

Report on the 4th National Symposium on Court Management

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020



Prepared By:

Peter Coolsen

Court Administrator

Criminal Division

Circuit Court of Cook County, Illinois

Michael Buenger

Of Counsel

National Center for State Courts



This document has been prepared with support from Grant No. SJI-10-1-099 from the State Justice Institute (SJI), with additional support from the Department of Justice/Office of Justice Programs/Bureau of Justice Assistance (BJA). The points of view and opinions offered in this report are those of the authors and do not necessarily represent the official policies or position of SJI and BJA.

Table of Contents

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Dedication

I. Introduction	5
II. Impact of Trends Shaping the State Courts.....	7
A. Pace of Social Change	
B. Demographic Changes	
C. Impact of Technology	
D. Economic Change	
E. Overarching Trends Shaping Courts	
III. Governance and Leadership of the Courts.....	11
A. Introduction	
B. Ten Principles of Court Governance: One Unified Court’s Perspective	
C. Response to Principles of Governance: Non-Unified Perspectives	
D. Response to Principles from a Panel of Trial Court Judges and Administrators	
E. Observations from Small Group Discussions & Informal Group Dialogue	
F. Afterword	
IV. Modernizing the Courts	24
A. Responses to Changes in the Trial Courts	
B. Reengineering in the States: The Arizona, Minnesota, and Vermont Experience	
V. Conclusion	27
VI. Appendix.....	28
o Symposium Agenda	
o List of Participants	
o Working Group Summaries	

Dedication

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Mary McQueen, president of the National Center for State Courts, opened the 4th National Symposium by acknowledging the work and legacy of the late Edward C. Gallas. As McQueen observed, Ed Gallas was one of the “founders” of the modern profession of court administration, and it is to his legacy that this report is dedicated. The challenges that faced Gallas and his colleagues at the beginning of the profession remain today. So it is fitting to open the Symposium report, as McQueen opened the conference itself, with a tribute to Gallas’ insight as well as the challenge he laid before all court leaders:

Opinion on whether courts were manageable was almost equally divided in a group of judges discussing the issue some years ago. Some asserted that the courts were not manageable. Others asserted that there was no need for management. Today, some very well-informed people might agree that the courts as currently constituted are virtually unmanageable. Few, however, would consent to the proposition that there is no need for their management.¹

Few would question today the need for continued vision and leadership from state court leaders for the state court community, particularly at a time of such immense change and pressing challenges. Gallas would be proud of the profession he helped establish and the level of discussion on improving the administration of justice that is taking place within the state court community.

¹ Ernest C. Friesen, Edward C. Gallas, Nesta M. Gallas, *Managing the Courts* (1971).

I. Introduction

The management and administration of state courts has historically evolved over time, driven by societal trends, technology developments, and the increasing and ever-changing demands being placed on state courts. For more than 30 years, state courts have examined these challenges and explored the most productive and efficient way for state courts to adapt and move forward.

This discussion took place October 27-28, 2010, when the 4th National Symposium on Court Management was held in Williamsburg, Virginia. More than 100 court leaders and scholars from around the country participated in the Symposium, hosted by the National Center for State Courts (NCSC) and generously supported by grants from the State Justice Institute (SJI) and the Bureau of Justice Assistance (BJA). The first Symposium was held in 1981, and they have followed every 10 years.

“How you used to make it in the system, is not how you make it today,” moderator Ron Stupak said in opening remarks, setting the tone for the one-and-a-half day Symposium. Courts by nature are tradition-based institutions, he said, steeped in a culture of deliberation and methodology to allow for reasoned and rational decisions. This culture, however, is at odds with today’s fast-paced, technology-dependent society. Stupak said courts “must stay in tune with what’s happening” in regards to the fundamental



Dr. Ronald Stupak

changes required of state courts today.

The Symposium focused on three areas of importance to the future of state courts:

- Examining trends expected to impact state courts in the near and mid-term
- Defining and improving state court governance
- Modernizing the institutional, procedural, and administrative capability of state courts to respond to the impact of new trends

Panelists and discussion groups on the Symposium’s first day focused on a white paper titled “A Case for Court Governance Principles.” The paper, authored by Utah Chief Justice Christine Durham and Utah State Court Administrator Daniel Becker, outlines 10 unifying principles that serve as a starting point for critiquing existing

models – and they served as a blueprint for much of the Symposium. The pros and cons of the principles were explored in a variety of ways: a unified court’s perspective, a non-unified court’s perspective, and from the perspectives of trial court judges and court administrators. All Symposium participants broke up into 10 working groups to further evaluate the principles. (See group summaries in the Appendix.)

Day Two explored the emerging trends shaping the state courts – stagnant budgets, declining case-loads but increasingly complex cases, increased pro se litigants, aging facilities, equipment, technology, and an aging workforce — and provided real-world examples of courts that have gone through the reengineering process and how they benefited from it and what other courts can learn from it.

This report reflects on the Symposium’s presentations and discussions and explores what challenges and opportunities lay ahead.



Dale Kasperek

Speaker John Martin, director of Immigration & the State Courts Initiative for the Center for Public Policy Studies, summed up the Symposium’s mission, “We have been able to anticipate the future in the past; we can anticipate what the courts will look like in 2020; we must shape a better future.”

Thanks to Dale Kasperek, who was project manager for the 4th National Symposium on Court Management.

II. Impact of Trends Shaping the State Courts

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Presenter: John A. Martin, Ph.D.

Director, Immigration and the State Courts Strategic Initiative, Center for Public Policy Studies



John A. Martin

Courts, like law, form an integral part of the fabric of states and local communities. They both influence and are influenced by changes that occur well beyond the judicial system itself. Indeed, one may argue that general societal trends can have greater expression in the courts as the forum in which individual disputes are litigated with potentially broad societal impact. As Alexis de Tocqueville observed almost 200 year ago, “Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question. Hence all parties are obliged to borrow, in their daily

controversies, the ideas, and even the language, peculiar to judicial proceedings.”² Consequently, courts can neither ignore their susceptibility to nor their impact upon the trends affecting law, culture, and society.

Dr. John Martin presented his view of evolving trends that will impact state courts and that will require the courts to identify steps necessary to modernize their systems in light of these trends.³ He outlined four areas of social change of particular note:

- (1) alterations in the *pace of social change*
- (2) basic *demographic shifts* in the population of the United States
- (3) the impact of the *technology revolution*
- (4) *fundamental economic changes* in American society

A. Pace of Social Change

Although society is always changing, the pace of change has escalated greatly, compelled in part by the impact of technology and the speed with which information flows across the culture. There is no indication that the speed of change will slow; if anything, the pace will quicken. This pace of change has many causes:

² Alexis de Tocqueville, *Democracy In America*. (Francis Bowen ed., Henry Reeve trans., Sever & Francis 1862) (1835).

de Tocqueville also noted:

Whenever a law which the judge holds to be unconstitutional is invoked in a tribunal of the United States, he may refuse to admit it as a rule; this power is the only one which is peculiar to the American magistrate, but it gives rise to immense political influence. . . . The political power which the Americans have entrusted to their courts of justice is therefore immense.

Id. at 127–28.

³ Much of this section is taken from the work of John Martin, Center for Public Policy Studies, on changes affecting state courts, including his presentation at the 4th National Symposium, *Trends Shaping the State Courts 2000-2020*, the article he coauthored with Brenda Wagenknecht-Ivey in the spring 2011 *Court Express*, and their article in the NCSC publication *Future Trends in the State Courts 2011*.

- the ease of human movement
- the Internet and access to information from across the globe
- the ubiquitous nature of technology and the speed of technological advance
- demographic and economic shifts that are reallocating both economic and political power

These trends, along with others, are having a profound impact on the nature of disputes, the role courts play in resolving disputes, and the expectations people have concerning the judicial and dispute resolution process.

The pace of change is reflected in law as well. For example, the rapid movement of people across the globe is compelling the development of international conventions intended to govern such areas as inter-country adoption, e-commerce, child protection, securities regulation, and the civil process. International conventions, once the realm of national governments, may soon govern the resolution of disputes at the state level involving transnational issues or persons. Likewise, state legal regimes are changing to address rapidly evolving circumstances, such as the impact of recent foreclosure filings on state courts and the evolution of problem-solving court methodologies. Technology, perhaps the single greatest driver of rapid change, is altering the manner in which we communicate with one another and the manner in which we interact with government. Many activities of government that once required a personal appearance, *e.g.*, renewing licenses, creating corporations, and filing court documents, are being handled through Internet transactions at the speed of light and with little human intervention.

As a result, state judiciaries face monumental challenges to adjust to the pace of change. This is particularly challenging to courts, perhaps because courts are tradition-based institutions framed by a culture of principled and deliberate decision making. Court leaders avoid a rush to judgment, which at times is reflected in the process by which we adjust to changing circumstances. Courts must face the challenge of balancing a “rush to



Lilia G. Judson and Marea Beeman

judgment” against the public’s demand for more rapid responses to its needs. People are developing an expectation that access to services should take place at the speed of light and not in periods of days or weeks or months or years. Whether this is good or bad remains to be seen. That it is happening is beyond dispute.

B. Demographic Changes

The United States is undergoing yet another significant demographic change. The country’s population is aging as so-called baby boomers reach retirement age. At the same time, life expectancy has increased with advances in medical care, which has created entirely new issues in healthcare law, elder care law, and public support for retirees. The budgetary impact of this trend is stark and pervasive. In 1950, there were 16 workers paying into the Social Security system for every retiree drawing benefits. Today the ratio is 3:1. Consequently, the number of elderly who may need access to the courts and court services will increase along with the nature of the cases they present, *e.g.*, elder abuse, conservatorships, and probate.

Despite the aging of the population, the United States still has one of the youngest populations among developed nations of the world – more as a result of immigration and not increased birthrates. Today’s youth face difficulties of their own, ranging from gang-related violence, to drug abuse, to

employment challenges. These issues find their way into the state courts. At the same time, today's youth are far more technologically savvy, and this fact will surely drive the manner in which future generations interact with the justice system and how they demand and receive services.

The face of America is becoming more diverse, with no one social, ethnic, nor racial group commanding an absolute majority in terms of numbers and ultimately in terms of power. Immigration in the United States has reached levels not seen since the great European migration of the late 1800s and early 1900s. One of every four children in the United States today has at least one immigrant parent, and 17 million of these children have at least one illegal immigrant parent. This development has social, political, and economic implications for state courts.

C. Impact of Technology

Much of the change we are experiencing is a result of the unprecedented technology revolution that has taken place in the last 30 years. Rapid advances in technology have had a significant impact on both economic productivity and American culture. Sophisticated digital technology has become ubiquitous in the workplace and in society. Social media and social networking are building new and yet unclear ways of creating and maintaining relationships, communicating, doing business, and challenging political establishments.

Although advances in technology certainly bring many opportunities, there can be a downside to this technological revolution. As the public increasingly accesses services through technology, the connectedness to the institutions people interact with will become more distant. Rather than speak with the clerk behind the counter, people will interact with bits and bytes over the Internet.

Yet public support and confidence in public institutions is a deeply personal and cultural affair. The proper use of technology can build support for systems by proving them to be more transparent, responsive, and capable of delivering services

in a near real-time environment. Rather than contact the court for case information, attorneys, litigants, and the public can monitor case developments from the convenience of their homes or offices. Yet the use of technology purely as a means of reducing costs in the pursuit of productivity may have its downside by simply increasing the distance between the courts and the people they serve. Courts will increasingly face the challenge of balancing the use of technology with the demands of constituents for greater access and transparency with the importance of remaining connected to the citizenry as the keystone of judicial legitimacy. This challenge may be particularly acute in the future as younger generations become prime constituents and users of the justice system.

D. Economic Change

By many accounts, the United States is experiencing a fundamental restructuring of its economy. This restructuring includes a protracted economic recession, a slow and uneven recovery, sustained levels of high unemployment, and increased income stratification. This restructuring is also evident in the increasing productivity of American workers and thus the potential for protracted unemployment or underemployment as traditional, human-driven manufacturing is replaced by technology. As a result, technologically skilled workers may have an easier time finding employment and moving between jobs while other skilled workers will find an increasingly less hospitable employment environment.

The recession of 2008-2009 had real consequences for courts. The collapse of the housing market and resulting credit crisis resulted in dramatic declines in state and local government revenue. The immediate impact on state and local budgets resulted in substantial cuts in funding to the courts and other parts of government precisely at the same time that demand for government services increased. According to the National Association of State Budget Officers (NASBO), although state revenues rebounded somewhat

in 2010 and 2011, revenues and spending still remain below pre-recession levels.⁴ Increases in state revenue were, however, almost immediately consumed by Medicaid requirements as more unemployed workers sought healthcare coverage under state programs.⁵ State and local governments laid off public employees at unprecedented rates, required involuntary furloughs, and even shuttered some court operations in an effort to trim public spending.

E. Overarching Trends Shaping Courts

In summarizing the court environment, Dr. Martin identified several overarching trends that he predicts will impact courts. The list includes:

1. Structural budget deficits in state and local governments, increasing scrutiny of the use of public tax dollars, and the emergence of what seems to be a “perpetual funding crisis” in the courts
2. Ideologically driven politics that threaten judicial independence, the public’s perception of fairness, and the public’s confidence in the courts
3. Challenges in policy, planning, and management of existing and emerging technologies in the courts
4. An increasing use of social media and social networking as a way to build and maintain relationships, communicate with constituents, and conduct business
5. Increasing numbers of court users with diverse, rapidly changing, and evolving needs.
6. A demand for “civil court reform” compelled by the high costs of civil litigation and the migration of cases into the private justice system
7. Declining caseloads generally, but an increasing proportion of more complex and difficult cases



Jonathan Mattiello

8. An increasing demand for therapeutic and problem-solving approaches to dispute resolution and justice services
9. An emphasis on decreasing costs of defendant incarceration and increasing opportunities for diversion
10. Increasing pressure on state courts for performance measurement,

demonstration of program effectiveness, and achievement of better case outcomes

In addressing these trends, court leadership must divest itself of the notion that courts will return to a period of equilibrium defined by past realities. Rather, court leaders must recognize that a “new normal” is being fashioned; one which is not only marked by a prolonged period of resource demand confronting a prolonged period of resource stagnation, but also one that presents dynamic opportunities for improving the structure, governance, and business of the state courts. It is against this backdrop of an evolving “new normal” that court leaders must struggle to provide services in an increasingly diverse society. Consequently “modernizing” the state courts entails more than changing case management processes or creating new programs; it requires an understanding of emerging demands for substantive and procedural justice and calibrating the mission of the courts to meet these emerging demands.

