

IT'S A NEW DAY: FUTURE TRENDS REQUIRE REVOLUTIONARY CHANGES IN COURTS

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The social, economic, technological, and policy trends shaping the courts since the 1990s, coupled with emerging trends, will require courts to alter their roles more profoundly by 2020 than ever before. Courts must revolutionize how they provide justice services, rethink how they do business, and assertively shape a better future.

Over a decade ago, we wrote that by the late 1990s courts across the nation had:

- created new or greatly expanded divisions and court support programs, such as domestic violence, mental health, drug, and other specialty courts;
- institutionalized family support, litigant assistance, and mediation programs;
- enhanced the use of computer- and telecommunications-based court services; and

- become more effective partners and leaders in rapidly expanding community justice networks composed of jails, defense service organizations, private attorneys, public- and private-treatment and human-service providers, community and public advocates, and law-enforcement and corrections agencies.

However, at that same time, we also stressed that without dramatic changes in the way courts operated, by the year 2010 the key trends shaping the courts during the 2000s could undermine progress and even result in courts moving further away from their essential mission to provide timely and effective resolution of legal matters while promoting respect for the courts and maintaining the independence of the judiciary. In particular we stressed that without substantial change, by 2010 our nation's courts likely would:

- become courts of criminal, family, and what insiders knew to be “quasi-criminal” jurisdiction;
- have increasingly assumed more social- and family-service functions;
- have mandates that far exceeded resources;
- face increasingly precarious funding;
- be challenged by more and more partisan and divisive judge selection often driven by ideology and interest-group-driven politics;
- face challenges to the independence of the judiciary;

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Critical Trends For Courts—2010 to 2020

Social/Demographic Trends

- Changing social demographics, including population and workforce aging.
- Alterations in family composition, including declining numbers of traditional families and alterations in the role of societal institutions and community norms and values.
- Polarization of people by class, race, ethnicity, and lifestyle preferences.
- Shifting and mobile population; rapid population growth in some areas and decline in other areas.
- Explosion in the use of social media/social networking as a way to build and maintain relationships, communicate, and do business.

Economic Trends

- Protracted economic recession and slow recovery.
- Increasing stratification between higher/lower incomes.
- People working longer; delaying retirement.
- Greater demands to do business 24/7 (e.g., retail shopping, banking, government services).

- deal with increasing costs per case and increasing numbers of unrepresented litigants;
- face mass retirements, especially of long-term court staff taking advantage of pension programs that they feared would only get worse for newer employees and those who waited too long to retire; and
- face declining morale in the court work place.

Finally, to try to avoid this likely negative future we suggested that courts needed to:

- work closely with local and state justice partners and the community to clarify the appropriate role of the courts relative to the work of executive agencies, service providers, and the many other groups who collectively make-up the justice system;
- redesign internal court work processes and cross-agency work processes to increase service efficiency and quality;
- enhance court governance to improve efficiency;
- implement monitoring systems to report and modify court and justice system performance;
- introduce assertively succession-oriented recruitment and training programs; and
- perfect decentralized service strategies, which emphasize providing services at sites throughout communities.

This article picks up where we left off ten years ago by listing key continuing and emerging trends to 2020 and suggesting several specific actions courts should take to shape a better future.

Key Trends for 2010 to 2020 and Consequences for Courts

The figure provides a list of trends we believe will have the greatest effect on courts in the coming decade. Some trends continue from the past decade, and others are new and emerging trends to 2020.

The space limitations of this article prohibit a detailed inventory of trends and descriptions of likely future scenarios for courts. However, below are a few of the most significant consequences for courts in the next decade.

1. There will be a widening gap between society's expectations of courts and courts' capacity to meet those expectations.
2. Court users increasingly will be more diverse and have a wide range of changing and evolving needs.
3. Case composition will change, and the complexity of some types of cases will continue to increase.

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Critical Trends For Courts—2010 to 2020

Polity and Political Trends

- Increasing scrutiny on how public tax dollars are spent.
- Increasing fragmentation, position polarization, and gridlock among political parties.
- Increasing tension between preserving individual rights and rolling back civil liberties.
- Ongoing tension between increasing expectations for government solutions (e.g., public expects courts to solve many of society's problems) and the call for less government involvement in personal lives (e.g., smoking cessation, obesity, dietary decisions).
- Ongoing debate over health-care reform.
- More tension between local control and need for regionalization of services.
- Continued pressure to help organizations suffering from economic downturn (e.g., airlines, banks/ financial institutions, automobile companies).

4. Pressure will continue to mount to achieve better case outcomes and appropriately supervise and monitor offenders.
5. There will be an increasing demand for culturally appropriate and therapeutic approaches to court and justice services.
6. Courts will have a difficult time keeping pace with and using existing and emerging technologies.
7. It will become increasingly difficult to recruit, hire, and retain highly skilled executives, managers, and staff.
8. Court facilities and infrastructure will continue to decline.
9. Ideology-driven politics and issues will continue to threaten judicial independence, influence perceptions of fairness, and affect the public's trust and confidence in courts.
10. Challenging times could create the right conditions for implementing new innovations and revolutionizing how courts do business and provide services.

