

Views of State Courts Leaders and Key Stakeholders on Issues and Trends Affecting State Courts*

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One of the difficulties of specialization is that experts in different fields may become so idiosyncratic in their focus and methods that they miss the opportunity to learn from those outside their specialty areas. The differences in perspectives between those who lead and manage the operation of state courts and those who study the operation of state courts as academic social scientists is an example of this problem. Judges and court managers face daily pressures to see that cases are decided justly and promptly, with prudent use of finite resources. Social-science scholars, on the other hand, face constant pressures to publish to achieve tenure and maintain professional status. This may often cause a focus on narrow issues considered most pressing or most immediately relevant to other specialists in the same field. This leads judges and court managers in one direction, to focus on the state of their dockets and their interactions with such other stakeholders as lawyers and elected officials. It leads social-science scholars toward critical analysis of recent work by colleagues and an effort to demonstrate appropriate methodological rigor, with the unfortunate consequence at times that their work products may become opaque, impenetrable, and potentially irrelevant to judges and court managers.

To the extent that social scientists studying state courts wish to make their work relevant to a wider audience, it is worthwhile to learn about the components and implications of broad issues and trends that are most important to such state court leaders as chief justices, trial judges, and state and trial court administrators, as well as such key stakeholders as general counsel for large corporations and other lawyers. This article presents highlights from the results of an annual survey of constituents conducted in February 2008 by the National Center for State Courts (NCSC). Although the survey was not conducted under rigorous methodological controls, the responses from state court stakeholders should be instructive for social scientists.

NATIONAL CENTER SURVEY OF CONSTITUENTS

To remain relevant to its constituents, the National Center conducts a survey each year to identify the priorities of those constituents. The results of this survey are then used by NCSC in a planning process that identifies major organizational initiatives.

The 2008 National Center survey was sent to members of fifteen constituent groups.¹ It identified twelve major issues and trends affecting the operation of state

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courts, as well as components of those issues or trends and their implications for society and state courts. For example, it identified “The Accelerating Pace of Globalization” as a trend, with such sub-issues as “pervasive information connectivity,” “reevaluation of the concepts of jurisdiction and venue,” and “global travel, crime, and legal practices.” Survey respondents were asked to indicate the priority of each overall issue with regard to the relevance, magnitude, and urgency it creates for the administration of justice in the state courts. They were also asked to indicate the priority of each sub-issue.

Next, the survey instrument listed some of the implications of each overall issue. For example, the implications of globalization include outsourcing of work; knowledge transfer to other countries; increases in multiparty litigation; requests by foreign attorneys for temporary practice authority; and increased cultural competency issues. Survey respondents were asked to indicate how important each of these implications is, adding any other implications they might see. In the final part of the survey, it asked respondents to identify any actions that the courts and NCSC should take to address the issues or implications.

HIGHLIGHTS OF SURVEY RESULTS

There were 397 survey respondents, with 21 replies from the National Center’s Board of Directors. Other respondents included state court chief justices (17), state court administrators (31), members of the American Judges Association (41), state-level court IT officers (16), members of the National Association for Court Management (203), and members of the National Conference of Appellate Court Clerks (20).

For the first time since the inception of this annual survey of constituents, the area of information technology was *not* ranked highest. With a high degree of consistency among all categories of respondents, the area of public trust and confidence in the courts was considered most important. In descending order of priority, respondents ranked issues or trends in the following overall order:

1. Increasing Public Trust and Confidence
2. Increasing Applications of Information Technology
3. Strengthening Judicial Independence and Accountability
4. Improving Access to Justice
5. Meeting the Needs of Children and Families

¹ The survey was sent to members of the following organizations or groups: NCSC Board of Directors; Conference of Chief Justices; Conference of State Court Administrators; American Judges Association; Council of Chief Judges of State Courts of Appeal; Court Information Technology Officers Consortium; Conference of Court Public Information Officers; National Association for Court Management; National Association of State Judicial Educators; National Association of Women Judges; National College of Probate Judges; National Conference of Appellate Court Clerks; National Conference of Metropolitan Courts; NCSC Lawyers Committee; and “Other” (members of related organizations, former members of the above groups, and those who have shown a continuing investment in the work of NCSC).

