEFORE

NOW

Service Development Management In The Courts

By: Kersti Fjørstad

Kersti Fjørstad has served as Deputy Director General for the Norwegian Courts Administration, Service Development Department from 2002. She previously served as Office Manager at the County Municipality Governors Office, and prior to that as Office Manager at the Norwegian University of Science and Technology.

Ms. Fjørstad has studied Public Administration at the Norwegian Business School of Economics in Bergen, and Law at the University in Bergen. She earned her Master's Degree, Master of Arts, in 1990 at the Norwegian University of Science and Technology, in Trondheim.

Kersti Fjørstad served as Vice President of IACA Europe 2011-2013.

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The author's main focus in her article is on developing, interacting, aligning and achieving service results in order to improve the trust and confidence in the court systems. Her belief is that good service development management in the courts is an important contribution to a higher degree of trust and confidence in the third branch of government

POWERFUL TOOL

Service development is an important and powerful tool for all organisations, but creates true value only when managed correctly. This requires a professional attitude towards the service development process.

My assumption is that good service development management in the courts is an important contribution to a higher degree of trust and confidence in the third branch of government. Service development also supports the value base of the courts: Quality, transparency, service, efficiency, respect, integrity, etc.

The concept of service development management involves certain methods, activities and skills needed to optimise and manage service processes. This is due to the highly complex nature of such management. In professional terms, service development and management focus on a complex range of visual and non-visual aspects relating to the service process itself or to processes for development of services.

My experience is that organisations that manage services efficiently perform better than those that do not because they successfully harness and exploit the potential of such service development management. Good services do not happen by chance or simply by investing in services, but emerge as a result of a carefully managed process characterised by: Being visionary, committed to a dream and empowering others.

COMPLEXITY

Many service professionals have differing views on what service development management entails, which highlights the complexity of this field. My focus in this article is on developing, interacting, aligning and achieving service results in order to improve the trust and confidence in the court systems. This also includes service management as an interface between service development and other relevant disciplines.

Service development management is the discipline of managing the development of services. As in all service disciplines, this also involves strategies, budgets, time frames and resource issues in general. The actual circumstances may differ from one organisation to the next, but service development management will still address the same general elements.

IN THE DAILY WORK

It is not possible for any court of justice to achieve only satisfied users. But regardless of the outcome of each individual case, it is our objective to ensure all users feel that they have been treated properly and fairly and that they will continue to trust our courts.

continued

A significant success factor in this regard is that all employees understand the needs of the users and act accordingly. For most staff, it is natural to be positive, helpful and service-minded. But what exactly is it in our daily work that will achieve "that little extra" that makes such a crucial difference? The very thing that makes people feel that they were treated in a good, impartial and just manner? It is usually the totality of the many big and small elements that determines the final, lasting impression. It is therefore important to be aware of what we should do more of and what we should avoid. Some consider services and interaction a matter of course. After all, it is common courtesy to be friendly and behave correctly towards others. But do we really understand how our own conduct affects the people we interact with? And how much effort do we put into maintaining and developing what is assumed to be a given?

EXAMPLE

Norwegian courts of justice are highly esteemed and credible institutions. The courts place great emphasis on performing efficient and high-quality work. An optimum user experience requires uniform and aligned interactions across the board with a satisfactory interaction quality. The service results must also be continually developed to ensure the user experience is up-to-date and to remain competitive. This requires a comprehensive understanding of the challenges, objectives, vocabulary and culture of other disciplines as well.

The tool/concept Service & Interaction was developed in 2007. The tool is based on ownership and adaptation by the management at each individual court. The Service & Interaction tool is available for and used by the courts in Norway. It has been the subject of considerable interest, with excellent feedback from users and high scores. One of the success factors is that each court may tailor the scheme to ensure the best possible adaptation to local conditions taking into account the common national basis. This ensures a uniform and unified scheme. The Norwegian Courts Administration has placed great emphasis on ensuring a sense of ownership by the management of the courts; i.e. the chief local judge at the court, both before, during and following the implementation.

The NCA has a preparatory meeting approx. one month prior to the actual seminar. This meeting lasts two hours. The first hour of the meeting is with the chief local judge to obtain a description of the court ("State of the Realm"). We then meet for half an hour with all employees and present a Service & Interaction "teaser". We also request a guided tour of the court premises to ensure a good understanding of the daily working conditions of the employees as regards building, accessibility, office layout and solutions, etc. Through these preliminary meetings with the courts, we learn more about each court, and the employees of the courts learn a little about the scheme to ensure they will be prepared for it.

Checklists for the various internal and external points of contacts, including meetings, telephone conversations, correspondence, face to face-meetings with users and the public seeking justice, have been developed through the many Service & Interaction seminars we have organised. The checklists are easily available via the courts' Intranet to ensure they may be used in the daily work.

The service development work related to Service & Interaction are characterised by four main elements: 1) Main focus on the users of the courts 2) Development work in cooperation with the court presidents and the courts 3) High rate of participation (both administrative employees and judges) 4) Extremely cost efficient (consecutively over a 10-year period from 2007). The figure below shows a model developed by the NCA based on academic studies. It shows the key components emphasised in a service development measure to create public trust.

