

Defining Optimal Court Performance: The Trial Court Performance Standards

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Eleven years ago twelve individuals from the court community met for the first time in Arlington, Virginia, to discuss the fundamental responsibilities of courts. The fruits of their discussion, the Trial Court Performance Standards, articulate the fundamental purposes of courts and offer the court community a way of communicating with each other and their constituents about the work of courts.¹ How the Standards were developed, what they are, and their potential benefits are the subject of this article.

I. SETTING THE STAGE FOR PERFORMANCE

What led to the development of court performance standards? In 1987, court reform focused primarily on the structure and machinery of courts—what courts looked like organizationally and how they did what they did. For example, studies considered how many judges, courtrooms, and computers were needed to accomplish the court's work, and examined issues like what type of calendaring system, jury management system, or management information system was most effective. However, several environmental forces were beginning to push courts — subtly and not-so-subtly — toward a more outcome-oriented approach. Consider the following environmental forces affecting courts during this time:

- In the mid-1980s, many of the nation's criminal courts were facing dramatic increases in their drug caseloads, with concomitant effects on other court caseloads and court business in general.² Some courts responded to the crisis by diverting resources from civil and family cases to handle the drug caseloads. These kinds of responses prompted some judges and court managers to consider questions about the fundamental priorities of courts: "The drug crisis is propelling us to look at this issue of who are we and what are we doing in a very different way than we've historically done."³
- By the 1980s, the professional court manager was a visible and common member of the broader court community.⁴ Many courts now had a professional who was charged explicitly with the task of examining the work of the court

from an organizational perspective — what is the court doing and how can it do it better?

- In the early 1980s, the court community revisited the problem of court delay.⁵ Much of the effort in this area was focused on improving the *process* of moving cases through the system. However, the intense examination of delay led to discussions about its consequences on court *goals* in general, such as access to justice, fairness, and public confidence.⁶
- Although Osborne and Gaebler's *Reinventing Government*, with its emphasis on performance-based public institutions, would not be released until 1992, rumblings that the public was dissatisfied with courts⁷ already were motivating some in the court community to consider ways to demonstrate court effectiveness.⁸ Given shrinking public resources, court leaders were finding that legislators also were seeking information on court effectiveness. Some court leaders were concerned that if the court community did not take up performance issues, someone else — with less information about the courts — would.

These and other forces conspired in the late 1980s to prompt court leaders to develop court performance standards. Court structures and processes were still considered important, but they needed to be evaluated against the ends toward which courts strive.

II. DEVELOPING THE STANDARDS

In 1987, the National Center for State Courts received funding from the Bureau of Justice Assistance to establish the Commission on Trial Court Performance Standards and to support the Commission's work of developing a set of performance standards and measures for state courts. The twelve-member Commission included state and local judges, state and local court administrators, an elected clerk of court and scholars in the area of judicial administration. The Commission was extremely active in the development of the Standards, striving to ensure that the Standards would be relevant to courts and

Footnotes

1. BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY 1-2 (1997).
2. See Robert D. Lipscher, *The Judicial Response to the Drug Crisis*, ST. CT. J., Fall 1989, at 13, 14-15.
3. *The Drugging of the Courts: How Sick Is the Patient and What Is the Treatment?*, 73 JUDICATURE 314, 315 (1990).
4. See G. Larry Mays & William A. Taggart, *Local Court Administration: Findings from a Survey of Appointed Managers*, 69

JUDICATURE 29, 30 (1985).

5. See Larry L. Sipes, *The National Conference on Court Delay Reduction: Observations*, ST. CT. J., Fall 1985, at 3, 3.
6. See William W. Falsgraf, *The Quest for Justice: Cost and Delay Threaten Equal Access to the Courts*, ST. CT. J., Fall 1985, at 6, 6.
7. See John M. Greacen, *What Standards Should We Use to Judge Our Courts?*, 72 JUDICATURE 23, 24-25 (1988).
8. See *id.* at 26-28.

accurately reflect court goals.

Throughout the three-year development phase, the Commission sought feedback from the court community about its work. In 1989, for example, approximately 5,000 copies of the tentative Trial Court Performance Standards were distributed to individuals and organizations for the purpose of review and comment. In addition, Commission members and staff made presentations to various judicial audiences to keep them informed of the process and to solicit reactions to developing ideas.

The final version of the Standards was released in 1990. They were subsequently endorsed by the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management, and, most recently, the American Judges Association. The Standards also were incorporated into the National Probate Court Standards and spawned another project to develop appellate court performance standards.

