



Volume 53 | Issue 5

Article 7

2008

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Recommended Citation

Rebecca L. Kourlis & Pamela A. Gagel, *Reinstalling the Courthouse Windows: Using Statistical Data to Promote Judicial Transparency and Accountability in Federal and State Courts*, 53 Vill. L. Rev. 951 (2008). Available at: <https://digitalcommons.law.villanova.edu/vlr/vol53/iss5/7>

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REINSTALLING THE COURTHOUSE WINDOWS: USING
STATISTICAL DATA TO PROMOTE JUDICIAL TRANSPARENCY
AND ACCOUNTABILITY IN FEDERAL AND STATE COURTS

REBECCA LOVE KOURLIS & PAMELA A. GAGEL*

COURTS and individual judges can now gain access to general statistical and case management data due to the growing capacities of information technologies, and the continuing development of electronic management systems. Historically, such data has not been easily accessible, or even available, either to external or internal constituencies.¹ This paper examines some of the benefits of enhanced access, and the limitations and challenges of current access at both the federal and state level. Specifically, the paper compares and contrasts the benefits of the largely uniform information management system used by the federal courts with the limitations presented by the lack of uniformity in state court information management systems. The paper then addresses how this statistical data is—and might be—utilized to advance “evidence-based best prac-

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The authors gratefully acknowledge the significant contribution to this paper by Jordan M. Singer, Director of Research of the Institute for the Advancement of the American Legal System.

1. See, e.g., THOMAS CHURCH, JR. ET AL., JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS 4 (1978) (explaining that “[i]n a number of instances, information on individual courts is incomplete because of a lack of reliable data” regarding study of nineteen urban trial courts); STEVEN FLANDERS ET AL., CASE MANAGEMENT AND COURT MANAGEMENT IN UNITED STATES DISTRICT COURTS 109 (1977) (noting that list of cases reviewed in seminal Federal Judicial Center study had to be provided by Administrative Office of Courts); JOHN GOERDT ET AL., EXAMINING COURT DELAY: THE PACE OF LITIGATION IN 26 URBAN TRIAL COURTS, 1987 at 10 n.18 (1989) (acknowledging that courts with “noncomparable data” were generally excluded from study’s correlation analysis). Recent commentators have also bemoaned the lack of public access to certain case filings. See Seymour Moskowitz, *Discovering Discovery: Non-Party Access to Pretrial Information in the Federal Courts 1938-2006*, 78 U. COLO. L. REV. 817, 875-78 (2007) (arguing against Federal Rule of Civil Procedure 5(d)’s restriction on filing discovery requests with courts).

tices”² and to measure performance of the courts and individual judges in order to increase transparency and accountability.

I. INTRODUCTION

How courts operate is a matter of both internal and external concern. Judges should be able to review their workloads, case statistics and comparative data in order to monitor and improve their own performance. Similarly, court administrators should use the data to assure even workflows and identify glitches. The public should have access to the data for accountability purposes: to monitor what work the court is doing and how efficiently that work is done. Lastly, researchers and court observers should be in a position to compare practices between different courts and judges based on complete and accurate data, which may allow jurisdictions to build upon one another’s accomplishments and avoid one another’s mistakes.

Currently, state courts utilize a wide variety of information management systems. These systems differ not only from state to state, but in some states from county to county, thereby exacerbating the challenge of collecting comparative empirical data. The lack of consistency in state court data gathering and measurements hinders the ability to identify problem areas, effectively measure innovations implemented in state courts or measure the performance of courts and individual judges.

By contrast, the federal courts use a single information management system known as Case Management/Electronic Case Files (CM/ECF).³ The CM/ECF system provides greater consistency than state court systems can offer with respect to data collection and analysis of case management procedures and practices that may be associated with variations in civil case disposition times and litigation expenses. Coupled with CM/ECF is an electronic access service called Public Access to Electronic Court Records (PACER), which allows users to obtain case and docket information and a limited number of reports from federal courts through the internet.

Advances in information technology present many opportunities to increase transparency and accountability in both the federal and state judicial systems. Technology enhances the ability to share information both internally and externally—information that, in the hands of a court dedicated to serving the public, can be used to identify and implement best practices. Courts, however, have been reluctant to embrace these technological advances and make statistical and case management data easily ac-

2. See Ingo Keilitz, *How Do We Stack Up Against Other Courts? The Challenges of Comparative Performance Measurement*, 19 CT. MANAGER 4, 27-28 (Winter 2004-2005) (discussing evidence-based practices).

3. See U.S. Courts, *Case Management/Electronic Case Files (CM/ECF)* (March 2008), http://www.uscourts.gov/cmecf/cmecf_about.html (noting how CM/ECF system is used in all ninety-four federal district courts and several other federal courts).

cessible for many reasons. Those justifications range from budget constraints to the need to protect individual privacy in the data maintained by the courts.⁴ Courts and individual judges are also concerned about the meaning of “transparency” and “accountability,” and the extent to which examination of statistical data will be used to challenge judicial independence. To some extent, this is a legitimate consideration. These institutional fears inhibit the goal of judicial excellence and the implementation of innovations to improve court process. Thus, it is important to set the ground rules on the intended purpose of the data collection in order to alleviate these concerns and speed the development of transparent information systems and procedures.

In order to frame this discussion, it is important at this stage to provide a context and working definition of the concepts of the terms “transparent” and “accountable.” “Transparent” is defined as readily understandable,⁵ and full, accurate and timely disclosure of information.⁶ “Accountable” is defined as responsible, answerable⁷ or capable of being explained.⁸ Transparency facilitates accountability.⁹

Part I of this paper focuses on the development of the CM/ECF and PACER systems and briefly discusses an empirical research project on federal court data currently being conducted by the Institute for the Advancement of the American Legal System at the University of Denver (IAALS). That project provides a specific example of the use of data both as a window to determine where the system breaks down, and to examine the nuts and bolts of effective best practices.

Part II explores the current limitations of gathering the same empirical data from state courts, and discusses ongoing efforts by state courts and interested groups to achieve greater consistency both within states and among states in the collection of statistical data and use of common definitions.

Finally, Part III summarizes the benefits and limitations of a uniform information management system and the potential benefits for state courts as they aspire to implement more uniform systems. This discussion also considers the potential for robust, comprehensive and consistent data collection and reporting to guide courts toward best practices for individ-

4. This paper does not address the current dialogue concerning the broader issue of the balance between public access and individual privacy rights. Resolution of that issue will possibly place even more limitations on access to the statistical data that does exist.

