The Peace Palace
The Hague, Netherlands
Site of IACA's Fifth International Conference
International Journal For Court Administration

IJCA is an electronic journal published on the IACA website (www.iaca.ws). As its name suggests, ICA focuses on contemporary court administration and management. Its scope is international, and the Editors welcome submissions from court officials, judges, justice ministry officials, academics and others whose professional work and interests lie in the practical aspects of the effective administration of justice.

Markus Zimmer
Executive Editor
mbzimmer_acc@iaca.ws

Philip Langbrook
Managing Editor
managing_editor@iaca.ws

Linda Wade-Bahr
Technical Editor

Editorial Board IACA Journal

Pim Albers, CEPEJ of the Council of Europe, Strasbourg
Jeffrey A. Apperson, International Division, National Center for State Courts, USA
Marc Dubuisson, International Criminal Court, The Hague, The Netherlands
Marco Fabri, National Research Council, Research Institute on Judicial Systems, Bologna, Italy
Vladimir Freitas, Tribunal Federal a4a Regiao, Ret., Brazil
Fan Mingzhi, Shandong District Court, China
Luis M. Palma, General Coordinator, National Commission of Judicial Management (Supreme Court of Justice, Argentina)
Medhat Ramadan, Law Faculty, University of Cairo, Egypt
Johannes Riedel, president Cologne higher regional court, Germany
Marcus Reinkensmeyer, Court Administrator, Maricopa County Superior Court, Phoenix, Arizona, USA
Anne Wallace, University of Canberra, Australia
Beth Wiggins, Federal Judicial Center, USA
Andrew Phelan, Chief Executive & Principal Registrar, High Court of Australia
James E. (Jim) McMillan, Director - Court Technology Laboratory, National Center for State Courts, USA
Dr. Péter Hack, Adjunct Professor, Eötvös Loránd University, Faculty of Law, Budapest
Dr. Gar Yein Ng, Assistant Professor, Central European University, Hungary
Dr. Dacian Dragos, Jean Monnet Associate Professor, Babes Bolyai University, Romania

International Association
For Court Administration

OFFICERS

Jeffrey A. Apperson
President & CEO
Richard Foster
President-Elect
Sheryl L. Loesch
Chief Administrative Officer
Tina Brecelj
Vice President, Europe
Vacant
Vice President, North America
Collin Ijoma,
Vice President, Africa
Mark Beer
Vice President, Middle East
Cathy Hlusser
Vice President, International Associations
Hon. Eldar Mammadov
Vice President, Central Asia
Vladimir Freitas
Vice President, South America
Charles Glenn
Chief Financial Officer
Noel Doherty
Treasurer
Linda Wade-Bahr
Chief Technology Officer
Jessica Lyulbanoits
Membership Officer
Philip M. Langbrook
Managing Journal Editor
Julia Ricketts
Secretary

ADVISORY COUNCIL

Markus B. Zimmer, Chair
Founding President of IACA
Hon. Charles Case
U.S. Bankruptcy Court, USA
Hon. Judith Chirlin
Superior Court Judge, Ret., USA
Hon. Laual Hassan Gummi
High Court of the Federal Capital Territory, Abuja, Nigeria
Hon. Paul Magnuson
U.S. District Court, USA
Mary McQueen
National Center for State Courts, USA
Hon. Diarmuid O'Scanlan
U.S. Court of Appeals, USA
Hon. Karim Pharon
Justice of the Supreme Court, Abu Dhabi, UAE
Professor Gregory Reinhardt
Australian Institute of Court Administrators, Australia
Hon. Irina Reshetnikova
Arbitrazh Court, Russia
Hon. Ales Zalar
Minister of Justice, Ret., Slovenia

The International Journal For Court Administration is an initiative of IACA's Executive Board and its diverse membership. The Journal is an effective communications vehicle for the international exchange of experiences, ideas and information on court management, and contributes to improving the administration of justice in all countries. The collective international experience of its Executive Board and Editors has been that every judicial system, even in countries in the earlier stages of transition, has elements to it that may be of interest to others. The variations in practice and procedure from one region of the world to another, from one court system to another, also reveal major similarities across all systems. IJCA serves as a resource for justice system professionals interested in learning about new and innovative practices in court and justice system administration and management, in common law, continental, and Shari'ah-based legal systems throughout the world. The Editors publish two issues per year.

The Editors welcome submissions from court officials, judges, justice ministry officials, academics and others whose professional work and interests lie in the practical aspects of the effective administration of justice. To view the Editorial Policy and Procedures for Submission of Manuscript and Guidelines for Authors, visit the IACA website (www.iaca.ws) and chose IACA Journal.

The Journal accepts advertising from businesses, organizations, and others relating to court and justice systems by way of services, equipment, conferences, etc. For rates, standards, and formats, please contact one of the editors.
In this issue:

From the Managing Editor: Our Journal’s Progress
By Philip M. Langbroek .......................................................... 1

Insights to Building a Successful E-filing Case Management Service: U.S. Federal Court Experience
By J. Michael Greenwood and Gary Bockweg ................................................. 2

Technology In Courts In Europe: Opinions, Practices And Innovations
By Dory Reiling ............................................................................ 11

Applying the Case Management CourTools: Findings from an Urban Trial Court
By Collins E. Ijoma and Giuseppe M. Fazari .................................................. 21

Framework for Development and Evaluation of Community Engagement
By Tim Haslett, Chris Ballenden, Louise Bassett, Saroj Godbole, Kerry Walker ................................................................. 21

Assessing and Filling the Gap as a New Mode of Governance, Lessons from a Preliminary Study carried out in the Cosenza’s Public Prosecutors’ Office
By Dr. Daniela Piana ............................................................................. 46

The Limitation Of The Training Discourse For Continuing Professional Development Of Judges
By Geeta Oberoi ............................................................................. 64

Behind the Judges’ Desk: An Ethnographic Study On The Italian Courts Of Justice
By Luca Verzelloni ........................................................................... 75

From the Executive Editor

By Markus Zimmer

On 16 February 2004, then-Transitional Chief Justice Harry Cooper of the Liberian Supreme Court dispatched a letter to then-U.S. Supreme Court Chief Justice William Rehnquist. Cooper described The Republic of Liberia as "...emerging from an extended civil upheaval that has taken its toll on all facets of our society and governmental institutions. The Judiciary was not spared. We need assistance in the rebuilding process." The letter requested assistance to "...provide needed capacity building." Later that year, the U.S. Departments of Justice and State jointly dispatched a small team of federal officials to travel to Liberia to assess the status of its beleaguered justice and law enforcement systems. I was asked to serve on the team. Oversight would be exercised by the U.S. Embassy, which directed the investigation be confined to Monrovia for our security. I objected, arguing that would result in a skewed assessment. Eventually we negotiated travel aboard wheezing, 1980s-vintage Ukrainian troop UN choppers to Buchanan, Zwedru, Grbanga, and Voinjama, deep in Liberia’s Hinterland.

We arrived in January 2005, slightly more than a year after fighting had been suspended. As we traveled throughout the country and met with UN and Transitional Government officials at the highest levels, it became clear that the small country, on the verge of political and economic collapse, was held together by a large contingent of UN peacekeeping troops, experts, and international police supporting a weak transitional government. We visited torched police stations, fire-scorched prisons, and plundered courthouses, including the Temple of Justice, home of Cooper’s Supreme Court. We met with judges, prosecutors, and court officials who had not been paid for two years or longer. Liberia was reeling from the devastation of prolonged and sequential civil wars, a succession of failed governments, widespread corruption, shattered communities, and thousands of orphaned children, many forcibly conscripted as soldiers, servants, and sexual slaves by rebel forces during the extended conflict.

Of those responsible for the widespread allegations of atrocities, war crimes, and crimes against humanity, the most prominent was Charles Ghankay Taylor, a native Liberian educated in the U.S., trained in Libyan terrorism camps, and eventually elected as Liberia’s President. In August 2003, following his indictment on 17 counts, later reduced to 11 -- including terrorism, murder, sexual violence, use of child soldiers, and abduction and forced labor -- by the UN-supported Special Court for Sierra Leone (SCSL), Taylor resigned the presidency and slipped into luxurious exile with his retinue in Nigeria under the personal protection of President Olusegun Obasanjo. Nearly three years later, following intense international diplomatic pressure, Taylor’s exile was terminated. His attempt to escape thwarted, he was extradited first to Liberia, then Sierra Leone, and eventually to the UN Detention Center in The Hague where, while serving as UNICTY’s Court Management Chief, I saw him in his cell in early 2007 as he awaited trial on the criminal charges. His trial began in June 2007 and concluded in March 2011.

On 26 April 2012, Trial Chamber II of the SCSL issued its judgment, pronouncing Taylor guilty on all 11 counts. Taylor’s convictions are for crimes he aided, abetted, planned and profited from not in Liberia but in neighboring Sierra Leone. The SCSL’s jurisdiction does not extend to Liberia. It appears unlikely that (i) the International Criminal Court will prosecute widespread allegations of war crimes and crimes against humanity there, or (ii) the Liberian government will petition the UN to establish a special court, notwithstanding the recommendation of its Truth and Reconciliation Commission, hence none complicit in the atrocities there will be brought to justice. Indeed, prominent leaders of the rebel groups, all of which engaged in horrific crimes pursuant to international criminal law, occupy leadership positions in Liberia’s government, including its Supreme Court. Our team interviewed several.

All of this notwithstanding, the conviction of Charles Ghankay Taylor is a victory for the cause of justice. Although the wheels of justice sometimes grind exceedingly slowly, it is reassuring that in this case, they have ground. He was sentenced on 30 May 2012 to a prison term of 50 years. Counsel for the defense and the prosecution are expected to submit petitions for review to the SCSL Appeals Chamber. If the laborious appeals process affirms his conviction and sentence, Taylor is expected to be incarcerated in a British prison.
From the Managing Editor:
By Philip Langbroek

Our Journal's Progress

Since we started in 2006, this journal has slowly taken root in the world of court administration, by the increasing number of authors from practice and academia that want to share their experiences and research. It is important to show that everybody involved in the production in this journal works as a volunteer. I am not considering the countless hours it takes to write a decent piece, reporting on a court improvement project, or the sea of time it takes to conduct a proper research into aspects of the functioning of courts in a country and write a decent report. No, I am pointing to the persons that have reviewed a submitted text, within and outside our editorial board. Of course, Linda Wade-Bahr, from the U.S. District Court - Middle District of Florida, plays an indispensible role in the actual production of the journal, and we have several persons who volunteer to do the corrections of texts of non-native English speakers. I mention Helen Child, working in Honiara on the Solomon Islands, who has spent quite some time for the current issue.

Now that we are growing, we need to reflect on how we can better organize our volunteers, and make the journal function better. In a way, we need a further professionalization of our journal organization. We want more people from practice to share their experiences, but we also do not want to miss the research reports. Furthermore, we want to better show who are helping us in the publication process, and maintain a lasting relationship with them.

Apart from internal organization issues, we want to address the question how we can enlarge our audience by increasing the visibility of the journal. We are considering to publish the journal in a professional journal web-shell, facilitated by a university library (Utrecht). This will connect us with library databases worldwide and make us much easier traceable for persons outside our network. It will also facilitate our direct connection with court administration organizations worldwide. This comes at some (modest) costs, and in order to cover those, we need maintenance and improvement of our relations with our sponsors and advertisers.

We will give a presentation of our plans on Friday afternoon, June 15, at 15.30 hours at the Peace Palace venue of our Conference.

I hope to see you there!
Simple, sophisticated digital recording solutions that set the standard for excellence

For over 25 years, our company has been providing courts around the world with simple yet sophisticated computer-based digital audio and video capture and management solutions. Our flexible, modular software suite allows courts to adopt the level of sophistication that is right for their organization, and our growing list of customers range from single-courtroom standalone installations to complex, country-wide installations with hundreds of courtrooms, multiple servers and thousands of users.

With VIQ Solutions, you can start with simple digital audio recording and add sophistication as you grow through advanced features like remote monitoring and recording control, multi-channel HD video capture, multi-tiered server distribution for complete redundancy, integration with case management systems and video conferencing integration for remote arraignment. Our flexible suite of digital recording solutions is scalable, with a clear migration path, allowing you to protect your initial investment while adapting to your court's changing needs.

For more information, visit us online at www.viqsolutions.com or email us at info@viqsolutions.com.
Infinitely better systems. No arena is more demanding or sensitive to absolute verbatim accuracy than the courtroom. That's why each component of The JAVS System is built from the ground up to seamlessly integrate with all other components. For over 30 years JAVS has delivered the official public record. Call 800.354.JAVS or email solutions@javs.com and see the JAVS System in action. Live demos conducted daily.

The Centro FlexMic Network Configurable Microphone features two tri-colored LED indicators that may be switched between red, yellow, and green. The FlexMic includes a programmable, feather-touch button to provide a wide range of options.

Be sure.
Insights to Building a Successful E-Filing Case Management Service: U.S. Federal Court Experience

J. Michael Greenwood¹ and Gary Bockweg²

Abstract

The U.S. Federal Courts Case Management/Electronic Case Files (CM/ECF) service is a very successful court automation system deployed throughout the country that integrated case management, electronic court case records and documents, and the electronic transmission and service of court records via the Internet. The authors briefly explain the history of automation development and indicators of success in these courts. The primary focus of the article is (a) on what capabilities and functions should be integrated into any modern court electronic filing and case management service; and (b) on insights as to key technical components, fundamental project guidelines, technical objectives, and non-technical principles and implementation techniques that were critical to achieving success. The ultimate CM/ECF goals that have been achieved are (1) that the entire U.S. federal court community (court, lawyers, government, public) are comfortable in totally relying on this service, and (2) that CM/ECF is the official record eliminating the traditional paper record.

I. Background & History

Court automation is not a new phenomenon in many national judiciaries, but the scope and level of development varies tremendously even among more advanced industrialized countries.¹ To date, only a few countries have attempted comprehensive integration and automation of court case records, case management, document management, and electronic transmission and receipt of records.² Many courts claim some progress³, but few have succeeded.⁴ This report focuses on the US Federal Courts Case Management/ Electronic Case Files (CM/ECF) system, a comprehensive, fully-integrated, judicial automation service with an established record of long-term success.⁵

The U.S. Federal Courts are composed of the U.S. Supreme Court, twelve Courts of Appeals, ninety-four District Courts (general trial courts responsible for both civil and criminal litigation), ninety Bankruptcy Courts (specialized trial courts responsible for both individual and corporate cases), and a few specialized courts such as the US Court of International Trade. There are 758 court facilities, 2,300 judges and magistrates, and 34,000 clerical and administrative staff located throughout the fifty states and overseas territories.⁶ For several decades before CM/ECF, US federal courts had deployed various word processing, electronic mail, and electronic case management systems.⁷

¹ He was Project Manager during the initial prototyping and implementation phases of CM/ECF at the AOUSC, and co-creator of the PACER service. He has worked developing and implementing various technologies into the U.S. court process for over thirty-five at the National Center for State Courts, Federal Judicial Center and AOUSC. In recent years, he has consulted for the Russian Federation, Ukraine, and Abu Dhabi courts.
² As Chief, Technology Division, Office of Court Administration, AOUSC, he has served as CM/ECF project director since the project's inception in 1995. He worked as an IT specialist with financial institutions and with the Advanced Research Projects Agency (ARPA) before becoming an attorney and joining the Federal Judicial Center in 1978. In over thirty years at the FJC and the AOUSC he has helped to develop five generations of case management systems and has engaged in case management demonstrations and discussions with delegations from many countries around the world.
⁴ Austria, Australia, Canada, Israel, Singapore, and South Korea are some examples.
⁵ Various US state courts publicize electronic filing but with restricted or limited capabilities and minimal integration into an automated case management system. See http://www.ncsc.org/topics/technology/electronic-filing/state-links.aspx.
⁷ The authors thank several colleagues who have reviewed this paper, and who have extensively worked on the formulation and development of this service throughout the years Andy Sirotta, John Brinkema and Rick Fennell, and to Noel Augustyn who has been a constant and avid supporter as executive sponsor.
⁸ For a comprehensive explanation of the US federal courts structure, legal jurisdiction, and authority see www.uscourts.gov.
⁹ The first major automation initiative (1975-1981) was Courtran, a criminal case management system using central computers among thirty district courts. Word processing and rudimentary electronic document exchange services were introduced in judge's chambers (1978-2004). Various mini-computers were installed in district courts (1979-1985) for several specialized functions such as criminal speedy trial reporting, party-case indexes, and case dockets. An Integrated Case Management System (ICMS) and several comparable bankruptcy services (NIBS, BUMS) were implemented (1985-1998) to handle case management and docketing functions, but excluded
The U.S. Federal Courts have various centralized administrative and policy-making groups that promulgate legal and administrative policies, delegate authority to various organizations at the national, regional or local court level, and distribute funding and resources, including personnel and computer resources to the courts. The automation resources are generally controlled by a centralized authority, the Administrative Office of the US Courts (AOUSC), but the actual automation operations are substantially controlled and operated by each court. While general automation policies, hardware procurement, and programming are centralized, regional and local court units are primarily responsible for the deployment, training, and precise use of the service in their jurisdictions. Therefore, the case management system was built to be flexible to meet the diverse needs of the various jurisdictions, types of litigation (civil, criminal), and levels of court (courts of first instance, appellate).

II. Development & Growth of CM/ECF – Measures of Success

An early prototype of CM/ECF was created in the fall, 1995 by a small AOUSC automation group to explore the creation of a fully integrated case management and electronic filing (and e-files) service for a large asbestos litigation in a US district court. This service became operational in January, 1996, and was then revised and implemented in the fall of 1996 for one of the largest US bankruptcy courts that is responsible for many large corporate bankruptcy cases. In 1997, the AOUSC published “Electronic Case Files within the Federal Courts: A Preliminary Examination of Goals and Issues on the Road Ahead”. By 2005, 80% of the courts had fully implemented CM/ECF, and now all courts use CM/ECF. Yet, little has been published describing the system and explaining the primary reasons for this success.

Success can be measured in many ways: the degree of adoption by courts, legal community, and the public; the volume and extent of usage both transmitting documents to and from the courts; the reliability, validity and dependability of the service; the efficiency and effectiveness of the service and productivity of staff; and improvements in the overall quality of justice.

All federal judicial officers (general trial and appellate judges, magistrates, and bankruptcy judges), and court legal and administrative staffs (law clerks, deputy clerks) have adopted CM/ECF as the official record and case management system. Over 625,000 lawyers have electronically submitted documents into CM/ECF. Each year there are more than 2,100,000 new cases opened, over 60,000,000 new docket entries and electronic documents submitted, and 525,000,000 e-notices transmitted from the courts to parties. CM/ECF systems maintain sizeable amounts of court information, with 41,000,000 cases, over 500,000,000 documents, and 850,000,000 docket entries that include active and closed cases. Demand for CM/ECF services is substantial, with over 325,000 individuals and organizations annually making one-half billion public access (PACER) inquiries, and downloading several billion pages of court information and documents.

CM/ECF servers/systems are almost always on-line, the entire day and night 365 days of the year. Newly submitted documents, docket entries, and updates are available to all users within seconds, and automatic court e-notifications are transmitted within a few seconds or minutes.

CM/ECF services have proven resilient in several major natural and man-made calamities, and in dramatic changes in filings and government policies. The 9/11/01 terrorist attack on the World Trade Center, the Katrina hurricane that decimated New Orleans and other Gulf localities in 2005, and floods in several Midwestern states caused only minor disruptions to CM/ECF services. US Congress enacted dramatic changes to the US bankruptcy law in 2005 that caused

---

10 The US District Court for the Northern District of Ohio, headquartered in Cleveland, received tens of thousands of new asbestos cases each year, with each case involving approximately 100 parties.
11 The US Bankruptcy Court for the Southern District of New York regularly adjudicates large corporate bankruptcy cases (Exxon, Worldcom, Delta Airlines, Lehman Brothers, General Motors) each containing 25,000 to 35,000 documents, and involving hundreds and sometimes tens of thousands of participants.
13 The U.S. Supreme Court has its own administrative and technology services and does not use CM/ECF.
14 This includes older cases converted from legacy case management services.
15 There are over 1,300,000 PACER registrants.
16 The federal courthouses in New Orleans, Eastern District of Louisiana, other localities in the Gulf region, and the U.S. Bankruptcy Court for the Southern District of New York, located within a few city blocks of the World Trade Center, were inoperable for several weeks; however, CM/ECF services continued operations while court personnel were relocated to other government offices in nearby suburbs or cities. No official records were lost or misplaced, and no significant disruption of court services occurred.
disruptions to CM/ECF services. US Congress enacted dramatic changes to the US bankruptcy law in 2005 that caused huge increases in new cases filed for many months, but caused no increase in court staff resources nor any delays in case processing.

Various organizations and judicial authorities have described what is desirable or necessary for a judiciary to provide electronic case management and electronic filing services. CM/ECF has achieved or exceeded all standards or principles published by various authorities. These principles include issues such as: equal and timely access (written, audio, and video) to court records; continuity, and sustainability of service; quality, security and verification of information, transparency of legal process; efficient exchange of information between government entities, and on-line publication of opinions.

III. CM/ECF Major Components & Functions

The traditional case docket written or typed by court personnel serves as an annotated index listing basic case information, various documents and case events in chronological order, usually attached to a folder containing the case documents retained somewhere in a courthouse. CM/ECF has fully integrated the opening of cases, the submission of all documents and the creation of docket entries into a comprehensive automated case and document management system. This has also allowed for the electronic filing and dissemination of any case and court information via the Internet, regardless of where and when recipients need to enter or access this information on a case-by-case or court-wide basis. This approach has greatly reduced duplicate data entry, substantially reduced errors, and eliminated misplaced or lost files or documents. It has also allowed for more timely submission and access to records, permitted greater transparency of all activities, and considerably altered the roles and responsibilities of both court personnel and the legal community.

This section describes various capabilities contained in CM/ECF that most judiciaries should require in any integrated judicial electronic e-filing and automated case management system.

Case Docket & Docket Entries: Case Opening & Case Dockets

A case can be opened on-line via the Internet by court personnel, lawyers or litigants. All docket entries and documents are electronically submitted, reviewed and disseminated via the Internet. CM/ECF has created a stylized set of screens controlling and validating the entry of case information into the computer system to insure a comprehensive record and permit standard well-structured case docket and reports. Various case opening modules are offered depending on the type of litigation and the person opening the case (e.g.; private litigator, court personnel, government representative); and several automated functions (case numbering, judicial case assignment, calendaring including due dates) are created. Most courts have hundreds of types of docket entries and variations. CM/ECF developed a mini-programming

16 The federal courthouses in New Orleans, Eastern District of Louisiana, other localities in the Gulf region, and the U.S. Bankruptcy Court for the Southern District of New York, located within a few city blocks of the World Trade Center, were inoperable for several weeks; however, CM/ECF services continued operations while court personnel were relocated to other government offices in nearby suburbs or cities. No official records were lost or misplaced, and no significant disruption of court services occurred.

17 The new bankruptcy regulations were effective as of October 2005. During the summer and early fall, new bankruptcy filing and workloads increased by 30 to 50% in most jurisdictions, and a few with a tenfold increase. All bankruptcy courts were fully operational on CM/ECF and the automatic processing and built-in CM/ECF efficiencies eliminated the need for temporary staff and still handled all court activities on time.


19 Courts will require additional desirable features over time related to legal, political or cultural requirements. For example, CM/ECF also contains (a) automatic random judicial case assignments, (b) case records management that tracks the paper files of old archived case records, (c) judicial conflict checking that determines whether a judge has a conflict of interest related to investments or interpersonal relationships with a party or counsel involved in a case, and (d) full text searching all cases and documents. These and other future enhancements will be discussed in a separate article (NextGen).

20 Some trial courts require or strongly urge counsel to open their case(s) on-line from their law offices; other trial courts still require counsel to submit their initial pleading (complaint) at the courthouse, and allow court personnel to open the case on-line. All courts strongly prefer or mandate all additional documents and docket entries be entered on-line via the Internet by the person signing the document. In pro se cases the litigant are restricted on what they can accomplish.

21 Most docket entries fall into three main categories: (1) case opening includes initial complaints and pleadings, (2) litigators filings including motions, responses, answers, replies, notices, service of process, and (3) court events and documents including orders, notices, judgments, pre-trial and trial proceedings, minute entries, appeals, judicial (re)assignments. The typical federal court has 400 – 500 types of docket entries.
language, using a stylized and flexible set of programming functions that would allow administrative (non-programmers) court staff to: create and control the prompts, type and sequence of information needed to be collected from the submitter; extract from the court’s database; display, review, and edit the docket entry; submit, validate and link documents; and insure compatibility and integration with other case management functions for each docket entry. This has allowed each court unit to easily change and update the template for docket entries as both national and local rules, regulations, and procedures have been introduced or modified over the past decade, without any significant disruptions or retraining.

**E-Documents**

All documents stored in CM/ECF must comport with Portable Document Format (PDF) standards. While any legal document filed with the judiciary may be composed on whatever device or format desired, these documents **must** be filed as a PDF document that will permit any recipient to view and/or reproduce them.

CM/ECF normally requires the electronic submission of documents as part of the docketing process. This requires the filer to identify the proper document category, to link the document(s) to appropriate case(s) and to other documents in the case (e.g., a response to a motion), and to have properly created a PDF version of the document. The official document is the PDF electronic document, not any paper version. Each document accepted is electronically time stamped, and, if necessary, a document validation program is available to verify that the document in CM/ECF matches the original submission. CM/ECF documents that have limited access or sealed status have additional restrictions.

**Digital Signatures**

When the operational prototype was being built in 1995, it was not clear what international standard for digital signatures might be adopted. It was decided that CM/ECF would temporarily use a traditional login and password for user identification. The successful password authentication of the user would be treated as a “signature” for any documents filed by the user. In addition, the system would generate a “hash table” security stamp for each PDF document filed to detect any subsequent error or tampering that could alter a filed document. That “temporary” approach has worked so well that it remains in use today. With hundreds of thousands of users, and millions of documents filed each month, there have been no instances of filers denying that they did, in fact, make a filing that was attributed to them, and no instances of illegal document tampering. Nevertheless, plans still include incorporating standard digital signature technology into CM/ECF.

**Document and Case Linkages**

Each document can be linked to one or more cases; each document can be linked to other related documents within the same case or other cases within the same jurisdictions; each case can be associated with other cases within the same court and to other cases in other jurisdictions (cases transferred to/from a lower inferior court or higher appellate court or another comparable court); and a filer can now insert a hyperlink within his document submission to another document in any CM/ECF database within the US federal courts.

**Schedules & Deadlines**

Most courts have prescribed schedules (e.g., arraignments, status conferences, pre-trial hearings, appointments, trials) or explicit deadlines that require litigants and parties to respond to previous submissions or events in a case (e.g., a response, answer or reply to an opposing party’s motion or court notice). The CM/ECF program allows automatic generation of dates and times based on court rules and procedures, court activities and docket entries, and permits court personnel to modify and update these dates and times. Various case, judge or court-wide reports (daily, weekly, monthly calendars) and queries (pending deadlines/hearing, pending answers) can be generated.

**Case Flags**

The program allows each court to create a unique set of multiple identifiers: to be placed on the front cover of the docket; to be automatically entered or revised based on docketing or court activity in the case; and to produce special reports for any internal case management purposes; e.g., case statuses, lead or special cases, speedy trial, case differentiation.

---

22 Data Processing Functions (DPF) are written in PERL or JAVA software language -- not to be confused with PDF documents.
23 DPF perform a myriad of functions, such as: validating case number and case title; adding, selecting, or removing a participant in the case; displaying pending motions; displaying and editing draft docket text; creating links to other cases and documents; creating, updating, or deleting a deadline or schedule.
24 CM/ECF validates whether the document conforms to prescribed PDF standards and size limitations established by the court, and will automatically reject improperly prepared electronic documents.
Forms & Labels
Court-generated standard forms, orders, notices, and other standardized legal documents are produced based on case and docketing information inserted into a forms template produced by clerical or judicial staff; and these documents are, whenever possible, automatically e-mailed to recipients, or mailed, when necessary, using labels automatically produced by the system.

Financial (Fee) Payments
Filing fees and other court costs are paid on the Internet either by credit card or online check transactions. When required to pay a fee, CM/ECF seamlessly redirects the filer to the U.S. Treasury; when payment is completed, an automatic entry is made into the case docket for auditing purposes. CM/ECF intentionally avoided creating an integrated financial and accounting program.

E-Mail Notification
A Notice of Electronic Filing (NEF) displayed in a standard format is automatically distributed within a few seconds of official docket entry usually by e-mail or by other means[^25] to all specified participants in the case. The NEF also replaces the "process of service" that lawyers traditionally had to file verifying that other parties received notice of a submission. The NEF contains the case title, case number, filer(s), docket text, list of recipients, original submitter’s file name, unique electronic document stamp created within CM/ECF, and a docket document number with a hypertext link to the document(s) within the docket sheet in the court’s database. Each recipient is permitted to view and, if desired, download the document(s) at no cost.

Transfer of Cases & Documents Among Courts
Case dockets, documents and data can be electronically transferred between and among courts.

Reports & Queries
CM/ECF contains over 150 standard reports classified into over thirty categories. The greatest demand is for the case docket report containing the cover page that lists basic case information, including participants (parties and counsel), followed by docket entries listed in chronological order with the synopsis of the entry or event, and the appropriate documents or forms associated with each docket entry. The number, type, and style of reports will vary depending on court needs but should include: local and national statistical reports; case indexes separately classified by civil, criminal, appeals and other types of litigation (e.g., sealed case) or unique statuses (see case flags function); court activity reports such as trials, hearing, motions, orders, written opinions, judgments issued; judicial case assignment and case status reports, daily, weekly and monthly court calendars; and case scheduling, hearings and case deadlines reports. Most reports include an extensive set of selection options to permit all users to precisely retrieve what they need and when they need a report. Preferred default options automatically appear on most selection screens, but the user is permitted to modify them. Court units are also provided a report writer to create unique local reports.

Court-Wide Specific Site and Codes Tables
Program options permit each jurisdiction to modify and control how and what information is provided. CM/ECF offers court-specific options and court codes tables to allow each jurisdiction to regulate how CM/ECF performs in accordance with local rules, policies, and preferences; for example, screen displays (e.g.; size, colors, and fonts), automatic numbering and display of basic case information, case opening procedures, court name, locations, and contact information, maximum size of e-document submissions, warning messages, restrictions to access sealed or confidential information, party roles.

Quality Control
Elaborate editing and utility options are available only to designated administrative court personnel. The role of a deputy clerk has been transformed with former data entry tasks replaced by editing and case management tasks to ensure that the electronic entries and documents submitted by filers conform to court procedures and standards[^26]. Other utility functions are restricted to a few specialized administrative personnel or technicians who handle the most sensitive information.

[^25]: Some courts allow some individuals to request a paper or fax copy of the notification.
[^26]: Only court employees would edit the basic case file or case docket; they would not make any changes to the legal documents submitted. The e-filer submitter is always notified of improper legal document submissions. Any substantive corrections are reflected in the official case docket with automatic notation as to whom and when the correction was made. In some instances, the e-filer is notified that the filing is rejected and must be refiled into CM/ECF. Error rates (2-3%) are comparable whether original entry is made by attorneys or court personnel.
Access Groups & User Accounts

There are multi-layers of access restrictions depending on each individual’s legal status (e.g.; judge, clerk, attorney), involvement in a particular case (e.g.; judge, plaintiff, defense, prosecutor, counsel), group permission (judge’s staff, clerical staff, attorneys of record), and special permission. Access can be restricted, if needed, by case, docket entry, and/or document(s) for sealed, ex-parte, or private court-only viewed entries.

Privacy & Confidentiality: Redaction, Restricted Information

Judges, court staff, attorneys and the public all access the same CM/ECF data. Most information in the system is public information, but some is not, e.g., juvenile cases, sealed indictments and documents containing trade secrets. Therefore, the system includes features to restrict access to information that should be available only to designated individuals (see Access Groups and User Accounts above). Some documents that are accessible to the public contain specific items of information that should be restricted to protect privacy interests, e.g., bank account numbers, Social Security numbers, some medical facts, and names of minor children. When such documents are filed, by court rule, it is the responsibility of the filer to redact that sensitive information. The filer then submits the redacted version of the document that can be viewed by the public and an unredacted version with appropriate access restrictions.

Public Access

Public Access to Court Electronic Records (PACER) is available to any organization or individual who registers for the service via the court-operated service bureau. The service allows a user to access, view and download any case docket, documents, or audio courtroom recordings from any CM/ECF court, at a nominal cost ($0.08 per page ($0.10 effective April 1, 2012); no charge for minimum usage; i.e., fewer than 125 pages (150 pages effective April 1 2012) per quarter year; maximum $3.20 per document regardless of size). Court opinions are exempt from any fee. The central PACER service bureau maintains and nightly updates a national locator index that permits a search by name, case number, or nature of the suit (a nationwide case-type classification code) across all trial and appellate court jurisdictions. Case information (dockets and documents) is extracted directly from a court’s operational CM/ECF database.

IV. Description of Key Technical Components

CM/ECF has relied on x86 computer processors (multi-processors and multi-core servers), originally 32-bit Pentium Pro and more recently upgraded to 64-bit Intel Xeon. Each court unit has its own computers with real-time replication of data to various computer server “farms” (now virtual servers on large platforms) located in several locations throughout the USA. A robust and adaptable relational database (Informix, now owned by IBM Corporation) was chosen based on competitive cost and performance analysis. A UNIX-based Linux Distribution Red Hat Enterprise O/S was acquired containing Open Source Software that includes PERL (general, purpose, interpreted programming language), Apache (web-server software), TOMCAT (open source software using Java servlet and JavaServer Pages technologies), and Comprehensive PERL Archive Network (standard modules of software written in PERL). The programming languages are PERL, JAVA and JavaScript. Portable Document Format (PDF, PDF/A) was established in 1996 as the required document format, and free readers/viewers are available for anyone who wants to review and download any CM/ECF legal documents or forms.

