



# The Court Administrator

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## “THE COURT ADMINISTRATOR”



*Sheryl Loesch, IACA President*

I am pleased to present to you the next edition of The Court Administrator. While this is yet another information packed edition, it is also bittersweet. As many of you already know, Ralph DeLoach served as the Editor of The Court Administrator for the last four years. Ralph was also one of the

original members of IACA when IACA was first organized in Ljubljana, Slovenia back in September 2004. He attended nearly every one of IACA's conferences and was very engaged in international Rule of Law projects. He traveled as a subject matter expert to many countries.

Aside from Ralph's involvement with IACA, he was a legend in the United States Judiciary. He was known as a great court administrator in his career with the U.S. District Court for the District of Kansas and I had the distinct honor and pleasure to have Ralph as my mentor as a young court administrator. I owe him more than words can say.

So, with all that said, this edition of The Court Administrator is dedicated to our colleague and friend, Ralph DeLoach.

If you haven't already watched IACA's inaugural podcast, be sure to take a look! You will see some familiar faces from our IACA community. It's definitely one not to be missed. Here's the link if you'd like to take a look: <https://www.iaca.ws/iaca-podcasts> IACA plans to produce more podcasts in the future on topics of interest in the field of court administration. We certainly welcome any ideas on topics you would like to see addressed so please email me your ideas at [president@iaca.ws](mailto:president@iaca.ws).

I also want to take this opportunity to welcome back Joe Bobek as IACA's Chief Financial Officer. Joe served as CFO for a number of years and then took some time off, but he is back now, and we are thrilled to have him. I know you join me in welcoming Joe back to IACA.

With the COVID vaccines now being distributed, we hope to be able to start planning our next conference once people feel safe to travel. It will be extra special seeing everyone in person again.

I know you will enjoy this edition of The Court Administrator. I want to give special thanks to the new Editor, Eileen Levine, and the rest of the editorial board, Dr. Susan Moxley and Kersti Fjorstad, for their exemplary work on this edition. I also wish to thank all the authors of the articles. Well done!

*Sheryl*



## EDITOR'S MESSAGE



*Eileen Levine  
Court Administrator  
Eastern and Southern  
Districts of New York*

It is my privilege to welcome the IACA membership and illustrious readers from all around the world to the 9th Edition of *The Court Administrator*.

This edition is dedicated to the memory of our dear friend and mentor, Ralph DeLoach. No one can fill the shoes of Ralph, founding

Executive Editor of *The Court Administrator*. His experiences: his career as Clerk of Court in the United States Federal Court for the District of Kansas, his educational and professional background, and his international accomplishments, stand second to none. It is with bittersweet emotions that we continue the work Ralph started. Let us all pay homage to Ralph in our own special ways.

I have been working as an editor on *The Court Administrator* since the inaugural edition in 2017. *The Court Administrator* is a platform for court executives, administrators, and judicial officers around the world to share experiences, best practices and, yes, even themselves. We come from different cultures and speak different languages; however, we all have the same goals in mind; fair and impartial court administration, respect for each other and equal access to justice.

For the past 4 years, we have been in constant contact with over 65 contributing authors, judges, and international

court administrators. I would like to thank IACA President, Sheryl Loesch, for appointing me to carry on in the role of Executive Editor. I sincerely thank Dr. Susan Moxley and Mrs. Kersti Fjorstadt for their friendship, their enthusiasm and of course, their awesome editing skills. I am excited and honored to work on this distinguished publication and with your help and guidance, I know we can achieve continued success in sharing best practice ideas, educating one another, and bringing international court systems closer together. Please continue to help us to accomplish our goals. If we learned anything from this past year's experiences, is that it is a small world indeed and that sharing important information helps everyone perform their jobs within their respective courts.

On behalf of the editorial staff, I want to express our gratitude to all of the authors who submitted articles for this edition for their time, energy, expertise and for taking us on a (virtual) journey into their individual courts.

My background as a career court administrator is in the U.S. federal court system, working for United States District and Circuit Judges for over thirty-six years. I am humbled to follow in Ralph's huge footsteps and in the strides that he has made in growing *The Court Administrator* into the publication that it is today.

Please do not hesitate to contact me at any time with your suggestions and your articles at [courtadministrator@iaca.ws](mailto:courtadministrator@iaca.ws). Additional information about *The Court Administrator* can be located on the IACA website at <https://www.iaca.ws/the-court-administrator>. Stay Safe!

Thank you.

*Eileen*



## Ralph DeLoach

April 28, 1946 - November 5, 2020



It is with tremendous sadness that the International Association for Court Administration pays tribute to Ralph DeLoach, our esteemed former colleague. For more than twenty-two years, Ralph served as Clerk of Court for the District of Kansas. Ralph passed away on November 5, 2020, in Overland Park, Kansas.

Ralph had been involved in IACA since the early beginnings of the Association. He was instrumental in helping IACA founders grow this Association during the past 18 years. Most recently, Ralph served as Editor of *The Court Administrator*.

Ralph also served as President of the Federal Court Clerks Association (FCCA). In his FCCA President's Message in the winter 1991 edition of the FCCA Journal, Ralph wrote:

*The service we provide and how we provide it is a significant factor in the way the judiciary is perceived by the Bar and the public. We should not lose sight of the fact that the Bar and public are exposed to the judiciary primarily, and sometimes exclusively, through the Clerk's office. . . . When we accept the responsibilities of public employment, we have an obligation to provide the kind of service the Bar and public deserve. We also have an obligation to provide the kind of service that reflects positively on the judiciary. We need to maintain an awareness of those obligations and strive daily to live up to them.*

Many years have passed since Ralph shared these words, but the message about professional responsibility could not be any truer today. Ralph demonstrated by his actions a

strong belief that the federal judiciary must stand firm as defender of the Constitution, and that we, in Clerk's offices, should humbly and diligently support this important mission.

Ralph was born in Coco Solo, Panama, where his father was stationed. He grew up in Jacksonville, Florida, with his seven siblings. He spent his childhood catching alligators, shrimping, and searching for conch shells. After completing graduate school, Ralph pursued his juris doctorate degree while working as a probation officer. He eventually was appointed by the court in Kansas

to the Clerk position, where he served with distinction.

Ralph was not content to limit his influence and expertise to the borders of Kansas. He shared his knowledge nationally and was an early implementor of many important initiatives, like the judiciary's modernized accounting system. Many who are still in the judiciary remember Ralph as a trusted advisor and mentor. Always an adventurer, Ralph eventually turned his attention to the international stage. He wanted to share with other countries his knowledge of and love for our unparalleled system of justice.

After retiring from the federal court in Kansas in 2008, Ralph became a consultant on best practices for judicial systems around the world, including Russia, Moldova, Romania, Saudi Arabia, and Indonesia.

We will miss you, Ralph. Thank you for your lifetime of service. Rest in peace.

The Court Administrator Editors

## Personal Memories and Tributes to Ralph

“Ralph was a key member of the Ljubljana Conference at which IACA was officially founded, and he went on to serve as an original VP on the Executive Committee. Later he also founded and presided over the independent foundation which served to raise funds for IACA’s operations, sponsoring conference participation on a competitive basis for court administration personnel anxious to become involved. He previously served as the Editor of the *Federal Court Clerks Association*



*Journal* and brought the skills he honed there to *The Court Administrator*, converting the old IACA Newsletter into a glitzy professional publication. Although he originally began his career in the federal probation service, if memory serves me correctly, he was subsequently appointed to serve as the U.S. District Court Clerk for the District of Kansas where he bloomed professionally.

I’ll never forget the time Jeff Apperson and I were in Ralph’s home city in Kansas. He invited us over to his home and we proceeded to enjoy reminiscing about life in court systems. Ralph received a major national award from the Administrative Office of the U.S. Courts for the manner in which he led the recovery of his district from a vicious attack in which an armed, deranged criminal managed



to overwhelm the guards at the entrance to one of the federal courts in a government building within the district and make his way into the clerk’s office where he opened fire with an AK47 on unsuspecting court support staff, wounding and killing administrative personnel.

May his soul rest in peace.”

Markus Zimmer,

*Retired Clerk of Court,*

*U.S.D.C.- District of Utah*

My Images of Ralph DeLoach:

“He always wanted his court to be first. Whether it was introducing new electronic financial or case management systems, he wanted his court to be in front. Even when riding bikes up mountains, he had to win. Everyone looked up to him. He was a leader. His court was and is a leader. He helped change the image of court managers as administrative support personnel to an image of professional managers. There will never be another as unique as Ralph DeLoach in the history of the Federal Judiciary. I celebrate his life.”

Jeffrey A. Apperson,  
*Vice President of NCSC*

*International, former*

*Clerk of Court for the*

*USDC, WD of Kentucky.*

*Chief Executive Officer and*

*past President of IACA*

*continued*



“...Moments ago, I received a phone call letting me know that Ralph DeLoach has passed away. I was still in shock as I hung up the phone. As most of you know, Ralph was one of the original IACA members when it was formed back in 2004 and

in more recent years has served as the Executive Editor for The Court Administrator.

Ralph was a legend and had a heart of gold. I feel blessed to have had him as a mentor early in my career and to call him my friend. He will be greatly missed.”

Sheryl Loesch,  
*Clerk of Court for the U.S. Bankruptcy Court,  
Middle District of Florida*

I am so sorry to hear the news that my old friend Ralph DeLoach passed. We had many wonderful times over the years, especially at the Fas4t Financial Conferences and Clerk/Chief Deputy Meetings.

I always looked up to my mentor and his numerous contributions to the Judiciary, International Courts, and the Federal Court Clerks Association. Ralph left an indelible mark on everyone he met and the places where he worked.

We always had many laughs. One time after one of our financial meetings, Ralph had the great idea to hire the piano player that we heard at the Hard Rock café. Sure enough, Ralph got enough of his friends to donate money and we heard this classically trained pianist until late in the evening.

Another fond meeting memory comes to mind, while we were all in Sedona, Arizona. When we were done with business, we spent the time telling stories on the golf course in view of the red rock and cliffs.

We had a chance to meet in DC when we both worked as consultants. I always cherished my time with Ralph. There were always tall tales, lots of laughs, and tears upon our departures.

Cam Burke,  
*Past Federal Court Clerks Association President (1995) and  
Retired Clerk of Court for the U.S.D.C.- District of Idaho*



“... very sad news, indeed. Ralph was a good friend and leader. A fond memory of him that I have is from the FCCA conference we hosted in Tucson (I was the Deputy In Charge there, and helped put the program together, etc.). Ralph was FCCA President, and we had our big outing to Old Tucson, the long-time movie set for Westerns, etc. We had a staged gunfight and needed someone to play the part of a bad desperado, and Ralph agreed to be him – including being tried and hung for his crimes! His stage name was “Ralph DeRoach.” Fun time.

Ralph also helped on the international scene as well, including work in Russia along with folks like me. Important work....”

Norman Meyer,  
*retired Clerk of Court for the U.S. Bankruptcy Court,  
District of New Mexico*





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## Moving On The Road To Improve The Attention Of Justice And Its Modernization In The City Of Buenos Aires.

by Judge Marcelo López Alfonsín



*The Honorable Marcelo López Alfonsín has been a Judge of the City of Buenos Aires (Argentina) since 2013. He is the chief judge of a court of first appeal which deals with all the judicial cases in which the government of Buenos Aires is involved. The court is located in the City of Buenos Aires, Argentina. His Honor holds a PH. D. in Constitutional Law (University of Buenos Aires Law School, Argentina, 2012), as well as a Master's Degree in Environmental Law (University of Lomas de Zamora Law School, Argentina, 2001). Judge Marcelo López Alfonsín is a Member of the Argentinean Academy of Comparative Law and he is a member of the Argentinean Academy of Constitutional Law.*

*Judge Marcelo López Alfonsín may be reached at [mlalfonsin@jusbaires.gov.ar](mailto:mlalfonsin@jusbaires.gov.ar)*

In March of 2013, I had the immense honor of being selected as judge of the City of Buenos Aires and to start from the beginning the settlement of a new court. Knowing in advance that the rule of law and the principles of fundamental justice<sup>1</sup> must guide the performance of the court and its workers, I realized the importance of the role of the judge in the complex task of being in charge of a new teamwork.

