

2019

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Trends in State Courts



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Trends in State Courts 2019 articles have been through a rigorous review process. The members of the 2019 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 in hard copy and electronically.

Submissions for the 2020 edition are now being accepted. Please email abstracts of no more than 500 words by October 14, 2019 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

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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 2019 was truly a team effort. Without the support and dedication of the court community this publication would not have been possible.

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The Trends in State Courts 2019 editors also recognize Thomson Reuters for their ongoing provision of online legal resources and research support.

The editors also recognize the contributions of two former staff members of the National Center for State Courts’ Knowledge and Information Services, Deborah Smith and Blake Kavanagh, who “started the ball rolling” for *Trends 2019* last year as members of the editorial staff. Their preparatory work was essential to this year’s edition.



This report is part of the National Center for State Courts’ “Report on Trends in the State Courts” series. Opinions herein are those of the authors, not necessarily of the National Center for State Courts.

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Table of Contents

Preface	1
Mary Campbell McQueen	
Massachusetts Trial Court: Using Sequential Intercept Mapping in Response to the Opioid Crisis	2
Hon. Paula M. Carey	
Pima County’s Dependency Alternative Program: Preserving Families and Promoting Access to Justice	8
Hon. Kathleen Quigley and Stacey N. Brady	
Engaged Employees = Satisfied Court Customers?	14
Eric Brown and Mindy Masias	
Human Capital: Connecticut’s Judicial Branch Is Investing in Its Workforce	21
Heather Nann Collins	
Court Employees: Investing in Your Human Capital	29
Hon. John J. Russo	
The Court’s Technology Communication Challenge	33
James E. McMillan	
Beyond Buzzwords: Building an Information Security Foundation	37
Sajed Naseem and Brian J. McLaughlin	
Improving Child Support Enforcement Outcomes with Online Dispute Resolution	43
Kevin Bowling, Jennell Challa, and Di Graski	
The Importance of a Legal Ecosystem	49
Tom Clarke	
Evaluating Remote Technology Options to Increase Self-Help Center Access	54
Sheldon Clark	



Preface

Mary Campbell McQueen President, National Center for State Courts

Courts play an essential role in our society, yet many members of the public find them intimidating, with their imposing architecture, security procedures, and seemingly arcane rules and legal language. Yet, for many members of the public, courts represent their only one-on-one contact with government, at least outside of a voting booth. As intimidating as courts can seem, access to justice is critical; therefore, state courts are working to make their processes more understandable and relevant to the public.

Courts also provide a crucial gateway to other essential services, such as drug treatment and rehabilitation. For example, the lead article in this year's edition of *Trends in State Courts* discusses how the Massachusetts Community Justice Project uses *Sequential Intercept Mapping* to confront the state's opioid-abuse crisis. This mapping process shows how the opioid crisis impacts the courts and points out gaps in community services to addicts that need to be filled.

The attitudes of court employees also affect access to justice, as well as public perceptions of the justice system. Engaged employees tend to be more efficient and devoted to the mission of the courts. A group of articles in this year's *Trends* examines the importance of courts investing in human capital, with a focus on such investment in the Connecticut Judicial Branch and the Cuyahoga County Court of Common Pleas in Cleveland, Ohio. Such investments pay dividends in improved operations and public perceptions of the courts' role in society.

Another section of *Trends 2019* looks at the role of technology in promoting the rule of law. One such article describes the 2019 Innovating Justice Forum at The Hague, which brought together court technologists and demonstrated the best justice-related apps from around the world, including India, Nigeria, and Sierra Leone. Other articles show how technology can improve outcomes in child support enforcement and increase access to a court self-help center. Another takes up the importance of building a foundation for information security.

Increasing access to justice is essential to a functioning democracy. We hope you find the articles collected for *Trends in State Courts 2019* both useful and thought provoking. You can read more about *Trends* online at www.ncsc.org/trends.



Massachusetts Trial Court: Facilitating a Community Response to the Opioid Crisis

Hon. Paula M. Carey Chief Justice, Massachusetts Trial Court

The opioid crisis has affected the lives of citizens nationwide—with a resulting impact on courts. The Massachusetts Community Justice Project uses Sequential Intercept Mapping to gauge the impact of opioid-related cases on courts and to improve services to victims of this health crisis.



State courts have long seen people and families dealing with mental illness and addiction, but the opioid crisis has created a new urgency in communities nationwide. As local communities work to address the crisis, state courts hold an important place in a comprehensive response built on partnerships between systems (justice, treatment, health care, and housing). The Massachusetts Trial Court has developed an innovative project designed to facilitate community collaborations, improve the use and availability of behavioral health services, and reduce the risk of

justice involvement, with a particular focus on opioid-use disorder and overdose prevention.

The trial court has responded to the opioid crisis in a number of ways, from expanding specialty courts to implementing federal grants that use case management and creating the Massachusetts Community Justice Project (<http://tinyurl.com/y25rtn9z>). This initiative works with communities to connect systems and promote the use of strategies that support recovery, enhance public safety, and improve community quality of life.

Behavioral Health and the Justice System

There is a lot we know about the intersection of addiction, mental illness, and trauma with the criminal justice system.

- When comparing the general population to the justice-involved population, people with addiction and mental illness are overrepresented in the justice system.
- The presence of childhood and current trauma is high in justice-involved populations, and it is a best practice to assume that most criminal defendants have a trauma history.
- The earlier that addiction, mental illness, and co-occurring disorders can be identified, and interventions implemented, the better the outcomes are for people who can be connected to community-based treatment that meets them where they are and not where we hope them to be.
- Addiction, mental illness, and trauma remain highly stigmatized. This means individuals often have hidden conditions that make it difficult to find places to intervene. Capitalizing upon opportunities, both before and while an individual is involved with the criminal justice system, is critical to reducing the likelihood that people will continue to cycle through the system because their mental-health and substance-use-disorder needs are not being met.
- Finally, many people dealing with behavioral health and substance use issues, who are also justice-involved, have complicated needs. They are often interacting with multiple systems (justice, treatment, health care, housing and shelter, social services) and are at high risk for relapse and recidivism. Connecting these often siloed systems and providing coordinated responses is important in a comprehensive approach.

The Opioid Crisis in Massachusetts

In 2017, more than 2,000 Massachusetts residents died because of an opioid overdose—an average of more than five people a day. Not since the AIDS epidemic of the 1980s and 1990s has Massachusetts seen such a sharp increase in a single category of deaths. Data from the Massachusetts Department of Public Health paints a stark picture:

- Fatal overdoses increased over 500 percent from 2000 to 2016.
- Nonfatal overdoses, a key risk factor for subsequent fatal overdose, totaled over 65,000 between 2011 and 2015; nearly one in ten people died within two years of an initial nonfatal overdose.
- Justice involvement: The opioid-related overdose death rate is 120 times higher for persons released from Massachusetts prisons and jails; nearly one of every 11 opioid-related overdose deaths involve persons with histories of incarceration in Massachusetts jails and prisons; in 2015, nearly 50 percent of all deaths among those released from incarceration were opioid related.
- Mental illness: Roughly one in four persons ages 11 and older in the MassHealth population (Medicaid) has a serious mental illness. The risk of fatal opioid-related overdose is six times higher for persons diagnosed with a serious mental illness and three times higher for those diagnosed with depression.

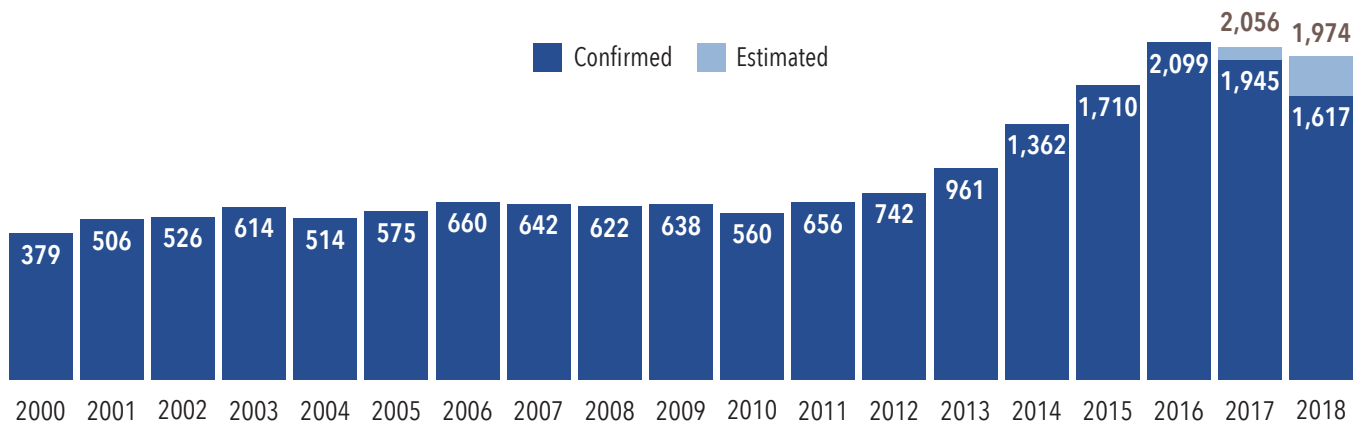


State courts have long seen people and families dealing with mental illness and addiction, but the opioid crisis has created a new urgency in communities nationwide.



Opioid-Related Overdose Deaths, All Intent

Massachusetts Residents: 2000-2018



Framework of the Massachusetts Community Justice Project: The Sequential Intercept Model

The backbone of the Massachusetts Community Justice Project is the *Sequential Intercept Model*. This model, developed by Dr. Mark Munetz and Dr. Patty Griffin in 2006, organizes the criminal justice system into a series of intercepts or touchpoints. The model provides a visual outline that communities can use to analyze each intercept and develop a comprehensive picture of local resources, as well as gaps in processes, programs, and services. Workshops using the *Sequential Intercept Model* were developed by Policy Research Associates and bring together partners from across systems at the local level for a facilitated, two-day working meeting.

The judge in the local court is uniquely positioned to bring important stakeholders to the table. Meeting participants include key stakeholders from the local criminal justice, behavioral health treatment, crisis, health care, and social service systems. During the event, the group goes through a facilitated process to map out how people with addiction, mental illness, and co-occurring disorders move through the local justice system.

Facilitators work with the group to take stock of evidence-based best practices at each intercept point. This process creates an inventory of resources in the community, as well as of gaps in practices, protocols, and services.



The judge in the local court is uniquely positioned to bring important stakeholders to the table.

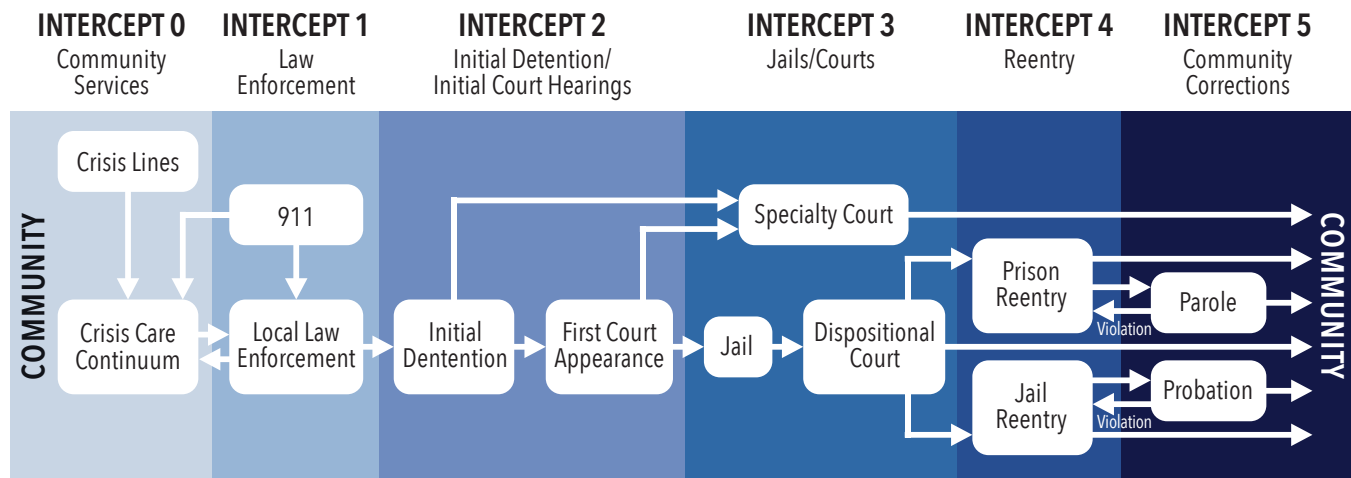


Mapping workshops culminate in the group collectively reviewing the gaps, selecting the top priorities for change in their region, and beginning to plan ways to achieve change. Facilitators encourage groups to start with a focus on short-term, low-cost, and attainable goals, with an eye toward medium and long-term goals.

Development of a Statewide Sequential Intercept Mapping Project

Groundwork for *Sequential Intercept Mapping* in Massachusetts began when the state Department of Mental Health (DMH), Department of Corrections, and Division of Youth Services received a Bureau of Justice Assistance planning grant in 2013 and hired Policy Research Associates to conduct a state-level *Sequential Intercept Mapping* and a workshop-facilitation, train-the-trainer event for five DMH employees. Recommendations from the state-level mapping included “develop capacity to provide *Sequential Intercept Mapping* across Massachusetts.”

Framework of the Massachusetts Community Justice Project: The Sequential Intercept Model



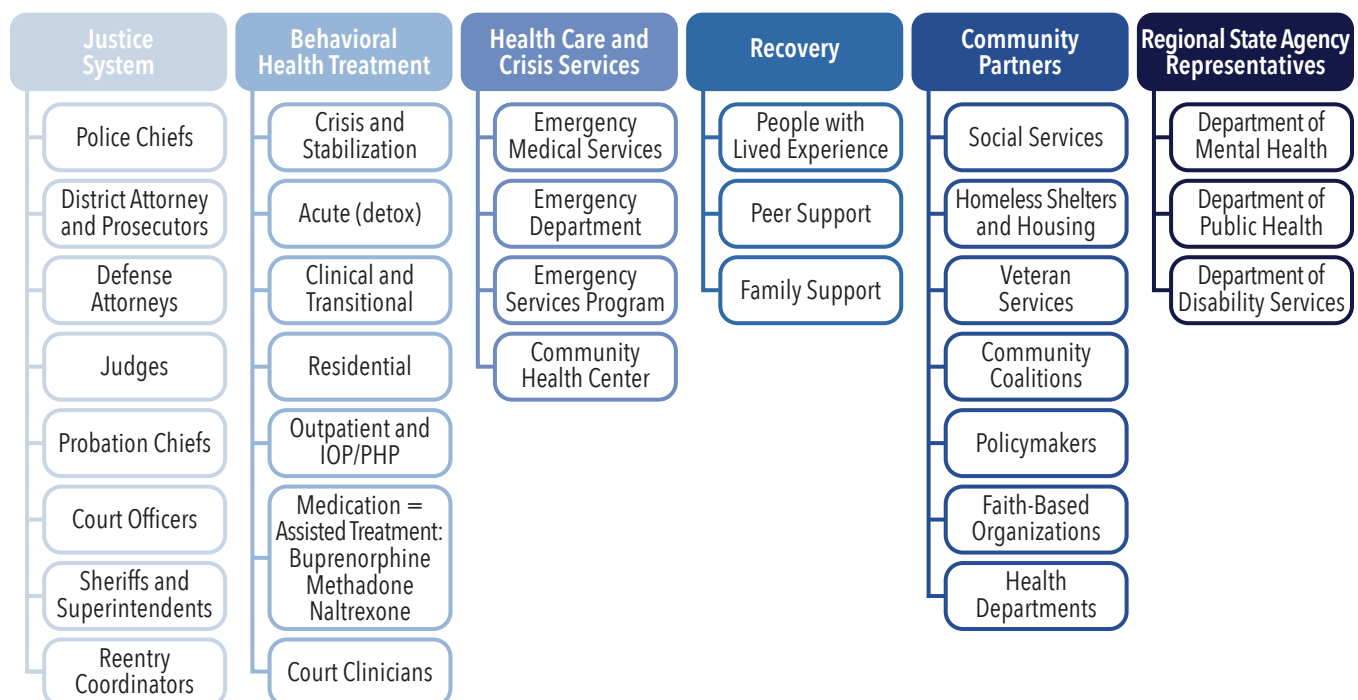
© 2016 Policy Research Associates, Inc.

In early 2015, Massachusetts convened the Trial Court Task Force on Substance Abuse and Mental Illness. This interagency task force was charged with reviewing and developing recommendations to address behavioral health issues in the courts and justice system. Among the initiatives that emerged from this group was the development of the statewide *Sequential Intercept Mapping* initiative that would subsequently be named the Massachusetts Community Justice Project. The state legislature approved funding for a project coordinator, and the trial court received

grant funding to host a second workshop-facilitation, train-the-trainer event with Policy Research Associates.

The project is now staffed by a project manager and an administrative coordinator. Staff work with a small planning group in each region, generally organized by district court jurisdiction, to plan, facilitate and evaluate workshops and provide follow-up technical assistance post-workshop. In addition, project staff compile reports for the legislature and state-level stakeholders on the status of the initiative and findings from each workshop.

