

WHITE PAPER ON
PROMOTING A CULTURE OF
ACCOUNTABILITY AND
TRANSPARENCY: COURT SYSTEM
PERFORMANCE MEASURES

Conference of State Court Administrators

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The Conference of State Court Administrators (COSCA) was organized in 1953 and is composed of the principal court administrative officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands.

PROMOTING A CULTURE OF ACCOUNTABILITY AND TRANSPARENCY: COURT SYSTEM PERFORMANCE MEASURES

"The ordinary administration of criminal and civil justice... contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government."

Alexander Hamilton

I. Introduction

A fair and impartial Judiciary is crucial to maintaining the rule of law and upholding the laws that govern societal relations. In a previous white paper, the Conference of State Court Administrators (COSCA) explored the relationship between judicial independence and accountability, stating that the courts occupy a unique position that demands independence and self-governance, but acknowledging that with judicial independence comes the corresponding "right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court business."¹ In that paper and in many other forums, COSCA has repeatedly expressed its strong commitment to the pursuit of accountability and transparency in the conduct of state and local court operations and in overall judicial branch affairs. Indeed, accountability and transparency are critical to judicial governance and to the preservation and strengthening of an independent Judiciary.

State court leaders have a duty to hold our organizations accountable to the public and our inter-branch partners by instituting a set of empirical measures, and a program of on-going assessment of court outcomes with the wide publication of the results of those assessments. Although state court systems are working successfully in many different contexts to advance accountability and transparency, court performance measurement is one area in which state courts need to do better.

Court performance measurement is the evaluation of overall systems and programs, rather than individual judicial performance. It encompasses more than the presentation and analysis of case management data; it is both a quantitative and qualitative assessment of court effectiveness. There are many important advantages to developing and implementing effective performance measurement systems. Whether state courts utilize the CourTools® system developed by the National Center for State Courts (NCSC) or other standards tailored to the needs of individual jurisdictions, a commitment to performance measurement will help state court leaders evaluate the organizational and operational effectiveness of our court programs and outcomes.

The assessment of court performance serves as a basis for organizational change and as a means for continuous improvement of court operations and programs. By the adoption of such a process and the transparency with which the process results are reported, state court leaders are able to demonstrate capable stewardship of the public's trust in the Judiciary's constitutional responsibility for the administration of justice. Indeed, at a time when courts are under increasing scrutiny, performance measurement systems are essential to identify those specific areas of effectiveness and those areas needing improvement. Public reporting of such empirical findings serves to blunt unfair criticism based upon exceptions and perceptions.

This paper demonstrates the important advantages of developing and deploying court performance measurement systems. It explores the reasons that courts have been slow to embrace performance measurement, and provides examples from jurisdictions that have derived important benefits of adopting a performance-based public strategy. It makes clear why the advantages of performance measurement significantly outweigh any possible risks.

If the Judiciary is to be fully accountable and transparent so as to preserve essential branch independence, court leaders must affirmatively embrace a process of constant self-examination and evaluation. Perhaps even more challenging is the need to make public in very broad ways the results of such assessments. State court leaders need only to look at the examples in the child welfare area and problem-solving courts to see concrete evidence of what courts can do to be both accountable and transparent.

Although this is a policy paper, there may be a need for technical assistance to aid state courts in pursuing accountability and transparency. The NCSC should make itself available to provide such assistance and consider developing a compilation of materials to serve as practical implementation guidelines.

II. Recent History of Court Performance Measurement Tools

In 1987, the National Center for State Courts and the Bureau of Justice Assistance of the U.S. Department of Justice commenced the development of the *Trial Courts Performance Standards* (TCPS) as a means of measuring state trial court effectiveness. The standards were established over a period of ten years at a time when both state court budgets and personnel "were stretched beyond their capacities."² It was believed that these standards would provide the impetus for major public policy reforms in the judicial branch of government. Twenty-two standards were developed in six performance areas: Access to Justice; Expedition

2. Keilitz, Ingo, Standards and Measures of Court Performance. *Criminal Justice 2000*, vol. 4, 559.

and Timeliness; Equality, Fairness and Integrity; Independence and Accountability; and Public Trust and Confidence. The 22 standards included a total of 68 discrete measures.

