



Achieving High Performance: A Framework for Courts

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The High Performance Court Framework suggests a series of flexible steps courts can take to integrate performance improvement into its ongoing operations.

The steps include focusing on key administrative principles that clarify high performance, understanding how a court’s managerial culture can promote common goals and collegial cooperation, developing the capacity to measure performance and learning to use the results for procedural refinements and communication with a variety of stakeholders. Taken together the steps form a functional system or quality cycle that courts can follow in enhancing the quality of the administration of justice.

Crisis in the Courts

Courts are no different than other institutions: It often takes a crisis for courts to reconsider their existing practices. The prospect of a dramatic loss of funding facing many courts today is a threat to their functional integrity that is greater than at any time in recent history. There is a need for an effective response to the fiscal shock, but unfortunately many courts, rather than innovate, will simply react. When courts are in reactive mode, solutions tend to be blunt fixes—such as staff furloughs, suspension of jury trials or cut backs in court hours. Some courts will employ the Washington Monument Budget Strategy: “If we do not get adequate funding, we’ll close the...” Despite the short-term glow that might come from such confrontations, this type of solution is seldom to anyone’s satisfaction.

In contrast, some courts will adapt to this crisis creatively and flexibly with an eye toward preserving or even enhancing the quality of the administration of justice. Courts that are in fact well run and are perceived to be well run will be well funded—even in periods of tight budgets. The rest will be told to do more with less. Hence, the financial challenge courts face today demands creative thinking. The courts that will flourish are those willing to implement changes they may not even have considered absent a crisis.

“We become just by performing just actions, temperate by performing temperate actions, brave by performing brave actions.”

Aristotle

Many people hold a belief that technology can save courts. Without a doubt information technology is a key to helping handle the steadily increasing amount of paperwork in courts. However, the promise of greater efficiency through technological innovation has not always been fully realized despite considerable investment. The spotty history of efficiency gains suggests that adapting information technologies to better organize and conduct court business has not been understood

fully by technologists, court practitioners or both. Part of the limitation of technological solutions is that they have been tried without sufficient attention to existing processes and work culture. “Don’t pave the cow paths!” is wise counsel against simply automating without first considering whether and how existing processes and workflow should be redesigned.

On top of fiscal crises and the apparent lack of immediate solutions through technology, court leaders are operating in an environment where there is a decline in the trust and confidence citizens have in major institutions, including courts. People are suspicious that courts are not committed to using their tax dollars wisely in support of fair and equal justice. One example is the view that the American justice system is bombarded by frivolous lawsuits. The logic is that eliminating frivolous lawsuits is a big step to making the system adequately financed. Citizens are now less likely to give their support without the sense that courts will reciprocate by being responsive to the needs of people seeking to use the legal process.

Dealing with Challenges

Crisis can certainly get people’s attention. In fact, many leaders in both the private and public sectors believe crisis is a necessary ingredient to shake-up the status quo and open the possibility of actually changing the way work gets done. But crisis management shouldn’t be the sole strategy. While it can stabilize the situation and buy time, simply responding to the crisis won’t necessarily cause courts to confront the underlying causes of the crisis. There is a need for courts to better anticipate challenges and to identify their sources.

Courts have made substantial changes in practices so as to better serve the interests, needs and rights of individual citizens better than the status quo. Critical feedback has been the driving force behind many innovations refining how courts do business. Consider three major organizational shifts that came in response to criticism that too many criminal defendants languished in jail, that the civil justice system was too costly and slow, and that some criminal defendants would be better handled outside the traditional adversary system.

- In the 1960s and 1970s, jails were overflowing because defendants could not make bail. Recognition of the problem led to separate pretrial release agencies, distinct from probation offices, springing up to help courts make more informed decisions on whether defendants had sufficient ties to the community to warrant release on their own recognizance. Bail reform resulted from the work of new agencies that supplied information that courts had not previously assembled in any systematic manner.
- Similarly, the alternative dispute resolution movement began in the 1980s as a reaction to what many considered overly complex and costly court procedures for dealing with many types of civil disputes. Specially trained mediators and arbitrators were hired to encourage negotiation between contending parties to resolve outstanding issues and avoid the time, cost and perhaps less satisfying results of traditional litigation.

- In the 1990s problem solving courts were developed to deal with the problems underlying low-level criminal behavior. A proliferation of these courts, for such cases as drug offenses, mental health issues, domestic violence, military veterans' issues, and so forth has occurred. One motivation for directing some cases away from a regular calendar and to their own separate, designated track was to reduce recidivism and another was to provide needed services that might not result from traditional adjudication.

These innovations are all examples of how courts have made dramatic change in efforts to solve specific problems. However, by the time some courts were actively involved the problems were very well developed and, in some instances, morphing into crises.

These significant innovations also illustrate the proclivity of courts to create something new and outside the normal routine. While there is nothing inherently wrong with this approach, it can serve to deflect attention from what happens to the majority of cases remaining on the regular calendar. It supports a belief that problems are solved by removing cases from "normal processing." The thrust of the planned change is to take cases out of the existing system, not to make the existing system itself better. To the extent the regular calendar is treated with benign neglect, the presumed benefits of newly created alternatives come at some cost.

Reliance on moving cases outside the traditional process can sometimes be appropriate, but it can also result in overlooking the need for all processes to be carefully monitored. All processes can degenerate over time. What is missing in the architecture of court reform is a common way to assess the performance of all courts and court-related processes consistently over time, rather than in response to crisis.

Desirable Qualities of Performance Management

For starters, the terms of performance assessment should be sufficiently general so that similar questions can be raised about the administration of general and limited jurisdiction courts, ADR and specialty courts. Obviously, the particular measures will vary from setting to setting but the questions should remain relatively constant.

A common way to assess trial courts needs to avoid the trap of assuming that problem solving is finding the one best solution. In fact, the idea of high performance is diminished if it becomes synonymous with finding the one perfect business model. Just as there is no Utopian society, there is no single best and permanent way of organizing court administration.

Effective performance assessment must help courts identify problems early in their formation and facilitate getting the information to court leaders before the problems fester, spread or boil over. Successful performance assessment is a dynamic process that helps leaders to think critically and creatively as well as to explore alternative ways to solve problems. This perspective suggests a key

purpose of court administration is working continuously to refine problem solving techniques over time. As a result, the effectiveness of responses should increase to the point where there are fewer failed solutions.

In response to the need for improving court performance, the National Center for State Courts has put together an analytical framework for managing that process.

The rationale for the High Performance Court Framework is to encourage court leaders to strive for excellence in the administration of justice and to better communicate their efforts to a wide audience, including members of the public and policy makers. The High Performance Framework identifies what it takes to meet key administrative principles defining fair and effective practices in handling cases and treating litigants, to sustain high performance, and to use and communicate performance results in gaining a stronger institutional role. The High Performance Framework invites courts to consider how they can enhance the courthouse experiences of participants in legal process and make the workplace better for judges, managers and staff members.

A Road Map for Improving Court Management

The High Performance Framework builds on previous efforts in court excellence and introduces new ideas on how to achieve continuing improvement in administrative practices. Toward this end, the High Performance Framework provides a comprehensive set of organizing concepts that describe what a high-performing court seeks to accomplish, demonstrates how a court's objectives are affected by its managerial culture, identifies measureable categories of performance and suggests approaches on how to assemble and use performance information. Bringing the pieces together creates a quality cycle that illustrates the dynamic character of these interconnected concepts. As such, the Framework is a hybrid between an educational tool serving to document the elements of high quality administration and a guide offering step-by-step procedures to use in concrete situations. It is hoped that this combination of approaches confronts enduring issues in court administration with enough specificity to be helpful in wrestling with real world challenges.

Administrative Principles

The High Performance Framework begins with the premise that performance rests on four elements that are a mixture of fundamental values and desired behaviors widely shared among judges and court managers. These values and corresponding behaviors define effective court administration and are expressed in the form of principles that the officials authorized to set court policies and procedures believe should be pursued to provide meaningful due process in every case. We call these values and behaviors *administrative principles*.

Administrative principles include the following: (1) giving every case individual attention, (2) treating cases proportionately, (3) demonstrating procedural justice, and (4) exercising judicial control over the legal process. Because these are principles, and not abstract ideals or lofty standards, they are

sufficiently tangible in the real world. However, their application depends on the local court context surrounding the judges and managers. Despite the broad agreement on the importance and relevance of the principles, they do not necessarily lead to universal practices due to substantial differences in court cultures.

Court Culture and Change Management

Understanding court culture is critical. Many court reform efforts are based on the belief that any policy can be put in place in any court at any time. In reality, court practices are slow to change. They are conditioned on the past and reflect the influence of informal norms and well-established ways of doing business. The existing culture of judges and managers shapes the application of policies and procedures in virtually all areas of court work.

A very common cultural orientation follows from the deep vein of administrative autonomy running through most courts. Judges are of essentially equal status in most courts. A judge in a leadership position, such as a presiding judge, is often described as “equal among firsts” and given limited formal authority to set administrative policy for the court. As a consequence, particular case management practices—even those deemed to be best practices—cannot simply be mandated. Autonomy and individual judicial discretion inhibit developing court wide agreement on how to best carry out administrative principles. Yet, total autonomy is not inevitable.

“Without change there is no innovation, creativity, or incentive for improvement. Those who initiate change will have a better opportunity to manage the change that is inevitable.”

William Pollard
English Clergyman

Courts need to work to build a managerial culture conducive to making performance based on the four administrative principles a court wide goal. The High Performance Framework makes clear how diagnosis and measurement of court culture can help shape successful strategies for court improvement efforts. Specifically, the degree of *solidarity* or the degree to which judges and managers pursue common goals is vital to successful court leadership. The challenge for court leaders is to encourage and facilitate collective decision making among individual judges on what is best for the court as a whole. As a result, by focusing on solidarity and building consensus, a court can overcome the structural impediments promoting fragmentation and isolation.

Performance Measurement and Performance Management

The High Performance Framework proposes the concept of *perspectives* for determining the scope of court activities properly subject to performance assessment. Perspectives concern how the interests

and positions of different individuals and groups involved in the legal process are affected by administrative practices. The High Performance Framework's four perspectives are:

- The customer perspective;
- The internal operating perspective;
- The innovation perspective; and
- The social value perspective.

Combining these four perspectives provides an integrated approach to performance measurement and management.

Within the first two perspectives there are ways to measure the effects of administrative practices against a common set of metrics. Despite the variability in culture and the different priorities that courts have in pursuing performance, it is important and useful to see how the variability and differences are related to performance results in four common *performance areas*.

- For the customer perspective, these are the areas of *effectiveness* and *procedural satisfaction*;
- For the internal operating perspective, these are the areas of *efficiency* and *productivity*

The areas of performance in the first two perspectives are measurable and can ultimately be documented with systematic *data*. Illustrative measures of the performance areas are drawn from the set of *CourTools* previously developed by the National Center for State Courts. When interpreted appropriately, such data provide concrete information on how well a court is doing its job. Moreover, there is a direct linkage between the performance areas and the underlying administrative principles of courts. For example, valuing giving individual attention to cases implies the area of *effectiveness*. Treating cases proportionately is a basis for *efficiency*. Demonstrating an understanding of issues is a foundation for *procedural satisfaction*. Finally, concern for control over the legal process grounds the use of *productivity*. As a result, the performance areas, measures and data are interconnected in a coherent manner.

In a complementary way, the third and fourth perspectives emphasize a court's dynamic *use* and management of information, not just anecdotes, informal feedback or intuition. The third perspective outlines management strategies to introduce practices likely to produce more positive results on an ongoing basis. It offers an approach courts can use to augment problem solving skills so as to more adroitly diagnose and forecast problems while they are still small. Here emphasis is placed on the role increases in human, organization, information and technology capital can have on enhancing a court's responsiveness in assembling performance results and in refining practices accordingly. High performance seeks to minimize the need for crisis management.

The fourth perspective stresses the *use* of information in communicating the work of the court to its partners in the justice system as well as members of the public and policy makers. A sharing of

information is vital and its absence an institutional weakness. This point is confirmed in citizen surveys that show disseminating clear information on court performance to the public is a priority. This perceived failing is a leading criticism of the work of courts. For this reason, courts can gain the trust and confidence of members of the public and policy makers only if they engage others through open communication and a willingness to receive and act on feedback.

Quality Cycle

The High Performance Framework suggests a series of flexible steps a court can take to integrate and implement performance improvement into its ongoing operations. In fact, the pieces of the Framework form a functional system that can be called a “quality cycle.” The court administration quality cycle consists of five main steps: determining the scope and content of administrative quality, data collection, data analysis, taking action, and evaluation.

In many courts, the road to high performance begins with a collegial commitment to see how the four administrative principles are working out in practice and using systematic data to gauge what “working out” means. In other words, the cycle starts when a court has come to agree on what constitutes desirable administration on two levels. First, key principles help court leaders build a strategy for determining how they currently stand in relation to what they believe a good court should look like. Expressly considering fundamental principles helps highlight the values the court is organizing to achieve. Second, an explicit commitment is made to examine whether the court’s managerial culture supports the interpretation and attainment of the key principles. A better understanding of the existing work environment helps court leaders decide how best to enhance and strengthen management capabilities.

The collection of data relevant to gauging the extent to which the principles are actually being applied is the next key element of the quality cycle. The scope of assessment is a matter of local option. Even with more modest assessment plans, the baseline activity for the quality cycle is choosing to make performance an integral part of the court’s agenda. A court can begin by consulting the Framework’s proposed set of performance areas and accompanying measures. The Framework provides a menu of ways to assess whether the court is living up to its principles on what constitutes sound administration. This menu is flexible; courts can choose and combine measures in the way that works best for them. For example, a court is concerned that the backlog of family law cases is growing. They decide to proceed by compiling data on time to disposition and age of the active pending caseload in family law, while also conducting an access and fairness survey with all litigants involved in family law cases

The third activity in the cycle is analyzing and interpreting the results from the data collection and drawing out their implications. The data are analyzed to identify problematic situations that may require corrective or preventative action. Bringing data to bear help judges, management and staff more clearly identify the real causes of the problem(s) and what actions might be taken to solve the

problem(s). For example, time to disposition data shows that family cases fail to meet the benchmarks for timely case processing. Further investigation shows that many self-represented litigants are not clear on what actions are required to move their cases forward, leading them to feel ill-treated by the court. The result is family cases are taking longer and backlogs are increasing, while litigant (customer) satisfaction is declining.

This third step in the quality cycle is clearly iterative. Once the basic character of a problem is identified, additional information can be gathered to further narrow and refine the problem. Continuing with the above example, court staff might examine data on the number of continuances in family cases, distinguishing whether or not litigants are pro se, and also soliciting input from family court judges. Such additional information might allow the problem to be more succinctly stated as “family cases involving pro se litigants are continued at a greater rate, delaying these cases and increasing the workload of judges and staff.”

After digesting the results, the fourth step in the cycle is taking action to implement the appropriate change. Clearly specifying the problem allows court managers to identify the particular business processes involved. Based on this analysis, potential business process refinements and staff capability improvements can be considered to solve the problem. If resources are constrained, the court might prioritize the possible fixes and implement them sequentially until they solve the problem. The court need not be overly concerned that they find and implement the single most *optimal* solution; rather, the goal is to improve on current practice. For example, with respect to pro se family law cases, the court may redesign services to provide improved self-help resources in the law library; add a family law coordinator; build up staff training for those working with pro se family law litigants; ensure the issue is on the meeting agenda for the family law bench; and collaborate with the local family law bar to develop a legal clinic staffed by pro bono attorneys.

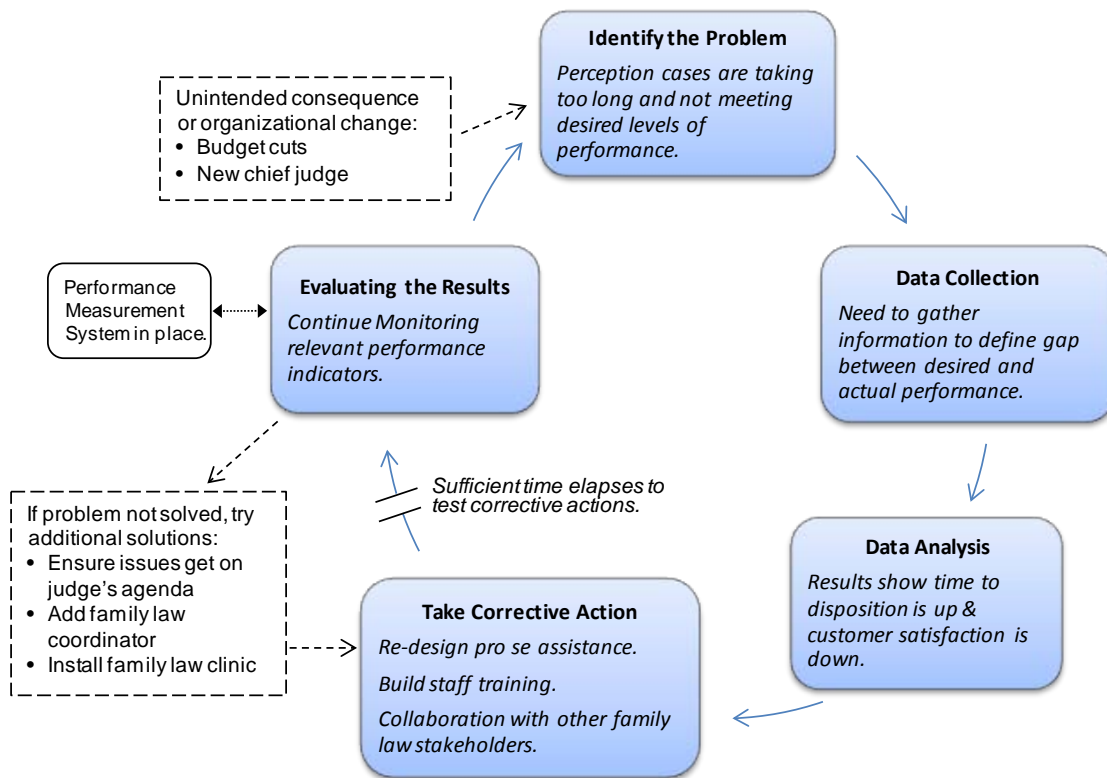
The fifth step involves checking to see whether the solutions have had the intended result. By continuing to seek input from appropriate judges and court staff and monitoring the relevant performance indicators, the court can determine if the problem is really fixed. The goal is not to temporarily get problems under control, but to achieve continuous and sustainable improvements in the process and in customer satisfaction. For example, a court that has implemented a range of possible solutions for improving family case processing will want to determine if updated performance measure data show the problem has been resolved. If the data show that performance is still unacceptable (not meeting benchmarks), another round of problem assessment is required.

A virtue of viewing the Framework in the dynamic terms of the quality cycle is that it encourages courts to move back and forth between performance areas in creating a composite picture of performance. There is no one aspect of performance that must be every court’s entry point; rather, the performance measurement scheme provides a balanced and comprehensive set of areas that

courts can address from the position of their particular needs and circumstances with the aim of ultimately filling in all of the blanks.

There is benefit from taking a systematic approach to the study and practice of high performance. Operating from a comprehensive framework clarifies the interconnections between managerial culture, the development of appropriate performance indicators, and management of the change process. Without a framework, it is very difficult to predict which change efforts will work, to see how new programs might conflict, or to anticipate potential trade-offs among performance areas. A framework helps make clear how performance results can be used by courts to reshape their day-to-day operations and strengthen their institutional performance.

Quality Cycle: Family Law Case Example



I Quality in the Administration of Justice

A leading issue in the developing field of contemporary judicial administration is the definition and measurement of high quality performance. Just as businesses in the private sector and executive agencies in the public sector have come to embrace the notion that performance is a useful and desirable organizing ambition, courts have begun to search for criteria and indicators of the quality of services delivered. This emerging issue is an exciting prospect for practitioners and researchers alike because it promises to move court administration in the direction endorsed by the larger field of experts in the organizational sciences, with the possibility of new insights into what the noble goal of “justice” requires of courts and the people who work there.¹

“Do not bother to be better than your contemporaries or predecessors. Try to be better than yourself.”

William Faulkner
Author

The rationale for courts to focus on their performance ultimately comes down to two basic incentives. First, by demonstrating how well courts are discharging their responsibilities, judges and managers can seek to satisfy the expectations of litigants, citizens, the media, the bar as well as the other branches of government.

In a democratic society, public institutions sustain themselves and their work if and only if they satisfy the expectations of those outside the institution. For courts, this means being attentive to the expectations of all who participate in the legal process, who grant legitimacy to courts, and who provide courts with tax-supported resources. The contemporary concept that embraces the principle that courts are to satisfy expectations is customer satisfaction. Courts have customers and the administration of courts should satisfy not frustrate the expectations of customers. The benefit to courts from pursuing this endeavor is gaining support for their institutional independence and authoritative role in resolving disputes.

Second, pursuing performance clarifies issues of internal operations by indicating what areas of work are doing well and what areas warrant attention. This information assists courts in evaluating and fine-tuning work practices, distributing resources and setting priorities. The choice of how best to organize and structure work processes benefits from an awareness and understanding of what court customers want. For this reason, this paper places a substantial emphasis on the values guiding judges and managers in their choice among alternative ways of conducting business and how they can determine whether their choices are conducive to high performance. Consequently, through attention to performance results, courts gain the benefit of a more orderly work environment while demonstrating fidelity to customers.

¹ Court administration focuses on improving practices in both trial and appellate courts. However, because trial courts greatly outnumber appellate courts, they understandably receive more attention on virtually every issue in the field, including performance. The Framework accepts the relatively greater emphasis placed on trial courts and concentrates on them in the discussion of performance with the understanding that high performance appellate courts are developing and will continue to become a major subject of interest in the near future. The focus on trial courts also is helpful for expository purposes by not having to have separate discussions of the same issue simply to take differences between trial and appellate courts into account.

Statement of Objectives

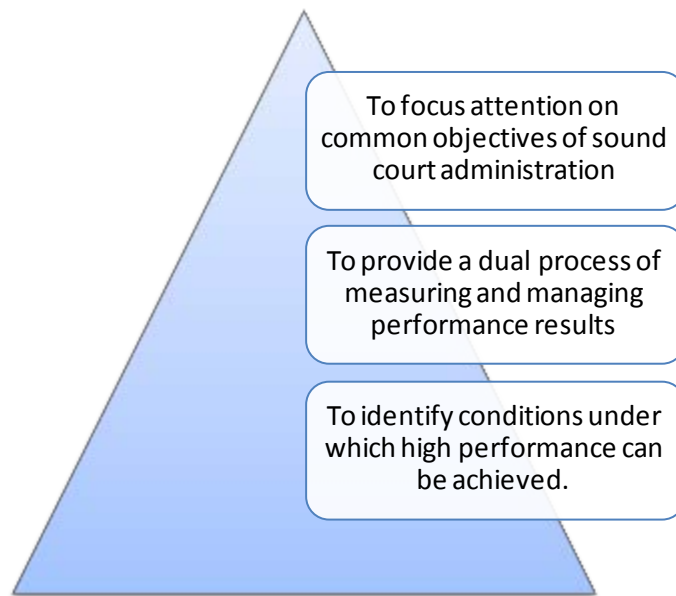
Despite the advantages accruing to a court by a commitment to high performance, assessment remains more a topic of conversation than demonstrations of results. A basic reason why more courts have not integrated it more deeply into their ongoing operations is because two fundamental questions remain unanswered: (1) what do we mean by a good court? And (2) how can we know one when we see it? The first question seeks a definition of a court's desirable characteristics and second one seeks information on what a well-performing court looks like in practice.

To address these questions, the National Center for State Courts offers a "High Performance Court Framework" (hereinafter called "the Framework") to advance an understanding of court performance and what courts can do to achieve high performance. The Framework has three primary objectives.

The first goal is to ground performance on a bed of enduring administrative values and predispositions of judges and managers. Certainly there are many alternative visions of what a high performing court might look like. For the purpose of developing a useful framework, the universe of values is distilled down to four key administrative principles. They are: every case receives individual attention, individual attention is proportional to need, decision making demonstrates procedural justice, and judicial control is exercised over the legal process. The Framework rests on the assumption judges and managers believe these values support the effective adjudication of disputes through the clear commitment to procedural due process. They orient judges and managers in their search for administrative practices that will best support the making of correct and timely legal decisions. Additionally, by examining how closely administrative realities correspond to desirable ways of doing business, the values are a foundation for changing administrative practices.

The Framework's second goal is to draw a clear connection between the basic administrative principles of judges and managers and specific areas and measures of performance. Evidence guides the path to high performance. A performance measurement scheme is developed that organizes indicators of performance into four

Framework Objectives



distinctive areas: (1) effectiveness, (2) procedural satisfaction, (3) efficiency and (4) productivity. These broad categories of performance are designed to provide courts with a coherent and balanced means to assess the quality of current administrative practices. These performance areas are, in turn, grounded by reference to specific, tangible measures in each area.

The Framework's third goal is to suggest a process by which a court can move to a level of high performance. Administrative activities that foster the skillful and persuasive use of performance results are identified and set forth as conditions for effective performance management. Performance management involves using results to refine administrative practices and to gain the support of members of the public and policy makers. Hence, the Framework's analytical structure identifies the attributes of a high performance court and the process by which a court can move to a level of high performance.

The importance of effective court administration is not a strictly modern or new insight. Quality state court performance has significant historical roots, being long recognized as an important feature of American government. A review of previous ideas helps puts the Framework in proper perspective and is a reminder of why institutional performance matters.