Sequential Intercept Mapping Workshop Participants



Adapting Sequential Intercept Mapping to the Opioid Crisis

The impact of the opioid crisis on individuals, families, and communities can be seen in courthouses nationwide. The Massachusetts Community Justice Project has adapted *Sequential Intercept Mapping* to incorporate opioid-use disorder and overdose prevention throughout the justice system and in the community. Workshops include an inventory of evidence-based, best and promising practices specific to opioid-use disorder. In adapting the model, the following questions should be considered:

- Is there community-based access to on-demand evaluation and, when indicated, rapid initiation to buprenorphine or methadone (outside of the emergency department)? Do treatment providers have open access/walk-in hours? Are community buprenorphine providers accepting new patients? Is the methadone provider accepting new patients? What are the wait times? Is there an opioid urgent care or bridge clinic in the community?
- Are law-enforcement agencies carrying naloxone (Narcan)? Do local treatment providers have police-friendly drop-off processes (efficient transfer of information and drop-off that minimizes police wait time)?
- Are the emergency department physicians waived to provide buprenorphine? Is the emergency department providing rapid initiation to buprenorphine for appropriate candidates? Are there rapid referrals and access to community-based buprenorphine or methadone programs post-emergency-department? Is overdose prevention education and naloxone provided to overdose patients and families?
- Do district attorneys have diversion programs specific to opioid addiction?
- Do prosecutors and defense attorneys receive training on addiction and medication-assisted treatment? Are prosecutors and defense attorneys aware of community resources and how to access them?
- Are court officers trained to reverse overdose? Do courthouses have naloxone on site?



Find champions in the community. In Massachusetts, champions have included judges, police chiefs, district attorneys, sheriffs, hospital executives, registers of probate, family court clerks, and legislators.



- Is there a drug court in this community? Is there a family treatment court? Has either been considered?
- Are houses of correction (HOCs) continuing buprenorphine or methadone for people held pretrial or sentenced who are stable on the medication in the community? Are HOCs initiating buprenorphine/methadone/naltrexone for pretrial or sentenced residents? Are HOCs providing warm hand-offs to community treatment? Are treatment providers conducting in-reach assessments?
- Are HOCs screening for opioid-use disorder and overdose risk? Are HOCs providing overdose prevention training and a naloxone kit upon release?
- Is probation screening for opioid-use disorder and overdose risk?
- Do all intercepts have access to recovery coaching? Are there peer support centers in the community?
- Are sober houses allowing residents to be on medication-assisted treatment?
- Are there harm-reduction/active-user-engagement/outreach services in the community?
- Are people with lived experience, with both opioid-use disorder and justice involvement, at the planning table?
- Are the local/regional opioid coalitions at the table? Sequential Intercept Mapping can be a useful justice-focused needs assessment for coalitions and task forces.
- Is there a standing order for naloxone (Narcan) at the local pharmacy?

Lessons Learned and Workshop Outcomes

While multiple benefits are gained by convening stakeholders who rarely meet as a group (relationship building, mobilization catalyst, stakeholder understanding of the big picture and their role), *Sequential Intercept Mapping* workshops are only as effective as what takes place after the event—particularly on efforts that lead to effective and sustainable changes.

These changes often take time to assess, implement, and evaluate. Given this, a key lesson learned has been to work with state, federal, and independently funded local coalitions whenever possible. These coalitions are already working on the opioid crisis in their communities, and their work involves bringing together stakeholders across systems. The Massachusetts Community Justice Project collaborates with coalitions to incorporate *Sequential Intercept Mapping* as a strategic-planning and capacity-building tool. In turn, the coalition acts as the backbone of community-based post-workshop efforts moving forward.

Additional lessons learned include:

- *Engage the local presiding justice as a key convener to bring stakeholders to the table.*
- *Invite probation to the planning table—community corrections staff understand the challenges to treatment access and continuity in an important way.*
- *Include the clerk in the discussion. The clerk's office should have a list of treatment and support resources in the community to provide to families seeking civil commitments for substance-use disorders.*
- *Align with state-agency missions and programming. Stay on top of and help communities understand changes in systems as they occur, particularly regarding public health insurance and legislative/regulation changes.*
- *Find champions in the community. In Massachusetts, champions have included judges, police chiefs, district attorneys, sheriffs, hospital executives, registers of probate, family court clerks, and legislators.*
- *Expect some communities to progress faster than others.*
- *Do not forget lived experience at the event and the post-workshop efforts. Remember that there are many paths to recovery; one person's experience speaks only to that individual's situation. Consider asking recovery coaches who are working with many people to join the table.*
- *Encourage cross-training, particularly training community partners on what the justice partners need. For example, when the local medication-assisted-treatment provider comes to train probation officers, have probation staff also train the providers on their systems and needs.*
- *Educate community and treatment on criminogenic risk and risk/needs/responsivity.*

- *Lay the groundwork to allow respectful discussions in the uncomfortable zone that will occur—the place where inherent tensions exist between behavioral health, health care, and justice approaches. Better understanding from each side allows for movement toward each other.*
- *Evaluate, evaluate, evaluate: workshops are only as effective as whatever changes happen after the workshops. Be sure to track progress in your community using shared data.*
- *Remain hopeful. This is hard work, and the individuals involved often do not see the benefits of their work. Treatment and support are effective, and people do recover.*

Following workshops, project staff remain in contact with community partners to provide technical assistance in implementing their action plans, for as long as needed. Electronic surveys are sent to all who attended the workshop six months after the event. These surveys evaluate the work that has taken place, inventory current barriers to progress, and gather information about what communities still need to move forward. Pre-workshop planning, workshop implementation, and post-workshop follow-up are adjusted as evaluation information is received.

Community post-workshop efforts include creation of a volunteer-led addiction peer-support center; development of a medication-assisted-treatment program in the county jail; formation of a pre-arraignment, district-attorney-based diversion-treatment program; training for prosecutors and defense attorneys on evidence-based treatment for opioid addiction; increased collaborations between law enforcement and crisis programs; increased capacity for co-response (social workers embedded in the police department); implementation of overdose risk screening and access to naloxone; and training for community partners on how to work with people who are actively using drugs.

Conclusion

For communities impacted by opioid use disorder across the country, the Massachusetts Community Justice Project can serve as a model for supporting the justice-community collaborations that are essential to improving outcomes for individuals and families. This project illustrates how a state court can take the lead on convening stakeholders, support discourse across sectors, maximize resources, and create the coordinated community response necessary to truly address the opioid crisis in our communities.



Pima County's Dependency Alternative Program: Preserving Families and Promoting Access to Justice



Hon. Kathleen Quigley Juvenile Court Presiding Judge, Pima County Juvenile Court Center, Tucson, Arizona
Stacey N. Brady Director, Court, Children, and Family Services Division, Pima County Juvenile Court Center, Tucson, Arizona

In 2017 the Arizona Supreme Court recognized Pima County's Dependency Alternative Program (DAP) with the Strategic Plan Award for Protecting Children, Families, and Communities. DAP was born out of a recognized crisis that significantly impacted families' timely access to justice; DAP averts significant dependencies and mitigates trauma to families.

Children of Pima County were in a crisis that separated them from their families through no fault of their own. Those children who found themselves thrust into the child welfare system remained in that system an average of 602 days, with some children lingering without a sense of permanence for years. While the family crisis

that brought the child into the child welfare system was beyond the court's control, the length of time the child spends there is absolutely the responsibility of the system and almost entirely controllable. It was this crisis of separation that necessitated the creation of Pima County Superior Court's Dependency Alternative Program.

How the Program Works

The Dependency Alternative Program (DAP) is voluntary, family centric, results oriented, and professionally led. Its differentiated case management approach empowers and guides families, who meet defined criteria, through the court and child welfare systems. DAP has two specific goals. The first is to prevent dependency cases when an alternative legal arrangement can provide safety and stability for the children. The second goal is to keep those families that reached a resolution via DAP out of the dependency system for at least one year. In this context, staying out of the dependency system means no dependency petition is filed, and no report is substantiated by the child welfare agency. The underlying interests for these goals include protecting children; keeping decision-making power with families; promoting access to justice; and ensuring responsible stewardship of finite public resources.

Through creative and cooperative initiatives, and agile deployment of resources, DAP provides expeditious access to the court system. Within seven days of a family's referral to the program, a DAP conference is held where all case stakeholders work together to reach full



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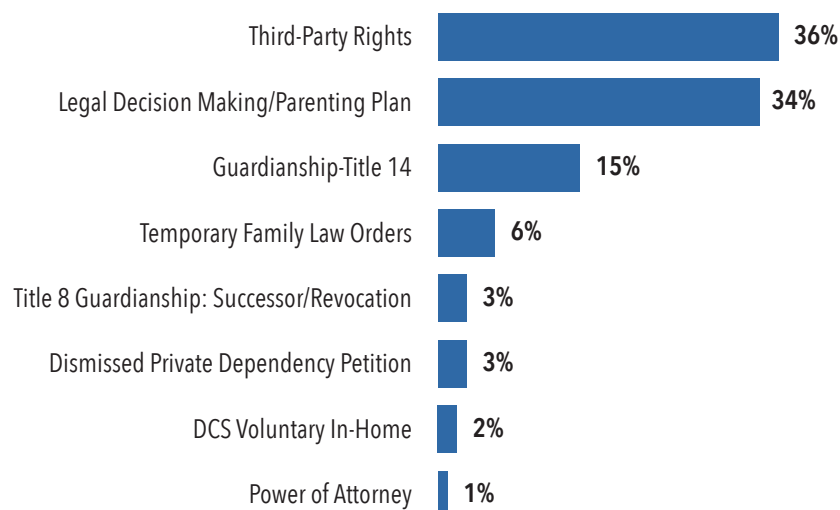


agreement upon the *best* legal arrangement for the child's custody and parenting time—that is, a safe and stable environment that addresses the family's needs, is in the best interest of the child, and is approved by all stakeholders. The typical case stakeholders are the family, the child, an advisory attorney, the Arizona Department of Child Safety case manager, and an assistant attorney general.

An experienced advisory attorney assists the family in understanding legal rights, options, and court procedures. A confidential mediation with a professional mediator is held in 86 percent of DAP cases. Court and clerk-of-the-court staff help facilitate the DAP process. Upon the case stakeholders' full agreement, a hearing is called where the judge enters either a temporary or final custody order. This gives the family an immediate sense of safety and helps alleviate some of the child's emotional stress because of the family crisis. Final court orders are issued during the first court hearing in 65 percent of DAP cases, and participants walk away from court with a certified copy of the court order. The Department of Child Safety, Arizona Kinship Support Services, or both provide continued support to the family following DAP case resolution.

Dependency Alternative Program (DAP) Case Outcomes

July 1, 2015 through December 31, 2018



How the Program Was Developed

The development and implementation of DAP was not accomplished overnight. Such an innovative process required extensive planning; the risks were too great to have the program fail to help those children in crisis, or worse, fail to get off the ground. As with any invention, prototypes were designed; test cases were deliberately escorted through the early process. Operational process improvement models made the program more inclusive and, most importantly, minimized the impact of the court and child welfare systems on the children.

Jennifer Sanders, an Arizona assistant attorney general, and Cathleen Linn, Pima County Superior Court commissioner, were instrumental in recognizing the crisis and sparking the idea that eventually became the Dependency Alternative Program. Independently, they shared their ideas with Kathleen Quigley, Pima County Juvenile Court presiding judge. Sanders's and Linn's ideas focused on how the court could better address the needs of the family, while potentially avoiding a dependency and prolonged court involvement. Judge Quigley organized a team of multidisciplinary professionals to examine the crisis and develop possible solutions.

The DAP development team comprised innovative thinkers with decision-making authority and represented all the pertinent stakeholders in the child welfare system. They embraced the collaborative approaches in Fisher and Ury's book, *Getting to Yes*. The authors' method for reaching agreements focused on four principles: separate people from the problem; focus on interests rather than positions; brainstorm options for mutual gain; and use objective criteria.

From the start, the team was committed to a problem-solving approach. While navigating various agency limits and overcoming barriers, the dedicated group successfully devised a path to meet the program's goals. The development team consisted of judges and attorneys who had specific and extensive experience in dependency,

family, or probate law; the Arizona Attorney General's Office; the Arizona Department of Child Safety; clerk of the court; Juvenile Court Mediation Program; various court staff; research, and evaluation professionals; Public Defense Services; and Arizona Kinship Support Services.

Another key to the program's successful development was the team's willingness to solve the problem without becoming entrenched in political and departmental territory.

Considering that the Pima County judicial benches are compartmentalized rather than unified, meaning that the benches are separated by case type (i.e., family law, juvenile law, probate law, criminal law), many unique barriers had to be overcome.

Pima County saw 1,351 dependency cases in 2014. Of those, 217 cases, roughly 20 percent, were dismissed pre-adjudication. Each of those cases had multiple events before being dismissed (including hearings, mediations, meetings, financial assessments, and behavioral health evaluations). The DAP development team thoroughly reviewed a sample set of 90 pre-adjudication dismissed cases; of those 90 cases, 81 (90 percent) could have been averted with a DAP resolution. This analysis supported the team's hypothesis that a significant and immediate impact was possible.

Furthermore, the DAP development team recognized that self-represented parties encountered significant barriers when they went to family court to obtain protective orders to prevent a dependency. Even when attorneys represented families, or families accessed legal and court services designed to assist self-represented parties, protective custody orders generally could not be obtained within the time frame in which the Department of Child Safety must make decisions or within legal time standards for dependency cases.

The referral-and-screening process for DAP identifies appropriate cases with a focus on assessment of safety and whether a stable custody arrangement can be put into place for the foreseeable future. The program is not intended to provide a short-term fix or to supplant legal, court, and other services already accessible in the community.



...[the DAP process] gives the family an immediate sense of safety and helps alleviate some of the child's emotional stress because of the family crisis.



In Arizona any person with a legitimate interest in the welfare of a child, usually a family member, may file a dependency petition. Privately filed dependency petitions are screened by court staff and a judge. In addition to referring a case to DAP before filing a dependency petition or acquiring a temporary custody order, the Department of Child Safety adopted procedures to facilitate the program and was instrumental in the program's success.

The program's intensive development, testing, and implementation was accomplished in just seven months. To this day, DAP is managed in concert with continuous process-improvement principles that incorporate regular stakeholder reviews, periodic data collection and analysis, participant feedback, case-referral-criteria evaluations, and inclusiveness-improvement efforts. Dedication to ongoing training is vital when considering routine turnover within stakeholder agencies. As a part of the review process, the DAP leadership team is exploring expansion of eligibility criteria. Program partners remain committed, engaged, and enthusiastic over four years after the inaugural meeting.



...because of DAP, permanency for children with a family member or kinship caretaker is now routinely achieved within a week.

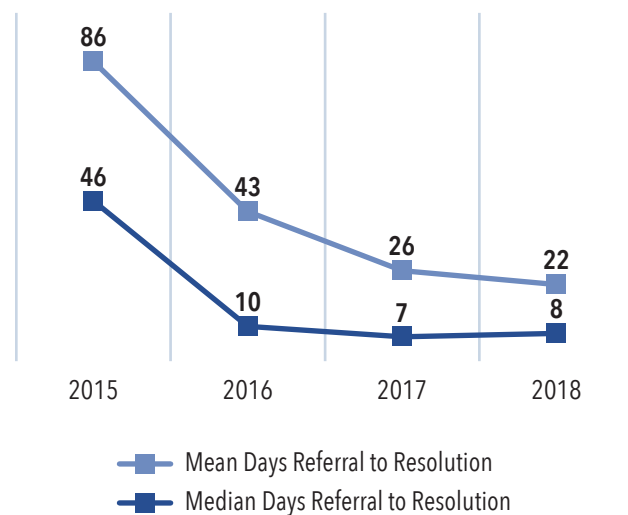


The Effectiveness of DAP

Since its inception on July 10, 2015, the Pima County Court's DAP program has processed 203 referred cases. In 2014 the average length of time a dependency case lasted from filing to dismissal, if closed without a finding of abuse or neglect (pre-adjudication), was 141 days. As of December 31, 2018, with DAP in full operation within Pima County, the average for DAP-participating cases is down to 22 days, with a median DAP-case dwell time of 8 days. In other words, because of DAP, permanency for children with a family member or kinship caretaker is now routinely achieved within a week.

This differentiated case management diversion process has materialized into significant cost and time savings. Conservative estimates put the actualized financial savings in excess of \$1,000,000, which allows for those resources to be redirected to other families that may need more intensive intervention. Through the eyes of a child, the savings in time alone are priceless.