⁴ National Association of State Budget Officers, *NASBO Update: Revenue Situation Improves as States Approach End of Fiscal 2011*, <http://nasbo.org/>.

⁵ See *id.* (“As a result, states are significantly increasing their own Medicaid spending in order to meet federal requirements. Medicaid general fund spending is projected to increase by \$16 billion in fiscal 2012, while general fund spending in K-12, higher education, public assistance, and transportation are all projected to decrease.”)

III. Governance and Leadership of the Courts

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Presenters: Daniel Becker, Administrative Director, Utah Courts
Hon. Christine Durham, Chief Justice, Utah Supreme Court

A. Introduction

One of the most significant challenges facing state courts in the coming years is the question of governance and the principal considerations that will drive court governance. One model of court governance was presented by Utah Chief Justice Christine Durham and Utah Administrative Director Daniel Becker, who presented the findings of their work⁶ from the Executive Session sponsored by Harvard University's Kennedy School of Government and the National Center for State Courts (NCSC). Framed around 10 principles, Chief Justice Durham and Becker presented a vision of *principle-based leadership*, the elements of which should have universal appeal regardless of the structure of courts. However, as both the authors and participants acknowledged, what may have general universal appeal in theory is another thing in practice, particularly given the loosely coupled nature of state court governance. Before addressing the 10 principles, it is worthwhile to set a context for current state court governance by making reference to several remarks by Chief Justice Durham.

Governance in state courts presents a particular challenge for two primary reasons:

(1) state courts are by culture and design loosely coupled organizations, in which the members tend to value independence and

autonomy over strict organizational coherency; and (2) the prime actors within state courts – judges – draw their authority, credibility, and power not internally from the organization but rather externally from sources such as state constitutions, gubernatorial appointment, or direct popular election. These factors significantly influence governance because institutional priority and policy setting, whether on the state or local level, is impacted by the value placed on autonomy and independence. Even in the most unified of court systems it must be acknowledged that centralized organizational control is more myth than fact since judges at all levels draw a significant amount of their power independently and without connection to the overall organization. Consequently, court governance and court leaders must take this culture and design into consideration. One cannot govern courts like corporations, or even like the executive branch, where



Daniel Becker

⁶ The Durham/Becker paper, "A Case for Court Governance Principles," is available at www.ncsc.org/4thsymposium, along with video of sessions and other readings.

leadership is both culturally and structurally more defined and hierarchical.

Principle-based leadership of the state courts is critical given the many challenges that face our systems if the courts are to be accepted as a truly independent branch of government. As Chief Justice Durham noted, some degree of autonomy and self-governance is necessary if the judiciary can call itself a branch of government. But this in turn requires state courts to address the challenge of cohesive governance within a highly diffused organizational structure. Perhaps the most closely aligned organizations to state courts are universities and colleges. Yet even here, as Chief Justice

Durham noted, these organizations retain more authority over the actions of their primary actors than do the courts. Consequently, courts may be some of the most loosely coupled organizations in America. Leading courts requires a high degree of flexibility, outreach, consultation, and participation if the courts are to be seen in fact and in perception as coherent organizations and not simply as a group of individuals occupying the same building. To achieve this, leading courts must be an exceedingly principled effort that balances organizational goals and accountability with autonomous and independent judgment.

B. Ten Principles of Court Governance: One Unified Court's Perspective

The work of Chief Justice Durham and Administrative Director Becker produced two significant contributions to discussions on court leadership and management. First, their work resulted in a type of court culture matrix for examining the leadership based on the underlying configuration of systems as defined by Thomas Henderson and cited in the Durham/Becker work: constellation, confederation, federation, and unified. This matrix can help court leaders more clearly articulate the nature of the underlying structural and cultural considerations that drive many aspects of court leadership. Second, their work in defining 10 principles of effective leadership for the 21st century should provoke further discussions on principle-based leadership of courts. It must be noted that although the 10 principles were articulated in the context of the Utah state court system, which is one of the most unified systems in the nation, the principles themselves have universal application systemically and largely independent of the constitutional or legal design of a system.

Court System Configurations

Constellation - "The state judiciary is a loose association of courts which form a system only in the most general of terms . . . numerous trial courts of varying jurisdictions . . . which operate with local rules and procedures at least as important as any statewide prescriptions . . . Formal lines of authority among the courts are primarily a function of legal processes such as appeals . . ." (Henderson et al.1984:35)

Confederation - "A relatively consolidated court structure and a central authority which exercises limited power. Extensive local discretion . . . There are clearly defined managerial units at the local level administering the basics of judicial activity." (Henderson et al. 1984:38).

Federation - "The trial court structure is relatively complex, but local units are bound together at the state level by a strong, central authority" (Henderson et al. 1984:41).

Unified - "A fully consolidated, highly centralized system of courts with a single, coherent source of authority. No subordinate court or administrative subunit has independent powers or discretion" (Henderson et al. 1984:46).

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

Perhaps the most critical principle of the 10 is the need for a coherent governance structure for systemic policymaking and administration. As Becker observed, a court system is only as good as the people that comprise it. No constitutional provision, statute, or court rule will guarantee success if people are not willing to work with and within a clearly defined system of governance. Becker explained how this is achieved within the context of the Utah courts and the judicial council. A well-defined government structure does not necessarily mean state-centered administration and management of the courts. It is equally applicable and necessary within the context of courts designed around the constellation, confederation, and federation models. However, he suggested that local courts in a non-unified system could benefit from securing a more cohesive governance structure that enables broad participation in policy setting and implementation.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

The highly diffused nature of state courts demands that court leaders elicit and engage judicial officers and administrators across all levels of the judiciary. Becker noted that participation in organization decision making minimizes the tendency of judges and others to act autonomously and without regard for the judiciary as an institution. Likewise, an inclusive decision-making process allows input from all levels, therefore minimizing the tendency of courts, particularly trial courts, to feel that decision makers do not understand the impact of their decision. In Utah, for example, most of the state's trial judges serve either on the judicial council or one of its advisory committees, bringing court leaders into a participant-based decision-making process rather than imposing decisions from the top.

Although this principle has great importance in the management of state unified systems, it has application within the context of local trial courts where judges can be independent actors with little regard for the local institutional standing of the courts. In loosely coupled organizations where leadership is diffused and administrators have limited tools to build cohesion, designing and implementing opportunities for meaningful input may be one of the best approaches to establishing and leading the institution of the courts.

PRINCIPLE 3: A system that speaks with a single voice

Given the inherent design of state courts and the external power centers of their primary actors, speaking with a single voice on major policy issues is a challenge. As Chief Justice Durham noted, legislatures have little inclination to pick and choose between competing and conflicting interests of the various actors within the judiciary. Therefore speaking with a unified message on issues of concern to state judiciaries is critically important to establishing the judiciary as a separate branch of government. In the absence of coherent messaging, the courts can look like an ungoverned and ungovernable institution. This invites others to direct and manage the internal affairs of the judiciary or, at the very least, disparage the courts as a legitimate independent branch of government in practice.

PRINCIPLE 4: Selection of judicial leadership based on competency, not seniority or rotation

Courts in the United States have a long tradition of selecting leaders based on systems of seniority or rotation. The result of this approach to leadership selection can be twofold: (1) judicial leadership positions may not be filled by individuals who are interested in or capable of providing dynamic leadership; (2) systemic policies, agendas, and decision making are constantly in flux and dependent, not on long-term institutional need, but

rather on the interests of individuals who serve in leadership at that particular moment in time. Just as judges, administrators, and personnel should be selected based primarily on considerations of capability, so too should competence and capability be the driving factor in the selection of judicial leaders. In Utah, for example, no judicial leadership positions are selected on the basis of seniority or rotation.

PRINCIPLE 5: Commitment to transparency and accountability

The legitimacy of court systems hinges on a commitment to transparency and accountability. Claims to institutional independence must be met with recognition of the obligation of courts to make information available. Providing information extends beyond the use of resources to include performance-related information so the public and other institutions of government have great insight into the courts and more accurate information concerning the operations of the courts.

Becker explained that in Utah the system has embraced the use of CourTools and makes both systemic and court-specific performance results available on the Internet; judicial council meetings are open to the press and public. Performance data is routinely used in working with the legislature to explain court needs and impacts of legislative and appropriation actions. These steps and others demonstrate the willingness of courts to be accountable and, in turn, can bolster public support for institutional independence.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

As both Chief Justice Durham and Becker observed, the institutional independence of the judiciary may depend a great deal on the control of resources. As an independent branch of government, the courts should have the ability to allocate and reallocate appropriated resources as

needed. This serves two important goals: (1) the courts are frequently in the best position to assess internal resource needs and address those needs within the limits of overall appropriations; and (2) responsibility and thus accountability for the use of resources remains quintessentially the task of the judiciary. Becker explained that the courts in Utah have a two-line item budget, one for salaries and operations and the other for buildings, with full authority to allocate resources within the system. The ability to allocate resources shifts management authority away from appropriators and to the courts, allowing the judiciary to determine the best course for administering programs and assigning resources. This also enables the courts to make “timely and difficult decisions,” Becker said.

PRINCIPLE 7: A focus on policy-level issues; delegation with clarity to administrative staff; and a commitment to evaluation

Even in a highly unified court structure where decisions about policy rest with the governance authority of the system, e.g., the Utah Judicial Council, implementation and operations belong to the administrative staff. Thus, policymakers must avoid micromanaging operations. Moreover, providing clear authority for implementation is important for the effectiveness of court governance and can minimize the opportunities for undermining policy at the operational level. Finally, Becker observed that courts must shift their thinking toward evidence-based evaluations of policies, practices, and new initiatives. Unless courts apply a rigorous evidence-based approach to administration, they cannot claim to be well-managed institutions.

PRINCIPLE 8: Open communication on decisions and how they are reached

A good system of governance does everything it can to keep information flowing through multiple avenues. Since judicial culture is a culture intimately tied to notions of decisional independence,

it generally fosters a strong sense of autonomy. It is critical to provide a rationale for the decision when it is communicated. When judges and staff feel that decisions simply emanate from on high without their input and prior knowledge, the potential for resistance and dissatisfaction is magnified.

PRINCIPLE 9: Positive institutional relationships that foster trust among other branches and constituencies

American government is by design framed around a series of natural tensions between the three branches of government. Given that the judiciary’s legitimacy and credibility rests in large measure on its institutional standing, it is necessary to build positive relationships not only with the leaders of the other branches of government but also those staff members in critical positions within the branches. It is not unusual for a court decision to create tension, but establishing and maintaining positive relations can mitigate the tendency of the legislature, in particular, to use its considerable power to disrupt the administration of the third branch. All politics are personal, and positive personal – and institutional – relationships are critical to

protecting the independence and standing of state courts. As Chief Justice Durham and Becker observe in their paper, “it also helps if courts are pro-active on the ‘quality’ side of the equation, demonstrating commitment to things like judicial education and performance evaluation for judges and courts.”

PRINCIPLE 10: Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees

It is particularly important in court administration for the role and authority of court leaders to be clear and unambiguous. However, as Becker observed, having roles and responsibilities articulated on paper or through rules does not necessarily or automatically translate into an operational fact. Like communications, defining roles and responsibilities is a constant work in progress, and while attention must be paid to the relationship between governing bodies and trial courts, it is equally important to address the roles and responsibilities of court leaders, and particularly presiding judges, at the local level.

C. Response to Principles of Governance: Non-Unified Perspectives

Presenters: Steven Hollon, Administrative Director, Ohio Supreme Court
Hon. Wallace Jefferson, Chief Justice, Texas

The challenges of court governance within a unified system are generally amplified in non-unified systems, as observed by Ohio Supreme Court Administrative Director Steve Hollon and Texas Chief Justice Wallace Jefferson. Hollon noted that Ohio is a strong “home rule” state not only in terms of court governance but also in terms of local government in general. This culture of home rule means that court governance in Ohio is widely dispersed and the authority of the supreme court, beyond its superintending powers, is not all that clear. There are six private judges’ associations and a judicial conference that operates inde-

pendently of the supreme court, notwithstanding its constitutional power of superintendence. Speaking with one voice – or even a single message – is very difficult given the multitude of independent organizations and actors representing the interests of the state courts. Ohio does not by rule or constitution have an office of the state court administrator. The administrative director of the supreme court fulfills this role more by default than mandate.

In addition to this diffused governing authority is the fact that all courts are locally funded, with the limited exception of a portion of trial judges’



Hon. Wallace Jefferson and Steven Hollon

salaries, all appellate judges' salaries, and supreme court operations. In effect, the funding model in Ohio contributes to a sense of local judicial control and potentially a culture of judicial fiefdoms. Judges are elected to relatively short terms, which can lead to a culture of strong local focus, not necessarily strong institutional focus. The vast majority of courts are one- or two-judge courts, and jurisdictional authority is spread across multiple levels of trial courts. The Ohio judiciary's strong educational program has contributed to implementing some standards and understanding governance in a very diverse system. But in the end, systems like Ohio's face unique challenges in institutional governance precisely because the institution is widely dispersed with multiple independent and autonomous actors with limited accountability to the institution of the courts.

Ohio exists somewhere between a constellation and a confederation, with some functions of statewide administration being assumed rather than delegated. The chief justice is directly elected in Ohio, which has advantages and disadvantages. On the one hand, direct election lends a certain level of direct popular legitimacy to the office and its occupant. On the other hand, it takes time to establish oneself as a leader of the judiciary, and changes in the political climate can produce dramatic changes in the agenda of the courts.