Background

Some Historical Roots. From the outset of the United States as a nation, the administration of State governments, and not just legislatively enacted policy, has been central to how the public views the character of government. Obviously, the words used in the 18th century to describe the nature of sound administration vary from today, but not the importance. For example, Alexander Hamilton writes that the extent to which State governments act with “uprightness and prudence” will increase the “degree of influence” they “possess over the people”. While Americans today do not speak of their State governments in terms of their “uprightness” and “prudence”, the durable strength of Hamilton’s claim is unmistakable. He is asserting that the quality of administration is a powerful independent force in shaping the public’s view of government.

“We are what we repeatedly do. Quality is not an act, it is a habit.”

Aristotle

Of particular interest is Hamilton’s more specific contention on the importance of providing effective administration of civil and criminal justice:

[T]he province of State governments... [by which] I mean the ordinary administration of criminal and civil justice... is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is this, being the immediate and visible guardian of life and property... more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence toward the government.

State courts are certainly one of the institutions Hamilton has in mind in making this claim. And the concern is clear: the image people have of the administration of justice in general and courts in particular affect their support and trust in government.

Yet, despite the critical role Hamilton attributes to courts, he offers few clues on the actual characteristics of high quality court administration and leaves unanswered the question, how does the public know good court administration when it sees it? In other words, how can judicial leaders ascertain if court business is being conducted with the modern day equivalent of “uprightness and prudence”?

The founding fathers of court administration in the 20th century certainly realized the problems of ineffective court operations. Beginning with Roscoe Pound’s 1906 speech on “the causes of popular dissatisfaction with the administration of justice” that “kindled the white flame of progress” (Pound, 1937) in judicial administration, reformers developed an agenda of issues related to court structure and resources as topics of reform. The mission was to minimize if not eliminate a perceived pattern of irrational and overlapping authority scattered among too many courts leading to duplication and inefficiency, and a resulting poor use of resources. To remedy this situation, Pound called for consolidation and simplification of court structures.

This “conventional wisdom” (Gallas, 1976) that the problems of courts is best addressed by innovations in their structure dominated reform for 70 years, although the causal link between structures and resources, on the one hand, and sound administration, on the other, was simply assumed.² The belief that court unification (i.e., the consolidation and simplification of court structure), for example, has a direct impact on the quality of court services, was not seriously questioned until recently (Henderson, et al., 1984; Rottman and Hewitt, 1996).

However, the long standing assumption that excellence in court administration is possible, is sufficiently tangible to be observed by the public, and has important consequences can be linked to the contemporary study of court performance. Interest in court performance measurement gained momentum from empirical research in the late 1970s and early 1980s that suggested that there was “no one best way” to guarantee desired results, and that courts with similar formal rules, resource levels and procedures can produce dramatically different outcomes. At about the same time, the focus of research in courts expanded beyond relatively narrow topical emphases (e.g., the role of defense counsel, pretrial release, and plea bargaining) to a broader perspective of the courts as public organizations operating in the context of the justice system as a whole (Tyler, 1989; Hensler, 1988).

² This conventional wisdom, with its emphasis on structure and process over results and outcomes, is exemplified by the American Bar Association’s *Standards Relating to Court Organization* (revised in 1990) and *Standards Relating to Trial Courts* (revised in 1992).

The idea that courts must be managed like other public and private organizations to achieve desired results had gained a foothold in judicial administration.

The Modern Study of Court Performance. For the past 20 years, courts and court-related organizations have explored the topic of administrative performance. Two slightly different approaches have emerged.

Standard Setting. One way the topic of court performance has been tackled is to define the main organizing question as: how closely do courts in the real world meet standards of performance?³ By framing the enquiry in this way, the two main tasks are establishing or setting black-letter “standards” and, second, providing “measures” to determine the extent to which a court meets a given standard. Additionally, each measure is accompanied by a step-by-step description (or methodology) of the data and analysis necessary to apply the measure in the real world. To provide coherence in the development of both the standards and measures, they are grouped according to whether they fall under a particular set of values called “performance areas”. The values, therefore significantly shape the logic, scope, and substance of the standards and measures.

This approach is ably represented by the pioneering work of the Trial Court Performance Commission, which began in 1987, to develop standards and measures of performance. The *Trial Court Performance Standards* provided measures and standards for courts to conduct self-assessment for the purposes of internal evaluation and self-improvement. It focused the court’s attention on customers and the ways in which its operations could be improved for those individuals availing themselves of the legal process. An enduring feature of the Commission’s work is its emphasis on defining performance in terms of outcomes or consequences of court activity rather than the presence or absence of a policy, procedure or practice.

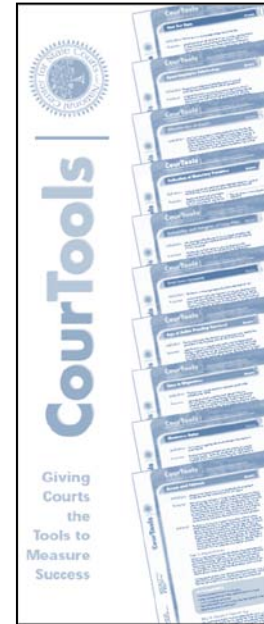
However, it was difficult, if not impossible, for courts to implement all 68 measures across the 22 standards arrayed within the five broad performance areas. Whereas the Commission viewed its mission as providing a comprehensive set of standards and measures, the response from the field was that there were too many measures for a court to apply given limited time and resources.

In reaction, in 2005, the National Center for State Courts released a set of ten court performance measures called *CourTools*. The NCSC mission behind this scheme was to focus on “fundamental values”, adhere to a “balanced” perspective by identifying a set of measures linked to the full range of court work, and suggest measures that are “feasible to implement and to sustain”. The ten measures include items closely tied to values or what the developers of *CourTools* regard as the special functions of courts, such as the accessibility and fairness of the legal process, as well as its timeliness, and items

³ Performance measurement is an inclusive term that refers to the process of measuring a court’s accomplishments, service levels, and outcomes. Generally, performance measurement is any effort undertaken to meet the need for evidence of results on a regular and continuous basis. A more detailed discussion of performance related terms and concepts is provided in Chapter 5.

commonly found in performance assessment of other public institutions, such as fiscal responsibility and the effectiveness of internal operations. The move to a smaller number of measures has had some success as courts have mounted efforts to use *CourTools*.

While the *CourTools* provide a broad range of indicators geared to general jurisdiction trial courts, they do not directly address parallel rationale and data requirements for performance measurement in specialized trial courts and appellate courts. Efforts to develop performance measures for court-specific programs and specialized dockets have led to performance measures for child dependency cases, (ABA, 2004) drug court cases, (NCSC, 2004) and appeals,⁴ and continued with more recent initiatives to formulate performance measures for domestic violence, mental health and probate courts.



A distinctive feature of the court performance efforts directed at specialized courts and calendars is the specific nature of the performance areas and associated measures. Taking drug courts as an example, both the performance areas and measures are tailored in their labels and content to fit the handling of strictly drug offender cases. For example, the areas include “Social Functioning” and “Processing” and within each of those areas there are measures labeled “Births of Drug-Free Babies” and “Graduation Rate”, respectively. Additionally, the approach used in specialized courts tends to take a different path than *CourTools* by proposing a substantial number of measures. As an illustration, there are 31 performance measures in the Processing area for drug courts.

The standard setting approach relies on values to set standards, but contains a heavy emphasis on measurement and arriving at key indicators of performance. Specifying the outcomes associated with high performance is foremost. Lesser emphasis is given to formulating explicit practices and processes that courts should follow; rather, courts are deemed to be in the best position to assess how best to organize and use resources to attain established outcomes.

Defining an Ideal Court. An alternative to standard setting is to suggest what an ideal court might look like in terms of its values and its operations as a model to be emulated. This approach is taken in developing the *International Framework for Court Excellence*, published in 2008.

The International Framework begins by identifying 10 “Core Values” that “courts apply in carrying out their role”. The values include “Equality, Fairness, Impartiality, Competency, Integrity, Transparency, Accessibility, Timeliness, and Certainty”. After briefly describing these values, the

⁴ Appellate Court Performance Standards and Appellate CourTools

authors of the International Framework use the values to define a court of “Excellence.” High performance is achieved by a court that maximizes all 10 values in seven “Areas of Excellence,” including “Court Management and Leadership; Court Policies; Human, Material, and Financial Resources; Court Proceedings; and Public Trust and Confidence.” Particular “Values” are maximized in particular “Areas,” with an ideal court achieving excellence in all areas. Hence, the International Framework departs from the standard setting approach by more explicitly specifying what an ideal court looks like.

A summary description of what the International Framework proposes as the ideal court is one where the body has visionary leadership, is high on innovation, operates in an inclusive manner both internally and in its external relations, is directed by a chief (or presiding or administrative) judge who champions ideas first discussed among the entire bench and professional staff and seeks collaborative relationships everywhere. As a result, the ideal court is a collegial body that strives to achieve commonly agreed on goals with an open mind to new ideas.

The International Framework places a more limited emphasis on measurement and the identification of particular indicators of performance. On this subject, the International Framework outlines what American states and other nations have done in measuring the extent to which trial courts approximate “excellence” through the use of short case study summaries, but there is very little discussion of what are appropriate indicators.

Building on these two approaches, the High Performance Court Framework seeks to advance the understanding of court administrative performance by explicitly linking values, court culture, and measurement. The goal of high performance is closely tied to an intuitively comprehensible set of values salient in the minds of judges and court managers. These values, expressed in the form of administrative principles, orient court personnel in their deliberations over the choice of administrative practices, although they do not necessarily determine how work is executed.

Court culture describes the character of the internal work environment in which administrative principles are pursued. *Trial Courts as Organizations*, (2007), suggests that, over time, courts have come to organize themselves in a combination of alternative ways that have direct implications for the way that work gets done. Each type of culture greatly affects the way administrative values are put into practice. In fact, culture independently affects the choice of performance goals, how performance is measured, and what judges and managers do with performance data. Therefore, the Framework draws on this body of research to suggest that diagnosing and understanding court culture is an important step on the road to enhancing performance.

The Framework also seeks to provide a coherent methodology for measuring performance and guidelines on managing performance. Whereas previous initiatives have addressed the measurement of performance, there is an unfulfilled need to link performance information more closely to the

implementation of improved administrative practices. For the Framework to have practical utility, it must be made clear how judges and administrators can use performance results in determining their courts present condition, evaluate alternative ways of doing business, and choose the best path forward. In addition, court leaders have a responsibility to communicate institutional achievement to justice system partners, executive and legislative partners, and the public.

Organizational Roadmap

The remainder of this paper is devoted to describing the critical elements of the High Performance Court Framework. Chapter Two provides a discussion of what propels courts toward performance in the first place. The chapter focuses on four fundamental court administrative values orienting judges and managers in the selection and design of administrative policies. The goal is to bring forward what judges and managers seek to achieve on a daily basis in courthouses around the country.

In Chapter Three, the nature of culture and how each of the four main types of culture (i.e., communal, networked, autonomous, and hierarchical) shape the manner in which administrative values are implemented and maintained. Additional analyses demonstrate how a court can adjust its current culture to facilitate the closer realization of administrative principles. Attention to culture is critical for court leaders because the power to make decisions and shape the way work gets done is typically widely diffused among independent, often elected, co-equal judges. This type of loosely-coupled organization presents difficult challenges for court managers and requires careful attention to evolving coalitions and the creation of meaningful power sharing arrangements.

“Quality is never an accident it is always the result of high intention, sincere efforts, intelligent direction and skillful execution, it represents the wise choice of many alternatives.”

William A. Foster
Awarded Medal of Honor,
US Marine Corp.

In Chapter Four, a performance measurement scheme is developed around four interrelated Perspectives on what a court should be doing to achieve high performance. The first two Perspectives are central to defining what performance is all about and identifying key court activities susceptible to measurement. The Customer Perspective focuses on the services provided to participants in the legal process and the Internal Operating Perspective considers how well a court functions in handling its case load. On the basis of these two perspectives, the Framework offers a balanced and broad set of areas of court activity to measure. The areas include effectiveness, procedural satisfaction, efficiency and productivity.

Chapter Five is a discussion of how the four performance areas contained in the Customer and Internal Operating Perspectives can be organized and measured. The four areas are designed to relate to each other in a coherent manner that gives appropriate coverage to a broad spectrum of

performance goals a court seeks to accomplish. The four performance areas draw on the concept of the balanced scorecard. Individual *CourTools* measures are used to illustrate distinct aspects of each performance area, while also showing how specific measures serve as indicators of achievement across the first two Perspectives.

Chapter Six presents a managerial guide on how performance results can be used in refining administrative practices and strengthening a court's institutional position by drawing on the third and fourth Perspectives. The Innovation Perspective concerns the ability of a court to refine work routines in light of emerging ideas, technologies, and performance information, and the Social Value Perspective concerns using information to garner the support of partners in the justice system and acceptance by the public and policy makers.

In conclusion, Chapter Seven addresses both the problems of and prospects for moving courts to high performance. The first part of the Chapter describes inhibiting issues in the form of five basic misconceptions about performance in general and the Framework in particular. It is essential to counter these false impressions to give the Framework a fair hearing on what insights it provides and what procedures it offers in applying general principles to real-world situations. The second part of the Chapter considers seven strategies courts can follow to make the best use of the Framework. The strategies have the dual purpose of maintaining the Framework's integrity in its application and avoiding problems in its implementation. The focused and structured attention on the administration of the court as an institution is fundamental to knowing how well the court as a whole is serving the community and its own well being.

II Administrative Principles

Today, a well functioning court is expected to resolve a large volume of work in a high performance manner within demanding time frames. An overall goal is quality administration of case processing. However, the viability of this goal depends on coming to terms with how to assess quality in the context of case processing.

Legal philosophers have discussed the quality of justice for thousands of years, but they have rarely, if ever, stated their conclusions specifically and concretely enough to be applied precisely by others to the everyday work of the courts. In recent years, one approach to defining quality can be seen in the values extolled by the Trial Court Performance Standards and the International Framework for Court Excellence. These conceptualizations portray a well-performing court (or court of excellence) as a place where the legal process exemplifies such noble virtues as equality, fairness and integrity. Certainly, there is no argument that such values are the lifeblood of justice in a free society. Yet, because of their lofty nature and high level of abstraction, these concepts of quality are not easily defined for use in a systematic way to assess court performance in the real world.

Consequently, the High Performance Court Framework focuses on case processing quality at a level that corresponds to “what many consider the essence of justice”⁵: assure each person’s constitutional right of due process. The link between due process and basic rights is clearly recognized, “It is now the settled doctrine [by the US Supreme Court] that Due Process embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due Process is that which comports with the deepest notions of what is fair and right and just.”⁶

“If you want to achieve your highest aspirations and overcome your greatest challenges, identify and apply the principles or natural law that governs the results you seek. How we apply a principle will vary greatly and will be determined by our own strengths and creativity, but ultimately success in any endeavor is always derived from acting in harmony with the principles to which the success is tied.”

Steve Covey, Author
The 7 Habits of Highly Effective People

⁵ Standard 3.3 of the Trial Court Performance Standards “focuses on what many consider to be the essence of justice.” The Standard requires that the decisions and actions of trial courts be based on legally relevant factors consistently applied in all cases. Furthermore, those decisions and actions should be based on individual attention to each case.” See http://www.ncsconline.org/D_Research/tcps/area_3.htm

⁶ Solesbee v. Balkcom, [339 U.S. 9, 16](#) (1950)

As construed by the courts, due process means laws are applied equally to every individual under established rules which do not violate elemental rights. This concept is founded on the fundamental value of fairness; that every person has the right to their day in court and to have their case heard, considered and resolved by an independent and impartial judge.

When translated into practice, due process implies the decisions and actions of trial courts should be based on individual attention to each case. In addition, court decisions and actions should be consistent, procedurally fair, and in proper proportion to the nature and magnitude of the case. Quality case processing is the result of judges and court managers, in their respective roles, attending to the effective administration of justice on a daily basis.

When considering the meaning of due process in action, scholars distinguish two basic goals. The first, called substantive due process, is to achieve more accurate legal rulings through the use of fair procedures. The second, called procedural due process, is to ensure appropriate and just procedures (or “processes”) are used to make people feel that the government has treated them fairly by, say, listening to their side of the story.

The rationale for court administration is to support the adjudicatory process by enhancing *procedural* due process. What constitutes a high performance court is measured independently and separately from the legal decision itself. The *substantive* validity of trial court decisions is beyond the scope of administrative performance measurement and conclusions. Yet, there is a vital linkage between administrative high performance (procedural due process) and adjudication.

How a court is organized and conducts business directly affects the quality of the legal procedures and processes. This belief underlies the frequently heard proposition that by sharing administrative responsibilities with court managers, judges have more time to devote to the *substantive* aspects of case resolution, which is their unique responsibility. Because the amount of available work time is limited even for the most conscientious judge, allocation of administrative tasks to non-judicial personnel promotes the goal of effective and substantively fair adjudication of disputes.

However, the benefits of an appropriate division of labor derive not only from sheer time savings for judges. Administrative practices contribute to a judge’s access to information, control over the courtroom, and communication with all participants in the legal process. Best practices in these areas are considered valuable aids to adjudication. Conversely, in a court with poor management, administrative practices will likely impinge on the quality of a judge’s decisions, contributing to substandard justice and the real possibility of less justice for fewer people.

The tangibility of procedural due process not only brings a degree of realism to the discussion of court performance overall, it is consistent with the Framework’s specific emphasis on achieving outcomes aligned with what court customers want from court administrative practices. While court

users may not speak in terms of procedural due process, they want results marked by the same key attributes, including a process that is fair, predictable, timely, and cost-effective. In considering desirable administrative performance, a key facet should be that individuals who use the courts come away satisfied with the experience.

Moreover, procedural due process and its manifestation in the idea of customer satisfaction are incorporated into the basic administrative values and expectations that judges and managers bring to their jobs. This congruence is of vital importance because judges and managers have the responsibility of putting administrative policies and procedures into effect. As a result, their beliefs and orientations are the proximate determinants of what performance means. Building on these linkages, the Framework formulates them into organizing ideas called “administrative principles”.

Administrative principles are general beliefs judges and court managers have about how the administrative process should work to fulfill their responsibility to ensure legal decisions are made in a

manner that satisfies customer expectations. These principles are powerful in shaping how judges and court managers gauge whether administrative practices are working as desired. If court practices are not consistent with the principles, judges will seek to make them more procedurally fair. For this reason, administrative principles are a critical first element in the Framework. The following discussion provides an outline of four underlying principles.

Four Administrative Principles are Emphasized in the Framework

Giving every case individual attention

Treating cases proportionately

Demonstrating procedural justice

Exercising judicial control over the legal process

Every Case Receives Individual Attention

Giving individual attention to cases has direct implications for administrative performance because it connotes a tension between an individual case and the aggregate nature of a judge’s caseload as a whole and in fact an entire court’s case load. Judges know they are responsible for their assigned cases and they know the manner in which they resolve them contributes to the institution’s performance. Judges and court managers do not want decisions in any case to be a foregone conclusion or the product of inattention. No one wants to regret an outcome where additional time would have led to a more correct legal decision. Stated more positively, judges know an appropriate amount of time is necessary to allow them to gain requisite information to make the most correct decisions possible. Effective procedures allow contending parties and attorneys to provide all relevant information to the court, to present their respective sides of the case and to respond to any questioning by a judge. Moreover, the parties and their attorneys should be able to question the

opposing side's arguments. And a judge realizes the importance of being in a position to obtain additional information on a case that is not supplied by the parties themselves.

Individual Attention Is Proportional To Need

Whereas the first administrative principle suggests judges focus on each individual case, the second one looks at each case's relationship to all others. Judges and court managers must balance the desire to give every case appropriate attention and the concurrent responsibility to honor this desire in a world of substantial case loads and finite time and resources. One way to reconcile the conflict between "individualized" attention and case load imperatives is to apply the proportionality proposition, which states that every case should receive individual attention in direct proportion to what it warrants. More complicated, more difficult and more serious cases should receive more time than the less complex, less difficult and less serious cases. The idea of proportionality is intended to maintain equality and due process in the treatment of cases, but also to acknowledge the reality that available work time and resources are limited (For additional discussions of the proportionality proposition, see Ostrom and Hanson, 1999; Woolf, 1996; and Chapper and Hanson, 1983).

With respect to criminal caseload, evidence suggests that many trial courts operate in accordance with the proportionality principle, even if there is no formal recognition of the concept. As criminal cases increase in seriousness, the time taken to resolve them increases, although the most expeditious courts manage to resolve each category of seriousness within a tighter time frame than less expeditious courts (B. Ostrom and Hanson, 1999). Achieving the benefits of proportionality is enhanced if court managers assist judges in establishing a structured screening process using clear mechanisms to sort cases according to agreed upon criteria and setting up alternative calendars for different gradations of cases.

Differentiated Case Management (DCM) is a more formal, structured management strategy illustrating proportionality. DCM, most typically used with civil cases, seeks to improve the efficiency of case processing by identifying and providing the appropriate level of judicial intervention at each phase of the legal process. This goal is achieved by differentiating cases early in the process based on the nature and scope of judicial and justice system resources needed to resolve the case. Each case is then assigned to a distinct track designed to provide the appropriate level of court monitoring, minimize unnecessary court appearances, and reach a fair and timely resolution.

Screening criteria basically involve siphoning out more routine cases from the more complex ones on some objective basis, such as dollar amount in controversy, number of parties, the newness of the issues and so forth. Routine cases involve a limited number of generally settled issues and a low dollar amount, although questions of liability and responsibility are in sufficient conflict to prompt a law suit. Routine cases are deemed not to require the procedures associated with a court's regular calendar, a calendar with procedures suitable for cases involving a considerable number of pretrial

motions, extensive discovery and having a reasonable probability of a bench or jury trial to resolve a dispute over a substantial amount of money and possibly involving multiple defendants.

As an example, a modified calendar for routine contract and tort cases might limit the number of motions and the types of discovery vehicles (e.g., no third party depositions), discovery time and encourage judicial case management to reduce the time and cost of litigation for litigants. The aim of a modified calendar is to prevent unnecessary motions and discovery vehicles from being filed and to keep the time and cost of litigation from exceeding what is appropriate for the types of cases on the calendar.

A challenge confronting a court is to differentiate cases without litigants in small stakes cases thinking they are being treated in an assembly-line manner where their cases are viewed of limited merit, importance and consequence. Case screening and placement of a case on the new calendar must not make judicial decisions a foregone conclusion or to reduce judicial discretion, but to increase judicial efficiency and quality review of like cases. As an ongoing measure of quality control, a judge might be given the option to transfer cases, initially screened for a simplified calendar but deemed by the judge to be inappropriate for a simplified calendar, to the regular calendar.

To introduce this administrative process is a major decision, but it need not be made on faith alone. The value of formalizing the concept of proportionality, say, through case screening and the use of modified calendars, is measurable by the degree of timeliness and cost-savings to litigants.⁷ Taking an empirical approach enables a court's administrative leadership to determine whether judges actually adhere to such procedures in their managing of cases as well as how participants in the legal process assess the impact on due process.

Decisions Demonstrate Procedural Justice

Many assume that winning or losing is what matters most to people when dealing with the courts. However, research consistently shows positive experiences are shaped more by court users' evaluations of how they are treated and whether the process of making decisions seems fair. The administrative principle of procedural justice is the concept that deals with the perception of fairness regarding court procedures and outcomes. This principle is of fundamental importance to the institutional legitimacy of a court and to the degree of trust placed in it by participants in the legal process, policy makers, and members of the public. In turn, perceptions that procedures are fair and understandable influence a host of outcome variables, including satisfaction with the process, respect for the court, and willingness to comply with court rulings and orders—even if individuals don't like the outcome.

⁷ Positive results have been demonstrated under the stringent conditions of a field experiment whereby some cases were randomly assigned for handling under a modified calendar (experimental cases) and others were assigned for resolution on the regular calendar (control group cases). The experimental cases were, in fact, resolved more quickly, involved fewer motions and discovery vehicles, cost litigants lower attorneys' fees and provoked no dissatisfaction among attorneys handling cases under the modified calendar (Connolly and Planet, 1984).

Tom Tyler, a leading researcher in the field, suggests there are four expectations people have for procedurally fair court processes. The first expectation, *neutrality*, is that the law is applied in a consistent, impartial manner by unbiased decision makers. The second one is that all people are treated with *respect* and dignity, and court procedures serve to clearly safeguard individual rights. Third, individuals who are affected by a given decision have the chance to be heard (or *voice*) and to present information relevant to the decision. Finally, the judge is seen as *trustworthy* by listening to both sides, shows an understanding of the issues, and clearly explains the reasoning and implications of the decision. Implementing administrative practices to meet these expectations reinforces the perception of a court's commitment to procedural due process.

The entire character of court administration plays a central role in the extent procedural justice is realized. Effective administration shows that the legal process, including judicial decision making, is respectful to all parties, not tilted in favor of a particular side, or subject to whims and capriciousness. How a court presents itself and how all court personnel carry out their tasks make a difference in the judgments court outsiders make about the internal operations and decision making of judicial bodies. Litigants might not be able to define a lack of procedural justice, but they know it when they see it.