During 2014 and 2015, in the light of the foregoing, I decided to be involved in an innovative project created by the Council of the Magistracy of the City of Buenos Aires<sup>2</sup>,

which is part of the program for the modernization of the new Judicial Power of the City of Buenos Aires and whose general aim is to achieve the highest institutional quality in the development of the local justice. This program, denominated “Strategic Plan”<sup>3</sup>, reflects a vision of the administration of justice through the “SWOT” method (strengths, weaknesses, opportunities and threats), involving all the employees of the court and the judge, under the supervision of specialists in management<sup>4</sup>. It should be highlighted that as a result of each of the stages of this program<sup>5</sup>, the conclusions and

1 Argentinean National framework grants the due process of law in article 18 of the National Constitution and it incorporates international human rights treaties in which it is also possible to find legal provisions that protect the access to justice (Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14; American Convention on Human Rights, Articles 8&25).

2 The Council of the Magistracy of the City of Buenos Aires is a permanent body created by the local Constitution in charge of the selection of the magistrates, the exercise of disciplinary powers and the programming and the administration of the budget of justice (article 116 of de Local Constitution).

3 The Council of the Magistracy of the City of Buenos Aires considered that “strategic planning” is a valuable tool and able to build a change in the culture of the judicial power to contribute to the formulation of permanent public policies with the objective of ensuring the commitment of all judicial operators. More information about the implementation of the program is available at: <https://consejo.jusbaires.gov.ar/institucional/centro-de-planificacion-estrategica/introduccion>

4 The “Strategic Plan” implemented in the court was published and exposed at a public event with the participation of personalities of the Judicial Power of the City of Buenos Aires. The press release is available at: <http://www.ijudicial.gov.ar/2015/el-juez-debe-atender-bien-al-justiciable-para-hacer-un-buen-servicio-de-justicia/>

5 The project was divided in three steps. Firstly, it consisted of a “Diagnostic” stage, where strengths and weaknesses were analyzed in four axes: human factor, management, infrastructure and equipment, and institutional setting. In addition, another part of the work placed emphasis on values, objectives, proposals and suggestions. Finally, suggestions and recommendations were provided.

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recommendations provided interesting proposals with regard to the improvement of the court's quality and efficiency.

To continue with the task of modernization and efficiency in the way of imparting justice that I have proposed since I entered the position of Judge, during the year 2019 we worked with the institutional quality area of the Magistracy Council for the certification of ISO standards 9001:2015.

The certification of ISO Standards requires the design and implementation of a Quality Management System (QMS) whose objective is to manage the interrelation of the processes and record their continuous progress. The objective of this Management System is to increase efficiency and speed in administrative processes, improve levels of transparency, increase mechanisms for access to information and management, create institutional memory, optimize management processes, increase collaboration between the areas and improve information channels. Get involved in this certification program from the framework proposed by this Management System designed from the Institutional Quality Directorate of the Magistracy Council. It allowed us to choose which process to work on and where we wanted to improve our standards. Thus, we decided to optimize the times for the resolution of the summary proceedings actions ("Amparos") that enter our court, trying to provide a transparent administration of justice, through an efficient and modern public service, seeking speed in the

process and generating confidence in the citizenship, within a framework of defense of republican values that contribute to the autonomous development of the City of Buenos Aires.

Throughout the course of designing this procedure, we evaluated the management of the risks that could result in the implementation, we developed quality surveys for lawyers that would allow us to understand where we were starting with respect to the care we provide. We also prepared and identified the profiles of users of each of those involved in the process in order to have better control of the functions and tasks that allow us to expedite the process. In our final goal we wanted to develop clear processes and improve the flow of information at all stages of management, as well as optimize the decision-making process, provide solutions to specific problems and accelerate the administrative procedures of the Court.

During all this time we have also put into practice all the modifications and improvements in the process that we identify to make it more efficient and have the elements to determine if we are going the right way.

The realization of all these challenges is part of my commitment to achieve a justice that grants greater speed in its processes, greater transparency and achieve the objectives that technology and modernization poses in this new century, knowing that the access to justice and the due process of law cannot be fully satisfied without a good service of justice.



## The Judicial Administration in Iceland

by Ólöf Finnsdóttir, Director of the Icelandic Judicial Administration



*Ólöf Finnsdóttir is the first Director of the Icelandic Judicial Administration. She has fifteen years of experience in administration within the Icelandic judicial system, having served as office manager in the District Court of Reykjavik and subsequently Director of the Judicial Council, the official body responsible for administration of the district courts, before being appointed to the post of Director of the judicial Administration on 1 January 2018. Prior to her career with the courts of law she had worked, inter alia, as legal counsel and lawyer in the state and municipal administrative system.*

*To follow up with Director Finnsdóttir, she may be reached at [Olof.Finnsdottir@domstolasyslan.is](mailto:Olof.Finnsdottir@domstolasyslan.is)*

The Judicial Administration is an independent administrative organisation, launched on 1 January 2018 with the entry into force of new legislation on the judiciary. The entry into force of the legislation marked the most extensive reforms in judicial procedure in Iceland organisation of the courts of law since the separation of local judicial and administrative powers that took effect in 1992. The principal change consisted in the introduction of an intermediate judicial level in the form of the Court of Appeal, meaning that there are now three levels instead of the two that had existed from the time that the Supreme Court of Iceland was founded in 1920, a century ago. The most serious defects noted in the judicial system in recent years have been, on the one hand, that it was not possible to obtain a review by the Supreme Court of the evidentiary value of oral pleadings in criminal proceedings, and, on the other hand, the precedential value of judgments of the Supreme Court was perceived as suffering from the heavy case load of the Court. The introduction of an intermediate judicial level was intended, inter alia, to respond to the international requirement of adversarial process at the appellate stage. Another important change that the law entailed was the establishment of a new government body, the Judicial Administration, to oversee the joint administration of

the courts, which constituted an extensive reform of the Icelandic judiciary and its independence. The purpose of the earlier Act on the Judiciary in 1998 was to reinforce the independence of the judiciary, among other things by entrusting the Judicial Council with various internal affairs of the district courts. These functions had formerly been entrusted to the Ministry of Justice, but it was regarded as more appropriate for the courts themselves to undertake them in order to underline and express their independence. This progress has now been continued by replacing the Judicial Council with the Judicial Administration. However, the mandate of the Administration no longer extends only to the district courts, as in the case of its predecessor, the Judicial Council, but to all the levels of court. At the same time, the Judicial Administration has been entrusted with greater responsibility for strengthening the independence of the courts of law, primarily through the statutory role of the Administration in processing proposals made to the Althing\* (the national parliament of Iceland) regarding appropriations to the courts. What this means is that according to the provisions of the Act on the Judiciary the Minister of Justice is required, if he/she deviates from the proposals of the Judicial Administration regarding appropriations, to provide

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reasoning for the decision to the Budget Committee, and, in addition, any deviations need to be explained in the Budget Bill. This ensures transparency in decisions on appropriations to the courts, and in addition the courts are given improved access to the budgetary authority. The explanatory notes to this provision of the Act state that even though the Minister is not required to accept the proposals of the Judicial Administration on appropriations, it is understood that the Minister will not deviate from the proposal except in extraordinary circumstances. It is also noted that this arrangement represents an attempt to strengthen the position of the courts vis-a-vis the executive branch and ensure that the Althing is fully informed about the viewpoints of the judiciary before any decision is made on appropriations. In its work, the judiciary has observed a resulting change in attitude in the executive branch, and since the entry into force of the Act the proposals of the Judicial Administration regarding appropriations have invariably been accepted. In addition to submitting proposals on appropriations to the courts of law, the Judicial Administration acts as the spokesman for the courts vis-a-vis the government, the media and the public. The Administration is responsible for supervision of the information and technological affairs of the courts and their development. The Administration has the task of collecting and publishing information on the number and conclusions of the cases before the courts, publishing an annual report on its activities and those of the courts, establishing rules of procedure on the harmonised procedures of the district courts and organising the continual education of judges and other staff in the service of the courts. In addition, the Administration is entrusted with the submission of recommendations on whatever may serve to improve the work of the courts of law and the legislation under which the courts operate.

The Minister of Justice appoints five members to the board of directors of the Judicial Administration for a term of five years. One board member is elected by Supreme Court judges from their own ranks to serve as chairman of the board; the second is elected by judges of the Court of Appeal, and the third by district court judges from their respective ranks. The fourth is elected by employees of the courts other than judges. The Minister appoints one board member without nomination who is not an employee of the courts. The board of directors of the Judicial Administration

takes the most important decision within the competence of the Administration but entrusts the Director with day-to-day operation on the responsibility of the board. The board of directors appoints a managing Director for a term of five years, and the Director hires other staff. The Director attends meetings of the board with the right to submit proposals. The Judicial Administration has four employees in addition to the Director. The first years of the functioning of the Judicial Administration have been extremely busy, as setting up a new government body and at the same time generating confidence in the organisation is a strenuous task. In order for the new Administration to be able to perform in its statutory role in the best manner possible, the board of directors decided that work was needed on strategic planning to prioritise tasks and on preparing a programme of action on how to achieve set goals. In the course of the preparation of the strategy the board summoned for consultation representatives of administrators at all the levels of court in addition to meeting with representatives of the Ministry of Justice, the Director of Public Prosecutions, the Icelandic Bar Association and the National Union of Icelandic Journalists. When the Judicial Administration had only been functioning for just over a year an administrative audit was conducted of the Administration's work by the National Audit Office at the request of the Althing. The investigation by the National Audit Office revealed in the end that the Judicial Administration had in its brief time of existence succeeded in establishing a creditable strategy and future vision regarding the development of the administration of the courts, and in organising its activities so as to extend in a satisfactory manner to all of the statutory tasks assigned to the Administration. Crucially, the board of directors of the Administration had immediately at the outset of its activities focussed on strategic planning, established its objectives and approved actions to enable the Administration to rise to the responsibilities assigned to it with the entry into force of the new Act on the Judiciary. Another matter that has influenced the work of the Judicial Administration and the courts is the judgment of the European Court of Human Rights in Strasbourg rendered on 12 March 2019, where Iceland was found to have been in breach of paragraph 1 of Article 6 of the European Convention on Human Rights with the appointment of four judges to the new Court of Appeal. This decision was upheld by the Grand Chamber

*continued*

of the European Court of Human Rights on 1 December 2020. The judges in question requested a leave of absence following the judgment, which was granted by the Judicial Administration. This made it possible to appoint judges to the Court on a provisional basis to enable the functional capability of the Court.

### **The importance of centralised administration of the courts in COVID-19 times**

One of the first centralised tasks of the Judicial Administration was to initiate the implementation of a new filing system for the courts to enable the electronic submission of documents and the transmission of court documents between the levels of court. Concurrently with the implementation of the new filing system the Judicial Administration undertook a comprehensive renewal of the courts' computer systems, which was a precondition for the increased use of electronic solutions in processing court cases. The fact that the computer equipment of the courts had been renewed, in addition to the installation of computer screens in the courtrooms, made it possible to maintain the functionality of the courts in COVID-19 times. Following the announcement of the Icelandic government of a prohibition of public gatherings for reasons of COVID-19 as of Monday, 16 March 2020, the Judicial Administration called a meeting of the administrators of the courts to discuss, among other things, the importance of ensuring legal certainty and continuation of the work of the courts. The decision was made to issue a joint declaration of all of the courts and the Judicial Administration stating that the work of the courts of law would continue, albeit with limitations, so that consistency would be observed by the courts and they would not be closed down. Accordingly, cases were heard at all levels of the courts where parties and witnesses were not required to present themselves in person to make statements, and cases were postponed if counsels were unwilling to present themselves in court. Subsequently, legislation on the administration of justice was amended provisionally in order to mitigate the impact of the Corona Virus pandemic to the extent possible so that the courts could conduct their statutory functions and legal certainty

could be ensured. Authorisation was granted for the use of teleconferencing equipment in court hearings, including hearings of statements from parties, suspects, and witnesses. Also, authorisation was granted for case documents to be sent to the courts by electronic means, and time limits were thereby interrupted where applicable.