Through use of the TCPS, courts were encouraged to engage in self-assessment primarily through observation, interviews, surveys, and examination of their own records and policy documents. These performance measures focused on the experiences and expectations of those being served by the courts rather than those of court managers and judges. There was strong opposition by some to the measurement system itself.³ Some critics were concerned that the NCSC would use the TCPS as a way to build a national system of court accreditation or that the TCPS would be used ultimately to gauge individual judge performance. As a result, the standards were published with an explicit disclaimer that the measures were to be used only for internal court management purposes.⁴

Prior to publication of the TCPS in 1997, the commission that created the standards expressed its expectation that by 2000 all state courts would be using the TCPS as part of their routine practices. Indeed, between 1990 and 1999, the standards were endorsed by the Conference of Chief Justices (CCJ), COSCA, the National Association for Court Management (NACM), the National College of Probate Judges, and the American Judges Association. Unfortunately, the TCPS was not routinely adopted by all state courts as predicted.⁵ In 2005, NCSC created the CourTools[®] measurement standards to provide “more specific focus than the 68 measures of the TCPS.”⁶ Drawing on the same underlying goals as the TCPS, while adding factors used in effective public institution management, CourTools[®] developers wanted to produce measurements that were fewer in number, feasible and practical for daily management, outcome-focused, and reflective of important aspects of the fundamental mission and vision of courts. In short, CourTools[®] were developed to be more practical and meaningful than TCPS. They evolved from the ideas and work of people actively engaged in trial court administration rather than

3. Keilitz, *supra* at 576.

4. See P. Casey, *Defining Optimal Court Performance: The Trial Court Performance Standards*, Winter 1998 Court Review, p. 28.

5. A. Aikman, *The Art and Practice of Court Administration*, 2007, p. 237 (“At an intellectual level, the Trial Court Performance Standards changed the debate, and changed the perception about the value of the data. Regrettably, they did not change operations in more than a few courts.”) For a listing of factors that contributed to decisions by state courts not to implement TCPS, see R. Schauffler, *Judicial Accountability in the U.S. State Courts: Measuring Court Performance*, 3 Utrecht Law Review 112, 120 (June 2007).

6. CourTools[®]: Giving Courts the Tools to Measure Success. National Center for State Courts, 2005.

large national committees.⁷ Narrowed to just 10 standards, the CourTools® measure:

- Access and Fairness
- Clearance Rates
- Time to Disposition
- Age of Active Pending Caseload
- Trial Date Certainty
- Reliability and Integrity of Case Files
- Collection of Monetary Penalties
- Effective Use of Jurors
- Court Employee Satisfaction and
- Cost per Case

At their 2005 joint annual meeting, CCJ and COSCA adopted Resolution 14 urging state courts to measure their courts' performance, using the CourTools® and their six-step implementation process as models.⁸ Resolution 14 reflected an important change in thinking about performance measures: no longer should performance measures be viewed as internal management tools only. State courts were urged to share and learn from the experiences of other court systems and use consistent methodologies to promote comparability between court systems. More importantly, Resolution 14 emphasized that "judicial accountability can foster an environment where other branches of government and the public understand the judiciary's role and less likely to interfere with the judiciary's ability to govern itself."⁹

In July 2008, the NCSC published a working paper entitled *Appellate CourTools®: A Performance Measurement System for Appellate Courts*. This working paper proposes eight performance measures for appellate courts based on several primary sources and is divided into three sections including a summary of the eight proposed performance measures, a general overview of the principles of performance measurement, and the final section provides a more detailed description of the eight proposed measures.

III. Current Measures and Data Use

In preparation for this white paper, an informal survey of COSCA members and trial court administrators was conducted to learn whether state courts are currently

7. Telephone conversation with Dan Hall, Vice President, NCSC, Court Consulting Services Division, Denver, CO, January 23, 2008.

