Creating a Judicial Innovation Fellowship to Strengthen America’s Court Infrastructure and Improve Access to Justice

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February 2022
Summary

People in the United States face a persistent gap in access to justice. Complex and outdated processes of the judicial system and court administration present significant barriers for individual litigants, who are, for the most part, poor and not represented by lawyers. Unfortunately, despite a willingness to innovate, court administrators often lack budget, staff, or time to address underlying technical challenges effectively.

To overcome these issues, Congress should create and fund a Judicial Innovation Fellowship that brings experienced technologists and service designers into state, tribal, and federal courts to improve judicial administration, transparency, and access to justice. Like programs in the U.S. federal executive and legislative branches (such as the United States Digital Service and Tech Congress), the Judicial Innovation Fellowship will embed mid-career technology professionals for “tours of duty” in state, tribal, and federal judiciaries. The Fellowship will bring much-needed talent and resources to America’s underfunded courts, creating a multiplier effect that will increase the quality of justice in the United States.

Challenge and Opportunity

Technical shortcomings of state courts exacerbate twin national crises: (1) the access-to-justice gap, and (2) mass incarceration. Each year across the United States, 55 million Americans experience 260 million civil legal problems—including issues with eviction, consumer debt, domestic violence, veterans’ benefits, disability access, and health care—with little to no support. 86% of low-income individuals facing a legal problem receive inadequate or no civil legal help. This is the justice gap. Meanwhile, an average of 630,000 people sit in pretrial detention every day. We know very little about this population, including to what extent pretrial detention is merited. In addition to representing a moral failure, unresolved legal issues can cause medical problems and lost wages or employment. Such issues cost the United States nearly 1.5% of GDP every year.

These problems have gotten worse over the past decade. The World Justice Project, which tracks the rule of law, has shown that Americans’ ability to access counsel declined from 2010 to 2020. State and federal courts have long faced accessibility and backlog challenges that have deferred, if not denied, access to justice for those who seek help. The COVID-19 pandemic has exacerbated the issue, with states around the country facing unprecedented delays of civil and criminal hearings. Federal courts have also faced problematic delays and “staggering” caseloads as a result of the pandemic. While many courts have shown impressive flexibility and creativity in adopting new technologies—sometimes on the fly during the pandemic—there remains a significant need to rethink and redesign fundamental aspects of court procedures and tools to meaningfully improve court administration.

Indeed, shortcomings in court technology and data clearly exacerbate the access-to-justice gap and hinder court administration. For example, collection, storage, and sharing of data related to trials and courts is limited and piecemeal around the
country. This means that there are not reliable numbers on the use of bail in criminal matters or self-represented litigants in civil court, making informed decision making and analysis nearly impossible. Increased need for digital court contact during the pandemic has also created new technical challenges for electronic filing, real-time translation, and security.

Courts are aware of the need for improved data and technology. The federal judiciary's September 2020 Strategic Plan made “harnessing technology's potential” a priority, including “develop[ing], operat[ing], and secur[ing] cost-effective national and local systems and infrastructure. State courts have underscored their commitment to achieving "100% effective assistance for essential civil legal needs" and set forth a "tactical plan for technology" to improve court functioning. Accomplishing these goals will require a comprehensive national effort to attract and nurture a technical talent pipeline to the judiciary.

The state and federal judiciaries have in-house IT staff to manage legacy court systems [e.g., the federal judiciary’s case management/electronic case files (CM/ECF system)] and networks. To date, however, there have been only a few examples of programs to systematically bring new technology and design talent into the judiciary. One such effort is the American Association for the Advancement of Science (AAAS)'s Judicial Branch Fellowship. This program “allows an accomplished scientist or engineer to contribute their scientific and technical expertise to federal judicial administration and case management.” The program supports one to two fellows each year in serving as a resource for the staff of the Federal Judicial Center. AAAS Judicial Branch Fellows have tackled legal issues involving technology as well as courthouse technology directly. For example, one fellow focused on the accessibility of courts and court records for individuals with disabilities. Other fellows developed resources for judges on neuroscience and empirical research on how court rules impact litigants’ behavior. Though impactful, the AAAS Judicial Branch Fellowship remains modest in scale and there have not yet been any efforts to replicate or expand it.