5. WEBSTER'S II NEW COLLEGE DICTIONARY 1200 (3d ed. 2005) [hereinafter WEBSTER'S].

6. Dictionary.com, Transparency, <http://dictionary.reference.com/browse/transparency> (last visited Mar. 29, 2008).

7. BLACK'S LAW DICTIONARY 20 (8th ed. 2004).

8. WEBSTER'S, *supra* note 5, at 8.

9. See Made2Measure, <http://made2measure.blogspot.com> (June 4, 2007, 11:33 EST) (noting that transparency facilitated “openness, communication, and accountability”).

ual and collective case management, thereby facilitating accountability and transparency.

II. FEDERAL COURTS

A. Background

The first computer was used in the federal courts in 1975; by 2001, all federal courts were interconnected by a nationwide system of software applications designed to facilitate collection of judicial statistics.¹⁰ Interest in statistical reporting concerning the courts grew almost as rapidly during the same quarter-century. In 1977, the Federal Judicial Center published a study of case management in ten federal district courts.¹¹ This project was “the first systemic attempt to relate procedures used in different districts to their statistical results.”¹² The 1977 report includes an excellent statement of both the problems and goals associated with increased access to statistical data:

Like the practice of law generally, the federal court system is highly localized. Few judges or lawyers regularly work on matters of day-to-day procedures with their counterparts in other states. For that reason, it is widely assumed in courts (often incorrectly) that “what is, must be.” Although individual judges frequently visit other districts, they rarely have an opportunity to look in a systemic way at the practice of law in other districts, or to examine the factors that may lead to statistical differences between their own districts, and others. Indeed, in large courts there are few opportunities for judges to learn in detail the procedures used by other judges of the same bench. A central purpose here is to assist judges and courts in learning from one another’s experience.¹³

The extensive data collected for the 1977 study led to a series of important conclusions about case management in the federal courts. Among those conclusions were that fast and/or highly productive courts have an automatic procedure for monitoring pleadings, commencing discovery quickly and moving if necessary to a prompt trial; that differences in case complexity cannot account for differences in overall disposition time; and that oral arguments do not contribute to court delay.¹⁴

10. See COMM. ON COURT ADMIN. & CASE MGMT., THE JUDICIAL CONFERENCE OF THE U.S., CIVIL LITIGATION MANAGEMENT MANUAL 131 (2001), available at [http://www.fjc.gov/public/pdf.nsf/lookup/civlitig01.pdf/\\$file/civlitig01.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/civlitig01.pdf/$file/civlitig01.pdf).

11. See generally FLANDERS, *supra* note 1.

12. *Id.* at ix.

13. *Id.*

14. See *id.* at ix-xi (discussing conclusions of 1977 study).

The 1977 study produced a flurry of additional statistical studies of state and federal courts in the 1980s.¹⁵ Although the federal system evinced an early recognition of the benefits of sharing and comparing data, it was not until the passage of the Civil Justice Reform Act of 1990 (CJRA)¹⁶ that federal courts were required to conduct a self-assessment and to develop a plan for civil case management designed to reduce costs and delays.¹⁷ The CJRA also required the Director of the Administrative Office of the United States Courts to ensure that each court had the automated capability to readily retrieve information about the status of each case in the court.¹⁸ In order to achieve this capability, the Director was to prescribe the information to be recorded in the automated systems—and the standards for uniform categorization of judicial actions—in order to record those actions in the automated systems.¹⁹ The CJRA specifically required that the uniform standards explain what constitutes dismissal of a case, and include standards to measure the period of time during which a motion has been pending.²⁰ The CJRA further exhorted the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts to conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies and other appropriate personnel were thoroughly familiar with the most recent information and analyses about litigation management.²¹ This requirement for uniform training on applicable definitions and standards is critical to ensure the integrity of the data input.

One of the most important effects of the CJRA has been the courts' reaction to reporting requirements. A RAND Institute for Civil Justice

15. See David C. Steelman, *What Have We Learned About Court Delay*, "Local Legal Culture," and *Caseflow Management Since the Late 1970s?*, 19 JUST. SYS. J. 145, 150-55 (1997) (summarizing studies conducted during 1980s regarding caseflow management).

16. 28 U.S.C. §§ 471-482 (2006).

17. See *id.* § 471. For a history of the CJRA and a criticism of what is intended by the statute's emphasis on "delay reduction," see Patrick Johnston, *Civil Justice Reform: Juggling Between Politics and Perfection*, 62 FORDHAM L. REV. 833, 837-49 (1994) (discussing CJRA and its genesis).

18. See 28 U.S.C. § 481(a) (noting that "[t]he Director of the Administrative Office of the United States Courts shall ensure that each United States district court has the automated capability readily to retrieve information about the status of each case in such court").

19. See *id.* § 481(b) (describing how Director shall carry out subsection (a)).

20. See *id.* § 481(b)(2) ("The uniform standards prescribed under paragraph (1)(B) of this subsection shall include a definition of what constitutes a dismissal of a case and standards for measuring the period for which a motion has been pending.").

21. See *id.* § 480 (discussing how Director will "develop and conduct comprehensive education and training programs to ensure that all judicial officers, clerks of court, courtroom deputies, and other appropriate court personnel are thoroughly familiar with the most recent available information and analyses about litigation management and other techniques for reducing cost and expediting the resolution of civil litigation").

study released in 1996 found that even though the total number of all pending civil cases had increased, the number of three-year-old cases pending in the federal courts had dropped by about 25% since the adoption of the CJRA.²² The transparency required by the CJRA appears to have had a measurable impact on the efficiency of the court system as a whole.

B. *Federal Court Statistical Reporting*

Currently, there are two primary sources of statistical information pertaining to civil cases in the federal courts. The first source consists of reports mandated by Congress, including the annual report of the director, federal court management statistics, federal judicial caseload statistics, judicial facts and figures and statistical tables for the federal judiciary.²³ The federal court management statistics provide information on caseload and case processing by district in one consolidated report. This report is issued annually for the twelve-month period ending September 30 of each year. Upon specific request by a court this data can be produced regarding an individual judge, but the resulting report is only available internally.