User’s Workstations, whether within the judiciary or any other CM/ECF user, can be any hardware vendor or third-party provider, any O/S, any telecommunications provider, and can employ any office applications. The user’s workstation or device must contain a modern Internet Browser (free), and a PDF reader (free software from various companies). If they need to create documents for submission to any CM/ECF federal court, the CM/ECF users must acquire a PDF “writer” (several highly-competitive commercial products available in various languages).

V. Explanation for Success: Basic Objectives, Guidelines, and Principles

There was no single technique or process that explains why CM/ECF has been so successful. CM/ECF success is based on a combination of technical (hardware, software, and telecommunications), development and implementation strategies, and non-technical processes and procedures (interim rules and court orders, mentoring, etc.). Several key steps and
decisions were taken that were critical in both the short- and long-term success of the project. Some of these techniques are more common today in the computer industry, but they were uncommon when deployed by CM/ECF in the 1990's. Unfortunately, these technical and strategic approaches are still infrequently adopted in most judicial automation projects around the world.

A. Key Technical Objectives

Preferred Non-Proprietary Software
Whenever possible, CM/ECF has used a non-proprietary, generic Operating System (e.g.; UNIX, LINUX) with technical vendor support and open source software libraries, and has adopted non-proprietary software and open published technical standards (e.g.; Adobe Corp. PDF, Sun-Oracle Corp. JAVA). Courts do not want to be dependent on a single vendor or consultant firm because of uncertainty about the long-term viability of the company, and pricing policies.

Internet-Based Browsers & Connectivity
All CM/ECF access and functions have used an Internet-based interface, but have insured compatibility with all major browsers and major mobile devices. Developers have wanted to avoid requiring users to install any special software on their personal computers.

Single Electronic Document Standard
While the original legal document may be created on whatever device, medium or format desired, all documents must be entered into CM/ECF as a PDF document. This single PDF standard has permitted any recipient of these documents to view and/or reproduce these documents, as originally rendered. This approach has allowed filers total flexibility in the creation of their documents, including traditional paper documents, but has required all filers and the courts to retain and disseminate these documents in one, open-published standard.29 In circumstances when filers have needed to submit paper documents, the court has electronically scanned the documents into PDF for filing into CM/ECF.

Application Interfaces
The initial set of web-pages, menus, screen layouts, and narrative were straightforward. This has allowed the entire legal, court, and public community to more easily learn and comprehend CM/ECF. The organization of menus and categories are based on judicial and legal community perspective. For the more complicated segments of the system, such as full docketing with multiple data entry screens and attaching documents, a self-help option has been offered on each screen; typically, a few hours of training for court and legal personnel is mandatory to insure efficiency and high quality entries. In addition, CM/ECF offers interactive learning modules, on-line training and tutorials, and technical help desks personnel, available during regular business hours.

High-level of Reliability, Responsiveness, and System Integrity
Both the judiciary and the legal community expect the service to be available seven days a week, to rapidly respond to inquiries, to permit efficient entry of information without disruptions within a few seconds, and to insure accurate and timely information that cannot be illegally altered or mistrusted. To achieve such standards, court computer installations require redundancy, including redundant power supplies, RAID computer disks, error correcting memories, real-time database replications, failover switching, and reliable internal communications networks. CM/ECF has avoided dependency on any single location or computer complex, and has prohibited any single critical location (hardware or network) to cause a major failure for the entire judiciary. CM/ECF has allowed each major court or regional office unit to operate and maintain its databases. System responsiveness is constantly monitored and responses and screen updates are expected within seconds or fraction of seconds for most reports and queries. CM/ECF development staff has assumed there is no 100% secured computer system and database. Instead, the concept of “layered protection” with a combination of hardware, software, and procedural barriers 30

29 The US federal courts were the first US government agency to adopt and mandate this electronic document standard, PDF, that over the ensuing years has become the primary e-document standard throughout the world.

30 The computer system configuration includes (a) inside (database) and outside (user requests or submissions) servers with unique transaction protocols; (b) a separate telecommunication network: Private Judiciary Data Communication Network (DCN); (c) a filtered Intranet that connects courts (DCN) and a public network (PACERNET for public access); (d) firewalls between all servers, an intrusion detection system, extensive transaction logs and reports for all accesses and updates, (e) software verification for all documents submitted or replaced, including hash table verification, restricted PDF functions, and PDF verification software; (f) identification of all edited docket and document entries, including the listing of an editorial change noted on the official case docket.
has been implemented to avoid threats, vulnerabilities, and to protect sensitive data and information from manipulation, improper access, or user identity theft.

B. Core Design, Development & Implementation Strategies

The ultimate objective, the total reliance on e-filing, e-files, and automated court case management, has been a radical departure from the traditional paper-intensive manual legal process. However, the development strategy was an evolutionary process that has allowed the court community to constantly test and refine requirements and functions while actually using the service; i.e., an extensive and continuous collaborative arrangement between the developers and users throughout all stages of development and implementation. CM/ECF developers and users did not formulate a grand design and await the completion of all or most components before implementing the service. An incremental application methodology has been used adding new functions and enhancements as more courts implemented CM/ECF. Three parallel project development staffs and user groups were created (appellate, trial, and specialized bankruptcy) using the same core CM/ECF functions, but allowing for separate development for crucial components unique to a particular type of court. A small in-house programming staff and court-knowledgeable analysts (five persons) experienced in court automation projects were employed during the early phases of system development and prototyping. Only after CM/ECF was proven effective and viable in test courts did the judiciary rapidly expand staff and consultant resources (both central and locally) for the duration of CM/ECF implementation.

The CM/ECF software and hardware architecture has assumed an integrated approach requiring all key components such as e-filing, e-files, e-docket, e-noticing, electronic case management, and electronic public access to be combined into one database and service. The e-filing, docketing, and case management components were designed to allow courts to easily modify the process. These changes were necessary due to major local rule, policy, or procedural modifications, or to new or revised national government requirements or regulations.

High service standards have been established that ensured the judiciary and legal community confidence and reliance in CM/ECF. These standards include the availability and reliability of service (24 hours /7 days a week, 99.9% on-line, particularly during court business hours); extensive backup and replication; fast, valid and transparent access to court case information, regardless of user’s location; full integrity of the information and documents; and equal and immediate public access to public available information.

C. Critical Non-Technical Principles

Court User Development Committees

Individuals involved in defining and assessing CM/ECF requirements were a heterogeneous group composed of judges, administrative staffs (both head administrators and lower-level supervisors), and technicians, representing divergent regions and court sizes. The composition of the group would change frequently, typically bi-annually. These advisory committees were required to establish priorities and clearly differentiate between basic needs and wants. Separate groups were created for different courts (e.g., bankruptcy, general trial courts, and appellate courts) since case management requirements and functions substantially differed. Early CM/ECF prototypes and pilot courts were restricted for several years to civil and specialized bankruptcy courts where case volumes were high, legal and constitutional and political barriers were modest, and the values of e-filing, e-files and an integrated case management system were most beneficial and cost-effective to the courts, litigators, and the public.

(date, and submitter name or ID); and (g) multi-layered individual and group profile access levels that specify which activities, cases or documents each individual can access.)

31 For example, docketing, access control, e-notification, public access, forms, docket reports, scheduling.
32 For example, specialized bankruptcy courts required a very specialized noticing module to distribute tens of millions of electronic and paper notices each month; trial courts handling criminal cases required specialized speedy trial and magistrate modules, and appellate courts required specialized judicial panel assignments and staff attorney modules.
33 Developers believed that the extensive court experience of this group was the critical factor for the success of CM/ECF.
34 Also see “8 Rules of E-filing” by Jim McMillian, National Center for State Courts, 2011 which describes key implementation policies and practices.
35 This approach is contrary to many court automation projects that emphasized the appellate and criminal courts.
Evaluation & Deployment
For each type of court, a moderate number of court units (four to five) were involved in the early years of development and testing of CM/ECF. These courts were required to install, train and operate the new system in actual court operations, not just review and test a product and service in an experimental or demonstration status. Both court personnel and technical AOUSC developmental staffs were prepared to regularly make adjustments and enhancements to the system, as needed. As additional court units committed to adopt CM/ECF, AOUSC prescribed a timetable for the installation, testing, data conversion, training of personnel, and anticipated operational “live” dates, with some adjustments depending on local circumstances.

Mentoring & Training Program
As the program expanded, well-structured training and implementation guidelines and mentoring programs were developed. A comprehensive set of guidebooks, checklists, and training manuals were developed, and a centralized CM/ECF service center staff was established. A mentoring program provided each court newly enrolled in CM/ECF with experienced court staffs from earlier CM/ECF adopter courts and other experts (AOUSC administrators, technicians, and consultants) to regularly assist and provide guidance during CM/ECF deployment. Forums have also been established to allow CM/ECF courts to regularly meet and exchange best practices and ideas to enhance the service. Several videos have been created to explain to the legal community the benefits and value of CM/ECF.

Interim Court Rules & Procedures
E-filing and electronic court records were novel experiences for both the judiciary and legal community, particularly in the initial years of adoption. The AOUSC has generated national guidelines and sample documents outlining the suggested changes in court procedures and rules. In addition, courts have created interim court rules and orders detailing local court practices and refinements.

Incentives for Early Adopters
Selective incentives were offered to lawyers and organizations who were early adopters and regular participants in the e-filing service. For example, counsels were offered extra services and more convenient hours to accomplish courthouse duties and meetings with judges. Early court adopters were given special recognition, and their leadership offered opportunities to become experts and mentors to other jurisdictions. In some cases, additional personnel, equipment and telecommunication services were provided to these early adopters. Legal and judicial authorities often view the legal process to be a “net-zero sum” process; i.e., one adversary wins while the other side loses; e-filing and e-court technology were proven to provide benefits and gains to all participants in the legal process.

Financial Support
CM/ECF avoided the total reliance on government funding for all development and maintenance. The judiciary recognized the long-term need for supplemental revenues. The US Federal Courts obtained Congressional legislation to permit moderately priced PACER fees with the requirement that revenue be invested in additional refinements and expansion of public access services and CM/ECF.

VI. Conclusions
CM/ECF has met all of the goals that were initially set out for the system. Court documents are now delivered, filed, retrieved and managed electronically. Court staffs have been relieved of much of their data entry work. Attorneys have been relieved of their noticing work and now receive immediate notice whenever activity occurs in their case. All users—the court, the bar and the public—are benefitting from immediate and convenient access to court records. The ultimate CM/ECF goals that have been achieved are (1) that the entire federal court community—judges, administrative personnel, lawyers, and public users—be completely comfortable in totally relying on this integrated automation service, and (2) that CM/ECF be the official record of all court records, with the vast majority of documents and case information entered and accessed via the Internet.

36 The CM/ECF approach differed from typical court development projects that insist on developers constantly making revisions and enhancements before the service is actually operated in real court settings. The CM/ECF approach encouraged more practical and value-oriented requirements.
39 For example, see Federal Civil Filing Rule http://www.law.cornell.edu/rules/frcp/rule_5; see local civil rule http://www.nysd.uscourts.gov/ecf/rules_040411.pdf.
New Tools for Telejustice from Vidyo

Thanks to modern video conferencing, today’s virtual courtrooms, remote depositions and video arraignments can benefit everyone involved in legal and judicial proceedings.

Every day, more people turn to Vidyo for high quality and reliable video conferencing. Vidyo makes it possible to connect courts, legal service providers, corrections facilities and law enforcement agencies for productive collaboration using everyday mobile, desktop and room-based systems, and an Internet connection.

Vidyo frees you from the constraints of old-school video conferencing systems so you can:

- Ensure telepresence quality communication and content sharing
- Streamline the adjudication process
- Alleviate the burden of court delays and case backlogs
- Reduce unnecessary travel time and litigation expense

Contact us for a hands-on demo and learn how Vidyo can improve your telejustice applications.

www.vidyo.com
Digital Technology Leading the Way in Court Recording

More and more courts all over the world are embracing digital recording systems to ensure that an accurate, accessible and reliable court record of proceedings is captured.

The court record may include the transcript, audio or audio and video recordings of any hearings, appearances and courtroom proceedings. Making the court record available to the general public is seen as one of the best ways to show open and fair justice to all. Further, enabling the record to be more easily accessible, and in broader formats, to judges and judicial practitioners can also result in expedited and fairer administration of justice.

The use of electronic recording (ER) is becoming commonplace in the modern courtroom. Over the last 15 years, more than 30,000 courtrooms have adopted digital audio and video recording technology to capture, store and manage the record of proceedings. Compared to alternative methods of record capture, digital recording technology offers significant, tangible benefits both immediately and in the long term.

Most digital recording systems today are comprised of at least four (4) components: recording, note-taking, playback and storage. For best clarity and to facilitate the creation of verbatim transcripts, typical courtroom venues require four (4) independent audio channels from a minimum of four microphones – one each for the judge, prosecution, defense and witness) are recorded. An increasing number of courts are finding tangible value in recording video as well as the audio.

Through the use of companion software programs, some digital systems provide participants (e.g., clerks, judges, attorneys) with the ability to enter electronic notes in real-time against the recordings. These notes are automatically time-stamped to the exact point in the recording when they were entered. During review, users can simply click the hyperlinked notes which will cause the recordings to play back at those exact points. Hence, it becomes extremely quick and easy to locate specific points within a court proceeding.

As for playback, digital recordings can be played on virtually any computer, which is one of their primary benefits. They can also be stored for future use either on optical media and/or on the network. Considering that official court records are often required to be stored for lengthy periods, courts benefit from significant savings in storage space and cost by going digital.

Once the court has a digital recording system installed, there are many benefits that judicial administrators can take advantage of to speed up the administration of justice.

Two of the most tangible benefits are rapid access to recordings of past proceedings and the ability to see and hear what actually happened during the proceeding, as opposed to relying on one’s memory and notes only.

The latest technologies enable all courtrooms, including those that are geographically dispersed, to be connected to a unified system that has a central repository for all audio/video recordings proceedings and associated linked notes. Thus, a simple search across all the notes in the repository for specific keywords (e.g. Case Number) can be conducted in order to locate the relevant notes and corresponding recordings.

An example of the application of the technology can be best realized through some typical scenarios. For example, during a courtroom proceeding, a person on the court’s staff (Clerk, Electronic Court Reporter etc) will usually start and stop the recorder and take a few log notes that will both aid the court in quickly locating and retrieving the hearing recording, as well as aid the typists during the transcription process. Additionally, if appropriate, courts can choose to deploy a centralized monitoring setup, whereby monitors are stationed outside of the courtrooms and each will electronically control and monitor up to four courtrooms concurrently. This approach, if deemed suitable for the particular environment, can result in even greater cost savings.

Court proceedings are often transcribed such that they can be reviewed by attorneys during the appeals process. When a transcript is requested, the relevant recording can be quickly retrieved and either copied to optical media and provided to a transcription entity, or distributed to them via a secure Internet portal.

Some digital systems enable the transcript to also include hyperlinks as additional value-add for the attorney. For example, with these time-stamped links, attorneys can quickly refer to the relevant portions of the recording when reviewing the transcript. This capability is especially useful when reviewing a case in preparation for trial.

Additionally, judges can also benefit through immediate access to courtroom recordings on the network, rather than having to wait for a transcript. They can also take their own private notes on their own computer, either during or after a proceeding, to assist with review at a later time.

Digital solutions can be customized in a myriad of ways to suit the infrastructure, operating environment, workflows and requirements of a particular court, and can be implemented in as basic or as sophisticated a manner as necessary. With increasing pressure on operational budgets and the demand for faster throughput, digital recording systems offer a clear advantage over alternative methods of capturing court proceedings.

For courts that have never recorded their proceedings, just the thought of going down that path can be a daunting one. However, the good news is that digital courtroom recording technology and processes have evolved over the years to the point where their deployment is straightforward and they have become ubiquitous. Thousands of judicial venues across the world are realizing the value of having a high quality, reproducible, permanent and easily accessible court record. This realization, coupled with the time and cost savings associated with increased workflow efficiency and employee productivity, is only serving to increase the rate of adoption of digital court recording.

Installation of digital recording systems represents one of the easiest ways to utilize state-of-the-art courtroom technology that delivers real cost savings, without causing disruptive change to current work practices. The digital system can be adapted to suit the way that administrative staff carry out their daily to day functions in the courtroom.

Digital recording can provide short- and long-term benefits, regardless of the type or size of the court. It can deliver a proven return on investment that is in line with current and future demands on operational expenditure for judicial administrators.
Digital Technology Leading the Way in Court Recording

More and more courts all over the world are embracing digital recording systems to ensure that an accurate, accessible and reliable court record of proceedings is captured.

The court record may include the transcript, audio or audio and video recordings of any hearings, appearances and courtroom proceedings. Making the court record available to the general public is seen as one of the best ways to show open and fair justice to all. Further, enabling the record to be more easily accessible, and in broader formats, to judges and judicial practitioners can also result in expedited and fairer administration of justice.

The use of electronic recording (ER) is becoming commonplace in the modern courtroom. Over the last 15 years, more than 30,000 courtrooms have adopted digital audio and video recording technology to capture, store and manage the record of proceedings. Compared to alternative methods of record capture, digital recording technology offers significant, tangible benefits both immediately and in the long term.

Most digital recording systems today are comprised of at least four (4) components: recording, note-taking, playback and storage. For best clarity and to facilitate the creation of verbatim transcripts, typical courtroom venues require four (4) independent audio channels (from a minimum of four microphones – one each for the judge, prosecution, defense and witness) are recorded. An increasing number of courts are finding tangible value in recording video as well as the audio.

Through the use of companion software programs, some digital systems provide participants (e.g., clerks, judges, attorneys) with the ability to enter electronic notes in real-time against the recordings. These notes are automatically time-stamped to the exact point in the recording when they were entered. During review, users can simply click the hyperlinked notes which will cause the recordings to play back at those exact points. Hence, it becomes extremely quick and easy to locate specific points within a court proceeding.

As for playback, digital recordings can be played on virtually any computer, which is one of their primary benefits. They can also be stored for future use either on optical media and/or on the network. Considering that official court records are often required to be stored for lengthy periods, courts benefit from significant savings in storage space and cost by going digital.

Once the court has a digital recording system installed, there are many benefits that judicial administrators can take advantage of to speed up the administration of justice.

Two of the most tangible benefits are rapid access to recordings of past proceedings and the ability to see and hear what actually happened during the proceeding, as opposed to relying on one’s memory and notes only.

The latest technologies enable all courtrooms, including those that are geographically dispersed, to be connected to a unified system that has a central repository for all audio/video recordings proceedings and associated linked notes. Thus, a simple search across all the notes in the repository for specific keywords (e.g. Case Number) can be conducted in order to locate the relevant notes and corresponding recordings.

An example of the application of the technology can be best realized through some typical scenarios. For example, during a courtroom proceeding, a person on the court’s staff (Clerk, Electronic Court Reporter etc) will usually start and stop the recorder and take a few log notes that will both aid the court in quickly locating and retrieving the hearing recording, as well as aid the typists during the transcription process. Additionally, if appropriate, courts can choose to deploy a centralized monitoring setup, whereby monitors are stationed outside of the courtrooms and each will electronically control and monitor up to four courtrooms concurrently. This approach, if deemed suitable for the particular environment, can result in even greater cost savings.

Court proceedings are often recorded and reviewed by attorneys during the appeals process. When a transcript is requested, the relevant recording can be quickly retrieved and either copied to optical media and provided to a transcription entity, or distributed to them via a secure Internet portal.

Some digital systems enable the transcription to also include hyperlinks as additional value-add for the attorneys. For example, with these time-stamped links, attorneys can quickly refer to the relevant portions of the recording when reviewing the transcript. This capability is especially useful when reviewing a case in preparation for trial.

Additionally, judges can also benefit through immediate access to courtroom recordings on the network, rather than having to wait for a transcript. They can also take their own private notes on their own computer, either during or after a proceeding, to assist with review at a later time.

Digital solutions can be customized in a myriad of ways to suit the infrastructure, operating environment, workflows and requirements of a particular court, and can be implemented in as basic or as sophisticated a manner as necessary. With increasing pressure on operational budgets and the demand for faster throughput, digital recording systems offer a clear advantage over alternative methods of capturing court proceedings.

For courts that have never recorded their proceedings, just the thought of going down that path can be a daunting one. However, the good news is that digital courtroom recording technology and processes have evolved over the years to the point where their deployment is straightforward and they have become ubiquitous. Thousands of judicial venues across the world are realizing the value of having a high quality, reproducible, permanent and easily accessible court record. This realization, coupled with the time and cost savings associated with increased workflow efficiency and employee productivity, is only serving to increase the rate of adoption of digital court recording.

Installation of digital recording systems represents one of the easiest ways to utilize state-of-the-art courtroom technology that delivers real cost savings, without causing disruptive change to current work practices. The digital system can be adapted to suit the way that administrative staff carry out their day to day functions in the courtroom.

Digital recording can provide short- and long-term benefits, regardless of the type or size of court. It can deliver a proven return on investment that is in line with current and future demands on operational expenditure for judicial administration.
Technology In Courts In Europe: Opinions, Practices And Innovations
By Dory Reiling

Abstract:
In 2011, the Consultative Council of European Judges produced an Opinion on justice and information technologies. It was my privilege to act as the supporting expert. This article is a reflection on the process of Opinion 14 and on its final product. It includes an evidence-based analysis of the state of IT in courts in Europe. It provides some insights into the opportunities and risks relating to IT in courts. This article also looks forward, in preparation for the International Conference on Court Administration in The Hague in June 2012. It closes with a critical evaluation of the way IT is changing courts and judiciaries.

The Opinion 14 Process
The Conseil Consultatif de Juges Européens (CCJE) is an advisory body of the Council of Europe (CoE). It is composed exclusively of judges, and advises on issues related to the independence, impartiality and competence of judges. The Council of Europe itself was founded on May 5 1949 by 10 countries; it now has 47 member countries. Its purpose is “to develop throughout Europe common and democratic principles based on the European Convention on Human Rights”. Its institutions include a parliamentary assembly, a council of ministers and the European Court of Human Rights. It is distinct from the European Union, which is primarily a political entity. The CoE is located in Strasbourg, France.

The CCJE produces an Opinion every year. The CCJE, after receiving its terms of reference for its 14th annual Opinion from the Council, first conducted a survey among its members on the use of IT in the courts in the member states. The results served to inform the preparation of the Opinion. A working party consisting of 9 CCJE members, each a judge representing a member state, met in Strasbourg twice to discuss and draft the Opinion. Finally, the draft was discussed and adopted in a plenary meeting of the CCJE in November 2011. It is now on the CCJE Council of Europe web site.

A Good Thing
First of all, it is important to note that the CCJE welcomes IT as a means to improve the administration of justice, for its contribution to the improvement of access to justice, case-management and the evaluation of the justice system and for its central role in providing information to judges, lawyers and other stakeholders in the justice system as well as to the public and the media. The CCJE encourages the use of all aspects of IT to promote the important role of the judiciary in guaranteeing the rule of law (the supremacy of law) in a democratic state; In the survey, a majority replied that they saw advantages in the use of IT, in terms of efficiency, speed and cost, access to legal information and as service to citizens. A minority also saw disadvantages, mainly in cost and data security.

Article 6 of the European Convention on Human Rights
Leading in the process of producing the Opinion was the application of Article 6 of the European Convention of Human Rights (ECHR). This article provides for access to courts, impartiality, independence of the judge, fairness and reasonable duration of proceedings to everyone. For each aspect of the judicial process that was discussed, we examined what the use of IT could mean for the standards of Article 6. The normative framework also included earlier CCJE Opinions and the Magna Charta of Judges, adopted in November 2010. The Magna Charta summarizes and codifies the main conclusions of the CCJE Opinions already adopted.

Existing use of IT
When thinking about innovating the administration of justice with IT, a look at the existing situation is a useful exercise. For the purpose of the Opinion, the CCJE survey provided some very interesting and poignant information on the use of IT in courts in Europe. Another source of information on the use of IT in those courts is the survey done by the Council of Europe's Commission on the Efficiency of Justice (CEPEJ). This survey of justice institutions in Europe is conducted every two years. Data collected are published in a report two years later. The 2004 data were published in the 2006

---

1 Dory Reiling, mag. iur. Ph.D., is a judge in the first instance court in Amsterdam, The Netherlands. She was the first information manager for The Netherlands' Judiciary, and a senior judicial reform expert at The World Bank. She is currently on the editorial board of The Hague Journal on the Rule of Law, the Springer Law, Governance and Technology Series, and chairs the Netherlands' Judiciary’s knowledge systems user advisory board. She has a weblog in Dutch, and an occasional weblog in English, and can be followed on Twitter at @doryontour.

2 www.coe.int

3 http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp; All websites were last visited on March 31 2012.

4 Magna Charta of Judges, adopted by CCJE in November 2010, available on the CCJE website at www.coe.int. The spelling Charta is original.
report. CEPEJ has surveyed the use of IT in courts since 2004, so it provides us with an overview of six years of IT development in courts. The two sources will be used extensively in the discussion that follows.

CEPEJ, for the purpose of its evaluation reports, has categorized IT according to the role of the technology in the court process:\(^5\):

- **Direct support for judges and staff.** This category includes most office technology, document production and calendaring as well as email and jurisprudence databases. It also includes technologies supporting the work in the courtroom.
- **Support for court management** encompasses case registration, case and court management systems and systems for financial management.
- **Support for interaction between courts and parties**, communication technology to transmit information within the organization and to those outside: parties and the general public.

CEPEJ’s methodology does not include technologies such as videoconferencing, instant messaging, blogs, wikis, and intranet web sites.

CEPEJ has classified the member states of the Council of Europe into three groups with regard to the level of use of information technology in their courts.

- In the highest scoring group, technology for direct support and court management is in place in all courts, and interaction technology is used to communicate externally. There are 17 countries in this group: Bulgaria, Czech Republic, Lithuania, Switzerland, UK-Northern Ireland, France, Norway, Portugal, Slovakia, Estonia, Turkey, Austria, Denmark, Finland, Malta, Russian Federation and UK-Scotland.
- The intermediate group has mostly implemented direct support and court management technology, but its use of external communication technology is still limited. In the intermediate group are 20 countries: Albania, Bosnia and Herzegovina, Belgium, Latvia, Sweden, Netherlands, Croatia, Italy, Monaco, Poland, Hungary, Luxemburg, FYROMacedonia, Ireland, Romania, Armenia, Slovenia, Spain and UK-England and Wales.
- In the lowest scoring group of 8 countries are Moldova, Azerbaijan, Cyprus, Greece, Montenegro, Andorra and Serbia.

The CCJE survey received replies from 37 countries. Five of the 17 high scoring countries in CEPEJ did not send replies to the CCJE survey. In the intermediate group, only 2 of the 19 countries did not reply, and in the lower group of the 8 countries, five did not reply. This means that the high level countries and the low-level countries are under-represented in the CCJE survey. Consequently, there is probably insufficient evidence on the cutting-edge innovation that is going on in the courts of some high level countries.

**Opinion 14**

The next part of this article follows the discussion in Opinion 14. Hence, it discusses IT in (1) access to justice, in (2) judicial procedures, and (3) with regard to independence and governance. For each topic, it first sets out the standards laid down in Article 6 of the ECHR and other Opinions and documents from the CCJE. Next, it analyses to what extent courts have implemented the technology. This analysis is based on the results of the CCJE survey and the surveys by CEPEJ.

1. **Access to justice**

**Article 6 ECHR and Opinion 14**

Access to justice is a very general concept that is relevant to judges and courts in different ways. It includes access to courts as laid down in Article 6 ECHR, but also access to legal information.\(^6\)

In Opinion 14, the CCJE states that full, accurate and up to date information about procedure is a fundamental aspect of the guarantee of access to justice identified in Article 6 of the Convention (ECHR). Judges must therefore ensure that accurate information is available to any person engaged in court proceedings. Such information should generally include details or requirements necessary to invoke jurisdiction. Such measures are necessary to ensure the necessary equality of arms. Opinion 14 is not the first occasion for the CCJE to concern itself with access to legal information. According to the Magna Charta of Judges, justice shall be transparent and information shall be published on the operation of the judicial system. CCJE Opinion 6 recommends that states should provide dissemination of suitable information on the

---


\(^6\) Reiling 2009 part 4
functioning of the judicial system, including landmark decisions delivered by the courts and citizens’ guides. Courts themselves should participate in disseminating the information. Opinion 7 contains the demand for increased transparency. The CCJE also warns that IT development should not be used to justify courts being dispensed with. Case law, at least landmark decisions, should be made available on the internet free of charge, in an easily accessible form, and taking account of personal data protection. It welcomes the use of international case-law identifiers like the European Union Case Law Identifier (ECLI) to improve access to foreign case law.7

Opportunities
Evidently, in the context of access to justice, communication technology is the first opportunity that comes to mind. In Opinion 6, the CCJE states that technology should be developed for obtaining documents to start a case, get in touch with the court and obtain information on cases.

The EU has developed a benchmark for stages of such increasingly complex levels of electronic interaction between citizens and governments8:

- **Stage 1**: Information online about public services
- **Stage 2**: One-way interaction: downloading of forms
- **Stage 3**: Two-way interaction: processing of forms (including authentication), e-filing
- **Stage 4**: Transaction: case handling, decision and delivery (payment).

Access to legal information
Access to legal information is also a very broad concept that includes access to information of a general nature, and/or to help with preventing or resolving problems that could potentially come before a judge, as well as information specifically on access to courts. Courts and judges have a role in ensuring access to legal information. The Internet can improve access to justice and promote transparency. The idea of online legal information to aid informal problem solving was advocated by Richard Susskind in the 1990s. Accessible information can lead to out-of-court resolution of problems and disputes9.

Access to courts
Access to courts is a service to citizens that can improve the individual’s chance of a just resolution of a legal problem. When courts publish their own decisions directly for the public, this increases their role as upholders of legal norms and standards, what is known as their shadow function. This refers to the wider normative authority of a judicial decision beyond its significance for the parties in the case.

According to the CCJE survey, courts and court systems increasingly have their own web sites. Less than half of those who responded say all or most courts have their own web sites. Some have portals, a few say they have one site for all courts, a few others have sites only for the Supreme Court. The websites provide general information on the judiciary, the court, its organization, information for court users and for the media, forms to submit to the courts, and case law.

<table>
<thead>
<tr>
<th>Facility in all courts</th>
<th>2004</th>
<th>2006</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic web forms</td>
<td>13</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>Special web sites</td>
<td>18</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Other electronic communication</td>
<td>12</td>
<td>15</td>
<td>16</td>
</tr>
</tbody>
</table>

Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93

The CEPEJ surveys did not ask about web sites in general, but they did inquire about the use of special websites, web forms and other forms of electronic communication. From the results, what emerges is that the use of special websites is increasing. In 2004, nearly half reported they used special websites in more than half or all of the courts. In 2008 there were a few more.

---

7 A new case identification/neutral citation system, a result of the recent Council of EU decision, designed to facilitate cross-border access to national case law (whether from courts or tribunals). Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law. [Official Journal C 127, 29/04/2011 P. 0001 – 0007](#)

8 EU Benchmarking p. 16

9 Reiling 2010.
What does emerge from the CEPEJ surveys is the development towards stage 2: downloadable forms. In 2004, almost a third reported having electronic web forms. In 2008 it had gone up to nearly half. Increasingly, courts also have electronic collections of jurisprudence.

**Table 2: Electronic jurisprudence databases in courts in Europe**

<table>
<thead>
<tr>
<th>Facility in all courts</th>
<th>2004</th>
<th>2006</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic database of jurisprudence</td>
<td>33</td>
<td>33</td>
<td>41</td>
</tr>
</tbody>
</table>

Where courts start to publish their own decisions, the market for legal information changes fundamentally. Traditionally, case law and jurisprudence are provided to publishers by the producers, judiciaries, lawyers or scholars. The publishers then provide them to the consumers, mainly the judiciaries, legal practitioners and educational institutions.

When the producers start to do their own publishing, the role of the traditional publishers becomes less central. Participants in the legal information market all play both roles as producers and consumers.

**E-filing**

From the CCJE survey, we can see that electronic filing, where legally possible, is still experimental and rare. Legislation enabling e-filing is in force in less than half of the respondents, in 2 it is not yet in force, in 1 it is incomplete, and a large minority say there is no legislation on electronic filing. Almost half say they have no e-filing, less than one third say they have electronic filing, the same number say they have some. The requirements for electronic filing are different: 2 members require an electronic signature, 5 members use a downloadable form and 6 members require a qualified electronic signature. E-filing is used extensively in Austria, but is low, rare or experimental elsewhere.

E-filing, as one-way communication is only stage 2 in the EU Benchmark. In stage 3, there is two-way communication. From the CCJE survey, we learn that less than half of the respondents say they communicate with parties electronically, and two say they do not. A large minority say they communicate electronically with lawyers, some by email and some through the portals.

What makes this analysis less than satisfying is that five out of the 17 members with experience in external communication did not send in replies to the CCJE survey questions. Hence, the picture is incomplete. For example, in the UK-England and Wales, which did not participate in the CCJE survey, there is an example of a stage 4 procedure: Money Claim Online (MCOL) and Possession Claim Online (PCOL). These processes both support full electronic transactions.

In summary, at present, innovation in access to justice in courts in Europe is mostly in stage 1 (information service) and 2 (web forms) external communication with the users of the courts. In countries where case law is made available to the general public on the Internet, this strengthens the shadow function of the courts, their role as guardians of norms and of the law.
2. IT in the court procedure

Article 6 Right to a fair hearing within a reasonable delay is an essential citizens’ right. A fair hearing includes the right to an adversarial hearing before a judge, production of original evidence, having witnesses or experts heard and to present material that is useful for the case. Information processing is central to the judicial procedure. According to ECHR case law, a hearing by videoconference should be in conformity with article 6, which includes the possibility of making a statement to the court and of adequate legal representation, and where necessary, provided for by law10.

Opinion 14 recognizes that IT offers opportunities for case processing and for knowledge management and state of the art, free of charge access to legal information and case law. Resort to IT facilitates exchanges of documents and access to case processing information for parties and their representatives. Video-conferencing may facilitate hearings in conditions of improved security or remote hearing witnesses or experts.