In a practical sense, fidelity to procedural justice should also be reflected in the scheduling of key procedural events and the handling of documents submitted to and produced by a court. Failure for events to go as scheduled or signs of misplaced and missing documents or inaccurately recorded events or actions are immediate signs of negative performance, especially to parties and their attorneys. Hence, the Framework rests on a third administrative principle by judges, with the assistance of court managers, to demonstrate procedural justice in how court personnel conduct themselves and thereby to communicate to all concerned that judicial decision making is purposeful, deliberative and fair in the assessment of issues before the court.

Judges Control The Legal Process

A key development over the past 40 years is application of management concepts to the movement of cases in a court house. Caseflow management has come to mean the blend of processes, techniques and resources necessary to move a case effectively and efficiently from the date of filing to resolution. At the center of successful caseflow management is the recognition that judges, with the assistance of court administration, must make a commitment to manage and control the flow of cases through the court. While this responsibility by judges and court managers should be tempered by continuing consultation with attorneys and others on the best means for improvement, a court must lead the effort if it is to succeed.

Several factors have been identified as key elements of effective caseflow management, including a set of meaningful events, a realistic schedule, clear expectations that events will occur as scheduled, firm control over the granting of continuances, shared information among the parties early in the

process, and the use of data to monitor compliance with established case processing goals. In sum, court control of the process is the basic principle on which these elements are based.

A substantial benefit of greater court control over the caseflow process is that it can lead directly to more effective (and cost-effective) advocacy for all litigants. By implementing and using effective caseflow management policies, the court sets clear expectations for what is expected of attorneys at each event and what a judge will do if the expectations are not met. Judges contribute to the preparation and performance of attorneys through their control over the process. Judges in an adversary legal process recognize the desirability and necessity of well prepared attorneys. In fact, judges enjoy presiding over proceedings when opposing sides act as effective advocates based on a thorough understanding of relevant laws, issues in dispute and a command of the relevant facts. Moreover, effective advocacy helps a judge to understand the issues more clearly.

Administratively, an ongoing mechanism for judicial control over the legal process is the routine practice of establishing and communicating clearly what, how, and when an action is expected of each side at all critical stages of the process. The overall purpose of this principle is to reduce uncertainty among the parties and their attorneys and thereby encourage attorney preparation. Reducing uncertainty promotes preparation because attorneys know what judges expect at each hearing and the event will occur when scheduled. And there will be consequences if an attorney is not ready to proceed when a case is called (For an expanded discussion of and evidence on these points, see B. Ostrom and Hanson, 1999). Moreover, clarifying expectations and reducing uncertainty on how the process operates is cost-effective, especially in civil cases, because it deters one side from abusing the legal process by filing dilatory motions, overreaching or resisting discovery or generally trying to punish the other side (e.g., requesting in-person motion hearings in instances of out-of town opposing counsel).

Court control of the process has been shown to lead to more effective advocacy. However, there is limited agreement on the precise way to design and implement the strategies discussed above to achieve effective caseflow management. What works in one court might not work in another. Best practices in case management continue to evolve and it is prudent to view existing elements of case management as “good working hypotheses,” comprising a workable theory but contingent on each court’s particular culture. Consequently, the administrative principle of judicial control over the legal process is not an endorsement of any particular type or method of case management. The fourth principle suggests that at rock bottom virtually all judges believe that there is virtue in and benefits from “case management” as administrative actions to reduce attorney uncertainty and thereby enhance their role as effective advocates. However, it is an empirical question how and whether that principle is translated into practice (e.g., the uniform application of court-wide rules versus alternative policies across different court rooms based on the discretionary authority of individual judges). Variation arises because of the variable nature of organizational culture among courts.

Summary

The legal concept of procedural due process and its administrative complement of customer satisfaction are incorporated into four administrative principles guiding judges and managers in their search for administrative practices. They are: (1) *Every case receives individual attention*, (2) *Individual attention is proportional to need*, (3) *Decisions demonstrate procedural justice*, and (4) *Judges control the legal process*.

These principles set forth what judges and court managers see as their roles and responsibilities in trying to run a court in a way that appropriately supports the adjudication of disputes. They orient almost all judges and court managers in the same way, but they are not determinative of how their court performs. Actual application of the principles will vary from court to court. How the principles affect court performance depends on how the general organizational nature of courts and the particular culture in a court shape the principles. The intervening roles of court structure and culture are the subjects of the next Chapter.

III Court Structure and Culture

The High Performance Framework rests on the initial premise that judges and court managers have basic beliefs about the appropriate administration of justice and these views fundamentally shape their behavior. Their views orient them in choosing what types of administrative practices to follow. As a result, administrative principles underlie how judges and managers define what high performance is. High performance occurs when the principles and the practices correspond with each other. Four of the most common and durable administrative principles include the following expectations: every case receives individual attention; cases are treated proportionately; the process demonstrates procedural justice; and the legal process is under control. Yet, despite the centrality and saliency of these principles, every court faces challenges in applying these values

“Deliberate in many voices, but govern in one.”

John Carver
Author

The structural nature of American trial courts inhibits collective decision making about how best to translate administrative principles into practice. A strong vein of judicial autonomy running through most courts means particular case management practices—even those deemed to be best practices—cannot be imposed. Mutual agreement is essential. However, the necessary step of reconciling the structural push for judicial autonomy with the need to establish judicial consensus complicates the court management task of putting administrative principles into operation. Before a court tries to implement administrative principles, an understanding of how structural and organizational forces encourage autonomy is required to overcome them.

The inherent difficulties a court confronts in translating values into reality cannot be ignored or dismissed by assuming courts will do whatever they can in coping with these challenges. Such assumptions doom the possibility of building a viable set of common performance criteria because they overlook what virtually all courts need to do to put performance initially on its agenda.

The purpose of this chapter is twofold. First, this Chapter is intended to describe problems courts have in elevating performance to the level of administrative policy making. Second, the objective is to suggest that courts can respond to their setting by working to develop a managerial culture that is conducive to making high performance an administrative goal. Paying attention to court culture is a means to align administrative principles with administrative practices.

Confounding Structure of Courts

One of the persistent themes in the contemporary court administration field is the search for increased performance through centralization and strong management. This pursuit is driven by a desire for enlightened leaders who cultivate court-wide agreement on administrative goals and

methods. Yet, fulfilling these types of aspirations is frustrated by three aspects of court organizational structure.

First, a minimal hierarchy of authority exists around which to build strong management. Trial courts are populated by professional attorneys, who by virtue of public election or legislative or executive appointment, are state constitutional officers. Judges do not select who their colleagues are and thereby have limited institutional rewards and punishments to control the behavior of their fellow members of the bench. As a result, a call for reaching collective decisions in a court requires an appreciation of the co-equal, often elected, professional characteristics of judges.

Judges are of essentially equal status in most courts. A judge in a leadership position, such as the presiding judge or chief judge, is often described as “first among equals” and given limited formal authority to set administrative policy for the court. If the judges are willing to share, collaborate, and follow the lead of a presiding judge, supported by the court administrator, establishing court-wide ways of doing business is a viable option. On the other hand, if individual judges seek to maintain independence and autonomy in administrative matters, reaching agreement on standard ways work should be done is much more difficult. As noted by David Saari, “No other organization or position in the United States combines elected status, professional status, and co-equal status into one job and then puts similar positions together into one group.” The fundamental nature of court structure makes it easy for judges to define independence in terms of autonomy in administrative matters. The need for voluntary commitment to collective decision making inhibits the adoption of court-wide practices.

“We don’t accomplish anything in this world alone...and whatever happens is the whole tapestry of one’s life and all the weavings of individual threads from one to another that creates something.”

Sandra Day O’Connor
Associate Justice, US Supreme Court

Second, judges behave in accordance with the necessities of their immediate work environments rather than systemic policy goals and objectives (Lipsky, 1976, 1980; Emerson, 1983). The most important part of a judge’s job is to decide cases. Adjudication is the primary service of a judge. However, judges must do more than decide cases—they must also manage a host of people and activities throughout the life of each case. To be effective, the work setting requires management. A live and unsettled issue is the extent to which judges and administrators have a shared understanding and agreement on what “management” means.

Courts are not the only institutions which are challenged by calls for synchronized management that seem quite natural in the bottom line motivated private sector. They fit within a category of structures called “loosely coupled systems” (Hirschorn, 1994). “In loosely coupled systems, the

forces for integration—for worrying about the whole, its identity, its integrity and its future—are often weak compared to forces for specialization.” Coordination in such systems is difficult because the members do not think about system-wide goals, but, as in the case of courts, focus instead on their own subunit, assigned caseload or court room.

A powerful force behind the lack of focus on system-wide goals in a loosely coupled group is the members’ professionalism. Judges are inhibited from working cooperatively toward common administrative goals just like other professionals, such as physicians, lawyers, and university professors. Each profession has primary work-related responsibilities (resolving disputes, seeing patients, meeting with clients, teaching students) that is supplemented by administrative duties requiring the accommodation of other individuals and that might be regarded as undesirable chores.

With respect to courts, the field of judicial administration emerged as a means to help judges handle both their adjudicatory and management responsibilities. In theory, each judge in a multi-judge court relinquishes control over some administrative duties to a presiding judge and/or court manager. A key role of occupants of these management positions is to act on behalf of the other judges in carrying out administrative policies. However, in the real world, conflict over what are appropriate practices, including scope of authority delegated to administrative leaders, can arise whenever there is not full agreement on how administrative issues should be addressed and resolved. And there are definite limits on what the presiding judge and court manager can do to set and enforce agreement.

Third, given the lack of a hierarchical authority structure, courts must depend on consensus building to reach mutually agreeable decisions. However, many reform initiatives never get discussed because a reform proponent believes it necessary to both determine the optimal solution to a perceived problem and also sell it to judicial colleagues. It is vital for courts (or the judiciary) to be aware that the art of consensus decision making offers a workable approach to reaching decisions judges can agree on, thereby avoiding stalemate. The key is recognizing that there are alternatives to a desired goal. Following some amount of deliberation over alternative courses of action, a choice can be made that will bring about the desired outcome better or easier than other options—even if it is not the “best.” Far from being a problem, research suggests using consensus building to reach decisions that are good enough although not necessarily the best is the rational way to proceed.

A significant contribution by Nobel-laureate Herbert Simon is demonstrating the fallacy of one best way to organize or manage any operation. He argues, even in the best of circumstances, it is simply beyond the capacity of human beings to gather and analyze all the information necessary to determine one best (or optimal) alternative. Simon posits the idea of “satisficing” or attempting to reach satisfactory solutions that address most needs and deal with inevitable uncertainty. In the world of courts, the satisficer’s philosophy is that there are too many uncertainties and conflicts in views and too little formal authority for there to be any hope of obtaining a true optimal solution and that it is far more sensible to set out to do “well enough” (but better than has been done previously).

The Simon proposition is more than just a warning against letting the perfect be the enemy of the good; it is the recognition that the perfect is impossible. Limits on information and analytical capacities mean that the goal is reaching satisfactory levels of performance on each administrative orientation.

The relevancy of achieving only satisfactory, not perfect, results for judges and managers in a court system is clear. Uncertainty faces courts on many fronts, but the public still expects results for their institutional support and tax dollars. In light of the fact that effectiveness is going to be measured in some way, the Framework offers a systematic means to do so. Yet, the Framework acknowledges the loosely-coupled nature of courts means consensus building on how to further success in achieving administrative orientations will be locally designed and driven. Each court must build its own path to high performance by taking into account its own particular circumstances. Deciding what course of action to take, what strategies to employ, and how to structure a court's management requires a deeper understanding of the internal dynamics in each individual court.

For all these reasons, it is not surprising that no single, specific approach to managing and coordinating a professional dominated structure like a court has emerged as the "best" way. Instead, what works in a given court appears to be and is generally thought to be highly dependent on the personalities, skills, and interests of the sitting judges. Certainly, efforts to require uniform work processes and outputs do not work well with judges because there is virtually no way to control a central process that does not exist. Individual judges need to feel comfortable in how they control the caseload process in their courtrooms or quality will suffer.

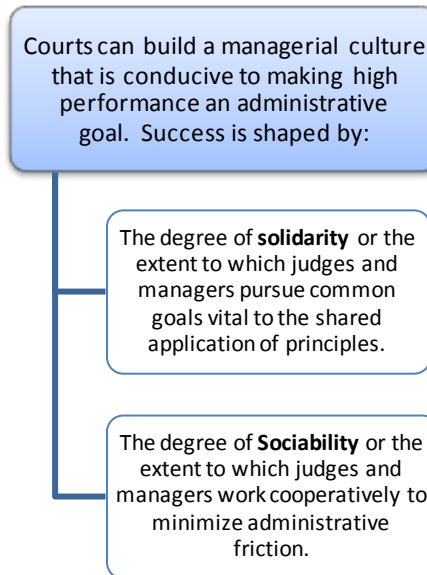
Recognizing the strongly local character of how decisions get made in each court is another way of saying local court culture matters. What giving individual attention to every case in a proportional manner, demonstrating procedural justice, and controlling the legal process means is a product of the intervening role of the variable type of court culture. Understanding what different cultures can do is a key to averting otherwise intrinsic road blocks to implementing administrative principles.

Court Culture

Court organizational structure and culture are contending forces that affect how administrative principles are put into place. The loosely coupled nature of courts inhibits collective decision making about administrative practices and promotes collective decision making if and only if the practices respect autonomy. A typical situation in many courts is that the virtue of common goals is never on the agenda, never raised and never discussed. Moreover, despite the encouraging realization that satisficing is an appropriate goal (rather than finding the one best way); courts have difficulty taking the initial step of discovering where viable consensus lies. A step critical in the collective formation of administrative practices and in elevating the idea of performance in any institutional sense is to understand the role of culture.

The NCSC approach to court culture is designed precisely to encourage and facilitate a conversation among judges and managers on culture; how current ways of conducting business are viewed and how they might be improved. Culture is an important element enabling court performance because it encompasses and makes coherent taken-for-granted values, expectations, and assumptions about how work gets done in a particular court. These values, expectations and assumptions form a palpable pattern because judges and staff come to identify with them. They are invaluable folkways on how to get along and get things done in a court. Indeed, they are taught to new members as the way court business gets done.

Court Culture and Change Management



Achieving high performance means judges and managers need to reach collective agreement on what administrative practices best support administrative principles and how they should be implemented. Given the inherent challenges courts face in reaching group decisions, the NCSC provides a method for understanding court culture and a set of tools and techniques for diagnosing, and when appropriate, changing court culture (B. Ostrom, C. Ostrom, Hanson and Kleiman, 2007). A decided advantage of this methodology is its ability to allow judges and administrators to gain clarity on their *current* court culture, or the ways things presently are done, as well as their *preferred* culture, or the ways they would like to see the court operate in the future.

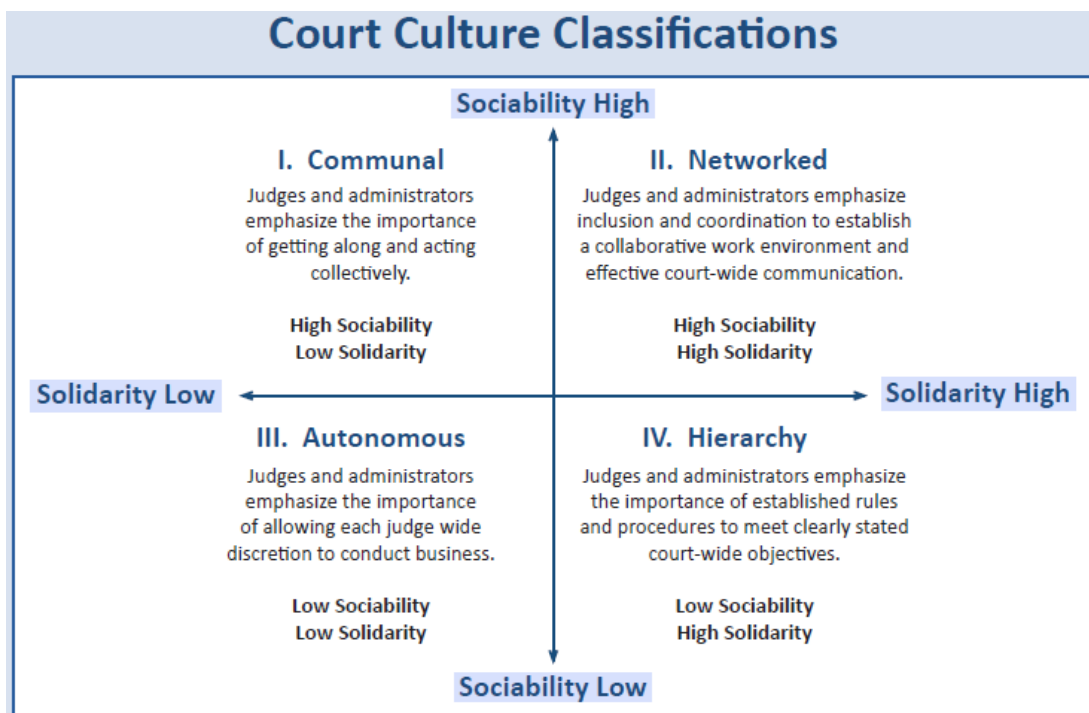
Defining court culture. Court culture concerns the beliefs and expectations judges and managers have about the way and the degree to which they individually and collectively affect and shape the legal process. These beliefs are ordered sufficiently to fall along two “dimensions.” The first dimension, called solidarity, is the wide spectrum of beliefs on the extent to which it is important for judges and managers to work toward common ends. The second dimension, called sociability, concerns the wide range of beliefs as to whether it is important for judges and managers to work cooperatively with one another.

The meanings of these dimensions are intuitively understandable. Solidarity refers to the degree to which a court has clearly understood shared goals, mutual interests, and common tasks. How unified is the court?

Sociability refers to the degree to which court personnel acknowledge, communicate, and interact with one another in a cordial fashion. How closely knit are members of the court?

Judges and managers vary from court to court in the extent to which they exhibit solidarity and sociability. That is the nature of the world. However, these views are highly instrumental in how work gets done because they are durable and powerful. In fact, solidarity and sociability are as significant as the structural nature of courts. They exercise an independent impact on what judges and managers do administratively above and beyond the structural nature of courts and other elements, such as size, resources, geographic location. In fact, court culture, or the extent to which judges and managers embrace solidarity and sociability, provide the leverage to overcome the structural impediments to the realization of fundamental administrative principles.

The NCSC approach constructs a classification scheme that systematically produces four distinguishable types of cultures: (1) communal, (2) networked, (3) autonomous and (4) hierarchical. Each of the four cultures is a particular combination of solidarity and sociability, shown below.



- Communal:** Judges and administrators emphasize the importance of getting along and acting collectively. Communal courts emphasize importance of group involvement and mutually agreed upon *norms* rather than established rules and firm lines of authority, Flexibility is a key to management. Procedures are open to interpretation and creativity is encouraged when it seems important to “do the right thing.”

- **Networked:** Judges and administrators emphasize inclusion and coordination to establish a collaborative work environment and effective court-wide communication. Efforts to build consensus on court policies and practices extend to involving other justice system partners, groups in the community and ideas emerging in society. Judicial expectations concerning the timing of key procedural events are developed and implemented through policy *guidelines* built on the deliberate involvement and consensus of the entire bench. Court leaders speak of courts being accountable for their performance and the outcomes they achieve.
- **Autonomous:** Judges and administrators emphasize the importance of allowing each judge wide *discretion* to conduct business. Many judges in this type of court are most comfortable with the traditional adversary model of dispute resolution. Under this traditional approach, the judge is a relatively passive party who essentially referees investigations carried out by attorneys. Centralized leadership is inhibited as individual judges exercise latitude on key procedures and policies. Limited discussion and agreement exist on court wide performance criteria and goals.
- **Hierarchical:** Judges and administrators emphasize the importance of established *rules* and *procedures* to meet clearly stated court-wide objectives. These courts seek to achieve the advantages of order and efficiency, which are deemed essential goals in a world of limited resources and calls for increased accountability. Effective leaders are good coordinators and organizers. Recognized routines and timely information are viewed as mechanisms for reducing uncertainty, confusion, and conflict in how judges and court staff make decisions.

From a strategic perspective, the NCSC cultural analysis provides courts with the ideas, tools and techniques to cope with serious structural challenges to performance and certainly to the possibility of a common High Performance Court Framework. In general, the graphic representations above illustrate the conscious cultural choices judges and managers make a difference in court operations, including whether performance is important, how performance should be measured and what should be done performance results. There are cultural distinctions behind what a court looks like and how it operates, including the measurement and management of performance. A communal court cannot be confused with a hierarchical court anymore than an autonomous court can be taken for a networked court.

Measuring culture. To apply the culture typology, a questionnaire, called a *Court Culture Assessment Instrument*, was developed to measure how individual judges and administrators believe work gets done in key areas. Because each culture manifests itself differently, the *Instrument* asks individuals to indicate how closely each of four ways of getting work done is to what happens in their court (current culture) and what they would like to see as the work style in the future (preferred culture). The survey is available upon request.

As a result, by taking measure of its culture, a court gathers critical information about itself in two regards. First, culture focuses attention on the objects exercising a strong, independent influence on the ongoing completion of all of the tasks vital to the maintenance and functioning of the legal process. Second, the measurement of current and preferred cultures provides a realistic picture of what is both a feasible and desirable degree of change in how a court does business. Measurement of culture does not provide simply a snap shot of how judges think they are doing. By capturing a court's preferred culture, insight is gained into what judges and administrators aspire to achieve. However, the aspirations are not purely idealistic because they are views on how judges and administrators would like to see business conducted in the common work areas of case management, change management and so forth.

Using Culture Analysis to Reach Consensus on High Performance. There is a roadmap for a court seeking to find new and better ways to organize and conduct business. Courts can manage a process leading from documenting their culture to designing a high performance system. A focused, consensus-based implementation process consists of five basic steps.

First, a court aspiring to high performance invites an appropriately representative combination of judges, commissioners, administrators and senior managers to complete the Court Culture Assessment Instrument. After completing the questionnaire, the individuals should meet together to review the results with the goal of reaching consensus on current court culture. A face-to-face meeting allows alternative perceptions to be voiced and discussed. Given ongoing work responsibilities and divergent schedules of the participants, separate meetings with subgroups (e.g., divisions, locations) might be necessary. During these meetings, questions may arise about the interpretation of the results, especially those indicating differences between the bench and staff members. Staff members might not feel free to speak openly and fully if they feel dominated by the bench. As a result, consideration should be given to how best to encourage open conversation and expression of views. One option is holding separate meetings of judges and staff members prior to any joint sessions so as to better surface constructive opinions and ideas.

“When a team outgrows individual performance and learns team confidence, excellence becomes a reality.”

Joe Paterno,
Football Coach
Pennsylvania State University

Second, the process in the first step should be repeated to identify the preferred future culture. One advantage of keeping the discussion of preferred culture separate from current culture is that participants will be able to focus more closely on the emerging demands facing their court, identifying existing bottlenecks and management challenges, how to develop greater trust and improved work relationships, and defining what it means to be a high performing court delivering great service to the public. Again, the goal is to reach consensus on a preferred culture that the

organization can commit to and strive to achieve. The conversation on current and preferred culture is likely to be among the most rewarding aspects of the entire change process.

Third, the presiding judge (or the court's administrative leadership) should consider organizing a working group of selected judges and managers to synthesize the results and their interpretations in the form of an overall statement on current and preferred culture. A goal for this group should be to articulate explicitly the rationale and benefits for a move from the current situation to a new and different orientation.

Fourth, the presiding judge should take the lead or ask a working group to explore the actions necessary to put their preferred cultural orientation into practice. No two courts have the same set of policies and procedures, but they all have the same basic administrative principles. Hence, the task is for each court to identify which existing policies, procedures and practices support desired change and which must be added, modified or dropped. In future meetings, court leadership can return to these issues, receiving regular reports from individuals with responsibility to define, monitor and report on changes in the five work areas over time.

Fifth, the presiding judge (or the administrative leadership of the court) should be in a position to build on the signs of successful cultural change to create a structured high performance measurement system. Cultural change is and should not be undertaken for the sake of change. The consequences of cultural change make the effort worthwhile. As a result, the signs of successful change are the seeds of improving performance. What a move to a preferred culture is expected to gain should be aligned with performance concepts designed to assist in getting there. In other words, the consequences of cultural change should be expanded into ongoing assessments of administrative practices. If the consequences of planned cultural change are linked to performance, then it is natural for a court to begin asking questions about performance, a topic that has its own concepts and methods. Some of those questions include the following:

What is meant by performance? Can court performance be measured? What are guides to interpreting and using performance results? Addressing these questions is the focus of Chapter 4. By using culture to define desirable changes in administrative practices, a court lays the groundwork for constructing a path to and method for a sustainable high performance measurement and management system.

Summary

Gauging a court's culture is a very useful step in moving toward high performance because it focuses on how judges and administrators do their jobs. Despite the commonality of administrative principles among judges and court managers, courts are likely to vary in the manner in which these orientations are expressed. Interestingly, they are expressed differently not for casual reasons or because "that's just the way life is". Distinctive cultures exist in the real world and they serve as filters

through which the principles must flow. As a result, whereas the administrative principles propel judges and managers to seek high performance, the diversity of cultures means performance is unlikely to be uniform.

Additionally, the organizational nature of courts constrains collective decision making by judges and managers. Courts tend not to be the type of organization that readily supports the search for “best practices” or embraces the benefits of centralized management and standardized ways of doing business. An inherent constraint is the institutional autonomy of judges, exemplified by the virtual lack of any system of rewards and punishments that judicial leaders might use to gain compliance with policies and procedures. The need for voluntary commitment to proposed administrative procedures inhibits court-wide uniformity.