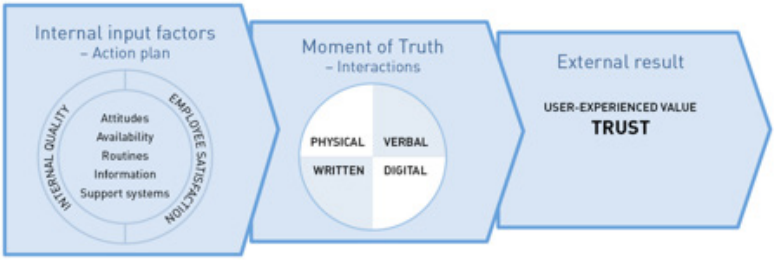

Fig. 1: Illustration showing how the action plan for service development may contribute to good interactions between employees and users. The illustration is inspired by "A model for modern provision of services" from Andreassen, T.W, Lervik-Olsen L. (2015). Service og innovasjon (Service and Innovation). Fagbokforlaget.

continued

TRUST

When the Norwegian Courts Administration was established in 2002, the trust in the courts had been in decline over the course of the 1990s (Olaussen 2005). In 2001, 64% had high confidence in the courts in Norway. From the time of the establishment of the NCA, there has been a considerable increase in the confidence in the courts. In 2017, the share with high confidence in the courts had increased all the way up to 87%. The increase is particularly strong for the group with very high confidence in the courts. In 2001, only 10% had very high confidence in the courts, while as many as 38% had very high confidence in 2017.

The Norwegian population generally has high confidence in public institutions such as the parliament, government and police. However, no other institutions have seen a corresponding increase in the share with very high confidence during this period. This may indicate that the strong increase in trust and confidence in the courts may partly be due to the ongoing work relating to trust and confidence from the time of the establishment of the NCA. The Norwegian Courts Administration won the Crystal Scales of Justice Award from the Council of Europe in 2017 for the Witness Service in Norwegian courts.

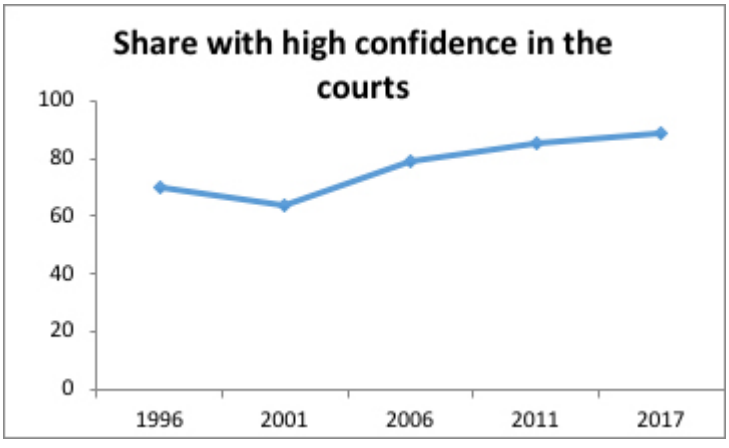

Figure 2: Share with high confidence in the courts in Norway. (From Olaussen (2005, p. 121) and the court magazine "Rett på sak", volume 4/2017, p. 4).

EXTREMELY USER-ORIENTED

Service development is intended as a key element in the trust and confidence work, between the NCA and the courts, as well as vis-à-vis the users of the courts. The development work has generated direct results, especially in terms of the overall service and user focus among all employees of the Norwegian courts. The new strategy for the courts in Norway is extremely user-oriented. With a clear focus on the users of the courts, it is expected that the trust and confidence in the courts will increase even further in the years to come.

References:

Michael D. Watkins (2012): The Big Shift. Harvard Business Review, June 2012, pp. 64-72

Gert L. Kootstra, CBRD (2009): Wageningen University & Research, DME Survey 2009

Olauseen, L.P. (2005): Folks tillit til og medvirkning i domstolene (People's confidence and participation in the courts), Tidsskrift for strafferett (Periodical for criminal law), 2005, volume 5, pp. 119 – 143.

Tidsskrift for strafferett (periodical for criminal law) 02 / 2005 (Volume 5), p. 121

Legislative work: Proposition No. 44 (2000-2001) to the Odelsting, and Recommendation No. 103 (2000-2001) to the Odelsting

Official reports supporting the court reform:

JD NOU 1999:22 "Domstolene i første instans" (Courts of First Instance)

JD NOU 1999:19 "Domstolene i samfunnet" (The Courts in Society)

www.domstol.no

www.coe.int

On Administration of the Judicial Branch

By: Joseph P. Nadeau, Associate Justice, New Hampshire Supreme Court (Ret.)

Justice Nadeau is a graduate of Dartmouth College, and Boston University School of Law. In 1981, he was appointed Associate Justice of the New Hampshire Superior Court. He served as Chief Justice of that court from 1991 until he was appointed an Associate Justice of the New Hampshire Supreme Court in 2000. He retired at the end of 2005 to continue international judicial activities. He has participated in Rule of Law programs in Albania, Algeria, Armenia, Bulgaria, the Czech Republic, Egypt, Indonesia, Japan, Jordan, Kazakhstan, Latvia, Poland, Slovakia, the Soviet Union, and Ukraine With William Meyer, and other volunteers, he helped design a two-week education for European judges at the CEELI Institute in Prague. Judge Nadeau may be reached at joecjnh@gmail.com

In his article, the author voices his strong views on the importance of an independent judiciary in the United States.