Nevertheless, implementing a strong unified court system in Ohio would be challenging given both the population size of the state, the multiple levels of courts, the general cultural of the Ohio judiciary that values autonomy, and deeply entrenched interests.

In summarizing the important principles of court governance, Hollon observed the following. First, a court system must have a clearly articulated structure for governing itself. A sound governance structure mitigates internal competition and conflict. A weak structure may support individual autonomy but erode institutional standing. Second, good communications, broadly defined, is absolutely necessary. Third, broad involvement from all levels of the judiciary in decision making builds support and coherence. Broad involvement enables local leaders to articulate their concerns and statewide leaders to work toward a more uniform administration of justice.

Like Ohio, Texas is a loose association of courts akin to the constellation model. The size and culture of Texas present challenges to implementing a coherent statewide governance structure. As Chief Justice Wallace Jefferson observed of his position, "It's all hat and no cattle." The chief justice acts as the titular head of a very diffuse, geographically dispersed, and locally funded system of courts. Several factors contribute to the challenge of governing the Texas judiciary. First, the nature of judicial elections in Texas, which are expensive and frequently hotly contested, creates an environment of local independence and autonomy. Second, Texas has two high courts — the Supreme Court of Texas and the Texas Court of Criminal Appeals — 14 courts of appeals, and 3,200 other courts with nine levels of jurisdiction, which bolsters a sense of structural autonomy among the courts.

Texas has established a judicial council, comprised of various levels of judges and members of the public, that makes policy for the judicial branch. The judicial council examines funding

issues and statutes that need changes. A significant emphasis is placed on working closely with the legislature, and particularly staff, in advocating for the needs and concerns of the judiciary. A strong office of court administration is important in a system such as Texas's, and public engagement is critical to building support for the judiciary. Critical considerations in governing a non-unified system include broad participation and working to speak with a single voice – or at least a single message.

As noted, the Texas judiciary is an elected judiciary at all levels. One advantage of this system

is that the chief justice can promote continuity in leadership and agenda so long as he or she is re-elected to the position by the voters. The disadvantage is that it exposes judges to the political changes that other elected officials suffer. The composition and face of the courts can change dramatically, oftentimes as a result of developments, e.g., national political changes, that have no direct cause in the courts. These electoral sweeps make administering the court systems incredibly difficult because local constituent considerations are frequently more important than institutional governance.

D. Response to Principles from a Panel of Trial Court Judges and Administrators

Presenters: Michael L. Bridenback, Court Administrator, Tampa, Florida
 Jude Del Preore, Trial Court Administrator, Mount Holly, New Jersey
 Hon. Lawrence M. Lawson, Assignment Judge, Freehold, New Jersey
 Michael D. Planet, Court Administrator, Ventura, California
 Hon. Christopher Starck, Presiding Judge, Waukegan, Illinois
 Suzanne H. Stinson, Court Administrator, Benton, Louisiana

A panel of leadership judges and trial court administrators responded to the 10 principles of governance from the perspective of five very diverse state court jurisdictions. Although the five states differ greatly in terms of judicial selection, degree of centralization, and model of court governance, all panelists agreed with the 10 principles and believed they could be applied to any court structure, state or local, unified or dispersed. Panel members said, however, that the critical challenge for successful governance is in the implementation of the principles within the context of very complex systems. The complexity of these systems was illustrated by the panel itself, which included representatives from courts where administration and management are strongly unified, to courts where administration and management are greatly diffused. The challenge, then, is how to improve court governance given the huge diversity of systems that exists in the United States. Jurisdic-

tional structures greatly influence court governance approaches at a state level.

The New Jersey state court system reflects the leadership of former Supreme Court Justice Arthur T. Vanderbilt, who envisioned a strongly unified court system. In 1947 the state constitution reduced the number of courts from 21 to seven and placed all operations of the courts under the chief justice and the six supreme court justices. In 1995 New Jersey moved from a diversified county court system to a state-funded, unified court system. Although the New Jersey panelists referred to their system as one of the “best court systems” in the country, they recognized that significant challenges exist to a state-funded, unified model of governance. For example, as the courts moved to a statewide system, tension between the administrative office of the courts (AOC) and the local trial courts was heightened, mostly around issues of budget and

control. Panelists acknowledged that this tension is not new in unified court systems. However, to the extent that the tension impedes the process of unification and effective management, it can impact the functionality of the system, defined more by competition for power, influence, and resources rather than a system built around cooperation at all levels in pursuit of the public's interests. This close management and interaction has the effect of limiting flexibility and allowing little room for local innovation. Another challenge facing the New Jersey court system, pointed out by Jude DelPreore, comes from its unionized nature; the courts deal with five separate employee unions, complicating the task of court governance in very pragmatic ways.

In contrast to New Jersey, Louisiana is a diverse and non-unified state court system with 380 judges, including seven supreme court justices, 53 court of appeals judges, and 247 district, family, and juvenile court judges. There are some 40 district trial courts. New Orleans currently has separate civil and criminal courts but is in the process of consolidating and forming the 41st district court. Each court hires its own administrators and staff and traditionally has been governed by its own court rules.

In 2002, the Louisiana Supreme Court established a commission that developed statewide rules. There is a judicial commission in Louisiana that primarily has oversight regarding judicial conduct, and a judicial council, established in 1950, which serves as the research arm of the Louisiana Supreme Court. As Suzanne Stinson suggested, this is a system of high autonomy in which the local courts have been known to resist unification. On the local level, the emphasis on autonomy can make it difficult to focus on the needs of the jurisdiction as a whole. On a statewide level, the principle of a "unified message" is a significant challenge in that proposed legislation is dealt with by the Louisiana District Judges Association and, if there is no consensus among the judges of the association with regard to a legislative proposal, the association is not able



Hon. Lawrence Lawson, Jude Del Preore, and Suzanne Stinson

to speak with one voice. As a result, the primary governance challenge in a state like Louisiana is to integrate local interests with overarching state judicial interests.

California, which has been state funded for more than 20 years, is a unified court system that includes 1,700 judges and 15,000 employees. The judicial council in California, like the one in Utah, is constitutionally responsible for overall policy making. It receives funds from the state and then distributes to local trial courts. The California Trial Court Funding Act requires a decentralized system of trial court administration. The decentralization of administration is critical in that the executive officer of the branch court administers all court functions (i.e., clerk, jury management, and all limited and general jurisdiction responsibilities). Also, the structure gives the branch court flexibility to use funding in a way that is responsive to local community needs. As Michael Planet stated, the governance principles that seem to have accounted for the successes of the California courts include a "well-defined governance structure for policy formulation and administration for the entire state court system" and the "authority to allocate resources and spend appropriated funding independent of the legislative and executive branches."

Illinois has 102 counties, seven supreme court justices, five appellate court districts, and 23 circuits. The state created unified jurisdictions in the 1960s. Circuit judges are elected and stand for retention every six years. This is a non-partisan



Hon. Christopher Starck

election in which the candidate must receive 60 percent affirmation. The judiciary also includes associate judges who are appointed by the chief judge and have the same duties as the circuit judges, except for the fact that they must be certified

by the supreme court to hear felonies. There is an elected clerk in all 102 Illinois counties, which, according to Presiding Judge Christopher Starck, can sometimes be a challenge to the court system. In some counties, the clerk of court works closely with the chief judge in an effort to provide the best services to the court and the public, while in other counties the clerk may be in direct conflict with the judges and views the court records as belonging to the clerk and not to the court.

Illinois is slowly moving toward a unified model of governance. However, the Illinois experience demonstrates that while there are aspects of a unified system that are desirable, unification in a state like Illinois also has its challenges. As Judge Starck suggests, establishing and maintaining a trusting relationship with the administrative office of the courts is critical to the success of the trial courts and to the state trial courts generally.

Florida has 67 counties, 20 judicial districts, and almost 1,000 trial court judges. It has been a unified jurisdiction since 1973. The chief justice's term is only two years, and the state has no judicial council. Florida has an integrated bar, which is highly influential and provides input to the supreme court on rules of procedure and judicial administration. There are independently elected clerks in all 67 counties, which is something of a barrier to unification. Some of the circuits have four or five counties and, therefore, must work through multiple elected clerks. The state courts

are moving toward a federated or union model, but a number of challenges exist, such as a move to state funding. A constitutional amendment was passed in 2004 that required the legislature to fund the trial courts. The move to state funding was driven by the perception of "have- and have-not counties" and unequal justice related to resources in the state. However, the legislature passed a statute dictating how the funding will be allocated, which has slowed the movement toward unification and equitable funding. Another challenge is the diffused nature of court governance in Florida. Currently 12 to 15 commissions have been set up to advise the chief justice. These commissions tend to operate independently and have limited inter-relationships, and confusion exists concerning who makes what decisions. The budget commission, which has become the most powerful of the commissions, drives court priorities. The Florida experience highlights, as Michael Bridenback suggests, the attempt to address unequal justice through unification, perhaps at the expense of local court flexibility.

In summary, panel members concluded that the greatest challenge to implementing the 10 principles of court governance is in adapting them to a variety of judicial environments. Panelists agreed that each system of court governance brings its own strengths and weaknesses. A strongly unified system can tilt toward too much centralized control, thus limiting trial court flexibility and creativity. States in which the trial courts have a great deal of autonomy have the challenge of developing equal justice, speaking with one voice, and maintaining institutional cohesion. The overarching challenge in court governance remains not the system or the structure, but rather the willingness of court leaders to recognize the unique role and responsibility of each aspect of a court system within the institution as a whole. The fact that courts are by nature loosely coupled organizations even in the most highly unified systems does not justify ineffective or non-existent systems of court governance.

E. Observations from Small Group Discussions & Informal Group Dialogue

Symposium participants were assigned to small working groups to discuss the 10 principles of effective court leadership. After their discussions, facilitators shared their groups' observations. Participants recognized that courts are under intense economic pressure to improve the business of justice and, to the extent that the principles deal with effective leadership and management, this is an opportune time for courts to address issues of effective governance. There was general agreement that the principles can be used as a template to measure the effectiveness of a state court governance structure and that all 10 principles are valid from the trial court perspective. It was also understood that the principles are not intended to describe or define a specific court governance structure, but that they could be adapted to any type of structure, whether unified or not, and that the implementation of these principles would necessarily vary in different jurisdictions due to different local cultures, organizational structures, and methods of judicial selection. The following are condensed versions of the reports that came out of those small groups. The full reports are available as part of this report's appendix.

PRINCIPLE 1: A well-defined governance structure

A well-defined governance structure should relate to the entire state court system, defining institutional policies, setting marching orders, and promoting effective implementation at the local level of the courts. Participants emphasized that if a state structure is to be effective it needs to be based on a fundamental sense of trust between all elements within the system. Effective governance structures can be promoted through different avenues, including constitutional authority, statutory authority, and internal rule. Ideally, this principle should apply to all court organizations, but in

many organizations, particularly at the state level, this will be a long-term and perhaps incremental goal. The principle, applied at any level, advocates that structure should be explicit, that the authority for policymaking and implementation be well-defined, and that the absence of such clarity can significantly undermine the ability of the court organization to make decisions.⁷

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

This is a fundamental principle underlying the management of organizations and complex systems. Unless the court community feels it is part of the process, it will lack commitment to implementing solutions. While feedback strategies and mechanisms are critical, perhaps even more important is the fact that the quality of the decision-making process is vitally enhanced by the knowledge and insights of all parts of the system. Since local courts are closer to the public, they are much more likely to understand the needs of their constituents and the implications of systemic decisions for local justice stakeholders.

PRINCIPLE 3: A system that speaks with a single voice

Of the 10 principles, this was the one that generated the most discussion. While participants saw this as an essential principle, they also said that no matter how centralized the system, it will be challenging to implement. Some concerns were expressed about the language and nuances in this principle. There was general consensus that the principle is really about "a single message" not necessarily a "single voice." Many people may be empowered to speak, but there should be one message. The problem exists when there are competing messages that can cancel each other

⁷ One group noted that the term "structure" might be problematic, because it implies a specific organizational hierarchy, and suggested that the word "model" might be a better choice.

out and negatively impact legislators' or the public's perception of the courts. Participants stressed that allowing dissent is vital in developing a single message and that there needs to be reasonable ways to address dissenting opinions. Just as appellate courts value dissenting voices in the issuance of court decisions, they should recognize dissent in matters of governance and, at a minimum, acknowledge the existence of differing viewpoints. However, once the message is agreed to, it should be the single message.

PRINCIPLE 4: Selection of judicial leadership based on competency

Competency of leaders, method of selection, and terms of service for positions of judicial leadership are the key components of this principle. In regards to competency, judicial leaders need education on concepts related to administering complex organizations, including education in such key areas as leadership, management, team building, and systems theory. Over time, such an educational process will help facilitate the development of new leaders. Moreover, courts need a balanced approach regarding the term of service of the presiding judge. If it is too short, defined as two years or less, it does not allow for continuity, and if it is too long it does not allow for new leadership to emerge. The method of judicial selection is another important consideration in implementing this principle. However, there was no consensus on which form of selection is most conducive to effective governance. Finally, it was suggested that, with the consent of the chief justice, presiding judges could benefit from guidance in succession planning to help them groom the next presiding judge.

PRINCIPLE 5: Commitment to transparency and accountability

Symposium participants said that the right to institutional independence and self-governance



Working Group 5

entails an obligation on the part of the court organization to be open and accountable for the use of public resources and program performance. In addition to financial disclosure, however, this principle advocates a wider dissemination of information to include the operational effectiveness of the courts and programmatic effectiveness. The court organization should know exactly how productive it is, how well it is serving the public, and what parts of systems and services need attention and improvement. This knowledge needs to be a matter of public record. In order to accomplish this, it is essential that the court develop a culture that is open to gathering, analyzing, and sharing data and information with both internal and external stakeholders. This should be seen in the context that transparency and accountability enable courts to accentuate the positives and to highlight accomplishments.

