

2020

NATIONAL CENTER FOR STATE COURTS

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Trends in State Courts



2020 Review Board & Trends Committee

Trends in State Courts 2020 articles have been through a rigorous review process. The members of the 2020 Review Board and Trends Committee have provided valuable feedback on this edition. The patience and commitment of the Review Board and Trends Committee are greatly appreciated.

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Call for Article Submissions

Trends in State Courts is an annual, peer-reviewed publication that highlights innovative practices in critical areas that are of interest to courts, and often serves as a guide for developing new initiatives and programs and informing and supporting policy decisions. *Trends in State Courts* is the only publication of its kind and enjoys a wide circulation among the state court community. It is distributed electronically and in hard copy.

Submissions for the 2021 edition are now being accepted. Please email abstracts of no more than 500 words by **October 12, 2020** to John Holtzclaw at jholtzclaw@ncsc.org. Abstracts received after this date are welcome and will be considered for later editions or for our online version of *Trends*.

Visit the *Trends in State Courts* website at www.ncsc.org/trends for more information and detailed submission guidelines.

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Trends in State Courts



Edited by

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*To promote the rule of law and improve the administration of justice
in state courts and courts around the world.*



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Acknowledgments

Trends in State Courts 2020 was truly a team effort. Without the support and dedication of the court community this publication would not have been possible.

The editors would like to thank VisualResearch—Neal Kauder, Patrick Davis, and Kim Small—for infographics, layout, design, and production of *Trends*.

The *Trends in State Courts 2020* editors also recognize Thomson Reuters for their ongoing provision of online legal resources and research support.



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Still Trending: State Court Statements on Racial Justice

Many cities all over the world are still roiling following the killing of George Floyd while in the custody of Minneapolis police officers on May 25, 2020. Protests and demonstrations are shining a spotlight on police treatment of minorities, particularly African Americans, and calling for change and reform for not only police, but also the justice system.

State courts are also poised to respond to issues of racial justice, as expressed by court leadership in the following statements. Links to more of the statements can be found on NCSC's website at www.ncsc.org/statements.

... I am not disparaging law enforcement or our judicial systems, but I am saying that they are not perfect institutions. I am outraged by some of the things that I have seen and heard. With each new revelation my heart breaks even more and ... I have long since reached the point that ... "I am sick and tired of being sick and tired." The existing imperfections in our justice systems have profound and lasting effect on all of us, but it is more severe on those of us who are the most vulnerable.... America can—and must—do a better job of providing "equal justice under law." ... [T]o quote Victor Hugo "Being good is easy, what is difficult is being just."

Chief Justice Richard A. Robinson, Connecticut

As judges, we take an oath to do justice equally to the rich and to the poor regardless of race, gender, religion, sexual orientation, or other demographics and our oath requires us to protect and defend the Constitution of the United States. We hold sacred the rights guaranteed by our Constitution and as judges, we must listen and do justice to the cases that people bring before us people from all walks of life. Our judges and dedicated court staff take seriously our responsibility to administer justice. We work hard to ensure access to justice for all and to make sure our courts are the best they can be to serve our community.

Chief Judge Anna Blackburne-Rigsby, District of Columbia

The prominence and horror of the George Floyd murder does point to continued divisiveness. But, at the same time, it also points to unparalleled unity as exhibited by unprecedented numbers of people of all ages, races, and walks of life who are: (1) expressing outrage at the continued unnecessary violence by some police officers against African Americans; and (2) asking "What can we do to make things better going forward?" ... We are grieving right now. And that is proper and healthy. I don't know if we have ever grieved like this before. But by grieving together, coming together, and supporting one another through all of this, I know that we will come out of this better than we were before. And for that I am encouraged.

Chief Justice Harold Melton, Georgia

As a justice system, we must be willing to recognize our failures. And we must be willing to not only listen, but to actually hear the very valid concerns raised by people who have been marginalized, degraded, or made to feel less than. The court system and the legal profession must continue to advocate for a diverse bench and bar to reflect the communities that we serve. We must continue to improve communication between the courts, justice partners, and court participants. And we must constantly evaluate and address institutional racism and our own implicit biases.

Chief Justice John D. Minton, Jr., Kentucky

... I readily admit our justice system falls far short of the equality it espouses. And I see many of its worst injustices meted out in the criminal legal system. Inequities there range from courts being funded with fines levied on poor, disproportionately African American defendants, to our longtime use of Jim Crow laws to silence African American jurors and make it easier to convict African American defendants. We need only look at the glaring disparities between the rate of arrests, severity of prosecutions and lengths of sentences for drug offenses in poor and African American communities in comparison to those in wealthier White communities, to see how we are part of the problem. Is it any wonder why many people have little faith that our legal system is designed to serve them or protect them from harm? Is it any wonder why they have taken to the streets to demand that it does?

Chief Justice Bernette Joshua Johnson, Louisiana

As the mother of twin sons who are young black men, I know that the calls for change absolutely must be heeded. And while we rely on our political leaders to institute those necessary changes, we must also acknowledge the distinct role that our courts play. As Chief Justice, it is my responsibility to take ownership of the way our courts administer justice, and acknowledge that we must do better, we must be better.

Chief Justice Cheri Beasley, North Carolina



Preface

Mary Campbell McQueen
President, National Center for State Courts



All of us were in the middle of living our normal lives when COVID-19 hit. Many of us went from working in our offices to working from our homes—and many, to not working at all. People wearing facemasks became the “new normal”; “social distancing” entered the lexicon; and no person, business, or organization was unaffected, including the courts.

Trends in State Courts 2020 was well into production when the pandemic started to affect NCSC’s daily operations. Although the articles for this year’s edition had been chosen and edited—and some of them laid out—the latest “trend” impacting the state courts’ ability to administer justice in a COVID-19 world had to be included. NCSC would like to thank Chief Justice Nathan Hecht and State Court Administrator David Slayton for sharing what the Texas judiciary has learned about conducting operations in the face of not only a pandemic, but also a cyberattack.

NCSC has been helping courts to resume operations by conducting informative webinars, providing online courses, and collecting data on how the state courts have altered their operations during the pandemic. More information can be found on our “Coronavirus and the Courts” webpage at ncsc.org/pandemic.

In late May of 2020, as this publication was being finalized, the nation was faced with another seismic event—the nationwide protests addressing racial injustice in law enforcement. A large number of courts and judges joined the conversation by issuing statements. In some instances, entire state supreme courts signed such statements, and in others, individual chief justices used their leadership platform to offer thoughtful commentary. We have printed excerpts from some of these statements on page iv.

As we go to press with *Trends in State Courts 2020*, there can be little doubt that the world we live in today looks markedly different from how it looked just a few short months ago. The National Center is committed to continuing to help courts, and court professionals, stay on top of these developments as they emerge. Whether in this publication, on our website, or on our social media channels, know that we are committed to keeping the critical issues facing the court community front and center.



#CovidAndTheCourts

Coronavirus and the Courts

- Links to State Court COVID-19 Websites
- Statewide Jury Trial Restrictions
- Length of Statewide Jury Trial Restrictions
- Statewide Eviction Moratoria
- Statewide Plans to Resume Court Operations
- Statewide Court Entrance Requirements
- In-Person Proceedings Generally Suspended
- Remote Oral Arguments by Courts of Last Resort
- Virtual Hearings
- Virtual Hearings Software
- Statewide Prisoner/Defendant Release

Links to State Court COVID-19 Websites

Statewide Jury Trial Restrictions

Length of Statewide Jury Trial Restrictions

NEW — Eviction Moratoria

Statewide Plans to Resume Court Operations


NEW — Statewide Court Entrance Requirements

In-
Person..

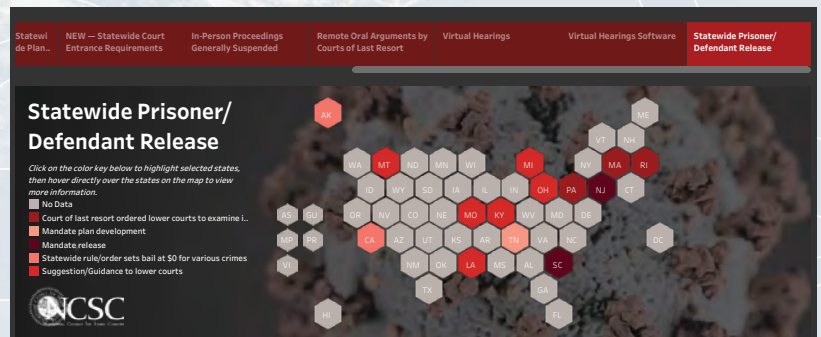
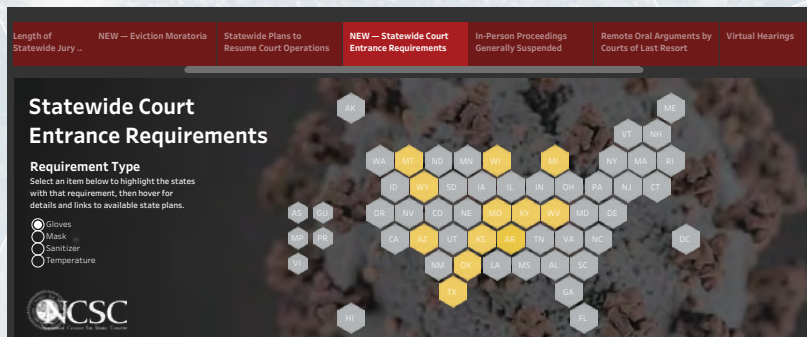
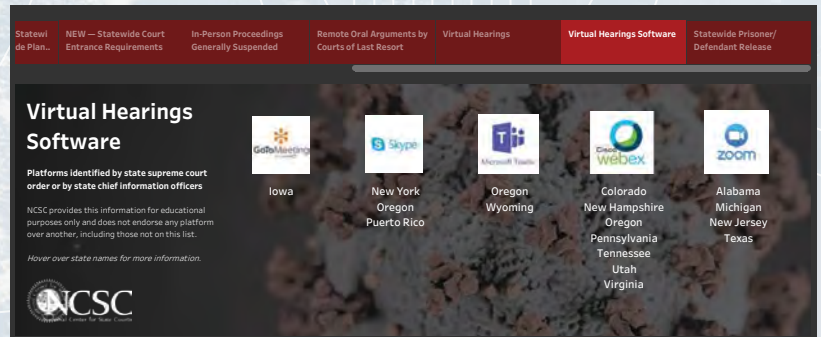
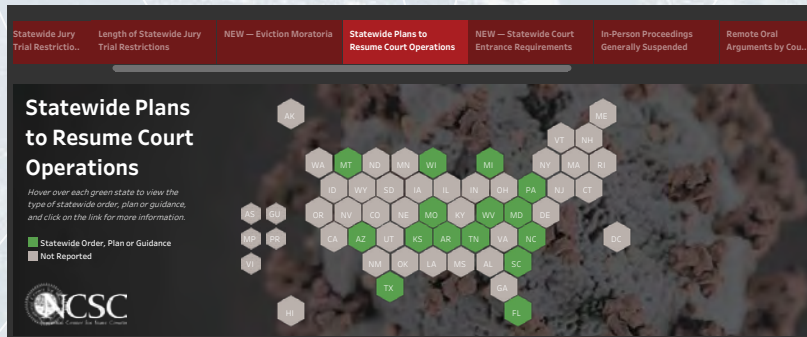
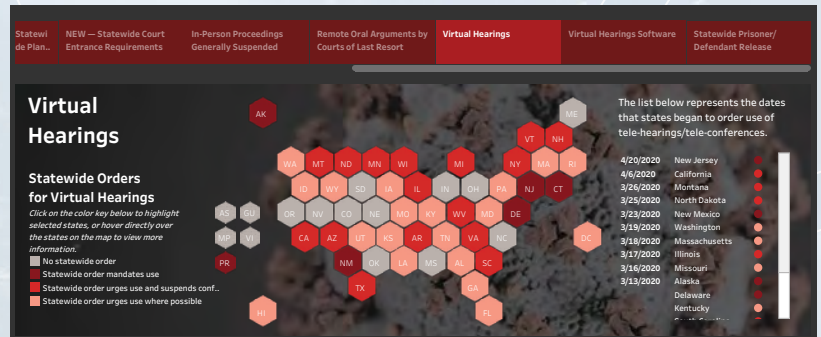
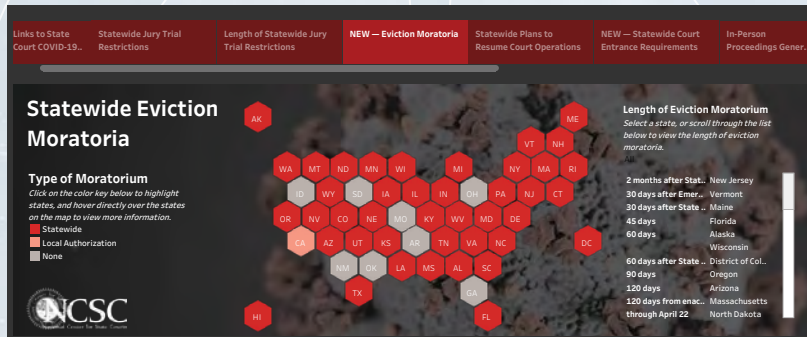
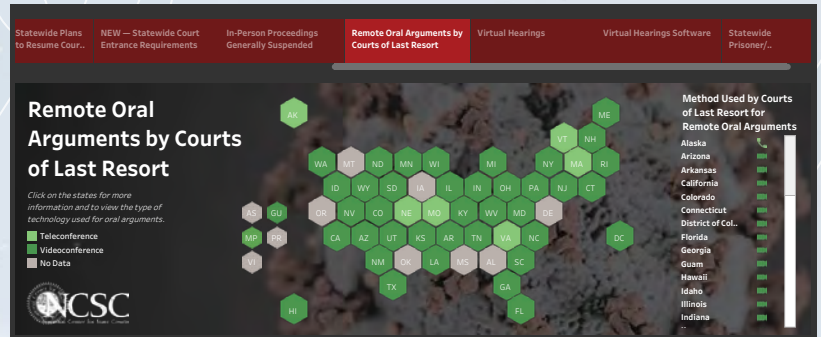
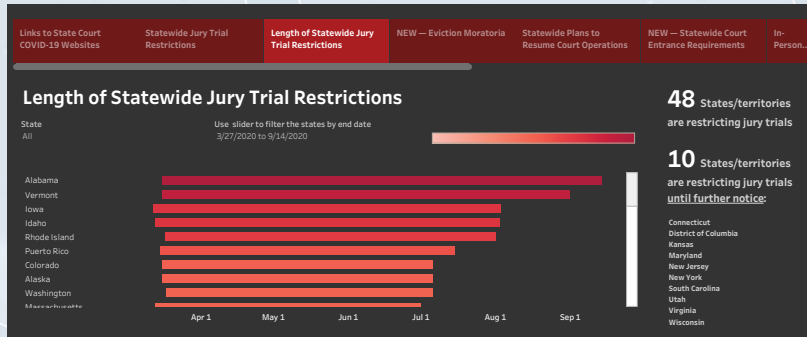
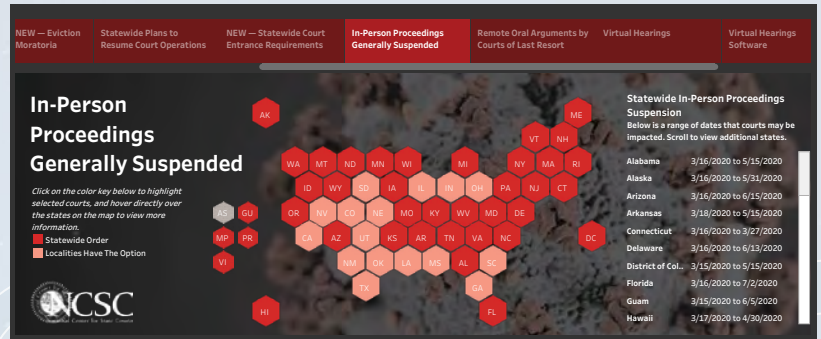
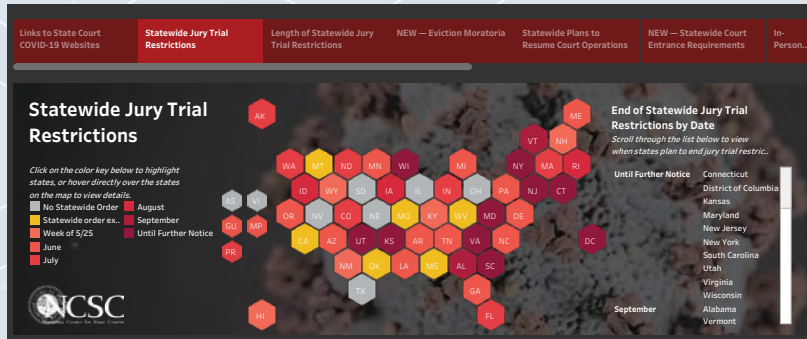
Links to State Court COVID-19 Websites

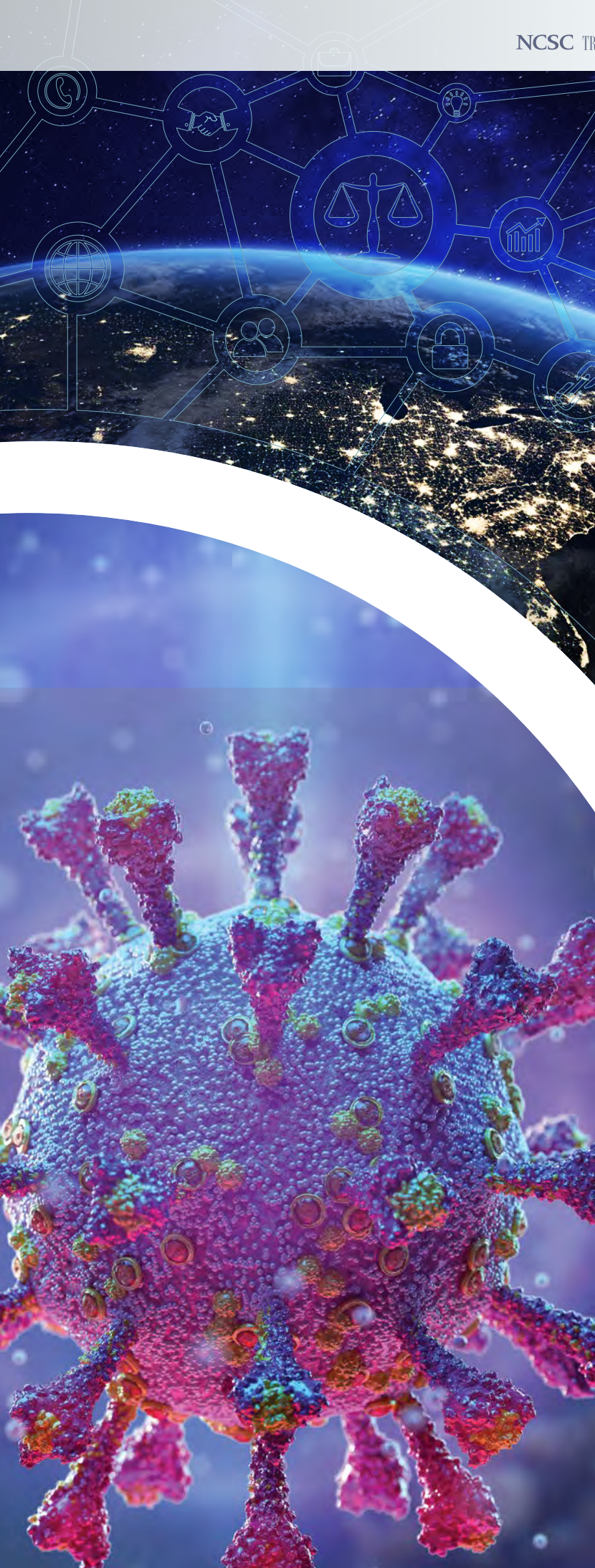
Depth of Resources Available

Click on the color key below to highlight certain states, then hover on the states on the map to view links to resources.

- Direct Link to Resource Page
-  Information Posted on Home Page







Leading During the Chaos of a Pandemic

Hon. Nathan L. Hecht

Chief Justice, Supreme Court of Texas

David Slayton

Administrative Director, Office of Court Administration, Texas

COVID-19 has put a tremendous strain on society, and the courts are not immune. The Texas judiciary was forced to respond to two simultaneous threats to its operations: the pandemic and a cyberattack.

As many of us celebrated the dawn of a new decade, the COVID-19 pandemic was beginning to take hold. Even though the state courts fortuitously participated in a pandemic summit last summer, none of us could be fully prepared for what was to come. The COVID-19 pandemic has since challenged courts in ways that we have not seen or could have imagined in our lifetimes, but the state courts' response to the challenges has been remarkable. As leaders charged with preparing and guiding the Texas judiciary through this pandemic and in our roles as members of the Conference of Chief Justices' and Conference of State Court Administrators' Pandemic Rapid Response Team, as well as the latest state court afflicted by a cyberattack, we have seen firsthand the challenges of disruption and have learned many lessons on how to lead during chaos.

Preparation

*“We don’t rise to the level of our expectations;
we fall to the level of our training.”—Archilocus*

No one can prepare for a once-in-a-lifetime event like a pandemic or a cyberattack. Instead, we must train ourselves in the smaller challenges that we face to prepare for the big event. This preparation involves building trust, making mistakes and learning from them, and being contemplative about how one should respond when faced with a challenge. In the combined six decades that the two of us have been leaders within the judiciary, we have confronted several difficulties that had to be addressed. Assuredly, not all our responses were successful. However, with each one we sought to learn from our mistakes and be better the next time. One of us said to the other during the height of the pandemic, “We train for hard times and often never see them. These are for us.”

Gather Whatever Information Is Available

Even during the chaos of a crisis, it is important to gather whatever information is available at the time from all accessible resources. Whether it was reaching out to public-health officials for real-time information on the pandemic; asking judges, attorneys, or litigant groups for feedback from the front lines; or simply researching how others, including those outside of the courts, have responded, we have gathered information on what is working and what is not, as well as suggestions on what we should do to address the pressing situation. If court leaders can embed or have someone embedded with the source of the information, that action should be taken. When Governor Abbott first convened Texas’s pandemic response task force in February, one of us was there at the table, and our staff have since remained. This real-time access to information and ability to inquire about potential actions has been vital.



Urgent Action Without Fear

Our training has taught us to gather information, analyze it, propose and refine a solution, and implement—sometimes over months or years. The chaos of the pandemic and cyberattack have not fit well within that mold. In fact, during the challenges of recent days, the information sometimes changes hourly or by the minute. Thus, we were faced with making decisions without all the information, but the alternative was to delay a decision—a delay that could cost lives or cause further damage. Rather than being paralyzed with inaction due to fear of making a mistake, court leaders must act without fear. This does not assume that the court leader should make reckless decisions but, rather, that delaying a decision that needs to be made is unacceptable. We worked together to develop emergency orders to accommodate the crises we faced and acted on those within hours in many cases. The Supreme Court of Texas issued its first emergency order that gave courts the ability to suspend or modify deadlines and to require virtual hearings within five hours of the governor’s state-of-disaster proclamation.¹ Others that could spare a little more time took days—the time from the court’s order permitting remote virtual hearings to the statewide implementation was 11 days, a decision that has resulted in more than 100,000 virtual hearings with over 317,000 participants in the first 60 days. The bottom line was that we have strived to act quickly when we needed to do so and when the stakes were high.

¹ Texas Government Code 22.0035(b) provides the supreme court with authority to modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor.



Communicate ... and then Communicate Some More

One of the biggest challenges during a crisis is ensuring that those who need information have the fullest amount that can be shared. Undoubtedly, there will be those that feel that leaders are not communicating enough. Therefore, it is vital to overcommunicate the situation and the response during a crisis. We began distributing information to the Texas judiciary the day before our first reported case of COVID-19 in Texas and have continued to do so through weekly or more frequent broadcast messages to everyone in the branch. We set up ways for the members of the branch and the public to get answers to their questions, which were frequent and to which we rapidly responded. We provided regular updates to members of the other branches of our state government. We used both traditional and social media to communicate to the public. During the cyberattack response, we have held at least daily conferences with those affected to give them updates.

Gather Feedback and Modify as Necessary

Taking decisive action will undoubtedly result in a need to adjust as the situation changes or more information becomes available. There have been multiple situations during the pandemic and cyberattack response where our previous actions needed adjustments. Several of those adjustments were the result of feedback received from those affected by our actions. Court leaders should admit where those previous actions fell short and make the necessary adjustments.





Focus on the Goal ... and Settle In

Undoubtedly, there will be detractors who are not delighted with our actions—generally a small but vocal group. It is important to listen to those detractors, but it is perhaps even more important to focus not on the negative reactions and instead on the goal of the actions. In our two most recent crises, we have had the goal of 1) protecting the health of our judges, court staff, public, litigants, and jurors while at the same time preserving access to justice in ways that promote the public's trust and confidence and the rule of law, and 2) recovering from a cyberattack as quickly as possible while ensuring the future security of our information technology infrastructure. Constantly remembering the goal grounds court leaders' actions and increases focus. Court leaders must continue to focus on that goal until the crisis has ended.

Conclusion

Challenging times will occur again—hopefully, not to the same degree as during the last few months—and court leaders should be ready for those. In the midst of chaos, however great or small, court users need to be able to trust in the stability of the Third Branch. The actions of court leaders will directly impact the courts' ability to deliver needed stability. In the end, court leaders who have prepared, gathered information, communicated, gathered feedback, acted, adjusted, and focused on the goal should remember that each was placed in this position “for such a time as this” (Esther 4:14).



On-Demand: Transforming Virtual Remote Interpreting

Hon. Donald A. Myers, Jr.
Chief Judge, Ninth Judicial Circuit, Florida

Virtual-remote-interpreting (VRI) services have been around for more than a decade but largely remain a niche technology with limited impact. On-Demand VRI takes this technology to the next level and shifts in how courts can leverage their existing resources to provide mission-critical due-process services.

In the ABC series *Shark Tank*, entrepreneurs present business ideas to potential investors with the hopes of winning their backing. These investors spend a good deal of time thoroughly vetting each concept, looking for ways to improve and increase the value of the product. Ideas that make it past this process receive funding and get a boost in the market. The ideas that do not are sent back to the drawing board for revisions. This vetting process is an essential part of the development of any idea—whether that idea is for an innovative material for sponges, a kitschy concept for dog sweaters, or a new system for providing interpreting services.