This Opinion builds on earlier ones, for instance Opinion 11 which states that a hearing should be held whenever the case law of the European Court of Human Rights so prescribes and should comply with all ECHR requirements, thus ensuring for litigants and society at large observance with the minimum standards of a properly designed and fair trial. Opinion 14 also identified a number of risks:

IT should:
- not diminish the procedural safeguards (or affect the composition of the tribunal) of a fair hearing.
- not prejudice mandatory hearings and the completion of other essential formalities prescribed by law.
- remain confined to substituting and simplifying procedural steps leading to an individualized decision of a case on the merits.
- not replace the judge’s role in hearing and weighing the factual evidence in the case, determining the law applicable and taking a decision with no restrictions other than those prescribed by law. The judge must retain, at all times, the power to order the appearance of the parties, to require the production of documents in their original form and the hearing of witnesses.

The aids to judicial decision should not be a constraint; they must be designed and seen as an ancillary aid to judicial decision-making.

Videoconferencing could provide a less direct or accurate perception of the statement. Video-conferencing should never impair the guarantees of the defense.

Implementation
IT has now become a pervasive information tool, as opposed to the administrative tool it once was. Courts operate with distinct processes: case disposition, managing cases and courts, knowledge sharing, and court hearings. They all process information in different ways, and therefore require distinct information technologies.

Office technology
From the CCJE survey, we learn that judges increasingly do their own writing on computers. Court staff write as well, but are also involved in registration and in delivering judgments. About half use models or templates. Some use voice recognition for document production.

Almost half use data in case registration systems for monitoring the length of proceedings; data on individual judges are used for statistical purposes only.

Courts occasionally communicate electronically with parties and/or lawyers, mostly on an informal basis. All courts still keep and archive paper files. Electronic files and electronic signatures are mostly still experimental.

In hearings, electronic files and equipment to project documents, audio and video, also to record hearings are used only occasionally. Some courts record hearings in audio, only a few make use of video recording. Some courts use videoconferencing to hear witnesses, parties and/or experts.

10 ECHR October 5 2006, Marcello Viola c. Italy, no. 45106/04 click here for full text, ECHR October 27 2007, Asciutto c. Italy, no. 35795/02.
The CEPEJ surveys show how word processing has become a pervasive tool in the back office of the courts. Email and internet connections are increasingly becoming a normal tool on the judge’s desk.

Table 3: Technology on the judge’s desk in courts in Europe

<table>
<thead>
<tr>
<th>Facility in all courts</th>
<th>2004</th>
<th>2006</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Word processing</td>
<td>40</td>
<td>42</td>
<td>45</td>
</tr>
<tr>
<td>Email</td>
<td>31</td>
<td>33</td>
<td>41</td>
</tr>
<tr>
<td>Internet connections</td>
<td>33</td>
<td>33</td>
<td>40</td>
</tr>
<tr>
<td>electronic jurisprudence databases</td>
<td>33</td>
<td>33</td>
<td>41</td>
</tr>
<tr>
<td>electronic files</td>
<td>20</td>
<td>18</td>
<td>21</td>
</tr>
</tbody>
</table>

Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93

With regard to e-files, in 2004 almost half replied they used electronic files in all courts. In 2006, the number had gone down to 18, only to go back up to 21 in 2008. According to the CCJE survey, use of e-files in courts is rare, and experimental at best, except in Austria. All courts still use paper files. A few use electronic files, a few more experiment with electronic files or use them occasionally.

Case law or jurisprudence databases
Jurisprudence databases deserve some special attention because the functionality and capabilities behind them can be very diverse. A jurisprudence collection is a repository of interesting or innovative decisions for the purpose of developing the law and its application for lawyers. Decisions are supplied on an ad hoc basis. Not every decision goes into the repository. Some infrastructure is needed, but it can be similar to producing the paper version. The purpose of a jurisprudence collection is to present innovative or landmark decisions to aid the development of the rule of law. The process involved can be separate from the regular court process of case disposition. A very different matter is a collection of all decisions in an electronic archive. All decisions need to go in. There is a process in place to ensure they do. This process is part of the regular business process of the court. In this case, the purpose of publication is also public scrutiny and transparency of the courts.

According to the CEPEJ surveys, a large majority had jurisprudence databases in all courts. In 2008 nearly all did. We do not know if these collections are open to the general public.

Knowledge management
Electronic jurisprudence databases are used widely, and increasingly. If the courts in member states have electronic access to sources of legal information, what types of information, and what sources do they have access to? The external sources can be state run or private, such as publishers. In the CCJE survey, less than half use both state and private sources, state sources are used in almost half, a few more use private sources. Below is the breakdown according to type of information and source.

Table 4: Sources of legal information databases in courts in Europe

<table>
<thead>
<tr>
<th>content</th>
<th>state sourced only</th>
<th>privately sourced only</th>
<th>both</th>
</tr>
</thead>
<tbody>
<tr>
<td>national legislation</td>
<td>18</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>European legislation</td>
<td>8</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>national case law</td>
<td>9</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>international case law</td>
<td>4</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>law review articles</td>
<td>4</td>
<td>-</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: CCJE survey on the use of IT in courts

11 Reiling 2009 p. 52-53
More than half of the respondents have access to state-sourced national legislation, less than half get national legislation from private sources. European legislation, where available, is mostly state-sourced, and so is national case law. Access to international case law and law review articles, from different sources, is much less common.

**Court management and administration**

The CEPEJ surveys include three databases systems for managing courts: Case registration systems, court/case management systems, and financial management systems. In 2004, just over half the member states had case registration systems in all courts. In 2008, that had gone up to two-thirds.

The increase in case registration systems is important, since they facilitate control over the process of case disposition\(^\text{12}\). Case registration systems in particular can improve case and case load management, which helps to reduce the time a case is pending.

Court and case management systems were available in all courts in half the member states in 2004, and in 2008 the number had increased to a little over half. It is remarkable to see how court and case management systems are lagging so far behind, even behind the financial management systems.

<table>
<thead>
<tr>
<th>Table 5 Court management technology in courts in Europe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facility in all courts</td>
</tr>
<tr>
<td>Case registration</td>
</tr>
<tr>
<td>Court/case management</td>
</tr>
<tr>
<td>Financial management</td>
</tr>
<tr>
<td>Source: CEPEJ 2006, p. 69, 2008 p. 86 and 2010 p. 93</td>
</tr>
</tbody>
</table>

The CCJE survey tells us that almost half use data in case registration systems for monitoring the length of proceedings, a slightly smaller number do not. A majority use data on each judge for statistical purposes only.

**Tools for the hearing**

Tools to support court hearings include electronic case files, equipment to project documents and images, audio and video, tools to record hearings and videoconferencing. Tools to support court hearings are not part of the CEPEJ surveys. From the CCJE survey, we can see that they are used only occasionally. In hearings, electronic files and equipment to project documents, audio and video, are used only occasionally. Some courts record hearings in audio, only a few make use of video recording. Some courts use videoconferencing to hear witnesses, parties and/or experts.

**3. IT-governance and judicial independence**

**Article 6** awards everyone the right of the citizen to an independent and impartial judge or court. Impartiality, and the independence which should safeguard it, are necessary for resolving citizens’ legal problems in a fair manner. Judicial governance needs to serve the goals of impartiality, independence, fair procedure and reasonable delay. Opinion 14 states that, in order to use the opportunities IT has to offer effectively, judges and courts may need to make major changes in their approach to case management, transparency, governance and their information relations with their environment.

**Independence and governance**

Across Europe, the issue of judicial independence is debated in different ways, depending on the national context. In some countries, independence stands first of all for the freedom and discretion of individual judges. In other countries, the independence debate is framed more in terms of organizing judicial impartiality\(^\text{13}\).

The way courts and judges work should, in the light of the norm in Article 6, be geared towards safeguarding independence and impartiality. When IT is introduced, the way courts work changes. This may entail changes in the way

\(^{12}\) Reiling 2009 part 3  
\(^{13}\) Reiling 2009 part 5
independence and impartiality are safeguarded in the daily work practices of the courts. Therefore, the impact of IT is relevant for independence and impartiality on different levels.

Across Europe, institutional arrangements differ
Safeguarding independence and impartiality is a concern on different levels: the level of the daily work process, that of the court organization, and that of the judiciary as a whole.

The distribution of responsibilities between the legislative, executive, and judicial powers as regards the operation of justice is arranged differently across the European states or entities. In a majority of states, the Ministry of Justice is responsible for the management of the overall budget for the courts, the public prosecution and legal aid. In some states, this responsibility may be partly delegated to judicial authorities, such as the Council for the Judiciary or the Supreme Court. With respect to the management of courts, it is first of all the court president, or a court (administrative) director who is responsible for the management of the financial resources at the court level.

Decisions about implementing IT for the entire court system are usually taken at the national level. Decisions about developing and implementing IT in court systems are taken by different authorities, depending on the situation. Across the member states, general and IT governance structures differ. According to the CCJE survey, decisions about IT are taken in almost half the countries by the Judicial Council or the national Court Administration, in less than half by the Ministry of Justice, and in a few cases by the Supreme Court. Judges participate in the IT decision making in less than half of the member states.

Opinion 14
Opinion 14 recognizes that IT access to information can contribute to a greater autonomy of judges in performing their tasks, and that IT can be an important tool for strengthening transparency, and objectivity in distributing cases and fostering case management. Information-based management is an opportunity for developing institutional independence. Data from IT systems can be used in evaluating judges, but not as the sole basis for evaluating an individual judge. Opinion 14 also identified a considerable area of risks with regard to IT implementation limiting judicial freedom to decide and infringing on the judicial process. IT should be used to enhance the independence of judges in every stage of the procedure and not to jeopardize it. IT should not interfere with the powers of the judge and jeopardize the fundamental principles enshrined in the Convention. IT has to be adapted to the needs of judges and other users, it should never infringe guarantees and procedural rights such as that of a fair hearing before a judge. Judges need to be involved in decisions that have consequences in those areas.

Managing and developing IT presents a challenge for any organization. For judiciaries, it presents a new and demanding challenge for their governance structures. IT governance should be within the competence of the Council for the judiciary or other equivalent independent body. Regardless of which body is in charge of IT governance, there is the need to ensure that judges are actively involved in decision making on IT in a broad sense. Judges and court staff have both a right and a duty to initial and on-going IT training so they can make full and appropriate use of IT systems.

Funding for IT should be based on its contribution to improve court performance, the quality of justice and the level of service to the citizens.

Critical Analysis
This next section discusses some of the ways in which IT is changing and innovating the administration of justice. It first analyzes the CCJE Opinion. This analysis, brief as it may be, points to some of the highlights of what is prominent in the Opinion, what its main concerns are, and what, in my view, is missing from it. The final paragraph will look forward to the future of court innovation.

What is prominent?
The CCJE shows great enthusiasm about knowledge management for judges. Electronic access to legal information, particularly jurisprudence databases, is regarded as a great step forward. An open question is, what courts do to share their own knowledge: do they make their own collections of their own case law, and do they use information technology to share knowledge, for instance in a wiki-like application? From the discussion in the section on access to justice, we can see how the market for legal services changes when judiciaries become producers, not just consumers of legal information.

14 CEPEJ 2010 p. 291
Opinion 14 also welcomes improved access for the public to legal information and to courts. Access to courts using electronic filing and access to case records are regarded as an improved service to the citizen.

What are the concerns?
The CCJE’s most pressing concern is the risk IT implementation poses to judicial freedom to determine procedures and to dispose cases. This concern is expressed in over a quarter of the statements in Opinion 14. Interestingly, this concern did not come up in the survey question about disadvantages of IT at all. The risk that implementation of IT poses to the independence of the individual judge to make decisions is evidently regarded as very serious. This concern may well have to do with the circumstance that, in more than half of the CCJE member states, judges are not involved in decisions about developing IT. Those decisions are, in the majority of cases, taken by governing bodies such as the Judicial Council, the Court Administration, the Ministry of Justice or the Supreme Court, without involving the judges.

Apparently, IT that does not directly affect the court process itself, such as an electronic collection of jurisprudence or even e-filing, is regarded with approval by the CCJE. This kind of IT is also relatively easy to implement. IT directly affecting the judicial process evidently causes anxiety, and it may even generate resistance.

In my earlier work, I concluded that the most salient deficiency is that of strategy: a strategic vision of processes administering justice, shaped by knowledge and understanding of the role of information in courts. In order for IT innovations in the court processes to actually improve court processes and not detract from them, the judiciary’s leadership and the IT function both need to understand how information works in the courts and the implications for IT. In some cases, changes in the governance structure may be needed to support strategy and policy formation and to support prioritizing funding and budgeting in accordance with the policies. From the above, I think the conclusion is also justified that judiciaries need to have sufficient control over their own IT, which may also require changes in the governance structure.

What did not make it into Opinion 14?
IT is constantly evolving and changing. Therefore, any discussion of IT in courts is going to miss the latest developments, for instance social media, wiki technology and mobile computing. However, in courts in Europe, IT tools for the courtroom are an undervalued topic. This is particularly true in comparison to common law systems like the U.S. where IT has been in use for much longer, and where the immediacy of trials have placed more emphasis on what goes on in the courtroom.

Personally, I would have welcomed a recommendation on cooperation and exchanges between member countries with regard to IT. Court systems can learn from each other’s experience with IT, precisely because IT is an evolving phenomenon. The results of experimentation are important for innovation. I have long advocated institutionalizing experimentation which can translate the needs of administering justice into IT applications. Court systems can also learn from the experiences of other court systems and other organizations. For example: the requirements for electronic filing are so different, one wonders whether an exchange of experiences on the requirements for e-filing might simplify its introduction. The CCJE could be a forum for such sharing of experience.

Innovations
The Magna Charta of Judges entrusts judges with responsibility for access to swift, efficient and affordable dispute resolution. Judges need to discern both advantages and disadvantages, to support positive trends and avoid those that are harmful to the administration of justice. Opinion 14 stresses that procedural rights (Art. 6 of the ECHR) of the parties should not be infringed by the application of IT. Judges, being responsible for ensuring the procedural rights of parties as safeguarded in article 6, need to be mindful of those risks but also supportive of the positive trends.

IT and its introduction in courts in Europe have affected the way the courts administer justice. These impacts may entail both risks and opportunities. At this stage, the innovation in courts is mainly in changes in tasks between judges and clerks in some countries. Judges’ access to national and international case law databases and other legal information has improved. More IT-savvy countries experiment with increased electronic communication with court users, in web forms and e-filing. Increased access to information, precision, and transparency of the judicial process has increased public scrutiny of the judiciary. Where courts publish their own case-law and decisions on line, the role of courts as setters of standards, their shadow function, has improved.

Standardized forms of justice can be more affordable for the users, but run the risk of being less applicable for individual situations. On the one hand, Opinion 14 sees the risk of a dehumanized justice and tribunals being closed down because of increasing use of information technology. On the other hand, it also identifies new forms of information management enabling higher levels of fairness and equality, also entailing a new perception of justice’s symbolism.
References

CCJE Magna Charta of Judges. Consultative Council of European Judges, on www.coe.int/ccje
CCJE Opinion 14, Consultative Council of European Judges, Justice and Information Technologies, Opinion 14, on www.coe.int/ccje
European Union. Benchmarking e-government projects at: www.epractice.eu
The Hague Institute for Global Justice (THIGJ), established in 2011, is dedicated to address core problems in the field of global justice where an interdisciplinary approach can open up new perspectives and lead to feasible and effective steps in solving the problems under scrutiny. Through its projects, the Institute seeks to promote the actual use of the concept of global justice and of national and international law – both public and private – as the basis for and as instrumental to attaining peace, security, and social and economic development. The Institute aims to achieve these objectives by synthesising the best and most innovative knowledge in these areas from national and international sources. Its goal is to mobilise various disciplines, actors, technologies and geographic and cultural perspectives to cultivate inclusive and bottom-up visions of issues, where the absence or impending absence of justice and of the willingness or ability to live up to the law leads to political, military, social and/or economic instability and inequality.

Submit your project proposals

The Hague Institute for Global Justice is interested in new proposals that fit within the scope of ‘global justice’ as framed on its website. For information on how to submit your proposals please go to our website: www.thigj.org/proposals

THIGJ combines the advantages and characteristics of a programming, a project and a network organisation. It develops its own working programme and projects, and executes these in cooperation with many different organisations, founding partners and others, all representing the best knowledge and the most creative practices in the field of the projects concerned. Further to that, the Institute acts as a politically independent body, it strives for cultural and religious neutrality, and works with researchers and research institutes from all over the world, in order to do justice to its name: The Hague Institute for Global Justice. THIGJ does not work with a large group of permanent researchers and developers, but appoints or accommodates experts with a proven past performance and up-and-coming talents on a project basis. This approach provides the Institute ample flexibility, including the possibility to react quickly to new challenges.
**Tetra Tech DPK**, a Tetra Tech company, is a San Francisco-based firm that provides technical, management, and advisory services to help developing and transitioning societies and governments navigate the challenges of modernization and democratization. We work around the world to help establish and strengthen productive relationships between state and society, and develop government and justice systems that are responsive, transparent, accountable, fair, and efficient.

The mission of Tetra Tech DPK is to foster good governance and the rule of law as basic qualities of successful democratic societies and market economies. We carry out our mission by helping institutions plan, manage, and implement constructive change to:

- Provide fair and timely access to justice
- Operate under transparent rules that safeguard rights of individuals, stimulate economic growth, and guard against unethical or corrupt practices
- Ensure the efficient and effective delivery of services to the public
- Increase opportunities for citizens to participate in the political and economic decisions that affect their lives

Tetra Tech DPK regularly seeks to engage qualified experts to serve on existing and anticipated projects around the world.

**Qualifications:**

- Candidates should have at least 5 years of relevant experience
- A college degree is required; law degree preferred for legal positions
- Fluency in written and spoken English is required; knowledge of a second language (in particular Spanish, French, and Arabic) preferred
- Prior experience on donor-funded projects with US government funding experience particularly desirable
- Subject matter experience in at least one of the following areas:
  - Criminal Justice
  - Court Administration
  - Criminal / Prosecutorial Investigation
  - Judicial Ethics and Discipline
  - Enforcement of Judgments
  - Inter Institutional Cooperation
  - Human Rights
  - Gender Equality and Mainstreaming
  - Anti-Corruption
  - Government Accountability and Audit
  - Civil Society Engagement and Development

Interested applicants should submit a cover letter in English, detailing your specific expertise, and resume to jobs@dpkconsulting.com.

More information about Tetra Tech DPK is available on our website, www.tetratechdpk.com.
Applying the Case Management CourTools: Findings from an Urban Trial Court

By Collins E. Ijoma and Giuseppe M. Fazari

Introduction
The National Center for State Courts (NCSC) recently promulgated 10 trial court performance measures, referred to as CourTools. Measures 2, 3, 4, and 5 provide a methodology by which court managers can examine their management and processing of cases. The measures include clearance rate (measure 2), time to disposition (measure 3), age of active pending caseload (measure 4), and trial date certainty (measure 5). The objective of this research was threefold. The first aim was to assess the viability of using the case management measures to examine case processing trends in a New Jersey (NJ) urban trial court. Each measure was reviewed to determine the tool’s applicability to the criminal division of the court. The second objective (pursued as a parallel to the first) was to present the findings in the same context as the CourTools’ framework to determine its practicality. The final goal was to serve as a platform for other courts on the national and international level that do not yet use performance measures. These courts, diverse as they are, may use the methodologies and findings of this case study as a reference and guide to develop their own program to measure the court’s productivity and efficiency.

To that end, this case study sought to answer the following questions in determining the applicability of the CourTools to the selected court and by extension, its potential for more universal application to other court systems. First, what is the relevance of measurements to the courts and why is it important, if at all? Second, what are the CourTools? Third, can the measurement model be applied to an actual court and if so, how is it executed and illustrated in practice? Finally, what are the implications of the findings for the court in question, as well as other courts that seek to incorporate the CourTools to measure performance?

The Relevance of Measures in Caseflow Management
The old management adage, ’you can’t manage what you don’t measure’, is not always applicable to all facets of management such that even the notable statistician and scholar, W. E. Deming, believed that many things of great import to managers could not be measured. In fact, when Deming was asked about the hypothetical benefit of spending 20,000 dollars to train 10 people in a special skill, he responded, “You’ll never know. You’ll never be able to measure it. Why did you do it? Because you believed it would pay off. Theory”. There are other aspects to a company, business entity, or as presented in this article, a court, however, where measurement is quite germane for assessment purposes and that is in the area of caseflow management. Solomon, Cooper, and Bakke defined caseflow management as:

“The coordinated management by the court of the processes and resources necessary to move each case from filing to disposition, whether that disposition ultimately is by settlement, guilty plea, dismissal, trial, or other method.”

Put succinctly, case management is “the process by which courts convert their inputs (cases) into outputs (dispositions)” Research in the court management field has provided administrators with copious amounts of data from which policy and procedure has been developed and monitored. In tandem with these improvements, the research has resulted in the training of many judges and court administrators in the lexicon and methods of case management. Managing the caseflow involves an assurance that these events are meaningful; that is, the activity and preparation required for the event to take place on the scheduled date is completed before that date by appropriate stakeholders.

References
1 Collins E. Ijoma is the trial court administrator for the Superior Court of New Jersey, Essex Vicinage. He was the 2004-05 president of NACM and a founding member of the Mid-Atlantic Association for Court Management (MAACM). He is a 1991 Fellow of the Institute for Court Management. Contact information: Collins E. Ijoma, Trial Court Administrator, Superior Court of New Jersey, Essex Vicinage, Veterans Courthouse, 0 West Market Street, Newark, NJ 07102, (973) 693-5701
2 Giuseppe M. Fazari is the assistant trial court administrator for the Superior Court of New Jersey, Essex Vicinage. Dr. Fazari holds a Ph.D. from Seton Hall University and is a 2008 Fellow of the Institute for Court Management. Contact him at giuseppe.fazari@judiciary.state.nj.us. Superior Court of New Jersey, Essex Vicinage, Veterans Courthouse, 50 West Market Street, Newark, NJ 07102
Caseflow management, as an area of study, is still in its infancy, although with the pioneering efforts of the NCSC and professional court associations, progress has been relatively rapid. Considering the early phase that the field finds itself, training in and knowledge of caseflow is critical to the court’s success. Gathering a variety of data provides the needed perspective of the challenges that delay dispositions. Delay is not inevitable and research in support of this statement is clear. Moving a case from filing to disposition is a robust test of the court’s effectiveness. Quite simply, the prevalence of delay is correlated with the court’s commitment to reduce it. All of this is well established in the field because of the empirical data in which supports it. For instance, Goerdt et al., inter alios, concluded that the pace of litigation is associated with the court’s caseflow management. Three findings substantiate this argument. First, the best predictor in efficient disposition was the court’s early and continuous control of events. Second, caseload per judge was inconsequential to the speed of disposition. This was echoed by Church et al., who found that criminal case delay is generally not caused by large caseloads or a limited number of judges. There was, however, a threshold to this second point whereby the caseload per judge cannot grow ad infinitum without it impacting even the best managed courts. At some point increases in caseload must be tempered by adding more judges. Third, effective screening and monitoring of defendants was associated with efficient caseflow management. These findings are encouraging because unlike court size and caseload, establishing and maintaining a protocol for moving cases through the system is within the control of the courts. The key, however, is that any protocol must be grounded on empirical data so that the inputs are justified by the outputs. Incidentally, the data, once collected, analyzed, and disseminated eases the concerns of supporters while at the same time quiets the cynics.

Aikman asserted that it is the judge who is responsible for managing cases. Staff and administration, albeit essential, are ancillary regarding this role. He noted:

“Caseflow management consumes a significant portion of a court’s resources…and those responsible for generating statistical reports to advise judges about the status of their caseloads, should be deemed mission critical to the caseflow management function” [emphasis added].

Active caseflow management is fundamental to a successful program. This relies in part on research from which the manager can make an informed decision and advise the judge accordingly. Some of this data includes generic caseload statistics, impact studies, and longitudinal reports. Saari and associates noted that courts should evaluate the number of filed, pending, and disposed cases in relation to established goals to effectively manage the caseload. Among others, some of the characteristics that Solomon, Cooper, and Bakke highlighted for an effective caseflow management system included:

1) Court supervision of case progress from filing to final disposition.
2) A case monitoring and information system to monitor the caseload and to identify any cases that are in danger of exceeding established time limits and goals.
3) A credible scheduling system that assures that court events occur on the first scheduled date.

Delay is defined as either necessary or unnecessary. Much of what is involved in case management is distinguishing between the two. In so doing, managers are primarily responsible for developing and implementing policy and procedure to mitigate unnecessary delay. As noted in the Trial Court Performance Standards, unnecessary delay “causes injustice and hardship…and is the primary cause of diminished public trust and confidence in the court.” The American Bar Association (ABA) submitted that unnecessary delay constitutes any elapsed time that falls outside that which can be reasonably expected for court events to occur. Measuring the caseflow is critical because it is through such

10 Ibid, page 214.
12 See Note 5 supra, pages 113-115.
measurements that one can determine whether cases are being managed effectively so that delay is reduced. Some of the benefits of proactive case management include:

- Time standards for postdisposition matters, with the standards and processing differentiated by case type and type of matter.
- Firm commitment to the credibility of assigned dates for both hearings and trials (there is no such thing as a “first” date).
- Macro and micro statistical reports providing a full picture of the pending, active caseload and the cases that have been disposed, with individual “early warning” reports for each trial judge identifying cases assigned to the judge that are close to missing a preset checkpoint in case processing.

Ensuring that individual justice is given to individual cases is the raison d’etre of the trial court. Caseflow management coordinates the activities and resources (including the human capital) so that this underlying purpose of the court is not compromised or otherwise not attained due to unnecessary delay. Delay, perhaps more than any other single factor, vitiates all other efforts made by the court to achieve justice. Hewitt and associates described it as “a disease…and a symptom of unhealthy conditions”.

A review of the literature consistently supports the importance of measuring court performance to reduce delay and ensure justice. The research borne from this case study shows the application of performance measures on an actual court of considerable size and the implications (for better or worse) of the outcomes. Other court systems can likewise consider these tools to assess the effectiveness of their case management practices on caseflow. The framework is analogous to a vehicle’s dashboard. If the vehicle represented the system, the outcomes of these measurements indicate to judges and managers how well or poor the vehicle is ‘performing’. Rarely does one drive his or her car without periodically checking, among other things, the gas, oil, speedometer, and temperature gauges. For those systems that drive blindly, one can only hope to not be on the road at the same time as them.

**CourTools Defined**

As referenced in the introduction, this case study examined the applicability of CourTools 2, 3, 4, and 5. Clearance rate (measure 2) is defined as “the number of outgoing cases as a percentage of the number of incoming cases”. The purpose is to measure “whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, from month to month and year to year, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements may be made. Courts should aspire to clear (i.e., dispose of) at least as many cases as have been filed/reopened/reactivated in a period by having a clearance rate of 100 percent or higher”.

Time to disposition (measure 3) is defined as the “percentage of cases disposed or otherwise resolved within established time frames”. The measure is intended to be used in conjunction with clearance rates and age of active pending caseload, to assess “the length of time it takes a court to process cases”. The court’s performance is compared with local, state, or national guidelines in determining “timely case processing…and provides a framework for meaningful measurement across all case types”.

Figure 1 illustrates the ABA, Conference of State Court Administrators (COSCA), and NJ Criminal Trial Court processing standards for criminal case-types. Although the ABA and COSCA standards are generally recognized by American courts, jurisdictions can consider adopting these benchmarks as simply a guide in formulating their own disposition goals that takes into account indigenous conditions, as well as, local empirical study (as was done in NJ).

<table>
<thead>
<tr>
<th>COSCA Case Processing Standards</th>
<th>ABA Case Processing Standards</th>
<th>NJ Criminal Trial Court Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony – 100 percent within 180 days</td>
<td>Felony&lt;br&gt;90 percent within 120 days&lt;br&gt;98 percent within 180 days&lt;br&gt;100 percent within one year</td>
<td>Pre-Indicted Cases&lt;br&gt;100 percent within 60 days of arrest (backlog not to exceed 30 percent of caseload)</td>
</tr>
<tr>
<td>Misdemeanor – 100 percent within 90 days</td>
<td>Misdemeanor&lt;br&gt;90 percent within 30 days&lt;br&gt;100 percent within 90 days</td>
<td>Post-Indicted Cases&lt;br&gt;100 percent within 120 days of indictment (backlog not to exceed 30 percent of caseload)</td>
</tr>
</tbody>
</table>

---

15 See Note 9 supra, pages 353-354.
17 See Note 3 supra, page 1.
18 Loc. Cit.
The age of the active cases (measure 4) refers to the cases that are filed, but are not yet disposed. It is measured as the number of days from filing until the time of measurement. The NCSC states “having a complete and accurate inventory of active pending cases as well as tracking their number and age is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the number and type of cases drawing near or about to surpass the court's case processing time standards. Once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes”\textsuperscript{19}.

Trial date certainty (measure 5) is defined as “the number of times cases disposed by trial are scheduled for trial”. Specifically, the measure evaluates “the effectiveness of calendaring and continuance practices for both jury and non-jury trials”. According to the NCSC, timely case disposition is correlated with the “court’s ability to hold trials on the first date they are scheduled to be heard”\textsuperscript{20}.

Research Methodology
This case study was conducted on an American court in NJ and guided by empirical findings and suggestions drawn from case management literature. NJ comprises 21 counties that are divided into 15 districts, termed vicinages. This research aimed to collect and analyze data on criminal cases filed in an urban trial court, heretofore referred to as the pseudonym, South Mountain District (SMD), during a timeframe of three court years. SMD is an urban trial court of general jurisdiction centered in a northeastern city of approximately 300,000 people. The court includes a complement of approximately 50 judges and 950 employees, who handle an estimated 150,000 filings each year.

Each vicinage is headed by an Assignment Judge (AJ), who is appointed by the state’s Chief Justice. The AJ serves as the chief executive officer and is responsible for overall affairs of the vicinage. The Trial Court Administrator (TCA) serves as the chief operating officer and oversees nine divisions including criminal, civil, family, municipal, probation, human resources, finance, information technology, and general operations. Together the AJ and TCA form the executive component of the court. The case management divisions (criminal, civil, family, and municipal) are headed by a Presiding Judge (PJ) and Division Manager (DM). Akin to the AJ and TCA, the PJ and DM comprise the executive component of their respective division. In Figure 2, Stott illustrated the typical span of control for judges and administrators\textsuperscript{21}. Case processing is depicted as a shared role suggesting that in an ideal state, the implementation of the CourTools measures and monitoring outcomes is a joint responsibility between administrators and judges.

\textbf{Figure 2. Continuum of Judicial-Administrative Activities}

<table>
<thead>
<tr>
<th>Administrator-centered</th>
<th>Joint decision making or information sharing: “a shared role”</th>
<th>Judge-centered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrator makes the decisions without consulting the judge</td>
<td>Joint decision making or information sharing: “a shared role”</td>
<td>Judge makes the decisions without consulting the administrator</td>
</tr>
<tr>
<td><strong>Examples of Activities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Budgeting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Training for non-judicial personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Purchasing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Accounting</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Statistics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Report preparation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Systems analysis and research</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Record keeping</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Agency relationships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Legislative relationships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Public information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Planning committees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Research on rules and procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Probation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Case processing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Financial policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Personnel rules</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Case decisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Directing meetings of judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Assigning judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Training for judges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Selecting law-trained support personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Supervising screening and instructing of jurors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Record creation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{19} Loc. Cit.
\textsuperscript{20} Loc. Cit.
The U.S. Census Bureau recorded the county’s racial makeup as follows: 44.5 percent Caucasian, 41.2 percent African-American, 0.2 percent Native American, 3.7 percent Asian, 0.1 percent Pacific Islander, 6.9 percent from other races, and 3.4 percent from two or more races. The median household income was 44,944 dollars with approximately 15 percent of the population below the poverty line. Research shows consistent support for the importance of the cited measurements in evaluating case management practices; in so doing, this methodology can serve as an outline for other courts contemplating the applicability of these performance measures. The SMD court was selected for the study given its volume, diversity, and accessibility of its criminal caseload relative to other courts.

This study synthesized the data which the NJ Administrative Office of the Courts (AOC) currently collects and promulgates regarding criminal case practice. The AOC collectively works as a resource for the vicinages and coordinates functions such as human resources, communications, finance, purchasing, and information technology. In addition, this central office assesses case management in a variety of areas by organizing and providing the vicinages with a series of reports on case management outcomes on a monthly and court-year-to-date basis. Consequently, the selected court provided the researchers with a great deal of versatility when comparing current measurements to the CourTools. Of course, these conditions do not exist in all courts, but the CourTools that were the subject of this analysis were shown to be relatively basic, particularly in contrast to the more advanced research modeling practiced in NJ, such as backlog per 100. For those courts that offer no assessment of performance, the CourTools were shown to be an appropriate starting point.

The collected data was examined for the selected three-year period using the local case management system database. The reports are generated on a weekly basis and distributed to administrators and supervisors. The charge/disposition screen, charging document, and disposition date fields within the automated system were used in determining defendant status. With the exception of trial date certainty, data pertaining to these measures was found to have been collected, albeit organized differently when summarized and promulgated to NJ judges and administrators by the AOC. The counties are ranked by case-type in accordance to the local statewide standards. These reports were reviewed and customized to the methods cited in CourTools. The data was analyzed using measurements of central tendency. The data was depicted in frequency distribution charts and shown in aggregate. In some instances, vicinage data was cross-tabulated with statewide findings. The recommendations are based on the collected data and findings of the selected district and the assertions found in the literature. Although the research recommended that the measures be incorporated statewide in NJ, expected benefits can vary depending on variables specific to the jurisdiction. This does not, however, disqualify the overarching importance of instituting performance measures in the courts that this study consistent with the literature supported. While the results and implications cannot be generalized, the CourTools, as demonstrated in this study, could certainly be universally-applied so that each court can draw its own conclusions.

**Results**

**Clearance Rates**

Table 1 shows the pre-indictment clearance rate for SMD and the state during three selected court years. Figure 3 demonstrates the clearance rate and trend for a current court year. The data indicates that the district did not meet its clearance goal for court years two and three. The trend for the current court year suggested that absent a significant increase in dispositions in May and June, SMD would be unlikely to clear 100 percent.