There is often a lack of guidance in the courts about deciding what information is appropriate to share, with whom to share it, and how much detail to provide. There was a wide range of responses among participants on how far to go in the release of information. Discussion included: What is public information? Is it the raw data? Is it better to have problems exposed by someone outside the court, or is it better to deal with it internally by doing the court's own internal analysis through the use of performance measures such as CourtTools.⁸ In the end, if courts are to become

⁸ Court Tools, Trial Court Performance Measures, National Center for State Courts.

truly transparent they will have to answer questions such as these and will need to set clear policies around them.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds

In order to be effective, courts need the authority to allocate resources and spend appropriated funds independent of the legislative and executive branches. The same principles should apply to the local courts and their budgets from the state judiciary. Effective use of judicial branch funds depends on placing discretion for spending at the local court level, within broad parameters set at the state level. When courts have the authority to manage their own funds, it ensures that priorities are dictated by agreed-upon policy and planning and not by the “project du jour.”

This principle is closely linked to the commitment of the court to transparency and accountability. If courts are to have independence in how they allocate resources, they must also be transparent and accountable—to the other branches and to the public—in how the funds are spent. Participants saw the best solution as judicial branch collaboration with the legislative and executive branches, noting the importance of having a seat at the table when court matters are being discussed and having data and priorities available in order to show accountability.

PRINCIPLE 7: A focus on policy, delegation of authority, and evaluation

Small group members stressed that the importance of accurate evaluation data cannot be over-emphasized. Without a commitment to evaluation of policies, practices, programs, and new initiatives, courts cannot claim to be well-managed institutions. Participants discussed whether many courts have the resources to commit to evaluation, particularly in decentralized systems and in small or rural communities. Also, there is often a lack of common data among counties in a decentralized system.

PRINCIPLE 8: Open communication on decisions and how they are reached

This principle is connected to the principle on public disclosure of information. Whereas Principle 5 relates to public engagement, there was a sense that this particular principle relates to the internal organizational communication duties with respect to judges, administrators, and others within the system. Both point to a need for the system to communicate an adequate explanation around critical decisions. The need for rational explanation was compared to studies on procedural fairness, where parties are more satisfied with decisions when they understand the process. Participants felt that the applicability of the principle of open communication may vary with the issue being decided. Courts do need the flexibility to limit the scope of some communications due to the sensitive nature of the subject.

PRINCIPLE 9: Positive institutional relationships that foster trust among other branches and constituencies

Courts need to develop effective ways to cultivate and sustain relations with legislators and other justice system partners. This is a sensitive area, as a single unfortunate incident could cripple inter-branch relations. This principle focuses on two aspects of building trust and confidence in the judiciary: (1) intergovernmental trust and confidence, and (2) public trust and confidence. Within the context of public trust and confidence the term “public” should be seen broadly to include developing and fostering positive relationships with the media. If courts have a positive relationship with the media, they can put stories in a proper context so that there is balanced reporting.

PRINCIPLE 10: Clearly established relationships among governance entities

Participants noted that this principle relates back to the first principle on a well-defined governance structure. The suggestion was made that

these two principles could be either combined or follow each other consecutively. However, it was recognized that, because of budget cuts and the current political climate, the courts have a unique

opportunity to work collaboratively with other branches to see how positive outcomes can be achieved most efficiently and effectively.

F. Afterword

There was one recurring theme in the small groups and summit discussions, related to the importance of encouraging innovation at the trial court level, which merits special attention in this report. Some participants felt that the 10 governing principles could be interpreted as leaning toward a tight centralization and unification of the judicial system and that this could inhibit innovation, which has a tendency to develop from local initiatives. Michael Bridenback, a court administrator from Tampa, Florida, suggested in the panel presentation that creativity and innovation are difficult in a unified system, and that in the past it has been the local courts that have acted as laboratories in attempting to meet the changing needs of the court. Some clear examples of this are the alternative dispute resolution (ADR) movement, the creation of problem-solving courts, and responses to pro-se litigants. In considering governance structure, care needs to be taken to ensure that a court system provides opportunity for flexibility and innovation.



Russell Brown

IV. Modernizing the Courts

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

A. Responses to Changes in the Trial Courts

A vigorous dialogue is taking shape today within the state court community about the fundamental changes necessary in the courts if we are to remain viable and relevant in this era of unprecedented change. A number of terms describe this process, including “court reengineering,” “business process reengineering,” “justice reform,” and “high-performance courts.” Environmental changes are compelling, and courts are clearly not insulated or isolated from their effects. From budget crises to the development of problem-solving courts to the impact of technology, courts remain both a driver and a recipient of change.

In his comments at the Symposium, Dan Hall, vice president, Court Consulting Services, National Center for State Courts (NCSC), pointed out that the court administration profession has been developing tools for addressing the impact of environmental changes over the past 20 years. Efforts such as the development of Trial Court Performance Standards in the 1990s, creation of the NACM Core Competencies in 2004, the development of NCSC’s CourTools (Trial Court Performance Measures) in 2005, the court reengineering project developed at the NCSC in 2009 and, more recently, the development of NCSC’s High Performance Courts Framework, reflect this greater attention to accommodating and shaping the courts of today and tomorrow. Yet one must question whether these efforts are enough. As Brian



Dan Hall

Z. Tamanaha (2004) observed, “[E]ven as politicians and development specialists are actively promoting the spread of the rule of law to the rest of the world, legal theorists concur about the marked deterioration of the rule of law in the West.” Consequently, courts both adapting to change and shaping change may well be critical to maintaining the rule of law in our own nation.

In his paper, “Principles for Judicial Administration,” Dan Hall articulates four sets of principles that provide assistance to state courts in navigating change and in making strategic choices.¹⁸ The four sets of principles, operational in nature, include:

- Governance Principles, a major part of the discussion at the Symposium
- Case Administration Principles, built on the premise that case management is the backbone of court administration

¹⁸ Hall, Dan, Principles for Judicial Administration: Governance, Case Administration, Essential Functions and Funding, National Center for State Courts, July, 2010.

- Essential Functions Principles, which define the mission and core functions of the courts
- Court Funding Principles, which serve as a conceptual framework for all branches of

government when exercising their respective duties and responsibilities regarding judicial budget requests and appropriations

B. Reengineering in the States: The Arizona, Minnesota, and Vermont Experience

Participants: Hon. Amy Davenport, Chief Administrative Judge, Montpelier, Vermont
Tim Ostby, Court Administrator, Wilmar and St. Cloud, Minnesota
Marcus Reinkensmeyer, Court Administrator, Phoenix, Arizona

In addition to laying out the operational principles for court modernization, three examples of court reengineering were presented. Court reengineering is a process aimed at creating sustainable changes, efficiencies, and savings throughout the court. The process varies by state and may include reorganizing staff, changing business processes through technology, and restructuring the court system through the legislative process. In Phoenix, a community that has experienced unbridled growth over the past few years, the court mandated a business process reengineering study that examined the core constitutional and statutory functions of the court, recommended the development of regional court centers and early disposition courts in order to maximize economies of scale, explored and implemented outsourcing possibilities, streamlined court functions through the use of technology, and addressed the development of enhanced revenues for court purposes. This reengineering process led to \$22 million in expense reductions and the elimination of 125 court positions, mostly through attrition. But as the Phoenix effort demonstrates, reengineering is not simply about saving money – it is also about providing improved services to the public. Of new felonies in Phoenix, 90 percent are now filed in the regional centers and early disposition courts, and 60 percent of these cases are resolved within the first 30 days. One of the critical insights gained in business process reengineering in the



Marcus Reinkensmeyer

Phoenix court, according to Marcus Reinkensmeyer, is that the change process is “most powerful when it includes the other justice partners and when it leverages community stakeholders.”

In Minnesota, the process of modernization began in the 1970s with the Court Modernization Act, which created the position of judicial administrator. In the following decade, the Court Administration Act merged all of the trial courts into one unified system. In the 1990s Minnesota moved from county-based to state funding of the courts. Minnesota has a unified court system with a well-defined governance structure that was a benefit in the process of change across the state. Since the year 2000, Minnesota has implemented a number of statewide strategies, including development of uniform business practices, centralized data processing, centralized payables, interactive television for court hearings, introduction of digital court reporting systems, implementation of a statewide case management system, redistricting,



Hon. Amy Davenport

specialization, and, with the assistance of the National Center for State Courts, extensive use of electronic processes, including civil e-filing.

Vermont had an earlier constitutional mandate to create a unified court system, but in reality the system was fractured, with partial control by the counties and partial control by the state. The Vermont legislature created a Commission on Court Operations, and from May 2008 through June 2010, the state implemented a change process through a “bold plan that challenged every sacred cow,” e.g. reduction in salaries of some

judges, courthouse closures, and loss of county administrative control. The incentives for change included an economic crisis, extraordinary leadership by the supreme court judges, a sense of teamwork within the courts, and technical support from the National Center for State Courts. The reengineering included a restructuring of the court system utilizing the legislative process, regionalizing functions, changing business processes through technology, reorganizing staff to reflect current demands, and adopting trial court performance standards.

V. Conclusion

Periods of significant challenge such as those facing the state courts today can be disorienting and difficult to manage. From demographic changes to the impact of structural budget difficulties and changing technology, state judiciaries are being confronted by a series of monumental challenges. Underlying each of these challenges is the profound question of how state judiciaries can remain relevant and legitimate in the coming years. To paraphrase Alexander Hamilton in *Federalist No. 78*, the legislature is armed with the power of the purse and the executive is armed with the power of the sword. The judiciary is armed merely with the power of its judgment. This may prove to be its greatest asset in confronting the challenges ahead. For while these challenges may seem daunting, they also provide an opportunity for state judiciaries to rethink the business of justice in such a manner as to increase the relevance of courts to American society.

At the heart of the challenges that state courts will face in the coming years is the recognition that sound, wise, and thoughtful leadership will be needed. Our processes for recruiting, selecting, and leading the courts must be adapted to find and retain capable individuals in leadership positions. But more is needed. Leading loosely coupled organizations, where key actors draw their legitimacy from external factors, requires courts at all levels and in all configurations to re-examine their governing structures and governing processes. Collaboration must be more valued than dictation; engagement and deliberation should be the pronounced governing philosophy, displacing idiosyncratic

approaches to leadership; commitment to the legitimacy of the organization is as important as drawing power from external sources. Regardless of the underlying structure, sound and wise leadership will be the critical determinant in the ability of state courts to meet the many challenges ahead.

Leadership will also be required to address the many underlying and internal factors that prevent courts from adapting to change. In an environment of constant and accelerating change, terms such as “reengineering” and “change management” must become core concepts of court leadership. Courts that instill an organizational management philosophy of public service, environmental awareness, and creative thinking will be better positioned to meet the public’s demand for service, even in the face of stagnant or dwindling resources. Court leaders will need to reject the notion of a zero-sum-game environment, in which fewer resources mean fewer or lower-quality services to the public, and replace it with a more opportunistic notion that innovative and creative ways of doing things will lead to a stronger, more efficient, and more responsive court system.

In the end, the purpose of state courts is to serve the public. The challenge to state courts is to do so in a constantly changing environment where public need is balanced against the importance of maintaining a coherent legal system. Courts that are capable of adapting to new challenges will contribute to and enhance the legitimacy of courts by maintaining their relevance to the public. Those unable to adapt and change may find their legitimacy challenged on all fronts.

VI. Appendix

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Symposium Agenda

List of Participants

Working Group Summaries

4th National Symposium Program

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Wednesday, October 27, 2010

7:30 – 8:30 AM

Registration and Continental Breakfast

8:30 – 9:00 AM

Welcome and Opening Remarks

Mary McQueen, President, National Center
for State Courts

9:00 – 9:15 AM

Moderator Opening Remarks

Ron Stupak, Principal and Partner,
Fording Brook Associates

9:15 – 10:00 AM

Principles of Court Governance and
One Unified Perspective

The Hon. Christine M. Durham, Chief
Justice, Utah

Daniel Becker, State Court Administrator, Utah

10:00 – 10:30 AM

Response to Principles of Governance and
Non-Unified Perspectives

The Hon. Wallace B. Jefferson, Chief Justice,
Texas

Steven C. Hollon, State Court Administrator,
Ohio

10:30 – 10:45 AM

Break

10:45 AM – 12:00 PM

Panel – Local Response to Principles

Moderator – Ron Stupak

Michael L. Bridenback, Court Administrator,
Tampa, FL

Michael D. Planet, Court Administrator,
Ventura, CA

Jude Del Preore, Court Administrator,
Mount Holly, NJ

The Hon. Lawrence M. Lawson, Assignment
Judge, Freehold, NJ

The Hon. Christopher Starck, Presiding Judge,
Waukegan, IL

Suzanne H. Stinson, Court Administrator,
Benton, LA

12:00 – 1:15 PM

Lunch — Colony Room E

1:15 – 3:15 PM

Breakout Groups

Group facilitators promote discussion of
governance issues and types of reform
needed. Group facilitators will work to
see that workgroup sessions result in
recommendations.

Group reporters will document recommenda-
tions and conclusions of each group.

