



The Court Administrator

OFFICIAL PUBLICATION OF THE INTERNATIONAL ASSOCIATION FOR COURT ADMINISTRATION

Ninth International Conference

Foz do Iguacu (Iguaçu Falls), Paraná State, Brazil, September 2018



VOLUME 4; FALL 2018

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“THE COURT ADMINISTRATOR”

Dear readers,

Here we are with a new issue of our “The Court Administrator”. Like the previous ones, more and more good ideas and successful practices of administration of Justice. The Judiciary Power, each day, becomes stronger around the world. The famous phrase of Montesquieu, le juge est la bouche de la loi has no place in our days.



*Judge Vladimir Passos de Freitas,
IACA President*

However, if this empowerment is a reality, the other side is that it means more responsibility. The Judiciary Power must be impartial, efficient, transparent and have a good relationship with society. These are the ideas transmitted in the articles. Congratulations to the authors and many thanks to our excellent team that makes our dream comes true.

Vladimir Passos de Freitas
President

EDITOR'S MESSAGE

The benefits of attending an international conference sponsored by IACA:

Before discussing the benefits I want to pay tribute to the person who was most instrumental in developing the opportunity that many take for granted. Jeff Apperson supervised the birth of IACA and the annual international conferences. I was there at the beginning and believe me I know that it took extraordinary vision and lots of courage to get the organization off the ground and to organize successful annual conferences that have continued from the birth of IACA in Ljubljana, Slovenia, until now. So I say, kudos to Jeff.

Some of the benefits of IACA conferences include the obvious presentations/lectures by very knowledgeable and accomplished individuals regarding court administration best practices and procedures. For me, the less obvious but more important benefit of attending an international IACA conference is the opportunity to meet and actually get to know folks from other cultures. Participants are exposed to alternative judicial



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

organizational structures and many participants develop professional relationships with newfound colleagues that sometimes last well after the conference has ended. Invariably, the host city rolls out the red carpet introducing everyone to the best their city and country have to offer. This happens because the conferences are generally planned and organized by well respected local judges such as Judge Vladimir Freitas and his court administration team.

Another benefit is having an excuse to visit great cities of the world, such as Istanbul, Turkey, Ljubjana, Slovenia, Jakarta, Indonesia, Verona, Italy and, of course, Iguazu Falls, Brazil. I have always found the cities and the people who live in those cities to be extraordinary. Visiting the cities and getting to know the people and their cultures, even for a few precious days reminds us once again, that we are much more alike than we are different. At this conference please take the opportunity to get to know the city, the people and their culture. You will be much richer as a human being and much more effective as court administrator.

The Judicial Administration in the Courts of Justice of the States in Brazil and the Role of the Judge-Manager

By: Ana Carla Werneck



Ms. Werneck is doctoral student (LL. D.) at the Pontifical Catholic University of Paraná/Brazil, having joined it in 2018. She concluded the LL. M. at the Faculty of Law of the Autonomous University Center of Brazil (UniBrasil)/Brazil in 2016 and got her specialization in the Judiciary School of Paraná in 2009. She was a visiting researcher at the Fordham University School of Law from Dec. 2014 to Feb. 2015, in New York/USA. Werneck is a Law Clerk in the Court of Justice of the State of Paraná and a Professor. Her research analyzes the administration of justice in Courts as a means of achieving the constitutional principle of reasonable time. She may be reached at anacarlawerneck@hotmail.com.

1. Introduction

This article intends to analyze the role of the contemporary Brazilian magistrate, based on the demonstration that the Brazilian Judiciary faces a moment of reinvention due to the great accumulation of ongoing legal processes. The focus of our analysis will be the Courts of Justice of the States, since most ongoing legal processes are concentrated within them. Thus, the need to evoke the judicial administration through the figure of the judge-manager stands out.

2. Scenario on the Brazilian Judiciary and its relationship with the judicial administration

The Brazilian Federal Constitution (1988) played an important role in expanding the access to justice. For instance, the access of citizens to the Brazilian Judiciary was facilitated, since this Constitution covered a higher number of rights to be guaranteed, having even received the name of “Citizen Constitution”. Due to this observation, there was an increase in the number

of demands applied/submitted in order to seek the implementation of the right guaranteed.

The National Council of Justice, created by the 45th Constitutional Amendment (2004), is an body responsible for the external control of administrative and financial activities of the Federal Courts of Brazil and the Courts of the States in Brazil and for the ethical-disciplinary control of its members.¹ Every year, this entity prepares a report called “Justice in Numbers”, which discusses relevant topics of the Brazilian Judiciary.

The report released in October 2017, regarding the year 2016, demonstrates that the Brazilian Judiciary ended the year 2016 with 79,862,896 (seventy-nine million, eight hundred and sixty-two thousand, eight hundred and ninety-six) ongoing processes (active) and 63,093,494 (sixty-three million, ninety-three thousand, four hundred and ninety-four) in progress (approximately 79.2% of the total) to the Courts of

continued

¹ According to the Art. 103-B of the Constitution, the body is composed of members from the Brazilian Public Prosecution Service, the Judiciary, and private patient advocacy. The presidency of the body is occupied by Carmen Lúcia Antunes Rocha, current Chief Justice of the Supreme Federal Court (2018).

Justice of the States. In addition, 29.4 (twenty-nine million) processes were brought to justice in 2016 – an average of 14.3 (fourteen) cases per 100 (one hundred) inhabitants.

The great amount of ongoing legal processes is noticeable and is of great concern to scholars and researchers, as the quantity is reinforced by the current structure. This situation led the report to conclude that *“even if the Brazilian Judiciary were paralyzed with no entries of new demands and the productivity of magistrates and employees were maintained, it would take approximately two years and eight months of work to clear the inventory”*.²

Notably, this framework impacts on the time of ongoing legal process. Thus, the Brazilian legal community should remain intensively concerned with the topic since it is a fundamental right – constitutional principle of reasonable time – of the 1988 Brazilian Federal Constitution, Art. 5, item LXXVIII.

It is true that this scenario cannot only be attributed to the facilitation of access to justice, since other factors, such as the precariousness of the physical structure, the insufficient number of magistrates and employees, and the negligence of the Executive and Legislative Powers, have made a significant contribution. However, in addition to these circumstances (even though they are interconnected, since they are all members of the judicial administration), the inefficient management of the Brazilian Judiciary also remains evident, especially in the Courts of Justice of the States, insofar as the judicial administration currently used (if we consider the existence of a model) did not monitor the number of legal processes, as well as the development of society.

In the context of computerization and globalization, the so-called “electronic process of law” arose through the Law No. 11419/2006, changing the legal process from physical to electronic media. The impact of this factor needs also to be emphasized in the instrumental sphere of the Brazilian Judiciary, as this action intends to achieve a broader accessibility and sharing of

information in a short period of time. Therefore, we can state that the Brazilian Judiciary currently experiences an era of reinvention. The judicial administration remains within this scope as we understand that it is indeed possible to modify the number of legal processes of the Brazilian Judiciary through it, insofar as it is identified as a deficiency. Thus, the reasonable time of legal processes would be achieved.

In Brazil, the judicial administration started to be studied in the year 2000, with the Congress promotion on the issue by the National Council of Justice. Over the years, the topic has had a significant evolution in its development and applicability. However, it seems to be incipient given the high number of processes awaiting judicial assistance, which deserve more profound understanding and study once the fundamental role of the Brazilian Judiciary in individuals’ lives is considered.

The judicial administration held by the Brazilian Courts of Justice, which involves administrative and budgetary issues, is crucial in terms of macro management. Nevertheless, according to the constitutional principle of reasonable time of judicial assistance, the administration held by the magistrate within his/her jurisdictional unit, by means of strategic planning, operational and administrative organization, as well as rationalization of litigation, is indispensable for the implementation of individuals’ rights. This role has been currently called “judge-manager”.³

The judge-manager can be understood as a judge who must be trained in the different types of management (human resource management, business process management, competency management, and strategic management), developing a management and leadership aptitude. For this purpose, he/she should also have a constant concern with the improvement of daily routines and work processes both from the “Judicial Secretariat” (a place with government employees, who are responsible to issue legal notice and services of process, among other activities) and

continued

2 BRAZIL. National Council of Justice. Justice in Numbers 2017: base year 2016. Brasília: CNJ, 2016. Available at: <<http://www.cnj.jus.br/files/conteudo/arquivo/2017/09/904f097f215cf19a2838166729516b79.pdf>>. Access: Aug. 10, 2018. p. 67. (translated from Portuguese).