There have been similarly few efforts to bring new technology and design talent into state and tribal judiciaries. In 2018, the Judicial Council of California hired service designers to conduct a research project to improve digital services for self-represented civil litigants. As a part of this project, the team observed and interviewed self-represented litigants, court staff, courtrooms, and attorneys to understand needs and how to design solutions to improve the process for self-represented litigants. At Sacramento State University, the Center for California Studies’ Judicial Fellowship Program has helped superior courts throughout California adopt self-help tools to aid litigants during the COVID-19 crisis, including live-chat functionality and video appearances. In August 2020, the Utah Supreme Court launched the Office of Legal Services Innovation Office to support its innovation sandbox, a program designed to foster experimentation in the delivery of legal services in the state. Again, these examples showcase the promise of concerted efforts to advance judicial use of data and technology but have not been meaningfully integrated or scaled.

In contrast, both the executive and legislative branches have developed and deployed effective models for government innovation. In 2012, President Obama launched the
Presidential Innovation Fellows (PIFs), a program managed by the General Services Administration (GSA) that recruits innovators from outside of government for one-year “tours of duty” within federal agencies to develop and launch innovative projects. The Obama-era White House later established the U.S. Digital Service (USDS) and 18F to serve as permanent technology units within the Executive Office of the President and GSA, respectively. In August 2021, the Biden Administration announced a U.S. Digital Corps through which early-career technologists join the federal government for two-year “tours of duty” within federal agencies. Digital Corps is designed to complement the work of USDS, 18F, and the PIFs.

The federal legislative branch similarly welcomes external talent for limited “tours of duty” through the Congressional Innovation Fellows (CIF) program run by TechCongress, a non-governmental effort. While CIF, like PIF, embeds mid-career technologists into the federal government, the former effort is intended to help “Congress aim for more informed decisions regarding technology and policy by allowing Congress to gain technical insight.” In effect, CIFs are policy advisors whereas PIFs are process innovators. The upshot is that programs like these can deliver impact through multiple avenues. The CIF, PIF, USDS, and 18F models provide a useful roadmap for similarly ambitious innovation initiatives in the judiciary.

Plan of Action

Congress should fund a federal Judicial Innovation Fellowship (JIF) program with a primary responsibility of improving and maintaining our national judicial digital infrastructure—the data, technology, processes, and talent at the heart of the U.S. justice system. Funding will support both a permanent staff to ensure long-term sustainability and ownership of projects, as well as rotating fellows (technologists and designers motivated by working for the public interest) to bring fresh ideas and energy to judicial innovation both during and after their formal engagement in the JIF program.

The JIF program, like the PIF and CIF programs, will comprise a one- or two-year “tour of duty” in the federal or state judiciary. During this time, the fellows will receive training in justice issues and court administration and will be embedded in federal and state court administrative offices to assist permanent staff and leverage leading-edge practices and technology to improve judicial workflows and expand equitable access to justice. Fellows will meet with each other once a month to share experiences and exchange feedback on their work. Fellowship managers will also meet with fellows one-on-one to check in on experiences and to provide support to fellows and the cohort at large. In the long term, the JIF program will provide a “pathway to permanence” for high-performing fellows to continue to work within the judiciary. We estimate that a two-year pilot JIF program will cost $3 million to administer, a cost that includes salary for eight fellows at $150,000 per year, salary for two permanent program staff, and miscellaneous training and administrative costs.

Like the PIF and CIF programs, the JIF program will target mid-career professionals with design, data, technology, and product expertise. Most fellows will be housed in the local administrative offices for the specific courts where they are serving. Some
fellows will serve from a state or federal central office (e.g., the Administrative Office of the U.S. Courts). Placing talent at both the federal and state levels will differentiate the JIF program from the PIF and CIF programs, which are federal programs that feed federal agencies and Congressional offices, respectively.