Virtual-remote-interpreting (VRI) services have been around for over a decade but largely remained a niche technology with a limited impact on the functionality of courts. That early VRI system was designed to streamline court processes; however, the scheduling-delivery model did not eliminate substantive time delays. After taking the technology back to the drawing board for revisions, VRI went on-demand as a first option, creating a seismic shift that provides mission-critical, due-process services to the courts.

Early VRI

The Ninth Judicial Circuit is one of the largest and most diverse circuits in Florida; on any given day in our communities, one can hear conversations spoken in over 160 languages. Located in Central Florida, the circuit serves over 1.7 million people living in Orange and Osceola counties, as well as over 75 million international and national visitors each year. Of the residents who have moved to the region in the past decade, more than half have relocated from another country. This rich, pervasive cultural diversity means that in over 35 percent of the households in Orange County, and over 50 percent in Osceola County, the primary language spoken in the home is a language other than English.

For many of our court users, as well as court users across the state, equal access to justice relies upon access to interpreters. Throughout 2019, the Ninth Circuit called upon certified interpreters for over 16,000 due-process proceedings. In these instances, the administration of justice depends upon the efficient and effective delivery of interpreting services.

Historically, interpreting services were accessed by traditional means. A limited number of staff interpreters moved through and between multiple courthouses in the circuit, drove through congested traffic, searched for parking places, lined up in security queues, desperately searched for an entrance to an elevator, and ultimately arrived in a courtroom only to wait for the hearing to be called. The system needed revising to address the amount of time spent traveling to and waiting for a hearing versus time spent interpreting at a hearing. Looking toward technology to improve upon the traditional system, the Ninth Circuit began using virtual technology to deliver simultaneous interpreting services in 2007. With the advent of VRI, interpreters began delivering interpreting services remotely; however, judges still accessed VRI using the same scheduling business model as traditional, in-person interpreting services.

Implicit in the concept of VRI is immediacy. If an interpreter could appear remotely, then it is naturally assumed that an interpreter could appear remotely at a moment's notice. However, early VRI did not include technology that could provide services on-demand. Judges still needed to request an interpreter in advance of a proceeding, regardless of whether a judge needed an interpreter in five minutes or five days. Interpreters were called into the courtroom at the scheduled time, often to be told the court was not ready for them. They were asked to call back in a prescribed amount of time, putting the interpreters on standby and setting the stage for a potential backlog in the delivery of services. A delay would affect not just the hearing in the courtroom requesting the change in time, but potentially any other hearings that also had that interpreter on their schedule. Like a doctor's office that runs late, early VRI was subject to additional scheduling delays. VRI may have eliminated the need to travel through and between courthouses, but interpreters still waited for hearings to be called, and judges still waited for interpreters to be available.

Without eliminating the critical time issues inherent in traditional in-person interpreting services, it quickly became clear that the court needed to transform the model—to go back to the drawing board and develop a system that provided an interpreter when a judge needed an interpreter. Interpreting services were needed on-demand. So, over the next 12 years, the circuit kept going back to the drawing board, every new step bringing a new improvement. VRI technology in the Ninth Circuit evolved from analog telephone lines to network-based delivery systems to a centralized call manager. All these incarnations led to the system launched in 2018—On-Demand VRI.

VRI went on-demand as a first option, creating a seismic shift that provides mission-critical, due-process services to the courts.

On-Demand VRI

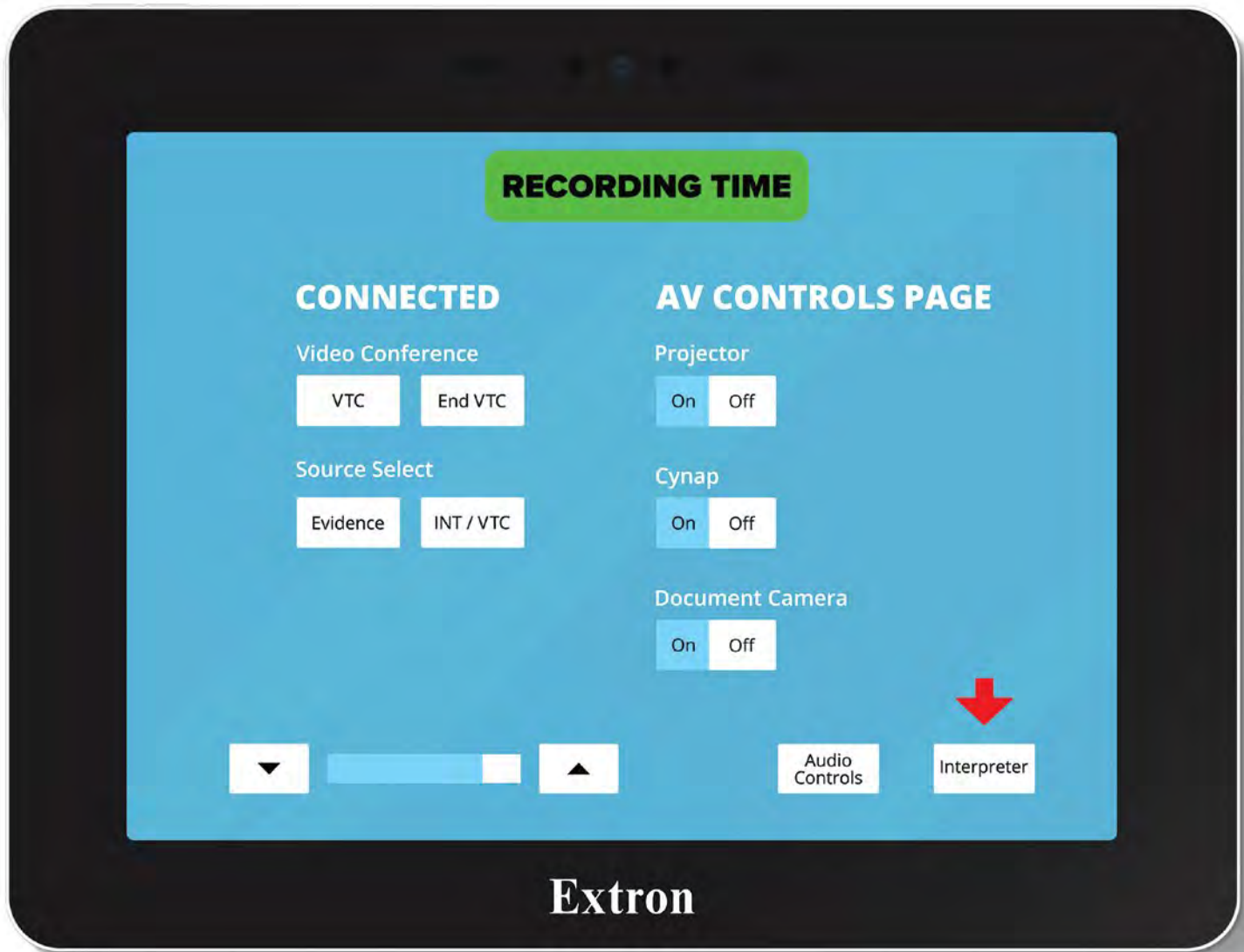
Leveraging the technology used by the early VRI concept and expanding upon it, the Ninth Circuit integrated network audio mixers with voice-over-internet-protocol (IP) cards and video codecs into the court's existing videoconferencing system, which was already accessible through a touch screen located on the bench. Simply put, network technology connects the courtroom to the interpreter—visually through the conference system and aurally through the voice-over IP cards. Through the simple touch of a button, judges could now request an interpreter, in real time, eliminating the delay inherent in the older systems. Now, within seconds of receiving the request, an interpreter appears virtually in the courtroom, available to provide simultaneous interpreting services.

The technology, and how one interacts with it, is simpler than it first appears. A touch screen installed on the bench has a call button preprogrammed to connect to the call manager. The call management software uses a hunt group to connect directly with a pool of Ninth Circuit staff or contract certified interpreters. The system “hunts” for an interpreter by sending an

Through the simple touch of a button, judges could now request an interpreter ... [and] within seconds an interpreter appears virtually in the courtroom, available to provide simultaneous interpreting services.

IP call to a pool of interpreters that are logged into the program. Once a judge requests interpreting services, an available interpreter receives the call through a videoconferencing unit, desktop, or laptop computer. The incoming call appears on their screen, and the display shows the county location of the call (Orange or Osceola), the courthouse, and the courtroom.





Immediately upon answering, the interpreter is patched directly into the courtroom. From a remote location, the interpreter can view and hear the entire proceeding, toggling between private conversation with the court user and public conversation with the judge by using a simple foot pedal, freeing a hand to take notes during complicated testimony. The interpreter provides simultaneous interpreting services to the court user, who is listening to the interpreter through headphones.

On-Demand VRI instantaneously eliminated the time-delay issues that plagued interpreting services for decades. Without having the delays inherent in scheduling and rescheduling interpreters, judges could hear and rule on proceedings in less time, as interpreters cover more hearings—across multiple locations—directly from their workstation. Additionally, simultaneous interpreting allows for a natural cadence in courtroom conversations, which then allows proceedings to continue at a swifter pace and

ultimately results in faster hearing times. The immediacy of On-Demand VRI improves courtroom flow that assists in mitigating the ever-increasing demands on the courts and helps to eliminate unnecessary backlogs. With On-Demand VRI, when a judge needs an interpreter, a judge gets an interpreter.

The immediacy of On-Demand VRI improves courtroom flow that assists in mitigating the ever-increasing demands on the courts and helps to eliminate unnecessary backlogs.

First Option—On-Demand VRI at the Ninth Circuit

The Ninth Circuit launched On-Demand VRI as the first option for Spanish language services in March 2018. Twenty-four courtrooms and eight interpreter workstations were fitted with the full VRI technology. Of the then 65 judges in the Ninth Circuit, (the circuit now has 66 circuit and county judges), 24 had access to the system at the bench.

While On-Demand VRI does not currently cover all proceedings, the system launched as the first option for most due-process events:

- initial appearances
- arraignments
- violation-of-probation hearings
- motions
- long hearings
- witness testimony
- pleas
- traffic
- misdemeanor
- felony pretrial
- dependency
- delinquency
- docket sounding
- Baker Acts
- Marchman Acts
- domestic violence return hearings
- other short-duration, in-court proceedings deemed appropriate by the presiding judge

These events are heard by judges located in seven separate facilities spread across 2,200 square miles. Through the On-Demand technology, the circuit's eight full-time certified interpreters can provide services for all events at all seven locations.

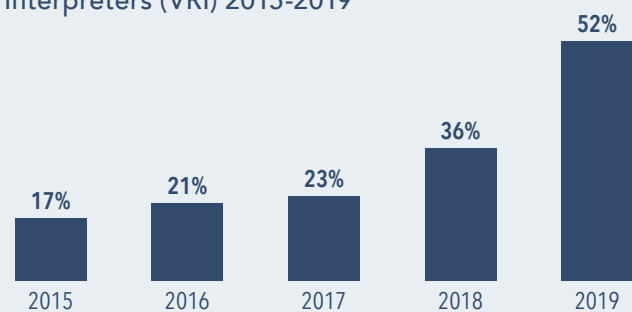
The advantages of an on-demand Spanish-language-interpreting system became apparent when examining the first year of data. In 2019 the On-Demand VRI interpreters covered over 8,000 events, compared to an average 2,000 events using prescheduled or ad hoc scheduled VRI interpreting services before 2018. Over 52 percent of all interpreter requests in the circuit were handled through the system.

On-Demand VRI intrinsically transformed how the courts function, allowing them to leverage existing resources to serve more court users across the circuit.

2019 Virtual Remote Interpreting (VRI)

Events	# of Events	Percentage
In-Person Interpreter	7,953	47.6
VRI Interpreter	8,749	52.4
Total	16,702	
Events per Interpreter		
# of Interpreters for 2019 (FTEs)	6.2	
VRI Events per Interpreter	1,411	

Percentage of Events Covered by Virtual Remote Interpreters (VRI) 2015-2019



While the success of On-Demand VRI is entirely attributable to the system's on-demand technology, it is equally attributable to the circuit's commitment to the system as the *first option* for pooled interpreting services. Within the first week of launch, the system was not just the first option, but also clearly the best option. Judges in the Ninth Circuit immediately saw its benefits. With On-Demand VRI's instantaneous, simultaneous delivery of interpreting services, there was no comparison to any previous system. After years of improving upon new systems and delivery models, providing feedback, and retesting, the judges finally had a product they could invest in.

Since 2018, an additional 14 courtrooms were fitted with On-Demand VRI technology bringing the total to 38. The remaining 24 courtrooms will have access to the technology in the last quarter of 2020. Additionally, two new interpreter workstations were installed in the circuit for certified contract interpreters of Spanish and languages of lesser diffusion. By the end of the year, On-Demand VRI will be the first option for most due-process events.

Next-Level On-Demand VRI

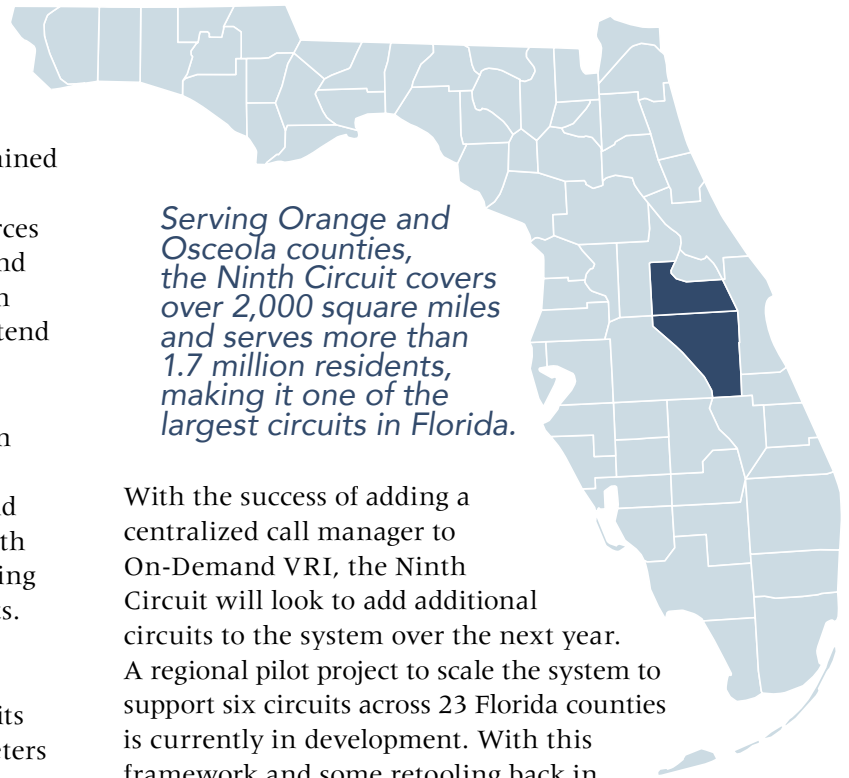
Recognizing the system's success and its incredible impact on the functionality and accessibility of the courts, the Ninth Circuit reexamined On-Demand VRI technology back to the drawing board to see how it could be scaled to share resources across the state. With the next phase of On-Demand VRI ready to test, the Ninth Circuit partnered with Florida's Eighteenth and Nineteenth circuits to extend the system across multiple circuits in 2019.

The accessibility of the technology made scaling an easier endeavor. The Eighteenth and Nineteenth circuits already had videoconferencing systems and were able to integrate their existing equipment with the Ninth Circuit's On-Demand VRI system, creating a centralized call manager serving multiple circuits.

Each circuit has its own call number that directly connects to its own pool of interpreters. The circuits manage their own interpreters, and those interpreters cover their own circuit's proceedings. However, if all the interpreters at one circuit are busy, the call manager automatically connects to another circuit's pool of interpreters. For example, if a judge in the Nineteenth Circuit requests an interpreter through the call button on the bench, that judge will be automatically connected to the Nineteenth's interpreter pool. Should all interpreters at the Nineteenth Circuit be busy with other proceedings, the connection will automatically reroute to the Ninth Circuit pool. A Ninth Circuit interpreter will then connect with the judge in the Nineteenth Circuit and provide interpreting services for the proceeding. This entire process takes place seamlessly in the background within 15 seconds of the judge's initial request.

The ability of On-Demand VRI to connect interpreter pools, share resources, and provide backup between circuits has the potential to intrinsically transform the delivery of interpreting services and access to justice throughout the entire state.


In circuits with a larger population of court users needing interpreters at their hearing, a networked On-Demand VRI system mitigates the increased need for interpreters. For circuits with smaller populations, the networked system allows for access to additional certified interpreting services without significant additional cost.



With the success of adding a centralized call manager to On-Demand VRI, the Ninth Circuit will look to add additional circuits to the system over the next year.

A regional pilot project to scale the system to support six circuits across 23 Florida counties is currently in development. With this framework and some retooling back in the drawing room, it is hoped that On-Demand VRI can provide a statewide solution for providing interpreting services and access to justice for court users regardless of their location or limited-English-language proficiency. As the courts expand the reach of On-Demand VRI, the Ninth Circuit looks forward to judges across the state vetting this system for themselves and hopes to one day see On-Demand VRI in courtrooms throughout the nation.

The ability of On-Demand VRI to connect interpreter pools, share resources, and provide backup between circuits has the potential to intrinsically transform the delivery of interpreting services and access to justice throughout the entire state.



Access Empowers: How ODR Increased Participation and Positive Outcomes in Ohio

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Time, money, geography, and psychological barriers contribute to the access-to-justice gap. The Franklin County Municipal Court combined ADR and ODR to bridge the gaps between access and social justice, increasing participation in the legal process and reducing default judgments.



The Franklin County Municipal Court (FCMC) in Columbus, Ohio and Court Innovations Inc. developed the first court-connected, small-claims online-dispute-resolution (ODR) platform in the United States in 2016. Since launch, the ODR platform has enhanced efficiency and fairness and improved case outcomes by empowering court users across income and race demographics to participate in the small-claims process and voluntarily resolve cases through negotiation and mediation. After more than three years of implementation and data collection, the FCMC ODR platform demonstrates how courts can bridge both the access-to-justice and social-justice gaps by combining alternative dispute resolution with online technology.

The Need for a New Civil Justice Approach

Socioeconomic factors, rather than meritorious claims and defenses, have historically determined case outcomes. In 2015 a University of Toronto study ranked Columbus fifth among large metro areas with the highest levels of overall income segregation. The Franklin County Municipal Court is the largest court in Ohio, with more than 45,000 civil cases filed annually. One out of every ten FCMC cases is a small-claims action to recover money. Between 2011 and 2015, default judgments for failure to appear at trial exceeded all other dispositions in FCMC small-claims cases. A defendant's failure to appear at trial could result in a money judgment that impacts access to credit, employment, or housing, to name a few potential consequences. Whether it is issues with transportation, employment, childcare, language, or other physical or psychological reasons, small-claims cases have a high default-judgment rate.

The 2015 National Center for State Courts' State of State Courts poll revealed court users generally had deep-seated and real concerns about inefficiency and unfairness, while African-Americans expressed significantly less faith in the courts than did the population as a whole. Surveyed court users were, however, enthusiastic about alternatives to traditional dispute resolution and the use of technology to improve customer service. That feedback provided courts with a roadmap to developing policies and programs that both strengthen public confidence in courts and enhance access to justice.

Socioeconomic factors, rather than meritorious claims and defenses, have historically determined case outcomes. Whether it is issues with transportation, employment, childcare, language, or other physical or psychological reasons, small-claims cases have a high default-judgment rate.



Placing the User at the Center of Dispute Resolution

The Franklin County Municipal Court and Court Innovations contracted to address civil social justice in small-claims cases. The FCMC Small Claims Division's experience was that when individuals participated in the legal process, whether it meant appearing in court or attending mediation, case dispositions on the whole were positive. Online dispute resolution was a way to increase participation without requiring parties to physically appear in court. Court Innovations, based in Ann Arbor, Michigan, launched its Matterhorn platform in 2014 to help courts and the public resolve cases more efficiently and equitably online. The platform combined 24/7 access with procedural information to empower the public to resolve cases that might otherwise result in negative case outcomes, such as warrants or fines. The purpose of Matterhorn is to help courts manage high-volume dockets and achieve social justice.

The FCMC ODR platform started with City of Columbus Division of Income Tax cases, a subset of small-claims cases, because they represented the largest percentage of default judgments due to defendant nonparticipation. The FCMC and Court Innovations team met with City of Columbus attorneys to design a user-friendly system that anyone familiar with text messaging could use.

The group initially discussed potential parameters for eligibility and participation restrictions but decided to create a true alternative to the traditional litigation process. The result was an asynchronous text-based system that did not have any barriers to access. Because the ODR platform was offered to users at no cost, was voluntary, and dovetailed with existing mediation options, no legislative changes or procedural rules were required to launch. The team tested the platform with individuals unfamiliar with the platform to obtain feedback. From idea to launch, the ODR platform was live within three months. Defendants in the pilot received information about ODR, along with their notice and summons to appear in court.

With more parties resolving cases online and fewer parties appearing at court, the ODR system increased the court's efficiency and positive case outcomes.

Tax Case Dispositions by Income and Minority Percentage

Based on Defendant U.S. Census Tract

Income Level	Non-ODR Defendants Random Sample 2017			ODR Participants October 2016 - December 2019		
	Total Cases	Dismissal %	Minority %	Total Cases	Dismissal %	Minority %
Low	39	46	64	41	56	62
Moderate	99	34	45	113	55	47
Middle	81	35	31	94	66	28
Upper	52	56	20	75	62	21
Out-of-County or State	53	58	21	70	67	20
Total	324	46	36	393	61	36

The asynchronous, online nature of the platform allowed parties to directly message each other and negotiate from anywhere at any time. Parties could generate agreements and exchange signatures electronically without the need to pay for postage or travel to court. With more parties resolving cases online and fewer parties appearing at court, the ODR system increased the court's efficiency and positive case outcomes. Tax cases resolved online are disposed within an average of 100 days from the start of negotiations, indicating that most defendants needed only a three-to-four-month payment plan to completely resolve their cases.

Most importantly, FCMC increased defendant participation and voluntary dismissals overall. Voluntary dismissals are significant because they indicate to the court that the case was resolved between the parties without judicial intervention and that court costs have been paid. In Ohio, government entities do not pay court costs at the time of filing; court costs are recovered from defendants either voluntarily or through collection actions. ODR-participant dismissal rates increased across income and race demographics. Defendants in low-to-middle-income neighborhoods experienced the largest increase in dismissal rates compared to non-ODR defendants.

In 2017 the Ohio State Bar Association's Judicial Administration and Legal Reform Committee presented FCMC with its *Innovative Court Programs and Practices Award* based on the success of the ODR platform. The positive results prompted FCMC and Court Innovations to expand ODR to cover all civil case types.

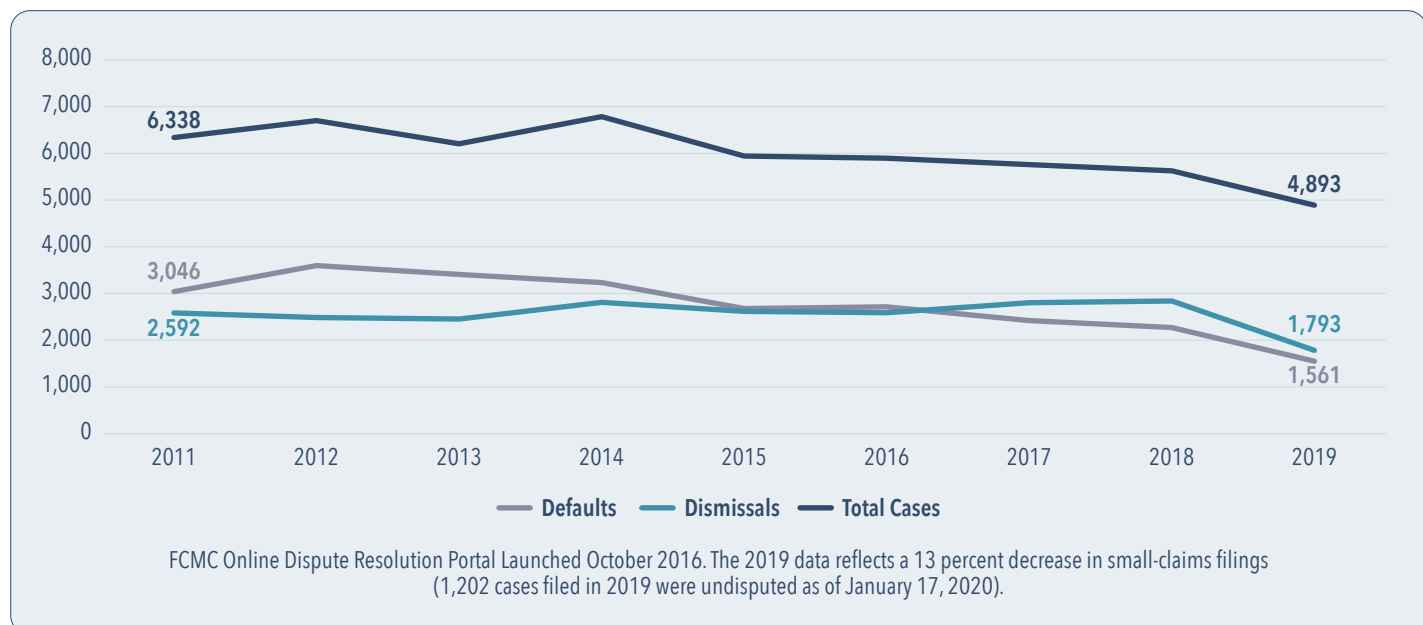
User Feedback and Positive Change

Participant feedback provides insight as to why ODR generates positive results. Time, money, and psychological stress are all factors that contribute to the access-to-justice gap. For most ODR participants, the option to resolve a case online not only is convenient, but also provides an opportunity to meaningfully participate in the legal process that would not otherwise exist but for the platform.

At the end of each online negotiation and mediation, users are surveyed for their thoughts and perceptions about the process. The majority of users preferred ODR (94.5 percent) over going to court (5.5 percent), found the platform easy to use (83.6 percent), thought their agreement was fair (89.8 percent), felt they were treated with respect and had an opportunity to be heard (90.1 percent), agreed they felt they gained some control over how their case would be resolved (85.2 percent), and would recommend ODR to someone else (91.2 percent). Surveyed users self-identified with the following race/ethnicity categories: white (59.5 percent), black (22.4 percent), Hispanic/Latino (5.6 percent), Native American (2.2 percent), and Asian or Pacific Islander (1.1 percent). Additional survey information is available at <https://bitly.com/fcmcddata>.

Small-Claims Case Dispositions

2011-2019



ODR Satisfaction Survey Excerpts

"Very easy to use and helped me tremendously since I had just started a new job and would have been unable to go to court."

