

Understanding and Diagnosing Court Culture

Authored by:

Brian J. Ostrom
National Center for State Courts
bostrom@ncsc.org

Roger A. Hanson
University of Colorado
Elizreg1558@comcast.net

Introduction

An important management truth is that there is more than one way to get things done and done well in the workplace. There is rarely a single, best way for either a private company or a public institution to organize itself to achieve high-quality outcomes for its customers. Formulating an effective strategy for a particular workplace requires not only a good understanding of the formal structure and lines of authority, but the unwritten rules, unofficial networks and underlying norms and behaviors that shape how work gets done. As a result, knowledge of an organization's culture is a crucial factor when searching for ways to improve operational effectiveness. .

The effort to better understand the role culture plays in shaping how courts operate is an enduring component of modern court administration research, with strong implications for both what we think courts are and what they can become. A line of research beginning three decades ago contends the views of judges and attorneys are critical determinants of emphasis that courts place on administrative goals (e.g., timeliness) and whether they embrace new ideas and innovative procedures¹. Thomas Church et al. call these views "local legal culture" and argue they account for why some cases are resolved more quickly than others². Variation among courts in the speed of litigation is not accounted for by objective characteristics, such as the number of cases assigned to each judge or the presence (or absence) of particular procedures (e.g. master or individual calendar). Rather, if practitioners believe cases can be resolved expeditiously, cases are in fact resolved expeditiously. In other words, people live up to their expectations³.

A more sweeping statement on the importance of judicial views as the source of what a court does is articulated by subsequent scholars. Peter Nardulli et al. advance the proposition that there are in fact distinctive "work orientations" which account for virtually all of the key

administrative differences among courts⁴. Brian Ostrom and Roger Hanson build on this insight to show how particular views among prosecutors and criminal defense attorneys are associated with the timeliness of criminal case processing, both overall and by case type⁵. Yet, while the existence and relevance of court culture is now more clearly recognized, the exact way the “views” influence culture and affect how work gets done remains elusive because of the lack of specification and measurement.

Unless we know more about the connection between culture and what happens in the courthouse, the explanatory power of culture is diminished and leaves the question of culture’s consequences unanswered. Building on and refining previous studies, this essay has three interrelated objectives:

- *Describing court culture.* This section highlights eight key aspects of an ongoing investigation into culture assessment being conducted by the National Center for State Courts. The larger investigation provides a comprehensive framework for understanding court organizational culture, along with a set of steps and tools to assess and measure a court’s current and preferred culture⁶.
- *Diagnosing court culture.* Using results from a large metropolitan court, the measurement of court culture is demonstrated and illustrations are offered on how this type of information can interpreted.
- *Reactions from the Field.* Assessing court culture is still in early stages of development, but there are already important reactions to efforts to put culture on the court community’s agenda. The receptivity of judges and administrators in several courts is discussed.

The unique contribution of culture is that it provides a road map for court leaders seeking to improve the way work gets done.

Describing Court Culture

Court culture is conceived as the beliefs and behaviors shaping “the way things get done” by the individuals—judges and court administrators—who have the responsibility of ensuring cases are resolved fairly and expeditiously. In many ways, culture shapes and defines what is possible in the work environment. Because judges and managers can develop and mold court culture, they should attend to the assessment of their culture as deliberately as they do when making legal decisions and issuing orders. The capacity of court culture to serve as a tool to promote and achieve successful court administration can be seen by looking at eight key aspects of this area of enquiry.

First, the concept of court culture focuses on the daily tasks and ongoing relationships among the judges as well as between judges and court staff members. As a result, it is grounded in activities familiar to all courts. The effort to better understand court culture offers a practical means to make a difference in courts’ success.

Second, the NCSC approach to examining court culture allows 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. It puts judges in the forefront of defining court administration rather than introducing a new management theory or proposed reform from the outside.

Third, the NCSC approach identifies a manageable and coherent set of cultures, which individually or in combination cover a wide range of courts. Specifically the NCSC framework

identifies four distinct types of culture; communal, networked, autonomous and hierarchical.

