

# Developing a Court Leadership and Management Curriculum

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## FOREWORD

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Every organization faces challenges in realizing its vision and mission. There are four challenges, however, that are specific to the court and tend to determine the court's success, as a public institution, in fulfilling its mandates.

The first challenge is achieving continuity of leadership. It is standard practice for courts to have a chief or presiding judge and to rotate this judicial leadership role among the bench every two to four years. Regardless of how these positions are filled, the leadership role is defined primarily by the person in the position. Most judges are neither trained for their leadership role nor given adequate time to accomplish its duties. In this vacuum, most chief or presiding judges install their own leadership agenda, which may differ significantly from that of their predecessor and is non-binding on their successor. This creates an adhocery, which makes it difficult for any court to implement and sustain significant change over time.

The second challenge is balancing judicial autonomy and court administration. Since each judge is independently elected or appointed to the bench, the highest value among judicial officers is their personal autonomy. While this autonomy is essential in the area of judicial decision making, the generalization of this autonomy to administrative matters makes it difficult for the court, as an organization, to function effectively and efficiently. Unless judges willingly give up some of their power and independence, the administrative functioning of the court is compromised. A seven-judge court, for example, will either be one court with seven judges or seven courts with one judge each. The outcome will be determined by the court's ability to construct a governance structure that strikes a reasonable balance between judicial autonomy and administrative coherence.

The third challenge is integrating, not merging, the judicial and court manager cultures and perspectives. The words judge and court are not synonymous. There is also a power differential between elected officials and appointed staff, which often results in an artificial separation between judicial and management functions. The issues that the court faces, however, are not strictly legal and addressable through knowledge of the law. There are organizational issues that require expertise in such areas as caseflow management, information management, human resource management, and court security. Success in these areas requires a partnership between judges and managers and recognition of each other's

expertise. There are few, if any, judicial issues that do not have administrative consequences; and few, if any, administrative matters that do not ultimately affect the work of the judiciary.

The fourth challenge is maintaining judicial branch independence while being responsive to the public. It is critical for the decisions of the court to be, and be perceived to be, impartial and independent of political, social, and economic influences. It also is important for the credibility of the courts to be, and to be perceived to be, responsive to the needs of their constituents. The issue of public trust and confidence in the courts reflects the need for courts to distinguish between their legal and ethical requirements to be independent and their moral and fiduciary responsibilities to be accessible and responsive to the diverse communities they serve.

The purposes of this monograph are to explore these and other challenges in an effort to help shape the court's leadership agenda and practices for the future.

## ACKNOWLEDGMENTS

This monograph is a collection of chapters and organizational reports dedicated to the advancement of court leadership and management. First of all, I wish to acknowledge the important contribution of Maureen Conner. In addition to preparing an excellent chapter, she was the driving force behind the entire effort. Without her insight, perseverance, and commitment, it is unlikely that this monograph would have been published.

Acknowledgment also is due to Dale Lefever for his preface and to David Steelman and Blan Teagle for their chapters. Their willingness to write and rewrite, even when they thought the task was done, was exemplary and much appreciated. The educational programs on court leadership and management offered across the country are a sure sign that the movement to improve court performance is ongoing.

For the organizational reports, a special thanks to Geoff Gallas reporting for the National Association for Court Management, Marilyn Vernon of the Federal Judicial Center, Mary Sammon of the Institute for Court Management of the National Center for State Courts, Douglas Somerlot of the Justice Management Institute, and Jennae Rozeboom of the Judicial Education Reference, Information and Technical Transfer Project.

Finally, my deep appreciation goes to Marge Forslin for her copyediting. She tirelessly combed through the many submissions, making countless changes that helped bring focus and clarity to what we were all striving to express.





## INTRODUCTION

Even with burgeoning theories and applications related to management and leadership to guide them, contemporary organizations remain dysfunctional and neurotic in many ways. A quick review of any daily newspaper, weekly or monthly business magazine, or quarterly professional journal will bear this out.

The courts are no exception. However, because of the role that the courts play in safeguarding our rights and privileges and settling our disputes, we would like to think they could do better. What if other organizations, public or private, could look to the courts as the premiere example of how to lead and manage an organization to achieve outstanding performance and service? What if the courts were sought after as a place of employment by the best and brightest because of their progressive employee policies and practices? What a day that would be! It stands to reason that exemplary leaders and managers must direct the courts. Such an important institution should settle for nothing less.

The complicated nature and dynamics of the courts coalesce in such a way that gaining and retaining exemplary court leaders and managers is a constant challenge. To further complicate matters, the courts have not thoroughly considered the impact of the baby boomers retiring. With the retirement of the boomers in the next few years, much of the institutional memory of the courts as well as decades of experience will be lost. The resulting brain drain could be devastating to the courts. This monograph proposes a comprehensive approach to ensuring continuity in court leadership and management by way of an education and training approach with four interrelated components—workplace learner groups, mentoring, succession planning and management (SP&M), and education and training.

The monograph attempts to apply what we know about comprehensive curriculum development to the implementation of a long-term education and training solution for court management and leadership development. The solution takes into consideration what we have come to understand about how courts function; why they have difficulties with their management infrastructures; and why change is so difficult in the courts. The education and training solution must address the challenges presented by the power dynamics at work in the court culture. Understanding leadership and management issues in the courts allows us to articulate competencies to be incorporated into a comprehensive curriculum plan.

In Chapter 1, David Steelman provides the reader with the historical and contemporary leadership and management challenges confronting the courts. Harvey Solomon gives an historical overview of the evolution of court management education and training programs in Chapter 2. Blan Teagle, in Chapter 3, explores the uses of power, both positive and negative, by organizational leaders and applies this exploration to the courts. In Chapter 4, Maureen Conner offers a holistic and long-term approach for developing court leaders and managers, as briefly described above. This monograph ends with five appendices of information related to various organizational efforts dedicated to grooming court leaders and managers.



## CHAPTER 1

### What Really Makes Managing the Courts So Challenging?

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#### **Introduction**

The management of courts has features in common with that of all other organizations. Key management concerns involve planning, human resources, budget and finances, information technology, facilities and other assets, and day-to-day operations. To do well, organizations need certain basic management conditions—leadership, commitment to a shared vision, effective communications, and (especially in a fast-changing world) a learning environment. Organizational success also requires that leaders and managers set goals and objectives, monitor actual performance, and ensure accountability. In these respects, managing a court is no different from managing any other organization.<sup>2</sup>

Yet, there are also many dimensions of court management that are quite different from the management of a private business or a private not-for-profit organization. Courts and other government organizations differ from private sector organizations in several important ways:

- Government revenue is derived from appropriations based on taxes, rather than on decisions by customers to buy goods or services.
- Government policy decisions about allocation of resources may often be affected by partisan political considerations, including efforts to be re-elected.
- The goal of “doing good” is typically a more important objective in government than profit. As a result, measuring “successful” performance in government is usually different from using the profit measure that is often critical for private businesses.
- Governmental organizations often operate in a near monopoly situation, with few or no competitors.
- A governmental organization often may not turn away any potential customers, but must generally give service equally to all citizens who seek it.<sup>3</sup>

In addition, the management of the courts is significantly affected by factors such as (1) the American judicial process with all of its rights, safeguards, and rules, and (2) a culture of acting on precedence, which makes change and planning for the future particularly difficult.

### **Factors Affecting the Management of the Courts**

Some factors inherent in the American judicial process make managing courts more challenging than managing other organizations. These factors are both structural and functional. They include the role of courts in American society; the constitutional role of the courts; the balance between judicial independence and accountability; judicial selection; culture and norms of judges and lawyers; professional cultures and norms, the use of status, prestige, and power; selection and tenure of chief judges, clerks of court, and trial court administrators; differing views on the importance of and appreciation for professional management; joint and individual responsibilities for leading and managing; and the nature of the judicial process.

#### *The Role of Courts in American Society*

Since the earliest times, the most prominent function of courts has been adjudication—to do individual justice in individual cases.<sup>4</sup> By providing a forum for resolving disputes between citizens and for determining when persons should be punished for disturbing the peace and safety of the community, courts help to reduce violence in society. An often-quoted section of the 1787 Federalist Papers is Alexander Hamilton’s observation in support of the proposed United States Constitution that the daily administration of justice is a powerful tool to promote popular support for government. It provides the “cement” to hold society together, serving as “the immediate and visible guardian of life and property, having its benefits and its terrors in constant activity before the public eye, regulating all those personal interests and familiar concerns to which the sensibility of individuals is most immediately awake.”<sup>5</sup> There are two primary ways in which the basic role of courts presents challenges for the management of courts.

The first challenge comes from the fact that courts have little control over the amount of business that they have.<sup>6</sup> Courts may require that parties present a true controversy, exhaust other remedies, file a case within statutes of limitation or other time requirements, or impose other such “gate-keeping” limitations. In addition, they may require that certain formalities be met at the time of case initiation, such as imposing a modest filing fee for civil matters or requiring that documents be completed in a certain manner. But courts cannot turn away business if filings increase, nor can they elicit more business if filings decrease.

The second challenge for managing the courts is doing justice in *all* cases. Doing justice in individual cases may conflict with the court management task of seeing that court resources are applied effectively and efficiently to all cases. If judges take too much time

deciding each case, the court may not be able to keep current with its inventory of cases. If judges give too little time to individual cases, there is a threat that justice will not be done or will not *appear* to be done, with the result that public trust and confidence in the judiciary will be reduced.

Both of these challenges make managing the court's resources and personnel—judicial and non-judicial—particularly confounding and causes conflict between two goals of the court: to do justice in individual cases and to be highly efficient.

### *The Constitution and the Role of Courts*

From the beginning of the American Republic, the proponents of our federal constitution have seen the courts as critical to both the maintenance of federalism and to the protection of our individual liberties. Our form of government is a federal republic, in which sovereignty is divided among the people, a national government, and the several state governments. In the Federalist Papers, Alexander Hamilton argued with regard to federalism that the federal courts should be the manifestation of “the majesty of the national authority,” while the day-to-day operation of the state courts would constitute “a complete counterpoise” to the power of national government.<sup>7</sup>

With the 1789 federal constitution, our Founding Fathers advanced the model of a modern nation-state with several innovations that have since won worldwide acceptance. One of these was the very notion of a written constitution, which provided a yardstick against which citizens could gauge their rights and responsibilities, and which restrained the institutions of government by putting “fundamental” law above the “statutory” law of legislatures and the actions of the executive. Another critical innovation was the creation of a bill of rights that reserved essential civil rights to the people as a barrier against infringement by government. Through the notions of separation of powers and judicial review, it ensured that the courts could impose sanctions on the other branches of government if they infringed on those rights.<sup>8</sup>

One of the most dramatic set of events in twentieth-century American legal history was the “due process revolution” occasioned by the U.S. Supreme Court's application of the right to counsel and many other features of the federal Bill of Rights through the Fourteenth Amendment Due Process Clause to criminal proceedings in state courts, ensuring protection for citizens from infringements on those rights by state governments as well as by the national government.<sup>9</sup> From the mid-1950s to the 1970s, this set of Supreme Court decisions fundamentally changed the nature of criminal proceedings in state and local courts, and it created the features of criminal case processing—such as timely disposition of cases in keeping with speedy trial requirements, and the provision of counsel at public expense for criminal defendants unable to retain counsel—that are day-to-day concerns of chief judges and court managers.

Because “due process of law” is constitutionally enshrined in our legal system, one might well say that the “process is the product” that courts give litigants. The challenge for

those responsible for managing the courts is to ensure that attention to process does not defeat the court's purpose of doing justice in individual cases. The process in the trial court involves the application of the law to particular facts. If too much emphasis is placed on mechanics and techniques, or if there is delay in the presentation of facts, the quality of justice may be reduced. Chief judges and court managers must ensure that a court has adequate resources to provide due process, maintains control over court procedures, and prevents delay or distortion in the presentation of facts, so that individual litigants receive justice and have their rights protected.<sup>10</sup>

### *Balancing the Independence of the Judiciary with the Need to Be Accountable to the Public*

Another important value expressed in our federal and state constitutions is the notion of judicial independence. Citing Montesquieu that “there is no liberty if the power of judging be not separated from the legislative and executive powers,”<sup>11</sup> Alexander Hamilton wrote in the Federalist Papers that having independent courts would be essential to the protection of constitutional rights.<sup>12</sup> As the Commission on Trial Court Performance Standards has observed, however, independence of the judiciary is not likely to be achieved if a court does not manage itself, measure its performance accurately, and account publicly for its performance.<sup>13</sup>

Despite the theoretical independence of the judiciary, budgeting relations with state-level executive and legislative branch officials and with local funding authorities have traditionally made court systems much more of a dependent branch of government. Courts are almost totally dependent on political processes for their resources. At the state level, this means that governors and legislators have significant influence on the judicial branch budget.<sup>14</sup> Trial court funding was largely a local responsibility until around 1950, and it is still typically split between state and local sources in most states.<sup>15</sup>

The dependence of courts on other branches of government at the state and local levels can create potential conflicts for chief judges and court managers, as well as individual judges. Courts must regularly decide cases in which they judge the other two branches. They must serve as arbiters between individual citizens and state officials, county commissioners, or city government officials. In such circumstances, the courts must exercise judicial independence in making decisions affecting government entities that may provide or veto court resources.<sup>16</sup>

Confronted by budgetary politics with funding authorities, courts from time to time have invoked “inherent powers”—those essential to the existence, dignity, and functions of a court because it is a court, or those that are necessary for the orderly, efficient, and effective administration of justice.<sup>17</sup> Reasoning that such inherent powers do not exist for the comfort and convenience of the judiciary, but rather as a means to ensure that courts serve the public interest, trial courts often issued writs of mandamus ordering local funding authorities to provide resources considered necessary for court operations. The growth of state funding has curtailed inherent powers litigation over financial issues, although pressure to hold down

taxes has led governments at state as well as local levels to resist expenditure increases even when courts and other public entities point to increasing needs.<sup>18</sup>

It is only in recent years that court system leaders have acknowledged that being a separate branch of government is only an illusion unless they make it real through effective administration and management. Since the 1950s, proponents of strong management in the judiciary have had to bring trial courts into a true state judicial system, removing them from their positions in local government structures, operating under the administrative direction of the state court of last resort, enlisting professional managers, and providing for greater state-level funding. Underlying these changes was the premise that without effective administrative control over the court system, the judiciary could not really be a separate and independent branch of government.<sup>19</sup>

Traditionally, the appellate process and trial *de novo*, supplemented by electoral politics, were the primary means by which judges were held accountable. Otherwise, courts were able to insulate themselves from administrative responsibility and accountability, in part because of overlapping jurisdiction among courts, which made it difficult to identify who was responsible for what activities, and in part because court administrative functions were shared among different institutional actors, not all of whom were under court control. With the twentieth-century court improvement efforts, including both court unification and other efforts to expand judicial control over court system affairs, the ability of external agencies to hold courts accountable for effective management of their affairs has increased.<sup>20</sup>

For courts, accountability to “the public” varies with the perspective of *different* publics, although it ultimately involves concepts of justice. For judges, emphasis is on whether the law is appropriately applied to a fact situation, so that the most appropriate control mechanism involves other judges, either through the appellate process or through administrative rules and procedures. Legislators are concerned with appropriate resource allocation and politically sensitive court decisions, and they have questions of judicial productivity. News media representatives see accountability as information, and they emphasize making court activities available for public scrutiny. The legal profession has still another perspective about accountability, involving fairness and access: to meet the needs of lawyers, courts must be predictable and adhere to accepted legal norms.<sup>21</sup>

### *Selection of Judges*

Unlike courts in civil law countries like France and Germany, there is no formal educational or career path to a judgeship in the United States. The formal manner in which judges are selected reveals the ambivalence that Americans have historically had about the judiciary. In the colonial era, judges were appointed by the crown, which made them suspect in the eyes of Americans seeking independence. After the revolution, federal and state judges were appointed, but this led in the early nineteenth century to a reaction among citizens against the appearance of elitism that it presented. In the era of Jacksonian Democracy, many states consequently provided for local election of judges, clerks of court, and other officials.<sup>22</sup> Yet, the election of judges has in turn raised the prospect that they might be too

political, too beholden to partisan interests, and insufficiently qualified to perform judicial responsibilities well. This led in the twentieth century to the development of mechanisms for merit selection of judges, as illustrated in the “Missouri Plan,” to provide for a degree of objective and non-political assessment of a potential judicial candidate’s qualifications for office.<sup>23</sup>

The result of these historical developments is that there currently is a mix of selection methods for state court appellate and trial judges in the United States.<sup>24</sup>

In states where selection of judges is done by partisan or non-partisan election, there is substantial evidence that the cost of judicial campaigns is growing. In such states, some have found a pervasive public perception that campaign contributions influence judicial decision-making, and that judges are guilty of favoritism when they make decisions that favor contributors.<sup>25</sup> Seeing an alarming increase by special interest groups in recent years to influence the outcome of judicial elections through both financial contributions and “attack campaigning,” the American Bar Association recently reiterated its support for merit selection.<sup>26</sup>

The presence of politics has a clear bearing on the nature of court management efforts in a court. Judges who are also politicians may find that taking a position that would involve the exercise of management responsibility might also create a risk of negative public opinion, or it might generate politically damaging controversy.<sup>27</sup> A 1980 study of the work styles and performance of American trial judges found that court politics and partisan politics reduce the likelihood that judges and court staff members will complete their tasks competently.<sup>28</sup> Even if it had no demonstrable effect on actual court performance, the level of politics associated with the selection of judges has a clear and palpable impact on the atmosphere and interactions in a courthouse.

### *Culture and Norms of Judges and Lawyers*

The most visible participants in the court process are judges and lawyers. As a result, the culture and norms among judges and lawyers prevail.

Most attorneys have been trained as soloists from the commencement of their careers, without attention to teamwork or organizational management. When attorneys become judges, they value independence as important to impartial decision making, and often they have no sense of duty to the court as an organization. Defending their own independence, they may want to protect the individual freedom of all judges, even if this would be destructive to managing the courts. Such a soloist approach breeds antipathy toward court administration and may manifest itself as opposition to strong management. Left to themselves, many judges would only rarely support the selection of a strong chief or administrative judge to manage their affairs.<sup>29</sup>

Court management has traditionally been a topic of only peripheral interest to judges and lawyers. Judges probably have more interest in court management than lawyers do,



because being on the bench alerts them to the complexities of organizational life. Yet, there are many judges who have little or no interest in the management of courts beyond managing their own individual courtrooms.<sup>30</sup> Some judges may also be inclined to divorce leadership from management, based on reasoning that justice is the court system's first concern (with judges leading), while management is a secondary consideration (with court administrators managing).<sup>31</sup>

Many judges and lawyers who have not attended education programs or developed special skills are not particularly suited to deal with management problems unless they happen to possess unusual attributes for their profession. Their approach to issues is guided by their professional training, so that they may see legal problems where management problems exist or apply legal-authoritarian solutions where management solutions are needed.<sup>32</sup>

### *Predominant Professional Cultures and Norms*

One feature of courts that makes them unique is the fact that the key personnel in many state courts—judges—are the only major professional group in the United States whose members are elected and also have a professional status.<sup>33</sup> Like other “professional” persons, a judge has (1) mastery of an organized body of specialized knowledge; (2) a specialized competence, based on aptitude, training, and experience; (3) extensive autonomy, influence, and responsibility in the exercise of that competency; and (4) a strong career commitment.<sup>34</sup>

In a study of organizational structures, Henry Mintzberg theorized that there are five basic models for organizations: (1) ad hoc organizations, as in a young, adaptable research organization; (2) simple structures, such as those of a small business; (3) “machine” bureaucracies, such as those of large, centrally controlled organizations; (4) divisionalized forms, as in organizations with semi-autonomous divisions; and (5) professional bureaucracies or collegial organizations, as in universities.<sup>35</sup> In a professional bureaucracy like a court, the professionals operate in keeping with the standards of their professional members, e.g., standards of judicial conduct and code of ethics, while “bureaucrats” operate in part in compliance with standards and guidelines that originate in self-governing associations outside the organization, e.g., core competencies established by the National Association for Court Management.

In a professional bureaucracy, writes Mintzberg, support staff are often more numerous than professional staff and constitute a more rigid and controlled organization. Professionals control their own work, but they also seek the collective control of the administrative decisions that affect them. What frequently emerge are parallel bureaucracies, “one democratic and bottom up for the professionals, and a second ‘machine’ [that is] bureaucratic [i.e., more like a large, centrally controlled business organization] and top down for the support staff.”<sup>36</sup> For chief judges and court managers, such a dual structure can create a conflict between “collegial” and “authoritarian” decision-making. In the collegial decision-making process among judges, decisions are made among equals; but the administrative

decision-making process often requires a more authoritarian approach. More authoritarian judges cannot simply dictate policy to other judges, but must typically take a more cooperative and team-oriented approach to leadership.<sup>37</sup> More collegial chief judges may have difficulty being authoritarian in the administrative arena, and any non-judge court manager must deal effectively with the collegial nature of decision making among judges.<sup>38</sup>

To be effective, court managers must understand and accept courts as professional bureaucracies, building on or compensating for the strengths and weaknesses of courts as professional organizations.<sup>39</sup> A collegial organization, for example, tends to exhibit participatory democracy among its professional members, and a court extending this freedom to its administrative staff will be able to deal more effectively with concepts of democracy in the work place. The court manager must also try to compensate for the blind spots of judges as professionals, such as their potential unresponsiveness to problems requiring interdisciplinary perspectives, or their possible difficulty in working collaboratively with other groups.

### *The Use of Status, Prestige, and Power*

The fact that courts and the legal process are dominated by judges as high-status professionals means that the way that judges use their status and prestige has significant bearing on how courts are led and managed. This can be problematic in courts where judges see non-judge court employees as “second-class citizens” for whom a top-down leadership style is most desirable. This usually leads to failure by court personnel to take any risks, and to “authoritarianism of the worst sort, under which personal style overwhelms institutional infrastructures, and rational management principles are drowned in the ego needs of judges.”<sup>40</sup>

Authority and power are inevitably part of the court environment, since judges are vested with the authority and power to order individual citizens and even government officials to perform or desist from performing certain actions, and to use the power of the state to enforce compliance through the imposition of sanctions.<sup>41</sup> The use of power is important to the success of chief judges and court managers. Power is exercised in different ways at different levels of a court or any other organization:<sup>42</sup>

- Upper level leaders and executives focus their use of power primarily outside the organization, negotiating and working as advocates for the organization in external settings.<sup>43</sup>
- Middle-level management power flows tend to be horizontally oriented, typically to advance an organizational cause by competing for or pooling resources with others who are on the same organizational level.
- First-line supervisors and managers tend almost exclusively to use power “down” in the organization to complete specific tasks within a particular department or unit.

Because of their personal style and professional background, judges are inclined to use power primarily in an individual and independent way, and court managers cannot expect

them to initiate the development of collaborative or team relationships.<sup>44</sup> Court managers tend to lack the direct power that managers in other kinds of organizations typically possess, although they need not be either ineffective or impotent. Rather, they can exercise considerable indirect power from their service as negotiators and liaisons between the court and other institutional actors in the court process. Moreover, they can at times be more powerful on a day-to-day basis than some of the judges, even though that power might easily be overwhelmed by the collective power of the judges, and would last only as long as judges perceive the managers to be serving the judges' interests effectively.<sup>45</sup>

### *Selection and Tenure of Chief Judges, Clerks of Court, and Trial Court Administrators*

Traditionally, the task of managing courts has been the responsibility of judges and clerks of court. Involvement of a third group—professional trial court administrators—is a more recent development. For each of these groups, selection methods and tenure have a bearing on the manner in which court leadership and management must be done.

**Tenure of trial court chief justices.** In most states, a trial court has a chief or presiding judge, who may or may not receive extra compensation while in that position. From one state to the next, and often from one level of trial court to the next, there can be great variation in the formal administrative authority of that judge.<sup>46</sup> Important tasks of a chief or presiding judge in most trial courts include judicial and case assignments, and in a large multi-judge trial court, chief judges face the problem of securing appropriate coverage for case types considered “unattractive” by many judges—high-volume and routine cases (such as traffic violations, collections, and small claims) and cases that can be especially taxing emotionally (such as domestic relations and child protection cases).<sup>47</sup>

In many medium-sized multi-judge trial courts, a chief judge must carry a full workload of cases in addition to performing administrative functions, and this can greatly affect the extent to which the chief judge can serve effectively as a leader.<sup>48</sup> The means by which the chief judge of a trial court is selected can also have significant bearing on the manner in which he or she can in fact exercise the level of his or her formal administrative authority. Selection by his or her peers on the same court is the most common method for selecting a chief judge in a state or local trial court, although almost as many trial courts now have their chief judge appointed by state-level court leaders. Political selection of chief judges (either by gubernatorial appointment or by direct popular election) is relatively uncommon.<sup>49</sup> Partisan politics is consequently less likely to be a factor in the selection of a chief judge. To the extent that state-level court leaders select a chief judge, there is a greater chance of selection on the basis of leadership or management ability, although it still means that his or her colleagues must accept the appointed chief in order to be effective.

Only one state provides that a chief judge can serve for life. Typically, a trial judge's term of service as chief judge is shorter than the term of office for a judge of that

court, so that continued tenure as chief judge is subject to frequent review by those responsible for choosing the chief judge.<sup>50</sup>

The term of a chief judge is usually short, which can lead to discontinuity of leadership in the court. Moreover, chief judges in many trial courts serve at the pleasure of those who have selected them. A chief judge who has leadership and management skills must thus be willing and able to be chosen for more than one term in order to provide continuity and stability of leadership to the court.

**Clerks of court.** Throughout American history until the last half of the twentieth century, the traditional managers of court operations have been the clerks of court.<sup>51</sup> In the eighteenth and nineteenth centuries, with trial or appellate judges often riding circuit from one court location to another, clerks of court have been responsible for overseeing most day-to-day court operations.<sup>52</sup>

Historically, American trial judges have lacked interest and training in management, so that clerks of court have handled court recordkeeping, supervision of court personnel, and most other day-to-day routine matters in state and local courts for the past two centuries. They also have had responsibilities relating to general county government as well as their court responsibilities. Having a strong local political base, clerks of court could often place judges in the uncomfortable position of having an important court support role played by a person whose first loyalty was not to the court.<sup>53</sup>

Court management difficulties such as these between judges and clerks of court have led in many states to changes in the way that clerks of court are now selected. While a majority of general-jurisdiction clerks of court are still elected, almost as many are appointed by the court that they serve. An overwhelming majority of clerks of court in limited-jurisdiction courts are appointed by the judge or the court that they serve. Clerks of court chosen by election serve for a term of years, while those who are appointed may serve for a term of years or at the pleasure of the appointing authority.

In many states, judges have used their status, prestige, and political power to induce clerks of court to be more responsive to judicial administration concerns. In addition, public-spirited elected clerks of court have on their own initiative recognized the management needs of courts. Working with judges and court administrators, clerks of court in many jurisdictions are becoming efficient and effective court managers. Large numbers of clerks of court are implementing strategies for improved management. In addition, they have joined professional associations with court administrators, regularly engaging in the same educational opportunities.<sup>54</sup>

**Trial court administrators.** The creation of “administrator” positions to manage the affairs of courts is a development with its roots in the first half of the twentieth century, and the establishment of a body of professional court administrators is largely a phenomenon of the last three decades of the twentieth century.<sup>55</sup>

There were no more than a handful of trial court administrators in the United States in the early 1960s. But, by 1980, the National Association of Trial Court Administrators (NATCA) had 350 members.<sup>56</sup> In the year 2000, the National Association for Court Management (which was created when NATCA merged in 1985 with the National Association for Court Administration [NACA], an organization of clerks of court) had about 2,500 members.<sup>57</sup>

In virtually all circumstances, trial court administrators are appointed by the courts and serve at the pleasure of the judges. All but 4 states report that they have administrators for at least some trial court levels. In 9 states, the state court administrative office makes the final decision on the selection of administrators at some or all trial-court levels. In 40 states, however, the chief judges at some or all levels make the final selection decision. In 26 states, all trial court administrator salaries are paid fully by the state, while all trial court administrators are paid fully by local governments in 11 states.<sup>58</sup>

The involvement of state court administrative offices in the selection of trial court administrators and the fact that many administrators are paid by the state indicates the degree of state-level investment in having management specialists in the trial courts. That most trial court administrators are chosen by the chief judge or the local trial court bench, however, reflects the practical reality that an administrator is answerable on a day-to-day operational basis to the local trial court judges. The actual responsibility and authority of trial court administrators varies considerably from one court to the next.<sup>59</sup> In part, this is a function of the extent to which trial judges understand and support the functions of a court manager.

### *Differing Views on the Importance of and Appreciation for Professional Management of the Courts*

The extent to which the role of court managers has approached its fullest scope (including administrative and supervisory authority over court personnel, facilities, budgets, and management information, among other areas) has in part been due not only to the size of a court system, but also to the philosophical view of judges about court management, as well as the extent to which judges are willing to delegate authority to a court manager. The judiciary was slow to accept trial court administrators as responsible managers, often at first causing them to assume a passive role in the court process, serving largely as office managers.<sup>60</sup>

Because they typically have not been exposed to ideas of management in their education, judges traditionally have been suspicious of “administration,” fearing that management will impede their individual judicial independence, cause a decline in the quality of justice, and undermine fairness and due process. As a result, they would relegate administrators to a subordinate role unless they were faced with a crisis arising from serious deficiencies in court operations.<sup>61</sup>

Traditional views about administration have been changing, however. This has in part been a consequence of growing volume, growing complexity in the work of courts, and the dramatic impact of developments in information technology, which have dramatically changed the nature and scope of court management work.<sup>62</sup> In addition, judges have come to see the benefits of active and innovative court management, concluding that more efficient management of caseload and other elements of court operations allow them more time to do what they do best—adjudication of cases. Aided by educational programs offered by the Federal Judicial Center, the National Judicial College, the Institute for Court Management, and programs offered by state judicial branch educators, judges have become more accustomed to playing a more active and assertive role in the leadership and management of courts.<sup>63</sup>

### *The Joint and Individual Responsibilities for Leading and Managing the Courts*

If a chief judge has ample authority to be a manager under constitutional and legislative provisions, he or she may be constrained by the burdens of the trial court caseload. In many multi-judge courts, except in the very largest, the workload volume prohibits the chief judge from taking less than a full judicial workload, which has the necessary consequence of limiting time available for performing the administrative functions of a chief judge. As a result, it is critical for the chief judge to work with colleagues, the court manager, and other stakeholders in the judicial process to define the mission and goals of the court and to coordinate efforts with others to achieve those goals.<sup>64</sup>

Critical to the success of such efforts is the working relationship and division of responsibility between the chief judge and court manager. This reinforces the importance of a team approach to trial court management, with the chief judge and court manager as key figures, and it also reinforces the importance of executive or management committees that bring members of the bench together regularly with heads of administrative units. The capacity of a court to perform well depends on the chief judge and court manager forming a team that can serve as a link between line staff and the bench and between the court and the outside world. Absent such a team, the traditional court unification agenda of consolidating benches and administrative functions cannot deliver improved court performance.<sup>65</sup>

### *The Nature of the Judicial Process*

In addition to factors already mentioned, the judicial process itself affects the leadership and management of courts. There are at least three important ways that this occurs. One is through the nature of the adversarial process. The second is the fragmentation inherent in the process. The third has to do with the fact that adjudication actually has different styles, each with its own management demands.

**Adversarial process.** American courts are lawyer dependent. The traditional view of the adjudication process was that judges should play a passive role, letting the attorneys move cases or delay them for reasons sufficient to themselves, and that

more active engagement by a judge in the progress of a case would compromise the disinterested neutrality of the judge.<sup>66</sup>

But this has slowly changed since the 1970s, with the development and empirical testing of caseflow management techniques.<sup>67</sup> A more contemporary attitude among chief judges, individual judges, and court managers is that the court must control the pace of litigation, and that the judicial process cannot be left to the convenience or special interest of the attorneys in a case.<sup>68</sup>

Many management problems for courts grow out of the adversarial process, in which lawyers' tactics involve surprise and concealment despite rules of discovery. The assignment of cases for trial puts lawyers and courts in a game, where each lawyer seeks to gain tactical advantage.<sup>69</sup> The ultimate result, however, is that about 19 of every 20 cases are resolved by plea or settlement before trial. Basic caseflow management practices are directed toward early achievement of negotiated outcomes, providing and managing trials where they are needed, and managing cases after initial disposition.<sup>70</sup> Such practices are intended to reduce room for maneuvering by trial attorneys and to increase judicial effectiveness.