If someone in our justice system makes a constitutional mistake, state supreme courts can correct it. If the Supreme Court makes a constitutional mistake, only the people can correct it.

In 2012, as a gesture to legislative leaders, the New Hampshire Supreme Court decided to accept language in a proposed amendment to the New Hampshire Constitution that would give the Legislature ultimate authority to regulate by statute "the administration of all courts in the state and the practice and procedure to be followed in all such courts."

Respectfully, I believed that decision was a mistake.

In 2004, the same basic amendment was opposed by the Supreme Court and rejected by the people. Two similar amendments failed before that: one was killed by legislators in 2001; another was turned down by voters in 2002.

Even after the court's gesture, the amendment cleared the New Hampshire House by seven votes out of four hundred. For adoption the amendment needed 60 per cent of the votes cast by the citizens at the polls. As they did before, the people rejected this legislative attempt to run the courts; this time by a 51 percent vote.

What made this legislative proposal troublesome and extreme was that it violated a fundamental principle of constitutional democracy: the three branches of government ought to be separate and independent. As Justice Sandra Day O'Connor noted, "The framers of the Constitution were so clear in the Federalist Papers and elsewhere that they felt an independent judiciary was critical to the success of the nation."

Some legislators supporting the amendment said openly that they wanted to "control" the courts. What did that mean? It meant a legislative takeover of the judiciary. We have pride in the management of our courts by judges and professional administrators. The New Hampshire Supreme Court was one of the early states to recognize the importance of that professionalism. I felt compelled to speak out and say "No," to its replacement by politicians.

The court is not a state agency. It is a branch of government. By the language of the New Hampshire Constitution, the legislative branch is political, the judicial branch is not. We value an independent political branch, and we value an independent judicial branch.

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Everyone, nevertheless, should be concerned about any attempted legislative takeover of the courts because political control of the judiciary is just not in the public interest. Part 1, Article 37, of the New Hampshire Constitution provides the branches "ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity."

The proposed amendment would have ended that separation, eroded that independence and weakened that connection. The amendment did not restore some lost balance between the Legislature and the court; it would have destroyed the balance.

For more than 100 years, the Supreme Court adopted rules governing courts and the practice of law. Occasionally, the Legislature enacted routine rules by statute, to which the Court acquiesced. So, by tradition, some shared rule making between the legislative and judicial branches existed for many years. But the proposed amendment was not about the enactment of routine rules. It was about one branch of government imposing its will on another branch.

Historically, each of the three branches of government has had the constitutional authority to control its own administration. Ignoring history, the Legislature sought to replace judicial branch authority with legislative supremacy. Imagine what would happen if legislators were to seek the same constitutional authority to administer the executive branch. Or, as we fear today, the executive branch were to seek to exercise powers constitutionally assigned to the legislature.

Not only was this amendment extreme, unnecessary and contrary to the basic principle of separation of powers, it was unique.

The National Center for State Courts – which researches, studies and reports on judicial systems in the 50 states –informed me that no other state in the nation has a constitutional provision giving a legislature ultimate authority over administration of the courts.

It was not hard to argue that our citizens should preserve the constitutional framework of the "Live Free or Die" state. And even though the public is not always aware of administrative issues, the people of New Hampshire rejected the overreaching proposal.

Our experience sets a good example of the need, today and going forward, to be aware of any effort to erode basic constitutional principles and core values. Democracy functions best when each branch respects the role of the other two. We cannot overstate the importance of the checks and balances provided by the concept of separate and equal branches.

Why Judges Should Be In Control:

IT's and Artificial Intelligence may improve courts services but are no panacea for backlogs and speeding up proceedings

By: Philip Langbroek

Philip Langbroek is professor of Justice Administration and Judicial organisation at the Montaigne Centre of Utrecht School of Law, Utrecht University, the Netherlands. Currently, he teaches Methodology of legal research, Legislation, and Introduction to Dutch law for exchange students. Philip Langbroek has focused his research on court and justice administration. He organised and participated in several international projects, for example on case allocation in courts, on transnational judicial cooperation in Europe on caseflow management in civil procedures, managed by Petra Pekkanen from Lappeenranta University in Finland. Recent research projects are Problem solving justice in Europe, and "Handle with care", on performance measurement in judiciaries. He is managing editor of the International Journal for Court Administration and co-director of the EGPA study group on Justice and Court Administration. Last but not least, he participates in the 2018 evaluation committee for the Netherlands' judiciary.

A recent key publication is: Philip Langbroek and Mirjam Westenberg (2018) Court Administration and Quality Work in Judiciaries in Four European Countries: Empirical Exploration and Constitutional Implications, *Justizforschung series, Stämpfli Verlag, Bern, Switzerland*

Last but not least, having a high performance drive is perfectly compatible with having a good time!