3 In Brazil, there is no figure of judicial administrator; consequently, such activities are carried out by the magistrate.

from his/her office. All these abilities are necessary in order to pursue excellence on the amidst-activities and therefore on the final-activity of the Brazilian Judiciary, i.e., the judicial assistance.

Initially, the work performed by the magistrate was only to be an “enforcer” of the law, i.e., to strictly exercise the activities of prosecution and trial. The magistrate did not need to worry about the management of activities, optimization of routines, and implementation of strategic planning. In other words, the use of the management science was unthinkable for this role. However, the figure of the magistrate as a manager of the judicial assistance has been gaining more relevance due to the increasing number of processes submitted to the Brazilian Judiciary every year, and other reasons.

Thus, the magistrate has been related to the construction of a new action model of the modern judge in order to do justice to the era of reinvention of the Brazilian Judiciary. Based on the implementation of the judicial administration techniques and instruments, the Brazilian magistrate will be able to reduce, or even eradicate, waste of time, as well as rework of certain activities, which will especially contribute to the reduction of time of ongoing processes. For this purpose, the Brazilian magistrate can use several administrative institutes in order to implement the judicial administration and therefore better the time of legal process. For instance, the Brazilian Constitution enables the delegation of some actions (not decision-making actions) from the judge to the “Judicial Secretariat” – Art. 93, item XIV. In this sense, the judge has more time to focus on complex actions.

Considering the aspects outlined on the profile of the judge-manager, we can ensure that this role surpasses its final-activity (prosecution and trial), since the amidst-activity (performed by means of the

implementation of the judicial administration in the jurisdictional unit) is of the utmost importance in order to obtain a jurisdictional response in accordance with the fundamental constitutional rights, mainly regarding the reasonable time.

Even though some progress has already been achieved, the major challenge with regards to this issue concerns the fact that a significant portion of the Brazilian magistrates, within the scope of the Courts of Justice of the States, do not understand the need to implement the judicial administration as an effective instrument, but many times as another assignment that will take their time, thus ceasing their prosecutions.

3. Conclusion

The Brazilian Judiciary, especially in the area of the Courts of Justice of the States, faces a moment of reinvention due to the high number of ongoing legal processes that exceeds the previous number every year. The judicial administration is still an incipient issue in Brazil, even though we have already achieved some progress, especially with regards to the Federal Courts of Brazil. However, regarding the Courts of Justice of the States, where most of the ongoing legal processes are concentrated, the confirmation of its importance is still deficient. Thus, in Brazil, we currently face the need to have a paradigm shift so that we can understand the importance of the judicial administration. This shift will occur as the profile of the magistrate changes from traditional judge to manager, for instance.

4. References

BRAZIL. National Council of Justice. Justice in Numbers 2017: base year 2016. Brasília: CNJ, 2016. Available at: <<http://www.cnj.jus.br/files/conteudoarquivo/2017/09/904f097f215cf19a2838166729516b79.pdf>>. Access: Aug. 10, 2018.

Empowering the Next Generation

By: Kersti Fjørstad



Kersti Fjørstad is the Deputy Director General Norwegian Courts Administration Department of Service Development.

In her article, Ms. Fjørstad describes some of the initiatives of the Norwegian Courts Administration (NCA) to strengthen young people's understanding of and interest in the judicial system based on her own experience through the 16 years since the NCA was established in 2002.

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Young people represent our future and therefore constitute a very important group in society. Adolescence is characterised by trying to find out who you are and what ideals to live by. Due process of law and safeguarding the values of a state under the rule of law will not necessarily be a part of this process.

How are we to commit and motivate future generations to promote a state under the rule of law, uphold and abide by its principles and ensure due process of law? How may we ensure young people will contribute to the fundamental premise of a state under the rule of law? How may court administration work contribute to a generational approach addressing young people's belief in the importance of ensuring due process of law now and in the future?

In a constitutional state, it will be important to use active participation, for example, to improve young people's understanding of the judicial system by increasing their knowledge and strengthening their belief in the legitimacy of the judicial system.

Description of situation

Record-high confidence in the courts of Norway

Norwegians' confidence in Norwegian courts is higher than ever. The annual confidence survey for the

courts shows that nine out of ten have a very or quite high confidence in the courts.

Scandinavia and Great Britain have a tradition of use of lay judges who are not legally qualified that extends all the way back to the Middle Ages. Lay judges play an important role in the Norwegian legal system and presumably constitutes one of the reasons for the population's high confidence in the judicial system.

Lay judges have the same responsibility and authority as the court's professional judges, but a professional judge will always preside over the court cases. No requirements have been stipulated regarding the professional background of the lay judges as defendants shall be "judged by their peers". Lay judges are used mainly in criminal cases in district courts and courts of appeal as well as in some civil cases. Lay judges are not used in the Supreme Court.

Lay judges are selected by the municipalities for a period of four years. Each district court and court of appeal has two panels of potential lay judges (women in one and men in the other). The Courts of Justice Act contains some requirements regarding who may serve as a lay judge; including being minimum 21 and maximum 69 years of age, entitled to vote and eligible for the municipal council.

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Very high ratio of lay judges in Norwegian courts

There is a total of 50.000 people registered in the lay judge panels; about 1 per cent of the population of Norway. A professional judge will always be the presiding judge, but the lay judges will always constitute the majority. This entails that the lay judges far outnumber the professional judges in the Norwegian judicial system. It may be assumed that 20-30,000 lay judges serve in Norwegian courts annually. Because of this large number, most of us probably know someone who either serves or has served as a lay judge and can confirm that that everything is fair and proper in the Norwegian courts. This is assumed to be beneficial for maintaining people's confidence in the judicial system.

Survey 2018 – 21-24 age bracket strongly underrepresented

In the spring of 2018, there was a survey among Norwegian lay judges where just over 30 per cent replied. The age distribution among lay judges is very different from the rest of the population. All age groups above 40 are overrepresented in the panels, and this overrepresentation increases with age. There is a corresponding underrepresentation with declining age. The strongest underrepresentation is in the 21-24 age group; which constitutes about 8 per cent of the adult population (21-70 years) but is only represented by a modest 0.4 per cent in the lay judge panels.

This age bias constitutes a challenge not only in terms of the principle of being judged by one's peers, but potentially also in terms of the legitimacy of a state under the rule of law among adolescents and young adults.

Knowledge of the judicial system

A quick search for systematic studies of young people's knowledge of the judicial system in Norway yields nothing. Talks with adolescents and teachers and a review of the curricula in Norwegian schools leave the impression that young people probably have limited knowledge regarding the judicial system.

Through 16 years of service development work in the Norwegian court system, I have met many young people, such as school kids involved in employment training and visiting, as well as apprentices. They

generally indicate that they know little about the judicial system. That said, they become very interested in and highly committed to finding out more when given the opportunity, and they learn quickly. This indicates that there is a considerable potential for increasing their knowledge.

The teachers I have met have all been very interested in the Norwegian judicial system. All of them have stated that there is little focus on the judicial system in the school.

This almost uniform description of a school with limited focus on the judicial system urged a closer look at the emphasis on the judicial system in the national curricula.

The curriculum for the mandatory primary and lower secondary school in Norway (6-15 years) addresses the judicial system as part of the subject Social Studies. Only one of the 38 learning objectives for Social Studies upon graduation from lower secondary school is linked to the judicial system. In upper secondary school (specialisation in general studies), only one of 35 learning objectives in Social Studies is linked to a society under the rule of law.

This entails that most students do not learn much about a state under the rule of law in primary and secondary schools. A few students select law as a subject in the education programme for specialisation in general studies. However, this does not change the impression that the judicial system is assigned limited priority in the national curricula.

Measures implemented

Trust and confidence in the courts among young people requires knowing how the courts function. One of the informational measures has been to welcome school classes and provide a thorough introduction to key elements of the judicial system.

Another measure has been websites for students and teachers with a lot of specific information and many different tasks, including information for role-playing court cases in the classroom. The NCA has also provided funds for organising 'Open Day' events at courts.

