

Developing IT for Courts – Ten Questions for Dory Reiling

(Interviewed by Professor Anne Wallace¹)

Dory Reiling Ph.D. Mag.lur. (1950) is a retired senior judge at the Amsterdam District Court. She was in charge of designing the digital procedures in the civil courts in the Netherlands. She was a senior judicial reform specialist at the World Bank and IT program manager for the Netherlands judiciary. She regularly lectures on court IT at universities, judicial academies and postgraduate schools and works as an IT adviser to judiciaries around the world. She is also a co-author of the World Bank Handbook on Justice Sector Assessments. She was the acting expert for the Consultative Council of European Judges (Council of Europe) Opinion 14 on information technologies and the courts. Her 2009 book *Technology for Justice, How Information Technology can Support Judicial Reform*, is widely available in print, on line and as an e-book. Her publications can be found on www.doryreiling.com, her tweets are on [www.twitter.com/doryontour](https://twitter.com/doryontour) and her **Technology for Justice** blog is on www.doryreiling.blogspot.nl



1. You've been in a unique position, as a Judge who has also studied court IT and now led a major project to design a digital courts process. Do you think judicial leadership is important for court IT projects? Are there disadvantages?

Judicial leadership is essential. My digital commercial claims procedure was part of the Quality and Innovation Program (Q&I) in the Dutch court system. The program involved the administrative and the civil jurisdiction. Its aim was to improve through legislation, digitalization and changing work processes, also at the appeal level. I was the product owner for the civil jurisdiction, and everyone agreed this role really needs a judge. Information technology has by now reached a level that enables digitalizing primary court processes. The requirements we were given included an entirely digital procedure, from filing to judgment delivery. Only court hearings are still face to face. We had to resolve issues with digital identification of parties, structuring case files, and digital case management. I am very proud of the solutions we found for all of those problems. Having achieved this, the entire process for handling a case, from filing to publishing a judgment, can now be done without a single scrap of paper. This is the domain par excellence of the judges. Consequently, they have to be the ones who are in charge of developing the new processes.

So far, judges generally do not consider digitalizing their core business, so that can be a disadvantage. But as I said in my book, legal scholars with knowledge of information technology, as well as informatics professionals who know about administering justice need to be in house for digitalization to be effective and successful. Judges will have to learn basic informatics, digital and business process design, program and project management. This can be a lengthy process, involving grooming promising candidates over a period of time. However, my judiciary now already has a learning track for judges aspiring to a management role, so why not for digital process development and management as well? This knowledge development is essential for judicial leadership over the digital procedures.

2. In 2009, in your book, you predicted that, over time, online transactions with courts would become the norm. The project that you have led is an example of one such recent efforts to introduce digitized court processes. But you also predicted that this would require major shifts in the way that courts and judiciaries work. Looking back, do you think you think that this norm will materialise soon or later than you would have predicted then? Why?

I have very mixed feelings about this. For one thing, the good news is that online transactions are now the norm in most of our daily lives. That helps with the shifts in court, since court staff also use online tools in their daily lives.

However, in the Q&I program experience, it was not so easy. My digital commercial claims procedure was implemented in two pilot courts. Digital proceedings were compulsory for all new commercial claims. By September 2018, over 2000 cases had been filed and dealt with. However, the procedure has not been implemented as planned in the other nine first instance courts. The main reason given was that implementation would be too much of an effort requiring too many resources. This complexity was the result of a large number of decisions, for instance in the new procedural legislation, that made development and implementation much more difficult than first foreseen. The shifts that are needed in the way courts work need to be carefully

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implemented. In fact, there was little willingness to change work processes. My impression is that the pilot courts were not sufficiently prepared for their pilot role, which is, tweaking the digital process in real time. So, although most people accept online transactions are the norm, implementing them in courts remains a concern. Clearly, there is no simple answer here.

3. What, in your view, is the most successful example of a Court IT project so far?

A successful court IT project effectively replaces a paper procedure with a digital process that conforms to the norm of a proper procedure as defined in the human rights conventions and is positively judged by the users. My sister project, for the administrative courts, is a good example. Administrative procedural legislation is relatively recent and allows for digital proceedings without difficulty. The Dutch courts have digitalized the asylum and immigration habeas corpus procedure effectively. It has been up and running in all courts since June 2017, and the users are happy with it. It allows for digital information exchange with the immigration service. The immigration service gets an automatic notification as soon as an immigration lawyer lodges an appeal. This makes for much faster hearing planning. Also, no one risks being arrested or detained because of inaccurate information. These are major improvements, especially for the asylum seekers. All told, success means procedures that leverage the potential of information technology to be fair, effective and user friendly.

4. What is the major lesson/s you would pass on from this experience?

My one major lesson is still to keep your process design and everything else as simple as possible. In my project, a large number of decisions, for instance in the new procedural legislation, made development and implementation much more complex than first foreseen. Ultimately, the Minister of Justice did not want to keep up funding to complete implementation. So, ask yourself if something is really necessary and keep everything as simple as you can. Keep in mind that every exception is a complication that causes extra cost. There will be enough complications coming your way anyway.

My other major lesson is to learn from experience in team work. We used Scrum/Agile product development, which I think is essential for any project to be successful. The Agile approach values individuals and interactions over processes and tools, working software over comprehensive documentation, customer collaboration over contract negotiation, and responding to change over following a plan. Software that works for the users is the most important goal. Scrum is a very effective way for professionals of different disciplines to work together. In our case, the project used Scrum/Agile, but the program management did not. This caused a lot of tension, with the program management and also with the courts. Court culture is not helpful with innovation.

5. In your book, you identified the importance of court culture as a significant factor in introducing IT in courts, for example, in systems of case registration. Can you give some examples from your experience that illustrate this?

