

Perspectives on
State Court Leadership

HERDING LIONS

SHARED LEADERSHIP OF STATE TRIAL COURTS

*One in a series from the Executive Session
for State Court Leaders in the 21st Century*

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This is one in a series of papers that will be published as a result of the **Executive Session for State Court Leaders in the 21st Century**.

The Executive Sessions at the Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue.

Members of the Executive Session for State Court Leaders in the 21st Century over the course of three years sought to clarify the distinctive role of state court leaders in our democratic system of government and to develop and answer questions that the state courts will face in the foreseeable future. Themes addressed include principles for effective court governance, the tension between problem solving and decision making, the implications of social media for court legitimacy, how courts defend themselves from political attack, and the notion of chief justices as civic leaders. Many themes were developed by Session members into papers published in a series by the National Center for State Courts.

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OVERVIEW

Conventional wisdom on state court reform calls for unified trial courts acting under the administrative authority of a state supreme court. Tremendous progress has been realized through reforms aimed at this goal. And yet court unification efforts have also highlighted the inherent tension between state supreme courts and local trial courts. In many states, like Texas and Arizona, the trial court system is decentralized and comprises a complex web of local jurisdictions and an equally intricate network of funding sources. Observers have likened the supreme court's role in managing trial courts to "herding cats," but a better metaphor might be "herding lions."

A healthy tension in state-local court relations can in fact be beneficial: it fosters discussion and promotes mutual problem solving. But establishing and maintaining positive intra-branch relations presents a daunting challenge—not from a lack of cooperation on the part of judges or court personnel, but from the hierarchical nature of state court administrative structures and the strong local orientation of trial courts. Working relations are further tested by the economic crisis facing states today, which forces courts to make insular decisions about resource allocation that impede harmonization.

This paper explores some of the underlying points of tension between state supreme courts and local trial courts, ultimately positing a "shared leadership" model to leverage local court innovation in states where the judicial function is highly dispersed. Central to this discussion is the overarching need to maintain prompt and affordable court services amidst economic uncertainty and reduced resources.

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STATE COURT PLANNING AND MANAGEMENT: THE BIG PICTURE

Whether a state's judicial structure is unified or decentralized, a state supreme court must ensure access to, and the availability of, essential court services. Uniformity, at some level, is necessary and, in many instances, is achievable by working closely with the state's office of court administration. Chief justices and state court administrators develop comprehensive strategic plans that promote the statewide delivery of court services. Because these plans are intended to instill best practices on a statewide basis, models are generally predicated on uniform policies and procedures. Thus, state-level initiatives emphasize standardized court forms, uniform fee schedules, standard data definitions, statistical reporting, and deployment of statewide technology solutions, such as integrated case and cash management systems. Most state court offices also have some sort of management oversight role executed through court operational reviews, performance audits, or technical assistance.

Not everyone agrees that centralization is superior to balkanization, or that chief justices and court administrators offer better solutions to the various challenges local jurisdictions face. Some posit that the office of court administration is a distant bureaucracy; that chief justices remain relatively remote from the sea of litigants and witnesses populating trial court proceedings; and that both have a limited understanding of how budget reductions will impact the system. Critics of uniformity also complain that application of homogeneous standards as a method of improvement creates "micro management," often imposing redundancies while squelching innovation.

These competing goals of uniformity and local control complicate the otherwise salutary goal of reforming the administration of justice. If we apply a different paradigm, however, the march toward a more efficient judicial system can best be realized by leveraging local success on a statewide scale.

LOCAL COURTS: ONE SIZE DOES NOT FIT ALL

Trial court planning is largely incremental in nature, driven by voluminous caseloads and a substantial number of local litigants. Service requirements are defined by the unique demographics, geography, economics, and caseload mix of the local court jurisdiction. Neighboring jurisdictions within the same state often have varying workloads, and differing degrees of funding and sophistication in the steps devoted to the litigation process. Courts must meet these service demands within the economic and political structures at hand.

Most students of the judiciary, however, agree on a central premise: Trial judges are best positioned to identify and resolve local court problems. Emerging trends, like party challenges to the procedure used and the geographical area targeted to which jury summons are sent, or a rising tide of judicial foreclosures in a down economy, often arrive without warning, creating the need for prompt action. The judge cannot wait for a pronouncement from the Capitol before confronting such challenges. She must engage existing resources quickly, establish pilot projects to test solutions, negotiate inter-agency agreements, and work with colleagues who have faced similar crises. There is little time for theoretical models or academic studies while lawyers and witnesses wait in the hall for an audience with the judge.

