

The High Performance Court project is an effort by the National Center for State Courts to design a conceptual framework for administrative improvement in all courts.

Becoming a High Performance Court

By Brian Ostrom, Roger Hanson, and Judge Kevin Burke

Preamble

The High Performance Court project is an effort by the National Center for State Courts to design a conceptual framework for administrative improvement in all courts. The High Performance Court Framework is grounded in the sensible belief that all courts are candidates for doing better than they are currently. Because no

court is excellent in all respects, every court is capable of making positive headway.

Court leaders want to improve their court's performance, but finding the starting point can be daunting. There is certainly no shortage of available "management solutions," including new leadership models, new technological applications, new human resource plans, and so forth. One problem,

though, is that most suggested schemes will not simply plug-and-play in the court environment.

The High Performance Court Framework suggests a series of flexible steps a court can take to improve its performance. The steps form a functional system that courts can follow in enhancing the quality of the administration of justice.

Achieving High Performance: A Framework for Courts is available at: www.ncsc.org/hpc.

Introduction

Let's start with a simple point: courts are both different from and similar to other organizations. Courts exist to resolve disputes, interpret statutes and constitutional provisions, and maintain the rule of law. These functions are performed according to rules and procedures that are quite different from the policy-making process followed by the other branches of government. Yet courts are similar to other organizations in that they depend on a group of people working jointly to achieve common goals. A judge may be the most familiar face of justice, but the path to the final outcome reflects the contributions of many individuals throughout the courthouse.

The current decade is proving a brutal challenge for court leaders. Budgets are collapsing, making it hard to keep morale high for those in public employment. The nation is increasingly politically polarized. Unpopular judicial decisions are attacked as being illegitimate. Organizations emerge whose business model is to fund raise off the mantra that activist judges are destroying our nation. To effectively counter propaganda, courts need a structure and administrative process that fully integrates the people, information, and technology to succeed — if not just to survive. Although it may seem a bit grandiose, having a vibrant effective court system is a key to maintaining a healthy democracy.

Courts shouldn't look automatically to borrow the same basic arrangement of control, supervision, and incentives used by other organizations. The idea behind the High Performance

Framework is to find leadership strategies that bring the special aspects of courts together with a focus on encouraging the collective efforts of all judges and staff members. The idea is to tailor the management of court business to fit the professional, often elected status of the judges working there.

In the past, both businesses and governmental agencies were designed as a hierarchy, where authority was centralized and people were expected to carry out orders without necessarily having input. Today the most successful businesses focus on creating a vision, empowering employees, and being dynamic. Unfortunately, many court leaders still assume some form of functional hierarchy is what courts need — even when the internal dynamics among judges and other professional staff put the lie to it. The problem with trying to impose a hierarchical structure on a court is that it is neither the best way to achieve a court's desired goals nor a style likely to be embraced by other judges.

A court is a mixture of people with quite different positions and viewpoints. Judges are individualistic for good reasons. Whereas law firms pick their partners and hire associates, courts get judges from external sources with little or no input as to what type of person or what type of interest — such as family law — a new judge may have. As a result, judges identify more frequently with their profession (“I’m a judge”) than with the court as an organization (“I work for the Fourth Judicial District”).

Court staff is as diffuse as the judges. Some fit the executive mold and might have professional degrees in law or court administration, professional memberships in the National Association for Court Management,

or similar state associations. However, most court staff members are not part of the management elite. They do data entry, work counters, or process paperwork. They took their jobs because the hours were good and the location was convenient, and they will stay and do a good job, but they can be afraid of or intimidated by the judges or their supervisors. There is with all three groups — i.e., judges, management, and line employees — the potential for a clash of culture.

The choice of an appropriate way to organize a court is intellectually challenging and no more obvious than correct rulings in complex cases. Organizational design is more than making process upgrades, such as adopting performance standards, using electronic filing, or establishing problem-solving calendars. Rather, leadership strategies offer a set of decision guidelines geared to helping judges and administrative staff members choose appropriate actions. Courts need to be clear about what the court — as an organization — wants to accomplish, how it will be governed, and how it will measure success. As simplistic as it may seem, courts need a concise statement of purpose and vision.

The objective of this essay is to discuss how selected ideas from *Achieving High Performance: A Framework for Courts* can be set in motion. The actions are called leadership strategies in the basic sense that they are ways of organizing and mobilizing members of the court to the advantage of reform. The bottom line is court leaders need to work at organizational change. High performance does not happen on its own.