They are defined as follows:

- ***Communal***: Judges and managers 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 managers 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 managers 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 managers 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.

The development of this fourfold typology is based on an analysis of how expert practitioners believe core values affect and relate to how work gets done. Sixteen values were culled from the literature on court administration including such distinct values as collegiality, continuity with the past, discretion, standard operating procedures, flexibility, rule-oriented, innovation, judicial consensus, and self-managing. Using a tightly structured questionnaire, 53 seasoned practitioners, including judges, administrators, prosecutors and defense attorneys, compared and contrasted the values. This exercise asked the practitioners to indicate how closely each of the 16 values is related to each of the other 15 values. The results of paired comparisons, using the technique of multidimensional scaling, showed four clusters of four values each.

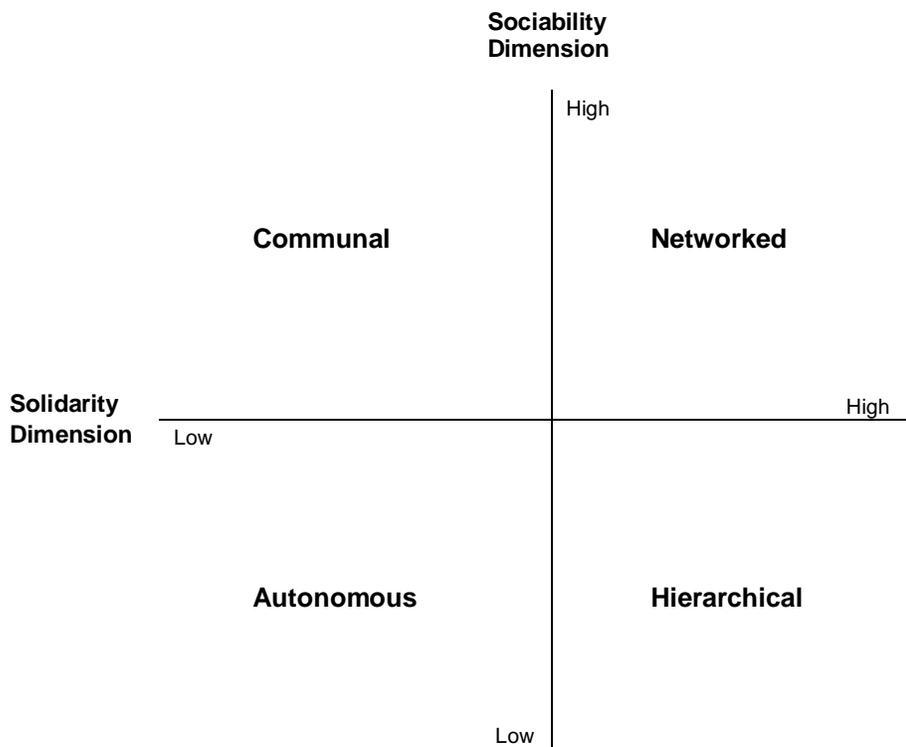
The clusters illustrate the core values of different types of cultures and are aligned along two dimensions called solidarity and sociability. These dimensions are intuitively understandable because solidarity refers to the degree to which a court has clearly understood shared goals, mutual interests, and common tasks and sociability refers to the degree to which people work together and cooperate in a cordial fashion.

Each of the four cultures is a particular combination of solidarity and sociability, as shown in Figure 1. Communal culture is low on solidarity and high on sociability. Its distinctive values are flexibility, egalitarianism, negotiation, and trust.

A network culture seeks both sociability and solidarity. Its values include judicial consensus, innovation, visionary thinking, and human development. An autonomous culture

emphasizes neither sociability nor solidarity. Its values are self-managing, continuity, independence, and personal loyalty. And a hierarchical culture stresses solidarity but not sociability. Its values are rules, modern administration, standard operating procedures, and merit. These alternative clusters of values shape the way that work gets done, as discussed below.