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The NCA has involved young people in the development of information material. Students from upper secondary school and professionals within the court and justice system have also helped the NCA develop a special witness app for young people called “Witness in court”. Information films and animations have also been prepared.

Another important measure is serving as a mentor vis-à-vis students in the area of study for young entrepreneurship. This helps ensure that the participating students learn about the judicial system and share their knowledge with other students.

Future measures

The 2018 Lay Judge Survey provides a good basis for work on the composition of lay judge panels. The further work will naturally focus on informing and increasing the awareness among municipalities of the importance of young people on the lay judge panels.

It is also very important to strengthen the information work and make information available via relevant digital platforms used by young people. The NCA may also convey knowledge via channels other than the school system, such as Facebook, Twitter, the Internet, etc.

As the judicial system, society and the understanding and attitudes of young people are undergoing

continuous change, the conveying of knowledge must be a continuously evolving process with further development of both content and form.

It is important that we do not merely think of young people as objects for our knowledge campaigns, but also grant them real opportunities to participate in the design of these campaigns. This will ensure not only better and more relevant knowledge management, but also strengthen young people’s involvement and position in the judicial system.

As part of the work on “empowering the next generation” in the judicial system, our vision is to organise an international youth conference together with adolescents and for adolescents.

The confidence in Norwegian courts is higher than ever. However, this confidence must constantly be reaffirmed vis-à-vis young people, not only in Norway and Scandinavia, but across the world. The future legitimacy of a society under the rule of law will be established through future generations. Measures to “empower the next generation” are therefore essential to ensure continued high confidence in a state under the rule of law. Are we not all in favour of that?

Drawing the Judicial Map of Ukraine: A Managerial, Economic, and Technical Approach

By: Ingo Keilitz



Ingo Keilitz, Ph.D., heads CourtMetrics, a consultancy in Williamsburg, Virginia, United States, focusing on justice system performance measurement and management worldwide. He is Research Associate, Institute for the Theory and Practice of International Relations, and Visiting Scholar of Public Policy, College of William & Mary, Williamsburg, Virginia, United States; and a Fulbright Scholar. He is a former Senior Justice Reform Specialist at the World Bank and a former Vice President of the National Center for State Courts.

This article is based on a presentation of the results of a project of the United States Agency for International Development's (USAID) New Justice Program in Ukraine implemented by Chemonics International, Inc. at the 2018 Conference of the International Association for Court Administration (IACA) held in Iguazu Falls, Brazil, September 16 – 19, 2018. Dr. Keilitz thanks his colleague, Robert R. Rose, Ph.D., Director of the Center for Geospatial Analysis at the College of William & Mary in Williamsburg, Virginia, USA, for his significant technical contribution to the project and Sergii Suchenko, Judicial Administration Specialist, New Justice Program in Ukraine, for his support.

Please send comments and queries to ikeilitz@courtmetrics.org.

Introduction

There is today great pressure on judicial leaders throughout the world to rationalize resource allocation and to implement reforms that promise greater efficiency, and reduced costs. In 2017 – 2018, as part of ongoing judicial reform, and alongside local administrative and territorial reform, Ukraine changed the existing map of its 579 first instance courts in the country's 25 oblasts (provinces) to ensure more rational, efficient, and more effective allocation of judicial resources. Long-standing inefficiencies needed attention. For example, almost half of the courts had no more than three judges, rendering them dysfunctional during routine absences of judges from the bench for vacation and medical leave, causing predictable case backlogs and delays in case processing.

The consolidation reduced Ukraine's 587 first instance courts more than half to 257 circuit courts. It was aimed at improving the supply chain management of the court system using a set of guidelines developed by the European Commission for the Efficiency of Justice (CEPEJ) for creating judicial maps that help judiciaries synchronize supply with demand for judicial services.¹

Drawing the Judicial Map

Historically, drawing a judicial map – determining where to locate courts and how many judges would sit in them – was relatively simple for government policy-makers and officials. Because of historic affiliations of courts with local and central governments, a court simply would be placed in every administrative district. The resulting judicial maps, with most of their boundaries

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¹ European Commission for the Efficiency of Justice (CEPEJ) (2013). Revised Guidelines on the Creation of Judicial Maps to Support Access to Justice Within a Quality Justice System. December 6, 2013, <https://rm.coe.int/16807482cb> [accessed August 16, 2018]. The CEPEJ guidelines stress the importance of quantitative data on the supply and demand of justice services across the geography of a country or region. They stress that local context and implementation of reform of judicial maps are important by citing the different experiences of the 47-member states of the Council of Europe.

created by fiat or accident (or both), were codified in law or simply inherited from past regimes, as is the case in Ukraine. Over time, with dramatic population shifts and other societal changes, many countries continued in modern times to rely on obsolete, irrational, and suboptimal judicial maps drawn many decades ago, a time when communities were relatively isolated, and courts and tribunals needed to be self-sufficient and independent.

Understanding the size, location, and spatial distribution of existing judicial resources and networks is critical to evaluating and balancing the supply and demand of judicial services delivered by courts. How many courts and how many judges does a country or a sub-national region need today and where should they be located to administer justice efficiently and effectively? How far away can courts be from the citizenry before the distances constitutes a barrier to access to justice? How should “distance” be redefined in today’s world of remote access to public institutions including courts with the possibility of the new technology of online dispute resolution (ODR)?

In our scheme in Ukraine, the terms judicial mapping and judicial map refer to the processes, techniques, and a resulting data visualization of the distribution of judicial resources (courts and judges) across the territory of a country or region based on factors such as the supply and demand for judicial services, population density, geographical location, and other factors such as communication and transportation infrastructure and socioeconomics. Data visualization enabled by modern geographic information system (GIS) technology facilitates easy comprehension of information at a glance in a few minutes or less, information that otherwise may be hidden. The maxim “a picture is worth 1,000 words” suggests the value and benefit of judicial maps.

Drawing an “As Is” Baseline and a “To Be” New Judicial Map of Ukraine

In November 2017, the United States Agency for International Development’s (USAID) New Justice Program in Ukraine engaged my colleague, Dr. Robert Rose, Director of the Center for Geospatial Analysis at the College of William & Mary in Williamsburg, Virginia, USA, and me to develop a baseline (“as is”)

judicial map of the first instance courts of Ukraine. Completed in January 2018, it presents the results of the judicial mapping of the 579 first instance courts across the 25 provinces (oblasts) of Ukraine in late 2017. Each of the 25 oblasts is represented by two judicial maps – one showing the number and size of the courts, i.e., the supply of judicial services, and the other the caseload of the courts, i.e., the demand for judicial services -- and a spreadsheet of the underlying data used to construct the maps. The judicial maps are based on four factors considered key to effective and efficient supply chain management: (1) the number and geographic location of the courts, including distances from other courts; (2) the supply of judicial services in terms the number of judges working in a court; (3) the demand for judicial services in terms of cases heard; and (3) the population density of the territory of the jurisdiction of the court.

In 2017, the State Judicial Administration of Ukraine (SJA), working in cooperation with representatives of the High Council of Justice and the Courts of Appeal, created a proposed framework of the consolidation of the 579 local courts into new 257 circuit courts, a plan enacted into law by a decree signed by Ukrainian President Petro Poroshenko that took effect January 1, 2018. Several months later, we started the second phase of our work, a set of planned (or “to be”) judicial maps of the oblasts of Ukraine displaying the new distribution of the 257 circuit across the country mandated by the presidential decree to consolidate the 579 first instance courts.