### **Opportunities to improve efficiency and access through the use of electronic solutions**

The use of electronic solutions has gained general acceptance by society since the onset of the COVID-19 pandemic, and the courts have benefited from the acceptance. Electronic procedure in the process of legal proceedings requires a clear vision of the extent to which electronic solutions can replace more traditional procedures in the process of justice. A review must be conducted of legislation on the administration of justice and a consensus will need to be achieved on the final objective of this trend. At the same time, new, consistent working procedures will need to be formed for the courts of law. The implementation and development of technological solutions for the courts will require both specialised technological knowledge and new competences among employees of the courts and the Judicial Administration, who will need training to be able to function in a new working environment. If this is successful, it is possible that improved efficiency in the procedures of the courts and improved access to the courts could be achieved with the use of technological solutions, for instance as regards the submission of documents and pleadings before the courts. There are vast opportunities for changes in the work of the courts of law, and in this regard the Judicial Administration, which is entrusted with the joint administration of all the courts, will have a key role to play in formulating and working toward a joint vision with the government authorities regarding the direction to be taken.

\*The Althing (Icelandic: Alþingi) is the national parliament of Iceland. The Althing is one of the oldest national parliaments in the world that still exists and was founded at Thingvellir in southwestern Iceland c. 930.

## Our System Of Law Must Remain Steadfast, Even In Troubled Times

By Thomas Rolén, Director-General, Swedish National Courts Administration



*After 13 years, Thomas Rolén returns as Director-General of the Swedish National Courts Administration. Director-General Rolén is a legal practitioner and former judge in Sweden. He sees a number of challenges, which will affect his work in the coming years. These challenges concern the effects of the pandemic that has had a major impact on the legal system through the use of video technology and cancelled trials, but also an investigation regarding court independence.*

*The Director-General brings an amazing wealth of experience, familiarity, understanding and know-how from his past appointments and positions to his current position. In 2020, he was honoured to receive H.M the King's 12th size gold medal on Seraphim Order ribbon for significant contributions to the Swedish legal and investigative field.*

*Among previous selections of employments and assignments; the director-general was employed at Ministry of Justice; he was Deputy Director-General and appointed Head of "Grundlagsenheten" (Constitution Unit) 1997. From 1998–2001 he served as Head of "Enheten för processrätt och domstolsfrågor" (Procedural Law and Court Issues Unit). 2001 Permanent Under-Secretary.*

*2005–2008 Director-General at the Swedish National Courts Administration.*

*2008–2020 President of the Administrative Court of Appeal, Administrative Court of Appeal in Stockholm.*

*2010–2020 Chair of the Judges Proposals Board*

*2012–14 Full-time employed chair of "Genomförandekommittén för den nya Polismyndigheten" (Implementation Committee for the New Police Authority)*

*2018 Vice-Chair of "Nämnden för prövning av statsråds och statssekreterares övergångsrestriktioner" (The Tribunal for the Examination of Cabinet Ministers' and Secretary of States' Transitional Restrictions).*

*2019–2020 Chair of "Kommittén om den framtida svenska migrationspolitiken" (The Committee for Future Swedish Asylum Policies)*

*2020- Director-General at the Swedish National Courts Administration.*

*Located in Stockholm and Jönköping, Sweden, our readers may follow up with the Director-General at [thomas.rolen@dom.se](mailto:thomas.rolen@dom.se).*

It has been 13 years since I left the Swedish National Courts Administration after having served as its director-general for 13 years. Now, I am back. It may seem strange, but there are natural explanations as to why. I live in Stockholm, as I did before, and the National Courts Administration is located in Jönköping. Due to my family situation, it was difficult to work remotely, with all the traveling this entailed.

Life is a little different now. My children are all grown up, making it easier for me to live in two locations. Having overseen the operations of the Administrative Court of Appeal in Stockholm, which also functions as the Migration Court of Appeal, for 10 years, I felt it was time for a change of pace before retirement kicks in. The exciting challenge of returning to the National Courts Administration therefore came at a highly opportune moment. When I left the National Courts Administration in 2008, I felt that I

was leaving too soon. I was not finished, and I have more development ideas I want to contribute.

In many respects, I am entering a vastly different organisation, and a lot has changed of course since I was last here. The National Courts Administration has grown in terms of numbers, mainly due to its mission broadening, becoming more in-depth and professional. This is especially true for IT issues, which have become more centralised and more demanding in terms of top-tier expertise as digitalisation continues to spread. This is a trend which will no doubt continue. I am also seeing increased cooperation both within and between the departments at the National Courts Administration. This is a great development, and I intend to continue driving it forward.

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## The Pandemic Has Challenging Consequences

I also realise that the Courts of Sweden is facing several challenges. The most apparent of these, one which I encountered as soon as I took up my position, is of course how the pandemic affects not only the National Courts Administration, but especially the individual courts. The restrictions that led to hearings being cancelled required a great deal of resource redistribution and a close cooperation. A special team was created through a joint effort by HR and the communications department to help provide the media, general public and individual courts with the information they needed. Statistics concerning the number of cancelled hearings and the use of video technology were published every week on the National Courts Administration website. The National Courts Administration provided tips and advice on how the courts could reduce the spread of infection and provide visitors and the public at large with information. Each individual court made decisions on how to implement this advice.

In the autumn, several courts decided to cancel all hearings, except for high priority cases. Measures were taken to protect lay judges, parties, and others in attendance. Examples of these measures included the use of face shields and sheets of plexiglass to separate the various parties.

The courts have taken serious and effective measures to handle the pandemic and to adhere to the recommendations issued by the Public Health Agency of Sweden, while ensuring rule of law and due process. The number of cancelled hearings went back to normal levels after the summer, following a spike in the spring.

During the pandemic, the Swedish courts have continued their vital operations with great respect and care, both towards its employees and the affected parties. Being able to continuously settle cases is naturally an important function, especially in cases where individuals have been detained. Civil disputes must continue to be settled, and administrative cases often involve individual livelihoods. The latter does not always receive much attention but is crucial to those affected.

## Digitalisation Has Made Major Strides

Another important part of the courts' ability to ensure that their operations could continue was the use of video technology becoming significantly more prevalent during this period. Towards the end of 2020, the number of video calls incorporated in a hearing process was almost 4,500 a

week, which far more than double the number of video calls in 2019. The National Courts Administration has been able to rapidly and efficiently contribute to the technological support that allowed the courts to adapt to the circumstances.

This development has helped drive the digitalisation of the Courts of Sweden. The activities of the National Courts Administration have also been adapted using digital meeting and training programmes, among other things.

Still, the new technology must be used with care. Rule of law and due process must under no circumstance risk being compromised. Video technology is to be used where possible and requires a great deal of consideration. The importance of physical interactions must never be downplayed in our internal activities nor in hearings.

## The Risks Posed By New Technology

A report from the Organisation for Security and Co-operation in Europe (OSCE), highlighted the use of new technology. The report, published in October 2019, discusses how the courts' functions across the world is impacted by shut-downs, states of emergency, curfews, and emergency legislation being used in the wake of the pandemic. A long list of countries has seen widespread and varying use of video technology, which has not been without risk. Some of the conclusions drawn in the report, along with issued recommendations, concern the fact that a fair trial must not be compromised by technological solutions. Each party's ability to handle and have access to technology must be considered.

I believe that Sweden has handled this well. But we must continue monitoring developments and consider the recommendations issued in the report to ensure due process during and after the pandemic.

## Imbalances Requires More Resources

Another major challenge facing the National Courts Administration in the wake of the pandemic is to free up resources and working methods to tackle the backlog of cases that unfortunately has built up over the year, even if this has not increased much in relation to the strains caused by the pandemic. We need a strategy for this, but we also need to highlight the need for extra funding for the courts in the coming years as the inflow of new cases continues to increase.

I am confident about this aspect of our work. If we are given the necessary resources, I am convinced that the

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National Courts Administration will find a solution that upholds the rule of law. We have done so before. But it will require a lot of hard work.

### **Resistance Has Its Price**

At the same time, I am also impressed by those championing the rule of law in these countries. Because there are those who do. I have had the privilege of meeting two of them. In late autumn of 2019, I met superior court presidents from all over Europe at a conference in Rome. The topic for the conference was the rule of law. Among the people I met were a man who was the Ombudsman of Justice in Poland, but also a judge from Hungary. Both gave speeches at the conference on the importance of maintaining the rule of law, and how they have both fought for this cause in their respective home countries. Both spoke of how this had impacted their careers. In 2018, I discussed this topic with court of appeal presidents from the Nordic countries at a presidential summit in Finland. It was a valuable experience, and we must continue this discussion and monitor the issue together.

One of the cornerstones of a functioning democracy is the public's faith in the rule of law. And for them to have faith in the rule of law, fundamental principles such as everyone being equal before the law and predictability are essential. Everyone must be able to trust that they have not been influenced by undue considerations, corruption, bias, or incompetence.

### **Sweden Is Once Again Investigating Court Independence**

In Sweden, the courts' independence and the role of the National Courts Administration has been investigated multiple times since the founding of the National Courts Administration in 1975. Changes have also been made, not least of which the large constitutional investigation of 2011, both from a legal point of view and in concrete terms when it comes to the appointment of judges with an independent Judges Proposals Board. But we cannot rest on our laurels.

Considering what has happened around the world in the last couple of years, an investigation regarding the independence of Swedish courts is a very welcome notion. The investigation is led by Anders Eka, justice of the supreme court. The purpose of the investigation is described in the government directive from February 2020. The purpose is to strengthen the democratic structures. A parliament-

appointed committee will investigate the structures for changing the constitution and the need to further ensure long-term impartiality of courts and judges. The inquiry shall among other things review:

- Whether a regulation should be introduced into the constitution regarding the number of justices of the supreme court and their retirement age
- Whether it should be made possible for the Supreme Court or Supreme Administrative Court to convene in a specific composition
- Whether the organisation, governance, and role of the National Courts Administration need to be revised

The committee shall also assess whether Sweden should raise the threshold for making changes to the constitution.

### **Now Is The Right Time For An Investigation**

Lately, we have seen a lively and welcome discussion between various heads of court regarding matters of independence. One point made in the discussion is that if Sweden is to make changes and strengthen the courts in their role and independence, this must be done in times of political stability. Such changes are not possible in times of turmoil. In this sense, the investigation is very timely. Simply put, the time has come for a new approach, seeing as the world is changing.

Focus will be on the relationship between the Riksdag, the courts and the Government, and the role of the National Courts Administration. Once the investigation starts calling attention to how the courts can receive continued efficient and qualified support for its operations, and development through the National Courts Administration, while also maintaining independence and guaranteed due process, I hope to be able to contribute my expertise in the field. I would argue that we discuss and reflect on the issue of where to draw the line on a daily basis at the Courts of Sweden, and that we will continue to actively discuss this in the forums where the National Courts Administration meet the courts.

### **Learning From Our Neighbours**

The National Courts Administration is led by a director-general appointed by the Government. A supervisory council is tasked with supervising operations and advice the director-general. Council members are appointed by the government. Could the introduction of a board be the way forward? If so, what would its composition look like? Does the National

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Courts Administration's work with wage-setting and allocation of court budgets constitute an opportunity to exert influence?

When asking these questions, it is of course interesting to look at our neighbour countries to see how they have solved similar issues, seeing as the solutions all look different. **Finland**, who founded their National Courts Administration no sooner than January of this year, has a court-governed board where the cabinet minister appoints the eight members, six of which are judges. What was discussed prior to its formation? What issues were considered? In 2002, **Norway** changed its court organisation to create an independent administration authority, Domstoladministrasjonen, with a board consisting of legal practitioners and two representatives of the public appointed by parliament. The National Court Administration's board in **Denmark** includes representatives from the Bar Association and court administration as well as judges. As of 2018, Iceland has Dómsstólasýslan, a board consisting of five people, three of which are judges. Board members are appointed by the Minister of Justice.

### Leading through change

The results of the investigation and decisions made in its wake will of course be important. But I also think that our current discussion about court independence and the decisions that may result from it are just as important. It must always remain active.

The investigation also shows that we take the changes we see around the world seriously. Our rule of law must remain steadfast, even in troubled times. The system needs to be robust and able to withstand stress.