Figure 1
Court Culture Classification



Fourth, culture is manifested in familiar and recognizable activities called “work areas,” such as the handling of cases, the responsiveness of courts to the concerns of the community, the division of labor and allocation of authority between judges and court staff members, and the manner in which court leadership is exercised. Each particular culture’s way of doing things is matched across four work areas in the Value Matrix (Figure 2).

Figure 2: Value Matrix

	<i>Communal</i>	<i>Networked</i>	<i>Autonomous</i>	<i>Hierarchical</i>
Case Management Style	Flexibility— Judges follow accepted principles for the timing of key procedural events, but are comfortable fashioning their own approach to “do the right thing.”	Judicial Consensus— 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.	Self-managing— Individual judges are relatively free to make their own determinations on when and how key procedural events are to be completed.	Rule oriented— Judges are committed to the uniform use of standard case flow management techniques (e.g., early case control, case coordination, and firm trial dates) with the support of administrative and courtroom staff. Written court rules and procedures govern what judges do.
Judge and Court Staff Relations	Egalitarian— Characterized by teamwork, cooperation, and participation. Judges, court managers, and staff work things out flexibly as they go along. Judges agree all individual staff members should obtain satisfaction from work, but no set training program applies to all staff uniformly.	People Development— Characterized by commitment to innovation, diversity of ideas, and widespread managerial and courtroom staff development. Attention is paid to developing effective court-wide communication. Regular systematic performance evaluations are encouraged.	Personal Loyalty— Characterized by personal loyalty to individual judges. Non-standardized procedures are the norm as judges have wide discretion in how they recruit, manage and reward their courtroom support staff.	Merit— Characterized by formal rules and policies, with people following clear guidelines and written instructions about work. Reasons for rewards and demerits are clear. Poor performance is dealt with quickly. Maintaining a smooth running organization is important.
Change Management	Negotiation— The change process tends to occur incrementally through negotiation and agreement. Procedures are seldom rigid so that the actual application of policy changes may reflect revision and compromise among work teams of individual judges and corresponding court managers and staff.	Innovation— The change process tends to be proactive in order to achieve desired goals. Judges and court managers are open to new challenges and acquiring new resources to support innovation. Monitoring and reacting to broad® court performance targets are encouraged.	Continuity— The change process tends to occur sporadically as the court is generally content to preserve established ways of doing business. Centralized change initiatives are a challenge because each judge exercises a wide scope of latitude in the choice of practices and procedures.	Modern Administration— The change process tends to emphasize improved efficiency and using new techniques to measure the way work is done. Judges and court managers seek and use court performance information, data, and technologies to help make better business decisions.
Courthouse Leadership	Trust— Leadership in the court is generally considered to exemplify building personal relationships and confidence among all judges and court employees; and seeking to reconcile differences through informal channels.	Visionary— Leadership in the court is generally considered to exemplify innovation, inclusion, and coordination by the presiding judge and/or court management team to establish a collaborative work environment.	Independence— Leadership in the court is generally considered to exemplify preserving individual judicial discretion, allowing judges to use their own criteria in defining success, and not necessarily relying on the same indicators of achievement.	Standard Operating Procedures— Leadership in the court is generally considered to exemplify centralized control and organization to achieve administrative efficiency. A presiding judge and/or court management team typically has authority to establish a clear division of labor and set courtwide expectations.

Fifth, the framework does not imply any particular culture is inherently superior to another in the choice of work-related values. Every culture allows for a court to be deliberative and purposeful in its administrative decision making. Courts, with different cultures, simply are deliberative and purposeful in their own way.

This proposition is neither obvious nor simple minded because it suggests every court can succeed in every work area, although some cultures might find it more difficult to excel in some areas than other cultures. Taking case management as an example, this framework makes clear that there is no single definition or approach because how cases are handled depends on the culture that is present. Many readers will note that hierarchical case management comes closest to the traditional “best practice” model of controlling case flow through the use of clear, uniform, and established rules enforced by administrative monitoring of standardized reports.