High Performance Flows From Skillful Administrative Leadership

Developing shared, court-wide agreement among judges on how court personnel can best work together requires acknowledging two primary responsibilities: the role each individual judge has in making decisions and the administrative role judges have in making the system work. Judges must make decisions every day that affect people in all manner of ways. Being a fair, impartial, and independent arbiter is the judge's primary responsibility. Not surprisingly, judges may chafe at the notion that some other person or organization is going to tell them how to best decide a specific case.

On the other hand, judges must do more than decide cases; they must also interact with a range of people and activities throughout the life of those cases. In busy courtrooms, creating the possibility of "justice for all" is a team effort; it requires conscious effort to organize the workflow through clear relationships between a judge and court staff members. Because this is true for every judge in the courthouse, the responsibility of court administration is to make the system as a whole work. Court administration either supports the adjudicatory process by enhancing procedural due process or it is an impediment. How a court is organized and conducts business directly affects legal procedures and processes. Because the amount of available work time is limited even for the most conscientious judge, allocation of administrative tasks to non-judicial personnel promotes the goal of effective and substantively fair adjudication of disputes.

The benefits of an appropriate division of labor are not based solely on sheer time savings for judges. Administrative practices contribute to a judge's access to information, control over the courtroom, and communication with all participants in the legal process. Administrative practices set a tone for the consumers of court services. Good practices in these areas are valuable aids to effective adjudication of disputes. Attorneys and self-represented parties can take their best shot when the purpose of court proceedings is clear, definite, and carried out as stated. Conversely, in a court with poor management, administrative practices will likely impinge on the quality of a judge's decisions, contributing to substandard justice and the real possibility of less justice for fewer people (B. Ostrom and R. Hanson, 1999).

Seven Leadership Strategies for Achieving High Performance

Courts are under ever-increasing pressure to be more transparent and accountable. Regardless of whether this is driven by fiscal crises, policy makers' concerns, or simple public outcry, a common question is "what are courts doing to be efficient and effective?" The best answer is to have a clear strategy of how to best allocate resources, respond to changing realities in funding, and energize employees.

Regrettably, there are some judges and managers who believe things are going about as well as can be expected. They certainly don't see themselves as inordinately slow, technologically backward, or out of touch with what is happening in the community. Given that outlook, they might ask, why pay

much attention to a "High Performance Framework" and devote resources to it when we don't have serious problems? Worse yet, some say the situation is so bleak in their court that positive change is nearly impossible. There are a lot of fad initiatives that consume time and money but prove to be wasteful. But the times do not permit courts to be on the defensive and regard improving performance as a prescription they don't need and a distraction they should avoid.

The premise of the High Performance Framework is that in today's economic environment no court can afford to be complacent. With belt tightening now the rule in courts across the county, courts need to face the reality of dwindling financial resources—being asked to do more with less. The High Performance Framework asks court leaders to think boldly and entertain the idea that it is possible to maintain or even improve quality in the face of budget and staff cuts. Taking up such a challenge is not painless. How to reach consensus on administrative goals, how to get staff members to work together, how to gather and use data, and how to adapt to an ever-changing world is not easy, but the stakes courts face make it worth trying to meet the challenge. President Ronald Reagan put it succinctly, "If not us, who? If not now, when?"

There is a craft of performance management for every court. Because management practices and court workflow processes can always be improved, courts should continually seek to do better than they are doing already. This approach doesn't necessarily require seeking out the best practice, just fashioning a better practice that is an improvement over the current situation.



There are seven strategies court leaders should consider to build and sustain high performance.

1. Share the Vision
2. Explore the Court's Cultural Landscape
3. Abandon the Myth of the Lone Ranger
4. Remember to Focus on Court Customers
5. Get Court Administrative Staff Members Involved
6. Promote Collegial Discussion
7. Share the Results

At West Point, Army cadets study tactical thrusts and strategic plans, the small scale movements and the big picture. Court leaders face something similar: a balance between tactics and strategy. Tactics are the how, while strategy is the where, when, and why. Taking time to focus on strategy is essential to choosing a good path

through what can be a confusing labyrinth.

STRATEGY 1: Share the Vision

Setting and communicating a leadership vision statement is a critically important and deeply strategic activity that many court leaders fail to adequately do. While it may seem like a simple activity for the court executive team to share a strategic vision of where they would like their court to go and the obstacles that must be overcome to get there, many do not take the time needed to share this vision with all members of the court.