In an Arizona county, cases challenging assessed property taxes based on value dramatically increased over a very short period of time due to the depressed economy. The statute provides that these cases have to be heard within six months of filing; however, the resources available to handle the caseload were insufficient. Immediate action was taken at the local level and later, the issue was addressed at the state level to prevent future problems.

Over the years, this grass-roots approach has yielded an impressive list of innovative local court improvements, including enhanced case flow management systems, self-service centers for pro se litigants, jury management systems, remote video interpreter services, and Alternative Dispute Resolution programs.

LOCAL COURTS MAY RESIST CHANGE EVEN WHEN BETTER SOLUTIONS EXIST

Long ago, a savvy Texas judge adopted an e-filing regime that was both innovative and effective for his county. Years later, after considerable capital investments and despite the continued success of the initial e-filing system, other counties adopted different e-filing protocols. Soon, lawyers with a statewide practice were yearning for a common standard. After a period in which counties engaged in e-filing experimentation, the state selected an e-filing plan that counties have gradually adopted. Although each locality likely preferred its own system, eventually most agreed that the efficient administration of justice required commonality throughout the state.

In another Texas county, leading officials have rejected proposals to migrate jury summons procedures to an online web site because, according to their employees, potential jurors would more likely appear if a friendly clerk called them personally. That assumption has been disproved by the vastly increased juror participation rates in counties that have adopted an e-jury system. So even when innovation achieves notable success in a particular county, the probability that others will parrot the improvement often depends on arbitrary factors, like personalities or parochial financial interests.

These are but two examples of where supreme courts can make a difference. Whereas local judges act upon local complaints, the chief justice entertains concerns from lawyers and citizens statewide, and thus can compare and contrast the various administrative tools counties employ. From that vantage point, the chief can help establish which systems or approaches are more effective. Frequently, those counties laboring under an antiquated system see the merit in transitioning to a better practice.

The most significant deterrent to reform is financial. In those states without a statewide judicial budget, some courts are able to tap into abundant local resources while others can barely provide essential services. A supreme court cannot bridge the gap, but it must act when a local funding deficiency threatens

citizens' constitutional guarantees or significantly impedes access to justice. In that instance, the issue is neither uniformity nor innovation, but rather fundamental justice. The supreme court, working with its office of court administration, must advocate in the legislature, with the governor, and in the media to fix impediments to constitutional rights. It can also employ its power to convene stakeholders to explore methods of improvement and areas of concern.

From the supreme court's perspective, the concepts of trial court innovation and community cooperation are generally commendable. However, state court leaders note with concern the disparate resource levels and varying availability of basic court services from jurisdiction to jurisdiction. From a statewide perspective, the concern regarding local court resources goes beyond the issue of basic parity, also raising issues about equal access and sustainability. State-level analyses often reveal costly duplication of efforts in local technology projects, fragmentation of services from a cross-court perspective, and transient court programs that succeed only because a strong-willed judge is at the helm (take, for example, a marginally funded drug court led by an especially resourceful judge).

Another process that can impact the already contentious relationship between the trial courts and the state supreme court is the method of judicial selection. A trial judge who arrives at and remains on the bench as a result of political prowess can defy with impunity compliance with uniform policies that a supreme court enacts. The situation is generally different for judges who have been appointed by the governor upon recommendation by a judicial nominating commission. By excising partisan politics from the process, the risk of political grandstanding by any judge, either trial court or supreme court justice, is greatly reduced.

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THE NEW ECONOMIC REALITY

The global recession has affected government functions at all levels, including the delivery of critical judicial branch services. State and local governments face long-term structural deficits, with no clear timetable for stabilization. In the aftermath of double-digit budget cuts, many court jurisdictions now face another round of staff layoffs, unpaid furlough days, court closures, and permanent downsizing of programs. Although there are some signs of economic recovery, it is time to accept the fact that resource levels may never be fully restored, despite growing workloads.

Courts currently employ a number of budget balancing measures, which may include revenue enhancement (e.g., new user fees and collection of outstanding court-ordered financial obligations), facility closure, prioritization of critical core functions, hiring and promotion freezes, elimination of overtime pay, reduction of travel, education and other expenses, outsourcing of labor-intensive non-core functions, unpaid furlough days, reduced service hours, early retirement incentive programs, and reductions in force.