6. Creating a Culture of Emergency Preparedness
7. The Evolving Role for Courts in Society
8. Rapidly Changing Demographics
9. Emerging Issues Affecting the Courts
10. Fluctuation of Economic Conditions
11. Changing Nature of Civil Litigation
12. Accelerating Pace of Globalization

Agreement among judges and court administrative officials was very close. Although judges and administrators ranked issues and trends in civil litigation low, the responses of general counsel and lawyers indicate that they consider this area one of high importance. Issues or trends relating to the impact of the “outside world” on the courts (e.g., changing demographics, changing economic conditions, globalization, and such “emerging issues” as mental health, identity theft, and immigration) were consistently ranked lowest among all respondent groups.

COMPONENTS OF ISSUES AND TRENDS CONSIDERED MOST SIGNIFICANT

Within each of the broad areas of issues and trends, the survey asked respondents to rank specific sub-issues or components. In descending order of priority, the following were the highest-ranked components:

1. Providing procedural fairness (a component of both “Improving Access to Justice” and “Increasing Public Trust and Confidence”)
2. Equal and courteous treatment of litigants (“Increasing Public Trust and Confidence”)
3. Resolution of cases without undue influence from outside sources (“Increasing Public Trust and Confidence”)
4. The need for courts to be accessible (“Increasing Public Trust and Confidence”)
5. Expedient resolution of cases (“Increasing Public Trust and Confidence”)
6. Case management information systems (“Increasing Application of Technology”)
7. Electronic filing and electronic records (“Increasing Application of Technology”)
8. Attracting a qualified judiciary (“Strengthening Judicial Independence and Accountability”)

Although respondents ranked the sub-issues independent of the broader issues and trends under which they were presented in the NCSC survey instrument, so that the sub-issue ranking reflects absolute numbers and not some kind of stratified count, the ranking of sub-issues corresponds directly to that for the overall issues or trends.

MOST IMPORTANT IMPLICATIONS

The survey request for respondents to address the implications of issues and sub-issues for society and courts brought matters to a more concrete level. Their ranking of the importance of the different implications was also independent of how they ranked overall issues or sub-issues. The following list of the implications that survey respondents considered most important shows a somewhat different pattern from the priorities listed above:

1. Need for records privacy and access policies (an implication of “Increasing Application of Technology”)
2. Need to manage technical projects competently (“Increasing Application of Technology”)
3. Potential reduction in court budgets (“Fluctuation of Economic Conditions”)
4. Improved public education about courts (“Increasing Public Trust and Confidence”)
5. Need for court interpreter services (“Rapidly Changing Demographics” and “Improving Access to Justice”)
6. Court proceedings and records are open (“Increasing Public Trust and Confidence”)
7. Court disposition time guidelines are met (“Increasing Public Trust and Confidence”)
8. Increased staff training required (“Increasing Application of Technology”)
9. Increased civic education in schools (“Increasing Public Trust and Confidence”)
10. Detection and elimination of discriminatory actions (“Increasing Public Trust and Confidence”)

As this list shows, the immediate concerns of judges, managers, and other stakeholders about the operation of state courts include five implications that have to do with survey respondents’ highest-ranked overall issue—public trust and confidence. Yet the two highest-rated implications have to do with information technology, while the third highest involves the economy. The issue of public trust and confidence has only one of the five most important implications, and the impact of changing demographics on the need for court interpreters rounds out the top five.