The Courts of Sweden will be facing major challenges today. We will need to implement changes with the goal of making the courts stronger through reform efforts. I feel energised and ready to, once again, lead through these changes.

### Facts about the Swedish National Courts Administration

The National Courts Administration was founded in 1975 and situated in Jönköping, where the administration headquarters are still located. The National Courts Administration also has offices in Stockholm, Göteborg and Malmö, and has around 400 employees.

The National Courts Administration is part of the Courts of Sweden, consisting of around 80 different courts and tribunals, with a total of 7,000 employees.

In the last five years (2015–2020), around 418,000 cases per year have been brought before courts on various levels, including cases concerning migration.

The authority operates under the Ministry of Justice, and the director-general oversees its operations on behalf of the Government.

The National Courts Administration's remit is to establish legally secure and efficient operations in Swedish courts and other tribunals and authorities within the Courts of Sweden. The remit shall be carried out with respect for the courts' independence in the judgements they render.

The National Courts Administration's remit can be divided into three areas:

- To provide service to the courts and in some cases provide service directly to the general public and other government agencies.
- Drive and support the development within the courts.
- In some cases, lead and coordinate the courts, such as in matters of resource allocation and the issuing of new regulations.

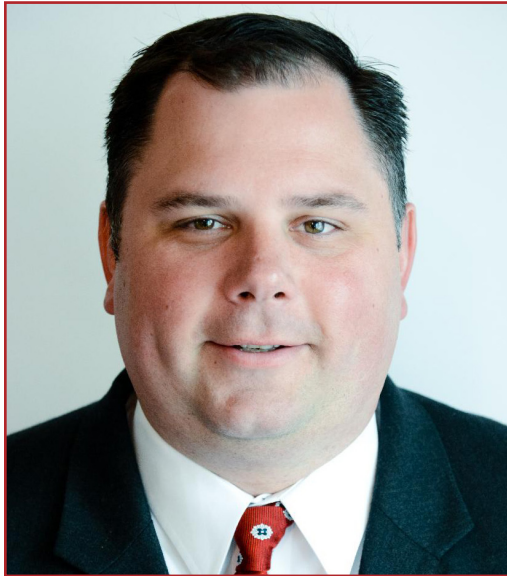
The National Courts Administration has what is known as a supervisory council, whose task it is to supervise the administration's operations and consult the director-general. The supervisory council is made up of a maximum of eleven members. The director-general serves as the chair of the council.

A council consisting of eight heads of court has been established for a continuous and systemic cooperation between the director-general of the Swedish National Courts Administration and the courts in tactical and strategic, joint issues. The aim of the cooperation is to raise the efficiency and quality of the Courts of Sweden.

Website: [www.domstol.se](http://www.domstol.se)

## Federal Jury Plan Revisions in the Northern District of Illinois and the Impact in Increasing Diversity in the Jury Pool

By Thomas G. Bruton, Clerk of Court for the Northern District of Illinois and Julie Hodek, Public Information Officer, Northern District of Illinois



*Thomas G. Bruton, is Vice-President of International Associations on the IACA Advisory Council. In this position, Tom serves as a member of the Executive Board and has the primary responsibility for identifying, connecting with, and maintaining relationships with other associations and bodies connected, directly or indirectly, with justice and courts.*

*Mr. Bruton currently serves as Clerk of the Court for the Northern District of Illinois, (ILND) one of the largest federal courts in the United States. In this article, Mr. Bruton highlights the changes to the ILND Jury plan and how these changes have impacted the diversity of the jury pool in the court. From 2013 to 2017, the United States District Court for the Northern District of Illinois revised its jury plan several times in an effort to increase the diversity of the District's jury pools. The purpose of this study is to assess whether the revisions are achieving their desired effect.*

*The Study of the Revised Jury Plan for the U. S. District Court, Northern District of Illinois was conducted by Jeffrey Abramson, Professor of Law and Government, University of Texas School of Law Mary R. Rose, Professor of Sociology, University of Texas. The entire report may be accessed from the link at the conclusion of this article.*

*The Located in Chicago, Illinois, Mr. Bruton may be reached at [associations@iaca.ws](mailto:associations@iaca.ws).*

A new academic study found that the U.S. District Court for Northern District of Illinois' jury plan revisions between 2009 and 2015 have had an impact in increasing the diversity of the district's jury pool and increasing the rate of response to mailed juror qualification questionnaires.

"Assembling a diverse pool of potential jurors that represents a cross-section of the community is critical to the administration of justice. As this study confirms, changes to our district's jury plan are helping us make progress toward the goal of more representative jury pools," said Chief Judge Rebecca R. Pallmeyer. "We know that more improvement is needed, and we will continue these efforts, because we are seeing that these changes can be effective."

Using data from four draws of the court's master jury wheel, Jeffrey Abramson, Professor of Law and Government at University of Texas School of Law, and Mary R. Rose, Professor of Sociology at the University of Texas, studied the effect of the following jury plan revisions:

- Adding state driver's license list and the list of those holding state-issued photo ID cards to the voter registration list as sources of prospective jurors. (2012)

- When a questionnaire to a potential juror is undelivered, sending substitute qualification questionnaires to another person residing in the same zip code. (2013)
- Sending follow-up reminder letters and questionnaires to potential jurors who appear to have received their initial mailing but have not responded. If a third mailing elicits no response, sending a substitute qualification questionnaire to another person residing in the same zip code as the non-respondent. (2014)
- Adopting a new juror qualification questionnaire, which reversed order of questions, now asking respondents first whether they are Hispanic before asking for their race. (2014)
- Changing two-week jury duty summons to a one-week summons. (2015)
- Adding list of persons who applied for and/or received unemployment insurance from the Illinois Department of Employment Security (IDES) as source of potential jurors. (2017)

The study concluded that the jury plan revisions succeeded in increasing the rate of response to mailed juror qualification

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questionnaires. The rate of undeliverable mail fell to 2.4% compared to 6.5% in 2009. Additionally, the rate of nonresponse fell to 11.7% from a high of 35.9% in 2011.

The study also concluded that jury plan revisions are resulting in increased representation of African-American citizens. In 2009, African-Americans comprised 19.5% of the 18+ citizen population and 13.4% of the qualified jury wheel. By 2015, African-Americans comprised 19.2% of the 18+ citizen population and 14.0% of the qualified jury wheel.

Representation for Hispanic citizens improved more significantly. In 2009, Hispanics comprised 12% of the 18+

citizen population and 10.2% of the qualified jury wheel. By 2015, Hispanics comprised 13.6% of the 18+ citizen population and 12.4% of the qualified jury wheel.

A copy of the full report, Study of the Revised Jury Plan for the U.S. District Court, Northern District of Illinois, is available here.

Link to ILND website for additional information.

[https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_press/Study%20of%20the%20Revised%20Jury%20Plan%20\(002\).pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_press/Study%20of%20the%20Revised%20Jury%20Plan%20(002).pdf)



## How has the Qatar International Court responded to the challenges presented by the coronavirus pandemic?

By Christopher Grout, Registrar of the Qatar International Court and Dispute Resolution Centre



*Christopher Grout is a barrister and deputy district judge (England and Wales) and Registrar of the Qatar International Court and Dispute Resolution Centre ('the QICDRC'). The QICDRC comprises a civil and commercial court and specialist regulatory tribunal and offers and supports a variety of alternative dispute resolution services, including mediation and arbitration. This article summarises how the Qatar International Court has responded to the challenges presented by the coronavirus pandemic, focusing on the importance of access to justice and how this has been achieved through the use of e case management and remote hearings.*

*Located in Doha, Qatar, Registrar Grout may be reached at [Registry@qicdrc.gov.qa](mailto:Registry@qicdrc.gov.qa) for those readers who would like to follow up with the author.*

### Introduction

The Qatar International Court ('the Court') was established with technology and remote access in mind. This has been especially fortunate in light of the international health crisis that has arisen as a result of coronavirus. In particular, it has meant that case management and hearings before the Court have been able to proceed in much the same way as they have hitherto. That is not to say, however, that there has been no change in the way the Court has operated as a result of the coronavirus situation. First, on a day-to-day basis, the majority of Court staff are working from home. Secondly, physical trials (i.e. with all participants appearing physically in the courtroom) are no longer taking place; instead, all trials (and other hearings) are taking place remotely. What follows is essentially a review of the Court's recent experience of a fully remote hearing and an identification of the various issues that were considered both prior to and following the hearing. It is hoped that the below will highlight not only that it is perfectly possible for a court to remain fully operational during a health crisis such as the present, but also that the experiences will assist other courts around the world in their delivery of justice.

### The Legislative / Procedural Framework

It is of paramount importance that the procedure employed

before any particular court allows for flexible ways of working. The Court's procedure is governed by its Regulations and Procedural Rules which were enacted in 2010. Of note, for present purposes, are the following provisions:

- The overriding objective of the Court is to deal with all cases justly (Article 4.1)
- Dealing with all cases justly includes, so far as practicable...making appropriate use of information technology (Article 4.3.4)
- The Court has the power to take all steps that are necessary or expedient for the proper determination of a case (Article 10.1)
- The Court shall manage cases in accordance with the overriding objective (Article 15.1)
- If the Court so directs there will be a directions hearing which may take place by telephone or by video link if the Court considers it appropriate (Article 22.2)
- The Court may give direction as to...the manner in which any witness evidence is to be given (Article 27.1.6)
- The Court shall conduct all hearings in such manner as it considers most suitable, given the issues raised by the dispute and in order to facilitate the just, expeditious and economical determination of the dispute (Article 28.4)

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- If the Court considers it appropriate, it may direct that any hearing takes place by video link or telephone. (Article 28.7)

It will be noted that the above are drawn in such a way so as to give the Court considerable flexibility in the way it manages cases and conducts hearings. This has always been of considerable importance to the Court but is particularly critical at the present time.

### **Case Management- eCourt**

Active case management is critical given that, during the lifecycle of any case, more time will be spent on case management than on the actual hearing itself.

Since 2018, case management at the Court has taken place with the assistance of eCourt, a specialist electronic case management system designed in conjunction with Singaporean tech company Crimson Logic.

eCourt has been tailored to the requirements of the Regulations and Procedural Rules of the Court and has numerous benefits, including:

- eCourt is available in both English and Arabic.
- It is free to use.
- eCourt is accessible via a variety of devices including tablets and mobile phones.
- It is available 24 hours a day from anywhere in the world (providing the user has access to the internet).
- eCourt is safe and secure to use.
- It allows parties to file and access case papers and communications with the Court.
- eCourt has an easy to use interface, customised for litigants in person and legal practitioners to ensure streamlined navigation.
- It provides email and SMS notifications to alert users of tasks and communications thereby ensuring that users are kept up to date with how their case is progressing and what actions, if any, are required from them.
- eCourt is integrated with the Court's video and telephone conferencing facilities, allowing parties to appear at hearings remotely.
- It has an in-built help function to assist users who may have queries in relation to eCourt's functionality.

There are a variety of customised user roles- for judges, court staff, legal practitioners, as well as litigants in person.

The physical Registry at the Court remains open. However,

Court staff continue to advise all parties and lawyers to use the eCourt system, not only for the reasons given above, but to ensure that health risks are minimised.

### **Case Example**

On 7 and 8 April 2020, the Court held its first fully remote hearing. The hearing concerned an application for summary judgment in the context of a dispute over demands said to have been made under a Performance Bond (in the sum of QAR 19,800,000) and an Advance Payment Guarantee (in the sum of QAR 9,900,000).

The case had been listed for a two-day hearing with all parties, lawyers, judges and court staff due to physically convene in the courtroom in Qatar. However, as a result of the coronavirus pandemic, a different approach was called for. The Court directed that the hearing would go ahead but with all participants appearing remotely.

The three judges who were hearing the case appeared remotely from their respective homes in Scotland, England and South Africa. The lawyers appeared remotely from England and Qatar. The Registrar of the Court appeared remotely from within the courtroom itself. Thus, all six participants in the proceedings appeared from different locations and the entire two-day hearing was conducted using the Court's video-link and eCourt technology.