However, a court emphasizing a particular culture rather than another might find it harder to achieve particular goals, like effective case management. In every culture there are pitfalls that a court might encounter in translating the values into practice. With case management, a common shortcoming is the failure to monitor ongoing court performance because judges and administrator assume things are getting done as intended. Moreover, the ability to detect problems is a more serious challenge in some cultures than in others because some cultures depend more on self-monitoring than others.

Sixth, cultures are measurable. A *Court Culture Assessment Instrument*, developed by the NCSC can be used to determine 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 corresponds 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.

An application of the framework to courts in California, Colorado, Florida, Maryland, Minnesota, Ohio, Oregon, Utah, Washington and the Tax Court of Canada finds examples of each of the four cultures, although the autonomous culture is the most frequent. This balanced distribution suggests courts are not monochromatic in their work orientations. On the other hand, regardless of the current culture, the vast majority of courts under study indicate a similar mosaic like preference for the future. Specifically, they tend to desire hierarchical orientations to dominate in the work areas of case management and change management, networked orientations to dominate judge-staff member relations and a communal culture to dominate the area of courthouse leadership.

Seventh, culture is found to have direct effects on a court's ability to achieve legal ideals, such as timeliness, access and fairness, and managerial effectiveness, but this empirical relationship does not presume any one culture is more desirable than another. A reason why some cultures might come closer than others is because judges and managers in some courts act to avoid the limitations associated with their present culture.

Eighth, the difference between a current culture and a preferred culture is a natural basis for defining what "planned change" is. Judges and managers who take the culture survey can see where they are now and where they would like to be. The task then becomes looking at and determining what existing policies, procedures and practices require adjustment to move to a more preferred state of affairs.

Diagnosing Court Culture

The study of culture provides a way to understand the most fundamental administrative concerns and goals that are shared by most of the people in a court, that tend to shape judge and staff behavior, and that often persist over time. Culture is not just a set of views, beliefs and perspectives. It is the grounds for how work gets done. Each culture reflects alternative ways that responsibilities can be carried out and provides a means to compare and contrast actual operations among individual courts. The payoff for a court of conducting its own culture analysis is a deeper understanding of how its culture manifests itself in the observable world of how work gets done. Each culture—and the values it espouses—influences in a distinctive manner the way cases are handled, how the court responds to its environment, how the court uses staff members, and the overall direction of the court.

Culture focuses attention on aspects of the work environment exercising a strong, independent influence on the completion of the tasks vital to the maintenance and functioning of the legal process. Values composing a court's culture shape the how, why, and when of decisions made by judges and the activities conducted by staff members. Because these individuals are responsible for putting policies and procedures into place, they are the key ingredients for ideas to take hold. Until a court's values are incorporated into daily routines and work habits, they stand very little chance of influencing court performance. For this reason, cultural values are more important to assess as indicators of the current state of affairs than virtually any other aspect of a court, such as structure, organization, process or resources.

The assessment of current and preferred cultures provides a realistic picture of what is both a feasible and meaningful degree of change in how a court does business. By capturing a court's preferred culture, insight into what judges and administrators aspire to achieve is gained.

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.

This approach to assessing court culture is illustrated with results from a large US metropolitan court. Following completion of the *Court Culture Assessment Instrument* in this court, the results showed there to be important difference between judges and senior staff members on the most appropriate kind of case management the court should seek to implement. Their current and preferred views are displayed below in the form of “kites.” Figure 3a focuses on judges and Figure 3b focuses on senior staff.

Both have fairly similar views on the current style of case management, which is that judges tend to fashion their own approaches (a primarily autonomous style). In addition, going forward, both would like to reduce the degree of autonomy in case management. Where differences emerge is on the direction of change. Looking at the shape of the darker super-imposed preferred kites shows judges tend to favor loosely enforced case processing norms (what is referred to as a Communal culture), while senior staff have a strong preference for the handling of cases to be governed by a relatively uniform application of the rules (a more Hierarchical culture).