RESEARCH PROSPECTS FOR SOCIAL SCIENTISTS

The survey results appear to suggest several areas for social-science research that would be important and relevant to state court leaders, managers, and stakeholders. Among these are the following possible research questions:

1. What impact on public trust and confidence in the courts is there from improved public education about courts; having court proceedings and records open to the public; or case dispositions within time guidelines?
2. If the burden of electronic discovery on civil litigants (including the expense of preserving electronic records, searching them for discovery purposes, and avoiding inadvertent disclosure of privileged information) affects settlement rates and the incidence of trials, what does this mean for the overall nature and quality of the civil-justice process?
3. Can an individual litigant effectively participate in a state court proceeding without a lawyer? Would access to justice or procedural fairness be served if everyone in a civil case were represented by counsel? Are there some types of proceedings that might not require a lawyer if the court process were made simpler?
4. How well do reduction of delay and the implementation and publication of court performance standards and measures work as strategies for court systems to respond effectively to attacks on judicial independence and efforts to politicize judicial selection? Are other strategies more effective?
5. What effect do court programs that provide court interpreters, court-affiliated alternate dispute resolution (ADR), or programs to reduce delay have on public perceptions of access to justice and procedural fairness?
6. How well are the needs of children and families met by improved court procedures for permanent placement of children, data sharing between child welfare agencies and courts, and interstate enforceability of protection orders?

CONCLUSION

Society will benefit greatly if the social-science research includes attention to the issues or trends that have important implications for the operations of state courts. An objective of this article has been to report on matters of priority and importance for state court leaders and stakeholders, in the hope that social scientists will provide helpful insights through research of state courts.

The benefit of such insights depends on more than the efforts of social-science scholars. In fact, it is critically important that those who represent or serve the state courts help social-science scholars learn and gain access to court data and other information about court proceedings that would not compromise the rights or privacy of individual citizens.

The National Center for State Courts can play a major role in making relevant information about state courts available to social-science scholars. The National Center has the world's largest judicial administration library, and the staff members of its Knowledge and Information Services unit gather and share an enormous amount of information about every aspect of state court operations. Its Research Division has done groundbreaking research on state courts, and yet there is so much more that social-science scholars could do in collaboration with the Research Division or to complement its efforts.

NCSC's Government Relations unit has long provided service to state court leaders by monitoring the activities of Congress and the federal agencies. Its Association Services unit supports all of the major organizations associated with the state courts, including the Conference of Chief Justices, the Conference of State Court Administrators, and the National Association for Court Management. Scholars of federal-state relations and of intergovernmental relations in state government would find a deep store of research information in the files of these units.

For about thirty-five years, NCSC's court management consultants have worked with individual state and local courts and state court systems, and the results of their efforts provide a rich store of "gray literature" that might be mined by social scientists. Beyond the borders of the United States, the National Center's International Programs Division has become a key provider of assistance to court systems around the world, and the work products of the International Division offer a picture of the manner in which court systems around the world have sought to adjust to the fall of Communism, the rise of a global economy, and issues of terrorism and social instability.

Although the National Center's information in these and other areas would thus be a treasure trove of social-science-research information, limits on the capacity of its organizational resources mean that allowing infinite access to its information is not a realistic possibility. It is important for the National Center to reach out to social-science scholars and let them know the scope of its knowledge pool. Associated with that, the National Center should work with social scientists and with representatives of state courts to achieve a level of access by social-science scholars that is meaningful, manageable, and beneficial to state courts and the citizens that they serve. **jsj**

substantial increases in campaign spending in state supreme court elections between 1990 and 2004. Spending is higher in partisan contests than in nonpartisan elections, and open-seat elections tend to be more costly than those involving an incumbent.

The next group of chapters focuses on actors in the campaign process. Deborah Goldberg analyzes patterns of interest-group participation in judicial elections. She notes that historically interest groups have played a limited role in these elections, but that beginning in 2000 interest groups began running television ads and making substantial independent expenditures. Goldberg acknowledges that citizens may rely on interest groups as a source of campaign information. Indeed, Brian Schaffner and Jennifer Segal Diascro show in their chapter that the media offer only scant coverage of judicial campaigns; what little coverage exists is devoted to the “horserace” aspects of the campaign rather than the information voters need to make decisions. However, Goldberg argues that the power of moneyed interests and ideological interest groups on judicial election outcomes can be diminished by offering neutral sources of information like official voter guides and independent campaign-conduct committees. However, she notes that even the elimination of judicial elections would not proscribe interest-group influence, pointing at the substantial interest-group activity surrounding the nominations of Samuel Alito and Harriet Miers.