<table>
<thead>
<tr>
<th>Court Year</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>N Filings</td>
<td>20,249</td>
<td>18,495</td>
<td>17,841</td>
</tr>
<tr>
<td>N Dispositions</td>
<td>21,003</td>
<td>18,152</td>
<td>17,666</td>
</tr>
<tr>
<td>% Clearance</td>
<td>104</td>
<td>98</td>
<td>99</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court Year</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>N Filings</td>
<td>115,682</td>
<td>112,528</td>
<td>113,633</td>
</tr>
<tr>
<td>N Dispositions</td>
<td>116,752</td>
<td>115,088</td>
<td>114,966</td>
</tr>
<tr>
<td>% Clearance</td>
<td>101</td>
<td>102</td>
<td>101</td>
</tr>
</tbody>
</table>

---

Table 2 shows the post-indictment clearance rate for SMD and the state during three selected court years. Figure 4 demonstrates the clearance rate and trend for a current court year. The data indicates that the district did not meet its clearance goal for court year three. The trend for the current court year demonstrated that with the exception of July, the district has fallen short of clearing 100 percent of its caseload for subsequent months.

<table>
<thead>
<tr>
<th>Court Year</th>
<th>SMD Clearance Rate</th>
<th>Statewide Clearance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N Filings</td>
<td>N Dispositions</td>
</tr>
<tr>
<td>Year 1</td>
<td>7,189</td>
<td>7,939</td>
</tr>
<tr>
<td>Year 2</td>
<td>5,498</td>
<td>6,766</td>
</tr>
<tr>
<td>Year 3</td>
<td>6,539</td>
<td>6,437</td>
</tr>
</tbody>
</table>

**Table 3. Time Intervals for Pre-Indictment Cases Disposed in Days**

<table>
<thead>
<tr>
<th>SMD</th>
<th>Time Interval</th>
<th>Arrest to Pre-Indictment Disposition</th>
<th>Arrest to Indictment Filing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Year 1</td>
<td>Year 2</td>
</tr>
<tr>
<td>Median</td>
<td>6</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Mean</td>
<td>50</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>70th Percentile</td>
<td>44</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>80th Percentile</td>
<td>74</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>90th Percentile</td>
<td>136</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Statewide</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Median</td>
<td>28</td>
<td>27</td>
<td>97</td>
</tr>
</tbody>
</table>
### Table 4. Time Intervals for Post-Indictment Cases Disposed in Days

<table>
<thead>
<tr>
<th>SMD Time Interval</th>
<th>Indictment to Disposition Year 1</th>
<th>Year 2</th>
<th>Indictment to Trial Date Year 1</th>
<th>Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median</td>
<td>88</td>
<td>74</td>
<td>263</td>
<td>253</td>
</tr>
<tr>
<td>Mean</td>
<td>125</td>
<td>-</td>
<td>298</td>
<td>-</td>
</tr>
<tr>
<td>70th Percentile</td>
<td>149</td>
<td>-</td>
<td>344</td>
<td>-</td>
</tr>
<tr>
<td>80th Percentile</td>
<td>194</td>
<td>-</td>
<td>379</td>
<td>-</td>
</tr>
<tr>
<td>90th Percentile</td>
<td>273</td>
<td>-</td>
<td>466</td>
<td>-</td>
</tr>
<tr>
<td>Statewide</td>
<td>78</td>
<td>74</td>
<td>288</td>
<td>291</td>
</tr>
</tbody>
</table>

### Table 5. System Time Intervals for Cases Disposed in Days

<table>
<thead>
<tr>
<th>SMD Time Interval</th>
<th>Arrest to Indictment Disposition Year 1</th>
<th>Year 2</th>
<th>Arrest to Trials Completed Year 1</th>
<th>Year 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median</td>
<td>224</td>
<td>186</td>
<td>415</td>
<td>349</td>
</tr>
<tr>
<td>Mean</td>
<td>259</td>
<td>-</td>
<td>442</td>
<td>-</td>
</tr>
<tr>
<td>70th Percentile</td>
<td>301</td>
<td>-</td>
<td>508</td>
<td>-</td>
</tr>
<tr>
<td>80th Percentile</td>
<td>361</td>
<td>-</td>
<td>555</td>
<td>-</td>
</tr>
<tr>
<td>90th Percentile</td>
<td>469</td>
<td>-</td>
<td>687</td>
<td>-</td>
</tr>
<tr>
<td>Statewide</td>
<td>186</td>
<td>172</td>
<td>434</td>
<td>435</td>
</tr>
</tbody>
</table>

### Age of Active Pending Caseload

Tables 6 and 7 demonstrate the age of the active pre-indictment caseload. The SMD backlog remained relatively steady during three selected court years noted in table 6. Table 7 shows the backlog for a current court year, which increased by approximately 7 percent from court year three.

### Table 6. Age of Active Pre-Indictment Pending Caseload

<table>
<thead>
<tr>
<th>Court Year</th>
<th>SMD Pending Caseload</th>
<th>Statewide Pending Caseload</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N Total Pending</td>
<td>N Backlog Beyond 60 days</td>
<td>% Backlog</td>
</tr>
<tr>
<td>Year 1</td>
<td>2,388</td>
<td>1,340</td>
<td>56</td>
</tr>
<tr>
<td>Year 2</td>
<td>2,824</td>
<td>1,659</td>
<td>59</td>
</tr>
<tr>
<td>Year 3</td>
<td>3,140</td>
<td>1,776</td>
<td>57</td>
</tr>
</tbody>
</table>

### Table 7. Age of South Mountain District Active Pending Pre-Indictment Caseload in Months

<table>
<thead>
<tr>
<th>Age (months)</th>
<th>N of Cases</th>
<th>% of Cases</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2</td>
<td>1,168</td>
<td>35.54</td>
<td>35.54</td>
</tr>
<tr>
<td>Over 2</td>
<td>1,041</td>
<td>31.68</td>
<td>67.22</td>
</tr>
<tr>
<td>Over 4</td>
<td>470</td>
<td>14.3</td>
<td>81.52</td>
</tr>
<tr>
<td>Over 6</td>
<td>459</td>
<td>13.97</td>
<td>95.49</td>
</tr>
<tr>
<td>Over 12</td>
<td>96</td>
<td>2.92</td>
<td>98.41</td>
</tr>
<tr>
<td>Over 24</td>
<td>52</td>
<td>1.58</td>
<td>99.99</td>
</tr>
<tr>
<td>Total</td>
<td>3,286</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

Figures 5 and 6 depict the percentage of the pre-indictment caseload that is over goal. During the month of April in court year three, 63 percent of the caseload was more than 2 months old and 33 percent was more than 4 months old. These figures represented a slight increase for the month of April during previous years. As of early May of court year three, more than a fifth of the caseload was older than 4 months with more than 18 percent older than 6 months.

### Figure 5. Percentage of Pre-Indictment Caseload Over Goal for April by Year
Tables 8 and 9 demonstrate the age of the active post-indictment caseload. Similar to pre-indictment, post-indictment backlog remained relatively steady during the selected court years. The backlog for the current court year increased by approximately 10 percent from court year three.

### Table 8. Age of Active Post-Indictment Pending Caseload

<table>
<thead>
<tr>
<th>Court Year</th>
<th>SMD Pending Caseload</th>
<th>Statewide Pending Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N Active Pending</td>
<td>N Backlog Beyond 120 days</td>
</tr>
<tr>
<td>Year 1</td>
<td>2,000</td>
<td>561</td>
</tr>
<tr>
<td>Year 2</td>
<td>1,450</td>
<td>437</td>
</tr>
<tr>
<td>Year 3</td>
<td>2,103</td>
<td>592</td>
</tr>
</tbody>
</table>

### Table 9. Age of Active Pending Post-Indictment Caseload in Months for the Current Court Year

<table>
<thead>
<tr>
<th>SMD</th>
<th>Statewide</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age (months)</td>
<td>N of Cases</td>
</tr>
<tr>
<td>0-4</td>
<td>1,527</td>
</tr>
<tr>
<td>4-12</td>
<td>824</td>
</tr>
<tr>
<td>12-18</td>
<td>101</td>
</tr>
<tr>
<td>18-24</td>
<td>8</td>
</tr>
<tr>
<td>24-36</td>
<td>9</td>
</tr>
<tr>
<td>Over 36</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>2,471</td>
</tr>
</tbody>
</table>

Figures 7 and 8 depict the percentage of the post-indictment caseload that is over goal. During the month of April in court year three, 38 percent of the caseload was more than 4 months old and 5 percent was more than 12 months old. Year-old cases showed a slight decrease for the month of April during previous years. As of May in court year three, 38 percent of the caseload was older than 4 months with most over goal cases between 4 to 12 months old.
Trial Date Certainty

Table 9 illustrates the number of events and defendants that were scheduled for trial together with the outcome of those proceedings. The data indicated that in court year three, there were 2,625 events that were originally scheduled for trial of which, about 30 percent or 782 events ultimately concluded in trial. Events involving continuing trials were removed from analysis. With respect to defendants, the data showed that of the 722 defendants scheduled for trial, 197 of them proceeded to trial. Almost half of defendants pleaded and close to a quarter of them were dismissed.

Table 9. Scheduled Trial Outcomes by Event and Defendant, Court Year Three

<table>
<thead>
<tr>
<th>Disposition</th>
<th>Scheduled Trial Events</th>
<th>Scheduled Trial Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trial</td>
<td>782</td>
<td>197</td>
</tr>
<tr>
<td>Dismissal</td>
<td>618</td>
<td>174</td>
</tr>
<tr>
<td>Plea</td>
<td>1,187</td>
<td>333</td>
</tr>
<tr>
<td>PTI</td>
<td>27</td>
<td>11</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>Sum Outcomes</td>
<td>2,625</td>
<td>722</td>
</tr>
</tbody>
</table>

Table 10 shows the number of trial events associated with defendants who actually proceeded to trial. The data shows that more than three-quarters of the defendants had had less than 6 trial events before the trial commenced. Defendants by and large have more than 1 trial event with the largest faction having 2 events.

Table 10. Number of Trial Events Scheduled to First Trial Day by Defendant

<table>
<thead>
<tr>
<th>N of Trial Events</th>
<th>N of Defendants</th>
<th>% of Defendants</th>
<th>Cumulative %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>22</td>
<td>11.2</td>
<td>11.2</td>
</tr>
<tr>
<td>2</td>
<td>46</td>
<td>23.4</td>
<td>34.6</td>
</tr>
<tr>
<td>3</td>
<td>33</td>
<td>16.8</td>
<td>51.4</td>
</tr>
<tr>
<td>4</td>
<td>26</td>
<td>13.2</td>
<td>64.6</td>
</tr>
<tr>
<td>5</td>
<td>25</td>
<td>12.7</td>
<td>77.3</td>
</tr>
<tr>
<td>6</td>
<td>18</td>
<td>9.1</td>
<td>86.4</td>
</tr>
<tr>
<td>7</td>
<td>13</td>
<td>6.6</td>
<td>93.0</td>
</tr>
<tr>
<td>8</td>
<td>3</td>
<td>1.5</td>
<td>94.5</td>
</tr>
<tr>
<td>9</td>
<td>6</td>
<td>3.0</td>
<td>97.5</td>
</tr>
<tr>
<td>10 or more</td>
<td>5</td>
<td>2.5</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>197</td>
<td>100%</td>
<td>-</td>
</tr>
</tbody>
</table>

Conclusions

The true benefit of the CourTools based on this research is not so much comparing the results to a given standard, as is the implications that those results can suggest. Data outcomes can yield the support that judges and administrators require to make policy and procedural change and, more importantly, enable them to provide the public with a transparent account of the court’s activity. Consider, for instance, three noteworthy recommendations that can be suggested to SMD, which can also be more broadly applied to NJ on the basis of this study. First, in light of the reliance that the AOC and district administration place on reports generated by the local case management system, it is imperative that data entered by clerical staff shows the veritable status of the case. Hence, training in this regard should be ongoing and ascribed paramount importance. Second, there is potential for the general application of CourTools since the AOC case
management report is promulgated throughout the state. Districts in NJ should revisit how the data is presented locally to determine if the CourTools framework is a more viable alternative. Third, SMD, in particular, should adopt a monthly report, which outlines the results for each case management measurement in accordance to the format noted in the study. A few tables with graphs and charts, where appropriate, should be adequate in determining the efficiency of case processing while focusing on backlog reduction. The more detail-laden reports should be reserved for select judges and administrators with particular questions vis-à-vis prediction modeling, correlations, trends, and the like.

Research into the applicability of the CourTools case management measures to the SMD Criminal Division revealed that the measurements already exist (but in a different form) and is utilized by management in developing policy and procedure. The data represented in the results did not indicate anything that was unknown to the administration given their access and use of current reports. When the data available in the AOC and local reports were compared to that which is presented in CourTools, local reports showed far greater detail in providing managers with case-related trends and information. In some instances, however, sharing this amount and level of data with all judges and staff results in ‘statistical overload’ creating an environment in which focus wanes and recommendations are disregarded. The CourTools are therefore, quite useful in this regard. The framework serves as a practical guide in deciphering which measures should be analyzed and how those findings should be presented to the appropriate persons. Courts that do not currently collect or analyze performance data can incorporate and adapt the model along the four basic measures using the same methodology (measures of central tendency depicted in a series of charts) described in this study.
About JUSTPAL

In April 2011 the World Bank launched the Justice Sector Peer-Assisted Learning (JUSTPAL) Network in Athens – Greece, in partnership with the European Public Law Organization (EPLP). The JUSTPAL objective is to provide a platform for justice professionals to exchange knowledge, good practices and peer-driven improvements to justice systems and thereby support countries to improve their justice sector performance, quality of justice and service delivery to citizens and corporations.

Working Methods

The JUSTPAL Network offers two working methods for exchanging best-practices between countries.

The first method concerns the organization of regular meetings arranged on topics that are of key importance for the vital functioning of the justice system. These meetings – Communities of Practice Meetings (COP’s) – focus on targeted subjects and a specific audience. JUSTPAL is organizing two COP Meetings in June 2012 at The Hague: a Community of Practice for (1) Budget Professionals and (2) for Court Managers and Administrators. About 120 Members of the JUSTPAL Network have been invited to attend the Meetings from across 22 countries. The outcome of the COP Meetings will be published in the form of practical reports that can provide justice practitioners guidance when developing plans for improving the organization and functioning of their justice systems.

In addition to the COP Meetings JUSTPAL offers another platform for communication and exchange of information too, namely a dedicated website: www.justpal.org on which one can find state of the art information about successful justice sector reform approaches, innovative solutions to increase the efficiency and quality of justice. Moreover, the website offers an excellent opportunity for members of the JUSTPAL Network to exchange experiences, raise questions and request for assistance in a secure environment.

JUSTPAL Secretariat

The Secretariat is situated in the premises of The Hague Institute for Global Justice, reflecting its aim of being one of the key knowledge institutions in The Hague supporting the city as the legal capitol of the world.

Want to become a member?

JUSTPAL welcomes all justice professionals and organizations who believe peer based learning and the mutual exchange of professional experiences is an indispensable factor for ensuring efficiency and quality of justice. Are you interested in becoming a member or a partner of the JUSTPAL Network? Please contact the JUSTPAL Secretariat for information by telephone or email through Ms. Manuella Appiah: tel +31 (70) 3028156 and email: m.appiah@thigj.org
Advanced Court Technology

Electronic filing – cost effective solutions allowing court users to complete and submit forms and documents to the court via the browser based *iCourt* web application.

Court Scheduling – this powerful tool allows court resources to be booked in the busy court diary – be it a 6 month trial or 10 minute hearing before a Judge, in a specific court room for a hearing or simply reserving video conferencing equipment.

Document Management – build a complete case record with all case details stored securely for easy access by Court staff and the Judiciary or to the case parties and public via *iCourt*.

*interCOMM* is a proven application which can be customised to suit any size of Court or Tribunal. The COTS (Commercial off the Shelf) solution uses open standards so can work with your existing legacy systems if needed.

Email: info@visionhall.com
www.visionhall.com
Framework for Development and Evaluation of Community Engagement
By Tim Haslett¹, Chris Ballenden², Louise Bassett³, Saroj Godbole⁴, Kerry Walker⁵

ABSTRACT
This paper examines Australia's first Neighbourhood Justice Centre (NJC) which is based Melbourne and was established in 2007. It outlines the history of the centre and proposes a framework for its evaluation. The paper discusses three extant models for community engagement and identifies a common theme of development and evolution in both process and structure. The paper identifies and discusses five phases for the development and evolution of the NJC and relates these to existing models. The paper also discusses the shifting emphasis of resource allocation during this development process. The paper concludes by proposing a series of questions to evaluate the development of a Community Engagement Centre.

INTRODUCTION
This paper is designed to serve three purposes.
1. To provide a roadmap for the development of future NJCs.
   This is done with the acknowledgement that each new centre will be highly location specific. For this reason, the paper does not describe specific activities but rather a general developmental framework.

2. To provide guidelines for evaluation.
   The central idea is that successful NJCs will demonstrate increasing sophistication and effectiveness in the development of their operations and that it is possible to evaluate an NJC on this developmental hierarchy.

3. To demonstrate the use of Systems Thinking in the goal setting process
   Causal loop diagrams (CLDs) are used to describe the dynamics of the goals and objectives of the Centre, in particular the reinforcing and feedback nature of these goals. These feedback systems introduce a key element not present in linear program logic models and identify the policy levers available to decision makers.

After four years of operation and an increasingly sophisticated approach to the operations of Community engagement, many of the staff of the NJC commented that there was not an overall and agreed definition of Community Engagement within the NJC. In part, this is a reflection of the diverse activities within the area and the lack of any coherent governance and learning structure around Community Engagement.

This paper describes the development and evolution of Community Engagement at the Neighbourhood Justice Centre (NJC) in the City of Yarra in Melbourne, Australia. The NJC Justice is a multi-jurisdictional court that sits as a Magistrate's Court, a Children's Court (Criminal Division), a Victims of Crime Assistance Tribunal, and a Victorian Civil and Administrative Tribunal (VCAT). For the discussion of Community Engagement, this paper treats each of these courts as a single entity.

This allows the discussion of manner in which the NJC developed community engagement, in areas such as crime prevention and problem solving, as well as supporting the formal legal processes of courts through programs such drug and alcohol rehabilitation.

DEFINING COMMUNITY ENGAGEMENT
The concept of Community Engagement was described by the founding CEO Kerry Walker as a desire that justice should be defined by the community and local communities would decide the issues are important to them such as parking, safety, drug use or graffiti.

After four years of operation and an increasingly sophisticated approach to the operations of Community engagement, many of the staff of the NJC commented that there was not an overall and agreed definition of Community Engagement within the NJC. In part, this is a reflection of the diverse activities within the area and the lack of any coherent governance and learning structure around Community Engagement.

¹ Adjunct Associate Professor, University of Queensland, email: haslett@bigpond.net.au
² Director, Ponte Consulting
³ Senior Policy Advisor, Neighbourhood Justice Centre, Melbourne
⁴ Director, Ponte Consulting
⁵ CEO, Neighbourhood Justice Centre
Community engagement refers to the process by which community benefit organizations and individuals build ongoing, permanent relationships for the purpose of applying a collective vision for the benefit of a community. It is closely related to community organizing, which involves the process of building a grassroots movement involving communities, community engagement primarily deals with the practice of moving said communities towards change, usually from a stalled or otherwise similarly suspended position.6

While this definition makes a fine and possibly slightly confusing definition of community-based organizations, General models of community engagement commonly involve the of development of engagement (or citizen participation) from relatively simple forms to situations where citizens’ groups exercise complete control over the structures, processes and decision-making in their specific area of concern. This control represents an end point of a developmental process that begins with relatively simple processes and grows to more sophisticated and inclusive forms of engagement. In discussing community engagement, the paper argues that the development of structure and governance is critical to community development in general and in the development of Community Justice in particular.

This idea of progression or development of community engagement is inherent in Sherry Arnstein’s (1969) “ladder of citizen participation” that describes the various levels of participation citizens can have in social governance.

![Figure 1: Eight Rungs on a Ladder of Citizen Participation (reproduced from Arnstein 1969).](image)

Arnstein distinguishes between citizen power and citizen participation and notes that participation often allows citizens to advise or plan but “retains for powerholders the right to judge the legitimacy or feasibility of the advice” (1969). Arnstein’s concerns are with the redistribution of power and powerholders’ accountability to the community.

Progression is inherent in iap2, a five-step process for CE that was developed by the International Association for Public Participation. The five steps are:

1. Inform
   To provide the public with balanced and objective information to assist them in understanding the problems, alternatives, opportunities and/or solutions.

2. Consult
   To obtain Public feedback on analysis, alternatives and/or decisions.

3. Involve
   To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.

---

4. Collaborate
   To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.

5. Empower
   To place final decision-making in the hands of the public.  

Fung (2006) outlines three dimensions of engagement each of which contains the idea of development.
1. Participation
   Some participatory processes are completely open to all who wish to engage while others invite only elite stakeholders such as representatives of peak associations.

2. Decision-making
   Here participants exchange information and make decisions whether by simply receiving information from officials or through debate and discourse within the citizen organizations

3. Policy Development
   Links are now established between discussions on one hand and policy action on the other. Here Fung (2006) proposes three levels the first where, citizens gain individual, educative benefits from participation, the second where citizens provide advice to officials and the third where participatory deliberation is vested with authority.
   While the NJC did not consciously develop its activities within any of these frameworks, there are commonalities between them and the way the NJC has developed. This paper relates the NJC’s development to these frameworks as a first step towards the definition of a general “pattern of progress” for neighborhood justice.

COMMUNITY ENGAGEMENT IN JUSTICE
Community Engagement in the Justice process is the means for developing Community, Restorative and Therapeutic Justice and develops the role of the community in the delivery of all facets of the justice process. The UK report Engaging Communities in Criminal Justice set out eight principles of Community Justice:
1. Courts connecting to the community.
2. Justice seen to be done.
3. Cases handled robustly and speedily.
4. Strong independent judiciary.
5. Solving problems and finding solutions.
7. Repairing harm and raising confidence.
8. Reintegrating offenders and building communities.

There is also a focus on the involvement of the community in achieving community level outcomes (Lee, 2000). Winick & Wexler, (2003) and Reddel (2004) see this in the context of broader movement towards shared responsibility which seeks engagement between the courts and the community. Ross (2010) states that a foundational part of the thinking about community justice is the framework outlined by Karp and Clear (2000) and that three elements of their community justice model (operating at a neighborhood level, giving priority to the community’s quality of life, involving citizens in the justice process) specifically require the involvement of the community.

Fundamental to this is the idea that criminal behavior grows out of the social conditions and interactions of the communities in which people live. It follows that the mitigation of criminal behavior and the restoration of offenders and victims is best placed within the context of the community.

Repairing the harm to individuals and the community caused by criminal behavior requires has four components:
1. the engagement of willing community stakeholders in the restorative process,
2. the offender taking responsibility for the crime,
3. the reintegration of the offender into the community and
4. some form of reparation.

---

7 http://www.iap2.org.au/resources/spectrum
8 Engaging Communities in Criminal Justice presented to Parliament by The Lord Chancellor and Secretary of State for Justice, The Secretary of State for the Home Department and the Attorney General by Command of Her Majesty April 2009
Some definitions of Community Engagement are deliberately limited. Mazerolle et al see the process as “Greater community engagement using principles of procedural justice leading to enhanced perceptions of police legitimacy and a greater capacity of police to control inter-group conflict and violence”.

The NJC has a wider definition of Community Engagement. The NJC was established to create a justice system which is “more integrated, responsive, accessible, and more effective in reducing crime, addressing the underlying causes of criminal behavior and increasing access to justice” (Department of Justice (Victoria), 2007).

While the concept of community engagement is generally well agreed, the practice will be significantly different in different jurisdictions. This is because the practice is an emergent phenomenon that is the result of the local interaction of complex personal, social and political systems. This leads to two important propositions about the practice and implementation of Community Engagement.

The first is that its manifestation will vary according to the context in which it is put into practice. The second is that the practice and definition of Community Engagement will be a work in progress because the social and political context in which it is delivered is dynamic and requires frequent adjustment. In the early stages of the development of Community Engagement at the NJC, it was necessary to understand and assess the needs and capabilities of the community of the City of Yarra in relation to the Community Engagement process. While this was being developed, the far more clearly defined processes of Restorative Justice and the associated rehabilitation of offenders, as seen in the professional activities of the Client Services group were developing around support for offenders who were brought before the court. This paper is a case study that details the emergent process of the delivery of community and restorative justice by the Neighbourhood Justice Centre in the City of Yarra.

The cornerstone of the NJC’s activities was a belief that the Court should redefine what a court means in the community and differentiate itself from its traditional counterparts by being involved in crime prevention and early intervention on one hand and in restorative practices leading to the re-entry of offenders into the community on the other.

---

**Figure 2: The NJC model of Community Engagement**

A unique aspect of this model was the population, or community wide, focus on activities expanding to a wider context in terms of local prevention and early intervention programs designed to address the pre-cursors of crime. While the restorative and rehabilitation programs were not unique to the NJC, the integrated and coordinated nature of these programs was.

**Goals and Objectives**

Inherent in the NJC’s Strategic Plan is the idea that the NJC will be accountable to government for the achievement of its stated goals. This accountability will necessarily include an evaluation of the efficacy of specific activities of the NJC in achieving these goals.

The specific NJC objectives relating to community engagement should be seen in the light of the three broader goals of the organization, two of which, Goals 1 and 2, have a strong emphasis on Community Engagement.

1. Prevent and reduce criminal and other harmful behavior in the Yarra community
2. Increase confidence in, and access to, the justice system for the Yarra communities

---

3. Strengthen the NJC community justice model and facilitate the transfer of its practices to other courts and communities

The specific NJC objectives relating to community engagement are:

- Increase the capacity of the community to prevent and manage the impacts of crime and other harmful behavior
- Increase the capacity of the community and the local justice system to resolve conflicts through Appropriate Dispute Resolution and restorative justice practices
- Build connections between the justice system and the wider community and community development programs that contribute to justice system goals and outcomes
- Provide efficient, transparent, accessible and inclusive justice services in the Yarra Communities

While many activities within the NJC, such as throughput rates in court, recidivism and successfully completed Court Orders are easily assessed by a numerically based evaluation. Other activities such as those listed above are less easy to measure. Despite this, funding authorities require some justification for monies invested in these activities. The challenge for organizations such as the NJC is develop processes within which they can develop the "harder to measure" activities and also provide a framework to evaluate these activities.

This discussion develops a framework for the evaluation of Community Engagement that uses the progress currently made by the NJC in this area, the requirements of government and the views of the professionals with inside the NJC to provide a developmental framework.

**Framework fundamentals**

Community Engagement is a two-way process between the NJC and its various communities. In the first instance the NJC was engaged with external organizations and communities as time progressed the engagement became a two-way process in that the external communities were increasingly involved in the "way the NJC did justice". For the sake of this framework, the external communities are divided into professional communities and local communities. The professional communities are the service providers and agencies providing professional support for the core activities of the NJC. The local communities are those community-based groups, committees, and working parties which are formed by local citizens and which focus on specific issues related to specific communities.

![Figure 3: The Two-way Nature of the Community Engagement Process](image)

From the beginning of the NJC, the professional communities have significant involvement in the processes of Court. Initially, the engagement with the local communities involved the NJC and its staff being involved in community-based activities, often of a one-off nature sometimes on a more ongoing basis. The engagement of the local communities in the core processes of NJC was, necessarily, a longer process and typically took the form of community engagement and involvement in the treatment and rehabilitation of offenders.

**Structural Engagement**

The central structure of the NJC is the treatment, sentencing and rehabilitation of offenders. This is supported by broad and targeted activities in the court aimed at creating a strong environment in which the community can participate in crime prevention as well as manage the effects of crime and other unwanted behaviors.

This is the structure that will be at the heart of the two-way Community Engagement process. The extent of Community Engagement varies across the systems and has changed over time. Direct community engagement in the administration of justice is difficult given the nature of the legal system. However, this should not overshadow the fact that there is significant Community input into the treatment and contextual rehabilitation plans that come before the Magistrate.
Underpinning the two-way nature of the community engagement process is the nature of the engagement with the fundamental structure of the NJC processes. At the heart of the NJC process is the Court where offenders sentenced. The unique aspect of the NJC is that the court sits within a broader and formal process of treatment and rehabilitation of offenders. In addition, there is an engagement in crime prevention which addresses the precursors of crime such as drug and alcohol abuse, homelessness and issues that this advantage. The community engagement process sees the professional local communities involved in a two-way interaction with the NJC in each of these key elements of the NJC’s activities.

**The Development of Community Engagement**

During the time of the NJC operations, there has been considerable development of the understanding of restorative justice and community engagement. These concepts have been defined within the NJC through the actions of the people on the front line of the treatment and rehabilitation activities of offenders. There has been significant learning in terms of the process and in terms of the development of the philosophy underpinning these activities. While this has been primarily at individual rather than at a group or organizational level, it is important that the NJC develop a formal structure for drawing together the individual learning and experience as it prepares to move its practices and processes into the mainstream. It is equally important that the development and dissemination of the work done in the NJC is supported by professional practice groups that are engaged in a formal action learning processes. To support this process a general framework for the development process was developed and is shown in Figure 5.

**Figure 5: Learning Structure for each phase of the CE process**

The critical aspect of this model is that each phase of CE development is preceded by a goal setting and strategic planning phase. This serves not only to direct the activities of each phase but also to provide a basis for the monitoring, evaluation and feedback processes inherent in the learning processes set.

This process applies to each of the five phases in the development of the CE framework:

1. Establishing the NJC concept
2. Development of communities
3. Independence and resilience of communities
4. Systemic interventions
5. Change within the Justice system

It is expected that projects will progress through the Establishment and Development phases and be positioned in one of the three final phases (Development of Communities, Systemic Interventions and Change within the Justice System).

Figure 6: The developmental phases of Community Engagement

Figure 6 demonstrates how Establishing the NJC Concept and Development of Communities are the fundamental building blocks for the development of Community Engagement. The subsequent phases of development are dependent on these earlier stages and cannot be developed without the basic building blocks being in place.

Using the Developmental Framework
The framework can be used to provide a tabular representation of the progress in the sophistication and impact of Community Engagement projects along the developmental hierarchy.

Figure 7: Development of Community Engagement

THE PHASES OF COMMUNITY ENGAGEMENT
Phase 1: Establishing the NJC Concept The initial phase of the development of Community Engagement within the NJC was characterized by
1. Making contact with a wide range of community organizations
2. Establishing relationships with the professional community that related to the NJC ’s work
3. Identifying community organizations that would have high leverage in the development of Community Engagement
Comparison with other models

<table>
<thead>
<tr>
<th></th>
<th>iap2</th>
<th>Arnstein's ladder</th>
<th>Fung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1: Inform</td>
<td></td>
<td>Level 3 and 4: Informing and consulting</td>
<td>Not included</td>
</tr>
</tbody>
</table>

Table 1: NJC Phase 1 comparison with other models

Both iap2 and Arnstein recognize this phase although Arnstein has two earlier stages, Manipulation and Therapy, that were not present in the development of the NJC model. When the NJC was initially established, the concept of Community Engagement was not widely understood by the majority of the new staff. As result, much of the innovative activity of the core assessment team located within NJC team was focused on providing support and services for offenders appearing before the court. Many of these services involved establishing relationships with well-established agencies within the City of Yarra in such areas as drug and alcohol counseling. This activity itself was indicative of the early process of defining "community". These agencies represented the professional communities in which the NJC would base its work. One long-serving NJC staff member observed that the new re-establish NJC was the "new kid on the block" and that many agencies have been delivering the services similar to those that the NJC proposed, although not with the specific focus on the activities of a court of rules.

In parallel with establishing these professional relationships was the process of making the NJC known within the broader community. Initially, this involved meeting with a wide range of community groups many of whom were not necessarily going to be associated with process of Community Engagement. However, it was felt necessary to do this for two separate reasons. First to engage with a broad range of groups to get a sense of the space within which the NJC would be able to operate. Second, to gain a sense of the community needs particularly in terms crime prevention and rehabilitation.

It was during this early phase of development that a number of community groups were identified as being particularly important to the NJC mission. Two particular groups were significant. The first were the Neighbourhood Houses that were community funded outreach organizations providing educational services and social support. The second was the community groups within the housing estates that consisted of community-based committees and action groups dealing with the social problems of the housing estates within the City of Yarra.

The developmental phases of the NJC are described using causal loop diagrams that were also used in an earlier analysis of the NJC’s activities and outlined in Haslett et al (2010). The first stage is, like all the other stages, a balancing loop where the balance of the activity comes into balance as the aims of the phase are met. In a CLD, causation is identified with an arrow. At the end of the arrow there is an O or an S. The letter O indicates that the dependent variable moves in the Opposite direction to the independent variable. The letter S indicates that the dependent variable moves in the Same direction to the independent variable. In the example provided, the relationship between house prices and effective demand is demonstrated in balancing loop. In Figure 8, as recognition for the NJC grows, the resource allocation for this specific activity will decline.

The resources devoted to this phase of the NJC's activities declined as the objectives of Phase 1 were met.
Phase 1: Evaluation questions
- What community groups and organizations have been visited?
- What professional groups and organizations have been visited?
- How long did this phase last?
- What resources were allocated?
- Which professional and community groups have an ongoing relationship with NJC?
- What was the learning derived from this Phase and how was it incorporated into the Goals and strategy for this phase?

Phase 2: Development of Communities
This phase of the development of Community Engagement within the NJC was characterized by:
1. The engagement of the professional community in the work of the NJC.
2. A sharper focus on the efficacy of community relationships.
3. A development of the engagement of the local community in the formal processes of the NJC.
4. Participation in citizens action groups.

Comparison with other models

<table>
<thead>
<tr>
<th>iap2</th>
<th>Arnstein’s ladder</th>
<th>Fung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 2 and 3: Consult and Involve</td>
<td>Level 6: Partnership</td>
<td>Level 1: Participation</td>
</tr>
</tbody>
</table>

Table 2: NJC Phase 2 comparison with other models

This second phase had three aspects. The first was the extent to which the SART team, now Client Services, developed the community engagement aspect of the work of the professional agencies providing support for the Court. The second aspect was that the community-based work became far more focused on assuring that the activities were related to the goals of the NJC. The third aspect was the extent to which the problem solving activities of the NJC, which constituted a unique function of this Court, developed local community engagement in the formal processes of the NJC.