The governance structure for rendering these difficult budget decisions is another point of potential conflict between state supreme courts and local trial courts, both in state and locally funded court systems. Will critical budget and resource decisions be made by the chief justice, the local presiding judge, or will they be the result of some collaborative approach? The same question extends to court revenues, specifically regarding local courts' authority to establish new local fees and/or increase existing fees.

Here again, the chief justice must consider the statewide budget at every judicial level, encompassing the needs of the supreme court, courts of appeal, trial courts and administrative court offices. At this macro level, across-the-board budget cuts may seem, superficially, the most equitable, but this approach may prove unfeasible given the array of core mandated services for each level of court and the varying caseloads for each jurisdiction. From the presiding judge's perspective, the local trial court's needs must also be

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aligned with the needs of the local community and local resource levels. These might include staffing of pre-trial services as related to jail overcrowding, or the need for more court interpreters in some jurisdictions as compared to others, particularly if Title VI funds are in jeopardy.

Predictably, these divergent perspectives risk giving rise to role confusion, an air of distrust, and an unhealthy sense of competition for the increasingly limited resources within the judicial branch. For example, will trial courts be asked to undergo a larger pro rata share of budget reductions than appeals courts, and if so, what impact will this have on court services as a whole? Or, at the local level and within the same “court family,” will probation services be downsized to provide funding for core court services, and who will make this difficult decision?

Equally problematic is the fact that the most promising long-term budget balancing measures likely require process reengineering (undertaking a thorough analysis of the current workflow). Process reengineering usually entails some initial expenditure (such as consulting studies or technology investments) and an extended time period for full implementation. More importantly, process reengineering must be tailored to the local court jurisdiction, bearing in mind the interdependencies of other local justice agencies.

While the pressing need for coordination between state and local courts is self-evident, it is further complicated by the ongoing struggle to maintain local decisionmaking authority.

COLLECTIVE RESPONSIBILITY, SHARED LEADERSHIP, AND GENUINE PARTNERSHIP: A “WIN-WIN” APPROACH

In addressing the issue of judicial branch collaboration, it is important to acknowledge the pioneering work of dedicated state court leaders—chief justices, presiding judges, trial judges, state court directors, and trial court administrators, among them. Under their leadership, a number of states have bridged the gap between the state supreme court and local trial courts. Many of the following observations and suggestions are drawn from these ongoing efforts, some of which are in place today.

Shared court leadership can be achieved through genuine collaboration between the chief justice, the state court administrator, presiding judges, trial judges, and court personnel. This form of leadership is based upon a strong sense of shared court mission, a common organizational vision, mutual respect and trust, and continued open channels of communication. It also reinforces pride in professionalism. The following initiatives may help implement many of the goals articulated here.

Public opinion is largely formed based upon the timeliness, affordability, and accessibility of the state court as a whole.

Collective Responsibility

Dedicated judicial officers and supporting staff have all made a commitment to serve in the judicial branch of government, many as their life's calling. Court personnel need to understand that the general public does not make fine distinctions between the various departments of the court or administrative jurisdiction. Rather, public opinion is largely formed based upon the timeliness, affordability, and accessibility of the state court as a whole. With this in mind, the chief justice and leadership judges are challenged to create a sense of collective responsibility for statewide delivery of quality court services. Creating this kind of organizational culture requires a transformational change, a concerted campaign involving the participation of all judges and staff. Measures to achieve this kind of organizational culture include the following:

- Development of a shared vision and mission for the state court system as a whole, with direct participation by all judicial officers and court personnel;
- Ongoing emphasis on the state court's shared vision via educational programs, publications, and meetings;
- Feedback from community focus groups, addressing the effectiveness of court services;
- Collecting the data necessary to provide staff with real-time feedback on court performance, with debriefings and follow up plans; and,
- Expanding leadership opportunities for trial court judges and staff through joint planning sessions, regular briefings and cross-court project initiatives.

Shared Leadership

Court administration literature espouses an “executive component of the court model” for trial court management. In this model, teams comprised of presiding judges and high-functioning court

administrators share leadership and management responsibility. The model requires a clear delineation of duties and responsibilities, as well as a high level of trust. A similar leadership model can be developed for state court chief justices and trial court presiding judges, maximizing the presiding judge's level of authority in administering the local court. Ideally, this kind of model would provide for:

- Delineating the respective areas of authority/responsibility of the chief justice and presiding judge, as well as their respective management teams;
- Establishing communication protocols to promote open and honest dialogue, including opportunities for informal meetings, joint education programs, tours, pre-decisional briefings, and sharing of confidential information; and,
- Creating communication channels for ongoing dialogue among the chief justice, presiding judges, trial judges, and court management.