Dependency Alternative Program: Days from Referral to DAP Resolution



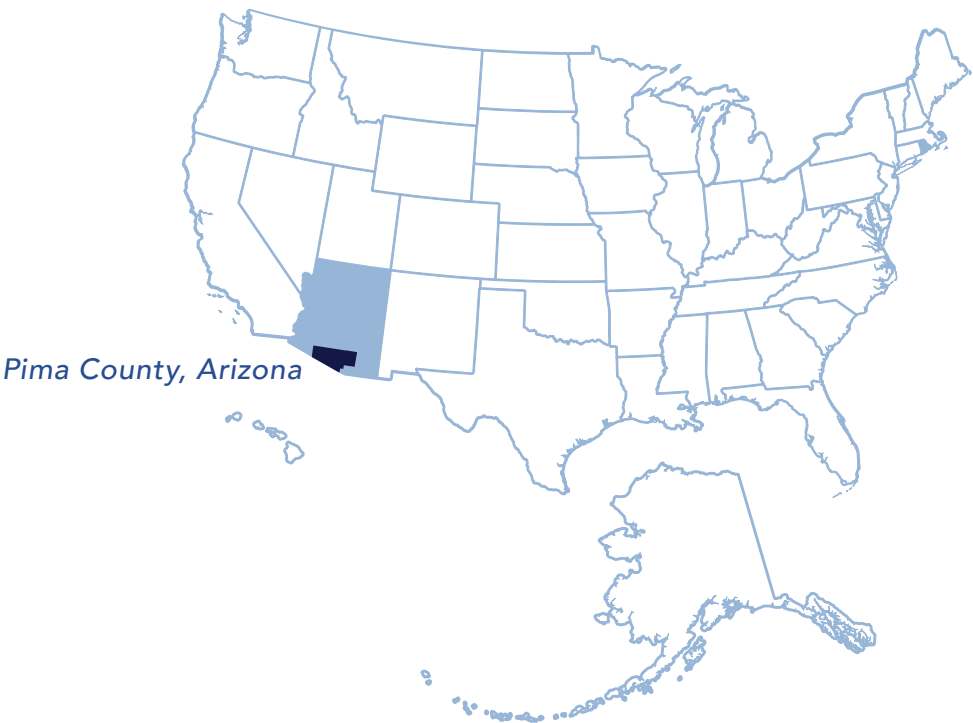
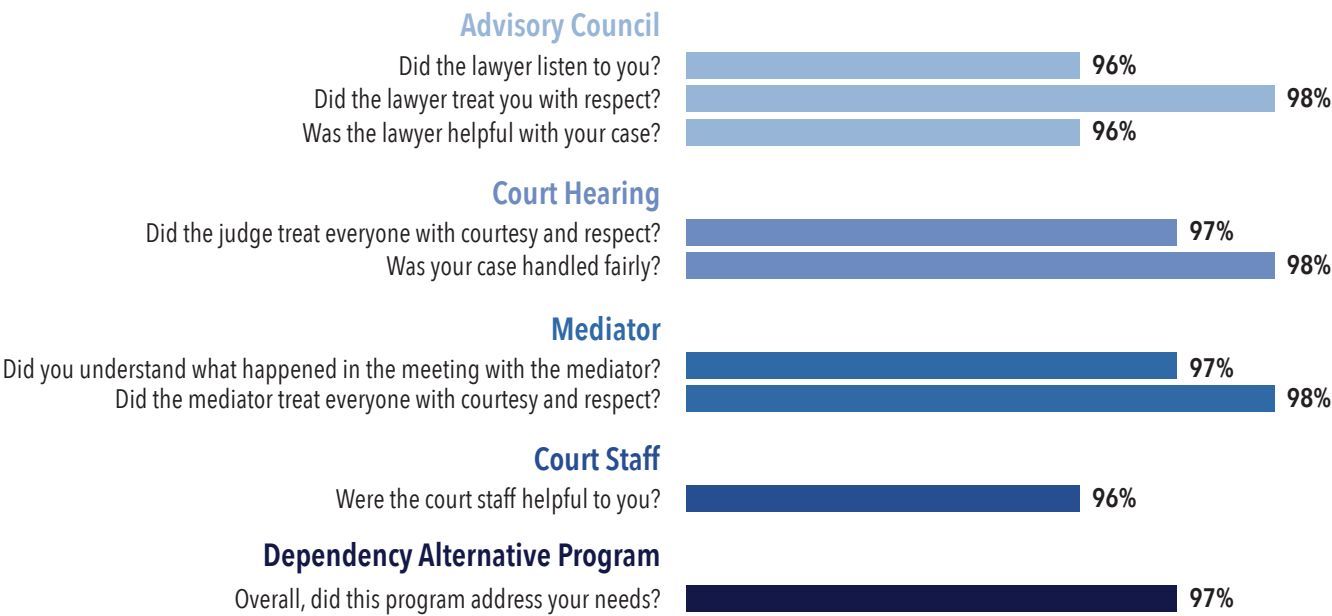
DAP has achieved both program goals. A dependency case was prevented for 88 percent of the 203 cases in which families voluntarily participated in the program, positively impacting 308 children. Without DAP, 2016 would have been the second-highest year for dependency petition filings in Pima County Juvenile Court’s history. In its first year, DAP achieved a 97.4 percent success rate for its secondary goal of keeping children out of the dependency system for at least one year after DAP case resolution. Not only did the family not return to court with a new case filing or

modification request, but there were also no reports received by or involvement with DCS during that trailing year.

The Arizona Supreme Court recognized the program’s effectiveness by awarding DAP its 2017 Strategic Plan Award for Protecting Children, Families, and Communities. Expanding DAP across Arizona is a keystone to the statewide strategic plan announced by Vice Chief Justice Robert M. Brutinel, as the incoming chief justice of the Arizona Supreme Court.

Dependency Alternative Program (DAP) Participant Satisfaction Survey Results

Results of 217 DAP surveys from: Parents, Children, Relatives, Friends, Legal Guardians, DCS Caseworkers July 1, 2015-July 1, 2018







Engaged Employees = Satisfied Court Customers?

Eric Brown Chief Human Resources Officer, Colorado Judicial Department

Mindy Masias Chief of Staff, Colorado Judicial Department

*The combination of employee happiness and motivation produces engagement—an important, if elusive, workplace attribute. Employee engagement has a significant impact on the public’s experience with the courts, and this article focuses on how to assess and improve your employees’ level of **engagement** to improve the court user experience.*

Are Your Employees Happy, Motivated, Engaged, or None of the Above?

How do happiness and motivation impact how employees do their jobs? Appreciating the connection between customer satisfaction and employee engagement requires a more thorough understanding of the somewhat elusive concept of employee engagement.

Most employees can recollect a work environment where leaving their employment was a more significant work-day focus than the work at hand. Is providing a latte machine, access to a gym, or free lunch once a week likely to address the issues that lead employees to find other jobs? Many managers believe pay increases and free lattes will motivate.

But even after perks are given, employees are not necessarily motivated, let alone engaged. Lattes will not garner an employee's emotional connection to their coworkers or the goals of the organization. For organizations working toward engagement, gym passes, flex schedules, and even pay increases are management techniques akin to applying a Band-Aid to a broken arm. Simply put, pay raises only solve one management problem: complaints about pay.

In a 2013 Gallup study, author Susan Sorenson warned, "Gallup recently studied employees' engagement and well-being and found that indulging employees is no substitute for engaging them." Managers often mistakenly assume that happy employees are also engaged employees.

Because the community's positive experience with the court hinges on an engaged staff, it is critical for leaders to know what makes for engaged employees. Herzberg's Two-Factor Theory on workplace engagement differentiates between factors that cause job satisfaction and factors that cause job dissatisfaction.

According to his theory, an employer's ability to satisfy an employee's *motivation* (*internal*) needs, such as achievement, recognition, responsibility, advancement, and natural connection to the nature of the work itself, leads to job *satisfaction*. Addressing a second set of factors, *hygiene* (*external*) needs, such as pay, fringe benefits, and a friendly work environment, reduces job *dissatisfaction*. Internal and external factors are independent of each other. But taken together, they contribute to employee engagement (Mind Tools Content Team, n.d.).

While material benefits might help employers address external "hygiene factors," material benefits do not capture employee loyalty, connect personal interest and work, or inspire



"If you're engaged, you know what's expected of you at work, you feel connected to people you work with, and you want to be there. You feel a part of something significant, so you're more likely to want to be part of a solution, to be part of a bigger tribe. All that has positive performance consequences for teams and organizations."

~ Jim Harter, Ph.D., Gallup's Chief Scientist of Workplace Management and Well-Being



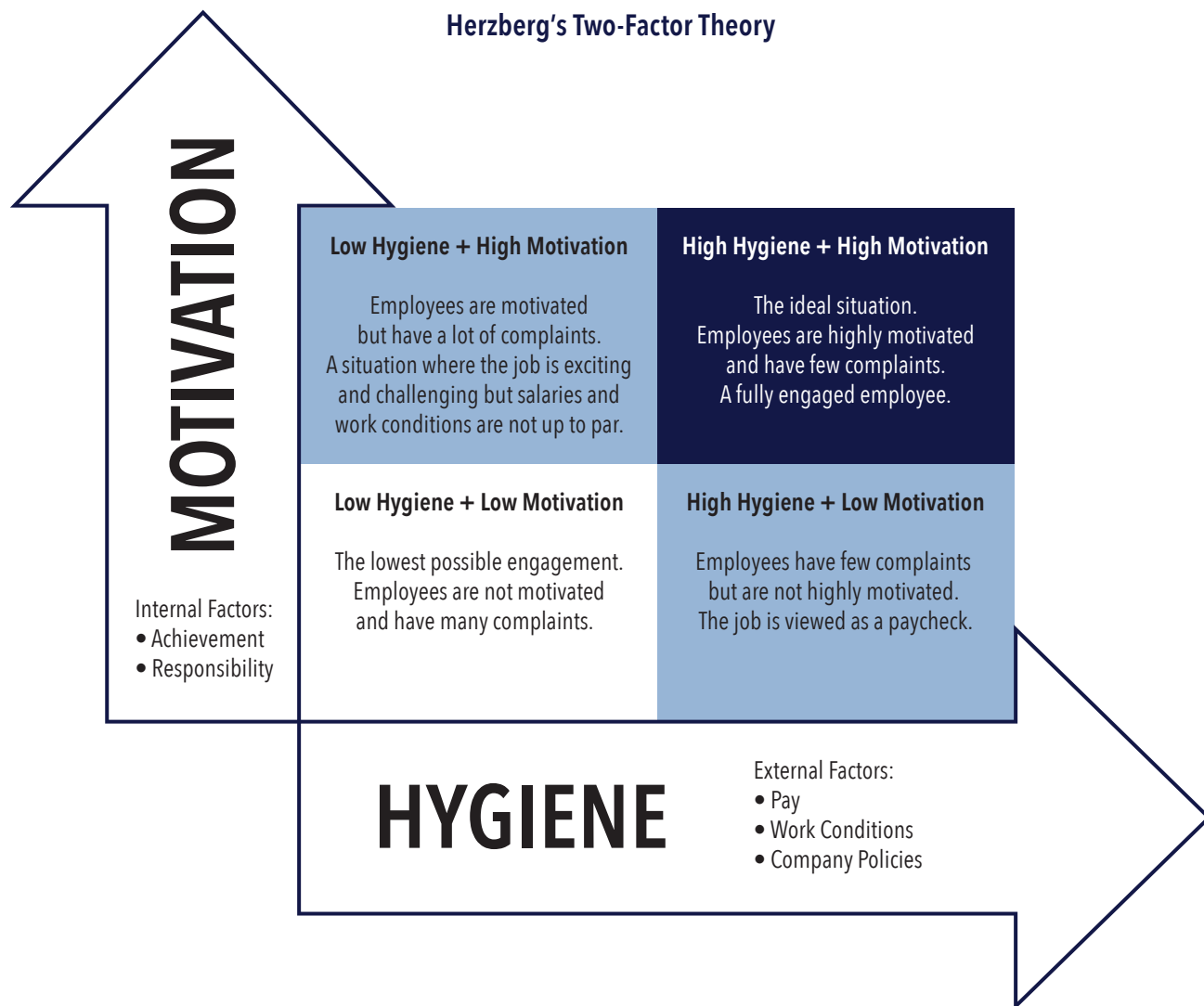
an employee to exert effort in their service, which are elements essential to inspiring engagement. In short, material benefits by themselves do not engage employees. Controlling external factors may produce happy but not necessarily motivated employees. Happy employees might find the workplace enjoyable or entertaining or be satisfied that the work provides the necessary means to make a living.

Many employee-satisfaction initiatives fail to adequately assess Herzberg's second critical factor: internal motivation. As a result, many courts may have staff who get the work done, but who also have a lot of complaints—and that will negatively impact the public's experience with the courts.

Addressing the nuances of motivation is far more complex than controlling external factors (what Herzberg dubbed "hygiene"). Court leaders must take the time to understand each employee's internal motivations and channel those motivations to benefit both the employee and the court's clients. For instance, an employee who is motivated to create positive relationships can be leveraged to improve team dynamics. An employee who invests personal time in serving youth through sports, Scouting, or other activities might be best assigned to work on juvenile dockets.

Employees reveal their engagement in subtle ways, such as arriving early, contributing constructive thoughts in open meetings, and volunteering for projects that contribute to the overall mission of the court.

There are varying degrees of engagement. Managers must talk to their employees, ask questions, and demonstrate care for engagement. According to Herzberg's Two-Factor Theory (Hartzell, n.d.), there are four possible combinations of motivations (internal motivations) and hygiene factors (external factors).



Think about your own experience. Have you had a job where you never looked at the clock, enjoyed the work environment, felt respected, and knew your efforts were needed to achieve organizational goals? Engaged employees know what is expected of them, are connected to the people with whom they work, and believe they are a part of something significant.

To help individual employees better understand their own workplace values and indicators of engagement, Kevin Kruse, author of *Employee Engagement for Everyone* (2013), created a self-assessment to assist employees with self-reflection on their own employment experience. Responses assess areas of individual engagement. Through self-reflection and understanding of their own engagement, managers can better understand employee engagement. A quick three-minute “pulse” survey is available online at <http://www.kevinkruse.com/profile/>. A variety of reputable organizations offer ongoing subscription-based pulse surveys, or managers can design their own using Survey Monkey’s Employee Engagement Survey Template (<http://tinyurl.com/y428rdo3>).

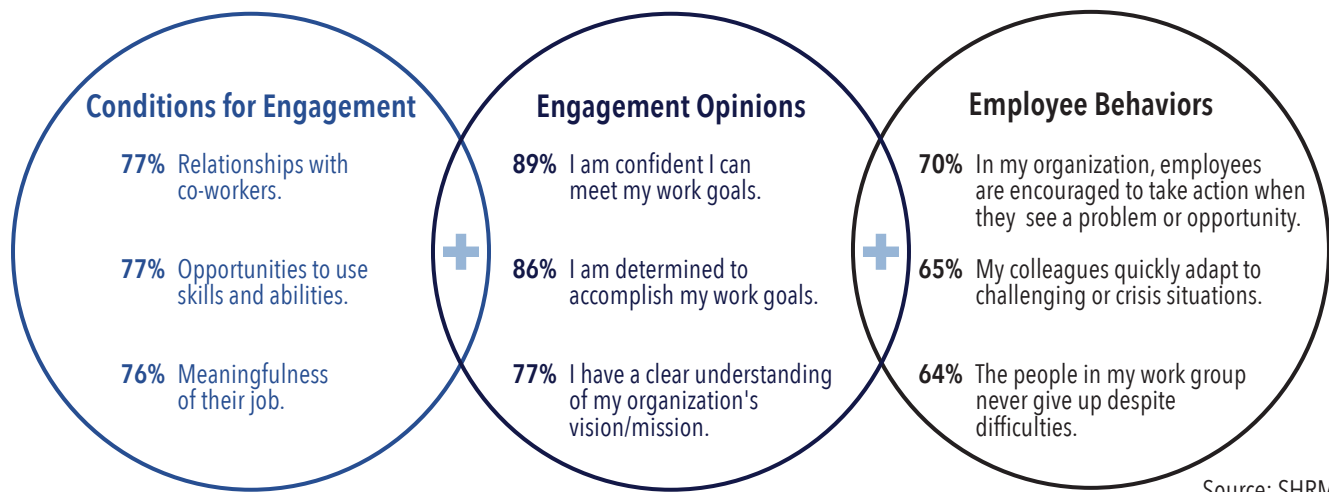
Impacting Engagement

The Society for Human Resources Management (SHRM) conducted an extensive survey of American workers, seeking to identify where the largest impact can be made to engagement (HR and Employee Engagement Community, 2016). The findings are extremely enlightening and actionable.

Ninety-six percent of American workers reported that “being able to apply personal interests in the workplace would make them happier in general.”

Additionally, 68 percent of employees reported they would be willing to take a cut in pay to work at a job that would better allow them to apply personal interests in the workplace.

These are great examples of “motivation” factors as defined by Herzberg’s theory, which employees naturally bring to the workplace. Effective court leaders use those factors to benefit both the court and the employee.



Hiring employees who have a personal interest connected to court business is beneficial.

SHRM identifies three areas for managers to consider:

- *conditions for engagement*
- *engagement opinions*
- *employee behaviors*

Once again, employees *rank* personal interests/meaningfulness of work among the top three drivers of conditions necessary for engagement. SHRM's new data also demonstrate that if managers focus on hiring employees who have personal interests that connect to the work, engagement is easier to achieve. For courts, individuals with a personal interest in serving the community, a desire to provide service to vulnerable populations, etc., would be well suited to the work of the courts.



96% of working Americans agree that being able to apply personal interests in their career would make them happier.



According to Herzberg's theory, these connections are "motivators." Therefore, managers must be adept at identifying the interests of candidates and employees and recognizing how those interests can be leveraged for the betterment of the court. Managers must also be good coaches to help staff make the connection between personal interests and work.

It is worth noting that courts must also be careful to ensure employees' personal interests are compatible with the core principles of courts, maintaining a neutral and unbiased environment. Leaders must draw clear boundaries with employees that support the court's core principles.

Knowing the difference between happy or motivated employees and engaged employees is critical to improving the public's experience with the courts. Concrete data are necessary to quantify both employee engagement and court user perceptions.



Assessing Employee Engagement and Customer Satisfaction

A one-time assessment of engagement can be useful for leaders to better understand how to manage resources, but managers must continuously assess engagement. The National Center for State Courts has developed a set of surveys called *CourTools* that assess a variety of court processes (www.courtools.org).

CourTools Trial Court Performance Measurement #9, Employee Satisfaction Survey, assesses employee engagement. Among other important work environment indicators, *CourTools* explores whether employees have enough challenge in their work assignments, are acknowledged by management for their work, feel respected, and understand the connection between their work and the goals of the organization.