"Because this service is free, you have nothing to lose and everything to gain by trying it first."

"It was a very good experience. It can be overwhelming and intimidating to go to the courtroom, online made the whole process so much less intimidating and more comfortable to come up with a resolution."

Based on Web analytics for the year 2019, the majority of ODR users access the platform via mobile phone (58 percent). Typical site users are between the age ranges of 25-34 (38 percent) and 35-44 (23 percent). They are more often male (57 percent), than female (43 percent). (Source: Google Analytics data on public use of the site, January 1-December 31, 2019; demographic characteristics are inferred by Google Analytics.)

The FCMC ODR portal continues to generate positive results:

1. User perceptions of procedural and substantive fairness are overwhelmingly positive across surveyed users.
2. The default judgment rate in City of Columbus Division of Income Tax cases is 10 percent lower than before ODR.
3. More than one-third of defendants access the ODR platform outside of business hours.
4. Dismissals now outpace default judgments across all FCMC small-claims cases.



Why ODR Works Well for Courts and the Public

As populations grow and communities evolve, courts may think they need to do more with less to serve the public. Online platforms, like ODR, allow courts and government agencies to serve a variety of community needs by leveraging technology to work within existing staff levels and budgets. The FCMC small-claims ODR platform requires minimal administrative resources because most users resolve their cases online through direct negotiations that do not require court assistance or intervention. The FCMC ODR mediation platform also works well for the court and its staff because the asynchronous nature of ODR allows administrators and mediators to work with multiple parties across different cases at the same time without coordinating schedules.

Court users may prefer ODR over coming to court because ODR represents a true alternative to the traditional in-court experience. Whereas in-person court appearances operate on strict schedules and procedural rules, ODR allows parties to select their own process at their own convenience, wherever they are comfortable. In-court experiences are often a mix of waiting long periods of time for an opportunity to be heard, and then quickly explaining a position in front of a decision maker and an opposing party under time restrictions. With ODR, public speaking and concerns about being in front of a judge or an opposing party are eliminated. ODR also works well for individuals with histories of chronic stress or trauma because it creates a physical and psychological buffer that is not available in a traditional in-court experience. ODR provides users with time to think and reflect about what they would like to say and what decisions they would like to make. Finally, parties may be more open and comfortable with resolving a case online when they feel that biases against race, religion, gender, sexual orientation, and physical appearance, for example, will not affect their case outcome.

Conclusion

Court-connected ODR is fundamentally changing how the public accesses court services. The FCMC experience demonstrates how a user-centered ODR platform can not only generate positive case outcomes, but also change the public's perception of court through positive experiences and bridge the access-to-justice gap to achieve social justice. The FCMC pilot started small and grew to cover all civil case types. After three years of implementation, the FCMC program illustrates how state courts can work within existing systems to immediately launch a successful ODR platform.

The FCMC experience demonstrates how a user-centered ODR platform can not only generate positive case outcomes, but also change the public's perception of court through positive experiences and bridge the access-to-justice gap to achieve social justice.



Assembling a Case Management System with LEGO®-like Blocks

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Most courts have a case management system provided by a single vendor built with preassembled building blocks that may not work easily (or at all) with building blocks from third-party vendors. Technology is available to help courts choose and assemble building blocks that meet their case management needs.

Technology can be complex and opaque to non-technologists. At the same time, technology must serve the business of the court. How should we design technology to serve the goals of the court and the goals of the public? This article proposes that we encourage the courts to demand, and industry to supply, best-of-breed application components that operate with standardized interfaces to improve the courts' service to the public.

Courts (and clerks) typically manage a suite of applications to support basic daily business, including receiving and sharing information with the public and justice partners, filing and scheduling cases, handling documents, accounting for costs and financial obligations, disposing cases, and tracking cases. As capabilities of technology have matured and the public has adopted smartphones, judges, clerks, staff, attorneys, and litigants desire to access court case records and information in new ways.

Courts and clerks need a variety of case management software applications that typically come from different sources but operate with common data, including e-filing, judicial tools/eBench, public and partner access, notifications, online dispute resolution, litigant (legal) portal, remote audio/visual, digital recording, electronic payment processing, compliance monitoring, electronic transcripts, evidence/exhibit management, and jury management.

The Current State of Component Integration

At this time, court software applications come from many sources and are typically not designed to easily interact with each other without significant investment because there are few standards. Some commercial off-the-shelf/configured applications may be developed and maintained by vendors, while others may be developed and maintained by local- or state-level in-house developers.

Lack of integration between applications often means that data must be entered more than once, increasing labor and risk of error, and those data are not easily accessible to people who need that data. Courts and application providers are moving toward a consensus that standards are needed to enable applications to integrate easily, regardless of their source.

Most courts have a monolithic case management system provided by a single vendor. The system is monolithic because integration of its preassembled components is controlled by the system vendor. Components from other vendors, which may provide improved or additional functionality, may have only limited access to the data and internal components of the monolithic system.

Currently, vendors of monolithic court case management systems seek to offer a complete solution. Many systems do not offer “hooks” that would enable other vendors to interface with a system; they were not designed to operate like this. In addition, interfacing may require access by third-party software to update the “of-record” court case database, something antithetical to vendors for reasons of risk/data security and the business desire for exclusive customer relationships.

Fitting third-party components to a legacy base system requires communication between the additional components and the base system components. The effort and expense of the monolithic system vendor and of the external component vendor discourages interconnection of components because integrating an external component to the base system for the first time requires custom coding.

Vendors of third-party court components currently must develop a customized interface with the specific legacy case management system that the court customer has implemented.

Case Management Systems as a Set of Components

A system is generally defined as a set of things working together as parts of a mechanism or an interconnecting network. After considering two types of system analogies, we will see how those characteristics apply to case management system hardware and software. Components are the things that work together in a system, and compatibility of components is a typical challenge when mixing brands of components.

LEGO® Components Analogy

The first system component analogy is LEGO® building blocks. LEGO® is a line of plastic construction toys using pieces that can be assembled and connected in many ways to construct objects, either free-form or following a specific plan. When two pieces are connected, they must fit firmly, yet be easily disassembled. Most of the pieces can be used for free building, but some specialized pieces only serve one purpose.

The challenge in the LEGO® analogy is building things using pieces from non-LEGO® systems and building the desired constructed object with the pieces available. Other types of plastic construction toys include DUPLO®, which is made by the LEGO® company, with bigger pieces, and Mega Bloks mini, which is made by a competing company, and some sets of them are compatible with LEGO® brand (DUPLO® and regular LEGO®) pieces. The success and aesthetic appearance of constructing the desired system depends on the pieces fitting together snugly onto LEGO® bumps, a consistent color palette, excellent articulation, great details, good quality pieces, and interchangeable accessories.

Video Media Components Analogy

The second system component analogy is video media components. In addition to a flat-screen television with remote controls, hardware components may include a satellite dish or cable connection to the Internet, a digital video recorder, a Blu-ray player, a video game platform, and a voice-controlled virtual assistant. Software components may include streaming services providing content on the Internet. The hardware components have standard connectors and adapters, allowing the user to select and integrate the desired components into the overall video system without compatibility issues. Additional streaming services can be added to the list of what is available. There is a well-developed market of brands for each type of hardware and software component.

A Vision for Court Components in Court Case Management Systems

The strategic goal of both court and industry developers/providers of court case management systems is availability of standardized court component interfaces. These include LEGO®-like pieces that snap together (no matter who was the original “manufacturer”) and hardware components that a court can select from a list to add to the configuration of components to achieve the desired functionality.

The strategic goal of both court and industry developers/providers of court case management systems is availability of standardized court component interfaces.

Court Component Model

The court case management system industry has a legacy of monolithic one-size-fits-all solutions where one vendor has tightly connected components that meet most of a court’s case management needs and are typically implemented all at once. The court community and the vendor community increasingly support the idea that case management components should be able to be procured from different vendors (“best of breed”), with the ability to add or swap components as needed, and that the components should be able to work together without customization. NCSC is facilitating this initiative, called the Court Component Model.

Software technology has evolved to the point that a best-of-breed approach is not only desirable from the court user side, but also feasible from the software development side. When courts demand a type of product, the market will respond. Court managers, judges, and clerks who have attended a conference and vendor exhibit may return to their court saying, “I saw [component X] and we need that.” It is up to court technologists to determine if that piece of technology would fit in court and prepare for a discussion with court leadership about how it would align with the long-term vision of the organization.

Taking a business-before-technology approach, the best practice is to have a business vision and then figure out what technology will support it. Components that provide the best functionality at the best price will succeed in the marketplace. This approach depends on setting standards that govern the exchange of messages and data between components.

Discussion of the Court Component Model comes with the caveat that the model is and will always be a work in progress as technology is always changing. The model will eventually be approved by the Joint Technology Committee of NCSC. Next steps on the model will be to add, revise, and consolidate components; document scope and key functional capabilities for each component; prioritize components for subsequent activities; and develop interface standards and conduct pilot projects to demonstrate successful implementation of components in a statewide or local court.

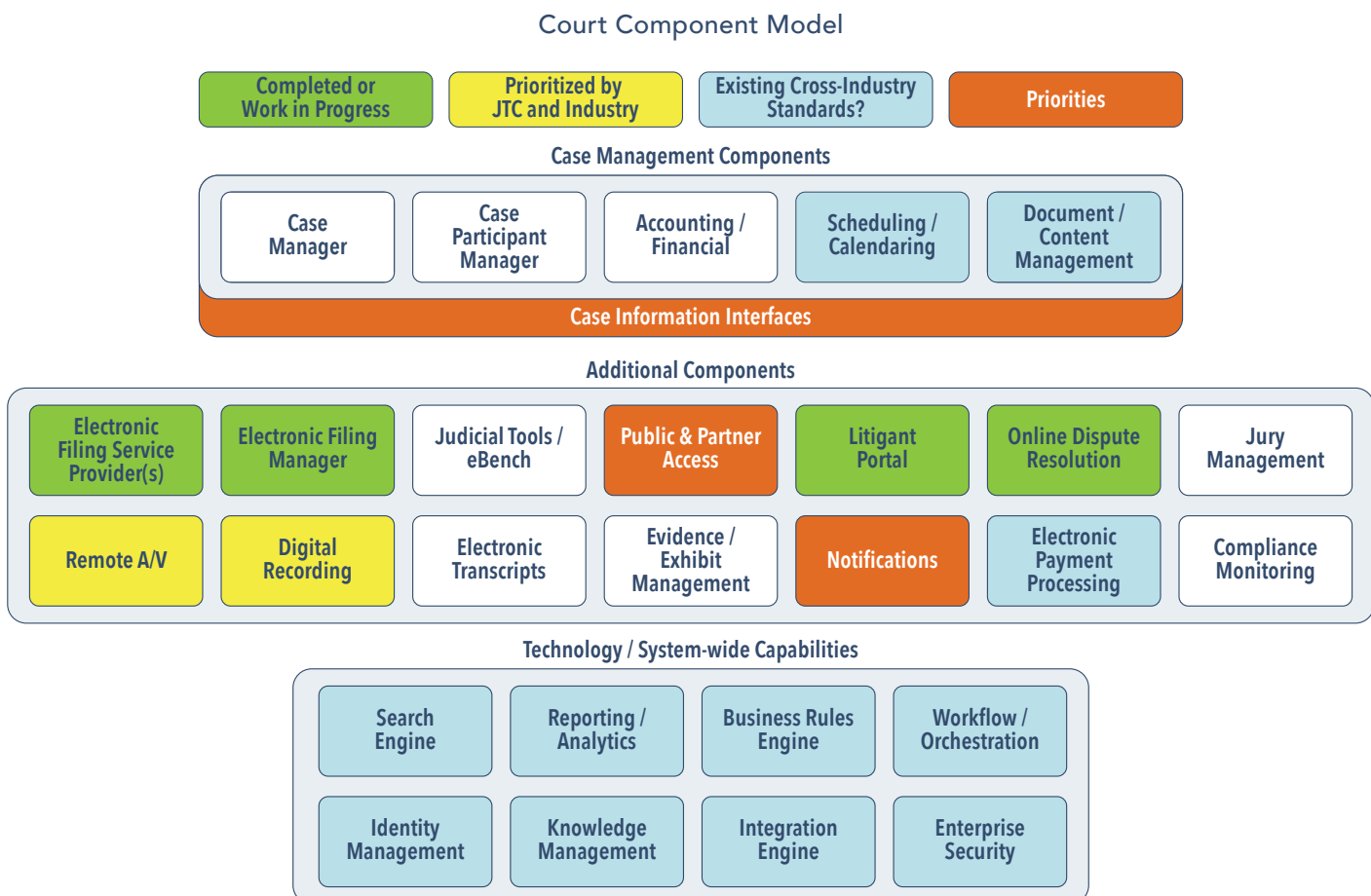
The Court Component Model has three categories:

1. Case Management Components of a traditional monolithic case management system are functions that are traditionally part of a legacy system currently used in courts, including a case manager, case participants, accounting/financial, scheduling/calendaring, and document/content management.
2. Additional Components are typically sold separately to add to capabilities of traditional components, including electronic filing service providers, electronic filing manager, judicial tools/ebench, public and partner access, litigant (legal) portals, online dispute resolution, jury management, remote audio/visual, digital recording, electronic transcripts, evidence/exhibit management, notifications, electronic payment processing, and compliance monitoring.
3. Technology/System-wide Capabilities offer functions and features used by the components, including search engine, reporting/analytics, business rules engine, workflow/orchestration, identity management, knowledge management, integration engine, and enterprise security (see Joint Technology Committee, 2017).

The diagram below shows the components in the three categories, with color coding indicating priorities and the status of interface standards.

How to Implement this Vision

We do not have to start at the beginning. We have examples of interoperable components in court technology already. Essential to a component-based approach is connecting applications using standards-based interfaces. Thus, to get to greater interoperability, groups are working together to define technical interface standards. As shown in the figure, several interface standards are complete or in progress (shown in green). Others may be leveraged from existing cross-industry standards (shown in blue). And then the components shown in yellow and in orange are prioritized for development.



We Are Part of the Way There— Some Components Already Interact Well

Not everything is in technical silos. Even now, there is a wide variety of component building blocks on the market to increase the availability and usefulness of court case data to other court functions. The most widespread ones include e-filing, judicial tools/eBench, and electronic payment processing for cases already filed in the court or being filed.

Even before a court case begins, courts that promote access to justice also recognize that litigant/legal portals and online dispute resolution will play an increasing role in helping the public access information and resources to address legal and nonlegal problems. Courts increasingly sponsor online assistance to the public, and provide a pathway if the incident or dispute results in a court case, through a seamless transfer of information from the component to the court's case management system.

For courts interested in locating components, the IJIS Institute Court Advisory Committee (ICAC) provides a free directory service at <https://icacprovdri.ijis.org>; the ICAC *Technology Provider Directory* presents products and services available in the market in a way that maps their capabilities and application to court technology components identified in the Court Component Model. This approach is designed to make it easier to find applications that meet specific challenges of courts.

Recommendations for Future Component Architecture: A RESTful Technical Approach

The standard for software interoperability is to constrain communications between systems via an API, or Application Programming Interface. A current popular and lightweight API method is a RESTful API. REST is Representational State Transfer (REST). Web services using this architecture are termed “RESTful.” REST was developed for distributed web (“hypermedia”) systems by Roy Fielding in 2000. It is meant to provide a “uniform connector interface” between software systems (Fielding, 2000: chap. 5). Its goal is to provide a structure for scalability, generality, and independence.

REST defines a set of constraints to be used for requests made to a resource (Uniform Resource Identifier, or URI, which is an entity or capability on a network or on the Internet, similar to a URL). The request elicits a response with a payload formatted in HTML, XML, or JSON. For example, one component may request a time slot in a docket based on case type with other parameters. In the RESTful style, a message from the scheduling resource contains all the metadata necessary for the requestor to understand what it can do. REST makes system integration more like the Web by providing hyperlink abstractions to the requestor, which adapt over time creating interoperability through discoverability of resources and location independence. (For more information, see also Bloomberg, 2013.)



Other Options for Component Interfaces: ECF

REST is not the only option. For example, the proposed technical interface standard for the Online Dispute Resolution component (see ODRTIS, 2019) leverages the OASIS Electronic Court Filing (ECF) standard for communication between software systems (see OASIS LegalXML Electronic Court Filing TC at <https://tinyurl.com/6wefanq>). The ECF standard is a mature one, originally approved in 2002, it remains actively used and adapted. ECF specification version 5.0 was approved in April 2019. ECF defines the communication of information between component systems in XML, the functions available, and the syntax of messages to request or receive information. For more detail, see the Electronic Court Filing version 5.0 specification (online at <https://tinyurl.com/uvmdg3b>).

Conclusion

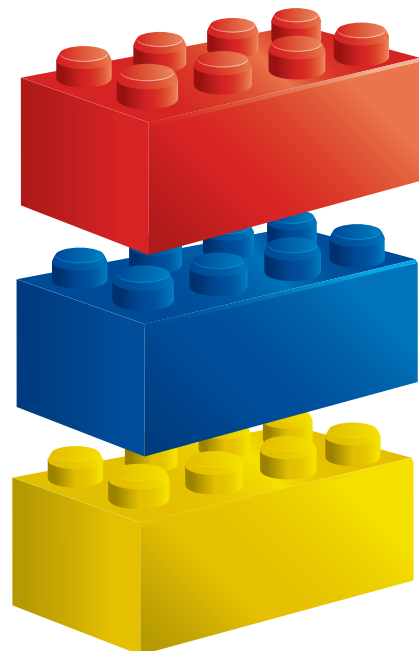
The list of components in the Court Component Model informs court managers of the kinds of automated case management functions (potentially) available to enhance what their legacy system does for the court. The Court Component Model looks forward to the day that all components are based on standards and are separately available in the market or can be developed in-house. This will enable courts to mix and match components they want to assemble for their case management system, even components from multiple vendors, which, by virtue of standards, will interoperate with each other. Courts are advised to ask their vendors/providers if a certain desired component will operate with their legacy system, and how much it will cost to integrate it, creating a demand for standardized integration. Finally, the court component approach will motivate court case management system vendors to meet the emerging needs of court case management by building standardized interfaces and not building the components themselves, which only continues the pitfall of “one size fits all.” We want all courts in the nation to have at their fingertips software that works well, regardless of source, and to focus on the work of justice, rather than the details of supporting technology.

The work of courts is challenging. It is time to create a technology environment where courts can choose and easily implement the software they need to get their work done.

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... the court component approach will motivate court case management system vendors to meet the emerging needs of court case management by building standardized interfaces... [and avoiding] the pitfall of “one size fits all” ...





A New Data Systems Approach for Drug and Treatment Courts

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The data demands for drug and treatment courts are complex and extensive. New database technology and cloud services provide an advantageous approach for courts and statisticians to consider.

A Brief History

Adult drug courts are the most prevalent problem-solving court type, with an estimated 3,400 adult drug courts nationwide (National Institute of Justice, 2014). Drug courts came into existence in the 1980s because of widespread dissatisfaction with the impact of traditional criminal justice interventions on offender substance abuse and recidivism (see, e.g., Marlowe, DeMatteo, and Festinger, 2003). Around the same time, the concept of therapeutic jurisprudence expanded the role of the court. According to therapeutic jurisprudence, courts could be change agents and have a positive impact on an individual (Lurigio, 2008). This paradigm shift presented an opportunity for courts to apply a new approach to address substance use and abuse, and with that, the first drug court was started in Miami in 1989. Its goal was rehabilitative in nature, focusing on treatment and connections to the community to support sobriety and stability.

Many studies have documented poor outcomes for drug users who experience the traditional responses of the justice system. Marlowe, DeMatteo, and Festinger (2003) point out the ineffectiveness of imprisonment, noting that some studies report that over 95 percent of drug-abusing offenders returned to drug use within three years of their release from prison, with most relapsing within only one year. Further, nationally, 77 percent of drug offenders are rearrested for a new crime, and 44 percent are reincarcerated within five years of release from prison (Durose, Cooper, and Snyder, 2014).

Probation has also been ineffective with this population. Spohn and Holleran's (2002) study in Jackson County (Kansas City), Missouri found that the probability of recidivism for drug offenders sentenced to prison was 82 percent, while it was 43 percent for those sentenced to probation. For drug-involved offenders, the probabilities were 62 percent and 48 percent, respectively. While drug offenders sentenced to probation outperform those sent to prison, they still recidivated at a higher rate than non-drug offenders sentenced to probation (40 percent).

Drug courts provide an opportunity for courts to address criminal behavior while simultaneously focusing on treatment and support, rather than solely imprisonment and supervision. The first drug court opened the doors for the problem-solving court model to be applied to other social issues, such as veterans court, mental health court, and human-trafficking court. Although local practices vary, treatment courts are typically distinguished by several features, such as a multidisciplinary team, intensive supervision, outpatient treatment, application of incentives and sanctions, and connection to supportive services. These features require the exchange of information between team members, other agencies, and service providers for both case management purposes and the evaluation of programs.

Drug courts provide an opportunity for courts to address criminal behavior while simultaneously focusing on treatment and support, rather than solely imprisonment and supervision.

The Complexity and Data Problem

The team approach, central to treatment courts' success, requires that participants have relationships with team members and other professionals: case managers, treatment providers, attorneys, program coordinators, and support systems.

In addition to these connections, drug courts need to track a wide range of information to monitor individual progress and program success, such as attendance at hearings and treatment, drug-testing dates and results, incentives and sanctions, and progress on individualized goals. When current and historic interactions with law enforcement and social services are added to the mix, a spaghetti bowl of entanglements is created that a traditional database approach cannot accurately reflect. New technology is needed to accurately capture and report all of the complexity.

Looking to New Technologies

Currently, many treatment courts continue to rely on an old computer information system developed in the early 2000s that runs on individual personal computers (PCs). In contrast, today we have ubiquitous Internet, tablets, smart phones, and, more important for this discussion, low-cost cloud services that provide a complete system infrastructure. These new technologies overcome the limitations of the old PC-based systems, such as the ability to securely share and efficiently update a person's treatment, progress, and ongoing relationship data, and do so in a low-cost way.

A low-cost solution is important since treatment courts rightly focus their financial resources on treatment services. As a result, IT spending is not normally available for technical design, programming, and support. And when there is IT spending, it is focused on the data needed for program evaluation to support ongoing funding of the programs. Therefore, cloud, open-source, and shared services are the strategies that the treatment courts need to employ to lower costs. While there are many examples of such strategies on the market, one in particular has the capability to be a game changer for treatment courts.

The NoSQL solution

We believe that a new technology, the NoSQL database, is a promising solution for treatment court professionals. Specifically, we use the MongoDB open-source database software at NCSC. The term NoSQL (not only SQL/non-relational) was first used in 2009 to “describe non-relational databases” that are structurally very different than the tables and rows we use in relational databases such as MySQL, Oracle, and Microsoft SQL, for example. NoSQL databases not only can handle relational data, but also do more.

Instead of tables like one finds in a spreadsheet, the basic units of NoSQL/MongoDB are officially called documents. For our purposes, we think that the term “card” works better, as documents have a very specific meaning and use in justice systems. There can be “cards” in NoSQL for people, places, events, and records (Foote, 2018).

Here is an example of what a simple MongoDB address “card” looks like “in raw form.”

```
{
  person: {
    first_name: "Peter",
    last_name: "Peter",
    addresses: [
      {street: "123 Peter St"},
      {street: "504 Not Peter St"}
    ],
  }
}
```

Source: Kvalheim, 2012.

There may be a “card” for the individual in the treatment court, related persons and organizations such as their employers, court orders, treatment providers, treatment programs, treatment program reports, test results, sanctions, incentives, financial tracking, modifications in treatment orders or programs, and final reporting/results, for example. There are links between all the cards as needed. This is the “magic” of this new database approach.

What specifically is that “magic” that MongoDB provides? In summary, it is the ability to:

- create and uniquely identify and index each card (meaning instant retrieval)
- edit cards for not only data but also new data fields as needed
- create and link, in any relationship, any card to one or many cards
- search by file and full text search the cards
- control and validate the data in the cards (like relational databases)
- provide audit tracking of card modification

For a more detailed technical explanation and a comparison with the MySQL relational database, see “Mongo DB vs. MySQL” at <https://tinyurl.com/qzay635>.

Implementation

Because a MongoDB can work “in the cloud,” it can be easily deployed in each treatment court. A court system could design and build one and then copy it as needed. Alternatively, it would also be possible to create one system for all treatment courts in the state or jurisdiction and allow them to share treatment and statistical performance information.

One of the challenges in evaluating treatment courts is the need to use data from partners outside of the court, such as number of treatment sessions attended, assessment results, or results of drug tests. When the data elements necessary to collect this information are not present, the information is captured in rudimentary ad hoc systems or in text boxes making analysis difficult. NoSQL/MongoDB’s flexible data structure enables it to incorporate any type of data—no matter what it looks like or where it comes from. Additionally, because it is “in the cloud,” NoSQL/MongoDB provides the opportunity for team members outside of the court to enter information into the database, reducing double data entry, facilitating communication between team members, and setting the foundation for measuring and evaluating the court’s performance.

Most importantly, perhaps, is NoSQL/MongoDB’s capacity for real-time analytics. Many treatment courts do not have the resources to have analysts, so program coordinators devote time and energy to compiling data when they need to report it. Real-time analytics drastically advance a court’s ability to use data to operate, to make program and process improvements, and to identify emerging issues—all while conserving valuable court resources.

Data Sharing, Protection, and Security

When considering cloud-based solutions, there is often a concern with security, especially of sensitive information. NoSQL/MongoDBs are already being used for medical records with the capabilities contained in the commercial version of the product. This is because the database, the card, and the data fields' information can be encrypted. So those systems, such as what is envisioned in this article that contain HIPAA data, require the use of encrypted data to protect the participants' information. MongoDB has posted a website (<https://tinyurl.com/yaqsraxz>) with their recommendations on security compliance to meet HIPAA and similar privacy regulations.


Future

Treatment courts are more likely to be successful when there is information sharing between team members and efficient, low-cost ways to manage data. NoSQL/MongoDB provides that infrastructure and so much more. A cloud-based approach allows for shared development, shared cost, and the potential for mobile apps and other new technology, such as online scheduling and reminder systems, to be created. The flexibility, accessibility, and low cost of this approach makes it one that deserves serious consideration by treatment courts throughout the country. If your court is interested in learning more about NoSQL/MongoDB, please see <https://tinyurl.com/qzay635>.

