

THE ACCESS AND FAIRNESS CAMPAIGN

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The cover image blends a photo of courthouse steps with a detail of the National Center for State Courts' seal. The steps represent access, while the seal symbolizes fairness. The seal refers to the tree at Runnymede, where King John agreed to “seal” the Magna Carta in 1215. The Magna Carta had a profound, and lasting, effect on rights and freedoms in other countries—including on our own Constitution. The English translation of the entirety of the NCSC seal reads:

“To no one will we sell, to no one will we deny, justice.”

THE ACCESS AND FAIRNESS CAMPAIGN

2017–2019



Introduction

The fair, impartial, and efficient application of the rule of law is essential if government is to be worthy of people's trust. Equal application of the rule of law is fundamental to our society. Courts are the primary place where citizens have direct contact with government, either through participating in jury service or by being part of an action as a litigant or witness.

On the one hand, a majority of the public holds positive views about the country's state judicial systems and the core dispute resolution functions that they deliver. In fact, the judicial branch of government continues to be rated much higher than the executive and legislative branches. National surveys also show that the majority of people in the country believe that courts treat them with dignity and respect and make unbiased decisions. In addition, the public scores courts high on providing procedural fairness.

On the other hand, these opinions are softening. Public trust in the court system has dropped dramatically in recent years. According to recent polling a majority of the public believes that the wealthy and large corporations are treated better by the courts, and that African-Americans and the poor are treated worse. Survey results highlight that one's race impacts one's perceptions of fairness. Less than a third of African-Americans believe courts provide equal justice. In addition, customer service ratings are unacceptably low. Members of the public who have had direct interaction with courts give courts lower grades than respondents who have not had interaction with the courts, challenging the conventional wisdom that "to know us is to love us."

The National Center for State Courts (NCSC) *Access and Fairness Campaign 2017-2019* will confront these trends in public opinion by outlining a bold vision for NCSC and the court community. This

Public Opinion of the Courts



Courts remain the **most trusted branch** of government



Concerns about inefficiency and unfairness are deep-seated and real



There is a strong demand for **greater availability of online services**



African Americans express significantly less faith in the courts than the population as a whole

Source: State of State Courts 2014 & 2015 public opinion surveys

plan outlines tangible outcomes for NCSC, as well as ways in which NCSC is prepared to help our state court constituents accomplish their own access and fairness goals.

The *Access and Fairness Campaign 2017-2019* builds on NCSC's previous strategic initiative, the *Justice Campaign 2013-2016*. That plan represented a departure from the traditional strategic-planning

model premised on producing a lengthy list of goals and objectives. Instead, *Justice Campaign 2013-2016* employed a campaign approach to develop a few explicit initiatives aimed at specific outcomes. The 2013-2016 campaign developed problem-solving tools for four specific initiatives:

- online solutions for court business and performance problems;
- strategies to secure adequate and stable resources;
- solutions to improve access to courts;
- mechanisms for improving court leadership and governance.

The successful completion of the 2013-2016 campaign produced key technology tools, including NCSC's Connected Community; CourtMD; and an electronic filing diagnostic tool. To help courts secure adequate funding, NCSC developed the *Principles for Judicial Administration* and collaborated with the American Bar Association (ABA), the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA) to develop and adopt budget strategies that better position state courts to meet long-term financial challenges. Solutions to improve access to courts included creating an NCSC-based language-access unit to better address court interpreter issues and initiating a virtual remote interpreter project to lower the cost of accessing certified interpreters. In partnership with the Council of Chief Judges of the State Courts of Appeal (CCJSCA), NCSC created an online education program focused on governance and leadership. NCSC worked with the newly formed National Association of Presiding Judges and Court Executive Officers (NAPCO) to address the needs of judicial leadership. The result has been the formation of a national judicial leadership academy to better serve the educational needs of presiding judges and court administrators. These are just a sample of projects that NCSC launched between 2013 and 2016 to help courts better serve the public.