8. Conference of Chief Justices/Conference of State Court Administrators, Resolution 14, "In Support of Measuring Court Performance." 57th Annual CCJ/COSCA Meeting, August 3, 2005.

9. *Id.*

measuring performance and what tools are being used.¹⁰ These court leaders were also asked about the use of the data being collected for performance measurement purposes: Is the data being used to increase accountability and transparency regarding court operations? Is it being shared to help other branches of government and the public understand the role of the judicial branch?

It was expected that those courts that do measure their courts' performance would have an interest in, and respond to, this informal survey. In fact, the vast majority of the 52 jurisdictions that responded indicated they are currently measuring their courts' performance in some meaningful and objective way through use of TCPS, CourTools® or locally prepared sets of measuring standards, or in some combination. Even courts that are not yet measuring performance responded that they have convened judicial task forces to study the issues further or are in the process of learning more about CourTools® and plan to implement them soon.

When asked how long respondents have been measuring performance, the survey results showed peak increases in two specific time frames: a third of the respondents indicated measuring performance for more than 10 years, while another third indicated less than 5 years. Both these survey results reflect the urging of COSCA and others to measure court performance following the development of TCPS in 1997 and CourTools in 2005.

While the survey data are encouraging, the court community has a long way to go toward sharing collected performance data with the public and the other branches of government. In many key performance areas of interest to the public (access and fairness, case expedition and jury management), only about a third of the responding courts measuring performance make their performance results public. Ironically, despite the relatively low level of public and inter branch information sharing, 85 percent of the responding courts that are engaged in performance measurement stated that their purpose in doing so is to demonstrate accountability and transparency.

So why aren't all courts making greater use of performance measurement tools? And why aren't more courts who measure their performance sharing their outcome data with court users, court funders and with one another? Of the courts responding to the survey that indicated they are not presently measuring their performance, the largest percentage indicated they have not yet done so because the data for performance measurement is not available and they lack staff resources to implement court assessments. A fairly large percentage of courts also indicated that a lack of consensus at the policy level kept them from measuring their court performance. No court responded that the measures were too difficult to use.

10. The survey was distributed to state and trial court administrators with assistance from NCSC and NACM.

Presumably, the courts that are measuring performance but not sharing their results do not perceive any advantages in doing so.

There are many important benefits derived from sharing performance data. This paper examines just a few of the jurisdictions that are measuring and reaping those benefits, but there are many other courts that measure performance and share their results with the public, the legislative and executive branches, and others. The courts described in the following section were selected to illustrate some of the varied approaches and benefits.

New Jersey

With the longest history of using court data to improve performance, the New Jersey Judiciary has collected statewide performance data since court unification in 1947.¹¹ In 1999, they focused specifically on reducing the number of cases in backlog as a major goal. New Jersey has time to disposition guidelines for all case categories. Cases beyond specified time standards are considered to be in backlog. Backlog was determined to be a critical measure since it addressed the public's most consistent criticism of the courts -- delay.¹² At the same time, the courts worked, through ongoing communication with judges, staff and the bar, to develop and implement best practice standards and procedures to resolve cases fairly and efficiently. Over the next several years, the New Jersey state court system ended each year with a press release and an annual report announcing the ever-decreasing numbers of cases in backlog in their trial courts.¹³ It published the information on its web site. With strong leadership that focused on the goal of backlog reduction and regular review of the data at statewide meetings, the courts were able to reduce their overall backlog by 46 percent and have maintained those lower backlog levels. The public, legislative and executive branch officials, academics in public policy institutions, and other key leaders, taking note of this information (and other performance measures), viewed the New Jersey judicial branch as well managed. They had an overall positive feeling about the courts because they could see how the court managed its backlog. According to the

11. Greacen, John, *Backlog Performance Measurement - A Success Story in New Jersey*, 46 *Judges' Journal* 42 (Winter 2007). Greacen explains that having a statewide automated information system is not a prerequisite to collecting performance data and that before an automated system was in place, the New Jersey courts collected and maintained this data on index cards in the local trial courts. What is necessary are uniform case management procedures based on best practice standards and consistent training to assure conformity of the data collected.