### **Procedure**

In terms of procedure, the hearing proceeded in much the same way as if everyone had been present. However, to ensure the smooth running of proceedings, the Registrar circulated 'ground rules' to all participants in advance of the hearing. The ground rules covered the following matters:

#### **1. Commencement of the Hearing**

Participants were advised that the hearing would commence with the Registrar announcing the case and identifying all those who were appearing via the video-link. The next person to speak would be the presiding judge who would explain how the hearing was to proceed.

#### **2. Etiquette**

Participants were advised that they should generally only speak when invited to do so by the presiding judge. Interjections were to be kept to a minimum and only when absolutely necessary. When a participant wished to interject, they were advised to raise their hand to signify to others that they wished to do so.

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### 3. Court Dress

Participants were advised that judges, court staff and advocates were not required to wear robes when participating in the remote hearing. Business attire / national dress was sufficient.

### 4. Equipment Tests

Video-link participants were advised to ensure that they made themselves available, as required by the Court IT staff, to conduct any necessary tests to ensure that the participants could access the remote hearing. In the present case, this involved a preparatory test a week before the hearing and a follow up test an hour or so prior to the commencement of the hearing.

### 5. Recording

The video-link system used by the Court had an inbuilt record function, operated and managed by Court staff. Participants were advised that they should not separately record proceedings without the permission of the Court.

### 6. Audio / Video quality

The quality of each participant's audio / video was assessed as part of the pre-hearing test(s). Participants were advised of the following general points to consider:

- A 4G connection may be preferable to a Wi-Fi one depending upon the signal strength and bandwidth. This should be checked as part of the pre-hearing test.
- Using headphones (with built-in microphone) is usually desirable.
- If a participant is not speaking, it is helpful if they mute their microphone.
- Other applications which may interfere with the remote hearing (such as multiple open browsers on the participant's laptop etc.) should be closed or otherwise kept to a minimum.
- The room which the participant is in should be free from external distractions. Smaller rooms are preferable to larger ones. Doors should remain closed. Participants should also be mindful of what can be seen by others who are observing the proceedings. Backgrounds should, where possible, be inoffensive and not a distraction. The participant should be mindful of their privacy and not broadcast areas of their home or office that they do not want other people to see.
- Mobile phones and other electronic devices should be switched off or turned to silent.

### 7. Breaks / Adjournments

The presiding judge determined when breaks were to occur. If any of the participants had specific needs for breaks, these were to be canvassed with the Registrar in advance of the hearing or, if this had not been done, with the presiding judge at the commencement of the hearing.

### 8. Technical Difficulties

If any participant suffered technical difficulties during the course of the hearing (for example, loss of audio or video) they were advised to advise, for example, the video was no longer working), the participant was advised to immediately contact the Registrar by email. The presiding judge would then stop the proceedings until the matter had been resolved.

### Other Matters

#### • Livestreaming

Proceedings were livestreamed with details of how to access the livestream being made available on the Court's website. The Court's IT staff managed the livestream and ensured that it was activated and deactivated at appropriate times.

#### • Judicial Deliberations

As the three judges were appearing from three different locations (indeed, three different countries), a separate, private, video-link was established for the purpose of judicial deliberations.

### Concluding Thoughts

The above is by no means an exhaustive list of considerations. It is, however, a reflection on the Court's recent experiences during these challenging times. Maintaining access to justice is of critical importance, but the quality of the justice system should not be diminished in an effort to keep courts open and operational. The measures put in place by the Court so far have ensured that people have been able to access the Court safely and securely. There has been no dilution of quality of service provided. The Court will continue to keep the situation under review and will update and amend its practices and procedures, if considered appropriate, as the coronavirus situation develops. It is hoped that by sharing experiences, other courts may be able to gain insights that will help them with the administration of justice. More information about the Court is available online at [www.qicdrc.gov.qa](http://www.qicdrc.gov.qa).

## Infotech Towards Judi-Tech: Dream of Normalcy to The Tool of Urgency

By Saroj Raj Regmi



*Saroj Raj Regmi currently serves as a Deputy Registrar (Judicial Service), Information Technology Division, Supreme Court of Nepal. Mr. Regmi's current job responsibilities include delivering the judicial administrative functions related with case management, policy formulation, as well as assisting administration of justice for efficient management of the court. Moreover, he is responsible for providing administrative assistance related with law and justice to the technical human resources in the information and technology division of the Supreme Court. He has been working in the Nepalese judicial service for the past 11 years. During that time, Mr. Regmi has served in the Secretariat of several Chief Justices and he has also performed the role as Bench Officer in the Supreme Court and the then Appellate Court. He has also served in District Court as a Registrar, a chief administrative official of the court.*

*In his article, the author takes our readers into the world of Information Technology in the Supreme Court of Nepal. Information Technology, when taking space in the Judiciary, seemingly generates the thought of a 'Judi-Tech' concept. The use of infotech in the Nepalese Judiciary has significantly permitted it to make this court 'paperless' and has at the least, brought the court to the place of 'less paper'. This Mega dream of the Nepalese judiciary has enabled to achieve some predominantly functional infrastructures despite compelling to compromise with several other targets. The dreams and achievements related with the information technology in the Judiciary of Nepal during normalcy have gradually become the need of urgency.*

*Located in Nepal, in the State of Bagmati, City: Kathmandu, the author may be reached at regmisarojraj@gmail.com*

### 1. Infotech Towards Judi-tech

It is not the matter of concern how information technology was amalgamated with the legal and judicial proceedings, but, obviously, within the ambit of its application, it is an issue of quest that can the judiciary be entirely based on information and communication technology (ICT) at any stage? The author does not really know whether the 'Infotech' will become 'Judi-tech' and whether this concept exists or not. However, the extensive use of technology related with the information technology has compelled us to think about the concept.

The use of ICT for the development of the e-judiciary in Nepal was started and first tested on Supreme Court under the high-level guidance of the leadership in 2005 and was further extended to other Courts. It is being currently used in almost all of the Courts of Nepal. Currently, IT Divisions in various Courts have been established and rules pertaining to use of IT has also been framed.<sup>1</sup> At the starting point of use of information technology in Nepalese Courts, there were very less activities that anyone could imagine, like creating a website, publishing notices and cause lists of Courts;

and publishing e-journals.<sup>2</sup> When these things seemingly appeared to be functional and widely applauded, subsequent activities like developing case management software and creating electronic records of court related documents became strategic programs for another five years. This led to the situation of accepting and applying information technology as an inevitable tool for the entire court management, and eventually ambitious goals and programs got into the list of judicial reform initiatives. Currently, Fourth, Five Year Strategic Plan (2020-2025) period is in the run. Within the past five years, the separate Ten Years ICT Master Plan of Nepalese Judiciary was formulated at parallel side, along with the five years strategic plan of judiciary, following annual plan of action in each fiscal year.

### 2. Targeting Heavily, Yet Achieving Steadily

The main driving force of information technology in Nepal has been the master plan and strategic plan in consonance with the existing law governing electronic transaction and incorporation of provision regarding the use of information technology in legal and judicial proceedings in the country's civil and criminal codes and respective other substantive and

1 Information and Communication Technology Master Plan of Nepalese Judiciary, 2016, Supreme Court of Nepal, pp.2-4

2 Strategic Plan of Nepalese Judiciary, 2005-2010

*continued*



procedural laws. The most ambitious vision of the ten years master plan is to 'establish paperless judiciary by 2025', with the mission of 'establishing e-judiciary by using IT and ICT from court management system for effective, efficient and citizen centric services'. These are supported by the goals like 'enhancing and strengthening the system and networking infrastructure', establishing automated case management', 'developing and implementing office automation system', establishing a 'judge support system' and 'enhancing public access through e-services of court'.<sup>3</sup> These objectives constituted a mega project with ambitious dreams in the judiciary. However, these were not dreamt in a vacuum, rather framed cautiously and systematically on the basis of time-based activities, budgets, resources and infrastructures to be achieved. Most of the activities have made tremendous impact on the case management, digitization, electronic transaction, office management and record keeping system. Nevertheless, a few of them are in the need of review, which probably will be done by the year 20/21 through the 'mid-term review', a compulsory mandate of the master plan. In this milieu, it is interesting and fascinating fact that the dream of judiciary of past few years have been turning into the necessity of the time.

### 3. Greed of Normalcy becoming a Need of Urgency

It is the well-known fact that the COVID pandemic emerged in the year 2020 shook the entire globe in multifaceted ways, and no areas remained virgin without the use of information technology where it could be applied. The same was with the developing countries too. Mainly, the public institutions, and moreover, the executive branch of the government often endeavored to ensure essential services through the use of information technology. In Nepal, except the government authorities and a very few other institutions were entitled for the delivery of essential services, and almost all institutions and organizations remained closed from April 2020 to almost October 2020 (although there

were few instances of activities in between on conditional basis). During the same time, the judiciary of Nepal as an independent organ of the state ensured by the constitutional provision, had to make arrangements regarding the delivery of judicial service through the decision of its own. On the other hand, legal provisions have compulsory provision for opening the courts for hearing the petition of *habeas corpus*<sup>4</sup> when the court will remain closed for three or more than three days.<sup>5</sup> In the given circumstances, prior to the decision of the government issuing lockdown orders, the Supreme Court of Nepal, through the Full Court decisions decided to open all the courts of Nepal for certain services, including the writ of *habeas corpus*, few nature of petitions and public interest litigations regarding COVID pandemic. After some time, the order of the Supreme Court also resolved the deadlock regarding statute of limitation, time-limit, date for appearance and so on during the period of lockdown.<sup>6</sup> One of the significant aspects *vis-à-vis* removing deadlocks, the order of the Supreme Court also directed to the Information Technology Division of the Supreme Court to manage the electronic means and methods for receiving documents, providing dates, notifying parties, and registering cases. The Full Court, through the administrative decision, also directed the administration to provide television screens to the nearest Bar Association where the hearing proceedings of the court will be broadcasted from the courtrooms. This caused to reduce the number of lawyers, parties, and service recipients in the courts, allowing physical distancing in judicial procedures.

### 4. Journey of Paperless Court Arriving at Less Paper Court

Although many infrastructures and programs of the Nepalese judiciary are still in pipeline, the very recently dreamed, but could not attained due to the same lockdown, was the application of the courtroom technology in the Supreme Court. It was a dream until last year but has become a need this year. Similarly, the programs and software which

*continued*

3 Information and Communication Technology Master Plan of Nepalese Judiciary, 2016, Supreme Court of Nepal, p.43

4 It is a special nature of remedy provided under writ jurisdiction of the court when anyone is illegally detained.

5 In Nepal section 26 of Administration of Justice Act, 2016 has this provision.

6 The 19 Membership Larger Full Bench of the Supreme Court was constituted in the Supreme Court of Nepal, which issued orders to resolve the deadlock regarding statute of limitation, time-limit, date for appearance and so on during the period of lockdown. This was laid down in orders issued after hearing arguments of the petitioners and Amicus Curiae in the Report of Supreme Court (076-RE-0392) and Petitioner Tikaram Bhattarai et.al. (076-WO-0944). The Date of Order is May 28, 2020.

were indeed dreamt about with the concept of ‘paperless judiciary’ and ‘smart judiciary’ has been currently serving the court in dealing and coping with the horrifying circumstances. Different incompatible software has been integrated with the name Case Management System (CMS) software and have been launched in the High Courts and District Courts; enabling both tiers of Courts to correspond and work digitally in their case management. Correspondence through digital means, scanning and uploading record case files, uploading judgments on the website, availability of precedents in the website for downloading are practically ensuring its stakeholders to retain certain services without visiting courts. Dockets (although it is not termed as ‘docket’, but similar in nature) are available through websites once the case number is entered in the login-page. Case status details and hearing lists of all the courts of Nepal are visible to anyone on the website every day when the court is in session or out of motion. Most of the administrative inspections, monitoring and coordination have been performed through video conferencing, and it is likely to be followed in the days to come. This year, during the same period of lockdown, the new software named Differentiated Case Management System (DCM) has been launched in the High Courts and District Courts, which will provide certain ‘track and time’ to the case on the basis of the nature and gravity of the cases. It is believed to be result-oriented for the speedy and predictable justice. Despite that, Mobile Application and SMS service is serving greater section of the court-users. Creating electronic files and uploading them is overwhelmingly being practiced for the judgments of the courts; and maintaining digital records have been in top priority. Biometrics of all the judges, officials and staffs of the entire Courts of Nepal is remarkably assisting for managing personal records and discharging administrative functions related with human resources. Through these activities, the aim of ‘paperless judiciary’ has at least indicated for ‘less papers’ due to the application of most of the programs related with the information technology.

