

# Public Trust and Confidence

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## Use of Curriculum Design

Taken together, the curriculum designs in this series provide an overarching plan for the education of court managers; this overarching plan constitutes a curriculum. Individually, each curriculum design and associated information provide faculty with resources and guidance for developing courses for those with an interest in or responsibilities for managing courts? See the *Target Audience* section below.

The designs are based on the NACM Core®. Each of the curriculum designs, organized by thirteen competencies, may be used either in its entirety or in segments to meet the needs of the individual circumstance or situation, the particular audience, and time constraints, and other contextual factors.

Each curriculum design includes a series of learning objectives and educational content to support those learning objectives. Associated information for each curriculum design includes: (1) faculty resources, (2) participant activities, and (3) a bibliography. Each faculty resource and participant activity includes information explaining its use. Also included in each design is a section entitled "Special Notes to Faculty," which provides important information to assist faculty in effectively preparing to design and deliver a course, and a section entitled "Target Audience," which includes guidance on the audience(s) are most appropriate for the curriculum design.

### Participant Activities

Participant activities have been designed to measure whether the learning objectives have been achieved. These activities include many types of group and individual interaction. Information on participant activities includes how to use, direct, and manage each activity. Instructions may be modified for the audience and setting, but

the highest goal is to integrate each activity into the learning process and the content of the course. Faculty should incorporate additional activities at their discretion to ensure that participants remain actively engaged throughout the course. Additional activities may include asking participants questions about the content, engaging them in sharing their experiences with the content, encouraging them to ask questions, and other approaches.

### Faculty Resources

Faculty Resources provide written information and/or graphics that support certain content and may also be used as handouts for associated topics in the Educational Content. Faculty Resources are a combination of resources referenced within the Educational Content and reproductions of those images embedded in the Educational Content as sample images that could be used in PowerPoint® slides and/or as handouts. They may be used in any course, but their applicability and use need to be determined by faculty, based on the topics, length of the course, audience, and other factors. Faculty Resources often include examples of documentation and other data that are time-based. Faculty members are encouraged to update time-based material as well as use material that is specific to the presentation and/or audience. As with participant activities, faculty are encouraged to provide additional materials based on the needs of the participants.

### Bibliography

While a bibliography may be viewed as optional by faculty, the resources contained in it are an important resource, in that the review of these materials may foster reflection, and they are sources that can be used to support further research and study.

## Needs Assessment

A needs assessment gathers information about the participants' proficiency on the topic of the session. Without a needs assessment, you may provide content participants cannot or will not use, or already know, or that fails to satisfy their expectations.

Assessing needs enables you to choose and deliver content with much greater accuracy. Conducting a needs assessment before your presentation may include a written survey or focus group discussion; and/or at the beginning of your presentation, you may conduct an informal question and answer exercise or a short pre-test.

Using surveys or focus groups in advance of a course is preferred as it provides you the opportunity to adapt and adjust your presentation to your audience in advance of the actual course. However, it is also advisable to use some time at the beginning of your presentation to seek information about your audience.

Whether you are able to conduct a needs assessment prior to the day of the session or not, the goal is to determine the essential knowledge, skills, and abilities the court managers who will be attending the session must have to perform their duties competently. Two key areas to explore are as follows:

- What level of knowledge, skills, and abilities do the participants currently have about the topic?
- What gaps in their knowledge would they like to close?

A needs assessment enables the faculty member to make necessary adjustments to meet learning needs. If you find out that

participants are much more knowledgeable about your topic than you had thought, you can adapt your presentation to a higher-level discussion. If you find that they are less knowledgeable, you can adapt your presentation to be more basic.

## NACM Core® Reference

### **Competency: Public Trust and Confidence**

Public trust and confidence in the courts is integral to the credibility of the judicial branch. To be effective at managing in a way that promotes public trust and confidence, court leaders must be able to maintain an organizational culture that fosters integrity, transparency and accountability for all court processes and proceedings.

### Learning Objectives

The following learning objectives are designed for a comprehensive course on that will require a minimum of 15 contact hours. Faculty that are developing curriculum for basic or shorter courses may simplify or reduce the number of learning objectives.

As a result of this education, participants will be able to:

1. Describe the importance of public trust and confidence to the credibility of judicial branch.
2. Compare and contrast historical writings and research to current discussions of public trust and confidence.
3. Document the ways that transparent and consistent application of court procedures, as well as the timely resolution of cases, enhances public trust and confidence.