III. DEFINING COURT PERFORMANCE

The Commission identified twenty-two standards or guiding principles for courts that fall into five broad performance areas:

1. **ACCESS TO JUSTICE:** Trial courts should ensure that the structure and machinery of the courts are accessible to those they serve.
2. **EXPEDITION AND TIMELINESS:** Trial courts should meet their responsibilities in a timely and expeditious manner.
3. **EQUALITY, FAIRNESS AND INTEGRITY:** Trial courts should provide due process and equal protection of the law to all who have business before them.
4. **INDEPENDENCE AND ACCOUNTABILITY:** Trial courts should establish their legal and organizational boundaries, monitor and control their operations, and account publicly for their performance.
5. **PUBLIC TRUST AND CONFIDENCE:** Trial courts should work to instill public trust that courts are accessible, fair and accountable.

These five areas encompass the fundamental purposes and responsibilities of courts. The specific standards in each area are described in the following sections.

A. Access to Justice

Access is a basic requirement of a fair and equitable justice system. Griffin Bell, former Attorney General of the United States, reflected on the importance of access: "There can be no equal justice under law unless all of our people have access to justice . . . It does not matter how fair our laws may be, if access to their enforcement is denied or unavailable."⁹ The five standards included in the access to justice performance area address geographic, economic, procedural, language, or psychological barriers that may inhibit access to a court's services. Specifically, the standards provide that a trial court

should:

- conduct its proceedings and other public business openly;
- maintain facilities that are safe, accessible, and convenient to use;
- provide an opportunity for all who appear before the court to participate effectively, without undue hardship or inconvenience;
- ensure that judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come in contact; and
- maintain reasonable, fair, and affordable costs of access to court proceedings and records — whether the costs are measured in terms of money, time, or the procedures that must be followed.

These standards encourage judges and court staff to look at their courts from the perspective of court users. How easy or difficult is it for the general public to get to the court, find their way around the court, obtain information about the court, participate in a proceeding, and so forth, despite their general unfamiliarity with the court and its procedures?

B. Expedition and Timeliness

In its 1975 decision in *Southern Pacific Transportation Co. v. Stoot*,¹⁰ the Texas Supreme Court noted that delay "postpones the rectification of wrong and the vindication of the unjustly accused," crowds court dockets, increases litigants' costs, pressures judges to take shortcuts, interferes with the prompt resolution of cases in which all parties are prepared, highlights the disorganization of the system, and increases the possibility of error in the fact-finding process.¹¹

As already noted, timely case processing was a serious concern among judges and court staff when the development of the Standards began. In crafting the standards for this performance area, the Commission expanded the concept of timely case processing to all of a court's activities. In so doing, the Commission acknowledged the importance of timely court actions not only to litigants, but to all those involved with the judicial system, including jurors, attorneys, witnesses, criminal justice agencies, social service agencies, and members of the public. Specifically, the three standards in this area ask a court to:

- establish and comply with recognized guidelines for timely case processing while, at the same time, remaining current with its incoming caseload;
- disburse its funds promptly, provide reports and information according to required schedules, and respond to requests for information and other services on an established schedule that ensures their effective use; and
- promptly implement changes in law and procedure.

C. Equality, Fairness, and Integrity

"Courts can take no better measure to assure that laws will be just than to require that laws be equal in operation."¹² The standards in this core area of court performance recognize the

9. Address by Griffin B. Bell (Mar. 19, 1978), in NATIONAL CTR. FOR STATE COURTS, STATE COURTS: A BLUEPRINT FOR THE FUTURE 290 (Theodore J. Fetter ed., 1978).

10. 530 S.W.2d 930 (Tex. 1975).

11. See *id.* at 931.

constitutional guarantees of due process and equal protection of the law. They emphasize fidelity to established laws and procedures and the importance of court orders that are explicit and enforceable.

Specifically, the six standards in this area ask a trial court to:

- faithfully adhere to relevant laws, procedural rules, and established policies;
- maintain jury lists that are representative of the jurisdiction from which they are drawn;
- give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors;
- render decisions that unambiguously address the issues presented and clearly indicate how compliance can be achieved;
- take appropriate responsibility for the enforcement of its orders; and
- monitor records of all relevant court decisions and actions for accuracy and proper preservation.

