



Justice System Change – a Personal Retrospective

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**PROFESSIONAL
ARTICLE**



ABSTRACT

This article presents the author's perspective on changes to court and justice systems over the past sixty years, focusing on those in which he was personally involved. Section One discusses efforts to improve discrete aspects of U.S. justice, beginning with initial bail reform efforts in the 1960s. Section Two contemplates large-scale justice system changes undertaken since the 1989 collapse of the Soviet Union in member countries that had been under authoritarian rule. The author views the changes in emerging democratic societies as very positive, especially with the emergence of strong professional associations supporting the changes. However, he cautions that practitioners committed to the rule of law and constructive change will confront major challenges in coming years as new waves of authoritarianism sweep across the globe. Despite the threats, the author is confident that further positive changes are achievable and sustainable.

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In the sixty years since I first started working in and with courts and other justice system institutions and agencies, they have undergone enormous changes in the United States and throughout the world. As but one example, the composition of the judiciary has changed remarkably. In the early 1960s, women were just beginning to become visible in law; now women hold significant leadership positions in courts and other key justice system entities in the United States and many other countries. And technology has had an enormous impact on courts. Sixty years ago, computers were only beginning to be used in a few justice systems. Now, computers and other technological innovations are commonly used for communications, information collection and analysis, and a myriad of other purposes, and artificial intelligence (AI) is presenting new challenges.

This essay draws on my experiences in the U.S. and other countries in helping to facilitate justice system changes that I think have made a positive difference in the quality of justice these systems can deliver. My perspective is grounded in practical experience, first as lawyer handling constitutional law cases in the 1960s, and subsequently as a researcher, teacher in justice-focused education and training programs, and consultant/technical assistance provider in a wide variety of justice-related settings in the U.S. and elsewhere. The examples discussed in the essay are drawn from my own experiences working with others — in courts, government agencies, nonprofit organizations, and other institutions — to achieve changes aimed at strengthening basic concepts of a democratic society and the rule of law.

In these examples, proponents of progress have been able to develop essential support and have managed to overcome obstacles to achieve significant positive change in justice systems. I have personally been involved in some aspects of the changes in justice systems in the U.S., including work on bail and pretrial release, court delay reduction, court performance standards, problem-solving courts, and efforts to prevent the conviction of innocent persons. I have also been involved peripherally in efforts to achieve major change in justice systems other than those in the U.S., changes that are far greater in scope. I admire the vision and broad scope of these efforts, the industry required, and the promise they hold for longer-term progress.

PROGRESS IN U.S. JUSTICE SYSTEMS

BAIL REFORM AND PRETRIAL RELEASE

Pretrial release and detention practices in the United States have long been characterized by the widespread use of money bail in states and localities. In a jurisdiction with a money bail system, a person arrested for violating the criminal law is subject to laws, policies, and institutions that function on the premise that freedom from incarceration before trial should be contingent on an arrested person's ability to post bail in an amount determined by a judicial officer. Money bail, with its built-in bias toward the affluent, has been subject to criticism for many years. Efforts to end the use of money bail have been at the forefront of efforts to achieve major justice system changes in the U.S., but the road toward reform has been lengthy and cluttered with obstacles.

The first serious attempts to reform American money bail systems began in the early 1960s, as part of the Kennedy administration's efforts to address the broad problem of poverty. In April 1961, Attorney General Robert F. Kennedy announced the appointment of a nine-member "Attorney General's Committee on Poverty and

the Administration of Federal Criminal Justice.” Headed by law professor Francis Allen, one area on which the committee focused its attention was the money bail system. Though the committee had only a modest expense budget, it managed to arrange for small-scale research by what was then a small organization called the Vera Foundation (later re-named the Vera Institute of Justice) that had begun working in the nascent field of bail reform.

Vera staff analyzed bail practices in the federal courts for the Allen Committee. It also separately undertook a ground-breaking experiment designed to study the effects of a reform-oriented theory about court practice: that many poor defendants could be released on their own recognizance if information about their background and ties to the community could be made available to the judge at the initial arraignment and bail setting. The research, conducted in a busy criminal court in Manhattan, New York, was one of the first experimental research projects undertaken in a court.