However, in the absence of a strong structural edifice of institutional authority, courts are held together by their cultural orientations toward work. Culture is a powerful force that shapes how administrative principles are translated into practice.

IV Performance Perspectives and Areas

Performance is shaped by administrative principles and culture. Principles, such as giving individual attention to all cases or judicial control over the legal process, orient judges and managers to seek out particular administrative practices. In addition culture plays a role in the choices of practices because the way work gets done influences the expression of the principles. For example, giving every case individual attention can be carried out according to the discretionary authority of each judge or in conformity with court-wide policies agreed upon collectively. Because alternative cultures have a particular impact on administrative principles, performance is the product of administrative principles as modified by culture. Consequently, paying attention to culture is important to performance in that it helps clarify the attitudes of judges toward performance concepts and the willingness of judges to modify behavior to further achievement of particular performance goals.

“Intuition and concepts constitute ...the elements of all our knowledge, so that neither concepts without an intuition in some ways corresponding to them, nor intuition without concepts, can yield knowledge.”

Immanuel Kant
German Philosopher

However, knowing whether and to what degree a court is high performing is a matter of results. A high performance court is evidence-based in establishing success in meeting the needs and expectations of their constituents. As a result, think of high performance as depending on three components: culture; administrative principles; and results.

A court culture supporting a common understanding and commitment to the administrative principles will seek to generate practices that lead to demonstrably high performance. Administrative principles help define a set of performance outcomes linked to gauging a court’s achievements in providing procedural due process in a way that leads to customer satisfaction. The challenge of court management is precisely to adjust administrative practices until desired objectives are achieved, as defined by administrative principles. Knowing if a court is moving closer to high performance is essential to making successful adjustments. For this reason, an objective of the High Performance Court Framework is to offer a method of gathering information directly on performance and to suggest ways courts can use the information to adjust practices.

Performance Perspectives

An initial definition of performance is that it is the consequences of a court’s efforts to achieve and sustain the values represented by the four administrative principles. More specifically, performance-relevant consequences refer to the qualities of the products and services received by an individual or

groups of individuals. Hence, the higher quality of service delivery is to the individual(s), the higher the level of performance. Yet, this definition is only one part of performance.

An essential characteristic of performance is utility. Knowledge of performance results must be put into practice. In other words, performance's consequences refer not only to observable measures of how well practices promote values or desired goals. They also refer to the use of performance results to improve administrative practices. The gathering of information on performance and the usage of the results are two distinct, but related, aspects of performance: Performance Measurement and Performance Management.

Performance measurement clarifies the meaning of values and makes them relevant by providing the essential element of information on where a court's service delivery stands in relationship to recognizable criteria. Gauging an institution's effort in meeting expectations establishes its location relative to the past and present; it points out where it has come from and where it is now. Knowledge of what has been accomplished to date allows a court to husband its limited resources, set priorities, and target its attention at where it is most needed. However, performance is not just a grade on a report card. Identifying and making use of performance results is a logical next step.

Performance management relates to how a court responds to performance results and refines, updates and adopts new practices in conjunction with both its evolving priorities and changing circumstances. Therefore, a high performing court is an "administratively activist" body because it considers the consequences of its administrative practices and adjusts them in light of what it learns.

The Framework describes performance measurement and management in terms of four Perspectives called Customer, Internal Operating, Innovation and Social Value. They are the subject of this and the next two Chapters. This Chapter describes the content of two perspectives concerning performance measurement: Customer Perspective and Internal Operating Perspective. Chapter Five suggests how *CourTools*, a set of ten indicators, measure aspects of the Customer and Internal Operating perspectives. Chapter Six outlines the Innovation and Social Value perspectives, which focus on performance management. Despite the different emphases of performance measurement and management, these two aspects of performance are necessarily closely linked. Both of them concern the consequences of administrative practices used to deliver court services. More specifically, they are both concerned with the "customers" who receive the services provided by administrative practices.

Court Customers

Courts have different types of customers, including litigants, attorneys, social organizations, citizens and policy makers, who can have different and sometimes competing interests. For example, most litigants seeking an uncontested divorce want a process that is straightforward, inexpensive, and possible to navigate on their own. On the other hand, many attorneys would just as soon the process

retained a level of complexity that increases the value of their services. Because both litigants and attorneys are customers of the court, the court must decide whose interests take precedence. Those instances when alternative customer interests diverge highlight a fundamental challenge to court management. Litigants, attorneys, the legislature, and other groups are all customers, but one should be getting first priority. How does the court choose which one?

A first step is to clarify basic differences over differing customer roles and expectations. There are at least three customer-type distinctions that court leaders and managers must be able to distinguish and satisfy.

- **End-users:** Individuals or groups who personally use court services/products to achieve a desired outcome. The end users can be thought of as the “principals” in any court transactions. For example, the litigant who initiates a case filing; attends a hearing; or pays a traffic ticket. A related group consists of citizens whose involvement is sought by the courts (e.g., jurors, witnesses)
- **Brokers:** These people act as agents of the end-user or of the court. As an agent of the end user, the broker explains the workings of the court system, assists in making the process more understandable and more accessible, and ensuring formal requirements are completed. As an agent of the court, the broker encourages the end-user to accept the requirements and rulings of the court. The interests of the broker may not be perfectly aligned with the interest of the end-user. In the court context, brokers include attorneys, social service providers, police, and court interpreters.
- **Funders:** Courts are funded by taxpayers. Another way of saying this is that citizens *invest* in the court system with their tax dollars. The investing is involuntary, but still comes with expectations. Taxpayers are investing in the court system to receive a return on investment, only the return is not measured in dollars. Rather, the return is measured in fair and timely dispute resolution. These investors elect a board of directors to oversee the “company” (the court) that are typically called the state legislature or county board of supervisors. In this conception, the taxpayers are investors. Taxpayers become customers when they use any of the services provided by the court.

“We believe that we know where the world should go. But unless we’re in touch with our customers, our model of the world can diverge from reality. There’s no substitute for innovation, of course, but innovation is no substitute for being in touch, either.”

Steve Balmer
Chief Executive Officer, Microsoft

A traditional point of view is that court cases “belong” to lawyers (brokers) who set the pace of litigation. This outlook, still present in some places, puts judicial institutions in a passive or reactive position. Case events are scheduled and occur when lawyers deem it important or convenient. In

contrast, the modern practice of judicial administration recommends courts take a far more active role with direct responsibility for organizing and managing the flow of cases. In so doing, the goal is to organize administrative practices to deliver high quality services to all individuals who enter the court house doors. This development means that the quality of court administrative practices should be evaluated primarily from the perspective of the end user. Court performance rightly focuses on the experiences of individuals participating in the legal process and how those experiences are affected by a court's administration.

Viewing court performance through the lens of outcomes that matter to court users augments our understanding of administrative principles. While judges and managers speak of ensuring due process through effective administration, customers also want the process to go faster and cost less. Fair outcomes are desired by everyone, with court users wanting this result through a process that is predictable, timely, and cost-effective. With this knowledge, courts can better refine processes to improve service delivery and achieve high quality outcomes that matter to customers.

Elevating end users to top priority does not mean other customers can or should be ignored. The Framework acknowledges multiple customer types, strives to show how their interests are accommodated and outlines strategies courts can use to best relate to the different customer types. Through careful consideration of different types of court customers and their wants, a court can gain a deeper understanding of how existing practices shape customer and public satisfaction.

The fact courts do not have a single bottom line, a monochromatic audience (or one type of customer), or one product line to the same extent as some private sector organizations or many other public bodies makes their performance difficult to measure and manage. Courts are engaged in different kinds of work and might operate under a mixture of cultures. These complexities require a concept of performance that can accommodate these realities without over simplifying them. The Framework draws on the Balanced Scorecard and Strategy Mapping literatures (Kaplan and Norton 2001, 2004) to accomplish this task.

These literatures translate an organization's mission statement and overall business strategy into specific, quantifiable goals and to monitor the organization's performance in terms of achieving these goals. A strategy

map builds on the balanced scorecard to provide a succinct, graphic representation of how a court can organize strategically to attain high performance. The map provides an entire strategy in a single

High Performance Court Framework

Sample Mission Statement

"The Court will, in a fair, accessible, effective, and efficient manner, resolve disputes arising under the law and will interpret and apply the law consistently, impartially, and independently to protect guaranteed rights and liberties."

Riverside County Superior Court

page format – thereby integrating and connecting the strategy and the intended performance indicators in a comprehensible fashion.

A High Performance Court Strategy Map is presented in the adjacent display. This picture draws attention to four distinct *perspectives* that are taken into account in designing an overall strategic vision. The four perspectives provide a balanced complement and include: the Customer perspective, Internal Operating perspective, Innovation perspective, and Social Value perspective.

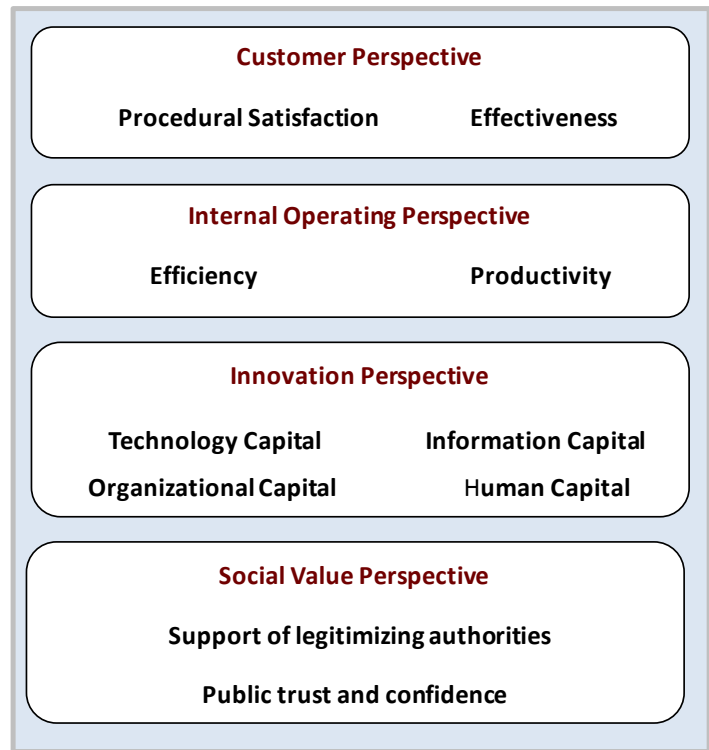
Each perspective in the trial court strategy map focuses on a distinctive aspect of performance that a court is expected to achieve. They converge to form a composite model of performance outcomes and describe the unique mix of products, services, and relationships a court offers its customers. They are as follows:

- (1) Customer Perspective: a court's relationship to individual participants in the legal process and their interests.
- (2) Internal Operating Perspective: a court's maintenance of its operations.
- (3) Innovation Perspective: a court's awareness of the consequences of its administrative practices and capacity to adjust its practices.
- (4) Social Value Perspective: a court's relationship to other groups and organizations involved in the legal process, members of the public and policy makers.

Performance measurement concerns the consequences of administrative practices on the quality of services, which are the focus of the first two perspectives in the display above. The remainder of this Chapter is dedicated to describing them.

Customer Perspective

The Customer Perspective focuses on the *end-user*—a person, company, or other entity that receives directly the goods and services produced by the court. Customers react to both the services delivered



and manner of delivery.⁸ A court is held accountable for providing satisfactory services in an orderly manner. As a result, the values from the customer perspective are divisible into two Performance Areas, which are broad categories of court activities and their consequences: (1) Procedural Satisfaction and (2) Effectiveness.

Procedural satisfaction draws heavily on the administrative principle of demonstrating procedural justice. Of primary importance is ensuring courts are both readily accessible and exhibit fair processes in all court proceedings, although accessibility and procedural fairness are only illustrative of the wide spectrum of observable behaviors within the Performance Area of Procedural satisfaction.

In becoming more accessible, courts must recognize a common area of customer concern is uncertainty about the legal process. A lack of familiarity with courts poses immediate questions about the location of court buildings, offices or rooms where specific court business occurs (e.g., payment of a fine, presence at a hearing, or retrieval of a closed case file) to doubts over whether attendance at court proceedings is required to confusion over whether scheduled events will take place as planned and when the process will end. Accordingly, courts should seek to reduce uncertainty by eliminating unnecessary barriers to its services. Such barriers can be geographic, economic, and procedural. Individuals may have language difficulties, trouble affording court fees, and/or a lack of knowledge about court proceedings. Additionally, accessibility is required not only for those who are guided by an attorney, but also for all litigants, jurors, victims, witnesses, and relatives of litigants. Of course, customer views on access are buoyed when they are treated with courtesy and respect by the court personnel with whom they come into contact.

Contemporary research also tells us that positive perceptions of a court are shaped more by how people feel they were treated than by the outcome of their case. There is a close tie between how individuals are treated during the process and their overall evaluation of service quality. Satisfaction with the process is most significantly influenced by whether customers believe their rights and interests are taken into account in the resolution of disputes. A court enhances court users' perceptions of fairness through treating customers with courtesy, dignity, and proper decorum; giving people a chance to tell their side of the story; exhibiting sincere concern and empathy; and by clearly explaining the reasons for decisions. In short, assuring individuals receive "their day on court". Compared to the scholarly literature, Procedural Satisfaction includes what is called "procedural fairness" (Tyler, 2005).

The Performance Area of Effectiveness focuses on a court's ability to achieve the objectives or other intended effects of the activities it undertakes in resolving cases. This concept is central to the

⁸ Research suggests that the evaluation of service quality and customer satisfaction is shaped by the interaction of process related activities and the results achieved. Service outcome is what a customer receives during the exchange (e.g., short wait in line, restitution received within a reasonable timeframe). Service process refers to the manner in which the outcome is transferred to the customer (e.g., courteous and respectful treatment at the counter, the judge listened to my side, and I know what to do next in my case).

administrative principle of providing individual attention to cases. When involved in litigation, people want the process to be clear, well-designed, and procedurally fair. They also want the process to convey a logical, rational connection between key events and end with a definitive outcome. Court administrative practices are expected to ensure the process is purposeful and deliberative. These values require a court to meet, complete and follow through on all its planned and stated goals governing the legal process. In other words, a high performing court is effective when it achieves administrative objectives.

For court customers, important administrative goals relate to a court's commitment to appropriate, timely, predictable, and complete case resolution. One way courts can take into account customer desires is to ensure cases are handled under the most suitable procedures (i.e., cost-effective) to avoid unnecessary litigation costs and time by litigants. Different types of cases are handled differently in proportion to what they warrant. A court can refine operations to be consistent with this principle by adopting practices such as differentiated case management and other proven procedural innovations.⁹

Additionally, court users want predictability and a clear idea of when the legal process will end. Effectiveness emphasizes values such as court events will occur when scheduled (e.g., trial date certainty); there will be prompt, clear and definitive responses to requests for or the issuance of orders (e.g., requests for records); and the court will enforce its orders (e.g., restitution will be paid on schedule). The value to the customer is that the court is cognizant of and acknowledges its duty to provide services and reach outcomes that comply with a relevant and predetermined set of criteria.

Internal Operating Perspective

To provide customers with procedurally fair and effective case resolution requires a high performing court to treat its entire caseload in a deliberative and controlled manner. If backlogs and bottlenecks exist, each individual's case suffers from excessive waiting time and likely inconsistent treatment when it comes to the amount of attention they receive from the court. No court where processes and events occur without rational control can persuasively assert that cases receive the amount of individual attention that is warranted. This perspective of the Framework focuses on the character of the internal business environment of the courts. It reflects the administrative principles of proportionality and judicial control.

"Efficiency is doing things right, effectiveness is doing the right things."

Peter Drucker, Author
Professor and
Management Consultant

⁹ Evaluation is critical to determining the effectiveness of new procedures and should involve the full spectrum of people and institutions affected by potential changes. For example, studies of attorney's evaluations of innovative procedures (Hanson, Olsen, Shuart, Thornton, 1983, 1984 and Hanson and Chapper, 1983) indicate attorneys believe the quality of justice is maintained under modified procedures if the procedures do not make outcomes forgone conclusions (e.g., appellate expedited procedures are not "affirmance tracks"), they can make equally effective arguments under the modified procedures, and judges have the same understanding of the issues under modified procedures (e.g., telephone-conference hearings versus in-person proceedings).

Maintenance of court operations ranges from budgetary control to recruitment and retention of skilled staff members, but the most critical subject matter concerns the management of a court's caseload. The process of handling cases involves a great many activities all happening at the same time. A useful way to categorize how well these activities are being performed is by dividing them into the Performance Areas of Efficiency and Productivity. While these two terms are sometimes used interchangeably, they provide different types of information for assessing internal operations. It is important to understand the differences between the concepts of efficiency and productivity when a court is examining the use and allocation of its available resources.

Efficiency is a term used to describe the amount of effort or energy that it takes to accomplish a certain task or operation. For an organization like a court that has a large volume of activity underway at all times, a high performance court will want each activity to be conducted as efficiently as possible. Staff in the clerk's office, for example, will develop a system to be efficient with case files. If they are successful, then a file will be found and retrieved quickly when it is needed. In other words, obtaining the file will require a small amount of effort.

Productivity, on the other hand, is a measure of how much work is done in a certain amount of time. For example, how many case files are filed and retrieved in a day. If the filing system is organized efficiently, then the office staff is productive; that is, they work together as a team. If each staff member has an efficient system to file court documents, but no other person can determine where the files are being kept, it will be very hard to improve the productivity of the office staff. Increasing productivity requires people working together in an efficient way. Each of these concepts is discussed in more detail below.

Efficiency captures the relationship between court performance and resources (e.g., manpower, time, dollars) and assists in managing a court in the most economical manner. It defines "how well did we use our resources to achieve what we did". A high performing court precisely avoids "cutting corners" by being efficient in handling all cases. Efficiency is not just for relatively routine cases. Whereas the amount of required work time is greater for complex cases than routine ones, even the most complex case should not receive more time than necessary. Giving more time than necessary to a complex case guarantees some other case receives less than it warrants. Consequently, efficiency is harmonious with a critical aspect of Aristotle's classical definition of justice as "receiving what one is due".

Efficiency has been the focus of sufficient attention that its meaning has moved beyond a straight forward definition to a specified relationship between variable elements. This advance in thinking means this Performance Areas enables a court to clarify the relationship between planned processes and actual processes in step by step process. While still remaining at the conceptual level, consider how efficiency clarifies whether a court is able to resolve cases within established time frames.

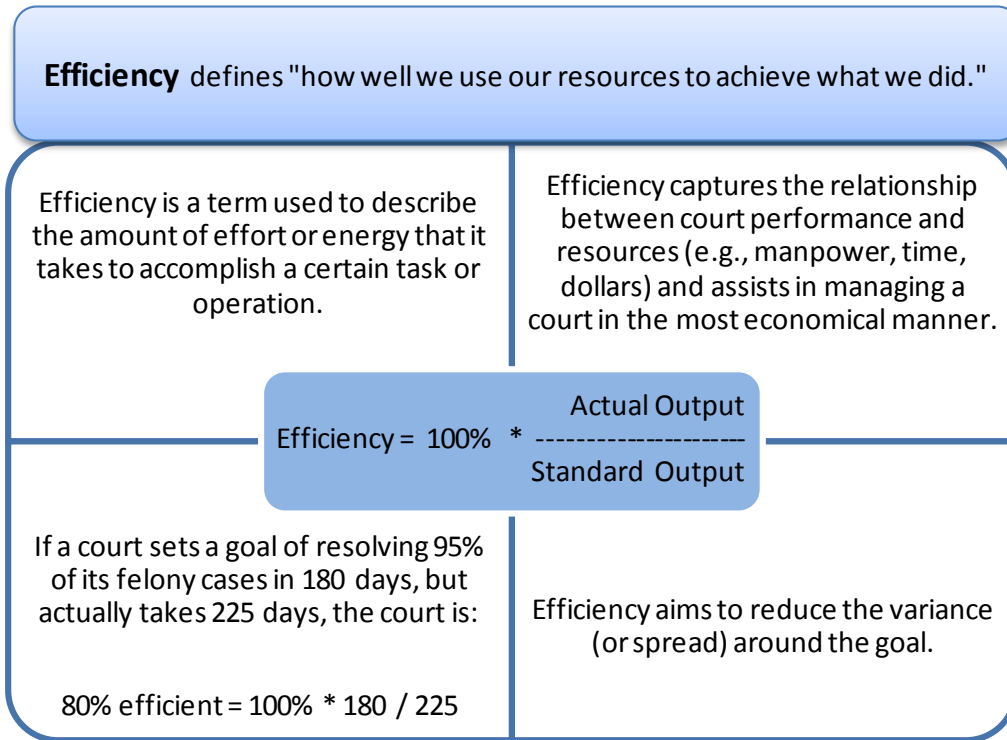
A high performing court will examine the time it actually takes to resolve a particular type of case (e.g., felony) in comparison to how much time it should take if the caseflow process is working as planned. A way to assess efficiency involves applying the following formula:

$$\text{Efficiency} = [100\% * (\text{actual output} / \text{standard output})]$$

In looking at the efficiency of case processing, actual output is the average time it actually takes to resolve a case and standard output is the goal the court has set for itself.¹⁰ For example, if a court sets a goal of resolving 95% of its felony cases in 180 days, but actually takes 225 days, the court is being 80% efficient:

$$[(220/95\% \text{ disposed} / 180/95\% \text{ disposed}) \times 100\%] = 80\% \text{ efficiency}$$

Efficiency seeks conformance with established goals (e.g., 95% of cases resolved within 180 days) and also aims to reduce the variance (or spread) around the goal. As a result, in a high performing



court, managers pay particular attention to the cases that exceed the processing time goal to determine the reason and how processes can be refined to improve future timeliness. Closely monitoring the age of the pending caseload is a critical aspect of meeting case processing time goals and reducing the variance in time to disposition.

¹⁰ The goal (or standard) is a number that is arrived at by looking at historical data for the process and by experience with what is possible if efficient processes are used.

Another aspect of efficiency is continuing to examine processes to reduce the level of resources needed to achieve a given result. For example, assume two courts both resolve 95% of their felony cases in 180 days, but Court A uses an average of 4 hearings per disposition while Court B uses an average of 8 hearings per disposition. Court A would be viewed as more efficient because they are able to meet their processing time goal at lower cost to the defendant, prosecution, defense counsel and the court. Fewer scheduled hearings require fewer appearances by all parties (including court staff and judges) and reduced preparation costs to achieve the same degree of timely case processing. A concern with efficiency leads a court to regularly evaluate the amount of work needed to effectively meet a court's internal process guidelines (benchmarks).

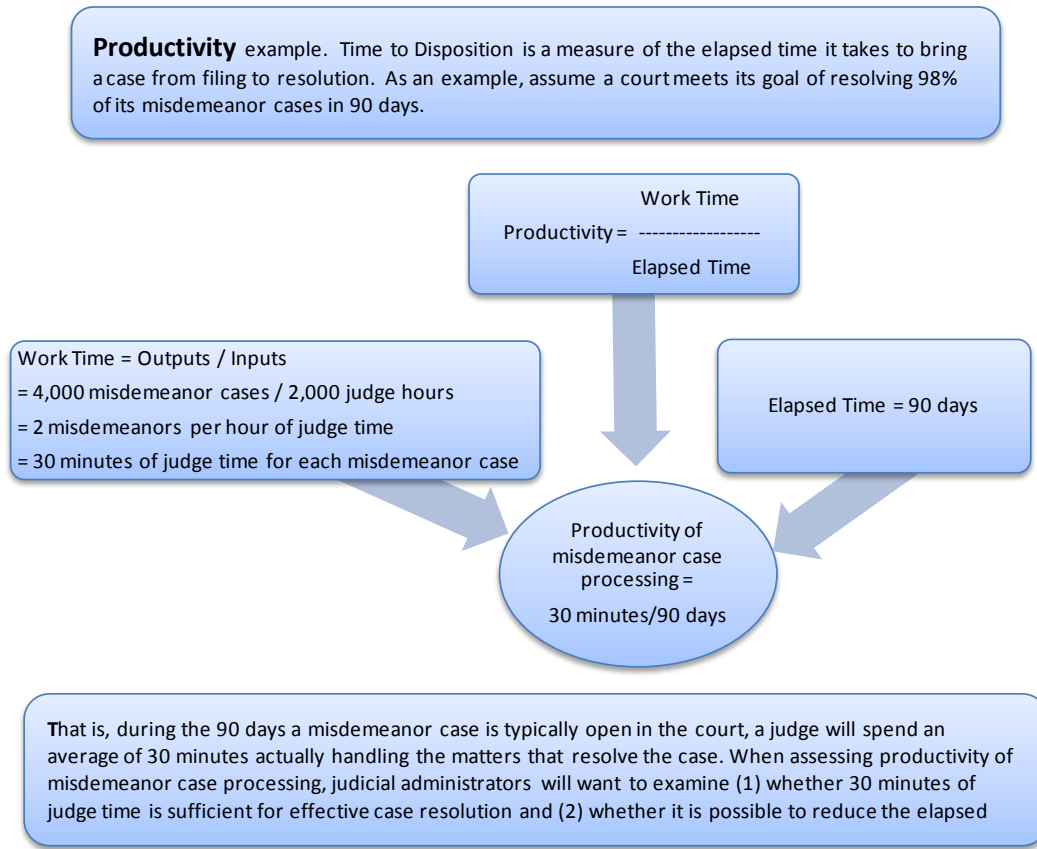
In a similar way, the Performance area of Productivity has reached the level of a specified relationship between observable elements. Generally speaking productivity applies to the amount of work performed in a given amount of time. The goal is to complete the *appropriate* amount of work at the least cost and in the minimum amount of time necessary. For judicial administration, this means understanding the degree to which existing case management processes are organized to make the best use of judge and staff time to efficiently resolve cases. Many authors writing in the area of creating a "customer-centered culture" emphasize that improvement efforts should start with examining the time it takes to complete a given process and actively strive to cut time when possible (Scholtes, 1998; Lawton, 1993; Miller, 2006). There are two types of time consumed by a process:

- Work time: the time during the process when actual work is being done
- Elapsed time: the total elapsed time of the process

Productivity can be defined in terms of the relationship between these two types of time:

$$\text{Productivity} = \text{work time} / \text{elapsed time}$$

Courts have hundreds, if not thousands, of processes both large and small underway at any one time where it might make sense to examine productivity more closely. However, because a primary purpose of courts is the fair and timely resolution of cases, we illustrate the concept by examining the productivity of case processing.