CourTools

Access and Fairness Survey

Section I: Access to the Court

Circle the Number.

1. Finding the courthouse was easy.
2. The forms I needed were clear and easy to understand.
3. I felt safe in the courthouse.
4. The court makes reasonable efforts to remove physical and language barriers to service.
5. I was able to get my court business done in a reasonable amount of time.
6. Court staff paid attention to my needs.
7. I was treated with courtesy and respect.
8. I easily found the courtroom or office I needed.
9. The court's Web site was useful.
10. The court's hours of operation made it easy for me to do my business.

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree	Not Applicable
	1	2	3	4	5	n/a
1. Finding the courthouse was easy.	1	2	3	4	5	n/a
2. The forms I needed were clear and easy to understand.	1	2	3	4	5	n/a
3. I felt safe in the courthouse.	1	2	3	4	5	n/a
4. The court makes reasonable efforts to remove physical and language barriers to service.	1	2	3	4	5	n/a
5. I was able to get my court business done in a reasonable amount of time.	1	2	3	4	5	n/a
6. Court staff paid attention to my needs.	1	2	3	4	5	n/a
7. I was treated with courtesy and respect.	1	2	3	4	5	n/a
8. I easily found the courtroom or office I needed.	1	2	3	4	5	n/a
9. The court's Web site was useful.	1	2	3	4	5	n/a
10. The court's hours of operation made it easy for me to do my business.	1	2	3	4	5	n/a

If you are a party to a legal matter and appeared before a judicial officer today, complete questions 11-15:

Section II: Fairness

11. The way my case was handled was fair.
12. The judge listened to my side of the story before he or she made a decision.
13. The judge had the information necessary to make good decisions about my case.
14. I was treated the same as everyone else.
15. As I leave the court, I know what to do next about my case.

1	2	3	4	5	n/a
1	2	3	4	5	n/a
1	2	3	4	5	n/a
1	2	3	4	5	n/a
1	2	3	4	5	n/a

Section III: Background Information

What did you do at the court today?
(Check all that apply)

- ☐ Search court records/obtain documents
- ☐ File papers
- ☐ Make a payment
- ☐ Get information
- ☐ Appear as a witness
- ☐ Attorney representing a client
- ☐ Jury duty
- ☐ Attend a hearing or trial
- ☐ Law enforcement/probation/social services staff
- ☐ Party to a legal matter

What type of case brought you to the courthouse today?

- ☐ Traffic
- ☐ Criminal
- ☐ Civil matter
- ☐ Divorce, child custody or support
- ☐ Juvenile matter
- ☐ Probate
- ☐ Small Claims
- ☐ Other: _____

How do you identify yourself?

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Hispanic or Latino
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ White
- ☐ Mixed Race
- ☐ Other: _____

How often are you typically in this courthouse?
(Choose the closest estimate)

- ☐ First time in this courthouse
- ☐ Once a year or less
- ☐ Several times a year
- ☐ Regularly

What is your gender?

- ☐ Male
- ☐ Female

Employee Satisfaction Survey

Strongly Disagree Disagree Neutral Agree Strongly Agree

1. My work unit looks for ways to improve processes and procedures. 1 2 3 4 5
2. I am kept informed about matters that affect me in my workplace. 1 2 3 4 5
3. As I gain experience, I am given responsibility for new and exciting challenges at work. 1 2 3 4 5
4. The court is respected in the community. 1 2 3 4 5
5. The people I work with can be relied upon when I need help. 1 2 3 4 5
6. I have an opportunity to develop my own special abilities. 1 2 3 4 5
7. I understand how my job contributes to the overall mission of the court. 1 2 3 4 5
8. I am treated with respect. 1 2 3 4 5
9. When I do my job well, I am likely to be recognized and thanked by my supervisor. 1 2 3 4 5
10. My working conditions and environment enable me to do my job well. 1 2 3 4 5
11. I feel valued by my supervisor based on my knowledge and contribution to my department, unit, or division. 1 2 3 4 5
12. My court's leaders communicate important information to me in a timely manner. 1 2 3 4 5
13. I enjoy coming to work. 1 2 3 4 5
14. The people I work with take a personal interest in me. 1 2 3 4 5
15. Managers and supervisors follow up on employee suggestions for improvements in services and work processes. 1 2 3 4 5
16. My meetings with my supervisor are useful and meaningful. 1 2 3 4 5
17. When appropriate, I am encouraged to use my own judgment in getting the job done. 1 2 3 4 5
18. I have the resources (materials, equipment, supplies, etc.) necessary to do my job well. 1 2 3 4 5
19. On my job, I know exactly what is expected of me. 1 2 3 4 5
20. I am proud that I work in the court. 1 2 3 4 5
21. The court uses my time and talent well. 1 2 3 4 5
22. I get the training I need to do the job well. 1 2 3 4 5
23. I know what it means for me to be successful on the job. 1 2 3 4 5
24. My supervisor is available when I have questions or need help. 1 2 3 4 5
25. Communication within my division is good. 1 2 3 4 5
26. My co-workers work well together. 1 2 3 4 5
27. I have opportunities to express my opinion about how things are done in my division. 1 2 3 4 5
28. In the last 6 months, a supervisor/manager has talked with me about my performance/career development. 1 2 3 4 5
29. The court and its leaders are dedicated to continuous improvement. 1 2 3 4 5
30. I am treated with respect by the public. 1 2 3 4 5
31. Background information
 - a. In which Court Division do you work? (check one)
 - ☐ District 1 ☐ District 2 ☐ District 3
 - b. How long have you been employed by the Court:
 - ☐ < 1 year ☐ 1-5 years ☐ 6-10 years ☐ 11-20 years ☐ > 20 years
 - c. I am planning on working for the Court another:
 - ☐ 1-3 years ☐ 3-5 years ☐ 5-10 years ☐ 10-20 years ☐ > 20 years

CourTools Trial Court Performance Measurement #1, Access and Fairness, provides the court with necessary insight into the court customer experience. Court leaders can use the survey to gain information about court users' perceptions of the service provided by court staff and the fairness of the process, as well as the way they were treated by judicial officers. Gathering and reviewing this information allows for targeted improvement.

Court leaders should not expect that court users are only satisfied if they prevail in their case. Statistics show that positive opinions of their court experience are shaped more by court users' perceptions about how they were treated than whether they won or lost their case (see <https://tinyurl.com/y355v6z5>).

Shifting the focus from “winning” or “losing” to “service” places new responsibility on court leaders. Assessing court user perceptions can help court managers determine if those who provide services have the information, tools, training, resources, and proper discretion to do their best work every day.

Research indicates private-sector employers have found a direct correlation between employee engagement and customer satisfaction (Harter, 2018). A recent Gallup story suggests a positive correlation between “employee engagement, productivity, retention, safety, and profitability in high-performance organizations.”

While the courts do not measure success through profits, courts do have accountability.



*[Business units]
in the top quartile
of [employee]
engagement realize
substantially
better customer
engagement,
higher productivity,
better retention,
fewer accidents,
and 21% higher
profitability.
~ Harter, 2018*



They serve the public and must obtain support from funding bodies. Public trust and confidence are placed at risk when the court's workforce lacks engagement, resulting in failure to provide the quality of service the public expects.

To establish a direct correlation between employee satisfaction and court user satisfaction, three elements must exist:

1. *Employees who respond to the employee-satisfaction survey must be the employees who provided service during the administration of access and fairness surveys.*
2. *Surveys should be administered at an unadvertised time; knowing an access and fairness survey is being administered can skew results.*
3. *Organizations must ask the same questions of employees and customers for each survey to track progress over time.*

Many employers are now seeking feedback from employees and customers through what are referred to as “pulse surveys.” A pulse survey consists of one to five questions and should take the respondent less than one minute to answer. Frequent pulse surveys give court leaders a consistent source of feedback throughout the year to keep a “pulse” on perceptions. Perceptions are often reality! Conducting surveys can be a challenge for court managers. SHRM provides an overview of employee engagement platforms. Using independent resources to conduct the studies can reduce the time required of court managers to gather that information.

What's Next?

Court leaders must maintain an accurate picture of the perceptions of employees and customers alike. Engaging employees and meeting customer expectations should rank as a top priority for court leaders.

Historically, most court leaders may not have considered the benefit of engaging human resources when working to improve client satisfaction. The National Center for State Courts and the Conference of State Court Administrators have partnered for the last four years to create a Human Resources Summit, an opportunity for court human resources staff throughout the nation and territories to gather for learning and collaboration. The HR Summit provides education on cutting-edge employment practices and an opportunity to share ideas and resources that creates a network of court HR professionals. Employee engagement has been a topic of discussion at the previous three HR Summits and will be again in 2019. The critical impact of an engaged workforce has significant ramifications for court organizations; leaders, managers, and HR must all be engaged in helping improve employee engagement to achieve customer satisfaction goals.



**"You know why I'm sure the sales chart will be great?
Because this is the morale chart."**

The *CourTools* Employee Satisfaction question #8 asks employees, "I am treated with respect." *CourTools* Access and Fairness asks court users, "I was treated with courtesy and respect." Is there any doubt that the way court staff are treated will impact the way they treat the public?

Courts that are ready to conduct a full-fledged study on the connection between customer satisfaction and employee engagement will reap many benefits and can use the information in the education and coaching of court leaders for many years. At a minimum, a study between "being treated with respect" by both employees and customers is worthy of closer inspection.



Engaging employees and meeting customer expectations should rank as a top priority for court leaders.



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Human Capital: Connecticut's Judicial Branch Is Investing in Its Workforce

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The Connecticut Judicial Branch spent ten years implementing a strategic plan to improve services to the public. Now it is implementing a multiyear plan to improve employee satisfaction by focusing on communications, well-being, training, connectivity, and professional growth and opportunity for its biggest asset: its human capital.



What do 103 questions, 1,701 responses, 41 focus groups, and 4,000+ comments equal? The Connecticut Judicial Branch's *Strategic Plan Phase II: Human Capital*, a blueprint for improving employee satisfaction for all 3,800 non-bench staff members.

Connecticut Supreme Court Chief Justice Richard A. Robinson unveiled the plan in September 2018. "Changing the culture of an organization does not happen overnight, but that is exactly what we're setting about to do," the

chief justice said in a video that accompanied the plan's emailed delivery to all staff. "You, as dedicated employees of the Connecticut Judicial Branch, deserve no less."

The first phase of the strategic plan focused on increasing the public's trust through the implementation of hundreds of activities supporting five goals: increasing access to justice for all people, responding to changing demographics, improving the delivery of services, collaborating with internal and external judicial stakeholders, and providing

accountability to all. Released in 2008 by then-Chief Justice Chase T. Rogers, phase one saw the establishment of a Public Service and Trust Commission and dozens of committees, which developed hundreds of activities and initiatives that changed how the branch conducts business.

Connecticut's economy struggled through the Great Recession, and its upturn has been slow. The judicial branch's budget—\$537 million in 2017—has seen precipitous fluctuations, and reductions have caused administrators to close some facilities, while absorbing certain executive-agency functions. Staffing of the branch has declined, too, as Baby Boomers begin to retire. In short, the will to create an employee-focused strategic plan was frustrated by the means to develop and implement such a plan.

The wait is over, and the branch is beginning phase two—the human capital initiative. This phase was developed over three years and turns the branch's focus inward, on the people who have made public service a meaningful career.

The Plan

The branch has defined human capital as “the collective sum of values, life experiences, knowledge, skills, innovation, energy, and passion that an organization's people choose to invest in their work,” and centered the human capital initiative around five areas of focus, with each supported by one or more strategies:

The Plan	Strategy	Action Steps
Communication	Utilize effective mechanisms to disseminate timely and consistent communication on all matters of personal and professional concern to Branch employees.	Ensure that temporary and part-time employees are included on all Branch-wide emails.
Training	Develop relevant and accessible job-specific training for all employees. Provide ongoing training to develop and support supervisors in all aspects of their job responsibilities.	Evaluate pay scales periodically in light of job descriptions, responsibilities, and minimum education requirements.
Connectivity between the managers and policy makers, and the supervisors and staff in the field	Central administrative offices should work to achieve a better connection with the field on operational matters. Foster and encourage employee input on matters that impact them in the performance of their jobs.	Providing supervisors with tools and techniques to use in creating a work environment that fosters a team culture, encourages the free and open exchange of ideas and suggestions, and empowers employees.
Professional Growth and Opportunity	Provide access to information and resources that support employee career development. Ensure that the hiring and promotion process is fair and transparent. Explore policy changes that would allow for non-monetary compensation incentives. Ensure that professional and personal interests of employees that are addressed through the review and assessment of job descriptions and classifications, compensation, performance appraisals, and the disparities between union and non-union employees.	Develop a formalized process within each division to solicit the input, comments, and suggestions of field staff before the implementation of new legislation, rules, and administrative policies and procedures and in the development or revision of forms, office procedures, and systems.
Employee Well-Being	Be committed to improving the physical and emotional health and well-being of its employees.	Provide training and explore other options to assist employees who, because of their position, are subjected every day to the trauma and stress experienced by the individuals they serve.

Each strategy has one or more recommended action steps, with 33 action steps in all, including:

- *Communications: Ensure that temporary and part-time employees are included on all Branch-wide emails.*
- *Connectivity: Providing supervisors with tools and techniques to use in creating a work environment that fosters a team culture, encourages the free and open exchange of ideas and suggestions, and empowers employees.*
- *Professional growth and opportunity: Develop a formalized process within each division to solicit the input, comments, and suggestions of field staff before the implementation of new legislation, rules, and administrative policies and procedures and in the development or revision of forms, office procedures, and systems.*
- *Training: Evaluate pay scales periodically in light of job descriptions, responsibilities, and minimum education requirements.*
- *Employee well-being: Provide training and explore other options to assist employees who, because of their position, are subjected every day to the trauma and stress experienced by the individuals they serve.*

Where did the areas of focus come from, and how do branch leaders, including the Office of the Chief Court Administrator, know that the areas of focus will address employee concerns? They asked, listened, asked some more, and listened harder. More specifically, they are the direct result of the information and data gathered by the Human Capital Workgroup via the branch's Employee Satisfaction Survey in 2016, and the comments of more than 300 employees who participated in 41 focus groups in 2017.

The data represent the collective voices of Connecticut's unified judicial system and include employees from all five divisions: Administrative Services, Court Support Services, External Affairs, Information Technology, and Superior Court Operations. Those voices include judicial marshals, office clerks, probation officers, information technology developers, temporary law clerks, facilities maintainers, law librarians, interpreters, human-resources professionals, staff attorneys, courtroom clerks, victim advocates, child-support-enforcement officers, and part-time court monitors.

Including the voices of employees from across the branch's rich spectrum was part of the human capital blueprint since its inception in 2015. That is when a Human Capital Steering Committee, led by Chief Justice Rogers, began discussing the next phase of the strategic planning process.¹

At Chief Justice Rogers's request, a human capital concept paper was drafted. At a December 2015 Steering Committee meeting, Chief Justice Rogers stated that developing a long-term human capital plan would be her "main priority for the foreseeable future," a move that imbued the importance of the efforts in the other branch leaders on the committee.

The Steering Committee considered many resources (for example, Verborg and Zastany, 2015; Griller, 2015; National Center for State Courts, 2011; and United States Office of Personnel Management, 2015). The committee then established a Human Capital Workgroup to develop a survey and chose members representing each division and the supreme and appellate courts. Chief Justice Rogers appointed Judge Elliot N. Solomon to chair the group. Executive directors were asked to include managers and staff members from human resources, program management, and employee-training units, as well as information technology experts, in their appointments to the workgroup.

¹ Other members of this committee included Chief Court Administrator Judge Patrick L. Carroll III, then-Deputy Chief Court Administrator Judge Elliot N. Solomon, Chief Appellate Court Judge Alexandra D. DiPentima, the executive directors of each division, and the chief executive officer of the supreme and appellate courts.

In January 2016, Judge Solomon and the other 18 members of the Human Capital Workgroup began vetting information and debating how the survey should look. The members held an affinity diagram session, a brainstorming session that helps group ideas into their natural relationships, centering on potential questions. The results were forwarded to Stephen J. Cox, a Central Connecticut State University professor who has worked extensively with the branch on developing assessments, for his review and recommendations. The workgroup also created smaller teams to address various components of the survey project, including technical issues, marketing, and legal matters, and Judge Solomon encouraged the teams to seek assistance from subject-matter experts among the staff.

In the winter and spring of 2016, workgroup members and small teams met frequently, developing a first-draft survey and conducting a pilot of more than 30 employees, who offered feedback on the questionnaire's value, length, and style. A marketing plan was outlined and, working with Prof. Cox, a system designed to allow staff to complete and submit the survey from their computers to an email address at the college to ensure anonymity. By early summer 2016, the workgroup presented to the Steering Committee a comprehensive package of recommendations, including a second-draft survey, a proposed intranet website dedicated to information about human capital, a dedicated email address for employees with questions or concerns about the survey or issues related to human capital, and a marketing plan to inform employees about the survey and encourage their participation.

The efforts of the workgroup and Steering Committee happened during a state budget crisis. Despite that, the Steering Committee determined that developing a long-term plan to retain and attract the best and brightest in public service would continue to be a priority and, over the summer, the chief justice recorded a video to help launch the survey in the fall. In September, ten months after the initial Steering Committee meeting, the chief justice and members signed off on a final version of the survey, which would be delivered from November 1 to 30.

