

# The Court of the Future

Is it possible?  
When will it arrive?  
What will it take?

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# The Goal

- Litigants experiencing the court system as a system
- A public sense that the courts operate as well as other modern institutions
- A radical leap in productivity and service
- A perception that justice is our business – not just certain types of justice or justice only in certain places
- A healthy institution that continues to provide the rule of law in an age of chronically constrained resources

# The Basic Strategy

- Everything that can be “virtual” will be virtual.
  - Filings, rulings, arguments, service, etc.
- Everything that can be standardized or “commoditized” will be.
  - Technology, administrative processes, etc.
- Legal and judicial resources will focus on early and aggressive case triage.
- Litigants will make decisions based on information about cost, timeliness, and due process tradeoffs.

# What the Court Looks Like

- 100% of all cases are digital in form.
- All interactions with the case file are virtual.
- Most interactions with court administrative staff are virtual.
- Some hearings are virtual.
- Some hearing participants are virtual.
  - Expert witnesses, interpreters, some witnesses, etc.
- Jury management is virtual until trials begin.
- Trials are timely and predictable in several senses.

# How Courts Operate

- Identification of contested issues occurs immediately.
- Triage into one of four case processing queues occurs immediately (full adversarial, adversarial lite, problem solving, administrative).
- Heavy use of mediation disposes most cases in the first few weeks.
- Cases without contested issues, either before or after early mediation, dispose immediately.
- Staff perform higher level case management tasks, since routine tasks have been automated.

# What does this take?

- A modern technology infrastructure
- State of the art online interfaces for self-help
- Consistent business practices
- Technology standards
- Rigorous, detailed and consistent case triage processes
- Consumer information on cost, timeliness and due process tradeoffs in different case processing queues
- Fewer staff with higher skill levels and better pay.

# Other Possibilities

- Routine non-contested matters could be handled in an entirely administrative way.
- Litigants might make frequent use of outside mediation to reach agreements and only submit those agreements to the court for formal orders.
- Staff lawyers and legal clerks might handle much of the early case management tasks and resolve cases before a judge needs to touch them.
- Virtual specialty courts in rural areas might provide expertise in business, complex litigation, etc.

# Panel Reactions

- What aspects seem desirable?
- What aspects seem undesirable?
- What aspects seem achievable?
- What aspects aren't achievable?
- What would you do differently?
- How would you get there faster?



# What Aspects Seem Desirable?

- Litigants need Speed and Predictability
  - Cost, time and non-trial options – knowledge is power!
- Citizens need ease of access and transparency
- Courts need realistic assessment to triage; maximize limited resources

*Arthur W. Pepin, Director, AOC New Mexico*

# What Aspects Seem Undesirable?

- Triage cases misses the fact that every case, regardless of how trivial the contest appears from the court side, is critical and very important to litigants
  - shunting the "little guy" outside the mainstream process might encourage him to ignore court process and handle things unpredictably outside the law
- "Help" for self-represented litigants discourages litigants from retaining attorneys
  - Unintended consequences of the self-help model is the self-misguided litigant
  - Courts should be about making representation available to all litigants, not encouraging unskilled civil litigants to make it highly likely the outcome of litigation will result from ignorance not substantive merit
- Courts' expanded use of video and remote conferencing, as well as video testimony and argument, diminishes the legitimacy of remote testimony/argument
  - Court employees lose personal relationships when serving on committees or receiving training in television
    - Personal relationships are lost to the virtual world
    - Television talking heads may encourage the development of a cocoon or fortress mentality at AOC

*Arthur W. Pepin, Director, AOC New Mexico*

# What Aspects Seem Achievable?

- Modern technology infrastructure for cms, e-filing, edms, e-access for litigants, e-payments, e-disaster recovery (redundancy)
  - Virtual management of files, jurors, witnesses, interpreters, hearings

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# What Aspects Aren't Achievable?

- State infrastructure constricts courts' ability to use technology
  - Court use of video, centralized cms, etc. with limited state infrastructure makes use of technology akin to squeezing a camel through the eye of a needle
- Technology in the courts (cms, e-filing, edms) requires higher skilled staff
  - Job requirements will outstrip education to high school diploma
  - Higher skills require higher pay for "clerks" that will not be funded
- Standardization is a chimera - courts will inevitably "customize" any technology, resulting in confusion for litigants in different courts and increased costs for the entity that pays for the technology (AOC)
  - Achieving standardization would require ceding authority to central control and management, which will not happen as long as human beings guard the prerogatives of different courts/districts/levels

# What Would You Do Differently?

- Communicate to various constituencies the benefit to them of technology in their work life
  - No matter how much a technology will improve court operations or be more efficient, employees and judges will resist in both obvious and hidden ways until they are convinced their work will benefit
- Communication is a two-way street; get participation from the ground up and the top down on any major change;
  - Sell the future to those mired in the present
  - Reward enthusiasm; identify and promote champions
  - Recognize that not everyone agrees that a virtual interaction is as good as person-to-person in the same room

*Arthur W. Pepin, Director, AOC New Mexico*

# How Would You Get There Faster?

- Identify and commit to means of having the system pay for future advances without the Legislature having to write a check to the courts
  - Mandatory civil e-filing with pay-as-you-go fee funds criminal e-filing and/or cms
  - E-payments include fee to fund court automation
  - Volunteer RIF of employees through attrition on a 5-year or 10-year plan through gains in efficiencies from funded technology; a reduction in personnel costs from current employment levels in the courts

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# Comments

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New Hampshire Administrative Office of the Courts

# Is it desirable?

Absolutely

Courts must use the same tools to serve our constituents as successful modern institutions use.

- They are efficient and effective.
- The public expects to use these tools.



# Concerns:

Due Process trade-off is a trap for our growing population of self-represented litigants.

- One person's trade-off is another's critical right.
- Abstract discussion conceals real risks.

Increased productivity may come at the cost of constituent service.

Necessary fee increases may trigger opposition.

# (concerns)

Courts use:

- Personal contact.
- Solemnity of the courtroom.
- Professionalism of the office.
- Size and design of the building.
- Robed judges on raised platforms.

To foster public trust and confidence.

# What aspects are achievable?

- All

Not mentioned: future of court facilities

- Virtualization and commoditization will have a huge impact on court facilities
- Highly political issue

# What would I do differently?

Limit courts to core (constitutional) responsibilities:

- Dispute resolution. Period.

Get out of uncontested matters.

- Uncontested divorces.
- Estate administration.

Outsource to an executive branch agency.

- Outside the courts.
- Send disputes to the courts.

# (What would I do differently?)

Plan B: Process uncontested matters administratively.

- In the courts.
- Using less expensive hearing officers.
  - Motor vehicle violations;
  - Probate administration; and
  - Uncontested divorces.

# (What would I do differently?)

Consult with outside experts when planning.

They bring experience with improvements to:

- Productivity.
- Constituent service.

# (What would I do differently?)

Outsource administrative support tasks.

- Transcript preparation.
- Interpreter services.

# (What would I do differently?)

## Segment the workforce

- After hours data entry.
- Central call center.
- Courtroom support.
- Counter service.





Do not neglect IT security.

# How do we get there faster?

- Strong leadership.
- Dependable funding stream.
- Current infrastructure.
- Commitment to caseflow management.
  - Technology makes process changes possible;
  - Process changes increase productivity.
  - Facilitate cultural change.