

NACM CORE: Principle

Competency: Purposes and Responsibilities of Courts

An Introduction to Core Concepts and the Purpose of Courts and Court Administration



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Purposes and Responsibilities of Courts



Welcome!

The Original Core



MICHIGAN STATE UNIVERSITY



WHAT WE KNOW

A few things have changed in 20 years!

Courts have changed!

NACM New CORE

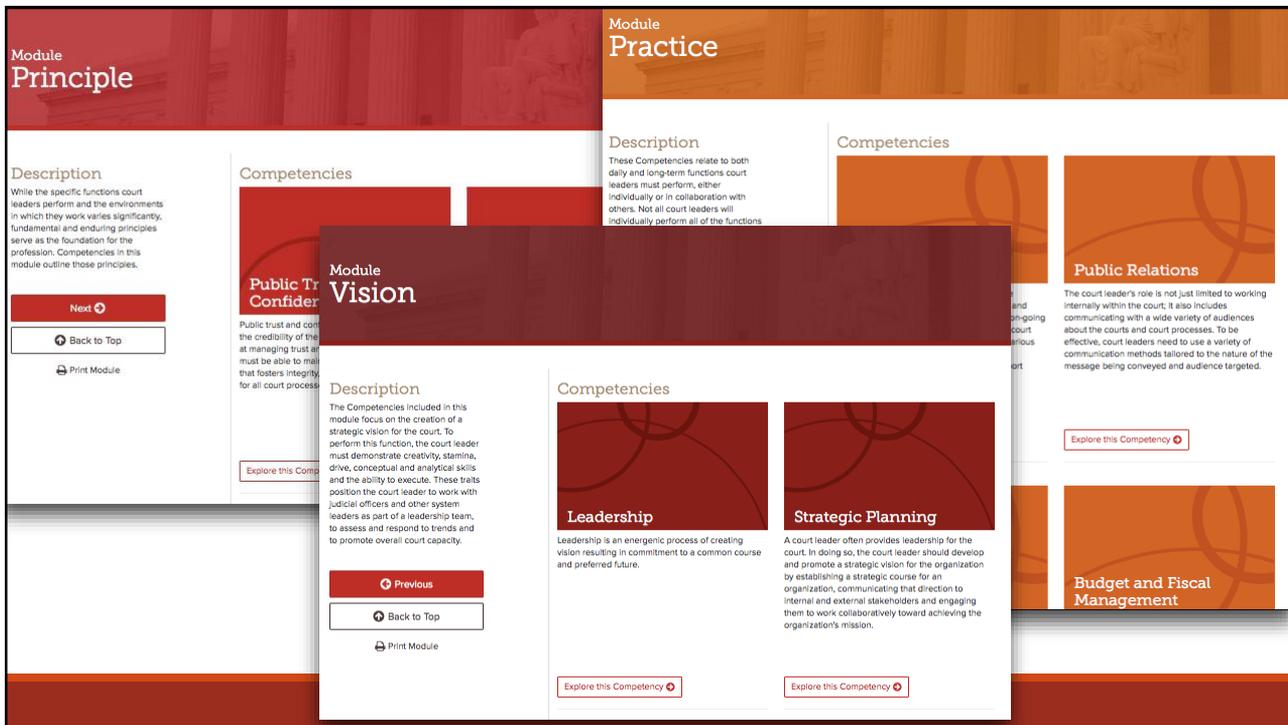


Original Core

- **Knowledge:** a body of information applied directly to the performance of a function.
- **Skills:** observable competence to perform a learned act.
- **Abilities:** competence to perform an observable behavior or a behavior that results in an observable product.

New CORE

- **Relevance:** a brief description of what the competency is and the areas of court management that it addresses.
- **Application:** the key elements of the competency and specific descriptions of how an individual should be able to apply their knowledge effectively.
- **Related competencies:** links to other competencies in the Core that cover similar areas.