The 103 questions were broken into six areas: *Work Experience*, *Work Environment*, *Immediate Supervisor*, *Second-level Supervisor*, *Career Development*, and the *Judicial Branch*. Additionally, the survey captured demographic information, including education levels, hours worked per week, length of service and expected length of service, generation identification, and gender and ethnic/race identification. The survey implementation team consulted with Prof. Cox on the survey-response continuum, in which respondents would be presented with statements and reply by selecting “strongly disagree,” “disagree,” “neutral,” “agree,” and “strongly agree.” The survey used positive statements, such as:

- *I am proud to work for the Judicial Branch.*
- *My workload is reasonable.*
- *My supervisor encourages staff to exchange opinions and ideas.*
- *My supervisor supports professional growth.*
- *Career opportunities are important to me.*
- *Judicial Branch programs effectively promote the importance of a diverse workforce.*

To promote participation, the chief justice sent an email to employees a month before the launch date, encouraging employees to complete the survey and explaining in a video that the results would be the foundation for a long-term blueprint. On the launch date, an email was sent to all employees, and a “Human Capital” icon embedded on all staff computers, prompting participation in the survey. Employees without regular access to computers, including several hundred judicial marshals, were notified by their supervisors and given opportunities to complete the survey during the month. Managers sent periodic reminders to encourage staff to set aside 15 to 20 minutes to participate. While Prof. Cox said the branch should expect a participation rate of between 30 and 40 percent, the ultimate completion rate exceeded that, with 44 percent, or 1,701 employees, completing the survey.

The Results

In spring 2017, the Steering Committee discussed the next steps and assessed the results. Among the highlights of the survey findings (combined percentages of agree/strongly agree):

- 82 percent of employees said they like the work they do
 - 78 percent said they are proud to work for the branch
 - 75 percent said their work gives them a sense of accomplishment
 - 76 percent said they can rely on the people they work with when they need assistance
 - 75 percent said their supervisor supports collaboration across work units to accomplish work objectives
 - 79 percent said their supervisor supports their need to balance work and other life issues
- Other responses indicated areas of concern in office morale, communication of information and the level of employee input on decision making, and a lack of clear career development opportunities. For example, just:
- 35 percent said career opportunities are available to them
 - 32 percent of employees said office morale is high where I work
 - 54 percent said their supervisor conducts regular staff meetings
 - 42 percent said they received support from their supervisor or a work mentor in developing a career path in the judicial branch

Chief Justice Rogers in May 2017 emailed all branch staff with the survey results and directed them to the new “Employee Insights” intranet webpage, where the data could be accessed.



To carry out its mission, the Judicial Branch will create an environment that will attract, develop, and retain a highly competent and invested workforce, by providing meaningful opportunities for their professional development and career advancement, while acknowledging their personal needs and responsibilities.



The summer issue of the branch’s internal newsletter, *Strategic Talk*, featured a lengthy message from the chief and articles about what the human capital initiative would mean to branch staff.

Then the Steering Committee began blueprint development: analyzing the responses and developing questions for in-person employee focus groups. During the summer, a Human Capital Focus Group Subcommittee, comprising members of the workgroup and other staff, developed parameters for focus groups to seek input on the specific survey areas that generated the most concern across all divisions and gathered more information on how the branch could address those concerns. Prof. Susan Koski of Central Connecticut State University helped establish focus group guidelines, and facilitators from across every division were identified.

After reviewing the survey answers, the Focus Group Subcommittee developed six specific questions:

1. How do you feel about the communication you receive from the Judicial Branch?
2. How do you feel about the communication you receive from your supervisor?
3. How do you feel about your level of involvement with decision-making that affects you?
4. What do you think about career opportunities available within the Judicial Branch?
5. What do you think the Branch does well, and what should be changed, with regard to promotions, transfers and hiring?
6. What can we do to attract and keep people in the Judicial Branch?



Emails encouraged staff participation in focus groups, which were held across the state, and facilitators had ground rules to ensure consistent experiences. Between October and December 2017, pairs of facilitators conducted 41 focus groups, yielding 4,000 comments from 317 employees from all divisions and the supreme and appellate courts. Focus group participants included dozens of job classifications, ranging from directors and deputy directors, to probation officers, paralegals, administrative assistants, law librarians, IT developers, and office clerks. Both full- and part-time employees were included, as were temporary and permanent classifications.

The results were shared with the Steering Committee, and Judge Solomon led a small analyses team of directors, managers, and line staff from the Human Capital Workgroup with experience in strategic planning to do the time-consuming work of parsing the comments. Each comment was written on a yellow sticky note and posted on conference room walls—a wallpaper, of sorts. The analyses team read the comments and patterns emerged; the 4,000 comments were synthesized into 263 statements, and those statements into 27 categories. Those 27 categories were further funneled into the 5 overarching areas of focus that capture the concerns of judicial branch employees.

Judge Solomon and the analyses team turned to the human capital definition in developing an overarching goal: “To carry out its mission, the Judicial Branch will create an environment that will attract, develop, and retain a highly competent and invested workforce, by providing meaningful opportunities for their professional development and career advancement, while acknowledging their personal needs and responsibilities.”

Chief Justice Rogers announced in November 2017 that she would retire from the court in February 2018, having served ten years as chief justice and ten years on the appellate and superior court benches.



...a culture change within the [judicial] branch, which considers its employees' well-being and their professional aspirations, may be difficult at first, but it is a necessity.



In one of her final administrative acts, she accepted the analyses of the survey and focus group results and encouraged the Steering Committee to continue working on a human capital blueprint.

Next Steps: A New Chief Justice and Implementation of the Human Capital Plan

Under the Steering Committee's purview, the human capital blueprint was finalized in the spring of 2018 and shared with the workgroup. In April, Governor Dannel Malloy nominated Associate Justice Robinson to serve as the chief justice, and he was unanimously confirmed by the state legislature's House and Senate in the first week of May. In July, the 22-page *Human Capital Plan: A Blueprint to Enhance Your Job Satisfaction* was formally approved for implementation by Chief Justice Robinson and the Steering Committee.

The chief justice thanked branch employees in the video emailed to all staff in September on the launch of the human capital blueprint and asked for patience as the implementation process begins. “Working together, this plan will become reality for all of us,” he said. “You are an outstanding group of individuals, who bring an amazing array of talents and skills to the table. I am absolutely confident that we are an unstoppable team that can achieve any goal that we put our minds to.”

Chief Justice Robinson and the Steering Committee created a larger Implementation Committee, including the new deputy chief court administrator, Judge Elizabeth A. Bozzuto; all division executive directors; and a cross-section of directors, deputy directors, managers, and line staff from across the branch. The Implementation Committee, under the direction of Judge Solomon, created subcommittees to address each of the five areas of focus as delineated in the plan. Each subcommittee is composed of staff and managers with subject-matter expertise, and each has a charge and a directive to create a realistic implementation plan for their area of focus.

For Judge Solomon, who stepped down as deputy chief court administrator in the fall 2018 to serve as a senior trial judge but continues as a leader of the implementation effort, the human capital blueprint has been a worthwhile investment of time and resources:

All of us, from millennials to baby boomers, can safely say that our personal lives have changed over time and we have had to adapt to meet the opportunities and challenges presented by those changes. There is no reason to believe that the workplace has been immune from the changes we have experienced in our personal lives. The Human Capital initiative is the vehicle which will guide the Branch in pursuing those opportunities and confronting those challenges in order to maintain an optimal environment in which branch employees can succeed and thrive in their professional and personal lives.

Many know the state of Connecticut as “The Land of Steady Habits.” Courts have existed within the state’s boundaries since the 1600s, and the court of last resort was established 201 years ago with the state’s first constitution.² Judge Solomon, like the chief justice, acknowledged that a culture change within the branch, which considers its employees’ well-being and their professional aspirations, may be difficult at first, but it is a necessity.

Judge Solomon said, “Change isn’t necessarily speedy and the path isn’t always clear, but change is essential to the success of an institution as essential as the Judicial Branch. As John F. Kennedy once said, ‘Change is the law of life. And those who look only to the past or present are certain to miss the future.’

In its first phase, the Strategic Plan represented the Branch’s ongoing commitment to the public to do those things going forward to resolve matters in a fair, timely, efficient and open matter. The Human Capital phase of the Strategic Plan represents the Branch’s ongoing commitment to its employees to maintain a work environment which best provides them with opportunities for professional satisfaction, growth and advancement while still accommodating the challenges they confront in their personal lives.”

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² See the State of Connecticut Judicial Branch website, “About Connecticut Courts,” at <https://jud.ct.gov/ystday/history.html>.



Court Employees: Investing in Your Human Capital

Hon. John J. Russo Administrative and Presiding Judge, Cuyahoga County Common Pleas Court, Cleveland, Ohio

How can a court invest in human capital? Here is an administrative judge's answer to that question.

It is no secret that a kind word can work wonders. Nothing will ease the tensions of a bad day better than having someone come up to you and say, "Thank you for what you did. It really meant a lot to me." It takes almost no effort to say something nice, and the payoffs can be incalculable. Consider a kind word as a solid investment of your time.

I speak from experience because as the administrative judge for the Cuyahoga County Common Pleas Court in Cleveland, I manage a staff of more than 500 people.

We are, by far, the largest court in Ohio and one of the largest in the nation. Our staff serves 34 elected judges, each with dockets that have more than 1,000 cases.

Our court is more than just our judges. To operate such a huge legal machine, it takes buy-in from every single employee. A personal bailiff is no more critical than a judicial secretary. A drug lab technician is every bit as important as a probation officer. Without our IT employees, our court would be at a standstill. Our employees are our human capital. We need to invest wisely.

To be fully engaged in their jobs, I believe every employee needs to feel valued and empowered, and that effort begins at the highest level. Employee satisfaction and involvement is one of the critical components of my job, and I have tried to focus at least a small bit of time on each individual.



It takes almost no effort to say something nice, and the payoffs can be incalculable. Consider a kind word as a solid investment of your time.



In my five years as administrative judge, our court has hired more than 200 new employees. That creates huge change, and huge opportunity. When new employees arrive for their first week on the job, I spend a few minutes one-on-one with each of them to welcome them to our team. I want to hear their expectations for their personal career growth and the court. Doing so gives me a better perspective as an administrator, and it is a simple, but valuable, investment in human capital.

Being administrative judge allows me to develop programs designed to build a better sense of camaraderie among all our employees. Many of our departments work somewhat independently and that can lead to a sense of isolation, which is not a recipe for success.

Each January, I schedule meetings with every department in the court. We spend about half an hour together, and I challenge our employees with an idea or theme for the year ahead. In 2016 it was “Servant Leadership,” and we talked about the citizens we serve as a court. We were “All-In” in 2017 following the Cleveland Cavaliers’ NBA Championship. I promoted “Action Leadership/Leadership in Action” in 2018, encouraging our employees take leading roles both in and out of the court.

In 2019 I discussed seeking “Balance” in our lives. We can never truly achieve a perfect balance between our work and personal lives, so I shared with them the lessons I have learned after reading several books on the subject. I encouraged everyone to look at every moment of every day. Live in those moments and balance will find you but be willing to take risks. As Theodore Roosevelt famously said, “It is hard to fail, but it is worse never to have tried to succeed.”

The court also arranges a small token of appreciation for each employee at these meetings. It always features the court’s seal, and is something that they can use while on the job. We have provided thermal mugs, coasters made from recycled car tires, stress balls, mouse pads, and, this year, a desktop cell-phone holder. None of these items have been extremely expensive, but I cannot even begin to calculate the value of providing something tangible to our employees. It is a fun and practical investment in our human capital.

Another way our court has invested in its human capital is by hosting events in which the staff can participate. Our fifth annual “Justice Fore All” September golf outing will take place this year. Financially, it is a break-even event, because the goal is camaraderie. We charge only enough to cover the greens fees and food, but people can gather outside of the courthouse, be themselves, and get to know their colleagues a little better. In December, we also host an annual holiday party at a nearby restaurant. We have a chili cook-off to benefit the local food bank in February, and a corned beef sandwich lunch for St. Patrick’s Day. Last fall, our judges hosted an ice cream social as a thank you to our employees.

During the summer, the court collaborates with the Downtown Cleveland Alliance to bring food trucks to the court for lunch on Mondays. We’ve dubbed it “Memorial Mondays.”

In addition to the great cuisine, the event is filled with live music and a chance for people to be outside and enjoy some sunshine. What started as something positive for jurors has evolved into a popular event for people who work downtown.



I encourage every employee to stop by my chambers if something is bothering them or if they have a suggestion. One of the worst things a leader can do is to avoid constructive criticism.





Every other Wednesday (weather allowing), we host “Justice Fur All,” in which the Cleveland Animal Protective League brings in dogs and kittens that are available for adoption. You want to draw a crowd? Have two puppies available for some “pet therapy,” and I guarantee people will stop by.

There are other employee-outreach programs, but these represent how we try to keep our workers engaged.

While engagement is important, even more critical is having an open-door policy. I encourage every employee to stop by my chambers if something is bothering them or if they have a suggestion. One of the worst things a leader can do is to avoid constructive criticism. As a judge, I look at things differently than a courtroom assistant or a staff attorney might. Every idea should be given careful thought. One of my favorite suggestions was that the court install a roof pool and tiki bar. Ultimately, I rejected that idea, but not without serious consideration.

An open-door policy is great, but not everyone is going to feel comfortable going to “the boss” with a concern. Sometimes they want to remain anonymous, which is perfectly understandable. That is why we installed a suggestion box in 2014. Well, not quite a suggestion box, but a suggestion wheel.

In the days before computer databases, jurors were chosen when their names were pulled from a large, rotating wheel that is not too far removed a bingo hall drum. There are several of these wheels in our courthouse, including a spectacularly ornate wooden wheel from 1931 on display on our first floor.



It does not cost much to invest in your human capital, but your efforts and gestures will pay dividends. If someone has ever said something kind to you, then you know exactly what I mean.



An employee suggested that we use a wheel from the 1970s and repurpose it for suggestions. A lock was installed on the wheel’s door, and I have the only key. Every Friday, I check the wheel and usually pull out a few slips of carefully folded paper. As you might imagine, not every anonymous suggestion is friendly, but several policy changes have come from these slips of paper. And, yes, the tiki bar idea did come from the suggestion wheel.

If you look back on the efforts I have laid out, the monetary expenditure is minimal. The annual employee gift is usually under \$1,000 total. The golf outing and holiday party are funded through ticket sales and employee Dress Down Fridays; employees can dress casually on those days, but we collect a small fee that goes into a “Fun Account” for court functions. We even donate to local charities with those funds.

Which brings me back around to the beginning and the idea of kind words. Employee events are great, but they do not speak directly to the person. Take a moment in the elevator to say good morning, ask about a person’s day, and compliment a cool pair of shoes. When you are walking down the hall, have your phone in your pocket and make eye contact with people you pass. Tell them to “have a great day.”

When someone goes above and beyond the call of duty, give them a shout out. Stop by their office or cubicle and tell them what a good job they did. Make sure they feel appreciated and that you know about their efforts.

It does not cost much to invest in your human capital, but your efforts and gestures will pay dividends. If someone has ever said something kind to you, then you know exactly what I mean.

It is always going to be the right investment to make.



The Court's Technology Communication Challenge

James E. McMillan Principal Court Management Consultant, National Center for State Courts

The Hague's Innovating Justice Forum is dedicated to improving access to justice via technology. The 2019 forum stressed the importance of improving communication between courts and citizens using mobile devices.

The ninth annual Innovating Justice Forum, held by The Hague Institute for Innovation of Law (www.hiil.org) on February 5 and 6, 2019, presented many interesting ideas for “bridging the justice gap.” I would like to comment, however, on a larger context that is a root cause of the problem that the solutions are trying to address—communication.

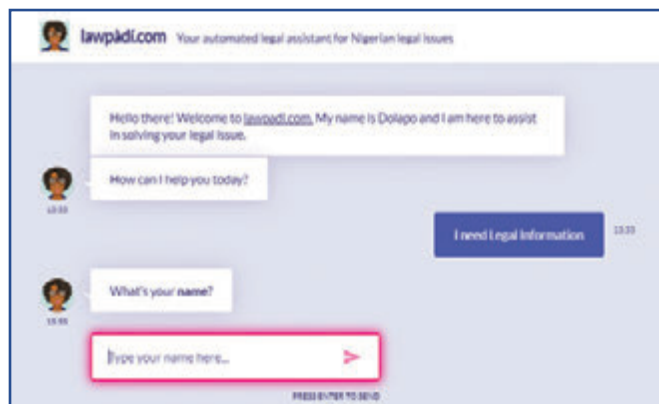
The Innovating Justice Forum focuses upon bottom-up, citizen-centered systems. While courts mostly focus upon internal systems, such as case and document management, it is good to listen to and think about the outside world.

After thinking about what I saw at the conference, the consolidating theme of communication seems to be rising to the top. But this should not be particularly surprising since a great amount of legal and court processes involve the timing and structure of communications both written and verbal. This is why courts create forms and why courtroom hearings have a specific sequence of events from the entrance of the judge to the swearing of witnesses. A routine communication approach is very familiar to judges and lawyers.

Let's look at some of the *finalist* solutions presented at the conference:

Law Padi

<https://lawpadi.com/>



This online “bot”¹ provides an “automated legal assistant for Nigerian legal issues.” The bot structures the communications via a question-and-answer interface. This is a good way of providing information, if the bot’s users can think constructively about their issues.