The Volyn Oblast Judicial Maps: An Illustrative Example

All told we created 100 judicial maps of the 25 oblasts of Ukraine (two “as is” baseline maps and two “to be” consolidation maps for each of the oblasts), far too many to display here. Figure 1 and Figure 2, showing the baseline (“as is”) and planned (“to be”) maps, respectively, of Volyn, an oblast in northwestern Ukraine on the borders of Belarus and Poland, illustrates the judicial mapping for all the 25 oblasts of Ukraine. Figure 1 compares the courts and number of judges (supply) to the population density of jurisdictions of the 17 first instance courts at the end of 2017. Figure

continued

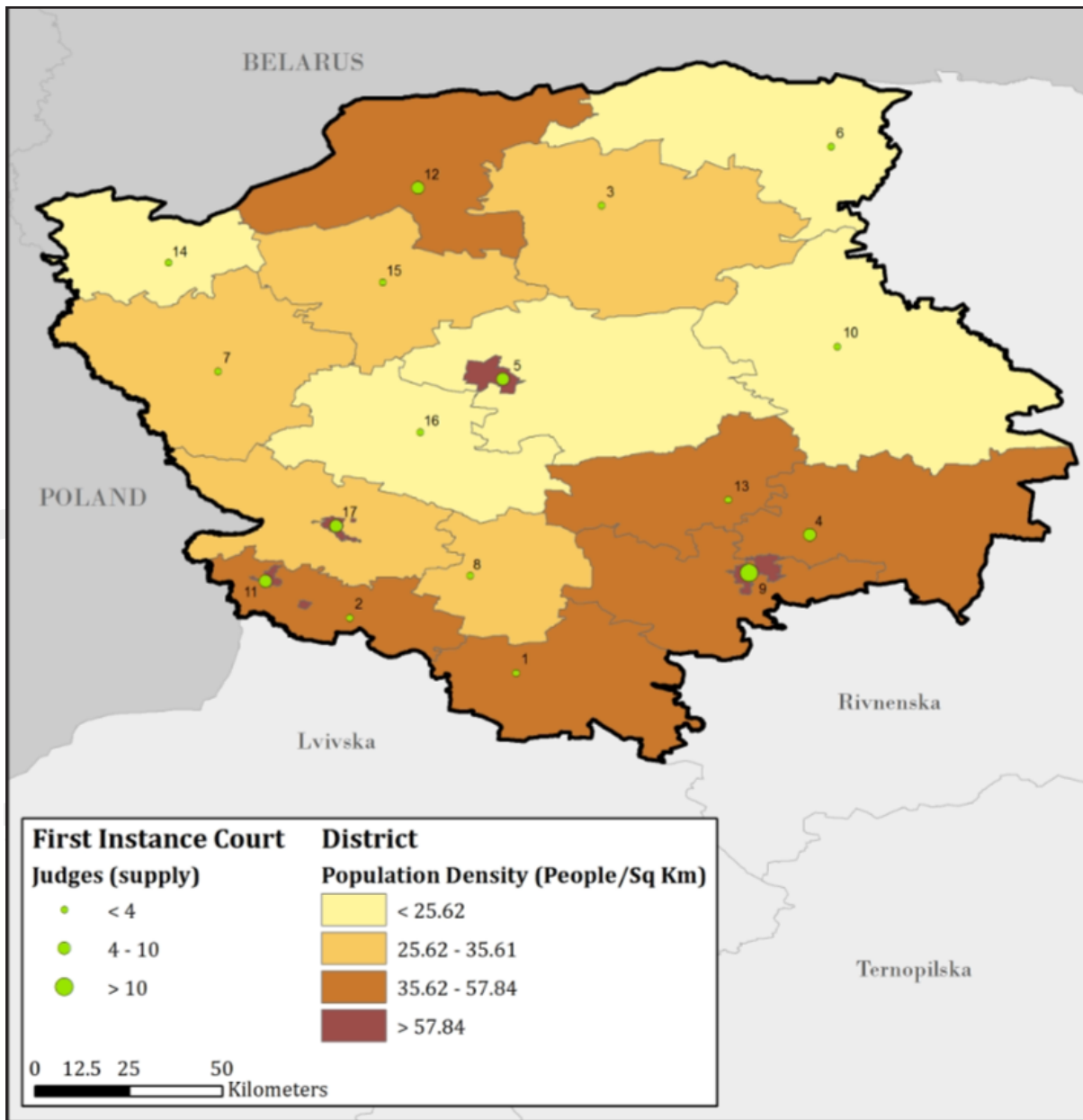


Figure 1. The Number of Judges in Each of the 17 First Instance Courts in the Volyn Oblast, Ukraine, in 2017

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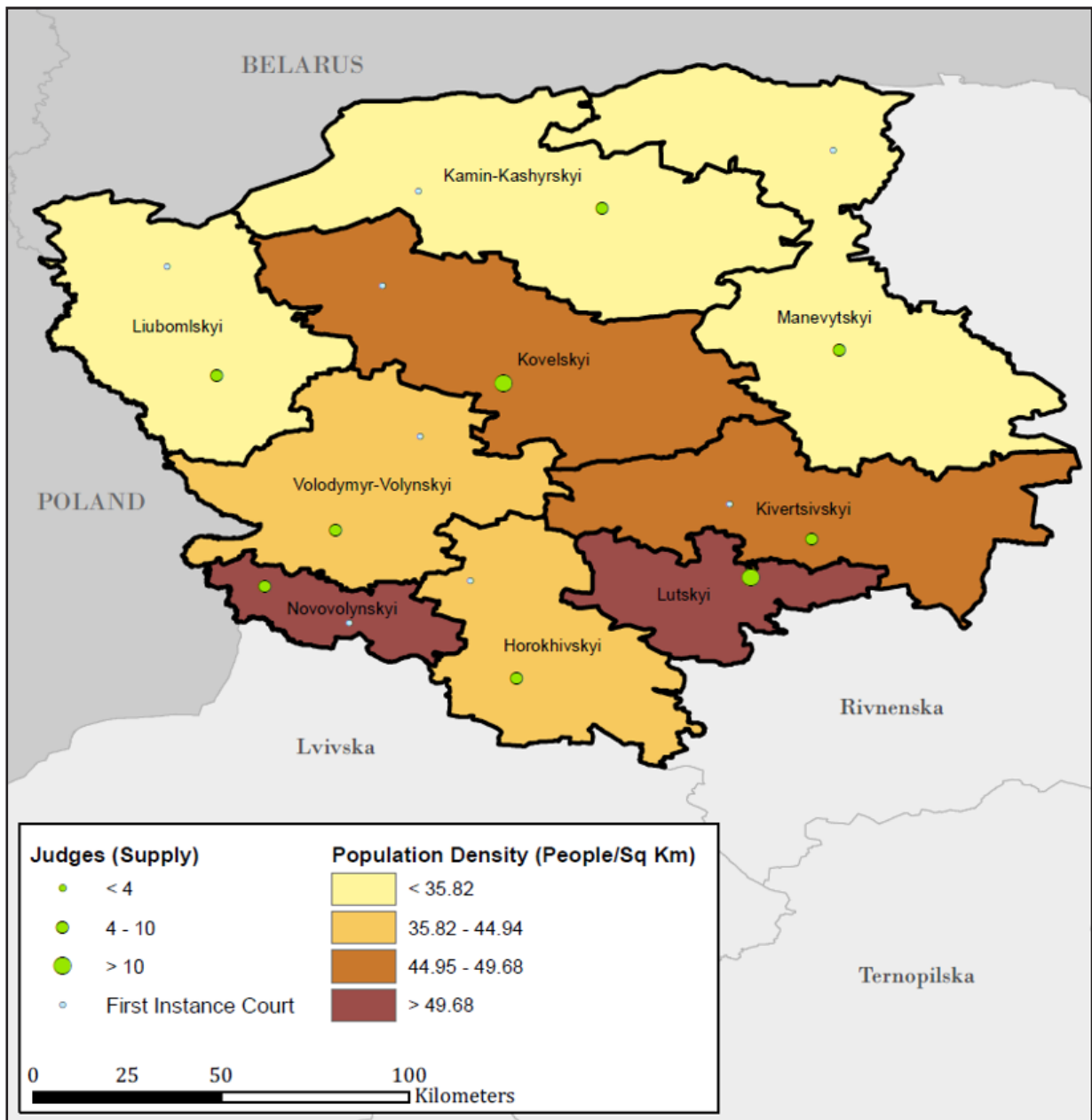


Figure 2. The Number of Judges in the 12 Circuit Courts in the Volyn Oblast, Ukraine, in 2018

2 shows the same comparison for the 12 consolidated circuit courts.

Figure 1 is the “as is” map at the end of 2017 of the 17 local first instance courts in the raions (districts), cities, and towns of Volyn (shown by small numbers on the map) and the number of judges (the supply side of the supply/demand equation), shown by green dots of different sizes, and their distribution across the territory of Volyn before consolidation. Figure 2 is the “to be” map showing the consolidation of the 17 local courts into nine new circuit courts. In both maps, population densities (people per square kilometer) are depicted by four different colorings of the territories representing different values of population densities (with yellow representing the most sparsely populated areas and dark brown the most densely populated). The consolidation resulted in no Volyn circuit courts with fewer than five judges.