This particular pair of contending perspectives is a useful prism through which to understand the nature of contemporary courts as they seek to determine the right balance between discretion and the uniform application of rules. Several important patterns and implications are seen in Figures 3A and 3B.

First, and foremost, the data suggest serious, dedicated and knowledgeable practitioners in the same court hold to different views or definitions on how cases should be handled in the

future. Both the judges and senior court managers in this court realize the legal process involves the effective scheduling, arranging, and conducting of a series of key procedural events. The work involved in discharging that function is called case management. But alternative views do exist on the exact manner of HOW this critical area of work should be carried out. And to successfully implement a workable case management plan, a court must understand and address these differences in perspective.

In addition, it is hardly surprising that judges and managers have different opinions on the steps necessary to improve case management. Because judges are in the court room or chambers every day, and managers generally are not present in these settings, judges are more sensitive to and aware of the raw human drama and emotion surrounding individual cases. Consequently, they are more likely to view uniformity as a goal, but not a universally appropriate way to deal with real-world circumstances in the courtroom. Judges are much more likely to discern the need for “improvisation” and individually tailored methods that downplay formalities and standardization.

The somewhat weak embrace of uniform case management by judges also is a natural product of a general desire by judges to retain collegiality when they have it (or think they have it). Judges who otherwise might see the benefits in a more standard case handling practice are understandably reluctant to give up a sense of friendly relations with colleagues in exchange for a more austere work atmosphere, which they associate with a uniform rule application style of managing. As one judge in the court under study observed about case management, “I have the sense that the culture of our judiciary is that no one is going to force any judge to do it in a certain way. There is a high degree of collegiality that we want to keep.”

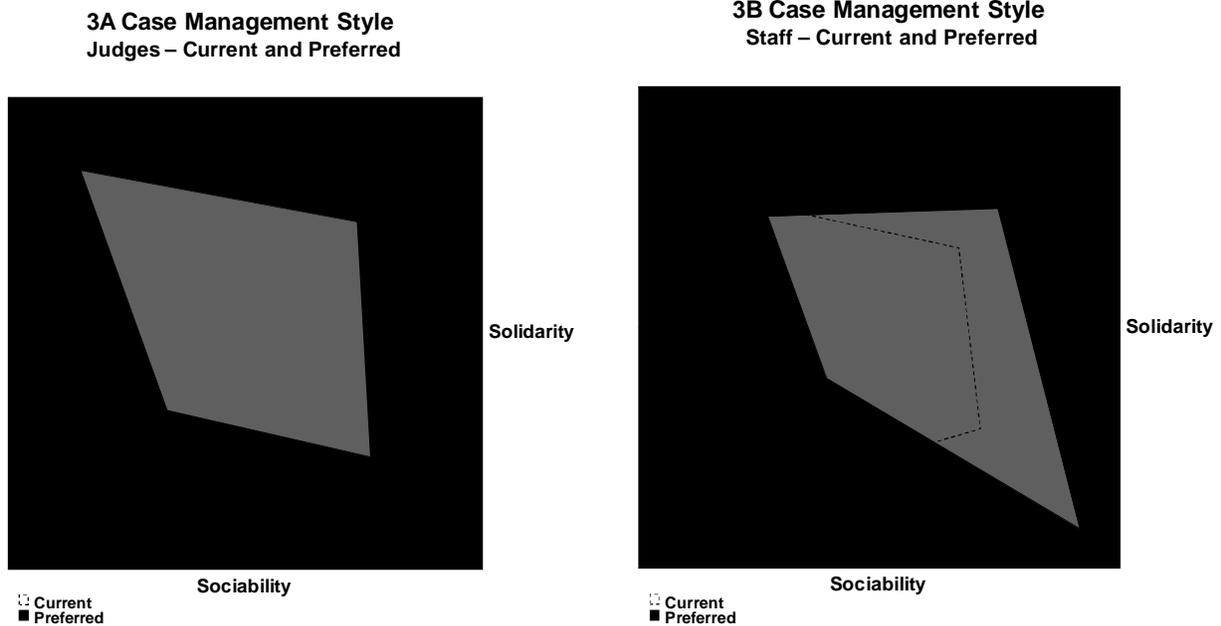
To the extent that this sentiment is representative, the data in Figures 3A and 3B provide a clue on what inhibits judges from accepting the form of case management leading experts in the field advocate as the way, and perhaps the only way, to achieve efficiency and timeliness. The benefits of a standardized case management scheme are not by themselves sufficient to lure judges to consider moving from a combination of an autonomous and communal system to a more hierarchical one. An implication from this situation is that a system of uniform rules has its drawbacks or limitations despite its promise of a more timely resolution process. Timeliness by itself is not appealing enough to attract adherents of uniform rules even among judges who might see limitations in their current circumstances. This possibility helps to explain why most American courts have not adopted uniform rules and put them in practice despite over thirty years of advocacy by judicial administration leaders.