Court culture is proving problematic in more ways than one. The example in my book deals with what courts consider normal when it comes to case disposition time. If a disposition time of one year is considered normal, that will also be the actual average disposition time. If, however, three months is considered normal, disposition time will hover around three months. During the project, I experienced a different aspect of that culture. The mindset needed for judicial work is less helpful in innovation processes. Judicial work involves working with past events, and usually deciding who is to blame for something that did not go right. Innovation means experimenting, and experimenting means testing, which will necessarily involve finding out what does not go right. But if this means being blamed for what did not go right, few people will want to take that risk.

6. You also identified the importance of tapping the experience of other courts, and identified some mechanisms for achieving this? Does this occur to a sufficient extent now and, if not, how could it be better facilitated?

More cooperation would be a great help to all of us. I recently visited Finland and Austria, and found they are dealing with the same issues that we had. In some cases, they had even come up with the same solutions. We can also learn from the courts in other parts of the world. Court systems tend to be very nationally oriented. That means they do not look to other systems for guidance as a matter of course. In Europe, there are many exchange programs and institutions that offer opportunities for exchanging experience in the legal domain. IT development is not usually regarded as part of the legal domain. But recently, there are some attempts at a more institutionalized form of exchange. The European Network of Judicial Councils holds an annual IT workshop, supported by a web site – now in the planning stage. The Commission for the Efficiency of Justice at the Council of Europe (CEPEJ) offers some support for such exchanges. There is also an extensive network of personal contacts. Most of those run through the Research Institute on Judicial Systems (IRSIG-CNR) in Bologna.

7. In your book, you also honed in on the potential that has been provided by IT, in particular, the Internet, for enhancing the capacity of courts to communicate with their users, by providing information that can improve access to justice and the ability of individuals to make more informed decisions about resolving their disputes, and for providing information about their work to the public (enhancing transparency and accountability.) Do you think that potential has been fully realized?

Actually, the only people in a position to answer this question would be the court users. In my book, I warned against letting legal professionals write the information for the users. My court system has understood that, and now communication professionals are in charge of the information service to the public and the court users. From the latest user survey, in 2017, I understand that users would like more accurate, more proactive and more user-oriented information service from the courts.

They also think the lack of e-filing facilities is antiquated. From what I can see, communications staff of the courts, the Judicial Council, and the digital proceedings help desk, use social media tools effectively to communicate with court users and with the general public.

8 You also concluded, in 2006, that 'Looking back, we can say that most courts have used IT to support their paper processes. Using technology for radical innovation in courts is rare.' Do you think that is still that case? Should there be more radical innovation, or is incremental change a better approach to introducing IT into judicial systems?

This, to my mind, is still the million-dollar question. It is quite possible to envisage IT-enabled service delivery that is radically different from the way judicial systems work at present. That may mean better service delivery for the court users. However, combining process innovation and introducing new IT is very complex to implement. Incremental change is easier to cope with in the courts themselves.

9. There is a lot of discussion now about the potential impact of AI on courts. What are your thoughts on this topic?

I did some work on this for the Netherlands Parliament, and later also for the Council of Europe. The full text of my advice is in my Technology for Justice blog. I wondered what proven AI technology would actually be helpful for the courts. One example is e-discovery as a recognized methodology for discovery in the US and the UK. It is useful for structuring large digital case files. The Civil Resolution Tribunal in Vancouver uses simple AI for its Solution Explorer, so for advisory services AI also has a role to play, as long as a human, armed with the advice, can decide the next step. Someone who gets an advice generated by AI should be able to decide that in this case, the advice does not solve the problem, and go to court. I have a big problem with the way the discussion is framed right now: with prediction software, human judges will no longer be needed. This makes any objection to AI look like a defence of the monopoly of human judges who are afraid of losing their jobs. The framing is also – and this is much more important – a fundamental misunderstanding of what judges and courts do. The discourse in courts is usually about what happened and about what that meant for the parties. Quite often, moral considerations come into play. So, it is not about applying the law to a simple, straightforward set of facts. In court cases, judges reduce complexity, but all court work is by no means complex, bespoke work. Courts do not process all cases in the same way, and consequently, they need information technology suited to the different ways. Therefore, AI can be useful for different types of court cases in different ways. Some forms of AI have already proven themselves in practice. But will robots replace judges, as some people have been claiming for more than twenty years? There is still no evidence to support it. Article 6 of the European Convention on Human Rights prescribes fair procedure. It will take a lot of work to make AI conform to that standard. Legal information is now largely laid down in documents, paper or digital. The information needs to be structured and given meaning, in order to make the information not only readable, but also actionable, including decision making. Providing an explanation, as required by a fair procedure, is, in the foreseeable future, not yet feasible for AI. AI can help people looking for information, parties in a case and judges with structuring information, and if legal information is enriched, also with advice and suggestions.

10. What would you see as the priorities for court IT at the moment? (Next 5 years?)

First: if courts and judiciaries want to benefit from information technology, they need to organize ownership. They should make sure the judiciary's governance is adequate for an information-based organization and for innovation. Building software for courts is no longer an issue. Implementing and then managing it is still uncharted territory for most court systems I know. Leading an information driven, innovation driving organization is radically different from managing a paper based bureaucratic organization. It involves understanding that digital court processes are the core business of the judiciary court processes, no longer a tool that comes in handy for some activities. They should also build knowledge within the judiciary by educating and training people in the judiciary and in the courts who can carry IT development forward. The court systems in Asia, for instance Singapore and Korea, provide good examples.

Second: if courts and judiciaries want to support enabling legal information for use by AI, they can help by structuring their output better. Structuring legal information is not a task just for courts; it should ideally be a cooperation effort for the entire legal community, including academia. It will enhance AI's capability to make justice more effective for everyone, jurists as well as everybody else.



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