The *Access and Fairness Campaign 2017-2019* builds on these tools. This plan is designed to align the efforts of NCSC with the greater court community on the key challenges facing state courts in America: stemming the erosion of public trust and confidence in our judicial institutions. The *Access and Fairness Campaign 2017-2019* contains five initiatives to improve public confidence in the courts:

- Reduce the cost, time, and complexity of traditional dispute resolution processes
- Improve the trust of minority and economically disadvantaged communities
- Grow online solutions to expand access to courts
- Demonstrate a commitment to fair, impartial, and accountable courts
- Provide judicial leaders with additional governance skills

These five initiatives are the product of intensive discussions with advisory committees and court association leaders, a review of the major trends and issues identified by other court organizations, and key findings from NCSC public opinion polls. The initiatives provide an ability to organize and galvanize the collective efforts of the court community around institutional outcomes that will result in tangible improvements to the public perception of fairness and access to state courts.

While these represent the most pressing areas on which the court community should focus attention, they should not be seen as limiting NCSC's work. NCSC will continue to provide research, education, services to associations, and technical assistance in a wide variety of areas both domestically and internationally that are not captured within these five initiatives.



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Mission:

*To promote the rule
of law and to improve
the administration
of justice in state
courts and courts
around the world.*

1. Reduce the cost, time, and complexity of traditional dispute resolution processes

National surveys show that court users have high expectations of courts when it comes to immediacy, convenience, timeliness, and cost. Yet the cost and time of resolving cases in the courts have long been recognized as barriers to justice in the United States. In recent years this condition has also come to the attention of the international community. The World Justice Project Rule of Law Index 2015 ranks the United States 19th out of 31 countries that are economically similarly situated, primarily because of the inaccessibility of the courts to disadvantaged groups and the cost and delay associated with litigation. The gap between rich and poor individuals in the United States, in terms of use and satisfaction with the civil justice system, is perceived as significant. Moreover, complexity of court proceedings is deemed to be growing at the same time that courts around the country are serving a larger percentage of self-represented litigants.

Recent work has laid the foundation to move forward. CCJ's Civil Justice Initiative has explored how courts handle civil litigation in small and large cases (ncsc.org/civil). Innovative team case management practices have been identified and are now being tested in civil cases and may be applicable to other case types. NCSC's CourtMD is available to court managers and judges to help them diagnose and solve their business problems. In 2015 NCSC hosted a "Hackathon" designed to engage innovators in the technology community to apply their programming skills to overcome barriers to efficient court access in high-volume cases, such as traffic violations. A multi-year project with the Casey Family Foundation is underway to improve outcomes in child welfare cases, including timeliness. The Arnold Foundation is supporting our study of innovations in the management of criminal cases. A nationwide virtual-remote-interpreting platform is being cre-

ated from scratch to improve interpretation in court proceedings at a fraction of current costs. A special effort is being made to make court interpreters more effective and accessible in domestic violence cases.

If state courts are to substantially reduce costs, shorten the time it takes to complete their business, and simplify complex procedures, new approaches based on these recently completed tools are needed. Future innovations must significantly address services for litigants with limited English proficiency, accommodate the needs of self-represented litigants, and address the representation needs of the poor. Team case management efforts need to be integrated throughout the court administrative processes so it becomes part of the judicial culture.

Objectives

- Implement Civil Justice Initiative recommendations in ten jurisdictions.
- Develop online applications to ease access and reduce costs for litigants, while improving the timeliness and quality of dispute resolution services.
- Engage in research that will identify the most effective practices in criminal case management, adjudication, and sentencing.
- Implement a nationwide, robust virtual-remote-interpreting system.

2. Improve the trust of minority and economically disadvantaged communities



Judicial leaders participate in the first episode of *Courting Justice*, a PBS series hosted by Tavis Smiley and one part of a listening tour designed to hear the concerns of minority and economically disadvantaged communities.

Photo by Earl Gibson III

American courts need to boost public perception of fairness in the justice system. And they must act swiftly. Public perceptions of unequal treatment by courts and the sense that the poor and minorities are treated differently are growing. In the aftermath of the U.S. Department of Justice's report on municipal court practices in Ferguson, Missouri, the fairness, oversight, and operations of municipal courts not just there but in other parts of the country have come into question. Unfortunately, many have come to see courts as revenue-generating entities, tarnishing their constitutional role as adjudicators and protectors of individual rights. NCSC surveys indicate that on nearly every measure of trust, fairness, or customer service, African-Americans score courts dramatically lower than the population overall.