Trial attorneys can play a significant role in defining the work patterns of trial judges, with an attendant effect on the use and allocation of judge time by chief judges and court managers.<sup>71</sup> The contentiousness of attorneys influences the amount and kind of work that judges will do. Highly contentious attorneys provoke more and longer motions hearings and jury trials. Judges also respond to the work skills of attorneys, at least as they perceive them, in selecting which tasks to emphasize in their work. Sometimes judges do work to compensate for the inadequacies of civil attorneys, as in drawing up decrees, judgments, and orders. In other instances, judges draw on the strengths of civil attorneys by emphasizing settlement or trial work where they perceive attorneys to be so skilled. Finally, judge work is shaped by the level of familiarity, or stability, of attorney members in the work group. The differences are more marked on the criminal side, where the balance among plea negotiations, non-jury trials, and jury trial work slowly tilts toward methods of quick disposition after attorneys have been assigned to a courtroom for some time and have established routine patterns and expectations with each other and the judge.

Another consideration arising from the adversarial process and affecting court management involves issues of supply and demand for trial lawyers. In any given jurisdiction, the number of institutional lawyers (prosecutors and public defenders) involved in most criminal cases is usually limited. While civil and domestic relations cases may involve a wider group of lawyers, it is common in all trial courts for a large amount of trial litigation to be concentrated in the hands of a comparatively small number of attorneys. This usually creates scheduling problems for courts.<sup>72</sup>

**Fragmentation of the process.** In addition to the fragmentation of court process caused by the professional norms of attorneys, the judicial process is fragmented by other factors. These include the fact that most participants in the process are not under

the direct control of the court, as well as the fact that due process promotes fragmentation.

*Participants not under court control.* A critical element of the adjudication process in courts is that it involves participants from different organizations. While the court in the context of a case can order the appearance of other participants, the scheduling of court events and the implementation of policy must typically involve consultation and coordination with institutional participants—prosecutors, public defenders, private attorneys, police, sheriffs, court reporters, and others—whose purposes, while related, are not identical to those of the court.<sup>73</sup> While a judge might order participants in any particular case to appear in court subject to penalties, the fact that the progress of cases to conclusion requires coordination of the schedules of different participants makes the scheduling of court events complex. Beyond that, any changes in the manner in which the case process is carried out can only partially be made by the court through rules and administrative orders. The successful implementation of any such changes may be quietly defeated by any of the participants absent substantial communication and coordination by chief judge and court managers with representatives of the other institutional participants in the court process.<sup>74</sup>

*Impact of due process.* One commentator has observed that one of the animating features of due process is a fear of authority and a concern about potential abuse of power by the state.<sup>75</sup> The purpose of the court is to stand between the state and the individual citizen, to ensure that action is not taken by the state against the liberty or interests of a citizen, without due attention to basic notions of fairness. As a result, the application of the Bill of Rights in criminal proceedings requires that the prosecutor acting on behalf of the state meet strict formalities regardless of a defendant's actual guilt in order to achieve a conviction. While such procedural formality increases fragmentation, the wide discretion of participants in the criminal process—of prosecutors whether to charge, of defendants whether to waive rights, and of the court to impose sanctions—also promotes fragmentation. In criminal cases, such fragmentation complicates the management of the judicial process and limits the extent to which the process can be streamlined to achieve just outcomes in individual cases.

**Varieties of adjudication styles.** In 1984, researchers assessing trial court unification suggested that the adjudication process in American courts is not uniform, but involves three different varieties—procedural, decisional, and diagnostic.<sup>76</sup> Because these different adjudication styles have different resource needs, they have differing support needs and pose different problems for chief judges and court managers.

*Procedural adjudication* is what we typically see in felony criminal cases and in serious civil cases, and it emphasizes adherence to established rules and procedures to ensure just resolution of a case. Decisional adjudication is more



common in traffic court, and it is designed to establish facts in a case so that the law can be applied as quickly and directly as possible. Diagnostic adjudication is what we see in juvenile cases, and it is often adjudication in name only, since its objective of diagnostic adjudication is to identify the problems that are the source of a dispute or that require court action for the protection of the parties and the society.<sup>77</sup>

These three different approaches to adjudication have substantially different court management implications.<sup>78</sup> Procedural adjudication is something for which a judge may need little direct administrative support in order to be effective, although legal research assistance may be desired. For this reason, a court dominated by this type of adjudication operates as a loose coalition of independent offices rather than as a closely knit, coherent organization. Each judge tends to work in isolation from colleagues on the bench.

*Decisional adjudication* leads to a high demand for administrative support and close contact between judges and administrators. Judges in multi-judge courts dominated by decisional adjudication are more likely to have regular contacts with colleagues and be subject to direct supervision of their day-to-day activities. This is because decisional adjudication emphasizes quick and direct resolution of cases, with a high case turnover and a premium on effective flow of paper and people through the courtrooms. High case turnover places a premium on effective coordination of judges, administrators, defendants, lawyers (when present), paper flow, and courtrooms. These courts have the most elaborate management activities, even in the absence of formal authority for such activities. In a multi-judge court, the chief judge is likely to take an active part in assigning cases and courtrooms among judges, monitoring judge performance, and trying to create circumstances for effective performance. The pronounced need for administrative support services encourages a relationship between the chief clerk or trial court administrator and the judges that is very different from that in a court dominated by procedural adjudication. Judge and manager view each other as two specialists doing mutually reinforcing jobs. The status differential between the manager and the judge is much less than that in a court dominated by procedural adjudication.

*Diagnostic adjudication* has high needs for administrative services. The most important component of the process is the development of a remedy to the problem that has been identified. This emphasis on outcomes means that the court may need access to a range of services at the time of disposition. In addition, many cases are heard *pro se* in diagnostic adjudication, so that judges must rely on administrative staff to provide information needed for an appropriate diagnosis. In this setting, the administrative services provided by the court are often more important to the outcome of the process than the judge is. Indeed, many of these cases never reach a judicial hearing, being instead resolved by a probation intake officer or a caseworker with the concurrence of all parties, or by a quasi-judge.

**Trial by jury.** One of the most notable features of the American judicial process is a litigant's right to trial by jury. While trials by jury have been sharply limited in England (the source of the common law tradition of which America is part), the jury right is so firmly entrenched in the American legal tradition that it is unlikely to be eliminated. While jury trials actually occur in five percent or less of all cases in trial courts, they consume a great deal of trial judges' time: it has been estimated that many trial court judges spend from one-third to one-half of their work time conducting jury trials.<sup>79</sup>

Jury trials have a significant impact on trial court management, since they consume so much time of judges, and since they require an extensive set of management practices and procedures.<sup>80</sup> The existence of the jury right requires (a) allocation of judge resources to provide a basically continuous hearing in a given case, and (b) the administration of a program to find impartial jurors. Trying a case with a cohesive team of jurors over any protracted period of time must overcome such difficulties as sickness, death in the family, jobs, and other factors. Finding impartial jurors involves summoning hundreds, examining them, letting some be excused, and sending others to a trial room for screening by lawyers. The fact of jury trials is another dimension of the fragmentation of the judicial process. Jurors are not employees of the court, and their incentives for performance are different from those of employees generally.<sup>81</sup>

## Conclusion

As the discussion in this chapter suggests, many things about courts in America present challenges for chief judges and court managers. Judges and managers have made remarkable strides in meeting these challenges in recent years, creating a true judicial branch of government by introducing means for management and accountability in the courts.

Yet, the nature of the reality the courts face is that new challenges are being forcefully presented to chief judges and court managers even as they make progress in surmounting traditional shortcomings. One aspect of leading and managing any organization involves willingness and capacity to modify its structure and operations to ensure that organizational purposes are being met in the face of evolving circumstances. One of the challenges that chief judges and court managers face is organizational resistance to change. Courts in America serve as a force for stability and predictability in society by relying on established norms and rules of social behavior and emphasizing the importance of precedent as articulated in prior court decisions.<sup>82</sup> While courts have been a force for change in American society in the twentieth century, promoting government recognition of the rights of individual citizens, their role as a source of social stability has traditionally created an atmosphere that makes it difficult to introduce changes in management and operations.<sup>83</sup>

The evolution of improved management and delivery of justice that courts have sought in the last half century have enabled courts to overcome some of their traditional

resistance to change. With enhanced capacity to manage their own affairs, the courts will face new challenges that will require further changes in the way that courts operate.

There are broad social, economic, and technological trends underway in society that will present an ongoing requirement for leaders and managers in the court to develop new strategies for the effective and efficient delivery of justice. Researchers and management planners have identified the following 11 trends that will be important to courts regardless of their size, whether they are urban or rural, and whether they serve wealthy or poor communities:<sup>84</sup>

1. Increasing demand for culturally appropriate court and justice services for Latinos, Asians, Middle Easterners, and other ethnic groups;
2. Increasing number of diverse expectations for courts' role in society;
3. Alterations in family composition, including declining numbers of traditional families, and alterations in role of societal institutions and community norms and values;
4. Polarization of people by class, race, ethnicity, and lifestyle preferences;
5. Increasing demand for acceptance of alternative lifestyles;
6. Increasingly sophisticated manipulation of public opinion about crime and courts using mass media;
7. Growing shortage of court administrators and staff;
8. Increasing reliance on therapeutic approaches to court and justice service provision;
9. Increasing demand for justice system performance accountability;
10. Emerging revolution in legal service provision, including bundling of legal, accounting, management, and financial services; and
11. Rapidly emerging information, telecommunications, and networking technology.

If courts respond to these challenges in their traditional fashion resistive to change, the researchers and management planners identifying these trends suggest that they will become increasingly isolated from other institutions in the justice process, increasingly at odds with them, and facing declining resources. The challenge leaders and managers face in the courts will be to undertake a strategic planning effort to work in a more integrated fashion within the court system and in collaboration with their partners in the justice community to create a more positive future through implementation of steps in the following general areas:<sup>85</sup>

- Implementation of a variety of mechanisms for working effectively with diverse stakeholders at the state and local level, to clarify the role of courts as opposed to that of executive branch agencies, identifying appropriate areas of collaboration through the development of programs providing outreach and participation for diverse ethnic and racial groups;
- Development of an enhanced court governance structure contributing to improved administrative efficiency, with increased emphasis on maintaining a quality justice system, with mechanisms to monitor and report on justice system performance;
- Initiation of court personnel recruitment, training, and career development efforts directed toward ensuring the ongoing presence of a court workforce that is well trained, well motivated, ethnically and racially diverse, and oriented to public service;

- Development of a decentralized approach to provision of justice services at diverse sites throughout the community; and
- Effective acquisition and use of technology to promote access to justice and enhanced court productivity.

Some courts are already beginning to work in the manner suggested here, through both internal collaboration among court units and through collaboration with other institutional partners in the justice process.<sup>86</sup> As Henry Mintzberg observed, our nation cannot afford anything but strong government, and both government and private business have much to learn from collaborative enterprises. People in the courts and other elements of the public sector must cope, he suggests, with conflicting objectives, multiple stakeholders, and intense political pressure.<sup>87</sup> The courts have long focused on judicial independence and ensuring “a government of laws and not of men.” As the new millennium unfolds, the challenge that leaders and managers face in the court is to enable courts and the law to progress beyond being independent and autonomous to being *responsive*—offering more than procedural law, courts must provide law that is competent as well as fair, helping to define the public interest and being committed to the achievement of substantive justice in a diverse and complex society.<sup>88</sup>

## CHAPTER 2

### Historical Overview of Court Management Education

*Harvey Solomon*

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While concern about judicial administration dates back at least to biblical times (see the Book of Exodus, Chapter 18, verses 13–27), its more recent emergence as a focus of attention can be attributed to Chief Justice Warren E. Burger. In 1969, Chief Justice Burger delivered a speech at the annual meeting of the American Bar Association entitled, “Court Administrators—Where Would We Find Them?” [53 *Judicature* 108 (1969)] In his talk, the chief justice noted that the United States had more astronauts trained for space exploration than qualified court administrators. To address this situation, he proposed the creation of an educational program aimed specifically at preparing men and women for careers as court managers. In the 1960s, there were only a handful of professional managers serving at the trial court and state administrative levels. The previous experience of these administrators varied. Some were lawyers, some had managed private or other public organizations, some had been legislators or judges; none, however, had had formal training in court management. With no body of knowledge or literature (aside from the general public administration field) on which to draw, managers and their staffs learned by doing. This is how court management as a professional activity began to develop, and, by the time of the chief justice’s speech, sentiment was growing that professional managers were needed in the courts. It was becoming clear that the organizational complexity of the courts and justice system and rising caseloads required management by people trained explicitly for that purpose.

The American Bar Association responded quickly to Chief Justice Burger’s proposal and formed a task force to follow up on the chief justice’s call for action. The task force also included representatives of the American Judicature Society and the Institute of Judicial Administration, organizations that had been long active in the administration of justice field. By early 1970, this task force had laid the foundation for the creation of the Institute for Court Management and its major educational offering, the Court Executive Development Program. Supported by a large grant from the Ford Foundation, the institute enrolled its first class in mid-1970. The class of 30 men and 1 woman completed the program in December 1970.

As first offered, the Court Executive Development Program was a full-time, six-month long course designed to aid individuals making a career change from some other endeavor to court management. Of the first class, approximately one-half were new to the

court administration field. The others were federal and state court employees or had some other prior experience in the courts. Those entering the field received fellowships from the Institute, which covered the costs of schooling as well as basic living expenses associated with attending the program.

The curriculum was a mix of formal classroom instruction and guided study in the courts. During the first two weeks, as a means of immersing the participants in the court environment, they were assigned to document the processing of different kinds of cases from filing to disposition and to interview all the key actors involved. The next nine weeks were spent in formal class sessions led by academics and practitioners. A visiting committee of judges, chaired by Chief Justice Burger, provided general oversight with a number of these judges sitting in on class sessions.

After the formal instruction phase, participants were required to spend the next three months as interns in the courts conducting a court study and preparing a report in accordance with a study guide developed during the closing weeks of the class sessions. The development program concluded with a two-week seminar designed to enable the participants to share their internship experiences. Chief Justice Burger awarded the certificates of completion to the first class at ceremonies conducted at the United States Supreme Court.

In designing this program, an underlying premise was that the court manager had to understand the total arena of the justice system. The program explored the complex nature of the courts and the environment in which courts function. Internal operations and external relationships were examined. To address these areas, the curriculum developed by the Institute for Court Management included a broad spectrum of subjects relevant to court management. Instruction and field experience were provided on such operational subjects as caseflow management (perhaps the central court function since resolving cases is the primary business of the courts), records and information management, budget and finance, jury management, and personnel administration. Class sessions were devoted as well to discussing the role and function of the courts, judicial independence, the adversary system, and other issues relating to the courts as an institution of government.

In addition, participants studied management and leadership styles to enhance their interpersonal skills and obtain a better understanding of the dynamics of organizational change. This was particularly important since in those early years a great deal of emphasis was placed on the role of the court manager as an agent of change.

Aside from being the first formal court management education and training program, the CEDP served as the model for university programs in judicial administration. In the early 1970s, the University of Denver College of Law, the University of Southern California School of Public Administration, and American University began offering graduate programs in court and justice administration. Many other universities and colleges also developed courses dealing with the courts and justice system, and some have established criminal justice programs and schools that include courses on court administration.

Court management training and education expanded in other ways as well. In 1972, the Institute for Court Management began to broaden its focus by offering workshops on the operational aspects of court administration, e.g. caseload management, budget and finance, etc., to in-service court personnel interested in continuing education. Enrollment in the Court Executive Development Program was not required. In addition, the Court Executive Development Program was modified to accommodate those with full-time positions in the courts. Rather than attend a single nine-week seminar, the program has evolved so that participants now attend a series of workshops and a three-week seminar. It takes two or more years to complete the program.

In addition to the Institute for Court Management, other organizations, most notably the National Judicial College and the National Center for State Courts, began offering court management courses in the 1970s. (The Institute merged with the National Center in 1984.) That decade also saw a large expansion in the number of state judicial colleges and programs dedicated to providing judicial branch education. Some of these institutions and activities included short training programs for court administrative personnel among their offerings. Aside from sessions that were locally planned and conducted, some jurisdictions collaborated with national organizations to design and present special programs for their court administrative personnel. Thus, by the beginning of the 1980s, education and training in court administration were available widely both as part of a defined course of study leading to a degree or certificate and on a continuing education basis. Practically nonexistent in 1969, the field of court management and court management training became well established in just ten years.

Court management training opportunities have continued to grow. For example, according to data collected by Judicial Education Reference, Information and Technical Transfer Project (JERITT), in the decade of the 1990s, the number of court administration and related topics included in educational programs more than doubled. This demonstrates clearly that court management's importance is gaining greater recognition by educational providers on the state, local, and national levels. This trend also underscores the need for the type of comprehensive court management education curriculum offered in this monograph.

The development of the field was aided, in no small measure, by an outpouring of articles, monographs, court study reports, and journals dealing with the administration of the courts. These publications were essential to building a body of knowledge about court operations and the management of courts and to developing the materials necessary for education and training programs. They were the result, in part, of systematic court studies spurred by the awakening interest in the field and the creation of court administrator positions in the state and federal court systems. The new administrators and many judges concerned with the administration of the courts realized that the knowledge base had to be expanded significantly if court management and court management education and training were to succeed. Without a body of knowledge, court management, as a professional activity, could not have been established. By the same token, its continuation as a profession requires that the body of knowledge be refined and expanded as the field matures.

The foundation for court management training and education that was developed in the 1970s has remained largely unchanged. While there are marked differences as to the number and variety of courses and the mode of delivery (e.g. distance learning), the basic premises and approach have seen little modification over the years.

At the outset, the focus was on the training of court administrators and the creation of court administrator positions. Although judges played a prominent role in fostering the development of the new profession of court management, no effort was made to teach court administration to judges or to encourage judges to participate with administrators in education programs. This, no doubt, was due to the view then current that court administration was concerned mainly with taking care of the housekeeping or administrative and business affairs of the courts. Policy making, on the other hand, was thought to be the sole prerogative of the judiciary. Despite the comfort this supposed dichotomy gave to many judges, in a few years it became clear to those involved in the development of court management that policy making and policy administration are not separate activities. Since administering a policy inevitably creates policy decisions, those responsible for administration cannot help contributing to shaping policy.

In addition, there was a realization that, at the top level, court administration was a shared function performed by judges, administrators, and other key actors. Effective court management thus depended on having more than just a trained, professional court administrator. Nevertheless, despite this broadened view of what court management entails, training for judges on court administration issues, including the core topic of caseload management, is still not a significant feature of the court management education landscape.

One of the consequences of the misguided view that court administration concerns only housekeeping matters and does not involve judges is a concentration on skills training regarding the operational side of court management. Despite their importance, management, leadership, and the change process have not been a major focus of court management training. Another consequence has been the two-track approach; judges and administrative personnel are trained separately on court management issues that need to be addressed jointly.

To be sure, over the years, many court management programs became available for judges, both on a national and in-state basis, and judicial attendance at these programs has increased greatly. But the development of these programs has been ad hoc and largely concerned with particular operational issues. As discussed in Chapter 1, in many jurisdictions, despite the importance of the position, judges become chief judges without specific court management training to prepare them for the job. The judicial role in managing courts and leading the justice system is still largely unexplored in the educational context.

A comprehensive court management education curriculum for the twenty-first century must address this issue. Just as it is in caseload management, judicial leadership is central to efficient and effective court management. Since most judges come to the bench with little or no experience or training in management and leadership, it is essential that those topics, broadly defined, be emphasized as part of the education provided to judges and key court administrative personnel.



## CHAPTER 3

### Exploring the Use of Power in Leadership

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#### Introduction

Leadership and power are not synonymous. People who have power may or may not demonstrate leadership abilities. We often hear about three types of power—personal, positional, and organizational—and these power definitions are helpful because they get at various sources of authority, some internal and some external. The first type, personal power, comes from what an individual knows, does, believes, and/or values. It is not the result of titles, positions, or other organizational or societal affiliations. The second type is positional power. A person has positional power when the duties, responsibilities, and mandates of the position he or she occupies are authoritative and controlling of other individuals or organizations—social, cultural, religious, or governmental. The third type, organizational power, can result when an individual becomes a member of or becomes affiliated with an organization that is itself powerful, that is, has authoritative or controlling attributes. Power from these sources can be expressed in styles of communication or action—as power from within, power over others, or power with others (Hawkins 2001).

Judges have immediate power bestowed on them through both their position and organization. They may or may not have personal power. The power that judges have as constitutional officers is exercised inside and outside the court, and sometimes it extends into their private lives.

A court manager's power is not as clearly delineated nor automatically bestowed. Several factors are involved. First, the extent of a court manager's positional and organizational power is determined by the chief judge and other judges on the bench. The court manager's roles, responsibilities, and authority depend on how highly the judges value management, and how well they understand what it takes to achieve management excellence.

The more knowledgeable and comfortable the judges are with the role of the court manager, the more power the court manager is likely to be given.

Second, regardless of how well a court manager performs his or her duties, the positional power of the court manager is always subordinate to that of the chief judge. Despite that, court managers often exercise considerable personal power within the court based on their knowledge, expertise, and personal characteristics in combination with their upper-level management positions.

Third, because the court is a powerful institution in our society, a court manager, outside the court, may enjoy some power by virtue of his or her participation in the organization, although not as much power as judges.

The power that judges and court managers have can be expressed in a myriad of ways. This chapter explores *power within*, *power over*, and *power with*—three ways of exercising power as defined by Thomas R. Hawkins (2001). It also examines power described through Parker Palmer's (1994) five *shadow sides of leadership*. The chapter closes by inviting you to consider a sample method of establishing shared leadership and power in an organization.

### **Three Ways of Exercising Power**

Hawkins illustrates his power models through hypothetical scenarios involving the institutional church. Following his lead, I will provide concrete examples based on the institutional judiciary.

#### *Power Within*

Administrative Judge Justin Credible is addressing the judges and court administrator in their weekly management meeting. The Supreme Court is piloting the concept of mental health courts in three circuits and Judge Credible has volunteered his circuit to lead the pilot. The following is his announcement about the pilot and his circuit court's involvement in it.

*I am confident that we can all pull together and support this new mental health court concept. You will be pleased that I have volunteered our circuit to pilot this important Supreme Court initiative. I don't want you to worry. As you know, when I was at Harvard, I stayed after graduation and did a brief fellowship at the university in law and psychiatry. During my years in the prosecutor's office, I maintained my expertise in these issues. I have also continued to write in this area and I have enclosed some of my most recent research in your packets for this meeting today. Additionally, if I learned nothing else as physics major at MIT before my Harvard days, I learned that there is a complex interrelation between the natural and social sciences. This was a profound and humbling experience for me and made me cognizant of the unique and special skills and temperaments that need to be brought to bear where the quagmire of mental illness intersects the judicial system. Because handling*

*these matters is as much art as science, there is a strange alchemy to these cases. So, I have decided that we should embark on this noble experiment and I will be assigning several of you whose gifts uniquely fit this sensitive area to help make this specialty court a great success.*

People who exercise power within are self-actualized. They draw upon expertise or personal qualities as a source of power. The example above illustrates a chief judge with a lot of power within. Judge Credible has impressive educational qualifications and a real commitment to and infectious enthusiasm for change and experimentation. He is also a confident decision maker. These are all positive attributes for a leader to possess. Yet, Judge Credible also illustrates some of the drawbacks power within can have. Hawkins has observed the person who has power within often feels tremendously empowered personally (Hawkins 2001). Judge Credible claims his own unique gifts. He recognizes his own creative energy and imagination, but, as Hawkins says, this same power within has the potential to disempower others (Hawkins 2001). Leaders who exercise leadership based exclusively on personal expertise and charisma sometimes prevent others from developing their own gifts as leaders. In a group, when a person with enormous magnetism or allure departs, group interest in the causes championed by that person often diminishes because no one else possesses the power to keep them going. The expert may have used power within, power based on to his or her expertise, to silence opposition to changes or ways of doing things he or she proposed. Others in the group, faced with this style of interaction or with the person's charm, may have passively accepted the leadership of the person with power within. Although power within can be exercised without formal positional authority, in the case above, the person with more knowledge and personal charisma also had express authority by virtue of the leadership role. This is when "power over" can come into effect (Hawkins 2001).

### *Power Over*

In the following scenario, you are a fly on the wall at a meeting between Chief Judge Isaiah Doit and new Judge Ida Thinkso. Keep in mind that this scenario is a dramatization. The lack of subtlety is to illustrate a point, and is not based on an actual situation. This is what you hear.

*Doit: Ida, I'm going to be assigning you to the juvenile dependency division.*

*Thinkso: I don't think so. I am new to the bench and all my experience is in general civil litigation. I am trying to learn a whole new job here. I don't think you should put me where I have to learn a whole new area of the law at the same time.*

*Doit: I'm surprised at your attitude. I'd advise you to check your copy of the state constitution. This is the way we function here: I make the assignments, you don't. You are new, and everyone does his or her time in juvenile. It's a good indoctrination. This job is not for the faint of heart and you acquitted yourself well in the election, though you do have a bit to learn about just what cards I hold and you don't.*

*Thinkso: I am not going to be intimidated by you. You are the chief, but I am a constitutional officer too. I draw the same salary and get elected the same way you do. This is not a wise use of my time or talent.*

*Doit: I won't brook a challenge like this to my authority. Let me cite Article V, Section 3 of our state constitution. By virtue of my election as chief judge for the next two years, I have the express and inherent authority to supervise this court and to assign you wherever I please. I make the assignments and the rotation decisions. That includes divisional assignments and main versus satellite courthouse. Now if you want to be assigned to the satellite, I may have something for you in civil.*

*Thinkso: This is a big circuit! That's 60 miles each way for me! You aren't serious about sending me to the satellite? Are you threatening me?*

*Doit: I'm providing leadership to this circuit. If you see that as a threat, that is your issue, not mine. Think it over. In the meantime, I will think it over too, but you'll be wise to accept the assignment you are given. You take juvenile as I have said, and you can have it downtown. You'll eventually get a choice rotation, but you have to earn it by being a team player.*

The above dramatization is designed to draw attention to a second type of power, power over. A chief judge with many years' experience may exhibit a senior mentor quality. The power to lead is legitimated by the recognized office and credible experience. The person exercising power over is using positional power, and as the example above illustrates, it can be used destructively and can escalate situations to conflict. Chief judges and senior court management professionals have access to power over when they have authority to control scheduling and court assignments over large numbers of staff. Judges in leadership roles control the subject matter and geographical assignments for other judges in a clearly defined bureaucratic structure. Power over is derived from social and organizational hierarchies. Power over, like power within, has both positive and negative aspects. A chief judge's positional power can initially provide other judges and court staff with a sense of legitimacy and can institutionally authorize their actions. However, if the destructive aspect of power over surfaces, conflicts may eventuate and escalate. Power over can be used coercively to manipulate, dominate, and control. Using either power over or power within is a questionable leadership strategy. When their expression is limited, they can have positive effects, but carried beyond that, they can become destructive and disempower others (Hawkins 2001).

### *Power With*

Court manager Sharon Powers is addressing a local judges' meeting. Her Chief Judge, Della Gatti, is also present, but has asked her to facilitate this portion of the meeting. Ms. Powers is speaking.

*Thank you all for attending this out-of-cycle, administrative meeting this afternoon. We have been given a new charge from the Supreme Court and I am tasked by Chief Judge Della Gatti with facilitating the implementation of a new mental health court in our circuit. I am not sure of the best way to proceed, but I am confident that we can collectively figure out a way to make this work. Therefore, I am asking for volunteers to work with me on a plan. I'd like to ask you to help me take a hard look at where we are now, analyze our strengths, weaknesses, opportunities, and threats to success, and I want to game this out. I think I owe it to the Supreme Court to share our feedback as well. If you will indulge me for a few moments, before I ask for volunteers, I think it would be wise to set aside a few minutes for you to ask questions or make comments, and express preliminary concerns. I've had a day or two to absorb the report from the special commission and to brainstorm with Judge Gatti, but you have not, so for about the next thirty minutes, it is your time to talk. This phase of the meeting belongs to you.*

This illustrates the third way to lead with power, power with (Hawkins 2001). This power is not derived from personal qualities or expertise like power within and does not stem from an official position, like power over, but is a mutual or coactive power. The above scenario involves a court manager, but as easily could involve a chief judge. Any leader can exercise power with by working as a member of (serving) a leadership team. Judicial leaders create leadership teams by giving members the tools and resources needed to accomplish the tasks the team defines as important. A leader who exercises power with sees his or her role first as being that of a servant and partner. Leadership based on power with does not rely on emphasizing one's own expertise or personal charisma, nor does it involve appeals to the authority of one's office or position. Instead, power with involves mutuality, reciprocity, and shared responsibility. As with the other two ways of leading with power, this approach has both possibilities and dangers. Precisely because leading with the power of collaboration and servanthood places a high priority on relationships, it runs the risk of creating exclusive and self-limiting interest in the team (Hawkins 2001). In this situation, the emphasis becomes the fellowship among team members rather than the services to be rendered. The enjoyment of relationships and friendships among like-minded people can supersede the mission, vision, final decisions, and service to the larger society (Hawkins 2001).

In summary, Hawkins has identified three ways to lead with power. Exercising power within, some leaders rely on their personal charisma or expertise. This form of power can be empowering to the person exercising it. It can release personal creativity and energy, and challenge traditional ways of doing things, yet claiming one's own gifts exclusively can rob power from others. Charismatic leaders have such strong needs to employ their gifts that others may lack the space to develop. The charismatic leader can have such a strong need to demonstrate expertise that he or she silences the rest of the group. Such leaders can fall into the trap of becoming celebrities rather than servants. When this happens, their impact on the organization is not enduring. When the leader recedes from the scene (his or her "celebrity vehicle"), the projects the leader championed become abandoned and that person's leadership legacy is lost.

Others prefer to lead with power over, relying on positional power or the authority of their office. Power over can be used to empower others. Unfortunately, leaders also can use

power over in ways that manipulate and coerce, and, as in the case of celebrity leaders, strong-arm-style leaders will also see their projects languish when they are no longer at the helm.

Third and finally, Hawkins's power with finds expression in leaders who value collaboration and mutuality. This way of leading with power can also be immensely generative. As people work collaboratively, new ideas surface that no single individual could have imagined. Synergy develops and the spirit carries people to accomplish things they never dreamed possible. On the other hand, power with can turn groups inward; they can become so invested in their own interactions that they fail to see the larger world around them. Potentially, they lose the capacity for servanthood, which is a catalyst for partnerships (Hawkins 2001).

No easy answer exists for how to lead with power; no single way is the right way. Each has assets and liabilities. The question is not which is right or which is wrong, but whether we are capable of meta-analysis, critical thinking about our thinking about power. Can we be critically aware of the way we typically lead with power and its impact on others? We have to ask, "At what point do the particular strengths inherent in our unique way of leading drift into the liabilities that overshadow and undermine our basic intent as leaders?"

### **Out of the Shadows and into the Light: Using Power Constructively**

This examination of power can best be undertaken by considering Parker Palmer's five shadow sides of leadership. Palmer believes that we, as humans, create the world through what we project into the world. "We share responsibility for creating the external world by projecting either a spirit of light or a spirit of shadow on[to] that which is other than us. We project either a spirit of hope or a spirit of despair, either an inner confidence in wholeness and integration or an inner terror about life being diseased and ultimately terminal. We have a choice about what we are going to project, and in that choice, we help create the world that is. Consciousness precedes being, and consciousness can help deform, or reform, our world" (Palmer 1994, 24). Palmer's definition of a leader is "...a person who has an unusual degree of power to project on other people his or her shadow, or his or her light. A leader is a person who has an unusual degree of power to create the conditions under which other people must live and move and have their being, conditions that can either be as illuminating as heaven or as shadowy as hell. A leader must take special responsibility for what's going on inside his or her own self, inside his or her consciousness, lest the act of leadership create more harm than good" (Palmer 1994, 24–25). Palmer specifically identifies five shadows of leadership, which rob others of their opportunity to express fully all of their gifts and talents (Palmer 1994, 32–38).

**Deep insecurity.** Deep insecurities about one's own identity and worth result in title and hierarchy obsession that robs identity from others to bolster one's own. Leaders who regularly resort to power over are likely to have deep insecurities.