## 5. Warriors and Barriers

The Judge Support System, which is believed to be the core component of the entire case management system has

yet remained to be established as it was aimed in the master plan of 2016. Similarly, Library Management System is another major feature which need to be further enhanced for the availability of all types of resources related and required for the settlement of cases. Online date is the system launched more than five years ago but has yet remained ineffective and there is usually difficulty in providing online dates to the parties through ‘inter-district’ and ‘inter-court’ approach. Another most dreamed, but challenging feature is ‘e-filing’ as it is directly connected with the digital signature. Since the application of the use of digital signature seems more complex in the Nepalese context due to the realities of stakeholders involved with it, there is slim chance that it will be applied in near future. Although there is permission from the law for digital signature, larger sections of lawyers, government attorneys, polices, public and private institutions vis-à-vis parties to the cases and other service recipients are not practically ready with digital signatures. The automatic case assignment is one of the ‘top issue’ throughout the years, and there is growing concern on this because parties to the cases usually get dissatisfied for occasional disparities in time and manner in the settlement of similar nature of cases. This year, a high-level committee is working for its feasibility study.

## 6. Steps Ahead

At present, the focus of judicial programs and government support is also largely oriented towards the information technology, which eventually is assisting most of the projects that judiciary has previously designed as a dream. By the next few months, judiciary of Nepal as a part of its scheduled activity of the Ten Year Master Plan, need to review and evaluate the targets and achievements and foster plans and programs for another five years. At this point, it is expected that the achievements are equally satisfactory. However, the existing need has actually driven to take another departure for the ‘e-judiciary’. The dream may come true or not, but it is sure that the dream of normalcy has obviously become the tool of urgency.

## COVID and the Courts – The Role of Leadership Resilience

By: Janet G. Cornell, Court Administrator and Consultant



*Janet G. Cornell, Court Consultant and Retired Court Administrator. Janet's degrees and certifications include: Master of Public Administration; Court Executive-Fellow with the National Center for State Courts Institute for Court Management; and Certificates of Completion from the Leader Coach Institute and Leadership Institute for Judicial Education. Janet has over 35 years in court leadership in general and limited jurisdiction courts. She is a consultant, educator, and author with consulting, teaching engagements, and publications in the United States and internationally. Areas of expertise include caseflow management, court performance measurement and management, operational assessment, self-represented litigant access, and leadership. Ms. Cornell is located in Phoenix, Arizona and may be reached at [jcornellaz@cox.net](mailto:jcornellaz@cox.net) for those readers wishing to follow up with the author.*

*In her article, Ms. Cornell discusses leadership challenges from the coronavirus. It asserts the importance of court leaders being resilient amidst the challenges and massive change that has occurred. Strategies are illustrated for leaders to develop and practice traits to be resilient.*

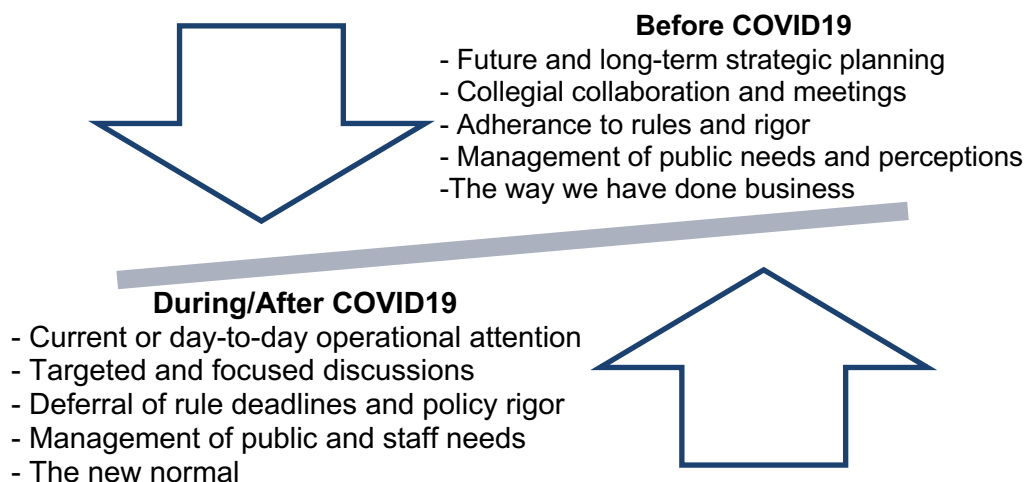
### Leadership Challenges and Opportunities

COVID-19 has provided a case study of urgency and reengineering. Courts have experienced immediate pressures to change the way they do business. Examples include:

- Redefining what is critical, urgent, and necessary;
- Relaxing rules, deadlines, processes, and deferring court events;
- Mobilizing new processes and technologies in a very rapid manner;

- Changing and rethinking how to provide litigant access and services; and
- Communicating with staff and the public about new processes.

As courts dealt with COVID19, day-to-day operational pressures prevailed over lengthy planning. Stakeholder collaboration took on new purposes and with new partners at the table. Leaders were required to manage information and perceptions not only for court personnel but also for the



*continued*

public.

### **Some good has come from these challenges, for example:**

1. Deployment of various technologies,
2. Expansive use of communication,
3. Enabling of remote work and collaboration tools,
4. Expanded – or new – deployment of digital services,
5. Reminders of the importance of operational transparency,
6. Finding possibilities and “seeing lemonade everywhere”
7. Leveraging opportunities for agility, trying new things, collaborations, incredible efficiencies, new capacities,
8. Being willing to take risks, create new or simplified processes, and evaluate which changes should remain after the pandemic, and
9. Seeing prospects to reconstruct how our courts function.<sup>1</sup>

Amidst these changes, there is a need for leaders to be resilient.

### **The Role of Leadership Resilience**

Resilience helps us deal with the challenge and alters the way we view adversity. Resilience is a muscle that leaders can recognize and know how to flex. Resilience is the: “ability to overcome challenges of all kinds - trauma, tragedy, personal crises, plain ole life problems - and bounce back stronger, wiser and more personally powerful”<sup>2</sup>; capacity to recover quickly from difficulties, flexibility, pliability (Oxford Dictionary); and power to spring back, rebound, and avoid discouragement (Webster’s Dictionary)

Resiliency can help us deal with stress, be alert, and remain

motivated. According to former Navy Seal Brent Gleeson, crisis makes us better leaders, since it:

- Demands humility,
- Combats complacency,
- Expands comfort zones,
- Makes us agile,
- Broadens our perspectives,
- Forces organization,
- Drives innovation,
- Fuels resilience, and
- Prepares us for the next challenge.<sup>3</sup>

After the coronavirus urgency settles, courts will be faced with taking the lessons learned and implementing lasting new ways of doing business. Court leaders may want to consider these strategies for leadership resiliency: heed advice from an astronaut; use adaptive leadership; measure processes and outcomes, and practice resilience traits.

1. Consider advice from an astronaut. United States National Aeronautics and Space Administration (NASA) astronaut, Col. Terry Virts, commented on the US Apollo 13 flight, which almost ended in tragedy.<sup>4</sup> He provided insights for dealing with something novel or something for which we may not have all the tools to solve. Astronauts on board the Apollo 13 flight had to keep their wits, make risky decisions, and reengineer the flight to allow it to return to Earth. Col. Virts noted the skills and traits the astronauts used: a) stay calm; b) figure out what is occurring; and c) determine what is currently working (to build upon it).<sup>5</sup>

1 These strategies and comments were derived from the National Center for State Courts’ webinar on “Access to Justice—Considerations for State and Local Courts as They Respond to COVID-19, a Conversation,” broadcast April 3, 2020, and from Bridget McCormack, Michigan Supreme Court Chief Justice, in National Center for State Courts webinars – May 1, 2020 on Developing Plans for Resuming Court Operations, and May 19, 2020 on Expanding Court Operations II: Outside the Box Strategies, available at <https://vimeo.com/414071907> and <https://vimeo.com/420651688> and Noelle Knell, “COVID19 Proves the Essential Nature of Government,” GovTech, June 2, 2020, accessed via [https://www.govtech.com/analysis/COVID-19-Proves-the-Essential-Nature-of-Government.html?utm\\_term=READ%20MORE&utm\\_campaign=Nigerian%20Hacking%20Group%20Targets%20State%20Unemployment%20Systems&utm\\_content=email&utm\\_source=Act-On+Software&utm\\_medium=email](https://www.govtech.com/analysis/COVID-19-Proves-the-Essential-Nature-of-Government.html?utm_term=READ%20MORE&utm_campaign=Nigerian%20Hacking%20Group%20Targets%20State%20Unemployment%20Systems&utm_content=email&utm_source=Act-On+Software&utm_medium=email)

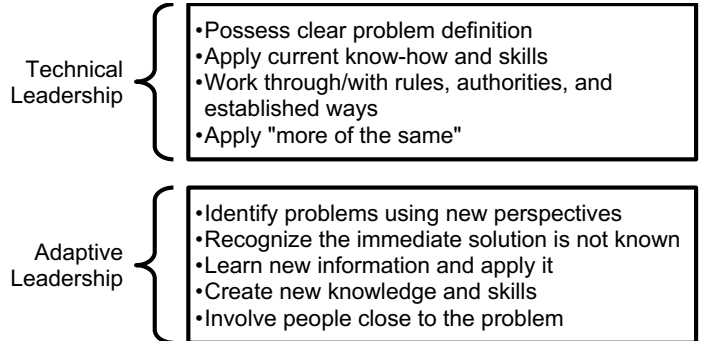
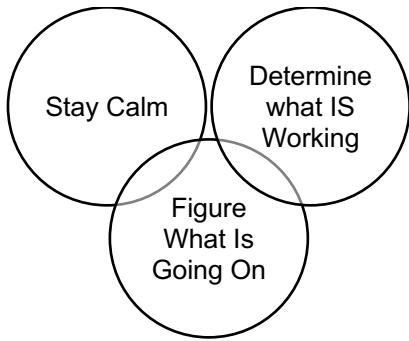
2 Becky Crum, “You Must First Put on Your Own Mask,” Arizona Child Abuse Prevention Conference, Arizona Department of Child Safety, July 2015, Glendale, AZ, USA.

3 Brent Gleeson, “9 Ways Crisis Makes You a Better Leader,” Forbes, March 31, 2020, accessed via <https://www.forbes.com/sites/brentgleeson/2020/03/31/9-ways-crisis-makes-you-a-better-leader/#25cdee5743e2>

4 Apollo 13 blasted off on April 11, 1970, as the seventh mission of the US Apollo space program. A malfunction in the space capsule/service module caused mission control and the crew of three to adapt and innovate to return safely, which they did on April 17, 1970, after aborting flight plans to land on the moon. This flight became a case study of innovation and stamina in the face of challenges.

5 Col. Terry Virts, former NASA astronaut, Space Shuttle pilot, and commander aboard the International Space Station, interview with Fox News Channel and commentator Neil Cavuto, broadcast on April 10, 2020.

*continued*



2. Use adaptive leadership practices.<sup>6</sup> Adaptive leadership relates to knowledge and skills for leaders to embrace and thrive in uncertain times. The foundational concept is that the challenges cannot be solved by existing knowledge nor techniques that have been in place, but instead problems and challenges should be tackled by using newly gained information and knowledge. The chart below illustrates differences between technical leadership (or technical solutions to problems) and adaptive leadership (or adaptive resolution of problems). Court leaders should seek ways to exhibit adaptive leadership.

3. Measure and evaluate. Using data and metrics will be important. Fortunately, there are models available. The CourTools measures, the National Center for State Courts High Performance Court Framework, and the International Framework for Court Excellence offer ways to measure the work and products (outcomes) from courts.<sup>7</sup>

The chart on the next page illustrates practical examples of measures to be informed about the work of the courts. These are derived from the CourTools measures and the High Performance Court Framework.<sup>8</sup> These may generate ideas on measures to deploy. Armed with metrics, a court leader may feel comfort in assessing operations in a much-changed environment.