The results were striking: far more individuals could be released simply on their promise to appear if the judge presiding at the proceeding received verified information about the defendant’s character, criminal history, and roots in the community, instead of simply setting bail at a monetary amount. Further, the defendants who were released on their own recognizance returned for scheduled court dates at a higher rate than defendants released on money bail and were less likely to be sentenced to prison.¹

The results of the Vera research plus the interest of the Attorney General helped spark a nationwide interest in bail reform. By 1965, two national conferences addressing the issue of bail reform had been conducted with the support of the U.S. Department of Justice and at least 65 jurisdictions had started bail projects modeled on the Manhattan Bail Project. Core points about fairness and public safety in the existing money bail system were stated succinctly in a Justice Department publication written by Dan Freed and Patricia Wald for the 1964 National Conference on Bail and Criminal Justice: “The trouble with the present system is that by relying on money, it jails too many of the poor; it also protects too little against the dangerous.”²

Despite the momentum generated by the Manhattan Bail project, the support of the U.S. Justice Department, and passage in 1966 of a federal Bail Reform Act that effectively eliminated commercial bail in the federal courts, subsequent progress toward reform of the money bail system has been slow. Sixty years after the first national conference that addressed the inequities of money bail, commercial money bail remains prevalent in most state and local courts in the United States, though significant progress has recently been made in a few states.

Opposition to reform of the money bail system has many sources. These include bondsmen themselves, the insurance companies and other interests who benefit economically from the commercial bail system, law enforcement groups, some prosecutors, and others who are quick to say that bail reform is “soft on crime.” However, progress has been made, with the support of a loose coalition of individuals and nonprofit organizations committed to the goal of a pretrial system in which

¹ Charles E. Ares, Anne Rankin, and Herbert Sturz, “The Manhattan Bail Project; An Interim Report on the Use of Pre-trial Parole,” 38 *New York University Law Review* 67 (1963).

² Daniel J. Freed and Patricia Wald, *Bail in the United States* (Washington, D.C.: U.S. Department of Justice and Vera Foundation, 1964) at 110.

release of arrested defendants prior to trial is based on assessment of the risks of release rather than on a defendant's ability to post funds for release on money bail.

The risks of pretrial release are real. Defendants may fail to appear for a court date, engage in criminal activity, or threaten witnesses. The risks of unnecessary detention are also real: they entail liberty costs for detained persons and economic costs for the detainees, their families, and the communities that incarcerate them. The organizations that have succeeded in developing fairer bail and pretrial release systems have used a variety of approaches, including research, advocacy, litigation, and education of practitioners and policymakers. Although success has been slow, there has been significant bail reform in recent years in the states of Illinois, New York, New Jersey, California and elsewhere.

Why the recent successes? I think that those urging reform have used a variety of strategies: First, effective advocacy and education has sensitized an increasing number of policymakers and the attentive public to the feasibility of risk-based assessment as an alternative to money bail. Second, the reliability of risk assessment has improved. With ongoing research and development of software that can factor out built-in biases in criminal history information, there has been steady improvement in the information on relevant risks. Third, there is increasing evidence that the reforms work. They save money in reducing the usage of jail space and enabling arrested persons to remain employed. Additionally, defendants released without money bail have been highly likely to return for their court dates and violent crime rates have not increased as a result of the reforms.³

Bail reform has been a lengthy and arduous process, and is still far from fully accomplished in the U.S. But the changes in the functioning of local justice systems because of the reforms have been real and significant. The revised systems function more fairly, detain fewer people unnecessarily, and are less biased against the poor.

DELAY REDUCTION AND CASEFLOW MANAGEMENT

Delay in the resolution of cases by the courts is a pervasive and long-standing problem in many societies. In the United States, efforts to conduct research on issues of congestion and delay in criminal and civil cases got underway in the 1950s and accelerated during the 1970s and '80s, as professionally trained court administrators became increasingly involved in the management of courts. They paid attention to the research and were instrumental in building upon what was learned. A key finding from the research was that court delay was not explainable solely because of too many cases and too few judges. While the resources available to courts are important factors, there was clear evidence that effective practices in managing cases and caseloads could make a difference in the speed with which cases are resolved.