D. Independence and Accountability

The standards in the fourth performance area recognize the importance of “an independent and honorable judiciary.”¹³ They call for the judiciary to maintain its distinctiveness as a separate branch of government, while also maintaining effective working relationships with the other branches of government and with other components of the justice system. In a speech observing the Bicentennial, Chief Justice Warren Burger remarked on the complexity of the relationships among the three branches of government: “But we should always remember that, even though independent, they were intended to be coordinate as well as co-equal. The idea of coordinate clearly implies that the separate powers must be harmonized into a workable whole.”¹⁴

This performance area’s standards also focus on the court’s status as a public institution. They hold a court responsible for developing action plans, obtaining resources for implementing the plans, monitoring its operations, and accounting publicly for its performance. Specifically, the standards direct a court to:

- maintain its institutional integrity and observe the principle of comity in its governmental relations;
- responsibly seek, use, and account for its public resources;
- use fair employment practices;
- inform the community about its programs; and
- anticipate new conditions or emergent events and adjust its operations as necessary.

E. Public Trust and Confidence

The judicial system derives its power and legitimacy from the public’s trust. Thus it is critical that the public “see and know” that justice is being done. The standards in this fifth and final performance area ask a court to consider its overall

performance through the eyes of the various constituencies it serves. The three standards in this area urge a trial court to foster public trust and confidence to achieve the following results:

- that the public perceives the trial court and the justice it delivers as accessible;
- that the public has trust and confidence that basic trial court functions are conducted expeditiously and fairly and that court decisions have integrity; and
- that the public perceives the trial court as independent, accountable, and not unduly influenced by other components of government.

IV. MEASURING COURT PERFORMANCE

Once the Standards were developed, the Commission (now consisting of fourteen members) and staff began developing measures to help a court gauge how well it is performing with regard to the performance goals. The Commission and staff brainstormed about possible measures (there being few existing measures of performance back then), wrote up the most viable, tested the measures in three courts, and then revised the measures based on the test results. The testing phase was important to determine whether: (a) the measures made any sense in the real world of courts, (b) the data actually existed or could be obtained, and (c) the information from the measures would be helpful to those who work in the courts. As a result of this process, seventy-five performance measures were produced.

The Standards and measures subsequently were implemented in twelve courts in four states. The courts varied along several dimensions, such as size, organization, and state law. As the demonstration proceeded, the Commission and staff reviewed the experiences of the various courts and revised measures accordingly. At the completion of the demonstration phase, several of the original seventy-five measures had been modified, replaced, or eliminated. The resulting measurement system included sixty-eight measures.

The measures use a variety of data collection methods and techniques, including: (a) observations and simulations, (b) structured interviews, (c) case and administrative record reviews and searches, (d) surveys of various reference groups, such as the general public, court employees, and members of the media, and (e) group techniques, such as brainstorming and focus groups. The use of multiple measures and diverse sources of information increases confidence in the accuracy and validity of the assessments.

As an example, three measures that rely on structured observations of the court are used to gauge performance on Standard 1.1, Public Proceedings. The first measure verifies that court proceedings that should be open to the public are open; the second examines whether an observer can identify what proceeding is underway in a courtroom; and the third determines

12. *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 113 (1949) (Jackson, J., concurring).

13. STANDING COMM. ON ETHICS AND PROF’L RESPONSIBILITY, AM. BAR ASS’N, MODEL CODE OF JUDICIAL CONDUCT (1990), AS SUBMITTED FOR CONSIDERATION AT THE 1990 ANNUAL MEETING OF THE HOUSE OF

DELEGATES OF THE AMERICAN BAR ASSOCIATION, Canon 1, App. a, at 7 (1990).

14. Warren E. Burger, *The Interdependence of Our Freedoms, in AMERICAN COURTS & JUSTICE* 1, 5 (Glenn R. Winters & Edward J. Schoenbaum eds., 1976).

THE TRIAL COURT PERFORMANCE STANDARDS

AREA 1 - ACCESS TO JUSTICE

- 1.1 *Public Proceedings.* The trial court conducts its proceedings and other public business openly.
- 1.2 *Safety, Accessibility and Convenience.* Trial court facilities are safe, accessible and convenient to use.
- 1.3 *Effective Participation.* The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.
- 1.4 *Courtesy, Responsiveness and Respect.* Judges and other trial court personnel are courteous and responsive to the public, and accord respect to all with whom they come in contact.
- 1.5 *Affordable Costs of Access.* The costs of access to trial court proceedings and records – whether measured in terms of money, time or the procedures that must be followed – are reasonable, fair and affordable.