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When it comes to IT's in justice administration and in courts and in court proceedings, their effects on court work and on society depends on the interactions between the judges, the court organization, the legislator and the court users.[1] Developing electronic caseflow management systems usually means the transformation of the shifting of paper-files into the logistics of electronic files in the back offices of the courts. There can be many separate back-office routines, for example concerning the standing of a case-filing party, concerning the payment of the court fee, concerning the registration of evidence and informing the other party, delivering of sentences and so on. These routines usually are closely connected to the rules of procedure as established in a procedural code, and are based on essential legal values, like the right to a fair trial, and the right to counsel. IT's can integrate these routines in caseflow management systems. When these internal Case-flow management systems are connected with the possibilities to bring cases to court electronically and to communicate electronically between the court and the parties, consequently the paper files will eventually disappear. Eventually, because also today, not everybody has access to the internet. Therefore, for a while, bringing cases electronically to electronic filing needs to be accompanied by maintaining

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1 Mario Procopiuck, Information technology and time of judgment in specialized courts: What is the impact of changing from physical to electronic processing? Government Information Quarterly Volume 35, Issue 3, September 2018, Pages 491-501 https://doi.org/10.1016/j.giq.2018.03.005, concludes in his quantitative study on the efficiency of specialized courts in Brazil: The findings of this study indicate that judges and judicial administrators are constrained by the legal system and the strategic use of time by litigants. This is an important point for judicial administration, which is blamed for delays when its performance is poorly understood. In this sense, the Brazilian case shows that the responsibilities of the legal system must be institutionally demarcated to speed justice; case duration also depends on the intentions and strategies of the litigants, and the allocation of competencies and resources by judges and judicial administrators.

the possibility of traditional paper case filing. It is not right to effectively exclude those citizens from access to justice who have no access to the internet.

It should be noted however that IT and artificial intelligence can assist citizens to get easier access to courts, without the help of a lawyer.[2] The further benefits of electronic case filing are that the time to exchange papers (letters etc.) between the court and the parties is reduced to zero; the chances that a file is lost somewhere (for example in the shelfs, or at a judge's home) are near zero. That cases will be decided more swiftly is not a necessary consequence when the case content and the rules of procedure do not change. Judges and court staff need just as much time to make legal assessments and write judgments. Judges will not take on a more dominant role in directing the parties' motions and restricting delays, only because IT is involved. Fighting delays demands that judges take on a much more dominant role in case management. [3]Court management and case management in courts, and the development of IT applications in courts are value driven. Therefore, it is unlikely that electronic case filing by itself will increase court productivity and diminish time to deposition significantly.[4] Speeding up proceedings and reducing backlogs presume that judges and courts act responsibly and are democratically accountable for their functioning.[5] The least they can do is to show that they care and work on improving their performances in terms of backlogs, speed, treatment of parties and quality of decisions. This implies a connection to the legislative concerning the effects of legislation on case-loads and concerning the budget and the production capacity of the courts. IT can help, but judges and the managers in the courts are the main actors.

Many IT firms claim their systems will enhance productivity. But achieving such aims is difficult. I once witnessed the presentation of a phone app developed for a region in Indonesia, by which anybody could signal burglary or theft to the police electronically. This was presented as major progress. I do agree, it enhances the accessibility of the police registration system tremendously. But of course, the introduction of such a facility does not bring automatically the increased capacity of the police to solve the extra crimes that have entered the registration system. The risk of course is, that citizens have higher expectations because of such an app, and that they will be (extra) disappointed afterwards, if the police does not get more (wo)manpower to address an increased number of cases. The business model of IT consultants does often not allow them to openly communicate what risks it takes to develop and implement IT systems. That leads to risks of failure of IT projects, especially in the public domain, and this is connected to blaming games. IT firms have experience with those games, they know the risks. For example, politicians often demand an increased productivity, also of the courts as a barter for public investments in IT. These demands are not really based on experience and are a way to divert responsibility from politicians for IT failures to the institutions in the justice domain. It is my experience that IT firms do not like to take the blame and neither do politicians.

That does not mean, however, that it is not worthwhile to transform the functioning of courts by means of IT. It is worthwhile, because IT permeates all parts of life. Large groups in our societies expect to be served by justice institutions (and public administration in general) electronically. It is inevitable and it must be done! But it takes time to make it work and success is not self-evident.

If one wants to use IT to render reliable court services to the public, this demands much more than

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2 Zeleznikow, J., 2017. Can Artificial Intelligence and Online Dispute Resolution enhance efficiency and effectiveness in Courts. International Journal for Court Administration, 8(2), pp.30–45. DOI: http://doi.org/10.18352/ijca.223; Reiling, D., 2017. Beyond court digitalization with ODR. International Journal for Court Administration, 8(2), pp.1–6. DOI: http://doi.org/10.18352/ijca.225.

3 Petra Pekkanen (ed), Caseflow Management Handbook, Guide for Enhanced Court Administration in Civil Proceedings, Lappeenranta, LUT University, 2016.