Important steps to create and effectively benefit from a shared vision include the ability:

- Of the chief judge and court administrator to create or elicit the initial vision

- To translate that vision into administrative activities that make the vision real
- To articulate and sell this vision to other judges, managers, and staff members as either the right or best way to reach the goal

Someone once said the difference between a vision and a hallucination is simply how many people see it. Thus, court leaders need to provide a comprehensive vision for their court that a significant number of judges and other court staff will embrace and buy into. The odds of connecting vision to daily work improve if the tasks of court administration are stated and clearly tied to a core set of guiding principles. The High Performance Framework rests on four principles that define effective court administration and are widely shared by judges and court managers: (1) give every case individual attention, (2) treat cases proportionately,

Courts have differences, and as a result each court must build its own path to high performance by taking into account its own particular circumstances.

(3) demonstrate court procedures are fair and understandable, and (4) exercise judicial control over the legal process. A high-performing court embraces each principle. How these principles might be expressed is represented by an Arizona chief judge who combined them when he said, “The most important case always is the one before me.”

These four principles orient judges and court managers in the same way, but they are not necessarily determinative of how their court performs. Actual application of the principles will vary from court to court. There are master calendar courts that are effective, and there are individual calendar courts that work. There are courts with a variety of specialty courts and some that have none. How the principles affect court performance depends on the general organizational nature of courts and how the particular managerial culture shapes the “way things get done.”

STRATEGY 2: Explore the Court’s Cultural Landscape

Courts have differences, and as a result each court must build its own path to high performance by taking into account its own particular circumstances. Deciding what

strategies to employ, what course of action to take, and how to structure a court’s management requires a deep understanding of the court’s internal dynamics. As a consequence, it is not surprising that no single, specific approach to managing and coordinating a court has emerged as the best way. What works in a given court is highly dependent on the personalities, skills, and interests of the sitting judges and executive court administration.

Beyond the explicit concept of shared vision discussed above, all organizations — including courts — have an implicitly shared vision, which manifests itself as what is most often referred to as the organization culture. The strongly local character of how decisions get made in each court is another way of saying local court culture matters. What giving individual attention to every case in a proportional manner, demonstrating procedural justice, and controlling the legal process mean is shaped by the intervening role of court culture. Culture is an important element enabling court performance because it encompasses and makes coherent taken-for-granted values, expectations, and assumptions about how work gets done in a particular court. The unspoken folkways on how to get along and interact are arguably the most important things every judge or court executive needs to know. Indeed, they are taught to new members

as the way court business gets done. The centrality of culture is highlighted by the words of Louis Gerstner, the former CEO of IBM, who stated: “I came to see ... that culture isn’t just one aspect of the game — it is the game.”

Understanding what different cultures can do is a key to averting road blocks to implementing high-quality administrative practices. The NCSC approach to court culture is designed to encourage and facilitate a conversation among judges and managers on culture, how current ways of conducting business are viewed, and how they might be improved (B. Ostrom, C. Ostrom, Hanson, and Kleiman, 2007).

The components of court culture fall along two distinct “dimensions.” The first dimension, called *solidarity*, is the spectrum of beliefs on the extent to which it is important for judges and managers to work toward common ends; that is the degree to which a court has clearly understood shared goals, mutual interests, and common tasks. The second dimension, called *sociability*, is the range of beliefs on how important it is for judges and managers to work cooperatively with one another. Therefore, *sociability* refers to the degree to which court personnel acknowledge, communicate, and interact with one another in a cordial fashion.

An essential lesson from field research is that a high degree of

Reaching collective agreement on court-wide administrative practices need not necessarily be an onerous activity, but it does require time and attention.

solidarity is necessary to support performance initiatives. Hence, a challenge for court leaders is to encourage and facilitate collective decision making among individual judges on what is best for the court as a whole. What good court leaders need to know about their court culture is not just where the court is presently, but how open the court is to change. Too often the group-think of courts begins with the false premise that there is no appetite for change in “the way things are done around here.” An analysis of the court culture can bring that attitude out for discussion.

STRATEGY 3: Abandon the Myth of the Lone Ranger

Reaching collective agreement on court-wide administrative practices need not necessarily be an onerous activity, but it does require time and attention. The first step is recognizing that the quirks and idiosyncrasies of court organizational structure put a premium on approaching this as a group enterprise. Few courts are organized in a way that simply allows a presiding judge to command compliance with particular practices or procedures. And no court allows the court administrator to fill that role.