The second source of information consists of reports published pursuant to the CJRA.²⁴ These semiannual reports disclose for each individual judge the number of motions that have been pending for more than six months and the name of each case in which the motion has been pending; the number of bench trials that have been submitted for more than six months and the name of each case in which such trials are under submission; and the number and names of cases that have not been terminated within three years after filing.²⁵ Each federal district court must provide these reports no later than fifteen days after the March 31 and September 30 closing dates.²⁶

Both categories of reports, however, only scratch the surface of federal statistical and case management data. Indeed, a wealth of raw data from individual cases is collected—and potentially available—through the CM/ECF and PACER systems. The Administrative Office of the United States Courts centrally administers the CM/ECF system, although each individual court runs its CM/ECF system on its own computer with its own

22. See JAMES S. KAKALIK ET AL., JUST, SPEEDY, AND INEXPENSIVE?: AN EVALUATION OF JUDICIAL CASE MANAGEMENT UNDER THE CIVIL JUSTICE REFORM ACT 2 (1996) (discussing RAND Institute study).

23. See U.S. Courts, Statistical Reports, <http://www.uscourts.gov/library/statisticalreports.html> (last visited Mar. 29, 2008) (providing links to statistical reports).

24. See 28 U.S.C. § 476 (2006) (providing guidelines for semiannual reports regarding judicial officers).

25. See *id.* (discussing required content of semiannual reports).

26. Interview with Stephen P. Ehrlich, former Chief Deputy Clerk, U.S. Dist. Court, Dist of Colo., in Denver, Colo. (Oct. 3, 2008) [hereinafter Interview with Stephen P. Ehrlich].

data. A primary benefit of this uniform system is its use of consistent categories and defined terms, as required by the CJRA. The system also contains information on every filed case, which creates a far more complete pool of data than summary statistics or published opinions can provide.²⁷

Unfortunately, the information available to the general public, court observers and academicians is not yet comprehensive and lacks some functionality.²⁸ For example, those with public access to PACER may only run reports for cases opened during a thirty day period, whereas the courts themselves can run reports for cases—whether opened or closed—without a similar time restriction.²⁹ In addition, although electronic case filing typically allows the general public to access and read pleadings and motions, that public access is hindered where documents are conventionally filed and not promptly scanned into the CM/ECF system. Cost is also an issue for the general public: the Judicial Council of the United States has currently authorized a charge of \$.08 per page for any search results, even if a search yields no matches.³⁰ Though this charge is reasonable for access to a small number of cases, the cost of significant data collection may be prohibitive. Limited access to docket data and reports creates barriers to research and restricts the ability of interested parties to evaluate and draw comparisons between varied practices in the courts.

Moreover, although collected CM/ECF data has the powerful potential to educate a court about its caseload and the effectiveness of its case management techniques, few federal district courts, if any, are taking advantage. In telephone interviews, representatives from several courts acknowledged the limited number of reports available on CM/ECF that allow courts to review and analyze their caseloads.³¹ Some courts have developed customized reports to fill this void, but unlike nationally availa-

27. See Brian N. Lizotte, *Publish or Perish: The Electronic Availability of Summary Judgments by Eight District Courts*, 2007 WIS. L. REV. 107, 147 (2007) (examining AOC summary reports and published opinions and concluding that “for now, the only accurate method to determine whether summary judgment has supplanted jury trial as the dominant method of federal dispute resolution is to conduct docket research”).

28. The reports, available to the public for a fee, include: docket sheets, a list of civil and criminal cases filed, a judgment index, a list of calendared events, a docket activity report for a given period of time and written opinions issued by the court. See PACER, ADMIN. OFFICE OF THE U.S. COURTS, PACER USER MANUAL FOR ECF COURTS 28-31 (2007), available at <http://www.pacer.psc.uscourts.gov/documents/pacermanual.pdf>. Most reports can only be run by court, not individual judge.

29. See *id.* Researchers and the public may generate reports of civil and criminal cases by division office, case type, nature of suit, cause code, case flags, filing date, open/closed cases and terminal digit. See *id.* at 28-30. Nevertheless, any given report has a circumscribed date range. See *id.* at 34. In practice this proved to be thirty days.

30. See *id.* at 5 (noting cost per page for any search results).

31. The telephone interviews were conducted as part of an IAALS study on federal caseload management.

ble reports, the customized reports must be updated with each new release of CM/ECF software.

Even federal court management statistics and CJRA reports are not always circulated to each judge in the district upon publication, and when they are distributed, those statistics are almost never the subject of discussion. If the value of statistical reporting lies in its ability to educate courts and court observers about what courts and individual judges are doing well (and not so well), maximizing that value will require both sophisticated reporting functionalities and the desire to act upon the information collected.

C. IAALS Federal Caseflow Management Study

During the summer and fall of 2007, IAALS initiated a federal caseflow management study designed to take advantage of the data available through the PACER system. The objective of the study is to examine the extent to which the goal of a “just, speedy, and inexpensive determination of every action”³² is furthered by the current structure of the Federal Rules, as well as by case management practices and local rules and protocols in selected federal district courts. The study will identify relationships between observed disposition times and the procedural, structural and cultural³³ characteristics of each district court and individual judges within each court.

The relative accessibility of federal case dockets significantly broadened the scope of the study. In all, eight federal district courts were selected for review. The districts were selected to reflect a diversity of size (as defined by the number of authorized district judges in each district) and geography. Within each size category (small, medium and large, as defined below), the selection process targeted courts with significant (intercourt) variation nationally in the following areas: (1) median time from filing to disposition of civil cases; (2) median time from filing to trial of civil cases; and (3) number of civil cases over three years old. The project design also included a general review of CJRA statistics for each court.

Ultimately, three “small” districts (the District of Delaware, District of Idaho and Western District of Wisconsin), three “medium” districts (the District of Colorado, Eastern District of Missouri and District of Oregon),

32. FED. R. CIV. P. 1.

33. Here, “cultural” is used to refer to the internal culture of the court as well as the local legal culture. The term “local legal culture” has been described as “established expectations, practices, and informal rules of behavior of judges and attorneys.” CHURCH, *supra* note 1, at 54. Some scholars have suggested that the collective outlook of a legal community may not only contribute (for better or for worse) to the speed of case processing, but may actually be an *obstacle* to reducing delay, even when all the participants in the legal community agree upon the need to reduce delay. See David R. Sherwood & Mark A. Clarke, *Toward an Understanding of “Local Legal Culture”*, 6 JUST. SYS. J. 200, 213 (1981) (noting presence of “local legal culture” providing bias of judicial system, which for 3rd Judicial Court System was approximately thirty-six months from filing to disposition of civil case).

and two “large” districts (the District of Arizona and Eastern District of Virginia) were selected for the study. The “small” districts have four or fewer authorized district judges, the “medium” districts five to eight, and the “large” districts nine or more.