4. Ascertain the level of public misperception about the courts and its causes, based on ten identified issues in Washington State.
5. Identify the inherent connections between public trust and confidence and the principles of procedural fairness.
6. Explore and discuss practical ways to implement the CCJ/COSCA proposed strategies for implementing public trust and confidence in each state and local court.
7. Investigate and share participant experiences and challenges with implementing a systemic court management approach to public trust and confidence.
8. Demonstrate the ways that local courts assess public trust and confidence.
9. Assess the level of public trust and confidence in your local jurisdiction.
10. Connect national research on the role of the media related to the courts with the experiences of local courts and local media.
11. Discuss and propose ideas and specific resources needed for community collaboration events to foster a greater understanding of the court process, services available, and methods for accessing them.

## Target Audience

This curriculum design is primarily intended for court managers and leadership judges; however, most of the design is equally relevant for all court employees and may be used with the general public (including students) who are interested in the judicial branch.

## Special Notes to Faculty

1. When introducing the competency, include references to timely public survey results, like the 2014 "Analysis of National Survey of Registered Voters" commissioned by NCSC (see Bibliography for details) as a way to make the Public Trust and Confidence curriculum design relevant to all court leaders. Refer to Section 1.4 in the educational content.
2. Remind audiences of the important distinctions among the branches of government and how critical public trust and confidence is to the effective functioning of the judicial branch. For example, the following quote may be helpful with setting the stage: "The Court's authority, consisting of neither the purse nor the sword, rests ultimately on substantial public confidence in its moral sanction." – Justice Felix Frankfurter
3. Prior to teaching Public Trust and Confidence, consider surveying the participants to determine their experience with the subject matter, e.g., has public trust and confidence ever been an issue in your jurisdiction; have you ever measured the level of trust and confidence in your local courts (e.g., focus groups, opinion surveys, bench/bar meetings, etc.); has any state or local training been provided to judges or court staff regarding the importance of Public Trust and Confidence in the courts; and does your court have a strategic plan that recognizes the importance of public trust and confidence?
4. Identify or create an image to use in PowerPoint (PPT) slides to denote an exercise (i.e., "brain exercise"). Interactive exercises with audiences are a critical part of the learning process and actively and frequently involving participants during a presentation

- promote the understanding and retention of the material.
5. In response to comments from participants regarding “why should I care about this” or “it is too much work and I have other priorities”, faculty will have a great opportunity to discuss how an effective and accountable judicial system directly adds to the quality of life in all of our communities by assisting with the resolution of conflict, assisting with public safety through effective criminal sentences, helping to make crime victims whole through collection of restitution, providing for children through child support and parenting time orders, supporting families through juvenile and child welfare proceedings, and caring for other vulnerable populations in need of guardians, conservators and mental health services.
  6. The materials presented below, however, should be flexible enough to use in a multitude of situations ranging from a brief overview in a press interview or student presentation to a multi-day seminar for experienced court employees.
  7. If a presentation must be limited to a brief overview, it may be worthwhile to focus on Learning Objectives 1 and 4, i.e., “Describe the importance of public trust and confidence to the credibility of judicial branch” and “Discover the inherent connections between public trust and confidence and the principles of procedural fairness”. Section 1.4, “Analysis of National Survey of Registered Voters,” provides four key findings which offer a quick outline for discussion and Section 4.1, Basic Expectations of Procedural Fairness, provides three provocative discussion topics which are relevant to all court interactions (voice, neutrality, respectful treatment). If time allows, Section 5.4 discusses the important issue of accountability for use of public resources. Depending on the needs of the audience, several sections of the curriculum could be presented independently in 1.5 hour or 3 hour segments.
  8. When preparing and presenting Section 2 – Public Trust and Confidence in Courts: An Historical Perspective, faculty should begin by reviewing the more detailed Purposes and Responsibilities competency, Section 2 – Sources of Liberty and Justice for All. The repeated treatment of historical documents like the Magna Carta, Federalist Papers and US Constitution in the PTC competency is intentional in an effort to reinforce the importance of these historical milestones. Subsequently, the PTC treatment of the historical perspective moves forward to the 20<sup>th</sup> and 21<sup>st</sup> centuries by adding detailed references to Roscoe Pound and later efforts using survey research to better understand public perceptions.



## Educational Content

### Section 1 – An Overview

#### Learning Objective

As a result of this section, participants will be able to:

- 1 Describe the importance of public trust and confidence to the credibility of judicial branch.