Under traditional practices in the U.S., the pace of litigation was generally left to the litigants and their lawyers. Judges in most courts presided over the resolution of disputes that came to them, but neither they nor a court's clerk or administrator was regarded as responsible for the efficient management of individual cases or for the overall caseload. There were no guideposts for the time within which cases of

³ See, e.g., *Former Gov. Chris Christie Leads Bipartisan Discussion of Success of New Jersey's Risk-Based Bail*, a news release published online by Arnold Ventures on March 27, 2023. Arnold Ventures is a philanthropic organization that has supported bail reform efforts in the U.S. Its web site has information on other bail reform efforts in the U.S.

different degrees of complexity should be resolved. However, during the 1950s and '60s, a few judges, including some chief judges, experimented with new approaches, setting guidelines for completion of stages of the pretrial process and monitoring compliance with the deadlines.

Importantly, these judges typically worked well with their clerks and consulted with others who had roles in the case processing system, regarding appropriate ways to address delay, both in individual cases and for overall caseloads. Initial research on the effectiveness of the new approaches of judges engaged in active management of the pretrial process confirmed their effectiveness in comparison with traditional practices. The research upended the traditional approach to handling cases in many places.

Maureen Solomon, a researcher and court consultant, first coined the term “caseflow management” to describe the active management of a continuum of activities that take place within a court from the time of filing to disposition, regardless of the method of disposition. She described the goals of this management process as including expeditious resolution of all cases, consistent with fairness to all parties; better quality of litigation; ensuring equal access to the adjudicative process for all litigants; and minimizing uncertainties in the process.⁴

Ms. Solomon and other researchers who focused on caseflow management and delay reduction used somewhat differing terminology in describing key factors relevant to effectively managing caseloads and minimizing delays in trial courts. However, they all brought out the importance of clear goals (including standards for the time within which cases of different types should be expected to be concluded), effective leadership, and the importance of judges and staff working collaboratively, using information to monitor the progress of cases and caseloads. Importantly, this research made it clear that trial court delay is not inevitable. Efficient systems could be developed and implemented, and such systems would be fairer for everyone involved. The research showed that a number of courts handled their cases very expeditiously. And, where lengthy delays had existed, some courts had been able to reduce them significantly using the new management techniques.⁵

In the U.S., the impact of research on court delay issues was reinforced by educational programs that brought the research directly to practitioners. Courses in caseflow management were presented by organizations such as the National Judicial College, the National Center for State Courts, the Institute for Court Management, the Federal Judicial Center, and the Justice Management Institute. Innovative workshop programs that brought together teams of practitioners—for example, a chief judge, court administrator, prosecutor, defense attorney, and probation officer from a jurisdiction—helped all the team members realize that caseflow management in the court was a justice system problem, not simply a problem for the court. The leadership and

⁴ Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association Commission on Standards of Judicial Administration, 1973) at 1–2.

⁵ See, e.g., Steven Flanders et al., *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977); Thomas W. Church et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (Williamsburg: National Center for State Courts, 1978); Ernest C. Friesen et al., “Justice in Felony Courts: Report on a Study of Delay in Metropolitan Courts During 1978–79,” *Whittier Law Review* (1979) at 7–60; Larry L. Sipes et al., *Managing to Reduce Delay* (Williamsburg, 1980); David W. Neubauer et al., *Managing the Pace of Justice: An Evaluation of LEAA’s Court Delay Reduction Programs* (Washington, D.C.: National Institute of Justice, 1981); Barry Mahoney et al, *Changing Times in Trial Courts* (Williamsburg: National Center for State Courts, 1988).

perspectives of practitioners who had different experiences and different institutional perspectives would be important for developing effective plans for addressing multifaceted justice system issues.