4 This is also supported by Adalmir Oliveira Gomes, Simone Tiêssa Alves, Jéssica Traguetto Silva, Effects of investment in information and communication technologies on productivity of courts in Brazil, Government Information Quarterly. Volume 35, Issue 3, September 2018, Pages 480-490. https://doi.org/10.1016/j.giq.2018.06.002

5 Augusto Zimmermann, How Brazilian Judges Undermine the Rule of Law: A Critical Appraisal, (2008) 11 International Trade and Business Law Review 179-217 asserts that such responsibility is lacking in the Brazilian judiciary.

the mimicking of paper-based court proceedings and court routines. It demands a rethinking of rules of procedure, the roles of judges and court staff, and of back office routines. It also demands a redesigning of those roles and responsibilities. In other words, for society to benefit from the implementation of IT in the courts, the functioning of courts as organizations need to be transformed. And of course, this should leave the guarantees for judicial independence and impartiality unaffected. But such transformation will nevertheless touch the content of judicial work. IT systems demand that the people working in the courts, judges included, work with those systems. This demands a certain discipline from everybody working in the courts. And the discipline presupposes a minimum consent with the design and functionality of the IT system. Furthermore, it demands that lawyers and attorneys work with the same system, and such transformation also demands cooperation of the legislator, who is responsible for the rules of procedure. This, by itself, makes the development and implementation of IT systems in courts highly complex. Part of the problem is the conservatism of judges and lawyers.[6] Developing new court methodologies implies experiments. The idea of experiments is to find out what goes right and what goes wrong. If the culture is that one is blamed for what goes wrong, no one wants to participate in experiments.[7] Lawyers generally do not like the streamlining of court proceedings and making the courts accessible without the help of a lawyer. The lawyers usually object to streamlining court proceedings in terms of legislation and often lobby against such changes.

In this perspective of conservatism as a feature of courts as organisations of judges and court staff, and the lawyers serving the courts, the reliable registration of cases filed at a court, and certainty about the identity of the parties, for example by means of an electronic check with the population register, the business register, the land register, etc. is already progress. In criminal cases, to know where a suspect stay by means of an electronic information system (prison, at home) is already progress compared to paperwork, because it makes it possible to send them an indictment. The same applies for the party to be summoned in civil cases and their address of residence.

In this regard, artificial intelligence in the judicial field can assist the courts and judges in making better informed decisions. Artificial intelligence can support division of labor in the courts, can assist citizens in on-line filing of cases, and it can help judges to find the right information for decision making and for reading through very large files. Big Data may even help to check the reliability of evidence – but this presupposes that judges and court clerks do understand the query and how the relevant algorithms work. If they don't understand, they will not be able to assess the relevance of the outcomes of the query. A judge googling for evidence is not acceptable in court proceedings. The least we can say here, is that the use of Big Data as a part of evidence in courts is that it requires new rules of evidence, that make certain that the judges are in control. For example, skin color or ethnicity may be part of Big Data and you would not want to make that play any role in judging whatsoever. The risk may be in criminal law that ethnicity leads to a conviction because a similar ethnicity of suspects was present in so many similar earlier cases. In this way, ethnic discrimination will breed discrimination, and arbitrariness would be given a role in court decisions.

Big Data and algorithmic automation are not a panacea for backlogs. I can only imagine automation in uncontested money claims. As soon as a money claim is contested, a human mind needs to assess the claim, give parties the opportunity to tell their part of the case, and finally take a decision. Algorithms are not intelligent by themselves, they cannot deal with the fuzziness of large parts of the law and of cases. And if the law changes, they need to be reprogrammed. I never heard of an algorithm that can hear parties and take a court decision. And it is unlikely that anybody will accept such a court decision as legitimate. There may be some firms that offer online arbitration as an alternative for court proceedings, but it is questionable if these decisions will be legally sound and legitimate. The risk of course is, that those who cannot afford real

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6 Dory Reiling, in: Anne Wallace, Interview with Dory Reiling, International Journal for Court Administration. Volume 10, nr. 1 2019, p. 1-4. http://doi.org/10.18352/ijca.293

7 Ibidem.

court proceedings will be forced to make use of those businesses, because they are relatively cheap. Effectively, the risk is that societally speaking, lady justice turns her back on those people and that justice is only for those who can afford court proceedings. That may lead to the Rule of Law as a business model that excludes the poor.

Psychologically, procedural justice can mainly be achieved in human interactions.[8] The success of problem-solving courts, especially drug-courts, can be explained by those interactions.[9] Probably, the most efficient way to deal with court cases based on Big Data would be to delegate it to Facebook or Google for example. But their algorithms are not public, and they would be not transparently accountable for their decisions, as courts and judges are. Delegating court decisions to algorithms is not acceptable under the rule of law. When we come to trust courts and judges, it is not because they are infallible, but because we see their efforts to avoid arbitrariness in court hearings and in the justification texts of court decisions. They apply the law to the case at hand, creating equal opportunities for the parties to plead their case.[10] But here also, this is not about a rosy view of judicial work, and I do not mean to plea against IT in courts at all. But I do plea for humans in control of court decisions and of the use of artificial intelligence. In the same fashion, the virtual realities of internet and social media demand new restrictions on judicial behavior in order to avoid appearances of bias.[11]

In conclusion, IT can help courts and judges tremendously to improve their performances both quantitatively and content-wise, within the court organization and in relation to the communities they serve. Jurisprudence databases can help courts and judges to reach better consistency in their decisions, over time and in the entire jurisdiction. In some cases, with a file of thousands of pages, search machines can help judges and their staff to read through the file, without having to read every word in it. Artificial intelligence can help the courts in assessing evidence. Caseflow management systems and on-line working on files, can save quite some slack time. Electronic storage enables files to never get lost. IT can help the courts communicate more efficiently with the parties. But to speed op case management and reduce backlogs, judges need to take control over proceedings and dare to instruct parties that they will not accept unreasonable delays. They could do that even without the help of Information Technology if they take on that societal responsibility.