AREA 2 - EXPEDITION AND TIMELINESS

- 2.1 *Case Processing.* The trial court establishes and complies with recognized guidelines for timely case processing, while, at the same time, keeping current with its incoming caseload.
- 2.2 *Compliance with Schedules.* The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.
- 2.3 *Prompt Implementation of Law and Procedure.* The trial court promptly implements changes in law and procedure.

AREA 3 - EQUALITY, FAIRNESS AND INTEGRITY

- 3.1 *Fair and Reliable Judicial Process.* Trial court procedures faithfully adhere to relevant laws, procedural rules and established policies.
- 3.2 *Juries.* Jury lists are representative of the jurisdiction from which they are drawn.
- 3.3 *Court Decisions and Actions.* Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.
- 3.4 *Clarity.* The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.
- 3.5 *Responsibility for Enforcement.* The trial court takes appropriate responsibility for enforcement of its orders.
- 3.6 *Production and Preservation of Records.* Records of all relevant court decisions and actions are accurate and properly preserved.

AREA 4 - INDEPENDENCE AND ACCOUNTABILITY

- 4.1 *Independence and Comity.* The trial court maintains its institutional integrity and observes the principle of comity in governmental relations.
- 4.2 *Accountability for Public Resources.* The trial court responsibly seeks, uses and accounts for its public resources.
- 4.3 *Personnel Practices and Decisions.* The trial court uses fair employment practices.
- 4.4 *Public Education.* The trial court informs the community about its programs.
- 4.5 *Response to Change.* The trial court anticipates new conditions and emergent events and adjusts its operations as necessary.

AREA 5 - PUBLIC TRUST AND CONFIDENCE

- 5.1 *Accessibility.* The public perceives the trial court and the justice it delivers as accessible.
- 5.2 *Expedition, Fair and Reliable Court Functions.* The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly, and that court decisions have integrity.
- 5.3 *Judicial Independence and Accountability.* The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable.

whether an observer can actually hear what is going on in the courtroom. Taken together, these three measures tell court officials whether individuals can gain entry to, identify, and hear a particular court proceeding, all components of having open and accessible proceedings.

V. USING THE STANDARDS AND MEASURES

There are two important caveats to note about using the Standards. First, the Standards define court performance — not judicial performance. The Commission expressly stated that the Standards were not appropriate for gauging the performance of *individual* judges. Rather, the Standards address the court as an organization, consisting not only of judges but of all who perform judicial and administrative court functions, including clerks, managers, probation officers, lawyers, and social service providers.

Second, the Standards and measures are intended for purposes of *internal* evaluation, self-assessment and self-improvement. They are not intended or recommended as a basis for cross-court comparison or accreditation programs.

The Standards and measures are tools that judges and court managers can use in a variety of ways. For example, the Standards can be helpful in explaining what courts do. Judges have found the Standards helpful in preparing presentations to civic groups about the purposes of courts or in explaining various court functions to legislators and city council members. Judges and court staff also have found them helpful in communicating with one another and others in the broader justice system.

The Standards can be a resource for developing a court's mission and strategic plan, framing problems or issues, evaluating current court performance, and identifying potential strategies for addressing specific problems. A court can use the entire package or focus on one or two standards and measures. The key is that the Standards and measures do not represent a rigid system; courts should use them as they deem helpful.

Two examples of different implementation approaches might be helpful. The first is the comprehensive approach taken by the Los Angeles Municipal Court in California. After attending an educational program on the Standards, several of the court's judges decided to incorporate the Standards and measures into the court's strategic planning efforts. They established an implementation committee of judges, a commissioner, and executive management staff. The committee led an extensive effort to implement all of the sixty-eight measures, except for those that were not relevant or adaptable to a municipal court jurisdiction or those for which similar data already was being gathered by the court.

The Los Angeles Municipal Court's experience with the Standards provided the court with specific data that was used as a basis for improving various court operations and procedures. As a result of the measurement process, the court laid the groundwork for institutionalizing a culture of continuous self-assessment and improvement. The court has identified a set of measures to incorporate into its routine operations and a set to undertake on a more periodic basis.

The all-encompassing approach of the Los Angeles Municipal Court to implementing the Standards demonstrates how the Standards can be used in a comprehensive way to

inform the on-going strategic planning process of a court. The Los Angeles experience also illustrates the adaptability of the Standards to the limited jurisdiction and municipal court environments.