PERFORMANCE STANDARDS

The emphasis on goals or standards as a key component of effective caseload management, coupled with increasing public expectations on the accountability of public institutions throughout government, led in the late 1980s to formation of a national commission on trial court performance standards. Organized by the National Center for State Courts, a 23-member Commission on Trial Court Performance Standards came up with 22 standards, with accompanying measures, that could be used to assess the performance of a trial court in the United States. The standards were grouped into five areas: Access to Justice; Expedition and Timeliness; Equality, Fairness, and Integrity; Independence and Accountability; and Public Trust and Confidence.⁶

Publication of these standards marked a significant milestone in thinking about courts, shifting the focus of attention to the performance of courts as institutions, rather than their structural organization or the activities of individual judges. Importantly, they set expectations for what courts *should* accomplish and articulated the importance of courts preserving their distinctiveness as entities in an independent branch of government. The standards explicitly acknowledged the public interest in effective court performance and provided a framework for legislatures and other bodies to hold the courts accountable for what they did.

When the first trial court performance standards were adopted by some trial courts in the U.S., the measures used to assess actual performance were revised in the initial stages of implementation. Subsequently, they have been further revised with increased attention to the perspectives of court employees and the public. New performance standards have been developed for appellate courts, measurement methods have been improved, and tools for implementing the standards have been made easily usable through technological innovation.

PROBLEM-SOLVING COURTS

In the July 2017 issue of this *Journal*, Caroline Cooper aptly described the origins and evolution of drug courts and other treatment-oriented courts developed in the United States over what is now a period of more than thirty-five years.⁷ In their focus on using the leverage of the criminal justice process to focus on improving the lives of individuals who have become defendants or probationers enmeshed in the justice system, and their emphasis on collaborative partnerships with public health practitioners, these courts are very different from traditional courts that focus on the factual guilt or innocence and the appropriate sanction for a defendant found guilty

⁶ Commission on Trial Court Performance Standards, *Trial Court Performance Standards with Commentary* (Williamsburg: National Center for State Courts, 1990).

⁷ Caroline S. Cooper, "Drug Treatment Courts and Their Progeny: Overcoming Their Winding Trajectory to Make the Concept Work for the Long Term," *International Journal for Court Administration*, Vol. 8, No. 3, July 2017. As the article notes, in the years since its origin the drug court concept has been adopted (in a variety of forms) in every American state and in over 20 other countries.

of violating the law. They have presented a very different model of what a justice system can achieve in addressing the situations of individuals and of society.

Drug courts were developed at the grass-roots level, by judges and other justice system professionals who recognized that traditional methods of handling cases involving drug-afflicted minor offenders were simply contributing to a cycle of repetitive convictions of individuals whose behavioral problems remained unchanged. The approach — led by judges committed to a non-adversarial problem-solving approach — has contributed to better outcomes for thousands of individuals and to broader understanding of the problems of substance abuse, addiction, and recovery.

The emphasis of all the practitioners in the early drug courts—including the prosecutors and defense attorneys—was on getting the defendant into a substance abuse treatment program that, when combined with close oversight by the court, would really work. The goal was to end the all-too-common cycle of drug use, arrest, jail, and release from custody, followed by renewed drug use and re-arrest. They were treating drug-abusing defendants as people — not as faceless “cases”— and doing their best to enable these people to escape the scourge of drugs.

Participants in the drug courts were required to make frequent appearances before the drug court judge to review their progress on an individual basis. The court atmosphere was empathetic rather than punitive, with the judge and everyone in the courtroom seeking to provide support that could lead to success. Relapses often occurred in the early weeks of a person's participation in the drug court program, but often the intervals between relapses increased and the relapses became less severe. If the person stayed drug-free for an extended period, he or she was eligible to graduate and have pending charges dismissed.

I attended many of these graduations over the years, and they were always deeply moving. The graduates were recognized for what they had accomplished. Typically, they would stand with newly found dignity, facing an audience that often included members of their own families sitting on benches in the courtroom. They would speak of their struggles, the help they had received, the changes made in their lives, and what those changes meant to themselves and their loved ones. The drug court changed lives for the better.

The basic collaborative problem-solving approach epitomized by drug courts has been adapted in many different ways in different places, and has gradually been extended to other spheres, including drunken driving, mental illness, and homelessness. Beyond helping to reclaim many individual lives, the basic drug-court approach has contributed to the potential for judicial officers, when they have a truly neutral role and the respect such a role commands, to play a significant part in multi-disciplinary approaches to addressing major social problems.