**Perception of a hostile universe.** The perception that the universe is essentially hostile and that life is fundamentally a battleground results in the dangerous and destructive employment of war metaphors to describe the world of work. Leaders who believe in a hostile universe are susceptible to perversion of power over, power within, or power with.

**Functional atheism.** The belief that the ultimate responsibility for everything resides with the leader is functional atheism. Palmer says that it is the “unconscious, unexamined conviction...that if anything decent is going to happen here, I am the one who needs to make it happen” (Palmer 1994, 35) that gets people into this mode of functional atheism. This shadow is probably manifested most in the context of power within.

**Fear.** The fear that Palmer talks about is a fear of the natural chaos of life, resulting in reliance on rigidity and rule regimentation that stifles growth and creativity, experimentation, and the failure that results in new learning. Fear can play out in the application of any one of the three forms of power Hawkins discusses.

**Denial of death.** Denial of death manifests itself in artificially maintaining projects and programs that should have been laid to rest or taken off life support years ago. Again, relating Palmer’s shadows to Hawkins’s categories of power, the controlling tendency of the leader who relies on power within or power over can result in preservation of a lifeless *status quo*.

The following discussion is organized around these five shadows of leadership and their impact on the ways judicial leaders balance the use of power over, power with, and power within. These shadows cast themselves long over the judicial branch. They characterize the culture of the organized judiciary, but Palmer’s prescriptive concepts can be curative.

### *First Shadow: Deep Insecurity*

Parker Palmer describes why it is important to look at the shadow side of leadership:

Many books on leadership seem to be about the power of positive thinking. I fear that they leave a common delusion among leaders that their efforts are always well intentioned, their power always benign. I suggest that the challenge is to examine our consciousness for those ways in which we leaders may project more shadow than light (Palmer 1994, 25).

Palmer says we need to “ride certain monsters all the way down” (Palmer 1994, 32).

How does this concept of shadows fit with the institutional judiciary? The institutional judiciary is an affiliate association historically bound by law as a subject matter and law as an approach to problem solving, and by gender identity based on paternalism. Although it is less bound by gender than in the past, it is still bound by an academic and

professional background in substantive and procedural law. Several years ago Ray Ferraro, Jr., a past president of the Florida Bar, said of the legal profession, “They teach them law in school, not humanity. Our individual challenge in this crisis of change is to retain our humanity, share it, and humanize the way we work with clients, the public, and each other.... Our role is peacemakers, bringing justice where it is lacking, tranquility where there is turmoil, freedom where it is deprived, and rewards where they are due.” Ferraro was not talking about judges or court managers, but the quotation seems apposite to all forms of judicial management and leadership, not just to practicing lawyers. Lawyers and judges, even non-lawyer court managers, tend to look at problem solving by “thinking like lawyers,” or from a legal perspective. The courts attract people whose background is in logic, reason, point, counter-point, adversary to adversary, and someone ultimately refereeing and making a ruling. Law training, or extensive experience working with those who think like lawyers, may incline a leader or manager to try to solve all of the world’s problems through law, or at least through a top-down, hierarchical decision-making model.

Yet, we see increasingly that this approach has its limits, is inadequate to solve some problems, and does not always give the larger society, which includes a broad range of staff and litigants, what they want or need. Law, historically, is a hermetically sealed discipline. It has not viewed interdependence or cross pollination of ideas from other fields of human knowledge as good in an independently functioning judicial system.

Contemporary experience is contrary to that historical foundation and is causing institutional insecurity. The public does not think that members of the judicial system have much integrity or compassion. They do not trust them or give them their confidence. Lawyers in practice are increasingly dissatisfied and depressed. Many are searching for alternative career paths and professional challenges, within or completely outside of law practice.

Deep down, beneath any denial, judges, lawyers, and court staff members know there is tremendous disaffection inside and outside the courts. Court managers have been seeing it much longer than have some others who work in the judicial system. Certainly, the leaders of the Conference of State Court Administrators (COSCA), the Conference of Chief Justices (CCJ), and the National Center for State Courts (NCSC) have been talking about and writing about public dissatisfaction and changing expectations for several years now.

Listening to that message and really hearing and processing it can be a bit scary. It means that by being so independent and autonomous, court leaders, both judges and court managers, are falling short. They may have to admit to limits of their education, their experience, their symbols, their worldviews, and their ways of acting on them. That message also implies that court leaders have to be willing to invite the ideas of allied professionals.

As Palmer says of leaders in general, “...especially in men...we have an identity that is so hooked up with external institutional functions, that we may literally die when those functions are taken away from us” (Palmer 1994, 32).

Leaders of the judicial system fear their institutional identity is under attack. They are unsure about what will happen to them if they lose the trappings of the office—the robe, the



gavel, the elevated bench, the dispute resolution function, the “ruling” role in criminal, civil, family, juvenile, and probate matters, and in the society at large. If alternative dispute resolution (ADR) is good, is the adversary system necessarily bad? If consistency in approach to juvenile dependency in child protection cases is a good goal, what does that say about the individual judge’s control of his or her own cases? What does it say about his or her approach to handling child protection matters? If therapeutic jurisprudence and rehabilitation are intrinsic goods, what does that say about the jurist who is a Juris Doctor (JD) and has plenty of litigation experience, but does not have a Master’s of Social Work degree (MSW) or much academic or real world experience in social work or human psychology?

Palmer warns that “when leaders operate with deep unexamined insecurity about their own identity, they create institutional settings that deprive *other* people of *their* identity as a way of dealing with unexamined fears in the leaders themselves” [Palmer’s italics] (Palmer 1994, 33).

Isn’t that what was going on, in part, with Judge Isaiah Doit in the power-over example? Palmer says, “The great spiritual gift that comes as one takes the inward journey is to know for certain that who I am does not depend on what I do” (Palmer 1994, 34).

### *Second Shadow: Hostile Universe*

This perception of reality is tough, but many would say it is, at least in part, true. Palmer looks holistically at the universe and finds the hostile model causes problems. Palmer notes the frequency with which people employ “battle image” (Palmer 1994, 34) as they go about leadership. I have heard “do or die,” “big guns,” “allies and enemies,” “wins” and “losses.” Some government agencies do “situation reports.” In my own experience, I have noted that leaders and managers in the judicial system frequently “war game it.” Somebody has “got the dot” on a project, referring to the infrared beam from a high tech rifle sight. The phrase is used to mean that if the project goes down, so does that person. Leaders are constantly “rallying the troops” because “this one is rolling out hot!” Hearing these terms, one would think that all leaders received training in the Marine Corps and that every project or task is combat pitched on a battlefield. This is also highly competitive imagery. It is certainly the language of litigation and that of attorneys and many of their clients who interact with judges and court staff, including even those judges and staff members who are ostensibly court leaders.

Court management does not have to be this way. Even if the cases being argued in the courtroom are “fought” with much acrimony, there is a consensual, cooperative, mutual way to do many things in the judicial branch. The positive side of power with, employed appropriately, does not include battle metaphors. The judicial branch is not well served by cynical, power-within leaders telling us their expertise supports the hostile universe outlook, nor is it well served by the bullying, power-over types assuming the role of field marshal. The judicial branch needs people who journey inward and connect their total life experience

authentically with the world, and who strive to use the positive aspects of the power they have.

Palmer's discussion and explanation includes spirituality as a part of the inward journey. Although Palmer's spirituality is religious, spirituality is not necessarily religious, nor is it necessarily soft, touchy-feely, or impractical. Pragmatic spirituality is based on observation. Readers need not accept that the universe is essentially good or guided by a benevolent deity. They have only to examine their own experiences and recognize that there are genuine examples of coherence, harmony, and working together for good going on all around us, at work and elsewhere. War is real, but so is peace. Independence is an intrinsic good, but so is collaboration.

These are important principles to keep in mind in budget negotiations with the local municipality, in funding discussions with local legislators, in performance reviews with court staff, in judges meetings with colleagues, and in administrative office communications. Increasingly, these principles are being applied to case management conferences, settlement conferences, and formal, adversarial court proceedings—especially those in family, juvenile, and mental health courts, but elsewhere as well.

Court proceedings involve argumentation, but they are also part of civic and civil discourse through which self-governing peoples operate to bring about more order than chaos, ultimately more light than darkness. Judges and court staff are public servants, here to secure the public good. Every manager and every leader would be wise to scrutinize his or her use of war metaphors and ask if the war analogies are the most apt, or if analogies borrowed from peacemaking might be more pertinent and helpful.

### *Third Shadow: Functional Atheism*

Lawyers and judges, not surprisingly, are interested in law and rules. However, they can become preoccupied or distracted with law and rules; and whether by training and/or their nature, they also can become absorbed or obsessed with control—control freaks or micro-managers. Folks like these, and I include myself among them, are the ones Palmer was talking about when he coined the term “functional atheism.” These are the people who have to do it all themselves, who dare not rely on anyone else to fathom the rules of the game for them. Palmer warns that functional atheism leads to workaholism, to burnout, to stress, and to strained and broken relationships and unhealthy priorities. Palmer says that leaders need to recognize that “ours is not the only act in town” (Palmer 1994, 36). In fact, “...some of them, from time to time, are even better than ours” (Palmer 1994, 36). The leader who uses only power within and/or power over is not ever going to learn this fact or benefit from it. Why? Because that leader does everybody's heavy lifting for them. This is often the case with the content expert or the hierarchical manager. When such people take an inward journey into the shadows, they “learn that [they] do not have to carry the whole load” (Palmer 1994, 36). They learn that they can share power and sometimes actually rest while someone else takes a turn. When they learn this, they can, by example, free others to learn. Then, the group can become a community of mutual discourse, collective wisdom, and a learning organization—a

leadership team. Co-creation is enormously liberating. Exploring the use of power with does not mean completely abandoning power over or power within, but it does mean that leadership does not need to be a solo act.

Functional atheism strikes at the heart of some of the perceived and real problems in judicial branch leadership. It should resonate with chief judges and professional court managers who are reluctant to trust their non-law-trained managers or education and training professionals.

Education and training is very closely allied with organizational leadership. Those who study organizational development can learn much from the discipline of education and training and vice versa. Adult education theorists tell us there are generally three purposes of education: (1) indoctrination or passing on tradition; (2) self-actualization; and (3) transformation of society (Fleischer 1999). The judicial branch has important traditions that merit enculturation, and a person who tries to develop or achieve his or her potential is laudable, but, in the complex world of judicial branch education, there is more to learn if we hope to serve the commonweal and thereby transform society. What we can learn from each other in discussion can change what we think, feel, and understand about things we learned previously. Leaders, especially, need to be in a process of continual growth and becoming. Noel Tichy says that leaders are teachers, whether in formal classroom settings or not, and leaders as teachers need to be teachable themselves (Tichy 1998). If leaders teach, they need to understand this, and they need to distinguish which among the three purposes of education is primary at any given time and in any given context.

So, one of the questions, as we apply sound management and adult learning principles to overcoming functional atheism, is how we can work together in ways that enhance the common effort and honor every individual's contributions. Leadership that depends on personal relationships is viewed by some as threatening, but personal relationships can also be valuable in building a sense of community. Leaders who interpret relationships with others as potentially limiting their ability to exercise power find collaboration risky. Others, who think relationships need boundaries and structures to make them safe, exercise control to lessen the risks. These attitudes persuade leaders to reinforce power differences among individuals by insisting on clear roles and explicit rules for working together. Leaders with these attitudes may hold back parts of themselves to try to protect their separateness. However, leadership today, because of increasingly rapid information transfer and increasingly complex interconnections in the work we do, is impossible without sharing information. Leaders have a greater need than ever for information and support from others. It is essential to understand that leadership itself is increasingly interdependent.

Related questions that need to be addressed include: what, as leaders, our relationship is with colleagues, what we need from one another beyond the roles and rules of our organizational arrangement, and what we can confidently expect from one another. Leaders, in court management and on the bench, need to engage in healthy conversations about these. And, although healthy conversations may include some elements of conflict, those conflicts should be manageable. The functional atheist who believes, "If anything is to be done right around here, I must be the one to do it," must quell his or her need to control. Functional

atheism in men may be expressed as paternalism. The temptation to act in this manner is endemic among court leaders. Eager to ensure that things turn out right, Palmer says the functional atheist makes others' decisions for them. Whenever we think we know what is best for other people, control can masquerade as care. Understanding that our wholeness is forged in connection and in mutual commitment, we must interact with our colleagues. Although we can try to stay intact by avoiding interactions, I borrow from a theologian who asks, "Who wants to be intact, but ungenerous?" What accountability does the functional atheist have for his or her interactions with colleagues?

Accountability in various professions has increased dramatically in recent years due to several factors (Devine 1996). Four traditional professions—medicine, education, the clergy, and the law—tended to assume that the members of their professions knew what was best for the people that they served (Devine 1996). These professionals were not accustomed to receiving significant input or feedback from clients, patients, students, and parishioners. In the past, this was partly because the members of the professions were thought to be the only ones educated or articulate enough to conceptualize and express the complex ideas of the profession. The professional, as a part of his or her identity, was assumed to know and uphold his or her responsibilities and obligations. Also, hierarchical organizational structures prevailed and were accepted by people in this country and around the world, well into the twentieth century. American government at its conception was called democratic, despite the disenfranchisement of the property-less, non-Caucasians, women, and in some instances, non-Protestants (Devine 1996). It was only in the last 30 to 40 years that public awareness and social activism dramatically accelerated a change in what is considered democratic. Originally, people outside of wealth, power, and privilege had no right to "talk back" (Devine 1996, 34). The concept of *noblesse oblige*, inherited from British imperialist roots, was the only obligation people of privilege had for subordinates. Increasingly, those subordinates—the lower classes, the disenfranchised, and the marginalized—found their voices. In China, in former European colonies, in Africa, in South America, in the United States and elsewhere, subordinates in so-called democratic societies began to say what it meant to live in a society of genuine participatory democracy (Bellah 1996; Devine 1996).

Along with this change, people began to expect to have their voices heard by the professionals. Education, combined with technologies such as the Internet, have given people who use the services of professionals more knowledge, and that knowledge translates into more power and influence than they were previously able to enjoy. Clients today are much more active than passive and expect to be consulted at critical junctures that involve them, especially in legal matters. This new interconnectedness and active participation of clients should not threaten the professional. This is not necessarily to say that the patient knows better than the doctor or that the public knows better than the judge; however, there is a palpable change in the tone of the relationship between the public and professional practitioners, including court managers and judges in leadership roles.

This change in society was perceptively observed by Robert Greenleaf in his book, *Servant Leadership* (1977). He asserts that we have to take "a fresh critical look" at power and authority. In the late 1970s he remarked, "[P]eople are beginning to learn, however haltingly, to relate to one another [less coercively and more creatively]" (Greenleaf 1977,

9–10). People also are starting to recognize that “the only authority deserving one’s allegiance is that which is freely and knowingly granted by the led to the leader in response, and in proportion to, the clearly evidenced servant stature of the leader” (10). That notion is considered counter-cultural, even radical, to some, and therefore unsuitable as applied to the judicial branch. The courts do, after all, have the constitution and the state’s police power to back up court actions. But, Greenleaf is saying, when we lose the public’s trust, we may be able to retain our power and influence through external control mechanisms for a time, but that would be an artificial and temporary means of exercising power. The history of the world’s various revolutions bears this out. Long-term legitimacy requires the consent of the governed.

#### *Fourth Shadow: Fear*

The preceding discussion danced around the issue of fear without addressing it head on. In the judicial branch, fear of disorder, or what Palmer calls fear of the natural chaos of life (Palmer 1994, 36), is debilitating. Those who see interdependence, innovation, challenge, and change as manifestations of the chaos that threatens order, will have difficulty adapting in the twenty-first century. He warns that leaders who see it as their job to eliminate all remnants of chaos will have problems. This fear has many expressions. Often, it is projected as rigidity, as inflexible adherence to rules and procedures. It is not uncommon to hear a top-down, power-over leader express in some manner, “That is the way it is. That is the way we have always done it. It ain’t broke, so don’t fix it.” In the corporate world, this attitude creates cultures that are restrictive, ossified, deadly dull, and “imprisoning rather than empowering” (Palmer 1994, 36). These corporations also cannot last. In the judicial branch, certainly there is a need for rules and procedures; there must be due process; fundamental fairness demands that the public have its reasonable expectations met. Things must be as advertised. Yet, within the spirit of the rules, there is more room for interpretation than some may concede. Certainly, there is more room for the interpretation of rules and procedures in the world of court management and administration than in the determination of a deadline for filing a responsive pleading. In the world of court management and administration, there is room for innovation. In spiritual traditions, chaos is a precondition to creativity. Any organization, including the courts, without a way to accept creative innovation or allow people to dive in and get their hands dirty, as though in a laboratory—any organization that rejects chaos in this manner—is half-dead already. Those organizations need to begin to allow some creativity and innovation, even if it comes with some chaos. They need to recognize that people not only can survive chaos, but sometimes they actually thrive on it, on vitality in the vortex.

#### *Fifth Shadow: Denial of Death*

What Palmer means when he says that some leaders engage in the fifth shadow, i.e., deny death, is that some leaders artificially maintain things—systems, procedures, and methods—that no longer or never did work. Projects and programs that should have been “put down” (Palmer 1994, 37) a decade ago are still on the resuscitator. This denial of death

ties in very closely with fear—fear of negative evaluations, public dissatisfaction, losing one’s job, defeat in elections. Although in many organizations failed research and development can result in negative consequences for the employees, Palmer and others note that we would be wise to learn from the sciences. In science, an experiment always produces new learning, whether the original hypothesis proves true or not. The best organizations will ask their employees to take risks, with the understanding that some systems, procedures, or methods may need to cease, but that we can learn from the experience. Spiritual traditions likewise hold that death is not the final word. Palmer warns that leaders who fail to deal with their own fears and denial about death create misery for everyone in their organizations. Palmer says there are ways to deal with our inner lives, and that doing that “inner work” (Palmer 1994, 38) is so important.

The five shadows remind us how easily leadership can go awry, but affirming the positive aspects of leadership can counteract their negative influences.

### *The Positive Aspects of Leadership*

Greenleaf in *Servant Leadership* (1977) and McMichael in *The Spiritual Style of Management* (1996) offer us a glimpse of some positive aspects of leadership. I offer an amalgam of the two, a reminder list for leaders. These can be read daily and affirmed in thought and action. Leaders also can use them to communicate their philosophy, values, and orientation to those whom they lead.

#### *A Leadership Reminder List: A Source of Daily Affirmations*

**A leader is not more competent than others by virtue of his or her position.** We all have talents. A leader possesses certain skills and talents, but so does everyone else. Skills and talents may vary, but they all have value.

**A leader envisions an organization that resembles a community.** We are governed by forces that collaboratively we must intuit. A collective power runs throughout the organization, much like a biological system. A leader is one conduit through which that power can work, but the power runs through all members.

**One of the leader’s roles is to articulate and focus the direction of that power.** A leader articulates the group’s mission, vision, values, and long- and short-term goals. He or she will enforce mutually agreed upon values and rules established by the group for governing discourse and conduct among individuals and guiding the creation of its work product.

**A leader wants group members to be able to take risks.** He or she wants them to be able to express opinions, challenge the existing manner in which things are done, and try new ways to achieve the results the group has decided upon and wants for the organization. The leader is responsible to the organization for what the group does as

a team, but each group member is responsible for how the team accomplishes it. Team members should be free to decide on the means of implementation.

**A leader will strive to have an open door policy.** He or she may have to establish office hours, but, to make this approach to leadership work, it is critical that each member of the group have an opportunity to express his or her opinions, challenge existing systems, and suggest improvements.

The affirmations are complemented by the following 7 guiding principles I have developed from McMichael's (1996, 12–16, 64–68) 12 spiritual management principles, and from Greenleaf and Covey. These can serve as polestars for leaders who believe they have a calling to make their organizations and the world a better place.

### *Seven Guiding Principles: Remembering Your Calling*

**Control** (McMichael 1996, 13). The leader is not in control. Instead, all team members are responsible for control. To paraphrase McMichael, a leader does not need to be in control if all the team members are running in the same direction. Control is illusory anyway, because, as Greenleaf (1977) astutely observed, the only power a leader has is that which is freely allowed by those whom he or she leads.

In 1989, Ron Stupak, the noted court management expert, made a point similar to Greenleaf's during the Florida Judiciary Education seminar for chief judges and trial court administrators. He warned that the leader who thinks he or she has assembled the perfect "A" team had better be mindful of the "little people" on the "Be" team, who were there when you arrived and will "Be" there when you are gone. Leaders who want a legacy have to empower others: not just share a little power with them, but trust them to exert their own power. That leads to the second guiding principle.

**Empowerment** (Covey 1992; McMichael 1996, 19). Empowerment is a term Stephen Covey made famous in *Principle-Centered Leadership* (1992). Other terms such as *organizational simplicity* or *participatory, non-hierarchical structure* refer to similar concepts. When a leader says, "I want you to be empowered," he or she is saying, "I want you to have access to the same information and resources I do. I want you to be fully empowered to serve the needs of the clients, customers, and stakeholders, both internal and external." What this requires on a practical level is the open-door policy discussed previously. It also requires regularly scheduled staff meetings for the express purpose of information sharing.

**Vision** (McMichael 1996, 13). A leader should support the team in developing a mission statement or organizational vision, and then help the team connect that to an aspirational vision. As a group, the team needs to devote scheduled and structured time to talking about its ideal preferred future, and the leader simply facilitates the process.

**Belief in People** (McMichael 1996, 13). Leaders need to expect the best from people. Short of being gullible, it is essential that the leader trust the innate goodness and competence of every person. There is a saying attributed to several management gurus, “There are no unmotivated people, only unmotivated workers.” Discovering what motivates people is a mark of good leadership and management. A leader is dedicated to exploring each person’s talents, strengths, and areas for growth and development. He or she is also dedicated to matching those strengths, insofar as possible, to the needs of the organization and will realign job responsibilities or rewrite job descriptions when appropriate.

**Call to Service** (McMichael 1996, 13). The concept of servant leadership is presented in a book by Robert Greenleaf (1977) that bears that title. Greenleaf and McMichael (1996), one of his proponents, believe the vocation of the leader is to serve the members of the organization. As Greenleaf said, it is time to take a “fresh, critical look” (1977, 9) at power and authority. As leaders demonstrate servant stature, others will grant them authority to lead in response to and in proportion to the demonstrated leadership behaviors. Although some say the term *customer service*, applied in a non-commercial or non-mercantile sector, is a misnomer, the term reminds people in the organization of the need to provide good service, whether for internal or external customers. Regardless of what it is called, identifying all the people who will receive a service and trying to attend to their needs is the job we all need to do. One of the servant leadership roles is to arrange for all team members to have all the resources needed—training, equipment, or other resources—to be effective in their jobs.

**Provide an Environment of Challenge and Support** (McMichael 1996, 14). Another leadership function is to create an environment in which people can safely experiment with different approaches to their work, as they strive to meet mutually agreed-upon goals and objectives (which the leader and team member developed to be consistent with the short-term and long-term goals, objectives, mission, vision, and health of the organization). Good leaders look for opportunities to provide staff members with growth challenges that are reasonable, achievable, and enriching. People tend to thrive when they have worthwhile work that has meaning to them; and good leaders are strongly committed to finding a place where each person’s talents can be manifested and best used. The leader also hopes to help individuals see how their work contributes to the achievement of the mission and vision of the organization. If it becomes evident that a team member is struggling to fulfill a role essential to the success of the team, counseling can be given, but if the skills of the individual and needs of the organization are mismatched, the leader may need to terminate that person’s employment. The skilled leader in those circumstances will, with a caring and respectful attitude for the talents and innate dignity of every person, try to help the team member disengage from the team and move on to more suitable and satisfying employment.

**Seek to Understand, Not Just to Be Understood** (McMichael 1996, 14). McMichael bases this on words attributed to St. Francis, “Lord, grant that I may not seek so much to be understood as to understand.” The leader will want each team member to



accomplish his or her personal goals and visions as well as the goals of the organization. It is important that the leader and team member discuss them on a regular basis and not just at performance reviews. Performance reviews often are too focused on what the organization wants from that individual. It is important for individuals, together with the leader, to look seriously at how personal goals and visions fit with their roles in the organization, or how they could fit better.

### **Final Thoughts**

This chapter is not a “how to” on leadership and management with definitions, tables, and matrices on how to manage and lead, and how to tell the difference between the two; nor is it a chapter on “how to” get the maximum performance out of people. As Parker Palmer says, leadership development is not about “getting in there and fixing each other up” (1994, 39) or about using human resources like so much equipment. It is not “simply about the skills to *manipulate* the external world, but...[it is about] the personal and cooperative disciplines of the inner world” (Palmer 1994, 39; italics added). Real leadership is not an attempt to stage-manage the workplace, and it is more than just knowing the mechanics and/or theory of leading. I believe Palmer would agree with Greenleaf (1977), who made clear that leaders cannot deal with the massive problems of our times merely in terms of systems, ideologies, and movements, but they must also honor the dignity of every individual. Systems theory is good and a leadership curriculum with “how tos” and “whats” is necessary, but they are not sufficient. What is more basic or fundamental is knowing the dynamics of power and control, knowing the shadow sides of leadership, and knowing the core guiding principles of the servant-leader relationship.



## CHAPTER 4

### **An Integrated Education and Training Approach to Court Leadership and Management**

*Maureen E. Conner*

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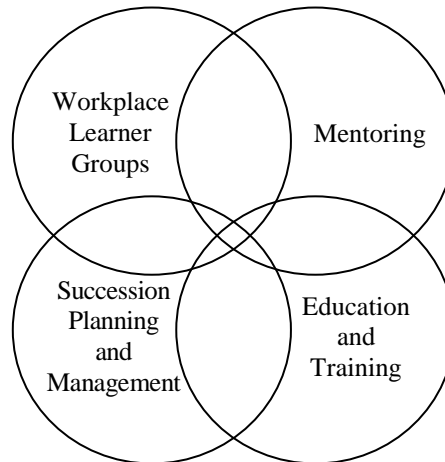
#### **An Overview of the Approach**

Even with burgeoning theories and applications related to management and leadership to guide them, contemporary organizations remain dysfunctional and neurotic in many ways. A quick review of any daily newspaper, weekly or monthly business magazine, or quarterly professional journal will bear this out.

The courts are no exception. However, because of the role that the courts play in safeguarding our rights and privileges and settling our disputes, we would like to think they could do better. What if other organizations, public or private, could look to the courts as the premiere example of how to lead and manage an organization to achieve outstanding performance and service? What if the courts were sought after as a place of employment by the best and brightest because of their progressive employee policies and practices? What a day that would be! It stands to reason that exemplary leaders and managers must direct the courts. Such an important institution should settle for nothing less.

The complicated nature and dynamics of the courts as described by David Steelman, and the temptation of individuals in the courts to use power inappropriately or ineffectively as described by Blan Teagle, coalesce in such a way that getting and retaining exemplary court leaders and managers is a constant challenge. To further complicate matters, the courts have not thoroughly considered the impact of the baby boomers retiring. With the retirement of the boomers in the next few years, much of the institutional memory of the courts as well as decades of experience will be lost. The resulting brain drain could be devastating to the courts. This chapter proposes a comprehensive approach to ensuring continuity in court leadership and management by way of an education and training approach with four interrelated components—workplace learner groups, mentoring, succession planning and management (SP&M), and education and training.

*Figure 1*  
*Leadership and Management Education and Training Approach*



As shown in Figure 1, this approach requires a holistic organizational response. This approach assumes that the courts are ripe for SP&M and that effective SP&M will make optimal use of workplace learner groups, mentoring, and education and training. All four of these components are essential for ensuring that strategic personnel hold the necessary competencies.

### **Introduction—Premises of the Approach**

This approach is based on eight premises. The first premise is that contemporary courts function through the knowledge, skills, and abilities of elected and/or appointed officials, at-will employees, and/or civil service managers, professionals, and technical and support staff. These individuals hold degrees and/or have experience in a broad range of professions, occupations, and fields. Contemporary courts need this diversity in education and experience to meet the demands placed on them by the ever-changing world within which they reside.

The second premise is that judges and court managers hold a combined responsibility for leading and managing the courts—with managers doing the managing, while judges know, understand, and direct what is being managed.

The third premise is that, as the courts serve our society, all individuals who contribute to the courts' operations, from judges to receptionists, are making an important contribution to society. The curriculum put forward later in this chapter acknowledges and addresses the differences in the roles and responsibilities of the individuals. At the same time, it demonstrates recognition of the contributions of all members of the court organization.

The fourth premise is that excellent leadership and management depends on the preparedness of current leaders and managers while simultaneously nurturing the next generation of leaders and managers.

The fifth premise is that leadership and management cannot be taught and understood solely in the classroom. This approach will look at the whole learning experience through a variety of components, including workplace learner groups, mentoring, education and training courses, and succession planning.

The sixth premise offers a structure to be considered but not adopted wholesale, as each organization will have its own needs that will require modification to what appears here. However, the hope is that this structure will be implemented with variations to meet the particular needs of each organization.

The seventh premise is that this approach focuses primarily on chief judges and court managers, knowing that there are others in the courts who do not hold either title, but who should be groomed for future managerial and leadership roles.

The eighth and final premise is that the courses offered in the curriculum strive to be comprehensive, but will not likely be all-inclusive, as each jurisdiction will have needs that will vary. The goal is to provide a framework that supports the premises and allows for flexibility in design and implementation. To that end, we will first explore leadership and management competencies. From there, we will briefly delve into the fundamentals of SP&M, followed by a review of mentoring and workplace learner groups. Finally, we will put it all together in a curriculum plan.

### **Leadership and Management Competencies**

Developing both leadership and management competencies in the courts has a special challenge to it, in that judges first join the organization at the top. Their leadership and management knowledge and skills are not considered when this placement is made. Though they may have some bearing on whether the judge assumes a chief judge role, they usually are not prerequisites for that assignment. Judges come to the bench to be judicial decision-makers. They are often shocked to find out that they also play a key role in a complex organization with rather involved management structures and functions. Those who become the judge in a one-judge court can be even more surprised, because they find they are not only the full-time judicial decision maker, they are also the full-time leader and manager of an organization with basic day-to-day operational needs.

Court managers occupy a high-level position, but not the top position that is reserved for judges only. In larger courts, typically the court manager is a person trained in management techniques. In smaller courts, there may not be a court manager of that stature. In those situations, the judge must also act as the court manager.

Leadership and management are two words that can imply skills of mythical proportions. As seen in Figures 2 and 3, even a cursory review of contemporary literature focusing on those two words leads us quickly to conclude that no one person can possess all of the characteristics or skills attributed to exemplary leaders and managers. Perhaps in our desire to find a solution to our organizational difficulties, we have invented archetypal figures to rescue us from the complicated work of reconstructing systems, healing relationships, and charting new collaborative partnerships and futures.