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Usability Testing Results for Legal Icons, Northwest Justice Project: A Case Study

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Visual icons can make court forms easier to understand. This article discusses the development and testing of icons for forms in family-law cases in Washington State.

Background

The Northwest Justice Project (NJP—Washington's publicly funded legal aid program) and the Superior Court of Washington have long relied on plain language and readable design to support people who want access to legal forms and information, but do not have lawyers.

Plain Language

Plain language is writing designed to promote quicker and easier understanding. It is sometimes called plain English or plain legal English. It avoids complex sentence structures and unneeded legal jargon. Transcend is a language services company that uses plain language, design, and usability testing to promote increased access to justice.

In 2018 NJP asked Transcend to create six new legal icons to enhance the readability of their family-law-document-assembly project. These new icons are now included in the legal icons set at transcend.net/legal-icons.html (learn more about the legal icons project by watching this video at bit.ly/LSC-rapid-fire-talk-legal-icons). NJP uses the icons to support step-by-step court-form instructions on Washington Forms Online (see <https://tinyurl.com/ycfcz8yr>). The icons provide a visual summary of each step, aiding comprehension and making a complex process feel more manageable.

This article shares the various testing methods used to ensure the legal icons conveyed their intended messages. We detail the testing steps below.

NJP requested icons for these phrases:

1. Review your forms
2. Print
3. Sign
4. Copy [forms] (show the number of copies)
5. Deadline
6. Parenting Plan

NJP requested icons 5 and 6 at a later stage. These icons were not tested for recognizability, only in context.

NJP provided from thenounproject.com as "inspiration" and asked Transcend to create and test icons that matched the style of Transcend's existing set of 200+ legal icons. The Noun Project is a website that collects symbols created and contributed by graphic designers from around the world. (Many are free; some are available at a nominal fee.)

Comparative Example of Legal Text Before and After Transcend's Plain-Language and Icon Adaptation

Original text

WARNINGS AND INFORMATION TO THE RESTRAINED PERSON: VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PERSONS SUBJECT TO A RESTRAINING ORDER ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM (PENAL CODE SECTION 10201 (G)). SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH.

Plain-language formatted

To the Restrained Person



Warning! If you disobey this order, you may be:

- charged with a misdemeanor or felony,
- fined \$1,000, and
- sent to jail for 1 year.



No Firearms: You must not own, have, buy, receive, or try to buy or receive a firearm while this or any other restraining order is valid.

If you do, you may be fined \$1,000 and sent to jail.

Icons created for Northwest Justice Project
by Transcend

Left to right:

Deadline-1, Sign, Review forms, Custom-Copies,
Parenting Plan, Copy, Deadline-2, and Print.



Usability Testing Procedure

Research/Identify Existing Icons

The first step was to collect existing icons for these phrases. Icons were selected based on a Google search of each phrase.

Preference Test Existing Icons

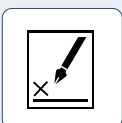
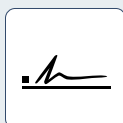
Next came individual preference testing with 5-12 users of existing icons to ask users which image they most preferred for each phrase. (Learn more about preference testing at [Usabilityhub.com](https://usabilityhub.com), especially the examples at <https://tinyurl.com/ycyq4bjk>.)

How to Preference Test

Show each user the inspiration image along with other popular icons for each phrase. Ask, "Which icon do you think best represents the phrase:?"

Example:

Which icon do you think best represents the phrase "Sign"?



None
of them

If you chose "None of them," do you have a suggestion for a better icon for this phrase?

At the end of this test, the icon with the most votes was redesigned to match the style of the previous icon set. It was ready for the next phase.

Test Icon Recognizability (Icon Only)

In this phase, icons were tested for recognizability. Three *new* participants were shown the icons and asked what each icon meant to them.

Example:

I am going to show you some pictures of things you might find on a legal website or in legal self-help documents.

I'd like you to tell me what you think they mean.

There are no right or wrong answers.

It's OK if a picture has NO meaning for you.

You can just say, I don't know. All answers are OK.

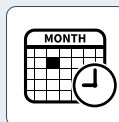
The information you give us helps us get better.

Two of the icons (Review and Copy) did not test well. But because these icons would not be used in isolation (i.e., they would appear next to text), it was decided to test them in context with text.

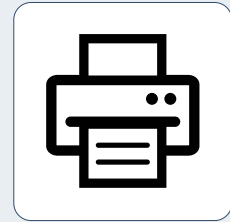
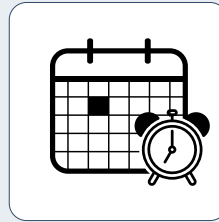
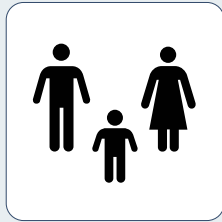
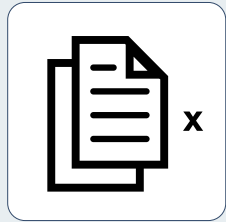
Example:

Look at the picture for #8. Now look at the words. Does this picture do a good job communicating **Deadline**?

8.





Write down the deadline for your court form.



Test Icons in Context (Icon with Text)

Each participant was shown some icons next to typical text and asked to rate how well they communicate a particular phrase. Participants were asked to rate their answers using the following scale:

1	2	3	4	5
No!	A little	Pretty good	Good	Great!
				
Unsuccessful			Successful	
Icon needs more work			Accept icon	

Icons rated Good or Great were considered a success. The icons were accepted without further changes. Only Print and Sign were deemed successful by every participant.

Get More Input on Unsuccessful Icons

The four other icons (Review Your Forms, Copy, Deadline, Parenting Plan) received low ratings. At the end of each test, each participant was asked for more input on each of these icons.

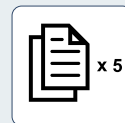
The artists and production team then translated the participants' input to revise the icons; this triggered a new round of in-context testing with new users.

Iterative Testing on Unsuccessful Icons

It took several more rounds of iterative testing, feedback, and reworking the icons to produce icons for Parenting Plan, Copies, and Review that participants successfully connected with. For Deadline, participants gave equally positive responses to two icons. However, they sensed the urgency in the icon with the exclamation point more than the alarm clock. For more information about iterative testing, see J. C. R. Bergstrom, E. L. Olmsted-Hawala, J. M. Chen, and E. D. Murphy, "Conducting Iterative Usability Testing on a Website: Challenges and Benefits," *Journal of Usability Studies* 7, no. 1 (November 2011): 9-30; online at bit.ly/iterative-testing-JUS-article.

Customized Copy Icon

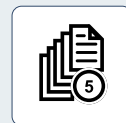
NJP requested a customizable copy icon where the user could specify the number of copies required.



A



B



C

Transcend conducted a preference test at Usability Hub, asking, "Which image best represents the phrase '5 copies'?" Please explain why you chose this option."


Choice B got the most votes as it appeared less cluttered and most effective to the participants.

Further testing helped determine that some users would have difficulty figuring out how to use the customizable version of this icon, so Transcend also created a how-to video.

Summary

Effective images can do much to enhance access to legal information and court forms and websites. Testing them is not that difficult. Follow the basic steps outlined in this article:

1. Research/Identify existing icons
2. Conduct preference testing
3. Conduct recognizability testing
4. Conduct in-context testing
5. Get feedback on unsuccessful icons
6. Rework unsuccessful icons
7. Conduct iterative testing until icons are successful



The Family Justice Initiative: A Work in Progress

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Legal cases involving families have their own special requirements. The Family Justice Initiative helps courts to improve the ways these cases are handled.

Family case types, including divorce, separation, and allocation of parental responsibilities, have important characteristics that distinguish them from other case types. A family case can be complex and often requires decisions throughout the case. The court must be forward looking in ways unique to family cases, and to shape future behaviors and relationships, they must assess past events. Where children are involved, the relationship between the parties continues well beyond the resolution of the case. Additionally, the traditional court process can inflame tensions between parents, putting children in the middle.

Courts are increasingly trying to develop new tools and processes to meet the needs of the families who come before them. To support family courts in evaluating and improving the way domestic relations cases are handled, the Family Justice Initiative (FJI) launched in 2017. The project is a partnership between the National Center for State Courts (NCSC), the Institute for the Advancement

of the American Legal System (IAALS), and the National Council of Juvenile and Family Court Judges (NCJFCJ), with support from the State Justice Institute. The FJI project received oversight and guidance from a sub-committee of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) Joint Committee on Children and Families.

The FJI project is modeled on the work of CCJ's Civil Justice Initiative (CJI), which resulted in the recommendations for civil justice reform contained in the 2016 report *Call to Action: Achieving Civil Justice for All*. This report made 13 recommendations for courts to improve how they serve citizens in terms of efficiency, cost, and convenience. FJI follows from this work, extending and modifying these recommendations to address domestic relations cases.

The court must be forward looking in ways unique to family cases, and to shape future behaviors and relationships, they must assess past events.

National Family Court Research

The first phase of the Family Justice Initiative involved a national study of domestic relations cases, *The Landscape of Domestic Relations Cases in State Courts* (2018). There was a belief that the characteristics of domestic relations cases had changed considerably over the last few decades, but at the launch of the FJI project our understanding of current domestic relations litigation was based on anecdotal accounts. The *Landscape* study represents the first large, aggregate examination of how family court cases are litigated in state courts.

Findings confirmed much of the conventional wisdom and anecdotal accounts of issues in domestic relations cases. The majority of cases (64.3 percent) were uncontested, which was consistent across courts and case types. Contested cases were more likely than uncontested cases to involve minor children and had higher rates of requests for emergency or injunctive relief and allegations of domestic violence. Not surprisingly, contested cases were more likely to have case-related activity compared to uncontested cases. Interestingly, however, the mean time to disposition was not significantly different between contested and uncontested cases: approximately one quarter of both contested and uncontested cases resolved in approximately three months.

The *Landscape* study also confirmed the prevalence of self-represented litigants in family cases. Most cases (72 percent) examined in the study involved at least one self-represented party. The petitioner was more likely to be represented than the respondent across courts and case types, and both parties were more likely to be represented in contested cases.

Days to Disposition for Contested and Uncontested Cases

Case Status	Number of Cases	Mean Days	Median Days	75th Percentile	25th Percentile
Uncontested	69,515	338	147	90	252
Contested	37,992	341	196	86	370

Representation by Contested Status

Contested (%)		Respondent	Uncontested (%)	
Petitioner Represented	Petitioner Self-Represented		Petitioner Represented	Petitioner Self-Represented
46.0	7.2	Represented	13.8	2.4
14.4	32.5	Self-Represented	21.9	61.9

Principles for Family Justice Reform

Informed by the *Landscape* study and other best practices from family courts around the country (i.e., resolving family problems and improving case management through a triage strategy that matches cases and parties to appropriate resources and services), the FJI Advisory Committee developed bold recommendations for family justice reform published in the *Principles for Family Justice Reform* (FJI, 2019b). The Conference of Chief Justices endorsed the *Principles* through [resolution 3](#) at their February 2019 Meeting.

Problem-Solving Mindset

The 13 *Principles* provide courts with strategies for improving the way they process domestic relations cases. At the heart of the *Principles* is a shift to a domestic-relations-case-processing approach that emphasizes problem solving and cooperation between parties, especially where children are involved. Broadly, the *Landscape* study found that “family court procedures still largely reflect the traditional adversarial system rather than the contemporary reality of parties that mostly agree” on how to resolve the issues in the case. “This presents a profound change in the role of the court from an adjudicative to a facilitative process.”

To this end, the FJI *Principles* direct courts toward an approach that focuses on problem solving, while also recognizing that courts have ultimate responsibility for leading case management. Problem solving for many family cases relies on nonadversarial court processes, such as mediation or online dispute resolution modalities, with careful attention to the safety of the parties. The *Principles* envision that parties should be empowered to play a proactive role in charting their course through the courts. Safety, however, must remain the top priority and this, along with children’s need for stability and predictability, gives the court a reason to restrict the self-determination of the parties.

CCJ Resolution 3 – Thirteen Principles In Support of the Family Justice Initiative Principles

Principle 1.	Direct an Approach that Focuses on Problem Solving
Principle 2.	Involve and Empower Parties
Principle 3.	Courts are Safety and Trauma-Responsive
Principle 4.	Provide Information and Assistance
Principle 5.	Use a Service-based Pathway Approach
Principle 6.	Streamlined Pathway
Principle 7.	Tailored Services Pathway
Principle 8.	Judicial/Specialized Pathway
Principle 9.	Implement High Quality Judicial and Court Staff Training / Education
Principle 10.	Identify and Strengthen Community Partnerships
Principle 11.	Improve Ongoing Data Collection, Analysis, and Use of Data to Inform Case Management
Principle 12.	Collect and Analyze User-Evaluation Metrics
Principle 13.	Implement Innovative and Appropriate Technology

... the *Landscape* study found that “family court procedures still largely reflect the traditional adversarial system rather than the contemporary reality of parties that mostly agree” on how to resolve the issues ...

Service-Based Triage-Pathway Approach

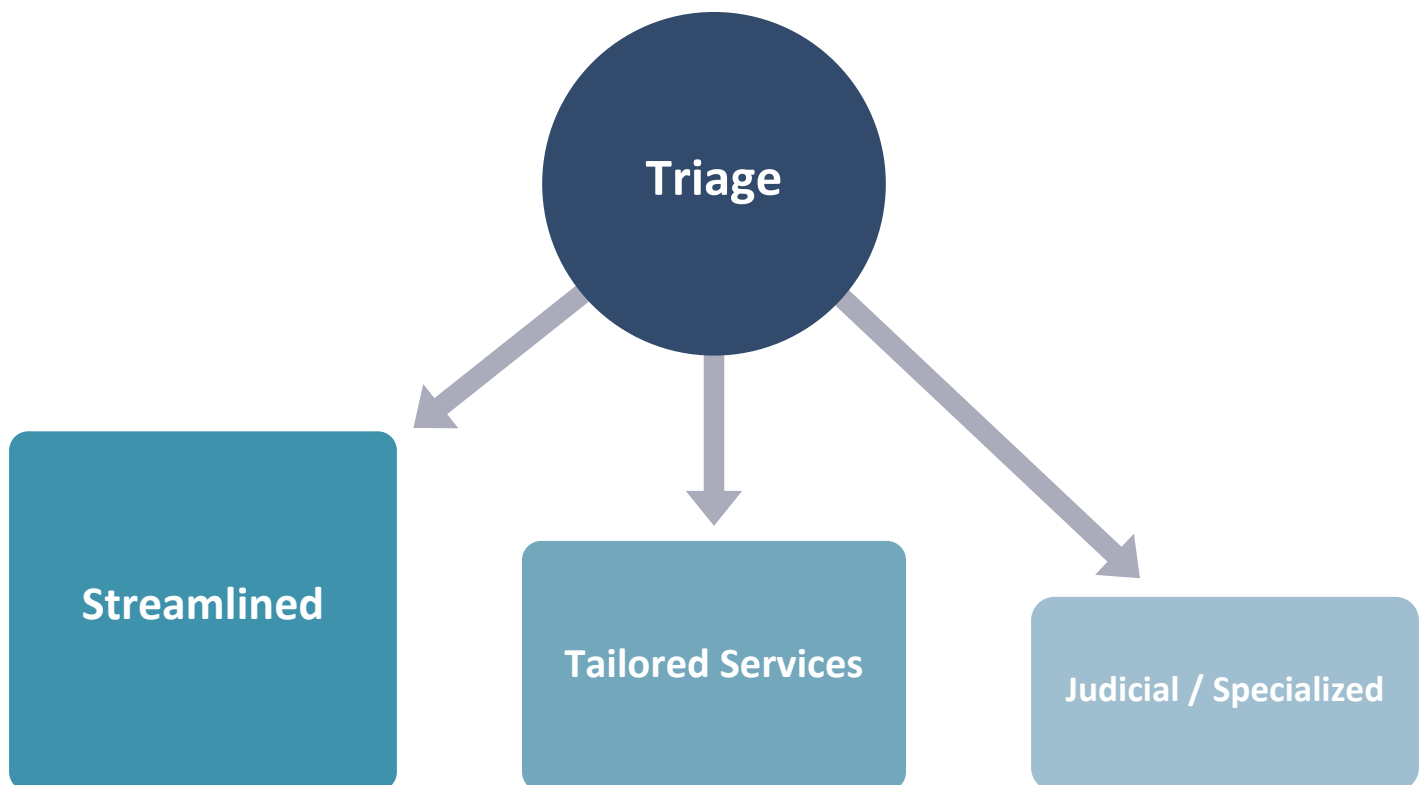
The *Principles* are centered on a triage-pathway system that matches cases and parties to appropriate resources and services both within and outside the court and supports increased information for self-represented litigants and robust training for stakeholders. A supplemental report, *A Model Process for Family Justice Initiative Pathways*, accompanied the *Principles*, setting forth best practices for implementing the triage approach (FJI, 2019a). The FJI *Principles* detail three separate but flexible pathways, allowing cases to move between pathways in the event additional information or subsequent events suggest reassignment is appropriate.

Case management enthusiasts will notice similarities between this triage/pathways approach and differentiated case management (DCM). Traditional DCM views incoming cases as feeding a “reverse telescope” where the fat end represents all incoming cases. Attempts are made through a sequence of case events like pretrial conferences, mandatory mediation, and settlement

conferences to clean out the cases. This approach may fail to meet the needs of the parties and it also misses efficiencies. Cases involving a history of violence should not be mandated to participate in mediation unless special measures are in place. Complex or high-conflict cases, which have a high probability of going all the way to a trial, could be put on a trial track immediately, rather than working sequentially through events and services that will not resolve those cases.

A triage or pathways approach attempts, through consideration of information available about the parties, to establish a pathway that will resolve the parties’ legal and nonlegal issues. By identifying the “symptoms” up front, courts can provide both the case management and services “treatment” that will be most likely to resolve the parties’ needs and, therefore, the case at issue. The case management and services for each of the three pathways is described below:

FJI Triage-Pathway Approach



Note: Most cases will be Streamlined, fewer will require Tailored Services, and fewer still will be Judicial/Specialized.

The Streamlined Pathway is designed for cases that require minimal court resources and little or no exercise of judicial discretion. As the *Landscape* study suggests, most domestic relations cases are uncontested, and in these cases, parties look to the court for legal ratification. Serving this need with minimal delay or complication is part of the court's responsibility to problem solve as appropriate. This pathway is intended to be administrative in nature, and the *Principles* recommend an entry of decree without appearance. In cases involving children, however, a cursory review of the underlying substance of an uncontested agreement may be appropriate, and there must be an explicit process for potential reassignment of tracks given the limited involvement of the court.

While many cases will be uncontested at the outset, there will naturally be some cases that come into the court contested but present an opportunity for problem solving between parties. The Tailored Services Pathway is designed to provide resources and services that empower parties to problem solve to reach resolution. A robust suite of alternative dispute resolution options, including mediation, early neutral evaluation, parenting coordination, and other mechanisms, are at the core of this pathway. Cases with domestic violence, substance abuse, and related issues should not automatically foreclose assignment to this pathway, but the court and service providers must take appropriate safeguards.

Finally, the FJI *Principles* detail a Judicial/Specialized Pathway for those cases that necessitate substantial court-based or community services and resources to reach a resolution. The court should begin active management of these cases as early as possible and should consider marshalling additional multidisciplinary court-based or community resources for the benefit of the parties and any children involved in the cases.

Information and Assistance to Parties

The *Landscape* study confirmed anecdotal and individual state reports that present a high number of self-represented litigants in family cases. Courts are increasingly taking on the responsibility of helping litigants navigate the process, and the FJI *Principles* call on courts to provide clear, straightforward information to parties and assistance to self-represented litigants that includes available resources to assist the family. While digital tools play a large role in court efforts to assist litigants, the *Principles* recognize that these solutions should not entirely replace the in-person and in-court resources available to parties.

Courts are increasingly turning to community partnerships as a means of increasing access to court services, which is particularly important in domestic relations cases...

Training and Community Partnerships

In support of the recommendations, the *Principles* acknowledge the importance of judicial and court staff education. While court-wide education and training are important across case types, domestic relations cases present wide-ranging issues that require educational content beyond traditional family-law statutes and cases. Another supporting recommendation calls on the courts to identify and strengthen community partnerships. Courts are increasingly turning to community partnerships as a means of increasing access to court services, which is particularly important in domestic relations cases where parties benefit from interdisciplinary services.

Data Collection, Evaluation, and Technology Innovation

The importance of data quality in the management of family court cases was a key takeaway from the *Landscape* study, and the *Principles* acknowledge the need to implement standardized, ongoing monitoring of caseloads and develop evidence-informed practices. As part of the court's caseload-monitoring criteria, the *Principles* include user-centric metrics, such as party satisfaction with various aspects of the process. Surveys, design sprints, and other means of engaging litigants can provide invaluable insights into process improvements.

Implementation and Evaluation

The third and final phase of the FJI project entails the implementation of the *Principles* in four pilot courts across the country: Miami-Dade, Florida; King County, Washington; Pima County, Arizona; and Cuyahoga County, Ohio. NCSC, IAALS, and NCJFCJ are working closely with the family courts in these jurisdictions to identify opportunities to implement the FJI *Principles*. A process evaluation will be made available to the court community in the summer of 2020. It is hoped that courts seeking to improve outcomes for families while managing costs, limiting delays, and facilitating healthy outcomes will be guided and informed by these experiences as well as from other courts that have taken steps toward implementation.




Conclusion

The evolving nature of family dynamics requires courts to respond with innovative models to help resolve family matters and improve access to and quality of justice. The Family Justice Initiative *Principles* draw upon data-informed strategies and best practices to provide new approaches to support families. As the piloting courts move forward, tested tools and processes will be available to meet the needs of the families who come before the courts.

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Youth Adjudicated for Sexual Offenses as an Exemplar of Person-First Language in the Courtroom

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Using an identity-oriented label such as sex offender to describe youth is stigmatizing, emphasizes pathology, and contributes to iatrogenic collateral consequences. Instead, justice professionals are encouraged to use more humanizing and person-first terminology, such as youth adjudicated for a sexual offense, to help lessen potential harm and improve outcomes.

Recent decades have witnessed a substantial trend of courts moving toward more trauma-responsive and client-centered approaches to working with vulnerable populations. Proposed models for this work often employ a public-health orientation that rejects *sick* vs. *well* or *victim* vs. *offender* dichotomies. Instead, approaching persons who are system involved as *injured* in some way recognizes the complexities of how human beings respond to all-too-common adversity, toxic stress, and trauma. Moving away from value-laden and mutually exclusive “either/or” labels embraces a more empathic and holistic view of human struggles and harm to which most can relate. In turn, recognition of the shared human experience of injury *writ large* suggests that a universal-precautions approach to the work of courts and allied systems holds benefits for both the consumers and administrators of justice. As a major tenet of the current work in trauma-responsive justice, universal-precautions approaches recognize that certain conditions of healing can be promoted via changes in policy, practice, persons, and environment that are “good for all” regardless of role or status within the system.

The language and linguistic frames used by courts when talking about themselves and those they serve are certainly an important and practical aspect of universal precautions, but the topic has received relatively limited attention in courts. We propose here that adjusting the narrative framing around offenders to a person-first orientation is important to models of trauma-responsive justice and is an important issue for courts to consider as they are increasingly recognized as a part of the larger healing community. Together with medicine, social services, mental health, vocational services, schools, and others, a shift toward recognizing and addressing vulnerable populations in more humanistic, person-first terms, although not without controversy, reminds us that these institutions were created to serve people.

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Power of Words

When describing individuals who come in contact with the justice system, words matter. It is beyond the scope of this article to explore the history and current controversies around terminology or the complexities and nuances of identity, semantics, symbolism, and social construction of meaning at the intersection of language and human behavior. However, research in social psychology, communication studies, education, and related fields has repeatedly demonstrated that “deviant” labeling can contribute to myriad negative repercussions to those labeled (e.g., shaming, targeted vigilante violence, reduced mental health, etc.). Labeling also may contribute to potential reoffending and reduce the likelihood of successful reintegration into the community.

Specifically, labeling theory suggests that the labels placed upon an individual by society can shape their behavior. For example, being labeled as a criminal may influence an individual’s self-perception, which contributes to internalization of beliefs about themselves consistent with the label (i.e., “bad,” “criminal,” etc.). These internalized beliefs may ultimately increase their adherence to criminal stereotypes and behavior and lead to increased socialization with deviant peers and other activities that contribute to persistent offending patterns.

Labeling theory also suggests that deviant labels may disrupt nonoffending pathways and can block opportunities for successful reintegration. For example, individuals associated with criminal labels may struggle to secure stable employment, access educational opportunities, and maintain healthy social relationships—all known protective factors buffering against potential recidivism. The absence of protective factors (e.g., unemployment) can contribute to behavior (e.g., theft) that is compensatory (e.g., need for resources), but also serves to reinforce continued involvement in deviant activities.

Certain populations are at particular risk for the negative repercussions of criminal labeling. For example, socially or economically disadvantaged individuals are likely to experience stronger labeling effects. Other populations, such as youth, are especially vulnerable to the potential impact of labeling due to developmental considerations, such as immaturity and the subsequent malleability of their personality and behavior. Perhaps most important to the present topic, certain types of criminal offenses may yield stronger labeling effects due to society's attitudes and beliefs about individuals who commit that type of crime. We illustrate that dynamic here with sex offenses in general and juvenile sex offenses in specific.

Individuals Convicted of Sex Offenses

The term *sex offender* is arguably the most highly stigmatized of all criminal labels. Upon hearing this label, many people are likely to be repulsed or otherwise angered and assume the offender has committed the most heinous of sexual offenses—a common prototype being that of a dangerous pedophile who preys upon innocent strangers without mercy and is unable to change his or her predilections. In reality, the term sexual offense encompasses a broad variety of criminal offenses, including lewdness, sexual assault, statutory rape, indecent exposure, prostitution, and possession of child pornography. Further challenging this stereotype is the reality that a large majority of offenders (particularly juveniles) do not recidivate, and most sexual offenses are committed against relatives or acquaintances rather than strangers.

Recognizing this variance and inconsistency, scholars, policymakers, practitioners, and advocates alike increasingly consider the term *sex offender* as pejorative, stigmatizing, and dehumanizing in part due to its homogenous framing of this category of offending.

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In other words, even though individuals charged with sexual offenses are quite heterogeneous across offense types and characteristics, they are often lumped into one group under this label, with “predatory,” “dangerous,” “unredeemable,” and “perverse” being just several of the many highly negative and often inaccurate assumptions and connotations. Indeed, most people would acknowledge that there is a qualitatively significant difference between public urination and rape—yet that variance is often lost in practice via the labeling process.