WRONGFUL CONVICTIONS

Courts in the U.S. have historically been very resistant to the idea of entertaining claims of innocence made by a prisoner who has been convicted of a crime and has exhausted all possible appeals. Courts have generally taken the position that if prisoners' claims of innocence were to be heard routinely, there would likely be unending streams of “actual innocence” claims made by convicted persons. Once there has been a trial or a plea of guilty and appeals have been exhausted, there has historically been little room for further review.

Judges and prosecutors, particularly, have been staunch defenders of the reliability of U.S. justice systems, reluctant to consider the possibility that someone might have been convicted despite being innocent of the crime. But what if there is irrefutable evidence that a person was innocent of the crime of which he or she was convicted?

The first U.S. exoneration of a convicted person based on proof from DNA evidence took place in 1989. As DNA evidence proved the innocence of others during the 1990s, including the innocence of some individuals who had been sentenced to death and were awaiting execution, the issues of how justice systems should deal with the conviction of innocent individuals, or the risk of such convictions, became increasingly salient. Change was needed.

Lawyers and journalists exploring the cases involving exonerations found that there were identifiable reasons for wrongful convictions. The most common was a witness's mistaken eyewitness identification of the wrongfully convicted person. Other reasons found in multiple cases included faulty evidence of forensic examinations (e.g., evidence of bite marks, hair samples); introduction of false confessions induced through interrogation; other misconduct by police or prosecutor, such as withholding of evidence that would tend to show a defendant's innocence; ineffective defense lawyering (such as failure to explore evidence of an alibi); and introduction of false evidence provided by an informer.⁸

As the evidence of multiple instances of wrongful conviction proliferated during the 1990s and early years of the twenty-first century, justice system policymakers and practitioners took notice. In 2003, a National Conference on Preventing the Conviction of Innocent Persons brought together teams of practitioners from states or local jurisdictions who had indicated interest in addressing the problem of flawed convictions. The conference was followed by other educational efforts in the states and in local agencies, many of which focused on specific methods and techniques for addressing the flaws. For example, the risk of mistaken eyewitness testimony could be minimized by techniques such as ensuring that a lineup of live individuals or photographs is conducted by someone other than the investigator of a crime and that steps are taken to minimize the possibility that a witness may be guessing at the identity of a suspect.

Once the problems had been aired and there was increasing evidence that they could be addressed — by measures that included revised procedures, better training, and in some instances new legislation — other innovations were developed. In recent years there have been a number of changes in criminal justice processes in states and local jurisdictions across the country that are aimed at reducing the risk of mistaken convictions. These include revised procedures for asking victims to identify crime suspects, training for police and prosecutors on avoiding “tunnel vision” by pursuing all plausible leads in an investigation even when a primary suspect has been identified, using audio and video recording of police interrogations, and improved standards for forensic testing of suspected evidence.

Additionally, there has been some increase in efforts to provide redress for wrongful convictions when they have taken place. These include the establishment in some states of criminal case review commissions to consider claims of actual innocence

⁸ See Barry Scheck, Peter Neufeld, and Jim Dwyer, *Actual Innocence* (New York: Doubleday, 2000); Jon B. Gould, *The Innocence Commission* (New York and London: New York University Press, 2008). For more current information, see generally the websites of the National Register of Exonerations and the Innocence Project.

and providing substantial compensation to persons who have been imprisoned but later shown to be innocent.⁹ An especially interesting development has been the establishment in some major prosecutors' offices of "conviction integrity units" that examine claims of innocence made by persons convicted after prosecution by the office. In many instances, these units have found critical flaws in police, forensic lab, or prosecutorial practices that led to the conviction of an innocent person. And increased awareness of the reality that mistakes can be made in criminal cases may have contributed to the marked decrease in imposition of capital sentences in U.S. courts.