Finally, the results from Figures 3A and 3B point out how courts can both reconcile conflicting preferences and generally chart a course of cultural change and accompanying practices. Specifically, reconciliation between the bench and senior staff members in this court became the mutual agreement to move toward a more networked orientation of case management. The judges can retain the value of collegiality and avoid a straight jacket prohibiting deviations when and where necessary by moving toward a networked culture. Similarly, court managers can move in the same direction and gain the value of guidelines in managing cases over unfettered judicial discretion which they see as a clear deficit.

Moreover, the joint move to a more networked case management oriented culture reduces the problems of initial implementation and increases abilities of both groups to suggest corrective action to remove any administrative friction they experience in trying out a new approach to handling cases. In fact, both groups gain from the experience of working smoothly

together under a new regime and can use it as a stepping stone to a potential move toward a more hierarchical approach. Judges can see how friendship is not necessarily sacrificed by moving away from an autonomous and communal position whereas managers can see how an appreciable increase in efficiency is achievable without tightly prescribed rules. Such knowledge facilitates the transition for the consideration of any additional moves in the future. For all these reasons, the NCSC recommended such a move to the court under study, which in fact accepted and began implementing this advice. Thus, by examining its culture, a court is in a prime position to define its future through a series of planned steps from its current to its preferred culture and is able to accomplish this task even when there are internal differences with the institution.

Figures 3A and 3B: Culture Kites for the Current and Preferred Cultures of Judges and Senior Staff Members.



Reactions from the Field

Because it is possible to measure the four cultures and because the difference between current culture and preferred culture is an internally inspired basis for reform, cultural analysis is now being accepted by many judicial leaders as a sufficiently promising idea to explore and to test out in the real world. For this reason, the NCSC has been engaged with a variety of courts ranging widely in size (i.e., 2 to 140 judges) and location (i.e., many different states and Canada) to take a cultural inventory and to use the results to chart a new course of direction. Despite the early stage of development, there are already important reactions to efforts to put culture on the court community's agenda.

- *A striking reaction is that judges and administrators welcome the opportunity to see their culture in a more explicit light and the way it shapes choices about the way work gets done. Because many administrative decisions might be made by a small leadership, the inclusive opportunity for each judge to contribute to the definition of their court's culture is an invitation many judges accepted. Also, due to the relatively widespread nature of an autonomous component in most courts, many judges appreciate the opportunity to discuss how work is done in chambers and on the bench with their colleagues.*
- *The vocabulary and the structure provided by the culture framework are well received. Judges and administrators grasp the meaning of the cultures quickly and talk freely about what the culture survey reveals. They are adroit in noticing the shape of their current and preferred culture kites and they comfortably describe themselves as being one or a particular combination of the four cultures in each work area.*