3:15 – 3:30 PM

Break

3:30 – 5:00 PM

Group Reports

Moderator Ron Stupak

5:00 PM

Session Announcements and Adjourn

5:30 – 7:00 PM

Reception — NCSC Headquarters

Thursday, October 28, 2010

7:30 – 8:30 AM

Continental Breakfast

8:30 – 8:45 AM

Opening Remarks

Moderator Ron Stupak

8:45 – 9:30 AM

Addressing Trends Shaping the State Courts
2000–2020

John Martin, Director, Immigration & the
State Courts Initiative, Center for Public
Policy Studies, Boulder, CO

9:30 – 9:55 AM

Principles of Court Administration

Dan Hall, Vice President, Court Consulting
Services, National Center for State Courts,
Denver, CO

9:55 – 10:15 AM

Living the Change: Reengineering in Minnesota
Tim Ostby, Court Administrator, Willmar and
St. Cloud, MN

10:15 – 10:30 AM

Break

10:30 – 11:00 AM

**Reengineering the Vermont Judiciary: A Judicial
Perspective**

The Hon. Amy Davenport, Chief Administrative
Judge, Montpelier, VT

11:00 – 11:30 AM

**Stewardship and Business Processing Reengineering:
An Urban Court Perspective**

Marcus W. Reinkensmeyer, Court Administrator,
Phoenix, AZ

11:30 – 11:45 AM

Session Closing Remarks

Ron Stupak

11:45 AM – 12:00 PM

Symposium Closing Remarks

Mary McQueen

12:00 – 1:00 PM

Closing Function — Box Lunch

Attendee List

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

*4th National Symposium on Court Management
Williamsburg Lodge • October 27, 2010 - October 28, 2010*

Mr. Richard P. Abbott
Family Law Administrator
Circuit Court for Baltimore
County, MD

Mr. Alexander B. Aikman
Consultant
Redding, CA

Ms. Kathleen L. Arberg
Public Information Officer
U.S. Supreme Court

Mr. Robert N. Baldwin
Executive Vice President
& General Counsel
National Center for State
Courts

Ms. Vicky Bartholomew
Deputy Court Administrator
Chester County Court of
Common Pleas, PA

Mr. Daniel J. Becker
State Court Administrator
Utah Administrative Office
of the Courts

Ms. Marea Beeman
Research Associate
Harvard University

Mr. Howard H. Berchtold Jr.
Trial Court Administrator
New Jersey Judiciary

Mr. Raymond L. Billotte
District Court Administrator
Allegheny County Court of
Common Pleas, PA

Mr. Kevin J. Bowling
Court Administrator
20th Circuit Court, MI

Mr. David K. Boyd
State Court Administrator
Iowa Judicial Branch

Mr. Michael L. Bridenback
Court Administrator
Thirteenth Judicial Circuit
Court, FL

Mr. Russell R. Brown III
Court Administrator
Cleveland Municipal
Court, OH

Mr. Craig D. Burlingame
Chief Information Officer
Massachusetts Trial Courts

Hon. Marjorie Laird Carter
Judge
Orange County Superior
Court, CA

Hon. Mary A. Celeste
Judge
Denver County Court, CO

Ms. Susan Stokley Clary
Court Clerk/General Counsel
Supreme Court of Kentucky

Ms. Laura Click
Public Information Officer
Supreme Court of Tennessee

Mr. Peter Coolsen
Court Administrator
Criminal Division
Circuit Court of Cook
County, IL

Ms. Caroline S. Cooper
Research Professor
American University

Mr. Chris Crawford
President
Justice Served

Mr. Kevin A. Cross
Deputy Court Administrator
First Judicial District of PA

Mr. Thomas B. Darr
Deputy Court Administrator
Administrative Office of the
Courts, PA

Hon. Amy Davenport
Administrative Chief Trial
Court Judge
Vermont Trial Courts

Mr. William A. DeCicco
Clerk of Court
U.S. Court of Appeals for the
Armed Forces

Mr. Jude Del Preore
Trial Court Administrator
Burlington County Superior
Court of NJ

Mr. Paul F. DeLosh
Director of Judicial Services
Supreme Court of Virginia

Hon. Jay D. Dilworth
Judge
Reno Municipal Court, NV

Ms. Maureen Dimino
Policy Analyst
Department of Justice/Office
of Justice Programs/Bureau of
Justice Assistance

Ms. Elizabeth Domingo
Trial Court Administrator
Union County Superior Court
of NJ

- Hon. William F. Dressel**
President
The National Judicial
College, NV
- Hon. Christine M. Durham**
Chief Justice
Supreme Court of Utah
- Ms. S. Kay Farley**
Executive Director
Government Relations Office
National Center for State Courts
- Hon. Kate Ford Elliott**
President Judge Emeritus
Superior Court of Pennsylvania
- Mr. John M Greacen**
Principal
Greacen Associates, LLC
- Ms. Glenda L. Guzinski**
Assistant Court Administrator
Circuit Court for Montgomery
County, MD
- Mr. Daniel J. Hall**
Vice President, Court Consulting
Services
National Center for State Courts
- Ms. Pamela Q. Harris**
Court Administrator
Montgomery County Circuit
Court, MD
- Ms. Stephanie E. Hess**
Manager
Supreme Court of Ohio
- Mr. Steven C. Hollon**
Administrative Director
Supreme Court of Ohio
- Hon. Wallace B. Jefferson**
Chief Justice
Supreme Court of Texas
- Ms. Lilia G. Judson**
Executive Director
Indiana Supreme Court
- Ms. Molly Justice**
Court Communications Officer
7th Judicial Circuit Court of
Florida
- Mr. F. Dale Kasperek Jr.**
Principal Court Management
Consultant
National Center for State Courts
- Mr. Ron Keefover**
Education, Information Officer
Kansas Judiciary Office of Judicial
Administration
- Dr. Caroline E. Kirkpatrick**
Director
Supreme Court of Virginia
- Ms. Laura G. Klaversma**
Court Services Director
National Center for State Courts
- Mr. Phillip Knox**
General Jurisdiction
Superior Court of Arizona
- Mr. Peter M. Koelling**
Director, Chief Counsel Justice
Center
American Bar Association
- Ms. Marie E. Komisar**
Executive Director
National Association of Women
Judges
- Hon. Lawrence M. Lawson**
Assignment Judge
Monmouth County Superior
Court of NJ
- Dr. R. Dale Lefever**
Management Consultant
Ann Arbor, MI
- Dr. Barry Mahoney**
President Emeritus
The Justice Management Institute
- Dr. John Martin**
Director, Immigration & the State
Courts Initiative
Center for Public Policy Studies
- Hon. Patricia Manila Martin**
Presiding Judge
Circuit Court of Cook County, IL
- Mr. Jonathan D. Mattiello**
Executive Director
State Justice Institute
- Hon. Charles W. McCoy**
Presiding Judge
Los Angeles County Superior
Court, CA
- Hon. Donna Jo McDaniel**
President Judge
5th Judicial District, PA
- Ms. Mary Campbell McQueen**
President
National Center for State Courts
- Mr. John R. Meeks**
Vice President, ICM
National Center for State Courts
- Mr. Snorri A. Ogata**
Chief Technology Officer
Superior Court Orange County,
CA
- Ms. Michele Oken**
Administrator II
Los Angeles Superior Court, CA
- Mr. Timothy L. Ostby**
7th/8th Judicial District
Administrator
Minnesota District Court
- Mr. Michael D. Planet**
Court Executive Officer
Ventura Superior Court, CA
- Hon. Sherry Radack**
Chief Justice
First Court of Appeals, TX
- Hon. Robert G. Rancourt**
District Court Judge
National Assoc. of Drug Court
Professionals

ATTENDEE LIST

Mr. Marcus W. Reinkensmeyer
Court Administrator
Superior Court of Arizona,
Maricopa County

Mr. Carl Reynolds
Administrative Director
Office of Court Administration,
TX

Ms. Beth Riggert
Communications Counsel
Supreme Court of Missouri

Mr. Michael Jim Roggero
Chief Information Officer
Missouri Supreme Court

Dr. David B. Rottman
Principal Court Research
Consultant
National Center for State Courts

Mr. Jesse Rutledge
Vice President, External Affairs
National Center for State Courts

Ms. Karen L. Salaz
District Administrator
19th Judicial District, CO

Mr. Joseph R. Sawyer
Manager, Distance Learning
& Tech
The National Judicial College

Mr. Richard Y. Schauffler
Director, Research Services
National Center for State Courts

Mr. William Simmons
District Court Administrator
Sixth Judicial District, GA

Mr. David Slayton
Director of Court Administration
Lubbock County District Courts
& County Courts at Law, TX

Ms. Carla A. Smith
Chief Deputy Judicial
Administrator
Orleans Criminal District
Court, LA

Hon. Christopher Starck
Circuit Judge
19th Judicial Circuit Court, IL

Ms. Kelly C. Steele
Policy and Fiscal Analyst
Administrative Office of the
Courts, GA

Ms. Suzanne H. Stinson
Court Administrator
26th Judicial District Court, LA

Dr. Ronald J. Stupak
Principal & Partner
Fording Brook Associates

Mr. Marty E. Sullivan
Jud. Branch Education Director
Administrative Office of the
Courts, AR

Hon. Sharon S. Townsend
Commission Member
NYS Permanent Judicial Commis-
sion on Justice for Children

Mr. Joseph A. Trotter Jr.
Professor, School of Public Affairs
American University

Ms. Konstantina Vagenas
Chief Counsel, Justice Center
American Bar Association

Hon. John W. Voorhees
Judge
Sagadahoc County Probate
Court, ME

Mr. William K. Weisenberg
Chair
American Bar Association

Mr. Bob Wessels
Court Manager
Harris County Criminal Courts,
TX

Mr. Robert A. Zastany Sr.
Executive Director
19th Judicial Circuit, IL

Working Group #1

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Jude Del Preore, Hon. Christine Durham, Hon. Christopher Starck, Laura Click, Hon. Sharon Townsend, Caroline Cooper, Mary McQueen

Facilitator: Alex Aikman

Reporter: Lorri Montgomery

Group 1 evaluated the first five Principles of Court Governance. The following are talking points, suggestions, and examples the group shared about those principles.

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

The big question about this principle is “Who defines the structure?” While the group agreed that there is a need to have a well-defined structure for the state court system, this is easier to develop at the local level. In many states, there is little concern for trial courts at the supreme court level, yet court structure is more effective with a chief justice who is a strong leader. Some states can turn to a judicial council, but whether the structure is “top down” or “bottom up,” everyone in the system needs to have input.

The courts need a collective vision of their mission and must develop an effective way of presenting it. Common trust is crucial to this vision. The group agreed that there is no clear way of achieving that trust and vision; however, trust develops over time, and transparency in the process builds trust (see Principle 5).

It is also essential that judges think of themselves as part of a judicial system, not as an individual attorney in a robe. Presiding judges, in particular, need to think less about individual needs and do a better job of communicating; their role could be made clearer to them as part of a presiding judges forum. The Conference of Chief Justices has

developed a model rule for presiding judges, who should not be selected on the basis of seniority. Utah’s judicial orientation program has been effective in training new judges about their administrative duties and in helping them to understand the court system’s structure.

How can states effect change in their governance structures? In Oregon, for example, the chief created an advisory committee. When the Utah Supreme Court needed to change the court system, the state constitution had to be amended. Whatever structure exists or is developed, it needs to transcend the personalities involved. Well-defined court governance is a good concept, but implementation is difficult.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

In many state-funded court systems, local courts lack the ability to be innovative because of the way state funds are allocated and, sometimes, restricted. The group agreed that budgets in a state-funded system should enable trial courts to be a laboratory, because trial courts are the ones trying to do and institutionalize innovative programs and methods. There needs to be a structure in place to recognize local court initiatives that work; trial courts need to know others in the judiciary are paying attention to what’s

working in the trial courts and are willing to learn and implement change. Meaningful input also involves working with other agencies.

PRINCIPLE 3: A system that speaks with a single voice

This is another good idea that is difficult to carry out. In fact, the group’s main suggestion was changing “speaks with a single voice” to “speaks with a single message.” Courts are the “last frontier” for not having a “single-message” approach to the legislature.

Presiding judges and other judicial leaders need to become more visible to the other branches of government in speaking for the needs of the judiciary, especially budgetary needs. The legislative and executive branches of government need to look to the judicial branch as an equal “independent” branch, and this can be more easily accomplished if judicial leaders speak with a unified message and are willing to appear in public. Impact statements for the judiciary could be important here.

But there are other issues. Who is the authoritative voice for the judicial branch? Who from the judiciary is at the table when the “single-message” decisions are made? It also diminishes the judiciary to be seen as a “bunch of politicians.”

PRINCIPLE 4: Selection of judicial leadership based on competency, not seniority or rotation

The main weakness in the selection of judicial leadership lies in peer selection. Selection of court

leadership would be more effective if it was based on data, such as how well a judge moves cases through the system, and leadership skills. An appointment process would be good; people who depend on competency should have some say.

Even though selection of presiding judges should be based on competency, length of service should still be considered. Seniority should not be the overriding way decisions are made, but experience should be taken into consideration. If a court is going to have peer selection, longer terms (more than one or two years) are recommended. Longer terms would, the group hoped, help judges make decisions based more heavily on competency than seniority or friendship.

The culture of the court (e.g., trusted leadership vs. weak leadership or a court with open communication vs. minimal communication) can influence the selection process. It’s important to “sell” the concept that seniority is not always the best method for selecting judicial leaders. Meaningful input is crucial.

PRINCIPLE 5: Commitment to transparency and accountability

Establishing a system to report data about court performance is a responsibility of the court to the public. This data must be reliable, and trial court judges must have confidence in it—but judges have not been taking responsibility for looking at court-performance-related data. The courts must do a better job of getting news out about court-related statistics.

Working Group #2

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Dan Becker, Kevin Bowling, Hon. Jay Dilworth, Hon. Robert Rancourt, Karen Salaz, Carla Smith

Facilitator: Russell Brown

Reporter: Nora Sydow

Group 2 evaluated the first five Principles, then the remainder as time permitted.

This group had a good, thorough conversation and was able to come to general consensus, with a few caveats, on all 10 principles. The group did not identify any principle as fatal to the implementation of the rest, nor did it believe any of the 10 principles should be eliminated. It was also understood by the group that these principles could be adapted to any type of court structure, whether unified or not. However, the group also recognized that the implementation of these principles would necessarily vary in different jurisdictions, due to different local cultures, court organization structures, and methods of judicial selection.

PRINCIPLE 1: A well-defined governance structure for policy and formulation and administration for the entire court system

It was noted by one group member that a well-defined governance structure comes from the state level (e.g. the supreme court), but it doesn't get used in a uniform manner because funding is sometimes local. One group member cited the common argument at the local level, "If the state isn't going to pay for it, don't tell us how to do it." The group agreed that a well-defined governance structure for policy formulation and administration for the entire court system is an essential principle so that everyone in the judicial system

understands the way the decision making process should work. One group member noted that the term 'structure' might be problematic because it implies a specific organizational hierarchy, and suggested that the term be changed to 'model.' And finally, the group noted that a clear governance structure that is not followed is quite possibly as dangerous as not having a governance structure at all.