CROSS-NATIONAL JUSTICE SYSTEM INNOVATION

MAJOR SYSTEMIC CHANGE

The 1989 fall of the Berlin Wall and subsequent implosion of the Soviet Union enabled over a dozen Central and Eastern European countries to declare their independence and to pursue implementation of core democratic concepts including the rule of law and an independent judiciary. Those efforts have involved significant institutional reforms, taken time to accomplish, and often been impeded by defenders of the former system. The changes that have been achieved are of a far greater order of magnitude than the incremental justice system changes in the U.S. that are discussed in the first part of this essay.

Often, new constitutional provisions were necessary, and new laws and regulations would be essential. Support had to be found for fundamental change. Historically, courts in these countries had been subordinate to the executive or to the Communist party. Having an independent judiciary involved the creation of new organizational structures and administrative practices at the national, regional, and local levels. Sometimes it also required changes in the facilities, equipment, and day-to-day practices of trial and administrative courts, with accompanying changes in the roles and training of judges and staff.

Most important, these changes introduced a new era of openness and transparency in civil and criminal justice system operations and outcomes. They offered the public markedly improved understanding of how justice functions, enabling greater participation of civil society in the work of courts including an ability to monitor officials charged with administering the system. They also involved implementing new methods of vetting, qualifying, and training judges to improve their ability to understand, interpret, and apply the law on its merits.

The factor most difficult to reform has been the culture of corruption, inherited from the former regimes. Corruption pervaded to varying degrees the core institutional frameworks of government, including justice systems, in all these emerging democracies. Corrupt practices have a corrosive effect on the legitimacy of government and on the rule of law. Reformers have sought to address the issue through new laws and regulations and the recent creation in some countries of anti-

⁹ The concept of having a special commission to examine claims that a person had been wrongly convicted had been recommended in the U.K. in 1991 by a Royal Commission on Criminal Justice and adopted in 1997 with the establishment of an independent public body, the Criminal Case Review Commission (CCRC). The idea was picked up and recommended by the authors of the best-selling book *Actual Innocence*, and subsequently adopted by several states in the U.S. and in Canada. See, e.g., Gould, *supra* note 8 at 34–41.

corruption bureaus and courts empowered with the authority to impose meaningful sanctions for serious violations.¹⁰

At the national level in these emerging democracies, development of an independent judiciary would typically involve designation of a central organization overseeing the organization and operation of the courts. This was sometimes an entity within an existing Ministry of Justice (or similarly titled entity that had been a part of the central government), sometimes a new independent entity. Optimally these new central court-system oversight bodies would be tasked with administering the judiciary with the involvement of judges and senior-level court staff members. It would also have a substantial degree of autonomy, while still subject to independent oversight. It could develop and manage its own budget, seek necessary appropriations from the appropriate body, and conduct a variety of operational activities.

The activities commonly undertaken by new centralized court administration bodies include presenting education and training programs for judges and staff, purchasing major equipment, recruiting new judges and staff, constructing, or renovating court facilities, organizing committees of judges and staff, and developing the capacity for effective relationships with the public, the media, and other government officials. At the local and regional levels there are often major challenges regarding the same issues, such as recruiting and training new staff and implementing effective systems for managing and securing files.

At every level of courts, the changes could range from introducing new computers and software systems to standardizing the size of papers and forms used in court proceedings to adopting new approaches to managing cases and caseloads. The roles of judges and staff have often changed considerably, with clerks and other senior-level staff taking on new management responsibilities, including learning to work effectively in teams. These are fundamental organizational changes, achieved to varying degrees in the countries that have undertaken them in pursuit of truly independent judiciaries, and are important for making these judicial systems more efficient and transparent to key stakeholders including the public.

In some countries, the justice system changes have included transitioning from an inquisitorial system of litigation to an adversarial one in criminal cases, with accompanying need for educating judges, lawyers and staff about new laws, procedural rules, and their own roles in the judicial process. Sometimes, especially in countries moving to an oral-adversarial system for criminal litigation, new methods of making a record of a hearing or trial have been introduced, replacing the former system of a judge dictating summaries of the proceedings. The new systems provide for a stenographic or electronic (audio or video) system for making a record that could be used for an appeal – a major change from past practice.