#### 1.1 Brief Overview

Much of this competency is based on the Trial Court Performance Standards (TCPS). Specific commentary related to public trust and confidence in the judiciary may be found in the “Trial Court Performance Standards With Commentary” (1997), Bureau of Justice Assistance Monograph

As described in the TCPS commentary, compliance with law depends, to some degree, on public respect for the court. Ideally, public trust and confidence in trial courts should stem from the direct experience of citizens with the courts. The maxim “Justice should not only be done, but should be seen to be done!” is as true today as in the past. Unfortunately, there is no guarantee that public perceptions reflect actual court performance.

Trial courts serve several constituencies, and all should have trust and confidence in the courts. These constituencies vary by the type and extent of their contact with the courts.

- *At the most general level is the local community, or the “general public”—the vast majority of citizens and taxpayers who seldom experience the courts directly.*
- *A second constituency served by trial courts is a community’s opinion leaders (e.g., the local news editor, reporters assigned to cover the court, law enforcement leaders, local and State executives and legislators, representatives of government organizations with power or influence over the courts, researchers, and members of court watch committees).*
- *A third constituency includes citizens who appear before the court as attorneys, litigants, jurors, or witnesses, or who attend proceedings as representatives, family friends, or victims of someone before the court. This group has direct knowledge of the routine activities of a court.*
- *The last constituency consists of judicial officers, employees of the court system, and lawyers—both within and outside the jurisdiction of the trial court—who may have an “inside” perspective on how well the court is performing. The trust and confidence of all these constituencies are essential to trial courts.*

To the extent the general public is represented by legal counsel, it is understandable why courts cater to attorneys and anticipate positive public perceptions of courts will be enhanced through positive attorney-client relations. As more court users choose to represent themselves,



however, and in situations where there is poor attorney-client communication, courts must take direct responsibility for communicating a positive and helpful message to the general public regarding the important role of courts in our society.

### 1.2 Introductions and Opening Exercise (“Think-Pair-Share”)

Faculty should determine the most effective manner of introductions. The choice should be informed by group size, group member’s familiarity with each other, and the results of the needs assessment (if one was utilized).

#### ***Activity 1 – The Importance of Public Trust and Confidence*** (see *Participant Activities*)

To encourage immediate involvement of participants, ask them to think about the meaning/importance of Public Trust and Confidence in their own court context and briefly share their thoughts with another participant. After a few minutes of discussion, the instructor may ask for some volunteers to share highlights of their discussion with the full class.

### 1.3 Defining Terms

Share basic definitions of Trust and Confidence, demonstrating how the terms are often used to define each other.

*Trust* - Reliance on the integrity, strength, ability, surety...of a person or thing; confidence.

*Confidence* - Full trust; belief in the powers, trustworthiness, or reliability of a person or thing.

Include discussion of the need for court leaders to help promote and maintain public trust and confidence by creating organizational cultures that foster integrity, transparency and accountability for court processes and operations. Discussion of each of these concepts should occur throughout the session.

### 1.4 Analysis of National Survey of Registered Voters

Review findings of the National Center for State Courts (NCSC) Nov 2014 nationwide telephone survey of 1000 registered voters. The following four key findings may be described in detail and used to prompt participant discussion regarding the importance of public trust and confidence to the credibility of the judicial branch:

- Courts remain the most trusted branch of government
- Court users express confidence in fairness of proceedings, but have doubts about customer service and job performance
- There is a strong demand for greater availability of online services
- The public worries that politics undermines the impartiality of the court system

For survey details, see: "Analysis of National Survey of Registered Voters," (2014). Also, see Section 1, Faculty Resources for a summary of national and state surveys of public trust and confidence.

In addition to public trust and confidence knowledge, court leaders benefit by performing fair and inclusive practices. NACM is committed to inclusionary and equitable practices and policies in all facets of the association. NACM's mission statement regarding diversity, equity and inclusion, is the foundation for which the association and the users of this curriculum should begin. A resolution of the association reflects and reinforces this commitment.

"NACM is committed to a diverse, inclusive and equitable environment where all board members, members, volunteers and educators feel respected and valued regardless of **gender, age, race, ethnicity, national origin, sexual orientation or identity, disability, education or other bias**. NACM is nondiscriminatory and provides equal opportunity for participation in all areas of the Association. NACM respect the values that diversity of experiences brings to our Association, leadership, and board while striving to listen to all points of view. NACM will increase public awareness of the benefits of diversity; increase the pipeline of minority toward leadership within court administration; utilize broad a large selection criteria and procedures in leadership advancement, include minorities in the leadership selection process."