Court Performance Measurement	
International Framework for Court Excellence	High Performance Court Framework
Key Performance Areas	Key Performance Areas
<ul style="list-style-type: none"> <li>• Quality</li> <li>• Efficiency</li> <li>• Effectiveness</li> </ul>	<ul style="list-style-type: none"> <li>• Effectiveness</li> <li>• Efficiency</li> <li>• Productivity</li> <li>• Procedural Satisfaction</li> </ul>

6 Adaptive leadership and problem solving has been covered in several books, among them Ronald A. Heifetz and Marty Linsky, *Leadership on the Line: Staying Alive through the Dangers of Leading* (Cambridge, MA: Harvard Business School Press, 2002); and Ronald Heifetz, Alexander Grashow, and Marty Linsky, *The Practice of Adaptive Leadership* (Cambridge, MA: Harvard Business Press/Cambridge Leadership Associates, 2002).

7 See *The-International-Framework-3E-2020-V2.pdf* (courtexcellence.com) and *High Performance Courts | NCSC*.

8 Content adapted from the National Center for State Courts' Framework materials (see "High Performance Courts Framework"). A variation of this chart was initially published in Janet G. Cornell, Felix F. Bajandas, and Nathan Hall, "Shared Self Help Center Assessment and Planning for the Second Judicial District Court, Washoe County, and Reno Justice Court," National Center for State Courts, 2018, and in Janet G. Cornell, Cyril Miller, and Kent Pankey, "The High Performance Challenge: Employing Framework Concepts in Your Court," *Court Manager*, National Association for Court Management, Vol.35, No. 1, 2020.

Court Performance Assessment and Measurement Areas		
Measures of the Customer Perspective		Potential Metrics
Effectiveness	Measures actions and achievements related to stated goals	<ul style="list-style-type: none"> <li>• CourTool Measure 5–Trial Date Certainty</li> <li>• CourTool Measure 7b–Enforcement of Legal Financial Obligations</li> <li>• CourTool Measure 8–Juror Usage</li> <li>• # and volume/utilization rates of specific functions</li> <li>• # of transactions by type of service (information, assistance, forms provided, escort, referral)</li> <li>• # of transactions by point or location of service (front counter, self help center, in courtroom, Library, other points)</li> <li>• # of transactions by type of contact (in person, via phone, via web/internet, by email, by chat, etc.)</li> <li>• Types of services provided (information, forms, instructions, charts, samples, courses, forms review, notarization, referrals, etc.)</li> <li>• # of materials, documents or forms provided or copies made</li> <li>• Amount of funds collected for services by type of service</li> <li>• Demographic information of users (residency, age, gender, ethnicity)</li> <li>• # of services by type of case at the court</li> <li>• # instances of referral by court or other agency</li> <li>• # of times user/litigant has accessed the services</li> <li>• # of instances where language assistance requested/provided</li> </ul>
Procedural Satisfaction	Measures customer perceptions service, fairness and accessibility	<ul style="list-style-type: none"> <li>• CourTool Measure 1–Access and Fairness</li> <li>• CourTool Measure 7a, 7c–Fairness RE Legal Financial Obligations</li> <li>• CourTool Measure 9–Court Employee Satisfaction</li> <li>• Transaction times for specific services</li> <li>• Customer service feedback and surveys</li> <li>• Anecdotal/informal feedback from users and customers</li> <li>• Formal and informal feedback from judges and court staff</li> <li>• Formal and informal feedback from service partners and collaborators</li> </ul>
Measures of the Internal and Operating Perspective		Potential Metrics
Efficiency	Measures variability of processes	<ul style="list-style-type: none"> <li>• CourTool Measure 2–Clearance Rate</li> <li>• CourTool Measure 4–Age of Active Pending Cases</li> <li>• CourTool Measure 6–Case File Integrity</li> <li>• Service transaction time for specific functions (document filing, phone talk time, one on one interaction)</li> <li>• Feedback on document accuracy, completeness, correct use</li> <li>• Informal judge and staff feedback</li> </ul>
Productivity	Measures utilization of resources and time	<ul style="list-style-type: none"> <li>• CourTool Measure 3–Time to Disposition</li> <li>• CourTool Measure 10–Cost per Case</li> <li>• # of transactions by month, by day of week, by time of day, by calendar</li> <li>• # of documents issued or reports generated</li> <li>• Cost per service or transaction type</li> <li>• Staff workload assessments (tasks, time, volumes per staff)</li> <li>• # of staff services: interpreters, court reporters, court security, etc.</li> <li>• # of service partners or providers utilized</li> <li>• # of technologies used and/or deployed</li> </ul>
<p>Adapted from the National Center for State Courts "High Performance Courts Framework," see <a href="http://www.ncsc.org/Information-and-Resources/High-Performance-Courts.aspx">http://www.ncsc.org/Information-and-Resources/High-Performance-Courts.aspx</a>. Chart originally published in "Shared Self Help Center Assessment and Planning for the Second Judicial District Court, Washoe County, and Reno Justice Court," May 2018, National Center for State Courts, <a href="https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/809/rec/20">https://cdm16501.contentdm.oclc.org/digital/collection/accessfair/id/809/rec/20</a></p>		

4. Practice resilience traits. A variety of articles, blogs, and books cover the topic of leadership resilience. A compilation of various characteristics of resiliency is noted in the chart below. Traits are grouped in the following categories: mindset and self-awareness; focus; linkage to goal and mission; communication and connections; and action.

Mindset, Self Awareness and Control	Focus	Link to Goal and Mission	Communicate and Have Connections	Action, Proactivity, and "Lean In"
<ul style="list-style-type: none"> <li>•Get comfortable with being uncomfortable</li> <li>•Embrace the challenge</li> <li>•Find meaning in the situation</li> <li>•Make lemonade out of lemons</li> <li>•Accept harsh realities</li> <li>•Focus on the positive</li> <li>•Break through excuses</li> <li>•Have personal awareness</li> <li>•Maintain perspective</li> <li>•Have optimism</li> <li>•Have faith in self</li> <li>•See possibilities</li> <li>•Accept what you cannot change</li> <li>•Accept setbacks and losses</li> <li>•Believe you can create forward movement</li> <li>•Watch self talk</li> </ul>	<ul style="list-style-type: none"> <li>•Have mental focus</li> <li>•Practice self control</li> <li>•Be self aware</li> <li>•Turn setbacks to comebacks</li> <li>•Take care of yourself</li> <li>•Learn how to thrive in adversity</li> <li>•Have intentions</li> <li>•Think big</li> <li>•Keep time in perspective</li> <li>•Embrace disequilibrium</li> </ul>	<ul style="list-style-type: none"> <li>•Integrate to the mission, vision, and values</li> <li>•Focus on the goals</li> <li>•Put the mission first</li> <li>•Own the narrative</li> <li>•Be transparent</li> <li>•Put yourself in the shoes of those you serve</li> <li>•Embrace the long view</li> <li>•Declare a goal</li> <li>•Set a strategy</li> </ul>	<ul style="list-style-type: none"> <li>•Communicate clearly</li> <li>•Keep your word</li> <li>•Cultivate relationships and connections</li> <li>•Engage staff and stakeholders</li> <li>•Seek feedback and follow up</li> <li>•Maintain a sense of justice and fairness to others</li> <li>•Collaborate</li> </ul>	<ul style="list-style-type: none"> <li>•Be "in" all the time</li> <li>•Improvise and make do</li> <li>•Look ahead</li> <li>•Work to adapt</li> <li>•Work to innovate</li> <li>•Turn adversity to advantage</li> <li>•Use the heart (empathy) and the head (rationale)</li> <li>•Resolve to act</li> <li>•Learn from experience</li> <li>•Decide what you control</li> <li>•Decide what others control</li> <li>•Foster adaptation</li> <li>•Develop next practices</li> <li>•Ask for help when needed</li> </ul>

A report recently released by BCG Henderson Institute provided some insight on the future after COVID19.<sup>9</sup> The report notes that crises leads to long-lasting changes and shifts in thinking—such as different policies, innovative ways of working, and new consumer (or court user) behaviors. The report asserts eight steps to “sense, exploit, and shape” the future (court-related notes are added in parentheses):

1. Expect change and look ahead,
2. Understand broader social shifts (justice community shifts),
3. Scrutinize granular and high frequency data (court metrics),
4. Identify your own revealed weaknesses and areas for preparedness and agility,
5. Study regions (courts, justice entities, or partners) further ahead in the crisis,
6. Scan for maverick activity,
7. Look at which new patterns reduce friction (delays, barriers, complexities, inconveniences), and
8. Maintain hope and a growth orientation.

<sup>9</sup> Martin Reeves, Philipp Carlsson-Szlezak, Kevin Whitaker, and Mark Abraham, “Sensing and Shaping the Post COVID Era,” Boston Consulting Group, April 3, 2020.

Will there be a “new normal?” Will it require different practices and processes? Courts will look back on this as a defining moment. Courts leaders can leverage their role in the “new normal” by practicing resiliency.

In closing, my own personal examples of how to seek resiliency, include:

1. When faced with a challenge, ask three questions: what should I do more of, what should I do less of, and what should I do differently?
2. Try to learn and grow in every situation and challenge. When discouraged, ask: how can I learn from this? what am I meant to learn from this?
3. Remember to cultivate and make use of a professional network.
4. Self-evaluate and understand what you value and identify as truly important.

*“It doesn’t matter if you fall down ...  
... what matters is that you get back up”*

## Suggested Resources on Leadership Resilience

- The Resilience Factor, Karen Reivich and Andrew Shatte
- The Power of Resilience, Robert Brooks and Sam Goldstein
- Meditation for Fidgety Skeptics, Dan Harris and Jeff Warren
- Harvard Business Review, <https://hbr.org/>
- The Truth About Leadership, James M. Kouzes and Barry Z. Posner
- Toughness Training for Life, James E. Loehr
- How Resilience Works, Diane L. Coutu, originally published May 2002, On Managing Yourself, HBR’s 10 Must Reads, Harvard Business School Publishing, 2010.
- Resilience Reset, Anne Grady, Success Magazine, July/August
- <https://www.success.com/8-daily-habits-to-build-your-mental-strength/>, accessed February 17, 2017.





## Part III of Special Series: Rich Indian Judicial System-from Vedas to Present Day

By Panchaksharayya C Mathapati



*Panchaksharayya C Mathapati ("Panch") currently works as a Court Manager with High Court Mumbai, Maharashtra, India. He has been posted at the Family Court, Mumbai, since 2013.*

*Panch shares with our readers the history of the Indian judicial system, the oldest in the world. Rich in principles derived from sages through Shrutis, Smritis (remember and pass on to the next generation), commentaries, customs, and refining of basic laws to tune to the requirements of the generations, Panch takes us through the Indian Judicial System and the Rule of Law as it continues its evolution throughout the times.*

*In Part III of this series of articles, the author brings us up to modern times in India.*

*In this conclusion, the author refers to current day laws and how ancient customs and dispute resolutions in the past have shaped the legal system of India in the present day. Throughout this series, Panch has carefully explained the development of the present court system and now ties the history together.*

*As we have been introduced to the history of court administration in India, we understand how we learn, borrow, and incorporate systems and methods from the past. Sharing our histories and cultures helps modern day court administrators better understand the present.*

*The Court Administrator editorial staff wishes to acknowledge and to thank Panch for his extensive and detailed articles. He has taken us all on a travel through time to explain the Indian Judicial System, past and present. Parts I & II of this series can be found in Editions 7 & 8 of The Court Administrator.*

*For those readers wishing to follow up with the author, he may be reached at mathapati.pc@gmail.com.*

### 2.0 Punishment

Manu provides stages of punishment for an erring person if he continues to do the crime, first by (gentle) admonition, afterwards by (harsh) reproof, thirdly by a fine, after that by corporal chastisement. However, when the offender is not able to restrain such offence even by corporal punishment, then the four modes co-jointly should be applied.