One group member identified a possible technical conflict between Principles 1 and 7, in that in both principles there is reference to the governance structure, but 7 identifies a structural "head" which connotes a strong individual. There was a question as to whether this meant the administrative arm which would have extra power. Dan Becker, one of the members of Group 2, provided clarification and explained that Principle 7 was actually intended to define and clarify the role of the administrative office and to narrow its role, not to expand.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

The group agreed that Principle 2 was essential because if you don't have a system that provides for meaningful input, then you have a void.

And a void can be problematic because a void might be filled in unintended ways.

One group member noted that it is not only important to get input from all levels, but warned against excluding an entire group, such as trial judges.

PRINCIPLE 3: A system that speaks with a single voice

The concern was that the way it is worded might imply that there shouldn't be any mechanism for dissenting opinions. Allowing dissent is vital, one group member explained, because there needs to be a forum to capture concerns. Another member suggested that perhaps the "single voice" should be reserved for system-wide issues. But the group agreed that what this principle should articulate is that the messages concerning the interests of the entire judiciary should not be sent with competing messages. One member also noted, "We get done what we get done because we send a single voice ... but you have to be prepared to say that the judicial branch's agenda is priority." However, another member suggested that this single-voice concept would be particularly challeng-

ing in a non-unified state. And finally, concerns over this principle were calmed by the agreement that this principle should be contingent upon the implementation of Principle 2.

The group questioned whether these 10 principles could be adopted individually or must be adopted in their entirety. Dan Becker explained that while he believed that all principles were important, the intent was not to discourage a system tackling just one at a time, if that is all it feels it can take on in the moment.

The group concluded its time with a discussion of the issue of separately elected clerks and how that system would seem to make implementation of most, if not all, of these principles quite challenging. The group concurred that in order to carry out its role and maintain itself as a separate and independent branch of government, the judiciary must have control and authority of its own records. The group agreed to suggest an additional principle that would incorporate the concept of independence, such as in the case of court records.

Working Group #3

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Philip Knox, Caroline Kirkpatrick, Dan Hall, Charles McCoy, Hon. Patricia Martin, William Weisenberg, and Jonathan Mattiello

Facilitator: David Slayton

Reporter: Kay Farley

Group 3 evaluated the first five Principles, then the remainder as time permitted.

PRINCIPLE 1: Well-defined governance structure

There was general agreement and support for this principle. There was consensus that the court should collaboratively develop a strategic plan and define the governance structure. The collaboration facilitates buy-in.

Courts are big business and should define their core purposes, which would not change in good times and bad times. Structure comes out of these core purposes. All work and new initiatives should enhance the core purposes.

Efforts have to be made to minimize the influence of personalities. Governance should not be personality driven. Governance won't work without real leadership, which must be earned to engender trust and confidence within the court community.

Leadership and empowerment are essential components of an effective governance structure.

Having a well-defined structure is helpful for new judges to understand the various roles and how they should interact with court staff, colleagues, and leadership. It also provides stability and consistency when there is a turnover in leadership.

Clarification is needed that the principle does not presume or is intended to promote a unified court system. The principle should be applicable all organization types.

PRINCIPLE 2: Meaningful input from all levels

This is an "obvious" principle. Unless the court community feels a part of the process, they won't have commitment to solutions and effectuating them.

In some instances, courts have done a good job at bringing people to the table, but not such a good job at using the input they receive. Research says that leaders have to show they are using and acting upon input. Feedback strategies and mechanism are needed.

Collaboration has to be regular and on-going.

PRINCIPLE 3: Single voice

Principles 1 and 2 have to be in place for Principle 3 to be implemented.

There was consensus that the principle is about "single message" not "single voice." Many people may be empowered to speak, but there should be one message. The problem exists when there are competing messages, which can cancel each other out and give legislators an excuse not to act. There should be an acknowledgement that a "single message" is difficult to achieve in the real world.

The approach should be "one message, many voices." Empowering multiple people to deliver the message has advantages. In addition to hearing from a state spokesman, legislators want to hear from their own constituents.

It is helpful to develop talking points and clearly setting the limits and boundaries of discussion.

When there is not unanimous agreement on an issue, there can be a problem. Leadership needs to figure out how to resolve differences. It comes back to the concept of leaders “earning trust.” Stakeholders need to come together to talk and hopefully come to a compromise to achieve a comfortable solution. Leaders need to be willing to share power and compromise when possible.

There was recognition, however, that sometimes compromise is not possible and leaders must make a decision. If, however, there has been an opportunity for meaningful input, compromises have been explored, and the rationale for the final decision is explained, then stakeholders can/should support the final decision.

Court systems value dissenting voices in the issuance of appellate decisions. Perhaps when leadership delivers a message, they should acknowledge the dissenting views.

There should be a foundation of civility. “We may not agree, but we don’t have to be disagreeable.”

PRINCIPLE 4: Selection of leadership

The key part of the principle is education. Leaders need the foundational tools to do the job. Courts cannot afford to not have the most competent leadership. Regarding the selection of presiding judges, all judges need to be educated on the job duties and required skills so they can make wise and informed choices. Over time, this education process will facilitate the development of new leaders.

Business schools teach leadership, but law schools do not. An observation was made that no organization is currently providing this type of training.

Another issue is the term of office for presiding judges. Some terms are too short (one or two year rotation) and other terms are too long (lifetime). There needs to be a balance in the length of the term, as well as opportunities for new blood.

It is problematic when leadership is selected by the electorate. The average citizen does not know the skills required of a presiding judge and whether an incumbent has done a good job. The judicial code also can limit what can be said in elections.

There was also discussion about when it is appropriate to provide leadership training and who should be trained. New judges can be overwhelmed at orientation sessions and not receptive to the training. Judges may be hesitant to attend leadership sessions at judicial conferences because they don’t want others to be aware of their ambition for a leadership position. The ABA developed an introductory judicial education session for lawyers who want to be judges, but it really didn’t take hold in the pilot states. NCSC has developed a training program for presiding judges, but the question has been where and when to deliver it.

Military leaders understand their responsibilities for developing new leaders. Court leaders don’t have that same ethic. Training programs should use current leaders as faculty and transmit the value for developing new leaders.

PRINCIPLE 5: Transparency and accountability

Transparency and accountability are important and becoming more important for justifying budgets. Data is also important for helping people to do their jobs, identify problems, and prioritize the workload.

There is a difference between publishing court performance data and judicial performance information. Judges have been resistant to publishing data on specific judges. There should be a conversation about what the public needs and should know.

Accountability is critical and helps define the court message. Communication is a component of accountability. Transparency and accountability enables courts to accentuate the positives and accomplishments.

The first five principles are the most important and get to the heart of public trust and confidence and professionalism.

It was observed that no court that has implemented CourTools has been bashed for the published data.

PRINCIPLE 9: Explain itself

The word “explain” was troublesome. The other branches of government don’t explain themselves. It is really about communication and exchanging information to develop trust and confidence.

Alternate words were suggested: “educate others” and “communicate and educate.” Education implies pushing information out. It is about sharing information and building collaborative relationships with the other branches of government. In the end, there was consensus that “engage” would be a good substitute word.

What Got Left Out

Courts need to develop and foster relationships with the media. If courts have a relationship,

they can preempt bad coverage and put stories in context so that there is balanced reporting. After discussion, there was thought that this issue could be included under Principle 9.

Difference between Principle 1 and Principle 10

Principle 10 gets at earning trust and legitimacy and illuminates what is contained in Principle 1. It may be better placed immediately following Principle 1.

Court systems have conducted external public trust and confidence surveys, which have shown progress in increasing the public’s positive attitude toward courts. Court systems should consider conducting surveys within the branch regarding leadership.

A suggestion was made to change “clearly established relationship” to “earning trust and confidence within our branch.”

Working Group #4

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Raymond Billotte, Kevin A. Cross, Howard H. Berchtold Jr., Lillia Judson, Molly Justice, Chris Crawford, Kathy Arberg, Rob Baldwin

Facilitator: John Greacen

Reporter: Laura Klaversma

Group 4 evaluated the first five Principles, then the remainder as time permitted.

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

Ideally, in our view, this principle should apply to a state court system as a whole, but in many states this will have to be a long-term and perhaps incremental goal. The principle, applied at any level, however, suggests that structure should be explicit, and the authority for policy-making and implementation well defined. The absence of such clarity can significantly undermine the ability to make decisions.

Discussion Points

- Are the principles general enough that they could apply to any structure?
- If Principle 1 is referring to a particular structure or expectation, some state such as Texas and Ohio could never fit this principle.
- If these are principles that lead to a particular structure, there will be objections.
- If these are to be guidelines to that set performance objectives for a governance structure, there should be consensus.
- What is a “principle?”
- In the 1970s there were structural “standards.” What we learned is that even when courts complied with such structural standards, it didn’t really mean they performed well, and vice versa – that well-performing

courts were not necessarily structured according to the standards. Realizing this, Geoff Gallas started the Trial Court Performance Standards, which were outcome-based performance measures.

- A multitude of structures can accomplish the principles.
- Well-defined: What does it mean?
- What is well-defined for the public/consumer?

It is important to look at who is served by the courts within the jurisdictions or states.

- Good governance structure means that whoever makes the ultimate decision is clear.
- Transparent should mean to the public and stakeholders.
- Principle 1 – applied to a state-level governance structure – can be broken into three points and will likely have broad endorsement with this breakout.
 1. Well-defined governance (can be met any governance structure that is defined explicitly).
 2. Enables Statewide policies; uniformity of customer experience throughout the state. The group identified several examples of unacceptable policy outcomes – trial court jurisdiction that differs from county to county and other local differences that produce a different court experience for the customer

- 3. Enables State-wide administration: to ensure that the local court does not cross over lines that are unacceptable for the state as a whole. Examples include failure of a court to meet standards for acceptable performance
- A number of these principles may be slanted towards a centralized system; but with this definition or view of Principle 1 broken into three parts, it is acceptable to everyone in the group.
- Are you comfortable having your state's structure judged by this Principle?

Conclusions

- The 10 principles not intended to describe or define a specific court governance structure. The group concluded that they should be seen as a template for measuring the adequacy of a statewide governance structure. The governance structure is adequate if it produces the outcomes called for by the principles.
- A well-defined governance structure should define policy for the entire system. It should set marching orders and leave implementation to local courts.
- It should administer the entire state court system. There would be statewide mandates in terms of the outcomes to be accomplished, but local courts would determine how to produce those outcomes, within basic parameters and limitations.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

This is a fairly obvious principle drawn from basic knowledge about system management. In the absence of any means of contributing to the process of making decisions, constituents who have to live with the decisions generally lack any sense of buy-in or ownership. This can result in, at best, indifference to the success of the enterprise or, at worst, resistance and sabotage. Perhaps more important, however, is the fact that the quality of the decision-making process is vitally enhanced by the knowledge and insights of all parts of the system.

Discussion Points

- How can anyone disagree with this Principle?
- It could be an important principle especially for those states that do not get the input.
- The principle of proportionality is an important aspect in this. Every decision does not need input.

PRINCIPLE 3: A system that speaks with a single voice

A court system that cannot govern itself and cannot guarantee a unified position when dealing with legislative and executive branch entities is not in fact a co-equal branch of government. Competing voices purporting to speak for the judiciary undermine the institutional independence of the courts and leave other parts of government (and the public) free to choose the messages they prefer in relation to court policy and administration. This is potentially very damaging both to the actual welfare of court systems and ultimately to the level of respect and attention afforded them.

Discussion Points

- This is an important Principle.
- No matter how centralized, it is difficult to implement. This cannot always be stopped from happening; but should be acknowledged and set as a Principle.
- At times, groups or individuals are not speaking on behalf of the system.
- There are times that it might be helpful to have multiple mouths speaking the same message. What is important is a consistent message not just a single voice.

Conclusion

- There were questions over the use of the terminology "single voice." It was agreed that this is a term of art meaning a consistent message. This Principle is essential for the effectiveness of the branch. When the executive and legislative branches get conflicting messages from different actors or parts of the judicial branch, they feel free to ignore all input from the branch.

PRINCIPLE 4: Selection of judicial leadership based on competency, not seniority or rotation

The complexity of modern court administration demands a set of skills not part of traditional judicial selection and training. Selection methods for judicial leadership should explicitly identify and acknowledge those skills, and judicial education should include their development. This is not an easy task in the context of court cultures around the nation. A more thoughtful conversation should begin and courts should seek ways to identify standards and practices that are better than many of those now in place.

Discussion Points

- This concept should not apply just to judges, but also to AOC directors.

Conclusion

- This principle needs to be broadened. It should apply to judicial leadership and court administration. Narrative should be added to include lengthening terms of service for judges and administrators in leadership positions so they are effective. (Look at the COSCA seniority roster – the ones at the top, with long seniority, are the most effective. States that regularly change their AOC director generally suffer from ineffective management and leadership.)

PRINCIPLE 5: Commitment to transparency and accountability.

The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also, and more importantly, the effectiveness with which resources is used. We in the courts should know exactly how productive we are, how well we are serving public need, and what parts of our systems and services need attention and improvement. We should make that knowledge a matter of public record.

Discussion Points

- Assessments need to be competent and methodologically sound. CourTools gives some comparability and standard.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

If someone outside the judiciary has the power to direct the use of dollars, that entity has the power to direct policy and priorities for the third branch. Obviously, there is always negotiation over funding priorities, but budget practices like line item funding shift the policy-making from the judicial branch to the legislative. This has the effect of pitting different parts of a court system against each other. Courts with the authority to manage their own funds can ensure that priorities are dictated by agreed-upon policy and planning and not by the “project du jour.”