One of the informal aims of the Client Services group was to develop the community of professional providers to a point where they were capable of delivering these services independently of NJC support. The downside of this particular approach was that the delivery of services to clients runs the danger of becoming fragmented and uncoordinated. In addition to this, there was a very strong emphasis on the role of service providers and of Client Services in providing local community support for offenders. The emphasis of this work was always on relocating the offender back into a supportive community that contained not only the community of professional support but also the community in which the offender lived.

During this period, there was a sharper focus on the extent to which community groups with which the NJC was involved were actually contributing to the central goals and objectives of the NJC. The increasing workloads off the NJC staff meant that the relationships that were nurtured with the ones that provide the highest leverage for meeting the NJC’s goals.
In addition, the Problem Solving services were focusing on finding solutions to problems that were community-based, effectively engaging the community in the formal NJC processes. The Problem Solving Conferences were meetings of the number of people who were stakeholders in the future of the offender, always lawyers often members of the community, effectively a community of support. These meetings sought to establish consent amongst stakeholders and the offender about what would be done to resolve the particular problem, often a case of non-compliance with a court order. The process involved to the offender and the community of support reaching an agreement that could be taken to the Magistrate as an alternative to a jail sentence. A related activity from the Problem-solving service involved Conflict Resolution providing skills training for community groups and in particular panels all of “Respected Community Members” in conflict resolution processes. This activity was essentially proactive designed to defuse potentially dangerous conflicts within specific ethnic communities within the City of Yarra.

These activities were significant in that they represented a shift in focus from the rehabilitation process to the crime prevention aspects of the Community Engagement of the NJC.

The commencement of Phase 2 saw a movement in resources away from Phase 1 to Phase 2 as shown in the CLD. As recognition of the NJC is established, resources to Community development increased with a corresponding decrease for Concept Establishment.

![Phase 2 resource allocation](image)

**Figure 10: Phase 2 resource allocation**

![Pattern of resource allocation to Phase 2](image)

**Figure 11: Pattern of resource allocation to Phase 2**

Phase 2: Evaluation questions
- Describe the goals and strategy for this phase and how they relate to the NJC goals?
- Describe the contribution that NJC has made to the development of community groups and organizations that were contacted in Phase 1 and how these relationships contribute to the Goals of the NJC.
• Describe the relationships that have been developed with professional communities and how these relationships contribute to the Goals of the NJC and to specific aspects (i.e., crime prevention, treatment, administration of justice, rehabilitation) of the NJC justice process?
• What resources were allocated to this phase?
• List the tangible outcomes that these professional and community relationships have made to the goals for this phase and to the Goals of the NJC.
• What was the learning derived from this Phase and how was it incorporated into the Goals and strategy for this phase?

Phase 3: Resilience and Independence of Local Communities
This phase of the development of Community Engagement within the NJC was characterized by:
  1. A focus on the systemic causes of crime
  2. A systemic approach to crime prevention
  3. Building resilience and independence in community groups
  4. Decisions on resource allocation between Phases 2 and 3

Comparison with other models

<table>
<thead>
<tr>
<th>iap2</th>
<th>Arnstein’s ladder</th>
<th>Fung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 4 and 5 Empower and Collaborate</td>
<td>Level 6, 7 and 8 Partnership, Delegated Power and Citizen Control</td>
<td>Level 2 Decision-making</td>
</tr>
</tbody>
</table>

Table 3: NJC Phase 2 comparison with other models

All of the comparative models recognized this Phase 3 of the NJC’s development indicating the importance of this stage in the development of community engagement.

The emphasis in Phase 2 of the NJC’s development was on the treatment and rehabilitation of the individual offender. Such an approach tends to deal with the symptoms rather than the root causes of the social problems contributing to crime. As the NJC became increasingly involved with community groups, particularly the Neighbourhood Houses and community governance groups on the housing estates, it became obvious that the concerns of these groups would only be solved by long-term systemic interventions rather than one-off solutions.

In developing the resilience and independence of community groups, The NJC’s initial involvement was necessarily extensive both in terms of time and funding. As well as developing the specific activities of these groups, the NJC has worked on the governance structures and funding processes to help these organizations towards independence. Such processes are difficult for both sides and are akin to children leaving home, a difficult but necessary step.

Resource allocation to Phase 2 was reduced and maintained at a lower level with the introduction of Phase 3. The shift in resources is shown in the CLD.

Figure 12: Phase 3 shift in resource allocation

The behavior over time is shown in Figure 14.
Phase 3: Evaluation questions
- Describe the goals and strategy for this phase and how they relate to the NJC goals?
- What steps have been taken to develop resilience and independence in community partners?
- How is that resilience and independence characterized?
- List the tangible outcomes that these professional and community relationships have made to the goals for this phase and to the Goals of the NJC.
- What was the learning derived from this Phase and how was it incorporated into the Goals and strategy for this phase?

Phase 4: Systemic and Policy Related Interventions
This phase of the development of Community Engagement within the NJC was characterized by:
1. Developing policy positions on relevant aspect of crime prevention
2. Working with organizations involved in policy advice to Government
3. Decisions on resource allocation between Phases 3 and 4

Comparison with other models

<table>
<thead>
<tr>
<th>Arnstein’s ladder</th>
<th>Fung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 5 Collaborate</td>
<td>Not included</td>
</tr>
<tr>
<td></td>
<td>Level 3 Policy Development</td>
</tr>
</tbody>
</table>

Table 4: NJC Phase 2 comparison with other models

Only two of the comparative models recognized this Phase. The iap2 Level 5 focuses on working with the public rather than with specific policy oriented organizations and does not include the emphasis on structural change.

Arnstein does not deal with this phase of development. iap2’s level 5 of collaboration is more concerned with the collaboration of the agency with the community groups. This phase of development is now focused on the collaboration between NJC and other agencies with a policy advice role. There are two aspects of this phase; the NJC’s involvement with other policy agencies and the extent to which the NJC is able to bring its fledgling community groups to the table with these policy advice agencies.

Such systemic interventions include changes to legislation, changes to regulations and requirements for public housing and the provision of accommodation for rehabilitating offenders. Given the multi-causational nature of the social problems leading to criminal offences, there is normally a wide range of agencies involved in dealing with these problems meaning that the NJC was unwilling to act unilaterally to the extent that had been the case in the provision of treatment and rehabilitation services. It was now necessary to work in partnership with a wide range of other agencies such as the Victorian Police, local government, universities, Office of Housing and the Department of Health. In fact, the more entrenched and severe the problem the wider the range of agencies involved. Each of these agencies was likely to bring a different perspective to the solution to the problems and as a consequence the influence of the NJC was mediated by the political realities off diverse stakeholder interests.

There are advantages in this system as the diminished influence is balanced by the increased political muscle of a more
diverse and influential group of stakeholders. In fact, it could be argued that social, political and legal change in the area of crime prevention will only be achieved through the actions of such coalitions of interest.

1. Participation in groups with the capability to bring about long-term systemic change

![Figure 14: Phase 4 shift in resource allocation](image)

![Figure 15: Phase 4 shift and new balance in resource allocation](image)

**Phase 4: Evaluation questions**
- Describe the goals and strategy for this phase and how they relate to the NJC goals?
- Who were seen as major stakeholders in the solution of these problems?
- What was the nature of the relationships developed with these stakeholders?
- What community groups has NJC sponsored to take on a policy development tole?
- What was the NJC’s role and relative influence in these relationships?
- What systemic interventions were affected?
- What resources were allocated to this phase?
- List the tangible outcomes that these systemic relationships have made to the Goals of the NJC.
- What was the learning derived from this Phase and how was it incorporated into the Goals and strategy for this phase?

**Phase 5: Change within the Justice System**
This next phase of the NJC activities was characterized by:
1. The development of a strategic plan for dissemination of NJC practices.
2. Working with other jurisdictions to adapt NJC best practice to new environments.
3. The establishment of professional practice learning groups
4. Increasing clarity in the definition of Community Engagement
5. Decisions on resource allocation between Phases 2, 3 and 4
Comparison with other models

<table>
<thead>
<tr>
<th></th>
<th>iap2</th>
<th>Arnstein’s ladder</th>
<th>Fung</th>
</tr>
</thead>
<tbody>
<tr>
<td>Included</td>
<td>Not included</td>
<td>Not included</td>
<td>Not included</td>
</tr>
</tbody>
</table>

Table 5: NJC Phase 2 comparison with other models

None of the comparative models included the equivalent of the NJC’s activities to mainstream community engagement activities into other jurisdictions. This may be a reflection of the innovative nature of the NJC model in this setting. The NJC’s strategic plan included Goal 3  *Strengthen the NJC community justice model and facilitate the transfer of its practices to other courts and communities* which highlighted the “incubator” aspect of the NJC. One of the original concepts had been that the NJC would be a Court where new ideas, new processes and new approaches were trial and the successful ones disseminated through other jurisdictions. There was general agreement that other jurisdictions have not been enthusiastic about adopting NJC processes. With the change of government in 2010, the NJC lost an important sponsor in Attorney General, Rob Hulls. The new government decided that it was time to place greater emphasis on Goal 3 and that the NJC needed to devote more time and resources to disseminating and encouraging the adoption of the processes that have been developed over the previous four years.

While the initial activities of the NJC, particularly in Phases 1 and 2 were on the differentiation and definition of the unique character of the NJC, it is now necessary to integrate the activities and philosophy of the NJC into the broader justice administration system. This process has begun in Phase 3 and 4 and will continue in Phase 5. The CLD shows the development of balance between Phases 4 and 5.

![Phase 5 resource allocation](image)

Resource allocation to Phase 4 were reduced with the introduction of Phase 5 showing resource allocation across the board coming into balance as shown in Figure 17.

![Pattern of resource allocation to Phase 4](image)

Phase 5: Evaluation questions

- Describe the goals and strategy for this phase and how they relate to the NJC goals?
- What aspects of NJC practice were transferable to other Jurisdictions and within the DOJ?
- What was the nature of the relationships developed with the stakeholders in this change process?
- What aspects of the NJC’s operations were transferred to other Jurisdictions and the DOJ?
- What was the learning derived from this Phase and how was it incorporated into the Goals and strategy for this phase?
Bibliography


http://www.iaca.ws/iaca-vol.-3-no.-1.html


Professor Lorraine Mazerolle, Dr Sarah Bennett and Inspector Pete Hosking. *Community Engagement Trials ARC Centre for Excellence in Policing and Security*


The Liberty Court Recorder is the most advanced digital recording application designed specifically for recording courtroom activities.

The Liberty system includes advanced features such as Automatic Gain Control (AGC) and Noise Reduction filters to provide the clearest possible playback of the recorded sessions, even from recordings made in difficult audio settings.

Customization into local languages is available with the Liberty system. Other facilities include the ability to stream proceedings to the Internet.

The Liberty system supports recording of multiple video feeds and playback of the recordings on emerging platforms such as the Android OS and on iPads and iPhones.

Contact High Criteria today to find out more about the Liberty Court Recording System.

In North America, call 905-886-7771 and press “1” for sales. You may also contact us via email at sales@LibertyRecording.com

Or visit our website at

www.LibertyRecording.com

The Liberty Recording brand is wholly owned, developed and marketed by High Criteria Inc. Dealer inquiries are welcomed.
Assessing and Filling the Gap as a New Mode of Governance, 
Lessons from a Preliminary Study carried out in the Cosenza’s Public 
Prosecutors’ Office1
By Dr. Daniela Piana2

Abstract
In all European countries courts and public prosecutor offices have been undergoing a long and comprehensive process 
of reform, target several different components of their organization and management. This phenomenon can be explained 
as the outcome of two combined forces: an increase demand of justice and a pressure from the international and 
supranational institutions. Accordingly, innovation has become a major issue in the judicial sector. Despite the attention 
devoted to it, much less effort has been made to comprehend the mechanisms that make organizations innovative. To 
what extent is leadership important? How may different organizational cultures facilitate or create obstacles to innovation? 
And to what extent can innovation be implemented through a top down approach in a peculiar organization, such as a 
judicial office?

This article tells the story of a case study on a public prosecutors’ office located in the South of Italy. The pilot study has 
been framed and conducted as both normative and empirical in its own nature. Moreover, it represents a case study with 
a certain number of policy effects, as it turned into a roadmap which was adopted by the judicial office to improve its own 
an organization and human resource management. This is the first study carried out in Italy using such methods with the 
objective to:

a) describe the implementation of organizational innovation (in this respect there had already been a study of the 
General Registry Office), 
b) map intra-organizational routines and inter-connections between administration and the General Registry Office 
and between the GRO and the criminal records Office etc; 
c) Identify skills to adapt and learn skills from daily routines and execution of specific tasks, as they are done in all 
public sectors.

If you really want to understand something, try first to change it. 
- Thomas Eliot

In Order to Make Organizational Innovation a Successful Story
Organizational innovations are nowadays distinctive marks of the judicial policies enacted within all advanced 
democracies at the different levels of the judicial governance. To mention a few examples of this: the High Judicial 
Councils (or Councils of the Judiciary), once instituted, have been reshaped partially in order to ensure their maintenance 
in several European countries, such as Italy, France, Bulgaria, and Romania (Pederzoli, 2011). The judicial offices have 
undergone a comprehensive process of reform targeting the pattern of human resources management, the division of 
labor, and the mechanisms of intra-organizational control, etc. The tools now at the disposal of common citizens and 
laymen to enable access to the courts in an easy and reliable way have been innovated and largely updated. ICT-based 
instruments of public communication have been installed within many judicial offices as the outcome of a new policy 
discourse favoring the judicial sector over the last two decades (Contini and Mohr, 2007; Lanzara and Contini, 2009).

To put it briefly, innovation has become common sense when policy makers are referring to judicial institutions. They are 
asked to solve and medicate the illness affecting the judicial sector, such as unreasonable time frames, inequitable 
access to the courts, lack of confidence by the general public to the bench, etc. This topic was also a core policy agenda 
set up of international organizations, such as the World Bank and the Council of Europe, as well as non-governmental 
actors which devote their resources to address the mishaps of judicial organizations. Despite the unquestionable 
attention gained by the topic “innovation” within the judicial sector, the understanding of the conditions that facilitate and 
create resistance, not only to the introduction of organizational innovation, but also to the correct and effective 
implementation of it, is very poor. Very little has been produced in terms of knowledge as how to make innovative

1 My gratefulness to all the judicial and administrative staff of the public prosecutor office of Cosenza and most importantly to the 
deputy chief prosecutor, Dr Domenico Airoma, who have been key factor in promoting and facilitating the conduction of this pilot study. 
As always, the responsibility of what is written in the current work is exclusively of the author.
2 Daniela Piana is Associate Professor of Political Science, co-coordinator of the Erasmus Academic Network MENU FOR JUSTICE 
https://www.academic-projects.eu/ menuforjustice/default.aspx, Department of Political Science University of Bologna. E-mail: d.piana@unibo.it
organizations successful and durable. Moreover, the question of how the implementation process may reshape, adapt and eventually drift off the initial innovation is still largely unanswered.

This is not as to say that judicial organizations and court management have been not sufficiently analyzed with a policy-oriented approach. Quite the opposite in fact. The point the author of this work wishes to make is more on the post adaptation of organizational innovations.

When a judicial office installs a customer access point, an ICT based platform to handle dockets etc, the changes triggered by such an adoption can be appreciated only by a substantial analysis of the informal organizational machinery. This cannot be assessed easily if starting from a standard analytical grid, which represents a precious, but incomplete assessment tool.

This state of affairs can be explained in several ways, but one way to do justice to it is to recognize that historically the judicial systems, which are based on the civil law tradition, previously experienced very limited complexity of cases. In continental Europe courts and public prosecutor offices were traditionally used to develop their professional behaviors upon the instructions provided with in the domestic legal codes and in the doctrine developed by high judicial institutions (Bell, 2006). This way of legitimizing their judicial decisions was directly connected with a deductive and bureaucratic view of the judicial governance, i.e., one set of formal and informal rules governing judicial behaviors. Hierarchically structured systems of governance mirror an equally hierarchically structured legal system. In practice, this means that judicial behaviors are supposed to comply with a set of legal norms and organizational rules enforced under the supervision of the highest organizational level of the system, which stands as the highest court – notably the Supreme Court – and the highest prosecutor office or the executive power – notably the Prosecutor General. In such a system any innovation was introduced by the highest organizational level and equally implemented by any judicial office within the country. Innovations consisted mostly in legal reforms or in the transposition of international norms (Merryman, 1979).

In all European countries the judicial governance undertook a deep and dramatic process of change impinging upon:

1) the number of authorities issuing rules;
2) the capacity of the standing authorities to enforce those rules;
3) the consistency and the coherence of the judicial behaviors within a national judicial system.

Several reasons explain this state of affairs. Firstly the authorities allowed to issue legally binding norms has increased in number and differed in their professional background. To mention but a few examples, the law is made by national courts, the European court of justice and the European court of human rights, without any formalized mechanism by means of which a hierarchical order is set up granting one authority with a priority or a dominance role within the European system (Poiares Maduro, 2002) (Ferrarese, 2010).

Secondly, a high number of non-legally binding norms has made an appearance in the European Union as one of the most groundbreaking outcomes of a transnational standard setting process, targeting the administration and the organization of domestic courts and public prosecutor offices. Several types of standards have been put forward: reasonable timeframes, equal access to justice, efficient financial management, effective public communication, etc., (Fabri, et al., 2005).3

Such issues, which have emerged particularly strong in the last three decades, corresponds to greater attention on the part of legislators and experts of institutional reforms to the mechanisms required to guarantee the impartiality of the judgment, but also contributes to the efficiency and quality of services that the judiciary system can offer (Frydman, 2011). This has entailed a growing commitment to inject within the traditional systems of judicial governance new organizational practices and policies originated in other systems or offices.4

The overall effect of this comprehensive change has resulted in a growth of innovation within the realm of justice administration. Innovation has been praised alongside the development of several exercises of monitoring and policy transfer (Rose, 1999; Dolowitz, Marsh, 2000) all of which have been supported by transnational judicial networks and welcomed by the court users and the legal professions as recourse for the problems encountered by increasingly overloaded judicial organizations.

3 In the international landscape studies of judiciary organization represent today a significant part of the research agenda on organization and administration science (Langbroek, Fabri, 2000).
4 The definition of a new mode of governance refers to combination of the hierarchical structures, still in place, with new practices to organize and coordinate collective actions, such as networking, policy transfer, quality management, social budgeting. On this topic, a vast literature has been developed. It is not to this work its critical review.
Once again, whereas traditional modes of governance – notably the hierarchy – were used to adopt innovations by a top-down approach, now innovation is deployed often as a localized and contextualized process of organizational reshape based on a dominant stream of thought inspired by the new public management (Pauliat, 2007) (Piana, 2001). More innovative offices are supposed to be better suited to reach the goal of a reliable, answerable, and efficient justice system. Despite the growing body of knowledge addressing the innovation within the judicial governance, the implementation of the organizational innovation, as introduced, is still a largely under explored subject. Also, those scholars who tried to describe the process of policy change enacted by the adoption of new practices, human resources management schemes, etc., did not offer any theoretical account for what can be defined as “steering of the innovation process.”

One can claim that this represents a serious lack of knowledge on both sides of science and politics. On the one hand, innovation can always be conceived as a type of change, which originates from the intention of innovating but can result into much bigger and deeper change than expected – and not necessarily consistent with the innovator’s goals.

On the other hand, without any robust explanation of the processes of change provoked by the innovation, any judicial policy praising the innovation may be viewed as weak with potential shortcomings. Innovation turns out to be effective in improving the judicial organization only to the extent it is under the control of a permanent monitoring authority, which should be – as it will be argued in this article – located within the innovating office.

In this article the author aims at offering a critical assessment of the results produced by a pilot study conducted by the author within the public prosecutor office of Cosenza. This exercise had different, but related goals:

1) Develop an assessment tool to detect and rate the capacity of the judicial office to adopt and effectively implement an organizational innovation;
2) Provide a heuristic of the facilitating/resisting conditions to the innovation;
3) Draw a set of key guidelines to reform the organization of the public prosecutor office by tailoring the policy advice on the basis of the specific context in which the office is located.

In this respect, the pilot study has been framed and conducted as both normative and empirical in its own nature. Moreover, it represents a case study with a certain number of policy effects, as it turned into a roadmap which was adopted by the judicial office to improve its own organization and human resource management.

The pilot study has been conducted by the author in the Prosecutor’s Office of Cosenza to assess the administrative and judicial staff’s latent skills and of the organizational dynamics, characterizing the interactions among the clerks, the assistant prosecutors and the chief prosecutors. Interactions between administration and secretarial offices were also monitored, as well as the functions of the courts with regard to prosecution services.

This pilot study represents the first step in a wider self-evaluation strategy by the Prosecutor’s Office in the medium to long term. In order to do this, the rationale behind employing academics was to bring the Prosecutor’s Office closer to academia, since the latter can offer methodologies, which, albeit framed theoretically and analytically, can be easily managed by an organization, which due to its structure, access to human and financial resources, could not afford a research officer. This study was carried out within four weeks, between 20 June and 20 July 2011, through combining qualitative methods and participatory observation.

- The latter aimed at creating an environment of trust and dialogue, establishing a point of contact with the officers during daily routine activities where were necessary to ensure the functioning of the office. This is the first study carried out in Italy using such methods and with the objectives of studying the implementation of organizational innovation (in this respect there had already been a study of the General Registry Office),
- mapping intra-organizational routine and inter-functional connections between administration and the GRO and GRO and the criminal records Office etc;
- identifying those adaptation and learning skills which arise in all public sectors from daily routines and execution of specific tasks.

Thus, in terms of unit of analysis, this study focused on two units: the individual (and the role) and the office. The availability of an office to work side by side with the judicial and administrative staff each day, facilitated the research considerably.

Briefly, this work can provide practitioners and policy makers with an instrument to assess the differential impact organizational cultures and informal organizational practices can have in the long run upon the implementation and consolidation of the innovations adopted by a judicial office.
In this respect, this work stands to complement and further develop the current mainstream focus on quality of justice. The added value is related to the capacity of this pilot study to detect the informal organization and thereby to make the staff of the judicial office leading actors in the assessment of the innovation.

**The Challenges of Innovating Loosely Coupled Organizations**

In a bureaucratic judicial system, legal and bureaucratic logic – which prescribe that decisions should be based on legal norms and be at the same time respectful of the legal doctrine set down by senior judges and prosecutors (usually sitting in a Supreme Court) - co-participate to put in motion a distinctive pattern of judicial governance, in which the independence of the single judge is substantially subordinated to the independence of the magistracy as a system.

This rationale is in the same direction as the principle of autonomy of public administration from political institutions. As Max Weber correctly pointed out, judges who work in bureaucratic settings benefit from a very particular type of guarantee, such as their independence and their professional status (Weber, 1912; 1922). Once recruited by means of a general, standardized procedure, which resembles very much the procedure adopted to recruit civil servants and bureaucrats, they are inserted into a machine in which many will spend their entire career. Each judge is expected to behave in way that is respectful of several different rules and standards. Her behavior should be lawful, should respect the organizational values that constitute and shape the identity of the judicial system in which she works, should respect the professional ethics of the legal professions, should respect a standard of effectiveness and efficiency in the use of the organizational resources and should respect the rights of the citizens, ultimate holders of the democratic sovereignty.

“This complex picture figures out a situation where judges expect costs and negative rewards if their behavior does not respect a set of several different standards. Some of them are weaker and informally enforced, while some of them are harder and legally binding” (Piana 2009, p 4). One may safely say that the bureaucratic judge (a judge who is working into a bureaucratically organized judicial system) is held accountable by means of a vertical chain of mechanisms of rule enforcement, whose effectiveness depends on the internal cohesiveness of the judicial hierarchy.

What ensures the legitimacy of a decision in a case is the balanced combination of a procedurally correct process of decision making on the case (evidence taking, hearing of witnesses, etc) and the cohesiveness of the judicial decisions taken along the years/decades and among different courts belonging to the same system. The consistency of the judicial hierarchy and the respect for legal procedures both aim to ensure the impartiality and the imperturbability of the bench vis-à-vis possible influences coming from the external environment, either politics, or the market, or other foreign legal systems (Febbrajo, 1981; Pasquino, 1984).

Bureaucratic reasoning ensures the application of general norms in a neutral way. Ideally, a bureaucratically-oriented agency performs its role by classifying a case as an instantiation of a general norm and deductively reasoning the case on the base of the specific obligation the norm contains. Creativity, discretionary comprehension of the case and extra normative arguments do not have any salience in this picture. The legality principle sticks to this view if it is intended to be a formal principle, which stands on a meta level vis-à-vis the ordinary application of legal norms. What makes the adjudication legitimate is the belief and the common expectation that a judicial actor will apply a legal norm along a pattern of reasoning that is strictly procedurally correct.

The mechanisms of change that are required by this approach should be considered attentively. The legality principle must be ensured by means of a mechanism of change that guarantees the transmission of the inputs from the highest level of the judicial governance to the lowest one (Langer, 2004; Galligan, 2009).

This portrait of the magistracy is not adequate for the contemporary world. As we all know, this portrait does not correspond any longer to the real state of affairs in which contemporary adjudication takes place. First and foremost judges are now placed amidst a complex, multi-layered and multi-centered system that spans globally from legal cultures that are miles away from each other and which generate norms that should generally be accommodated on a case by case basis, rather on the base of deductive and intra-systemic reasoning.

Ordinary judges (not to mention judges sitting in constitutional courts) are allowed to be attentive to the normative creations of foreign courts and, accordingly, to pass over or to overrule in some cases, the doctrine endorsed by the senior judges who are responsible for their career promotion. In issuing a sentence, judges are no longer simply interested by their domestic reputation, but can become particularly sensitive to the international scrutiny in academic or judicial networks and entourages.

Despite being a place traditionally devoted to the enforcement of domestic legal rules, courts are nowadays involved in multi-level and multi-layered systems of collective action where they perform their function amidst a multi-voiced set of
norms of values and norms much more complex than the one they were confronted with in the past (Kappen-Risse, 1995; Benda-Beckmann, 2006). European courts experienced this phenomenon in a distinctive way. Mechanisms of cross

ternational coordination and cooperation have been enhanced to the point of breaking through the architecture of the States and borders of domestic legal systems (Borzel and Cichowsky, 2003; Falkner et al., 2008; Chalmers, 1992; Wallace and Wallace, 2000; Piana, 2009a). Most important of all, supranational institutions, which in principle are not entrusted with any competence in the field of judicial governance, in the early 90s of the Twentieth century started to set up a wide and comprehensive process of reflective policy making (Rogowski, 2007), targeting the models of judicial governance, the practices of judicial administration, and the mechanisms by the means of which courts interact with the external environment – such as media and citizens (Voermans, 2007). Standards of rule of law and quality of justice have been set down by networks whose membership ensures a systematic link between supranational and domestic policy arenas, since these judicial networks are composed of judges and prosecutors, representatives of domestic judicial institutions (Piana, 2010).

Despite being within the formal jurisdiction of sovereign States, courts have become a promising and fertile terrain on which transnational standards are implemented.

This comprehensive process of change, originated from broader and more complex processes which encompasses the entire allocation of power and authority across the levels of politics (sub-national, national, and supranational ) is in parallel with an endogenous process of change which, affected all the judicial systems that have been structured along the bureaucratic logic depicted above, albeit with a different degree of intensity.

In some countries more than others we observe an on-going process of change that weakens the hierarchical ties between the ordinary courts and the high courts. Here, several causes can be mentioned to account for such a phenomenon. Some scholars have argued that the introduction of a mechanism of corporatist representation within the High judicial councils has managed to transform the judicial hierarchy into a judicial “democracy” i.e., one man corresponds to one vote in the election of the judicial council’s members.

The emphasis put by some countries – such as Italy – upon the internal independence of judges and prosecutors as the main avenue to the guarantee of the judicial impartiality reinforced the overall effect of making the judiciary less hierarchical and more horizontal in its mode of governance. Nowadays in Italy public prosecutors jealously guard their individual autonomy. This goes as far as one of the most prestigious magistrate sitting at the General Prosecutor Office of the Court of Cassation declaring that they can do very little to force the ordinary public prosecutors to adopt any specific organizational practice. Beyond moral persuasion, very little can be done.

The career scheme is inspired by a bureaucratic mechanism of appointment, both for judicial and prosecutorial offices. However, several organizational practices which significantly impacts the way prosecution is enacted and carried on, differs from one judicial district to the other. I am inclined to argue that Italy is the extreme case of a general trend which is exhibited by the public sector overall. The more plural, fragmented, and heteronimic the inputs that influence the agenda and the decision making rationale of a public institution, the more the single units that exist within the complex organizations in which the institutional values and principles are embedded need to gain a certain degree of freedom to adapt and accommodate all these inputs. The bureaucratic logic of action seems to be forced to step back to leave some space open for an adaptive rationality.

What consequences may this have for the processes of organizational innovations?
Organizational theorists provide an insightful approach to this point. In 1976 Weick, whilst observing the functioning of the education systems in seminal work, introduced the concept of a ‘loosely coupled system’, i.e., a system where the connections among its units are weak and flexible and under the same conditions, different units belonging to the same system react in different ways.5 Loosely coupled systems are complex machineries in which the behavior adopted by the unit U1 entails the reaction of the unit U2 with which U1 is regularly interacting, not alongside a linear and causal relationship. If U1 opts action A, it does not follow that U2 opts for one and only one action linearly related to A, let’s say B. The reaction of U2 may span over a range of options including B along with other possibilities. Of course, U1 and U2 are somehow governed by an overarching principle, say the fact that they need to respect some general procedures. But in very concrete and practical terms, the chain A-B does not necessarily unfold, it is likely or highly probable to unfold. Loosely coupled systems exhibit a very high capacity to adapt to abrupt and unpredicted changes. In this respect they gain in flexibility, however, lose some degree of consistency and predictability. To be sure, a loosely coupled system can

5 Readers may consider that a loosely coupled system exhibits an organizational texture where informal rules and mechanisms of horizontal co-ordinations still maintain a fairly high importance in the overall.
easily react to horizontal patterns of coordination, but represent a very uncomfortable terrain if they are requested to consistently absorb and implement an innovation.

Some scholars have rightly argued that judicial systems in continental Europe exhibit the organizational matrix of a partial loosely coupled system (Contini, 1999; Zan, 2011). Why partially? Necessarily, judges and public prosecutors, as well as clerks and administrative staff units are forced to strictly comply with the rules entrenched in the civil and the penal procedural codes. In this respect, judicial offices are organizations that feature a high degree of predictability. For instance, the pre-trial bargaining proceeding requires that the pre-trial hearing judge accomplishes certain type of actions. The deputy prosecutor is also obliged by the procedural code to act in a specified and formalized way. This grants predictability to the behavioral patterns of the judicial office. However, this scenario, which can be described as a tightly coupled system, goes hand in hand with a second scenario, which can be described as loosely coupled. There are several indicators one can consider for the latter or second scenario. The public prosecutor is autonomous as far as the management of the docket is concerned. The public prosecutor can decide to speed up or to slow down the pace of the pre-trial investigations. The public prosecutor can delegate most of the docket management of her clerks-assistant or opt for the opposite behavior. Similarly, the administrative services can organize their works internally in very flexible way. Such flexibility is witnessed, for example, by the fact that personnel are easily replaced, especially at the lowest hierarchical level. Therefore, “who does what” can vary on the basis of the level of overloading of the dockets, the degree of cooperative/non cooperative interaction that is enacted within each service and of the permanence, or non permanence of the same personnel in the same service.

Italy is, in this respect, an extremely telling case. An overview of the organizational practices adopted in the public prosecutor offices across the whole country results in a patchwork of different routines and management schemes, and an inconsistency in areas such as case assignment and the responsibility granted to the clerks that assist and support the work of the public prosecutor. For the sake of clarity, one should also mention the recent effort made by the legislator in the area of enhancing the hierarchical control within the PPO by granting the chief prosecutor a certain number of competences in matters of case assignment, budgeting, and relationship with the other offices and the external public (media included).

This said though, one can safely argue that Italian PPO’s are multi faceted organizations: a procedural facet tightly coupled with behavioral schemata and a managerial facet loosely coupled with behavioral schemata.

If this argument holds, in order to ensure the effective implementation of any organizational innovation, preliminary scrutiny of the organizational dynamics into which the innovation is to be absorbed should take place. This means in practice that some specific characteristics of the organization and work practices undertaken as part daily routine should be detected:

- Presence of leading individuals in the organizational units who have the capacity to hold the other staff units answerable and accountable.
- Presence of individuals who have worked within the organization for several years and have an overall view of the organizational matrix – as it is in practice, not only from the organogram.
- Managerial skills developed by means of a ‘learning by doing’ mechanism. These skills will be instrumental in monitoring step by step the implementation of any innovation.
- Presence of an organizational texture where inter-individual ties are based more on loyalty than on formal relationships.

In general, I would argue that the more the organization exhibits a loosely coupled pattern of control and intra-organizational accountability, the more each innovation needs to be introduced by the following means:

1) A participative process of design: this will make the innovation more familiar to those people that, beyond the assignment from the organogram, have very strong capacity to hold other staff units accountable.
2) A permanent process of self-monitoring under the supervision of the chief prosecutor or , such as in the Italian system, the deputy chief prosecutor (she is responsible for the court management in the Italian procedural code)
3) The delivering of training sessions focused on the organizational innovations to people who are more committed and more loyal to the institution.
4) A yearly external audit in which citizens and representative of the qualified users – such as Chambers of Commerce, Bar, etc. – are involved.

---

6 This argument is more deeply and widely developed in Piana, 2010, ch. 5.
A Path Breaking Pilot Study

The Italian judicial system comprises both courts and public prosecutor offices. Jurisdiction over civil and criminal matters is handled by judges and public prosecutors, both belonging to the judicial order (magistrati). Criminal proceedings draw from the prosecutorial act of an ordinary public prosecutor, which is subject to the constitutional principle of legality. Each notice of crime should end into a prosecutorial act. The latter, of course, can be transformed into a criminal proceeding based on accusation or simply closed on the basis of two reasons: lack of evidence and of procedural correctness. Once the criminal proceeding is registered at GRO, a serial number is assigned to a docket and consequently the proceeding is assigned to an ordinary prosecutor. The jurisdiction is organized on the basis of the territorial unit which corresponds to the judicial district (similar to a province).

