

Position Paper on Effective Judicial Governance and Accountability

Conference of State Court Administrators

December 2001

Board of Directors, 2001-2002

President: Mercedes M. Bauermeister, Puerto Rico

President-elect: Patricia Tobias, Idaho

Vice President: Michael L. Buenger, Missouri

Daniel Becker, Utah

Jerry L. Benedict, Texas

Kingsley W. Click, Oregon

Jonathan Lippman, New York

Keith E. Nelson, North Dakota

Lee Suskin, Vermont

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.

Table of Contents

	Page
A. Introduction	1
B. Promoting Effective Judicial Governance	2
C. Conclusion	7

White Paper on Effective Judicial Governance and Accountability

“I am struck by the paradox of judicial independence in the United States: we have as independent a judiciary as I know of in any democracy, and yet the judges are very much dependent on the Legislative and Executive branches for the enactment of laws to enable the judges to do a better job of administering justice.” (Chief Justice Rehnquist, 1996 Year-End Report to the Federal Judiciary)

A. Introduction

American constitutional government balances state power by distributing it among three equal branches that are separate and politically independent from one another. Every state constitution establishes the judiciary as an independent and co-equal branch of government. Judicial independence is not an end in itself, however, but rather the means to ensure the primacy of the rule of law by guaranteeing the ability of the courts to protect individual rights, police the exercise of governmental powers and decide individual disputes impartially. Moreover, the doctrine of separation of powers contemplates some sharing of powers among the branches; indeed, the other branches are constitutionally empowered to determine the judicial branch’s structure, jurisdiction and resources.

Policy decisions concerning the administration of justice, however, should reside with the courts, both as a constitutional matter--judicial administration is inherent in the courts’ adjudicative role--and as a matter of good governance. Judicial branch responsibility for court administration is especially critical today, as state courts face rapid social change, massive caseloads and ubiquitous, ever-changing technology.

Yet with judicial governance comes the right and interest of the other branches of government and the public to hold the judiciary accountable for effective management of court business. Although courts occupy a unique position within American government that demands independence, they must recognize that they are a part of government and thus accountable to the public for their institutional actions. This paper discusses how the

judiciary can work to promote effective judicial governance by defining a sweeping vision of what it means to be an accountable court system, and then convincing its partners in government that attainment of that vision is viable only if the courts have substantial freedom to manage their own affairs.

B. Promoting Effective Judicial Governance

From time to time, every state judiciary faces external criticism, most commonly in the form of attacks on particular decisions of individual judges and courts. Such attacks in turn can foster an environment in which the other branches of government intrude on the judiciary's ability to govern its own affairs, e.g., by eroding court funding or micro-managing court practice and procedure. Sometimes, indeed, it is the judiciary's own action or inaction that invites these intrusions. This can happen when a court system appears to fall short in performing its duties in an effective manner. But this can also happen when the judicial branch fails to articulate to the other branches of government how impairment of the judiciary's ability to govern itself undermines its capacity to provide the highest quality of service to the public.

All court systems strive to be accountable--that is, to serve the public with maximum effectiveness--but they do not always make that effort clear to the other branches of government and the public. While vigilant of our constitutional prerogatives as a separate branch of government, courts in the future must go beyond accepting the necessity of outside review and actually welcome it as an excellent opportunity to educate the public and the other branches about the mission, accomplishments and needs of the third branch.

More importantly, the judicial branch should undertake to identify more precisely the core responsibilities for which a court system can and should be held accountable. Once these responsibilities are delineated, the judiciary will be in a much better position

to demonstrate why the ability to govern itself is critical to meeting its accountability obligations.

This process of identifying the core elements of judicial accountability and judicial governance will enable court systems to develop and present to the coordinate branches of government and the citizenry a bold vision of the judiciary's role. In presenting such a vision, court systems will be making clear that the judiciary is far more than simply the sum of the adjudicative decisions of individual judges and courts. This will lead to an enhanced understanding of the judiciary's function in our society, enabling court systems to transcend narrow attacks on their adjudicative decisions. And it will transform the judicial branch's reaction to criticism and intrusive actions from one that is typically defensive in nature to a more constructive, affirmative approach that will engender institutional respect for the judiciary.

1. Accountable State Court Systems--The Path to Effective Judicial Governance

The first step is to identify the core responsibilities for which court systems should be held accountable. An effective way of doing this is to ask the following question: How can we ensure that average citizens who have contact with or are affected by the courts--as litigants, as jurors or simply as taxpayers--come away from the experience with their expectations of fairness and quality service fulfilled? In large measure, the answer should consist of the following:

- Cases must be processed and disposed of fairly and expeditiously.
- All citizens must have access to justice.
- Judges and nonjudicial personnel must be courteous, knowledgeable and responsive.
- Jurors' time must be used efficiently; and jurors must be treated with dignity,

provided with all necessary tools and materials to carry out their responsibilities and compensated adequately.

- Courthouses and courtrooms must be easily accessible, secure, clean, open to all and provide an environment conducive to the administration of justice.
- The public's tax dollars must be expended intelligently, prudently and in accordance with sound fiscal practices.
- State court systems must be candid in assessing and reporting on their own performance and utilize credible accountability tools by which that performance can be measured, such as the Trial Court Performance Standards, adoption of audit procedures and use of outside auditors.
- Citizens must have an opportunity to air complaints regarding the operation of the courts, and the court system must be responsive to constructive criticism and suggestions and must implement processes for continuous self-assessment and improvement.
- Members of the bar, whose conduct is regulated by the judiciary, must act with competence, professionalism and civility, both inside and outside the courtroom.
- Modern technological innovations must be fully utilized.
- Written information on individual courts, including their operations and procedures, must be widely available through electronic and more traditional means.
- Comprehensive data on filings, caseloads, case processing standards and goals and expenditures must be collected and made readily available.