12. *Id.* at 45.

13. Information from Theodore Fetter, Deputy Administrative Director, Administrative Office of the Courts, State of New Jersey, 1985-2008.

Judiciary, measurement and transparency have had positive results in budget requests and new judgeships.

The New Jersey measurement system is effective because the resulting data is integrated fully into the management of the courts. Performance measurement is integrally woven into the New Jersey courts' regular business operations-accountability is part of the court culture.

Oregon

Oregon's state court system is experiencing a similar positive effect from measuring court performance and sharing the results with the public and the other branches of state government. In 2003, the Oregon legislature required all state agencies, and the Judicial Branch, to include performance measures in their biennial budget requests. In response, the Oregon Judicial Department (OJD) developed 17 output measures focused on funding issues. In 2004, the OJD established a Performance Measures Advisory Committee (PMAC) to guide and improve performance management. In 2007, PMAC embarked on a process to establish outcome measures based on its business needs. Their design process involved all levels of judges and staff to ensure performance measurement is embedded in their "organizational DNA."¹⁴ Additionally, draft measures were designed to create a transparent, "bottom-up information system" that allows for future system enhancements. The Legislative Fiscal Office and Department of Administrative Services were kept informed throughout the process. They have proposed five additional performance measures for 2009-2011.

Currently, OJD's outcome performance data is limited to monthly and annual reports available on its website. PMAC is currently in the process of making real time data available to judges and staff through the use of dashboard and business analysis software to drive operational and business decisions. Once the OJD completes their dashboard reporting of data, the information will be available in real time on their website. The Oregon legislature and executive branches have publicly complimented the OJD as the model for performance measurement in the state.

Massachusetts

The Massachusetts court system began measuring court performance following a finding by an independent commission that the state courts were "drowning in

14. Telephone conversation with Jim Adams, Chair, OJD's Performance Measures Advisory Committee and Alice Phalan, Planning and Evaluations Manager, OJD's Court Programs and Services Division, May 30, 2008.

managerial confusion."¹⁵ Although the Massachusetts trial courts were long-recognized for excellence in the quality of justice, improvement was needed in the delivery of justice: a 2001 U.S. Chamber of Commerce survey of corporate attorneys ranked Massachusetts courts near the bottom of all states on timeliness. The Chief Justice convened a commission of respected business, legal and academic leaders that identified the need within the state court system to "create a culture of high performance and accountability."¹⁶ Following this commission's report, the Massachusetts legislature created the Court Management Advisory Board, which recommended the adoption of empirical measures to document progress in improving the delivery of justice in the state. The Massachusetts court system put civil and criminal time standards into place in all trial courts by November 2004 and adopted the four CourTools[®] measures that pertain to timeliness and expedition. That the court did so prior to full implementation of the statewide integrated court automation system and with the limitations inherent in their existing legacy computer system demonstrated foresight and resulted in benefits -- the performance measurement project helped inform the reporting requirements for their automated system and the new system facilitated production of the courts' performance data.

In 2006, improvements in timeliness of cases exceeded all expectations. For example, the number of pending cases that were beyond the disposition date set by the time standards was reduced by 50 percent. The Massachusetts court system's performance measurement project (called the Court Metrics Project) and their outcome data is published in annual reports and in quarterly reports on their website and written about in bar journals and news articles. As a result, the legislature and the public understand more about the court's case management processes and can review objective data demonstrating effective management of the court's resources. Massachusetts is also utilizing other CourTools[®] and as a result of these performance measurement initiatives, empirical data now informs court policies and drives its management decisions. The court culture has been radically transformed to one informed by performance-based data, rather than anecdotes and intuition.¹⁷

Utah

The focus in performance measures in the Utah State Court system has been on performance improvement and transparency. In 2004, the Utah Judicial Council

15. Kladko, Brian, *Report: State Court System Has Improved Efficiency*, Boston Business Journal, April 27, 2007.

16. Mulligan, Hon. Robert A., *Metrics in the Trial Court: Creating a Culture of High Performance*, Boston Bar Journal, May/June 2007.