Judges are often best described as a group of equals, where everyone has about the same amount of influence as everyone else. At best, presiding judges are then a first among equals (or an equal among firsts). The challenge is to persuade each judge to see that making the best use of his or her individual time is strengthened when administrative routines and processes support the work of every judge in a coherent fashion. The organizational development expert, Warren Bennis, stated this question bluntly: “How do you get talented, self-absorbed, often arrogant, incredibly bright people to work together?”

There are those who argue that superior achievement is possible if and only if a true visionary charismatically convinces others to change their practices and effortlessly adopt new and better ways of doing things. It is hard to argue that inspirational leadership is not a helpful ingredient in achieving high performance. But making improvements in a court is not dependent on the single-handed leadership of one person. In fact, waiting for a charismatic presiding judge or court administrator to lead the move to high performance overlooks the formidable hurdles in creating and maintaining strong executives even in the private sector, where lines of authority are frequently clearer. The loosely coupled nature of courts means leadership is a matter of

persuasion, bringing people together, and setting a tone. “He or she cares about us, listens to us, and deeply cares about the court as an institution” is far more important than charisma. For this reason, the High Performance Framework focuses on how court-wide agreement can be encouraged, drawing on a shared cause and culture that binds strong personalities together. Building a culture based on mutual trust, collaboration, and commitment to solid administrative practices can serve to restrain strong egos. Arriving at a culture conducive to high performance is a challenge involving consensus of the entire bench, not something that can be forced on judges even by an inspirational leader.

STRATEGY 4: Remember to Focus on Court Customers

A high performance court strives to give attention to the interests and rights of all individuals involved in the legal process. Customer satisfaction is a priority for high performance courts. While the term “customer” is not used in many courts, good court leaders and managers recognize and accept the idea that courts have customers, feel more comfortable with the term “customer” itself, and acknowledge that a key part

A high performance court strives to give attention to the interests and rights of all individuals involved in the legal process. Customer satisfaction is a priority for high performance courts.

of court administration is to determine how to satisfy them.

With the exception of repeat players (i.e., attorneys and parties with regular court experience), court customers often have considerable uncertainty about the legal process. This is particularly true of self-represented parties. As a result, a high performance court tries to reduce confusion by being readily accessible, providing clear information, and adhering to predictable, orderly, and timely proceedings.

Positive perceptions of a court are shaped more by how people feel they were treated than by the outcome of their case. Satisfaction with the process is mostly shaped by whether customers believe their rights and interests are taken into account in the resolution of disputes. If a court can increase the sense of procedural fairness, all of the social science research suggests that a byproduct is increased compliance with court orders. Court leaders should give explicit attention to the concept of procedural fairness, the mantra being, “Every litigant has a right to be listened to, to be treated with respect, and to understand why the decision was made. We want that 100 percent of the time.” In short, it is ensuring individuals receive their day in court. While the volume in many state courts

can make achieving procedural fairness a difficult challenge, it is not an excuse for substandard performance.

But it is more than litigants who deserve fair treatment — so do court employees. The same commitment to treating people with courtesy and respect must also be extended to court staff by judges and court executives. They too have a right to be treated with dignity, to be listened to, and to understand why decisions are made. The golden rule does not apply at work, or, as professional speaker Leslie Charles, says, “Implement the platinum rule: treat others as they wish to be treated.”

STRATEGY 5: Get Court Administrative Staff Members Involved

Change is hard for everyone, and for courts it can be extremely difficult. Successfully finding and implementing better ways of doing business is a task requiring commitment from employees throughout the court. For employees to focus on how their day-to-day responsibilities link to achieving desired court-wide results, judges and senior

managers need to help all staff members understand the court’s performance objectives. There are too many courts with ill-defined performance measures at best. Performance measures need to be relevant and meaningful to the public and other governmental entities, as well as to judges and court staff. By encouraging all court personnel to see how their work contributes to performance, a court avoids the difficulties of implementing changes with a top-down approach where only high level management shares enthusiasm for what is being promoted.

The ability to adapt successfully to new ways of doing business is strengthened when everyone understands the court’s vision and is properly aligned to achieve it. A sign of a healthy court is that court staff members are viewed as active partners with judges and senior managers. Each part of the court troika (i.e. judges, professional and line staff) needs to understand and appreciate the role of the other two. In her book *Team of Rivals*, Doris Kearns Goodwin described Abraham Lincoln as a man with an extraordinary ability to put himself in the place of other men to experience what they were feeling and to understand their motives and desires. There are few Lincolns in court leadership, but the ability of court

leaders to marshal everyone's talent is a key ingredient to high performance success. Employees need to be brought into the conversation to help find ways to sustain areas of high performance (e.g., documenting successful approaches for managing case files) and ways to improve areas of less than successful performance (e.g., spending more time improving customer service at the counter). Because staff members often have regular contact with the public, many have a refined sense of what aspects of current service delivery lead to dissatisfaction.