The Italian public prosecutor is the master of the prosecutorial action (art. 112 constitution). She leads the investigation and disposes of the police’s involvement of the matter. Public prosecutor offices that are located in the South are often handling proceedings related to Mafia associated crimes. For this reason, one of the most time consuming and expensive activities led by the PPO is wire-tapping and phone tapping. Records of both are then analyzed and cross checked with evidence collected throughout the investigations undertaken by the police. The pre-trial documents prepared by the prosecutor are then handed over to the office of the judge for preliminary investigation. The office of the judge is the judicial representative. The judge checks and assesses the validity of those documents and eventually accepts/does not accept the request for pre-trial detention (if it is the case).

For organizational accountability, ordinary prosecutors are held responsible to the law (legal accountability) and to the High Judicial Council by regular assessment of skills. After the new judicial reform came into force in 2007, public prosecutors – like the judges – are assessed on the basis of a complex and comprehensive grid which aims to detect the degree of their performance ever four years. Professional assessment has become a key topic in the Italian debate on quality of justice, in particular with regard to the assessment of the positions of deputy and chief prosecutors. The latter both undertake an assessment of their managerial capacities every four years.

PPO exhibit a very low degree of hierarchical control. In Italy, since the late ‘60s the judicial order has been shifting from a purely bureaucratic asset to a more horizontal setting, where judges and prosecutors are considered equal regardless of their functions. The chief judge or the chief prosecutor is not allowed to provide ordinary judges or prosecutors with orders or commands as how to adjudicate or prosecute.

The recent reform tried to create the conditions for the PPO shifting back to a more hierarchical organization (Piana and Vauchez, 2012, ch. 4). This solution was considered by the legislator as a way to regain control of the expenditure of the offices, to come to terms with problems of intra-organizational dissent among different prosecutors on the same case, and lastly to reduce the exposure to the media. Now only the Chief and deputy prosecutors can speak to the media and have the power to handle the most delicate cases themselves if they think there are valid reasons to do so.

The Prosecutor’s office of Cosenza’s Courthouse is a medium-sized office. The office employs 12 ordinary prosecutors and 14 honorary prosecutors. At the time of writing there are 4 vacancies. The administration office, following the implementation of a ministerial decree on October 10 2007, includes 49 staff at different levels, as per table 1. There are 7 vacancies.

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Organogram</th>
<th>Attendances</th>
<th>Vacancies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manager</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Manager C3</td>
<td>1</td>
<td>0</td>
<td>-1</td>
</tr>
<tr>
<td>Chancellery clerk C2</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Chancellery clerk C1</td>
<td>7</td>
<td>6</td>
<td>-1</td>
</tr>
<tr>
<td>Chancellery clerk B3</td>
<td>13</td>
<td>11</td>
<td>-2</td>
</tr>
<tr>
<td>Bailiff B3</td>
<td>4</td>
<td>0</td>
<td>-4</td>
</tr>
<tr>
<td>Bailiff B2</td>
<td>4</td>
<td>3</td>
<td>-1</td>
</tr>
</tbody>
</table>

7 Interview of an Italian public prosecutor with high ranked position.
8 Regulation issued by the Italian Ministry of Justice.
At first, the availability of resources presents two characteristics. The prosecutors of the office are relatively young. In terms of the gender variable, two out of 12 prosecutors are women. The senior prosecutors display different work experiences. The Chief Prosecutor spent most of his working life in Calabria, in Catanzaro first (Court of Appeals), in Rossano, and finally in Cosenza. The deputy prosecutor comes from Naples’ offices where he worked as assistant prosecutor. In that respect, Cosenza’s Prosecutor’s Office, through staff mobility, displays a medium level of local rooting in Calabria and in an implicit way it has incorporated a deep understanding of this region’s issues. However, it should be emphasized that the reality of Cosenza is different from Catanzaro, since the former does not have an anti-mafia office (DDA) and this allows for more routine work, particularly in running the daily agenda of the public prosecutor.

Prosecutions are handled by means of a group-based division of labour.\(^9\) Three groups have been created since the former chief prosecutor was in office: economic and financial crimes; crimes against public institutions; crimes against minors and disadvantaged groups.

Prosecutors are assigned to one group, except the chief and the deputy chief prosecutors. The latter holds the responsibility for the management of the office. The division into groups has allowed the judicial staff to acquire a degree of specialization, which is widely perceived as a positive factor. Regular meetings are held where the collective representation of judicial staff is considered positively.

With regard to the administrative staff, a more thorough analysis is necessary. First of all, the vacancy of the administrative manager, which is only covered through temporary employees, clearly has an impact on the office. In fact, the administrative manager is entrusted with the responsibility for all human resources management, the financial management, and the interactions between the administrative staff and the judicial personnel. In principle she represents a key figure in the organizational matrix of any Italian judicial office. In organizational terms, the absence of a full time administrative manager determines a partial presence of the manager of the Prosecutor’s office, since the same role covers both the judge and the prosecutor’s office. This in principle might ensure a greater overall management capacity; in practice however a lack of time translates into relying on the office’s routine knowledge, or tacit knowledge, and on its human and communication network in order to resolve daily issues. In this respect, one might guess the prominence of the heads of each service unit, an aspect that will be addressed below. In terms of professional figures, another limit is lack of medium-high professionals. Out of 49 administrative staff, less than half own a qualification higher than a diploma and only 2 started a retraining course that goes beyond what is normally on offer through central or local institutional channels.

The pilot study conducted in Cosenza was devoted to assessing the organizational culture developed within the sub-units composing the office:

- General Register,
- the office for the pre-trial investigation,
- the office which handles the documents to be transmitted to the hearing panels,
- the office which supervises the budget,
- the wiretapping structure office, and the archive.

On the top of these sub-units each public prosecutor has her own office to which one assistant is assigned.

A questionnaire has been filled out by each staff unit, both judicial and administrative, under the supervision of the author. The questionnaire – here annexed – was to collect data about three dimensions:
- The individual profile of each staff unit: professional experiences and background; IT skills; training needs and training expectations.
- The sub-unit organization of labor: daily agenda, practices and routines, problem solving strategies, (eventually) the capacities of functional replacement, patterns of leadership and obedience.

---

\(^9\) Regulation issues by the Chief Prosecutor and submitted to the High Judicial Council.
- The interaction strategies set up by each unit to interface with the other units: communication, transmission of docket, checking and cross-checking of information, mechanisms of organizational accountability.

In 25 days 46 questionnaires were collected. Only one is considered invalid. The data collected, by means of the questionnaires, have been complemented by the data drawn from the participative observation carried out by the author within each of the five organizational units: general register, pre-trial office, archive, accounting office, pre-panel hearing office (415 bis), and the wiretapping office.

As well as these units, the author has been observing the communication practices of the public prosecutors and the behavioral patterns exhibited by them when they interact with their assistants (clerks) for a total of one month.

The analysis of the data should be separated from the behavioral patterns and the capacities shared by the administrative staff, from those shared by the judicial staff.

The first finding that deserves attention is the distribution of reflective knowledge of the organization. The continuity of administrative staff explains the deep rooted knowledge of the organization. The degree of tacit knowledge is only partial among public prosecutors. There exists an imbalance between the recognized training and institutional title and the actual skills acquired on the job. Several administrators have decades-long experience. This has determined the learning of intra-systemic and inter-service dynamics at an emotional level, which is rarely reflected upon becoming an object of meta-cognition. A mapping of latent skills was carried out with an analytical and situational matrix. This means that the organisational actor was interpreted as a situated subject, who has developed knowledge on what he/she is, or should be, in relation to his/her work environment. Latent skills should therefore be understood as the know-how which is not used, either because there is no demand for it, or because the actor is not aware of it. The inference of adaption skills develops from the mapping of latent skills through this process.

Table 2 provides a comprehensive reading of the agenda, the role interpretation and the degree of reflective knowledge developed by the public prosecutors. As it develops from a sectional reading of the table, public prosecutors work in fair isolation from the rest of the office. They do not have or possess a deep and comprehensive understanding of the routines, the organizational practices, and the criticalities of office management. This can be explained on the basis of the training programs offered to candidate judges and prosecutors in Italy. The role interpretation is predominantly rule-based and positivist. Prosecution is mainly focused on the basis of an independent and autonomous judgment, strictly based on the law. Managerial, social, and teleological remarks are seldom mentioned in the questionnaire. The attitude of the public prosecutors towards colleagues is highly cooperative. Functional replacement and support are frequently offered in cases of vacancy of position, illness, and overloading, especially within each group.

<table>
<thead>
<tr>
<th>Tab. 2. Synoptic table on cognitive disposition of judicial staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cognitive/ situational dispositions</td>
</tr>
<tr>
<td>PP1</td>
</tr>
<tr>
<td>PP2</td>
</tr>
<tr>
<td>PP3</td>
</tr>
<tr>
<td>PP4</td>
</tr>
<tr>
<td>PPO</td>
</tr>
<tr>
<td>-----</td>
</tr>
<tr>
<td>PP5</td>
</tr>
<tr>
<td>PP6</td>
</tr>
<tr>
<td>PP7</td>
</tr>
<tr>
<td>PP8</td>
</tr>
<tr>
<td>PP9</td>
</tr>
<tr>
<td>PP10</td>
</tr>
</tbody>
</table>

Legend: PPO=public prosecutor

In general, one may safely argue that the public prosecutors exhibit a very low level of reflective knowledge of the judicial organization. Besides the competence they have – which is proven from the analysis of the judicial cases handled by each group – fairly developed, they do not have the habit of reflecting upon the criticalities exhibited by the administrative units of their office. In fact, the interactions of the public prosecutors with the administration – general register, pre-trial office, pre-panel hearing office, archivea, accounting office – are filtered and mediated by their assistants (clerks).

Following on from this analysis, an in depth study of the culture and the practices developed by the prosecutors’ assistants provided supplementary insights. The assistants show – on average – a very high motivation and a strong commitment to the institution. Loyalty and support are usually shown to the prosecutors, and a stable pattern of cooperation has been set up over the years. This can be explained by the high level of continuity amongst the administrative staff.

A latent – but permanent – conflict between the prosecutors’ assistants and the other administrative staff units came out in our analysis. Latent skills are largely developed. The assistants of the public prosecutors can functionally replace and compensate for the overload of the prosecutors workload as well as the shortcomings of the organization of other units. They cross check the general register and they have a constant monitor of the dockets. Activities carried on as a way to replace or compensate lack of personnel or poorly trained staff units hampered a steady process of progressive understanding of the systemic functioning of the entire office.

The prosecutors’ assistants are aware of the criticalities and the potentialities of the office and have an historical overview of the routines and the practices set up and put into motion over the years.
Tab. 3. Synoptic table of clerks’ dispositions

<table>
<thead>
<tr>
<th>Administration/ Cognitive and situational dispositions</th>
<th>Skills in use</th>
<th>Acquired skills</th>
<th>Individual meta-cognition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADMIN1 Admin staff</td>
<td>Managing files</td>
<td>Keeping within the role’s boundaries (“the beauty of work is work”)</td>
<td>Medium; highlights absence of assistant</td>
</tr>
<tr>
<td>ADMIN2 Admin staff</td>
<td>Functions in various judicial offices (360 degrees vision of proceedings)</td>
<td>Keep to his/ her role</td>
<td>Increase in workload</td>
</tr>
<tr>
<td>ADMIN3 Admin staff</td>
<td>Ability to guarantee order and monitoring of the work</td>
<td>High: check list of tasks/ duties (file monitoring); attention to the organization of the office</td>
<td>High</td>
</tr>
<tr>
<td>ADMIN4 Admin staff</td>
<td>Lawyer</td>
<td>Medium (good communicator)</td>
<td>Need of better sharing the workload</td>
</tr>
<tr>
<td>ADMIN5 Admin staff</td>
<td>Diploma degree in highway engineering; elected local councilor in 2001</td>
<td>Perception of the role with a low bureaucratic component; trust and loyalty towards the prosecutor</td>
<td>Medium-high: poor ICT of the office highlighted</td>
</tr>
<tr>
<td>ADMIN6 Admin staff</td>
<td>Seniority of the role</td>
<td>Medium</td>
<td>Medium (all offices should be moved to the same floor)</td>
</tr>
<tr>
<td>ADMIN7 Admin staff</td>
<td>Lawyer</td>
<td>Medium (need to link position level to effective competence)</td>
<td>Medium-high</td>
</tr>
<tr>
<td>ADMIN8 Admin staff</td>
<td>Specialization high IT competence</td>
<td>High (motivation and willingness to learn)</td>
<td>High</td>
</tr>
<tr>
<td>ADMIN9 Admin staff</td>
<td>Hostility towards computers</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>ADMIN10 Admin staff</td>
<td>ICT skills acquired in the field</td>
<td>Low</td>
<td>Medium (suggestion of moving the Gen Reg to the fourth floor)</td>
</tr>
<tr>
<td>ADMIN11 Admin staff</td>
<td>Law degree – (experience outside Calabria)</td>
<td>Medium high (relationship with others; ability to focus)</td>
<td>Medium-law</td>
</tr>
</tbody>
</table>

Legend: ADMIN= clerks (administrative staff units assigned to the public prosecutors as assistants).

A more critical aspect seems to be the organizational matrix within each sub-unit. Here the questionnaire has been filled out for each sub-unit. Senior – with managerial responsibility – and the ordinary administrative staff unit have been distinguished from each other. The reader should be reminded that the Italian judicial administration is organized as a hierarchy. Important and demanding tasks are usually handled by higher positions in the office. Data collected has been analyzed on the basis of a simple distinction: staff with low responsibility and no managerial tasks and staff with managerial tasks. The latter have usually been employed in the office for many years or have – in one case – a higher education background (graduate of law). Moreover, data concerning the leadership and the degree of reflexive knowledge developed by the managerial roles have been collected (see annex 1).

The findings can be described by a cross analysis of different roles and tasks and different degrees of reflexive knowledge, specifically, the understanding of the functioning of the office with an organizational overview of its capacities and criticalities.

In the General Register, the style of leadership is the most significant factor influencing the cohesiveness and the spirit of commitment of clerks assigned to this unit. The chief of the unit has vast experience in the work carried on within the judicial offices and has a strong personality. All employees are women. They have a very poorly developed view of the office as a system. However, they have learnt how to compensate and collaborate within the General Register. In cases of vacancy or illness, the unit is capable of functional compensation and substitution. Weaker cooperation is exhibited by...
the other units, such as the office that handles all documents associated with the pre-trial hearings. In this unit, the chief exhibits low profile leadership. This has left space for the low level employees to interpret the work flow and functions.

Table three (below) compares two units – the general register and the pre-trial hearing office – by focusing exclusively on the lower level responsibility staff units.

Tab. 3. Synoptic table on cognitive disposition of non-senior administrative staffs

<table>
<thead>
<tr>
<th>Administrative/Cognitive and situational dispositions</th>
<th>Routine skills</th>
<th>Acquired skills</th>
<th>Individual meta-cognition</th>
<th>Situational meta-cognition</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Gen Reg1)</td>
<td>Receiving acts; recording activities are not carried out (expect on Saturdays)</td>
<td>Ordinary activities of covering for colleagues where necessary. Saturday Gen Rec. Gen Reg</td>
<td>Very low. But strong motivation and good will.</td>
<td>Low or not declared.</td>
</tr>
<tr>
<td>(Gen Reg 2)</td>
<td>Gen Reg</td>
<td>Basic IT skills</td>
<td>Little competence on managing software packages</td>
<td>Highlights lack of office meetings</td>
</tr>
<tr>
<td>(Gen Reg 3)</td>
<td>Gen Reg</td>
<td>Pleasure of learning</td>
<td>Highlights little competence on managing software packages; declares good predisposition towards interaction with the general public</td>
<td>Highlights that the office works well</td>
</tr>
<tr>
<td>(Gen Reg 4)</td>
<td>ARCHIVE; management of chancellery</td>
<td>Organized mind; attention to details (from craftsmanship)</td>
<td>Self-perception as someone very organized. This is reason for pride and self – acknowledgement for results.</td>
<td>Low cognition of the office. Latent recognition of the need for managers that actually listen to their employees.</td>
</tr>
<tr>
<td>(MONO 1)</td>
<td>Notice cards</td>
<td>Idem.</td>
<td>Low.</td>
<td>Lack of vision of judicial machine.</td>
</tr>
<tr>
<td>(MONO 2)</td>
<td>Preparation of court hearings; list of witnesses; two judges as reference</td>
<td>Acquiring competences for activities at the Courts of Appeal of Turin and Naples</td>
<td>Low, scarce motivation</td>
<td>Poor organization of workload [latent leader in the room].</td>
</tr>
<tr>
<td>(MONO 3)</td>
<td>Idem (4 judges as reference)</td>
<td>Transmission of knowledge of functions to others</td>
<td>Scarce motivation; high level of perception of relative deprivation</td>
<td>Low. Negative opinion of managers</td>
</tr>
<tr>
<td>(MONO 4)</td>
<td>Preparation of the file index</td>
<td>Skills acquired from other ministries (transports, economics and finance)</td>
<td>Only partial perception of the office (been only working there for 2 months); sense of wanting to feel as a protagonist.</td>
<td>Low awareness of the office.</td>
</tr>
<tr>
<td>(MONO 5)</td>
<td>Preparation of the monocratic</td>
<td>Organization of the work load</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Despite the high capacity of functional substitution and the de-differentiation process that has been put into place by some staff units, who compensate vacancies or lacks of abilities in handling complex tasks, the two units exhibit two different organizational patterns. This difference comes from the leadership, which is differently profiled in the two units. As table 4 shows, managerial attitudes are poorly modernized in all units. The chiefs keep monitoring and coordinating the clerks who work in their units by means of a pattern of loyalty and cohesiveness based on informal and personal basis, rather than on impersonal and formalized tasks. Moreover, the capacity of designing and planning any human resources management is limited. In a nutshell, leadership appears to be based on seniority and familiarity with the office – years spent within the same unit or in the same office – rather than on competencies and professional background.

Tab. 4. Synoptic table of administrative managers’ cognitive dispositions

<table>
<thead>
<tr>
<th>Managers/managing capacities</th>
<th>Leadership skills</th>
<th>Capacity building in the sub-unit</th>
<th>Role interpretation and Reflexive knowledge of the system</th>
</tr>
</thead>
<tbody>
<tr>
<td>MANAG1</td>
<td>High; recognized; pre-modern type</td>
<td>Medium-high; based on loyalty</td>
<td>Strong personalization of the role.</td>
</tr>
<tr>
<td>MANAG2</td>
<td>Low; not recognized or recognized where there is a high degree of autonomy</td>
<td>Low; scarce intervention on office dynamics</td>
<td>Strong personalization of the role.</td>
</tr>
<tr>
<td>MANAG3</td>
<td>High; recognized within the office; office mirror of self.</td>
<td>High</td>
<td>Strong personalization of the role.</td>
</tr>
<tr>
<td>MANAG4</td>
<td>Low</td>
<td>Low</td>
<td>Strong personalization of the role</td>
</tr>
<tr>
<td>MANAG5</td>
<td>Low</td>
<td>Low</td>
<td>Very weak</td>
</tr>
<tr>
<td>MANAG6</td>
<td>Low</td>
<td>Very low</td>
<td>Very weak</td>
</tr>
<tr>
<td>MANAG7</td>
<td>Low</td>
<td>Very low</td>
<td>Very weak</td>
</tr>
</tbody>
</table>

Legend: MANAG: staff units assigned to the administrative services and with managerial functions.

A supplementary analysis was conducted to assess the technological endowment of the office and the human resources allocated to the IT department. IT innovations suffer a lack of consistency and long term planning. The technical assistant is not permanently employed and this undermines his will and his capacity of planning any IT restyling strategy, or renewal of the IT endowment.

Despite this objective condition, social perceptions of the IT assistant are positive. Less often discussed is the attitude of senior clerks with a low level of education to the IT innovations. Some do not use the computer and exhibit a patent resistance and mistrust to the use of IT in handling the dockets.

In short, the pilot study cast new light on the following issues:
- Hierarchical governance is combined with horizontal, informal, and personal ties which in some cases can matter even more than the formalized mechanisms of organizational control;
- Administrative staff can learn to perform functions which are not formally assigned and this allows each organization to circumvent the lack of human resources.
- The gap that exists between the formal structure of governance and the pattern of governance put into place in reality creates a lack of control or a discontinuity in the capacity of the highest levels to enforce rules and norms at the lower organizational level.
- Barriers to innovation come more from the managerial positions than from the lower levels of bureaucrats. This goes hand in hand with the control of know-how associated with the seniority and the leadership based on informal recognition and loyalty.

From the point of view of the relationship that exists between the public prosecutor office and the external environment, the pilot study has unveiled a very intensive interaction which runs along two different lines. One is the fact that the courthouse is easily accessible but not easily readable for the general public. Users are often forced to look for the location of the office they need to reach. The fact that they can access all departments and all corridors in the courthouse creates a potential risk for unsafe interferences. Even so, such an interference is not possible, the perception of an excessively accessible courthouses can create damage to the image of justice administration by the local community. A second point that should be mentioned is the fact that structural barriers that usually protect a courthouse located in the South of Italy do not exist in the region studied.

Lessons from Cosenza and Beyond
The pilot study conducted in Cosenza proved to be effective in revealing the weight of several forces and factors acting within the organizational matrix of the units and the office as a whole.

Firstly, on the basis of these findings, what has become clear is the existence of two different organizational patterns, each of them associated with two different patterns of accountability.

In the case of the clerks, whose tasks have been assigned on the exclusive basis of their formal role – according to the organogram – the responsibility is clearly assigned and the performance can be easily assessed. In this case, the mechanisms enacted to correct and sanction any mistakes are linear and adherent to the formal organizational structure. This is the case in the wiretap office and the archive. However, the clerks who have been told to perform their functions, informally – day by day – adapt their daily agenda to the contingent need of their unit. the overall outcome of the unit is equally effective, but the assignment of tasks and responsibility can be vague and not transparent. In these cases, the sanction and the reward are allocated by means of an informal pattern of leadership which runs much closer to a ‘friendship’ than formal control or traditional supervisory relationships. Overall I should say the prosecutor's office at Cosenza’s courthouse displays a high degree of organizational cohesion. The aggregated effect displays higher quality compared to the distribution of performance and cohesion throughout individual organizational units.

The policy guidelines designed after the pilot study addressed four targets:
- Interaction with the outside world;
- Interaction among the different sub-organizational units;
- Sustainability of the organizational environment in the medium-term
- The distribution of mechanisms of acknowledgment and motivation

1) Objectively and subjectively, through the perception of staff, the Prosecutor's office suffers from overexposure to the outside world. Access to the courthouse and the levels on which the public prosecutors’ offices is located are high. Also, in terms of interaction with lawyers and qualified users, access to offices, and certain services in particular, is far too easy. This, combined with the existence of high functional integration within certain service units, should instead take on the division of tasks and functional differentiation. This happens for instance when an office receives acts together with registration to GRO. It might be appropriate to break all functions of interaction with the outside by the creation of a multi-functional front-desk (customer service point) where people can lodge complaints and lawsuits, but also request those documents be produced by dedicated offices, such as the court’s records office. The unit producing the document should be separated from the unit receiving the request. Limited contact with the public should be ensured. We recommend questionnaires to survey people’s satisfaction, both overall and on specific areas, are available at the front-desk.

11) The office of the prosecutor is characterized by a medium organizational meta-cognition. A policy of common reflection could help foster awareness and transform intra-service organizational practices into a common know-how. This is a low-cost intervention in terms of time, energy and resources. An annual plenary session where those responsible for each service explain their management practices and critical issues as well as idea’s for improvement. Here the judicial staff should be less visible; hence they should not present a structured report. The objective is to improve the machinery of services available to public prosecutors. One more intervention, or change, would be a rota for the staff. There are units of staff that display medium-high adaptive rationality. Moving staff through intra-service units could activate skill and dialogue transfer mechanisms between services, via the staff.
Finally, although this is a long term intervention, there is a high convergence towards the possibility of organizing public prosecutors’ work through a range of integrated services, where judicial police officers and the administrative staff can represent the first interface with the public (only a minority of users, selected by the prosecutors, will need to use this service, since the general public would generally go to the front-desk).

Sustainability is the characteristic of a process or a state that can be kept at a given level of quality – both in terms of process and product – in the long term and for an ideally undefined period of time. In the context of a Prosecutor’s office, sustainability should be understood as the result of policies that will be thought of in terms of tomorrow’s performance. In this sense, we have asked ourselves which policies should be implemented now to guarantee optimal performance of the office in the medium-long term. Here we identify four sets of actions that should guide investments.

The First Set of Actions Concerns IT

The degree of computerization of the office is still well below requirements. This is a problem arising from scarce IT skills among staff and little autonomy (highlighted by several Gen. Reg. and administration staff) in running software. This also arises from a lack of continuity among technical and IT staff. Fund raising from regional funds and external financing could help address this issue and provide resources to hire staff with technical and IT skills, to start a training cascade process. Computerization would also ensure the added value of offering qualified users access to digital documents ex art. 415 bis [see point one of this section].

A second set of actions should be the transfer of skills. It is a fact that within 5 years, the office will suffer particularly from a lack of professional figures formally dedicated to coordinate such a service. The immediate consequence of this is the risk that all acquired skills and knowledge through learning by doing and professional experience will be lost. Managers should be able to train and transfer knowledge to others. This could be independent of codified and structured mechanisms of internal promotion, since these are necessary but cannot be changed at the level of each judicial office.

Thirdly a space dedicated to social interactions should be opened. The office is characterized by a high level of organizational cohesion, which allows for various forms of assistance to colleagues to provide relief cover in their absence, to discuss contingent pressures and unexpected problems. We recommend the creation of a canteen, a space where people can meet during lunch breaks. This would have a socializing function and would help to contain time dispersal.

Finally a fourth set of actions would entail the integration of external staff. This would be a positive element for two main reasons. The external staff will bring new vision of the office and, through imitation and comparison, can better formulate consolidated, but now implicit, practices. The critical issues about training external staff will be discussed under sub species 4.

The Prosecutor’s office in Cosenza, like all judicial offices in Italy, suffers from a lack of formal mechanisms to retain staff and to acknowledge and reward performance or excellence. As usually happens, organizations find alternative mechanisms of acknowledgment, via informal channels, although often not specific to the office, albeit fostering motivation and self-esteem. A strategy that can be managed at the office level is training on non-juridical themes, such as IT, relations with the general public, management of human resources and psychology of decision-making. Demand for this type of training is often latent and has emerged from in-depth analysis of responses by administrative and secretarial staff. The kind of training that we recommend should have a contextual character, in the field, in the office and with guidance, through non-traditional teaching methods with the aim of providing staff with tools for self-evaluation and monitoring. This type of intervention can be implemented through the participation to projects funded by local, national, and European institutions, partnerships and twinning with other European Prosecutor’s offices.

A supplementary but not residual remark should be made. This pilot study has confirmed the fact that a gap can emerge between the formal structure of governance and the functional division of labor within a public prosecutor’s office. This gap offers us a robust argument to claim that the actual pattern of governance should be taken into consideration in order to ensure the effective implementation of any organizational innovation that is introduced into a judicial office.

In theoretical terms, this gap can be framed in the broad discussion concerning the so called loosely coupled systems, i.e. systems where the ties among the units that compose the systems are loose and therefore the communication that goes from one unit to the other can be non-linear. Any input coming from a higher ranked unit and going to steer the behavior of a lower ranked unit can fail in reaching the goal. Consistency and cohesiveness are weaker in such a type of system.
We do not want to enter into the discussion whether the judicial systems can be defined exclusively as loosely coupled. I do not think this is the case. However, what can be argued — on the basis of the empirical evidence — is that judicial offices that exhibit a high level of continuity in retention of staff may feature as loosely couple systems to a degree that can undermine the capacity of the highest authority of steering the innovation processes.

If this is true, the idea conveyed by this concept is very simple, but often overlooked by the literature on comparative judicial systems. Governing change should be intended as a function and a process that goes beyond simply acting with an aim. It is a process that entails acting with an aim — for instance introducing organizational innovation to improve performance — but also the enactment of on-going adaptation and adjustment responses to unexpected consequences generated by innovation processes. Thus, governing change is a policy process strictly linked to the knowledge used to manage the implementation of innovative policies. Various conditions prove crucial:

- Constant knowledge of the process of innovation implementation. The introduction of an organization unit of relations with the general public (URP) should be integrated with a monitoring process managed within the office.
- Managers’ leadership skills.
- The capacity to understand the management of a judicial office in a comparative perspective, with particular attention to the policy effects of management decisions.

Moreover, and in my view above all, innovative processes, when put into motion in organizational structures similar to the one reconstructed in our study, should be as participative as possible, in order to create, by means of the innovative processes, the opportunity to increase the reflexive knowledge judicial and administrative staff have of the office.

This guideline has been applied in the public prosecutor office of Cosenza in implementing two of the policy suggestions mentioned above. The first is the creation of a front-desk (customer service point) to interact with the general and specialized public. This has been an innovation discussed and designed after a comprehensive and inclusive process of survey’s aiming at detecting and unveiling the latent attitudes of the staff to the consequential reallocation of tasks that has flowed from this study. The second is the creation of a room — entitled “Rosario Livatino”, after a judge who died by way of a mafia murder — which symbolically is a new space where meetings organized to enhance the intra-organizational coordination will be perceived as part of a community practice.

References


<table>
<thead>
<tr>
<th>Q1 Individual Profiling</th>
<th>Q2 Intra-organizational analysis</th>
<th>Q3 Systemic analysis of the public prosecutor office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1.1) to which organizational unit have you been assigned?</td>
<td>Q2.1) could you offer a simple description of the activities you perform in your daily work? What do you do in your daily practice?</td>
<td>Q3.1) Which organizational units interact more frequently with the one where you work?</td>
</tr>
<tr>
<td>Q1.2) how long have you been working in this unit?</td>
<td>Q2.1) which activities would you consider as priorities?</td>
<td>Q3.2) are you interacting with the public? And which the legal defendants? How would you assess this interaction?</td>
</tr>
<tr>
<td>Q1.3) where did you work before being assigned to this unit?</td>
<td>Q2.3) how do you cope with the organizational stress?</td>
<td>Q3.3) when you read the newspapers blaming the Italian judicial system what do you think?</td>
</tr>
<tr>
<td>Q1.4) which extra-legal skills do you have (i.e. ICT, others)</td>
<td>Q2.4) recently did you notice any change in your daily work?</td>
<td>Q3.4) how do you interact with the court manager?</td>
</tr>
<tr>
<td>Q1.4) how many hours per day are you used to work</td>
<td>Q2.5) what do you like more in your daily work and what do you like less?</td>
<td>Q3.5) let’s focus on the location of the offices in the courthouse. If you could, how would you reallocate them?</td>
</tr>
<tr>
<td>Q1.5) which experiences of professional training did you attend recently?</td>
<td>Q2.6) if you had the opportunity to choose one different job, which one would you opt for?</td>
<td>Q3.6) suppose that you are the chief prosecutor for one day. Which innovation/changes would you introduce in order to make your work more effective?</td>
</tr>
<tr>
<td>Q2.7) within your organizational unit, which activities are handled in a cooperative way? And which are assigned on the basis of the division of labor?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Q2.8) could you tell me about a problem that you and your colleagues – within the same organizational unit – have solved working together?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Q2.9) could you complete this sentence: “my job requires people be skillful in ….”</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Annex: Questionnaire

<table>
<thead>
<tr>
<th>Q1 Individual Profiling</th>
<th>Q2 Intra-organizational analysis</th>
<th>Q3 Systemic analysis of the public prosecutor office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1.1) to which organizational unit have you been assigned?</td>
<td>Q2.1) could you offer a simple description of the activities you perform in your daily work? What do you do in your daily practice?</td>
<td>Q3.1) Which organizational units interact more frequently with the one where you work?</td>
</tr>
<tr>
<td>Q1.2) how long have you been working in this unit?</td>
<td>Q2.1) which activities would you consider as priorities?</td>
<td>Q3.2) are you interacting with the public? And which the legal defendants? How would you assess this interaction?</td>
</tr>
<tr>
<td>Q1.3) where did you work before being assigned to this unit?</td>
<td>Q2.3) how do you cope with the organizational stress?</td>
<td>Q3.3) when you read the newspapers blaming the Italian judicial system what do you think?</td>
</tr>
<tr>
<td>Q1.4) which extra-legal skills do you have (i.e. ICT, others)</td>
<td>Q2.4) recently did you notice any change in your daily work?</td>
<td>judicial system what do you think?</td>
</tr>
<tr>
<td>-------------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Q1.4) how many hours per day are you used to work</td>
<td>Q2.5) what do you like more in your daily work and what do you like less?</td>
<td>Q3.4) how do you interact with the court manager?</td>
</tr>
<tr>
<td>Q1.5) which experiences of professional training did you attend recently?</td>
<td>Q2.6) if you had the opportunity to choose one different job, which one would you opt for?</td>
<td>Q3.5) let's focus on the location of the offices in the courthouse. If you could, how would you reallocate them?</td>
</tr>
<tr>
<td></td>
<td>Q2.7) within your organizational unit, which activities are handled in a cooperative way? And which are assigned on the basis of the division of labor?</td>
<td>Q3.6) suppose that you are the chief prosecutor for one day. Which innovation/changes would you introduce in order to make your work more effective?</td>
</tr>
<tr>
<td></td>
<td>Q2.8) could you tell me about a problem that you and your colleagues – within the same organizational unit – have solved working together?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Q2.9) could you complete this sentence: &quot;my job requires people be skillful in ....&quot;</td>
<td></td>
</tr>
</tbody>
</table>
With Vidyo, You Can Have Your Day in Court

More law firms, courts and enforcement agencies choose Vidyo.

Vidyo delivers high quality, reliable and secure video conferencing to any mobile, desktop or room-based device, anytime, and anywhere with a simple Internet connection. Our Vidyo™ Conferencing solutions integrate easily with your workflow and UC applications. And Vidyo is a trusted name, with patented innovations that are setting industry standards for modern video collaboration.