In the later Vedic Samhitas and Brahmins, the old Vedic tribal councils called the 'Sabha' developed into King's court as well as his Councils. During those days, the law applied was on the basis of ancient religious texts and authoritative comment. The law was administered by the King under advice of his ministers and learned Brahmins. The King also appointed judges to administer the law. Law at the village level was administered by a village panchayat consisting of five or more members. During Mauryan administration, the King was the head of the state. He had legislative, executive, and judicial powers. He was the supreme commander of the army and planned military operations with his senapati. In Kautilya's Arthashastra, the King was called Dharma

pravartaka. The King issued ordinances called 'shasanadesh' (शासनादेश). The King appointed Sachivas (minister or Amatyas). The King was advised by the Mantriparishad. There was a full complement of departments with their duties well defined. The Mantris were high ministers. The Amatyas (Civil Servants) performed judicial and administrative functions and monitored the affairs of the state. The Adhyakshas were in charge of various departments. They collected taxes and controlled the dealings connected to the land. The Samhartas were the collector general of revenue of the Kingdom. The Sannidhata was an officer in charge of the treasury. The Purohitas, Senapatis and Dauvarikas and Durgapala were other officials who helped in administration. The King was honored as the fountain of justice as per the Dharmasastra and Nitisastra. The King was the final court of appeal and his decision was final. He was expected to decide cases according to law. In the administration of justice, the community always helped the judges. Further, the system of Trial by Jury was also prevailed. Gautama remarks that the King shall ascertain the law from those who have authority over these respective classes and shall give

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his decisions accordingly. Kautilya and Brihaspati point out that the King should not decide unaided; he should take the help of those who were well-versed in three Vedas. Manu opines that, when the King was unable to attend the work of administration of justice, then he must appoint a learned Brahmana together with three Sabhyas to decide the disputes of the people.

## 2.1 Types of Courts

There were two judicial courts, which were divulged from the study of Arthashastra of Kautilya, viz., 1) Dharmasthiya or the Civil Courts, and 2) Kantakasodhana or the Criminal courts. It is also clear from the study of Arthashastra of Kautilya that, in order to evade delay and other difficulties at the time of investigation of cases, Kautilya thought of giving greater local autonomy in the administration of justice. This would ensure some sort of public responsibility in all villagers, which was expected from every villager. Kautilya established three courts viz., 1) Sangrahana, (2) Dronamukha, and (3) Sthaniya. According to Manu, the Sabha system formed the basis of forming and grading courts. The Yajnavalkya, Narada, Brihaspati and Katyana also speak in favor of this view. Over each village, a headsman was appointed consisting of 10, 20, 100, and 1000 respectively. These courts were termed as Kula, Sreni and Gana and known as Popular Courts. These courts were within easy reach of the people. The purpose behind establishment of these courts was to give justice at doorsteps to each aggrieved person without causing unnecessary delay. The clear relationship, which existed between the Popular Courts and King's courts, was well defined. Brihaspati states that the Sabhyas occupied higher position than that of Kulas, and the Adhyakshas were above the Sabhyas and the King was above all. In ancient India, the policy of the government was to encourage the People Courts and enforce their decisions. These courts had royal authority behind them and were essentially non-official. Yajnavalkya claims them as sanctioned by the court.

As per the Vedic literature, it was the Sabha or the popular village assembly who was going to arbitrate whenever circumstances so required. There was a belief that Purushamedha sacrifice, Sabhachara, which was dedicated to Dharma or law. The term Prasnin refers to Plaintiff and Abhiprasnin refers to Defendant. These parties submit their disputes for settlement to the Village Sabha either voluntarily

or on account of their poverty. Madyamasi was an arbitrator, but not considered as judge. Narada observed that there was a provision for an appeal to City Court against decision of the Village Courts. The order passed by the City Court could be challenged in the King's Court, which was highest appellate court. Besides, in ancient India, we find existence of people court in the Narada Smriti to quote him: "Law suit may be decided by the village councils (Kulani), Corporations (Sreni), Assemblies (Puga) in Yajnavalkya, Gana in Narada, the judges appointed by the King, and the King himself, each later one being superior to each preceding one." Apart from this People's court, there were also in existence other courts. They were recognized by the Dharmashastra writers including the commentators and the digest writers, viz., Pratisthita (i.e., court established in a fixed place such as town), Apratisthita (i.e., circuit court or Nanagramapratisthita), Mudrita (court presided over by a judge who is authorized to use the Royal Seal) and Sasita (court presided over by a king himself). The work of Bhrgu, also mentions that, there were ten People Courts. They were functioning common to all men, viz., (1) The village people, (2) The assembly of the citizens of the capital, (3) Gana, (4) Sreni, (5) Men learned in four Vedas, (Chaturvedi) (6) Vargins, (7) Kulas, (8) Kulikas, (9) Judges appointed, and (10) The King himself.

## Present Judicial System in India

The judicial system provided by the Constitution of India is comprised the three type of courts. At the top, it is the Supreme Court, at middle the High Courts and at bottom the subordinate Courts. In addition to the Constitution, there are other laws and rules which direct the composition, power, and jurisdiction of these courts. Here, discussion is given of all the three types of courts.

### Supreme Court of India:

The Supreme Court of India is the highest judicial court under the Constitution of India. The highest constitutional court, with the power of judicial review. The Supreme Court of India is established by Part V, Chapter IV of the Constitution of India. It is presided by the Chief Justice of India.

The Supreme Court has original, appellate, and advisory jurisdiction. It's exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State

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or States on one side and one or more States on the other or between two or more States. Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari to enforce them. The Supreme Court has been conferred with power to direct transfer of any civil or criminal case from one State High Court to another State High Court or from a Court subordinate to another State High Court.

### High Courts:

The High Courts of India are the highest courts of the States having original jurisdiction in their respective state and union territory. However, a high court exercises its original civil and criminal jurisdiction only if the subordinate courts are not authorized by law to try such matters for lack of pecuniary, territorial jurisdiction. The High Court is bound by the judgments and orders of the Supreme Court of India by precedence. There are 25<sup>1</sup> High Courts in India, three having control over more than one State. Delhi has a High Court of its own among the Union Territories. Each High Court consist of a Chief Justice and such other judges appointed by the President of India.

The High Court has the appellate jurisdiction (Article 225), correspondingly High Courts at Calcutta, Mumbai, Delhi, and Chennai also enjoy original jurisdiction (Article 225). In case of violation of Fundamental Rights or any other found in Article 226, an aggrieved party can approach the High Court by filing a Writ Petition.

### District Courts:

Chapter VI under Part VI of the Constitution provides the provisions regarding subordinate courts. Below the High Court there is the Court of District Judge, which is top court among subordinate courts. The appointment, posting and promotion of District Judges are made by the Governor of the concerned State in consultation with the concerned High Court. To be considered eligible for the post of the District Judge, a person not already in the service of the Union or of the State shall only be eligible to be appointed as District Judge if they have been an Advocate or a Pleader for more

1 <https://doj.gov.in/sites/default/files/CJ%20list%2001.02.2020.pdf>

2 <https://doj.gov.in/other-programmes/gram-nyayalayas>

than seven years and are recommended by the concerned High Court. Appointments of a person other than District Judges to the judicial service of the State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with concerned State Public Service Commission and with concerned High Court. As regards, control over subordinate courts, including the matters of posting, promotion, leave etc., the concerned High Court is vested with the power to have control over subordinate courts, but the High Court is to exercise the control in accordance with the conditions of service under the law applicable in relation to subordinate courts. The Governor may, by public notification, direct the application of the provisions of Chapter VI of the Constitution and the rules made there under on any class or classes of magistrates in the concerned State subject to any exception or modification.

### Gram Nyayalaya:

Gram Nyayalayas Act<sup>2</sup>, 2008 is an Act of Parliament of India enacted for establishment of Gram Nyayalayas or village courts for speedy and easy access to justice system in the rural areas of India. The Act came into force from 2 October 2009. Gram Nyayalaya are established generally at the headquarter of every Panchayat at intermediate level or a group of contiguous panchayat in a district where there is no panchayat at intermediate level. The Gram Nyayalaya are presided over by a Nyayadhikari, who will have the same power, enjoy same salary and benefits of a Judicial Magistrate of First Class. Such Nyayadhikari are to be appointed by the State Government in consultation with the respective High Court. The Gram Nyayalayas have both civil and criminal jurisdiction over the offences and nature of suits specified in the First, Second and Third schedule of the Act. The pecuniary jurisdiction of the Nyayalayas are fixed by the respective High Courts.

### Conclusion

Indian Judicial system is rich in its principles, oldest in the world, derived from sages through Shruti, Smriti (remember and pass on to the next generation), commentaries, customs, and refining of basic laws to tune to the requirements of the generations, Rule of Law kept on upgrading. The legal system of a country at any given time is not creation of one

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man or of one day but is the cumulative fruit of the endeavor experience, thoughtful planning, and patient Labour of a large number of people throughout generations. With the coming of the British to India, the legal system of India changed from what it was during the Mughal period where mainly the Islamic law was followed. Before that time period, the Hindu laws were followed. With the formation of Constitution of India post-Independence, the Indian Legal system continues to evolve through the generations, based on the ancient principles set by the sages, to better suit the modern generation.

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## United States Federal Courts Participate in Audio Livestream Pilot Program

*Eileen Levine, editor*

Due to the state of emergency existing as a result of the coronavirus pandemic, many United States federal courts have entered emergency orders establishing procedures to provide members of the public and media a means to access proceedings held by video conference, telephone conference or similar remote means. Those who receive remote access to these proceedings must still abide by established rules and regulations, which include: no photos, no recordings, no rebroadcasting, etc. The public and the press have a qualified First Amendment right of access to certain court proceedings. The courtroom doors may not always be physically open, but during these remote proceedings, justice is being carried out, despite COVID limitations. Once the U.S. federal courts go back to in-person, live, real-time proceedings, anything may be possible in the future as far as extended public access.

With television, movie cameras and (unofficial) audio recordings banned from most federal court proceedings in the United States by the U.S. Judicial Conference, the national policy making body, a new two-year pilot program has begun. As part of this pilot program, these courts will livestream audio of select proceedings in civil cases of public interest. With very few exceptions, proceedings in federal courtrooms are open to the public. This pilot program has already begun with most of the courts going live in February 2021.

There are presently 13 United States federal district courts who will be participating in this pilot program; Northern District of California, Southern District of Florida, Northern District of Georgia, District of Kansas, District of Montana, Eastern District of Missouri, District of Nevada, Northern District of New York, Western District of Pennsylvania, District of Rhode Island, Eastern District of Tennessee, Eastern District of Washington, and the District Court in Washington D.C.

Some of these courts already have begun making proceedings available via audio livestreams. On December

7, 2020, the Northern District of Georgia streamed audio of a hearing on a U.S. presidential election-related lawsuit. This livestream attracted over 42,000 listeners. The Eastern District of Missouri streamed audio of a status conference in the case of U.S. v. City of Ferguson, in September 2020.

The public will be able to listen to real-time court proceedings on courts' designated YouTube channels. All parties in court proceedings must give their consent. The presiding judge will exercise discretion and have the final say. At this time, the pilot includes civil conferences. Legal proceedings including trials, witnesses, jurors, sealed matters, etc. are excluded from this pilot program.

Eastern District of Missouri U.S. District Judge Audrey G. Fleissig is Chair of the Judicial Conference's Committee on Court Administration and Case Management. "The pilot reflects the Judiciary's commitment to transparency and to increasing public access to court proceedings — an issue that has taken on even greater importance in the last year," said U.S. District Judge Audrey G. Fleissig, noting that many courts have been forced to restrict public access to courthouses for health and safety reasons during the COVID-19 pandemic.

"At the same time, we want to develop the best practices for the process and ensure that any new practices do not compromise the integrity of federal court proceedings. That is why we are taking a measured and deliberative approach by working with volunteer pilot courts to test audio livestreaming and help us improve the process," said Judge Fleissig. (USCourts.gov December 15, 2020)

In early 2020, this pilot program was authorized by the Judicial Conference "to study the feasibility of livestreaming audio of civil proceedings. The experience of the pilot courts will help identify livestreaming-related policy, and technical, operational, budgetary, and administrative issues that the Conference may need to resolve," according to the USCourts.gov website, December 15, 2020.