*Figure 2*  
*Characteristics or Skills Attributed to Exemplary Leadership*

<b>Reference</b>	<b>Characteristics and/or Skills</b>
Heifetz and Laurie (1998)	<ol style="list-style-type: none"> <li>1. Giving the work back to people (i.e., giving people the opportunity or authority to learn things for themselves and internalize the lessons)</li> <li>2. Protecting voices of leadership from below (i.e., voices from below usually do not exhibit the professionalism the people at the top expect, but protecting those voices ensures the flow of valuable information and encourages the growth of new leaders)</li> </ol>
Kotter (1998)	<ol style="list-style-type: none"> <li>1. Developing a vision for the future along with strategies for achieving the vision</li> <li>2. Communicating new directions for the purposes of creating coalitions</li> <li>3. Motivating and inspiring</li> </ol>
Zaleznik (1998)	<ol style="list-style-type: none"> <li>1. Personal mastery that drives one to struggle for psychological and social change</li> <li>2. Adopting personal, active attitudes toward goals</li> <li>3. Looking for opportunities and rewards, inspiring others, and activating the creative process through their own energy</li> </ol>

Reference	Characteristics and/or Skills
Badaracco (1998)	<ol style="list-style-type: none"> <li>1. Focusing on core values and principles, which define one's purpose and results in shrewd, pragmatic, politically astute action</li> </ol>
Bennis (1999)	<ol style="list-style-type: none"> <li>1. Realizing the full potential of intellectual capital</li> <li>2. Serving the needs of the workers</li> <li>3. Creating a climate of candor</li> <li>4. Removing the organizational barriers of fear</li> <li>5. Expecting success, anticipating positive outcomes, and fostering hope</li> <li>6. Producing results</li> <li>7. Bringing zeal, resourcefulness, risk-tolerance, and the discipline of an entrepreneur</li> <li>8. Mastering the softer side, including people skills, taste, judgment, and character</li> <li>9. Bringing passion, perspective, and significance to defining organizational purpose</li> <li>10. Being authentic and consistent</li> <li>11. Inviting people's growth and creating an environment where people constantly learn</li> </ol>
Jensen (2000)	<ol style="list-style-type: none"> <li>1. Simplifying</li> <li>2. Visualizing success</li> </ol>
Lewin and Regine (2000)	<ol style="list-style-type: none"> <li>1. Displaying the three A's: allowing, accessible, and attuned</li> </ol>
Senge (1999)	<ol style="list-style-type: none"> <li>1. Addressing the challenges of sustaining change</li> <li>2. Creating organizational environments that inspire, support, and leverage the imagination and initiative that exists at all levels</li> </ol>

Reference	Characteristics and/or Skills
Roberts, Ross, and Smith (1994)	1. Encouraging learning
Collins (2001, 20)	1. “Build[ing] enduring greatness through a paradoxical blend of personal humility and professional will” 2. “Catalyz[ing] commitment to and vigorously pursuing a clear and compelling vision, thereby stimulating higher performance standards”

*Figure 3*  
*Characteristics or Skills Attributed to Exemplary Management*

Reference	Characteristics and/or Skills
Kotter (1998)	1. Planning 2. Budgeting 3. Goal setting 4. Action planning 5. Organizing 6. Staffing 7. Establishing jobs 8. Delegating responsibility for getting work done 9. Implementing and monitoring tasks, plans, etc. 10. Controlling and problem solving to get results 11. Reporting 12. Coping with the complexities of large and/or complex organizations
Collins (2001, 20)	1. “Organiz[ing] people and resources toward the effective and efficient pursuit of predetermined objectives”



Reference	Characteristics and/or Skills
Nohria and Berkley (1998)	<ol style="list-style-type: none"> <li>1. Being sensitive to the organization's context and open to uncertainty</li> <li>2. Focusing on outcomes and getting results</li> </ol>
Teal (1998)	<ol style="list-style-type: none"> <li>1. Being skilled in finance</li> <li>2. Developing products</li> <li>3. Marketing</li> <li>4. Manufacturing</li> <li>5. Advancing technology</li> <li>6. Strategizing</li> <li>7. Persuading</li> <li>8. Negotiating</li> <li>9. Demonstrating vision</li> <li>10. Demonstrating fortitude</li> <li>11. Demonstrating passion</li> <li>12. Demonstrating intelligence</li> <li>13. Demonstrating ethical standards</li> <li>14. Demonstrating courage</li> <li>15. Demonstrating tenacity</li> </ol>
Mintzberg (1998)	<ol style="list-style-type: none"> <li>1. Developing peer relationships</li> <li>2. Carrying out negotiations</li> <li>3. Motivating subordinates</li> <li>4. Resolving conflicts</li> <li>5. Establishing information networks and disseminating information</li> <li>6. Making decisions with little or ambiguous information</li> <li>7. Allocating resources</li> </ol>
Rothwell (2001)	<ol style="list-style-type: none"> <li>1. Succession planning</li> </ol>
Zaleznik (1998)	<ol style="list-style-type: none"> <li>1. Diffusing conflicts</li> <li>2. Placating all parties so that the organization's day-to-day work gets done</li> <li>3. Striving to maintain orderly, stable work patterns</li> </ol>

As we review the items listed in Figures 2 and 3, we understand why we are so often disappointed by those people we expect to be imbued with these attributes. When we believe that one leader or one manager can do it all, we set ourselves up to be disappointed. In holding leaders and managers to unachievable expectations, we also scare off the next generation of leaders and managers.

The last thing any organization wants is to be left without people to lead and manage it today and into the future. “The key to future competitive advantage will be the organization’s capacity to create the social architecture capable of generating intellectual capital. And leadership is the key to realizing the full potential of intellectual capital” (Bennis 1999, fifth paragraph). Intellectual capital is extremely important in this information economy because it is knowledge and information that are produced, marketed, and sold. The proficiency with which an organization brokers its knowledge and information products will be quickly determined by its customers. The users of knowledge and information services want on-demand results. If they do not get them, they will not be shy about letting everyone know. Yet, today’s organizations are not always structured to be as agile as they need to be to comply with the new marketplace demands. Management is usually blamed for that. Teal (1998, 148), in an essay entitled “The Human Side of Management,” contends that if you look at any company with problems you will find poor management. “Look closely at any company in trouble, and you’ll probably find that the problem is management. Ask employees about their jobs, and they’ll complain about management. Study large corporations, and you’ll discover that the biggest barrier to change, innovation, and new ideas is very often management. Make an inventory of the things that have stifled your own creativity and held back your own career; summarize the critical factors that have stood in the way of your organization’s success; name the individuals chiefly responsible for the missed opportunities and bungled projects you yourself have witnessed. Managers will top every list.”

Are managers just getting a bad rap while we glorify leaders? Is the work of managers more quantifiable than that of leaders, and thus more easily evaluated and exposed? Perhaps. Leaders also get their share of negative assessments. We usually hear that organizations fail because of a lack of leadership.

What we do know is that both managers and leaders are needed. The courts are no exception, as evidenced by the contributing authors of this monograph and the hundreds of others who have written about court management and leadership over the past four decades. Thousands of education and training programs as well as state and national networks and mentoring efforts have been dedicated to improving the quality of management and leadership in the courts. A few examples of such efforts are available in the appendices. A brief review follows and is summarized in Figure 4.

- The Institute for Court Management (ICM) has the longest-standing court management curriculum that results in a “fellows” designation for those who complete the program. See Appendix C.

- The Federal Judicial Center (FJC) has organized its management and leadership programs for federal court personnel into a curriculum structure called the Court Management Framework. This framework includes 27 skills across 6 skill categories. The categories are leadership, interpersonal, personal, thinking, operational, and system skills. Training programs related to the skill areas are offered. From these, FJC has developed three offerings that are specifically targeted at developing the skills and abilities of individuals who want to enhance their careers within the federal court system. They are the Federal Court Leadership Program, Leadership Development Program for Probation and Pretrial Services Officers, and the Supervisor's Development Program. See Appendix B.
- The National Association for Court Management (NACM) has developed core competencies for court managers from which curricula can be developed. The ten core competencies are Purposes and Responsibilities of Courts; Leadership; Caseflow Management; Information Technology Management; Court Community Communications; Human Resources; Resources, Budget, and Finance; Education, Training, and Development; Essential Components; and Visioning and Strategic Planning. Within these ten core competency areas, hundreds of knowledge, skills, and abilities have been identified. See Appendix A.
- In 1997, the Urban Court Managers Network was established through the co-sponsorship of the Justice Management Institute (JMI) and NACM. This network allows managers and leaders of large urban courts to come together to share information and learn from one another. Network members discuss many issues affecting the courts as well as how education and training can assist the courts in meeting their missions and goals. Continual improvement and collaboration is the focus of the network as evidenced by its purpose "...to help strengthen the ability of urban court leaders to work effectively—with practitioners in their own jurisdictions, with key justice system policy makers, and with each other—to improve justice operations." See Appendix D.
- Education and training related to court management and leadership takes place every day across the country. A review of the JERITT project's judicial branch education programs database shows that state and national providers reported 94,000 programs related to managing the courts over 12 years. These programs were attended by 394,213 participants. See Appendix E for more details. State providers offer the vast majority of the programs. For more information on what is offered by each state organization search the Programs Database on JERITT's Web site, <http://jeritt.msu.edu/databases.asp?Page=2>.

*Figure 4*  
*Necessary Organizational and Individual Competency Areas*  
*Identified by NACM, FJC, Urban Court Managers Network,*  
*and JERITT Management-Related Subject Matter Codes*

<b>Organization</b>	<b>Competencies</b>
NACM Core Competencies	<ol style="list-style-type: none"> <li>1. Purposes and responsibilities of the courts</li> <li>2. Leadership</li> <li>3. Caseflow management</li> <li>4. Information technology management</li> <li>5. Court community communications</li> <li>6. Human resources</li> <li>7. Resources, budget, and finance</li> <li>8. Education, training, and development</li> <li>9. Essential components</li> <li>10. Visioning and strategic planning</li> </ol>
FJC Court Management Framework	<ol style="list-style-type: none"> <li>1. Leadership skills</li> <li>2. Operational skills</li> <li>3. System skills</li> <li>4. Thinking skills</li> <li>5. Personal skills</li> <li>6. Interpersonal skills</li> </ol>
NCSC/ICM Court Executive Development Program (CEDP)	<ol style="list-style-type: none"> <li>1. Management of court operations</li> <li>2. Leadership and management in the courts and justice environment</li> </ol>
Urban Court Managers Network National Agenda	<ol style="list-style-type: none"> <li>1. Urban court leadership</li> <li>2. Encouragement of innovation</li> <li>3. Access to justice</li> <li>4. Fairness in the justice system</li> <li>5. Information</li> <li>6. Promptness, predictability, and affordability</li> </ol>
JERITT subject matter coding for court management related education and training topics	<p style="text-align: center;"><i>Court Administration, Management and Leadership</i></p> <ol style="list-style-type: none"> <li>1. General/Other</li> <li>2. Acquiring, Managing, and Training of Computer and Software Technologies</li> </ol>

<b>Organization</b>	<b>Competencies</b>
	<ol style="list-style-type: none"> <li>3. Auditing</li> <li>4. Budget, Resources, and Finance</li> <li>5. Case and Delay Management</li> <li>6. Colleague and Peer Relations</li> <li>7. Collecting and Accounting for Costs, Fines, Fees, Garnishments, Revenue, and Taxes</li> <li>8. Court Clerks' Roles and Responsibilities</li> <li>9. Court Executive Component</li> <li>10. Court Reporting and Recording</li> <li>11. Court Security</li> <li>12. Customer Service: Internal and External</li> <li>13. Decentralized Courts and Performance Planning</li> <li>14. Delegation</li> <li>15. Electronic Courts</li> <li>16. Facilities Management</li> <li>17. Forms Management</li> <li>18. Futures, Strategic, Long/Short Range, and Action Planning</li> <li>19. Giving Legal Advice</li> <li>20. Indemnity, Immunity, and Liability</li> <li>21. Intergovernmental/Interagency Relations</li> <li>22. Leadership</li> <li>23. Managing a Diverse Workforce</li> <li>24. Managing a Non-Traditional Workforce</li> <li>25. Managing Ancillary Services and Court Programs</li> <li>26. Managing Court Reform</li> <li>27. Managing Court Services for Pro Per/Pro Se/ Self-Represented Litigants</li> <li>28. Managing High Profile Cases</li> <li>29. Managing Information Systems and Court Statistics</li> <li>30. Managing Law Libraries and Legal Research</li> <li>31. Managing/Implementing New Legislation, Court Rules, Laws and Other Mandated Changes</li> <li>32. Organizational Change and Development</li> <li>33. Privatization</li> </ol>

Organization	Competencies
	<p>34. Problem Diagnosis/Solving</p> <p>35. Professionalism in the Workplace</p> <p>36. Project Management</p> <p>37. Records Management</p> <p>38. Research Methods: Needs Assessment, Evaluations, and Written/Oral Surveys</p> <p>39. Setting and Managing Attorney Fees</p> <p>40. Supervision and Staff Relations</p> <p>41. Team Building</p> <p>42. Time Management</p> <p>43. Trends and Futures Projections: Impact on the Courts</p> <p>44. Trial Court Performance Standards</p> <p>45. Victim and Witness Treatment Services</p> <p>46. Vision, Missions, Purpose, Philosophy, Goals, and Objectives</p> <p>47. Volunteers</p> <p style="text-align: center;"><i>Human Resource Management</i></p> <p>1. General/Other</p> <p>2. Americans With Disabilities Act (ADA)</p> <p>3. Career Development</p> <p>4. Child Care and Elder Care</p> <p>5. Coaching Problem Employees</p> <p>6. Discipline</p> <p>7. Documentation of Performance Issues</p> <p>8. Employee Assistance Programs for Substance Abuse</p> <p>9. Equal Opportunity Laws</p> <p>10. Fair Labor Standards Act</p> <p>11. Grievance Procedures</p> <p>12. Hiring</p> <p>13. Indemnity, Immunity, and Liability</p> <p>14. Interviewing New Hires or for Job Change</p> <p>15. Job Description and Classification</p> <p>16. Medical and Family Leave Act</p> <p>17. Mentoring Employees New to a Job</p> <p>18. Motivating and Inspiring</p>

Organization	Competencies
	19. Performance Appraisals and Management 20. Personnel Records 21. Promotions, Demotions, and Transfers 22. Recruiting 23. Retirement 24. Salaries and Benefits 25. Sexual Harassment 26. Termination/Discharge 27. Training 28. Unions and Labor Relations

Additionally, earlier in this monograph, Lefever, Steelman, Solomon, and Teagle identified competencies that further demonstrate how important effective court leadership and management is if the courts are to be highly functioning organizations. Figure 5 provides an overview of the competencies they wrote about.

*Figure 5*  
*Competencies Identified by Lefever, Steelman, Solomon, and Teagle*

Author	Necessary Organizational and Professional Competencies
Lefever	1. Continuity of leadership 2. Balancing judicial autonomy and court administration 3. Integrating judicial and court manager cultures and perspectives 4. Maintaining judicial branch independence while being responsive to the public
Stelman	1. Planning 2. Human resources 3. Budget and finance 4. Information technology 5. Facilities and assets 6. Operations 7. Leadership 8. Commitment to a shared vision

<b>Author</b>	<b>Necessary Organizational and Professional Competencies</b>
	<ol style="list-style-type: none"> <li>9. Effective communications</li> <li>10. Learning organizations</li> <li>11. Set goals and objectives</li> <li>12. Monitor actual performance</li> <li>13. Ensure accountability</li> <li>14. Willingness and capacity to modify structure and operations</li> <li>15. Change management</li> <li>16. Working with stakeholders</li> <li>17. Clarify role of courts</li> <li>18. Identifying areas of collaboration</li> <li>19. Outreach initiatives to secure participation for diverse ethnic and racial groups</li> <li>20. Enhanced governance structure for administrative efficiency, maintaining quality of justice, monitoring and reporting justice system performance</li> <li>21. Ensuring a court workforce composed of well-trained, well-motivated, ethnically and racially diverse public-service oriented employees</li> <li>22. Decentralized provision of justice services</li> <li>23. Access to justice and enhanced productivity supported by technology</li> </ol>
Solomon	<ol style="list-style-type: none"> <li>1. Managing and leading change</li> <li>2. Judges and managers jointly leading and managing the courts</li> </ol>
Teagle	<ol style="list-style-type: none"> <li>1. Honor everyone's talents and skills</li> <li>2. Leaders make power available to all organization members</li> <li>3. Facilitate a process of articulating a mission, vision, and values</li> <li>4. Take risks and encourage new opinions and challenge the status quo</li> <li>5. Keep an open door</li> <li>6. Empower others</li> <li>7. Believe in people</li> <li>8. Be in service to others</li> </ol>



<b>Author</b>	<b>Necessary Organizational and Professional Competencies</b>
	9. Provide an environment that is safe for personal and professional challenge and change 10. Engage in ongoing reviews of what both the organization and employees need and how both are performing

What can we conclude? First, there is a high degree of interest in and activity associated with the continual improvement of the courts. Second, there is near universal agreement in the supposition that excellent management and leadership are requirements for high-functioning courts. Third, there are extensive amounts of effort, time, and resources pouring into management and leadership development through education and training-related initiatives. Fourth, with the advent of professional court management, some courts have changed the way they are managed and led. Fifth, there is still more to be done before the majority of courts have sustainable management infrastructures in place that can ensure continuity in management and leadership processes to guide the courts through their daily work and future plans. Sixth, theorists and practitioners from the court world and from other public sector enterprises, private business, and not-for-profit organizations, universally agree on the primary competencies required of leaders and managers.

Is there anything new here in our conclusions? No. However, that answer begs the question, why are we addressing court management and leadership one more time? We do so in an attempt to apply what we know about comprehensive curriculum development to the implementation of a long-term education and training solution for court management and leadership. The solution takes into consideration what we have come to understand about how courts function; why they have difficulties with their management infrastructures; and why change is so difficult in the courts. This education and training solution must address the challenges presented by the power dynamics at work in the court culture. Understanding leadership and management issues in the courts allows us to articulate competencies to be incorporated into a comprehensive curriculum plan.

### **Grouping the Competencies**

Building on what we have learned, leadership and management competencies can be grouped by the knowledge, skills, and abilities needed by court executives (i.e., leaders and managers with responsibility for the entire court operation, such as chief judges, deputy chief judges, and court managers), and by the knowledge, skills, and abilities needed at an organization level (i.e., by leaders and managers with responsibility for divisions or departments within the courts, such as presiding judges of a court division and division or department managers). See Figure 6.

*Figure 6*  
*Type of Leadership and Management Competencies*  
*and Primary Span of Responsibility*

<b>Type</b>	<b>Primary Span of Responsibility</b>	
	Entire Organization	Division, Department, Unit
Executive Leadership (i.e., chief judges, deputy chief judges, and court managers)	X	
Organizational Leadership (i.e., presiding judges and division or department managers)		X
Executive Management (i.e., chief judges, deputy chief judges, and court managers)	X	
Organizational Management (i.e., presiding judges and division or department managers)		X

### *Executive Leadership Competencies*

If Senge is correct, “the real role of executive leadership is not in driving people to change, but in creating organizational environments that inspire, support, and leverage the imagination and initiative that exists at all levels” (1999, 566). What does this mean? It means that executive leaders have the responsibility for creating and sustaining an organization that articulates its mission, purpose, goals, and objectives; aligns structures and functions so that all four of these can be achieved; establishes systems that clearly define work standards, assessments, and rewards; promotes workplace ingenuity; and stays the course in an attempt to build something worthy of sustaining. Jim Collins, commenting in an article in *Fast Company* (2000, 135) on why his 1994 book about executive leadership principles, *Built to Last*, struck such a strong chord among people, identified the following four reasons: (1) There are timeless fundamentals that can always be applied; (2) Greatness does not lie in cost cutting, restructuring, or profits; (3) People want to build something bigger than themselves; and (4) People have the desire to build something that is worthy of lasting, something that will leave a legacy. Leadership in the courts is no exception.

Most people would agree with Senge and Collins, but the challenge for the courts is that the top-level executives, the chief judges, have such a short tenure—usually no more than a couple of years. When leaders’ tenures are short, so are the visions and the corresponding strategic actions that support the visions. One way to counteract this tendency

is to have visions and a visioning process that remains as part of the court management infrastructure, regardless of the length of stay of the person occupying the chief judge's office. In a majority of court jurisdictions, the court manager has a longer tenure than the chief judge and can serve well as the keeper of the vision, the visioning process, and the corresponding strategic actions. This solution can be further enhanced if both the chief judge and the court manager have executive leadership competencies. Others, in particular the executive committee, if the court has one—the presiding judges and department or division managers—also would do well to have executive leadership competencies.

Executive leadership involves displaying the exemplary leadership characteristics and skills enumerated in Figure 2, both inside and outside of the court. It also requires internal and external accountability. Executive leaders must say what they are going to do, and then do what they say. While it is important for every organizational member to do that, it is extremely important for executive leaders to have and display integrity. Executive leaders serve as symbols of the organization.

#### *Organizational Leadership Competencies*

Executive leadership competencies are not the only leadership competencies necessary for achieving excellence in the courts. There are many presiding judges, sitting judges, and court employees throughout a court who may or may not have executive roles, but who have the abilities and opportunities to be influential leaders. These organizational leaders can be found at almost any level. It is not unusual to find them at the department or division level or at the unit or work group level. Senge (1999) refers to these people as local line leaders. Senge believes that without leaders at this level, initiating and sustaining change is virtually impossible. At this level of the organization, products and services are delivered, which makes leaders at this level powerful in that they can thwart or champion the initiatives of the executive leadership and/or management. If organizational leaders are recognized and groomed, they can become good candidates for future executive leadership positions.

Organizational leaders connect the workers and the work to the organization's visions and strategic action plans. They are the everyday leaders that make it possible for the work to get done. Organizational leaders create the environment that makes the employees want to come to work and excel at what they do. They invite innovation and reward it. They deal firsthand with the resource challenges related to a lack of time, staff, or money. Organizational leaders also create communication networks among work groups and among workers. These individuals must lead by example—they must care about the organization, the workers, the work, and themselves. Because of their close proximity to the work, they are usually both active leaders and active managers.

#### *Executive Management Competencies*

Executive management competencies encompass the characteristics and skills attributed to exemplary management (see Figure 3). Since activities at the executive level

affect the entire organization, not just a division or department, executive management and executive leadership are linked. The activities of the organization and how they are managed are determined and/or guided by leadership direction and decisions. Executive leaders and managers use some of the same knowledge, skills, and abilities. Although executive managers generally do the budgeting, planning, and negotiating, they may also engage in leadership functions such as helping to set the mission, goals, and objectives.

Executive managers, like executive leaders, have an external as well as internal role to play for their organizations. Community leaders most often look to judges as representing the courts. However, executive managers may also be called upon to represent the courts in the larger community and must be prepared for that responsibility.

### *Organizational Management Competencies*

Organizational management competencies are needed by the people responsible for overseeing the day-to-day operations of the courts. Management competencies at this level require expert skill in introducing, implementing, and monitoring the initiatives, products, and services of the courts. Successful organizational managers must be able to do all of this in the framework of the organization's visions and strategic action steps established by the executives. They must keep the employees for whom they are responsible engaged, motivated, and committed to the work that must be done and to the visions upon which the work is based. Good organizational managers will network with other similarly situated managers, because often the work of their divisions and departments is interrelated. Thus, how organizational managers conduct themselves is especially important to the internal operations of the courts and, because they work with employees who interact directly with the public, their actions can affect the public's perception of the courts. The characteristics and skills offered in Figure 3 are particularly appropriate for organizational managers.

While not exhaustive, Figures 2 through 5 offer an overview of desirable competencies for both leaders and managers. Systemic competency development, a comprehensive approach to identifying and grooming future leaders and managers, as well as assisting current leaders and managers, needs to include an SP&M program to reach its full potential for the courts.

### **Succession Planning and Management (SP&M)**

The very nature of how judges move in and out of the top leadership and management positions in the courts has made SP&M a difficult challenge. Our complex society and the growing connectedness of the world demand that courts have three things: stable direction from its leadership, strong and competent management, and deep institutional memory. Without SP&M, none of this is possible. The courts must think about their long-range future and plan accordingly. Federal and state constitutions provide the reasons and rationale for having courts, but it is up to those who run them to ensure their viability and vitality.

### *Defining Succession Planning and Management*

To understand what is involved in SP&M, we will first define it and discuss how it works. Then, we will connect SP&M to the education and training approach offered in this monograph.

Usually, when we think of succession planning, we think only of upper management. For the courts, that would be the chief judge and court manager. However, for succession planning to be truly effective, it must be comprehensive and involve people in all of the organization's job categories. This is particularly true today with the flattening of organizational structures, which requires more independence in employee decision making and higher-levels of competencies and performance. Positions from counter clerks to chief judges must be looked at anew.

Succession planning and management (SP&M) is the process that helps ensure the stability of tenure of personnel. It is perhaps best understood as *any effort designed to ensure the continued effective performance of an organization, division, department, or work group by making provisions for the development, replacement, and strategic application of key people over time* (Rothwell 2001, 5–6).

Succession planning and succession management are separate but related processes. Succession planning needs to include

a means of identifying critical management positions, starting at the levels of project manager and supervisor and extending up to the highest position in the organization. Succession planning also describes management positions to provide maximum flexibility in lateral management moves and to ensure that as individuals achieve greater seniority, their management skills will broaden and become more generalized in relation to total organizational objectives rather than to purely departmental objectives (Carter 1986, as cited in Rothwell 2001, 6).

Putting the planning and management of succession into a program on which the courts can rely helps ensure that the missions, goals, and procedures of the courts will not be in disarray every time there is a change in the chief judge, court manager, or other key personnel. Therefore, instituting an SP&M program must be a “deliberate and systematic effort by an organization to ensure leadership continuity in key positions, retain and develop intellectual and knowledge capital for the future, and encourage individual advancement” (Rothwell 2001, 6). Understood this way, SP&M is a process that matches “the organization's available (present) talent to its needed (future) talent. [It is also a process] to help the organization meet the strategic and operational challenges facing it by having the right people at the right places at the right times to do the right things” (Rothwell 2001, 6–7).

What does this mean for the courts? It means that the courts could enjoy more leadership and management continuity; capitalize on the knowledge, skill, and expertise of those who are already employed; minimize the effects of a change of employees, including judges; promote growth and development of current organizational members, thus retaining them longer; and clarify what knowledge, characteristics, and skills are required when recruiting new employees. Another benefit of SP&M for the courts is that it would make the

courts a more attractive place to work, thus improving the quality and quantity of potential candidates. Personnel recruitment would be made easier if the courts could demonstrate the potential professional development and career path opportunities available to those individuals who excel in their work performance.

### *Establishing a Succession Planning and Management Program*

Rothwell (2001, 21–24) indicates that establishing an SP&M program will be driven by decisions on a number of issues.

**Direction.** An SP&M program can be developed using the top-down approach, bottom-up approach, or a combination approach. In the top-down approach, individuals at the highest levels of the organization will make decisions about how competence and performance will be assessed for present positions, how future competence and potential will be identified, and what developmental activities will be needed to prepare individuals for advancement while building the organization's strength and leadership talent. In the bottom-up approach, employees and their supervisors are active participants in all aspects of developing an SP&M program. Decisions about the SP&M program are tied to individuals' career planning, in which employees determine what they need to do to accentuate their assets and reduce any weak areas. As an individual's SP&M program is developed, it is forwarded to upper management for immediate action. Another alternative combines the top-down and the bottom-up approaches. In this approach, all pertinent members of the organization are actively involved in learning how succession within the organization will take place and can apply this knowledge to their individual career planning (Rothwell 2001, 21–22).

**Timing.** How an SP&M program is managed can determine its effectiveness. It can be used fitfully, periodically, or continuously. When used fitfully, SP&M will provide no guidance for filling vacancies and ensuring continuity. Each vacancy has the potential for causing organizational crisis. If SP&M is periodically activated, that means that it is used at some preset interval. The typical approach is to combine it with employee performance appraisals wherein the supervisor makes assessments about the individual and develops plans accordingly. A continuous SP&M program is an active approach that emphasizes results. Employees at all levels are expected to contribute to their own improvement and that of others through mentoring, networking, sponsorship, training, education, and development (Rothwell 2001, 22).

**Planning.** How much planning is enough? It can be systematic (e.g., an organization-wide statement of purpose and policy) or unsystematic (e.g., unplanned and informal). The former institutionalizes SP&M. The latter approach leaves it to the discretion of individual managers and supervisors, which may or may not yield plans preparing individuals to take on increasingly more complex and responsible positions (Rothwell 2001, 22–23).

**Scope.** Organizations first undertaking SP&M commonly wonder how many positions it should cover. The answer should be based on what the organization is trying to

accomplish with the program. A specialized program targets leadership continuity for a few selected positions. A generalized program has the goal of preparing individuals for advancement in all job categories, job levels, functions, and locations. A generalized program provides the foundation for individualized training, education, and development that can direct an individual's career goals and plans (Rothwell 2001, 23).

**Degree of Dissemination.** An organization's culture will influence how many people participate in the SP&M development process. A closed program is developed and owned solely by the top managers. Information about it is not widely disseminated, not even to the affected individuals. The rationale for a closed program is based on two factors: (1) succession issues are proprietary to the organization, and, if known, may give competitors secret organizational information; and (2) employees affected by the succession plan may develop unrealistic expectations and cause problems for the organization.

To the contrary, in an open SP&M program, individuals at all levels of the organization know about the work requirements, competencies, and success factors. All individuals are told how they are regarded without promises that high performance will guarantee advancement. The message is that continuous, outstanding performance is a requirement to be considered for job succession (Rothwell 2001, 23–24).

**Amount of Individual Discretion.** For many years, organizational leaders assumed that a person would relocate and/or change his or her life for the good of the organization, if not for his or her own career advancement. That can no longer be assumed. This change in the workforce results in factors that must be considered in SP&M. SP&M can be approached as a mandated program, which ignores the wishes and desires of the potential candidate, or it can be a verified approach that considers the individual. Under the mandated approach, people who are making decisions for the organization identify their candidate; then when a vacancy occurs they approach the individual with the expectation that the individual will comply with the decision makers' plans. Of course, the person can always refuse the offer, but it is done at peril of his or her continued employment. In a verified approach, decision makers identify potential candidates and verify the candidates' interests. When the vacancy occurs, the decision makers know which individuals to contact. In this approach, decision makers balance organizational needs with individual career goals and personal and professional needs (Rothwell 2001, 24).

The decisions courts make about how to approach succession planning will define its success. Perhaps the most difficult question is not whether to put an SP&M program in place, but whether court leaders and managers can discard their tendencies to use the hierarchical, paternalistic model so often employed when making management decisions and personnel choices. Considering the approaches offered by Rothwell, if succession planning in the courts is going to include the goal of grooming future leaders and developing a court environment that embraces change, SP&M must be both open and generalized. Decision-makers in the courts should establish programs in which individuals throughout the organizations know about and participate in decisions, rather than a closed, specialized program, with decisions known to and controlled by only a few top executives.

At first blush, SP&M may look like it is intended to develop a self-contained organization—an organization that does not go outside its boundaries to recruit new talent. While one goal of SP&M is to identify existing talent and use it to best advantage, that is not the end of the story. Organizations, the courts included, must have, as part of their SP&M plans, methods to infuse the organization with new ideas and new people to increase workplace vitality. This infusion is critically important or stagnation will result. In fact, Rothwell's five generations of SP&M programs include both internal and external recruitment.

- The first generation of SP&M is CEO replacement (Rothwell 2001, 57). The position at the very top of the organization needs to be addressed before the others. In doing so, support for SP&M is likely because many leaders recognize how important it is to have a system ready to replace the CEO. Some may consider SP&M to be destined to fail in the courts because the chief judge, who serves as the CEO, typically comes into that role through peer selection or some other appointment means. Usually, management and leadership competencies have little or nothing to do with how one ascends to the chief judge position. However, SP&M can be used to better prepare chief judges in the future. Most chief judges are selected by their peers; this means that, at the local level, judges can establish criteria for chief judge selection and begin grooming future chief judges accordingly. Even if selection is by appointment from outside the local courts, judges who believe in the need for continuity of leadership and management can impress upon the appointing entity the value of establishing a statewide SP&M program.
- Second-generation SP&M is a plan that addresses how to replace the CEO and his or her immediate reports (Rothwell 2001, 65). For the courts, that would be the chief judge and court manager and the presiding judge and manager of the various court divisions or locations, if applicable. Involvement in this type of SP&M extends to other upper-level leaders and managers. In some courts, this group of individuals is referred to as the executive team. The chief judge is involved, but other organizational members may have more responsibility in shaping the SP&M for the rest of the organization. If this group does not support the SP&M program, it is not likely to be implemented throughout the organization.
- Third-generation SP&M includes middle managers who report to the executive team members (Rothwell 2001, 66–67). It is at this point that an SP&M program becomes more fully realized and fleshed out. For that to happen, the SP&M plan must include mission, goal, and value statements with accompanying action plans.
- Fourth-generation SP&M involves the development of internal talent pools (Rothwell 2001, 7). Decision-makers look for possible internal successors by looking, beyond who would be “next in line,” to all individuals who exhibit interest and demonstrate the ability to gain the requisite leadership and management skills.
- Fifth-generation SP&M goes beyond developing internal pools to looking outside the organization. Organizations do this by investigating outside talent pools of temporary



and contingent workers, retired workers, outsourcing agents, vendors, consultants, and other groups with which the organization works (Rothwell 2001, 67). Courts can do the same. When we think about all the individuals and organizations, including employees of other courts, in state and out of state, with which the courts have daily contact, we realize how rich the talent pool is.

SP&M must have structures in place to support it and realize its full benefits. In this approach, workplace learner groups, mentoring, and education and training programs play that support role. As we will see next, whether a court has a single judge or multiple judges affects how workplace learner groups will function.

### **Workplace Learner Groups**

Workplace learner groups fulfill two major educational purposes. First, they are a setting in which employee needs, desires, frustrations, and ideas can be expressed. This feeds critical needs assessment information into the educational process at the front end. Second, following education, training, or activities to enhance leadership or management techniques, judges or court managers might participate in workplace learner groups to discuss and consider the outcomes and related leadership or management issues. At the back end of the educational process, workplace learner groups can serve as a vehicle for the transfer of learning and/or a source of information for impact evaluation.