Module PRINCIPLE

While the specific functions court leaders perform and the environments in which they work varies significantly, fundamental and enduring principles serve as the foundation for the profession. Competencies in this module outline those principles.

Competencies:
Public Trust and Confidence
Purposes and Responsibilities



Module

PRACTICE

These Competencies relate to both daily and long-term functions court leaders must perform, either individually or in collaboration with others. Not all court leaders will individually perform all of the functions associated with these Competencies but they should be aware of their relevance, the key skills they entail and their application, as appropriate, to their specific roles in the courts.

Competencies:

Caseflow and Workflow
Operations Management
Public Relations
Educational Development
Workforce Management
Ethics
Budget and Fiscal Management
Accountability and Court Performance



Module

VISION

The Competencies included in this module focus on the creation of a strategic vision for the court. To perform this function, the court leader must demonstrate creativity, stamina, drive, conceptual and analytical skills and the ability to execute. These traits position the court leader to work with judicial officers and other system leaders as part of a leadership team, to assess and respond to trends and to promote overall court capacity.

Competencies:

Leadership
Strategic Planning
Court Governance

LEARNING OBJECTIVES

Describe why courts exist and the major purposes that courts carry out.

Define the values, foundation, and historical perspectives underlying the American court system.

Define key concepts and terminology, especially the judicial system's dedication to the rule of law, equal protection, and due process as related to the purposes of courts.

Summarize the role of courts as an independent third branch of government, an institution, and an organization; and how its role impacts and complements the other two branches of government.

LEARNING OBJECTIVES continued....

Identify trends in court reform and pressures forcing the courts to change and expand.

Apply the values and goals of the American judicial system to specific court administrative tasks and responsibilities including dispute resolution.

Explore quality court management concepts, accountability measures, and efficient processes in executing the role of courts in society.

Articulate the practical impact and relevance of the purposes and responsibilities of courts to your jurisdiction, day-to-day court operations, and your job.

PRE-WORKSHOP ASSIGNMENT

	Knowledge, Skills and Abilities		Your Personal Learning Need and Interest (1-5)	Importance To Your Court Organization (1-5)
	Highest Ranking = 5	Lowest Ranking = 1		
A	Knowledge of accepted purposes underlying judicial process and the management of cases from filing to disposition, the heart of everyday judicial administration: 1) individual justice in individual cases; 2) the appearance of individual justice in individual cases; 3) provision of a forum for the resolution of legal disputes; 4) protection of individuals from the arbitrary use of governmental power; 5) a formal record of legal status; 6) deterrence of criminal behavior; 7) rehabilitation of persons convicted of crime; and 8) separation of some convicted people from society.			
B	Knowledge of the historical role the courts have played in balancing efficiency, stability, and social order against individual rights; preserving the equality of the individual and the state; bringing law in line with everyday norms and values; establishing the legitimacy of the law; and in guiding the behavior of individuals and organizations;			
C	Knowledge of the historical context which provided impartial and independent courts as a protection from the abuse of governmental power and as a safeguard of individual rights;			
D	Knowledge of each and every judge's independent responsibility for case decisions, the essential elements of judicial decision making, and judicial immunity;			
E	Knowledge of the implications of the court as an institution and judicial decisions as immune from challenge versus the court as an organization and a bureaucracy;			
F	Ability to maintain judicial and staff awareness that courts were not intended to be popular;			
G	Knowledge of the perpetual tensions inherent in the Purposes and Responsibilities of Courts including social order versus liberty, the adversarial process versus consensual or efficient case process, and the authority of the state versus the protection of individuals against governmental power.			

COURSE AGENDA

SEGMENT 1

Introduction

- New NACM Core
- Course Goals
- Exercise and Follow-up: Why Courts Exist?