The study involved the review of dockets for civil cases terminated between October 1, 2005 and September 30, 2006—the standard federal court statistical reporting year.³⁴ Data from approximately 7,700 cases was logged and entered into a customized database, which was completed in December 2007. With specified exceptions,³⁵ the database included every case terminated within the stated time frame in the small and medium courts. For each of the two large districts, the database included a random sample of approximately 400 cases terminated within the same time period.

During December 2007, the second phase of the project commenced with a statistician’s review of the data to establish statistical validity of the sampling. This phase also includes an analysis of the collected data, together with other collected case management materials, to identify practices and rules that positively and negatively impact a court’s ability to provide a just, speedy and inexpensive determination of every civil case. The data analysis will serve two purposes. First, it will test specific hypotheses about case management. Second, it will look for trends, statistical conclusions or inferences that might not be captured by the initial hypotheses. The initial review will:

- Identify courts with the fastest and slowest rates from filing to deposition;
- Identify unique rules and practices that impact effective case management;
- Identify where delays occur in specific cases, and what practices are associated with such delays;
- Determine the rate at which different case types go to trial;
- Determine if there are associations between different case types and disposition times (both for different stages of the case and overall);
- Examine how magistrate judges are used in different courts, as well as the association (if any) between the use of a magistrate judge and both disposition rates and time to disposition; and
- Determine if mandatory alternative dispute resolution (ADR) is part of each court’s or individual judge’s procedures, what types of

34. IAALS obtained a waiver of PACER fees for each of the subject district courts. In all cases, the waiver was for a limited time period sufficient to complete data entry.

35. The study did not include specific categories of cases whose procedure was unique or differed substantially from a typical federal civil action. Among the excluded cases were actions for recovery of defaulted student loans; recovery of overpayment of veterans’ benefits; recovery of overpayment and enforcement of judgments; prisoner civil rights, mandamus and habeas corpus petitions; and social security cases.

ADR are offered by each court, and evaluate the association between ADR and the timing of cases.

The second level of analysis will:

- Analyze and evaluate case management practices across different courts;
- Identify practices in case management by court that are associated with faster disposition times; and
- Examine how increased public disclosure of civil case processing statistics (by court and individual judge) might impact the civil justice system.

Although conclusions from the study are not available as of this writing, the study has already confirmed the value of the CM/ECF system and PACER as a rich source of data on the federal courts. Each of the eight districts studied presented the information in a similar and recognizable format, and in most cases, individual documents were accessible to researchers simply by clicking on a hyperlink on the docket. Docket sheets and individual documents were also downloadable or printable for further review.

Some limitations, however, were also apparent. The titles of individual pleadings and motions were left to the parties, which sometimes made it difficult to ascertain the nature of the document without opening and reading it. In two of the eight courts studied, the CM/ECF system was not fully adopted for at least part of the time frame studied, leading to an increased number of unavailable documents. Finally, in a small number of cases, the clerk's office had incorrectly entered the nature of suit or party name, thereby increasing the likelihood that the case would not be found by a conventional search.

Overall, nearly 8,000 cases, 6,400 discovery motions, 16,000 dispositive motions and 22,500 other relevant motions were reviewed and logged as part of the study. During most of that time, the work was completed by two supervised externs working forty-hour weeks. The sheer volume of information collected in that relatively short period of time would not have been possible if not for the ease of electronic access to the desired docket information.

III. STATE COURT STATISTICAL DATA AND CASE MANAGEMENT SYSTEMS

A. *Background*

When compared to the federal system, accessing and reviewing statistical and case management data from state courts is a daunting task. The first reason is volume: the number of cases in state courts far exceeds the number in federal courts;³⁶ moreover, in contrast to ninety-four federal

36. See COURT STATISTICS PROJECT, NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF STATE COURTS: A NATIONAL PERSPECTIVE FROM THE STATE COURT STATISTICS PROJECT 21 (2006) [hereinafter EXAMINING THE WORK OF STATE COURTS], available at <http://www.courtstatistics.org> (select "2006 FULL REPORT" under

district courts, there are an estimated 16,000 state courts and state court equivalents in the United States, the District of Columbia and Puerto Rico.³⁷ Over 100 million cases were filed in state courts in 2005;³⁸ 322,848 cases were filed in federal district courts during that time period.³⁹

Even within individual states, courts may use different automated systems, and there is little or no standardization as to the types of data collected or how those data elements are defined. This lack of consistency in state court systems hinders the ability to identify problem areas and effectively measure solutions implemented in state courts. Typical state case management systems record case initiation, indexing, docketing, record keeping, scheduling, document generation, calendar management, accounting, state and federal reporting and statistical and management reporting. Many state systems do not produce management reports concerning early judicial intervention, differentiated case management (if such a docket track assignment is in place), status conferences, settlement conferences, pre-trial conferences or time to disposition of motions. Nor do they differentiate between procedural and dispositive motions, specify discovery motions and hearings, indicate reassignment to different judges or set out the number and time of continuances of both hearings and trials.

Nevertheless, there are a number of reasons why analyses of state courts are in many ways more important than those of federal courts. Most fundamentally, the vast majority of citizens who experience the legal system (whether as litigants, witnesses or jurors) do so in state court.⁴⁰ In addition, many categories of cases that are most likely to touch the lives of typical citizens—such as traffic fines, personal injury cases, insurance issues and domestic relations cases—are frequently or exclusively the province of the state courts. Lastly, state court judges are assuredly accountable—at some level—to the citizenry in ways that are not applicable to the federal judiciary; thus, the public has an increased need to know how the courts and individual judges are handling their caseloads.

“Examining the Work of State Courts” heading) (reporting that in 2005 over 100 million cases were filed in state courts). Approximately 2.2 million cases were filed in federal courts. See ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS 11, 14, 17 (2005), available at <http://www.uscourts.gov/judbus2005/front/judicialbusiness.pdf> (reporting 68,473 cases filed in U.S. Court of Appeals, 1,555 cases filed in Federal Circuit, 322,848 cases filed in U.S. District Courts and 1,782,643 cases filed in U.S. Bankruptcy Courts for 2005 fiscal year).