A few ways Vidyo can help you:
- Case management
- Remote depositions
- Remote expert witness or victim testimony
- Attorney consultations
- Pre-trial proceedings, arraignments
- Inmate-counsel meetings

Ask us about our field-tested Vidyo™ solutions for Legal Services.

www.vidyo.com
Tetra Tech DPK, a Tetra Tech company, is a San Francisco-based firm that provides technical, management, and advisory services to help developing and transitioning societies and governments navigate the challenges of modernization and democratization. We work around the world to help establish and strengthen productive relationships between state and society, and develop government and justice systems that are responsive, transparent, accountable, fair, and efficient. The mission of Tetra Tech DPK is to foster good governance and the rule of law as basic qualities of successful democratic societies and market economies. We carry out our mission by helping institutions plan, manage, and implement constructive change to:

- Provide fair and timely access to justice
- Operate under transparent rules that safeguard rights of individuals, stimulate economic growth, and guard against unethical or corrupt practices
- Ensure the efficient and effective delivery of services to the public
- Increase opportunities for citizens to participate in the political and economic decisions that affect their lives

Tetra Tech DPK regularly seeks to engage qualified experts to serve on existing and anticipated projects around the world.

Qualifications:
- Candidates should have at least 5 years of relevant experience
- A college degree is required; law degree preferred for legal positions
- Fluency in written and spoken English is required; knowledge of a second language (in particular Spanish, French, and Arabic) preferred
- Prior experience on donor-funded projects with US government funding experience particularly desirable
- Subject matter experience in at least one of the following areas:
  - Criminal Justice
  - Court Administration
  - Criminal / Prosecutorial Investigation
  - Judicial Ethics and Discipline
  - Enforcement of Judgments
  - Inter Institutional Cooperation
  - Human Rights
  - Gender Equality and Mainstreaming
  - Anti-Corruption
  - Government Accountability and Audit
  - Civil Society Engagement and Development

Interested applicants should submit a cover letter in English, detailing your specific expertise, and resume to jobs@dpkconsulting.com.

More information about Tetra Tech DPK is available on our website, www.tetratechdpk.com.
Abstract:
This paper deals with the constraints faced in the effective delivery of judicial training. It discusses obstacles that may confront the judicial professionalization project aimed through the training discourse, thus failing the training discourse in its judicial reform objectives. The paper focuses on the institutional arrangements that undermine the goal of judicial professionalization, specific environmental factors that demotivate judges in the learning process, and the socio-legal environment that hinder raising skills and abilities in judges. Important research questions investigated herein are: what kind of impediments are there in the path of professionalization of the judiciary? Are these impediments universal in character? What specific impediments constrain raising knowledge, skills and professional abilities in judges? How much failure can be attributed to the trainees, trainers, system and the status of trainees?

Introduction
The constraints faced in the judicial trainings are delineated from four sources: (i) literature review from sociological and psychological studies that provide why training adult professionals proves to be a difficult task; (ii) field experience in the training discourse; (iii) experience of others, about the hostilities and difficulties they faced in the training discourse; and (iv) the online debates and discussion groups formed amongst justice sector professionals who share their hardships in judicial reform projects. This paper uses these four resources to discuss how trainee judges contribute to limiting their own learning, how trainer characteristics hinder the achievement of training objectives, and finally how the systemic arrangement and institutional set-up block the path to reformative success through the training discourse.

Prof. Cheryl Thomas from London University author of a comparative analysis project on the nature of judicial training offered throughout Europe, identified six types of constraints faced in the judicial trainings in the European context: funding, time, geography, judicial dominance, institutional inertia and resistance to new training approaches. This paper summarizes further analysis grounded in eight years’ experience in the field of judicial training. I have divided the paper into three parts. Part I discusses constraints faced as a consequence of inadequate and faulty institutional arrangements made for the training discourse; Part II provides how trainings fail on account of trainee judge characteristics; and Part III locates these constraints in the relationship between judicial trainer and judge trainee.

Part I: Institutional Arrangements Made For Judicial Trainings

1.1 The Structural mess
To understand the background in which judicial trainings are administered in India, it is useful to know the structural setting of the judicial system. India has pyramid hierarchy for its judiciary. At the highest point of the pyramid is the Supreme Court of India with 31 judges. Decisions of the Supreme Court are law of the land under article 141 of the Constitution of India, and therefore binding on every entity. Below the Supreme Court are 21 high courts with about 800 constitutional judges. Precedents of these 21 high courts are binding on the district judiciary in their respective geographic jurisdictions. The district judiciary is subordinate to the high court judiciary and under the administrative control of the latter. It, too, is organized on the hierarchical lines. The lowest level court in the hierarchy is designated as the court of Judicial Magistrate First Class (JMFC) when taking up criminal matters, and the court of Civil Judges Junior Division (CJJD) when hearing civil disputes. The majority of JMFC or CJJD are fresh law graduates who clear the competitive exams to obtain an appointment as a judge. A small percentage comprises practicing advocates who gave up the practice of law to join the judiciary so as to avoid uncertainties and economic insecurities associated with legal practice. To them, the judiciary offers safe and secure employment with a fixed monthly income.

When these judges complete five years successfully, they become eligible for promotion to the next higher post of Civil Judge Senior Division (CJSD) on the civil side, or the post of Chief Judicial Magistrates (CJM) on the criminal side. The jump from this second step in the hierarchical ladder to the third step consists of being appointed or promoted as an additional district judge (ADJ). This takes considerable time and also is highly dependent upon several factors which no one clearly spells out at least to the public. Performance is certainly one criterion out of all, but there is a struggle within
the judiciary to accept or deny openly whether this is the only criteria employed for promoting the judges to this higher post. Also, competition for this post is increasingly challenging because there are fewer positions and because practicing advocates can compete for them directly from the bar by passing an open examination and being directly appointed. From the post of ADJ, one is eligible for promotion to the highest and most prestigious position within the district judiciary - of district and sessions judge. Administratively this judicial position has significant powers and responsibilities, including maintaining performance records for all subordinate judicial officers. Moreover, around 20 to 30 percent of district and sessions judges are considered eligible for elevation to the position of high court justice, which is ranked as a constitutional judgeship and carries significant respect, facilities, power, status. As a consequence, the competition for appointment to the high courts is extremely rigorous.

This structure of the Indian judiciary combines elements of common law and civil law systems. High court judges and the Supreme Court judges function as judges in any common law jurisdiction function – as equal partners with the legislature and executive in governance, whereas the district judiciary is a career judiciary having all semblance of the judiciary in any civil law country. The career oriented district judiciary in India, unlike the constitutional courts – the Supreme Court and 21 high courts – is highly dependent on the various state law ministries for its administrative support, staffing and oversight. Even though they are governed by the rules framed by the high court, which has constitutional obligation to supervise the district judiciary, the judges of the district courts do not consider themselves as an independent judicial professional but as the state government employees. This opinion gets formed because of their appointment. Most of them are selected as judges by passing a competitive exam conducted through the state government’s civil service bureau known as state public service commission. Judges of the respective high courts are present only at the stage of conducting interviews.

1.2 Environmental factors posing hindrance to the learning process
Above structural location of the district judiciary in India, coupled with the poor quality infrastructure made available to the district courts and poor quality of legal training that judges have to undergo, makes the task of judicial training extremely difficult. The discussion below clarifies it further.

1.2.1 Infrastructure to do the judicial work
In the Indian context, the most important reason for lack of motivation in training is inadequacy of infrastructure to do the judicial work. Take, for instance, a criminal case before the trial court where an opinion of forensic expert would be essential for the judge to determine the truth of an allegation made. If the state does not have sufficient forensic labs and trained forensic experts who can send the report about evidentiary sample to the court in reasonable time, judges must wait until the results are be delivered to them to decide the matter, thus delaying the court proceedings. While training young CJJD/JMFC in Maharashtra Judicial Academy on the usefulness of forensic science in their judicial work, I found that they had no enthusiasm for the subject. On closer interaction, I learnt that the state of Maharashtra has only five forensic labs to cater to 2000 courts, and due to the heavy workload, these labs are unable to complete and transmit the reports to the court on a timely basis.

One judge reported that she has been waiting for the DNA test results for four years, resulting in inexcusable delay in a case assigned to her and leaving her very frustrated that she will be held responsible for keeping this case file pending for so long in her court. The others all echoed her frustrations and narrated similar problems they face when forwarding any document to the handwriting expert for verifying the signatures or writings that are contested. Another judge highlighted yet another difficulty with this kind of evidence. In prohibition statutes which bar drunk driving, the police neither collect a blood sample to test the alcohol level in the body in many instances as prescribed by the law, nor do they forward samples, when they do take them, to the lab for testing within the period stipulated by the statute. In such cases they wondered how magistrates can help if the blood sample is not seized as per the procedure prescribed by the law. And when the courts, due to absence of reliable evidence, do not punish drunken driving offenses, society blames them for not responsibly processing such cases. These limitations on access to forensic science and incompetent police made judges reluctant participants in an educational module that encourages reliance on the forensic science to verify the charges.

The same problem occurred again when an attempt was made to draw judges’ attention to the utility of electronic case and court management. In September 2011, the U.S. Department of Justice and the U.S. Trade and Patents Office in India conducted a course for the senior district judges in Maharashtra to raise awareness on the issues relating to the trademark and copyright infringement. In this program, Judge Morrison England of the U.S. District Court, Eastern District of California demonstrated how the new reforms from past 12 years have changed the federal courts in the U.S. tremendously. He practically demonstrated to trainee judges from Maharashtra how he accepts e-filings, e-documents and digitally signs and writes his orders and judgments through his I-Pad even without being physically present in the court or the country. Senior trainee judges, rather than accepting the benefits that accrue if they take advantage of the advancements in the judicial profession around the world, started questioning the usefulness of all this progress. This
negative response to the electronic court management process stems from the fact that the government of India has not allocated laptops to all the judicial officers in the trial courts, and not completed the computerization of all the trial courts. Therefore, even now there are trial courts with no computer and internet connectivity, no soft sources of law which can be easily accessed and incomplete libraries for reference. Most of the judges do not know how to use computers and draw a blank when acquainted with their benefits.

1.2.2 Legal education quality
Problems of obsolete laws demand judicial innovation to meet the demands of modern and complex societies under the laws that did not anticipate future directions of progress of society. Frontline judges selected right after their law graduation can sit as judges without even any type of internship in a court. Equipped with poor legal education they are unable to apply these obsolete laws to the present circumstances.

It is not that there are not lawyers who take interest in their own learning and are very bright, but most such talented men and women avoid joining the trial court bench because of the conditions that persist in many of those courts. Except for some newly constructed courts in some metropolitan cities, the physical conditions make these courts very stressful and depressing places. Poor physical infrastructure, dilapidated buildings, little furniture, lack of sanitation and hygiene, gloomy settings with no sitting arrangements for litigants, broken windows and dirty conditions characterize many of these courts. Libraries and information resources for lawyers and judges are non-existent, photocopying equipment is heavily burdened, corruption amongst clerical staff who handle filing and record keeping is widespread. Ambitious men and women prefer better working conditions. They prefer to join the bar, engage in the practice of law, and then pursue a judicial career via direct appointment to a judgeship in a constitutional court which offers a much more attractive environment – physically and intellectually. The upshot is that the trial court judiciary generally comprises an inferior quality of judicial officer, one seeking a secure job that promises monthly emoluments. Thereby, trial court judgements are reduced to the status of almost routine civil service government jobs in the justice system.

Part II: Trainee Judges’ Characteristics

There are number of reasons for unsuccessful training that can be attributed to trainee judges. These are:

2.1 Poor legal scholarship and secrecy
The major constraint in the training discourse are judges themselves who believe that their work is confidential, that the public has no business inquiring into their analysis and reasoning in how cases are adjudicated. Some of them view training as a useless endeavor and waste of exercise. Their poor scholarship prompts them to view criticism as a threat to their job security. More and more judges of mediocre scholarship are now making it to the top. This is aptly described by Krishna Iyer as:

“...choices are almost personal, uncontrolled by socially accountable canons and compromises among the thesis. The candidates once selected or rejected are jettisoned or again midwife for unknown grounds. The bar and the public are in the dark. Judges, transferred for suspect behavior emerge as chief justices of a high court or even members of the Supreme Court. One high court judge who rarely attended court or wrote a judgment was made chief justice of Kerala High Court by the bizarre wisdom of the feudl few of the apex court accidently at the top. To be brief, in the art of choice, the process is a riddle wrapped in mystery, inside an enigma. Management of the judiciary needs vigilance, research, social perspective and national commitment, people’s concerns and socialist, secular convictions."3

2.2 Lack of motivation
Many trainee judges, on account of their closed mindset, traditional value systems, narrow thought process, limited exposure, and egocentric position, remain unmotivated if they are unable to climb up in the hierarchical career, questioning the utility of the educational discourse against their practical court work experience.4


2.3 The problem of participating in self-learning
Not all adults feel comfortable with the idea of participation, very much want the training to be ‘done to them,’ and are either reluctant or refuse to contribute to their own learning. Most adult professionals, including judges, are able to help themselves in the various situations of work and life they are accustomed to, but some feel helpless in the new educational and learning situation. Contrary to popular belief that adult educational methods work successfully for adult professionals, senior judges unwillingly participate in the role play and simulation exercises. Only newly appointed judges are found enthusiastic.

2.4 Training and the tendency to maintain status quo
As observed by Tracey et. al., reactions to training play a critical role in the training process. Positive reactions influence an individual's willingness to use newly acquired knowledge and to attend future training programmes. Reactions may be classified into – affective and utility reactions. Affective reaction refers to the extent to which a trainee likes or enjoys training, whereas utility reaction refers to the perceived applicability or usefulness of the training for subsequent job performance. Utility reaction creates in judges the tendency to resist any change that is being proposed. In the Indian context, I found that this tendency emanates in judges from three sources – personality of the judge, socio-cultural upbringing of the judge, and the quality of education that is undergone by the judge.

2.4.1 Personality
Personality is an important dimension that restricts learning new ideas in the training discourse. Almost on all batches of the frontline judges that I have administered the MBTI personality test, it emerged that the majority of them are comprised of ISFJ and ISTJ type. This personality resists change, reforms, and innovations to be brought in to the existing system. These personality traits prompt the judges to oppose judicial reforms. This becomes quite evident when judges are told to acquire new skills. There is huge resistance to proposals for proposed court reforms such as doing away with the stenos, typists and additional clerks used for manual filings in the courts. Many judges show reluctance to accept computer automated operations. This same personality also presents itself as a hindrance when legislature introduces progressive legislation. Judges of these personality types challenge the judicial education discourse that calls for change in attitude or approach.

2.4.2 Socio-cultural upbringing
Judges from the rural areas are not accustomed to new inventions that are changing the world, and their cultural and educational background does not encourage investment in self-development. Therefore, even when they have good salaries, they spend little or nothing of that salary towards their own intellectual development. There is reluctance to spend even 1 % of the salary earned to learn new things by investing in books or journals or computers for themselves. This socio-cultural background shows that judges do not give much importance to their own professional development.

The rural upbringing with too much stress on caste, color, religion and culture in the lives provides yet another challenge to the training discourse and also to the learning process. There is a group that does not believe in equality of gender; does not like men and women sitting together in classroom; shies away from taking part in any collective activity; resorts to character assassination of female litigants, advocates and fellow colleagues; pays too much attention on outer exterior of people who appear in the courts; and draws conclusions about character from this outer exterior. These prejudices then find their way into the decision-making process.

2.5 Prior experience
Even when adult professionals are well aware of the fact that their experience is not perfect and in need of some correction and completion, it becomes difficult for them to admit these imperfections, because they define themselves largely by experience, and they have a deep investment in its value. It goes without saying that if a judge unwittingly relies on irrelevant past experience and has thereby become obsolete as times change he/she is unlikely to be cooperative and open-minded as an active and eager participant in the training course. To my experience, difficulties of this kind are many, and they threaten to a high degree the effectiveness of the learning process during the training discourse.

---

7 Id. at 12
8 Created by Isabel Briggs Myers the author of the world’s most widely used personality inventory, the MBTI or Myers-Briggs Type Indicator — is developed and modeled around the ideas and theories of psychologist Carl Jung, a contemporary of Sigmund Freud and a leading exponent of Gestalt personality theory.
2.6 Barriers to learning
Illeris points out to three barriers to learning: mislearning, defense against learning, and resistance to learning.\textsuperscript{10} Mislearning is caused by lack of qualifications, lack of concentration, and misunderstanding; defense against learning is being selective in what one learns and resistance to learning is obstruction to learning something in situations that are experienced as unacceptable. Illeris states that there are many individual and situational reasons for non-learning. Learning processes may be blocked or derailed for a variety of reasons, partially or totally. Judges are not free from such barriers.

2.7 Open acceptance for the need and benefits of training
Kadens reveals that judges may not openly acknowledge benefits they derive from training:

‘Even those who admit to having had a learning curve remain coy about what they did to teach themselves how to be judges. When asked directly, however, judges readily admit to the difficulties of learning their jobs’ (2009:143).\textsuperscript{11}

Pischke in his paper about continuous training in Germany found out that trainees are reluctant to spend personal time for training activities. Most of those who had undergone training clearly indicated that they would not have participated in the training without the financial assistance received from their employer side or another source.\textsuperscript{12} This reluctance to invest in personal development shows lack of commitment to continuing education on part of professionals. Judges too, whether in India or elsewhere often participate in learning only when it is provided it free of cost.\textsuperscript{13}

A stark difference is found in the attitude towards judicial education between some civil law and some common law countries. Where judicial education is publicly recognized and accepted for judges in most advanced and some developing civil law countries, in some developing common law countries, many judges prefer to keep the process hidden from public awareness, presuming that judges already know everything they need to know. To that extent, we have this process going on under the blanket of titles like conferences, retreats, workshops, seminars, etc. This difference according to Kadens emerges because:

‘In civil law countries, the judiciary has long been viewed as a career, an honorable one, perhaps, but just one amongst many choices a young lawyer could make. The law student or law school graduate selects the judicial track, receives focused training, and progresses up the hierarchy of courts as his or her abilities, interests, and experience warrant. In such a system, the fact of judicial education is openly acknowledged. In common law countries, by contrast, a judgeship long ago became a reward for a successful career as a practitioner. It was not the career the young lawyer prepared for; it was, and remains, the plum he hoped he might earn by service in another branch of the law’.\textsuperscript{14}

2.8 Attachment style of individual learners
Another constraint in effective transfer of training relates to attachment style of individual judges. Developed primarily by Bowlby,\textsuperscript{15} attachment theory holds that from infancy people form an internal working model of other people as well as themselves, based upon the perceived accessibility of their primary care taker. Attachment styles systematically influence how people seek and process information, interact with and evaluate others, engage in tasks and regulate their emotions.\textsuperscript{16} The two variables that determine a person’s attachment style are (i) one’s belief that one is worthy of love and (ii) one’s belief that significant others can be depended upon to be accessible.\textsuperscript{17} At present, three attachment styles have

\begin{thebibliography}{17}
\bibitem{Pischke} Jörn-Steffen Pischke, Continuous Training in Germany, Discussion Paper No. 137, March 2000, MIT, Cambridge and IZA, Bonn at p. 8
\bibitem{EU} Report of EU 2012
\bibitem{Latham} Gary P. Latham and Peter A. Heslin, Training the Trainee as Well as the Trainer: Lessons to be Learned From Clinical Psychology, Canadian Psychology, vol 44, issue 3, pp. 218-231
\end{thebibliography}
been identified – secure, anxious-ambivalent and avoidant. According to attachment theory, people with secure attachment style view others as trustworthy and themselves as worthy of care; anxious ambivalent attachment results in a high dependence on others for a sense of well being. There is over-involvement in close relationships characterized by incoherence in discussions, unnecessary intrusions and interruptions, and exaggerated emotionality. The desire for closeness, combined with a fear of rejection often triggers angry protests when a significant other is perceived as ignoring them or as inaccessible. An avoidant attachment style stems from consistent rejection of attempts at closeness. This sometimes culminates in a positive view of self and a negative view of others because of their perceived lack of availability.

Attachment styles determine how trainee judges will view training activity as well as their work or job. Considerable research and empirical studies prove that attachment styles affect task exploration and engagement. They further demonstrate that secure attachment style is the most positive style and people with this style work without undue distraction, ambivalence or anxiety. On the other hand, anxious ambivalent people find relationship concerns affecting their work and productivity and they often get feeling of being misunderstood, unappreciated and fear other’s impression about their work. It has been also found that people falling in the third category – with avoidant attachment style use their work as a means to minimize social interactions. Different attachment style of individual judges implies great variations in the participation by judges in their learning for any given training program.

Part III: Judicial Trainer and Methods Employed for Trainings

Like all interactions between human beings, training is a complex business, involving both the personality and skills of the trainer, or facilitator, together with the teaching environment in which the training takes place and the willingness of the trainee to learn. Trainee judges are not solely responsible for the failure of learning from the transfer of training. Collins et al. in their work cast the heavy responsibility on the trainer and make trainer responsible for failure or success of learning. According to these authors, trainers have to create an atmosphere in the training duration conducive to successful learning by the trainees. Judicial trainers need to note the heart of Dewey’s teaching: the aim of education is to teach learners ‘how’ to think and not ‘what’ to think. The military-type instructions churned out during the judicial education discourse to judges who have been given vast discretionary powers under the various statutes do not prepare judges on “how” to think.

Some of the reasons for the failure of learning by judges attributable to judicial trainer are: (i) lack of understanding about andragogy as a discipline; (ii) lack of skills to motivate adult professionals to participate in their own learning and development; (iii) no scientific qualifications to undertake continuous educational activities; (iv) supply side deficiency; and (v) arbitrariness.

3.1 Judicial education institutional management in India

There being a divide between the career judiciary and the higher judiciary, the judicial education needs of both groups is addressed with different strategies. For the career judiciary, the lowest post to enter the judicial system being that of CJJD or JMFC, the consensus amongst the high courts is to train these officers for a one-year period in the judicial education institution before appointing them the bench. In the state of Maharashtra, under the high court of Bombay directive, once selected, candidates are sent to Maharashtra Judicial Academy for four months of residential training. After this training judges are sent to the courts for six months to obtain practical experience in judging. After completing six months in the courts where they sit along with senior judges and observe working of the court, they return to the Academy for another two months of residential training.

Again not all states in India follow this timeline; from state to state, there is variation. Ideally each state should have its own high court and its own judicial education institution but this is not the case. Several high courts have territorial

---

jurisdiction over more than one state. For instance, Bombay high court has jurisdiction over Maharashtra, Goa and union territories Daman and Diu, and Lakshadweep. Similarly, Gauhati high court has jurisdiction over seven sister states of northeast India – Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura and Sikkim. This extension of jurisdiction well beyond the boundaries of the state is justified on account low rate of litigation in some territories and therefore it was not thought fit to have a separate institutional judicial framework for these territories. For instance take the case of Gauhati high court. Even after having a jurisdiction over the seven sister states, this court has the lowest litigation rate because the population there prefers that its claims be addressed by alternative dispute resolution forums rather than the formal court dispute resolution process.25

Likewise is the case of judicial education institutions in India. Ideally there has to be one apex institution under the supervisory control of the Supreme Court of India and at least 21 others in different states in the supervisory control of the high courts. However, this is not the case. At the national level, under the administrative control of the Supreme Court, there is National Judicial Academy at Bhopal established and operational since the year 2004. At the state level, not every high court accords the same level of importance to judicial training. In fact, at the state level, judicial education dissemination is directly dependent on the priority that the high court gives to it. Therefore, state judicial academies, are not functional in all the states. Also, some states have established more than one institution to provide judicial training. Presently, Maharashtra and Tamil Nadu have more than one judicial education institution whereas the states like West Bengal and seven states in the northeast do not have functional judicial academies. They send their judges to Delhi for the judicial training.

Judicial education in most states is not backed by any sound planning and policy. Senior district judges detailed to judicial academies and entrusted the task of educating fellow judges often lack a vision for training and sometimes even do not fully understand the purpose of training for their colleagues. Occasionally a district judge posted at judicial academy has lots of enthusiasm. Also, enthusiasm for judicial training as opposed to cynical feelings towards its utility will not be sufficient to develop the discourse to raise intellectual abilities in judges to appreciate law and provide reasoned decisions. The discourse has to provide them judicial skills required for justice according to constitutional morality and mere enthusiasm for training on the part of management will not translate the training into a skill-development exercise. Enthusiasm is not helpful in stabilizing the core ingredients of the training. Few district judges have professional training in the principles of curriculum development, and many treat their posts in the judicial education institution as an extension of their court work. They know of no scientific principles to be employed in designing of curriculum, teaching methodology, faculty selection, mission and vision and goal for education, tools to be employed in monitoring effectiveness of the professional education.

There have been various reports by committees constituted by the government of India from time to time, for example the Shetty Commission, to do away with the wide variance in the type of induction training programmes for judges in terms of duration, content and quality. From year 2006 to 2010, the National Judicial Academy at Bhopal conducted many consultation meetings with the then-directors of state judicial academies to help them evolve a common approach to judicial education, and it also developed a minimum core curriculum for judicial education, both for induction and for continuing education. However, the state judicial academies are free to adopt or abandon this proposed curriculum and even today, every state judicial academy is doing its own things with no coherent national strategy and systemic training objectives in place. The only standardization that these seven years of judicial training has yielded in my experience is in the topic of constitutionalism. Judges almost in every state are now made to realize through the judicial trainings the relevance of constitutionalism to their judicial work.

The time invested in training is directly related to the status of a judge in the hierarchical system. CJJD/JMFC judges are deemed appropriate candidates for a one-year residential training requirement. Judges at the next-higher level of CJSD/CJM at most are provided a one-month residential orientation course. Judges one level above them, ADJ, may not be provided more than 10 days of training. High court judges have no obligation to participate in training and typically do not spend more than two or three days at the National Judicial Academy in Bhopal in any seminar. Supreme Court justices from years 2004 to 2011 attended only two retreats, one in 2005 and one in 2008 of four days each. Not all judges are able to attend training programs during their careers, even with so many institutions engaged in training Indian judges. One widespread perspective on judicial training is that it should be required only of the subordinate judiciary; some even give it the color of punishment. For instance, there have been incidents of a judicial order that sends a judge to a specific course at the judicial training institute on account of judicial error.26

25 Chief Justice Madan B. Lokur in his address on court and case management issues to trainee judges in Maharashatra Judicial Academy acquainted everyone present with this fact.
26 In Rohit Kumar v. State of NCT of Delhi 2008 CrLJ 3561, a Delhi High Court judge in an appeal from the order of ADJ found that he had not correctly applied the criminal procedure. He therefore in open judgment ordered the judge to undergo a 3 months refresher
Close observation of the district judiciary reveals significant challenges within the district judiciary. Every objectionable vice - wrath, greed, sloth, pride, lust, envy, and gluttony – can be identified. There is a huge misuse of hierarchy and performance appraisal tools. I focus the remainder of this article on this segment of judiciary to enumerate the kinds of difficulties one may encounter in the process of judicial training.

3.2 Training in the absence of needs assessment
The state judicial academies managed by district judges are not equipped to assess the professional training needs of judicial officers from time to time in their state, in part because they have not been trained in evaluation techniques to determine the utility of training delivered. Further, although trainee officers are selected by the high court, the actual selection function often falls to the registry of the high court. Indeed, in some high courts some trainees are sent to multiple training sessions while other judges never have the opportunity to undergo training during their careers. Another problem is that trainee judges are not asked about their willingness to undergo trainings. This results in forced training for a judge who has no inclination or need to learn the subject. Also, some judges on the verge of retirement are sent for the training. They question the relevance of the training for them. High court registry offices cannot be blamed for poor selections because they already are heavily burdened with other tasks related to court management, budget formulation, protocol follow ups, etc. There is no system in place for assessing needs to match judges to programs.

3.3 Training by employing methodology of fear, sanctions and disciplinary techniques
Trainee judges are not solely responsible for the failure of learning from the transfer of training in the judicial education discourse. Collins et. al. in their work cast the heavy responsibility on the trainer and make trainer responsible for failure or success of learning. According to these authors, trainers have to create an atmosphere in the training duration conducive to successful learning by the trainees. This means that the training has the potential to change learner mindsets at any age or any stage of the career provided that an appropriate methodology is employed by the trainer. Absent correct methodology, the trainings cannot shred hardened attitude of adults who feel reluctant to change.

My experience and interaction with the state judicial academies in India reveals amusing and unusual techniques deployed by the district judges who manage their day-to-day functioning. One prominently used is the technique of instilling fear to inspire respect for themselves and compliance with their directions. They create concern on the part of the trainee judges that the district judge teaching the class may tomorrow become a guardian judge, administrative judge or the principal district judge and may have some influence on the promotion, performance review, or disciplinary procedure against the trainee judges. This fear of the future ensures that trainee judges remain obedient in the class, do not question the utility of what is being taught, and maintain the standard of discipline dictated. At the end of the training period, an interview is conducted where the trainer judge tells trainee judges about their performance during the training period; a written report is subsequently forwarded to the high court for its information. This interview and reporting process make young entrants to the profession very nervous; it also produces responses from the trainees in the form of sessions or two or more hours during which they praise and sing songs to appease the trainer judge.

Also, the evaluation feedback form asks trainee judges to identify themselves by providing their name, place of posting, etc. Hence, if trainees criticize the trainer for poor delivery or inadequate mastery of the topic or record other comments reflecting bad management of the Academy, in all likelihood it would result in a quid pro quo on their personal performance reports that the academy prepares and sends to the high court. Such tactics are adopted by almost all the fully functional state judicial academies in India managed by the district judges.

3.4 Perception about successful career and judicial trainings
Perception, a product of many environmental factors, plays an important hindrance role in judicial training. Almost all young trainee judges join the judiciary with an optimistic attitude, but that perception soon devolves into a highly course in criminal law at Delhi Judicial Academy and even asked to Academy to submit his performance at training report back to the court. Usually this decision could have been made at administrative side without exposing identity of the judge to the whole world and making him a topic of the gossip circles. Also, judicial training at the Academy run by his fellow colleagues or even his junior colleagues, makes one wonder, how sure one can be that at appropriate course would be offered to judge to give up his misconceptions.

27 Even though recently former judge of the Supreme Court of India, justice Ruma Pal in her speech at fifth V M Tarkunde Memorial Lecture on ‘An Independent Judiciary’, acknowledge that the higher judiciary is guilty of these sins, I would like to add to her observation that the judiciary below this higher judiciary [which the constitution designated as the subordinate judiciary] is no less better, but far more worse. See ‘Higher judiciary guilty of 7 sins: ex-SC judge pulls no punches’, Indian Express Newspaper, 10 November 2011.

pessimistic attitude about their career growth. They are brainwashed to believe that the career growth is linked not to their performance on the bench but to the extraneous circumstances like family background, financial capability, political connections, ability to keep superiors happy, good fortune and networks within the higher judiciary. This perception is nurtured by their peers and seniors who have spent considerable time in the judicial system. It persists because there is no transparency criterion or national policy communicated to everyone of the factors considered in promotions, demotions, transfer and removal of the judicial officers. This perception is created in the minds of young entrants by the senior hawks in the career judiciary who wish to exercise control over the future of these young entrants so as to create obedience, subjugation, loyalty and allegiance among the junior entrants. This pessimistic perception about career growth based on performance in the system demotivates the young entrants to take full advantage of their judicial training opportunities.

3.5 Treating different personalities on the same level
Ten Have (1973) brings to our notice one major blunder that trainers commit; it is treating adult as a homogeneous group, shadowing on different personalities that emerge as a result of aging process. He acquaints us with six different types of attitudes that have been scientifically, medically and socially proved to exist in adults after age of 40. These six attitudes produce six types of adults. All of them have different educational and therapy requirements of which judicial trainers are not aware.

3.6 Lessons learnt from some specific training courses
I will now recall my personal experiences in the trainings to provide how the background of a judge stands as an impediment to learning process.

3.6.1 Refresher course for the Family court judges
Family court judges in Maharashtra State belong to two different cadres or groups. One group is appointed directly to the family courts through written examinations; the other group comprises judges transferred to the family court for a period of three years. The Supreme Court judgment in the year 2011 made clear that judges who are directly appointed to the family courts in Maharashtra cannot be considered for elevation to the high court. This decision meant that once a judge has been selected for appointment as family court judge then he/she will remain in that capacity until retirement at the age of 58 years. Therefore, family court judges can be transferred only from one family court in the state to another family court. They can be transferred neither to any other type of court nor, like their counterparts in the district judiciary, be considered for elevation to the high court. This separation has not been accepted well by family court judges because it effectively eliminates any possibility for promotion. They feel they also suffer because they have no opportunity to adjudicate different types of cases or to improve their status.

In July 2011, in the refresher course on the changing nature of matrimonial litigation for the judges of the family court, the high court registry had nominated judges from both the groups along with counselors who are attached to the family courts for encouraging mediation and conciliation amongst the litigants. On the first day, I experienced firsthand the frustrations of the family court judges who are not eligible for elevation. I learned in the opening session that judges who had put more than 20 to 25 years in service as family court judges felt entrapped within the system. They also were hostile, given their many years of experience, to this particular course because they felt they already knew so much that there was no need for them to undergo any additional training discourse at this moment in their careers.

The other group comprised newly appointed family court judges on transfer basis. These judges, prior to being transferred to the family courts, presided over cases in drug courts or other special criminal courts dealing with serious offences. Judges from this group lacked basic understanding of the objectives of the family court. In fact, one judge throughout the three-day course, displayed biases and prejudices against women in matrimonial discords. This judge had a problem with almost every trainer on the gender justice issues and had a strong reservation on maintenance and alimony to be afforded to women. These reservations that some judges displayed toward progressive legislation present a challenge to the successful transfer of learning in the training process.

In December 2012, in yet another refresher course for newly appointed family court judges, I found some judges to be highly conservative about outer appearances of litigants. Some expressed an open dislike of women litigants who dress well, wear makeup or show no remorse and hurt in the divorce proceedings. Also, some of them expressed dislike for nuclear families as they themselves resided in joint families.