The volume editor, Matthew J. Streb, discusses the role of political parties in both partisan and nonpartisan judicial contests in chapter 6. Using an innovative survey of county party chairs, Streb finds that political parties are actively involved in both partisan and nonpartisan elections, though there is generally less activity in nonpartisan elections. Parties frequently recruit judicial candidates, arrange fundraising events, advertise for candidates, and sponsor get-out-the-vote efforts. While the broad scope of partisan activity in states using partisan elections to select judges is unsurprising, Streb’s evidence raises serious questions about how nonpartisan these nonpartisan judicial elections really are.

Lawrence Baum and David Klein shift the focus from the candidates to the citizenry in their chapter on voting behavior in judicial elections. They compare the relatively docile, low-information Ohio State Supreme Court elections of 1998 with the salient, rancorous 2002 elections for the same court. Participation was substantially higher in the more intense 2002 election, but the increases in participation were most substantial among those with lower levels of political knowledge and lower levels of education. Notwithstanding the changes in the electoral environment, though, Baum and Klein show that the determinants of vote choice were largely the same across both elections, with party identification being the key determinant of the vote. If these authors are correct (they acknowledge the limits of using data from just two elections), new-style judicial campaigning may increase voter participation without actually changing the way in which voters make up their minds.

The final set of chapters evaluates the consequences of using competitive election systems rather than appointment plans to select and retain judges. A chapter by Melinda Gann Hall documents a surge in the competitiveness of state supreme court

rices using contestation, vote percentages, and defeat rates. While many scholars have lamented the politicization of judicial elections (including Deborah Goldberg in her chapter in this book), Melinda Gann Hall argues that these increasingly competitive elections are manifestations of a healthy democracy, creating an important connection between citizens and judges. This is particularly important because antagonists of judicial elections have claimed that elections fail to promote accountability. Ironically, the increased competitiveness of judicial elections, generally lamented by judicial reformers, seems to have eliminated one of the major criticisms of elections made by those same reformers. Nevertheless, this accountability may come at the cost of the independence of the judiciary.

In chapter 10, Paul Brace and Brent Boyea consider the effect of elections on voting in capital punishment cases. One particularly salient issue in judicial campaigns is the reversal of death penalty sentences. Brace and Boyea show that judges facing reelection in the current year make significantly fewer votes to reverse death penalty cases than they did in the years before or after their election year. These effects are magnified in states that do not have a commit clause because incumbents are not insulated from challengers who can explicitly commit to fewer death penalty reversals. The Brace and Boyea chapter can be coupled with Hall's chapter to make an interesting illustration of the classic accountability vs. independence dilemma. Judges who vote less often to reverse death sentences are arguably just responding to the wishes of the citizenry (good by democratic norms), but there is a sense of injustice knowing that one is more likely to die because he was unfortunate enough to have his appeal heard in a year when several state supreme court justices were facing tight reelection bids.

There is a tremendous amount of information that scholars and students alike may glean from this book. Within the pages of a single volume one can find a robust introduction to many of the key institutional issues in state judicial elections. Those working in the justice system will find it a useful explanation of many of the fundamental issues at stake in judicial selection. The evidence in much of the book is compelling though preliminary because it is often limited to a short time span (the Bonneau and Hall chapters are notable exceptions); this problem is particularly acute in gauging the effects of the *White* decision.

As time passes and more data become available, the lack of empirical support can be remedied. The future also affords the opportunity to synthesize some of what we know about elections (and how voters behave in elections) and see how well theories of elections explain voting behavior and campaign outcomes in judicial elections. The chapters by Streb and Baum and Klein are good examples of some ways in which this might be done. One particularly important void is a more general understanding of how voters decide judicial elections, what kind of information they seek (issue positions vs. qualifications), and how judicial selection institutions affect voter decision making. One notion that was particularly clear in this book, however, is the growing importance of the study of judicial elections. The importance of this volume will only grow as the trends outlined therein continue on their present trajectories. **jsj**