37. See EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 21.

38. See *id.*

39. See Judicial Caseload Profile Report, Federal Court Management Statistics 2005, <http://www.uscourts.gov/cgi-bin/cmsd2005.pl> (select “ALL DISTRICT COURTS”; then select “GENERATE” hyperlink).

40. See Roger A. Hanson & David B. Rottman, *United States: So Many States, So Many Reforms*, 20 JUST. SYS. J. 121, 121 (1997) (noting how number of cases filed in state court far exceeds number filed in federal court).

B. *The Court Statistics Committee and Court Statistics Project*

As early as 1979, the National Center for State Courts (NCSC) began to collect individual case data from state courts in order to develop models on case timing. The additional examination of civil motions, discovery and other practices was intended to identify models with the hope of transferring those proven procedures to other courts.⁴¹

The Court Statistics Committee of the Conference of State Court Administrators (COSCA) was established to work in partnership with NCSC to carry out the Court Statistics Project (CSP).⁴² The mission of the CSP is to assist states in improving the administration of justice by promoting the collection and use of relevant, timely and accurate data in the state courts. The CSP is funded through the Bureau of Justice Statistics (BJS). BJS and NCSC share the general responsibility for the CSP and its mission of court statistics improvement working under the policy direction of the COSCA Court Statistics Committee.⁴³

The primary goal of the CSP is to develop a statistically accurate and policy-relevant profile of the work of the state courts.⁴⁴ Under the guidance of COSCA with support from BJS, the CSP directs the only authoritative national level court data collection program operating in all fifty states. Simply stated, significant trends and differences in state court workload cannot be understood without a base of valid data.

The Court Statistics Project produces three regular publications:⁴⁵

- *State Court Caseload Statistics* contains “structure charts, statewide aggregate caseload data and reporting practices, population trends and a detailed explanation of the Court Statistics Project methodology”;⁴⁶
- *Examining the Work of State Courts* is an annual, interactive, graphically oriented piece on court statistics;⁴⁷ and
- *Caseload Highlights* is a series of “short, periodic reports on specific and significant issues.”⁴⁸

41. *See id.* at 128 (discussing NCSC data on pace of litigation in state trial and appellate courts).

42. *See* Conference of Chief Justices [CCJ] & Conference of State Court Adm’rs [COSCA], Court Mgmt. Comm., July 29, 2004, *Resolution 23 in Support of State Implementation of the State Court Guide to Statistical Reporting, 2003*, COSCA 04-A-23 [hereinafter *Resolution 23*], available at <http://cosca.ncsc.dni.us/Resolutions/CourtAdmin/StateCourtGuideStatisticalReporting2003.pdf>.

43. *See* EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 4.

44. *See* NCSC, Court Statistics Project, <http://www.courtstatistics.org> (last visited Oct. 17, 2008) (collecting and analyzing data relating to work of state courts).

45. *See* EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 6.

46. *See id.*

47. *See id.*; *see also* NSCS, Court Statistics Project, *supra* note 44.

48. *See* EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 5.

CSP also continues to promote implementation of the *State Court Guide to Statistical Reporting 2003* (the Guide).⁴⁹ The Guide is a product of a collaboration of COSCA, CSP, trial court administrators, statisticians and other court experts from around the country.⁵⁰ It replaced the *State Court Model Statistical Dictionary* published in 1980 with subsequent revisions in 1984 and 1989.⁵¹ The Guide provides a national model for data reporting with descriptions and definitions of case and disposition types and a standardized framework to report this data. It is intended to assist state courts in the development of automated information systems that produce useful and accurate statistical reports.

Courts, in collaboration with NCSC, developed this data dictionary to standardize the definition of key terms across state courts.⁵² While the dictionary represents a fundamental step, it must be adopted and fully implemented by all or most state court systems in order to reach its potential effectiveness. At present, a number of states are in various stages of the planning, development and implementation of new automated case management systems. This presents a tangible opportunity to bring about a greater level of consistency in the definition of data.⁵³

The Guide expanded case type categories for filings, dispositions and pending cases. For example, there are now ten categories of tort cases, nine categories of contract cases and two categories of real property cases.⁵⁴ The Guide also expanded the categories of case dispositions to include both trial and non-trial disposition events (default judgment, summary judgment, dismissed for want of prosecution), jury trials and bench trials, as well as alternative dispute resolution.⁵⁵ The Guide also recommends a model approach to define and count the difficult elements of court caseloads such as reopened, reactivated and inactive pending cases.⁵⁶

The data elements in the Guide have been endorsed by COSCA, the National Association of Court Management and the American Bar Association.⁵⁷ At their 2004 annual meeting, COSCA and the Conference of Chief Justices (CCJ) passed a resolution adopting the Guide as a model

49. See STATE COURT GUIDE TO STATISTICAL REPORTING (2003) [hereinafter GUIDE], available at <http://www.courtstatistics.org> (select "FULL REPORT" under "State Court Guide to Statistical Reporting" heading).

50. See *id.* at 7.

51. See *id.* at 202.

52. Interview with Frank Broccolina, State Court Adm'r, in Md. (Jan. 16, 2008) [hereinafter Interview with Frank Broccolina].

53. See *id.*

54. See GUIDE, *supra* note 49, at 1-29.

55. See *id.* at 4.

56. See *id.* at viii.

57. Email from Neil LaFountain, Senior Court Research Analyst, National Center for State Courts, to Mac Danford, IAALS (Apr. 4, 2007, 11:54 MDT) (on file with author).

approach to data reporting for state trial and appellate courts.⁵⁸ That resolution, Resolution 23, urged state courts to take immediate steps to implement the Guide.⁵⁹ Resolution 23 references previous resolutions by COSCA in December 2003 and CCJ in 2004, which reflect their position that in order to support the principle of effective judicial accountability, courts need to assure that comprehensive data on filings, caseloads and case processing standards and goals are readily available.⁶⁰

Richard Schauffler, Director of Research Services for NCSC, reports that the Guide continues as the Court Statistic Committee's "single biggest effort."⁶¹ The issue is not the *fact* of reporting, but the quality and consistency of the data that is included in the reports. If states could or would clean and standardize their data, the reporting issues would be solved.⁶²