## Section 2 – An Historical Perspective

### Learning Objective

As a result of participating in this section, participants will be able to:

2. Compare and contrast historical writings and research to current discussions of public trust and confidence.

### 2.1 Magna Carta, 1215

This historical document captured the tension between the "Rule of Man" (aka King) and the "Rule of Law". Under the Rule of Man, the King/Government was able to act purely on its own without being subject to any checks or limitations. Once the English Barons confronted the King of England and demanded that certain rights be written and acknowledged by the King, the Rule of Law began to emerge with clear separation of powers, legal certainty, and legal equality.

This concept of "Rule of Law" became a cornerstone of our current judicial system and heightened awareness of the fact that public trust and confidence in any legal/court system is critical to its legitimacy.

### 2.2 The Federalist, No. 78, 1788

"The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active

resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment"  
(Hamilton, 1788, para 7)

This reference from the Federalist Papers demonstrates that the issue of public trust and confidence in the courts is not a recent historical development based on serious disagreements with high profile judicial decisions or politically divisive judicial campaigns. Rather, it is a perennial issue that dates back to the formation of the US Constitution.

### **2.3 The Federalist, No. 17, 1787**

- "The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government."

(Hamilton, 1787, para 7)

### **2.4 Constitution of the United States, 1788**

For court leaders to fully appreciate the importance of public trust and confidence in the judiciary, there must first be a foundational understanding of the underpinnings of the third branch of government. This understanding begins at the beginning, i.e., with Article III of the US Constitution and the judicial article of the various state constitutions.

- Article III, Section 1: "The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

### **2.5 The Causes of Popular Dissatisfaction with the Administration of Justice Roscoe Pound, 1906**

Roscoe Pound presented his lecture, "The Causes of Popular Dissatisfaction with the Administration of Justice" at the annual convention of the American Bar Association in 1906. The lecture was a call to improve court administration and a preview of his theory of law. It has remained a classic statement on the need for efficient and equitable judicial administration.

Pound acknowledged that some people have always been dissatisfied with the law, but he contended the courts did indeed need to be administered more effectively. He also noted the adversary system often turned litigation into a game, irritating parties, jurors, and witnesses and giving the public the "false notion of the purpose and end of law." In addition, he criticized the overlapping jurisdiction of courts and argued that each state had too many courts. This overlapping jurisdiction problem related in Pound's writings includes both internal and external ramifications. For example, the internal effects may include issues like wasteful budgets and confusion caused by the multiplicity of courts. The external effects (e.g., court and judge shopping by attorneys, confusion, and degraded access to litigants) tend to be the tipping points which can cause a direct decline in public trust and confidence in the judicial branch.

## 2.6 On Public Trust and Confidence: Does Experience with the Courts Promote or Diminish It? By David B. Rottman, *Court Review*, Winter 1998

<http://aja.ncsc.dni.us/publications/courtrv/cr35-4/CR35-4Rottman.pdf>

A judge or court manager can reasonably ask why she needs to be concerned with findings from social science surveys on the topic of public trust and confidence.

### ***Activity 2 – History and Research on Public Trust and Confidence*** (see *Participant Activities*)

This brainstorming and discussion activity is designed to compare and contrast current discussions related to public trust and confidence, and historical writings and research. The experiences and perceptions of class participants are an important component of that comparison.

A general answer is that public opinion, regardless of its accuracy or source, defines the legitimacy of government institutions. A decline in legitimacy poses a particular challenge to the judiciary, which, as Hamilton noted, “has no influence over either the sword or the purse” but is expected to prevent tyranny by the majority and to protect the Constitutional rights of individuals. (Hamilton, 1788, para 7). See 2.6, Faculty Resources for additional references to research articles on public trust and confidence.

A more practical answer is that current efforts to secure public support for the courts rest on assumptions about what promotes a positive view of the courts. The most basic assumption is that courts should concentrate on efforts to expand public knowledge about the institutional role of courts and court procedures through judicial outreach. Court educational programs, court newsletters, and court visitors programs are based on this idea. This assumption may be too limiting, however. Public opinion surveys suggest a surer return may follow from an emphasis on changing court processes in ways that, for example, allow more direct participation by litigants and more meaningful involvement by the public in court programs. Such changes potentially foster positive experiences and set the stage for enhanced public confidence.

See Section 2, Faculty Resources, for examples of articles and theories about institutional legitimacy in courts.

## 2.7 Selected Public Surveys

In addition to various academic discussions on the public perception of courts, there have been several attempts to survey members of the general public at the national, state, and local level. The following are examples of notable surveys that were intended to provide concrete guidance for a variety of court reform efforts. Detailed information on each survey is noted in the Bibliography.