8 E. A. Lind & T. Tyler, The Social Psychology of Procedural Justice (1988) and the research they have published since then. In the Netherlands: K. van den Bos et al., 'On the role of perceived procedural justice in citizens' reactions to government decisions and the handling of conflicts', (2014) 10 Utrecht Law Review 4, pp. 1-26; H. A. M. Grootelaar, Interacting with procedural justice in courts (diss.), Utrecht, 2018.

9 Berman & Feinblatt, Good Courts, the case for problem solving justice, Quid Pro books, New Orleans2005/2015, pp. 124-126; O. Mitchell, D.B. Wilson, A. Eggers & D.L. MacKenzie, 'Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and non-traditional drug courts', Journal of Criminal Justice 2012, p. 60 and pp. 69-70

10 A further indication that this makes a difference can be found in: Vasconcelos, C.C. de, Oliveira, E.W. de, and Netto, W.L., 2018. The Impact of Attorneys on Judicial Decisions: Empirical Evidence From Civil Cases. International Journal for Court Administration, 9(2), pp.32–42. DOI: http://doi.org/10.18352/ijca.244

11 Paul van den Hoven., 2015. The Judge on Facebook. International Journal for Court Administration, 7(1), pp.18–26. DOI: http://doi.org/10.18352/ijca.147; Schutz, P.D. and Cannon, A.J., 2013. Trial by Tweet? Findings on Facebook? Social Media Innovation or Degradation? The Future and Challenge of Change for Courts. International Journal for Court Administration, 5(1), pp.25–33. DOI: http://doi.org/10.18352/ijca.5

Enhancing Courts and Justice with Video Solutions

By: Kourtney Wooten, Polycom Corporation

Kourtney Wooten is a Marketing professional who creates and executes marketing campaigns and programs around Polycom's iconic solutions for unified voice, video, and network communications. Polycom, Inc. is an American multinational corporation that develops video, voice and content collaboration and communication technology.

Kourtney has worked in marketing for over 15 years and with Polycom for the last 8. She holds a BBA in Marketing and Communications from North Carolina Central University.

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In her article, Kourtney discusses some of the new tools and skills available today and the product solutions that are available to address issues and problems that arise in courtrooms around the world. When it comes to considering technology upgrades and enhancements in the courtroom, the key question is: Will the technology actually improve justice?

Modern technology enables courts to improve the administration of justice, enhance efficiency and even save money. The problem, however, is finding reliable and economical solutions to real-world problems that ensure justice is improved. In this article, we'll provide an overview of how technology can actually enhance justice, improve efficiency and save costs in courtrooms.

Define the problem, identify technologies and determine legality

The initial question when contemplating a technology adoption or upgrade is: What problem is the court seeking to solve or improve?

Once the problem is defined, the next step is selecting potential technologies and specific products. Then, the next questions are always of legality: Is the specific application use prohibited or constrained by law? If so, is the problem one which can be easily be fixed, for example, by changing a court rule, or is the problem fundamental enough to be a "show- stopper?"

Court officials must determine whether the proposed solution really works, is affordable and if so, whether it's sufficiently robust and reliable enough to do the job.

Unified Communications and Collaboration (UCC) solutions for courtrooms

Multiple technologies are being combined more and more to provide better solutions. For example, counsel can present evidence using only smartphones, and counsel, judge and jurors can view the evidence on tablets. What's most exciting is the development of unified communications and collaboration (UCC) solutions. UCC solutions include video conferencing, audio, presence, recording, streaming, captioning and content collaboration.

Consider a technology-enabled motion argument: one party is arguing a motion to the judge and another party by video conferencing, while a third party is appearing only by audio. The proceeding is captured for court records by digital audio and video recording with potential remote transcription and the proceeding is available via web streaming.

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Four reasons how Unified Communications and Collaboration (UCC) solutions enhance justice and efficiency

1. **UCC solutions create easier access to the judicial system.**

   Secure, high-quality video conferencing technology connects people in remote geographies, as well as those with disabilities, budgetary or travel-limiting restrictions to the legal system with convenience and minimal cost. For example, in British Columbia, Canada, judges are nearly always available no matter how remote the location because a judge can always be connected to the necessary court location via video conferencing.

2. **UCC solutions speed up the justice process.**

   Time spent traveling to and from the court is reduced or eliminated, which allows for greater productivity for judges and attorneys. With less time wasted in travel to the courtroom, more cases can be handled at a faster pace. And citizens spend less time waiting for the legal process to take place, minimizing the impact on their lives and businesses.