The CSP's two annual publications, *State Court Caseload Statistics* and *Examining the Work of State Courts*, offer the most detailed statistical information on the volume of cases in state courts, the nature of judicial business and historical trends in court caseloads.⁶³ "The CSP is investigating how to integrate data from individual trial courts into its publications. Focusing on the work of individual trial courts would allow the publications to offer not only comparisons of caseload, but also to extend the analysis to caseflow and workload."⁶⁴ Furthermore, "[t]he CSP is [also] seeking to develop more web-based channels for publishing court statistics, building from [a] recently developed query tool that allows states to construct their own comparisons using some basic data elements."⁶⁵

Because of this project, courts can now view themselves comparatively.⁶⁶ Most importantly, courts actually use this information.⁶⁷ "Courts at both the trial and appellate level as well as judges and state court administrators request and rely on the comparative, baseline data on caseload volume, composition, trends and jurisdiction provided by the CSP."⁶⁸ This project remains important because "[c]ontinuing work to assist states to implement the data standards in the State Court Guide to Statistical Reporting will enhance comparisons with more consistent and meaningful data elements."⁶⁹

58. *Resolution 23*, *supra* note 42.

59. *See id.*

60. *See id.*

61. Email from Richard Schauffler, Director of Research, National Center for State Courts, to Mac Danford, IAALS (Apr. 16, 2007, 09:41 MDT) (on file with author).

62. *See id.*

63. PROJECT DESCRIPTIONS, NAT'L CTR. FOR STATE COURTS (2008), http://www.ncsconline.org/D_Research/descriptions.html.

64. *See id.*

65. *See id.*

66. *See id.*

67. *See id.*

68. *See id.*

69. *See id.*

With respect to the kinds of data collected, a new COSCA statistics project is examining the types of data collected by state courts in order to develop a standardized list of data elements that might encourage greater uniformity in the collection of statistical data.⁷⁰ The anticipated outcome of this project is a baseline for court data that should enable more reliable comparative statistics between states.⁷¹

C. *CourTools*

CourTools is a relatively new measure of court performance designed by NCSC.⁷² CourTools seeks to improve state court performance by clarifying performance goals, developing a measurement plan and documenting success. The ten CourTools measures are: access and fairness; clearance rates (which examine court productivity in keeping current with the incoming flow of cases); time to disposition (which calculates elapsed time from case filing to case resolution compared to the established processing time standard); age of active pending caseload (the amount of time that cases have been awaiting resolution); trial date certainty (a tool to evaluate effectiveness of calendaring and continuance practices); reliability and integrity of case files; collection of monetary penalties; effective use of jurors; employee satisfaction; and cost per case (the average cost to the court of processing a single case by case type).⁷³

Each CourTool includes a definition and statement of purpose, a measurement plan, data collection methods and strategies for reporting results.⁷⁴ CourTools offers the possibility of at least one set of consistent court performance measures if all state courts adopt them, although modifications of the survey instruments by individual courts could defeat that uniformity. Efforts continue to encourage additional state courts to implement the CourTools measures.

D. *IAALS Court Statistics Project*

Despite efforts to develop uniform standards and definitions, state court data gathering and data measurement continue to lack consistency. This condition hinders the ability both to identify problem areas and to effectively measure solutions and innovations implemented in state courts. During 2007, IAALS sought to identify existing state court information management systems to determine what is presently measured and accessi-

70. See Interview with Frank Broccolina, *supra* note 52.

71. See *id.*

72. See NCSC, CourTools, http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm (last visited Sept. 30, 2008).

73. See COURTOOLS, NAT'L CTR. FOR STATE COURTS, TRIAL COURT PERFORMANCE MEASURES (2005), http://www.ncsconline.org/D_Research/CourTools/Images/10%20Index.pdf.

74. See NCSC, CourTools, *supra* note 72 (follow hyperlinks to pdf files for each of ten measures).

ble. IAALS developed a survey that was distributed to all fifty state court systems. Eighteen states responded to the survey.⁷⁵

The survey asked each state to describe its familiarity with the Guide and with CourTools. The survey also requested specific information on the data that each jurisdiction collected and the scope of management reports prepared to assess that data. In addition, the survey inquired as to who received management reports and whether those reports were available to the public.

The survey asked if the state automated information system conformed to the criteria set forth in the Guide. Four states responded “yes,” six states responded “in some areas,” two states responded “no” and six states responded “unknown.” None of the states responding to the survey had adopted CourTools in its entirety, although ten states had adopted some of the CourTools measures. Three states responded that they had not adopted CourTools at all and five states responded that the extent of the use of CourTools—if at all—was unknown.⁷⁶

The responses and follow-up conversations with the state and Johnson County information technology staff in Kansas were illustrative of the efforts by state courts to develop technology to assist with statistical reporting and the challenges those courts still face. With the exception of two counties—Johnson County and Shawnee County⁷⁷—the Kansas courts use a commercial case management system called FullCourt.⁷⁸ FullCourt is a system that is very sophisticated and flexible and can be used both by large multi-tiered courts and by smaller courts as well. This is an integrated system; that is, the data maintained in FullCourt can be shared by other justice system stakeholders such as law enforcement, the district attorney and the Department of Corrections—provided that those entities purchase a companion product, FullCase. Johnson County, Kansas uses the Justice Information Management System (JIMS), a system that is owned, operated and maintained by Johnson County. It also is an integrated system between the courts, other justice system stakeholders and the county.

Both the state system and the Johnson County system are highly sophisticated case management systems that gather and collect the data rec-

75. Those states that responded were Arkansas, Kansas, Kentucky, Missouri, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Texas, Utah and Washington. Kansas is counted once although responses came from both the state and Johnson County, Kansas courts.

76. The implementation and utilization of CourTools has significantly increased since the IAALS survey was conducted.

77. No information was provided by Shawnee County.

78. FullCourt is also used in Idaho and Montana, and a contingent of representatives from the New Mexico court system recently visited Kansas to view the FullCourt application to consider whether to purchase the product. The vendor is based in Albuquerque.

ommended in the Guide. Both systems, however, had observable limitations. Among them:

- The Johnson County system could produce reports concerning differentiated case management, but the state system could not.
- The state system, FullCourt, could produce reports on the number of continuances granted and the length of those continuances, but these reports have never been requested. The Johnson County system could not produce such reports.
- Although both systems could produce reports that identify discovery motions, hearings and orders, these reports have never been requested.
- Neither system can calculate the amount of time from the filing of a motion to its disposition.
- Neither system can measure “Trial Date Certainty,” which is one of NCSC’s core performance measurements in its CourTools product. Trial Date Certainty measures the number of times cases ultimately disposed of by trial in a given jurisdiction are scheduled for trial.⁷⁹

E. *Progress in Other States*

Looking beyond the information from the survey process, a brief review of several states’ past and present efforts to develop integrated case management systems and use statistical data to measure the success of innovations is also instructive as to the challenges that individual states confront as they attempt to incorporate the various tools and models that have been developed on a national level.

