

DAY ONE PROJECT

Digitizing State Courts,
Expanding Access to Justice

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Summary

To overcome the unprecedented backlog of court cases created by the pandemic, courts must be reimagined. Rather than strictly brick-and-mortar operations, courts must consider themselves digital platforms.¹ To accomplish this, the U.S. Department of Justice (DOJ) - with support from 18F, U.S. Digital Service, the Legal Services Corporation, and the State Justice Institute - must build and fund professional and technical capacity at the state level to develop and adopt standardized digital infrastructure for courts and other justice agencies. Due to the replicable nature of this solution across states, the federal government is perfectly positioned to lead this effort, which will be more cost effective than if each court system attempted this work on their own. The estimated cost is \$1 billion.

This once-in-a-generation investment will allow courts to collect granular, raw data, which can help overcome the current backlog, increase access to the justice system, inform policies that drive down mass incarceration, improve transparency, and seed a public and private revolution in justice technology that improves access to justice for all Americans.

Challenge and Opportunity

The COVID-19 pandemic brought physical shutdowns to American courts and an unprecedented backlog of cases. In Connecticut, pending civil and criminal cases jumped 200 percent, and many trials are not scheduled to start until 2021.² As of June, New York City had 39,200 criminal cases in backlog.³ Meanwhile, San Diego, California has 20,000 criminal cases waiting to be heard.⁴ These are just a small sample of a widespread national trend.

In an attempt to manage this moment, courts rapidly moved online and opened Slack channels and Zoom accounts. Quick action like this should be applauded. However, these solutions are undercut by the justice system's long-term lack of investment in digital infrastructure.

Across the country, courts fail at data collection, publication, and use. States like California, Colorado, and Florida passed laws in recent years to collect more data created by the justice system, but they are in the minority. Many states still operate on paper and have little-to-no digital data.⁵ In Massachusetts, a state that spent over \$75 million to digitize court infrastructure, courts still don't

¹ Jason Tashea, "The Justice System as a Digital Platform," *The Commons*, New America, September 30, 2020.

² Christine Stuart, "Court Backlog Builds During Ongoing COVID-19 Pandemic," NBC Connecticut, September 16, 2020; Robert Storage, "Come Back in 2021: All Connecticut State and Federal Jury Trials Postponed," *Connecticut Law Tribune*, December 4, 2020.

³ Alan Feuer, Nicole Hong, Benjamin Weiser and Jan Ransom, "N.Y.'s Legal Limbo: Pandemic Creates Backlog of 39,200 Criminal Cases," *The New York Times*, June 22, 2020.

⁴ "Justice Delayed: The Pandemic Has Created Backlogs in Courts Across the Country," *The Takeaway*, WNYC, September 17, 2020.

⁵ Jason Tashea, "Liberating Criminal Justice Data: How a Florida Law Provides a Blueprint for the Nation," *ABA Journal*, June 18, 2019; Pierre Bergeron and Michael Donnelly, "How a Spreadsheet Could Change the Criminal-Justice System," *The Atlantic*, December 14, 2020.

electronically track judges' decisions, bail rates, or even a party's gender.⁶ Nationally, a 2015 study found that 26 state court systems could not provide "an accurate report on how many cases were filed and disposed in any given year" — the most basic of court data.⁷ Meanwhile, public trust in the courts recently fell by double digits⁸ and the U.S. ranks 36th globally on access to civil justice—behind Rwanda and on par with Kazakhstan.⁹

This lack of reusable data puts a ceiling on our understanding of individual courts and what courts can do with technology. Without data, software solutions like those that help analyze a court's caseload, automate court processes, or provide assistance to people representing themselves without an attorney, are out of reach. While the relationship between data and improved court understanding and efficiency has been well-known for at least 30 years, the existing failures of the justice system compounded by the pandemic demand sweeping action.¹⁰

Plan of Action

To fix this systemic problem at its foundation, the DOJ should support state courts in the adoption of open data standards, modern data collection methods, and application programming interfaces (APIs). Collectively, this is the digital infrastructure needed to help courts manage the tens of thousands of cases that have piled up, become more efficient, and increase access to justice.

This approach is different from how justice system actors currently conceptualize managing information. Currently, agencies generally think about data only in its finished form: a court order, a pamphlet, or a website. Thinking as a digital platform requires justice system leaders to consider data not only in its end form, but as raw data that is accurate, publicly available, secure, and reusable.

To make this a reality, the reconstituted Office of Access to Justice in the DOJ, with support from 18F, U.S. Digital Service, the Legal Services Corp., and the State Justice Institute, needs to offer grant and technical support so local court systems can digitize court data and services. To do this, three layers must be created: information, platform, and presentation.¹¹ This proposal supports the creation of the first two layers, setting the foundation for the development of the third.

⁶ Todd Wallack, "Call It Big Data's Big Dig — \$75m, 19 Years, Still Not Done," *The Boston Globe*, April 11, 2015; Rachael Rollins, Byron Rushing and Juana Matias, "Massachusetts Criminal Legal System Needs to Get Serious about Data," *The Boston Globe*, September 14, 2020.

⁷ William Raferty, "Efficiency Of Unified Vs. Non-Unified State Judiciaries: An Examination Of Court Organizational Performance Examination Of Court Organizational Performance," (PhD diss., VCU Scholars Compass, 2015).