Successful change initiatives in courts tend to be created by cross-functional teams that involve the joint participation of designated judges, managers, and staff members, as appropriate. Specific examples of the team approach from the court world include a focus on streamlining felony case processes to improve time

to disposition (Riverside County, CA); using data and problem solving techniques to reduce jail costs of in-custody defendants (Harris County, TX); interviewing litigants outside the courtroom following completion of family law matters to assess whether they knew what to do next in their case and how the judge might more clearly communicate (Hennepin County, MN); and making an effort to come up with completely new ways of doing things through a major reengineering project (Vermont).

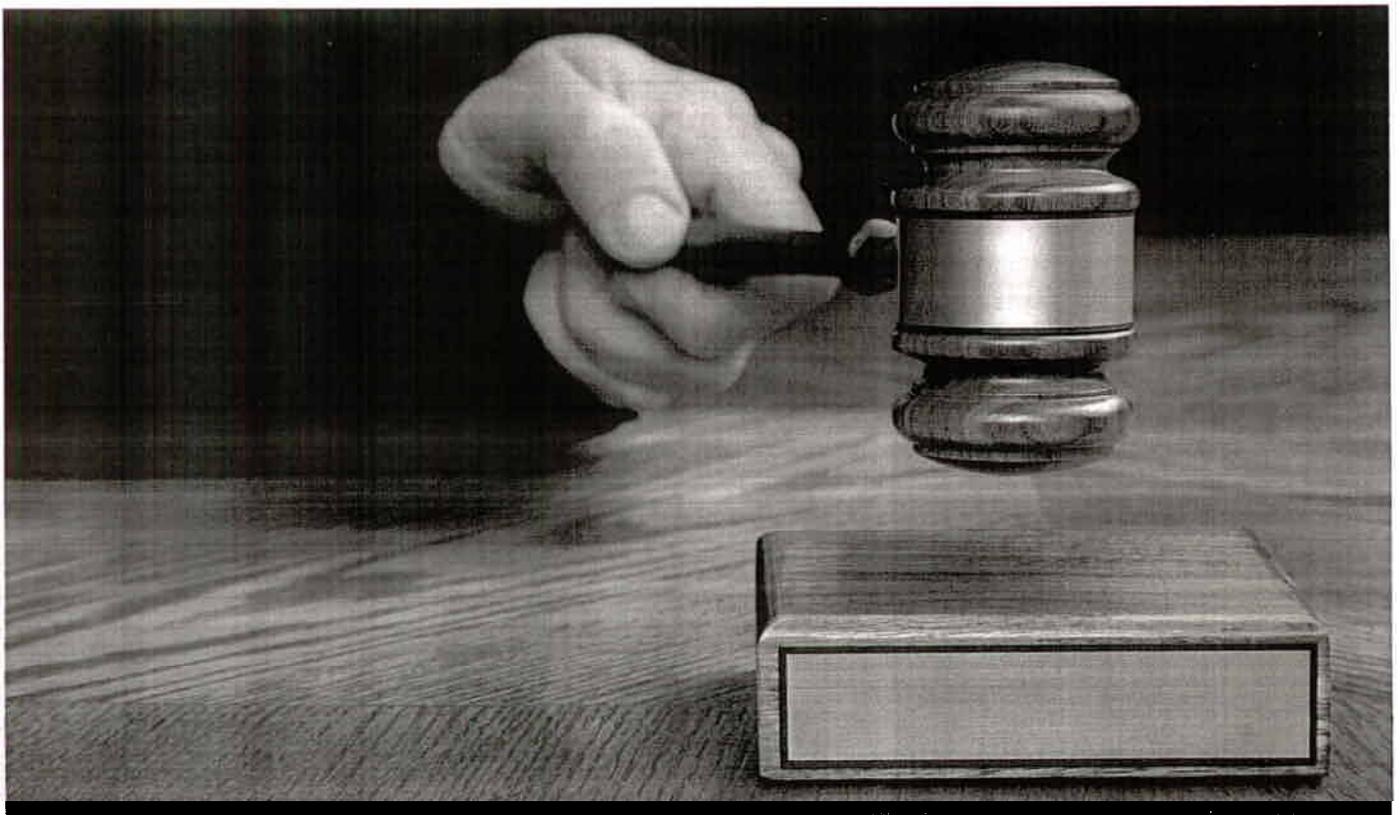
STRATEGY 6: Promote Collegial Discussion

The opportunity for members of a court to discuss the character of administrative practices is the *sine qua*

non for success. Communication is the most fundamental sign individuals consider themselves part of the same group. In a high performance court, members take the opportunity to go over the pros and cons of different practices in a cooperative manner.