Just as mid-career professionals will apply to serve as JIFs, courts and offices will apply to host JIFs. Applications will identify needs for process or technology improvements to advance public access to justice, equity, and court administration, and outline specific projects for JIFs to work on. Selected proposals will be honed with the help of the JIF program’s permanent staff. After a JIF is placed, staff at the hosting court or office will work closely with the JIF throughout the design, development, and deployment process of any proposed solutions. Initially, at least, we expect that JIFs will primarily support court administrative offices (e.g., clerks of the court or chief information officers) by:

- Improving court data-management and security practices.
- Developing self-help tools and resources for self-represented litigants.
- Improving court processes through technology (e.g. electronic filing, online dispute resolution).
- Developing long-term plans for maintaining new tools and processes.

By focusing on these core issue areas, courts will be better suited to meet existing and emerging challenges. They will have better data to inform more effective administration themselves, tools to assist self-represented litigants, fresh perspectives to help close the yawning justice gap, and more.

We propose launching the JIF program with an initial two-year pilot in partnership with at least three state courts. Courts will be picked based on their project proposals, capacity to host fellows, and ability to manage fellowship projects after the placement is complete. During the pilot, an inaugural team of fellows will work alongside existing court staff to prototype and implement an achievable project, to be memorialized in a final report and playbook. Due to limited resources within the judiciary, we expect that this initial pilot will be managed within a university center, non-governmental organization, or foundation, and funded by private foundations or non-governmental organizations.

The pilot will be used to refine and support expansion of the JIF program, including by hiring a larger permanent staff and growing the fellowship class. In time, the JIF program will serve as a core pillar of a nationwide judicial innovation strategy to ensure a robust, secure judicial infrastructure that significantly improves access to justice well into the future.
Conclusion

The ongoing coronavirus pandemic has significantly exacerbated a growing access-to-justice gap within America's judicial infrastructure. Overcoming this gap calls for a bold and long-term solution. A Judicial Innovation Fellowship program would drive technology and design talent to state, tribal, and federal judiciaries—and in so doing, would create a novel talent pipeline to help our courts tackle their most pressing justice issues.

Frequently Asked Questions

1. Why should JIF be federally administered and funded?

The justice crisis is a national crisis that requires an organized, national response. There is precedent for a program like the JIF program. The Legal Services Corporation and the State Justice Institute were created by Congress so that federal funding and technical support could be shared with state and local justice agencies. Doing so centralizes administration, which builds procedures and institutional knowledge that can be shared across jurisdictions while streamlining overhead costs.

2. Where will the Judicial Innovation Fellowship be housed?

For the pilot phase of the program, we propose that the Judicial Innovation Fellowship be located within an existing university center that focuses on civic technology and access to justice.

After the pilot phase, the Judicial Innovation Fellowship could be stationed within the Administrative Office of the Courts (AO) or spun out as an independent nonprofit with Congressional support, like the Legal Services Corporation. JIFs will typically be stationed within administrative offices of state, tribal, and federal courts, working closely with court staff on their innovation projects. If a fellow is working on a cross-court project (e.g., developing standards), it may be more appropriate for the fellow to be stationed at the AO rather than at a specific court administrative office.

3. Why focus on state, tribal, and federal courts? Why not just choose one?

The national access-to-justice crisis requires coordinated action at all levels of the judiciary. While many of the most pressing justice issues arise at the state-court level, many important legal issues also arise at the federal level (e.g., immigration, civil rights, and criminal justice). A comprehensive approach to advance innovation across federal, state, and tribal courts, will (1) enable coordinated sharing of best practices and solutions across courts, (2) ensure that no court is left behind and that all have access to tech talent, and (3) consider cross-jurisdictional solutions where appropriate.