SEGMENT 2

Sources of Liberty and Justice For All

- Key Historical Documents
- Key Concepts and Procedures

COURSE AGENDA

SEGMENT 3

Courts in the United States

- Courts As An Organization
- Judicial Review
- Court Reform and Accountability

SEGMENT 4

Court Management and Leadership

- Responding to Dissatisfaction
- Practical Impact of Leadership
- Challenges to Court Leadership
- Practical Applications of Purposes

TWO THRESHOLD QUESTIONS

FIRST QUESTION

What is my current understanding of the purposes and responsibilities of the courts and its practical relevance to my day-to-day court duties?

SECOND QUESTION

How important is it for me to understand purposes and responsibilities of courts as related to my job and job performance?

EXERCISE 1

Why do courts exist?

Public perception of the purpose of the courts.

Roving Reporter

WHY DO COURTS EXIST?

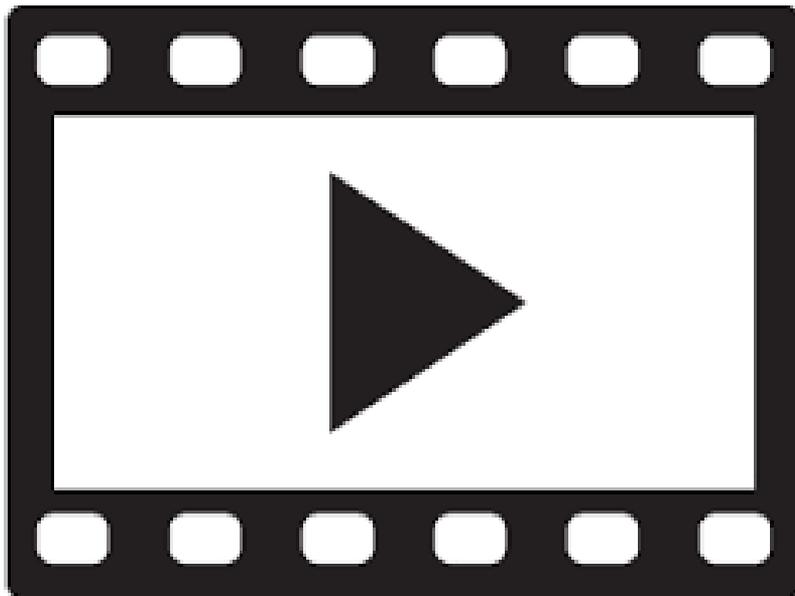
Purpose of Courts:

- Do individual justice in individual cases
- Appear to do justice in individual cases
- Provide a final resolution of legal disputes
- Protect individuals from the arbitrary use of government power

WHY DO COURTS EXIST?

Purpose of Courts continued....

- Make a formal record of legal status
- Deter criminal behavior
- Rehabilitate persons convicted of crimes
- Separate persons convicted of crime from society



VIDEO: Purposes of Courts - Ernest C. Friesen

3 FINAL THOUGHTS...

1. Think of a person...
2. What about you...
3. How have the purposes of courts changed over time?

SOURCES OF LIBERTY
AND JUSTICE FOR ALL

KEY CONCEPTS MATCHING TEST - Exercise 2

On the line to the left of each factual statement in Column 1, write the letter of the document in Column 2 that best describes its source.