In sum, in the absence of court leaders shaping a radically different future, it is plausible that by 2020 the already bleak scenario for 2010 summarized above will

become even more desperate. By 2020 our nation's courts could easily become unable to provide, or increasingly inadequate in providing, effective forums for resolving disputes, protecting the rule of law, and ensuring justice for all.

What Courts *Must* Do as a Result of the Trends

Although shaping a better future will be difficult, below are seven things court leaders can and must do to prepare for and respond to these trends.

1. *Court leaders must jettison the mind-set that we are going through a short-term rough patch and that, in time, things will get better.* History has proven that tough economic and fiscal times eventually improve. Thus, we know that current times also will get better. However, for at least the next decade or so, it is plausible that even if and when the general economic outlook improves, funding for courts will not return to previous levels. Consequently, courts will be required to do both “more with less” and “less with less” in the years ahead.
2. *Courts must reexamine their missions and critically review and align the scope of services they provide.* This strategy requires making difficult choices about the services courts provide. It may mean choosing X service instead of Y service or eliminating some services entirely, especially services that are outside courts' core missions or are secondary or tertiary. Retaining and aligning core and primary services while eliminating secondary or tertiary services is an example of doing “less with less” in the future.

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Critical Trends For Courts—2010 to 2020

Technological/Scientific Trends

- Continued rapidly developing information, telecommunications, and networking technology.
- Continuing wireless revolution and use of the Internet.
- Rapid advances in the types of communications and information technology and the cost-effective applications of technologies, especially use of mobile devices.
- Rapidly advancing and cost-effective technologies for distance learning and virtual meetings.
- Continued scientific breakthroughs in nanotechnology, human genetics, robotics, etc.
- Increasing capacity for nano, bio, and electronically enhanced behavior monitoring and modification.

3. *Court leaders must rethink and dramatically alter how courts provide primary services, conduct business, and achieve effective outcomes.* This requires questioning why and how courts do business and radically altering how justice services are provided. No longer will incremental or evolutionary change be enough. Instead, courts need to embrace the following:

- Revolutionize work processes and caseload management practices, such as allowing or using other electronic media, and allowing jurors to select their date of jury service and complete juror orientation online.
- Improve access to services and information using low-cost social media such as Facebook, LinkedIn, Twitter, and YouTube, along with IApps, Skype, and other emerging technologies to conduct core court business, such as answering questions of court users; educating the public; conducting arraignments, hearings, and settlement conferences; training court staff, and monitoring performance.
- Use evidence-based practices and tools to achieve better outcomes and do more with less by targeting services more accurately and monitoring results.

4. *Court organizations must become more nimble, agile, and responsive.* Instead of striving for stability, court leaders must design and build court organizations that can easily and quickly respond and adapt to changing needs and times. This includes implementing more effective and responsive governance structures, strengthening and expediting decision-making practices, adapting policies and procedures to keep pace with changing demands, and fostering a court culture that thrives on experimentation, change, and innovation.

5. *Court leaders must revolutionize their court cultures and work environments.* Court leaders must be pioneers in implementing flexible, effective, and contemporary human-resource approaches and policies and in developing an engaging work environment that will attract, motivate, and retain highly skilled staff. This includes creating flexible work arrangements, investing in career-planning and developmental opportunities, providing horizontal and vertical advancement opportunities, expanding position responsibilities, eliminating narrowly defined job descriptions, retooling skills and abilities, and implementing progressive pay, reward, and incentive practices, such as pay for performance and bonuses.

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Critical Trends For Courts—2010 to 2020

Justice System Trends

- Perpetual federal, state, and local funding challenges.
- Aging court infrastructure, especially facilities, security, technology, and equipment.
- Changing demographics and characteristics of court users.
- Continuing demand for justice system transparency and performance accountability.
- Increasing local and state involvement in the enforcement and adjudication of federal policy, such as immigration and health-care, and responses to the mortgage-foreclosure crisis.
- Greater expectations and demands for access to information and ability to do business with courts from remote locations (e.g., e-filing, pay fines and fees, access to case information, video arraignments).
- Continuing politicization of the judiciary and attacks on judicial independence.
- Increase in legislation for specific crimes and unfunded mandates.

Note: Many of the trends listed were also identified in a recent national survey of court managers. Respondents to the survey believe that these trends will continue to shape the next decade for courts.

6. *Courts must expand existing, and forge new, partnerships.* Courts have a long-standing history of collaborating with partners and the communities they serve. In the future, they must leverage and expand these existing partnerships to include working more closely with regional, national, and even international justice networks.
7. *Court leaders must be even more tenacious in advocating for the needs of the judiciary and courts, communicating accomplishments, and demonstrating accountability.* Being less insular, more transparent, and more direct and forceful about needs and accomplishments are essential to shaping a more favorable future.

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