As noted previously, sanctions that are particularly punitive and control oriented in nature may exacerbate the effects of labeling. The United States has experienced a substantial public push for more punitive responses to sexual offending in recent decades, which culminated in widespread registration and notification policies. The purpose of these policies was to increase community safety by providing the public with information regarding offenders living in the community (e.g., address, photographs, offense information, etc.). Thus, the effects of the labeling can be especially strong for this group given the ease with which this information can be accessed online—and the difficulty of removing such information once it lives in cyberspace. Accordingly, the term *sex offender* is often a label that will remain with a person throughout his or her lifetime.



Youth Adjudicated for Sex Offenses

Labeling children and adolescents as *juvenile sex offenders* is particularly problematic for a variety of reasons. First, the label tends to be associated with the belief that this group is unlikely to be rehabilitated and is at high risk to recidivate. In fact, data suggest these youth on average typically desist from criminal offending as they mature and have less than a 10 percent likelihood of committing another sexual offense. This relatively low recidivism rate, as compared to other types of juvenile offenses, could reflect reality that juveniles who commit sexual offenses also tend to be highly amenable to a variety of treatment options, such as community-based treatment and education services.

Second, the importance of peers at this developmental stage makes youth particularly vulnerable to the impact of labeling. Labeling youth can contribute to ostracism, social isolation, and subsequent loss of pro-social support networks—all particularly important protective factors early in life and for preventing reoffending. It is not unusual for sexual offenses in this age range to be related to other developmental considerations (e.g., not yet understanding consent) or poor understanding of boundaries. Research suggests that approximately 25 percent of juveniles who commit

sexual offenses have some form of intellectual or cognitive impairment that contributes to their lack of understanding of developmentally appropriate interpersonal behavior. Labeling these youth as sex offenders can further isolate this particularly vulnerable population from healthy normative and educative influences.

Youth are also vulnerable due to the nature of the *sex offender* label as a catalyst for stressors that can derail a more normative path of development. Consistent with other offending types, youth who commit sexual offenses tend to follow *adolescent limited trajectories*, which is the tendency of delinquent youth to desist from criminal offending as they mature into adulthood. However, these positive trajectories toward self-correction or rehabilitation can be disrupted when youth experience particularly stigmatizing labeling. Although this disruption can occur across ecologies, the labeling process can lead to a host of stressors and collateral consequences at the individual level that might particularly impede rehabilitative progress and desistance. Some of these individual-level impacts include anxiety, depression, reduced self-efficacy, and lower self-esteem. Despite these concerns and in the face of recommendations for developmentally appropriate practices across youth offenders, registration and labeling of youth as *juvenile sex offenders* continues.



Importance of Person-First Language in the Courtroom

Judges are the primary decision makers within the court system. Given their role, status, authority, and substantial influence on experiences of youth who are adjudicated, their language choices are especially important to consider. One can argue they set the tone for the system and other justice professionals in how defendants and adjudicated youth are treated and perceived in the system and by the public.

Person-first language, in contrast to *identity*-first language, is one promising approach to addressing iatrogenic labeling effects that is growing in popularity across fields. Person-first language is a way to speak about a person appropriately and respectfully that emphasizes the individual rather than their characteristics. This type of language aims to retain the dignity of individuals and frame them as persons, rather than describing them by their ability, status, offense, etc. This approach has its foundations in disability advocacy and activist movements and is certainly not without controversy, including allegations of political correctness gone wrong, but it also is receiving more attention and support from practitioners and researchers.

There is evidence that the judiciary also is increasingly endorsing person-first language. In 2018 we conducted an online “snowball sample” survey of juvenile and family court judges in the United States ($N = 76$) to assess, in part, their attitudes and beliefs about youth who commit sexual offenses. Judicial officers were recruited through various national organization listservs (e.g., the National Council of Juvenile and Family Court Judges). Although the sample size was relatively small, judicial officers represented jurisdictions across 24 states, with 50 percent identifying as female, 85.5 percent identifying as white/Caucasian, and 50 percent reporting their political beliefs to be “moderate.”

Specific to the current topic of interest, we found that 32 percent of judicial officers believed that the label *juvenile sex offender* should continue to be used; however, 30 percent preferred the terminology *youth who cause sexual harm*. Further, 38 percent preferred other often less-stigmatizing and person-first terms, such as *youth who committed a sexual offense*, *youth with sexual behavior issues*, and *youth with unhealthy attitudes toward sexual conduct*.

Judges were also asked to rate how punitive they felt their colleagues were in comparison to themselves when dealing with cases where juveniles have been charged with a sexual offense. Overall, judges reported that their colleagues were either similarly punitive

(65 percent) or more punitive (33 percent) than themselves. Subsequent analysis indicated that judges who felt they were less punitive relative to other judges were more likely to recommend using person-first language (62 percent). Interestingly, no other substantial associations were revealed between the likelihood to use/endorse person-first language and gender, political affiliation, or general stance on social issues. Given the limited variability in racial characteristics of this sample, we were unable to assess whether race was associated with judicial perceptions reported; thus, an important activity for future research would be to more robustly explore for individual differences in linguistic preferences.

Though the survey employed a small sample size and early descriptive findings reported here should thus be viewed with caution, it is notable that the relative perceptions of being less punitive, at least compared to colleagues, is perhaps associated with openness to implement less-stigmatizing, person-first language. Given that the judges surveyed were not in agreement regarding the language that should be used with these populations, there remains the need for further discussion around what developmentally appropriate and less-stigmatizing language might be more broadly accepted within the courtroom. We also believe that future research should aim to validate proposed language with actual *youth* samples to help confirm their utility and elucidate which proposed terms are preferred by youth themselves. Research should also further explore which factors or conditions predict openness to using person-first language, which in turn can help tailor judicial education efforts and practice recommendations.



Person-first language is a way to speak about a person appropriately and respectfully that emphasizes the individual rather than their characteristics.



Conclusion

Consistent with social-science research and the trajectories of other human-serving institutions and fields of practice, we encourage judges and allied court professionals to explore moving toward more universally constructive and humanizing terminology when referring to persons involved in the justice system. It is important to emphasize that in no way is this approach intended to minimize criminal/delinquent behavior, nor is it inconsistent with concepts of “accountability”—both common critiques of efforts to move away from a pathology or deficit orientation in the justice system. Rather, we view this shift as a trauma-responsive universal precaution that improves precision in language, moves away from inaccurate “all-or-nothing” terminology, avoids restrictive and artificial *sick* vs. *well* dichotomies, and assists both the consumers and administrators of justice to seek healing.

The language chosen should be as free as possible of stigma, respect the individual, and prioritize the person (i.e., person-centered language) over their actions (i.e., the offense). Returning to our illustrative example, the shift to person-first language such as *youth adjudicated for a sexual offense* (or, even better in low-level cases, the specific offense) is likely less harmful than *juvenile sex offender*—if such a label is even necessary in any given circumstance. By reducing labeling stigma and its subsequent repercussions, developing evidence and societal trends suggest we can improve rehabilitative outcomes and community safety while still maintaining necessary accountability.



Parental Alienation Can Be Emotional Child Abuse

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What is and is not parental alienation? Here are some of its descriptors, possible effects on children, and tips for custody evaluators and family court judges.

When marital discord evolves into hatred, many couples are quick to see divorce as their best option. Divorce may be an easy way out for the couple, but it often wreaks havoc on the children. When parents seek help from state courts, family court judges can appoint mental health professionals as custody evaluators to guide them in determining the future best interests of the children. While these professionals are historically skilled at identifying physical child abuse, they are beginning to identify a more insidious form of emotional child abuse called parental alienation. When this form of abuse is correctly and timely identified, custody evaluators can recommend specific strategies for success.

Parental Alienation vs. Parental Alienation Syndrome

Parental alienation is frequently confused with the parental alienation syndrome (PAS). Dr. Richard Gardner, an American psychiatrist who died in 2003, coined the phrase “parental alienation syndrome” in 1985 and wrote extensively about it. He defined the syndrome as:

*a childhood disorder that arises almost exclusively in the context of child-custody disputes. It is a disorder in which children, programmed by the allegedly “loved” parent, embark upon a campaign of denigration of the allegedly “hated” parent. The children exhibit little if any ambivalence over their hatred, which often spreads to the extended family of the allegedly despised parent (“Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children,” *Journal of Divorce and Remarriage* 28, nos. 3-4 [1998]).*

Gardner used the term “syndrome” because of his medical background. A syndrome is a cluster of related symptoms. Syndromes are generally discouraged as evidence in court because they refer to symptoms from a collection of individuals, while the court is only concerned with those individuals who have standing for the matter before the court.

For Gardner, the syndrome describes the child’s campaign of denigration against one of their parents—a campaign that is encouraged by the other parent. It should be noted that there is no PAS when abuse or neglect is present. PAS can only be applicable when the “hated” parent has not abused or neglected the child or exhibited any behavior that would justify the child’s animosity toward that parent.

Parental Alienation Syndrome can only be applicable when the “hated” parent has not abused or neglected the child or exhibited any behavior that would justify the child’s animosity toward that parent.

While PAS identifies a problem in the child (“a childhood disorder”), parental alienation identifies a collection of one parent’s behaviors aimed at causing the child to become alienated from the other parent. Children can become alienated from a parent for a variety of reasons, such as sexual abuse, physical abuse, emotional abuse, parental abandonment, adult alcoholism, narcissism, and other reasons. Sometimes, a child may become alienated from the parent who initiated the divorce, blaming that parent for breaking up the family. But while these reasons may explain why the child is alienated from the parent, none would qualify as descriptors for parental alienation. Parental alienation is a strategy whereby one parent intentionally displays to the child unjustified negativity aimed at the other parent. The purpose of this strategy is to damage the child’s relationship with the other parent and to turn the child’s emotions against that other parent. This strategy has been called a “head-trip game” (see Ken Lewis, *Child Custody Evaluations by Social Workers: Understanding the Five Stages of Custody* [Washington, DC: NASW Press, 2009], p. 44).

Parental alienation is a particular family dynamic that can emerge during divorce in which the child becomes excessively hostile and rejecting of one parent. This hostility can involve transgenerational dynamics about which evaluators and family court judges should be aware.

The remainder of this article presents:

- a list of the various descriptors that identify parental alienation;
- the possible effects on the children;
- parental alienation as a form of emotional child abuse;
- the ways that courts have responded to parental alienation; and
- 10 tips for family court judges.



Descriptors of Parental Alienation

When investigating whether parental alienation is present, a custody evaluator looks for a variety of descriptors concerning the targeted parent and the alienating parent. Ten such descriptors are:

1. The child expresses a relentless hatred for the targeted parent.
2. The child's language parrots the language of the alienating parent.
3. The child vehemently rejects visiting the targeted parent.
4. Many of the child's beliefs are enmeshed with the alienating parent.
5. Many of the child's beliefs are delusional and frequently irrational.
6. The child's reasons are not from direct experiences but from what has been told to him or her by others.
7. The child has no ambivalence in his or her feelings; they are all hatred with no ability to see the good.
8. The child has no capacity to feel guilty about his or her behavior toward the targeted parent.
9. The child and the alienating parent are in lockstep to denigrate the targeted parent.
10. The child can appear like a normal healthy child. But when asked about the targeted parent, it triggers his or her hatred.

Parental alienation is a strategy whereby one parent intentionally displays to the child unjustified negativity aimed at the other parent. The purpose of this strategy is to damage the child's relationship with the other parent and to turn the child's emotions against that other parent.

Effects of Parental Alienation on the Children

Parental alienation is a form of emotional child abuse. The potential impact of this abuse on a child's life can be devastating. Some of the frequently listed effects of parental alienation have been reported in the child welfare literature, including:

- an impaired ability to establish and maintain future relationships;
- a lowering of the child's self-image;
- a loss of self-respect;
- the evolution of guilt, anxiety, and depression over their role in destroying their relationship with a previously loved parent;
- lack of impulse control (aggression can turn into delinquent behavior); and
- educational problems, disruptions in school.

Family therapists who have treated alienated children have classified the problem as a "parent-child relational problem," as outlined by the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* (4th ed.).

Parental Alienation and Emotional Child Abuse in State Statutes

Children who suffer from emotional abuse often elude the legal assistance of the child protection system. For example, this emotional abuse is usually invisible to teachers and social workers and even the family court judge. The alienated child will talk with the judge in language and syntax similar if not identical to the way the alienating parent talks. While the targeted parent often appears anxious, depressed, or angry, the alienating parent appears relaxed, composed, and, therefore, credible.

The normative framework of the child protection system does not always include the emotional abuse of children. For the majority of states, the physical health and safety of children are focal points in determining whether abuse or neglect has occurred. Nonetheless, 48 states include emotional abuse or maltreatment in their abuse definitions. (Emotional maltreatment is not included in statutory definitions in Georgia and Washington, but it can be found elsewhere in their statutes.)

Samples of Statutory Definitions in the United States and Canada

California

"A child who is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian."
W.I.C. §300 subd. (c) 2000 [Welfare and Institutions Code].

Michigan

"'Serious mental harm' means an injury to a child's mental condition ... that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality." MCL 750.136b (1)(g).

Punishment for serious mental harm is prescribed:
"A person is guilty of child abuse in the *first degree* if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for not more than 15 years." MCL 750.136b (2).

Minnesota

"Persons guilty of neglect or endangerment (include) a parent ... who endangers the child's ... health by: ... permitting a child to be placed in a situation likely to substantially harm the child's ... emotional health."
Minn. Stat. § 609.378, Subdivision 1 (a)(2)(b)(1) (2005).

Nevada

"'Substantial mental harm' means an injury to the ... emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior."
Nev. Rev. Stat. Ann. § 200.508, 4 (e) (2006).

North Dakota

"A parent ... who willfully inflicts ... upon the child mental injury ... is guilty of a class C felony except if the victim ... is under the age of six years in which case the offense is a class B felony."
N.D Cent. Code, § 14-09-22.1 (2013).



Wyoming

"'Mental injury'" means an injury to the ... emotional stability of a child as evidenced by an observable ... impairment in his ability to function within a normal range of performance."
Wyo. Stat. § 14-3-202 (A) (2006).

Manitoba

"The best interests of the child shall be the paramount consideration of the ... court in all proceedings [R]elevant matters shall [include] ... the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure ... [and] the ... emotional ... needs of the child and the appropriate care ... to meet such needs."
The Child and Family Services Act, 1985, C.C.S.M. c. C80 2(1)(a) & (b) [Continuing Consolidation of the Statutes of Manitoba].

Ontario

"No person having charge of a child shall permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development."
Ontario Child and Family Services Act, R.S.O. 1990, Chapter C.11 sec. 79 (2)(b)(ii).

Whether “mental harm,” “mental injury,” “emotional instability,” “emotional endangerment,” “emotional damage,” or some other phrase, it is clear that emotional child abuse is a statutory crime. When one parent intentionally encourages the child to turn against the other parent, he or she is employing parental alienation as a strategy.

When this strategy is used by one parent in hopes of alienating the child against the other parent, it is tantamount to teaching the child how to hate. Canadian Judge John H. Gomery put it eloquently this way: “Hatred is not an emotion that comes naturally to a child. It has to be taught.... Defendant has deliberately poisoned the minds of his children against the mother that they formerly loved and needed” (*Stuart-Mills, P. v. Cher, A.J.*, Sup. Ct. Quebec, District of Montreal [1991]).

Parental alienation can be administered in mild or extreme amounts, or anything in between. In its extreme form, it can be defined as criminal behavior, consistent with the various state definitions presented above.



When the strategy [of parental alienation] is successful, the emotional consequences to the child can be damaging and may rise to the level of criminal behavior.

How the Courts Have Responded to Parental Alienation

Courts in different states have responded to parental alienation in different ways. Basically, there have been four categories of these responses.

Criminal Response. Some states make interference with custody a criminal offense. For example, New Jersey makes interference a crime of the third degree that may lead to imprisonment for three to five years or a fine of \$7,500 or both. All states make emotional child abuse or maltreatment of a child a criminal offense. Some extreme cases of parental alienation may warrant this response.

Civil Remedies. All courts can impose civil sanctions by way of contempt-of-court orders. When a parent's strategy of parental alienation endangers the child's relationship with the other parent, some of the possible civil remedies may be economic sanctions against the alienating parent or short incarceration time for contempt of court.

Custody Responses. All courts that have initial custody jurisdiction have the authority to modify previous custody orders. Responses to parental alienation have been to deny initial custody (order a parental alienation evaluation, deny custody to the alienating parent); to modify visitation (extend visits between the child and the alienated parent, establish supervised visitations); and to modify previous custody (temporary modification of custody for specific time periods, permanent modification of custody, reverse custody).

Therapeutic Responses. Family law's innovations and reforms have become the showcase for therapeutic jurisprudence. Parental alienation cases provide opportunity to demonstrate how the strategy of replacing the “punishment” role of the courts with the therapeutic “fix-the-problem” approach can advantage children. Evaluation and therapy are earmarks of the therapeutic response to parental alienation.

The court could order an evaluation of the child to determine whether parental alienation is operative in a case and, if so, at what level is it operative.

- The court could order individual therapy for the alienator.
- The court could order family therapy in mild cases.
- Parental alienation therapy by a specialist could be ordered by the court in extreme cases.

Ten Tips for Custody Evaluators and Family Court Judges

Tip #1	<i>There is no parental alienation when there is reasonable justification for the child to express negativity against one parent.</i>
Tip #2	<i>Parental alienation can be a strategy used by the custodial parent, the noncustodial parent, or both parents.</i>
Tip #3	<i>Parental alienation is nearly impossible when the child is an infant.</i>
Tip #4	<i>The beginning stage of parental alienation is difficult to begin in the child's late teen years.</i>
Tip #5	<i>Parental alienation can be operative on one sibling, while not operative on the other siblings.</i>
Tip #6	<i>If parental alienation is suspected or alleged, it should be assessed by a custody evaluator experienced in the matter.</i>
Tip #7	<i>Extreme parental alienation should be considered emotional child abuse and referred criminally.</i>
Tip #8	<i>Often parental alienation can be reduced or eradicated by ordering more time between the child and the targeted parent. When a child spends frequent positive time (primary experience) with one parent, it is less likely that the other parent's parental alienation strategy will be successful.</i>
Tip #9	<i>Parental alienation case law is growing; family court judges should become familiar with cases in their jurisdictions.</i>
Tip #10	<i>Identify mental health professionals in family court jurisdictions who have expertise in parental alienation.</i>

Parental Alienation Bench Card

Parental Alienation Descriptors

- ☐ 1. The child expresses a relentless hatred for the targeted parent.
- ☐ 2. The child's language parrots the language of the alienating parent.
- ☐ 3. The child vehemently rejects visiting the targeted parent.
- ☐ 4. Many of the child's beliefs are enmeshed with the alienating parent.
- ☐ 5. Many of the child's beliefs are delusional and frequently irrational.
- ☐ 6. The child's reasons derive from what has been told to the child by others.
- ☐ 7. The child has no ambivalence about his or her negative feelings; they are all hatred.
- ☐ 8. The child feels no guilt about his or her negativity toward the targeted parent.
- ☐ 9. The child and the alienating parent are in lockstep to denigrate the targeted parent.
- ☐ 10. The child can appear like a normal healthy child, but, when asked about the targeted parent, it triggers his or her hatred.

Effects of Parental Alienation on the Alienated Child

- ☐ 1. An impaired ability to establish and maintain future relationships.
- ☐ 2. A low self-image.
- ☐ 3. A loss of self-respect.
- ☐ 4. Over time: guilt and depression for destroying the relationship with a previously loved parent.
- ☐ 5. Lack of impulse control. Aggression can turn into delinquent behavior.

Court's Possible Responses During Child Custody Litigation

- ☐ 1. Enter order to determine whether parental alienation is operative and, if so, at what level.
- ☐ 2. Order individual therapy for the alienator.
- ☐ 3. Order family therapy in mild cases.
- ☐ 4. In more severe cases, order parental alienation therapy by a specialist.

Caution: If possible, parental alienation should be addressed in its early stages. It is significantly more difficult to treat if it progresses over time and grows more intense.

So, This Is Fifty: The Gray Divorcees

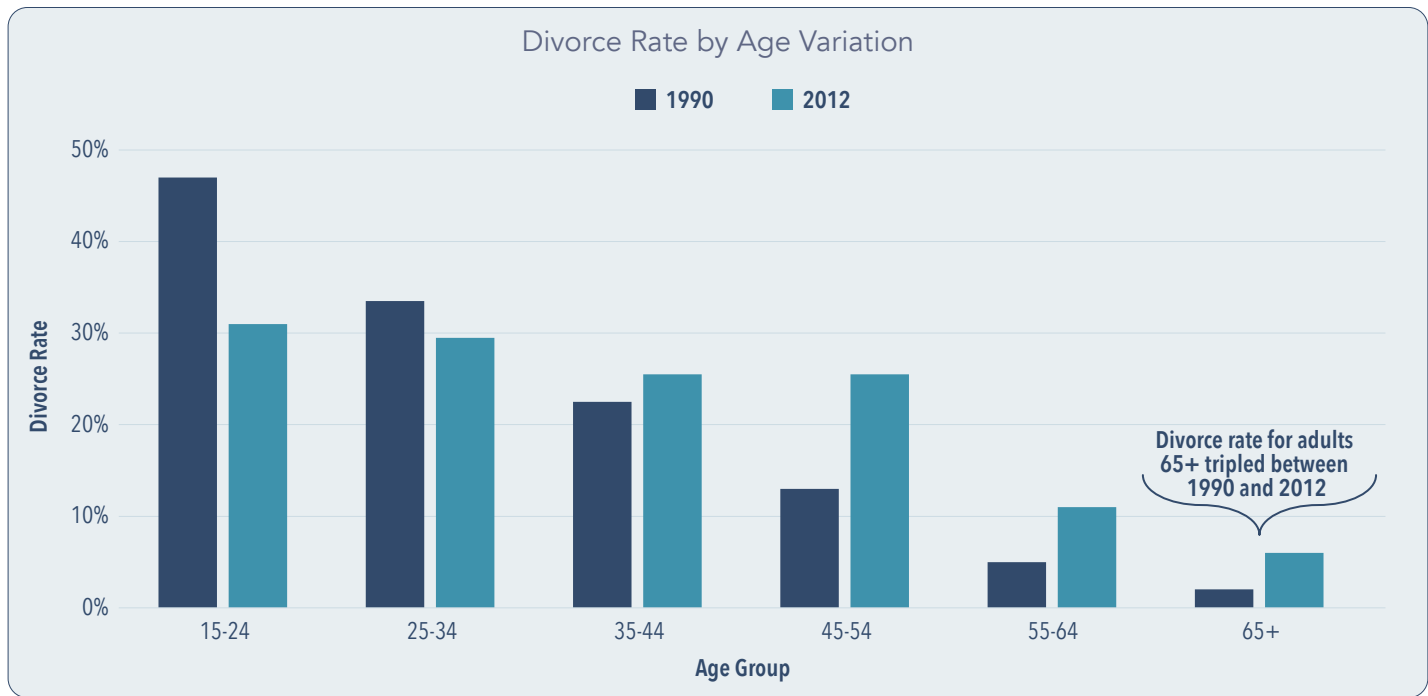
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The judicial system will be further tested by the increasing divorce rate of the elderly population. Are the courts equipped to handle this surge, and what are the most critical factors they must consider?

One group has experienced a significant rise in divorce rates since the 1990s. This group, referred to as “Gray Divorcees” or “Silver Splitters,” consists of couples who are over the age of 50. The U.S. Census Bureau Project predicts there will be more adults aged 65 or older than children in 2035 (U.S. Census Bureau, 2010).

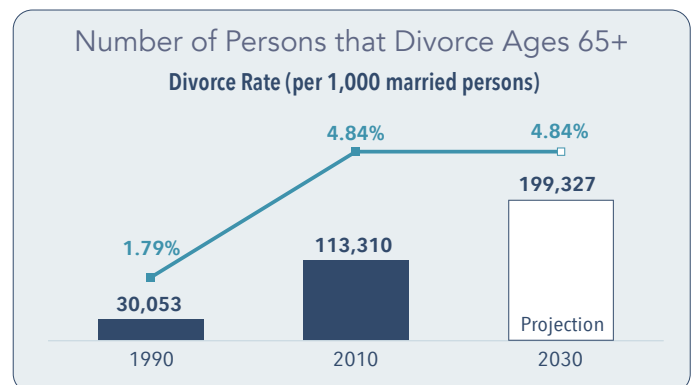
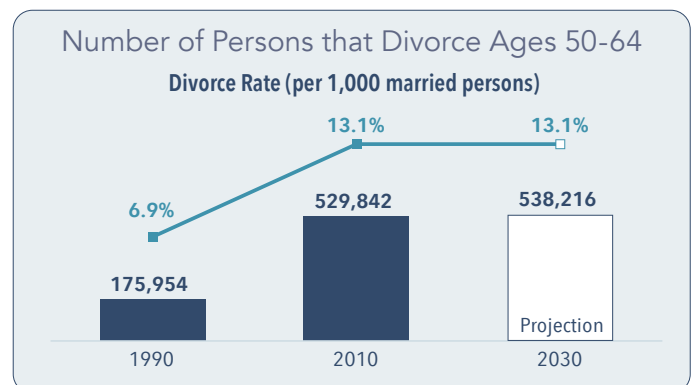
The stigma and the laws of divorce have dramatically changed over the years. In the 1850s, the Matrimonial Act allowed married couples to get divorced, but only under certain conditions that typically favored the husband. In the 1920s and 1930s, in addition to cruelty, rape, incest, and adultery, the law included drunkenness, insanity, and abandonment. By the late 1960s, the Divorce Reform Act relaxed the restrictions for couples to divorce and allowed a two-to-five-year separation period before granting a final divorce. What was once a subject of shame or failure, or considered illegal, has now elicited celebrations known as “divorce parties” to honor what once existed and the newfound freedom of the individual (see https://en.wikipedia.org/wiki/Divorce_party). In a time where life expectancy has increased, education has become necessary to achieve success, and homes need dual incomes to survive, unhappy couples refuse to remain in unfulfilling marriages for another 20, 30, or even 40 years.



Source: Centers for Disease Control and Prevention, National Center for Health Statistics, VitalStats and U.S. Census Bureau, American Community Survey, 2012

During late adulthood, spouses experience several reasons that lead to a “gray divorce.” Couples experience empty nests and retirement, where both remain in the home and learn how to live together again. Declining health adds a different type of stress to the marriage as one grows older. Other common reasons for an increase in gray divorces include infidelity, abandonment, and sexual dissatisfaction.