ALL MEN ARE CREATED EQUAL	A. Bill of Rights
TO NONE WILL WE SELL...DELAY...OR DENY JUSTICE	B. Magna Carta Article 40
COLLECTION OF JUDICIAL DECISIONS, CUSTOMS, AND GENERAL PRINCIPLES	C. Marbury v. Madison
JUDGES IN EVERY STATE SHALL BE BOUND THEREBY	D. Judicial Act of 1789
CREATED 13 DISTRICT INFERIOR COURTS TO ASSIST SUPREME COURT	E. <u>Federalist</u> 10
A CONTRIVING...INTERNAL STRUCTURE OF GOVERNMENT IS ESSENTIAL...TO PRESERVATION OF LIBERTY	F. Due Process Clause
JUDICIAL POWER OF THE U.S. SHALL BE VESTED IN ONE SUPREME COURT	G. U.S. Constitution - 14 th Amendment
PRINCIPLE THAT ALL PERSONS, INSTITUTIONS, AND ENTITIES ARE ACCOUNTABLE TO THE LAW	H. Declaration of Independence
EQUAL PROTECTION CLAUSE	I. <u>Federalist</u> 78
NO LIBERTY UNLESS THE POWER OF JUDGING BE NOT SEPARATED FROM THE LEGISLATIVE AND EXECUTIVE BRANCH	J. U.S. Constitution - 6 th Amendment
FIRST 10 AMENDMENTS TO THE U.S. CONSTITUTION	K. Supremacy Clause U.S. Constitution Article VI
SAFEGUARD FROM ARBITRARY DENIAL OF LIFE, LIBERTY, OR PROPERTY	L. Common Law
RIGHT TO A SPEEDY PUBLIC TRIAL BY AN IMPARTIAL JURY IN CRIMINAL PROSECUTIONS	M. Rule of Law
AUTHORITY TO DETERMINE WHETHER A LAW VIOLATES THE CONSTITUTION	N. U.S. Constitution Article III Section 1
IF MEN WERE ANGELS NO GOVERNMENT WOULD BE NECESSARY	O. <u>Federalist</u> 51

COMMON LAW MODEL

- Judges apply abstract rules (precedent) to decide disputes
- Adversarial system is used to ascertain the truth
- Judges are neutral and impartial
- Judges referee the opponents in contentious proceedings
- Parties and attorneys play a major role in identifying and presenting evidence

CIVIL LAW MODEL

- Judges apply the code to cases
- Once the court's jurisdiction is invoked, the state has an absolute duty to resolve the dispute
- An inquisitorial system is used to ascertain the truth
- Judges play an active, affirmative, interventionist role
- Parties and attorneys play a minor, supportive role to enable the Judge to fulfill its inquisitorial function

DECLARATION OF INDEPENDENCE

- United States founded as union of 13 Colonies claiming independence from British Crown
- Spoke of *“the good People of these Colonies”*
- Pronounced *“these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES”*
- The Declaration listed a “long train of abuses” against the King of England – and there was precedent for doing so.

DECLARATION OF INDEPENDENCE

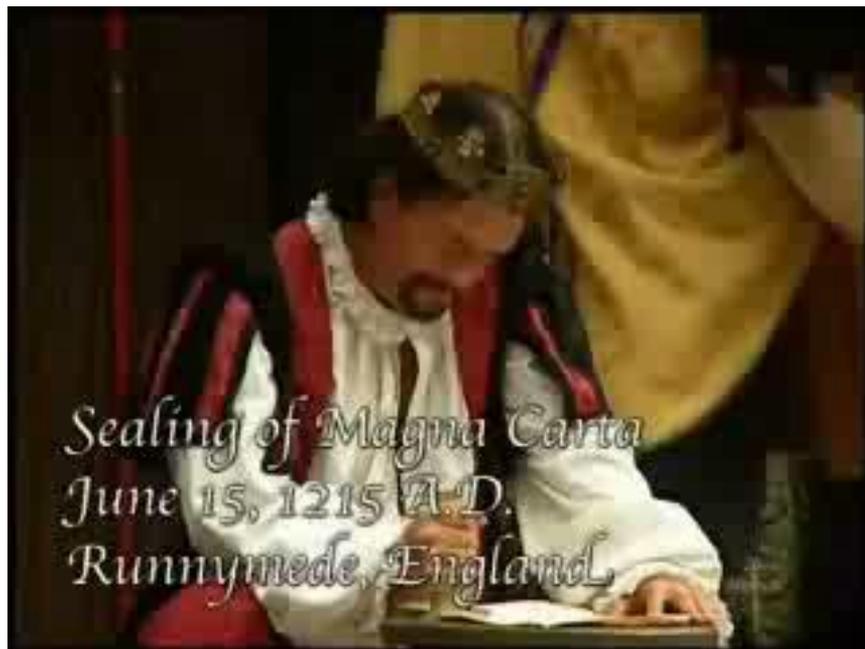
- “He has obstructed the Administration of Justice, by refusing to Assent his Laws for establishing judiciary powers.”
- “He has made Judges dependant on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.”
- “For depriving us in many cases, of the benefit of Trial by Jury.”