Multi-judge and single-judge courts have their own set of circumstances to work out when using workplace learner groups. We will explore both.

#### *For Executive Leadership and Management in Multi-Judge Courts*

Because the number of individuals available to participate in workplace learner groups is greater in multi-judge courts, we will explore the creation and organization of those groups more fully.

The composition of such groups in multi-judge courts is important and can be established using at least two criteria—(1) roles and responsibilities, and (2) issues or tasks.

1. **Roles and responsibilities.** Executive roles and responsibilities can be daunting, and, in the courts, this is especially true. Judges come in at the top of the organization, typically with little to no management or organizational development experience. They are introduced to a management infrastructure in which they are expected to play a lead role. Many judges are learning for the first time what it takes to run a court. They find members of other professional groups involved in the process—court managers, technology specialists, alternative dispute resolution practitioners, legislative aides, public information officers, educators, mental health therapists, and so on. Many judges coming to the bench are unaware that so many non-judge personnel are part of the court organization,

and that they will all be working together to process cases and deliver court services.

Several different learner groups are possible at the executive level. Their composition depends on the leadership or management needs or activities.

One likely group could include the chief judge, court manager, deputy chief judge, presiding judges, deputy court manager, and division or department managers. Composing this type of group is important because it signals that the responsibility for leading and managing the courts cannot be vested in one or two people. It also provides an opportunity to identify and groom future executive leaders and managers. Membership in this type of group is multi-professional and may pose many challenges while it offers many opportunities. It will likely do both as it engenders communication and broadens the perspectives of those involved. Diverse points of view and experiences will become part of the dialogue. This allows successes and failures of the courts to be examined through several different lenses, thus improving the chances of identifying problems accurately and determining good solutions. An exchange of this nature enriches the development, education, and training of court executives.

A second possible scheme for composing executive groups is by job—all-judge and all-manager groups. The judge group would include the chief, deputy chief, presiding judges, and other judges with no direct leadership or management responsibilities. Some judges with no direct leadership or management responsibilities might wonder why they should be in a learner group for executive leadership and management, but the answer is simple. Internally and externally, judges are viewed as the leaders of the courts. What they do and how they do it is a reflection on the court. The public, in particular, cannot distinguish between what an individual judge does and what the court does. They are synonymous. Judges have a leadership role whether or not they want it, and whether or not they have the formal designation of chief or presiding judge. An all-judge group offers the advantage of providing a forum for judges to discuss issues germane to their judicial positions. Judges, in this setting, may be more willing to discuss things they would not consider discussing with non-judge personnel. Additionally, it provides an opportunity for judges to learn collegiality and about the art and science of leading and managing courts. It may also encourage more judges to become formally involved in leading and managing or, if not formally involved, at least more sensitive to how they represent the court externally and set the tone internally.

Learner groups composed of all managers offer similar advantages. Court management personnel, given their positions, professional affiliations, and education and training, see the operations of the court from a multitude of viewpoints. In fact, there is much more diversity within all-manager groups than all-judge groups. Judges' education and training and professional affiliations create many more commonalities among judges than do education, training, and

professional affiliations for other court employees. Regardless of their dissimilarities, however, the court management personnel group will be more open and willing to discussing problems and solutions when not in the presence of judges.

Whether it is an all-judge or all-court managers group, from time to time, the learner group will find it beneficial to invite others, from within or outside of the court, to interact with their group.

2. **Issues or tasks.** Learner groups can be formed around issues and tasks. Individuals with a stake or interest in the issue or task can join the group. In issue-oriented or task-oriented learner groups, membership may extend beyond executive leaders and managers to other individuals in the organization who are involved with some aspect of the issue or task. These learner groups can contribute to the task's accomplishment and/or the issue's resolution.

Executive-level workplace learner groups will discuss organization-wide issues or tasks and possible responses the executives could make. The content of the conversations will likely cover both individual and organizational needs and solutions. The outcome of these conversations may provide the needs assessment information required for the education and training programs and other organizational actions or interventions. Then, during and after the actions or interventions, the learner groups provide feedback that indicates whether periodic or continuous monitoring of the situation is required. This feedback is also necessary for the ongoing development of education and training courses.

Workplace learner groups may be permanent groups, or they may be constructed and deconstructed around organizational needs.

#### *For Organizational Leadership and Management in Multi-Judge Courts*

Learner groups in this situation are composed of division and department managers and presiding judges. They could also include line supervisors, as well as judges without formal leadership and management roles. They can be established based on individuals' roles and/or responsibilities, or based on one or more issues and/or tasks. Either way, they are formed to address the needs of and develop solutions for the individuals or the divisions and/or departments within the organization. Nevertheless, what these learner groups decide and do will likely have ramifications for the entire organization, so there should be a mechanism in place to feed the resulting information to the executive group and vice versa.

#### *For Executive Leadership and Management in Single-Judge Courts*

Learner groups are equally important in single-judge courts. The composition of learner groups in single-judge courts could include the judge and all court employees because the number of court employees is small enough to allow effective accommodation of

individuals. In addition, in smaller courts, judges and court employees depend on each person's contributions so heavily that everyone needs to work together to improve court operations.

Another possible learner group for single-judge courts could be judges and court managers from other courts who face similar issues or tasks. Just like multi-judge courts, others from outside the court environment may be invited to the meetings to provide insight and input. Executive leadership and management workplace learner groups in single-judge courts will have the same goals as their counterparts in multi-judge courts—to support and enhance court operations and individuals' development. In smaller courts, however, the discussions are likely to address both executive and management issues, including how to lead and manage both down and across the organization.

#### *For Organizational Leadership and Management in Single-Judge Courts*

Many single-judge courts will be too small to have organizational leadership and management workplace learner groups. However, in those courts that are large enough to have separate divisions and departments with supervisors, workplace learner groups are possible. There can be an executive leadership and management learner group that looks at the whole organization and other learner groups that look at the divisions and departments. Like other learner groups, organizational leadership management groups can be established including personnel from similarly situated courts that share concerns or interest in the same issues or tasks.

### **Mentoring**

Mentoring is considered important for the development of leaders and managers, but it is underutilized for transferring knowledge and skills or the organizational culture and values. Individuals new to an organization or new to a position within the organization can become more valuable sooner through mentoring. Depending on the skill enhancement or socialization needed, more than one mentor may be required. An individual may benefit from a mentor both inside and outside the work environment. Several different mentoring relationships are possible. Approaching mentoring creatively is particularly important for small, rural, or one-judge courts.

- Chief judges from other similarly situated courts can mentor new chief judges.
- The current chief judge, deputy chief judge, or presiding judge within the same court can mentor incoming chief judges, deputy chief judges, or presiding judges.
- Judges in multi-judge courts without official leadership and management responsibilities can be mentored on leadership and management by their chief judge or deputy chief judge.

- Court managers from other similarly situated courts can mentor new court managers.
- Chief judges from the same court can mentor the new court manager.
- The court manager or deputy court manager from the same court can mentor new deputy court managers.
- The court manager, the deputy court manager, or division and department managers can mentor new division and department managers. Managers from other courts may also be appropriate for the mentoring role.

Additionally, mentoring should be undertaken when judges or employees, regardless of their current positions, are identified as having potential to assume future leadership or management responsibilities. In fact, mentoring early on will enlarge the pool of next-generation leaders and managers. The sooner talent is recognized and cultivated the sooner the organization can benefit from what the individual has to offer.

### *Stages of Mentoring*

Just as SP&M is a long-term strategy to ensure continuity in leadership and management, so is mentoring. This is why SP&M and mentoring work so well together. There are four stages in a typical mentoring relationship observed by Kram (1983): (1) initiation, (2) cultivation, (3) separation, and (4) redefinition. Formal mentoring programs established by organizations or professional associations or groups may increase or lessen the amount of time taken in any given stage, but the stages themselves do not change. The stages of mentoring as well as the characteristics of mentoring relations and the legacy of mentoring are described in *Mentoring in the Judiciary: JERITT Monograph Two* (Conner and Anderson 1999, 7–8, 8–9, 19–21).

The initiation stage typically lasts 6-12 months. It is during this time that potential mentors and protégés first become aware of each other, and a bond of mutual respect begins to form. As these two learn more about each other, the mentor will begin to assess the protégé's professional potential, assign tasks that allow the mentor to directly observe the protégé's work performance, and begin to share with the protégé work values and observations about the profession. The protégé will begin to "check out" the reputation and credibility of the mentor within the organization and likewise begin to assess the mentor's ability to help the protégé. This initial stage of the relationship generally ends when the two agree to serve as mentor and protégé.

The second stage, the cultivation stage, lasts 2-5 years and represents the most active period of the relationship. It is here that the mentor directly intervenes in shaping the career of the protégé...[who] enjoys the benefits of special assignments, attention, emotional support and recognition, [while] the mentor experiences the satisfaction of contributing to the success of a young professional.

The third stage, the separation stage, is a difficult one for both the mentor and protégé. It is generally marked by the promotion or reassignment of the protégé. Generally, protégés begin to conduct themselves more autonomously, requiring less input from their mentors. Some mentors

may feel a sense of loneliness or abandonment. Ultimately, both mentors and protégés come to realize the successful outcomes of their relationship.

The final stage, the redefinition stage, is where the mentor and protégé attempt to reestablish their relationship under a new set of rules. The two now interact as trusted peers and provide joint support and professional assistance. This stage is characterized by less direct interaction, but a bond of friendship exists that may last the remainder of their professional careers....

#### Characteristics of Successful Mentor-Protégé Relationships

With the knowledge that most mentoring relationships pass through a series of stages, it is important to examine next what is known about those successful mentor-protégé interactions. Judicial educators charged with the responsibility of establishing mentoring programs cannot hope to control all the variables in a successful mentor-protégé relationship, but they can control some. The understanding of others hopefully will contribute to successful implementation efforts. Presented next is a profile of research findings on successful mentor-protégé relationships.

1. Mentor-protégé relationships (MPRs) are based upon a mutual agreement and commitment to participate; they cannot be mandated (Levinson et al., 1978; Colwill, 1990).
2. MPRs maintain achievement as their primary goal. While these are helping relationships, the main dynamic is the assistance and support provided by the mentor to the protégé. This support takes many forms, but is always intended to help the protégé be successful (Jacobi, 1991).
3. In successful MPRs, mentors plan their protégés' learning experience so that they will be stretching but not overwhelming, and successful. Protégés are encouraged to accept responsibility, but are not permitted to make large mistakes (Atella, 1974).
4. MPRs are characterized by high mutual respect and trust between mentors and protégés. Respect includes both professional and personal skills. Trust refers to a relatively consistent pattern of behavior by each party over the duration of the relationship (Clawson, 1980; Densmore, 1975).
5. In MPRs, both mentor and protégé demonstrate optimal levels of informality, openness with information and professional intimacy. This willingness to "self-disclose" information and emotions takes the relationship beyond a typical superior-subordinate arrangement (Clawson, 1980; Kram, 1985).
6. In successful MPR's, the participants interact frequently. Mentors and protégés report meeting about once a day or every other day (Clawson, 1980).
7. MPRs are reciprocal relationships. The mentor as well as the protégé report benefits from the relationship, and these benefits may be either emotional or tangible in nature (Jacobi, 1991).
8. MPRs do impact the protégé's success within an organization or profession. Mentored individuals report having more career mobility/opportunity, recognition, satisfaction and promotions than non-mentored individuals (Fagenson, 1989).

9. Situational factors, such as organizational/professional structures, norms, reward systems, performance appraisal systems and the organizational/professional culture impedes and/or facilitates successful MPRs (Fagenson, 1989)

### The Legacy of Mentoring

Mentoring has personal, organizational, and professional pay-offs which exceed what was perhaps the original intent of a mentor and protégé participating in an organizational mentoring program. The act of mentoring enriches the mentor. For the protégé, being mentored is an affirming experience which establishes the protégé's right to be a player in the organization and the profession. For the organization, mentoring serves as a vehicle by which a new employee can more easily learn both the formal and informal structures of the organization and be an early contributor to the organization's success. The profession that the protégé represents is further shaped and advanced by the protégé's contribution to its continual unfoldment. Whether mentoring is individually engaged in or formalized through the establishment of a mentoring program, it creates and leaves behind more than what was originally intended. Mentoring leaves a legacy....

The depth and breadth of the mentoring relationship speaks to the powerful impact mentoring has on the mentor, the protégé, the organization, and the profession. What was originally believed to be a relationship that had only individual benefits, is now understood to have far reaching effects which shape the knowledge of professions and disciplines, as well as the organizations in which protégés work. This far-reaching effect is the first legacy of mentoring.

The second legacy is found in the continuation of the mentoring practice. Simply put, those who were mentored become mentors once they are appropriately situated (Busch 1985; Roche 1979; Dalton et al. 1977). Some may ask why carrying on the practice of mentoring is so significant. Researchers, practitioners and recipients all agree that mentoring is an individually rewarding and career-enhancing life event which can and does have immediate and long-lasting effects for both the mentor and the protégé. Additionally, as previously stated, mentoring has a ripple effect which takes the benefits of mentoring far beyond the individual relationship.

The third legacy of mentoring is directly related to benefits experienced by organizations which have mentoring programs. These organizations flourish because their employees are invested in the organizations' culture and purpose. Further, the protégé views personal success and organizational success as inseparable; therefore, the protégé's gain is also the organization's gain. Mentoring more quickly develops employees with high potential, so their contributions to the organization come earlier and are highly visible because employees have been sponsored and led to success; corporate culture is more easily understood, accepted, and passed on; and company loyalty is increased; and lastly, mentoring promotes the acceptance of organizational norms (Gerstein, 1985).

The fourth legacy of mentoring is its leadership development. The development of leadership can be found in the way the mentor and later the protégé become involved in shaping the direction of the organization they work in and the profession they represent. This leadership is manifested in several ways.

When an individual is designated as a mentor, especially when the designation is formalized through a mentoring program, that individual is viewed differently by others and that individual's persona changes. Automatically, the mentor designation implies that the person holds valuable experience, knowledge, and skill that he/she can communicate in such a way that the

protégé will be immeasurably changed through contact with the mentor. The mentor, thus, becomes a leader, because the organization formally recognizes this person's abilities. Very few people are chosen to be mentors which increases even more the important leadership role of the mentor....

The leadership role inherent in the act of mentoring is only one aspect of leadership development through mentoring. Mentors may discover administrative shortfalls through the process of mentoring. Whether the mentor relationship is formal or informal, the mentor is in a unique position to see the organization through the new employee's eyes. This fresh perspective may allow the mentor, an organizational veteran, to see the effects of inefficient systems; unclear directions; conflicting standards of performance; underfunded programs and projects; and undefined goals, purposes and objectives in a new light. As a result of this simultaneous "insider-outsider" view the mentor is in a unique position to initiate change. The mentor is already recognized by and in the organization, thus access to the policy-makers is relatively easy. The stature of the mentor also adds to the likelihood that the mentor will be heard by those who make administrative decisions.

Developing a mentoring program in conjunction with SP&M provides a direct and active link between identifying and grooming future leaders and managers. A leadership and management curriculum complements both succession planning and mentoring by providing expert knowledge and skills through courses that fill competency gaps.

### **A Court Leadership and Management Curriculum Plan**

*Curriculum* is defined by the *American Heritage Dictionary of the English Language, Fourth Edition*, as "1. All the courses of study offered by an educational institution. 2. A group of related courses, often in a special field of study: *the engineering curriculum.*" For the purposes of our discussion, the "educational institutions" are the local, state, and national providers of continuing professional education and training of judges and court personnel. The "special field of study" is court management and leadership. The "group of related courses" or "courses of study" is the sample curriculum outlined here.

The purpose of this curriculum is to bring judges and managers to a common appreciation, understanding, and knowledge of, as well as skills, in leadership and management. It is intended to better prepare judges and managers to help ensure excellence in the courts and groom future court leaders and managers. To that end, the curriculum plan includes an array of courses on leadership and management.

The education and training courses are offered with the understanding that personal and professional development is required over the life of an individual's career. Different types of programs will be required at different times to develop different competencies.

The principles and practices of instructional design should be applied to this curriculum in order to fashion it into a plan that will meet the needs of the organizations that employ it. This curriculum suggests that multiple audiences can and should attend the same courses. However, within each course the application of the theories, principles, or models



will differ depending on the participants' jobs. Thus, the courses must be designed with time allowed for group discussions and projects that require all audience types to work together, as well as apart.

No units of time or credit have been established for this curriculum. Again, the instructional design process employed by each court that uses this curriculum must make those decisions based on gap analysis. Established time or credits may vary, as all curricula must be dynamic to meet the needs of individuals. New people or situations may have new requirements. Additionally, as the organization changes, so should the curriculum. Thus, no one employing this curriculum should ever consider it complete. Like other sound continuing education and training efforts, this curriculum should be reviewed regularly and updated as required. What is offered here is a beginning, not an end.

*Figure 7*  
*Leadership and Management Curriculum with Target Audiences*

Course Title	All judges	Chief judges	Deputy chief judges	Presiding judges	Court managers	Division and department managers
<b>LEADERSHIP</b>						
1. Courts as Organizations	X				X	X
2. The Expanded Role of the Courts in Society	X				X	X
3. The Changing Role of Judges	X				X	X
4. Communicating with the Public as a Court Leader	X				X	X
5. The Components of Court Management	X				X	X
6. Using Power as a Court Leader	X				X	
7. The Leadership Responsibility	X				X	X
8. Developing and Sustaining the Executive Team		X	X	X	X	X
9. The Courts and the Future		X	X	X	X	X

<b>Course Title</b>	<b>All judges</b>	<b>Chief judges</b>	<b>Deputy chief judges</b>	<b>Presiding judges</b>	<b>Court managers</b>	<b>Division and department managers</b>
10. Developing, Communicating, and Sustaining the Visions, Missions, Goals, Objectives, Values, and Action Steps of the Courts		X	X	X	X	X
11. Court Management in Action		X	X	X	X	X
12. Building and Sustaining the Relationship with the Court Manager	X					
13. Leading and Managing the Court Culture and the Court Employees		X	X	X	X	X
14. Leading and Managing Other Judges		X	X	X		
15. Building and Sustaining Relationships with the Chief Judge					X	X
16. Building and Sustaining Relationships with the Bench					X	X
17. Communicating with the Public	X				X	X
18. Developing and Using Personal and Organizational Power and Influence		X	X	X	X	X
19. Leadership and Management Succession Planning and Management		X	X	X	X	X
20. Mentoring Court Leaders and Managers		X	X	X	X	X
<b>MANAGEMENT</b>						
21. Developing Information Technology		X	X	X	X	X
22. Using Court Technology	X				X	X
23. Fiscal, Budget, and Resources		X	X	X	X	X
24. Human Resources Management		X	X	X	X	X
25. Caseload Management	X				X	X
26. Court Security		X	X	X	X	X
27. Court Reporting/Recording		X		X	X	X

Course Title	All judges	Chief judges	Deputy chief judges	Presiding judges	Court managers	Division and department managers
28. Court Performance		X	X	X	X	X
29. Facilities		X			X	
30. Intergovernmental/Interagency Relations	X				X	X
31. Managing and Developing the Workforce	X				X	X
32. Managing Court Services		X	X	X	X	X
33. Research, Evaluation, and Needs Assessment		X	X	X	X	X

### *Leadership Course Descriptions*

**1. Courts as Organizations.** This course focuses on organizational theory and development as a framework for exploring courts as complex systems with structures, functions, cultures, values, actors (i.e., judges, court personnel, court users, and others), and relationships. At the conclusion of this course, participants will understand the organizational life of the courts, identify the roles and responsibilities of leaders of those organizations, be able to diagnosis the organization’s strengths and weaknesses, and recommend appropriate treatments or interventions to improve both process and product. *Target audience: All judges, court managers, and division and department managers.*

**2. The Expanded Role of the Courts in Society.** The role of the courts is changing as our society changes. This course will explore the evolution of the courts in American society with an emphasis on contemporary issues and factors pressing for change in the courts. It will explore how various jurisdictions have implemented different ways to operate that address the legal, social, and justice issues of our times. At the conclusion of this course, participants will be able to identify and plan for leadership’s response to the changing role of courts in society. *Target audience: All judges, court managers, and division and department managers.*

**3. The Changing Role of Judges.** Along with changes in the courts, the roles of judges are also changing. This course will review historical roles and compare them to roles judges have today. It will explore the competencies and personal and professional characteristics needed to survive and thrive as a judge. At the conclusion of this course,

participants will be able to determine how the roles of judges have changed in the various types of courts in their state. They will also be able to determine how leaders can guide and direct these change processes to allow judges and the courts to adapt and flourish more easily. *Target audience: All judges, court managers, and division and department managers.*

**4. Communicating with the Public as a Court Leader.** This course is based on the premise that courts make important contributions to community life. Judges, in particular, when they are appointed or elected to the bench, are viewed immediately as leaders. The public does not automatically make the distinction between chief judge and any other judge; thus, anything any judge says or does is a reflection on the entire court. Consequently, this course will explore avenues for successful community-court and community-judge interactions and the benefits they bring to the courts in general and judges in particular. It will also assess the roles of all other court employees who have significant interactions with the public, and who thereby can raise or diminish the court's profile in the community. At the conclusion of this course, participants will be able to identify ways that judges and court employees can interact with the public to improve the sentiments about the courts and increase the public's understanding of the courts as well as the court's understanding of the public. Participants will be able to demonstrate skills as court leaders in establishing, activating, and monitoring a public and community outreach plan. *Target audience: All judges, court managers, and division and department managers.*

**5. The Components of Court Management.** Over the past 30 to 40 years, court management has developed into a complex and sophisticated profession requiring extensive knowledge and skill. This course will offer a review of court management functions; professional values and competencies; and the role of court management in contemporary courts. It will analyze how the role of the judge and court manager can complement one another. At the conclusion of this course, participants will be able to identify the primary functions of court management; the overarching values and competencies of the court management profession and how they blend with the professional values and competencies of judges; the role of leadership in identifying, maintaining, and advancing outstanding court management; and how to blend and balance the values and competencies of court managers and judges. *Target audience: All judges, court managers, and division and department managers.*

**6. Using Power as a Court Leader.** Power is inherent in leadership positions, and the use of power can enhance a leader's credibility and success, or destroy both. This course will take an in-depth look at the types and uses of power. At the conclusion of this course, participants will be able to describe types and uses of power, analyze possible outcomes of the types and uses of power, and skillfully use power to achieve organizational and professional missions and goals associated with their leadership positions. *Target audience: all judges and court managers.*

**7. The Leadership Responsibility.** Leaders chart our present course and are, in many ways, stewards of our future. The responsibility of the leader is tremendous, and a leader's actions can bring unforeseen consequences. This course will explore decisions and choices leaders must make and the possible resulting outcomes that will affect the leaders and others.

At the conclusion of this course, participants will be able to articulate the responsibilities associated with leadership, determine their own leadership preferences, identify ways to use their leadership role to advance the courts and care for its employees, and write a contract with themselves that outlines what they want their leadership to stand for and how they plan to realize their leadership aspirations. *Target audience: All judges, court managers, and division and department managers.*

**8. Developing and Sustaining the Executive Team.** Leading the courts requires the expertise of an executive team composed of the chief judge and executive court manager. If the court is a large one, the executive team may expand to include presiding judges and court managers of divisions or branches. This course addresses how to develop and sustain an executive team for leading and managing the courts. At the conclusion of this course, participants will be able to identify the roles and responsibilities of an executive team and how to manage the items that an executive team addresses; demonstrate problem solving skills, decision-making skills, and knowledge of implementation and monitoring strategies; explain the appropriate roles, authorities, and responsibilities of each executive team member; and have a plan to help guide the executive team whenever it is moving off course or has lost the confidence of its team members. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**9. The Courts and the Future.** Preparing for change is a necessary job of leaders. This course will provide the knowledge and skills required to engage in futures planning that incorporates change management. At the conclusion of this course, participants will be able to use state, national, and global trends to determine possible futures for the courts by engaging in trends analysis, forecasting, visioning, and establishing goals and action strategies; articulate a change management plan for implementing the outcomes of the futures planning process; and identify roles for leaders to play in preparing the courts for the future. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**10. Developing, Communicating, and Sustaining the Visions, Missions, Goals, Objectives, Values, and Action Steps of the Courts.** This course will address short- and long-term planning and strategic planning. Court projects, structures, and functions all require planning, and this course will focus solely on critical steps in planning and the roles leaders play in planning and change management. At the conclusion of this course, participants will know the steps involved in the different forms of planning and be able to select and direct appropriate planning processes. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**11. Court Management in Action.** Courts are dynamic organizations that require active management. This course will explain the primary activities involved in managing the courts and the importance of leadership for achieving the maximum potential from those activities and the people involved. At the conclusion of this course, participants will be able to identify and explain the major activities and people involved in managing the courts, understand how leadership can facilitate excellent management, prioritize activities, and

match appropriate leadership actions with an activity. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**12. Building and Sustaining a Relationship with the Court Manager.** Chief and presiding judges typically have less longevity in their positions than do court managers. Consequently, court managers generally have more technical expertise and more management knowledge and skills than do judges. Rightfully, court managers feel a great deal of ownership in and identification with the management and leadership of the courts. This course will explore the culture of court managers, including their professional identities, values, ethics, and education and training. It will identify how court managers differ from judges and how the court managers' culture differs from the judges' culture, identities, values, ethics, and education and training. The course will address how strong and mutually beneficial relationships can be built between the chief judge and court manager so that the courts can experience continuity in leadership and management. This course is particularly pertinent for judges with direct management responsibilities. However, all judges are subject to management systems, projects, and reporting requirements, which makes this a valuable course for all judges to attend when they take the bench. At the conclusion of this course, participants will know the characteristics attributable to court managers and judges, be able to establish and maintain a strong and effective working relationship with their counterpart, evaluate the effectiveness of the relationship, and develop a plan to ensure its ongoing viability and vitality. *Target audience: All judges.*

**13. Leading and Managing the Court Culture and the Court Employees.** This course addresses the professional and personal needs of court employees and the culture within which they work. It analyzes the predominant organizational culture of the courts and how that culture affects the health, well-being, and productivity of the employees and vice versa. At the conclusion of this course, participants will know the most promising theories and practices related to managing and leading organizational cultures and employees and be able to apply what they have learned to achieve and sustain employee commitment to the courts and passion and high-level competencies in their work. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**14. Leading and Managing Other Judges.** Chief and presiding judges are first among equals. This has potential for creating problems in exercising leadership and management. This course will explore leadership and management theories and practices that have applicability for the courts, and it will examine other institutions with similar dynamics, to look for models that the courts could emulate. At the conclusion of this course, participants will be able to identify the problems they encounter in their own courts when judges try to manage and lead other judges, select and apply what they have learned to overcome the identified problems, and demonstrate their ability to lead and manage when their judicial peers resist their efforts. *Target audience: Chief judges, deputy chief judges, and presiding judges.*

**15. Building and Sustaining Relationships with a Chief Judge.** The chief judge and court manager roles parallel those of a board president or chair and a chief executive

officer. The court manager (chief executive officer) knows that he or she answers to the chief judge (board president or chair). In the courts, there is an additional wrinkle. The court manager may also answer to other judges who may or may not be in agreement with the chief judge. Therefore, an important feature of building and sustaining relationships with chief judges is to determine the chain of command; formal and informal communication channels; distribution of power, authority, and responsibility; and role definitions among all the judges. Another important feature is to establish a system that institutionalizes the transition process of the chief judgeship while protecting the court manager, ensuring continuity of leadership, and allowing for an orientation process and period as judges assume the chief judge role. Such an orientation process must deal with values, ethics, and the professional identities and cultures of both the court manager and chief judge, so both individuals are aware of the philosophical base from which they operate. At the conclusion of this course, participants will know about the theoretical and practical issues related to a chain of command; forms of communication; role definitions; and issues of power, authority, and responsibility. Participants will also be able to develop a transition and orientation plan that takes into consideration the roles of the chief judge and court manager, as well as their values, ethics, and professional identities and cultures. *Target audience: Court managers and division and department managers.*

**16. Building and Sustaining Relationships with the Bench.** Court managers have the dual responsibility of building and sustaining relationships with the entire bench in addition to building relationships with the chief judge. This relationship with the entire bench will be guided by the chief judge-court manager relationship and responsibilities, as well as by the executive committee of the courts (if there is one). This course will address how to bring the plans and strategies developed with the chief judge and executive committee to bear on the relationship between the court manager and the bench. At the conclusion of this course, participants will be able to develop an action plan for building and sustaining relationships with the bench and to identify potential areas of contention and possible solutions. *Target audience: Court managers and division and department managers.*

**17. Communicating with the Public.** This course will address how all court employees can interact with the public both inside and outside the court to ensure that the public is served and the role of the courts is better understood. At the conclusion of this course, participants will be able to describe successful approaches to communicating with the public; identify the benefits and risks of engaging in more active communication with the public; and develop a court plan for enhanced public communications. *Target audience: Chief judges and court managers.*

**18. Developing and Using Personal and Organizational Power and Influence.** All employees have the potential to exercise power and influence. That power and influence may have several sources. It can come from being part of a powerful institution. It can come from the status of the person's position. It can also come from the knowledge, character, or other personal attributes of the person. This course explores sources of power and influence as well as ways to develop and use both. At the conclusion of this course, participants will know the theoretical underpinnings and practical applications of power and influence. They will learn how to use both power and influence. They will also be able to identify opportunities for

employees to exercise leadership within the courts, and learn how employees can use their power and influence for the advancement of the courts. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**19. Leadership and Management Succession Planning and Management.** This course will explore what succession planning and management is and define its benefits and complications. Components of succession planning and requirements for implementing and managing a succession plan will be included. At the conclusion of this course, participants will be able to lead a succession planning effort; outline a plan; identify who will be involved; select a team that can conduct the succession planning effort and monitor it over time; and identify how succession planning, mentoring, and workplace learner groups work together to ensure continuity in court leadership and management. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**20. Mentoring Court Leaders and Managers.** This course will cover the characteristics, functions, and stages of mentoring relationships. It will also set out how to develop a mentoring program. At the conclusion of this course, participants will know the importance of mentoring and how it interacts with succession planning, workplace learner groups, and education and training as part of an approach to ensuring leadership and management continuity; select action steps that a leader can take to develop a mentoring effort; and implement a process wherein mentoring becomes institutionalized in the courts. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

### *Management Course Descriptions*

The intention of the management courses is to increase knowledge and skills so courts can be more expertly managed. The orientation and content are practical, focusing on application. Leadership courses, on the other hand, aim at providing knowledge with the theoretical and philosophical framework for approaching and doing the work of the courts.