17. *Id.*

began implementing the CourTools® developed by NCSC. Updated information on the court's performance in eight areas of measurement is provided on the Utah state court website. A web page preceding the actual measurements describes what is being measured, how it is being measured, and why it is important to the court system and to the public to measure this area of court operation. Following this explanation, graphic displays clearly illustrate time to disposition, age of active pending and clearance rates of the various Utah courts, summaries of jury service, and information on collection of restitution and fines. The information is provided by court type, and presented statewide, by judicial district, and by individual courthouse.

The results of an access and fairness and employee satisfaction survey are also published. Survey results have been utilized for policy setting and program evaluation by the Judicial Council and by court administration working with court leadership to improve outcomes and performance. Basing decisions on hard data allows for more concrete and effective action. Anyone interested in knowing how Utah courts are performing and how public resources are utilized can access that information easily. The centrality of accountability and transparency has shaped ideas of governance and ownership of the Utah court system as a public institution.

Lubbock County, Texas

A court system need not be large or even have made the decision at the state level to measure and publish its performance results. In Lubbock County, Texas, the Board of Judges gathered together attorneys, the public, and other stakeholders at meetings to discuss changes to improve the judicial system. This court system believes that it is crucial for the judiciary to be independent and that maintaining that independence requires accountability in its operations. It adopted the newly-released CourTools® measures and in 2005 published its first report of court performance. The report is made available on the court's website. Since then the Lubbock County judiciary has been able to show the public and all interested persons improvements in case time to disposition and increases in clearance rates while case filings have increased and staffing levels remained the same. The Lubbock County court information also illustrates that a court system need not adopt and begin measuring all performance areas at once -- start with a few measures and continually expand and improve your performance measurement process.

Some jurisdictions noted that they have had directives from their state legislatures to measure performance. Often, these directives come with measurement tools that have been prepared primarily for other government entities and are not well suited to measure court performance and outcomes. Other courts are adopting rules to preempt such directives from the other branches and to retain judicial control over its performance measurement design and process. As was pointed out in the

Introduction to this paper, the judiciary has a responsibility to maintain such control and assume a leadership role by providing objective measures of our courts' successes, as well as our failures. When advocating for scarce budget resources, a picture is worth a thousand words. Even by showing where state court systems may fall short of intended goals, by objectively measuring and publishing performance data state court leaders can demonstrate in an effective way how state courts are responsibly using current resources, the outcomes they are able to achieve with current levels of support, and what is additionally needed to provide the highest level of service to the public.

IV. Lessons Learned

1. Court leaders need to create a culture of accountability and transparency that establishes a system of performance measurement that promotes an openness of its performance outcomes to the public and others.
2. Performance measurement can be undertaken and be successful regardless of the size of the court.
3. No particular organizational structure of the court system is required.
4. A court need not have a sophisticated automated information system in place to track and measure its performance data.
5. A court system need not adopt all the CourTools® and begin measuring everything at once.

Judges and court administrators cannot afford to be complacent about achieving true accountability and transparency. These important goals are not furthered without commitment to sharing performance data beyond the immediacy of the court system. The public, legislators, executive branch officials, and other community leaders must be given a window into court performance. We must move beyond narrowly thinking of performance measures as internal court management tools. State courts cannot afford such outdated thinking in today's political and economic climate. Courts also cannot afford to believe themselves to be too large, too small, or without sufficient information and technology resources to measure performance.

State courts must be proactive in the measurement of their performance with empirical, credible tools. It is equally important that they share outcome data in a public manner by publishing the results of their performance measurements. There is no reason for courts to find themselves in a reactionary or defensive posture when responding to requests for information in a legislative budget hearing or defending against attacks from special interest groups. Instead of being reactive, state courts

need to be assertive in shaping the issues on matters affecting judicial governance, as COSCA advised in 2001 and 2006.¹⁸ How state courts use public resources must be visible to both funding bodies and the public. With sufficient accountability and transparency, state courts have the opportunity to earn the trust and confidence of the public and the other branches of government regarding the effectiveness of state court system operations and the efficient use of public tax dollars. Judges and court administrators will not move either society or the courts forward by complaining about higher caseloads and more work with less funding. In the alternative, by exhibiting to the public and stakeholders what state court systems are doing with current resources, state court leaders offer a convincing argument for how state courts would take advantage of additional resources to further improve court performance. State court leaders are in a position to provide empirical data on which the public can make judgments about the effectiveness of state court systems, rather than judgments based on inaccurate or anecdotal information. Some of the more obvious benefits for making performance measurement results transparent include:

- The ability of the Judiciary to speak as an independent branch of government in defining measures appropriate to the effective administration of justice;
- “What Gets Measured Counts” – implementing a system of continuous performance measurement creates a culture of achievement and effectiveness;
- Data reliability and validity improve significantly when used in assessing court performance that will be made public;
- Case management measures put administrators in the position of proactively directing additional resources to help alleviate backlog;
- Access and fairness surveys provide court leaders with valuable information about the public’s physical and legal access to our courts and their perception of the fairness of the legal process;
- Employee satisfaction surveys can be used for tailoring educational and technical assistance in human resources to the needs of a particular office to address issues such as communication, performance evaluation, poor supervision and other human resource issues;
- A culture of performance evaluation should lead to increased reliance on the use of outcome-based measures in contract administration and

18 COSCA Policy Statement, Effective Judicial Governance and Accountability, adopted November 30, 2001; renewed December 1, 2006.

program evaluation, thereby improving productivity and the overall use of resources; and

- A coordinated effort will result in a uniform set of measures which will permit comparisons with other jurisdictions both within the state and with jurisdictions in other states.

State court systems are experiencing increased scrutiny, and it appears states are heading into another period of recession and state budget deficits. Courts that do not empirically measure performance and publish their data will be left increasingly vulnerable to unfair criticism and without a strong defense against budget cuts. Courts cannot afford to withhold performance data from each other and from legislative and executive bodies and the public. Now more than ever, the public needs and deserves a clear understanding of what we do as courts and how we use their resources. The old adage relevant to educational institutions and non-tenured faculty would serve courts well to remember now: "publish [your performance data] or perish!"

V. Conclusions and Recommendations

Resolution 14, adopted in 2005 by CCJ/COSCA, urged:

- "State courts to develop and test a balanced set of court performance measures using CourTools and the six-step implementation process as models; and
- State courts to collaborate with the National Center for State Courts as these measures are developed to learn from the experiences of other court systems and, to the extent possible, encourage the use of consistent methodologies which are necessary for comparability and
- The National Center for State Courts to establish a clearinghouse for court performance measurement and management solutions -- including the application of information technology -- and to serve as a resource center for courts to test and gain experience from the use of various court performance measurement systems."

To create and sustain a court culture of accountability and transparency, we now urge:

- Chief justices and state court administrators to assume a leadership role, regardless of their court system organizational structure, to promote and enact performance measurement systems;

- State courts to develop the automated capacity to collect, report, and analyze the data necessary to support performance management;
- State courts to, in practice, adopt policies requiring performance measurement;
- State courts to measure their courts' performance and publish those measures on their courts' websites, in annual reports, at budget hearings and other public meetings to improve understanding of the judicial branch;
- State courts to use their performance results to educate the legislative and executive branches of government;
- NCSC to serve as the clearinghouse for state performance measures and management solutions provided by the states via its website, including an implementation manual to assist state courts with performance measurements;
- State courts to share their information, methodologies, and results with one another and with NCSC in an effort to learn from these shared experiences and improve performance and management; and
- NCSC and NACM to continue to strengthen this theme of using performance measures and making data public in their educational programs for future court leaders.

Finally, court leaders, must strive toward a better future for the nation's state courts. The responsibility lies wholly with state court leadership to do so. Performance measurement must play an integral role in such an effort by identifying what is important and working to guide and improve performance in those areas. Sharing the results of court performance with the public and the rest of government provides the basis for an effective court organization, better service to the public, and the ultimate support for the judicial branch of government and its continued independence.