30 1. The accepting type; 2. The expanding type; 3. The introverting type; 4. The struggling type; 5. The relaxing type; 6. The resigning type
Persuading family court judges abandon their personal cultural assumptions poses another formidable challenge to the training process. It is highly unlikely that they will give up their personal morality and do judging based on the constitutional morality.

3.6.2 Refresher course for the juvenile justice board members
In the year 2000, in order to conform to the mandate of the UN Convention on the Rights of the Children to which India is signatory, the parliament raised the legal age of a child under law from 16 to 18 years. Eleven years have since transpired, yet even today some trial court judges question the wisdom of the parliament requiring treatment under law of a person below the age of 18 years as a child. They prefer the earlier statute and argue that 16 years was sufficient to afford protection to children. Continuous seminars, conferences, refresher courses and workshops have not been able to change the mindset of the trial judiciary on the treatments to be afforded to adolescents aging 16 to 18 years. They even come out with the reasons to reduce the age of child from 18 to 16 saying that this group is largely involved in all kinds of criminal activities. The use of disciplines like psychology in the training discourse to shake this view has not proved very successful. The only way forward seems to be a strong message to be circulated to the trial court judiciary from the high court to stop challenging the parliamentary wisdom.

3.6.3 Orientation programme for the senior district judges
In a month-long orientation program for newly appointed or promoted district judges in Maharashtra Judicial Academy, I found district judges questioning the precedents of the high court and the Supreme Court of India; in their view, these precedents were immoral. For them, the constitutional courts are compromising Indian culture and values by validating same-sex relationships, live-in-relations, and sex outside of marriage; therefore, these should be discarded.

Since the cultural and moral value index differs from one set of judges to another, judicial trainers like me are challenged as to how to move forward. The gap in cultural and moral values, anchored in the education a judge may have undergone, plays a crucial role in his/her selection and appointment at different levels within the judiciary. I have learned that the best methodology to move forward under such circumstances is to insist that judges from all levels rely on the morality set forth in constitutional precedent rather than one’s personal and cultural morality. The constitutional morality reflects the larger values of freedom, equality, dignity, equity and fairness that must be reflected in judicial decision making is a new concept to the trial court judiciary, but a minority of judges are sufficiently open minded to internalize this idea. In fact most of them found it to be an academic imagination and not practical approach for the courts.

3.6.4 Induction courses for frontline judges
The dynamic of training changes depending upon the power invoked by the judicial trainer. Trial court judges who undergo training react very differently to judges and non-judges. They do not question, for example, judge trainers for fear of reprisal on the utility of the ADR in their case management course. They pretend to be in complete agreement with the philosophy and utility of the ADR in court and case management. However, this pretension soon fades away if the academic trainer is substituted for the judge trainer. Suddenly a volley of questions is hurled at the trainer, demanding to know why there is a need to privatize the justice! This step-motherly treatment of the academic trainers has led to the exit of some eminent academic trainers from the judicial training field.

Conclusion

Whereas promotions to judgeships at the high courts and the Supreme Court of India are earned after undergoing high-quality legal education, success in the legal profession, standing in the bar etc., the trial court judgeship is all about an ability to crack a competitive exam. There is therefore a huge ideological difference between the two groups of judges in India. The level of education, experience and exposure to the world segregates these two into separate groups with dramatic differences in status. It then falls to judicial education institutions to narrow the gap in knowledge, understanding and competence of these two groups. However, one question remains: can this task be fulfilled by the judicial academies under the immediate supervision of judges from the career judiciary (although under the management control of the high court) on the very lines as if they are courts under the administrative control of the high court. My experience tells me that the senior district judges are reinforcing the very values from which the judiciary needs to free itself. If this situation is not analyzed and resolved, no long-term improvement can result from the judicial education discourse and no benefit will accrue to the system. With the system remaining as it is from where we began, the public expenditure on the judicial education discourse will not be sustainable in the long run.

31 13th Finance Commission provides the grant of INR 2500000000 for the period 2010 to 2015 to state judicial academies so as to bring the desired judicial reforms through the judicial education discourse. See para 12.84, p. 221, chapter 12 of the thirteenth Finance Commission report available online on the website of the Finance Commission of India.
Further, while choosing trainers for the judicial trainings, the policy makers in the High Court and the Supreme Court, need to take note that many jurisdictions are now insisting on qualified trainers. In England and Scotland there are regulations\(^\text{32}\) requiring trainers in the further education sector to have qualified or be actively working toward a stipulated qualification.\(^\text{33}\) There is the usual ‘grandfather’ clause allowing those already working to continue, but trainers new to the profession will have to be fully qualified.

Further, there is a need for a shift in the field of training – from mere emphasis on trainees who are recipients of training to the trainer who administers the training.\(^\text{34}\) No actual benefits will accrue if the role of the administrator of training is completely ignored and marginalized. The trainer’s capacity building is equally important to maximize the trainee’s learning. Training of trainers has been completely ignored and hardly any attention is paid to the role of the trainer for organizational survival in a dynamic environment of hyper-competition.\(^\text{35}\)


Infinitely better systems. No arena is more demanding or sensitive to absolute verbatim accuracy than the courtroom. That’s why each component of The JAVS System is built from the ground up to seamlessly integrate with all other components. For over 30 years JAVS has delivered the official public record. Call 800.354.JAVS or email solutions@javs.com and see the JAVS System in action. Live demos conducted daily.

The Centro FlexMic Network Configurable Microphone features two tri-colored LED indicators that may be switched between red, yellow, and green. The FlexMic includes a programmable, feather-touch button to provide a wide range of options.

Be sure.
Simple, sophisticated digital recording solutions for global justice

For over 25 years, our company has been providing courts around the world with simple yet sophisticated computer-based digital audio and video capture and management solutions. An established solutions provider, we have a growing global customer base in Europe, Africa, Asia and the Americas.

With VIQ Solutions, you can start with simple digital audio recording and add features and sophistication as you grow. Our flexible suite of digital recording solutions is scalable, with a clear migration path, allowing you to protect your investment.

With built-in language profiles and a completely customizable interface, our software can be adapted to suit any justice environment. So whether your court is in London or Lagos, Minsk or Marrakech, our suite of solutions will meet your specific requirements.

For more information, visit us online at www.viqsolutions.com or email us at info@viqsolutions.com.
Behind the Judges’ Desk: An Ethnographic Study On The Italian Courts Of Justice

By Luca Verzelloni, University of Bologna, COMIUG, Italy¹

Abstract:
Interpretation of the written law, far from being a cognitive activity, it’s a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions. This process isn’t based on perennial and immutable axioms, but is an activity built in practice, through subsequent “translations” of formal and abstract rules into “concrete” lawsuits. Being a magistrate doesn’t mean acquiring a body of abstract knowledge on how to interpret the written laws; rather it signifies an ability to practice as a judge in a court of justice. In order to study the logics that characterize the “fabrique du droit”, it is necessary to go “behind the judges’ desk” so as to investigate the “real doings” of the practitioners.

In light of these reflections, this article tries to reflect on the activities of the Italian judges. The data presented were drawn from several periods of ethnographic research conducted over two years in four Italian courts specialized in legal arguments at first instance related to Labor relationships, Assistance and Welfare. Tribunals were chosen on the basis of two criteria: dimension and geographical location. The research has considered 16 judges (novices, experienced and presidents of section).

The conclusion of this paper is that interpretation of the written law, while remaining a prerogative of the single Italian magistrate, is linked to the organizational context in which each judge operates and to the occasions for comparison with the colleagues of section. Some Italian tribunals look like “condominiums”, where magistrates appear as “monads” and other, instead, can be described as “communities of practitioners”, in which judges discuss common “translations” of the written law and put the results of this dialogue into practice.

Introduction
A court of justice often appears, to the eyes of the layman, as something mysterious and abstract. Courts are “black boxes”, “opaque institutions” impenetrable from the outside². These “temples of law”, basing their activities upon complex procedures and a highly specialized vernacular, are often perceived as closed institutions, characterized as being far removed from the society in which they operate³.

Since the interpretation of the law is not only a cognitive process, but a practical and situated activity, in order to study the logics that characterize the “fabrique du droit”, it is necessary to pass beyond the “institutional facade” of the tribunals so as to investigate the “real” goings-on of practitioners.

In particular, considering the judge, a figure who is the crucial subject in the continuing and repeated translation of law into practice, it is necessary to go beyond the norms and procedures and to analyze the activities of magistrates and the continuous processes of learning located in the courts of justice.

This conviction is summed up effectively with the idea of “going behind the judges’ desk”. The expression, directly referring to the famous motto “follow the actors”⁵, prefiguring something yet to be discovered and emphasizes an ambition to explore the mysterious world of the law from a specific viewpoint.

¹ Post-Doc Research Fellow, University of Bologna, Department of Politics, Institutions and History; Director of the Centre for Organization, Management and Informatization of the Italian Courts of Justice (COMIUG), Strada Maggiore 45, 40125, Bologna, Italy, luca.verzelloni@unibo.it.


1. Interpretation of written laws as a “practice”

In general terms, written laws are linguistic propositions that require interpretation. A judge, especially in the Civil Law system, is continually called upon to “translate” the text of these rules in decisions, which require expression of the law through the judge’s interpretation. Interpretation is a complex and dialectical system based on reconstruction of facts, evaluation of arguments and recognition of fallacies.

Written law, being general and abstract, is unable to regulate every possible empirical situation. The distance between written laws and “practice” does not allude to the presence of a dysfunction, but expresses exactly the “space” of interpretation open to a magistrate: in the Civil Law systems, judge is always obliged to make a decision, even in cases of obscurity, ambiguity, vagueness, imprecision, incompleteness and antinomy of the rules. For this reason, each legal operator performs, by necessity, an interpretative activity.

Every judge, far from being a “mere mouth of law”, through her/his interpretation of the formal norms, contributes to the continuing realization of the “living law”. Law is not a static entity; on the contrary, it continuously evolves over time, concomitantly to the transformations of society. Each legal system is built on a dialectical relationship between “positive law” and “living law”.

The “translation” of the written law in practice characterizes the activity of each judge. The legal world is founded on a continuous and repeated transposition of formal norms enmeshed in legal proceedings. A judge, during his/her daily activities in a court of law, contextually works on two levels: “merit” and “method”.

Every magistrate operates on the level of “merit” when constructing the legal resolution of a lawsuit on the basis of her/his interpretation of the law. Decisions on “merit” are built during the various stages of the proceedings and are expressed through motivated sentencing and other forms of verdict that are produced by the magistrate – as ’operative parts of the judgment’, ‘statements of reasons’, ‘contextual decisions’, ordinances or decrees. This dimension is strictly related to the substance of legal issues. The job of a magistrate is largely based on her/his technical skill of judging the “merit” of the lawsuits presented to the court by the lawyers.

Besides “merit”, there is the dimension of “method”: the two variables are intrinsically linked. The “method” represents the set of activities that allow the judge to reach a moment of decision on a lawsuit. The sphere of “method” is related to the procedural dimension, which includes all issues inextricably connected to the legal route that defines a proceeding. The word “method” derives etymologically from Latin (mèthodus) and Greek ( méthodos) and refers to a way, or manner, to conduct an investigation. Sentencing and other forms for concluding a lawsuit are only the final acts of an elongated and complex process, constituted by a sequence of procedural steps, tasks and deadlines. A judgment is directly connected to the “method” in which it is constructed. Each judge determines the temporal development of the proceedings. The sphere of “method” is strictly tied to the organization of work of the single magistrate and of the court.

This article assumes that interpretation of the law, expressed in the “merit” and “method” derived decisions of the judges, far from being a mere cognitive activity, is something socially constructed, concrete and material, which is created, recreated and reinforced through experience and continuous individual and collective learning. The role of the magistrate...
is not restricted to the passive acquisition of a body of abstract knowledge on interpretation; rather, the magistrate signifies the dual nature of a dialectical relationship that exists between written law and interpreter practicing in a court of justice. "Knowing-in-practice", every magistrate builds her/his own peculiar "competence-to-act" in context.

2. Aims and methodology of the research

In light of the debate on Practice-Based Studies (PBS), derived from data collected during ethnographic research conducted over two years, this article aspires to paint a vivid picture on the activities of Italian judges.

The data presented in this article was drawn from several different periods of ethnographic research in four Italian courts, respectively identified with the pseudonyms of Alpha, Beta, Gamma and Delta. Courts were chosen on the basis of two criteria: dimension and geographical location. Furthermore, all courts utilized as sites of research for this study are specialized in the treatment of legal arguments at first instance related to Labor relationships, Assistance and Welfare.

This study includes analysis of 16 judges: 6 in the Alpha court, 2 in Beta, 3 in Gamma and 5 in Delta. These judges, all identified by color derived pseudonyms, were chosen on the basis of their experience in Labor procedure. The analysis has contextually considered judges with less than 2 years of experience (here defined as 'novices'), experienced and Presidents of section.

Research methodology can be broken into three parts: participant observation, in-depth interviews and document analysis. During the period of participant observation, this research focused on judges and their activities and considered every formal and informal meeting between magistrates. Analysis of the data refers mainly to the dimension of "method", that is, to the texture of practices used by judges to temporally manage judicial proceedings.

3. Practicing in the Alpha Court

**Context.** Alpha court is located in a city in central Italy; this city is the capital of the province and region. The tribunal can be considered as medium-large. Six judges operate within the Labor section, including the President (known from here on in as 'Black'). Judges are predominantly male: there is only one female ('Green'). Most of the judges have several years of experience, only two magistrates have less than two years experience dealing with Labor cases ('Yellow' and 'Black'). This research examined the activities of all the magistrates of the section: 'Blue', 'Red', 'Green', 'Yellow', 'Black' and 'Cyan'.

**Length of proceedings and adjournments.** Although written law has established a Labour process founded on orality, concentration of hearings and the immediate decisions of judges, magistrates of Alpha Court very often adjourn the hearings. This choice affects the duration of proceedings. No judge directly proposes to make the 'final discussion' between the parties. Each magistrate prefers to adjourn their decision until a subsequent hearing, in order to prepare and ponder his/her judgment. Green delays her procedural duties over time. These adjournments are the expression of a precise choice of the magistrate: this does not tend to change the activities of the hearing a great deal. Usually, Green adjourns the hearings for 7-8 months. Yellow and Black usually adjourn 'final discussions' for 6-8 months. Both Yellow

---


17 In these trials judges work alone, not in a collegial board. Rules of Code of Civil Procedure (henceforth c.c.p.) that define the functioning of the rite of Labour have changed with the introduction of Law 533/1973. This particular procedure is defined by 39 articles (409-447): 30 reserved to first instance and 9 to appeal.

18 Competencies of Presidents of section are defined by art. 47 quarter of the Italian Judicial Order, Royal Decree 12/1941. However, there aren't specific training programs dedicated to the Presidents of Sections.

19 This choice was made to focus on the organization of work of the single magistrate and of the court.

20 Research experience in Alpha court lasted 8 months.

21 President Black has no experience in the Labour procedure.


23 Cyan refused to be studied during his hearings.

24 Art. 420 c.c.p.

25 The last hearing, when parties discuss the conclusion of the lawsuit.
and Black judges, when deciding on adjournments, do not take into account the total duration of proceedings (due to lack of experience). Blue and Red, on the other hand, allow a limited time for their hearings. A ‘final discussion’ is usually adjourned for a minimum of 2 to a maximum of 6 months. Judges of Alpha section are generally averse to providing adjournments at the request of parties. Only Black is far less rigid in these concessions. Unlike other courts, all judges in Alpha court often admit the assistance of technical advisers (c.t.u.), especially on medical-related legal questions.

**Timing of hearings.** Judges of the sections organize their hearings in different ways. Some judges, such as Red and Black, group all cases that require the same task into one day: ‘first hearings’, then evidence or ‘final discussions’. Conversely, other judges will mix the different proceedings. Red always calls for 2-3 days of hearing and, wanting to concentrate all the ‘first hearings’ in a single day, is often unable to devote much time to reconciliation attempts. Black dedicates 3 days to the hearings. The President divides the ‘first hearings’ into blocks of 15-30 minutes, depending on the complexity of the case. Green organizes 2-4 days of hearings a week. As with her colleagues, Green does not have fixed days for hearings. Usually the magistrate sets her hearings on subsequent days. Yellow allocates only 1-2 days a week to the hearings. The mornings of a judge are therefore very busy in terms of the procedural tasks that need to be completed. On many occasions, the hearings overlap and space for oral exposition is limited. Blue, as with Yellow and Green, mixes the different procedural tasks. Blue organizes 3 days of hearing, and articulates his working day on the basis of time required to analyse the evidence.

**Organizing hearings.** During the ‘first hearings’, all judges of Alpha section attempt a reconciliatory solution. These procedures are, however, very hasty and rarely lead to effective results. As with the reconciliation, even the free interrogation of parties often appears as a mere procedural formality. In most cases, the judges simply ask the parties if they have read and if they confirm the acts of proceedings. Evidence is handled in different ways. Red and Yellow, compared to their colleagues, dedicate less time to the investigative hearings. The two judges, during the investigative procedures, always follow the requests made into processual acts by the lawyers. Space for oral expression is generally limited. Alpha’s judges provide relatively little time for ‘final discussions’. In the hearings of Yellow in particular, oral expression is practically nonexistent. The writing of judgments is an activity that differs significantly between the judges of each section. In general terms, Red and Blue pronounce their decisions in public during the hearings. The others, in contrast, despite the Code of Civil Procedure (c.c.p.) demanding the contrary, deposit the ‘operative parts of judgments’ directly in chancellery. Green and Black, in particular, write their decisions in the afternoons of the days of hearing. It is rare that any of the judges respect the deadline for the deposit of ‘statements of reasons’.

**Occasions of comparison among judges.** Within the Alpha section, “formal” opportunities of comparison between the judges are entirely absent. Although a written law requires it, the President of the section (Black) doesn’t encourage “the exchange of information within the section”. Black operates only as a “simple” judge and does not promote occasions for discussion between magistrates. The rare occasions of comparison among judges are mostly informal. Sometimes the magistrates encounter each other in front of the court coffee machine. However, judges never speak about merit or method’s issues, instead focusing discussions on the facts of the lawsuits. Alpha’s judges are not aware of the operating procedures of their colleagues. No magistrate is aware, for example, of the length of adjournments dictated by the other judges, or of their methods for managing the ‘first hearings’. Even if they work close to each other on a regular basis, the magistrates ignore the way their colleagues interpret the same normative dispositions and think that they are working in the same manner.

4. Practicing in the Beta Court

**Context.** Beta court is also in a central city of Italy. The tribunal could be defined as medium-small. The Labour section is composed of only two judges: a male (‘White’) and a female (‘Violet’), both of whom have several years experience. Due to its limited size, this section does not have a President. This research has analyzed both the magistrates.

**Length of proceedings and adjournments.** Judge White subdivides his hearings over an extended period of time and adjuncts the ‘final discussions’ to 15 months away. These delays are an expression of a specific choice: this judge, in fact,
always makes a distinction between urgent\textsuperscript{35} and non-urgent lawsuits. Unlike White, Violet’s hearing adjournments are less extensive. This magistrate fixes her ‘final discussions’ for 2-4 months in the future. Violet, in contrast to White and the judges of Alpha section, as defined by art. 420 c.c.p., often invites the lawyers to enter into an immediate debate, without setting a new hearing. Judges of Beta section generally grant only a few adjournments if requested by the parties, and evaluate the real effectiveness of these delays. Both judges White and Violet give priority to urgent procedures, at the cost of having to deal with them in the late afternoon of hearing days.

**Timing of hearings.** Magistrates of Beta section adopt different criteria to manage their procedural tasks. Every week, White plans 2-3 days of hearings and divides up the different types of duties required for each area: ‘first hearings’, presentation of evidence and ‘final discussions’. Adjournments during the days of hearing are very tightly scheduled and sometimes the legal processes overlap each other. Violet, unlike her colleague, schedules for only 1-2 days of hearings and mixes the different types of litigations.

**Organizing hearings.** In contradistinction to the judges of Alpha court, magistrates in Beta court dedicate a great deal of time to reconciliations. Both judges try to produce a genuine encounter between the processual parties and study the files in detail. Besides reconciliations, judges always allow for the free interrogation of parties. Furthermore, unlike colleagues of the Alpha court, magistrates take time to thoroughly interrogate the parties. In general terms, judges of Beta section devote ample space to oral debate. Neither judge fix time limits to the lawyers’ speeches, which can often last for a long time. White, in particular, considers orality as the real basis of his work. Judges always pronounce their decisions during the hearings. White writes his ‘operative parts of judgments’ after each debate. Violet, on the other hand composes her judgments at the end of the morning of hearing days. Neither judge is inclined to respect the deadline for filing sentences. Violet and White produce their ‘statements of reasons’ within 65-70 days. Judges justify their non-compliance with the term emphasizing the attention devoted to orality. The two judges often use the tool of ‘contextual decisions’, especially when deciding on simple cases or lawsuits on Assistance and Welfare.

**Occasions of comparison among judges.** Judges of Beta court, despite the limited size of the office, regularly discuss together the possible interpretations of “merit” and “method”. The climate between judges is based on collaboration and dialectics. Although “formal” occasions of comparison do not exist, in the absence of a section President, judges meet each other informally in the breaks between hearings and in the weekly meetings. Empirical evidence shows that White and Violet, despite not operating in exactly the same way, translate into practice on a daily basis and in a similar manner, a plurality of written rules.

5. Practicing in the Gamma Court\textsuperscript{36}

**Context.** Gamma is a court in a southern city of Italy, located in the capital of the province. The size of the judicial office is medium-large. Six judges operate in the Labour section, including a President. At the time of research, the office had four vacant positions. These vacancies had a direct impact on the duration of judicial proceedings. This research investigated three judges of Gamma section, all females: ‘Magenta’, ‘Coral’ and ‘Purple’. Coral and Magenta have several years of experience, Purple is a novice.

**Length of proceedings and adjournments.** Procedural timings in Gamma appear somewhat chaotic. Judges, under pressure to complete a huge number of files, extend the time required for such procedural tasks for as long as possible. In this section, adjournments, far from being “residual” mechanisms, appear as "tools" for delaying the decisions. Judicial trials by Coral last on average 5 years. Usually the magistrate defers her ‘first hearings’ for 24 months. ‘Final discussions’ are adjourned for 34 months. As with her colleague, the scheduling of the proceedings of Magenta is greatly extended: typically Magenta adjourns her hearings to 23-24 months away. Furthermore, when required, urgent cases are delayed for at least 8-9 months. In contrast, the timing of Purple, a judge relatively new to the section, is influenced by adjournments decided on by her predecessor. Purple is not yet able to define her delays, and are adjourns all hearings for at least 15-17 months. In this court, magistrates readily grant adjournments requested by the parties. These continuous delays inevitably expand exponentially the length of proceedings. All judges, despite expressly forbidden by the Code of Civil Procedure\textsuperscript{37}, very often concede adjournments for reconciliation attempts or for the lack of documents and postal notifications.

**Timing of hearings.** In the Gamma tribunal each day of hearing consists of a variety of proceedings. On average, each day, the magistrates of the section deal with 40-50 cases. Hearings are often very chaotic. Coral, Magenta and Purple fix their hearings only in the morning and never after 13:30-14:00. The three magistrates always make two days of hearings

\textsuperscript{35} As, for example, cases of dismissal or accident at work.

\textsuperscript{36} Research experience in Gamma court lasted 2 weeks.

\textsuperscript{37} Art. 420 c.c.p.
a week and mix the different procedural tasks. Coral and Magenta, early in the morning, officiate ‘first hearings’ and ‘final discussions’ and, from 10:30, the evidence. Purple has not yet developed her time organization.

**Organizing hearings.** In Gamma section, attempts of reconciliation are rarely officiated. Although the Code requires participation at the hearings\(^{38}\), the parties rarely attend. Spaces for orality are almost nonexistent. In practice, every trial ends with the deposit of the written notes produced by lawyers. Sometimes the hearings seem like mere formalities which have to be completed quickly. In comparison to other judges included in this research, magistrates of the Gamma section study the files for less time. Frequently during the hearings, Coral, Magenta and Purple clearly demonstrate that they had not read the processual acts. For these judges, analysis of documents often occurred concurrently during the hearings. Coral, Magenta and Purple do not read their judgments in public. Usually magistrates write their decisions in the afternoon and directly deposit the ‘operative parts of judgments’ in the chancellery the next morning. Purple and Coral, on average, write their ‘statements of reasons’ in 18-20 days. Magenta, instead, deposits them within 60 days. The first two judges, upon quickly reaching a decision, usually conclude with fewer proceedings. Purple and Coral, in fact, do not wish to accumulate delays in the deposit of judgments. Purple, Coral and Magenta always produce extensive ‘statements of reasons’. None of the three judges produce ‘contextual decisions’. Coral and Purple go as far as to ignore the existence of this processual instrument altogether.

**Occasions of comparison among judges.** In the Gamma section occasions of comparison between the judges are totally absent both formally and informally. The President of the section is essentially a “normal” judge and does not support the exchange of knowledge. Magistrates work entirely alone, often on different days of the week, and do not know effectively how their colleagues operate. In most cases, relations between the judges of Gamma are limited to simple and brief greetings in the corridors of the tribunal. Gamma section, far from being an integrated organization, is a place where each judge works entirely independently.

6. **Practicing in the Delta Court**\(^{39}\)

**Context.** Delta is the tribunal of a large city in northern Italy. The court of justice is one of the largest in the country. 13 judges operate in the Labor section, including a President. This research has analyzed 5 magistrates: ‘Turquoise’ (male, expert), ‘Grey’ (male, expert), ‘Pink’ (female, novice), ‘Orange’ (female, expert) and ‘Brown’ (male, expert, President of section).

**Length of proceedings and adjournments.** All judges of the section confine their procedural tasks to a limited window of time. ‘First hearings’ are generally fixed within 2 months which decreases with urgent procedures. Evidence, including times when many witnesses are utilized, is always officiated within 1-2 months. ‘Final discussions’ are never adjourned beyond 30 days from the conclusion of the preparatory phase. These timings seem remarkable when compared to those practiced in the other courts analyzed in this research. While in Gamma section some trials are adjourned up to 34 months, in Delta section the judicial lawsuits are usually terminated in a few, concentrated hearings. Very often judges do not adjourn the final debates. All judges, in fact, after evidence, invite the parties to directly discuss the case. Unlike other magistrates, the judges of Delta are always ready to make a decision at any moment\(^{40}\). This ability is based on a very deep knowledge of the processual files.

**Timing of hearings.** Judges of the Delta court undertake many hearings. Orange and Turquoise attend to anywhere between 4-5 days of hearings, Pink usually limits her hearings to 3. The younger magistrate stretches out her hearings so as to ensure she will have more time to study the processual files. The President of the section (Brown) stands out among the judges for his ability to work at a pace absolutely out of the ordinary: Brown organizes 5-6 days of hearing a week; the President conducts his hearings on a case by case basis, tailoring proceedings to the needs of parties and lawyers. Several judges dedicate days of hearing to specific types of proceedings: ‘first hearings’, evidence, ‘final discussions’. All magistrates separate the lawsuits of Assistance and Welfare.

**Organizing hearings.** Conciliations are one of the pillars of the Delta section. Often these procedures go on for several hours. A large number of lawsuits are resolved during the ‘first hearings’. Judges always ensure time is set aside for free interrogations. All magistrates devote a portion of their work to this procedural task. Grey, in particular, considers this tool a cornerstone of his activities. The interrogations of Grey have been known to last for 2-3 hours. Oral debate is given particular importance in the hearings. Judges always grant an adequate amount of time to allow lawyers to explain their thesis. Often the ‘final discussion’ of a complex case can continue for up to 3 hours. No judge, despite the potential delays of subsequent hearings, ever interrupts the speeches. During hearings, magistrates frequently demonstrate an intimate

\(^{38}\) Art. 415 c.c.p.  
\(^{39}\) Research experience in Delta court lasted 1 week.  
\(^{40}\) Only Violet (Beta), on occasion, does the same.
knowledge of the files: all judges are always prepared to make their decisions. Every judge of the section reads in public his/her ‘operative parts of judgments’. Only Pink, being as yet inexperienced, will on occasion, adjourns her decisions on the afternoons of the days of hearing. Magistrates organize their time in different ways in regards to writing their ‘statements of reasons’. Pink and Grey usually deposit their sentences within 60 days. Turquoise, Orange and Brown always complete their ‘decisions of fact and law’ within 15-20 days. Judges of the section frequently make use ‘contextual decisions’. In particular, this mechanism is used to define simple cases or consolidating matters related to interpretation.

**Occasions of comparison among judges.** On a daily basis, magistrates of Delta court meet with each other and discuss interpretative issues. Thanks largely to the President of the section (Brown), who is especially careful to promote dialogue between judges, there are a number of formal and informal opportunities for exchange between judges in the Delta section. Judges meet in corridors, have lunch together and communicate by phone several times a day. More experienced magistrates (such as Brown and Grey) are a constant source of reference for novices (such as Pink). Delta section is not merely a bureaucratic division, but appears as an integrated organizational unit, in which every magistrate, although independent in his/her decisions, is always connected to their colleagues operating in the same context.

**Discussion**

As the arbiters of a unique procedural written law, certain and equal for all, the sixteen judges analyzed in this research put into practice the thirty articles of the Code of Civil Procedure (c.c.p.) governing the Italian Labor procedures at first instance in often profoundly different ways. These behavioral differences, besides calling into question the principle that “law is equal for all” and representing an implicit criticism of Legal Positivism, highlight the eminently practical character of the interpretation of written law.

Interpretation of the law, far from being a cognitive activity, it is a concrete and material practice, which is created, recreated and reinforced through experience and through continuous individual and collective learning occasions. The interpretation of law is not based on perennial and immutable axioms, but is an activity built through practice, through subsequent “translations” of formal and abstract rules into “concrete” lawsuits. Being a magistrate does not mean acquiring a body of abstract knowledge on how to interpret the written laws; rather it signifies an ability to practice as a judge in a court of justice.

Every Italian judge, through decisions of “method”, builds his/her personal organization of work on a daily basis. Applying her/his own specific, and often idiosyncratic, interpretation of the written law to the lawsuits, organizing hearings, delays and procedural tasks, each magistrate also defines her/his work activities and the development of proceedings. These decisions, as the examples below how, directly affect on the lawsuits: how much time to devote to oral debate, to organize 1 or 6 days of hearings a week, to deposit the ‘statements of reasons’ in 15 or 70 days, to try or not the reconciliation attempts, to fix ‘final discussions’ to 30 days or to 2, 7 or 34 months. These examples radically change the duration and development of the judicial proceedings.

Interpretation of the written law, while remaining clearly a prerogative of the single Italian magistrate, is linked to the organizational context in which each judge operates and to the occasions for comparison with the colleagues of section. In some courts, such as Alpha and Gamma, judges appear as “monads”, working in total independence, to the extent that they are not aware of how their colleagues are operating. These courts resemble “condominiums”, physical spaces, formally defined, where magistrates practice according to their own wishes and with little influence from other colleague. Judges of these courts are “craftsmen”, who independently produce, experiment and translate into practice their interpretation of the law.

Judges in Beta and in particular Delta courts, on the other hand, interact with each other and give rise to occasions of individual and collective learning. In this context, knowledge that is derived from the interpretative activities of magistrates does not remain confined to the “flats” of the “condominium”. It is not the personal heritage of individual judges, rather, knowledge is shared and potentially institutionalized among the various practitioners. Beyond differences of behaviour,

---

41 See note 17.
42 For example: Delta’s judges vs. Alpha’s judges.
43 For example: Yellow (Alpha) vs. Brown (Delta).
44 For example: Orange, Brown and Turquoise (Delta) vs. White (Beta).
45 For example: Delta’s judges vs. Gamma’s judges.
46 For example: Delta’s judges vs. Red and Blue (Alpha) vs. Green (Alpha) vs. Coral (Gamma).
judges of Beta and Gamma, far from appearing as “monads”, can be described as “communities of practitioners”48, who regularly discuss the possible “translations” of the written law and put the results of this dialogue into practice.

In conclusion, in light of these reflections, it is clear that in order to glean detailed and in-depth understanding of the functioning of the justice system, it is imperative to go beyond the dimension of written laws and to move “behind the judges’ desk” and investigate the organizational dynamics and the empirical practices located at the heart of a court of justice.

---

Cisco Connected Justice Connects Law Enforcement, Courts, and Corrections

With shrinking budgets and rising case loads, now is the time to bring innovation into your courthouse and improve the way justice is delivered—from law enforcement, to the court system, and all the way through to corrections.

Connected Justice: Law Enforcement
Integrating remote video and real-time collaboration at all levels of law enforcement allows agencies to:
- Control evidence
- Speed response times
- Control costs

Connected Justice: Courts
Streamlines court processes by improving collaboration with face-to-face collaboration. This reduces the need to move inmates or bring in live interpreters, increases safety and security, plus cuts the time and cost of travel with:
- Adjudication
- Testimony
- Interpretation

Connected Justice: Corrections
Using Cisco collaboration technology to provide more efficient services to inmate populations enables correctional institutions to:
- Improve staff and prisoner safety
- Improve inmate management and control contraband
- Reduce transportation and other costs

Cisco Connected Justice provides a unified network platform to automate the justice workflow, remove the barriers between systems, and facilitate the transfer of information. With rich communications through all the steps of the process, it:
- Increases the pace of justice
- Reduces costs
- Lets courts work beyond the courthouse walls
- Improves public safety

Judge for Yourself
Learn more about Cisco Connected Justice technologies, services, and partners at cisco.com/go/connectedjustice

© 2012 Cisco and/or its affiliates. All rights reserved.
The Liberty Court Recorder is the most advanced digital recording application designed specifically for recording courtroom activities.

The Liberty system includes advanced features such as Automatic Gain Control (AGC) and Noise Reduction filters to provide the clearest possible playback of the recorded sessions, even from recordings made in difficult audio settings.

Customization into local languages is available with the Liberty system. Other facilities include the ability to stream proceedings to the Internet.

The Liberty system supports recording of multiple video feeds and playback of the recordings on emerging platforms such as the Android OS and on iPads and iPhones.

Contact High Criteria today to find out more about the Liberty Court Recording System.

In North America, call 905-886-7771 and press “1” for sales. You may also contact us via email at sales@LibertyRecording.com

Or visit our website at www.LibertyRecording.com