Societal reasons have played a significant part in this increase. There has been added pressure on many places of worship to take another look at how they view divorces. The Catholic Church has begun to express more leniency in accepting divorces due to this push. This is a significant change from 40 to 60 years ago, when feelings of failure and shame accompanied a divorce, and religion played a more significant role in decision making. Our society has become more secular. Based on several generational studies, society has changed views on religion and identification with specific groups in general. Younger generations identify less with set political parties or religious groups, and they carry strong feelings about the role of the military, marriage, and education in their lives. One example: Two-thirds of members of the Silent Generation (67 percent) say religion is very important in their lives, but only 38 percent of the youngest members of the Millennial Generation, those born between 1990 and 1996, say the same (Lipka, 2015).

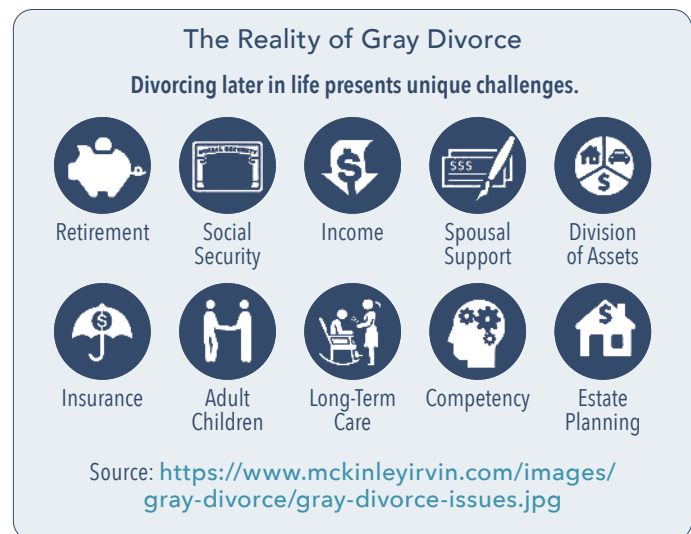


Source: Brown and Lin, 2012.

Online dating, sometimes specifically geared toward adults 55 or older (for example, [OurTime.com](https://www.ourtime.com/)), has also provided a new forum for divorced parties to reconnect with others after leaving a marriage of 20 or more years. Knowing there are still “options” can help soothe the fear of being “alone for the rest of their life.” Women entering the workforce, waiting to have children until later in life, not taking on all the home-caretaking responsibilities, gaining more education, and obtaining higher positions of employment have also reduced the fear of leaving marriage later in life.

Gray divorce presents unique challenges for the court system. It is necessary to determine if the courts are equipped to handle the complexities these divorces present. Critical areas in which courts need expertise include spousal support, Social Security benefits, division of personal and business assets, pensions, estate and trust planning, long-term care, insurance, retirements, veterans benefits, guardianship issues, inheritance disputes, and elder abuse. (According to the National Council on Aging, in almost 60 percent of incidents of elder abuse and neglect, the perpetrator is a family member, and two thirds of perpetrators are adult children or spouses.) Access to the courts and self-represented parties are two other major factors that affect how courts handle divorces. Additional outside groups that also need to work on gray divorces include attorneys, mediators, medical professionals, and financial analysts/accountants.

The consequences of a gray divorce are likely to be different than those of a divorce in earlier years. For a younger couple, dividing assets may be simple because the couple has not had enough time together to accumulate much property or wealth. They may just be starting out in their careers, so pensions and retirement are not worth as much as they would be after 30 years of service with a company. One party may not have acquired a pension through an employer or could have spent many years unemployed. They may also have young children, where child support and custody and visitation must be addressed. Although many might think this issue does not exist with adult children, states such as New Jersey allow child support to go until 23 years old if children are continuing their education or are disabled. In New York that age caps at 21 years. When a child’s parents divorce later in life, adult children can become more entwined in the divorce, because they may need to assist their parents with finances, provide an alternative location for a parent to reside, or take on power of attorney for medical decisions.



Preparing the Courts

When addressing gray divorces, the courts must not have a “one-size-fits-all” approach. All professionals must work together to remove the barriers and limitations for this specialized divorce group.

In gray divorce cases, the courts must be willing to investigate various concerns, such as intimate partner violence (i.e., elder abuse). In domestic violence cases that have one party self-represented, an imbalance of power and control can appear, changing the outcome of the event. There may be an increased need for geriatric and forensic psychiatrists to conduct full evaluations for abuse, trauma, or competency issues even before appearing for the first time in court.

This leads to a significant need for attorneys and judges to expand their training in elder law, which is the specialized field of law that addresses the diverse legal needs of aging adults and their elderly parents and includes the following legal areas:

- disability planning, including special-needs planning
- long-term care planning, including Medicaid planning and veterans benefits
- estate planning
- guardianship and conservatorship
- estate settlement, including probate and trust administration
- elder abuse, both personal and financial (Garber, 2020)

In 2009 the ABA Commission on Law and Aging compiled a list of schools that had begun incorporating elder-law courses or clinics in their certification programs. There were 90 schools nationwide. However, since that time, due to the increase in the older generation and gray divorces, many more schools are offering these types of programs or continuing education courses. Something else to consider could be the use of law students for self-represented litigants, which would provide internship credits for the student, as well as legal services to parties at no cost.

Gray divorces bring another complex issue for courts: competency. For instance, competency issues in Florida differ from competency issues in Kentucky. In Florida, once a party is legally declared incompetent, three years must pass before the courts will grant the divorce. This is done to afford enough time to the other party to become stabilized with their resources. In Kentucky, the mentally incompetent are unable to reach the court system when they have a guardian and are seeking divorce. The guardian must act on the incompetent party's behalf. It becomes problematic when the guardian is the other spouse and does not want the divorce. In those cases, the courts will not grant the divorce. This puts an added strain on the appellate court system when the party seeking the divorce appeals the decision—e.g., *In re Dandridge*, 120 A.D.3d 1411 (2d Dept. 2014) and *Campbell v. Thomas*, 73 A.D.3d 103 (2d Dept. 2010).

There are also those instances when other family acquaintances or scammers try to take advantage of those who may be mentally incompetent and act on their behalf negligently, which would require the courts to take extra time to conduct a thorough investigation. Asking family court management nationwide to examine the roles and tasks of their staff in the courts, such as using a “family court investigator” to aid in this type of investigation, could be beneficial.

Limitations in court technology delay court proceedings when a party is bedridden or in an assisted nursing facility and they do not have access to technological equipment or do not remember how to use the equipment. Virtual courtrooms, conference bridge calls, chat/video groups, and regular phone calls could provide additional options to handle these cases remotely.

The need to hire more judges or associate judges, mediators, attorneys, and other professionals who specialize in the complications of this group of divorces is also needed but requires additional funding for the courts. These cases must be reviewed in depth before receiving a court hearing date to ensure that attorneys who represent these matters are well educated and prepared to present the matters they are faced with. They then need to be placed on a specialized track, which allows longer processing time without causing backlog for the courts and while ensuring parties are not being delayed from court access unnecessarily.

Attorneys may also need to approach these cases differently than they have been accustomed to, which can be difficult for many because it requires a thought-process shift, especially if they have not received the proper training for this divorce group. Court staff also need to be properly trained with the language on court orders. For example, if there are multiple conditions set on an order, it is necessary to use plain language to indicate if all or some of those conditions must be met at the same time before the divorce can proceed or is granted/denied.

Legal verbiage and court forms can also present problems for self-represented litigants trying to understand what is needed and must be considered. Legal information centers, where more simplistic court forms and on-the-spot translators could be available all day, could help. Staff in those centers would need the ability to provide more specific guidance, with minimal limitations, on the navigation of documents and should be hired as an outside entity from the courts, yet be a collaborative stakeholder to the courts to provide proper guidance.

Dividing assets in these matters, when parties are established or wealthy, can become extremely complex. An inventory needs to be taken of all assets; however, judges must consider limitations on retention time spans when retrieving records. Some records may not be retrievable over seven years. A couple indicates their account had \$500,000 in it and that it should be equally distributed; however, \$400,000 of that was contributed by only one of the unmarried parties over 35 years ago, before the marriage. Yet there are no paper records available from either party due to the limited record-retention span and the lack of electronic access dating that far back. Due to splitting assets, there may be a need to locate and secure other forms of income for the parties and to consider age differences, life expectancy, and medical conditions, before granting the divorce.

Health insurance becomes a concern as well, especially if one of the parties is not 65 and able to receive Medicare. A decline in economic well-being following divorce would suggest a greater reliance on public rather than private forms of support, possibly meaning a rise in Medicaid and Supplemental Security Income use by older adults (Brown and Lin, 2012). That party must find a way to pay for COBRA or obtain some other form of health insurance to cover the large cost. Providing litigants with additional mental-health support or “court hotlines” could assist with reducing stress and health issues developing through the divorce process. In older generations it was not uncommon to have one individual, typically the husband, be the sole breadwinner for the family. This would leave the female spouse at a disadvantage, because she stayed home, did not continue her education, had limited work experience, and could now be facing health conditions that need to be addressed.

However, there is still much more that needs to be contemplated for the seamless handling of these specialized cases in the court system. Streamlining more simplistic cases should be considered first. Making court paperwork easier to read, removing language barriers, providing more cost reductions or payment plans, setting up more nontraditional court hours, or providing funding for staff that can specifically offer advice and guidance solely on navigating paperwork would be a start. Using outside options from the traditional courtroom could help reduce backlog and settle more divorce cases. Using “mobile divorce” vans to meet parties at their home; reducing the need for child care, transportation, or taking time off from work; adding “one-stop shop” divorce centers or “drive-thru” locations; or developing a divorce-procedure app for the phone and computer for individuals who are more comfortable with technology are some other options.

A more recent unconventional approach came out of Hotel Karel the Fifth in the Netherlands and Gideon Putnam Resort and Spa in Saratoga Springs, New York: divorce hotels (for more information, go to <https://tinyurl.com/y8kvkqd7>). These are mini resorts for the couples seeking to check in as a married or separated couple, obtain a divorce through mediation techniques, and check out legally as singles upon departure. Mediators are on-site, and the divorce can be conducted in a relaxing and remote area, removing children from the tense environment. In these situations, the cost of the vacation can be much less than that of the hiring of lawyers for both sides, court expenses, and loss of time.



Bringing to light the various factors of litigation areas in gray divorce cases, properly implementing new trainings, and hiring educated judges, attorneys, judicial staff, and involved professionals is an immense start. Additionally, it could be helpful to conduct in-depth surveys with involved parties going through the process, similar to the *Study of Divorce at Midlife and Beyond* conducted by AARP (Montenegro, 2004). Data from these surveys could help courts with areas that need improvement.

Looking at the physical court environment can change the experience for parties. Making the courthouse more inviting by adding couches, food, drink, comfortable lighting, light music, or entertaining reading material can put parties more at ease. Judges and staff could adopt a more person-centered approach to interact with parties. For example, a judge can sit with the parties side by side, instead of looking down from the bench. Maybe family staff can conduct field visits to parties' homes or neutral restaurants to discuss options.

In the end, are “gray divorces” truly a new trend, or have they always been present but never examined this way until recently due to all the societal changes that have occurred? Despite the rapidly increasing trend with late-life divorces, the court system has made significant strides in understanding the complexities of gray divorces by adding continuing education courses on elder law, hiring specialized and experienced professionals, and discussing more openly the concern and need for adjustment on how these divorces are handled within the courts.



Source: Gideon Putnam Resort and Spa in Saratoga Springs in New York. *NY Post* (February 10, 2015).

Source: "Judge's Changes Make Divorce Court Less Stressful." <https://local12.com/news/local/courtroom-gear-toward-collaboration-in-divorces>



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State Courts' Responsibility to Convene, Collaborate, and Identify Individuals Across Systems^{*}

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Collaborative efforts among justice, mental-health, and public-health systems are essential to respond to individuals who frequently cycle through systems. Court leaders are well positioned to convene stakeholders to implement effective responses to reduce the negative impacts on the nation's courts.

^{*} Promising practices included in this article were informed by interviews with jurisdictions in six states, as well as from workshops and webinars highlighting current efforts in responding to the needs of individuals with serious mental illnesses (SMIs) and substance use disorders (SUDs) in their jurisdictions.

Who Frequently Cycles Through Systems?

Across the country, there have been systemic failures in how communities and the justice system respond to those with serious mental illness (SMI), creating a revolving door through which vulnerable individuals cycle continuously (Fuller, Sinclair, and Snook, 2017). Examples include rigid legal standards for involuntary commitment (Conference of Chief Justices, 2006) and gaps in competency evaluation and restoration services, producing unethical delays that have led to litigation against various government entities across the United States (Fuller et al., 2017). Community members who cycle through jails, hospitals, mental- and behavioral-health facilities, and other social-service programs strain community resources (National Association of Counties, 2016). In Miami-Dade County, Florida, deplorable conditions for those with SMI involved in the justice system led the Honorable Steve Leifman to work with community stakeholders to implement solutions through the Eleventh Judicial Circuit Criminal Mental Health Project (for more information, see <https://tinyurl.com/snuess7>). Data-collection and data-matching efforts there showed that 97 high-service-utilizing-individuals with SMI cost taxpayers \$13 million in criminal justice costs over a five-year period (Mental Health Institute, 2010).

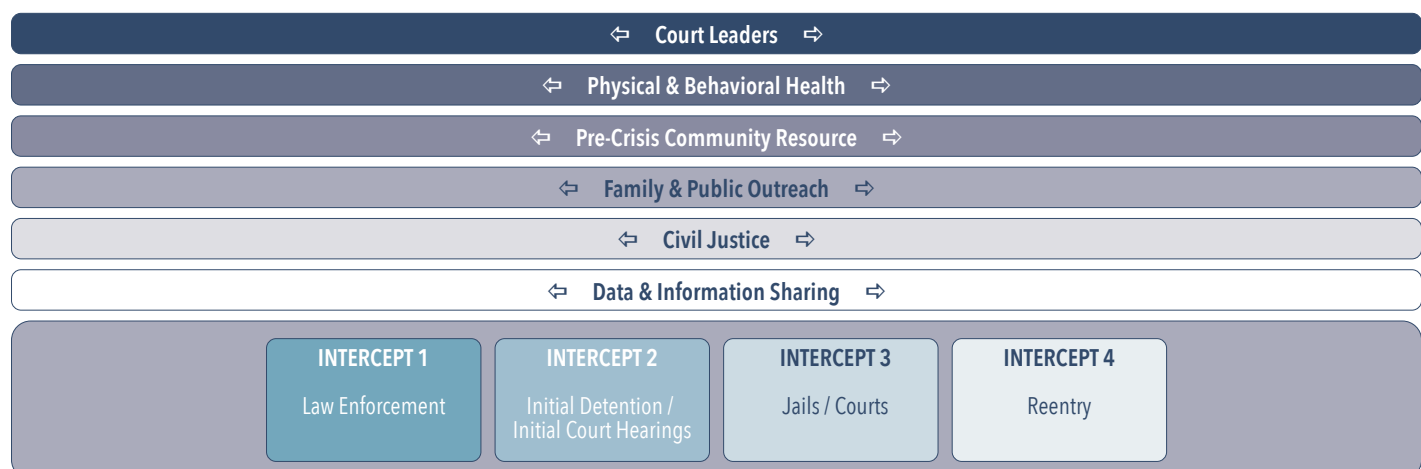
The health-care field has offered early efforts to identify individuals who cycle through various social systems, focusing primarily on medical services and emergency departments. However, research has indicated that community leaders overlook the role of SMI when examining frequent utilization of services (Fuller, Sinclair, and Snook, 2017). The intersection of SMI and the justice system has brought the issue

The intersection of SMI (serious mental illness) and the justice system has brought the issue of frequent utilization to the forefront for many judges and jurisdictions.

of frequent utilization to the forefront for many judges and jurisdictions. To examine the issue, some jurisdictions focus on frequent utilization of multiple social systems within their jurisdiction. Examining data from multiple sources, such as behavioral-health services, homeless services, and jail or court records, creates a robust profile of individuals cycling through these systems. While many jurisdictions focus mainly on the criminal justice system (CJS), there are civil justice issues as well, including involuntary civil commitments or orders for assisted outpatient treatment (AOT). Initiatives to share and examine data to identify and respond to frequent utilization begin for various reasons but should center on better serving individuals who cycle through various social systems.

The figure below depicts the Sequential Intercept Model (SIM; available at <https://www.prainc.com/sim/>) and additional areas of focus, a conceptual model to inform community-based responses to system use by individuals with SMI, substance use disorders (SUDs), or both. This model highlights points of contact as intercepts, which are intervention points to keep an individual from further penetrating the CJS.

The Sequential Intercept Model (SIM) and Additional Areas of Focus for Coordinated Court and Community Responses. <http://apps.ncsc.org/MHBB>



Managing Frequent Utilization Through Data

Data and information sharing span all the SIM intercepts, which inform a range of efforts, including pre- or post-arrest diversion, services provided in custody, creative sentencing options, and reentry efforts emphasizing referrals and warm handoffs to community-based services. The ways in which communities define and identify an individual who cycles through various social systems vary greatly and often relate to which entity is inquiring about utilization. For example, jurisdictions may define this population as the top 100, or 5 to 10 percent of individuals who utilize services the most, or those who were arrested more than four times in 12 months. The first step is for the community to agree upon the criteria for identification. The community should regularly reevaluate these criteria to ensure relevance to the shifts in the population served across mental- and public-health systems over time.

Screening for SMI and SUDs in the custody of law enforcement is a best practice to identify individual needs and provide appropriate services. Data-sharing and data-matching efforts between jails and community-based behavioral-health providers are useful in coordinating and providing continuity of care when

individuals are in custody and upon their release into the community. Ultimately, these efforts can facilitate a move upstream to incorporate proactive approaches offering outreach and providing services, rather than reactive responses, after a crisis or an interaction with the CJS. Some examples of efforts to address the needs of individuals who cycle through various services are outlined below:

- Lake County, Illinois identifies frequent utilizers of the jail (individuals who were booked three or more times over 12 months), screens for SMI, and connects individuals to community service providers for intensive case management and to a peer specialist, who assists with individual needs.
- Fairfax County, Virginia examines 9-1-1 and call-for-service data to identify which individuals use first-responder systems the most and to identify individuals who can be provided with community outreach, including a peer specialist on the outreach team.
- Johnson County, Kansas uses outreach efforts and referrals based on screenings conducted at the jail, as well as previous use of county services. Additionally, a collaboration with Carnegie Mellon University uses predictive analytics to determine which individuals may have an adverse interaction with law enforcement. This list is sent to the mental-health center every month for outreach efforts.



What Is the Role of the Courts?

While the Conference of Chief Justices passed a resolution in 2006 outlining the need for court leadership to address the impact of mental illness on the court system, much work still needs to be done. A recent policy paper from the Conference of State Court Administrators calls on judges to collaborate within their communities, engage with policymakers to correct problems, and develop better tools for addressing mental-health issues (Mack, 2016).

Judges are in a unique position to gather stakeholders and facilitate cross-system change.

Be advocates and leaders of change:

Judges are in a unique position to gather stakeholders and facilitate cross-system change. A common notion expressed across jurisdictions was that addressing frequent utilization would not be possible without the support of judicial leadership and, in some cases, the initiation of change efforts by judges. Court leaders have a responsibility to reduce the reach of the CJS to individuals with SMI, SUD, and co-occurring disorders (CODs). The National Center for State Courts (NCSC) has created a national guide (2019) to help judges and judicial officers cultivate community change in addressing mental-health issues. The national guide lays out steps for beginning the movement toward change in the court and community's response to mental health and CODs, by inviting stakeholders (see table below) to participate in commencing and sustaining responses for long-term impact. An additional NCSC resource is the "Data Governance Policy Guide" (Robinson and Gibson, 2019), which provides guidance for courts on how to convene stakeholders to discuss storing, sharing, and managing data.

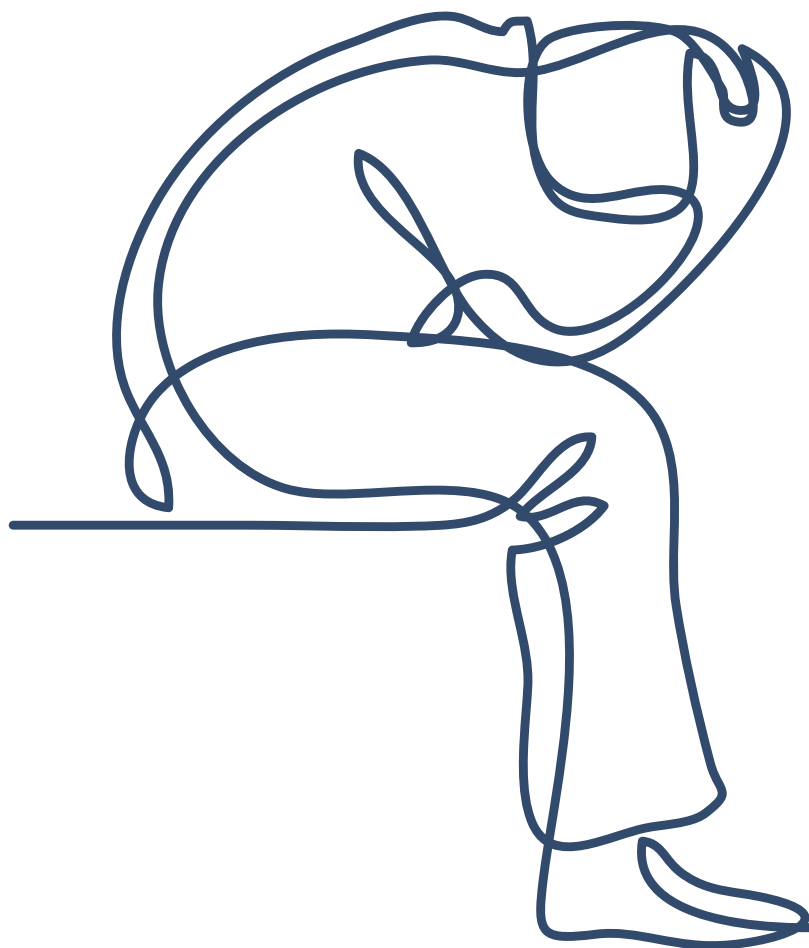
Potential Stakeholders

Judges	Probation and Parole Officers
Court Administrators	Pretrial Officers
Law Enforcement (Sheriff, Local Police)	Disability / Physical Brain Disorder Advocates
Bailiffs	Civil Commitment Personnel
Prosecutors	Mobile Crisis Units
County Attorneys	Crisis Units
Private Counsel	Benefits Representatives
Public Defenders	Tribal Representatives
Former System-Involved Individuals / Persons with Lived Experiences	Competency Evaluators
City Councils	Competency Restoration Treatment Providers
County Board / Board of Supervisors Members	Disability Law Groups
School Board Members	Social Security / Disability Representatives
Criminal Justice Commissions	Faith-Based Organizations
Legislators	Emergency Room Personnel
Family Members	Emergency Medical Technicians
Direct Treatment Providers (Public and Private)	Public Advocate / Public Fiduciaries
National Alliance on Mental Illness	Pediatricians and Physicians
Psychiatrists	Project Coordinators
Supported Employment Specialists	Local Business Leaders
Housing Specialists	Local Researchers and Academics
Peer and Self-Advocacy Organizations	Data Quality and Integrity Contacts
Jail Administrators	Victims' Rights Advocates
Domestic Violence Services	Guardianship and Conservatorship Groups
Mental-Health Hotlines	Food Banks
Residential Unit Staff	Transportation Services
Mental-Health Boards	Community Foundations
Jail Mental-Health Staff	Substance Use Treatment and Services

Recognize opportunities for growth and improvement:

While no jurisdiction wants a systematic failure to be publicly highlighted in their community, these events provide an opportunity to reexamine how various systems address the needs of vulnerable community members. Communities that identify individuals who cycle through various social systems and target responses across the justice system not only can stop a vicious cycle for individuals and affected families, but also save resources significantly across these systems.

Judges have become more creative in approaches to populations with complex needs and have embraced therapeutic justice versus adversarial approaches.



Be receptive to innovation and change:

Court leaders should embrace data, listen to stakeholders who outline issues that may need to be addressed, and be open to the interpretation of data that uncovers issues. Data, information from programs and stakeholders, and feedback loops should spur innovation. Court leaders should empower system actors to innovate, rather than become embattled in adversarial approaches. For example, in Milwaukee County, judges received trauma-informed training as part of their dedication to determine better solutions to serve justice-involved individuals with mental illness. Court leaders should use data strategically to effect meaningful change.

Court leaders can begin by tracking and extracting data to enable the community to understand the current system within their jurisdiction. An example of innovation is the Jail Diversion Program in Miami-Dade County, where individuals are diverted from the justice system into treatment, and their legal charges may be dismissed in accordance with treatment engagement. These approaches not only provide connections to services but also reduce the negative impact of the justice system on those suffering from SMIs, SUDs, and CODs.

Establish relationships with service providers in the jurisdiction:

Court leaders can collaborate across their jurisdictions. For example, problem-solving courts recognize that there are treatment aspects to individuals who appear in court and whose cases involve multiple social determinants of poor health. Many individuals need flexible, person-centered care to effectively address their complex circumstances. Judges have become more creative in approaches to populations with complex needs and have embraced therapeutic justice versus adversarial approaches. Judges in many jurisdictions consider leveraging treatment options rather than incarceration if an individual fails to comply with a court order due to symptoms of SMI, SUD, or COD.

What Advice Can Jurisdictions from Around the Country Share with Court Leaders?