3. **UCC solutions enable better witness protection services for victims of crimes.**

   This is especially relevant to those who have been battered or abused, or those who have escaped from human trafficking who may be too traumatized or threatened to face the accused in court.

4. **UCC solutions permit sharing of critical court resources.**

   Courthouses and even courts can share critical foreign language or sign language interpreters. Given the large number of languages spoken in many countries, it's critical to share these human resources to ensure that the right interpreter, especially a court- certified interpreter, is available when and where needed.

Video conferencing today

The days of poor connectivity, bad audio, unclear images and poor or cumbersome camera placement are over. Today's high-quality solutions offer seamless connectivity, crystal-clear audio, HD resolution, full content sharing and automated cameras that locate and frame all participants. Bring your own device (BYOD) and dedicated video content collaboration capabilities let you transmit or record content, video and voice—all with the touch of an on- screen icon.

At the Center for Legal and Court Technology (CLCT), an entrepreneurial public service initiative of William & Mary Law School and the National Center for State Courts, you'll find the latest technology being evaluated and used in a courtroom setting. Formerly known as the Courtroom 21 Project, CLCT's McGlothlin Courtroom at the Law School is generally recognized as the world's most technologically advanced trial and appellate courtroom.

"Video conferencing technology has the potential to greatly improve the delivery of legal services," says Fredric I. Lederer, Chancellor Professor and CLCT Director. "We see courtrooms all over the world extending the usage of video conferencing and broader UCC technology solutions not only to improve justice, but to keep pace with expectations of today's younger generations of citizens and hearing participants."

Major cost savings and reprioritization

Although judges primary focus areas are on ensuring justice and enhancing access to justice, court administrators have a special concern for budgets. UCC solutions offer significant cost savings not only for the courtroom, but also for the courthouse, with applications for training, development and meetings.

Case in point: With more than 11,000 circuit, district, and probate hearings per year in Michigan, prisoner transports average $800 each. Michigan judges and court administrators found that they could realize major cost savings while improving the delivery of justice.

Video collaboration solutions allow participants to engage in hearings remotely without the expense, impact on law enforcement and risk to public safety associated with physical transports. They equipped 300 courtrooms and plan to have 900 video-enabled courtrooms statewide. Today, one in four hearings uses video conferencing.

As a result, Michigan has saved more than $2.2 million on physical transports. Saving the travel time necessary for in-court appearances, especially in major congested cities, allows attorneys who use video

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conferencing to be more productive and serve more clients at more competitive costs.

UCC solutions also allow for reprioritization of duties for law enforcement, corrections and judicial system employees. For Michigan, instead of having two law enforcement officers pulled away from their regular duties for prisoner transport, technology eliminates the need for travel, so their officers can focus on other important public safety assignments.

The use of video in other related areas also has a positive impact on justice. Video in prisons allows inmates to communicate with family, mental health providers, counselors and clergy— improving their chances of successfully reintegrating into society upon release. And access to technology in governmental agencies allows for easier cross-agency collaboration and communication.

The Bottom Line

UCC solutions enable courts to enhance the administration of justice, realize significant cost savings and surpass the technology expectations of today's court participants and taxpayers.

Dying for Tech in the UK

By: Mark Beer, President, International Association for Court Administration

In addition to assuming the reigns of IACA in September 2018, Mark is currently a visiting fellow at Oxford University and a member of the World Economic Forum's Global Expert Network. He is also Chairman of the Board of Trustees of the Global Legal Action Network, advisor to the Board of Resolve Disputes Online, a Professional Associate of Outer Temple Chambers and a member of The Innovation Working Group of the Task Force on Justice focused on addressing UN SDG 16.3.

Mark previously served as the Chief Executive of the Dubai International Finance Centre's (DIFC) Dispute Resolution Authority, Registrar General of the DIFC Courts and was a Small Claims Tribunal judge for over 10 years, during which time the DIFC Courts secured a reputation as one of the most efficient and advanced commercial courts in the world. Mark also oversaw the launch of various judicial firsts for the Middle East, including a Code of Professional Conduct for lawyers, a Pro Bono program and a common law training academy. During his tenure, Mark played a key role in developing formal working relationships between the DIFC Courts and the other Courts in the UAE and internationally.

Before joining the DIFC Courts in 2008, Mark served as Regional Counsel for South Asia, Middle East and Africa, and then Vice President, Sales and Corporate Services, for MasterCard. Prior to that, he started out in his career as a company and commercial lawyer for Edge and Ellison before joining Clyde & Co in Dubai. He has also worked as corporate finance lawyer at Man Investments in Switzerland.

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Wednesday morning was bitingly cold, but the sky was clear, and the sun shone bright and full of hope for Christmas and the New Year. A lovely lunch in London beckoned. The 9:31am from Oxford would get me in with plenty of time to spare, and maybe even allow for some Christmas shopping. But there was no train – the line had been closed, albeit for a glimpse. A tragic snap shot of the end of a life. A body found on the tracks near Reading.

And what makes for such despair, tragically repeated around 16 times a day in the UK, mostly of middle-aged men but increasingly of our children? There is no simple answer – despair, frustration, sadness, depression, bullying…the list goes on. But could many of these deaths have been prevented? What outlets do we provide for those most in need? Those sinking into the quicksand of our bureaucracy, feeling stranded, scared and lost – as if crossing a minefield wearing a blindfold?