Managerial, Economic, and Technological Considerations in Judicial Mapping

In our two reports of Ukraine’s judicial mapping² we describe, in some detail, the recommended phases and methodology of judicial mapping *including managerial, economic, and technical* methods, techniques, and strategies. In brief, judicial mapping first considers the critical *managerial*³ strategies required for change management – mainly controlling the narrative of reform and avoiding unproductive and divisive ideological debates. Grasping at political ideology is not the approach to rationalizing judicial resource management. By stripping ideology, doctrine, politics, and emotions from pressing problems, supply-chain-management thinking can illuminate the most practical ways to tackle them. Unlike debates about doctrine and ideology that are nuanced, open to interpretation – e.g., the right of access to justice, the independence of the judiciary, and the separation of powers – supply-chain-management discussions are scientific, based on publicly

observable data for all to see, and are won by the best data, not the best ideology.

Our approach then considers key *economic* factors of supply and demand for judicial services, including the geographical location, number of courts, and cases heard. In economic theory, supply chain management is the design, planning, allocation, and monitoring of the movement of resources from point of origin (supplier) to the point of consumption (end user). In court administration, the supply chain consists of the supplier or provider (the court and its judicial officers and staff), the “manufacturer” or the creator of the judicial service (e.g., the clerk, registry staff, or judge), the “distributor” (e.g., the e-filing service), and the “customer” (the court user). Supply chain management aims to balance supply and demand and to maximize efficiency, effectiveness, fairness, and other values such as public trust and confidence in the courts. While the level of demand of justice services most likely is determinative – i.e., a court with few cases is a good candidate for consolidation with another court -- the population served by each court also is an important additional factor to be considered when reforming the judicial map.

Finally, our judicial mapping approach applies the technical application of modern geospatial data and analysis, data visualization, and geographic information systems (GIS).

Implementing the Consolidation of the Courts

Even a great idea is worthless if it fails in its implementation. There is no doubt that Ukraine’s “as is” and “to be” judicial mapping is a significant a step in the rationalization of the allocation of judicial resource. However, it is only the beginning of reform. The design of the consolidation and the presidential decree that mandated it are today the *de jure* law (“law on the books”); however, it remains to be seen

continued

2 Robert R. Rose & Ingo Keilitz (2018). Judicial Mapping of the First Instance Courts of Ukraine: Rationalizing the Allocation of Judicial Resources in the Oblasts and Kyiv City. Final Report. Nove Pravosuddya Justice Sector Reform Program in Ukraine, United States Agency for International Development (USAID), January 31, 2018; and Robert R. Rose & Ingo Keilitz (2018). The Consolidation of the First Instance Courts of Ukraine in 2018. Final Report. Nove Pravosuddya Justice Sector Reform Program in Ukraine, United States Agency for International Development (USAID), July 15, 2018.

3 Our geospatial analysis used Esri’s ArcMap software, the main component of Esri’s ArcGIS suite of GIS tools. See <http://desktop.arcgis.com/en/arcmap/> (accessed August 16, 2018).

what the *de facto* law (“law in practice”) will look like when consolidation is implemented. Decisions about downsizing or closure of courts are likely to meet fierce resistance from justice officials and politicians who are invested in the status quo. Arguments opposed to any change in the organization and distribution of courts, no matter how dysfunctional, too often remain steeped in doctrine and ideology.

Even when resistance is broken down, sticky practical issues of implementation remain. To name just a few, for example, a significant number of the consolidated circuits courts include as many as four former first instance courts that today remain as different court locations within the circuit. One court location among these former first instance courts has been designated the “main” location in a circuit. This designation suggests an organizational scheme that remains to be fully explained (e.g., the designation and compensation of a presiding judge of the circuit court; and the voluntary or involuntary transfer of judges and staff from one location to another). Further, the number of judges in many circuits remains low. The aim of remedying dysfunctions of courts with only three or fewer judges by their consolidation into circuits with at least seven or eight judges has not been met in a significant number of the consolidated circuits. All but two oblasts (Luhansk

and Lviv) have circuits with no fewer than seven judges. Finally, another related problem that remains a work in progress for implementation are imbalances in supply and demand, with some circuit courts with too little work to do and others with too much.

Looking to the Future

About half the world uses the internet today. As more and more people move online, and

remote access to courts via internet-connected personal computers, tablets, and smartphones becomes standards practice in judicial administration, the need for physical presence of parties in brick-and-mortar courthouses is likely to decrease. How should internet penetration across the territory of Ukraine and the jurisdictions of its circuit courts affect supply chain management of judicial services? How much will a decreasing demand for physical presence of parties and other participants in legal proceedings, allowing electronic access to court records and, ultimately, online dispute resolution (ODR, reduce the needed supply of brick-and-mortar resources (i.e., courthouses) and the physical availability of judges? These are intriguing questions my colleagues and I at the College of William & Mary will explore with our Ukraine counterparts starting in September 2018.

One Leadership Size Does NOT Fit All!

By: Norman Meyer



After 38 years as a trial court administrator in the state and federal courts in the U.S., Norman continues to write, teach, and otherwise participate in judicial administration activities world-wide. In particular, he is active in the International Association for Court Administration (IACA) as a North American Region board member, and in the National Association for Court Management (NACM) as a Past President. This article was originally posted to the Vantage Point blog on March 14, 2018. Norm may be reached at normanmeyer@outlook.com*

In graduate school I was not taught a lot about how to supervise and lead staff. That left it initially to on the job training and help from a few mentors to help me find my way as a court administrator. Then, I attended a NACM conference and saw a presentation on *Situational Leadership*¹ that became a big influence on me and my work. Before this session I had pretty much subscribed to the point of view in many books that there was “one true way” to lead, and if I just could do this, I would be great. I was basically a “fad surfer!”

What made Situational Leadership so profound to me was the premise that when supervising staff, one size does not fit all – that the leader/supervisor should adapt to the needs and style of the follower, not the other way around. When one thinks about it, this makes a lot of sense, since people are individuals, all with varying degrees of knowledge, skills, and abilities to perform their work. A supervisor who doesn’t recognize and adapt to this ends up treating everyone the same, with widely varying success.

The basic principles of Situational Leadership are (the graphic at the bottom of this post does a good job of summarizing):

1. Staff members have four levels of maturity, or readiness, to do the job (tasks):
 2. Unable and insecure (new staff member)
 3. Unable but confident (novice with enthusiasm)
 4. Capable but insecure about taking on responsibility (fully trained)
 5. Very capable and confident; self-directed (role model for others)
6. Leaders have four levels of styles in response:
 1. Directing (one way, top-down; guiding)
 2. Coaching (two way but still directive; persuading and explaining)
 3. Supporting (two way, shared; encouraging and problem solving)
 4. Delegating (monitoring and observing)

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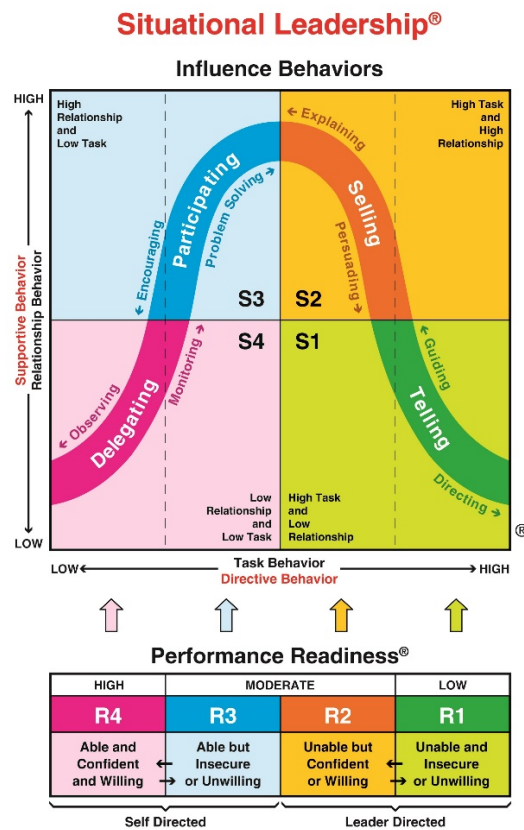
¹ Situational Leadership was developed by Hersey and Blanchard (along with Performance Readiness), and is trademarked by Leadership Studies, Inc. https://en.wikipedia.org/wiki/Situational_leadership_theory

No one leadership style is effective all the time; one needs to be flexible to fit the style to the situation – including being task-relevant. The right style will depend on the person or group being led. The goal is to work with staff to enable them to develop their skills and confidence so that they are self-motivated and not dependent on others (including the leader/supervisor) for direction and guidance. In essence, the leader diagnoses, adapts, communicates, and advances in tandem with staff members. Isn't that what we all want, skilled and confident staff that need very little oversight?