Conflict isn't necessarily bad in a court environment if it is task conflict, not relationship conflict. The unhealthiest courts mask differences, pretend there is unanimity, and allow all discussion about court direction to occur in the parking lot.

Identifying problems and coming up with possible solutions is not always straightforward. There can easily be sharp differences of opinion among judges about what, if anything, needs to be done. Even if a presiding judge champions a course of action, it does not necessarily mean the plan will be fully enacted. And if acceptance is reached, it is not uncommon for



objections to be raised again and previously settled issues scuttled or threatened. In the court world, the idea that the few can command the support of the many is dubious.

As difficult as it may be, court leaders need to recognize there are alternative paths to a desired goal. Good court leaders are careful when there is a close vote among judges. A close vote may indicate it is time to go back to the drawing board and refine the alternatives. The best court leaders willingly accept a collective choice that will bring about the desired outcome better or easier than their most preferred options — even if it does not appear on paper to be the best.

Openness to alternatives builds trust and enables cooperative communication. Judges and staff members need not fear administrative discussions are forums to foist practices on them. Hence, the High Performance Framework suggests exploring and developing ways to encourage greater judicial participation in deliberations concerning performance.

Strategy 7: Share the Results

Judges need regular and systematic feedback if they are to get better at their craft. Courts need regular and systematic feedback if the court as a whole is to improve its performance. Court leaders can build broader support within the justice system community by circulating results. Because customer satisfaction is a focal point of performance, the sharing of performance results among judges, managers, staff members, and the public is a sign of respect.

Sharing performance results also enables corroboration of performance data because it tests their external validity. How well do objective performance results line up with the experiences of court customers? Seeking the perspective of attorneys, for example, allows the court to obtain direct feedback on how change in business practices affects individual practitioners and whether they see benefits in the change. Yet, not everyone might be for wide dissemination of all, some, or any results.

For some, performance results might be seen as too subject to misinterpretation or as a source of trouble for the court. Fear is a driving force in too many courts. As Edmund Burke wrote in England 20 years before the American Revolution, “No passion so effectually robs the mind of all its powers of acting and reasoning as fear.” Court leaders and a cadre of judges and senior managers can facilitate sharing results by first having the conversation internally. Reason, not fear, has to guide discussion about the course a court is on. Because results are subject to interpretation, an opportunity to review and comment on them ensures a fair debate and possible reconciliation of divergent points of view. A minimum standard all members should support is that released results can withstand scrutiny for clarity, comprehensibility, and accuracy. The release of results shapes the accountability environment in which the court finds itself and can set the terms of discussion with funding sources and promote a more healthy review of court progress and resources.

Summary

The seven strategies for achieving high performance admittedly are interrelated. A package of practical suggestions is necessary to overcome the resistance to begin the push for high performance. So while there is no single problem that wracks all court houses, there are a lot of common ones. All court leaders need to focus on the ability to motivate and manage change and not allow the fear of change to blind them. Because change is a given, the big issue is preparing to lead. To the extent court leaders can find solutions to guide their court through these interesting times, the promise is the court they care about will be a high performance place where people enjoy their work and the public is well served.

ABOUT THE AUTHORS

Brian Ostrom is a principal research consultant at the National Center for State Courts. His interest in the idea of high performance courts grew primarily out of work with several state court systems regarding efforts to improve court organizational effectiveness through careful assessment of court management culture, judicial workload, and court performance. Contact him at bostrom@ncsc.org.

Roger Hanson lives in Denver, Colorado, where he engages in legal research for the purpose of legal reform. He co-authored *Trial Courts as Organizations* with Brian Ostrom in 2007. Contact him at elizreg1558@comcast.net.

Kevin Burke, a Minneapolis trial judge since 1984, is one of the most recognized leaders within the American judiciary. He served several terms as chief judge of the Hennepin County (Minn.) District Court, a 62-judge court, where he instituted social-science studies examining — and reforms improving — procedural fairness. He is a past recipient of the William Rehnquist Award and member of the board of the National Center for State Courts. He is currently president of the American Judges Association. Contact him at Kevin.Burke@courts.state.mn.us.