What was the precedent for confronting the King with complaints about his style of governance?

1215

MAGNA CARTA

- The idea of “*limited government*” is rooted in the Magna Carta.
- The first time that the subjects themselves forced upon the King of England certain obligations.
- He, the King, must respect their rights and abide by the Rule of Law.



VIDEO: Magna Carta

ROOTED IN ... MAGNA CARTA

Magna Carta of King John AD 1215

Article 38

Right to confront adverse witnesses

Article 39

Right to a determination on the record

SOURCES

The Federalist Papers

Essay 10

- Constitution would establish a government to control violence and damage of factions. – Madison

Essay 51

- Separation of Powers

“If men were angels, no government would be necessary.” - Madison

Essay 78

- Independence of the Judiciary

“There is no liberty unless the power of judging be not separate from the legislative and executive power.” - Hamilton

JUDICIAL INDEPENDENCE

“When they are impartial and independent, courts earn public trust and confidence as they balance needs for social order and individual freedom in the ‘ordinary administration of criminal and civil justice.’”

Federalist
Essay 17 – Hamilton

U.S. CONSTITUTION

Fifth Amendment

- Grand Jury Indictment
- No Double Jeopardy
- No Deprivation of Life, Liberty, or Property Without Due Process of Law

Sixth Amendment

- Speedy Trial
- Right to Trial by Jury

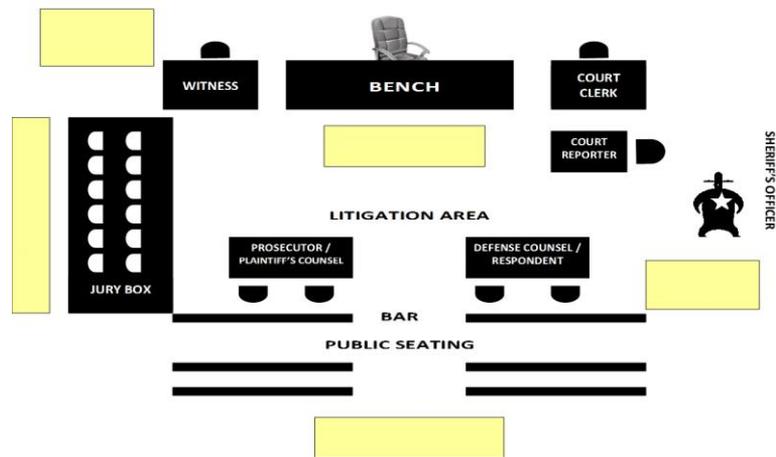
Eighth Amendment

- No Excessive Bail

Fourteenth Amendment

- Due Process and Equal Protection

COURTROOM LAYOUT – Exercise 3



DUE PROCESS



- Fifth & Fourteenth Amendments
- Substantive & Procedural
- 10 Due Process Protections

PROTECTION 1

Timely and Adequate Notice

- Rule 3: Commencement of Action
- Rule 4: Summons

PROTECTION 2-9

“An Opportunity to Be Heard”



PROTECTION 10

An Impartial Decision-Maker



- Right to Jury Trial
 - In criminal prosecutions
 - In civil cases
- Trial by Judge
 - Judicial Disqualification

CONSTITUTIONAL JUDGE REFERENCES

- Specifying that they hold their office “during good behavior.”
This meant that their appointments are for life.
- Specifying that their salaries cannot be diminished during their tenure. This prevents Congress from retaliating against judges by cutting their pay.
- Making the removal process difficult (only on “impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.”)

SUPREMACY CLAUSE – Article VI

“This Constitution..., shall be the supreme law of the land; and the judges in every state shall be bound....”