Time to disposition is a measure of the elapsed time it takes to bring a case from filing to resolution. As an example, assume a court meets its goal of resolving 98% of its misdemeanor cases in 90 days.

For a court, determining the actual work time means examining the time judges and staff members spend on resolving different types of cases. A basic way to measure work uses the following formula:

$$\text{Work time} = \text{outputs} / \text{inputs}$$

For a court, output refers to the number of cases of each case type disposed in a given period and input refers to the amount of time spent by judges or staff in resolving those cases. For example, suppose a court resolves 4,000 misdemeanor cases using 2,000 hours of judge time, work can be measured as:

$$4,000 \text{ misdemeanor cases} / 2,000 \text{ judge hours} = 2 \text{ misdemeanor cases disposed per hour of judge time.}$$

Another way to say this is that it takes an average of 30 minutes of judge time during the life of a misdemeanor case to get it resolved. Of course, the average amount of judge time will vary across different types of cases.

In this example, the productivity can be measured as:

$$\text{Productivity of misdemeanor case processing} = 30 \text{ minutes} / 90 \text{ days.}$$

That is, during the 90 days a misdemeanor case is typically open in the court, a judge will spend an average of 30 minutes actually handling the matters that resolve the case. Therefore, when assessing productivity of misdemeanor case processing, judicial administrators will want to examine (1) whether 30 minutes of judge time is sufficient for effective case resolution and (2) whether it is possible to reduce the elapsed time to less than 90 days.

Weighted caseload studies are conducted to determine how much time is spent across different types of cases. Whereas there is not yet a national standard on what the appropriate time is per case category, a high performing court is sensitive to this information and regularly engages in workload analysis to determine the level of judge (and staff) time needed to effectively resolve its complement of cases. Such analysis may show that additional judge time is necessary to ensure an appropriate level of quality case processing. On the other hand, closer investigation may show that changing some processes allow a reduction in judge time with no loss of quality.

Many argue courts can improve productivity by decreasing the elapsed time from filing to disposition by more skillfully avoiding wasted time and effort. Research has shown that only five percent of a normal business process consists of actual work time. This suggests it may be possible to sharply enhance productivity through efforts directed at cutting overall time to disposition. Progress on this goal will require greater collective agreement and teamwork amongst judges on designing policies and procedures directed at getting the process completed faster. Paying attention to a fundamental customer concern of completing the legal process more quickly aligns with the views of many management experts, illustrated by Robin Lawton, “The objective is to cut as much time from the process as possible.”

A court’s ability to streamline work processes to reduce elapsed time depends greatly on the skills and abilities of court staff. Key to improvements in productivity are employees committed to understanding and improving the system so as to better meet the needs of customers. Staff members may focus on finding the best opportunities to reduce time; they may use data and problem solving techniques to eliminate errors and rework; or they may focus on determining customer priorities and improving customer outcomes. Significant improvement in productivity will likely require redesigning and re-conceptualizing many court staffing jobs to include greater levels of responsibility, autonomy and flexibility.

Summary

The Framework's first two perspectives, Customer and Internal Operating, guide a court in establishing how well it approximates the desirable characteristics of four Performance Areas: Effectiveness, Procedural Satisfaction, Efficiency and Productivity. These four areas certainly bespeak a "good" court. A court's willingness to view itself through the lenses of the Customer and Internal Operating Perspectives should provide judges and managers with suitable gauges for estimating how well it is doing. What is needed next is a structured form of performance measurement that enables the assessments resulting from the Framework's application to withstand scrutiny and rebut criticisms. That is the subject of the next Chapter.

V Organizing and Measuring Performance

Twin challenges confronting judges and managers are how to choose a good set of measures and how to arrange the measures in such a way that the results provide a basis for coherent evaluation. Without exaggeration, performance measurement is useful only if (1) it captures a meaningful set of consequences and (2) the consequences address an interrelated set of questions about the success a court is having in resolving cases.

The first two perspectives of the High performance Court Framework, described in Chapter Four, provide a platform for compiling information on four key performance areas of sound court administration. The areas are effectiveness, procedural satisfaction, efficiency, and productivity. A high performing court seeks to demonstrate that its practices contribute to high degrees of achievement in each one. The purpose of this Chapter is threefold: to provide a short dictionary of key terms frequently used in performance assessment, to show how the four performance areas are related to each other, and to provide examples of measures that can be applied to provide data on each one.

A Vocabulary for Understanding Performance Measurement

The purpose of this section is to provide an overview of key terms and concepts used in the discussion of court performance.

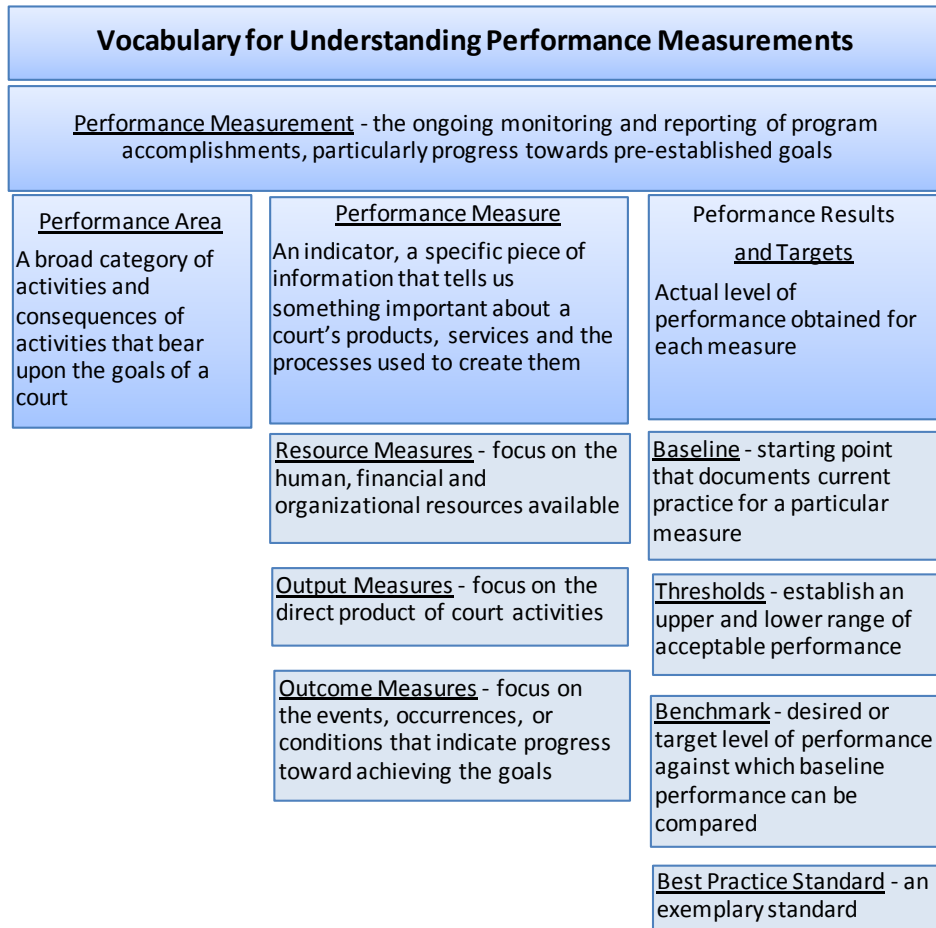
What is performance measurement? Generally, performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress towards pre-established goals. Performance measurement addresses the adequacy of resources, the type or level of program activities undertaken, the direct products and services delivered by a program, and/or the results of those products and services.

In the court context, it is important to note that performance measurement is not meant to focus on the work of individual judges or the decisions reached in individual cases. Rather, it focuses attention on what the court as an organization wants to accomplish and how time and resources can best be used to achieve objectives.

What is a performance area? A performance area is a broad category of activities and consequences of activities that bear upon the goals of a court. They are intended to illuminate and establish what a court should be concerned about if it wants to be high performing and fulfill its institutional mission. Performance areas suggest what a court should be doing to provide quality service, on time and within budget. Performance areas that are well conceived and organized help a court ensure that individual performance measures give appropriate coverage to the full spectrum of goals a court seeks to accomplish.

What is a performance measure? A performance measure is an indicator, a specific piece of information that tells us something important about a court’s products, services and the processes used to create them. Well-designed performance measures have characteristics susceptible to measurement and quantification. They can be reduced to steps for gathering data and the accumulation of multiple observations. They are intended to help a court see:

- If the court is meeting its stated goals or service levels;
- If those served by the court are satisfied;
- If the court exercises control over its business processes; and
- If and where improvements are necessary



Performance measures must be understandable so that court employees know what is being measured, how each measure is calculated, and what they should do with the information.

Key types of performance measures include:

Resource measures - focus on the human, financial and organizational resources available to do the work in the trial courts. These are indicators of the resources a court system uses to

provide its service, such as total dollars spent, the number of judges and court staff employed and the number of court locations. This component is also referred to as *inputs*.

Output measures - focus on the direct product of court activities. Outputs are indicators of the amount of service provided (e.g., the number of hearing notices sent out within 24 hours of a judge's order). Outputs are important for measuring internal work performance (e.g., do all the parties who received a notice actually appear at the hearing for which they were ordered to appear?).

Outcome measures - focus on the events, occurrences, or conditions that indicate progress toward achieving the goals and objectives of the court. Outcome indicators document the quality or effectiveness of a service. They measure the results of court activity compared to its intended purpose or answer the question: "Do these resources result or contribute to the success of what we want to accomplish?" For example, outcome indicators in the court context can include the level of litigant satisfaction or the time to disposition.

What are performance results and targets? Performance *results* are the actual level of performance obtained for each measure. The results gain meaning when assessed against a desired or *target* level of performance, and especially when assessed over time and against comparable courts.

Key terms used in discussing performance results and targets include:

Baseline - the starting point that documents current practice for a particular measure. It establishes a point of reference to gauge the impact of future changes in court operations. An example is measuring *current* time to disposition for felony cases.

Thresholds - establish an upper and lower range of acceptable performance. They offer a means to introduce the idea of reducing variation in how specific processes are carried out. For example, a court might establish the expectation that 100% of felony cases will be disposed in 180 days as an upper threshold and 90% as a lower threshold of acceptable performance.

Benchmark- a desired or target level of performance against which baseline performance can be compared. For any particular measure, a benchmark tends to be an above average level of performance derived from statewide reference data, case study research, and/or promulgated by a national court organization. Essentially, benchmarking provides a snapshot of actual court performance in relation to established expectations.

Best Practice Standard - an exemplary *standard* of performance for any particular aspect of court operations; it is the "best in business" level of performance. For many aspects of court performance, there is insufficient comparative data available to establish best practice standards.

Organizing Performance Measures

The Customer and Internal Operating Perspectives of the Framework contain the four performance areas of effectiveness, procedural satisfaction, efficiency and productivity. They are designed to relate to each other in a coherent and comparable manner that give appropriate coverage to the full spectrum of goals a court seeks to attain. The four performance areas draw on the balanced scorecard concept.

Achieving a balanced perspective means performance should encompass the most important areas of performance and offer meaningful measures of success in each area. The management approach associated with a “balanced scorecard” entails both the idea of “balance” (e.g., unifying traditional case processing measures like time-to-disposition with measures of access and procedural fairness) and regularly scoring performance. The balanced approach allows the court to consider all the important areas at the same time, highlighting whether improvements in one area are coming at the expense of another.

Seen in this context, management is understood as a series of trade-offs: taking more time to explain issues at the front counter might result in higher customer satisfaction, but might create delay in getting to other customers waiting in line. The management challenge is to find the optimal point: taking just enough time for each case or customer, but not too much time or too little time. A balanced performance scheme allows managers to make these trade-offs consciously and to monitor the results of their decisions.

“Measurement is the first step that leads to control and eventually to improvement. If one can’t measure something, you can’t understand it. If you can’t understand it, you can’t control it. If you can’t control it, you can’t improve it.”

H. James Harrington
Internal Quality Advisor for Ernst and Young

In comparing and contrasting the four performance areas of effectiveness, procedural satisfaction, efficiency and productivity, it is helpful to discuss how they are related, yet also how they emphasize different aspects of the court management process. The concept of performance dimensions is introduced to facilitate the explanation of the underlying design.

The first dimension differentiates evaluation criteria according to the priority that they place on institutional control. The performance areas arrayed on this dimension reflect the fact judges and managers understand that the appropriate level of control falls along a continuum, varying depending on the circumstances. As a result, at one end of the dimension, there are criteria that emphasize the importance of flexibility and discretion in making decisions. A well-functioning court realizes there are times when it is important to be adaptable so as to meet specific customer needs or to improvise

in unusual circumstances. At the other end of the dimension, there are criteria that take into account a court's desire to ensure appropriate rules are applied uniformly to achieve stable, predictable, and timely case processing. The dimension of control represents the desire by courts to be both nimble and steady. Hence, it is important and pertinent to organize performance measures around these dual concerns.

A second dimension differentiates evaluation criteria according to the priority that they place on looking inward versus outward. At one end of the dimension, there are criteria that emphasize attention to the external environment. Here a court seeks to satisfy court users, especially in terms of ensuring administrative practices contribute to a satisfactory process of dispute resolution. At the other end of the dimension, there are criteria accentuating the internal operating practices of courts and their ability to process cases in an orderly manner.

Taken together, these two dimensions arrange the four performance areas of effectiveness, procedural satisfaction, efficiency and productivity in an ordered manner. The areas are organized by what combination of the two dimensions they represent. In other words, each area is a particular combination of the two dimensions. This arrangement forms four categories (or quadrants), as is shown graphically below. Each quadrant is the intersection of the two dimensions, as shown below. A brief description of the quadrants is as follows:

Effectiveness - a court's ability to achieve its goals in successfully completing and following through on activities that matter to *customers*. A court is being effective when processes are sufficiently *controlled* so that there is a match between a court's stated goals and the results provided to customers.

Procedural satisfaction - the extent to which court *customers* perceive the court as providing fair and accessible service to all who enter the courthouse doors. A court enhances court users' perceptions of fairness by being *responsive* to the individual needs and characteristics of each case and customer.

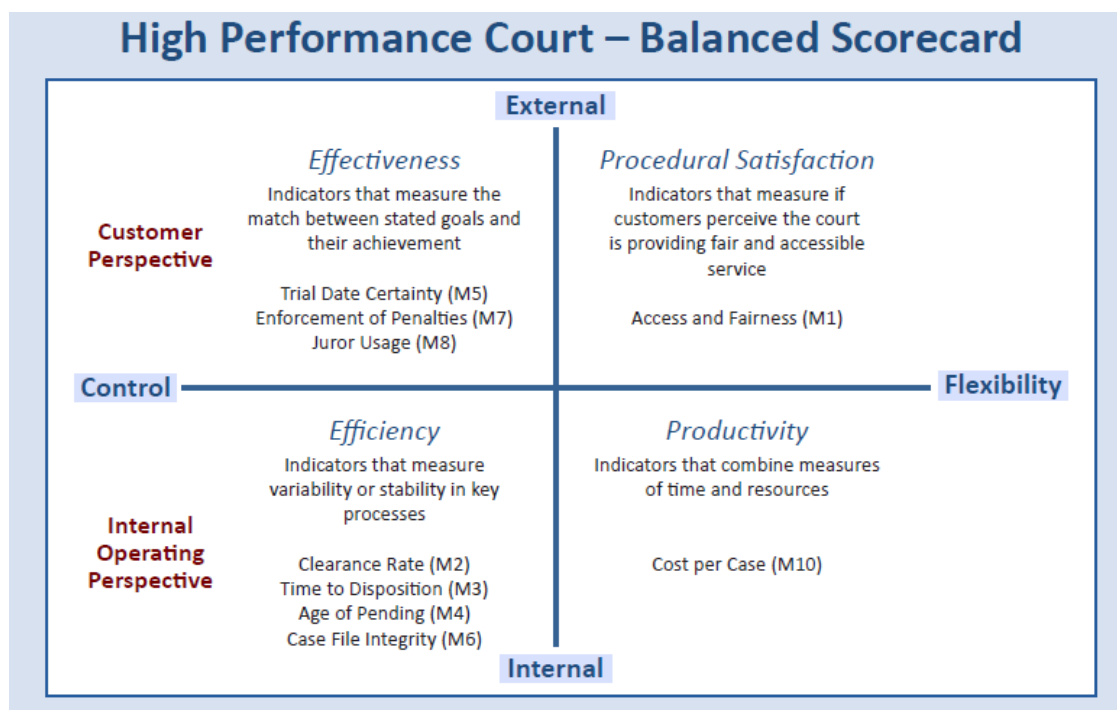
Efficiency - concerns the relationship between planned processes and actual processes that a *court* uses to resolve cases. Closely *monitoring* the caseload process is central to reducing unwarranted variation in how cases are handled.

Productivity - focuses on how much *court* work is done in a certain amount of time for the full spectrum of cases to be resolved. Being productive means consistently evaluating and *fine-tuning* processes so that all cases receive an appropriate amount of judge and staff time.

Measuring Performance

The value of the classification of areas is that it indicates what qualities of court performance are being emphasized and targeted. These four performance areas are made more concrete by associating specific *CourTools* with each area. *CourTools* are specific measures that serve as indicators of achievement in the four areas.

Effectiveness. Placed in the upper left-hand quadrant of Figure 4, this aspect of institutional performance emphasizes the value of prompt, clear and definitive case resolution. Effectiveness concerns the degree of compliance of a case outcome with a predetermined set of criteria. Three *Courttools* measure the ability of a court program or activity to produce a specific desired effect or result that can be measured against a target.



Measure 5: Trial Date Certainty provides a tool to evaluate the effectiveness of calendaring and trial date continuance practices. This measure illustrates control over a critical procedural event and key symbol of the legal process. Not only does trial postponement contribute to delaying case resolution, the explicit constitutional guarantee of a speedy trial is jeopardized. Because trials are very resource intensive, monitoring trial date certainty contributes to high performance by analyzing and interpreting the proportion of cases meeting a court's goal in going to trial as scheduled, the number of continuances granted compared to court policy, and the reasons for rescheduling trials (e.g., the unavailability of judges or court rooms versus too many cases placed on a trial calendar).

Measure 7: Collection of Monetary Penalties asks the court to determine at the case level whether it is collecting and disbursing the fees, fines, and restitution ordered by the court in misdemeanor cases. The measure focuses attention on the extent to which a court takes responsibility for the enforcement of monetary penalties and restitution. It tells the court the share of people who actually complete payment of penalties or receive ordered restitution, and the time required to complete this

phase of the case. If orders are not followed, the authoritative nature of the court is in question and the validity of laws on which the orders are based is in doubt. In addition, the public interest is not well served if criminal penalties are not paid and, in the case of restitution, the victim's case is not fully resolved without payment. Mastery of this measure's application to fines and restitution in misdemeanor cases can then be extended to other monetary penalties, such as child support payments, civil damage awards and traffic fines.

Measure 8: Effective Use of Jurors addresses a court's ability to manage jury service responsibly by calculating how many members of the public are asked to report to the court to serve (yield), and asking also for the court to evaluate how many of those asked to serve are actually used in jury selection. Once calculated, actual juror yield and juror utilization can be compared against established court targets and thresholds. The goal is to minimize inconvenience and wasted time for the citizens as well as to control the court's jury management costs. Jury participation in the legal process represents the basic democratic premise that citizens are appropriate decision makers in legal disputes, and as such it is vital that courts manage jury service effectively.

Procedural Satisfaction. This performance area focuses on asking individuals to evaluate the accessibility of services and the fairness of decision-making procedures. It emphasizes the fundamental importance of individuals and how they are treated in the American legal system. Measures of procedural satisfaction are related to flexibility and focus on whether the court is "doing the right things right" and is uniquely defined by each individual.

Two types of individual experiences and corresponding evaluations have emerged as leading measures of this aspect of institutional performance. Do individuals find that a court's administrative policies and practices make the legal process accessible to them? Once they are involved in the legal process, what do they think about the manner in which court business is conducted?

An example of a measure of procedural satisfaction is found in *CourTools Measure 1: Access and Fairness Survey*. This instrument measures individual satisfaction with the ability to make use of the court's dispute resolution services (access) and how the legal process dealt with their issue, interest, or case (fairness).

The strength of the survey is that it translates the cumulative findings from a large body of research into a concise set of questions and thereby facilitates a rich interpretation of what the responses mean and imply for court practices. In addition, the Access and Fairness Survey provides a technique for combining responses across a variety of questions to form an overall sense of what each individual thinks about accessibility and fairness.

Efficiency. This performance area examines the stability of court processes and the ability of a court to perform its work in a smooth and controlled fashion. Efficiency is concerned with standardizing

processes, where appropriate, so that employees follow the same steps every time, and simplifying processes to reduce waits and delays. An associated objective of measures in this area is to assess and minimize variability in key processes.

Four *CourTools* are especially relevant in documenting whether court functions are being performed within a proper and reasonable time frame. They are most useful when employed in concert because they get at distinct, yet interrelated aspects of efficiency.

Measure 2: Clearance Rates examine a court's success in keeping current with the incoming flow of cases. Simply put, it measures whether more cases are being added to the court's caseload than are being disposed. If the numbers of resolved cases fall short of filings, a potential backlog is automatically being created. A failure to achieve balance will result in the accumulation of unresolved cases and may lead to delay.

Measure 3: Time to Disposition calculates the length of elapsed time from the date of case filing to case resolution, with the recommendation that the result be compared to an agreed-upon case-processing time standard. Obviously, the greater the number of days, the longer the waiting time for the parties and others interested in the court's decision. In addition, longer overall case resolution times are often associated with an excessive number of continuances or other unnecessary events. Attention to this measure is not an argument for "cutting corners" or shirking responsibilities; rather, it supports administrative efforts to eliminate hearings or events not essential to fair and timely case resolution.

Measure 4: Age of Active Pending Caseload counts the number of days cases have been pending or awaiting resolution. It is an important companion measure to Measure 3, because a court might demonstrate expeditious processing of recently disposed cases only to have undesirably high figures for the age of its active pending caseload (due to cases that linger in the court inappropriately). Such a situation occurs when routine cases move smoothly through the court system while more complex cases are not given sufficient court attention. Moreover, an increase in the age of active pending cases means the time taken by recently resolved cases underestimates future case resolution time and thus foreshadows emerging problems.

Measure 6: Reliability and Integrity of Case Files measures whether case files can be located in a timely manner and whether the information in the files is complete and correct. Active cases with incomplete or inaccessible files are subject to delay. Resolved cases with inaccessible or incomplete case files seriously compromise a court's integrity. This measure is vital to the public interest (individual litigants and taxpayers alike) in that the records of court decisions and actions shape the rights and responsibilities of individuals and the government.

Productivity. This area is directed toward assessing the degree to which internal processes add value. Productivity seeks on a continuing basis to adjust resources to changing circumstances so as to improve service delivery, including changes reflected in the other measures of performance.

One example of a productivity measure combines efficiency and timeliness in a single index. A high performing court seeks to optimize the use of judge and staff time to make best use of its own resources so as to ensure timely, effective and fair case resolution for customers. This measure of productivity focused on the relationship between elapsed time (e.g., time to disposition) and value added time (e.g., amount of judge time consumed in the process) is discussed more fully in Chapter Four.

Another aspect of productivity critical to sound administration focuses on deciding how best to allocate scarce resources so as to gain the maximum value for dollars. Attention to results must be joined with the equally critical element of cost-effectiveness. Well-managed courts want to compare relative expenditures (costs) with results to determine where additional dollars will likely have the greatest incremental impact on performance and to evaluate past decisions of this type. If a court has achieved new levels of timeliness, it is important to be able to see that this is the result of additional investment in new services (e.g., a self-help center or an alternative dispute resolution program). In other words, the purpose for measuring cost per case is not simply to monitor and drive costs down, but also to be able to see the relationship between budget expended and other outcomes (e.g., timeliness, litigant satisfaction).

Measure 10: Cost per Case provides information essential for deciding how to allocate funds within the court and for understanding the link between costs and results. Claims of judicial independence unsupported by information on the cost-effectiveness of current programs makes court budget requests vulnerable to arbitrary cuts or inadequate increases. Hence, it is in the self-interest of courts to frame the dialogue over the financing of services with their own, independent cost-effectiveness data.