By way of comment on this approach, the recent keynote presentation at the IBM Think 2019 conference, moderated by CEO Ginni Rometty, included an interview with Greg Kalinsky of GEICO insurance on their tests with artificial-intelligence-enabled (AI) customer-service systems. He noted that AI worked very well for expert users who knew what the next right question should be. But it often failed for those who had no understanding of the subject area. They are continuing to test and develop this interactive approach by breaking the problem down into smaller “services” (video available at <http://tinyurl.com/yyb45zrf>)

This does not mean, however, that the GEICO System and Law Padi cannot evolve. They will. But this means that funding and support for the systems will need to continue.

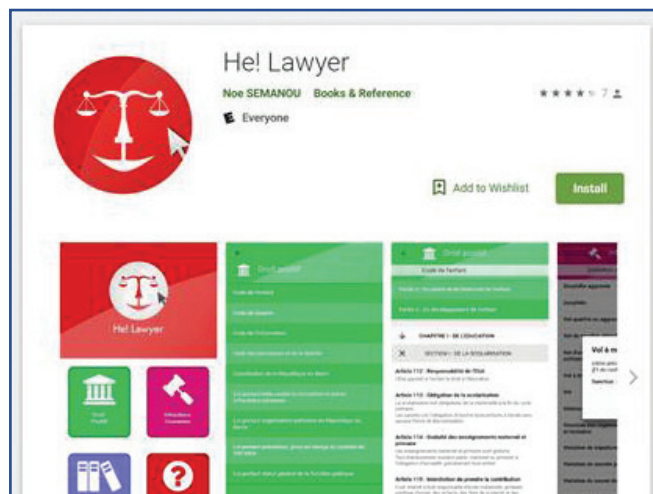
Haqdarshak

<https://haqdarshak.com/home>

This website connects persons in India to welfare resources. It does it by structuring a person's information, allowing for eligibility to be evaluated, providing options, and then allowing a person to schedule an appointment with "a trained representative to complete the application procedure." This combination of digital triage and connection to a person (wetware) is powerful because it improves efficiency.

He! Lawyer

<https://tinyurl.com/y6h29el4>



This mobile app in the country of Benin provides information online and can connect the user with a lawyer via callback. This approach uses the mobile infrastructure to connect people to one another.

Axdraft

<https://business.axdraft.com/>

This website is similar to Access to Justice (A2J) Author and LegalZoom in that it allows one to build a legal document online with the added benefit of being able to access a lawyer.² This is good for people who understand generally what they want to do.

Viamo

<https://viamo.io>

This mobile system combines interactive voice response, SMS text messaging, apps, web, and IM (instant messaging). What is most interesting about this service is that they are operating in 20 countries and, therefore, must support many languages.

...the tools to build these [artificial intelligence] systems are quickly being made available by technology companies, and courts should take advantage when these tools are ready.

1 S. Mitroff, "What Is a Bot? Here's Everything You Need to Know," *cnet* (May 5, 2016), available at <https://www.cnet.com/how-to/what-is-a-bot/>.

2 A2J, available at <https://www.a2jauthor.org/>. LegalZoom, available at <https://www.legalzoom.com/>.

Baobab Law

<http://baobab.law>

This website provides tools for community paralegals and public-service lawyers that connect them to clients and one another via a mobile app. So, this is an inside-out approach.

The basic technical/communication foundations of these and other systems:

1. They are primarily mobile-device based. These are the most widely used “computers” and “networks.” It makes sense to go where the customers are.
2. They use, in varying ways, the communication system that the mobile devices provide, including apps, SMS text, IVR (interactive voice response), and in some instances connection to live persons or callback. Courts in the United States have implemented text and email-reminder systems for payment and jury service reminders. But what we do not yet see in the courts is an AI-based interaction conversation that can assist callers by asking appropriate questions and, based upon the responses, by providing the correct court and process information. That said, the tools to build these systems are quickly being made available by technology companies, and courts should take advantage when these tools are ready.
3. Many systems facilitate creation of court or legal documents. Documents are the lifeblood of the legal system. Developing systems that break down the data required to create documents is an excellent first step. But again, technology is quickly advancing. We have not yet seen speech-to-text data capture in the courts, despite wide use in other business areas. It is another exciting, near-future direction to be explored.
4. It is very important that the systems listed above provide the documents/interfaces in plain language. Most people with legal problems are not lawyers. And we have known for 30 years that understanding legal language is a significant problem, resulting in lost time for litigants and courts.



... the faster that courts adopt this interactive standard electronic communication approach [between external systems and court automation systems], the more enabled the citizen developers will be.



5. Languages and language translation are a problem for all courts. Only one system listed above really addresses this problem. In contrast, the courts in the People's Republic of China have been using computer-assisted spoken and written language translation for several years. This technology is developing very quickly and should be monitored and tested by the courts to, again, address a communication issue.
6. We really have not seen any systems in this round of citizen/hack/bottom-up development that interact with courts themselves. This is often because courts do not provide an automated connection (also known technically as an API, or application programming interface) for their systems. For almost 20 years, court and industry professionals have worked on technical standards to allow one kind of automatic connection between external and court automation systems. The most recent version of this work, the Oasis-Open LegalXML ECF 5.0 standard, is attempting to address this by providing standards for not only e-filing but also for scheduling requests to be submitted to courts. Thus, the faster that courts adopt this interactive standard electronic communication approach, the more enabled the citizen developers will be.

Further, it is very important for courts to allow their systems to be used to verify information and, specifically, court orders or financial payments. A court's public system does not have to be the internal operational data or documents versions. Instead, with cloud-based or hybrid architectures, automatic public copies of court documents, recordings, and data such as schedules can be made to systems that would not include sensitive or operational data. Therefore, courts should examine what citizens and legal professionals need and improve access to it via these public copies.

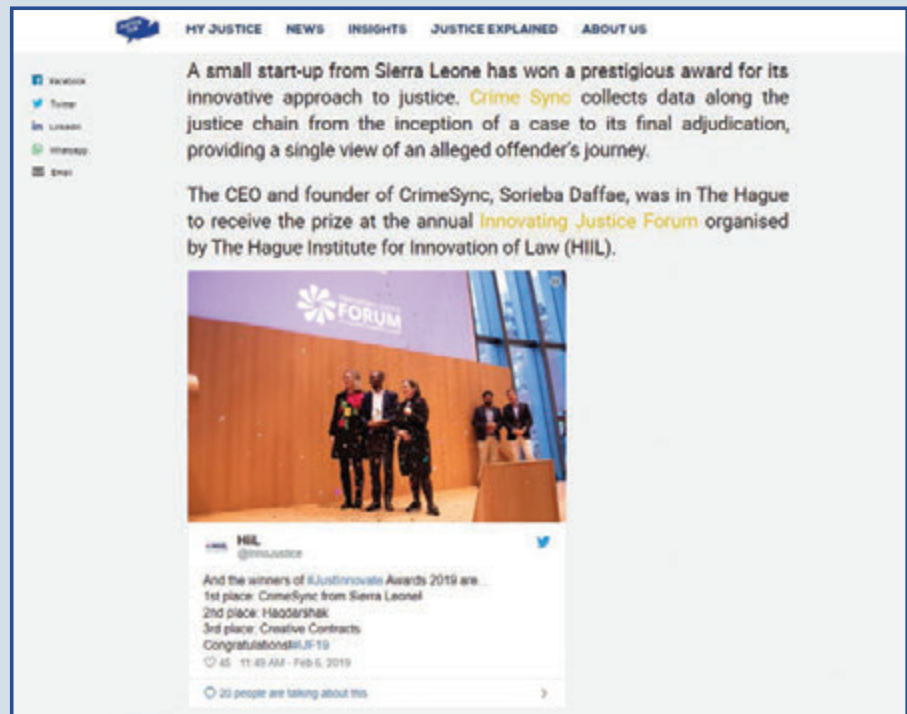
In conclusion, it is important and valuable to learn from “citizen hacker” ideas for improving the courts and legal system. And courts should facilitate this by supporting these efforts and making interfaces available when possible.

Innovating Justice Awards Winner

The winner of the Innovating Justice Awards was a project called CrimeSync from Sierra Leone to “organize, collaborate, and share information through electronic case management” (see “How to Fix Sierra Leone’s Criminal Justice System Through Tech Innovation,” *Justice Hub*, February 12, 2019, available at <http://tinyurl.com/yym4vxad>). This solution is what was referred to as an integrated justice system in the past. But CrimeSync took advantage of modern web/cloud/database technology. A warning for those who may look at this potential solution is that it is not the technology that stops integrated justice, it is organizational barriers. No organizations wish to cede control of their data, workflow, or information to a central body. It may work in the short term, but the organization will claw back

control from the shared integrated system. Therefore, in the United States, organizations went to the concept of “data sharing” in the 1990s after many, many integrated systems failures. This allowed each

organization to maintain control over their systems but also connect and share. Clear organizational control and change processes must be a key part of this solution so that it may be successful over the long term.





Beyond Buzzwords: Building an Information Security Foundation

Sajed Naseem Chief Information Security Officer, New Jersey Judiciary
Brian J. McLaughlin Court Executive 2a, New Jersey Judiciary

Cybersecurity is no longer just a buzzword, but a stark reality where an attack can debilitate organizations. This article discusses steps to build an information security foundation for courts, ideally supported by leadership and integrated into every level of the organization.

Cyberattacks are a reality for every public organization, including state courts. During these challenging times, it is critical to update court operations to incorporate information security requirements and to develop a plan to methodically respond to cyberattacks. This article discusses steps a judiciary can take to prioritize information governance and to build a foundation of cybersecurity best practices in every level of the organization.



Culture of Information Security

State courts rely on information technology for processing millions of cases across many docket types. With the increased use of information technology comes an increased security risk to court data and business operations. Recognizing that information security is no longer just an information-technology-office topic, but one that involves all facets of the organization, judiciary leadership should commit to establishing an organizational culture of information security.

Building a foundation for current competencies and continued improvement in information security can be accomplished by adopting and implementing a standard for information governance, managing vital internal and external relationships, and investing in protective infrastructure. Further, it involves bringing together technological units and other court offices through cybersecurity awareness, risk management, and incident response planning.

In laying the groundwork for a culture of information security, courts should explore various issues. The following questions provide a useful starting point:

- *Is judicial and administrative leadership invested in information security?*
- *Is information security more than just a technology topic in the court?*
- *Does the information security unit have autonomy and authority?*
- *Does the court have information security and cybersecurity awareness programs that are coordinated and measurable?*
- *Are all relevant layers of court management and operations involved in the court's cyber-incident-response program?*

Information Governance and Court Systems

An optimal information governance process is developed with stakeholders and takes risk, infrastructure, and awareness into account. Gartner (2019) defines information governance as “the specification of decision rights and an accountability framework to ensure appropriate behavior in the valuation, creation, storage, use, archiving and deletion of information.”

Court systems have the responsibility of managing different categories of information, such as personal identifiers, victim/witness information, financial data, and employee records, just to name a few (McLaughlin, 2018). To govern that information, policies and procedures must be formulated, and court processes (business and technology) reviewed and audited.

For this comprehensive process, court systems should select an information governance standard, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF). The NIST CSF provides computer security guidance for how organizations can assess and improve their ability to prevent, detect, and respond to cyberattacks. Judiciary policies and procedures should be developed, evaluated, and refined based on the selected information governance standard.



...information security is no longer just an information-technology-office topic, but one that involves all facets of the organization, judiciary leadership should commit to establishing an organizational culture of information security.







Among the most vital internal relationships necessary to establish a culture of security is that between the court's defined information security unit and the information technology office. . . these units must operate independently and cooperatively—and on equal footing.



technology office. To function appropriately, these units must operate independently and cooperatively—and on equal footing. This means separating the two offices both in the organizational reporting structure and in practice.

Working with judicial and administrative leaders, a chief information security officer can best set the vision for information security that is implemented organization-wide.

Managing Relationships

Managing internal and external relationships is essential to building and sustaining a foundation for information security. This task can be challenging because it requires negotiating, compromising, and challenging norms inside and outside of the organization. For information security to be implemented organization-wide and practiced by all employees, it must be incorporated into daily court operations, which necessitates buy-in from internal and external partners. Managing these relationships requires ongoing collaboration with stakeholders.

Internal relationships include those within any central administrative office, as well as all levels of courts (e.g., supreme, appellate, trial, and municipal courts). Among the most vital internal relationships necessary to establish a culture of security is that between the court's defined information security unit and the information

Under the leadership of the chief information security officer, the information security unit should handle information governance and security, enterprise risk management, and cybersecurity awareness training separate from the development of information technology.

This allows information technology and information security to manage separate yet related areas and to take the same or different positions on critical issues. The two units should have unfiltered voices in the organization and should report to and engage directly with court leadership. Informed by the distinct perspectives of information security and information technology, court leadership can handle day-to-day decisions, as well as an incident or breach, when urgency is vital.

Successful internal relationships support courts' relationships with external stakeholders and users, including prosecuting authorities, public defenders, state agencies, law enforcement, bar members, and any other group that accesses the courts.

These external users interact with the courts through judiciary systems, as well as by email. Through these external relationships, courts can foster open communication to develop and adhere to appropriate memoranda of understanding and rules for professional engagement. Managing both internal and external relationships can position a judiciary to apply its information governance standard to judges, court staff, and other internal users, as well as to intergovernmental partners, attorneys, and others.



Cybersecurity awareness is both an internal and external imperative, as courts have many employees and external users.



Information Security Infrastructure

Risk reduction should be one focus of the information security infrastructure. With the push for courts to enhance operations through new and expanded initiatives in information technology, there is a need to balance technological enhancements with risk reduction. A strong information security infrastructure protects areas of risk. Some key protections include secure authentication, encryption, data loss prevention, network access control, and incident response. Cyber threats are always changing, with many increasingly sophisticated threat actors and near daily news reports on data breaches, ransomware, phishing, and data loss. A strong information security infrastructure starts with a robust foundation of vision, strategy, architecture, process innovation, and deployment of technologies suited for the organization to mitigate these threats. Finally, it is important to measure results to identify areas in need of improvement. This requires engaged support by leadership and throughout many levels of the organization.

Cybersecurity Awareness

To minimize risks and costs, information governance seeks to encourage behaviors in people and institutions that foster an information-centered organizational culture (Brown and Toze, 2017). Cybersecurity awareness is both an internal and external imperative, as courts have many employees and external users. With a large user base, the information governance process should include a persuasive cybersecurity awareness presence, so user behavior aligns with best practices in attack prevention.

No defense is complete without a strong cybersecurity awareness program. Court systems should consider various steps to prioritize cybersecurity awareness, such as:

- *annual recognition of Cybersecurity Awareness Month every October to provide classes for all employees on phishing, identity theft, social media, and information governance;*
- *cybersecurity posters on phishing, identity theft, social media, and information governance to serve as an ongoing reminder of these issues;*
- *required cybersecurity training for all employees to ensure continued education and growing familiarity with best practices;*
- *informational cybersecurity cartoons shared with employees to stimulate engagement; and*
- *review of cybersecurity principles and practices as part of employee performance expectations to provide accountability.*

The goal is to instill in all employees an understanding of the role of information security in their daily work and to reinforce the impact of their daily conduct in this area.

Cybersecurity awareness is critical for developing a vibrant information security culture. The goal is to instill in all employees an understanding of the role of information security in their daily work and to reinforce the impact of their daily conduct in this area. Management guru Peter Drucker once said, “You can’t manage what you can’t measure” (Wolcott, 2016). Courts may use various methods to measure the levels of employee cybersecurity awareness. These tools could include surveys or quizzes that can help the information security unit tailor relevant trainings to achieve the organization’s objectives.



Risk Management: Integration of Court Units and Information Security

Risk management in the use of information technology, and its integration within the court system, requires balancing the benefits of technology with an understanding of the potential vulnerabilities inherent in any non-paper system.

In evaluating and managing information security risks, state courts must consider all internal and external-facing systems. Effective risk management requires court managers, business experts, and the information security unit to collaborate as these areas converge. In risk assessment, court managers and business experts provide the information security unit with insight about their unit's data and operations to enable identification and evaluation of potential threats and vulnerabilities. Assessing these risks provides increased oversight and risk mitigation for information systems. It further enables a court to develop an appropriate plan to manage the identified risks.

Cyber Incident Response

Consistent with a standard of information governance, and in conjunction with establishing a culture of information security, courts should plan for potential cyber incidents. Cyber incidents cover a broad range of activities, ranging from a simple phishing attempt sent to a court employee's e-mail address, all the way to a scenario where a threat actor hacks and takes control of a court's case management system. The Multi-State Information Sharing and Analysis Center (MS-ISAC), within the United States Department of Homeland Security, is a valuable resource for state and local governments. MS-ISAC compiles information on cyberattacks and provides guidance on incident prevention, protection, response, and recovery. An incident response plan should involve many internal court units and may link to the organization's continuity of operations plan or disaster recovery plan. In addition to educating employees to preempt cybersecurity vulnerabilities, court systems should also plan to respond to any cybersecurity attack that could occur.

Summary

State court systems are guardians of sensitive data. The increasing threat of a cyberattack, big or small, amplifies the responsibility of courts to protect this data through all available means. A culture of security recognizes that everyone in the organization—not just information technology and information security—must protect and secure data. Ultimately, managing court records is an enduring core function for any judiciary.

Building the foundation for a strong and evolving information governance process moves beyond buzzwords and slogans to a comprehensive approach that engages every member of the organization. It includes proactive prevention—through internal and external relationships, protective infrastructure, and ongoing cybersecurity awareness—as well as practical steps to identify, mitigate, and respond to vulnerabilities through risk management and incident response planning. With the ever-present threat of cyberattacks, these steps are vital to safeguarding the information entrusted to state courts.