MARBURY vs. MADISON



“....duty of (the judicial branch) to say what the law is....”

KEY CONCEPTS AND PROCEDURES

JUSTICE:

Fairly applying the law to the facts in each individual case.

RULE OF LAW:

Principle that all persons, institutions, and entities are accountable to the law.

DUE PROCESS OF LAW:

Constitutional protections from arbitrary denial of life, liberty, or property.

KEY CONCEPTS

ADVERSARIAL SYSTEM:

Two opposing sides present case to neutral third party.

JURISDICTION:

Case subject matter, defendant, or property must be under court's control.

VENUE:

Location where case in dispute will be tried.

RIGHT OF APPEAL:

Right of party to appeal case to a higher court.

DEFINITION SEARCH – Exercise 4

- Equal Protection
- Justiciability
- Controversy
- Habeus Corpus
- Discovery
- Jurisdiction

JUDICIAL INSTITUTION
JUDICIAL REFORM
JUDICIAL INDEPENDENCE

INSTITUTION vs. ORGANIZATION

- Institution is a bigger and deeper concept than an organization.
- Institutions guide human behavior while organizations are formed to achieve special goals and purposes.
- Marriage, democracy, education, and “third branch” are examples of institutions while courts, schools, companies, and businesses are examples of organizations.
- Institutions have a bigger role to play in social lives in comparison to organizations.

JUDICIARY AS AN INSTITUTION

- Has its mission rooted in the values and customs related to justice
- Creates and protects the core purposes of justice within society
- Establishes and enforces rules that govern justice
- Defines rules and processes related to justice

ARE PEOPLE SATISFIED WITH COURTS?

NCSC: The State of State Courts 2014/2015

“DISSATISFACTION WITH THE ADMINISTRATION OF
JUSTICE IS AS OLD AS LAW”

- Roscoe Pound

“CAUSES OF POPULAR DISSATISFACTION WITH THE
ADMINISTRATION OF JUSTICE”

THE JUDICIAL CONTEXT FOR THE SPEECH

In the American Courts

- Trial courts were County or City-based, mostly single-judge venues
- Judges were politically selected
- Civil procedures were sources of protracted disputes
- Legal education was largely by apprenticeship

FOUR CAUSES OF DISSATISFACTION

- Causes of Dissatisfaction with *Any* Legal System
- Causes lying in the peculiarities of our Anglo-American legal system
- Causes lying in our American judicial organization and procedure
- Causes lying in the environment of our judicial administration

PRE WORKSHOP ASSIGNMENT

Your group will be assigned one cause as follows:

1. Causes of dissatisfaction with any legal system.
2. Causes lying in the peculiarities of our Anglo-American legal system.
3. Causes lying in our American Judicial Organization and Procedure.
4. Causes lying in the environment of our judicial administration.

Exercise

Discuss and analyze the cause assigned to your group.

From Pound's 1906 speech, designate a reporter(s) who will explain the cause and review the slides listed for your group.

Each group should list whether the cause assigned:

1. Can be remedied by the courts?
2. Has already been remedied by the courts or by other means?
3. Is an issue currently being addressed in Michigan?
4. Discuss the role of the judiciary and your individual role in court reform.

This should also be a part of your group report.

GROUP I – ANY LEGAL SYSTEM

- Necessary mechanical operation of rules, and hence, the law
- Inevitable difference in the rate of progress between law and public opinion
- General popular assumption that the administration of justice is an easy task, to which anyone is competent
- Popular impatience with restraint