⁸ "State of the State Courts // 2019 Poll," National Center for State Courts, Accessed on December 16, 2020, https://www.ncsc.org/__data/assets/pdf_file/0018/16443/ncsc_sosc_2019_presentation.pdf

⁹ Rule of Law Index 2020, World Justice Project, 2020.

¹⁰ "Reducing Court Delays: Five Lessons from the United States," *PREMnote 34*, (World Bank, Dec. 1999).

¹¹ "Digital Government: Building a 21st Century Platform to Better Serve the American People," Executive Office of the President of the United States, n.d., <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>

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The information layer encompasses all of a justice system's structured and unstructured data, including case filing and case outcome data. Creating this layer means collecting and cleaning the standardized data that exists across court systems, but also turning unstructured data - like court rules and orders that are usually housed in PDFs or on paper - into structured data. Creating this layer is time-consuming and painstaking, but the process is replicable across jurisdictions, which is why funding and technical support from the federal government is important and more cost effective than relying on each state to recreate this process. The National Center for State Courts published open data standards for courts in 2019.¹² By using these standards across the country, court-to-court and state-to-state comparisons become possible, which can better inform local need and complementary federal support.

The platform layer gives the data utility. This includes the adoption of data management processes and software and APIs. This creates a multitude of benefits. Most significantly, it allows courts to quantify and manage the case backlog by giving them ready access to usable information about what types of cases are pending, for how long, and why. Having readily useable data will also increase transparency by allowing administrators, policymakers, and researchers to dig into how courts function.

Publicly available, structured data also lowers the barrier to entry for entrepreneurs and researchers building solutions to mass incarceration and the access-to-justice gap, thus creating the presentation layer. We've already seen this in other markets: data from weather.gov informs weather forecasts on our devices and local government transit data populates real-time information on map applications. For courts, this layer may include a court data portal where the public can see, in real time, what's happening at the court. The presentation layer could come in the form of a text message reminder system that helps people appear for their court date, which would decrease bench warrants and pre-trial detention. This data will also assist the adoption of online dispute resolution software, which allows courts to quickly resolve high-volume, low-stakes cases without requiring in-court hearings, saving time, money, and trouble.

Conclusion

By focusing on data infrastructure, localities will have the information to uncover and tackle the most pressing issues that they face. However, if the justice system continues on its current path, fewer people will have access to the courts, people will continue to languish in prison, and faith in the justice system will continue to erode.

¹² "National Open Court Data Standards," National Center for State Courts, n.d., <https://www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics/national-open-court-data-standards-nods>.

Frequently Asked Questions

What risks are created by digitizing justice system records?

Regardless of whether this proposal is enacted, cybersecurity will be an issue for courts. Court documents are filled with sensitive information, including names of confidential informants, information about children, and people's mental health histories. If courts fail to protect people's data, it will erode trust in the justice system, which in turn undermines the rule of law. For any court, regular, third-party security and privacy audits of these systems should be non-negotiable.

Is there a comparable example of this type of effort?

Yes. In January, the Federal Bureau of Investigation (FBI) will officially change how it collects and shares crime data. Bringing an end to the Summary Reporting System (SRS) era, national crime data will be collected through the National Incident-Based Reporting System (NIBRS), which will collect significantly more granular data about crime in the U.S. NIBRS is a data standard that will be used by at least 75 percent of the law enforcement agencies in the U.S. starting in 2021. Decades in the making, a partnership between the FBI and the Bureau of Justice Statistics helped localities through technical and financial support to make the switch to the more complex NIBRS system.

Why can't private industry do this?

Private industry is a part of the solution, not *the* solution. Building on the example above, once the FBI decided on the NIBRS data standard, they worked with law enforcement case management system companies to incorporate the new data standard. For the companies, it became a selling point of their product that the shift to NIBRS would be easier because the company had already done the leg work. If the federal government commits to a justice system data standard and helps states adopt it, we should expect private court case management companies to play a similarly supporting role in that transition.

The federal government currently suffers from a dearth of technical talent. Does the government have the required technical and legal expertise to create the information layer to the court's digital infrastructure?

Yes, through both in-house talent and partnerships with non-profits, academic researchers, and private industry. Government agencies like U.S. Digital Service, 18F, and Legal Services Corporation having been working with the public sector to digitize and modernize infrastructure. The aforementioned example about the FBI creating NIBRS is an example of a federal agency creating and deploying an information layer across thousands of state and local agencies.



Photo credit: Saverio Truglia

About the Author

Jason Tashea is a policy expert, writer, and entrepreneur focused on how technology impacts the justice system. Currently, he is a product manager at an access-to-justice startup. He previously created and taught a course on criminal justice technology, policy, and law at Georgetown University Law Center and was a staff writer at the American Bar Association *Journal*, where he focused on technology issues. He is currently a member of the Legal Services Corporation's Emerging Leaders Council and the Institute of Electrical and Electronics Engineers' Law Committee. He is also the editor of [the Justice Tech Download](#), a weekly newsletter. His work has been published by the Brookings Institute, the Harvard Shorenstein Center among other academic publications, New America, and *Wired*.



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