PROFESSIONAL COURT MANAGEMENT

As key components of an independent judiciary, the ideas of modern court management, caseload management, and court performance standards have gained currency. To effectively administer such a new system, development of a cadre of trained administrators is essential. With governmental support and assistance from an

10 See, e.g., Victoria Jennett, *Fighting Judicial Corruption: Topic Guide* (Transparency International, 2014); Matthew C. Stephenson and Sofie Arjon Schutte, *Specialized Anti-Corruption Courts—A Comparative Mapping*, (Chr Michelsen Institute, 2022).

array of international organizations, new positions (for example, a professional court administrator, other senior staff positions requiring training) have been identified. New procedures for managing cases and caseloads, as well as managing human resources and budgets, have been put in place or modified from their previous forms. Court managers educated and experienced in public and legal administration are now key actors in many local courts as well as in central court administrative bodies.

Internationally, efforts to reform judiciaries and courts were first initiated largely in countries in central and eastern Europe during the 1990s and early years of the 21st century. Since then, however, similar efforts to modernize justice systems have been initiated in many post-colonial societies formerly dominated by western powers, sometimes with both colonial and authoritarian legacies to be overcome. The challenges are often similar in many respects to those faced by emerging democracies in central and eastern Europe, with a panoply of legal, organizational, personnel, and operational issues to be addressed.¹¹ The basic goals are the same: work toward having judicial systems that are self-governing, independent of the executive or other malign influences, transparent in their operations, and committed to the rule of law.

I have personally had experience with significant changes aimed at modernizing the judicial systems of countries as diverse as Mexico, Kosovo, Ukraine, and Saudi Arabia. Proponents of court system modernization have drawn on ideas and techniques that have proven successful elsewhere to establish new structures and procedures that fit with the cultures of their countries.

INTERNATIONAL PERFORMANCE STANDARDS

Not long after the concept of court performance standards was introduced in the U.S., it attracted interest from academics and government officials in other countries. In 2007, a consortium that included the National Center for State Courts and three other court-related institutions with experience working in courts drew on the court performance standards in developing a broadly applicable set of guidelines known as the *International Framework for Court Excellence*.

In recent years, both the U.S. court performance standards and the international framework have been revised, expanded, and made far more easily accessible and usable for those interested in improving the operation of courts throughout the world. The idea of courts undertaking a self-assessment, using performance standards and measures, has gained currency in many countries. For good reason: the process of developing performance standards and measures compels practitioners and policymakers to focus on understanding why courts are important in societies, on the key aspects of their organization and operations, and on practical ways to determine how effectively they are functioning.¹²

¹¹ For useful discussion of organizational and conceptual challenges faced in implementing reforms aimed at increasing transparency, accountability, and meaningful judicial independence in newly independent nations, see, e.g., Ingo Keilitz, "Viewing Judicial Independence and Accountability Through the 'Lens' of Performance Measurement and Management," *International Journal for Court Administration*, Vol. 9, No. 2 (Dec 2018); Samantha Joy Cheesman, et al., "Judicial Reforms and Challenges in Central and Eastern Europe," *Id.*, Vol. 14, No. 2 (Sep 2023).

¹² For an example of the adaptation of court performance standards in one country, see the document approved by judges of Ukraine: Council of Judges of Ukraine, *Court Performance Evaluation Framework: Standards, Criteria, Indicators and Methods* (Kyiv: English language version, U.S. Agency for International Development Fair Justice Project, 2015).

With performance standards established, judges, administrators, other justice system practitioners, and the public at large can assess the actual functioning of courts and have a basis for making ongoing improvements in their operation. The International Framework for Court Excellence has now been translated into many different languages and been implemented in a variety of ways in over a dozen different countries.

OPPORTUNITIES AND CHALLENGES AHEAD

In Europe, the establishment in 2002 of the European Commission for the Efficiency of Justice (CEPEJ) marked a recognition of the desirability of international collaboration on ways to improve the administration of justice in the constituent states of the Council of Europe. Two years later, the formation of the International Association for Court Administration (IACA) created a non-governmental vehicle for the interchange of information and ideas on evaluating and improving judicial administration through conferences, other educational programs, and this *Journal*. Both have been influential in the exchange of information and ideas about court and justice system improvement.