The time involved in establishing this kind of management partnership will be well spent, particularly as management control is tested during times of stress. Key factors in establishing a relationship of genuine collaboration are a high level of trust, openness to dissenting views, and willingness to compromise.

Judicial Councils and Advisory Committees

State court governance generally includes some form of statewide judicial council or a supreme court advisory committee, made up of court representatives and members of the community, such as the trial bar, or the public at large. The council models are distinguished by varying levels of decision making authority, reporting lines to the state supreme court, and their overall level of connection to the trial courts. Some state courts have greatly elevated the policy making role of the councils, whereas the council role is more advisory in nature in other states. Thus, the

judicial council in any given state can either enhance or undermine efforts to build a healthy state-local court partnership. While an exhaustive discussion of council models is beyond the scope of this paper, the following measures are recommended to maximize the decision making role of judicial councils:

- Council members should be fully briefed on all policy and planning issues, early and often, allowing them to help frame the issues and formulate policy options;
- Open and honest discussion should be encouraged to assure that any issues or problems will be identified and dealt with;
- Briefing materials should be made available to council members well in advance of the decisional meetings;
- Decisions having an adverse impact on a single court or jurisdiction should be fully vetted with the presiding judge of that local court prior to the council meeting and finalization of policy documents;
- The council should create opportunities for active participation by trial judges, through leadership roles on council work groups and sub-committees, planning sessions, etc.;
- To the greatest extent feasible, shift from a command/control model to participatory governance structure;
- Presiding judges should be consulted regarding council requests for local court data, program information or work assignments to local court judges/staff; and
- The membership of the council should provide strong representation on the part of the trial court and intermediate appellate courts.

LEVERAGING LOCAL COURT INNOVATIONS – CENTERS OF EXCELLENCE

As previously outlined, the state trial courts provide a rich environment for early problem identification and rapid development of innovative solutions. Judges and court staff are often the first to identify new trends in litigation, court access issues, and opportunities for systemic change. Currently, however, these efforts tend to occur on an ad hoc basis in the various trial courts, with duplication of efforts and varying levels of success. Some projects are replicated in a few other jurisdictions while others are expanded to every court in the state.

To build upon these local court efforts, it may be helpful to designate selected trial courts as “centers of excellence” for research and pilot testing of innovative programs in a particular area of court services. Under this scenario, Court A can be designated as a center for family court innovations, Court B can be designated as a center for criminal pre-trial services, and so on. The designated center courts can be targeted to receive additional resources for technology investment, project start-up, and program evaluation. Successful program models can then be implemented on a statewide basis, with assistance from the originating court. This model is not to preclude innovations of any kind in any trial court, but rather, it is intended to provide a more focused and potentially fruitful way to encourage and promote trial court innovations.

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STAFFING – THE HUMAN FACTOR

Some state court offices have gained credibility with the trial courts by bringing trial court judges and managers on staff. This trend seems especially promising in the areas of judicial education, information management, operations review, and strategic planning. The practice can readily be expanded and, conversely, trial courts may also wish to bring state court office personnel on staff for an expanded perspective. Finally, a court staff exchange program may help promote improved working relations, both in the state-local court relations and in cross-court communications.

INDUCEMENTS

Nothing encourages a trial court's admiration more firmly than the belief that the chief justice and supreme court are fighting for causes that are important to local judges. A chief justice should therefore welcome opportunities to advocate for changes in legislation or policy that solve problems for local jurisdictions. If the trial judge has trouble persuading the legislature that resources should be devoted to a particular problem in a local jurisdiction, the chief justice should consider taking on that cause through her relationships with executive and legislative leaders. That kind of effort, over time, pays dividends in the form of support for statewide initiatives.

CONCLUSION

Collectively, these measures stand to create a more cohesive sense of court mission and shared leadership on the part of the chief justice, the state administrative office, presiding judges, trial judges, and court personnel. Recognizing the inherent complications of state court governance, ventures of this kind clearly require a long-term commitment and a willingness to regroup. Considering the vitally important role of state courts and justice in our society, such efforts are well worth the risk.

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