Summary

Performance measurement enables courts to collect and present evidence of their success in meeting the needs and expectations of customers. Basic measures of court performance are a necessary ingredient of accountability in the administration of justice and effective governance of the third branch. Moreover, they provide a structured means for courts to communicate this message to its partners in government. Paying attention to the measures of effectiveness, procedural satisfaction, efficiency, and productivity should appeal to judges and administrators interested in setting the agenda of policy discussions and evaluations of institutional performance. Designed to demonstrate the quality of service delivery, measures like those found in *CourTools* foster consensus on what courts should strive to achieve and the success in meeting objectives in a world of limited resources.

However, once in place, existing measures should not automatically be assumed to be permanent. To ensure ongoing relevance, performance measures need to be periodically audited for use and merit. If a measure isn't being used, it probably needs to be reworked or discarded. Experts in performance measurement say most measures have a natural life cycle. This point underscores that meaningful performance measurement should be a dynamic process and must be managed if it is going to produce more positive results on an ongoing basis.

Ten Court Tools Summarized:

1. Access and Fairness

Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.

2. Clearance Rates

The number of outgoing cases as a percentage of the number of incoming cases.

3. Time to Disposition

The percentage of cases disposed or otherwise resolved within established time frames.

4. Age of Active Pending Caseload

The age of the active cases that are pending before the court, measured as the number of days from filing until the time of measurement.

5. Trial Date Certainty

The number of times cases disposed by trial are scheduled for trial.

6. Reliability and Integrity of Case Files

The percentage of files that can be retrieved within established time standards, and that meet established standards for completeness and accuracy of contents.

7. Collection of Monetary Penalties

Payments collected and distributed within established timelines, expressed as a percentage of total fines, fees, restitution, and costs ordered by a court.

8. Effective Use of Jurors

Juror Yield is the number of citizens selected for jury duty who are qualified and report to serve, expressed as a percentage of the total number of prospective jurors available. Juror Utilization is the rate at which prospective jurors are used at least once in trial or voir dire, expressed as the number of jurors selected as a percentage of the total number of prospective jurors qualified and available to serve (yield).

9. Court Employee Satisfaction

Ratings of court employees assessing the quality of the work environment and relations between staff and management.

10. Cost per Case

The average cost of processing a single case, by case type.

VI Performance Management

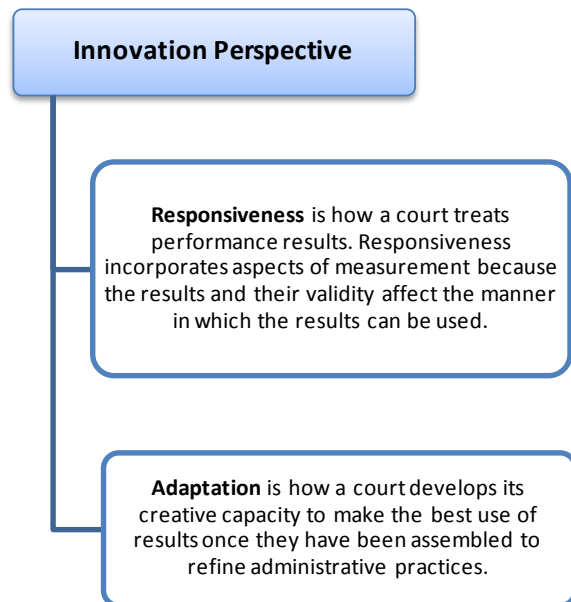
Management adds value to measurement results by using them to enhance the efficacy of administrative practices and to strengthen a court’s institutional role. Both uses involve assembling and communicating information, but they are directed toward different ends and involve different audiences.

The High Performance Court Framework categorizes the management of performance results dedicated to the refinement of court practices as part of its third perspective, Innovation. The managerial aim is to improve the administration of the legal process in individual cases by using patterns of results in diagnosing and uncovering how and why the treatment of individual customers or cases might be improved.

Responding to performance results, a high performing court refines updates and adopts new practices in light of both its evolving culture and the aspirations of its customers. Performance results are put to good use in pointing out areas of work warranting correction, finding the sources of difficulties slowing the achievement of desired objectives, and suggesting what practices call for modifications, large and small.

Management is required because performance results by themselves do not improve the handling of cases, the treatment of litigants, or relations with the public and policy makers. In fact, even in the rare instances of where performance results seem to “speak for themselves,” someone has to introduce them into the mix of administrative decision making.

The second form of performance management concerns the judiciary’s institutional role. American state courts operate in the context of a democratic society and a governmental system with competing legislative and executive branches. Both citizens and the other two branches legitimately can question how a court carries out its business. In their role as voters, citizens influence the composition of the bench, but they also can support referenda altering the authority and accountability of courts.



Policy makers shape the makeup of the bench through executive and legislative appointment systems and they can pass laws affecting the jurisdiction of courts and the authority of judges. Moreover, state and local governing bodies have direct control over the funding courts receive. As a result, the public and policy makers influence the authority and resources courts have to do their job. Courts cannot command status as an independent institution nor acquire resources without support of the public and policymakers. Hence, a second form of performance management required of courts is to gain the attention and garner the support of these other two groups. This situation creates a fourth perspective in the Framework called the Social Value Perspective.

Innovation Perspective

The Framework's Innovation perspective offers an approach that reduces the challenge of linking performance results to new practices to the pursuit of two values: (1) Responsiveness and (2) Adaptation. Responsiveness is how a court treats performance results and Adaptation is how a court develops its creative capacity to make the best use of results once they have been assembled to refine administrative practices.

Responsiveness incorporates aspects of measurement because the results and their validity affect the manner in which the results can be used. However, responsiveness is more than just the calculation and announcement of a particular performance score. The reaction to performance results actually begins with formulating a rationale for performance measurement and culminates in the presentation of results to intended audiences and gauging their reactions.

“It is not the strongest of the species, nor the most intelligent that survive. It is the one that is the most adaptable to change.”

Charles Darwin
Author, *Origin of the Species*

Adaptation focuses on what judges and managers do if the response requires change in a court's practices. The whole point of changing administrative practices is to use what has been learned to improve the way work gets done so as to enhance customer satisfaction. However, because no court knows exactly what the future holds as they confront making changes based on past and current results, grand and detailed strategic plans are avoided. Instead, a court prudently develops the capacity to anticipate, recognize and react—adapt—to emerging challenges as they occur. Creating a nimble, results-oriented workplace requires a multi-prong strategy geared to supporting and improving organizational performance. Adapting for high performance includes such actions as helping all employees become actively engaged in finding ways to improve personal and organizational performance, seeking closer collaboration with justice system partners in identifying and resolving case management problems, and ensuring appropriate investment in technology and infrastructure. At rock bottom, the goal is creating a culture of high performance.

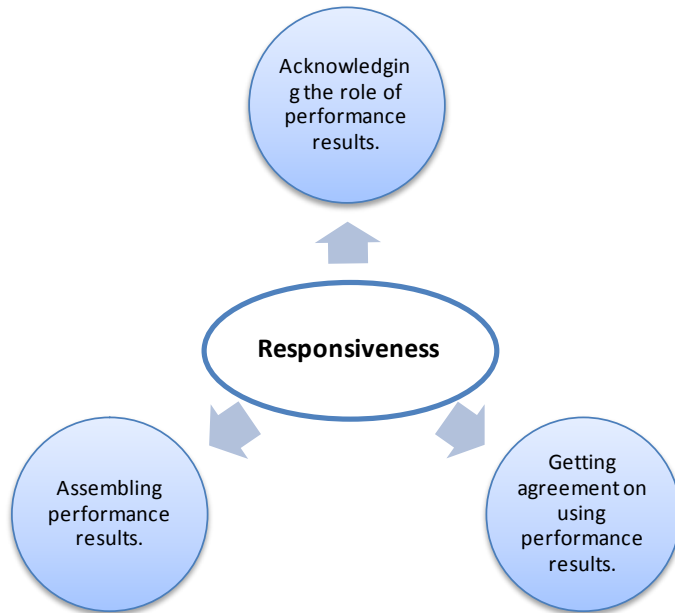
By seeking high degrees of responsiveness and adaptation, a court gains the know how to generate and use performance results. The idea is that performance should influence how judges and managers go about their work, play a role in deciding collectively what they hope to achieve as an organization, and help guide the change process. Judge Kevin Burke of Hennepin County District Court in Minnesota illustrates the challenge when he poses the following two-part question:

“Is a court to function merely as an office sharing arrangement among lawyers who happen to be judges? Or is the court an institution that functions as a high performance organization responsible for the administration of justice?”

Following Burke’s lead, the Innovation perspective describes how a court can invest in its ability to manage results in their own real world environment.

Responsiveness

Acknowledging the role of performance results. Responsiveness begins when performance emerges as a topic for discussion within a court house in conjunction with the challenges “normally” thought to exist and deemed worthy of attention, such as the influx of more complex cases, dwindling resources and the growing need to do much more than adjudicate. In other words, a trajectory toward high performance starts with the recognition that administrative practices do matter and warrant refinement. The choice of administrative practices is seen as actually affecting whether a sudden influx of complex cases is anticipated and how they are handled, the extent to which resources are monitored and redistributed in light of changing circumstances, and procedures are differentiated to fit the different types of cases coming through the doors.



Sheer recognition of the impact of administrative practices is followed by a concerted effort to evaluate practices in light of well-articulated performance objectives. The breadth of performance issues might be limited initially to case processing time, the number of cases pending for a lengthy amount of time and the progress made in reducing any backlog. However, the path to excellence expands the discussion to questions of what can and should a court be doing beyond speeding up the pace of litigation, not because timeliness is minimally important, but because other measures, such as procedural and customer satisfaction exist and can be meaningfully assessed. A high performing

court extends the discussion despite the unfamiliarity of some measures of quality. The broadening of what performance means facilitates a court embracing the Balanced Scorecard nature of measurement discussed in Chapter Four.

As the agenda of performance is connected to the full range of court activities, court employees at all levels need to be involved. Performance is not just part of a chief judge's portfolio. A court aiming for high performance draws more court personnel into how performance is ascertained, understood and used to improve existing conditions. Greater inclusiveness provides the means to educate all judges and staff on how their daily job responsibilities are linked to organizational goals.

Responsiveness drives a court to circulate performance results and provide regular forums to discuss what they mean. An effort is made to maintain continuity in performance progress, with new topics added periodically.

Responsiveness propels a high performing court to discuss performance, consider it part of its routine operations and takes a systematic approach to the subject. As a result, a high performing court experiences a growing body of cumulative information on how well it is doing. This posture does not mean the court eschews less structured feedback from litigants, attorneys, staff members or court observers; rather it is in a position to compare what it knows about itself from many angles and to weigh all the information in adjusting administrative practices.

Getting agreement on using performance results. Responsiveness can be promoted and put into place akin to the way a court encourages negotiation between opposing parties in both civil and criminal cases. Courts have had great success establishing processes to facilitate negotiation among the parties and their attorneys. In an analogous manner, court leaders can strive to create a decision-making process designed to foster and sustain responsiveness essential for a court to use performance results. As discussed in Chapter 3, the loosely-coupled character of most courts presents a challenge to reaching collective agreement on court-wide policy objectives. The absence of formal lines of authority means that new ways of doing business cannot be imposed, but must be agreed to and implemented by all judges on the court. A means for judges to reach agreement is by implementing a form of consensus decision making. In fact, building consensus is a necessary condition for responsiveness; courts that are responsive invest in developing collegiality.

Consensus decision-making is a group decision-making process that both seeks the agreement of most participants and strives to resolve or mitigate minority objections. It is based on the idea that the possibility of reaching court-wide agreement is enhanced if the key players who are affected by the decision are involved in making the decision. In this context, reaching a decision to respond to performance results is not an end in itself. Instead, reaching a decision is a bridge to realizing the intended consequences of the selected alternative. Decision making is viewed and occurs in the form of a process which starts with an idea and ends with the actual implementation of the decision.

Advocates of consensus decision making believe it can work better in loosely-coupled organizations like courts than alternatives such as the use of majority rule or having decisions handed down by a presiding judge or executive committee. Under majority voting, the process typically involves a choice between one of two alternatives and does not actively seek other options that may actually produce a broader level of agreement. Competition is fostered rather than cooperation when decisions lead to a division between winners and losers, rather than a search for compromise or other mutually beneficial solutions. There is no effort to build unity through strengthening the group's ability to decide together. In addition, proponents of consensus argue that majority decisions reduce the commitment of individuals not in the majority. Judges who believe their concerns have not been taken into account may be less willing to defend or act on the decision.

The loosely-coupled structure of courts raises similar concerns about decisions made by either a single individual or committees. Certainly if a decision is made solely by the presiding judge, it can be made quickly. However, the actual implementation still takes time. When one person or a small group of people makes a decision for a larger group, the decision not only has to be communicated to the others, but it also has to be acceptable to them or its implementation will need to be forced upon them. And in the world of courts, independent, often elected, judicial officers can just say no.

On the other hand, if all judges and senior managers participate in the decision-making, the decision does not need to be communicated and its implementation does not need to be forced. The decision may take longer to make, but once it is made, implementation happens in a more expeditious manner.

Consensus decision-making works by establishing a clear set of guidelines to achieve consensus on a substantive issue. It is a controlled process, not a free form speaker's corner. The reason behind choosing a specific decision-making approach is to select one that is compatible with the organization's structure. In many courts, the possibility of agreeing and possibly changing how work is done requires a way to overcome their often autonomous, loosely-coupled nature to reach agreement that each individual judge will support.

Without an initial decision on how collective agreement among the judges and senior managers is to be reached, any court-wide improvement plans will face considerable uncertainty over the prospect of sustained success. Precisely what the guidelines and ground rules are for trying to arrive at widespread agreement need to be determined by a court and may vary with the nature of issues under discussion. Like any process, a consensus-based approach might fail when members of the court do not agree to follow a particular structure when considering a particular proposal, dealing with vigorous dissent, and deciding the circumstances under which near unanimity is necessary. Consensus decision-making is not as formalized as others (e.g., Robert's Rules of Orders), and the practical details will vary from court to court. However, there is a core set of procedures common to most implementations of consensus decision-making. (Dressler, 2006)

Assembling Performance Results: Six Steps

In addition to considering alternative forms of consensus decision making, a responsive court follows particular steps in actually defining the work to be done and the division of labor necessary to use performance results. Responsive courts employ a common methodology in handling performance results. The methodology does not guarantee a court is responsiveness and able to translate results into feasible administrative changes, but high performing courts follow a coordinated plan.

“To solve any problem, there are three questions to ask yourself. First, what could I do? Second, what could I read? And third, who could I ask?”

Jim Rohn
Entrepreneur and Motivational Speaker

The plan is broken down into six steps and corresponding decision points. To make the steps as specific as possible, *CourTools* are used as indicators of effectiveness, procedural satisfaction, efficiency and productivity, as described in Chapter Five. While no particular form of decision-making is assumed, the steps below describe an inclusive, participatory and cooperative process for a court to consider in using *CourTools*. Each step consists of a series of illustrative questions. Tentative answers to one set of questions refine and shape the questions in subsequent steps.

The steps are as follows:

Step 1: Getting started

Step 2: Review CourTools

Step 3: Determine what data are needed and where they will come from

Step 4: Apply the indicators

Step 5: Assemble the results

Step 6: Present the evidence

Step 1: Getting started. A first step is deciding exactly what will be measured, how the indicators will be defined, and agreeing on the rationale for gathering of performance-related information.

Addressing these decisions informs a court of the scope and the kinds of work to be done. As a result, members of the bench and staff have a clear expectation of the overall magnitude of this initiative. In one or more meetings dedicated to the performance initiative, a court's leadership team should prepare to lead the discussion by formulating an agenda around a series of issues intended to address the appropriate scope, rationale, and level of effort to put a sound performance plan in place:

Define performance measurement. Just exactly what is performance measurement? How does the court benefit from it? How is it different from case management, the adoption of specialized calendars or time standards? Which courts in the state have

tried it and which ones have used it successfully? How has the topic come to the court's management agenda?

Review how the court currently measures performance. What are the indicators of performance currently in place? Do they reveal where real problems exist and what should be done about them? Is some missing performance information worthwhile gathering?

Discuss how to use the results. Are the results to be used primarily as a means to assess and provide staff with feedback on service quality? Should results be structured so as to allow for comparisons of performance between court divisions or with other courts? What results might be most helpful to the public, funding sources, and other interested stakeholders?

Discuss communicating the results. To whom and how often should results be distributed? At what point will information on the court be available to the public, the media, the bar or anyone interested in the court? Is the information to be available on a court's Web site?

What should emerge from these discussions is an initial understanding of the purpose of and desired products from performance measurement and a general expectation of how performance information might be used.

Step 2: Review CourTools. The *CourTools* package provides both a rationale for the choice of the indicators, guidelines on what data need to be gathered, and suggestions for presenting the results in a coherent manner.

A court should review the design, method, and implementation strategy provided by *CourTools* as an example of what is involved in court performance measurement. In conducting this review process, the following issues and questions should be considered:

Gain clarity on key performance goals. What are key indicators of a high performing court (e.g., accessible, timely, fair, efficient)? Are the goals complementary or competing or both? What trade-offs might exist as a court seeks to improve performance across multiple goals?

Compare the CourTools to the status quo. Does the court already collect information similar to any of the ten *CourTools*? How closely do the existing indicators compare in form and substance with the *CourTools*? What performance information represented by *CourTools* is not available presently?

Understand the requirements of CourTools. Are the steps and data requirements necessary to complete each indicator understandable? Are there any perceived gaps, ambiguities, or areas requiring clarification? How are the results to be interpreted in terms of improvements in policy, procedures and practices?

Evaluate the priority of each measure. Do some indicators have a higher priority for the court to undertake than others? Which indicators should come first? Does the gathering of evidence in some instances look too expensive and time consuming to justify their application?

These topics may best be handled by a designated subgroup of judges and court managers who, in turn, present their judgments to the wider group of court personnel. To ask every court member to examine the *CourTools* in detail is unrealistic and unnecessary. What is important is that the *CourTools* are reviewed carefully for their utility and the full court has an opportunity to react to recommendations based on an intensive review.

Step 3: Determine what data are needed and where they will come from. The indicators suggested in *CourTools* are general in their definitions of cases, participants in the legal process, and employees of the court. In addition, they draw on both data that may already exist in an automated system (e.g., the indicators related to caseload management, the collection of fines and fees, and the management of juries) as well as information that requires original data collection (e.g., survey information from the public and from court employees). To accommodate the need for data outside a court's automated system, *CourTools* contains two surveys that have been tested and are ready for use (1) Access and Fairness and (2) Employee Satisfaction.

As a court considers what data are available through existing sources, it is beneficial to distinguish questions relating to indicators of caseload management from indicators related to other areas of organizational activity. Conducting appropriately detailed and accurate measurement of the caseload process is highly dependent on the capacity of a court's case management system and will require a commitment by IT staff. Other indicators emphasize involvement by different types of court staff (e.g., courtroom and clerk staff, jury manager) and possibly different data sources (e.g., jury management system). These two sets of indicators and corresponding questions are as follows:

Caseload management (e.g., clearance rate, time to disposition, age of pending caseload, trial date certainty):

Determine what categories of court cases should be used. Should the classification conform to the different organizational divisions in a court, such as criminal, juvenile, civil, family law or more specialized calendars? Are there sufficient numbers to permit more specific classifications, such as violent felonies, burglary, and drug offenses in criminal cases or the use of mediation in civil cases? Are there important case characteristics that should be measured, such as trial and non-trial adjudications?

Determine what desired information is available from the court's automated system. Do current reports contain the desired information? Do the existing systems provide sufficient detail? What can be done at a reasonable cost in software applications and staff training to enhance data availability and analysis?

Managerial effectiveness (e.g., case file integrity, enforcement of monetary penalties, effective use of jurors, and cost per case):

Determine appropriate categories and criteria for measurement. What are appropriate case type categories and standards for completeness useful for examining the reliability and accuracy of the case filing system? Is it possible to determine the extent to which court orders requiring payment of monetary penalties are being complied with? Is the court able to determine how effective its jury management system is in the use of prospective jurors?

Identify which judges and court staff will be involved. Who will be given responsibility to organize and direct the process for each measure? Who else will be asked to be involved in finalizing the scope and content of each measure? What is the anticipated timeline for completing each measure?

Honestly assessing data needs and availability is a critical step. As it is almost certain that problems in data quality will be discovered, the court should also be prepared to engage in staff training to fix these problems at the source; the emphasis should be on improvement not embarrassment or punishment.

Step 4: Apply the indicators. The *CourTools* illustrate the type of work involved in implementing performance measurement. A step-by-step methodology suggests the data to be collected and ways to compile and present the results (e.g., the percentage of litigants who believe a judge listened to their side of the story, the percentage of felony cases resolved within 180 days after the date of arrest, the percentage of civil cases pending more than 730 days after the date of filing). Suggestions also are made on how to interpret different patterns of results.

A court should try to apply multiple indicators simultaneously. Indicators cutting across different areas of service delivery can be set in motion at the same time so that a court is able to speak to the question of how well it is serving its multiple goals (e.g., access, timeliness, fairness, efficiency). Choosing to try out only the indicators relevant for some pressing problem or only those most easily enacted diverts the initiative from integrating performance assessment into the operational management of a court. As noted earlier, great value results from undertaking indicators that balance one dimension of the court's work against another. For these reasons, two suggestions are made.

Set an implementation schedule. Should the court attempt to apply the indicators simultaneously or sequentially, with additional indicators added with each subsequent effort? What measures are top priority and why? Does a court want to speak to particular audiences on particular issues with greater urgency than it speaks to other audiences on other issues?

Coordinate the data collection effort. When and how should the performance data be collected? In what format and on what schedule should the performance

information be conveyed and presented? When problems are encountered in gathering data how are they to be resolved?

Step 5: Assemble results. Assembling the results of performance measurement is a craft involving three components: (1) understanding what the results mean, (2) conveying a sense of what results are most important to the court as an organization, and 3) using insight into how to make practical use of the results in managing efforts to improve the delivery of court products and services.

A court should encourage managers to refine their skills in becoming more familiar with the techniques of the performance analysis, such as base lining and bench marking, trend spotting, problem diagnosis, and operational and strategic planning. For courts venturing into performance assessment for the first time, three guidelines are recommended to produce clear and comprehensible results.

Address leading questions directly. What is the current performance level? Is performance changing over time? What do the results say about the upper and lower bounds of particular indicators? What are the problems identified by the indicators?

Include corroborating evidence of success. Assuming the court is reasonably timely, what additional indicators are consistent with that observation or pattern of results? For example, if a timely court also should be keeping up with its incoming cases, does the court have a clearance rate that is close to 100 percent or greater? Similarly, if a timely court should be expected to have a minimal backlog, is the percentage of the pending cases that are more than two years old negligible?

Consider implications for the future. Comparing the current picture to previous snapshots, is a court's performance improving, declining, or staying about the same? Is the current pattern noteworthy given that the caseload might have increased while the complement of judges remained constant or even decreased due to vacancies? Are decreases in resources expected in areas of high performance?

The surest path to interpreting the results fully and convincingly is to indicate what a court has learned about itself from the results and what it can do to improve its performance in the future.

Step 6: Present the evidence. *CourTools* are indicators of broader performance measures, such as effectiveness, procedural satisfaction, efficiency and productivity. The presentation of evidence on performance should take this elemental distinction into account when describing the results to more general audiences and to emphasize what specific indicators reveal to audiences of judges and managers.

However, actions taken in this regard likely will be iterative or adjusted on the basis of repeated efforts. There is no magical way to know in advance exactly how detailed any audience might want to see performance results described, interpreted, and discussed. For this reason, this final step suggests

how the issue of presentation should be monitored and evaluated to achieve the most satisfactory reaction; the reaction that is most helpful to a court in learning what administrative practices should be refined.

Is the right information getting to the right people? What do court customers like about the form and substance of the performance results? How can those reactions be combined with internal feedback from judges and court staff to refine how performance data are collected, examined, and disseminated?

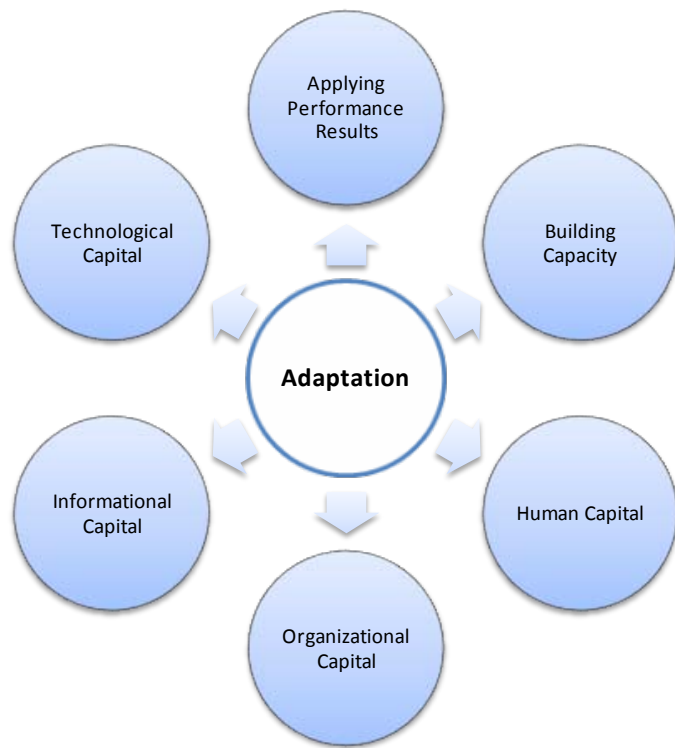
Does the presentation of performance data effectively communicate the results? Do the results provide evidence of service quality? Does the data allow appropriate comparisons within the court or among other courts? How best to use the information in facilitating continuous improvement?