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Improving Child Support Enforcement Outcomes with Online Dispute Resolution

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Court appearances in family cases can be traumatic for many citizens—particularly those who have endured adverse childhood experiences, such as parental abuse or divorce. Ottawa County, Michigan, has been experimenting with online dispute resolution techniques, particularly in communications, to improve child support outcomes outside of courtrooms.

Online dispute resolution (ODR) is “a digital space where parties can convene to work out a resolution to their dispute or case” (Joint Technology Committee, 2017: 1). In 2016 court leaders in Ottawa County, Michigan, began their investigation of ODR for child-support-enforcement “show-cause” hearings, which other courts might call contempt proceedings. The Joint Technology Committee (2017) of the Conference of State Court Administrators, National Association for Court Management, and National

Center for State Courts believes that “[l]ow-conflict, low-complexity family court cases are particularly well-suited to ODR because of the clear benefit to children and the parents who care for them” (p. 13). This article describes Ottawa County’s ODR process, three key outcome measures since the December 2016 launch, two theories that might explain ODR’s effectiveness, and the court’s plans to expand ODR in family court cases in the future.

Snapshot of Child Support Enforcement in Michigan

In Michigan, the establishment and enforcement of child support orders is a judicial function with numerous parties: the custodial parent, who is entitled to receive financial support; the noncustodial parent, who is ordered to contribute to his or her children's upbringing; the state Department of Health and Human Services' Office of Child Support, which maintains MiCSES, Michigan's statewide child support enforcement information system, as well as MiChildSupport, Michigan's public-facing child support portal (online at <https://tinyurl.com/y25mo4bd>); plus employers, health-care

insurers and providers, and the court itself. The caseload and financial stakes are staggering: In 2015 MiCSES contained almost 850,000 active child support orders and accounted for well over a billion dollars in child support payments. Despite Herculean efforts, Michigan's ordered but unpaid child support (arrearages) total more than \$6 billion (Michigan Department of Health and Human Services, n.d.).

Despite Herculean efforts, Michigan's ordered but unpaid child support (arrearages) total more than \$6 billion.

Michigan's Friend of the Court (FOC), celebrating its 100th Anniversary in 2019, is a team of administrators, investigators, and administrative support staff within the family division of each circuit court, who actively manage child support cases. Ottawa County's FOC team is responsible for every phase of child support cases, including

the establishment of paternity, initial orders, and enforcement of child support and parenting time orders.

ODR's Impact on Ottawa County

Ottawa County is home to about a quarter million people and more than 12,000 active child support enforcement cases. In 2018 noncustodial parents in Ottawa County paid approximately \$40 million in child support. Following Ottawa County's implementation of ODR, it exceeded the federal Office of Child Support Enforcement's 80 percent benchmark for the collection of current child support,

meaning that the county became eligible to receive additional incentive payments from the federal government.

Noncustodial parents who fail to comply with child support orders are subject to contempt proceedings called show-cause hearings. The outcomes of show-cause hearings range from a satisfactory payment arrangement to a civil bench warrant for failure to appear to referral to the county prosecutor for felony nonsupport charges. Clearly, jailed parents are less likely to earn the income needed to come current with their child support obligations.

In the past, Ottawa County's show-cause hearings were scheduled en masse every Friday. Friend of the Court investigators brought thousands of child-support show-cause matters before two family court judges every year, and more than a thousand bench warrants were issued (20th Judicial Circuit, 2018: 26).

In December 2016, Ottawa County launched a set of ODR tools to reduce the occurrence of show-cause hearings and improve compliance with child support orders. One of these ODR tools is a proactive, SMS text notification to noncustodial parents "when their case fits the criteria for show cause" (20th Judicial Circuit, 2018: 28). FOC staff first reviews a MiCSES report showing cases with no payment for at least 45 days and eliminates cases for which the noncustodial parent is incarcerated, deceased, receiving Social Security disability payments, or deported to a country without a reciprocity agreement with the United States. The remaining cases are candidates for show-cause hearings, which, before 2016, would have been immediately scheduled.



Noncustodial parents who are at risk of a show-cause hearing are first given an opportunity [using SMS text notification] to engage in an information-gathering and problem-solving session with the FOC [Friends of the Court investigators]. The results are impressive...







Sending and receiving text messages is the most prevalent form of communication for Americans younger than 50.
~ Newport, 2014.



Now, however, Ottawa County's FOC transmits an SMS text message to noncustodial parents, warning them about the noncompliance and inviting them to meet with FOC investigators to discuss their ability to pay,¹ any changes in employment, and available resources for securing employment. Noncustodial parents who are at risk of a show-cause hearing are first given an opportunity to engage in an information-gathering and problem-solving session with the FOC.

The results are impressive: The number of show-cause hearings has been reduced by almost a quarter. By the end of 2017, Ottawa County's Family Court Division scaled back its show-cause calendar from every Friday to two Fridays each month, freeing precious judicial resources for other family court cases.

If a noncustodial parent fails to heed the FOC's text message or achieve an acceptable plan with the FOC investigator, or the case is scheduled for a show-cause hearing. At this point, two additional ODR tools are improving the number of successful show-cause hearings:

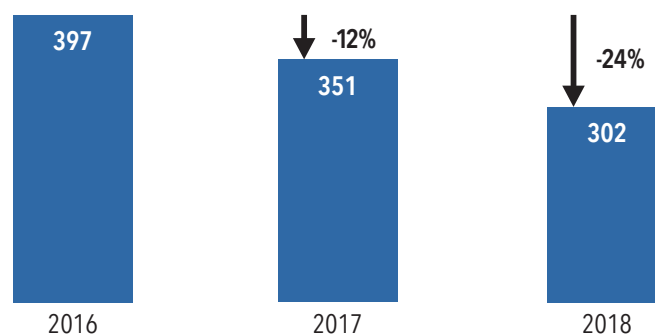
1. an SMS text reminder of the upcoming show-cause hearing (reducing the number of failures to appear) and
2. a hearing check-in system improving the speed and effectiveness of prehearing settlement conferences with FOC investigators.

Ottawa County has also slashed the number of child-support-related arrest warrants by a third. This significantly eases the burden on the Ottawa County Sheriff, both in workload and in the three deputies embedded with the FOC team and in jail overcrowding.

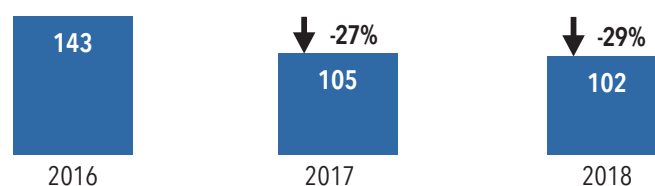
Most important, though, is that approximately 50 parents every month will not be subject to arrest and detention for failure to pay child support and will, instead, be in the community, able to earn income and parent their children.

Perhaps the most impressive outcome has been Ottawa County's 28 percent increase in child support collections. For court leaders and the FOC team, surpassing the federal government's 80 percent collections threshold is the realization of a long-term goal that had previously eluded them. It will unlock additional federal incentive payments to the county, and it also translates into a 28 percent increase in the financial resources available to Ottawa County's custodial parents and their children.

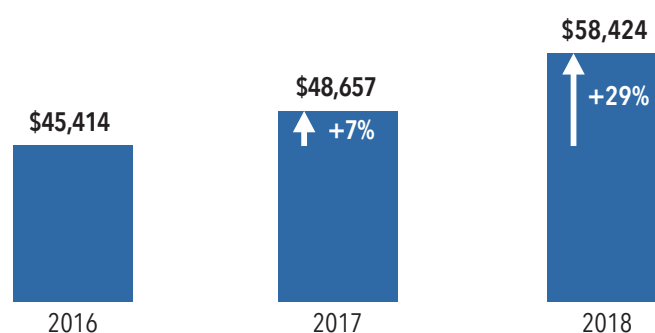
Average Monthly Hearings



Average Monthly Warrants



Average Monthly Child Support



¹ *Turner v. Rogers*, 564 U.S. 431 (2011), prohibits the incarceration of a party for failure to pay unless there are procedural safeguards for determining the party's ability to pay. Ottawa County's FOC team is helping the court comply with *Turner* by investigating noncustodial parents' ability to pay.

Why Does Child Support Enforcement ODR Work?

Ottawa County's court leaders and FOC staff hypothesize that the striking and sustained effectiveness of their initial ODR program is attributable, at least in part, to the communication preferences of the twenty- and thirty-somethings who are parents. In the past, the Ottawa County FOC staff's primary mode of communication with noncustodial parents has been documents sent through the United States Postal Service, but many, many pieces of mail are returned to the FOC office undelivered. As national studies repeatedly show (and as *Trends* readers have experienced both personally and professionally), the demographic groups known as Millennials and Generation Z prefer text messaging to every other form of communication.

An additional hypothesis is based upon recent research conducted in Muskegon County, Michigan, about the prevalence among noncustodial parents of adverse childhood experiences (ACES), such as parental abuse, incarceration, divorce, and substance abuse. Muskegon County assessed the number of noncustodial parents who reported four or more ACES and found they were overrepresented in child support enforcement cases, typically double the rate. For example, in zip code 49457, 14.72 percent of the general population had a child support enforcement case, but 28 percent of the population with four or more ACES had a child support enforcement case.

What national research about trauma teaches is that young adults with high ACES score are more likely to engage in risky behaviors and less likely to hold stable employment and housing, significant risk factors for nonpayment of child support. Research also shows that people with high ACES scores have physically different brain structures, which create difficulty processing and effectively communicating information, especially in settings they interpret as hostile (Substance Abuse and Mental Health Services Administration, 2013). Traditional child support enforcement strategies, such as formal show-cause hearings and threats of jail



...the relatively simple techniques of text messaging, engagement with an FOC case worker outside of a formal courtroom setting, and provision of support services seem to be achieving improved outcomes.



time for nonpayment, are likely triggers for high-ACES parties, making them even *less* able to engage the executive functions of their brains to set goals, follow through with appointments, and complete tasks.

Returning to Muskegon County's data, one can see a correlation that appears to support the hypothesis that high-ACES noncustodial parents will be among the most challenging FOC clients: As the density of high-ACES residents increases, the percentage of child support collections plummets. For example, zip code 49457 shows an ACES density of approximately 9 percent more than Muskegon County's least ACES-dense zip code, and a child support collection rate 8 percent lower.

Is it possible, then, that online dispute resolution's positive impacts on Ottawa County's engagement with noncustodial parents and collection of child support are attributable, at least in part, to ODR's ability to meet the needs of high-ACES parties? Many trauma-informed judicial practices focus on communication and address the needs of high-ACES parties to receive just-in-time notification of court events; to engage with authority figures in a low-stress environment so that they can more effectively tell their story and engage in the process; and to build trust that the system's goal is their success, rather than punishment. In Ottawa County, the relatively simple techniques of text messaging,

engagement with an FOC case worker outside of a formal courtroom setting, and provision of support services seem to be achieving improved outcomes.

What's Next for Family Court ODR?

Family court leaders know that disputes about child custody and parenting time are among the most contentious cases on their dockets. Perhaps unique to Michigan, FOC teams are responsible for establishing and enforcing parenting-time orders, and FOC leaders are concerned that parenting-time cases demand an inordinate quantity of their staff's time and cause the most stress and burnout. Ottawa County and several of its sister counties wish to explore ODR tools that show promise in improving parenting time, with two distinct strategies.

The first strategy is to apply ODR to parents' initial creation of their parenting-time agreements. Several Michigan FOCs believe that if they offer ODR tools to parents who seem to be working well together and express a desire to submit a stipulated parenting plan, then the ODR tools could serve the important functions of providing the parties with plain-English information and guidance, document assembly, and case tracking. For these counties, providing ODR to parents in low-conflict cases will streamline the legal process, improve the quality of stipulated-parenting-time agreements, and help the parties achieve their admirable goal of keeping their family out of court. This strategy might be likened to the current practice in community supervision of applying the lightest possible "touch" to low-risk probationers, providing them support but striving to minimize their contact with formal justice venues. It also enables court staff to focus their time and efforts on higher-risk clients.

In contrast, a second set of Michigan counties is interested in testing whether ODR can help mitigate the chronic conflict they witness in highly contentious parenting-time cases—the proverbial 20 percent of cases that demand 80 percent of court staff's time. For these counties, providing ODR in high-conflict cases might mitigate the parents' endless battles by offering a communication medium that:

- ✓ *is less fraught than a formal courtroom setting;*
- ✓ *shows promise in detecting inflammatory speech and coaching the parent toward more collaborative language;*
- ✓ *guides the parents away from irrelevant issues and back toward solutions that are in their children's best interests; and*
- ✓ *allows the parties to engage a skilled human mediator on-demand for assistance with specific issues.*

This article began with the Joint Technology Committee's recommendation that ODR is most appropriate for "[l]ow-conflict, low-complexity family court cases," and it ends with a plan to deploy ODR in the highest-conflict family court cases. We hope our court colleagues agree that this is not a quixotic quest but a well-founded belief that ODR tools are rapidly evolving and lend themselves to trauma-informed judicial practices. We will keep you informed of our progress, and we invite you to share your experiences, too.

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The Importance of a Legal Ecosystem

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Not all legal problems require the services of a lawyer or all the processes of a court. The concept of a “legal ecosystem” might be an effective way of increasing access to justice, especially for self-represented litigants.

An ecosystem is a concept that comes from ecology. It has several defining characteristics:

- *It consists of a system that is more than the sum of its parts (systemic).*
- *Changes in any part of the system affect all other parts of the system (integration).*
- *There is a hierarchy to the system (hierarchical).*

The ecosystem concept has recently been applied to several aspects of the legal system as a useful analogy. For example, the Justice for All (JFA) project seeks, according to its guidance materials, to help states achieve 100 percent access to justice.¹ Funded by a variety of foundations, the JFA project encourages states to assess their legal services across a very broad array of potential capabilities, understand where gaps in those services exist, and support stronger integration of those services from the customer viewpoint.

¹ Justice for All grants have been received to date from the Public Welfare Foundation, the Kresge Foundation, the Open Society Foundation, and the JPB Foundation. Thirteen states have been funded to create action plans for achieving 100 percent access and implementing the first several projects of those action plans. The National Center for State Courts and the Self-Represented Litigation Network maintain a JFA website (<https://tinyurl.com/yyodcbqz>) with resources and provide technical assistance to both grantee and non-grantee states on their access-to-justice efforts.

Because those with legal problems are often discouraged or defeated by the lack of system integration of legal services, the JFA premise is that an ecosystem approach is needed to solve the access problem. Early pilots of the JFA approach in several states have uncovered a surprising number of service gaps and helped states identify ways to better integrate those services.²

A second application of the ecosystem concept applies to delivering legal services. This idea derives from the example of the health-care system, where new roles have proliferated over the last several decades in recognition that not all medical problems require the expertise and expense of a doctor. Washington State and Utah have piloted new legal roles that sit between a lawyer and a paralegal. Some states allow for very limited legal roles around tasks such as closing real-estate transactions. One can easily imagine a set of legal roles like those in health care that are systematically matched to the task at hand and reduce costs to the customer.

So far unremarked is the idea that legal services themselves could benefit from an ecosystem approach. The traditional idea has always been that the courts have a monopoly on resolving legal disputes. That belief has been gradually eroding over several decades as independent arbitration and mediation capabilities sprang up in almost every state. More recently, a wide array of nonprofit and for-profit organizations now offer a broad selection of legal services, ranging from answers to single legal questions on one end to the negotiation and creation of court-judgment-ready agreements on the other end.

There is no doubt that the availability of many such legal services online has affected what business comes to lawyers and courts in an unprecedented way.



Courts have already seen their national caseload decrease by roughly 20 percent over the last decade as citizens and corporations voted with their feet for alternative dispute resolution processes that are less expensive, less complex, and faster.



Offering legal services online offers advantages of scale and cost-effectiveness not possible just a few years ago. Analysis of customer queries online also enables providers of online legal services to understand and cater to those who have legal problems in a fine-grained way that could not be imagined in the past. Indeed, like many current for-profit companies, one significant advantage the upstarts have obtained is very detailed knowledge of their potential customer base. These data enable them to segment their customers carefully and offer appropriately tailored services in a way that most courts do not.

The impact of alternative dispute resolution on courts has already been huge. Complacently assuming a strong continuing hold on its traditional monopoly, courts routinely assert their totally passive role toward legal disputes. They claim to have no control over what comes in the courthouse door. However, courts must routinely respond to legislative proposals that significantly affect what cases come to them.³ The court rules they establish and the business processes they use strongly affect demand for their services.

This is even more true now that there are so many alternatives for resolving legal disputes. Courts have already seen their national caseload decrease by roughly 20 percent over the last decade as citizens and corporations voted with their feet for alternative dispute resolution processes that are less expensive, less complex, and faster. This is obviously just the beginning.

While lawyers have not generally resisted the use of mediation and arbitration, most state bar associations have battled vigorously against most of the new competing legal organizations. If restrictions on who can provide legal services and how they can provide them were loosened, the erosion would probably accelerate.

² The first round of JFA states included Hawaii, Alaska, Georgia, New York, Minnesota, Colorado, and Massachusetts.

³ One such example is a proposal made several years ago in Washington State to establish a new water court. Numerous states have modified the maximum and minimum amounts in controversy for their general- and limited-jurisdiction civil-court cases. Many states have also decriminalized large numbers of traffic cases.



The paradox is that while the courts are losing business, the proportion of people with unmet legal needs remains stubbornly around 80 percent—a huge gap between supply and demand. One explanation for this vast imbalance is that the traditional monopoly of the courts and the bar prevents a true market from developing that could meet the legal needs of everyone. When one size fits all and that size is the slowest, most expensive, and most complex version of a solution, then many people will be unable to use that solution.