The development of international organizations and associations such as IACA, CEPEJ, and the International Consortium for Court Excellence should be helpful for future work on justice system improvement. Both the International Consortium and CEPEJ have refined the early work on court performance standards and have introduced measures and tools that enable court practitioners to make practical use of such standards.¹³ One result of the international collaboration and interchange of ideas has been the gradual development of a world-wide community of justice system practitioners devoted to constructive change in the functioning of courts as key institutions in democratic societies. The international conferences organized and conducted by IACA throughout the world have strengthened this community and helped to build a shared global commitment to improve court and judicial systems.

Practitioners committed to the rule of law and constructive change in justice systems will face major challenges moving forward. The years ahead are likely to see accelerating societal and technological changes, continued tension between ideas of individual liberty and public safety, and further resistance in some places to the concepts of rule of law and judicial independence.

The U.S. is challenged by the need to improve the availability of competent legal assistance for those enmeshed in both criminal and civil cases, reduce the gross over-reliance on incarceration, reduce the disproportionately high numbers of racial and ethnic minorities ensnared at all stages of the criminal process, and generally improve the fairness with which the system functions. And throughout the world, justice systems in democratic societies will have to contend with authoritarian forces antithetical to the rule of law and independent judiciaries.

Recent events indicate that we are in a new era, one in which the judiciaries and justice systems in democratic societies, including Israel, Poland, Hungary, Romania, Brazil, Argentina, Mexico, and the U.S., are under attack by radical elements seeking to undermine their independence and diminish their authority while enlarging the scope of executive power. In the U.S., the Supreme Court's recent decision on providing

¹³ See, e.g., the websites of the International Consortium for Court Excellence (ICCE) and the European Commission for the Efficiency of Justice (CEPEJ).

for presidential immunity for at least some types of criminal acts undermines a fundamental concept of a democratic society: that no individual is above the law.¹⁴ While the full import of the majority's decision has yet to be determined, it appears to greatly expand the executive authority of the president and to sanction some "official acts" that may involve criminal elements for which legal accountability has vanished.

In many countries, including the U.S., well-funded interests have made concerted efforts to influence judicial selection and fill vacancies with their allies, seeking to undermine or discard well-established rule of law norms and practices. Resistance to these efforts will require sensitizing the public, urging its careful and continuing assessment of what is going on, developing effective strategies to counter the efforts, and emphasizing the importance of exercising the right to vote.

While the challenges ahead for courts and overall justice systems may be substantial, I believe that positive changes are achievable and that reactionary efforts to undermine well-functioning justice systems can be defeated. Regardless of whether a proposed change is national or local, major or incremental, I think there are some common elements that are valuable (often essential) for success. These include having a clear vision of what is sought to be accomplished, effective leadership, an ability to build supportive coalitions, the capacity to gather and use information effectively, and skills in communications and the use of technology. Persistence, too, will be important. As we have experienced, justice system change is often a very lengthy process.

For effective change to be accomplished and preserved, a commitment to effective education and training will also be important. Leaders and practitioners at all levels need to know why a change is proposed, how it can be accomplished, what techniques will be employed, and the likely effects of the proposed change on their lives. The professional associations of judges, court managers, and other justice system practitioners, as well as organizations that have expert staff members and work closely with justice system practitioners, should be valuable allies in accomplishing constructive justice system change. Their research, educational and training programs, and direct consulting assistance have been instrumental in much of the constructive change that has taken place in courts and justice systems over the past half-century.

My own involvement in efforts to help make change in justice systems has left me convinced that positive change is possible, though there are bound to be obstacles along the way. Looking back, I can see that much has been accomplished over the past sixty years, as well as much that remains to be done. I am grateful for having had the opportunity to work with many excellent colleagues in collaboratively seeking to contribute to some of the accomplishments. I am optimistic that progress in improving justice systems as essential elements of a democratic society will continue and that their core values can be preserved and enhanced.

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¹⁴ Trump v United States, 603 U.S. ____ (July 1, 2024).

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14

COMPETING INTERESTS

The author has no competing interests to declare.

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