Certain administrative functions are essential to effective judicial governance. These include assignment and calendaring of cases, management of court personnel (including hiring, firing and deployment), management of court and administrative records and judicial branch education. In core areas such as these, the courts should be afforded the capacity to manage their own affairs, as court administrators are closest to

the issues and best qualified to make the policy determinations necessary to ensuring the highest level of service to which the public is entitled.

Under our tripartite system, there are many important functions over which the courts, by design, have varying degrees of authority and control. In particular, the judiciary is dependent on the legislative branch for its budget and for judicial salary increases, while in other areas--facilities development and maintenance and court security--the judicial branch regularly cooperates closely with the executive branch. Given the high degree of interdependence among the branches, it is critical that each branch understand and respect the others' roles. The judiciary must strive to work constructively with the other branches of government, but at the same time it must not hesitate to speak out assertively and appropriately when excessive executive/legislative interference with court operations frustrates the vital goals of effective judicial governance and accountability.

This is a difficult and sensitive balancing act, one that state court systems can better achieve through the development of a declaration of basic principles of judicial accountability and governance. The declaration would serve as a forceful statement to the judiciary's partners in government, leading to increased understanding and appreciation of the interrelationship between judicial accountability and judicial self-governance and the judiciary's steadfast commitment to providing the highest quality of service.

2. Practical Strategies

Aside from the need to articulate and communicate a clear vision of its role, the judiciary can undertake a variety of practical, day-to-day steps to communicate and promote its institutional objectives.

A key element in this regard is coherent leadership. The judiciary must be able to speak with one voice. Too often the other branches are presented with a judicial branch that speaks with multiple, and even contradictory voices. State court systems should continue their efforts to redesign administrative systems to promote the judicial branch's ability to address and speak on system-wide issues from the broad perspective of the

judiciary as a whole.

The judiciary must work on a continuous basis to cultivate positive institutional relationships with the other branches of government and other justice system constituencies. By expanding and routinizing formal and informal interbranch communications, state judiciaries can familiarize the other branches with the problems and needs of the courts. Productive working relationships, once established, foster an ethos of mutual understanding that reduces resistance and misunderstandings. Some examples of how this can be accomplished include: arranging informal meetings between the Chief Justice and the Governor to discuss basic concerns, or with legislative leaders, including as appropriate, the State Court Administrator, Governor's Counsel, Attorney General, etc.; inviting key legislative committee chairs to the courts to observe the judicial system in action and discuss the daily realities faced by judges; and scheduling meetings with groups of judges and legislators to exchange ideas and have a continuing dialogue on justice system issues. These examples of interbranch communications are illustrative of what must be multifaceted efforts that target all court constituencies on a regular basis. In addition, court systems should:

- Take a prominent leadership role on matters of court reform and improvement and enlist support from the legislative and executive branches, other court constituencies and the public. The judiciary should be widely regarded as neutral, reform-minded and committed to good governance.
- Assume a more active role in the legislative process in matters of court operations and governance, including submission of legislative proposals. The legislative branch has the final word on policy, but the courts have a legitimate role in providing input concerning the impact of legislation on court operations and resources through mechanisms like judicial impact statements.
- Establish interbranch commissions and conferences to study and discuss the needs and problems of the courts and important issues of mutual concern.
- Deliver annual state of the judiciary messages to members of the legislative and executive branches and to the public via court web sites.
- Develop strong communications and public affairs offices that work cooperatively and actively with the other branches and the media to educate them and the

citizenry about specific judicial decisions and the judicial branch's performance and role in our governmental system.

- Establish judges' groups to meet with public officials and speak at forums and town meetings to improve understanding of the judiciary's functions, needs and problems.
- Take the lead in addressing judicial governance issues and not leave it to bar associations, court reform groups or other civic entities to develop standards or define issues in this area.
- Fully utilize the resources of the National Center for State Courts, which could support state court efforts by: (1) establishing a Special Advisory Council of judicial governance experts to stay abreast of national independence and accountability developments, including best practices, and to help courts develop long-term strategies to improve interbranch relations and prevent and manage interbranch conflict; and (2) creating a web-based central clearinghouse for the voluminous materials and projects addressing judicial governance topics, and establishing a compendium of best practices concerning judicial independence, accountability and governance issues.

C. Conclusion

As a governmental entity, the judicial branch will always be subject to criticism for its actions; this is inevitable, indeed welcome, in a free and open society. The challenge for court systems is to prevent such criticism from escalating into broader attacks that interfere with the capacity of the judiciary to govern itself. The judicial branch must articulate a clear vision of what it must achieve to be fully accountable, and demonstrate why the courts' ability to meet the public's expectations is dependent on the freedom to control and manage their own affairs. Moreover, the judiciary must take every opportunity to communicate that message to its partners in government. This will ensure that the other branches more fully appreciate that judicial governance is not an end in itself but a critical means of ensuring that court systems are able to provide the highest quality of service to the citizenry. In support of all of these efforts, COSCA and CCJ, in partnership with NCSC, should join together to develop a public declaration of the basic principles of judicial governance and accountability, and to examine judicial governance issues with a

goal of identifying national models, standards, policies and strategies that state court systems can utilize as tools for the effective administration of the third branch. Finally, CCJ and COSCA should assert leadership in shaping the issues and debate, as opposed to responding to the initiatives of others.