1. *California*

“NCSC is collaborating with the Office of Court Research of the California Administrative Office of the Courts (AOC) to pilot test the ten CourTools measures in the California courts.”⁸⁰ Developing a strategy and methodology for statewide implementation is the intermediate goal.⁸¹ “The project includes a comprehensive assessment of the current statewide data to assess that data for its accuracy and utility as well as pilot tests of the ten CourTools measures.”⁸²

2. *Massachusetts*

The Massachusetts Trial Court initiated the Court Metrics Project for performance measurement in 2006.⁸³ With a focus on more timely dispo-

79. CourTools has not been implemented in either the state system or in Johnson County.

80. See PROJECT DESCRIPTIONS, NAT’L CTR. FOR STATE COURTS, *supra* note 63.

81. See *id.*

82. See *id.*

83. See Chief Justice Robert A. Mulligan & Paul Burke, *Good Data Makes for Good Management: The Massachusetts Court Metrics Project*, in EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 84.

sition of cases, the Administrative Office of the Trial Court adopted four CourtTools measures: clearance rate, time to disposition, age of pending caseload and trial date certainty.⁸⁴ Massachusetts proceeded with this project prior to full implementation of MassCourts, a new statewide case management system.⁸⁵ The Trial Court established time standards, adopted common metrics to measure improvement on timely disposition of cases, set common specific goals for each metric and produced regular reports on progress toward those goals.⁸⁶

The first year report on Court Metrics acknowledges that “[t]he performance-based approach adopted in this initiative represents a radical departure from traditional court practice and a transformation of court culture.”⁸⁷ The Honorable Robert Mulligan, Chief Justice for Administration and Management, reports that the systematic compilation and dissemination of empirical data has transformed the trial court culture and created a new sense of accountability and transparency in the trial courts.⁸⁸ Furthermore, in an address to the Massachusetts Bar Association on October 11, 2007, Chief Justice Margaret H. Marshall provided detail on the Court Metrics project and concluded with “[o]ne final note about metrics. They are not secret. You can find Chief Justice Mulligan’s quarterly and annual reports, as well as the Advisory Board reports, on the Trial Court website.”⁸⁹

3. Michigan

The Michigan Caseflow Management Guide (the Michigan Guide) includes as one of its four court management principles: “Management information, whether from an automated or manual system, is needed to determine if the court is meeting its caseflow management goals and objectives, assess the effectiveness of case management procedures and practices, and determine the need for change.”⁹⁰ Caseflow management is “an administrative process; therefore, it does not directly impact the adjudication of substantive legal or procedural issues.”⁹¹

84. See CHIEF JUSTICE ROBERT A. MULLIGAN, ADMIN. OFFICE OF THE TRIAL COURT, ENHANCING THE DELIVERY OF QUALITY JUSTICE: REPORT OF THE COURT METRICS PROJECT CALENDAR YEAR 2006 4 (2007), available at <http://www.maximus.com/corporate/downloads/pdf/MassCourt-Metrics-Report.pdf>.

85. See *id.* at 7.

86. See *id.* at v (Executive Summary).

87. *Id.*

88. *Id.* at 19.

89. Margaret H. Marshall, Chief Justice, Address to Massachusetts Bar Association (Oct. 11, 2007), available at <http://www.mass.gov/courts/sjc/media/mbaspeech-2007.html>.

90. Preface to STATE COURT ADMIN. OFFICE, CASEFLOW MANAGEMENT GUIDE (2004), available at <http://courts.michigan.gov/scao/resources/publications/manuals/cfmg.pdf>.

91. *Id.* at 1.

The Michigan Guide states that the State Court Administrative Office has a uniform statistical and data management system called the Caseload Reporting System (CRS), but indicates that at the time of publication of the Michigan Guide, CRS was not synonymous with local trial court case management systems.⁹²

An excellent example of the positive impact of publication of court statistical data, and the resulting motivation to implement change, is found in the Wayne County Circuit Court.⁹³ In 1978, NCSC published *Justice Delayed*, a study of the civil case processing time in Wayne County Circuit Court and twenty other urban courts across the country.⁹⁴ Continuing through a 1984 follow up study, Wayne County ranked “at or near the bottom of the eighteen courts on nearly every measure of delay.”⁹⁵

The chief judge of Wayne County determined in 1985 that radical changes were necessary to improve the court’s performance.⁹⁶ Over a five year period, the court transitioned from a hybrid calendaring system to an individual calendar system.⁹⁷ This change led to a dramatic reduction in caseload size and shorter time to disposition for cases.⁹⁸ In 1985 there were 6,987 civil cases pending over two years, and in 1990 that number had been reduced to 1,295 cases.⁹⁹

4. Nevada

Nevada faces the challenge of establishing standardized data collection practices in a non-unified court system.¹⁰⁰ The Nevada judiciary is comprised of seventeen district courts, forty-two justice courts and seventeen municipal courts organized in nine judicial districts.¹⁰¹ Courts are responsible for the acquisition of their own case management systems to be used to report case statistics to the Nevada Administrative Office of the Courts (AOC).¹⁰² Not only were there a variety of case management systems, but also some courts did not have an automated system and col-

92. *Id.* at 3.

93. K. KENT BATTY ET AL., TOWARD EXCELLENCE IN CASEFLOW MANAGEMENT: THE EXPERIENCE OF THE CIRCUIT COURT IN WAYNE COUNTY, MICHIGAN: A GUIDE BY AND FOR PRACTITIONERS (1991), available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=2>.

94. CHURCH, *supra* note 1, at 5.

95. See BATTY, *supra* note 93, at vi.

96. See *id.*

97. See *id.*

98. See *id.*

99. See *id.* at 2.

100. See Robin L. Sweet & Robert J. Dobbins, *Developing Nevada’s Statewide Data Model and Court Statistics Reporting System*, in EXAMINING THE WORK OF STATE COURTS, *supra* note 36, at 79 (describing challenges of statistic reporting in Nevada court system).