This is where the concept of a legal ecosystem comes in. The research on unmet legal needs is spotty and incomplete, but it suggests that those needs range from simple answers to single questions to complex trials with full due process. If a proper legal ecosystem existed, appropriate legal services could be matched to each type and level of legal problem. Legal services would use a broad array of processes exhibiting a mix of costs, speeds, degrees of due process, convenience (such as availability at any time and place online), and other key characteristics that matter to consumers.

If such a legal ecosystem were allowed to develop, one can imagine the traditional courts taking their proper place at the apex of the system. Courts are slow, complex, and expensive for a good reason. They enforce a maximum amount of due process to ensure fairness in legal disputes that matter the most. Examples include potential loss of life and freedom, potentially large economic losses, and situations with vast power or information asymmetries (as when individuals have disputes with governments or large corporations). Those kinds of cases should and probably will always remain in the courts.

Everything else is fair game for a legal ecosystem. Courts are unlikely to compete successfully with the rest of that ecosystem for the remaining kinds of legal disputes. Courts are constrained by state and federal statutes, several hundred years of common law, and severe funding limits on investment.



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They are also extremely risk averse, as all political organizations are, because any failure is likely to invite quick and severe punishment. In an environment like that, no court is likely to outcompete other providers of legal services based on cost, speed, or technological innovation in general.

A true legal ecosystem would be a fundamentally new system, with which the public would be totally unfamiliar. Marketing, consumer education, and training would be required for those with legal problems to understand what legal services might be appropriate for them and to find the right type of providers.

Here the example of health care might be at least partly instructive. Consumers by and large do not have to understand or select appropriate medical roles. The health-care system does that for them. Instead, those with health problems select a desired health-care organization or provider, who in turn decides what medical role needs to address each health issue.

The provision of medical services is also undergoing rapid evolution. Hospitals do both more and less than they used to. Small local clinics now offer a surprising array of convenient and less expensive services. Drug-store chains and other similar large commercial companies now offer immediate health-care services by professionals in their many locations.

Remote, virtual health-care services (video consulting, non-video diagnosis, drug requests) are rapidly proliferating online with no end in sight.

How do consumers make sense of these different possibilities? First, each type of health-care organization advertises its services to varying extents in ways that the public can understand. The descriptions are free of technical medical jargon and focus on problem descriptions as nonprofessionals would describe them. An increasing proportion of them also clearly communicate what the costs of those services are, and many of those costs are fixed up front. Traditional hospitals remain the one bastion of opaqueness when it comes to costs, but even that is beginning to change.

Providers of legal services need to emulate this approach. Describe legal services in terms of legal problems as their customers would understand them. Use nontechnical language. Be transparent about costs. Fix the cost of most services. Imagine how different the legal ecosystem would be if those changes were made. It is hard to believe that 80 percent of legal needs would continue for long to be unmet in that ecosystem.

In this evolving legal ecosystem, courts are no longer a monopoly provider, but merely yet another provider of legal services among many. They remain privileged in several important ways, but the courts cannot presume upon those advantages to maintain their current proportion of the legal-services market. They must also adapt and specialize in services for which they have a natural and enduring edge.

Organizations are justly infamous for defending their own interests. This is just as true for government or nonprofit entities. That means that the public cannot rely on the courts or the bar to do the right things in support of a legal ecosystem. It is likely that state legislatures will need to apply some motivating pressure. Technically, almost all state supreme courts have the legal authority to at least partially deconstruct the monopolies on legal services that still formally exist, even if they are under attack from all sides.

Recent experience suggests that those courts will only act when state legislatures threaten to step in.⁴ Otherwise, courts are too beholden to state bars that will battle to the death against such changes. However, the courts' interests are rapidly diverging from the interests of the bar as they confront the growing army of self-represented litigants and quickly decreasing caseloads.



...if the courts are serious about access to justice and maintaining a healthy rule of law, then they need to find ways to support the evolving legal ecosystem... as long as the bar maintains its hold on regulation, other roles and service providers will be blocked.



Lawyers face their own issues. In a healthy legal ecosystem, many legal problems would be resolved using the services of nonlawyers (indeed, sometimes of non-humans or software). Like the courts, full-service lawyers will always be needed for complex and high-stakes legal problems, but that is probably it. Thus, the bar must face the reality that its current cohort is mismatched with the demand. Trying to protect its eroding monopoly will be a failed long-term strategy. Better to learn from doctors and understand an appropriate and cost-effective role within a legal ecosystem.

The legal ecosystem is coming. Nothing will stop it. The question is not if, but when. The most important question is how. If the courts are serious about access to justice and maintaining a healthy rule of law, then they need to find ways to support the evolving legal ecosystem, including those delivered by for-profit organizations, and ensure that the quality of those services across the board will be adequate for all consumers. That will require one additional innovation: more cost-effective regulation of legal services.

The way lawyers are currently regulated is incredibly expensive and mostly ineffective. A legal ecosystem can never operate well if that is the only way that quality control can be ensured. As long as the bar maintains its hold on regulation, other roles and service providers will be blocked. This is a problem that legislatures can and will step up to soon if state supreme courts are unwilling to act. That assertiveness is likely to be needed, since supreme court justices only know the regulatory structures now in place for lawyers. Significant

innovation will need to come from elsewhere, even from other countries. We know it is possible. Let's get started.

⁴ It is difficult to cite many examples yet, since some of these dialogues occur behind the scenes. A recent U.S. Supreme Court decision on the state regulation of dental services in North Carolina was an event that sparked conversations in a number of states. Utah and Arizona are states where those conversations resulted in projects to address changes in how legal services are regulated.



Evaluating Remote Technology Options to Increase Self-Help Center Access

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Providing meaningful access to justice should be at the top of every court's goals, and remote technology is a means to increase meaningful access for self-represented litigants. This article discusses how Minnesota's Tenth Judicial District determined which type of remote technology was appropriate for their jurisdiction.

Meaningful Access to Justice

Courts have an obligation to provide not just access to justice for self-represented litigants, but meaningful access to justice. Most would agree it is something more than unlocking the courthouse doors but something less than providing legal counsel to every litigant in every case. *(For a situation describing what happens without meaningful access to justice, see the story of Marley on p. 58.)*



Minnesota Works to Increase Meaningful Access to Justice

Self-represented litigants often do not have the legal background or necessary information to defend themselves against a claim or advance their case toward final resolution. Given the rise of self-represented litigants in Minnesota, a response from the court was required because the inability to effectively and efficiently access the judicial system jeopardizes access to justice.

Minnesota has started several initiatives to assist the growing number of self-represented litigants. One of the most significant responses was developing more than 300 unique forms self-represented litigants can use depending on their legal situation. These forms are available on a public website, along with detailed, step-by-step instructions. The Minnesota Judicial Branch has also created instructional videos for different case types.

Minnesota's Tenth Judicial District, which includes eight rural and suburban counties, is the second largest of the state's ten districts, based on number of judgeships. The Tenth Judicial District wanted to supplement the services offered by the Statewide Self-Help Center (which provides telephone, email, and Team Viewer co-browsing services). In 2015 the Tenth Judicial District began offering in-person, self-help center services in the largest of those eight counties, Anoka County. The Tenth Judicial District Self-Help Center began with a single employee offering in-person services four days a week on all major case types—civil, family, criminal, probate, and juvenile—in addition to assisting via telephone and email. The services, offered pursuant to Minnesota Rules of General Practice 110, include providing forms and information on how to complete forms; reviewing forms for completeness; providing information on court processes; and providing



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information on available legal aid resources, clinics, and other dispute resolution programs.

Over the past three years, the program has expanded, adding two additional employees. More self-represented litigants are using the service each year. For court administration staff and judges, this means fewer telephone calls asking why hearings have been canceled or stricken; less time spent at the counter or in the courtroom explaining processes or deficiencies with forms; fewer hearings needing to be rescheduled; and fewer confused or upset court users.

In-person services are now offered at least once per week in each of the eight counties in the Tenth Judicial District. Staff are required to travel, sometimes up to 150 miles a day, to provide those in-person services. Because staff spend a portion of their work day traveling between courthouses, their ability to assist self-represented litigants is reduced, and the Tenth Judicial District incurs additional costs. Those costs include staff time spent traveling to different courthouses, mileage reimbursement, and increased potential liability for traffic accidents and worker compensation claims.

In a time of scarce resources and shifting demographics, the Tenth Judicial District believed it would be prudent to explore additional means to provide services to self-represented litigants. John Greacen wrote a seminal study for the Self-Represented Litigation Network on self-help centers providing self-represented litigants with resources remotely. His report identified self-help services provided in eight different sites and analyzed the benefits and drawbacks

of the various programs (Greacen, 2016).¹ As Greacen noted in his report, “one of the major learnings of the study is the need to tailor remote service programs to the jurisdiction and clientele to be served” (Greacen, 2016: 4).

¹ Those sites are Alaska Court System Family Law Self-Help Center; Butte, Lake, and Tehama counties, California SHARP Shared Services Model; Idaho Judicial Branch Court Assistance Office and Idaho Legal Aid Services; Maryland District Court Self-Help Center; Minnesota Courts Self-Help Center; Montana Court Help Program and Montana Legal Services Association; Orange County, California Self-Help Services; and Utah State Courts Self-Help Center.

Evaluating Remote Technologies for the Tenth Judicial District

The Tenth Judicial District desired to study which remote services, if any, may be most appropriate for self-represented litigants. Using Greacen’s report as a starting point, three remote technologies—video conferencing, live chat, and text messaging—were evaluated as a potential means to provide self-help center services to self-represented litigants. These three remote technologies were selected because they were all implemented by other self-help centers across the nation and because other remote technologies—telephone calls, emails, and co-browser services—have already been implemented in Minnesota.

Tailoring expansion of remote services to the Tenth Judicial District raised two questions:

1. Does a need exist for remote self-help-center services beyond telephone, email, and co-browsing services?
2. If there is a need in the Tenth Judicial District, which remote service would self-represented litigants in the Tenth Judicial District be most likely to use?

The first step in evaluating those questions was to look at poverty rates and vehicle access, as compiled by the Self-Represented Litigation Network. Using data “from the most recent 1-year and 5-year estimates from the Census Bureau’s American Community Survey from 2014,” the Self-Represented Litigation Network tracked poverty and vehicle access for each Tenth Judicial District County (Self-Represented Litigation Network, 2017). In analyzing that data, it was apparent the two most rural counties in the district, Pine and Kanabec, had the highest poverty rates and highest rates of households without vehicle access. That led to an initial belief that remote technology may be more necessary in those counties.



...three remote technologies—video conferencing, live chat, and text messaging—were evaluated as a potential means to provide self-help center services to self-represented litigants.



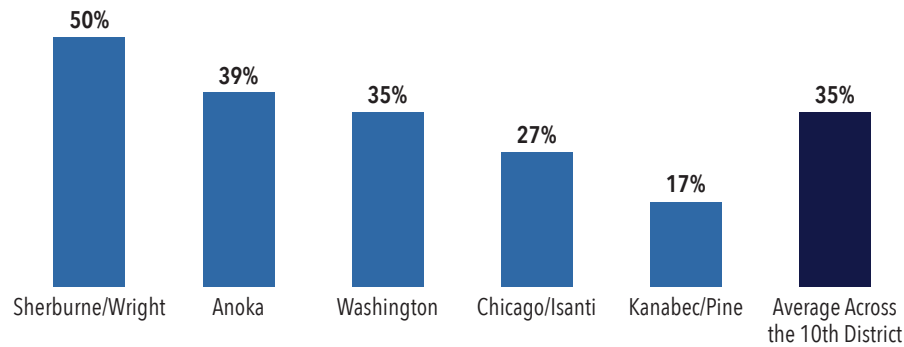
After considering those factors, a survey was developed for self-represented litigants who visited the Tenth Judicial District Self-Help Center in the fall of 2017. Self-Help Center staff distributed the survey in each of the Tenth Judicial District’s eight counties. The data were organized based on “county groupings.” The county groupings were divided by size—larger counties were a single group while smaller counties were combined based on location and size.

The survey asked 21 questions about:

- 7 video conferences
- 5 live chat
- 4 text messaging
- 3 demographics (age, county of residency and gender)
- 1 travel time to the courthouse
- 1 whether any special arrangements were made to allow the self-represented litigant to travel to the courthouse

Survey results demonstrate that 35 percent of survey respondents had to make special arrangements to visit the Tenth Judicial District Self-Help Center. Special arrangements included needing to take time off work, arranging child care, or asking a friend or family member for a ride to the courthouse. One in three individuals who come to the Tenth Judicial District Self-Help Center needed to involve an employer, a babysitter, or a friend or family member to help get them to the courthouse. If meaningful access to justice is not provided, these individuals may need to make multiple visits to the courthouse, each trip potentially impacting an employer, friend, family member, or child care.

Percentage of Survey Respondents Who Made Special Arrangements



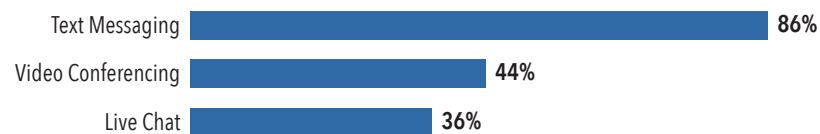
These responses and the statistics from the Self-Represented Litigation Network demonstrate that the answer to the first question—does a need exist for remote self-help center services beyond telephone and email—is, in this author’s opinion, yes.

Survey respondents were next asked for their opinion as to whether they would use text messaging, live chat, or video conferencing to contact the Tenth Judicial District Self-Help Center. The results were nearly uniform. Approximately two out of three survey respondents strongly agreed or agreed they would use text messaging, video conferencing, or live chat to contact the Tenth Judicial District Self-Help Center.

Of the three remote technology options, text messaging had the largest percentage of survey respondents who strongly agreed they would use it to contact the Tenth Judicial District Self-Help Center. Text messaging is also the most widely used remote technology among survey respondents.

Of those who use text messaging, 40 percent have used it to contact a business. The majority of survey respondents, 69 percent, send at least five text messages every day, while almost half of all survey respondents indicated they send ten or more texts per day.

Percentage of Survey Respondents Who Use Remote Technology



Number of Text Messages Sent by Percentage of Survey Respondents





When Access to Justice Is Not Meaningful

The following hypothetical situation illustrates what can happen when self-represented litigants do not have meaningful access to justice.

Marley and her two-year-old son's father had been separated for six months. After failing to work out parenting-time exchanges and money for their child on their own, Marley decided to seek help at the courthouse. She took the day off work, and as a single mother, it was not easy for her to miss a day's pay.

After paying her neighbors to watch her son, she battled rush-hour traffic to the courthouse and parked half a mile away. She made her way past court security and saw a map directing her to courtrooms, court administration, probation, and the jury room. She didn't know where to go.

After reading signs and maps and asking for help, Marley found a line of people waiting at a counter. Once at the counter, Marley began explaining her situation, when the court clerk politely explained she was at the civil-division counter and would need to speak to the family division. After Marley waited in line again, the family-division clerk asked her if she had her custody summons and petition to file and had served the father. Marley would need to come back after completing the forms, which could be found on the court's website, accessible in the law library.

The law library was unstaffed. Marley found a computer, printed several forms, and decided to ask the family-division clerk if they were the right forms. The clerk, although pleasant, could not give Marley legal advice and suggested she retain legal counsel—impossible on Marley's income.

As she left the courthouse, Marley looked at the stack of papers she printed. Their words made no sense to her.

It would take Marley four months and three more courthouse trips to complete the right forms to start the process of addressing custody, parenting time, and child support. Unfortunately, her experience with the court is not uncommon.

Without meaningful access to justice, self-represented litigants may be unable to address critical issues facing their day-to-day lives.

Conclusion

The statistics and survey results reveal that self-represented litigants in the Tenth Judicial District need additional remote services and are likely to use remote technologies to contact the Self-Help Center. Although there is strong support for all three types of remote technologies considered, text messaging is the most widely used in the district.

The Tenth Judicial District now has data to support exploring the implementation of text-messaging services for self-represented litigants. One item to consider will be the cost for a software program to allow staff to respond to text messages. The program should have the ability to develop standardized answers for appropriate situations, allowing for faster response times. If implemented, the text-messaging program could be evaluated by looking at:

- *the number of self-represented litigants who contacted the Self-Help Center via text messaging;*
- *the length of time spent working with a self-represented litigant via text message compared to working with a self-represented litigant in-person, via telephone, or by email;*
- *the number of text messages exchanged between the self-represented litigant and Self-Help Center staff;*
- *the length of time that passes between when a text message is received and when Self-Help Center staff first respond to the message; and*
- *the satisfaction level of self-represented litigants who contact the Self-Help Center via text messaging compared to those who call, email, or appear in-person.*



*...text messaging
can supplement
existing services,
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and increase access
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By analyzing data from court users in the Tenth Judicial District, we can tailor remote Self-Help Center services to the people it serves. In addition to reviewing the statistics from the Self-Represented Litigant Network and the survey results, this author found it invaluable to speak to judges, administrators, and staff across the Tenth Judicial District for their thoughts on implementing such a program. They provided additional insight that was not addressed by the survey.

Providing services via text message will not replace in-person, telephone, or email services. The messages, by design, will be short and direct the individual to other resources, such as forms and legal aid providers. However, text messaging can supplement existing services, make more efficient use of staff time, and increase access to justice for those who need it most. If Marley (*see p. 58*) had been able to send a text message, she would have saved a lot of time, frustration, and resources—not only for herself, but for those around her, as well.

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