GROUP II – THE ANGLO-AMERICAN LEGAL SYSTEM

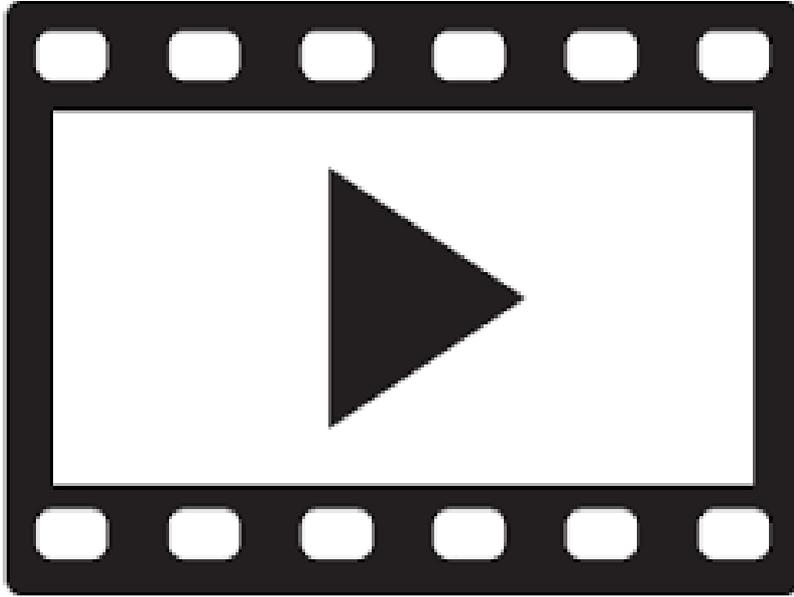
- Individualist spirit of our Common Law, which agrees ill with a collectivist age
- Common law doctrine of contentious procedure, which turns litigation into a game
- Political jealousy due to strain on the legal system as a result of supremacy of law doctrine
- Petty tinkering when comprehensive legal reforms are needed
- Defects of form resulting from a legal system that is based upon caselaw

GROUP III – U.S. JUDICIAL ORGANIZATION AND PROCEDURE

- In its multiplicity of courts
- In preserving concurrent jurisdictions
- In the waste of judicial power which it involves

GROUP IV – ENVIRONMENT OF U.S. JUDICIAL ADMINISTRATION

- Popular lack of interest in justice, which makes jury service a bore and the vindication of right and law secondary to the trouble and expense involved
- The strain put upon law in that it has today to do the work of morals also
- The effect of transition to a period of legislation
- Putting our courts into politics
- Making the legal profession into a trade, which has superseded the relation of attorney and client with that of employer and employee
- Public ignorance of the real workings of courts due to ignorant and sensational media reports



VIDEO: 2010 Selected Supreme Court Ads



VIDEO: California Administrative Office of the Courts Spending – ABC 10 News

FEDERALIST No. 17



“When they are impartial and independent, courts earn public trust and confidence... in the **‘ordinary administration of criminal and civil justice.’**”

THREATS TO JUDICIAL INDEPENDENCE

FEDERAL COURT ISSUES

- Improper impeachment threats
- Court-stripping (banning courts from hearing specified issues)
- Partisanship over judicial appointments and delay in appointments

STATE COURT ISSUES

- Special interest money flooding state court elections
- Pressure on judicial candidates to promise specific rulings
- Funding crisis threatens access to justice
- Key reforms: public financing, appointment/retention recusal rules and new disclosure

THREATS

continued...

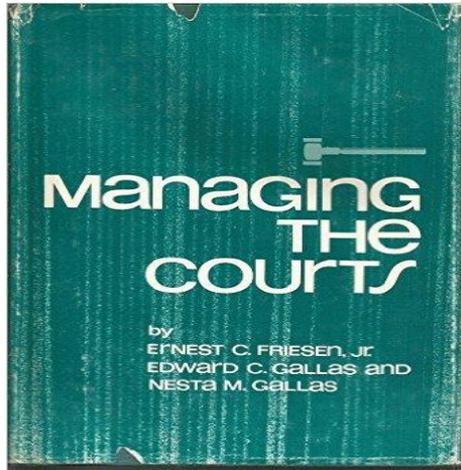
Diversity Issues

- People of color, women, lesbian, gay, bisexual, and transgendered persons.
- Persons with disabilities are underrepresented among state and federal judges.
- Lack of diversity on the bench and among court staff can lead to the appearance of bias, and even actual bias. A more diverse bench improves the quality of justice for all citizens.
- There is also a disproportionate number of minorities in correctional facilities across this nation.