**21. Developing Information Technology.** In this age of rapidly changing technology and information needs, court managers and leaders cannot afford to be without a plan or preparations for employing information technology. This course will offer participants the tools necessary to determine their information needs and help them identify the appropriate technology to meet those needs. At the conclusion of this course, participants will be able to conduct an information audit of their courts; identify technologies that can meet the information needs (including education and training); conduct a consultant appraisal process that results in selecting the most competent and effective internal and external consultants; construct external consultant contracts, which link payments to deliverables and project plans for internal consultants that can be monitored and measured for performance compliance; and design an implementation and training process that integrates the new technology with other judicial branch training to allow users to engage the new technology with skill, confidence,



and comfort. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**22. Using Court Technology.** It is not uncommon for organizational leaders and managers to make decisions about technology without planning for how the users of the technology will be affected. The courts are no exception. As a companion to “Developing Information Technology,” this course will further assist the participants in analyzing the impact of the new technology on the users; provide models for establishing and monitoring user groups; develop steps for revising the technology based on user group feedback; and accurately assess the impact the technology will have on the organizational culture and the personal and professional relationships that the technology will affect. *Target audience: All judges, court managers, and division and department managers.*

**23. Fiscal, Budget, and Resources.** This course wrestles with the realities of incoming and outgoing money and resources. Part one focuses on different forms of budgeting and building and maintaining support for court budgets. The second part focuses on accounting practices and record keeping applicable to the courts. Part three explores finding and managing multiple sources of money and resources. The last part offers strategies related to contingency planning for fiscal, budget, and resource matters—strategies that forecast budget needs and constraints, thus eliminating crisis budgeting. At the conclusion of this course, participants will know and be able to construct several different budget models, evaluate the models, and select the one(s) most suitable for them; establish the appropriate accounting and record keeping practices; assess resource possibilities and develop plans to successfully secure those resources; and engage in forecasting of future needs and develop contingency budgets and plans to meet those needs. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**24. Human Resources Management.** Human resources are the most valuable assets courts have. This course will address employment and labor laws, compensation, and other human resource issues related to hiring, promoting, demoting, and firing employees. This course also will address developing and maintaining a work environment that encourages optimal performance, develops satisfied and dedicated employees, and promotes a service ethic. At the conclusion of this course, participants will know and be able to apply employment and labor laws; determine the appropriate policies related to compensation, hiring, promoting, demoting, and firing employees; and construct and activate a systemic approach to developing a work environment that promotes optimal performance and satisfied employees who believe in serving one another and the public. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**25. Caseflow Management.** The lifeblood of any court is its efficiency and efficacy in processing cases so that timely and just results are achieved. This course will offer caseflow management theories, principles, and practices. It will also cover issues related to determining which process is best for a particular court or type of litigation, as well as how to implement the chosen process. At the conclusion of this course, participants will be able to analyze their courts’ caseflow management needs, develop a process to meet those needs,

and develop and implement a strategy that succeeds from both a process and human standpoint. *Target audience: All judges, court managers, and division and department managers.*

**26. Court Security.** This course will focus on how to do a security audit and develop steps to eliminate any weaknesses in the security of judges, court personnel, court users, or court records, systems, or facilities. At the conclusion of this course, participants will know critical security factors; be able to conduct a security audit and/or be able to identify the appropriate credentials of a security expert to do the audit; implement security measures with automatic review periods; and train judges, court personnel, and other affected parties regarding the security of the courts. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**27. Court Reporting/Recording.** Records of court proceedings are an important function of hearing cases. This course will review court technologies related to keeping the record as well as how to manage the people and processes involved in court reporting/recording. At the conclusion of this course, participants will be able to evaluate their needs related to court reporting/recording, match the appropriate technologies with the needs, and have an action plan for implementing suitable technologies. *Target audience: Chief judges, presiding judges, court managers, and division and department managers.*

**28. Court Performance.** Setting performance standards and evaluating whether those standards are met is an important aspect of managing the courts. This course will review court performance standards and measurements in general as a baseline for participants as they conduct a performance audit of their own courts or establish their own standards and measures. At the conclusion of this course, the participants will know the elements of court performance audits; be able to conduct an audit; set standards; and establish evaluation objectives, measurement intervals, and units of analysis. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**29. Facilities.** Facilities management is a fundamental component of court functioning. This course will address what court managers and leaders need to know about first assessing facility needs and then determining how to meet those needs. At the conclusion of this course, participants will be able to conduct a facility audit, project future needs, maximize use of current facilities, and develop plans for meeting facility requirements now and into the future. *Target audience: Chief judges and court managers.*

**30. Intergovernmental/Interagency Relations.** The courts are perfectly situated to lead intergovernmental and interagency relations in the justice arena. This course will focus on how the courts can take a leadership role in bringing together other branches of government and agencies to collectively better serve their communities. At the conclusion of this course, participants will be able to identify all the governmental units and agencies with which they interact, develop a collaborative approach with those units and agencies for meeting joint goals and objectives, and establish an outreach approach to delivering

coordinated court services. *Target audience: All judges, court managers, and division and department managers.*

**31. Managing and Developing the Workforce.** This course will focus on identifying the factors critical to developing desirable workplaces for optimal performance and job satisfaction. At the conclusion of this seminar, participants will be able to identify elements in the workplace that result in dysfunctional people, systems, and processes; select methods to eliminate the dysfunction; assess employee education, training, and development needs; and establish a systemic approach that constantly monitors the organization and its workforce for dysfunction, and identifies toxic employees and/or systems that demoralize those who work in the courts. *Target audience: All judges, court managers, and division and department managers.*

**32. Managing Court Services.** Contemporary courts deliver a multitude of services that need to be organized and managed. This course will identify those court services and look at the resources required to offer them. At the conclusion of this course, participants will be able to identify all of the court services offered by their courts, evaluate how well those services are operating, analyze the adequacy of the resources applied to those services, forecast new service requirements, and determine how best to manage the necessary court services. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

**33. Research, Evaluation, and Needs Assessment.** Courts are complex organizations that rely on data to function. This course will teach court leaders and managers how to do basic qualitative and quantitative research, evaluation, and needs assessment (theories and methods) so they can determine (1) when they have need for such information, (2) how to get it, and (3) how to analyze and use the findings. At the conclusion of this course, participants will be able to identify how to improve current information collection mechanisms; determine where their information gaps are and decide what methods are best used to fill those gaps; project future information needs and establish a standing research, evaluation, or needs assessment protocol; assess the findings for quality and applicability; and use the findings to meet the needs of the court. *Target audience: Chief judges, deputy chief judges, presiding judges, court managers, and division and department managers.*

## Target Audiences

The curriculum, as just described, targets recognized positions in the courts. The titles may vary slightly by jurisdiction, but it is the function that is important. The terms for these target audiences facilitate our discussion about developing court leaders and managers. With that in mind, definitions follow.

- **Chief judges.** Judges who have court leadership and management responsibilities as set forth by their state supreme court, court rule, or some other authoritative source

- **Deputy chief judges.** Judges who act as partners with or back-up for the chief judges
- **Presiding judges.** Judges who have court leadership and management responsibilities for a division, department, or branch of court
- **All judges.** Judges who are currently on the bench, who may or may not have designated leadership and management responsibilities
- **Court managers.** Top court managers who have designated leadership and management responsibilities for the entire court organization
- **Division and department managers.** Individuals who have responsibility for managing or supervising one or more operational units related to upholding the infrastructure of the courts

Other courses these audiences will need during their court careers should be part of the broader education and training curriculum that looks at the needs of organizational members at all stages—new-, mid-, and advanced-career. This curriculum is offered as a way to provide continuing education and training to individuals in leadership and management positions or with the potential to assume such positions. This means all judges and court employees are possible candidates, but which ones will advance in their careers depends on the larger organizational approach to grooming leaders and managers. We offer next an organizational approach to grooming leaders and managers that integrates SP&M, mentoring, workplace learner groups, education, and training.

### **Putting It All Together: The Integrated Approach to Grooming Court Leaders and Managers**

In this approach, when a new judge or employee joins the court, he or she is automatically enrolled in a mentoring program, and a mentor is immediately assigned to the person so that organizational acclimation, job orientation, and on-the-job training can begin. Continuous mentoring will be most intense during the first year. It will likely continue for several years thereafter, encompassing the initiation and cultivation stages of mentoring. The mentor is mindful of developing the new person for other positions or responsibilities within the organization, but if that person shows no interest or aptitude for taking on leadership or management responsibilities, he or she will not be groomed for that. Instead, that person will be developed to contribute to the organization in ways he or she can contribute best and gain the most enjoyment and reward.

Those who show both interest and aptitude for leadership and management are targeted for placement in the organization's SP&M program. The program offers a career path for individuals and provides continuity in court leadership and management. The SP&M program must be well-defined and known throughout the organization, so an individual entering the program will be able to clearly identify the goals, objectives, and expected levels

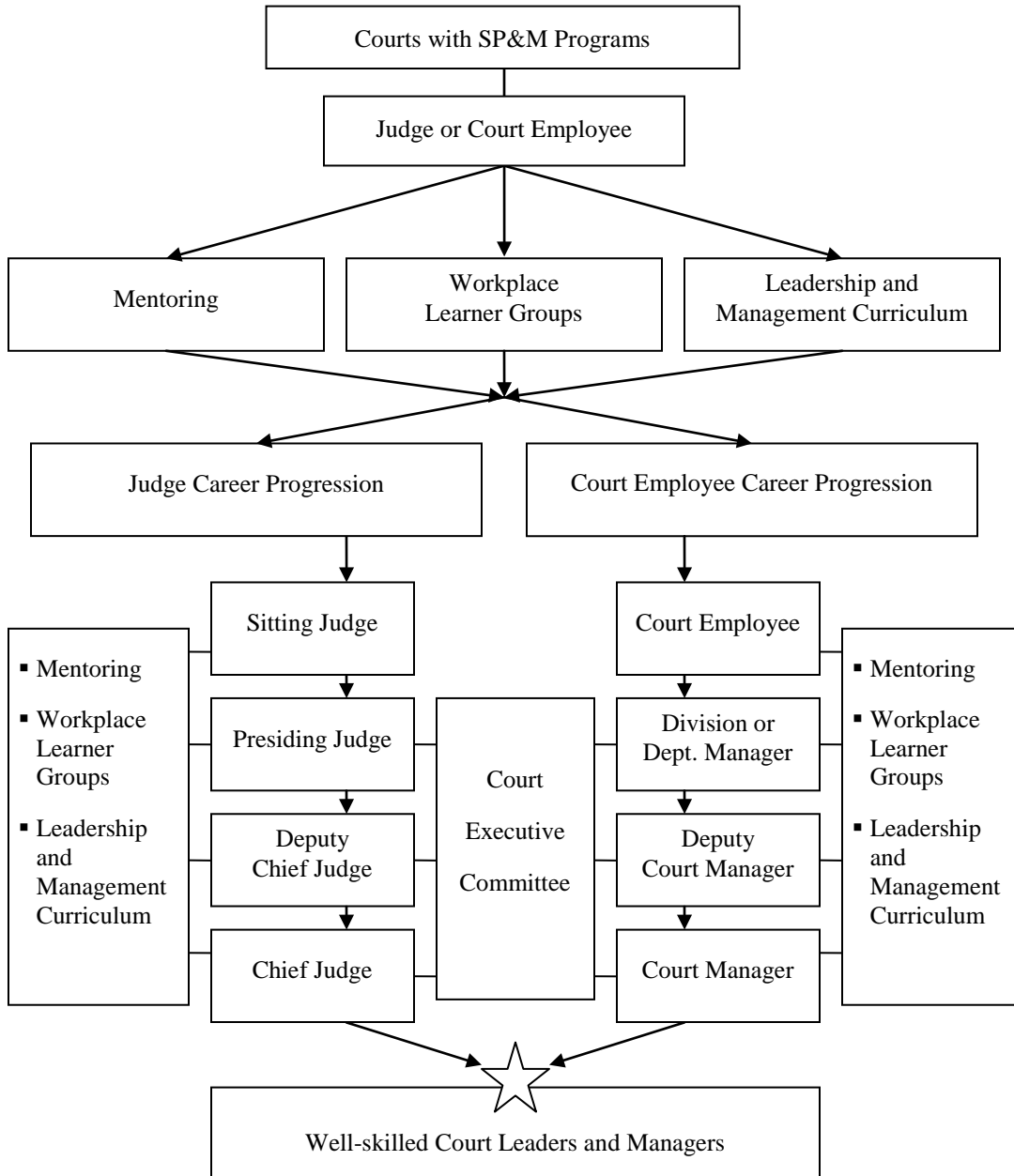
of achievement. That person will continue to be mentored even if another person assumes the mentoring role to better match the needs arising out of his or her involvement in succession planning.

Along with mentoring, the judges or court employees will be directed to workplace learner groups that best advance their leadership and management development and the functioning of the organization. Over time, they will likely participate in multiple workplace learner groups corresponding to their increasing knowledge, skill development, and progressively more complex job responsibilities.

The judges or court employees will start the leadership and management curriculum. In the workplace learner groups, they will be able to identify the knowledge and skill areas in which they have the largest gaps. Then they will be directed to enroll in courses that best address those gaps. While they are taking those gap-filling courses, they can also take other courses in the curriculum. All courses are directly tied to work place performance; thus, they will use workplace learner groups as forums to discuss the application of what they have learned, receive feedback from others, and identify any additional gaps to address in further courses.

Each component of this approach reinforces the others. In order to produce fully groomed leaders and managers, all components must be active, constantly monitored, and altered as necessary. Figure 8 depicts the holistic nature of this approach.

Figure 8  
Developing Leaders and Managers



## Closing Thoughts

This monograph explored the history of the courts and why courts have such difficulty changing to meet the challenges and demands confronting them. It also explored the history of court management education and training, exposing both the strengths and weaknesses of past practices. Even the power dynamic was confronted for both its destructiveness and usefulness. Current efforts in developing leaders and managers were profiled so that they could inform others who wish to implement such efforts. All of this information was used as background for this comprehensive approach to developing court leaders and managers. In the past, courts have tried education and training, mentoring, or even workplace learner groups. However, they have never put all these components together with a comprehensive SP&M program.

We can no longer just wish for outstanding leaders and managers. We can no longer settle for less than the best. We don't have to. With commitment, creativity, cooperation, and planning, we can make the best happen by using this comprehensive, integrated approach. We have many outstanding leaders and managers and hundreds of well-run courts. For the most part that did not happen because of a well-planned strategy to recruit and retain the best and brightest. It sprang from the passion and commitment individuals had for the rule of law and the good that courts can do in our society. And it may be why we have not felt the urgency to make certain such dedicated individuals lead and manage all of our courts well into the future.

Jim Collins talks about settling for less in his book *Good to Great* (2001, 1): "Good is the enemy of great. And that is one of the key reasons why we have so little that becomes great." Greatness is ours to be had. We need only set it as a goal and not stop until it is achieved.





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## APPENDIX A

### **National Association for Court Management (NACM) Core Competency Curriculum Guidelines**

*Geoff Gallas, for the National Association for Court Management  
Professional Development Advisory Committee (NACM/PDAC)*

#### **Purpose and Audience**

The purpose of the National Association for Court Management Core Competency Curriculum Guidelines is to define court manager learning needs across the full range of the court's mission, functions, and responsibilities. Presiding and supervising judges, court managers, court administrative staff, and judicial branch educators can use the competencies to guide their efforts to improve the performance of the court managers and their courts.

#### **History, Overview, and Future Uses**

The NACM Core Competency Curriculum Guidelines flow from a process begun in 1990 when NACM undertook a Delphi survey of all its members to evaluate its goals, priorities, and services. Survey results, reported at the 1991 NACM Annual Conference and in the fall 1991 issue of *The Court Manager*, clearly indicated that the nation's trial court managers wanted and needed education and training that is more diverse. NACM responded with two prototype regional conferences and a multi-year education and professional-development action plan.

Among many action plan initiatives, a special NACM professional development study committee was formed in 1992. Drawing on the 1990 Delphi survey, this committee worked to focus NACM educational programming by reaching consensus on the core areas of court management skill and responsibility. An initial list of 14 was reformulated into ten core competencies—areas in which court managers should have acceptable levels of knowledge, skills, and abilities (KSAs). Note: A brief description of each competency appears at the end of this appendix.

**NACM Ten Core Competencies:  
What Every Court Manager Should Know and Be Able To Do**



With funding from the State Justice Institute (SJI), and in cooperation with the National Center for State Courts' Institute for Court Management (NCSC/ICM), the Justice Management Institute (JMI), and others, this NACM committee then refined the 10 core competencies. The committee began with a survey of over 200 experienced court managers and several focus groups attended by leading court managers, researchers, and academics to produce KSAs for each of the ten core competencies.

Ninety carefully selected court administrators, court management faculty, and researchers then delineated the substance and structure of a second survey of 250 experienced respondents who (1) evaluated how essential it was for senior court managers to master the 10 previously identified core competencies and related KSAs, as well as 12 general management KSAs; (2) estimated the proportion of court managers who had substantial performance inadequacies with regard to each of the KSAs; and (3) selected the 10 KSAs with the highest priority for NACM educational programming.

SJI funded a follow-on NACM, NCSC/ICM, and JMI Core Competency Curriculum Guidelines project. The project begun in 1996 was completed in 1999 under the supervision of the NACM Professional Development Committee (PDAC). PDAC developed ambitious project goals.

The first goal stated that, when completed, the NACM Core Competency Curriculum Guidelines would clearly specify **what court leaders need to know and be able to do**. To accomplish this goal, three core competencies were identified on which to focus: (1) Caseflow Management; (2) Resources, Budget, and Finance; and (3) Visioning and Strategic Planning. The second goal was to have the NACM/PDAC curriculum guidelines expand, refine, and, very importantly, organize critical KSAs for each core competency. Court managers, judicial educators, and court management associations—national, regional, and

state—would then be better able **to assess their learning needs and to improve their performance and the performance of their courts.** The final goal, when the work is completed, is to have national, regional, state, and local educational providers—not for profit, public, and for profit—use the NACM Core Competency Curriculum Guidelines to enhance court performance through well-focused, relevant court management educational programs.

Curricula built around the guidelines will be delivered face-to-face at NACM annual and mid-year conferences; from remote sites, through electronic self-paced and other distance learning programs; and during national, regional, state, and local train-the-trainer programs. The guidelines stimulate relevant education because they provide a comprehensive and reliable tool for court managers to assess their own, their staffs', and colleagues' professional development needs and educational priorities. **This honors NACM's belief that continuing professional and personal development is the essence of professionalism.**

Fundamental to this major NACM initiative is an understanding of what the core competency curriculum guidelines are *not*. Core competency curriculum guidelines are *not* intended, nor are they appropriate, as a test or grading tool for practicing or aspiring court managers. Rather, their purpose is expressly limited to *self-assessment* and *self-improvement*. Use of the core competency curriculum guidelines to evaluate the performance of a practicing court manager is inappropriate for a host of technical and practical reasons and is generally understood to be unacceptable to the court community and NACM. Further, while all ten core competencies, related curriculum guidelines, and KSAs are crucial, NACM does *not* assume that *any single* court manager has, or could master, every core competency, much less every KSA in every curriculum guideline area.

Finally, core competency curriculum guidelines by themselves are *not* sufficient or complete, in two important ways. First, following a self-assessment using the guidelines, court managers and those responsible for the managers' educational programs must then decide which core competencies, guidelines, and KSAs are most in need of development, taking into account (1) the needs of the individual learner and (2) impacts of existing performance and knowledge gaps.

Second, the much needed curricula do not now exist. NACM's aim is to stimulate development of needed curricula and, within them, the educational programs that can improve a court manager's competence and the judiciary's performance.

Despite these limitations, the NACM/PDAC Core Competency Curriculum Guidelines move court reform forward by improving the court management profession. Court reform, from the turn of the century through the late eighties, was driven by the unified court concept in which the unit of analysis was an entire court system. Key issues were the structure and organization of the system; its funding; and authority relationships between and among the chief justice, the central administrative office, and several levels of courts and managers. In the nineties, court reform evolved when trial court performance standards were produced by the National Center for State Courts with Bureau of Justice Assistance funding. These shifted attention from the system's structure, organization, funding, and authority

relationships to the production and performance of trial courts regardless of structure, organization, funding, or authority relationships. The unit of analysis changed from the court system as a whole to individual courts. Finally, the NACM/PDAC Core Competency Curriculum Guidelines shifted the court reform focus down another notch, from trial courts to the individual court manager. The guidelines recognize that neither court systems, nor their constituent courts, can operate efficiently or effectively without competent court managers—professionals who understand that continuing personal and professional development is a necessity, not a luxury.

In early 1998, the NACM/PDAC delivered two prototype curriculum guidelines and presented them in *The Court Manager: Caseflow Management; and Resources, Budget, and Finance*. It also delivered draft guidelines for the third core competency area, Visioning and Strategic Planning, and the *Educator's Guide: Setting Priorities, Faculty Selection and Training, Course Evaluations and Outcome Measures*.

NACM recognized that curriculum guidelines for these three and the other seven core competencies must evolve as the court managers' issues and challenges change. However, as curriculum guidelines are updated, they will *not* necessarily become lesson plans or change the curriculum. They are *not* curricula or lesson plans. NACM's curriculum guidelines link the court's substantive purposes and management objectives to the *current* learning needs of practicing and aspiring court managers. And, while the guidelines assume lifelong learning and continuous development for the professional court manager, they leave the planning, designing and delivery of education programs to professional judicial branch educators.

Curriculum guidelines succinctly present basic, advanced, and cutting-edge KSAs in three steps.

1. Introduction: what is this core competency and why it is important?
2. Summary: what should court managers know and be able to do?
3. Curriculum guidelines (six to nine guidelines per core competency): what knowledge, skills, and abilities are needed for each core competency?

The hierarchy of core competencies, curriculum guidelines, and knowledge, skills, and abilities (KSAs) is as follows:

- Ten core competencies
- Six to nine curriculum guidelines for each core competency
- Knowledge, skills, and abilities (KSAs) for each curriculum guideline

Complete and current information about the competencies, curriculum guidelines, and KSAs is available on the NACM Web site ([www.nacmnet.org](http://www.nacmnet.org)). Following is the description of the ten core competencies appearing on the Web site November 23, 2002.

## **The Ten Core Competencies**

Ten Core Competencies define court manager learning needs across the court's mission, functions and responsibilities. The ten Competencies are described in brief below in the order in which they were developed.

### ***PURPOSES AND RESPONSIBILITIES OF COURTS***

The Purposes and Responsibilities of Courts are the epicenter of the NACM Core Competencies. The Purposes and Responsibilities of Courts provide the reason, the root, and the justification for the other nine Core Competencies. Purposes gives legitimacy to the exercise of Leadership, informs Visioning and Strategic Planning, and orients the practice of Caseflow Management and the other six more technical competencies.

### ***LEADERSHIP***

Leadership is the energy behind every court system and court accomplishment. Fortunately and contrary to some received wisdom, leadership is not a mysterious act of grace. Effective leadership is observable and, to a significant extent, learnable. Academic debate about the difference between leadership and management has resulted in consensus that a difference exists, which is not a matter of "better" or "worse." Both are necessary "systems of action." In the memorable words of Warren Bennis: "Managers do things right. Leaders do the right things."

### ***CASEFLOW MANAGEMENT***

Caseflow Management is the process by which courts carry out their primary function: moving cases from filing to disposition. This includes all pre-trial phases, trials, and increasingly, events, which follow disposition to ensure the integrity of court orders and timely completion of post-disposition case activity. Effective caseflow management makes justice possible both in individual cases and across judicial systems and courts, both trial and appellate. It helps ensure that every litigant receives procedural due process and equal protection. Properly understood Caseflow Management is the absolute heart of court management.

### ***INFORMATION TECHNOLOGY MANAGEMENT***

While it is decidedly not an end unto itself, Information Technology can help small, medium, and large courts do what they do faster, cheaper, and better. Computerization allows courts to dispense justice in the face of increased expectations of efficient and instant service; significant changes in people's mobility and the social, political, and economic environment; and increased caseload volume and complexity. Court leaders who effectively manage Information Technology know its limitations and the challenges it presents. They also know if its promise is realized, Information Technology can improve court and justice system operations.

### ***COURT COMMUNITY COMMUNICATIONS***

If the courts are to be accessible, open, responsive, affordable, timely, and understandable, courts must learn from and educate the public. To interact effectively with their many publics, court leaders must understand the media and its impact on the public's understanding of, and satisfaction with the courts. Understandable courts, skillful community outreach, and informed public information improve court performance and enhance public trust and confidence in the judiciary.

### *HUMAN RESOURCES MANAGEMENT*

Courts need good people, people who are competent, up to date, professional, ethical, and committed. Effective Human Resource[s] Management not only enables performance, but also increases morale, employee perceptions of fairness, and self worth. People who work in the courts are special. Their jobs and the work of the courts are not too small for the human spirit. With proper leadership court Human Resources Management contributes to meaning and pride over and beyond the reward of a paycheck. Excellent Human Resources Management is unlikely in an otherwise mediocre court.

### *RESOURCES, BUDGET AND FINANCE*

The allocation, acquisition, and management of the court's budget impact every court operation and, arguably, determine how well, and even whether, courts achieve their mission in the American political system. Resources are rarely sufficient to fund everything of value the courts or any other organization might do. When resource allocation and resource acquisition are skillful courts preserve their independence, ensure their accountability, both internally and externally, improve their performance, and build and maintain public trust and confidence.

### *EDUCATION, TRAINING AND DEVELOPMENT*

Education, Training and Development can help courts improve court and justice system performance and achieve their desired future. Education, training, and development programs are aimed at judges and court staff especially those in and aspiring to leadership positions, and many others on whom the court depend, both inside and outside the courts. Thus the term judicial branch education, as opposed to judicial education. Because judicial branch education helps actuate all other competencies and helps courts maintain balance between the forces of change and enduring principles and predictable process, court leaders take responsibility for it. It is not merely remedial and limited to training. Rather judicial branch education is strategic and involves education, training, and development.

### *ESSENTIAL COMPONENTS*

Courts and judges do not just consider evidence provided by the parties, rule on motions, and decide cases on the merits. Increasingly, information is provided to the court by programs annexed to the court or the case rather than by the parties to litigation. Courts must deliver and use this information as well as manage other Essential Components, which range from the relatively mundane such as court security, a courtroom, clerk and reporter, to the sophisticated such as child custody evaluations, legal research staff, and indigent defense. These and other services, programs, and infrastructure not dealt with by the other core competencies constitute the court's Essential Components. Effective court leaders understand the court's Essential Components and, regard[les]s of who has formal authority over them, work to ensure they are well managed.

### *VISIONING AND STRATEGIC PLANNING*

Visions are holistic, inspirational future snapshots. They look forward and reach back to core values: the ends of justice and service and the means of judicial independence, substantive and procedural due process, equal protection, open access, and the fair and efficient application of the law to the facts. Visioning invites court leaders, their justice partners, and the community, first to imagine and then to deliver the future they prefer. Strategic planning is a process—involving principles, methods and tools—to help court leaders decide what to do, and how and when to do it. The strategic planning process is directional and linear. Strategic planning translates vision into plans and action.



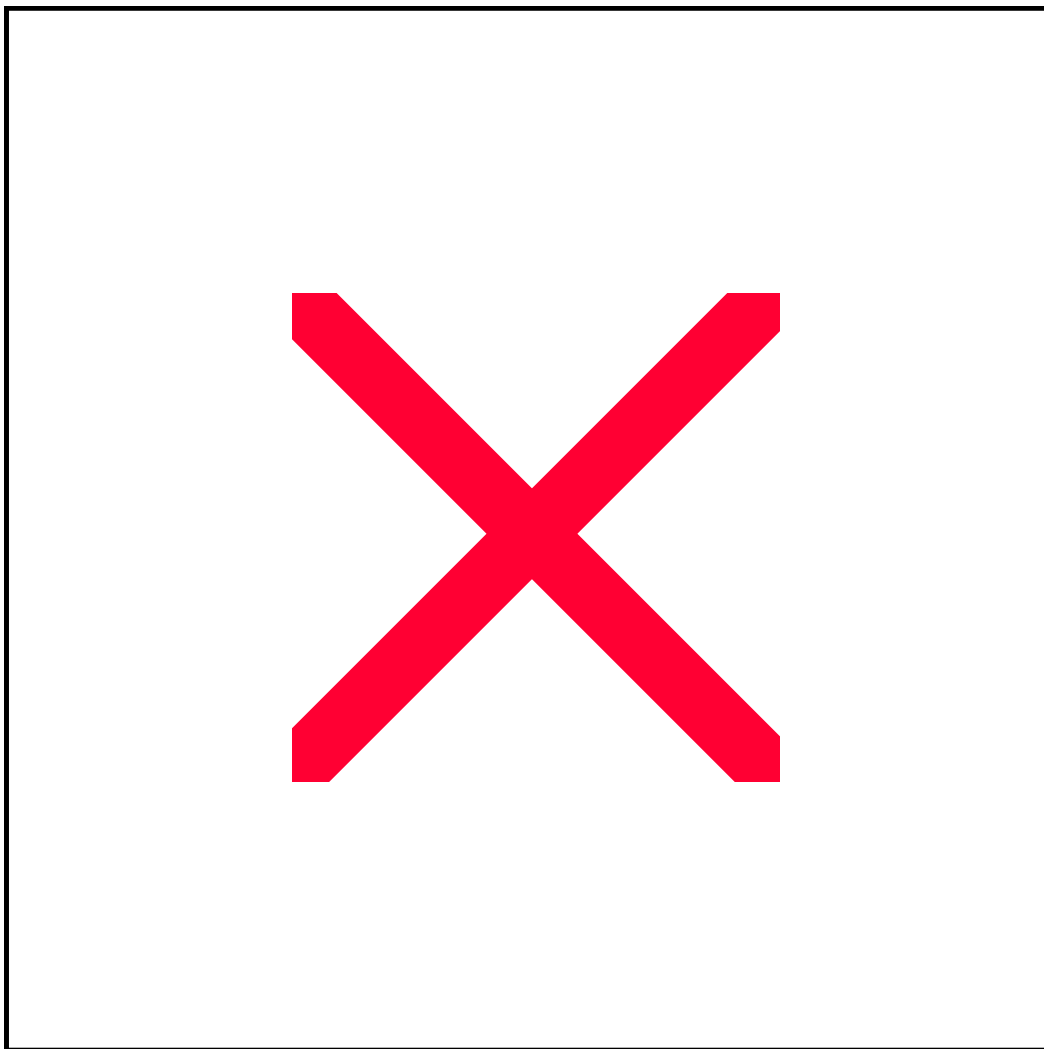
## APPENDIX B

### Court Management Framework

*Marilyn Vernon, Federal Judicial Center*

What skills does a manager need to succeed in supervising employees? Two ad hoc advisory committees of court personnel and staff from the Administrative Office of the U.S. Courts assisted the Center in identifying 27 fundamental skills, which are presented in the Court Management Framework below. The skills are grouped into six broad categories: leadership, operational, system, thinking, personal, and interpersonal.

On the next pages, you will find tables that define each of the fundamental skills in the framework and list the Center programs providing relevant training.