The six steps described above are designed to increase court responsiveness to performance and to enable courts to rise to high performance. Responsiveness is obviously a variable condition or characteristics of courts. However, as Judge Burke poignantly puts it, it is a state determined in large measure by conscious choices of the judiciary and management.

Responsiveness puts a court in the position to make use of performance-related information. A high performing court that takes performance information seriously possesses a valuable tool in refining administrative practices. It has something to manage in the same way it has technological, human and other resources to manage. The next stage is for a court to apply this new found resource in the actual refinement of practices.

Adaptation

Applying performance results. Adaptation is refining practices in light of performance results to align administrative principles closer with customer expectations. The extent of refinement ranges from strengthening to modifying to adopting new practices. Consequently, some long-standing and familiar ways of doing business will change and people will be asked to develop new competencies. For any change initiated by court leadership to take hold, it will need the help and support of court staff throughout the organization.



Adaptation begins with the sharing of performance results. A chief judge or a court's leadership team circulates results for the purpose of setting an agenda of policy reform. Topics for discussion among judges and managers revolve around both performance scores that are disappointing and those that are signs of solid performance. The former suggest the need to remedy problems and the latter raise questions on how to sustain and enhance quality service delivery. Because customer satisfaction is a focal point of performance, the sharing of performance results among judges and managers is paralleled by conversations between court leaders and customers. This dialogue serves to provide information and a rationale for planned refinements, to gain feedback helpful in interpreting past performance results, and to learn what additional concerns customers have about administrative practices.

Clarity on desired results in combination with indicators showing the level of current performance is the foundation for identifying and prioritizing how a court best moves forward. Positive change can happen once the most consequential performance deficits are identified and possible solutions developed. Openness to improvisation and experimentation will help determine the best solution as well as how existing practices need to be strengthened, modified or completely reworked. However, in all instances, refinements are not made for the sake of refinements. There is a conservative element in a high performing court's change management scheme. Improvements are driven by performance results.

Building capacity. A high performance court knows the results it wants to achieve, seeks indicators of how it is currently doing, and has established an approach to determining the highest priorities for change. Adaptation focuses on how the full spectrum of available resources are marshaled and aligned to solve a particular problem. According to Kaplan and Norton, this element "recognizes that the ability to execute internal business processes in new and differentiated ways will be based on the organization infrastructure; the skills, capabilities, and knowledge of employees; the technology that they use; and the climate in which they work."(p. 76). Taken together, such organizational attributes are leading indicators of a court's ability to adapt.

The Framework suggests that the knowledge and skills conducive to court adaptation are divisible into four broad categories: (1) Human, (2) Organizational, (3) Information and (4) Technological Capital. Given that these four areas comprise very extensive systems of ideas and concepts, each with its own wide-ranging literature, the discussion below will necessarily be brief and selective in what is covered. Additional sources that the NCSC has found useful will be mentioned. Therefore, this section of the Framework will seek to define each type of capital and provide illustrations of how it might be used to encourage adaptability.

Human capital. Successfully finding and implementing better ways of doing business is a task requiring commitment from employees throughout the court. The Framework describes human capital as the

shared belief among court personnel (including judges, managers and staff members) that every individual makes a contribution to the fulfillment of court functions and how well each individual contributes affects overall court performance. For employees to focus on how their day-to-day responsibilities link to achieving desired court-wide results, judges and senior managers need to help all staff members understand the performance objectives, actively involve them in measuring how well the objectives are being met, and hold them responsible for finding ways to improve personal and court-wide performance. The goal is for all involved to come to a real understanding of what performance is in terms of goals and measures. By encouraging all personnel to see how their work contributes to performance, a court avoids the difficulties of implementing changes with a top down approach where only top management shares enthusiasm for what is being promoted. As a result, human capital facilitates adaptation by making changes in administrative practices relevant to every employee of the court.

The ability to successfully adapt to new ways of doing business is strengthened when the organization as a whole understands the court's vision and is properly aligned to achieve it. A balanced set of performance indicators, such as those discussed in Chapter 5, is essential to provide a comprehensive view of how well the court is performing on its priorities. A sign of increasing human capital is that court staff members are viewed as active partners with judges and senior managers in using performance information. For courts serious about adaptation, employees will be brought into the conversation to help find ways to sustain areas of high performance (e.g., documenting successful approaches for managing case files) and ways to improve areas of less than successful performance (e.g., spending more time improving customer service at the counter). Because staff members often have regular contact with the public, many have a keen sense of what aspects of current service delivery lead to dissatisfaction with customers.

Once court leadership has determined the top priorities for improvement, projects need to be designed to actually implement better ways of doing business. Successful change initiatives in courts tend to be created by cross-functional teams that involve the joint participation of designated judges, managers and staff members, as appropriate. Specific examples of the team approach from the court world include a focus on streamlining felony case processes to improve time to disposition (Riverside County, CA); the use of data and problem solving techniques to reduce jail costs of in-custody defendants (Harris County, TX); interviewing litigants outside the courtroom following completion of family law matters to assess whether they knew what to do next in their case and how the judge might more clearly communicate (Hennepin County, MN); and the effort to come up with completely new ways of doing things through a major reengineering project (Vermont).

Many possible reform efforts will require that old jobs be redesigned and that staff learn new skills. How individual employees respond to change in the work environment is the subject of many books and numerous theories. The NCSC has found several sources that provide insightful and practical treatments on the subject (Scholtes, 1998, Herzberg, 1968, Miller, 2006). A common denominator in

these sources is a focus on people's intrinsic motivation and what can be done to enhance employee engagement and satisfaction. Based on this course of research, the NCSC has developed an Employee Satisfaction survey for use in courts.

The survey is based on the idea that paying attention to job satisfaction, and making it a top priority, creates a significant opportunity for improvement in the work place. Satisfied employees tend to be more productive, creative, and committed to their employers, with an additional benefit being that higher levels of staff satisfaction leads to higher levels of court user satisfaction.

To better understand employee attitudes and motivation, the NCSC makes use of an approach developed by the behavioral scientist Frederick Herzberg. Through his research, he discovered an intriguing phenomenon: the things that make people satisfied and motivated on the job are different from the things that make them dissatisfied. He observed that people can get very dissatisfied with problems about company policies, supervisor behavior, salary, and working conditions. However, if these issues are resolved, it did not mean an increase in job satisfaction. Job satisfaction was the result of different factors such as interesting work, recognition, and growth.

The NCSCs employee satisfaction survey is designed to get at issues related to both employee satisfaction and dissatisfaction. The results provide a useful tool for understanding how employees view the work place and to identify where court managers might best focus their efforts. Using this survey provides insights and suggestions to court leaders and senior managers on how to increase satisfaction and decrease dissatisfaction. They include the following:

- Provide a forum for receiving helpful and practical suggestions from staff members.
- Identify areas of strengths and weaknesses and target training programs to meet priority needs in improving employee performance.
- Help court staff members feel valued, by showing concern and respect for their views.
- Provide a benchmark against which to measure improvements.
- Enable employees to express valid concerns.

The goal is to better integrate all employees into the process of adaptation. Simply stated, people support what they help create.

Organizational capital. From the perspective of the Framework, organizational capital refers to the internal and external coordination of resources to complete key procedural events in the legal process. Internally, organizational capital is the allocation and distribution of judicial and staff resources; the amount of time and nature of attention they give to cases and customers. For a court to adapt or refine administrative practices, the ability to acquire necessary resources and to direct the flow of organizational capital is critical. Externally, organizational capital is gaining the cooperation

of partners in the justice system that have their own positions, interests and goals. For a court to adapt or refine administrative practices, the ability of a court to induce other participants in the justice system to embrace, or at least accept, court objectives is central.

Concerning the internal management of organizational capital, two key areas for attention are: (1) assessing the workload of judges and court staff and (2) consideration of court culture. A clear measure of court workload is central to determining how many judges and court staff members are needed to resolve all cases coming before the court. With respect to adaptation, adequate resources are essential to effectively manage and resolve court business without delay while also delivering quality service to the public. More judges and more staff members, on their own, won't turn a court into a high performing organization, but appropriate resource levels are a necessary ingredient for a court to implement and sustain high performance. High performing courts develop the capacity to compete effectively for their fair share of public funding essential to carry out their fundamental responsibilities of dispute resolution. One proven strategy in this area is the use of empirically-based workload assessments to determine objectively the number of judges, managers and staff members required to handle the caseload and whether judicial system resources are being allocated and used prudently.

Culture or how judges and managers believe work should get done governs the setting of priorities for the use of court resources and the appropriate division of labor to carry them out, which in turn determines administrative practices. Drawing on the discussion of court culture in Chapter Three, high performance is fostered by solidarity or agreement among judges and managers on the importance of common goals. A high degree of solidarity propels a court to actively monitor its compliance with agreed upon objectives in addition to relying on individuals living up to what is expected of them. This attention applies to how cases are handled and how customers are treated. In contrast, cultures lacking solidarity have difficulties ensuring their preferred methods of getting things done are in fact working as planned. Solidarity is a necessary and sufficient condition for high performance; solidarity contributes to high performance and high performance courts exhibit solidarity.

Solidarity fosters adaptation because it is an essential ingredient to whether a court is ready and willing to refine administrative practices. Solidarity is what makes administrative practices a common concern and worth refining to achieve common goals. A court seeking a level of adaptation associated with high performance increases its degree of solidarity where appropriate. However, not every area of work might be considered to warrant the same degree of solidarity. Case and change management seemingly are more suitable than court house leadership where collegiality rather hierarchy is desired. This possibility does not diminish the general importance of culture or the special importance of solidarity. Consequently, a court intent on high performance in general and adaptation in particular will examine its culture and emphasize solidarity in its preferred culture for the future.

Concerning external management, whether a court communicates with its partners in the justice system, makes its goals known to them, seeks input and discusses issues with them, and exercises a leadership role in the system is related to performance. A strong example is documented in the case of criminal courts.

Based on a comparative examination of nine criminal courts, court communication and leadership are shown to affect timeliness and due process (B. Ostrom and Hanson, 1999). Jurisdictions where prosecutors and defense attorneys see courts communicating and playing leading roles in the justice system are more expeditious than where courts are seen as less communicative and exercising less leadership. Attorneys are attentive to what a court has to say and receptive to court-led efforts to introduce case management. This is so because they see a connection between what a court wants for the justice system that is consistent with their own work. For example, the firmer are trial dates and procedural events in general, the easier it is for attorneys to realistically schedule and communicate confidently with their clients.

Similarly, in the jurisdictions where prosecutors and defense attorneys see courts communicating and taking responsibility for managing the court case load, they are more inclined to see themselves as effective advocates than their counterparts in jurisdictions where courts provide fewer opportunities for dialogue and allow attorneys to control the pace of litigation. Court communication and leadership reduce uncertainty and confusion. Attorneys know what is expected of them and that hearings will be held as scheduled. This allows attorneys to confidently plan and prepare for all procedural events, while expecting opposing counsel to do the same. As a result, they are in a position to present their arguments effectively; they anticipate and respond clearly and accurately to judicial questioning, and are able to present their own arguments coherently and concisely. For all these reasons, court communication and leadership foster effective advocacy, which is essential to due process in adversary legal system. Consequently, a court can increase its adaptation through open and continuing dialogue with its traditional partners in the justice and exploring similar relationships with new groups.

Informational Capital. Information capital refers to the level of understanding judges, managers and staff members have about the quality of court business practices as they engage in the management process. The scope of information can come solely from intuition and day-to-day experience or be augmented by systematic performance measurement. Information capital relates to the depth and quality of information available about court operations and should be viewed as one of a court's most valuable assets. This is the basic stuff needed to manage the court and is designed to answer such questions as: How long does it take to handle this particular type of case? Are customers getting what they want from particular court services? Is the court achieving the results it expects using a particular process?

Courts seeking high performance develop an information capital strategy that complements its overarching goal of delivering quality dispute resolution services to the public. This is a court-wide initiative that will benefit from involvement by individuals from throughout the courthouse. In this way, a court's capacity to identify and create relevant information will emerge from ongoing interaction and close coordination between court divisions and across functional areas. A court's strategy can usefully involve employees at all levels as dealing with information becomes a larger part of most jobs. If seen as a true priority by court leadership, more and more employees will develop the ability to identify gaps in performance and participate in finding and implementing solutions.

Clearly, there is a broad spectrum of what specifically constitutes information capital. It includes tangible objects, such as blueprints of how to optimize space in existing court facilities or more intangible ideas, such as efforts to improve the listening and communication skills of judges. The value and scarcity of a court's information capital is illustrated by reference to the ability of a court to generate data necessary to evaluate the caseload process.

Taking the topic of delay reduction as an example, successful implementation of performance metrics (e.g., case processing time, age of pending caseloads, and certainty of critical events) requires a solid foundation of data and the willingness to measure. The importance of information to adaptation in this example is evident in two ways. First, questions linger in many courts about the accuracy and completeness of case processing data. If data are to be used to manage, care and attention need to be directed to compiling, distilling and effectively presenting the most relevant information. With respect to compiling, data entry procedures need to be designed *and* implemented to ensure valid and reliable data is being entered in a timely fashion. More courts need to seriously consider periodic audits to alert court staff members to the importance of accurate data entry and help increase awareness throughout the court on improvements to data quality.

Second, attention to the "information foundation" will not just improve data accuracy and uniformity but also the *perception* that the data are meaningful. Court management depends on an alliance of professional managers, judges and lawyers—all with different views on the utility of "management information." It has been a long time since Benjamin Disraeli's adage about "lies, damn lies, and statistics." Yet the quote, so often repeated that it has become a cliché, underscores a general distrust of numbers permeating the field of judicial administration. Getting clear answers from the available data remains the central concern. Many court leaders are suspicious of data, concerned that inaccurate information will be used against them. They see not the essential contribution of meaningful data to effective caseload management, but, rather, another showcase of "how to lie with statistics." Enhancing the *willingness* of leaders to measure performance and manage caseload begins by establishing the data are accurate and a clear understanding of how they can best be used in practice.

Technological Capital. Technology has emerged as a very significant business enabler. It has the potential to improve markedly both the efficiency of court business processes and the quality of some court outputs. High performing courts are implementing a number of new technologies to boost both efficiency and quality.

Because technologies continue to evolve, specific applications associated with high performance are subject to change. However, the Conference of State Court administrators established in 2005 an initial list that serves as a useful starting point. COSCA enumerated ten “E-Everything” basic technology capabilities that all courts should implement. These capabilities include: an ADA-compliant statewide website, a court website under the control of the state court administrator, a review committee for website content and design that includes attorneys and other court stakeholders, free online court calendars, e-filing pilot projects, videoconferencing pilot projects, online payment of fines and fees, Internet access in the courthouse, high tech mobile courtrooms, and online access to court data and documents for a reasonable cost.

These basic capabilities establish fundamental skill sets for courts, but they are not enough to really leverage technology into improved efficiency and effectiveness. To do that, courts must implement more advanced capabilities like comprehensive paper on demand (e-filing, e-case file, e-service, e-noticing, and so forth), extensive use of videoconferencing, exclusive use of the digital record, standards-based external exchanges of information with key business partners, portfolio management of technological capabilities, adequate disaster and business continuity management, strategic outsourcing, and active business governance.

While many of these more advanced technological capabilities have become core competencies in private business, they are new, difficult and not easily embraced by many courts. To assist courts in controlling these new capabilities, the NCSC and the Joint Technology Committee of COSCA, the Conference of Chief justices and the National Association for Court management are developing the Court Technology Framework. This Framework seeks to promote the managerial integration and unification of court technology from the business level down to the technical level. Following the history of best practices in the non-governmental world, this Framework promises to assist courts in aligning their technological capabilities with their business goals and efficiently manage their technology projects across their different organizational units and over time.

Broadly speaking, there are four technology management skills that courts need to acquire to be high performing: implement technology in an integrated way, keep the technology up to date, maintain alignment between technology and business goals, and oversee the state of technology in an operationally competent manner. Most presiding judges and court administrators are not adequately trained in these key skills, so courts currently rely on technology staff members to make good decisions based on their knowledge of technology, but perhaps without the benefit of fully understanding the legal process. At time when courts are sometimes “betting their business” on the

success of a technology project, making up a large and visible proportion of their budget, skill deficits in technology management by judges and court managers are serious concerns.

There are some obvious and critical dependencies between technology capital and the other kinds of capital. Some courts strongly prefer an internal model of technology support, but are unable to train or acquire the necessary staff skills. Some courts are successful in implementing new systems, but fail to take full advantage of those new capabilities to improve operational management. Finally, some courts develop the potential to collect data useful for evaluating judicial and staff workload, but then may not use those data to more efficiently staff their courts.

The last problem is emerging as an even more significant issue in a new and different way. As these new technological capabilities are implemented, courts attain the possibility of radically altering their internal business processes. If done successfully, such reengineering affects staffing requirements in dramatic ways. Some courts are starting to talk about the creation of statewide “virtual clerk’s offices” and eliminating large proportions of their back office administrative staff as routine data entry and case file tasks get automated.

The effect on judicial staffing is smaller and varies according to how states organize their judicial districts. For example, many states require a judicial presence in every county no matter how lightly populated. It is certainly possible that technology can be used to consolidate work in fewer court locations resulting in robust improvements in court efficiency. Since most of court operational costs are labor costs, taking advantage of these reengineering possibilities improves court performance without sacrificing services to citizens even when there are budgetary reductions.

Other dependencies exist outside the realms of responsiveness and adaptation, which are part of the Framework’s third perspective. Technological capabilities also affect the Social Value of courts, which is the Framework’s fourth perspective. Simply stated, members of the public perceive courts lacking commonly accepted and well known technological capabilities as incompetent and inefficient. Those perceptions, even when inaccurate, lower the legitimacy of courts in the minds of voters and policy makers. Demonstrating technological competence is in the self interest of courts. Experience shows policy makers will sometimes support courts that show a willingness to attempt a reengineering project using technology. Policy makers are sophisticated enough to know that such projects are difficult and not always successful. As a result, when they see a court attempting to improve its performance, they will often support it financially.

In short, the competent management of Technology Capital is rapidly becoming a core competency for court leaders. High performing courts will acknowledge that situation and respond by acquiring the necessary skills, personnel and capabilities.

Social Value Perspective

The first three Perspectives in the High Performance Framework focus on what a court can do to maximize the utility of performance data for individuals directly involved in the legal process. Together, the Customer and Internal Operating perspectives counsel judges and managers on how to measure the effectiveness, procedural satisfaction, efficiency and productivity of their efforts to deliver adequate services to participants in the legal process. That's the performance measurement side of the Framework.

The third perspective, Innovation, focuses more on performance management and suggests how a court can assemble and respond to performance results in a coherent and policy relevant manner. Additionally, the third perspective specifies conditions that foster the refinement of practices affecting the participants and their cases as well as for developing the organizational strength of the court. Success in actually using results once they are assembled is found in courts that emphasize the importance of human, organization, information and technology capital.

The Framework's fourth perspective, the Social Value Perspective, acknowledges court performance is also pertinent to members of the public and policy makers in the world outside the court house walls. Not all members of the public or policy-making bodies have personal experiences with courts, but they are "customers" because of their positions in the American state governmental system. They each look to courts to act as the authoritative resolver of legal disputes and, thereby have an interest in whether courts promote justice at both the individual and aggregate level. Unlike each individual participant in the legal process who is keenly interested in their own case, members of the public and policy makers want courts to handle all cases well. They assess courts as an institution.

The Framework's fourth perspective, the **Social Value Perspective**, acknowledges court performance is also pertinent to members of the public and policy makers in the world outside the court house walls.

The views held by members of the public and the executive and legislative branches of government have of courts matter in at least three ways. First, in many states, elections allow members of the public to express their preferences by voting for particular judicial candidates. In addition to shaping the composition of the bench, the public also votes on referenda affecting the legal and administrative authority of courts. In the legal context, for example, voters in California and Florida have enacted constitutional amendments limiting state supreme courts from expanding federal precedent constitutional rights (Latzer, 1991). Administratively, Florida voters have amended the State Constitution by approving a ballot initiative requiring courts to demonstrate the cost effectiveness of their programs in a manner similar to what is expected of executive agencies. Policy makers, in turn, are able to pass laws substantially affecting the discretion of courts (e.g., mandatory criminal sentencing laws).

Second, the support of members of the public and policy makers is essential for courts to enjoy compliance with their decisions. Courts lack strong, independent enforcement mechanisms. They are dependent on members of the public voluntarily following their decisions and for policy makers to support judicial decisions even when some decisions strike down policy makers' actions and enactments. Finally, courts require the approval of members of the public and policy makers for their resources. Policy makers control the amount of money available to courts. Since these funds are financed by tax dollars, members of the public exert influence through their representatives in determining what courts have to work with. These institutional arrangements have implications for court performance.

As argued in the Federalist Papers, members of the public make judgments about the administration of justice. They have expectations on how courts should operate, which, if met, are sufficiently powerful to influence their views of government in general. The higher the esteem with which members of the public and policy makers hold courts, the greater the support they give to the courts and the greater their willingness to grant the courts independence. In other words, job performance is critical to the support courts receive from the public and policy makers.

A high performing court pays attention to how they are regarded by members of the public and policy makers. How a court pays attention is part of performance management. The nature of this attention and the condition that shapes it is the subject of the Social Value Perspective.

The Social Value Perspective revolves around how well a court is viewed by members of the public and by policy makers. What do they think of how a court is handling its customers and cases overall? There are two basic measures of this perspective: (1) Trust and Confidence and (2) Adequate Funding. A high performing court enjoys trust and confidence from members of the public and policy making bodies. It also seeks and receives adequate resources to perform its work. These two values strengthen the institutional position of the courts.

Trust and Confidence

Trust and confidence are the belief that judges and managers are performing their jobs as intended. However, attitudes about courts are not always formed through direct experience. Trust and confidence are assessments—they concern what the public and policy makers think courts are doing even when they do not “see” or interact with court personnel directly. They are an approval rating based on broad considerations of what courts

Trust and confidence are assessments—they concern what the public and policy makers think courts are doing even when they do not “see” or interact with court personnel directly. They are an approval rating based on broad considerations of what courts are thought to accomplish and achieve, and are not limited to personal experiences or direct encounters with court activities.

are thought to accomplish and achieve, and are not limited to personal experiences or direct encounters with court activities. As a result, the support that flows from this general perception is typically called “diffuse” and is distinguished from specific support or reactions based on specific decisions or actions taken by a court.

Diffuse support is deemed essential to the authoritative status of a court in a democratic society. This is especially true for a trial court *vis a vis* a state supreme court, which receives more publicity about its smaller number of decisions that affect statewide legal policy. Support by members of the public toward trial courts is diffuse because it is impossible for them to comprehend and assess the large number of trial court decisions made annually.

In addition, the stress placed on the impartiality of judges and managers means that the process and grounds for decision making are not to be revealed except in rulings, orders and opinions. By design, the cloistered nature of judicial decision making is intended to ensure a neutral decider and a neutral decision making process. Even appellate courts are loath to “second guess” trial court judges in cases on appeal. Yet, members of the public and policy makers are expected to assess what takes place at the court house and they have institutional mechanisms to register their approval or disapproval with what is happening.

The type of assessment that emerges from this institutional duality of impartiality and the public’s exercise of their designated authority focuses on a court’s integrity and reliability. Members of the public and policy-making bodies are asked to judge whether courts are acting responsibly and expected to continue to discharge their obligations successfully in the future. Clearly, this type of assessment is general in nature and does not require direct knowledge of what happens to individual cases and participants in the legal process. Trust and confidence are judgments on the stewardship of courts.

The typical means to assess whether a court achieves a high degree of public trust and confidence is through the use of surveys of public opinion (Rottman, 2005) and focus group interviews (Wooden and Doble, 2006). Surveys provide a barometer of public attitudes and can identify general themes and concerns across courts. Because public opinion surveys are expensive to conduct, they are seldom done at the individual trial court level. As a consequence, the surveys that are undertaken focus on statewide samples of residents and rely on state level funding. However, such research offers limited clues on individual trial court performance because the state wide samples have too few respondents from any particular court to draw valid inferences. For this reason, focus group interviews seem a more appropriate method to use when asking the public about the courts.

Additionally, focus groups provide direct feedback on what customers want from their local court. Questions can move from general considerations of trust and confidence to specific topics of how

court processes could be improved. Focus groups are an excellent way to identify the issue of most relevance to the people coming to court, such as:

- Why do I have to wait so long in line?
- Why is it so difficult to find where I need to go in the courthouse?
- Why do I have to come to court at all for this matter?
- Does the court have someone on staff who can answer my questions?
- Why can't I handle this court business from home?

Paying attention to what customers want most is critical for evaluating administrative practices. And putting improvements into place shows the court is serious about enhancing the level of trust and confidence.

Numerous sources exist that provide a step-by-step focus group process that can be used to find out what customers want even if they don't start out by knowing it themselves. There is not space to cover the details here, but the process is straightforward enough that hundreds of court and government managers have been able to do it themselves.

Adequate Funding

To fulfill its mission, a high performing court seeks and receives adequate funding. Making a persuasive case for resources is supported by the presentation and circulation of performance results and what actions and plans a court has taken and intends to take to respond and adapt new practices. A high performing court works to achieve a positive reputation for itself by means of its own effective communication of performance related results.