CCJ and COSCA, in partnership with the State Justice Institute, have established the *National Task Force on Fines, Fees and Bail Practices* to address the impact that these practices have on economically disadvantaged communities. The task force is specifically focused on improving fairness and access to courts that handle traffic and minor criminal offenses; reforming the governance and administrative structures in these limited-jurisdiction courts with an eye to improving transparency and accountability; and providing better oversight of limited-jurisdiction courts. The task force will craft reforms to ensure that qualified judges are independently selected and trained. Adjudication practices need to follow constitutional guidelines that protect litigant rights and are fair—and perceived as fair.

Alternatives to incarceration must be available to defendants who cannot pay assessed fines and fees. Courts need education and bench books to ensure that judges are knowledgeable and capable of ensuring due process.

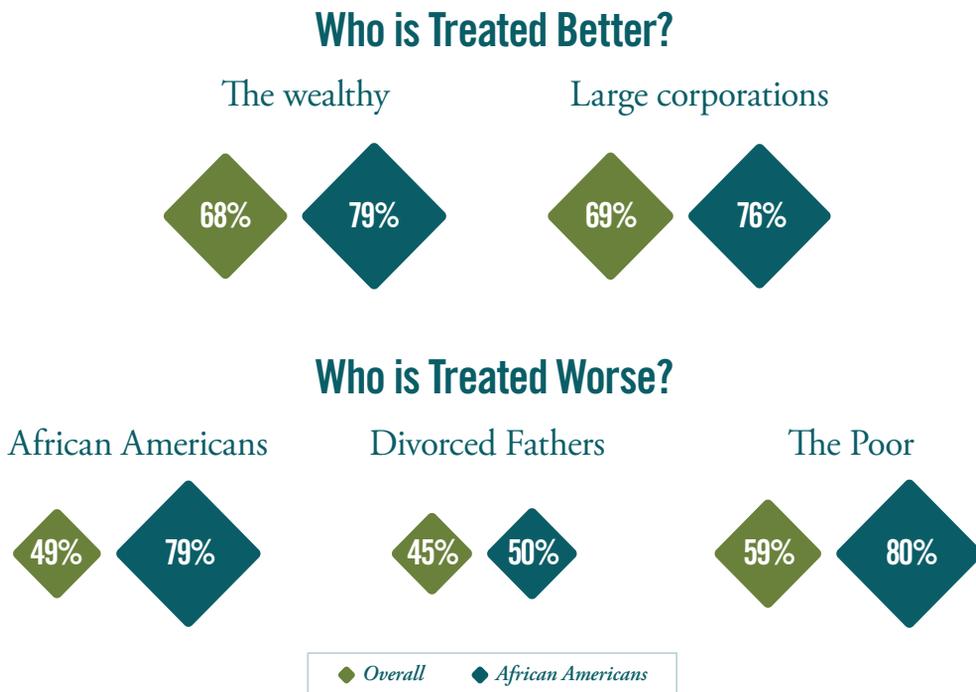
CCJ and the National Consortium on Racial and Ethnic Fairness in the Courts have established the *Community Engagement Project* to engage disadvantaged communities in a dialogue that brings community leaders to the courts to help establish relationships built upon trust, respect, and understanding. From this discourse, tools and resources will be developed that assist state court leaders in engaging marginalized and disenfranchised communities to ensure that there is equal access to justice for all.

Objectives

- Reach out to disadvantaged communities to identify their perceptions of how courts can improve their services.
- Address the growing concern that certain courts have been turned into revenue centers.
- Develop models to assist state judicial leaders to reform their state’s fines, fees, and bail practices.

Finding: Beliefs in unequal justice are deep-seated and widespread.

Question: “Tell me whether you believe that group is treated the same as other groups by the (court/justice) system, or whether you believe they are treated differently than others.”