*LEADERSHIP SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<i>RELATED TRAINING</i>
<b>Motivating Others</b>	Encouraging and enabling others to achieve; fostering enthusiasm, a feeling of investment, and a desire to excel.	<ul style="list-style-type: none"> <li>▪ <i>Managing Employee Relations</i></li> <li>▪ <i>FrontLine Leadership</i></li> <li>▪ <i>Foundations of Management</i></li> </ul>
<b>Fostering Teamwork*</b>	Forming appropriate structures and teams to meet organizational goals; fostering a work climate in which collaboration and teamwork can flourish; managing team differences; rewarding group and team efforts that advance the court's mission.	<ul style="list-style-type: none"> <li>▪ <i>Forming Quality Improvement Teams</i></li> <li>▪ <i>Team Dynamics</i></li> <li>▪ <i>Team Meetings</i></li> <li>▪ <i>FrontLine Leadership</i></li> <li>▪ <i>Executive Team Development</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>Maximizing Productivity: Team-based Management</i></li> <li>▪ <i>Federal Court Leadership Program</i></li> </ul>
<b>Appraising Performance</b>	Clarifying work tasks and responsibilities; accurately assessing employees' strengths and areas for improvement; giving timely, specific performance feedback.	<ul style="list-style-type: none"> <li>▪ <i>The Adaptive Manager</i></li> <li>▪ <i>Performance Management in the Courts</i></li> <li>▪ <i>Foundations of Management</i></li> <li>▪ <i>Supervising in the Courts</i></li> <li>▪ <i>Managing Employee Relations</i></li> </ul>
<b>Coaching and Developing Others</b>	Coaching employees to enhance performance and expand skills; providing challenging assignments and opportunities for development; ensuring that the staff receives adequate training.	<ul style="list-style-type: none"> <li>▪ <i>Managing Employee Relations</i></li> <li>▪ <i>Team Leadership</i></li> <li>▪ <i>The Adaptive Manager</i></li> <li>▪ <i>A Guide to Creating Employee Exchange Programs</i></li> <li>▪ <i>FrontLine Leadership</i></li> </ul>
<b>Influencing and Negotiating</b>	Persuading; expressing ideas in ways that lead others, including judges, to share a common perspective and reach agreement; appropriately using negotiation, persuasion, and authority in dealing with others to achieve goals.	<ul style="list-style-type: none"> <li>▪ <i>Team Dynamics</i></li> <li>▪ <i>Leadership Programs</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

*INTERPERSONAL SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<b>RELATED TRAINING</b>
<b>Building Relationships</b>	Creating supportive relationship around work; considering and responding appropriately to the needs, feelings, capabilities, and interests of others; providing feedback; training others equitably.	<ul style="list-style-type: none"> <li>▪ <i>Team Effectiveness</i></li> <li>▪ <i>Quality Improvement Programs</i></li> <li>▪ <i>The Adaptive Manager</i></li> <li>▪ <i>FrontLine Leadership</i></li> <li>▪ <i>Executive Team Development</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>Supervisor's Survival Kit</i></li> </ul>
<b>Communicating</b>	Ensuring a consistent, timely flow of high-quality information within the court and to court constituencies; conveying information clearly in writing and in oral presentations, encouraging open expression of ideas and opinions.	<ul style="list-style-type: none"> <li>▪ <i>Managing Employee Relations</i></li> <li>▪ <i>Presentation Skills</i></li> <li>▪ <i>Quality Improvement Programs</i></li> <li>▪ <i>FrontLine Leadership</i></li> <li>▪ <i>Put It in Writing</i></li> <li>▪ <i>Effective Practices Guide</i></li> <li>▪ <i>Foundations of Management</i></li> <li>▪ <i>Writing Skills Workshop</i></li> </ul>
<b>Valuing Diversity</b>	Reorganizing the mix of similarities and differences among staff and court users; building respect for differences; drawing on the unique skills and background of each employee to build effective teams and enhance productivity.	<ul style="list-style-type: none"> <li>▪ <i>Managing Employee Relations</i></li> <li>▪ <i>Diversity in the Court: A Guide for Assessment and Training</i></li> <li>▪ <i>Foundations of Management</i></li> <li>▪ <i>Executive Team Development</i></li> </ul>
<b>Managing Stress</b>	Developing strategies that help staff maintain productivity and efficiency during stressful times; creating a desirable and supportive work environment; providing a balanced perspective on work.	<ul style="list-style-type: none"> <li>▪ <i>Achieving Balance</i></li> <li>▪ <i>Supervising in the Courts</i></li> <li>▪ <i>Coping with Change</i></li> </ul>
<b>Managing Conflict</b>	Anticipating and seeking to resolve conflicts, disagreements, and confrontation in a constructive manner; mediating conflicts; building consensus.	<ul style="list-style-type: none"> <li>▪ <i>Team Dynamics</i></li> <li>▪ <i>Leadership Development Program for Probation and Pretrial Services Officers</i></li> <li>▪ <i>Managing Employee Relations</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

*PERSONAL SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<i>RELATED TRAINING</i>
<b>Knowing Yourself*</b>	Learning from experience; seeking feedback and modifying behavior based on feedback; actively pursuing learning and self-development.	<ul style="list-style-type: none"> <li>▪ <i>Leadership Development Programs</i></li> <li>▪ <i>Executive Team Development</i></li> <li>▪ <i>Foundations of Management</i></li> </ul>
<b>Balancing Priorities</b>	Setting priorities; focusing on the important, not only the urgent; delegating effectively; allocating time for renewal and development.	<ul style="list-style-type: none"> <li>▪ <i>Achieving Balance</i></li> </ul>
<b>Acting with Integrity*</b>	Demonstrating principled leadership and sound ethics; building trust with others through openness; following through on commitments.	<ul style="list-style-type: none"> <li>▪ <i>Introducing the Code of Conduct for Judicial Employees</i></li> <li>▪ <i>Sexual Harassment Awareness</i></li> <li>▪ <i>Supervisor's Survival Kit</i></li> </ul>
<b>Making Decisions</b>	Making timely and sound decisions; taking action and risks when needed; making decisions under conditions of uncertainty.	<ul style="list-style-type: none"> <li>▪ <i>Tools for Quality Improvement: Idea Generation</i></li> </ul>
<b>Staying Flexible*</b>	Being willing and able to adjust to multiple demands, ambiguity, and rapid change; challenging the status quo and encouraging initiatives to improve court operations.	<ul style="list-style-type: none"> <li>▪ <i>Transition Guide</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

*THINKING SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<b>RELATED TRAINING</b>
<b>Gathering External Data*</b>	Keeping current on what is going on in other courts, government agencies, and in business; keeping abreast of laws, policies, trends, and issues that have an impact on the court; using information in decision making.	<ul style="list-style-type: none"> <li>▪ <i>Planning Workbook for Probation and Pretrial Services Managers</i></li> <li>▪ <i>Maximizing Productivity: Total Quality Service</i></li> <li>▪ <i>Effective Practices: Pretrial Services Communications</i></li> </ul>
<b>Analyzing Information</b>	Using quantitative information effectively to improve the court's efficiency, including assessing customer needs; defining standards for quality; and evaluating outcomes.	<ul style="list-style-type: none"> <li>▪ <i>Quality Improvement Programs</i></li> <li>▪ <i>Federal Court Leadership Program</i></li> <li>▪ <i>Maximizing Productivity: Total Quality Service</i></li> </ul>
<b>Thinking Strategically</b>	Considering a broad range of internal and external factors when solving problems and making decisions; appropriately adjusting actions to address strategic issues.	<ul style="list-style-type: none"> <li>▪ <i>Planning Workbook for Probation and Pretrial Services Managers</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>A Guide to Creating Employee Exchange Programs</i></li> </ul>
<b>Thinking Creatively</b>	Generating insights, new ideas, and solutions; fostering innovation; bringing perspectives and approaches together and combining them in imaginative ways.	<ul style="list-style-type: none"> <li>▪ <i>Tools for Quality Improvement: Idea Generation</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>Maximizing Productivity: Process Improvement</i></li> </ul>
<b>Planning*</b>	Developing short-range and long-range plans that are comprehensive, realistic, and effective in meeting goals; establishing policies, guidelines, and priorities; identifying required resources; coordinating planning efforts with others.	<ul style="list-style-type: none"> <li>▪ <i>Forming Quality Improvement Teams</i></li> <li>▪ <i>Transition Guide</i></li> <li>▪ <i>Planning Workbook for Probation and Pretrial Services Managers</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

*OPERATIONAL SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<b>RELATED TRAINING</b>
<b>Managing Resources*</b>	Fostering strategic use of resources; making resource decisions that enhance the organization's efficiency and effectiveness.	<ul style="list-style-type: none"> <li>▪ <i>Leadership Development Programs</i></li> <li>▪ <i>Maximizing Productivity</i></li> <li>▪ <i>Workshops for Court Unit Executives</i></li> <li>▪ <i>Effective Practices: Enhances Supervision</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>A Guide to Creating Employee Exchange Programs</i></li> </ul>
Human Resources*	Ensuring effective recruitment, selection, training, performance appraisal recognition, and corrective/disciplinary action; promoting employee well-being.	<ul style="list-style-type: none"> <li>▪ <i>Exit Interviews</i></li> <li>▪ <i>Performance Management in the Courts</i></li> <li>▪ <i>Sexual Harassment Awareness</i></li> <li>▪ <i>Managing Employee Relations</i></li> <li>▪ <i>Structuring On-the-Job Training</i></li> <li>▪ <i>Developing Strategic Training Plans</i></li> <li>▪ <i>Diversity in the Court: A Guide for Assessment and Training</i></li> <li>▪ <i>Hire the Right Person: Effective Interviewing</i></li> <li>▪ <i>Developing Employee Exchange and Internship Programs</i></li> </ul>
Budget and Finances	Forecasting budget trends; preparing and justifying the budget; monitoring obligations; making decisions that enhance the organization's financial position.	
Procurement and Contracting*	Making purchasing and contracting decisions that maximize the use of funds.	
Automated Systems	Applying new technologies to organizational needs; encouraging staff to keep abreast of new technology; ensuring staff are properly trained and proficient in court-adopted automated programs.	
<b>Knowing Court Operations</b>	Maintaining technical competence in relevant area of court operations; accessing and using other expert resources when appropriate; understanding the court's culture and dynamics.	<ul style="list-style-type: none"> <li>▪ <i>Inside the Federal Courts</i></li> <li>▪ <i>Effective Practices: Enhanced Supervision</i></li> <li>▪ <i>Effective Practices: Case Management</i></li> <li>▪ <i>Ensuring Effective Case-Flow Management</i></li> <li>▪ <i>Leadership Development Programs</i></li> <li>▪ <i>In-District Development of New Probation/Pretrial Supervisors</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

*SYSTEM SKILLS*

<b>SKILL</b>	<b>DEFINITION</b>	<b>RELATED TRAINING</b>
<b>Creating a Vision*</b>	Creating a compelling picture of the organization's values, purposes, and direction; involving staff in developing the vision; facilitating needed organizational improvement.	<ul style="list-style-type: none"> <li>▪ <i>Planning Workbook for Probation and Pretrial Services Managers</i></li> <li>▪ <i>Leadership Development Programs</i></li> <li>▪ <i>Strategic Planning</i></li> </ul>
<b>Focusing on Customers*</b>	Staying in tune with customers' expectations about quality and service; taking actions to meet customer needs and increase customer satisfaction.	<ul style="list-style-type: none"> <li>▪ <i>Maximizing Productivity: Total Quality Service</i></li> <li>▪ <i>Effective Practices: Case Management for Supervisors</i></li> </ul>
<b>Managing Change*</b>	Acting as a catalyst for needed change; encouraging employee suggestions; assisting staff in accepting and implementing new policies and processes; managing court changes effectively.	<ul style="list-style-type: none"> <li>▪ <i>FrontLine Leadership</i></li> <li>▪ <i>Transition Guide</i></li> <li>▪ <i>Strategic Planning</i></li> <li>▪ <i>Coping with Change</i></li> </ul>
<b>Committing to Quality</b>	Emphasizing the need to deliver high-quality products and services; setting quality standards and continuously evaluating court products, processes, and services against those standards; taking action to make improvements as required.	<ul style="list-style-type: none"> <li>▪ <i>Maximizing Productivity: Total Quality Service</i></li> <li>▪ <i>Quality Improvement Programs</i></li> <li>▪ <i>Effective Practices: Case Management for Supervisors</i></li> <li>▪ <i>Ensuring Effective Case-Flow Management</i></li> </ul>
<b>Championing System and Profession</b>	Actively seeking chances to teach court constituencies and others about the court's mission and work; promoting awareness of the impact of employees' performance on court and community.	<ul style="list-style-type: none"> <li>▪ <i>Effective Practices: Pretrial Services Communications</i></li> <li>▪ <i>Workshops for Court Unit Executives</i></li> <li>▪ <i>Federal Probation Officers: Who, What, Why</i></li> <li>▪ <i>Introducing the Federal Courts: A Federal Judicial Center Orientation Series for Court Employees</i></li> <li>▪ <i>Inside the Federal Courts</i></li> </ul>

\* The Ad Hoc Advisory Group on Identifying Competencies for Managing in a Decentralized Environment identified these skills as critical.

## **The Federal Judicial Center's Leadership and Supervisory Skill Development Programs**

Out of the Court Management Framework, FJC has developed three multi-phase training programs—Federal Court Leadership Program, Leadership Development Program for Probation and Pretrial Services Officers, and Supervisors' Development Program. Each program consists of educational components that participants complete over several years.

Although participation in the programs is neither a prerequisite for nor a guarantee of promotion, participants report that the programs have been beneficial when they have sought positions with enhanced management responsibility. In addition, participants who complete the programs are eligible for graduate and undergraduate college credit.

### **Federal Court Leadership Program**

A two-and-a-half-year program for managers and technical specialists who want to prepare for positions of increased responsibility in the federal judiciary. Open to persons in the appellate, district, and bankruptcy courts; court libraries; and staff attorneys' offices that meet certain education and experience requirements and have the support of their court unit executive. Conducted in four phases, the program combines on-line instruction, two workshops, and self-directed projects at the court unit level. For additional information, visit the DCN at <http://156.132.47.230:8081/newweb/jnetweb.nsf/pages/386>. Contact: Fran Toler, (202) 502-4128.

### **Leadership Development Program for Probation and Pretrial Services Officers**

A three-year program for officers, specialists, and managers at the CL-28 level (formerly JSP-12) or above who serve as supervisors or who have supervisory experience. Guided by program faculty and mentors, participants undertake three major projects: a management practices report, an in-district improvement project, and a temporary duty assignment. After completing the projects, participants are invited to a national workshop on leadership issues. (Participants attend two such workshops.) For additional information and to obtain downloadable application forms, visit the DCN at <http://156.132.47.230:8081/newweb/jnetweb.nsf/pages/232>. Contact: Michael Siegel, (202) 502-4107.



### **Supervisors' Development Program**

A three-year, 90-hour curriculum for supervisory skills development that can help new and experienced managers meet the challenges of court employee supervision and gain job satisfaction. A Certificate of Achievement is awarded on completion of curriculum requirements. The program is undertaken in two or three phases, depending on the amount of participants' supervisory experience (participants with less than one year of experience must undertake the first phase).

Phase 1. Survival Kit for New Supervisors (6 hours)

Phase 2. Foundations of Management (40 hours)

Phase 3. Enhancing Supervisory Skills (50 hours) –This is individually tailored training selected by the participant and his or her manager.

For additional information and to obtain downloadable application forms, visit the DCN at <http://156.132.47.230:8081/newweb/jnetweb.nsf/pages/807>. Contact: Valdenia Simmons, (202) 502-4100.



## APPENDIX C

### Institute for Court Management

*Mary Sammon, Institute for Court Management, National Center for State Courts*

In 1970, the Institute for Court Management (ICM) was created to provide court managers with the education and training necessary to apply modern management theories in the courts. In 1971, the National Center for State Courts (NCSC) was founded to provide a clearinghouse of information and technical assistance to state court systems and to conduct major national research work.

In the years that followed, both organizations made great progress as reflected in Chief Justice Burger's 1980 State of the Judiciary message: "Several thousand individuals have participated in the training programs of the Institute. This has brought a revolution in court administration." In his 1981 State of the Judiciary message, he declared, "The National Center for State Courts is one of the most important developments in the administration of justice in this century."

Over the years, the work of ICM and NCSC brought them closer together, until the benefits of combining their resources became clear. The merger in 1984 linked the significant record of ICM for training and educating court personnel with the outstanding reputation of the NCSC for advancing court improvement.

Chief Justice William Rehnquist at ICM's 1987 graduation ceremony noted: "There was a time not so long ago—a time since I was admitted to practice in the early fifties, if that qualifies as not so long ago—when clerks of courts and supporting personnel were regarded as primarily patronage jobs, places for time servers of the right political affiliation or the right degree of friendship with the judges of the court. Fortunately, these perceptions have now pretty much changed, and both judges and the public have come to recognize the need for trained managers in the administration of justice just as in any other field of human endeavor."

With these strong roots, the NCSC and the ICM flourished. During the 1990s, the field of court administration grew exponentially. Education programs on leadership and management were created to meet the growing needs of court managers. Judges attended leadership programs, and court executives—judges, court managers, and others—began to focus on the need to work more collaboratively as a team. New issues emerged and new content for ICM programs was needed to deal with such things as technology, security, case management, and court performance standards. ICM also offered courses for the professional development of court personnel—courses on leadership, from fundamentals to advanced theories; management; and research.

The 1990s also ushered in a decade of international expansion. In countries struggling to organize their loosely developed court systems, new partnerships were formed with ICM

and NCSC. Those partnerships continue to strengthen and inform court leadership across borders and cultures.

As the education division of the NCSC, ICM is dedicated to the improvement of the management of the state courts through education and training services with programs directed toward every level and type of court: trial, appellate, local, state, or federal. Services provided by ICM include: 1) certification programs—Court Executive Development Program (CEDP) and Court Management Program (CMP); 2) national programs; and 3) partnerships with state administrative offices of the courts, trial courts, and international groups. Since 1970, ICM has provided management education to thousands of administrators, clerks, judges, and other personnel from the courts in the United States and many foreign jurisdictions.

Detailed information about ICM's current course offerings is available on its Web site, <http://www.ncsc.dni.us/ICM/index.html>.

## **Certification Programs**

### *Court Executive Development Program*

CEDP is the flagship program of the National Center for State Court's Institute for Court Management. The only program of its kind in the United States, the CEDP is a four-phase intensive educational program for court employees pursuing management and leadership careers within the judicial branch of government. Admission is open to anyone interested in court management, but mid/upper-level managers in the justice system, including court administrators, clerks of court, and judges with management responsibilities, will receive the greatest benefits.

Those who successfully complete all four phases of this prestigious program become Fellows of ICM. In its 31-year history, CEDP has graduated 980 Fellows in 49 states, the District of Columbia, Guam, and 12 foreign countries.

**Program Purpose.** The overall purpose of the CEDP is to prepare individuals for management and leadership positions in the courts. The CEDP provides comprehensive instruction in areas of functional responsibility associated with court administration—the technical, interpersonal, and conceptual skills needed in today's courts.

**Curriculum.** The four phases of the CEDP build upon each other to develop individuals' analytical, administrative, and communication skills for use in the demanding environment of the courts. Phase I courses are offered across the United States and are open to all. Phase II may be taken only by those who have been formally admitted to the CEDP and who have completed Phase I. Phases III and IV must be taken in order and may be taken only by those who successfully complete

Phase II. The four phases of the CEDP should be completed within five years of admission to the program.

**Phase I–Management of Court Operations.** Participants take six courses during Phase I: Court Performance Standards, Research and Evaluation Methods, Managing Human Resources, Managing Court Financial Resources, Fundamental Issues of Caseflow Management, and a course in the area of technology management. Many of the Phase I topics have introductory, advanced, and applied courses. The online course catalog (<http://www.ncsc.dni.us/icm/catalog/index.html>) lists all National Courses offered by the ICM. The catalog indicates which courses meet CEDP requirements.

**Phase II–Leadership and Management in the Courts and Justice Environment.** Phase II is a three-week course offered in Williamsburg, Virginia. Participants sharpen their conceptual and interpersonal skills while exploring the roles and purposes of courts, the internal and external environments in which courts operate, and modern leadership and management theory and practice as applied to court management. This course emphasizes application of theory and the development of critical thinking.

Prior to the three-week course in Williamsburg, Phase II students participate in an Internet-based Online Institute. While participation in the Online Institute interactive discussion is limited to Phase II students and faculty, anyone interested in the CEDP may see the course materials for the CEDP's current Online Institute.

**Phase III–Court Improvement Project (Independent Study).** Phase III enhances the participants' analytical and writing skills. Participants prepare a master's level research paper relating to the evaluation or implementation of a key court function or activity in their home jurisdiction. This research paper should reflect the equivalent of approximately 50 days of effort over a six-month period. The CEDP director will approve student topics and assign advisors to work with each candidate.

**Phase IV–Concluding Seminar/Summation and Review.** In Phase IV, participants present the results of their Phase III research projects and consider the reports of their classmates. Participants are challenged to place all their learning from CEDP into perspective and to discuss leadership issues and future trends in court management. Phase IV culminates with a graduation ceremony held in Washington, D.C. at the Supreme Court of the United States.

**Faculty.** The CEDP is committed to bridging academic theory and public practice. Faculty members have experience in the public sector and are regularly involved in community service, training, research, or consulting with state or local courts. At the same time, they are scholars who view public affairs as a subject for analysis and evaluation in a broad social and historical context. As ICM faculty, they bring their ability to reflect critically on practical experience to the design of academic programs. Faculty members accomplish this, not by merely adding current case studies to

reading assignments, but by regularly recasting the questions addressed by the program in light of contemporary public concerns.

**Admission Requirements.** CEDP is open to anyone interested in court management. Applicants must have a college degree and five years of management experience. Individuals without a degree or the management experience may request in writing a waiver of either of the requirements. The CEDP director will review the waiver requests.

### **Admission Process Requirements**

- Submission of a CEDP application;
- Submission of a typed cover letter explaining why the applicant wants to pursue a fellowship with the Institute of Court Management. Major duties and responsibilities of current job and career goals should be summarized. This statement helps assess the applicant's interest and motivation for CEDP study and helps gauge the fit between what the program offers and what the applicant hopes to receive from it;
- Submission of a résumé providing evidence of work experience and academic achievement;
- Submission of one letter of recommendation from a direct supervisor or presiding judge that provides clear evidence of the applicant's ability to commit to the time and expense of the CEDP program;
- Submission of an essay (five double-spaced, typed pages) on a public policy issue. In the essay, the applicant should explain the issue clearly, describe the major contending views, state his or her own view and defend it with relevant evidence to back up his or her position. The essay, which is an important element in the overall assessment of the application, will be evaluated on the quality of its analysis and the coherence of its argument. The typed essay may follow any standard style format.

**Admission Deadlines.** Planning is important. While there is no specific deadline for admission in CEDP, prospective students are urged to complete an application early in Phase I.

Applications received by June 1 are ensured consideration for the following year's Phase II class. Admission decisions are made on applications completed by this date. The screening committee will complete selection and formal invitations will be made by October 1. Applicants must acknowledge formal acceptance by November 1.

**Academic Policies.** CEDP will accept one course earned, within the past five years, in programs offered through state or national judicial education organizations or other

accredited institutions. The CEDP director, following review of appropriate materials, including course transcripts or course syllabi, where appropriate, awards waiver credit. A waiver fee of \$100 will be assessed.

### *Court Management Program*

ICM's new Court Management Program (CMP), a two-phased certification program currently available through partnerships or national courses, offers courts cost-effective training options and provides an alternative to ICM's more extensive Court Executive Development Program (CEDP). Its target audience is mid-level managers from all levels of the court environment. Its curriculum expands upon and assists courts in the integration of the National Association for Court Management's core competencies. CMP offers courts and individuals cost-effective training options while providing an alternative to the more extensive CEDP program.

CMP certification is an attractive training option that is available to all participants regardless of their academic background. Developmental in design, the CMP addresses the specific education and training needs of mid-level court managers. The CMP does not require a comprehensive research project and its two phases can be completed over a short period.

CMP graduates are not precluded from participating in ICM's Court Executive Development Program but they will be required to meet all CEDP entrance qualifications; details at <http://www.ncsc.dni.us/ICM/national/cmp.html>.

**Phase I.** CMP Participants take the same six courses during Phase I as CEDP: Court Performance Standards, Research and Evaluation Methods, Managing Human Resources, Managing Court Financial Resources, Fundamental Issues of Caseflow Management, and a course in the area of technology management. Many of the Phase I topics have introductory, advanced, and applied courses. Participants should carefully select the category needed.

**Phase II.** Phase II is a weeklong concluding seminar that builds on the Phase I foundation courses. With their peers and ICM faculty, participants explore the roles and purposes of courts; deal with the concepts of judicial independence and interdependence; become familiar with various leadership and management theories as they apply to courts; and take time to recognize and appreciate not only their own conceptual and interpersonal skills but also those of others. Integral to the program are teambuilding concepts and techniques. Through interactive group work, good communication is emphasized to strengthen participants' critical thinking skills. Phase II culminates in a formal graduation program and awarding of CMP diplomas.

## **National Programs**

The ICM annually delivers approximately 25 courses as part of the National Programs offerings. These courses are delivered at various locations across the country to a mixed audience of court personnel. See the National Programs' Web site, <http://www.ncsc.dni.us/ICM/national/index.html>, for details.

ICM also delivers Web-based classes using WebX conferencing software. This new delivery method allows the ICM to reach audiences in their work settings, while faculty deliver programs from remote sites. The distance learning center provides four methods of program delivery: 1) education forum reading rooms with options for joining threaded discussions, 2) self-paced interactive programs available on demand, 3) videoconferences connecting courts around the country for learning about a topic of common interest, and 4) live web classes linking students through the telephone and computer.

National Programs' courses are stand-alone educational opportunities designed to respond to the education and training needs of the state courts. They are open to all and serve to inform judicial branch personnel of the growing body of knowledge on court leadership and management, case management, human resource management, budget and finance management, information technology management, strategic planning, court performance standards, research methods, and other areas deemed critical to professional development. National Programs' courses are the Phase I foundation courses for ICM's Court Executive Development Program and the Court Management Program.

## **Partnerships**

Partnership programs are created with ICM, state administrative offices of the court, trial courts, or international groups to address the specific needs of those courts and to broaden the education and training opportunities available to their employees. Courses can be standard programs from the ICM curriculum or custom-tailored programs designed to meet the needs of the partnering organization.

## **ICM's Advisory Council**

ICM has a 12-member advisory council with members serving in the courts, academe, business, and in leadership roles. The advisory council was established to advance the education, training, and development programs of ICM. The council serves in a number of ways, including 1) assisting ICM in both long- and short-term strategic planning; 2) reviewing and evaluating program offerings to suggest topics and programs to add, restructure, or discontinue; 3) suggesting improvements in methods of instruction; 4) providing a link between ICM staff and ICM graduates, practitioners, and court



organizations; and 5) assisting ICM in the development of marketing strategies and in promoting ICM programs within the court administration field.

### **National Center for State Courts**

To understand the Institute for Court Management's role in the courts, it is important to view it in the broader context of the National Center for State Courts. NCSC, founded in 1971 at the urging of Chief Justice Warren E. Burger, is governed in part by the leadership of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) as an independent, nonprofit organization. NCSC is responsible for fostering positive, proactive change in judicial administration. By anticipating developments, identifying best practices, promoting innovation, and evaluating court performance, the NCSC achieves its *mission to improve justice through leadership and service to the state courts*. More than 98 percent of all judicial proceedings in the United States occur in state courts, placing a high demand on state courts to become more effective and efficient in judicial administration.

Services provided by the NCSC include consulting, education, and research and information services to the nation's state courts. These are coordinated through program area divisions in Williamsburg, Denver, and Washington, D.C.—Court Consulting Services, Research Services, Technology Services, Association Services, and International Programs, as well as the Institute for Court Management.

A 26-member board of directors that represents all levels and jurisdictions of state courts governs NCSC. Members of the Conference of Chief Justices, the Conference of State Court Administrators, and the National Association for Court Management (NACM) all hold standing positions on the board. The remaining directors are selected from nominations made by the Council of State Court Representatives.

NCSC employs a multidisciplinary staff of 146 with expertise in business, academic, and legal/judicial fields. There are 104 employees in Williamsburg; 18 in Denver; 20 in Washington, D.C.; 1 in Cairo; and 3 in Mongolia. NCSC receives funding from a variety of sources including assessments from the states; education and conference fees; state, federal, and international grants and contracts; and private contributions from corporations, law firms, and individuals.



## APPENDIX D

### Urban Court Managers Network Development of a National Agenda for Urban Trial Courts

*Douglas K. Somerlot, the Justice Management Institute*

The Urban Court Managers Network is, as the name implies, a group of trial court managers from major urban courts from around the United States. The Network was formed in 1997 under a grant from the U.S. Department of Justice, Bureau of Justice Assistance. The Network is cosponsored by the Justice Management Institute (JMI) and the National Association for Court Management (NACM). JMI has provided the staff and support for the group, and the author has served as project director for the activity.

The purpose of the Network is "...to help strengthen the ability of urban court leaders to work effectively—with practitioners in their own jurisdictions, with key justice system policy makers, and with each other—to improve justice operations."

At present, the membership of the network includes the following courts:

Superior Court of Arizona in Maricopa County Phoenix, AZ	Seventh Judicial Circuit Court of Maryland Upper Marlboro, MD
Los Angeles Superior Court Los Angeles, CA	Hennepin County District Court Minneapolis, MN
Alameda County Superior Court Oakland, CA	Circuit Court of Jackson County Kansas City, MO
Orange County Superior Court Santa Ana, CA	Essex County Superior Court Newark, NJ
Riverside County Superior Court Riverside, CA	New York City Criminal Court New York, NY
Ventura County Superior Courts Ventura, CA	Cuyahoga County Court of Common Pleas Cleveland, OH
Denver Municipal Court, Denver, CO	County Criminal Courts at Law Houston, TX
Eleventh Judicial District Court Miami, FL	Harris County District Court Houston, TX
Thirteenth Judicial District Court Tampa, FL	Washington, DC Superior Court, Washington, DC
Fulton County Superior Court Atlanta, GA	

Since its formation, the Network has met three times each year. Each meeting has taken place at the court of one of its members. At each meeting the host court presents innovative activities in which it is currently involved. Following the presentation, a wide-ranging discussion ensues concerning ideas presented during the visit and other key issues of the day. As these discussions occurred over the three-plus years of the Network's existence, it has become clear that there are a number of issues common to these trial courts, and probably to most urban jurisdictions. To bring attention to these issues and generate action toward their resolution, on March 15–16, 2001 the Network convened in Washington, D.C. and developed a *National Agenda for Urban Trial Courts*.

### **The National Agenda**

The *Agenda* has three main goals:

- To express values that provide a foundation for policies that shape delivery of court services for people who live in urban areas,
- To encourage urban courts to assume a leadership role in today's increasingly collaborative justice system, and
- To focus the justice system on the need to provide equal access to justice for all.

The subjects on the *National Agenda* are as follows:

#### **Urban Court Leadership**

Courts exist to serve the litigants and the public. The experience of the business community suggests the importance of the exercise of internal leadership by the segments of organizations that actually deliver services. Urban trial courts provide a major share of the services by courts to the people for whom government exists. Thus, urban trial courts must take a leadership role within the justice system. In recognition of the interdependence of all facets of the justice system, urban trial courts need to lead the efforts for greater collaboration among the various agencies in the system so that all may more effectively strive to achieve the commonly sought result—justice. Further, in order to serve the needs of an increasingly diverse population, leaders of urban trial courts must take a more visible role in creating linkages that allow the valid perspectives and reasonable expectations of the communities to be a part of the planning and day-to-day functioning of the justice system.

#### **Encouragement of Innovation**

Urban trial courts are challenged by the need to meet the people's expectations with restricted resources and in the face of greater control over the allocation of resources by levels of government removed from the direct delivery of court services to people. Urban courts must continually seek ways to provide innovative solutions to emerging issues within the limited resources available.

**Access to Justice**

There must be equal access to the services that the justice system provides. Changes in demographics, linguistics, and the increase in cultural diversity within urban communities combine to present new challenges and opportunities in the delivery of services and the recruitment of employees, jurors, and judges. Courts must ensure that legal representation is available for those that are disadvantaged. The development of innovative programs should be encouraged to ensure that litigants who choose to represent themselves are adequately prepared and can move their cases toward resolution without unnecessary action by the court or intrusion on the time of other litigants.

**Fairness in the Justice System**

The courts must address the perception and reality that some people are treated less fairly than others by the justice system.

**Information**

Current, accurate, and complete information should be available for all the agencies involved in making decisions within the justice system. Integrated computer systems that share data within all facets of the justice system's operation provide a potentially powerful tool for improving the quality and efficiency of decision making, evaluation, and public accountability.

**Technology**

Courts need to encourage technological innovation and remain open to considering ways in which present and future technology may improve the way the basic work of the courts is conducted. Court system leaders have a primary decision-making role in balancing the need to utilize technological advances in order to gain the benefits that innovation can bring while protecting the rights of people and the values upon which justice is based.

**Promptness, Predictability, and Affordability**

Promptness and predictability are essential to providing efficient and effective service by the justice system to the public. Participants in the court system should expect that meaningful activity advancing the case toward a fair resolution will take place each time they are called to the court. Because of the potential impact on people's present lives, and because of the need to protect and nurture those who represent the future, the need for promptness and predictability is especially significant in cases involving families and children. The direct and indirect economic impacts of legal action require the courts to ensure that public and private resources are utilized efficiently and effectively in resolving disputes.

The points contained in the *Agenda* are perhaps nowhere more accurately illustrated than in the 2002 State Justice Institute (SJI) program announcement. SJI solicited proposals for a National Symposium on the Role of the Judge in the Twenty-first Century. While the recently enacted federal budget makes it unlikely that such a conference will be held in the

near future, the issues that might be covered at such a conference, as mentioned in the SJI Grant Guidelines and enlarged upon by a consortium of court organizations preparing a response to the solicitation, indicate how the issues confronting judges and courts have already evolved, and will continue to change.\*

Among the issues identified as potential symposium topics by the consortium were:

- Emergence of the ideas and processes that have come to be called Therapeutic Justice;
- Development of court-supported dispute resolution services for persons who have not yet become litigants;
- Growth of non-court-annexed dispute resolution services;
- Development of sentencing alternatives collectively known as Restorative Justice;
- Growth of the use of intergovernmental partnerships as a means to achieve a wide variety of justice system objectives;
- Development of neighborhood justice programs and community focused justice initiatives;
- Maintenance of (or perhaps redefinition of) judicial neutrality in the face of emergent ideas like therapeutic justice and neighborhood justice;
- Need for re-examination of existing codes of judicial ethics in the face of changes in judicial philosophy;
- Redefinition of separation of powers in terms of roles of judicial branch *vis-a-vis* legislative and executive branch and in terms of funding for services and support;
- Need for changes in the definition and scope of customer service in light of changing demographics—the communities served by courts are increasingly multi-cultural, multi-racial, and multi-lingual, the average age of the population served is rising, the proportion of self-represented litigants is increasing;
- Impact of technology;
- Public expectations and public accountability; and
- Measurement of individual and court performance to consider the emergent program ideas.