As with any model, in reality things are much more fluid and one must apply these principles with care. One thing I have learned is that just because a staff member may have developed to the high level of being very self-directed, circumstances may change and their "readiness" may drop, necessitating the supervisor's change of style in response. For example, a new computer program or system is installed, fundamentally revising the work processes – now the skill level of the staff member is much lower in that area. Or, what if there is a reorganization and the staff member is moved to a different group of employees (and even supervisor)? There will be an adjustment period for everyone, again necessitating an adjustment of communication, etc.

Over the course of my career I tried to implement the Situational Leadership model, and I think it made me a much better court administrator. If you haven't been exposed to this model, I encourage you to take a closer look.

*NOTE: this article was originally posted to the Court Leader Vantage Point blog at <https://courtleader.net/2018/03/14/one-leadership-style-does-not-fit-all/>.



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The Role of Justice Sector Reform in Commercial Law Development

By: Adam Al-Sarraf and Arezo Yazd

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A transparent, efficient and predictable court system is critical to a healthy economy and to attracting investment. The judicial sector has a direct impact on the level of legal risk in an economy and courts can be a major deterrent to investment if there is a perception that contractual and property rights will not be enforced. Seeing the importance of this sector, countries around the world have requested the Commercial Law Development Program's (CLDP) technical assistance to improve the quality of judicial processes, particularly focusing on the elements affecting transparency and efficiency; case management, alternative dispute resolution, court specialization and court automation.

Key words: Justice sector, court administration, contract enforcement, international development, Iraq, Tunisia, Saudi Arabia, Bahrain, Kuwait, Azerbaijan, Ukraine, Georgia, Bosnia and Herzegovina

In their article, the authors provide an overview of CLDP's technical assistance programs to support judiciaries' reform efforts to become more efficient, transparent and predictable. *

1. Introduction:

The Commercial Law Development Program (CLDP) was established in 1992 as a division of the Office of the General Counsel of the U.S. Department of Commerce. CLDP is uniquely tasked with providing technical assistance to the governments and private sectors of transitional countries to improve the legal environment for doing business, thereby fostering greater political stability and economic opportunity for local entrepreneurs and U.S. companies. A major component of CLDP's technical assistance programming uses CLDP attorneys and subject-

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matter experts, including U.S. federal and state judges, to provide legal capacity building for judges and legal professionals in developing countries. Since its inception, CLDP has provided services in more than fifty countries in the Middle East, Central and Eastern Europe, the former Soviet Union, Northern and Sub-Saharan Africa, and South-East Asia. A major pillar of CLDP's technical assistance focuses on improving court administration and providing judicial capacity building in development countries and emerging markets as way to achieve fairness, transparency, consistency, and efficiency in the legal/judicial system, thereby bolstering foreign direct investment and stimulating economic growth.

2. Iraq's Specialized Commercial Courts

In 2009, CLDP was asked by the Iraqi Higher Judicial Council to assist its efforts to build the institutional capacities of its courts and judges to handle complex international disputes after decades of isolation. Following a three-week visit to the US that involved meetings with the Commercial Division of the New York State Supreme Court, private sector attorneys and US Federal Judges, the HJC decided to create its first specialized commercial court in Baghdad.¹ The court's jurisdiction was limited to cases involving foreign litigants and commercial controversies as a way to reassure foreign companies and investors that Iraq's judiciary would adjudicate their disputes in an efficient and impartial manner.² CLDP was the primary technical assistance provider tasked with training Iraqi judges on the procedural and substantive topics most relevant to disputes of an international nature, including the enforcement of international arbitration awards and

agreements. In 2012, the Baghdad Commercial Court, rendered a landmark decision enforcing an international arbitration agreement, despite Iraq's lack of membership in the New York Convention.³ As a result, Iraq has received an additional point on its World Bank Doing Business Report (DBR) contract enforcement indicator for consistently enforcing international arbitration agreements.⁴ Between 2009 and 2014, CLDP conducted 15 workshops in Baghdad and in the region, which were led primarily by US Federal Judges. During this same period, the HJC noted a significant reduction in the duration of court cases that were handled by its new commercial courts, which included two additional courts in Najaf and Basrah that were created in 2013.⁵ However, these improvements were not reflected in Iraq's DBR score for contract enforcement as the courts' jurisdiction is limited to cases involving foreign litigants and the DBR only measures contract enforcement procedures for cases between domestic parties.

3. MENA Contract Enforcement Technical Assistance

In 2016, CLDP launched a multi-phase technical assistance program to assist Saudi Arabia, Kuwait, Tunisia, Morocco and Bahrain with improving their contract enforcement mechanisms as a way to facilitate commerce and contribute to economic growth. In the 2017 DBR, which is based on data collected in 2016, the MENA region was collectively the worst region in terms of the quality of judicial processes with a score of 5.8 out of 20 possible points.⁶ Building on the success of the Iraq engagement, CLDP's approach has been to focus on specialization of courts with a particular focus

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1 Al-Sarraf, Adam, Specialized Commercial Courts in Iraq (2016). Lexis Nexis-2016 Fourth Quarter #04. Available at SSRN: <https://ssrn.com/abstract=3191126>

2 Ibid

3 Calamita, N. Jansen and Al-Sarraf, Adam, International Commercial Arbitration in Iraq: Commercial Law Reform in the Face of Violence (2015). Journal of International Arbitration 32, No. 1 (2015): 37-64. Available at SSRN: <https://ssrn.com/abstract=2598355>

4 In 2016, the World Bank's Doing Business Report created a new methodology for assessing the quality of judicial processes <http://www.doingbusiness.org/data/exploreeconomies/iraq#enforcing-contracts>

5 Ibid. Statistics updated as of 2017 in this article.

6 <http://www.doingbusiness.org/reports/~media/WBG/DoingBusiness/Documents/Profiles/Regional/DB2017/MENA.pdf> at page 199 The Quality of Judicial Processes score focuses primarily on the court structure, effectiveness of procedural regulations and case management, court automation and alternative dispute resolution. In the 2018 report, Morocco had the highest quality score at 8.5, while Saudi Arabia received an 8.0, Tunis a 7.0, Kuwait a 6.5 and Bahrain a 4.0.

on alternative dispute resolution, court automation, publication of case decisions and case management as a way to improve the judicial quality indexes of these countries' judicial sectors. In 2016, Bahrain launched its first specialized commercial courts and in 2017, Saudi Arabia launched its own commercial courts.⁷ Both countries have utilized CLDP programs to train judges for these new courts.

CLDP's approach has also emphasized judicial exchanges, particularly involving US and UAE judges,⁸ and the inclusion of the private sector to provide feedback on the justice sector's performance and develop solutions that are customized for each country's unique context. The two most consistent obstacles identified in these programs have been 1) frequent adjournments to cases either based on limitations in the country's civil procedure code or a lack of training for judges on effective case management and 2) a lack of administrative support for managing caseloads. As a result, CLDP has focused on case management techniques, the role of law clerks and the streamlining of civil procedure codes as solutions to the obstacles identified in the programs. Recently, Bahrain's parliament has approved a draft procedural code⁹ adopting best practices from the US and the UAE on case management and Saudi Arabia is in the process of reforming its own civil procedure code. Saudi Arabia, Morocco and Bahrain have also made significant progress in expanding the automation of its courts, however court automation remains to be a significant challenge in Kuwait and Tunisia.

While in all of these countries the latest DBR indicators have been helpful in identifying obstacles and measuring progress, CLDP's programming has also aimed to address additional areas identified by through its engagements with judges and the private sector such as lengthy service of process procedures and

the lack of admissibility of electronic evidence. In the coming years, CLDP will aim to expand its technical assistance efforts in the MENA Region through more institutional development such as the development of judicial bench books and the support of reforms to civil procedure codes (particularly in Saudi Arabia and Kuwait) while also continuing to engage the private sector and other stakeholders to measure progress and identify additional assistance needs.