Source: Figure 5, NCSC 2015 State of State Courts Presentation

3. Grow online solutions to expand access to courts

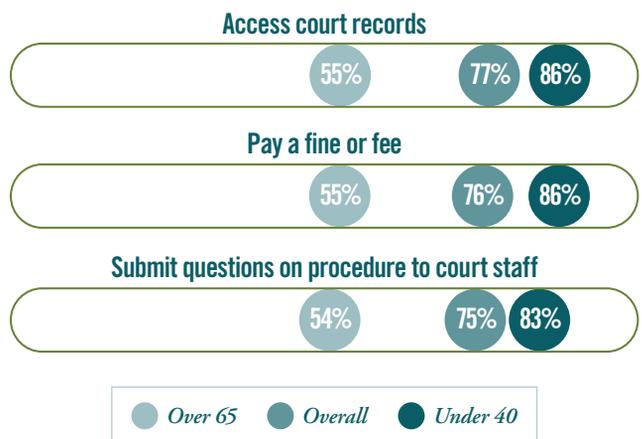
NCSC continues to be at the forefront of court technology. To date, the focus has been to help courts apply technology solutions to their business problems. Those include automated case management systems, electronic filing, electronic records, the management of digital evidence, and privacy policies and procedures in the electronic age. Meanwhile, the public demand for accessibility and user-friendliness is increasing. To remain relevant, courts must keep pace with a growing public demand for online services. NCSC research shows a clear demand for greater use of technology to enable customers to find information they need on their own, to conduct more court business remotely, and to handle legal problems by themselves without a lawyer.

Rapidly evolving technologies are transforming society, including the courts. Technology forecasts indicate that IT infrastructures will be increasingly cloud-based. Personal mobile devices will become even more powerful and ubiquitous. The era of “smart” machines is here and will be disruptive. The ability to leverage “big data” to develop solutions is becoming a minimum requirement to do business in the private sector.

State courts now face competition. Online legal services are emerging that provide innovative, low-cost alternatives to consumers to help resolve their disputes. Some private providers already offer on-demand, affordable legal advice through online and telephonic legal advisors. Consumers for one of these businesses can get their legal questions answered for no or low cost by more than 250,000 participating lawyers, or search more than eight million previously asked questions and attorney-provided answers. To remain relevant, courts must respond to the increasing demand for more immediate legal services.

Finding: The public is willing to conduct court business online.

Question: “If you had business with the courts and this service was available online, how likely would you be to use it?”



Source: Figure 6, NCSC 2014 State of State Courts Presentation

Objectives

- Provide guidance to courts in developing online apps.
- Develop guidelines for both the use and security of mobile devices in courthouses and courtrooms.
- House a repository of online applications.
- Host national meetings at which court leaders can learn about best practices in technology applications, governance, and management through an ongoing partnership with the Joint Technology Committee.

4. Demonstrate a commitment to fair, impartial, and accountable courts

The right to decisional independence and institutional self-governance require courts to be open and accountable for their use of public resources. Courts must be open to appropriate public scrutiny to validate civic trust and confidence. Over the past four decades, the national court community has been increasingly committed to accountability and transparency. That commitment began with the adoption of the *ABA Time Standards* (1977) and continued with the publication of the *Trial Court Performance Standards* (1988), completion of *CourTools* (2005), production of the *High Performance Court Framework* (2010), revision of the *Trial Court and Appellate Court Time Standards* (2012 and 2014 respectively), publication of the *Principles for Judicial Administration* (2013), and release of the book *Reimagining Courts: A Design for the Twenty-First Century* (2015). In addition, NCSC has completed groundbreaking work in the areas of procedural fairness and judicial performance.

It is important that courts use these available resources to address multiple and conflicting demands. To do so, the judiciary must frequently measure its own performance; know how to quantify its productivity; and know how to document and communicate these measures of court productivity to the public. This is even more important as this campaign addresses issues of fairness.

Objectives

- Develop a complete set of performance measures that complement the *CourTools*.
- Innovate team caseflow management practices by implementing the principles identified in *Reimagining Courts*.
- Identify model courts and their successful management practices in civil, criminal, and family cases.
- Complete an online education program on procedural fairness in court operations.