Discussion Points

- There should be authority to allocate resources and spend appropriated funds independent of the legislative and executive branches.
- The same principles should apply to the local courts and their budgets from the state judiciary. Effective use of judicial branch funds depends on lodging spending discretion at the local court level, within broad parameters set at the state level.

PRINCIPLE 7: A focus on policy level issues; delegation with clarity to administrative staff; and a commitment to evaluation

Decisions about policy belong with the structural “head” of a judicial system, but implementation and day-to-day operations belong to administrative staff. An avoidance of micro-management by the policy-maker and clear authority for implementation in the managers are both important for the credibility and effectiveness of court governance, and can minimize the opportunities for

undermining policy at the operational level. Finally, without a commitment to evidence-based evaluation of policies, practices and new initiatives, courts cannot claim to be well-managed institutions.

Discussion Points

- Principle accepted without discussion, additions or conclusions.

PRINCIPLE 8: Open communication on decisions and how they are reached

Judicial culture generally fosters a strong sense of autonomy and self-determination amongst judges — a necessary corollary of decisional independence. In the administrative context, that same culture can make system management tricky. No one wants to tell judges how to decide cases, but we may need to tell them how to manage case records, report court performance, move to electronic filings and discovery, and handle assignments and schedules. To the extent judges and staff feel that decisions emerge from a “black box,” without their input and prior knowledge, the potential for discomfort and dissatisfaction, not to mention general mischief, is magnified. A good system of governance does everything it can to keep information flowing.

Discussion Point

- There is no need to know everything, just the major things. The principle was accepted without additions or conclusions.

PRINCIPLE 9: Positive institutional relationships that foster trust among other branches and constituencies

Given the natural constitutional and political tensions that are inherent in our system of government generally, the judiciary must work constantly to explain itself to the other branches. Care and strategic attention must be afforded to building personal and professional relationships that will ensure an adequate level of credibility when the judiciary converses with the other parts of state

government. This is particularly essential on the budget and finance side, and on the question of openness and accountability. Legislative and gubernatorial staffers as well as their bosses need to know they can take information and numbers “to the bank” in terms of accuracy and transparency when they come from the courts. It also helps if courts are pro-active on the “quality” side of the equation, demonstrating commitment to things like judicial education and performance evaluation for judges and courts.

Discussion Points

- Principle accepted without discussion, additions or conclusions.

PRINCIPLE 10: Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees

Nothing undermines good governance faster than muddled understanding of who is responsible for what. Judges in general have a penchant for assuming that plenary jurisdiction and authority on the decisional side should translate into equally broad individual authority on the administrative front. Thus it is particularly important in court management for the assignments and authority of leaders and managers to be clear, explicit, and included in the general orientation of new judges and staff, as well as in the training of new and potential judicial leadership.

Conclusion

- There is a need to further define relationships. This can be a useful tool for local relationships.
- If governance structure matches the template, services to public will be improved.

Additional Discussion and Conclusions Regarding Principles in General

- The group supported all of the principles based on the assumption that they would not impede with how a local court is able to respond to the needs of its local community and did not

specifically support either centralized or decentralized court governance systems.

- We do believe that these Principles can be used as a template to measure the effectiveness of a state court governance structure.

Discussion Points Regarding Principles In General:

- The Principles can be areas to consider in the way we improve the court operations. It is important to question whether or not we use resources adequately and effectively, spending tax dollars appropriately.
 - The Principles can contribute to, not ensure, more effective processes in the courts. If you do not agree or use them will it detract from efficient courts?
 - This directly addresses some of the institutional problems and anomalies; this will help improve the administration of justice.
- One possible way to evaluate the use of the Principles would be to see how they work for litigants.
 - Is there anything about this period of time that makes the Principles important now?
 - Technology creates change.
 - Under intense pressure to improve the way we do business.
 - Economic pressures demand leadership competency. We cannot afford ineffective leadership and administration in these tight budget times.
 - It is important for a governance structure to preserve flexibility for local courts. Statewide principles of service that can serve as constraints can be useful, but individual courts must have the capacity to decide how to provide the required level of service.

Working Group #5

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: David K. Boyd, Craig Burlingame, Pamela Q. Harris, John R. Meeks, Michael Planet, Joseph A. Trotter, Jr.

Facilitator: R. Dale Lefever

Reporter: Amy McDowell

Group 5 evaluated the first five Principles, then the remainder as time permitted.

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

The workgroup determined that this first principle is one of the two most critical governance principles. It was agreed there is value for every employee within the judicial branch to know and adequately understand this principle, as well as for members of the legislature and other justice system partners to develop a thorough understanding of it.

The group raised the question, however, as to whether the remaining principles could be implemented, or implemented as well, in a system that was not unified.

The workgroup also noted that it is necessary to provide a mechanism by which the courts are able to creatively identify and experiment with best practices and alignment of key stakeholders. Examples would include such things as time standards, financial accounting practices, jury policies, filing fees, indigent defense funds, and pro se representation efforts.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

The workgroup decided that if courts do not follow this principle, then the first principle is likely to fail. One of the advantages of seeking meaningful input is it allows managers to successfully anticipate and respond

to criticism. The key to this principle is how to define the adjective “meaningful.” The group expressed consensus that meaningful input must go beyond only obtaining input from the judges of each court. Rather, it is necessary to educate members of the court community and broader justice system, being careful to ensure that input is not just solicited, but taken seriously.

One of the questions raised by the group is how to effectively operationalize this principle.

PRINCIPLE 3: A system that speaks with a single voice

The group expressed the viewpoint that Principles 1 and 3 should be considered together. For example, using one person or assigned group to convey judicial decisions provides greater legitimacy to the process. However, this also poses a leadership challenge which is not easily met.

A question raised by the workgroup is whether the judiciary obtains greater power by speaking with a single voice and who this voice should be.

PRINCIPLE 4: Selection of judicial leadership based on competency, not seniority or rotation

Overall, the workgroup found this to be an obvious requirement for successful governance. However, it is included in the list of ten principles because it is not often

followed within the court environment. The group discussed what the basis for leadership selection would be if seniority and rotation were removed as criteria for selection. Examples provided include altruism, skill, popularity, and a sense of duty, but these options could create competition and even a sense of favoritism where seniority and rotation are easier to defend.

PRINCIPLE 5: Commitment to transparency and accountability

Fundamentally, the group felt that stepping up to the leadership function is the right thing to do and demonstrates accountability to both the taxpayers and the public.

Questions raised by the group for consideration include whether accountability within the courts has taken a defensive posture. Additionally, how exactly should the courts achieve transparency

and accountability? The group considered that transparency and accountability of the courts as an institution is much more easily achieved than is individual judicial performance.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

The workgroup found this principle to be key to any model of court governance. It requires a focus by court leaders on policy and clearly establishes one of the key leadership roles of presiding judges. The funding agencies should focus on the overall budget allocations, but the courts should be given the flexibility as to how the funds are expended in support of their core functions.

Working Group #6

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: William Simmons, Vicky Bartholomew, Suzanne H. Stinson, Hon. Sherry Radack, Hon. Donna Jo McDaniel, Hon. Bill Dressel, Dale Kasparek

Facilitator: Barry Mahoney

Reporter: Greg Hurley

Group 6 evaluated Principles 1 and 6-10, then the remainder as time permitted.

PRINCIPLE 1: A well-defined governance structure for policy formulation and the administration for the entire court system

The group found that Principle 1 and Principle 10 – **Clearly established relationships among the governing entity, presiding judges, court administrators, board of judges, and court communities** – were tightly linked principles, applicable at both the state level and in trial courts. Group 6 would recommend that Principle 10 be moved to Principle 2 so the Principles could be read in concert and the interrelationship between the two Principles would be clear. The group also noted that Principle 8 – **Open communication on decisions and how they are reached** – may need a caveat. The group felt that the applicability of the principle of open communications may vary with the issue being decided. Courts do need the flexibility to limit the scope of some communications due to the sensitive nature of the subject—for example personnel decisions involving allegations of substance abuse.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

The group agreed that this is desirable. However, group members noted that the applicability of this principle is closely linked

to Principle 5, which provides for court commitment to transparency and accountability. If courts are to have independence in how they allocate resources, they must also be transparent and accountable—to the other branches and to the public—in how the funds are spent.

Group 6 reached a consensus that Principles 1 and 6-10 were otherwise useful and should be included within the Governance Principles.

PRINCIPLE 3: A system that speaks with a single voice

The view of the group was that there needs to be a reasonable way to address dissenting opinions. Several members suggested that the “single voice” would need to note opposition to the opinion being expressed. Others noted that this may or may not be an effective way to handle dissenting opinions. Several group members commented that Principle 3 will only work if the members of the judiciary as a whole have trust in the speaker of the single voice. At a minimum, the existence of differing views should be acknowledged. The group did find Principle 3 to be acceptable as a governing principle but they describe their agreement as a “weak consensus.”

The group reached a consensus that Principles 2 and 4 were appropriate to be included in the Governing Principles.

PRINCIPLE 2: Meaningful input from all court levels into the decision-making process

Several group members said emphasis should be placed on ensuring that the process of obtaining input from all court levels in the decision-making process should be meaningful. There was strong agreement in the group that Principle 4 – Selection of judicial leadership based on competency, not seniority or rotation – is very important. It was suggested that the commentary on this principle might also note the desirability of leadership policies that provide for ways to assure continuity in leadership and establish limits on the length of terms of persons in leadership positions. The NCSC’s “*Elements of a Model Rule for Presiding Judges*” was cited as providing excellent material on court leadership selection, retention, and responsibilities.

Group 6 noted that the Governing Principles seem to lean towards centralization or unification of the judiciary. The group expressed concern that this could inhibit innovation, which has a tendency to develop from local initiatives. The group felt that care should be taken to ensure that local initiatives still have the ability to be tested and developed

when appropriate. It was suggested that perhaps one of the core principles should be to ensure that a court system provides opportunity for local-level innovation. The group also noted that strategic planning—in particular, attention to the mission and vision of the court or court system—is an essential element of any governance system. A statement of core principles of court governance should be linked closely with clear statements of the purposes and mission of courts.

Working Group #7

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Paul DeLosh, Elizabeth Domingo, Glenda Guzinski, Beth Riggert, Tina Vagenas, Marea Beeman

Facilitator: Marcus Reinkensmeyer

Reporter: Lorie Gomez

Group 7 evaluated Principles 1 and 6-10, then the remainder as time permitted.

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

Members of Group 7 agreed on the importance of Principle 1, stressing the importance of defined administrative roles within the court system. Lack of understanding with regard to one's role, or the role of others, causes organizational tension. Blurred roles cause tension as well. While all agreed that Principle 1 is good in theory, many felt that implementation is the challenge.

Members spoke to the importance of open communication, clarifying that this means meaningful engagement as opposed to “going through the act” of communication. Communicating ineffectively can lead to an inconsistent application of rules and points to the need for policy and procedure standardization. Policy cannot be personality-driven, group members emphasized. Another member stressed the importance of not losing sight of court end users, particularly citing NACM's Purposes and Responsibilities of Courts Core Competency.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

Members of Group 7 discussed the variety of methods used in their courts to allocate resources and spend funds, and it ranged

from being very restricted by a funding source to having a “lump sum” pot of money to spend as the court saw fit. Frustrations with tight controls were expressed, particularly when allocations appear to be arbitrary. Members also felt this stifles court management creativity. Several members expressed envy for the West Virginia courts, who create a budget and the legislative branch must fund it.

Areas of concerns included having the state freeze hiring when court employees are state employees and adversely affecting local courts, and the legislature imposing program requirements on the judiciary and creating fiscal issues/collateral consequences. Members saw the best fix as judicial branch collaboration with the legislative and executive branches, noting the importance of “having a seat at the table” when court matters are being discussed and having data and priorities available in order to show accountability.

PRINCIPLE 7: A focus on policy-level issues; delegation with clarity to administrative staff; and a commitment to evaluation

Group 7 members felt that Principle 7 sounded like good management. Issues of consistency in management and the problem of micromanagement came up again in this discussion, as did concerns regarding the challenge of evidence-based program evaluation.

PRINCIPLE 8: Open communication on decisions and how they are reached

Group members agreed with Principle 8 “at face value” and discussed the importance of training in making open communication a reality. Members discussed the need to encourage judges to let staff help them with administrative duties, the need to improve vertical and horizontal collaboration, and the need to educate each other. They also stressed that a good working relationship between the administrative judge and court manager is key and requires constant contact and communication.

Members expressed support for judicial council committees that involve “line” staff, noting that projects and commissions that get people involved get buy-in. Using technology to communicate change and to give staff a chance to give feedback is also looked on positively. One member said, it allows us to “tell not just the ‘why’ but also the ‘how’” of an administrative decision. “Communication from a dialogue rather than a mandate is better accepted,” added another member. Everyone agreed that court personnel want to be heard, and it increases their satisfaction when they know they’ve been heard. Furthermore, explaining the decision does not undermine the decision.

PRINCIPLE 9: Positive institutional relationships that foster trust among other branches and constituencies

Group 7 members agreed that Principle 9 is crucial, but institutional relationships are not always controllable because of personalities and personal relationships. Members were optimistic about the prospects of improving institutional relationships, however. Positive attempts to reach out to other branches and constituencies suggested by group members included:

- Including legislative and executive branch members on court committees
- Holding programs such as Legislative Day (Virginia), where legislators are invited to the court for a breakfast meeting and View from the Bench (Arizona) or Judicial ‘Ride-Alongs’ (Maryland), where legislators can shadow a judge on the bench.
- Inviting legislators to drug court graduations to build support for drug courts
- Encouraging judges to advocate only for issues affecting the administration of justice and not to individually lobby legislators
- Providing a Freshman Tour to bring new legislators to the judiciary
- Supplying data to support the work of the courts (and not relying on personalities and relationships)

PRINCIPLE 10: Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees

Discussion by members of Group 7 centered on the need to strengthen the presiding judge’s role.