EXERCISE 5

- What should we say: Court Management Public Service Announcement
- Identify the most challenging concept(s) for today's court leaders
- Three most important ideas or points
- 60 second PSA to citizens

ROLE OF COURT MANAGEMENT



“THE TRUE ADMINISTRATION OF JUSTICE IS THE FIRMEST PILLAR OF GOOD GOVERNMENT.”

-George Washington

Efficient and even effective judicial administration is not an end in itself. Courts do not exist so court leaders, either judicial or civilian, can manage them. Rather courts must be managed well so that judges and others acting in their stead and in their shadows can do justice.”

NACM Core Competencies

TWO KEY QUESTIONS

1. Why are court managers essential to the administration of justice?
2. What is your role in assuring access to justice?

STRONG COURT MANAGEMENT NECESSARY

1. The overall consideration in determining the value of court management to justice is the extent to which it contributes to maintaining the judiciary as an independent branch of the government as well as an independent unit of management.
(Source: Managing the Courts, Friesen, Gallas & Gallas)
2. Court administration that is effective requires a strong chief judge-administrator team that has two equals who recognize and respect each other's strengths and undertake to cover for each other's weaknesses.
(Source: The Art & Practice of Court Administration, Aikman)

COURT MANAGEMENT HIERARCHY



MANAGEMENT AND LEADERSHIP IN THE NATION'S COURTS

Key Responsibilities

- Goal setting and leadership
- Formulation and implementation of management policy
- Dealing with judges and staff
- Relationships with the bar
- Relationships with the other branches, non-court agencies, and the public
- Delegation and oversight of the detailed aspects of court administration

(Tobin)

COURT LEADERS MUST BE ABLE TO:

- Develop and use appropriate standards and measures of court performance and to assess and report on court performance internally, to funding authorities, the public, and the media.
- Align court performance, court structure, court operations, and court processes with court purposes.

ACCOUNTABILITY MEASURES

- Trial Court Performance Standards
- American Bar Association Model Time Standards
- NACM CORE
- CourTools

SURVEY OF TIME QUESTIONNAIRE

In your group, respond to the questions listed on the questionnaire. When answering the questions, consider the *normal workday activities you perform on an average day*.

When completed, discuss your responses with your group members.

SURVEY OF TIME – Exercise 6

Respond to the point listed below based on your normal workday activities.

1. Percentage of your daily work which involves:

a. Only the Judicial Branch: _____ %

b. Other Branches of State/Federal Government: _____ %

c. The Public: _____ %

Total: _____ **100 %**

2. Percentage of your daily work which relates to your court's mission or vision statement. _____ %

3. How often do you refer to a court rule or statute? _____

4. How often do you think of or refer to the public or whether an action was for the public good? _____

EXERCISE 7

1. Did you think of or refer to one or more of the Trial Court Performance Standards or CourTools?

 2. This is a forced choice question. Please fit 100% of your average daily work into the following categories:
 - a. Why Courts Exist: _____ %
 - b. Courts as Institutions: _____ %
 - c. Rule of Law, Equal Protection and Due Process: _____ %
 - d. Accountability: _____ %
 - e. Interdependence and Leadership: _____ %
- Total:** _____ **100 %**

EXERCISE 8

1. What do you do on a daily basis that brings you the most professional gratification?

2. If you have been in your current position with the court for several years, reflect on whether your answers would have been different 5 years ago? 10 years ago?

Discuss responses in groups and with the class as a whole.

NEW DIRECTIONS

- Problem-Solving Courts
- Evidence Based Practices
- Conviction Alternatives Program
- Alternative Dispute Resolution
- Restorative Justice

Why should court
leaders and managers
study Purposes?

Think of a person....

**THANK YOU FOR YOUR
LEADERSHIP!**

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