Begin change efforts:

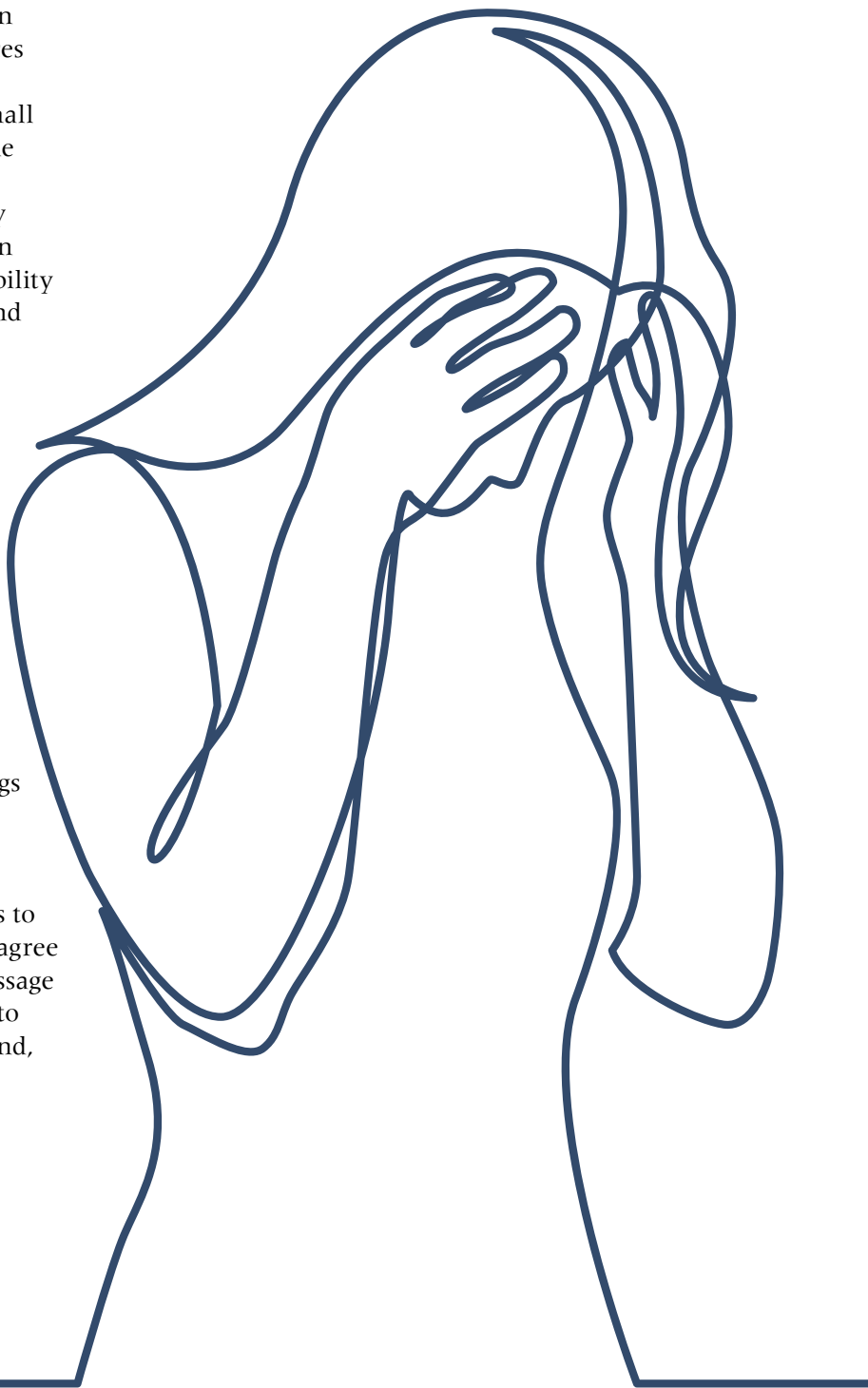
Some jurisdictions suggest starting with large, inclusive efforts inviting various stakeholders to collaborate and creating topic-specific workgroups. Conversely, some jurisdictions suggest starting with available data to demonstrate the ability to answer programmatic questions with data, and then utilize that success to fuel further efforts. Where and how a jurisdiction begins their efforts will likely depend on resources and existing partnerships within a community. Whether efforts begin with a large group or a small task force, it is crucial to gather data, agree on the definitions, and create meaningful responses. Additionally, it is essential to include community members to create awareness of the issues, obtain community buy-in, and create mutual accountability among stakeholders. As leaders of their courts and communities, judges are in a unique position to begin, expand, and improve these efforts.

Break down silos:

Judges should move away from siloed, adversarial approaches to seek collaborative solutions. Organizations should understand that there is no specific entity overseeing comprehensive services and continuity of care for individuals. In fact, many individuals use several services simultaneously, underscoring the need to coordinate responses. Working groups should create data-sharing and data-privacy agreements and memorandums of understandings (MOUs) to outline the expectations of involved organizations. Stakeholders should share their knowledge, listen and compromise when faced with opposing viewpoints, and propose solutions to multi-system issues. While stakeholders may disagree on some topics, it is valuable to reinforce the message that everyone is working toward common goals to address issues that impact community systems and, most importantly, individuals and their families.

Establish support from leadership:

It is imperative during reform to secure the support of leaders across systems. By engaging cross-system leadership, a culture of change can flow downstream through organizations. A successful model for innovative problem-solving communities is through a champion of the effort who commits to finding solutions addressing the root causes of problems. A champion such as a judge can convene stakeholders, overcome barriers, and maintain a sustained level of dedication among stakeholders.



Ensure the right people are in the right roles:

Cross-system data are messy and often dissimilar by definition and format. Such data are best understood by individuals with intimate knowledge of the community, its history, and services. Therefore, many jurisdictions voiced the importance of having dedicated individuals who are familiar with data as point people. Moreover, information technology staff play an important part in collecting, integrating, housing, and extracting data from various systems in a sustainable, secure, and accessible way. It may be beneficial to house these data experts centrally in the courts.

Create a coordinating council:

A coordinating council, oversight committee, or similar working group dedicated to convening stakeholders and outlining avenues of future work is important for the success, sustainability, and collaborative nature of efforts. A coordinating council can serve as a neutral group where stakeholders collaborate and share ideas related to the development and implementation of effective policies and practices. Additionally, existing councils and committees that judges may already lead can be a starting point and backbone support for efforts.

Anticipate challenges:

The issues leading to change are multifaceted; therefore, sustained efforts to implement meaningful changes will not occur overnight. Common hurdles that jurisdictions face when sharing data across systems are the Health Insurance Portability and Accountability Act (HIPAA; for more information, please visit <https://www.hhs.gov/hipaa/index.html>), which outlines what personal health information can be shared and under what circumstances, as well as Title 42 of the Code of Federal Regulations (42 CFR), part 2 of which relates to personal SUD information (for more information, please visit <https://tinyurl.com/ybl9vz72>). While questions and common misconceptions regarding HIPAA and 42 CFR 2 pose challenges to data sharing, it should not deter jurisdictions from understanding how data can be used to better serve individuals. Jurisdictions should work closely with legal counsel and HIPAA compliance officers to understand the intricacies of sharing individual-level data across systems. In some cases, an MOU or data-sharing agreement may not be sufficient, and jurisdictions will need to consider obtaining individual consent for the release of information.


Make data-driven decisions:

Data can inform how to save, reinvest, and target resources to reach people more effectively. Data should be utilized to educate individuals, inform programs and policies, and serve as neutral evidence of the need for the creation or expansion of services. For example, data matching regarding those with SMI and individuals who engage with other community systems will help courts understand if specialized dockets are being utilized by their target populations. In Seattle, for example, data revealed that treatment courts were only serving about 8 percent of frequent utilizers.

Seek academic or research partnerships:

There are limitations in what judges or organizations have the capacity to do on their own. Recognizing these limitations and calling on various organizations, such as local research or academic institutions, can bridge the gap between internal capacities and project goals. These can be low- or no-cost partnerships that create a synergy around problem solving, research, data analysis, and program evaluation. Jurisdictions may also consider partnering with the National Association of Counties through the Data Driven Justice Initiative, which assists communities in addressing the needs of individuals who cycle through various social systems (National Association of Counties, 2016), and partnering with agencies to conduct Sequential Intercept Mapping workshops (Policy Research Associates, 2017).

... data matching regarding those with SMI and frequent utilizers of other community systems will help courts understand if specialized dockets are being utilized by their target populations.



Incorporate peer services and supports:

Jurisdictions around the country, including Miami-Dade County and Lake County, embrace the idea of using services that connect individuals to peer specialists. Peer specialists have lived experiences, which make them uniquely qualified to assist individuals with community reentry and engagement in treatment and services. Peer services are not detrimental to care quality and result in at least equivalent clinical outcomes to usual care or services by non-peer staff, as well as positive impacts on clients' levels of hope, empowerment, and quality of life (Bellamy, Schmutte, and Davidson, 2017).


Conclusion

The need to better identify and effectively serve individuals who frequently access and engage with various social systems relates not only to the justice system but also to important issues concerning public health and social justice. Courts have a duty not only to focus on the cost of addressing the needs of individuals who cycle through various community systems but also to respond to the core issues contributing to frequent utilizers. Judges have an important role in leading change in the justice system and identifying effective community responses to individuals with behavioral health needs. An example of this judicial leadership is how the Honorable Steve Liefman spearheaded efforts in Miami-Dade County. Enhancing the justice system and community solutions for individuals with SMI, SUDs, and CODs can seem like a lofty goal, but efforts around the country have shown that these endeavors are not only necessary but also achievable and sustainable.

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What Will Shape the Future of Courthouse Design?

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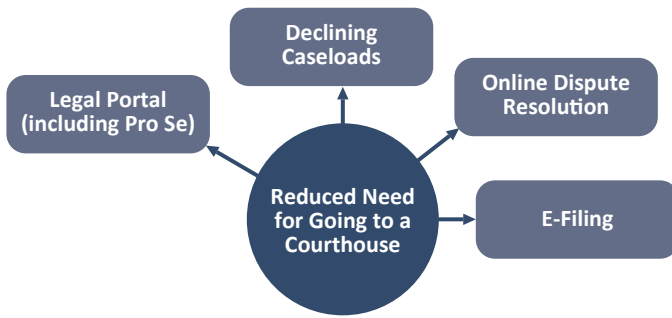
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Trends in court management are driven by not only operational (internal) factors, but also responses to our rapidly changing world (external). These factors require architects and court planners to reexamine how spaces are designed to accommodate functional, environmental, and societal needs and expectations.

Courthouse planning requires building occupants not only to contemplate the types of spaces and amenities that meet their current operational requirements but also to anticipate needs. By studying court management trends, building occupants and designers can foresee how the built environment may respond.

Note: At the time this article was in development, the COVID-19 outbreak was only beginning to manifest as a global pandemic. Already, this unprecedented event is having an enormous impact on court operations, challenging traditional ways of conducting business. As the pandemic evolves, the courts will continue to adapt, and many new processes and procedures may become standard practice, further transforming courthouse space requirements.

Reduced Need for Going to a Courthouse, High-Level Objectives



Among many factors, the following trends are likely to make a significant impact on court facility planning and design:

- the reduced need to go to a courthouse because of emerging technologies and declining caseloads;
- the adoption of evidence-based practices, including restorative justice, increasing access to justice, and a desire to enhance public trust;
- the evolving workforce and the skills needed, including how to attract and retain court staff by considering their generational expectations; and
- the adaptation to global and societal changes, including climate, increased multimodal transportation options, and security.

Proper physical space, amenities, and the courthouse atmosphere are all planning considerations that need to be carefully thought out to support these trends. These considerations are presented in the Design Response Map. While the Design Response Map may be intimidating at first glance, the reader is encouraged to start with a major trend and follow the branches one by one to see how they lead to architectural opportunities and facility design responses.

Reduced Need for Going to a Courthouse

Technology is rapidly impacting our society in novel and dramatic ways. It provides opportunities and challenges to courts that necessitate operational responses and, in turn, affect physical space requirements. Online dispute resolution and e-filing are already reducing foot traffic in courthouses and forcing courts to consider new types of services they offer to the public both virtually and in person. Further, caseloads are declining nationwide, and the need for physical adjudication space is decreasing.

E-Filing

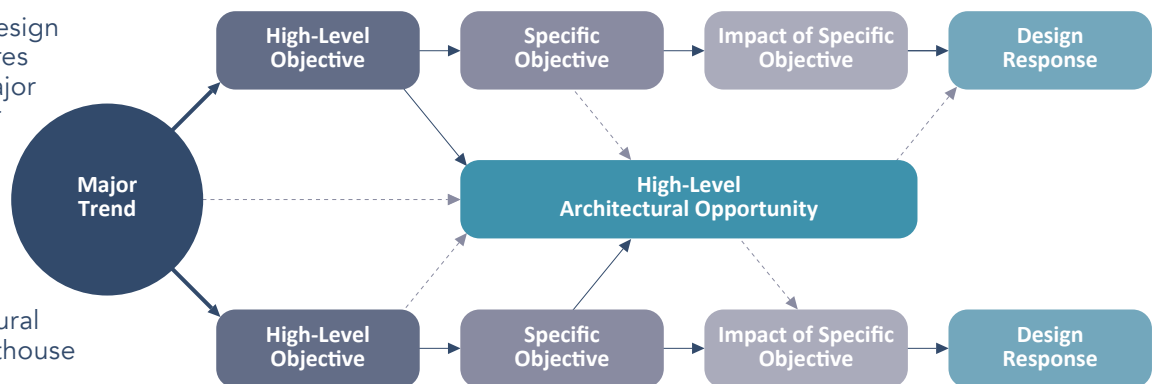
A dream for many years of legal practitioners, judges, court managers, and technologists, e-filing is now almost universal in the nation's state and federal courts. Court-record-storage spaces often have empty shelves as new cases are e-filed, and existing cases are scanned into document repositories. Lines of customers at the clerk's windows have become much shorter, and as fewer people trek to the courthouse, the need for parking will decline.

Online Dispute Resolution (ODR)

ODR is moving from pilot testing to statewide and widespread local implementation. Used for many years in commercial dispute resolution, ODR is increasingly sponsored by state and local courts to help civil litigants. Parents and spouses in family case types and criminal-case litigants (including prosecutors and traffic and criminal defendants) can potentially achieve relatively quick and inexpensive resolutions of issues with or without a mediator. Disputes may become court cases if all issues cannot be resolved, but ODR can reduce the number of issues the court must address. Similar to e-filing, ODR will also reduce foot traffic in courthouses.

The accompanying Design Response Map explores the progression of major court trends and their objectives to possible design responses. One can trace connections and converging objectives to understand how they lead to architectural opportunities in courthouse design and planning.

Design Response Map Legend



Legal Portals

As the number of self-represented litigants continues to increase, the need for services and amenities to support those litigants will be more in demand.

Although still in development in some jurisdictions, legal portals provide remote access to technology for litigants. Acknowledging that members of the public may not know if their dispute is a legal matter or not, a technical standards group renamed “litigant portals” as “legal portals” to help identify them as a community resource to help people resolve their questions.

Even with the availability of technology, some individuals will come to the courthouse for help, and the way the court serves the public will continue to adapt. A self-help capability center in the courthouse where the public can have face-to-face interaction at information desks, and the availability of public kiosks and computers, worktables, research materials, and scanning stations, will be a growing need.

Impact of Declining Caseloads

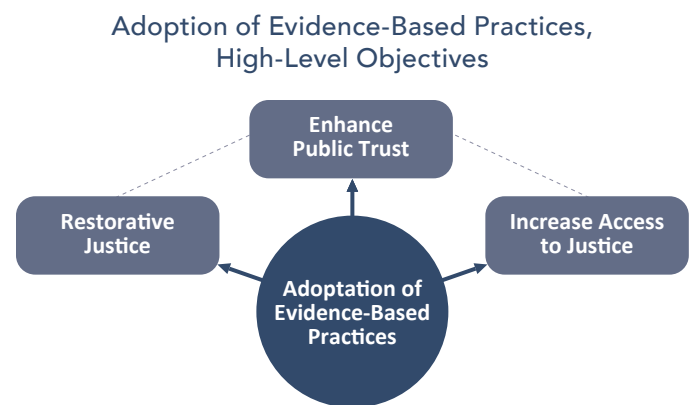
The decline in caseloads has been documented since the Great Recession of 2007. Total incoming cases in state courts from 2007-17 decreased by 22 percent (Court Statistics Project, 2019). The actual numbers and the reasons for this decrease vary by state and by case type. Still, this trend will continue for a variety of reasons, including increasing numbers of self-represented litigants, ODR, and legal portals. Some jurisdictions have already begun to realign their existing facilities to optimize the use of space and increase operational efficiencies.

As declining caseload trends continue, many jurisdictions will see an opportunity to save money and reduce construction budgets and space allocations. Using spaces to their full potential will be expected and may include judges sharing courtrooms, staff sharing resources, and planning for spaces to accommodate multiple uses whenever possible.

...some jurisdictions need additional meeting space and have created "alternative dispute resolution centers" where meeting rooms are clustered.

Adoption of Evidence-Based Practices

Evidence-based practices, such as restorative justice, will continue to gain popularity. Simultaneously, the building industry recognizes the impact of our environment on our health and wellness. Case studies demonstrate the importance of a wellness-inspired environment and stress reduction on a person's behavior and decision making for the public and court personnel, too. The built environment can enhance access to justice and increase public trust in the courts. Through its design, the courthouse conveys a message to its occupants and reinforces the values of the court and the community it serves.



Implementation and Integration of Restorative Justice Strategies

Mediation has played a role in court processes for decades, particularly in civil and family case types, and probation and community supervision in criminal and juvenile case types are universal. But the theory of restorative justice expands the scope of cooperative processes that include all stakeholders in potentially all case types to focus on repairing harm and encouraging participation in the resolution of issues. As a result, some jurisdictions need additional meeting space and have created "alternative dispute resolution centers" where meeting rooms are clustered.

Supervision of pretrial and convicted defendants and mediation/arbitration are long-used strategies to provide restorative justice. In jurisdictions where new programs are being introduced or redesigned, there is a need for probation and mediation operations space to be located in close proximity to the court. These operations should be nearby to facilitate staff and public access to the courthouse.

New attention has been paid to wellness-inspired and trauma-informed space-planning strategies to reduce environmental stresses on court visitors and occupants. Participants in court proceedings are often under stress, which can lead to mental fatigue and even emotional outbursts. Biophilic design recognizes that court customers, as well as employees, benefit from contact with natural light, ventilation, natural materials, vegetation, views, and natural shapes and forms—in short, valuable connections with the natural world.¹

Enhancing Public Trust

When individuals go into a courthouse, attention needs to be given to their perceptions of what type of building it is and their feelings related to the reason and purpose for which they are entering it—the building image. Given the role of justice seeking in American society, a court facility should reflect the values of its community and the judicial system.

As a means of enhancing public trust, researchers have studied the perception of openness from the building occupants' points of view and identified the following implications for courthouse design practice to achieve transparency and exposure:

- include large areas of exterior windows to connect the interior and exterior visually;
- provide strategic visual links from interior spaces to key local landmarks;
- offer views of important interior public spaces from the streets and sidewalks;
- optimize engagement with pedestrian and vehicular traffic; and
- enhance the visibility of the courthouse. (See Pati, Rashid, and Zimring, 2010. The authors acknowledge that the survey of building occupants but not the general public; the small size, 3, of the courthouse sample; and the limitation to federal courthouses may limit generalizability of the findings.)

These principles sharply contrast with some court facilities built in the 1960s and 1970s, characterized by massive, monolithic, and “blocky” appearances with large-scale use of poured concrete.

Architects and designers should not be limited to a particular style of architecture. Instead, they should convey an image that is appropriate to the community and court.

Increasing Access to Justice

Access to justice has different meanings, from the physical ability to appear in court, to the systemic barriers faced by various members of the community. Understanding the profile of members of the public who are court customers will aid courts in identifying ways to meet their needs in obtaining access to justice. Where the courthouse is located and how its patrons travel to the facility and enter it will depend on the site selected and the means to physically approach the building, such as:

- placing the courthouse near public transportation;
- locating the courthouse on heavy-traffic corridors;
- positioning the courthouse on a site visible from one or more major highways;
- ensuring easy access from public parking;
- designing for universal access;
- providing a processional entry sequence (to guide court-users) from transfer points to the main public entrance; and
- using form and materials to design articulated entrances. (See Pati, Bose, and Zimring, 2007.)

¹ “Biophilic design is a concept used within the building industry to increase occupant connectivity to the natural environment through the use of direct nature, indirect nature, and space and place conditions.” See https://en.wikipedia.org/wiki/Biophilic_design.

The Evolving Workforce

The Millennial Generation (also known as Gen Y) outnumbered Baby Boomers in 2019 (Fry, 2018), and Gen Z is just beginning to enter the workforce. By 2025, over 70 percent of the workforce will be Gen Y and Gen Z (Capital Global Employment Solutions, 2018). The court must adjust its operations and physical spaces to attract and retain these workers because their work environment expectations and needs are different, e.g., teleworking will be commonplace for all kinds of jobs that require access to electronic court records and do not require face-to-face interactions (other than through videoconferencing).



Agile workspace such as “hoteling workstations” will be needed as workers dynamically schedule their use of workspaces...as they move from task to task in the court. Hoteling workstations also provide teleworkers with a place to plug-in when they need to work on-site.

Designing the Environment to Retain and Attract Staff

Two related objectives can help court managers deliver services to the public. Team building and cross-training of staff help share knowledge; best practices inspire creativity and innovation and communicate a shared mission, values, and culture. Jobs in a court have become less dependent upon moving paper files from desk to desk because many or most court records are now electronic. Cross-training creates more agile staff, and though it is not a new management strategy, it has implications for court facility design.

An agile staff means that employees perform multiple kinds of tasks, which increases the flexibility of the court in delivering services and makes jobs more interesting. Agile workspace such as “hoteling workstations” will be needed as workers dynamically schedule their use of workspaces such as desks, cubicles, and offices as they move from task to task in the court. Hoteling workstations also provide teleworkers with a place to plug-in when they need to work on-site.

As courts seek to retain and attract staff, they should aspire to meet the expectations of a desirable workplace. “Workplace effectiveness” is a way of thinking about the workplace as “a shift toward high-performance behaviors. As knowledge and creative work have become more complex and interconnected, people today report spending less time working alone and more time collaborating (in person and virtually), socializing, and learning” (Gensler Research Institute, 2019).

Other expectations of the workplace environment include the availability of childcare and observance of the principles of biophilic design.

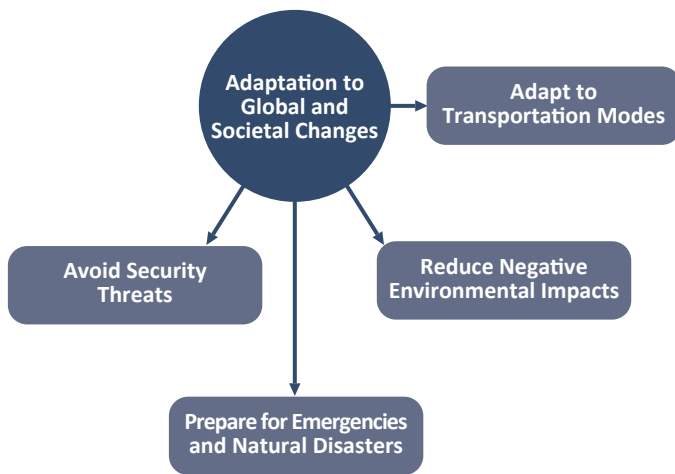
Adaptation to Global and Societal Changes

Global changes, such as climate and societal changes, related to technological innovation have affected our day-to-day life and will, in turn, affect our urban fabric and buildings.

Adapting to Changing Transportation Modes

Multimodal alternatives to driving, such as ridesharing, increased bike lanes, improved public transportation routes and frequency, and self-driving vehicles, will increase physical access to justice and reduce the amount of parking needed at court facilities in most urban and many suburban jurisdictions.

Adaptation to Global and Societal Changes, High-Level Objectives



Reducing Negative Environmental Impacts

Sustainable building design will become more and more commonplace. “The building sector is the single largest consumer of energy and producer of greenhouse gas emissions. The urban built environment is responsible for 75% of annual global greenhouse gas (GHG) emissions: buildings alone account for 39%” (Architecture 2030, n.d.). The American Institute of Architects 2030 Commitment aims to work toward a carbon-neutral built environment by 2030. This commitment is widely adopted in the United States and globally and has been implemented into federal, state, and local government legislation, becoming standard practice in most leading architecture, engineering, and civil-engineering firms (Architecture 2030, n.d.). Rating systems, such as the Leadership in Energy and Environmental Design (LEED), exist to help building owners and operators be environmentally responsible and are well known and commonly used (U.S. Green Building Council, 2020).

Given the crucial nature of courts’ responsibilities related to maintaining the rule of law in all situations, the development of effective emergency management strategies and a continuity of operations plan (COOP) is essential.

Preparing for Emergencies and Natural Disasters

Given the crucial nature of courts’ responsibilities related to maintaining the rule of law in all situations, the development of effective emergency management strategies and a continuity of operations plan (COOP) is essential (National Center for State Courts, 2019). As a part of the courts’ COOP, it is critical that the planning of court facilities address the possibility of natural disasters and other emergencies. Planning for unanticipated emergencies is necessary for both new and existing courthouses, and it should include provisions for both resilient court facilities and alternate facilities that may be used when the primary facility is not operational.

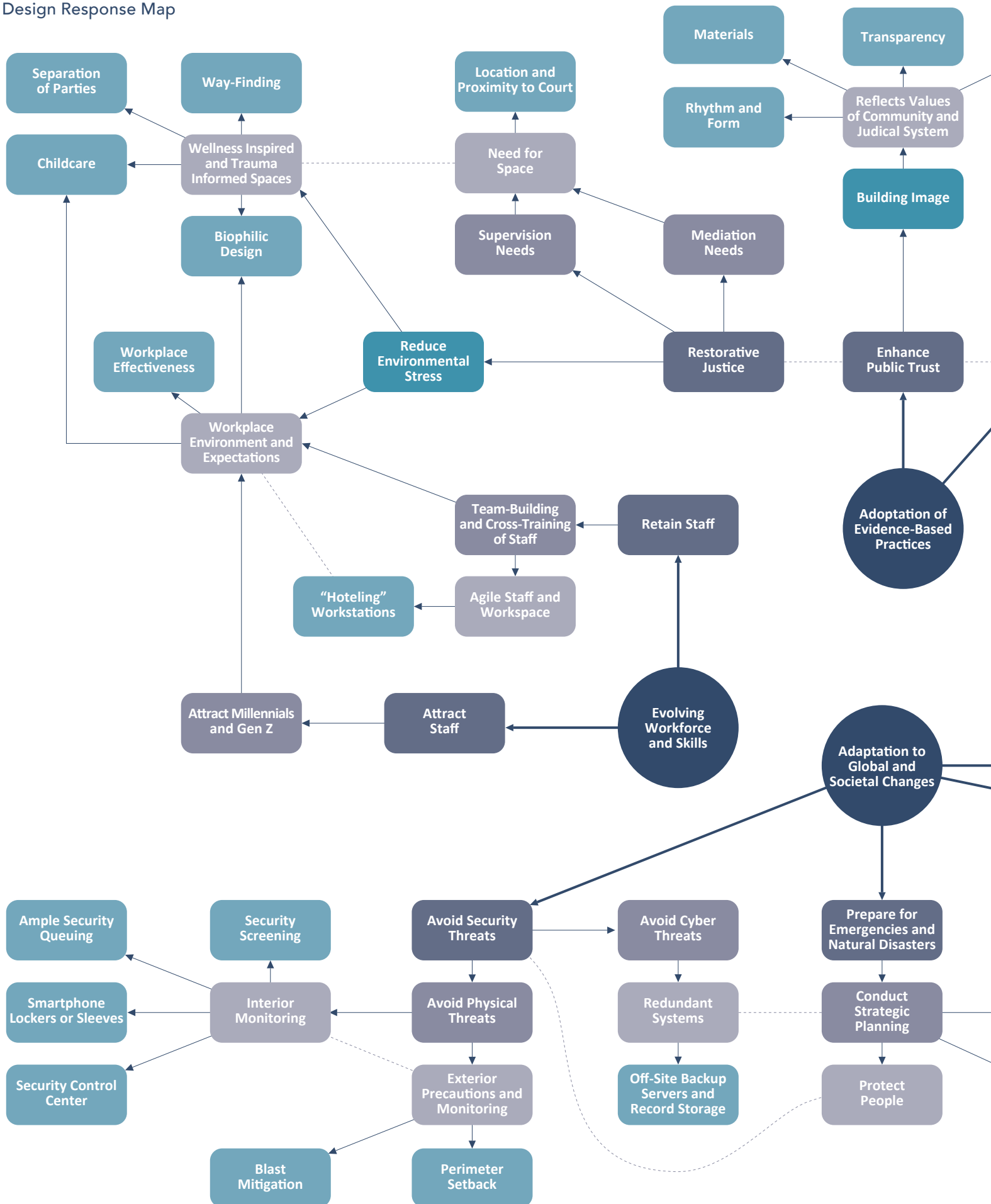
Adequate backup power and the location of critical infrastructure in safe locations promote resilient court buildings. For example, it is recommended that courts use cloud server platforms or locate server rooms on upper floors rather than basements to avoid flooding. Backup power generation requires a plan for when backup generators break or run out of fuel.