Most members felt that more structure or guidance for presiding judges would be beneficial and that this would help with issues of consistency. Consistency, said one member, is empowerment. Members particularly saw a need for succession planning, preferring that a presiding judge would be “grooming” the next presiding judge – with the consent of the chief justice. The Virginia AOC developed a manual for PJs to help them adjust to their administrative role. Many group members felt that rotating the position of presiding judge is beneficial, because it keeps the presiding judges “cordial” toward other judges and court personnel.

Working Group #8

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Stephanie Hess, Richard Abbott, Timothy Ostby, Hon. Kate Ford Elliott, Hon. John Voorhees, Joseph Sawyer, Marie Komisar

Facilitator: Carl Reynolds

Reporter: David Rottman

Group 8 evaluated Principles 1 and 6-10, then the remainder as time permitted.

The group discussion began with a review of the comprehensiveness of the 10 governance principles and the degree to which the states represented in the group embraced those principles. The following points were raised.

1. While the principles clearly would be implemented in different ways depending on the structure of a state court system, it is important to recognize the continuing importance of personalities of the leaders, especially of the chief justice and state court administrator, in how and how well each principle can be implemented.
2. The method of judicial selection also is an important consideration in implementing the principles. There was no consensus, however, on which form of selection is the most conducive to implementing governance principles.
3. In many states, the existing governance arrangements and rules are set up in a way explicitly designed to prevent some of the principles being realized in a state.
4. More attention should be placed in the principles on the distribution of rule-making authority within a court system and the role that plays in shaping court governance in a state.
5. There was a concern that studies be done to show the benefits of adopting the 10 principles.

After the general discussion, each principle was discussed individually. The following ideas and comments emerged.

PRINCIPLE 6: Authority to allocate resources and spend appropriations independent of the other branches

Several states were described as already having key aspects of Principles 6 in place. Issues remained in those states, notably the internal allocation of resources. Generally, the principle is complex because funding arrangements and decision-making is often very dispersed.

PRINCIPLE 7: A focus by court leaders on the policy level

Observations included the degree to which the strength of the focus depends on the management style of the state court administrator; some administrators micro-manage, while others keep a distance. The word “evaluation” seems misplaced. One group member suggested that the phrase might refer to the value of allowing innovation at the local level contingent on a subsequent evaluation to determine if the innovation met its objectives and is transferable to other courts in the state.

PRINCIPLE 8: Open communication on decisions and how they are reached

There was a sense that this principle was insufficiently distinguished with Principle 5, a commitment to transparency and accountability. The discussion concluded that the difference is that Principle 5 refers to the court system vis'a' vis the public and Principle 8 to judges, administrators and others

within the system to state level decision-makers. One way of expressing Principle 8 is that leaders at the state level should treat those working within the system in a procedurally fair manner.

PRINCIPLE 9: Positive institutional relationships that foster trust with other branches

There was agreement on the importance of this principle. Examples were offered about the way in which a single unfortunate incident could cripple interbranch relations. The declining representation of lawyers in state legislators causes difficulties in achieving this principle. Courts need to develop effective ways to cultivate relations with legislators and obtain the help of the legal profession and other justice system partners in doing so.

PRINCIPLE 10: Clearly established relationships among presiding judges, court administrators, boards of judges, and court committee

The principle was discussed primarily in terms of budget preparation and the rule-making process. In one centralized state system administrative directives go through initial vetting by a number of committees. In some decentralized states, it appears that trial court administrators want more uniformity and direction, while judges do not even want statewide uniform forms to be developed.

The group went on to do an overview of the initial five governance principles, including a look

at the degree to which they were currently found in the states represented in the group.

Some group members felt that Principle 3 (“the system speaks with one voice”) was the most difficult to achieve because the majority of judges are elected. However, a group member from a state with a highly centralized court system and non-elected judges noted that it was unimaginable that any judge would, for example, talk to a legislator even at a public event about court policy. In another centralized state with judicial elections, contacts between trial court judges and legislators were done in a targeted manner decided at the center, assigning the more appropriate trial judge to a particular legislator.

In discussing Principle 2 (“meaningful input from all court levels) the importance of management style or personality was raised in terms. Input meant different things in systems in which personality shaped the nature and form of input from within the court system, as opposed to when the process defined the nature of the input.

For Principle 4 (“leadership selected based on competency and not seniority or rotation”), different views emerged. Some felt that the process of the bench electing its presiding or chief judge is inherently divisive, sufficiently so that seniority had its virtues as a selection method. Others were in favor of central appointment of trial court presiding judges.

Working Group #9

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Michele Oken, Steven C. Hollon, Tom Darr, Marty Sullivan, Richard Schaffler

Facilitator: Bob Wessels

Reporter: Deborah Saunders

Group 9 evaluated Principles 1 and 6-10, then the remainder as time permitted.

PRINCIPLE 1: A well-defined governance structure

Differences in the ability of courts to reach the desired outcome based on the size of the state and cultural differences such as strong local control were recognized. The group agreed that there are many different ways to do the same thing and not necessarily one best way. While structure does matter you need to first look at how well things are working. One example was court unification in California where municipal and superior courts that were already cooperating found the transition much easier. In jurisdictions where there was not this type of cooperation the behavior did not change and they still operated as a two tiered system. Leadership is needed to get to the necessary outcome.

While structure is important it is also important not to micromanage. There is a need for some place in the structure for the trial level and supreme court or governing body to meet and dialog. There was a concern that centralization could drown out the small rural voices. The group emphasized that the chief justice needs to be a leader but that this should not be top down leadership. Instead the chief justice should listen to the council and make decisions from there. Perhaps the emphasis should be on simplification and not necessarily unification. Leadership from the top is needed in changes such as state wide automation. A concern

was expressed that this decision making process should not be too participatory, in the end a decision has to be reached and the branch move forward.

PRINCIPLE 6: Resource allocation independent of legislative and executive branches is crucial

Everyone agreed that Principle 6 is crucial.

PRINCIPLE 7: Policy level issues, delegation to administrative staff, and commitment to evaluation

The group agreed that evidence-based programs and program evaluation are critical. The importance of clearly defined data to support the entire process including management data and analytics needs to be emphasized. Policy makers have to make evidence based decisions. How you count and report cases makes a difference.

PRINCIPLE 8: Open Communication

The group noted that it relates to Principle 2 (meaningful input from all court levels). Both of these principles point to a need for an adequate explanation. This need for rational explanation was compared to studies on procedural fairness where parties are happier when they understand the process. The possibility of combining these two principles or moving them so that one followed the other was discussed.

PRINCIPLE 9: Positive institutional relationships

Everyone agreed on the necessity, but the question remained on how to foster these relationships. The importance of empirically based decision making was reiterated.

PRINCIPLE 10: Clearly established relationships

The group noted that this principle related back to the first principle on a well-defined governance structure. The suggestion was made that these two principles could be either combined or follow each other consecutively.

PRINCIPLE 3: A system that speaks with a single voice

A comment was made that this happens best if the other principles are followed.

PRINCIPLE 4: Selection of judicial leadership

The point was made that the more of the group that had been the presiding judge, the better the group dynamics and team work. Being a presiding judge gave each judge a new perspective and the experience made them function better as a unit. The suggestion was made that permitting successive terms was a good option.

PRINCIPLE 5: Commitment to transparency and accountability

There was a wide range of responses on how far to go in the release of information.

Discussion included the questions: What is public information? Is it the raw data? Is it better to have problems exposed by someone outside the court or is it better to deal with it internally by doing the court's own internal analysis? The consensus was reached that it is better for the court to make the analysis and put the information out there themselves.

Finally, the group asked the question was anything missed by these 10 principles in terms of effective governance.

Two questions were raised.

1. What belongs in court and what does not? This question looked at the issue of when do you need the full formal court system? The full blown court system may not be needed in every instance i.e. traffic citations.
2. What should be centralized and what should be left to local discretion? The example of an HR system managing all personnel and facilities was discussed. The point was made that this could happen in smaller states but would be more difficult in a larger state with a long history of local control.

The group discussion was summed up with the statement that the goal is a structure that allows for the shared fair exchange of values recognizing that one size does not fit all.

Working Group #10

STATE COURT GOVERNANCE AND ORGANIZATION IN 2020

Participants: Kelly Stelle, Hon. Wallace B. Jefferson, John Martin, Hon. Marjorie Laird Carter, Ron Keefover, Peter Koelling, Maureen Dimino, Michael Bridenback

Facilitator: Robert Zastany

Reporter: Anne Gallegos

Group 10 evaluated Principles 1 and 6-10.

Summary Points

- All principles are interrelated.
- While there are challenges that can hinder the successful implementation of each principle, overall, they are goals that courts should aspire to achieve.
- The principles will be applied differently to different types of state court structures; however, courts should not rely on their structure as an excuse for not being able to apply these principles but should use the principles as a way to challenge the status quo in their system.
- Key components to implementing these principles include, education, training, and internal buy in.

PRINCIPLE 1: A well-defined governance structure for policy formulation and administration for the entire court system

The group discussed this principle at length. It was agreed that this principle did not dictate a particular type of structure only that it should be well defined and anybody should be able to figure out how the system works, regardless of system type. The group also agreed that an overarching structure should govern certain aspects of the entire court system (e.g., uniform HR structure, minimum level of resources, standards of essential functions). However, others should be left to trial courts discretion and might vary from one court to another to enable flexibility and efficiency (i.e., how to achieve

the standards or minimum level of resources). Finally, it was discussed that the structure should not only be well-defined, but needs to be comprehensive and indicate how the court system relates at all levels of the system (i.e. judges, administrators, judicial council, elected clerks). How these different parts interact is often unclear and undefined. Power, structure, and resources at all levels of the system need to be aligned.

The group also discussed some challenges that could hinder implementing this principle. One was lack of clarity about who has authority to make key decisions. The group felt that there needed to be an institutionalized system for who is responsible for what, otherwise nothing gets accomplished. On the other hand, the group discussed how at times it seems like it can take too long to come up with processes and achieve change in a rigid governance structure if there is no flexibility provided at the local level. Another hurdle the group discussed was getting support/buy in internally before achieving a change in governance. If you can't establish buy in at the local level, you can't build up to state level. The group felt that there are always people/judges within a court system who don't want a well defined structure because they believe they will lose their autonomy and discretion. They discussed how education and awareness are key in garnering support for a well-defined governance system and standardized practice.

PRINCIPLE 6: Authority to allocate resources and spend appropriated funds independent of the legislative and executive branches

The group agreed that the judicial branch should have the authority to allocate resources independently and consequently, should be responsive and accountable regarding how they decide to use the funds. The group agreed that they did not feel dollars should be appropriated into specific categories by the legislature. Likewise, they felt that the local/trial courts should have some flexibility to allocate their funds as well, that the state judiciary should not "micromanage" the trial court/local level.

Accountability was a big theme when discussing fund allocation. The group felt that the judiciary should be able to provide a business case for money requested based on achievable outcomes and the ability to measure those. There should be an assumption that the courts know their business and can provide evidence to support why funds are needed and what they will be used to accomplish. A question that arose here was whether the AOC has the resources for outcome measurement and tracking the results of spending.

Another challenge the group discusses was that the judicial branch budget impacts other branches and vice versa and this needs to be considered when working collaboratively. An example that came up was when core court functions are not part of budget allocation for the judiciary (e.g., probation, elected clerks), yet this can heavily impact the court's ability to do work. The judiciary doesn't have the authority for the other functions and the budgets for those. However, it was stated that because of budget cuts and the current climate, the courts have a unique opportunity now to work with other branches (e.g., corrections) collaboratively to see how the most outcomes can be achieved most efficiently.

PRINCIPLE 7: Focus on policy-level issues;

delegation with clarity to administrative staff; and a commitment to evaluation

The group felt that this principle was in large part a training issue for leadership—making sure there is a good selection process for administrators and that they receive comprehensive training. It was brought up that currently there might be a trust issue, since court administration is a relatively young profession. The group spoke of the dichotomy that exists—elected officials make policy and administrators implement it. Some felt that this was not necessarily true. Others felt that while administrators do influence policy, judges should have policy authority. The group agreed that judges need to know when they should to be involved in administration and when not to and need to buy into this idea. The group spoke of instances when judicial leadership did not buy into this idea and how negatively this affected the administrative staff and prohibited progress.

The group discussed whether many courts had the resources to commit to evaluation, particularly in de-centralized systems and in small or rural communities. There is often a lack of common data among counties in a de-centralized system. The group agreed that there should at least be a set of minimum common data elements to be collected statewide. In the meantime, if this is not available, a strategy is to use data from similar states or jurisdictions as a substitute for data that you don't have yourself. The group also discussed that in a decentralized system, it is the AOC's responsibility to ensure that the elements of this principle are implemented at the local level.

PRINCIPLE 8: Open communication on decisions and how they are reached

Overall, the group discussed that there is generally a lack of guidance about deciding what's appropriate to share—with whom to share which information and how much detail to provide. They felt that informal structures need to be integrated with formal communication structures. For example, at local levels the judge has commu-

nity relationships that need to be used to communicate the court's messages and decisions. Another example is passing along information informally about how or why decisions were made to the people who need to know when there is no formal communication made.

Specifically, the group wondered if passive forms of communication are enough (minutes, agendas, etc). Maybe there should be more active forms of communication, in-person, and more explanation of the decision-making process. One example mentioned was that having open hearing on budget decisions would help in understanding why decisions were made. They also agreed that while messages from the state level are important, local courts have the ability to share information in a more personal setting and can make more impact.

PRINCIPLE 9: Positive institutional relationships that foster trust among other branches and constituencies

The group talked about the need to have consistent information systems and data across localities to show to other branches. Courts

perceive legislators as lacking in understanding about the courts—having data to educate and inform them would help.

The group also discussed that how the judges come into their position (i.e., elected, appointed) influences relationships and how connected and accountable they are with the constituents. Attitudes on judges' visibility have changed over time. In the past, it was common for judges to be encouraged to stay “under the radar.”

PRINCIPLE 10: Clearly established relationships among the governing entity, presiding judges, court administrators, boards of judges, and court committees

The group felt that the discussion for Principle 1 covered this as well, that you can't have one without the other.