The experience of the Fifty-Second District Court, First Division, in Oakland County, Michigan, illustrates the use of the Standards to address a particular issue. The judges of that court were interested in learning what the community thought about the court's performance. They also were interested in exploring how the court could work with the community to better serve the public. They started with a measure in the public trust and confidence performance area that sought the general public's perceptions of the court through a telephone survey. Because the judges wanted to reach out to and interact with the community, they decided to obtain the public's perceptions through a series of town hall meetings. They modified the original questionnaire to address some additional issues the court was interested in and made the questionnaire available through newspaper outlets and community organizations.

The judges learned that those who were familiar with the court were satisfied with the court's performance, but that the majority of town hall participants did not know much about the court or how it worked. Consequently, the judges plan to issue an annual report, create an Internet site, and provide news media with information on how certain court processes work. A commitment to print the articles already has been obtained. In addition, the court is in the process of analyzing the questionnaire responses to identify other areas that may need to be addressed and other potential strategies for improving performance.

The Michigan example demonstrates some of the side benefits that can occur as a result of undertaking a measure. The court not only learned how the community perceived its performance (the main reason for conducting the measure), but the court also benefitted from more than twenty positive news reports applauding the fact that it bothered to ask what the public thought. Another benefit was the personal satisfaction the judges and court staff enjoyed as a result of engaging in the process and working with each other. They see their court as an innovative organization that is reaching out to the public and doing good things.

The Michigan example demonstrates how the Standards and measures can be used to address a specific court need. The Fifty-Second District Court modified one measure in one standard area and obtained information, guidance for improvement, and much good will.

VI. RECOGNIZING THE BENEFITS

The Trial Court Performance Standards and measures have made a significant contribution to judicial administration. The Standards and measures represent a shift in thinking about the work of the court — from structures and processes to performance and outcomes. They also focus attention on court users rather than "court insiders." They ask how the system can be improved to work better for the people who have to maneuver through it.

At a recent educational session on the Standards, participants were asked to identify why the Standards would be helpful to them. Some of the reasons offered included:

- They apply to the actual, real life work of the court. The Standards aren't an add-on to "real" work—one more chore; they fit and are part of our real work.
- They provide a foundation to work from.
- They articulate the core values of courts — help courts gain public trust and confidence.
- They recognize the interdependence of courts and other agencies and court users.
- They allow courts to have some independent control over their own evaluation and monitoring.
- They enable administrators, judges, and the community to focus their thinking on the same items at the same time. That will focus on and result in community collaboration and community efforts.
- The goals, measures, and standards are fundamental priorities that all court officers are concerned about and care about.
- The Standards make the legislature more responsive to the needs of the courts through public support and create credibility for the courts with those outside of the courts.
- They offer a vehicle for strategic planning.
- They raise the bar and challenge us to be better than we are.
- They define excellence.
- They provide a motivation for staff.

Beyond this focus on court management and communication, however, the ultimate end of the Standards is to ensure a more responsive justice system. Improved court performance will help ensure, for example, that victims get through the system as expeditiously as possible and are treated with dignity and respect; that child support orders are enforced; and that interagency communication and coordination occurs in cases involving drugs, domestic violence, and mental illness.

For those who would like to get some preliminary indications of how the Trial Court Performance Standards might be applied to your own court, you can take the Court Performance Inventory, found on page 31. For those who want to learn more about the Standards, several reference sources are noted following this article. The Standards represent a valuable resource for self-assessment and self-improvement of trial courts. They are available for as extensive – or as focused – a use as you want to make of them.



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ADDITIONAL RESOURCES

Want to learn more about the Trial Court Performance Standards and measures? The following publications are available from the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 or online at <http://www.ncjrs.org/courdocs.htm>:

Trial Court Performance Standards with Commentary

Trial Court Performance Standards and Measurement System Implementation Manual

Planning Guide for Using the Trial Court Performance Standards and Measurement System

Trial Court Performance Standards and Measurement System Program Brief

Trial Court Performance Standards and Measurement System Fact Sheet.

In addition, the National Center for State Courts (NCSC) maintains a Trial Court Performance Standards Listserv (i.e., an e-mail discussion group) for individuals to ask questions and learn about current efforts to implement the Standards and measures. If you would like to join the Listserv, contact Ms. Hillery Efke at hefkeman@ncsc.dni.us. Finally, the NCSC's Institute on Court Management (ICM) offers educational courses on the Standards several times throughout the year in various locations across the country. You can contact Ms. Christine Staight at 1-800-616-6160, or e-mail her at cstaight@ncsc.dni.us, for information on ICM courses. You can also visit the NCSC's web page at <http://www.ncsc.dni.us>.