4. How much will the Judicial Innovation Fellowship program cost?
We estimate that the two-year pilot will cost $3 million. Most of the budget will cover two full-time staff and up to eight fellows. We estimate that annual per-fellow salary will be approximately $150,000, a level on par with PIF salaries. Once the program is fully established, we anticipate an annual budget of $10 million.

5. Would launching the JIF program require new legislation?

A pilot JIF program could be launched without new federal or state legislation. However, federal funding appropriated directly for JIFs through legislation would support a more durable and robust program.

6. How will courts interested in supporting JIFs be identified?

Several federal and state courts have already taken particularly forward-thinking approaches to innovation. At the federal level, these include the U.S. Courts for the Northern District of California and for the Southern District of Texas. At the state level, these include the judiciaries of Arizona, California, Michigan, Texas, and Utah. We propose engaging with chief justices and clerks of these courts as likely early supporters of the JIF program.

A key lesson from the PIF program is that innovation fellows—particularly those from outside traditional political and legal fields—must have support from and access to agency decision-makers in order to achieve their goals. Assigning fellows to placements where their reception is lukewarm at best is a recipe for failure. To that end, we recommend establishing a formal process for courts to request JIF support—a request that would include a commitment to work collaboratively with any JIFs placed in their offices. Courts should also be encouraged by JIF program staff to take a co-leading role in defining priorities for assigned JIFs and to take a co-development role once a JIF-managed project is underway.

7. How might funding and resources be secured to sustain the JIF program for the long term?

There are a number of potential public and private sources of funding for the JIF program. Public funding would be best secured through dedicated Congressional appropriations. This public funding could then attract private funding from grant-making foundations. Universities could also support the JIF program through in-kind support (e.g., training) provided through law schools such as those at Stanford University and Georgetown University, both of which have strong technology and access-to-justice programs.

8. How would JIFs be selected?

The JIF program would source applicants from government, universities, and the private sector. The best applicants would be mid-career technology or service-design professionals with a passion for improving access to justice and strong technology or design skills. We will also solicit good practices for fellow recruitment from leaders behind other, similar innovation fellowship programs.
9. How would fellows be effectively onboarded so that they understand court culture and legal, financial, and institutional constraints?

The JIF program would provide structured training to all accepted fellows. The training would draw on key texts in court innovation, judges, and court reform leaders, and would include an overview of the U.S. judicial system (in particular, the functioning and administration of U.S. courts). Fellows would also receive training tailored to the court or office to which they are assigned, (e.g., information about court- and office-specific court issues and rules).

10. How can the JIF program promote sharing and reuse of solutions across courts?

The JIF program will need to be built for sustainability and transferability across jurisdictions, while recognizing and accounting for local differences. To that end, the program will ensure support from and collaboration with institutional decision makers, commit to open-source projects and open-access procedures, and allow for sufficient flexibility and independence to work creatively while prioritizing regular communication between fellows, JIF leadership, and court stakeholders.
About the Authors

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Tanina Rostain is a law professor at Georgetown Law Center who has for a decade been studying and teaching about the uses of technologies in increasing access to justice. She is the founder of the Justice Lab at Georgetown, Faculty Director of the Georgetown Institute for Technology Law & Policy, and a creator of the Georgetown Iron Tech Lawyer Competition, a global pitch competition for students to show off digital tools that improve access to justice. With Amy O’Hara, a research professor at Georgetown’s Massive Data Institute, Tanina launched the Georgetown Civil Justice Data Commons (CJDC) to (i) facilitate collection and use of data, and (ii) produce research and operational knowledge about the U.S. civil-justice system. The CJDC, which is funded with support from the Pew Charitable Trusts, the JPB Foundation, and the National Science Foundation, is creating a new technical and governance model to facilitate data collection and sharing and improve the functioning, fairness, and transparency of civil-justice institutions. Tanina was chosen as a 2014 “Fastcase 50” member and a 2015 ABA Journal Legal Rebel.

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