According to a research paper produced by The Hague Institute for Innovation of Law, 1 in 7 of us will face a serious legal issue every year. Put another way, and perhaps stretching the laws of mathematics, each of us will face a serious legal issue every 7 years. And by serious, the report means a legal issue that is sufficient to keep us awake at night with worry; one that puts a strain on family life; one that affects our ability to function and has the potential, over time, to make us ill. Put another way, that's 7 million serious legal issues a year for the adult population of the UK.

With that in mind, what percentage of people seek legal advice when they have a serious legal issue and what percentage actually go to court to obtain justice. Only 16% for the former and 5% for the latter. When asked why, most people express concerns about the cost and effectiveness of the traditional legal and judicial system, with many saying it is only for the rich. Charities like Citizens Advice provide essential support for many of those with serious legal issues, assisting 2.7 million people a year. Even assuming the 16% who went to see a lawyer does not include anyone who went to Citizens Advice, in combination they

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cover only 3.75 million people, or around half of those in need. There are other institutions that also provide valuable counselling and assistance for those in trouble, including the Samaritans, but overall 3 million people a year in the UK are left alone with their troubles, mostly in the often interconnected areas of family and divorce; employment; debt; tenancy and petty crime.

And what impact does that have on our society? That is something yet to be quantified in economic terms, but people's reaction to stress varies from anger and violence, to frustration, sadness and despair. Along the way, families fracture, jobs implode and sickness can take hold.

And of those 3 million people left alone with their problems, worried and in need of help, I wonder how many find themselves, on a cold and fresh winter's morning, with a happy and loving Christmas just over rainbow, staring at the Great Western Railways' express service to London Paddington?

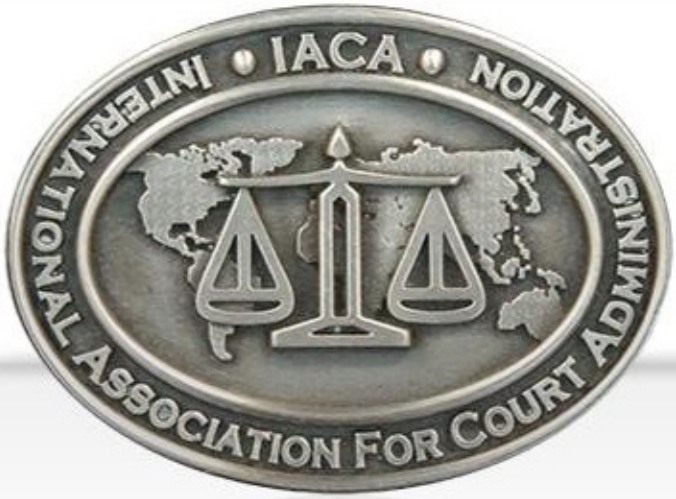
And how might we try and make a dent in this despair? How might we make sure that serious legal issues (which are by no means the only reason why people turn to suicide) are addressed and resolved sooner and more effectively? How can we help to avoid legal issues becoming serious ones? The answer may not lie in attempts to adjust the existing system – the behemoth is too large to turn in time. Rather the answer may lie in the use of technology. Why? Well, if given the choice of an iPhone or a law firm, I suspect most people feel more comfortable with the phone – it is the Delphic oracle of the 21st Century – our own Egeria, delivering answers in return for attention. Combining the power of the phone, with the diagnostic competence of Artificial Intelligence, we are not far from a pocket lawyer more powerful and wise that any human. Should you doubt that, look at the recent work of AlphaZero, Libratus and the Convolutional Neural Network's ability to detect cancers better than human doctors. So, I expect that analysing legal problems via Siri, Alexa and Bixby is nearly within reach.

But in most cases, people know that they have a serious legal issue already – the final demand from the bank has already arrived: The horse bolted and the milk has been spilt. It doesn't take a supercomputer to work out that there is a major problem. At that point, what people need is help to solve the problem, etymologically speaking, to make it dissolve. But what they so often find from the traditional legal system are people bent on doing the opposite. This is where technology comes in. Research on online dispute resolution mechanisms, allowing people to try and work through their problems through a human or AI based facilitator, are proving to be valuable and effective. For example, the results of Modria's work in Clark County are interesting, showing that many people like to settle down in the evening in front of their screen to try to work through their problems, rather than with a lawyer when the Courts are open. What people want is a safe space in which they can, at their own pace and in their own time, often with the help of a neutral, peel the onion that has been causing them such anguish and, ultimately find a solution. This is the power of technology, and ultimately of AI: To be available whenever people need it, even for those 13 people who filed for a divorce online on Christmas Day.

Will technology solve all of the serious legal issues we face in this country? Will it prevent the suicides that are rooted in serious legal issues? Will it mean the end of lawyers and social services? Absolutely not.

But might it mean that some of those three million men and women in the UK, and untold numbers of children, who today feel they have nowhere to turn, might have a familiar and trusted platform to help make a molehill out of their crisis. Of that, there is no doubt.

A GIFT FOR YOUR SUPPORT



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