5. Provide judicial leaders with additional governance skills

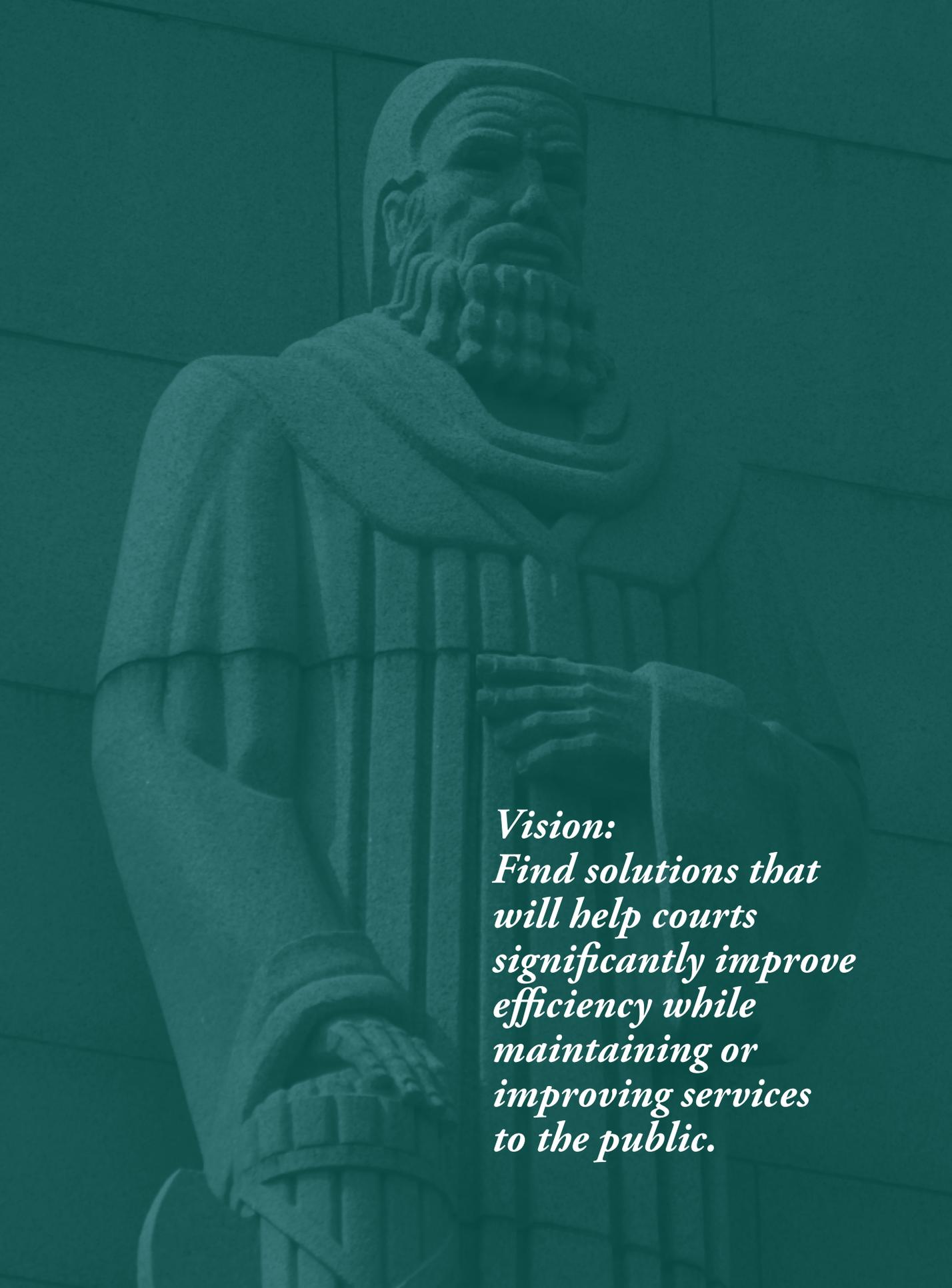
Many courts need improved governance skills to meet the challenges laid out in the *Access and Fairness Campaign 2017-2019*. Courts are unique organizations that are similar to universities and medical centers, where highly educated individuals make independent judgments in specific cases. From an organizational perspective, balancing the self-interest of independent decision makers with the institutional interests of the judiciary is necessary. This requires a common vision, useful and productive support services, and a shared understanding of threats and opportunities.

NCSC is well positioned to apply the leadership tools developed through the Harvard Executive Session for Court Leaders in the 21st Century to fairness initiatives. These tools have been piloted in two locations. In addition, the National Leadership Academy has been organized to provide education to judicial leaders.

Objectives

- Integrate the leadership and governance principles developed through the Harvard Executive Session for Court Leaders in the 21st Century into the products and services of NCSC.
- Provide additional technical assistance to courts to provide leadership and governance support as they implement the initiatives outlined in this campaign plan.
- Develop a four-phase leadership curriculum to be unveiled through consecutive annual sessions of the Leadership Academy.
- Develop mechanisms to roll out these curricula to state-court-education institutes.
- Disseminate an online education program on governance and judicial leadership in the appellate courts.





*Vision:
Find solutions that
will help courts
significantly improve
efficiency while
maintaining or
improving services
to the public.*

To promote the rule of law and to
improve the administration of justice
in the state courts and courts
around the world.

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