The consortium was proceeding from the premise that the issues listed above are already present within the judicial system. Further, that the presence of these issues requires re-evaluation of the role of judges and state courts in light of their impact on the fabric of the justice system as it presently exists.

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\* The consortium responding to SJI's proposal for a symposium on the role of judges in the twenty-first century consisted of representatives of the American Judicature Society, the JERITT Project, the Justice Management Institute, the National Center for State Courts, and the National Judicial College.

### **Basic Research Needed**

Taken together, the *Agenda*'s key points and the issues raised by the SJI solicitation suggest a number of actions that are needed. First, they suggest the need for basic research in order to (a) document innovations in these areas, (b) evaluate the innovations, and (c) encourage replication of innovations that are particularly successful. There is a dearth of current, objective research into justice system-related topics, and almost a total absence of research relating specifically to issues confronted by courts serving urban areas. Because innovations are brought to national attention with increasing speed, too frequently they are proffered as solutions to current issues without thorough evaluation. Courts need to be able to plan based not only on ideas and goals, but also on objective information.

### **Funds for Research**

Second, these points suggest the need for funding at the national, state, and local level in support of the work that needs to be undertaken to respond to issues raised in the *Agenda*. In these difficult financial times and in the face of many competing demands on the limited resources of state and local government, funding to conduct research, encourage innovation, and provide education and training on new ideas and perspectives is often the first thing sacrificed and the last regained. Yet, as our society becomes more diverse, and as expectations of the public grow in pace with the increasing speed of technological change, funds to develop and document innovative approaches to justice system problems need to be provided.

### **Education Based on Research**

Third, these points suggest the need for broadly based education and training of judges and judicial branch staff at the national, state, and local levels—equipping those who will lead and manage the courts of the future with conceptual frameworks, techniques, and perspectives of others already active in developing solutions to the identified problems. While the topics that have formed the basis for “traditional” judicial branch education and training remain relevant, other skills need to be developed, additional knowledge needs to be introduced, and refinement of traditional techniques needs to take place if the next generation of those who manage courts is to succeed.

### **Broad Need for Education**

Following its development in March 2001, the *National Agenda* was presented at NACM's annual meeting. Two reactions by those attending the presentation are particularly interesting. First, a consensus developed that the issues raised in the *Agenda* are applicable to courts of all sizes, serving all types of population areas. Second, it was observed that courts

need to examine the effects of selection and training methods for court leaders, both judges and administrators. NACM developing the *Core Competency Curriculum Guidelines* is an important first step in that process.

## **Implications for Judicial Branch Education**

### *The Basics*

The need continues to teach and acculturate judges and court administrators in the basics. What are the fundamental purposes of courts? What does fundamental fairness mean in the context of dispute resolution? What is judicial independence? What concepts require protection by those whose job it is to care about the rights of people? The basic methods for organizing courts and for measuring court performance need to be re-examined to make sure that technological change and changes in public expectations can be accommodated without damage to the fundamental purposes for which courts exist.

### *New Technologies*

Changing expectations and technological advances demand continuing re-examination and re-education related to the skills, techniques, and tools for managing and conducting the dispute resolution process. Although concepts of court and case management are well established, the tools available to implement the concepts are constantly changing and improving.

### *Changing Roles and Turnover*

The roles of those who manage courts, both presiding judges and court administrators, are evolving. Not only must judicial branch educators teach, train, and strengthen current leaders, but also they must develop and nurture the coming generations of court leaders. Neither the conceptual underpinnings nor the techniques of leadership should be taught like graduate courses only to those who have achieved leadership positions. Leadership, including all its responsibilities and all its ramifications, should be part of the basic and continuing education that everyone receives.

## **Good Training Will Include Success Examples, Collaboration Strategies, and Concepts and Skills for Change**

Judicial branch educators need to take a leadership role in this area. Successful examples of court administrator/presiding judicial officer executive teams need to be studied and presented so they can be replicated. Collaborative management strategies that bring ideas and concepts from other disciplines and communities outside the traditional world of courts need to be developed and encouraged. Conceptual education and the skills-training for court leaders to perform effectively in the face of changing expectations and growing extra-judicial responsibilities are areas where judicial branch educators can play a significant role in shaping the judicial branch of the future.



## APPENDIX E

### JERITT Finds Significant Growth in Two Program Categories

*Jennae L. Rozeboom, JERITT Project*

JERITT has been collecting programming information for 12 years. During that time state, national, and international judicial branch education organizations have submitted over 9,400 programs. Initially, these programs were submitted via the mail. Due to the continued requests from the field, the monthly program reporting form is now available electronically through the JERITT Web site (<http://jeritt.msu.edu>). Along with the submission process being streamlined, JERITT revamped its coding structure based on three factors. First, the coding structure needed to reflect the changes that had been taking place in the field over the past 12 years. Second, it needed to take into consideration the Core Competencies developed by the National Association for Court Management. Third, the structure needed to incorporate the global trends anticipated to affect the courts over the next 25 years. These trends were identified at the National Symposium on the Future of Judicial Branch Education held October 7–9, 1999.

Currently, the JERITT coding structure consists of 23 main categories and 659 subcategories. Over time all the main categories changed somewhat, and two had significant growth—Court Administration, Management, and Leadership and Human Resource Management. Changes in these two categories represent the shifting climate in the field of judicial branch education. They indicate that actively managing the court and its staff has become a higher priority.

Over half the programs in the JERITT database have one or more agenda topics related either to Court Administration, Management, and Leadership and/or Human Resource Management. Currently, the JERITT database contains more than 97,900 agenda topics. Of these agenda topics, 19,445 are related to Court Administration, Management, and Leadership and Human Resource Management.

#### **Programs and Participants Reported to JERITT from 1990 to 2002 in Court Administration, Management, and Leadership and Human Resource Management**

State/ Country	Total Programs	Total Participants	ID		NC		SD	
AL	202	15,897	IL	108 9,964	ND	34 1,712	TN	70 9,923
AR	83	7,729	IN	73 12,192	NE	5 265	TX	330 32,749
Australia	52	4,113	KS	20 4,126	New Zealand	6 260	UT	27 2,004
AZ	135	23,098	KY	92 9,414	NH	79 4,069	VA	139 10,214
CA	350	37,140	LA	40 6,249	NJ	30 6,048	VT	29 2,300
Canada	57	2,482	MA	150 7,029	NM	89 12,248	WA	123 12,303
CO	100	3,220	Malaysia	1 24	NV	427 21,430	WI	64 5,999
CT	79	3,276	MD	19 1,015	NY	32 8,434	WV	60 4,207
DC	126	3,511	ME	2 93	OH	135 10,113	Other	13 788
DE	27	2,021	MI	249 12,939	OK	2 108		
FL	156	14,999	MN	62 4,923	OR	96 5,708		
GA	171	14,329	MO	560 10,887	PA	29 3,107		
HI	59	2,488	MS	131 13,102	RI	6 1,027		
IA	64	6,446	MT	1 29	SC	2 367	<b>TOTALS</b>	5,078 394,213

### JERITT's Coding Structure

#### Main Categories

Civil Law and Procedure	Jury
Communication Skills: Verbal, Nonverbal, and Written	Juveniles/Children
Court Administration, Management, and Leadership	Probate
Crimes and Offenses	Probation and Parole
Criminal Law and Procedure	Public Court Related Education and Outreach
Discipline, Ethics, and Conduct	Role of the Court in Society
Domestic Relations	Sentencing
Evidence	Settlements
Health, Wellness, and Quality of Life In and Out of the Court	Societal/Cultural Issues and the Humanities
Human Resource Management	Substantive Law
Judicial Branch Education	Miscellaneous
Judicial Life and Judicial Role and Responsibilities	

#### Subcategories

##### for Court Administration, Management, and Leadership

General/Other	Managing Court Reform
Acquiring, Managing, and Training of Computer and Software Technologies	Managing Court Services for Pro Per/Pro Se/Self-Represented Litigants
Auditing	Managing High Profile Cases
Budget, Resources, and Finance	Managing Information Systems and Court Statistics
Case and Delay Management	Managing Law Libraries and Legal Research
Colleague and Peer Relations	Managing/Implementing New Legislation, Court Rules, Laws and Other Mandated Changes
Collecting and Accounting for Costs, Fines, Fees, Garnishments, Revenue, and Taxes	Organizational Change and Development
Court Clerks' Roles and Responsibilities	Privatization
Court Executive Component	Problem Diagnosis/Solving
Court Reporting and Recording	Professionalism in the Workplace
Court Security	Project Management
Customer Service: Internal and External	Records Management
Decentralized Courts and Performance Planning	Research Methods: Needs Assessment, Evaluations, and Written/Oral Surveys
Delegation	Setting and Managing Attorney Fees
Electronic Courts	Supervision and Staff Relations
Facilities Management	Team Building
Forms Management	Time Management
Futures, Strategic, Long/Short Range, and Action Planning	Trends and Futures Projections: Impact on the Courts
Giving Legal Advice	Trial Court Performance Standards
Indemnity, Immunity, and Liability	Victim and Witness Treatment Services
Intergovernmental/Interagency Relations	Vision, Missions, Purpose, Philosophy, Goals, and Objectives
Leadership	Volunteers
Managing a Diverse Workforce	
Managing a Non-Traditional Workforce	
Managing Ancillary Services and Court Programs	

#### Subcategories

##### for Human Resource Management

General/Other	Job Description and Classification
Americans with Disabilities Act (ADA)	Medical and Family Leave Act
Career Development	Mentoring Employees New to a Job
Child Care and Elder Care	Motivating and Inspiring
Coaching Problem Employees	Performance Appraisals and Management
Discipline	Personnel Records
Documentation of Performance Issues	Promotions, Demotions, and Transfers
Employee Assistance Programs for Substance Abuse	Recruiting
Equal Opportunity Laws	Retirement
Fair Labor Standards Act	Salaries and Benefits
Grievance Procedures	Sexual Harassment
Hiring	Termination/Discharge
Indemnity, Immunity, and Liability	Training
Interviewing New Hires or for Job Change	Unions and Labor Relations

## ENDNOTES

### Chapter 1 [This is the only chapter with endnotes. —ED.]

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<sup>1</sup> I want to acknowledge the assistance that I received from the Knowledge and Information Service staff of the National Center for State Courts, who provided considerable background information to support my preparation of this chapter.

<sup>2</sup> See David Steelman, John Goerd, and James McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, Va.: National Center for State Courts, 2000), chapters IV and V (pp. 87–124), where I argue that most of the essential elements of successful caseflow management in a court are the very same ones that are also critical for managing courts in general, and indeed for managing any organization well. See also, Peter Drucker's discussion of managing for performance in service institutions, in *Management: Tasks, Responsibilities, Practices* (New York: Harper and Row, 1974), pp. 158–159.

<sup>3</sup> See David Osborne and Ted Gaebler, *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (New York: Penguin Books, 1993), pp. 20–21.

<sup>4</sup> There is also an array of non-adjudicatory tasks that courts do as well, including “legislative” work to develop and promulgate rules of procedure and standards of professional behavior for judges and lawyers; such “executive” functions assigned by statute as inspection of jails and prisons or appointment of certain local government officials; “administrative” functions, like the supervision of estates in probate or of businesses in receivership; and such “ceremonial” functions as the performance of marriages and the naturalization of aliens. Still another set of activities are tasks in aid of adjudication, such as caseflow management, personnel management, resource brokering, and other court management activities, which are the focus of this monograph. See Jethro Lieberman (ed.), *The Role of Courts in American Society* (St. Paul, Minn.: West Publishing, 1984), p. 2.

<sup>5</sup> See Alexander Hamilton, *The Federalist* No. 17, in Hamilton, James Madison, and John Jay, *The Federalist Papers* (New American Library Edition, New York: Mentor Books, 1961), p. 120. What Hamilton meant by “administration of justice” in the Federalist Papers is broader and less specific than what we now mean by “managing the courts.” Indeed, the phrase “court management” was probably unheard of before the twentieth century. See Larry Berkson, “A Brief History of Court Reform,” in Berkson, Steven Hays, and Susan Carbon (eds.), *Managing the State Courts: Text and Readings* (St. Paul, Minn.: West Publishing, 1977), p. 7. The origin of modern notions of court management can probably be traced to Roscoe Pound's famous speech in 1906 on “The Causes of Popular Dissatisfaction with the Administration of Justice” [*American Bar Association Reports* (Vol. 29, 1906) 395; reprinted, *Journal of the American Judicature Society* (Vol. 20, February 1937) 178, and *Federal Rules Decisions* (Vol. 35, 1964) 273], where he urged that greater attention should be given to finding greater efficiency in administering court business. See Ernest Friesen, Edward Gallas, and Nesta Gallas, *Managing the Courts* (Indianapolis, Ind.: Bobbs-Merrill, 1971), pp. 4–6.

<sup>6</sup> This observation has been made by many commentators on courts. See, for example, James Duke Cameron, Isaiah Zimmerman, and Mary Susan Dowling, “The Chief Justice and the Court Administrator: The Evolving Relationship,” *Federal Rules Decisions* (Vol. 113, 1987) 439, at 454, citing Wayne Oglesby and Geoff Gallas. See also, Richard Matsch, “Court Management: Balancing People and Processes,” *Federal Probation* (Vol. 60, No. 1, March 1996) 58.

<sup>7</sup> See *The Federalist* Nos. 16 and 17, in *The Federalist Papers*, at pp. 116 and 120.

<sup>8</sup> See S.E. Finer, *The History of Government from the Earliest Times*, Vol. 3, *Empires, Monarchies, and the Modern State* (New York: Oxford University Press, 1999), pp. 1501–1505.

<sup>9</sup> See Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), pp. 294–323.

<sup>10</sup> See Friesen, Gallas, and Gallas, *Managing the Courts*, pp. 17–18.

<sup>11</sup> See Montesquieu, *The Spirit of Laws* (ed. David Wallace Carrithers) (Berkeley, Calif.: University of California Press, 1977), Book XI, Chapter 6 [5].

<sup>12</sup> See *The Federalist* No. 78, in *The Federalist Papers*, at pp. 464–466.

<sup>13</sup> See Bureau of Justice Assistance, *Trial Court Performance Standards With Commentary* (Monograph NCJ 161570)(Washington, D.C.: U.S. Government Printing Office, 1997), p. 18.

<sup>14</sup> Among the 50 states, the District of Columbia, and Puerto Rico, court systems in fewer than half (24) submit the judicial budget directly to the state legislature; 19 submit the judicial budget to the executive branch; and 9 submit it to the legislature and the executive branch. In 18 of these states or territories, the executive branch can amend the judicial budget, and in 15 this is done routinely. In only 14 states or territories is the judicial budget submitted as a separate bill. See Bureau of Justice Statistics, *State Court Organization 1998*, by David Rottman, David and Melissa Cantrell, Randall Hansen, and Neil LaFountain (Washington, D.C.: U.S. Department of Justice, 2000), Table 17.

<sup>15</sup> Trial-court judicial salaries in 35 of the states or territories are largely paid by the state. Trial court administrator salaries are paid by the state in 23 states or territories. Clerk of court salaries for trial courts are paid primarily by the state in 20 states or territories. Expenses for trial-court facilities are paid largely or in full by the state in only 6 states or territories. All or virtually all trial-court expenses are paid by the state in only 11 states or territories, and in all the others a substantial share of the cost is borne by local government units. See Bureau of Justice Statistics. *State Court Organization 1998*, by David Rottman, David, Melissa Cantrell, Randall Hansen, and Neil LaFountain (Washington, D.C.: U.S. Department of Justice, 2000), Table 18.

<sup>16</sup> See Ernest Friesen, “Constraints and Conflicts in Court Administration,” in Berkson, Hays, and Carbon (eds.), *Managing the State Courts*, p. 38.

<sup>17</sup> Felix Stumpf, *Inherent Powers of the Courts: Sword and Shield of the Judiciary* (Reno, Nev.: National Judicial College, 1994), p. 3.

<sup>18</sup> Carl Baar, “Inherent Powers: Trends and Prospects,” in Stumpf, *Inherent Powers*, at xxiv.

<sup>19</sup> See Robert Tobin, *Creating the Judicial Branch: The Unfinished Reform* (Williamsburg, Va.: National Center for State Courts, 1999), pp. 21–23.

<sup>20</sup> Thomas Henderson and Cornelius Kerwin, *Structuring Justice: The Implications of Court Unification Reforms. Policy Summary* (Washington, DC: National Institute of Justice, 1984), pp. 13–15.

<sup>21</sup> *Ibid.*, pp. 15–16.

<sup>22</sup> See Lawrence M. Friedman, *A History of American Law* (New York: Simon and Schuster, 1973), pp. 109–121 and 323–339.

<sup>23</sup> See Tobin, *Creating the Judicial Branch: The Unfinished Reform*, pp. 27–30.

<sup>24</sup> Initial State Judicial Selection Methods, 2000: Merit selection through nominating commission, 15 states and DC; Gubernatorial appointment without nominating commission, 3 states; Legislative appointment without

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nominating commission, 2 states; Partisan election, 9 states; Nonpartisan election, 12 states; Combined merit selection and other methods, 9 states. From American Judicature Society, *Judicial Selection in the States: Appellate and General Jurisdiction Courts* (Chicago: American Judicature Society, 2000).

<sup>25</sup> See American Bar Association, Standing Committee on Judicial Independence, *Report of Commission on Public Financing of Judicial Campaigns* (Chicago: American Bar Association, 2001), pp. 9–20.

<sup>26</sup> See American Bar Association, *Standards on State Judicial Selection* (Chicago: American Bar Association, 2000), p. iv.

<sup>27</sup> Steven Hays, “The Traditional Managers: Judges and Court Clerks,” in Steven Hays and Cole Blease Graham (eds.), *Handbook of Court Administration and Management* (New York: Marcel Dekker, 1993), p. 230.

<sup>28</sup> See Ryan, et al., *American Trial Judges*, p. 115.

<sup>29</sup> Ernest Friesen, “Constraints and Conflicts in Court Administration,” in *Managing the State Courts*, p. 40.

<sup>30</sup> This hardly differs from the interest that many physicians may have in hospital administration, among all of the topics of potential interest to health-care administrators. See David Saari, *American Court Management: Theories and Practices* (Westport, Conn.: Quorum Books, 1982), pp. 3–4.

<sup>31</sup> See Ronald Stupak, “Court Leadership in Transition: Fast Forward Toward the Year 2000,” *The Justice System Journal* (Vol. 15, No. 1, 1991) 617, at 619.

<sup>32</sup> See Friesen, Gallas, and Gallas, *Managing the Courts*, p. 13.

<sup>33</sup> See David Saari, “New Ideas for Court Administration: Applying Social Science to Law,” *Judicature* (Vol. 51, 1967) 82.

<sup>34</sup> Friesen, Gallas, and Gallas, *Managing the Courts*, p. 150.

<sup>35</sup> See Mintzberg, *The Structure of Organizations* (Englewood Cliffs, N.J.: Prentice-Hall, 1979).

<sup>36</sup> *The Structure of Organizations*, pp. 358–360, as discussed by Keith Stott, in “The Judicial Executive: Toward Greater Congruence in an Emerging Profession,” *The Justice System Journal* (Vol. 7, No. 2, Summer 1982) 152, at 157–158.

<sup>37</sup> Steven Hays, “The Traditional Managers: Judges,” in Berkson, Hays, and Carbon (eds.), *Managing the State Courts*, p. 171.

<sup>38</sup> James Duke Cameron, Isaiah Zimmerman, and Mary Susan Dowling, “The Chief Justice and the Court Administrator: The Evolving Relationship,” *Federal Rules Decisions* (Vol. 113, 1987) 439, at 453.

<sup>39</sup> Stott, “The Judicial Executive: Toward Greater Congruence in an Emerging Profession,” at 158.

<sup>40</sup> Ronald Stupak, “Court Leadership in Transition: Fast Forward Toward the Year 2000,” at 620.

<sup>41</sup> See Friesen, Gallas, and Gallas, *Managing the Courts*, p. 113.

<sup>42</sup> Ronald Stupak, “Court Managers as Leaders: An Active Strategy for Understanding and Using Power,” *The Court Manager* (Vol. 16, No. 2, 2001) 19, at 20.

<sup>43</sup> Servicing as a spokesperson on behalf of the court in discussions with such representatives of outside organizations as prosecutors and county board members is an important way for the chief judge of a trial court to use the power of that position. See David Rottman and William Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal* (Williamsburg, Va.: National Center for State Courts, 1996), p. 86.

<sup>44</sup> Stupak, "Court Managers as Leaders," at 20.

<sup>45</sup> See Keith Stott's discussion of Henry Mintzberg's theoretical framework for understanding the management of professional organizations as it applies to court management, in "The Judicial Executive: Toward Greater Congruence in an Emerging Profession," at 157–158.

<sup>46</sup> Titles for the judges in such positions vary from state to state, including chief judge, presiding judge, administrative judge, president judge, assignment judge, chancellor, first judge, supervisory judge, senior judge, chief judge for administration, and chief magistrate. In four states, there is no judge in such a position; in other states, there are some levels of trial court in which there is no judge in such a position. In 18 states, chief judges generally receive more pay than their colleagues; but in 25 states they generally do not. There is a wide range of management matters that can be within the scope of a chief or presiding judge's authority, such as (a) supervision of non-judicial employees; (b) assignment of cases to judges; (c) assignment of judges; (d) requesting visiting judges; (e) selecting quasi-judicial officers; (f) supervision of fiscal affairs; (g) establishing special judge committees; (h) public relations; (i) maintaining statistics and management information systems; and (j) evaluation of court effectiveness. But few states give chief judges authority in all of these areas. *State Court Organization 1998*, Table 30.

<sup>47</sup> See David Rottman and William Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal* (Williamsburg, Va.: National Center for State Courts, 1996), p. 84.

<sup>48</sup> *Ibid.*, p. 85.

<sup>49</sup> States vary considerably in terms of trial court structure, with some having only one statewide consolidated trial court and others having a number of local county- or municipal-level trial courts. See the court structure charts in *State Court Organization 1998*, pp. 315–369. Methods for selection of a chief judge may vary within a state according to the level of trial court, and in some states there is local variation within the same level of trial court. Federal district court chief judges are selected by seniority, but that is now the selection method in only a minority of state trial courts (10). There are 38 courts where the chief judge is selected by colleagues. State-level court leaders (the supreme court, the chief justice, or the state court administrator) select the chief judge in 33 trial courts. Chief judges for 14 trial courts are selected by gubernatorial appointment. Chief judges are directly elected in only 2 trial courts. See *State Court Organization 1998*, Table 7.

<sup>50</sup> The most common term of office for a state trial judge is 6 years (48 trial courts) or 4 years (32 trial courts). In 23 trial courts, there are local variations within a state regarding a chief judge's duration of service, and in 20 others the chief serves at pleasure. Otherwise, the most common duration of service for a chief judge is 2 years (21 courts) or 1 year (18 courts). In 60 state trial courts, the duration of service as chief judge is shorter than a trial judge's term of office. See *State Court Organization 1998*, Table 7.

<sup>51</sup> Rather than having the title of "clerk," some of these officials are called "registers" or "prothonotaries."

<sup>52</sup> See Steven Hays, "The Traditional Managers: Judges and Court Clerks," in Hays and Graham (eds.), *Handbook of Court Administration and Management*, p. 221.

<sup>53</sup> See Robert Tobin, *Creating the Judicial Branch: The Unfinished Reform*, pp. 70–72; Steven Hays, "The Traditional Managers: Judges and Court Clerks," in Hays and Graham (eds.), *Handbook of Court Administration and Management*, pp. 230–231; and Larry Berkson and Steven Hays, "The Traditional Managers: Court Clerks," in Berkson, Hays, and Carbon (eds.), *Managing the State Courts*, p. 175.

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<sup>54</sup> Hays, "The Traditional Managers: Judges and Court Clerks," p. 233.

<sup>55</sup> See David Saari, Michael Planet, and Marcus Reinkensmeyer, "The Modern Court Managers: Who They Are and What They Do in the United States," in Hays and Graham (eds.), *Handbook of Court Administration and Management*, p. 237; See also, Harry Lawson and Dennis Howard, "Development of the Profession of Court Management: A History with Commentary," *The Justice System Journal* (Vol. 15, No. 2, 1991) 580.

<sup>56</sup> See Geoff Gallas and Edward Gallas, "Court Management Past, Present and Future," *The Justice System Journal* (Vol. 15, No. 2, 1991) 605, at 613.

<sup>57</sup> See National Association for Court Management, *2000 Membership Directory* (Williamsburg, Va.: National Association for Court Management, 2000). Not all NACM members are court administrators. Some members are clerks of court, some are court support staff members, a few are judges, and others are persons interested in trial court administration.

<sup>58</sup> See *State Court Organization 1998*, Table 32.

<sup>59</sup> Responses to a trial court administrator survey conducted in 1989 showed considerable variance in the courts that they served, in the nature of the positions they filled, and in their own personal backgrounds and characteristics. Survey researchers concluded that such diversity apparently was a result of the particular needs and expectations of local judges, vast differences in court size, and unique characteristics of various jurisdictions. These factors also had considerable bearing on local legal culture, scope and directions of administrative policy, and the pace of organizational change. The survey results suggest further that the duties and responsibilities of trial court administrators have evolved over time, in part because of (a) growing professionalization; (b) bringing such expertise as budgeting, caseload management, or automation technology; and (c) identification of diverse functions in courts as complex organizations. Three basic areas of trial court administrator responsibility appeared to be common: (1) operations (case management, calendaring, courtroom support, research, and program development); (2) fiscal services (budget, fiscal management, grant management, and planning); and (3) special support services (jury, court reporters, interpreters, facilities, personnel, technology, probation, pretrial services, and security). See Saari, Planet, and Reinkensmeyer, "The Modern Court Managers: Who They Are and What They Do in the United States," in Hays and Graham (eds.), *Handbook of Court Administration and Management*, pp. 251–252.

<sup>60</sup> Steven Hays and Larry Berkson, "The New Court Managers: Court Administrators," in Berkson, Hays, and Carbon (eds.), *Managing the State Courts*, p. 192.

<sup>61</sup> Hays, "The Traditional Managers: Judges," in *Managing the Courts*, p. 170, and Hays, "The Traditional Managers: Judges and Court Clerks," in Hays and Graham (eds.), *Handbook of Court Administration and Management*, p. 227.

<sup>62</sup> See Mark Zaffarano, "The Professional Court Manager: Have the Traditional Roles Changed?" *The Court Manager* (Vol. 3, No. 1, Winter 1988) 6, at 7.

<sup>63</sup> See, for example, Richard Matsch, "Court Management: Balancing People and Processes," *Federal Probation* (Vol. 60, No. 1, March 1996) 58, and Paul Wice, "Court Reform and Judicial Leadership: A Theoretical Discussion," *The Justice System Journal* (Vol. 17, No. 3, 1995) 309.

<sup>64</sup> See Matsch, "Court Management: Balancing People and Processes," 58–59; see also, Bryan Borys, Cynthia Banks, and Darrell Parker, "Enlisting the Justice Community in Court Improvement," *Judicature* (Vol. 82, No. 4, January-February 1999) 176.

<sup>65</sup> See David Rottman and William Hewitt, *Trial Court Structure and Performance: A Contemporary Reappraisal*, pp. 85–86.

<sup>66</sup> A notable legal academic critic of active case management by judges was Professor Judith Resnik, in her article entitled, “Managerial Judges,” *Harvard Law Review* (Vol. 96, December 1982) 374, which was also published as a monograph (Santa Monica, Calif.: Rand Corporation, Institute for Civil Justice, 1982).

<sup>67</sup> See David Steelman, “What Have We Learned About Court Delay, ‘Local Legal Culture,’ and Caseflow Management Since the Late 1970s?” *The Justice System Journal* (Vol. 19, No. 2, 1997) 145.

<sup>68</sup> In support of active caseflow management by courts, Richard Hoffman recently challenged the views expressed by Resnik and other legal academics in his article, “The Last Frontier: Optimizing Court Management Despite Legal Academe,” *The Court Manager* (Volume 16, No. 1, 2001) 9.

<sup>69</sup> Friesen, Gallas, and Gallas, *Managing the Courts*, p. 48.

<sup>70</sup> See Steelman, Goerdt, and McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium*, pp. 3–33.

<sup>71</sup> See Ryan, et al., *American Trial Judges*, pp. 97–98.

<sup>72</sup> See Friesen, Gallas, and Gallas, *Managing the Courts*, p. 64.

<sup>73</sup> According to Malcolm Feeley, court operations can be seen to involve a multiplicity of “games,” in that judges, prosecutors, defense attorneys, defendants, clerks, police officers, bailiffs, sheriffs, bondsmen, witnesses, and others come to the courthouse with distinctly different interests and purposes and may understand their participation in process in entirely different ways. Police are involved in a “public order” game, responsive to citizen complaints about domestic violence, public disturbances, and personal safety. Prosecutors are involved in “public order” and “civic virtue” games. Defense attorneys play a variation of the prosecutors’ game, using procedure and rules to obtain the most desirable outcome. The court process thus involves a collection of individuals who, while sharing common concerns and interests and knowing they must work together to process criminal defendants, are also engaged in a variety of other enterprises not formally acknowledged in the law. See Feeley, *Court Reform on Trial: Why Simple Solutions Fail* (New York: Basic Books, 1983), pp. 10–11.

<sup>74</sup> See Steelman, Goerdt, and McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium*, pp. 97–101 and 180–182.

<sup>75</sup> *Ibid.*, p. 11.

<sup>76</sup> Thomas Henderson and Cornelius Kerwin, *Structuring Justice: The Implications of Court Unification Reforms. Policy Summary*, pp. 8–13.

<sup>77</sup> *Ibid.*, pp. 9–13.

<sup>78</sup> *Ibid.*, pp. 70–75.

<sup>79</sup> See Steelman, Goerdt, and McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium*, p. 17, citing Brian Ostrom and Neal Kauder (eds.), *Examining the Work of State Trial Courts, 1996* (Williamsburg, Va.: National Center for State Courts, 1997), pp. 25, 30, and 57.

<sup>80</sup> See Ernest Friesen, “Constraints and Conflicts in Court Administration,” in Berkson, Hays, and Carbon (eds.), *Managing the State Courts: Text and Readings*, pp. 40–41.



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<sup>81</sup> See Dale Sipes and Mary Oram, *On Trial: The Length of Civil and Criminal Trials* (Williamsburg, Va.: National Center for State Courts, 1988), p. 69, where the authors report their finding that judge control over attorney questions in jury selection is a key way to shorten trial times. Adoption of judge control over jury selection has been far from universal, however, because of resistance from attorneys and judges.

<sup>82</sup> Steven Hays has observed that the peculiar nature of the American legal establishment, with its emphasis on precedent making courts perhaps the most traditional and static of all public institutions, serves as an obstacle to efficient administration. Judges and attorneys may often want to retain the status quo, since changes might call for them to re-educate themselves and change their operating methods. Hays, "The Traditional Managers: Judges," in Berkson, Hays, and Carbon (eds.), *Managing the State Courts*, p. 171.

<sup>83</sup> Ronald Stupak has observed that the investment of courts in the constitution and "justice" has a potential side effect of making them backward-looking entities. He observes that the legal profession's domination of the mindset of court leaders means that courts are destined to be suspicious of dynamic change processes, instead of being "proactively ahead of the power curve," so that they might control their environment rather than being pushed or dragged by it in certain directions. The law's reverence for precedent and confidence in established customs poses limits on the pace and nature of change in courts. Yet technology and stakeholder involvement in decisions are among the criteria demanding performance in judicial productivity, and courts cannot continue to wait until "something is broke before they fix it." Stupak urges judicial leaders to act strategically, consciously, proactively, and flexibly to move ahead and create new judicial paradigms, both substantively and managerially. See Stupak, "Court Leadership in Transition: Fast Forward Toward the Year 2000," at 620–621.

<sup>84</sup> John Martin and Brenda Wagenknecht-Ivey, "Courts 2010: Critical Trends Shaping the Courts in the Next Decade," *The Court Manager* (Vol. 15, No. 1, 2000) 6, at 6–12.

<sup>85</sup> *Ibid.*, pp. 13–15.

<sup>86</sup> See, for example Matsch, "Court Management: Balancing People and Processes," 58, as well as Borys, Banks, and Parker, "Enlisting the Justice Community in Court Improvement," 176.

<sup>87</sup> Mintzberg, "Managing Government, Governing Management," *Harvard Business Review* (May-June 1996) 75.

<sup>88</sup> See Phillippe Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978), pp. 18, 53, and 73–74.