To kindle both trust and confidence and **adequate funding**, a high performing court engages in a vigorous campaign to organize and mobilize its partners in the justice system.

In addition, a court should look for help in communicating its message. To kindle both trust and confidence and adequate funding, a high performing court engages in a vigorous campaign to organize and mobilize its partners in the justice system. Attention to improved performance by a court has tangible benefits for partners who use the courts. A high performing court reminds the bar as well as the external supporters and advocates of new calendars and practices, of how a well-managed court facilitates and enables them to present and enforce their clients' interests and rights—and to enjoy substantial remuneration in retained cases. Partners in the justice system are in a position to amplify and corroborate the leadership role required when a court makes a serious commitment to high performance. The benefits to partners from improved court practices are readily apparent in such areas as alternative dispute resolution and specialized calendars; setting and applying clear goals, enforcing procedural requirements; and availability of court personnel to discuss performance results and ongoing performance. Organizing and mobilizing the many groups that use

the legal process and benefit from sound administrative practices are ways of making the court's message more convincing. Partners can suggest how courts are good stewards of public monies and how the public is served by a well administered legal process.

Building coalitions with key partners provides members of the public and policy makers with something in exchange for their support. They receive collaborative evidence on tax dollars well spent. Because each type of court customers is keenly interested in some particular aspect of court administration, they can report "in their own words" how improved court administration benefits the community. What they have to say should complement the court's message, but with more nuance and color. While the message from groups of court customers should be distinguishable from the court's requests from resources, it can certainly emphasize why the court's efforts to excel merit continuation and refinement.

Summary

A high performing court seeks to develop a two way channel of communication. One channel, as described in the first three perspectives of the Framework, focuses on building a court's internal capacity to diagnose and improve its performance. The second channel opens when a court looks outward. For a court to fulfill its responsibility as a public institution accountable to the citizens, it must be prepared to provide the information necessary to evaluate how it is functioning.

VII Summary and Implications

The High Performance Court Framework is intended to clarify what court leaders can do to guide their organizations in the direction of high quality administration. The way cases are handled and participants treated are strong indicators of the seriousness and care given by the judiciary to the resolution of disputes brought before them. Administrative routines not only support adjudication, they also independently influence the image of what a court stands for and how it is carrying out its responsibilities. Demonstrating self-improvement in practices contributes to strengthening a court's role in the justice system.

The aim of this chapter is to help courts get started on the road to high performance by reflecting on what they can do from the outset to increase the odds of success, while making their efforts a more rewarding and less daunting experience. From the beginning, everyone working in a court will benefit from a common understanding that performance is not just a set of numbers assembled to satisfy demands for greater accountability. Moreover, past experience suggests judges and court managers interested in high performance should prepare for resistance from some colleagues and requests for faster implementation by others. As a consequence, the first section of this chapter focuses on several major misconceptions about high performance that overestimate the difficulties it faces and underestimate its value. The second section identifies a set of strategies for successfully implementing a high performance initiative.

Putting the Framework in Context

Despite the promising benefits of pursuing performance, there are at least five basic misconceptions blocking it from being on a court's agenda and skewing reasonable efforts in questionable directions. To take full advantage of what the Framework has to offer, it is best to take these mistaken beliefs head on.

Myths

Myth One: Only weak organizations need to improve. One of the fundamental false impressions is that the Framework is intended primarily for courts performing poorly; those courts suffering from chronic administrative weaknesses. Such a view distorts the relevancy of performance because few courts see themselves in this position.

In many if not most courts, judges and managers believe things are going about as well as can be expected. They certainly don't see themselves as inordinately slow, technologically backward, or out of touch with what is happening in the community. Given such an outlook, they rightly can ask, why pay much attention to a "Performance Framework" and devote resources to it when we don't have serious problems? What this misconception does is to put many courts on the defensive and encourages them to consider performance as a prescription they don't need and a distraction they should avoid.

Actually, the Framework rests on the recognition that in today's economic environment no court can afford to be complacent. With belt tightening now the rule in courts across the country, courts need to face the reality of dwindling financial resources—being asked to “do more with less.” The Framework asks court leaders to think boldly and entertain the idea that it is possible to maintain or even improve quality in the face of budget and staff cuts. Taking up such a challenge illuminates the basic elements court managers need to consider—how to reach consensus on administrative goals, how to get staff members to work together, how to gather and use data, and how to adapt to an ever-changing world.

Attention to the craft of performance management is a good idea for every court. Management practices and court workflow processes can always be improved. Case processing quality improves with efforts to drive out wasted time, eliminate errors and rework, and to design services that better meet customer expectations. For example, while few courts are inordinately slow, all courts have room for ambition. Virtually no court in America has “maxed out” on timeliness as seen by the fact that no court has yet to consistently meet the American Bar Association or Conference of State Court Administrators Time Standards.

The Framework conceives of performance as an activity whereby each court seeks to do better than what it is doing already. This approach doesn't necessarily require seeking out the *best practice*, just fashioning a *better practice* that is an improvement over the current situation. Better practices make a difference both in instances which require a major reworking of an existing business process and those which call for only a slight tweaking. Continuing improvement in performance, either marginally or significantly, is what is desired. Hence, the invitation to pursue high performance is relevant to every court.

Myth Two: There is only one best way. A second and related misunderstanding is that the High Performance Framework identifies a specific set of business processes that all courts should employ. Once problems are defined, an inventory of known and well-established superior ways of getting things done can be searched and the one matching the problem most closely is an ideal candidate for implementation.

Despite the appealing nature of this single turnkey process, relatively few court business problems can be solved with an off-the-shelf solution. By no means does this imply court leaders shouldn't have their antennae up for success stories from other courts. Rather, the Framework encourages court leaders to learn as much as they can about what good, better, or best practices appear to offer an answer to a perplexing business situation. It is developing just such a capacity to approach difficult questions from many perspectives and to combine various approaches that holds the greatest promise for fine-tuning a solution that will work in each court's particular context.

Additionally, while the field of court management has developed many good *methods* for improving the administration of justice (e.g., caseload management, jury management), the trick is in the implementation and follow-through. History shows that just because one court has success with a certain initiative doesn't mean that another court can seamlessly plug-and-play the same process with the same result. Rather, success in court reform balances the promise of a good idea (or best practice) with a clear understanding of the individual court context. In most instances, successful problem solving comes by court leaders using their experience, subject matter expertise, and creativity to tailor a solution based upon the unique contextual circumstances of the court.

The Framework offers a process and set of activities for courts to more readily identify emerging problems, to keep little ones from becoming bigger, and to develop the skills and expertise to make all problems more tractable. In a real sense, the performance measurement and performance management elements of the Framework are intended to minimize the swings between “normal” and crisis management.

Myth Three: Performance management is just a fad. A third misconception is that high performance is just the latest in a string of generic management schemes high on rhetoric with little relevance to the real world of courts. The public and private sector fields are littered with discarded management schemes—quality circles, total quality management, management by objective—because these approaches were applied in mechanical fashion without regard for the individuality of the organization trying to use them. By contrast, the High Performance Court Framework begins with an explicit acknowledgement of the distinctive nature of courts and how their organizational structure influences court culture. The Framework calls for candid conversation on the role of culture in each court—not ignoring it.

Moreover, the Framework is designed expressly for courts. It distills decades of proven court management strategies and techniques into a single source. The Framework suggests a series of flexible steps a court can take to integrate and implement performance improvement into its ongoing operations. Practical suggestions are offered for how the areas of performance, such as effectiveness, procedural satisfaction, efficiency, and productivity, can be measured through the use of quantitative techniques such as the *CourTools* performance measures. Finally, the Framework describes how performance results can be used by courts to reshape their day-to-day operations and strengthen their institutional position. The length of the Framework reflects the full range of opportunities a court can exploit to achieve high performance.

Myth Four: Solutions are obvious. A fourth misconception is that when a court starts marshalling results on current performance, everyone will see and agree on the changes that need to be made. Because results speak for themselves, the easy part is identifying the problem to be solved.

In reality, the challenge of problem identification should not be underestimated. Any organization (including a court) operates the way it does because the people in the organization want it that way. To paraphrase Peter Scholtes, “every organization is finely tuned to achieve the results it currently gets.” Even if current practices lead to subpar results, there are people who have a vested interest in maintaining business as usual. What might be an obvious solution to some will be seen as unacceptable by others because the consequences of trying something new can be unpredictable and may upset some judges and managers. In this view, the cure is worse than the problem.

In recognition of the diverse reactions to the same set of performance results, the Framework emphasizes the importance of trust and the building of trust. Trust overcomes the perception that new practices are actually organizational weapons by a dominant coalition of judges and managers bent on command and control, a call for change for the sake of change, or even to punish particular personnel with unnecessary tasks (e.g., more extensive reporting and counting of time and activities). Hence, adaptation is much more than identifying best practices and implementing them in a step-like sequence. Communication and collegiality underlie responsiveness in the interpretation of results and the translation of results into new practices.

Myth Five: Only a leader can save us. A fifth misconception about high performance is that it requires the emergence of an outstanding leader to unlock the door to quality administration. In this view, superior achievement comes from a true visionary who charismatically convinces others to change their practices and adopt new and better ways of doing things. For this reason, the way to ratchet up performance is by offering “tips” to chief executives whose managerial skills enable them expertly to translate good advice into high performance (See for example, Behn, 2006; Likierman, 2009).

It is hard to argue against leadership as an essential ingredient to achieving high performance. But making improvements is not dependent on the single-handed leadership of one person. In fact, waiting for a superb presiding judge or court administrator to lead the move to high performance overlooks the formidable hurdles in creating and maintaining strong executives even in the private sector, where lines of authority are clear. Most courts are not organized in a way that allows a presiding judge to demand compliance with particular practices or procedures, for reasons given in Chapter Three. The loosely-coupled nature of courts places a premium on leaders who recognize they can’t go it alone. They see the need to build and sustain partnerships so as to share the dangers and exposure that can come with change initiatives.

There’s a deep vein of autonomy running through many courts that cannot be ignored. For this reason, the Framework focuses on how court-wide agreement can be encouraged and why common measures of performance are suitable. To the extent courts share basic administrative principles, they all need to see what sort of performance they are achieving with the type of managerial culture they have. Arriving at a culture conducive to high performance is a challenge involving consensus of the entire bench, not something that can be forced on judges even by an inspirational leader.

Awareness of these five misconceptions should put judges, managers, and staff members in a state of mind open to considering what the Framework has to offer. To promote full consideration of how to achieve and maintain high performance requires a bit more. The utility of the Framework can be enhanced by the application of selected strategies.

Seven Strategies for Using the Framework

This section offers strategies on how to enhance the Framework's application. The objective of the strategies is to minimize possible administrative friction, while building agreement on how the Framework supports efforts for ongoing and sustained improvement in court administrative practices.

The strategies meld the nature of the Framework's elements with what staff members at the NCSC and veterans of court administration have learned on what enables courts to hit on good ideas, secure sufficient consensus to put them into place and gather sound information on the degree new practices have worked. Specifically, seven strategies are suggested.

Strategy One: Make sure people see the big picture. A critical aspect in the move to high performance is clarity on what the real point of the enterprise is. The fundamental goal of the Framework is enhancing due process: facilitating a court's capacity to justly and equally apply the law for every individual. This concept is founded on the elemental value of fairness: every person has the right to their day in court and to have their case heard, considered and resolved by an independent and impartial judge.

The *raison d'être* of the Framework is to help courts achieve key values of utmost significance to judges and managers. While there are alternative ways to conceive of what a high-performing court looks like, the Framework focuses on four key administrative principles. They are: every case receives individual attention, individual attention is proportional to need, decision making demonstrates procedural justice, and judicial control is exercised over the legal process.

The Framework rests on the assumption judges and managers believe these values support the effective adjudication of disputes through the clear commitment to procedural due process. They orient judges and managers in their search for administrative practices that will best support the making of correct and timely legal decisions. In addition, agreement on basic administrative principles by judges and managers support the development of a performance measurement scheme that can help assess the quality of current practices. At the outset, court leaders can build support for high performance by clearly articulating their vision of court excellence and the essential role appropriate performance assessment plays in achieving it.

Strategy Two: Remember to focus on the court customers. A high performance court strives to give attention to the interests and rights of all individuals involved in the legal process. Said somewhat differently, customer satisfaction is a priority for high performance courts. Today's court leaders and managers recognize and accept the idea that courts have customers, feel more comfortable with the term "customer" itself, and acknowledge that a key part of court administration is to determine how to satisfy them.

Viewing administrative responsibilities from a customer's perspective focuses a high performance agenda because with the exception of repeat players (i.e., attorneys and parties with regular court experience) court customers often have considerable uncertainty about the legal process. As a result, a key facet of a court's administrative practice is to reduce confusion by being readily accessible, providing clear information and adhering to predictable, orderly and timely proceedings. When considering the quality of existing processes and service delivery, the court should try to see it through the eyes of the customer.

In addition, there is strong evidence to suggest that positive perceptions of a court are shaped more by how people feel they were treated than by the outcome of their case. Satisfaction with the process is most significantly shaped by whether customers believe their rights and interests are taken into account in the resolution of disputes. For this reason, court leaders should give explicit attention to the concept of procedural fairness. This means actively working with judges and staff to cement the importance of treating customers with courtesy, dignity, and respect; giving people a chance to tell their side of the story; exhibiting sincere concern and empathy; and by clearly explaining the reasons for decisions. In short, ensuring individuals receive their day in court.

Strategy Three: Emphasize collegial discussion. Once performance data starts to be collected, it is necessary to analyze and interpret the results. However, identifying problems and coming up with possible solutions is not always straightforward. There can easily be differences of opinion among judges about what, if anything needs to be done. Even if a presiding judge champions a course of action, it does not necessarily mean the plan will be universally adopted. The belief that suggested new practices are self-executing as intended is all too frequent. In the world of courts, the idea that the few can command the support or compliance of the many to new practices is doubtful.

As a result, any strategy for problem solving must be well-suited to the decision-making constraints of courts. Such a strategy needs to take into account that widespread buy-in only comes when people believe the goal and application of a new practice are relevant to them. For most courts, the lack of a clear central authority structure means it is necessary to use some form of consensus building to reach mutually agreeable decisions. The key is recognizing that there are alternative paths to a desired goal. Following some amount of deliberation over alternative courses of action, a choice can be made that will bring about the desired outcome better or easier than other options—even if it does not appear on paper to be the "best." Far from being a problem, research suggests using

consensus building to reach decisions that are good enough although not necessarily the best is the rational way to proceed. Consensus building serves to build trust and attachment. Unless court personnel communicate with one another, they hardly can be called members of the same group, which calls into question what the word “court” really means. Hence, the Framework suggests exploring and developing ways to encourage greater judicial participation in deliberations concerning performance. This strategy is not unique to performance, but it remains a critical approach to developing court-wide agreement on the importance of performance.

Strategy Four: Acknowledge the vital role of discretion. Solidarity is conducive to high performance. But the dedication to common goals based on fundamental administrative principles should leave room for individual initiative and creativity that comes with the discretion to explore new and possibly better ways of conducting business. A worst-case scenario is a court that takes uniformity to the extreme and makes performance a straightjacket.

The strategic benefit of demonstrating a commitment to discretion is most pertinent to the performance management component of the Framework. Performance results need to be interpreted and the specific problem(s) identified. Because not every proposed solution will solve the problem, adopting a flexible response that makes use of information on fixes that appear to be working as well as those that aren't increases the likelihood a workable solution will be found. In addition, the design and introduction of new practices geared to solve a particular problem should involve the input and critical feedback of all individuals expected to carry out tasks related to the new practice. It is remarkable how experienced staff members interacting with the public on a daily basis become aware of the true character of service problems and what might be done to overcome them. Seeking to make performance improvement an iterative process involving relevant data and subject matter expertise, from both judges and staff members has been proven to be a sound strategy.

Strategy Five: Anticipate a focus on case management. Despite the multifaceted nature of high performance, many judges, managers and staff members are likely to view performance primarily through the prism of case management. When discussion turns to assembling performance results, greater familiarity may prompt interest in measures pertaining to case handling, such as efficiency and productivity, rather than to other issues such as change management, accessibility, and judge-staff relations. The understandable prominence of case management should not be resisted, but the importance of a balanced scorecard warrants emphasis to prevent high performance from ultimately being too narrow and of limited interest to the full range of court customers. Therefore, court leaders should be prepared to bring the concepts of procedural satisfaction and effectiveness to the fore to achieve a well-rounded view of performance.

Strategy Six: Be sure to share the results. A central purpose of the Framework is encouraging courts to refine practices in light of performance results to better meet customer expectations. Adapting to performance results will range from strengthening to modifying to adopting new practices.

Consequently, many individuals, including judges, court staff, and attorneys, may be asked to break with familiar ways of doing business. For changes to take hold, it will help for individuals involved to be kept abreast of progress.

Sustaining improvements begins with the sharing of performance results. A chief judge or a court's leadership team can build broader support among the justice system community by circulating results. Because customer satisfaction is a focal point of performance, the sharing of performance results among judges and managers is paralleled by conversations between court leaders and customers, particularly attorneys. This dialogue serves to provide information and a rationale for planned refinements, to gain feedback helpful in interpreting past performance results, and to learn what additional concerns customers have about administrative practices.

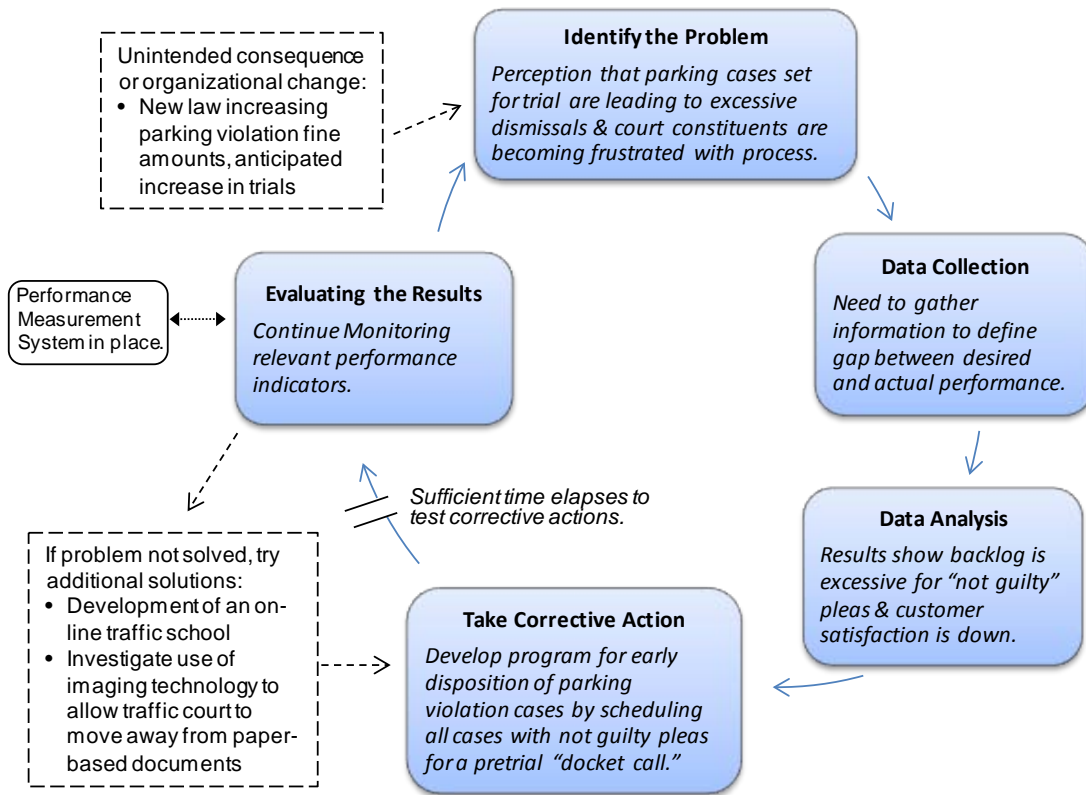
In addition, sharing performance results is key to corroboration because it helps confirm their validity and increases their persuasiveness. How well do objective performance results line up with subjective experiences? Seeking the perspective of attorneys, for example, allows the court to obtain direct feedback on how change in business practices affects individual practitioners and whether they see benefits in the change. The point is to see if performance results have face validity with key customers. The additional information, even if it is not based on a structured sampling of attorneys, strengthens the original results. Performance results based on multiple sources, even if some are informal in nature, has greater validity and credibility than strict reliance on a single measure.

Strategy Seven: Use the Quality Cycle. This final strategy accentuates the fundamental purpose of the High Performance Framework: develop a repeatable process to identify and solve court business problems that incorporates the earlier strategies. The Framework provides a series of flexible steps courts realistically can take to achieve intended results and sustain quality despite inevitable changing circumstances and new challenges. Taken together, the steps form an iterative *quality cycle* of activities that enable a court to learn from measured results and to refine its responsiveness and adaptation to problems. The court administration quality cycle consists of five main steps: identifying the problem, data collection, data analysis, taking action, and evaluating the results.

Issues related to the handling of traffic cases are used to illustrate the basic mechanics of the quality cycle. Because involvement in a traffic case is the most common reason for people to interact with a court, the management of these cases is critical for attaining high levels of customer satisfaction. That is, people's experience with traffic cases is very influential in forming perceptions on whether courts are accessible, expeditious, and fair.

Take for example a limited jurisdiction court, with responsibility for handling a high volume of state and local ordinances, having serious problems with trial backlogs.¹¹ The problem is particularly acute in the high-volume area of parking violations, where cases are set for trial following a plea of not guilty. In this court, it has become common knowledge that a plea of “not guilty” will often result in no penalty or fine being paid because the court is forced to reschedule or dismiss large numbers of parking cases to deal with its trial calendar backlog. Moreover, the results from a recently conducted access and fairness survey indicate litigants who do resolve their parking cases at trial are dissatisfied: they think the process takes too long, they are not treated with appropriate courtesy and respect by court employees, court staff do not pay attention to their needs, and the judges do not have time to adequately listen to their side of the story before making a decision.

Quality Cycle: Traffic Cases Example



This background informs the first step in the quality cycle of identifying the problem: the large backlog of parking violation cases set for trial is leading both to excessive dismissals and declining

¹¹ This illustration draws on the experience of the Austin Municipal Court discussed in David Steelman, with John Goerdt and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millenium*. (in the 2004 edition, see pp. 39-41)

customer satisfaction. Steps two and three of the quality cycle involve compiling and analyzing data relevant to better understanding the true causes of the problem and what actions might be taken. In this example, the court found that in the current year nearly 45,000 parking cases were set for trial after a plea of not guilty, while only about 750 trials were actually held (about 1.6% of the cases scheduled for trial).

Based on this analysis, the court took action (step 4) by developing a program for early disposition of parking violation cases by scheduling all cases with not guilty pleas for a pretrial “docket call.” This hearing would be a motorist’s only opportunity to plea bargain, to enroll in driving safety school (discretionary with the court), or to ask for deferred prosecution. As a growing number of cases were disposed at docket calls, more space became available on trial calendars.

The final step of the quality cycle is to review performance data to ensure that the problem has been fixed. In this example, the new program proved highly effective. Time to disposition for cases with initial not guilty pleas declined. In addition, there was a substantial decline in the trial backlog during the first 18 months of program operation. One key metric was a dramatic drop in the number of dismissals due to failure to appear by police officers—a decline of about 90%. Improvements in timeliness of case processing and predictability in case scheduling also led to rising levels of customer satisfaction.

Of course, successfully solving one problem isn’t the end of the story. A key idea of the quality cycle is continuous improvement in administrative practices. For example, the court might investigate the development of an on-line traffic school, thereby making it easier for motorists to comply with requirements of court orders and help prevent a traffic ticket from being added to the driver’s record. A more ambitious effort might involve the use of imaging technology to allow a traffic court to move completely away from paper-based documents. The ultimate goal of the quality cycle is the ongoing search for process improvements supporting efforts to provide quick, efficient, and convenient service to customers.

“If you can’t describe what you are doing as a process, you don’t know what you are doing.”

W. Edwards Deming, Statistician Professor, Developer of Quality Control and Quality Management

Summary

The High Performance Court Framework seeks to clarify how courts can achieve and sustain quality in the administration of justice. The quality cycle discussed above vividly shows how this important process of institutional improvement can take place. Moreover, there is a valuable by-product that courts can gain from engaging in high performance.

The decision to pursue high performance should lead to a heightened sense of collegiality between a court's administrative leadership and the rest of the bench, and among the bench, managers and staff members. In fact, the substantive nature of collegiality should shift from just the exchange of pleasantries to more frequent structured discussions of administrative matters. Simply stated, a move toward high performance is premised on developing agreement on common principles, a greater sense of solidarity in work orientations, shared goals and measures of goal attainment, and the sharing of reactions to results.

A performance-based call to arms should not automatically provoke defense mechanisms or passive aggressive tendencies because the issue is aimed at strengthening the institution in ways that benefit everyone. Using systematic results to characterize problems also should minimize the frequency of ad hominem attacks. Disagreement will occur but conflict will be directed at what the court should accomplish. As a result, topics that heretofore might not have been raised at regular administrative meetings will gradually surface and appropriate attention can be given. Clearly, the prospect of enhanced collegiality under a movement toward institutional improvement awaits substantive confirmation. Anecdotal evidence suggests collegiality reigns in courts that are well organized and well run. That is certainly a result worth replicating.

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