4. Eastern Europe Technical Assistance

CLDP began working in Europe and Eurasia shortly after the fall of the Berlin wall, however, efforts to improve judicial capacity currently focus on Ukraine, Bosnia and Herzegovina (BiH), Azerbaijan, and Georgia. The perception of widespread judicial corruption has plagued the region for several years, and while improving contract enforcement to increase foreign direct investment is one of the primary focuses of CLDP programming, efficient and transparent court systems also assist in anticorruption efforts through tools such as court automation and electronic filing.

As noted during the U.S.-Georgia Strategic Partnership Commission Economic Working Group Meetings in 2017, one of the key challenges in Georgia remains ensuring fair commercial dispute resolution mechanisms. Companies deciding whether to invest in Georgia are aware of the deficiencies in the court system, including not only the lack of judicial capacity, but also a questionable competence level of Georgian legal professionals to litigate complex international commercial disputes. They also note that arbitration and alternative dispute resolution are not commonly used to resolve commercial disputes. The U.S. Government has highlighted improving the rule of law

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⁷ <http://www.bna.bh/portal/en/news/741170>

<https://www.lexis.ae/2017/10/28/ksa-moj-announced-kingdoms-commercial-courts-officially-launched/>

⁸ CLDP programs have involved trial and appellate level judges from the Southern District of New York, the Commercial Division of the New York State Supreme Court, the North Carolina Business Court and the Commercial Court in Dubai.

⁹ “*تصويت البرلمان على تعديل قانون الإجراءات المدنية والتجارية*” (Parliament Approves Amendment of Civil and Commercial Procedure Code) <http://alwatannews.net/article/763500/Bahrain/%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D9%8A%D9%82%D8%B1-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84-%D8%A7%D9%84%D9%85%D8%B1%D8%A7%D9%81%D8%B9%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9-%D9%88%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D9%8A%D8%A9>

and strengthening capacity, especially in the context of resolving commercial disputes, as a priority.¹⁰

CLDP is currently working on strengthening the business enabling legal and judicial environment in Georgia, by developing a commercial chamber to better adjudicate complex commercial cases. The creation of a commercial chamber within the existing judicial structure will enable selected judges to gain the requisite skill and knowledge to adjudicate fairly, consistently, and efficiently, a broad range of complex national and international commercial disputes. It is hoped that the new chamber will not only provide well-reasoned and consistent adjudication, based on international norms and Georgian law, but also serve as a model for the broader judiciary, thereby improving trade and investor confidence in Georgia.

It is estimated that the chamber will initially be comprised of between six to fifteen judges, thus necessitating an in-depth practical and experiential training of judges who are selected to serve on the commercial chamber. The consensus among the parties involved, is that the selected judges should be seconded (or placed long term) to the chambers of selected U.S. judges. CLDP will develop a program of secondments, which will optimally last for several months and will provide an opportunity for selected judges to learn the U.S. approach to commercial cases, study the practices of U.S. courts, and observe efficient and transparent case management. Similar efforts in its nascent stages with respect to building the capacity of economic or commercial chambers in such courts are also underway in Azerbaijan, with focus on providing trainings to existing economic chambers on judicial ethics, intellectual property and ADR.

In BiH, a highly decentralized government hampers economic policy coordination and reform, while excessive bureaucracy and a segmented market discourage foreign investment. BiH's underperforming judicial system, especially coupled with its complex regulatory system, hinders the country's further economic development. Most judges have little to no experience adjudicating international commercial disputes and many types

of commercial cases, leading to substantial lags in dispute resolution timing, and lowered consistency and predictability in enforcement of contractual and commercial law disputes. CLDP's work in BiH region is more complex due to the prevailing political structure of special commercial courts existing in the Republic of Srpska, while not existing in the Federation of BiH. Therefore, CLDP workshops focused on general international best practices in international sales contracts, bankruptcy, ADR and IP have provided both as forum to build judicial capacity while also allowing the judiciary in both regions to work cooperatively together. For example, CLDP's development of an IP Benchbook with the BiH judges to help develop standards on IP within the country since 2014.

CLDP has also worked closely with the Higher Commercial Court of Ukraine (HCC) and the National School of Judges (NSJ) to build the capacity of Ukrainian judges to adjudicate commercial disputes. In 2017, a committee of Ukrainian judges with CLDP assistance, completed their work on an IP Benchbook, which will be utilized both in the education of judges, as well as in the daily adjudication of IP cases.

Given the new judicial restructuring in which much of the commercial adjudication is now within the ambit of the Supreme Court of Ukraine, and that the relevant judicial standards for adjudicatory skill and consistency rests with the High Council of Justice, CLDP's existing relationship with both of these judicial bodies on capacity building and anti-corruption in adjudication allows for a continued and robust engagement with the judiciary. This engagement, which focused primarily on the building of the skill and knowledge necessary to fairly, efficiently, and consistently adjudicate commercial law matters. It should also be noted that the procedures for the adjudication of commercial disputes in Ukraine are being significantly changed in 2017, posing new challenges for the efficient adjudication of such disputes. Additionally, given the backlog of cases and the time and cost of adjudication, both the Government of Ukraine and the private sector are seeking to develop and utilize forms of alternative dispute resolution.

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¹⁰ <https://ge.usembassy.gov/joint-statement-us-georgia-strategic-partnership-commission-working-group-democracy-governance/>

Whether through court mandated mediation or private sector arbitration and mediation, Ukraine is seeking to reduce the backlog of commercial cases – bringing with it the additional benefit of reducing the excessive work of individual judges - and to ensure quick and equitable resolution of conflict for foreign and domestic investors in the commercial arena. CLDP has worked with both the private sector and the judiciary on building capacity to undertake and utilize alternative dispute resolution practices that are based on international frameworks and agreements.

5. Conclusion

CLDP's support to the improvement of judicial quality indexes, as measured by the World Bank, has relied heavily on the inclusion of private sector feedback and resources to identify gaps and measure progress. Similarly, anticorruption efforts, which also have a significant impact on the investment climate, have relied on invaluable feedback from the private sector and chambers of commerce, U.S. embassies and international civil society organizations. CLDP's programming and its counterparts have also benefited significantly

from sharing best practices and lessons learned from its own diverse programs around the world and other international organizations. However, the single most important element of any of the successes that have been achieved with CLDP contributions, have been the leadership of the judiciaries and judicial administrators with which it interacts. Judiciaries are increasingly recognizing the importance of courts in the economy and the attraction of foreign investment, particularly in developing and post-conflict countries. CLDP will continue to support the efforts of these judiciaries in the coming years and hopes to expand its network of experts and its database of best practices through its first engagement at the International Association of Court Administration Annual Conference in 2018.

** Please note that the views expressed in this article are those of the authors and do not necessarily represent the views of, and should not be attributed to, the US Department of Commerce or the Commercial Law Development Program." The disclaimer is particularly important for any opinions or assessments that we expressed in the article as this is not an official Commerce Dept publication.*

May It Please the Court: Expanding Access to Justice Through Technology

By: Daniel Korn

Director of Corporate Affairs for Latin America
Microsoft Corporation



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At Microsoft Corporation. In his position as director, Mr. Korn leads Microsoft's government affairs engagements in 46 countries in the region. In his article, Mr. Korn would like to emphasize that digital technologies can make access to justice more efficient, easier and less expensive. After reviewing some of the challenges faced by court systems, the benefits from, and the hurdles to the digital transformation of justice are explored and a roadmap for possible next steps is presented. Mr. Korn is located in Fort Lauderdale, Florida and he can be reached at dankorn@microsoft.com

The UN Sustainable Development Goals admonish all countries “to promote the rule of law . . . and to ensure equal access to justice for all.”¹ For many societies, this Goal has been largely beyond reach. “Digital justice”—the process of leveraging digital technologies to achieve more with less, seeks to redefine the way justice is delivered, making access to justice more efficient, easier, and less expensive.