101. See *id.*

102. See *id.*

lected data manually.¹⁰³ Nevada was one of the few states that did not provide comprehensive statistical data to either its own AOC or for reporting in the annual CSP reports.¹⁰⁴

In 1999, Nevada established the Uniform System for Judicial Records (USJR) project.¹⁰⁵ The initial hurdle was to establish agreement on the critical data elements, their definitions and counting rules. Also, the AOC selected a case management system and promoted its adoption by all local courts on the theory that a uniform case management system would benefit all courts. Most (but not all) courts agreed to adopt the system.¹⁰⁶

The courts agreed to report case filings and manner of disposition in Phase I of the USJR project.¹⁰⁷ Lessons learned during Phase I included the need for well-defined and exhaustive specifications of case types that provided for designation of the entire caseload of the court.¹⁰⁸

Expansion of the initial data model in Phase II included a broad statewide representation of judges, court administrators and court clerks.¹⁰⁹ The Guide was released during roughly that time period, and Nevada adopted both the definitions and counting standards set forth in the national model for criminal cases.¹¹⁰ Nevada hopes to complete its work to standardize reporting for civil, family and juvenile cases by early 2009.¹¹¹

Through this exercise, the Nevada courts anticipate several benefits including greater insight into caseload management practices and the ability to formulate meaningful comparisons with other state courts and courts in other states. Additionally, USJR statistics have evolved into a tool to demonstrate judicial accountability to the public and other governmental entities.¹¹²

5. *New Jersey*

New Jersey created a unified judicial branch in 1947, and since that time has successfully used court data to improve court performance.¹¹³ From 1990 to 2007, New Jersey focused on cases in backlog status (cases older than the time to disposition standards).¹¹⁴ In 1992, there were

103. *See id.*

104. *See id.* at 80.

105. *See id.* at 79.

106. *See id.* at 80.

107. *See id.*

108. *See id.*

109. *See id.* at 81.

110. *See id.*

111. *See id.* at 83.

112. *See id.*

113. *See* John M. Greacen, *The Court Administrator's Perspective: Performance Measurement—A Success Story in New Jersey*, in *FUTURE TRENDS IN STATE COURTS 2007* 93, 93 (2007), available at http://www.ncsconline.org/WC/Publications/KIS_CtFuTu_Trends07.pdf.

114. *See id.*

76,002 cases with that status; by 2006, that number had been reduced to 22,765.¹¹⁵

The fundamental components of New Jersey's performance measurements are a statewide data collection system, a differential set of time to disposition guidelines and an ongoing archive of performance measure information.¹¹⁶ New Jersey relies on eight different automated systems for eight different case types.¹¹⁷ The state AOC developed each system and each was implemented in every trial court.¹¹⁸

Prior to the development of the automated systems, New Jersey courts maintained statewide statistics on index cards.¹¹⁹ The New Jersey courts exhibited a commitment to transparency and accountability even without the benefit of technology and automated information systems. This type of commitment is evidence of a culture that is crucial to the achievement of a transparent process—a process that lends itself to improvement and implementation of beneficial changes.

6. *Utah*

Utah implemented CourTools in 2004, and in January 2007 began posting the complete results of eight CourTools measures on its website.¹²⁰ The results of Utah's CourTools performance measurement are completely transparent: the state judicial website publishes and posts statewide, as well as individual, judicial district data.¹²¹

IV. THE FUTURE OF DATA COLLECTION, COURT TRANSPARENCY AND ACCOUNTABILITY

The standardized federal CM/ECF automated information system with access through PACER enhances research and investigation of successful procedures and practices in the federal courts. The value of that access should not be underestimated, and expanded use of the many capabilities of that system should be encouraged. Courts and individual judges should view this system as an appropriate tool to publicize their successes and to showcase their improved performance in meeting the needs of those who rely on the courts.

This is not to suggest that statistical data standing alone should be the measure of that performance. There are factors impacting the dockets of courts and individual judges that will never be captured in statistical data

115. *See id.*

116. *See id.* at 94.

117. *See id.*

118. *See id.*

119. *See id.*

120. *See* CourTools, Utah Courts CourTools Measures, <http://www.utcourts.gov/courtools> (last visited Mar. 29, 2008).

121. *See* Made2Measure, <http://made2measure.blogspot.com> (Feb. 12, 2007, 8:29 EST) (reporting on Utah's decision "to go entirely transparent").

alone. Credible empirical research should include an examination of those other factors that include staffing practices, the number of complex cases and the impact of growing criminal caseloads on the resolution of civil cases.

Even a uniform information system has continuing limitations, although those limitations may be traced less to technology and more to human decisions concerning the availability of the data and related reports, the process and timing of producing the data and reports, and court to court modifications to the system. The federal courts should consider making a greater range and scope of reports accessible to the public through PACER. This information should be available on a judge by judge basis, not just for the court as a whole. We would suggest that the long-standing culture of the courts to avoid publicizing information concerning the performance of individual judges not only hinders the goals of transparency and accountability, but also limits the ability of individual judges to showcase effective and innovative practices in their courtrooms.¹²²

State courts also have opportunities to use existing national models to implement information systems to capture data and provide reports with greater uniformity and consistency. This paper recognizes the additional hurdles for state courts in adopting more uniform information systems. The substantially larger number of state courts and the significantly larger caseloads of those courts is a starting point. Although the states seem to be moving to uniform statewide information systems, there will probably never be one nationwide system for all state courts. We do not suggest that it is necessary for every state to adopt and implement the same hardware and software for their courts in order to achieve the goals of transparency and accountability.

Instead, we suggest that the inability to compare statistical data related to court practices and procedures is an obstacle to the development and implementation of innovative solutions in the state courts, and that applying consistent definitions and data entry terms would substantially remove that obstacle. It is also a matter of the culture of the legal system, and such an effort must be embraced by those on both sides of the courthouse windows. Ultimately, the future of transparency, accountability and public confidence in the judiciary lies not with the specific technology available to us, but with the way in which we choose to use it.

122. Indeed, sharing information on the performance of courts and individual judges with the public has the potential to build public trust in the judiciary, whereas hiding information tends to build only suspicion. See Rebecca Love Kourlis & Jordan M. Singer, *Using Judicial Evaluations to Promote Judicial Accountability*, 90 JUDICATURE 200, 206 (2007).