- *Every court appreciates the nuance underlying the array of four cultures. In fact, the values and practices of communal and networked cultures seem most intriguing to judges who perhaps are most familiar with the circumstances of an autonomous culture and perhaps envision a hierarchical court as its only alternative. For example, judges frequently ask questions about how exactly do judges agree upon “norms” and what do the norms cover.*
- *Even courts that are performing well see the value of cultural analysis. Group discussions surface areas that warrant improvement even in high performing courts. For example, a communal culture might seek to maintain a collegial and cooperative approach but find cultural analysis a fruitful means to strengthen formal communication channels to ensure everyone is informed of collective decisions and thereby expected to follow them. The dimension of solidarity reminds court leaders of the need to avoid the results of collective decisions from inadvertently being lost, misplaced or forgotten due to the lack of standardized record keeping and communication procedures.*
- *Courts are interested in culture as a tool to use in conjunction with other initiatives, such as strategic planning and reengineering, already underway. A court may learn very quickly from the culture survey and subsequent discussions that it is overcommitted by having too many projects for the members of the court to juggle, lacks a sense of clear priorities, fails often to complete projects before taking up new ones and might even treat projects as successful with limited evidence of positive performance.*

These reactions show that judicial leaders in many courts see culture analysis as an essential prerequisite to successful innovation and reform. As more experience with this

approach is gained, it will be possible to more clearly see the extent to which court culture in fact produces meaningful and lasting change in the real court world.

Conclusion

Court leaders and managers know, at least intuitively, that culture affects court operations. A long line of literature from the field of court administration makes clear that differences in court culture is a key factor in explaining differences in court performance. A contribution of the current research is the development of a conceptual framework and set of measurement tools that permits the variation in court culture to be described in a coherent and comprehensible manner. The four cultures of communal, networked, autonomous and hierarchical are sufficiently broad to capture the way work gets done in the real world. Moreover, courts are spread across the four categories instead of being bunched up in one or two ambiguous categories, such as well and not so well managed.

In addition, the combination of cultures is measurable, avoiding the classification of courts into rigid, wooden and unrealistic “pure” types. There might be some courts with very dominant cultures, but the culture framework accommodates this possibility without assuming it holds everywhere. The results of measuring culture are a valid and reliable basis for changing the behavior of judges and managers. By comparing current and preferred cultures, practitioners can begin to explore a path, which they control, to greater institutional excellence and a more hospitable work environment for everyone. The capacity of courts to see the differences between where it is today and where it wants to be tomorrow enables them to reduce the problem of changing the way things get done to manageable proportions. A preferred culture provides a clear and meaningful target to shoot at and its distance from where the court presently stands

suggests a timetable for making changes in goals and practices. Simply stated, a preferred culture is the basis for internally inspired reform that members of a court can understand.

Finally, the existence of alternative cultures is a prudential note of caution to externally inspired reform. Outside experts tend to propound the idea that reforms, which they advocate, take on a fairly strict, programmatic form containing specific elements and prescribed relationships. Court improvement programs might mention the possibility of tailoring reforms to local needs and circumstances, but such a modest concession does not take into account the realities of alternative cultures. This concession fails to accommodate the fact that every court sees reforms through its own particular lenses. Consequently, if a reform incorporates only a particular cluster of values on how work should get done, receptivity to the reform will be limited to particular types of cultures, and diminish the prospects for widespread diffusion of new ideas. Hence, reformers need to consider how courts can proceed in alternative ways to approximate a desired goal and practice.

1. Raymond Nimmer, *A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing*, 48 Den. Law J. 206. (1976) and _____, *The Nature of System Change: Reform Impact in Criminal Courts* (1978).
2. Thomas W. Church, Jr., Alan Carlson, Jo-Lynne Q. Lee, and Teresa Tan, *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. (1978).
3. Thomas W. Church, Jr., *The 'Old' and the 'New' Conventional Wisdom*, 8 Just. Sys. J. 712 (1982).
4. Peter F. Nardulli, James Eisenstein, and Roy B. Fleming, *The Tenor of Justice: Criminal Courts and the Guilty Plea Process* (1988).
5. Brian J. Ostrom and Roger A. Hanson, *Efficiency, Timeliness, and Quality* (1999).
6. Brian J. Ostrom, Charles W. Ostrom, Jr., Roger A. Hanson, and Matthew Kleiman, *Trial Courts as Organizations* (2007).