I. By way of background, justice systems today face a range of challenges. These include:

- Limited resources. Courts everywhere are being asked to process more cases, often with the same or fewer resources. The result is huge backlogs and delays. For example, the U.S. immigration court system's workload has increased 146 percent over a decade, driving up the average pending time per case to 627 days.²

- Too much paper. Before moving to a digital platform, the UK court system generated a million pages of documents each day.³ Beyond the obvious inefficiencies of creating, transporting, filing, and storing paper documents, reliance on paper can impede the administration of justice, as a single missing page can lead to cases being delayed or even dismissed.
- Lack of transparency. The ability of those involved in court proceedings to access information about their cases is vital to judicial integrity. Paper-based systems and the siloed nature of many legacy IT systems can make justice systems appear inscrutable or even irrational. They also expose the system to tampering out of the public eye with evidence or other key documents.

continued

1 United Nations, Sustainable Development Goals, Goal 16, at <https://www.un.org/sustainabledevelopment/peace-justice/>.

2 See Editorial Board, The immigration court backlog: Why won't Congress act?, Los Angeles Times (26 Aug. 2015), at <http://www.latimes.com/opinion/editorials/la-ed-immigration-court-20150826-story.html>.

3 See Microsoft, How Digital Justice Is Transforming The Justice System, at 2, at http://az370354.vo.msecnd.net/enterprise/MSFT_PSNS_Digital_Justice_Article_Final_Aug_12.pdf.

- Barriers to access. This is particularly true for people with disabilities. In a recent survey, more than three-quarters of respondents reported that people with disabilities have no or very little access to justice, and 90% said barriers to justice have a moderate or major impact on their lives. 81% pointed to inaccessible documents (not usable by screen readers) while 76% said courtrooms are not using assistive technologies such as real-time captioning⁴. This is at odds with the UN Convention on the Rights of Persons with Disabilities, which requires signatories to “ensure effective access to justice for persons with disabilities on an equal basis with others.”

II. Leveraging digital technologies to modernize justice systems can generate huge benefits for the people who work in and rely on them.

- Greater efficiency. The adoption of digital justice solutions by the State of São Paulo in Brazil, for instance, resulted in a saving of 850,000 working hours (equal to nearly 100 years) in 2015 alone, a number expected to increase to 3 million working hours in the years ahead.⁵ Digital tools create efficiencies that are impossible with paper-based systems, such as remote working and collaboration, electronic scheduling, and automated archiving and searching of documents. Indeed, the simple adoption of secure videoconferencing in courtrooms allows witnesses in remote locations to testify without traveling hundreds of kilometers or police taking hours to appear in court for five minutes of testimony. Video can even save money on prisoner transportation—a cost that consumes a whopping 10 percent of the UK Ministry of Justice budget.⁶

- Faster and fairer results. Digital justice also helps increase the speed of cases and the responsiveness of the system overall. In São Paulo, digital solutions helped accelerate the processing of new cases by 87%.⁷ Digital technologies can also promote fairer outcomes, for instance by helping judges ensure that decisions on pretrial detention and sentencing are consistent over time. Online dispute resolution (ODR) systems are giving parties new ways to resolve cases quickly outside the traditional court system. In Canada, for instance, people are using an innovative ODR system to resolve small-claim housing disputes affordably and rapidly.⁸
- Greater transparency. By improving transparency, digital technologies promote public trust. They improve access to documents, decisions, and other information; enable stakeholders to provide feedback; and bring openness to previously opaque processes that may be prone to corruption. The UK Government, for instance, recently launched a Crown Court Digital Case System to enable all parties involved in a criminal case to share and access documents via a cloud-based platform.⁹
- Improved services for citizens. In Argentina, for instance, the Supreme Court of Buenos Aires created the Augusta System portal that allows users to upload and download documents, stream videos (e.g., of court proceedings) and search for files, all from their home or office. Launched in 2016, the System already serves 200,000 users a month.¹⁰ Portugal’s Ministry of Justice established local court kiosks to give parties real-time information on case proceedings.¹¹ Some “virtual courts,” such as the

continued

4 See Global Initiative for Inclusive ICTs, Results: Global Survey on Technology & Access to Justice for Persons with Disabilities (14 June 2018), at http://g3ict.org/resource_center/publications_and_reports

5 See Microsoft Customer Stories: State Court of Justice of Sao Paulo (TJSP) (13 Jan. 2016), at <https://enterprise.microsoft.com/en-us/customer-story/industries/government/state-andlocal/state-court-of-justice-of-sao-paulo-tjsp/>.

6 See Microsoft, *supra* n. 3, at 4.

7 See Microsoft Customer Stories, *supra* n. 5, at 2.

8 See Civil Resolution Tribunal, at <https://civilresolutionbc.ca/>.

9 See Logan Finucan et al., Smart Courts: Roadmap for Digital Transformation of Justice in Africa, at 15, ACCESS PARTNERSHIP (29 June 2018).

10 See Microsoft, *supra* n. 2, at 4.

11 See Smart Courts, *supra* n. 9, at 13.

Abu Dhabi Global Market Courts (ADGMC), are almost entirely digital. As described by Chief Executive Linda Fitz-Alan, the ADGMC “is now accessible 24/7 from anywhere in the world, so we know no geographical or time boundaries. You can register, submit documents, file and pay online, and use Skype-enabled trial hearings from remote locations.”¹²

- Greater access to justice. By making information more accessible, digital solutions make it easier for people, especially those with disabilities, to overcome traditional barriers to justice. The State of Alaska, for instance, allows people with disabilities to participate in court proceedings by video; these same technologies can help facilitate remote sign language services for people who are deaf.¹³ Court professionals with disabilities can also be so empowered.¹⁴

III. Despite the many benefits of digital justice, court officials seeking to implement these solutions often face hurdles. Poor Internet connectivity and weak Wi-Fi are problems for many courts and can limit choices. Legacy IT systems can make it difficult to migrate existing documents to modern, cloud-based services, and the up-front costs of such migration can distract administrators from the long-term benefits (and necessity). Staff used to existing ways of work may resist moving to more efficient technologies, especially if they see them as threats to their jobs. Procurement procedures may need to be updated to accommodate the service-based nature of many digital justice offerings.

Most importantly perhaps, policies adopted in an era of paper-based justice may create unintended blockers to digital solutions. Laws on the books requiring paper-based documents, restrictions on video equipment in court, and a host of other rules drafted for the pre-digital era can make it difficult for officials to leverage new technologies to their fullest potential.

IV. Addressing these challenges requires a clear, well-defined roadmap. At the heart of any successful

strategy are the court administrators who know the system, understand its strengths and weaknesses, and have the best sense of what needs fixing. Involving court administrators early in the process for their initial feedback and partnership in the transformation process is essential.

Additional best practices for a successful implementation strategy include:

- Involve all stakeholders. Digital solutions are only successful if people use them and perceive them to add value. It is therefore vital to solicit feedback from all affected stakeholders—judges, lawyers, administrative staff, and especially members of the public.
- Invest wisely. Decision-makers should look beyond the up-front price of solutions and consider total lifecycle costs and savings. The São Paulo court system saved nearly 5 million kilograms of paper and 440,000 cubic meters of water over five years by transitioning to digital solutions.¹⁵ Agencies should also prioritize solutions with strong accessibility capabilities that expand opportunities for persons with disabilities.
- Provide training. Adopting solutions that are both powerful and intuitive to use can greatly ease the training process.
- Revise policies. Policymakers should revise policies designed for a paper-based, off-line, analogue world to remove all legal impediments to digital solutions. This includes removing barriers to cross-border transfers of data. Security and privacy rules should also be updated to reflect modern digital technologies.

Digital justice holds tremendous promise to improve the quality, speed, efficiency, and transparency of justice. In doing so, it can help societies meet UN Sustainable Development Goals by promoting the rule of law and expanding access to justice for all.

12 See Microsoft, *Pioneering digital transformation in the legal and justice system*, at 3 (10 Aug. 2018), at <https://customers.microsoft.com/en-us/story/adgm-azure-office365-dynamics365-uae>.

13 See Global Initiative for Inclusive ICTs, *Leveraging Technology for Greater Access to Justice*, at 3, at <http://g3ict.org/design/js/tinyMCE/filemanager/userfiles/File/Publications%20and%20Reports/20180227%20G3ict%20A2J%20Longer%20Paper.pdf>.

14 See *Smart Courts*, supra n. 9, at 14.

15 See *Microsoft Customer Stories*, supra n. 5, at 6.

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