Courts are located along a spectrum of preparedness for alternate technologies and facilities available during times of disaster. Alternative facilities are characterized as “cold, warm, or hot sites.” These sites may range from having little or no preestablished infrastructure or hardware to having a copy at the secondary site of everything ordinarily available at the primary facility, including personnel, hardware and software systems, communications, and power. A court will have minimal downtime when using a “hot” site, though the cost of alternatives and the likelihood of emergencies such as hurricanes, earthquakes, and flooding must be considered.

Avoiding Security Threats

Court facility planning should aim to avoid security threats, both physical and cyber. Ways to avoid physical threats include exterior precautions such as setbacks around the building perimeter, the incorporation of blast-mitigation provisions, and thoughtful placement of windows in courtrooms and judicial chambers. The monitoring of both interior and exterior spaces is already standard practice in most facilities. Security queuing and waiting can be an additional stress for individuals who are feeling anxious due to their court-related responsibilities. Providing ample security-queuing space helps to minimize stress on those waiting to be screened and leads to better behavior and decision making. Cell phones are commonplace, and a procedure for keeping them out of courtrooms to protect witnesses, parties, and other people may involve storing phones until a visitor leaves the building. Smartphone lockers or sleeves are ways to secure those devices.

Design Response Map





Conclusion

Court management trends and operations cannot be fully implemented without the proper physical environment, and the design of courthouses can help or hinder the court's ability to provide service to the public. The following high-level planning and design opportunities exist to support court trends:


- reduce environmental stress for court staff and the public;
- consider the building's image;
- realign existing facilities;
- provide support space and amenities for self-represented litigants;
- reallocate and, in some cases, reduce the amount of space; and
- reduce the facility's negative environmental impacts.

As illustrated in the overall Design Response Map, major court trends result in tangible design responses that are needed to support and enhance their objectives. Several trend objectives converge into complementary design-related outcomes. The objectives are interwoven and move toward a common purpose, which is to improve service to the public by providing thoughtful and appropriate space, necessary and helpful amenities, an authentic building image, and an inspiring atmosphere.

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When the Law and a Judge's Personal Opinions Collide

Hon. Raymond J. McKoski

Judge (ret.), Illinois, and author of Judges in Street Clothes Acting Ethically Off-the-Bench

Every day, in every courthouse, judges honor their oaths by scrupulously following the law even when they disagree with the law or the law conflicts with the judge's personal belief. It is time that the public understands this essential component of judicial impartiality.

When the public is asked what qualities make a good judge, impartiality and fairness usually top the list. To help ensure these legitimate public expectations, every judge takes an oath that courtroom decisions will not be influenced by friendships, public clamor, powerful litigants, or politicians. The oath further requires that judges disregard their personal opinions on social, political, and legal issues and scrupulously follow the law. Judicial impartiality demands that the rule of law prevail no matter how strongly a judge holds a personal view or how vehemently a judge disagrees with the law.

Supreme Court Justice Antonin Scalia's vote in *Texas v. Johnson* (1989) vividly demonstrates the commitment of judges to set aside individual preferences and adhere to the law. In *Johnson*, the court considered the constitutionality of a Texas statute that criminalized the burning of the American flag. Justice Scalia's personal opinion on the issue was well known.

He made no bones about telling a reporter that he disliked people who burn the flag, and if king, he would jail all flag burners (Barnes, 2008). Disregarding his personal conviction that flag burning should be a crime, Justice Scalia voted with the majority to reverse Johnson's conviction for the very conduct Scalia found so abhorrent. And Justice Scalia was not alone in placing the law above personal preferences. Justice Anthony Kennedy concurred in the majority opinion in *Johnson* even though the case outcome was "painful" to him.

The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases (Texas v. Johnson, 1989: 420-21).

In *Republican Party of Minnesota v. White* (2002: 798; Stevens, J., dissenting), Justice John Paul Stevens acknowledged that all judges, not only Supreme Court Justices, recognize their duty to follow the law. Justice Stevens commended "countless judges in countless cases" for making unpopular decisions and "enforc[ing] rules that they think unwise, or that are contrary to their personal predilections."

Although members of the judiciary and most lawyers appreciate that judges routinely follow laws or rules with which they disagree, the public sometimes finds it difficult to accept that judges possess this essential hallmark of impartiality. So, permit me to present two cases in which it was necessary for me to set aside my personal sense of justice and render a decision mandated by the law. In the first case, the law mandated the acquittal of a defendant who had undoubtedly committed the offense of sexual abuse. In the second matter, the law required a ruling against a plaintiff in a property-damage lawsuit.



Judicial impartiality demands that the rule of law prevail no matter how strongly a judge holds a personal view or how vehemently a judge disagrees with the law.

Sexual Abuse Acquittal

To prove that a defendant committed a crime, the state must prove beyond a reasonable doubt that 1) a crime in fact occurred and 2) the defendant committed the crime. The first element, that a crime occurred, is known as the *corpus delicti*. It is a long-standing rule “that proof of the *corpus delicti* may not rest exclusively on a defendant’s extrajudicial confession, admission, or other statement” (*People v. Sargent*, 2010: 1055). The law requires evidence, independent of the accused’s confession, that a crime occurred. Historical mistrust of out-of-court confessions formed the basis for this common-law evidentiary rule (*People v. Sargent*, 2010: 1055). Distrust arose from coercive interrogation techniques and the tendency of some to confess to crimes they did not commit or to crimes that never occurred. Ordinarily, presenting evidence that sexual abuse occurred is not a problem because the victim is available to testify.

In the case before me, the state charged the defendant with criminal sexual abuse. The charge was consistent with the acts that the defendant admitted performing on the victim in his extrajudicial confession. However, the victim of the abuse was ten months old and, therefore, unable to testify. A pediatrician specializing in sexual and other forms of physical abuse examined the child but was unable to find any indication of trauma or abuse. There was simply no evidence other than the defendant’s detailed and convincing confession to establish that a crime occurred. Thus, a bench trial resulted in a finding of not guilty.

Proving Damages in an Automobile Accident

Civil lawsuits involving vehicular collisions are heard every day in courthouses across the nation. As first-year law students learn, to recover money from a defendant in an automobile-accident case, the plaintiff must establish that the defendant drove in a negligent manner, that the defendant’s negligence damaged the plaintiff, and the amount of the damage in monetary terms sustained by the plaintiff. The means and methods of proving the elements of a tort action pose no special problem for lawyers. The matter is not so simple, however, when a *pro se* plaintiff, unschooled in the law, faces an insurance-company lawyer representing the defendant.



In my case, the plaintiff appeared on the trial date ready to prove the defendant’s negligence with her testimony. She planned to testify that while stopped at a traffic signal, the defendant’s automobile struck her vehicle from behind. She was ready to prove her damages with the automobile repair shop’s written estimate of \$1,500 for repairs necessitated by the defendant’s negligence. What the plaintiff did not know was that in Illinois an unpaid repair estimate is by itself insufficient to prove the amount of damages. The law required a repair bill marked “paid,” the plaintiff to testify that the bill had been paid, or the repairperson’s in-court testimony establishing the necessity and reasonable cost of repairs (see *Saunders v. Wilson*, 1969: 90; *Schaefer v. State*, 1984: 268).

Of course, the plaintiff was surprised to learn about this evidentiary rule when it was interposed by defense counsel. I suggested that the plaintiff consider requesting a trial continuance to bring the repairperson to court to testify. The plaintiff declined, stating she could not miss another day of work. No explanation by me could remove the plaintiff's feeling that the system cheated her and that justice was perverted to unjustly reward the insurance company. She was correct. The "paid bill" rule prohibited a fair result in the case. If my oath permitted me to substitute my subjective sense of fairness for the rule of law, the unpaid repair bill would have been admitted into evidence and the plaintiff would have recovered the cost of repairs. And I cannot say the thought of ignoring the evidentiary rule did not cross my mind. But judges resist the urge to substitute their own sense of justice for the rule of law. In many situations, such as the one before me, the only legitimate remedial action is to change the law.

How can courts and judges promote the public's understanding and appreciation that the rule of law requires judges to set aside their personal views and follow the law even when the result offends the judge's personal sense of justice? In his "2019 Year-End Report on the Federal Judiciary," Chief Justice Roberts provided at least a partial answer when he implored his "judicial colleagues to continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach."

Chief Justice Roberts... implored his "judicial colleagues to continue their efforts to promote public confidence in the judiciary, both through their rulings and through civic outreach."

Civic Outreach

Judges and other court staff traditionally have used speaking engagements to educate the public about the judicial system. Judges and staff could easily structure speeches around historical and personal examples of judicial officers disregarding strongly held personal opinions to comply with the law. Historical illustrations are easy to come by; for example, see *Texas v. Johnson* (1989), regarding Justice Scalia's views on flag burning, and Duin (2005), describing how a judge's ruling resulted in the picketing of his home, death threats, and the judge's resignation from his church. So are examples from the court calls of judges who, like me, find themselves bound by a law or rule with which they disagree. Op-ed pieces and posts on a court's social-media pages could likewise explain the restrictions placed on judges.

Even more fundamentally, every court's webpage should emphasize a judge's sworn duty to disregard personal opinions and follow established law. Some states have taken steps in this direction. For example, the "Voters' Guide to Nebraska's Judicial Retention Elections," found on the Nebraska Judicial Branch's website, informs the public, "Judges must be neutral and follow the rule of law. It is inappropriate for a judge to consider his or her personal views, political pressure, or public opinion when deciding cases." The Nebraska website further explains that obeying the law sometimes leads to unpopular results that can only be remedied if the legislature changes the law. The Iowa Bar Association provides similar information in its *Judicial Performance Review* publications to assist voters in intelligently exercising their franchise in judicial retention elections (Iowa State Bar Association, 2018: 3-4). While these efforts are laudable, there is no reason to limit the explanation of a judge's duty to follow the law and disregard personal preferences to election guides. Courts need to brand the judiciary as impartial arbiters prominently on court webpages and in social media. Because of their often superior knowledge concerning means of electronic communication, this is where court administrators, public information officers, and other court staff can play an instrumental role in branding the judiciary as impartial decision makers scrupulously following the law, rather than their personal opinions.

Judicial Decisions

Sometimes, judges view the purpose of judicial rulings too narrowly as merely a means of resolving a dispute between litigants. An equally important purpose of a judicial decision, however, is to help the litigants and public understand the role of judges, courts, and laws in our system of justice (Chemerinsky, 2009: 1783). This explanatory component of judicial decision making is especially important when a judge's decision seems to confound common sense or deviate from public expectations.

Authoring opinions clearly and deliberately explaining the rules controlling the decisions in the two cases described previously presents little difficulty. The rule that a criminal defendant cannot be convicted without evidence independent of a confession can be explained in simple terms. The public would also understand the reason for the rule, especially in light of recent disclosures of coerced and other false confessions. Similarly, a written opinion in the automobile-accident case could explain that only paid repair bills are admissible in evidence to prevent litigants from securing inflated cost estimates. Such explanations would not only help the public and media understand the relationship between the rule of law and the role of judges but also help foster changes in the law thought necessary by the public.

Educating Judges

Every state requires judicial education and training. Courses for judges usually focus on procedural and substantive law and mandated instruction on codes of judicial ethics. If not yet a part of the curriculum, programs should be added to educate judges and judicial candidates about the essential components of impartiality, including that personal beliefs cannot influence judicial decisions. Education regarding this essential trait of judging is vital in states that permit non-lawyers to become judges. Judges who are lawyers better understand the judicial role but would still benefit from course work on the importance of the rule of law and from training on how to prevent personal opinions and other implicit biases from subconsciously influencing rulings. Most importantly, impartiality training would allow the courts to advertise to the public that judges not only understand the importance of divorcing personal beliefs from court decisions but also receive training how to accomplish that goal; for example, *State v. Plain* (2017: 841) explicitly states that all Iowa judges are required to undergo implicit bias training and testing.

Courts need to brand the judiciary as impartial arbiters prominently on court webpages and in social media.



Conclusion

Building public confidence in the legal system falls squarely on the shoulders of judges, court administrative and support staff, and lawyers. The single most effective means of enhancing public trust in the judiciary is to confirm that judges act impartially; ignore outside influences, including their own personal views; and decide cases only on the facts and the law. That judges meet this rigorous impartiality standard is demonstrable through the words and actions of famous judges sitting on the country's highest court and less famous judges hearing cases at the local level. We can no longer simply rely on repetition of the mantra "judges must be impartial" and, instead, must prove to the public that every day, judges in every court, and in every kind of case, do, in fact, remain impartial.

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We can no longer simply rely on repetition of the mantra "judges must be impartial" and, instead, must prove to the public that every day, judges in every court, and in every kind of case, do, in fact, remain impartial.





From Avoiding Liability to Building Trust: It's on Us

Melissa Muir

Human Resources Director, Seattle Municipal Court

Traditional approaches to harassment and discrimination prevention training in the workplace have not worked: employees do not report concerns, and managers do not make it safe to report those concerns. The Seattle Municipal Court is piloting a new approach, focused not on avoiding legal liability but on building trust.

Our court, in partnership with the City of Seattle's Department of Human Resources, is piloting a *Responsive Workplace Culture* training program. After facilitating training around this topic for more than 20 years, I am seeing firsthand how this new approach is reaping unexpected benefits. For our court, this pilot training has evolved into an ongoing series of candid conversations to build an inclusive culture of trust.

Discrimination and Harassment in the Workplace: Courts Are Not Immune

Courts at all levels historically report few internal claims of discrimination and harassment. Across the United States, Law360 recently identified just 43 public determinations against state judges involving allegations of sexual harassment or other inappropriate interactions with court staff. And that was over more than a decade from 2008 to 2019. There are few claims in the federal judiciary, and at the state level claims are “almost unheard of” (Coe, 2019).

These low numbers were once reassuring. For two decades, as my peers and I facilitated training on preventing workplace harassment, we emphasized that the small number of claims demonstrated that courts are a model employer. We were wrong. Instead, these numbers show that courts face the same reporting challenges as other organizations.

Ensuring our workplace culture is inclusive, accountable and respectful for all employees starts with the bench. We are committed to fostering a courthouse that will not tolerate harassment or inappropriate behavior and the Responsive Workplace Culture workshop helps us ensure that our culture reflects these values.

Presiding Ed McKenna
Seattle Municipal Court

As U.S. Supreme Court Chief Justice John Roberts acknowledged in the federal judiciary’s 2017 year-end report: “Events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear that the judicial branch is not immune.”

The Costs Are High

When the Equal Employment Opportunity Commission (EEOC) published its groundbreaking 2016 study on harassment in the workplace, the agency estimated the direct costs of harassment—“just the tip of the iceberg”—at \$164.5 million (Feldblum and Lipnic, 2016). The Society for Human Resources Management (SHRM, 2019) recently estimated the true costs of workplace toxicity, which “often manifests itself as harassment and discriminatory treatment,” at \$223 billion. By any measure, the costs are high.

3 out of 10 feel their managers don’t encourage a culture of open and transparent communication.

4 out of 10 feel their managers fail to frequently engage in honest conversations about work topics.

1 in 5 feel their managers fail to foster an environment of trust.

Society for Human Resources Management
The High Cost of a Toxic Workplace Culture

DO

- *Listen. Listen more.*
- *Use a 90-10 approach where they do 90% of the talking.*
- *Remember that you are not solving the problem.*
- *Ask open-ended questions, especially if you have an impulse to judge. Ask questions until the impulse to judge goes away.*

DON'T

- *Ask "why."*
- *Rush to solve the problem.*
- *Ask close-ended questions.*

People Do Not Report Concerns

In the wake of the #MeToo movement and its widespread impact on the workplace, courts throughout the country are reexamining their harassment policies, investigation procedures, and training. Although most organizations have programs in place, victims remain unlikely to report harassment or discrimination: employees do not report concerns, and managers do not make it safe to report those concerns.

- 3 out of 4 people who have experienced harassment do not report it (Feldblum and Lipnic, 2016), and those who do report wait an average of 12-16 months to come forward
- 4 out of 10 people who observed behaviors of concern at work did not report it (FBI, n.d.)
- 4 out of 10 leaders have personally witnessed sexual harassment and discriminatory treatment that they believe was not reported (SHRM, 2019)

The training emphasized a culture where having conversations about difficult things is ok. Let's do more on that!

Training Participant



Training Must Change

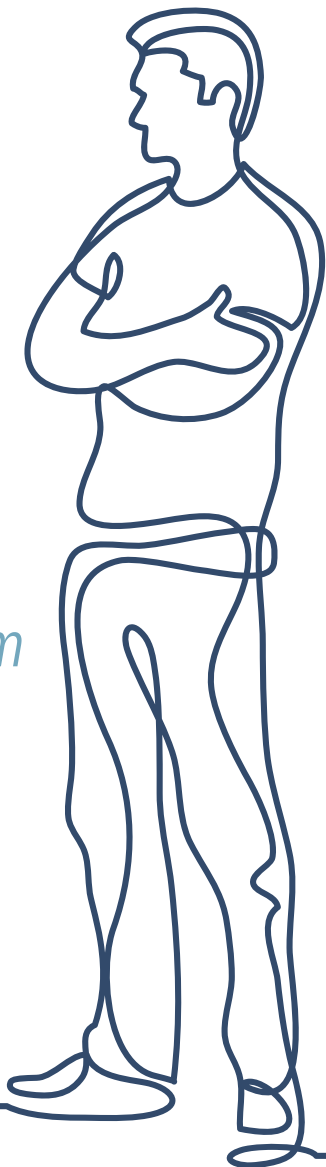
Traditional training has not worked. As a long-time trainer in this area, I acknowledge the discomfort, and reality, of this statement. As the EEOC cautioned in its 2016 report, “[m]uch of the training done over the last 30 years has not worked as a prevention tool—it’s been too focused on simply avoiding legal liability.” The EEOC suggests that training that is tailored to the specific workplace, offers tools to intervene, and focuses on respect and civility “may offer solutions.” Employment experts encourage us to focus less on compliance and more on interactive content, leadership buy-in, and engagement in preventing harassment and building trust (West, 2020).

Over the past year, our court has reexamined our training, our trust building, and our culture. With the support and insights of learning and development experts, we have introduced an approach designed to be impactful and meaningful. The initial results are promising.

When an employee brings a concern, what assumptions do we make?

What past experience and knowledge inform what you believe and question?

Exercise Questions



Our approach has changed in three key ways.

1. Moving away from legal definitions of harassment and discrimination to a broader understanding of workplace harm

For years our training began with a self-quiz: Is It or Isn't It? The answers fell into one of three categories: harassment, discrimination, or “arguably inappropriate.” The last category, arguably inappropriate, was not addressed in the curriculum. At the end of each session, managers would review and self-grade their quiz silently.

Now we open our training with a quick review of definitions and a small-group exercise. We display the categories on a continuum: Discrimination, Harassment, Wrongful Conduct and a fourth category, Trust-Building Behavior. As managers grapple with relevant and ambiguous scenarios, we dig deeper than Is it or Isn't it:

- What additional questions do we want we ask?
- How do we resist the impulse to judge?
- How do we address wrongful conduct that does not satisfy a legal definition yet does not feel right?

In the exercise, we start by categorizing and naming the concern. Then we practice active listening to understand and foster an environment where employees feel safe to share these concerns. Messy real-life examples, the ones that do not fit neatly into categories, become our focus. They provide opportunities to react, listen, ask questions, and demonstrate trust-building behavior.

If employees trust us to share conduct that feels wrong, they are more likely to trust us with deeper concerns of harassment and discrimination. These discussions are our opportunities to incrementally build trust. As researcher Brené Brown (2018) reminds us in *Dare to Lead*, “[t]rust is in fact earned in the smallest of moments. It is earned not through heroic deeds, or even highly visible actions, but through paying attention, listening, and gestures of genuine care and connection.”

2. Thinking more about the biases we as court leaders bring to conversations and how these impact court staff

Previously, training moved from legal definitions to workplace responses. We covered rights, responsibilities, and remedies. We used a scripted “assertive communication” model that was so uncomfortable to practice that my co-trainer and I often resorted to demonstrating it in front of the group rather than make people role play.

In our approach now, we go back to the initial scenarios and look inward. We ask ourselves what information we created to fill in the gaps of the limited information we were provided. We stop and ask ourselves what learned stereotypes, what life experiences, what assumptions are influencing our judgments even before an employee raises a concern. This second exercise focuses not on a scripted response but rather on what gets in the way of true listening: assumptions about gender, race, position, even assumptions about whether something happened.

We recognized this exercise’s success when we watched it fail. As outlined in the highlighted story, offhand remarks in the scenarios led participants to question how leaders would treat real employee concerns. Such remarks are one of the very reasons employees hesitate to report. Our activity, intended to encourage employees to raise concerns, had instead discouraged them. Our biases and assumptions got in the way of making ourselves fully available to hear what employees were trying to say.

In our sessions since then, we call out this real-life challenge when examining how our biases and assumptions impact our ability to communicate with others. For employees to bring their authentic self to the workplace, we must *ask questions until the impulse to judge goes away*.

The scenario was brief. One of your employees approaches you to share that the night before, a male coworker drank to excess at happy hour and made advances toward a female coworker, which she declined. The employee is “grossed out” but doesn’t want to get the male coworker in trouble.

As our leaders were debriefing this small-groups exercise, Supervisor “T” raised her hand, unseen by the directors sharing thoughts on the scenario. By the time I returned to her, the conversation had moved on. I followed up with her the next day and was surprised by what she said next.

What impacted me after the exercise scenario was how all levels of leadership at the table erupted into comments, feeding off each other, laughing and even mocking:

“That guy’s just gossiping!”

“The two of them were probably on a date!”

“What if it’s just a rumor?”

“What if they’re being oversensitive?”

“They’re not at work so he needs to mind his own business!”

Once the ruckus died down, I was able to comment that as leaders we must remember that our job is not to make a knee-jerk judgment or assumption. Rather, our job is to professionally and neutrally ask questions and gather information from the person reporting before determining the right steps to take.

Most of the leaders around the table were questioning the motive of the observer raising a third-party concern from a setting outside of work. Any employee with a concern like that—at any level in the organization—would think about how it would be received by their leader and probably stay silent.

As the exercise focused on how our assumptions can impact employees’ reporting, we were making assumptions that discouraged reporting! We’ve since built that observation into the exercise itself as a moment of self-reflection.

As court leaders, people watch us and think about how we will react to their vulnerability. How we talk among ourselves, what we say informally, our sarcasm and deflection as we deal with difficult subjects—these can have a chilling effect on people long before we realize there is a concern. By addressing our assumptions directly, we illustrate the importance of the culture we support, our commitment, and the trust we build before these conversations.

3. Engaging leadership in building trust to prevent behavior from escalating to illegal harm

Previously, we covered rights and responsibilities, both of court employees and court leadership. We encouraged people to handle situations at the lowest possible level, which sometimes meant we asked employees themselves to handle the situations they had finally brought to us for help.

Now we look more broadly at our responsibilities as leaders. First, we look at how we listen—making ourselves fully available to hear the concern and practicing active listening skills. Next, we look at what impacts how we listen—developing awareness of the impact of our own position, power, and biases. Last and not least, we practice building trust.

In the third exercise, we work through realistic scenarios in groups of three, rotating the roles of manager, employee, and observer. The employee role has a few pieces of information and plenty of latitude. The manager role has sample active-listening questions and reminders of ways to create respectful workplace norms. Observers have questions to guide their notetaking. The ensuing conversations quickly get lively and animated. The conversations have been so valuable that we have continued them in ongoing, hour-long skill-building sessions.

Finally, we end with a self-reflection exercise. Rather than a quiz, each court leader identifies ways to create and nurture a culture of respect, thinks about situations they wish they had intervened in earlier, and identifies a trust-building skill they want to further develop in themselves.

Thank you for coming to me with this. I know it might not be easy to talk about. There are some things I can keep between you and me and some things I can't, but I hope you will let me help.

Sample opening language when employee shares a concern

How Do We Know It Is Working?

The EEOC points out that previous training is not working and offers insight into what may work; employment experts recommend leadership ownership and interactive, discussion-based training grounded in respect (West, 2020). While there is not a lot of external data available yet, our court sees signs that this new approach has promise. Shortly after we facilitated our pilot sessions, an employee came forward about harmful conduct in a meeting. They had hesitated in the past but felt that the court had shown increasing openness. When approached with the concern, the manager, rather than defensive, was curious. Both want to work through it. The fact that we are even having this difficult conversation is a tangible sign of the willingness to engage and build trust.

For more than 20 years, I have worked with judges and court staff to address concerns about workplace harassment and discrimination. I have arguably been part of the problem. Now in Seattle we are pleased with the response to our new and simpler approach: less on avoiding liability and more on creating and supporting a culture where we address concerns long before they rise to the level of illegal harm. We're building a respectful and *Responsive Workplace Culture*.

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