- 1977 – The Public Image of Courts, Hearst Corporation
- 1977 - Highlights of a National Survey of the General Public, Judges, and Community Leaders, Yankelovich, Clancy, Schulman, NCSC A Blueprint for the Future 21, 1978

- 1998 survey, published 1999 – Perceptions of the U.S. Justice System, American Bar Association
- 1999 – How the Public Views the State Courts: A National Survey funded by the Hearst Corporation, National Center for State Courts
- 2014 – The State of State Courts: NCSC nationwide telephone survey, for research details, see: “Analysis of National Survey of Registered Voters,” (2014).

## 2.8 Trial Court Performance Standards (TCPS) and Measurement System, 1987

<https://www.ncjrs.gov/pdffiles/tcps.pdf>

In 1987 the TCPS Commission identified five performance areas that encompass the fundamental purposes and responsibilities of courts and that may be considered foundational to a court’s mission:

- Standard 1 - Access to justice.
- Standard 2 - Expedition and timeliness.
- Standard 3 - Equality, fairness, and integrity.
- Standard 4 - Independence and accountability.
- Standard 5 - Public trust and confidence.

(TCPS, 1997, p.4)

The central question posed by the standards related to public trust and confidence is whether trial court performance—in accordance with standards in the areas of access to justice; expedition and timeliness; equality, fairness, and integrity; and independence and accountability—actually instills public trust and confidence. Standard 5.1 provides that the trial court be perceived by the public as accessible. Standard 5.2 provides that the public believes that the trial court conducts its business in a timely, fair, and equitable manner and that its procedures and decisions have integrity. Finally, Standard 5.3 provides that the trial court be seen as independent and distinct from other branches of government at the state and local levels and that the court be seen as accountable for its public resources.

Ideally, a court that meets or exceeds these performance standards is recognized by the public as doing so. In fulfilling its fundamental goal of resolving disputes justly, expeditiously, and economically, public opinion will not always be on the side of the courts. Nevertheless, where performance is consistent with recognized standards and communications are effective, public trust and confidence are likely to be bolstered. When public perception is distorted because understanding of processes is unclear, court activities may need to be supported by a commitment to outreach. In addition, because in some jurisdictions public perceptions are not always an accurate reflection of performance, it is important for courts to rely on objective data and public perceptions in assessing court performance.

## Section 3 – The Impact of Effective Court Process

### Learning Objective

As a result of participating in this section, participants will be able to:

3. Document the ways that transparent and consistent application of court procedures, as well as the timely resolution of cases, enhances public trust and confidence.

The common themes that have emerged from decades of public survey research about courts include the perception that courts are too expensive, too confusing, and cases take too long. In this section, dealing with effective court process, each of these perceptions is addressed in the related context of case filing, case processing and case disposition.

### 3.1 Case Filing

Ease of Access to Courthouse – the ease with which the courthouse can be accessed informs one’s impressions about the courts and the judicial process. In non-criminal matters, once a member of the public determines a need for court intervention the traditional path to accessing court services used to be through a local attorney, who is assumed to have the experience needed to access the court system. Of course litigants still hire attorneys, however, as the number of self-represented litigants continues to go up, public trust and confidence in the courts will rise or fall based in part on ease of access to conduct business. In the private sector, people naturally “vote with their feet” and if a business is not easily accessible or does not deliver a good quality product, customers will naturally take their business elsewhere. There was a time when the courts were the sole option for the resolution of legal claims, but that is no longer the case. The dramatic rise in alternative dispute resolution demonstrates how some court users will choose to go elsewhere if court process are felt to be lacking because of delays, cost, or for other reasons.

Availability of E-filing and online resources to assist court users – as the general public becomes more adept with technology and the number of digital natives grows, courts must invest in appropriate technology to provide timely access and high quality service. E-filing, for example, can provide greater access to the courthouse, reduce clerical data entry and case file assembly, provide court staff and judges with easier access to essential court records, and more. Likewise, the ability to pay fines or fees online, to resolve a traffic ticket without a court hearing, to remotely check on the status of a case, or to consult a court calendar to confirm a trial date are examples of user functions that can easily be completed through the Internet in many jurisdictions. As members of the public witness courts attempting to make legal systems more accessible and convenient, it is reasonable to expect improvements in public trust and confidence.

Reasonableness of filing fees – fees are another access issue that court users immediately confront when they initiate a case. Individuals and businesses with significant resources may not be deterred by high filing fees and litigants on public assistance are often able to have filing fees waived or suspended. Many, however, may experience filing fee “sticker shock” when they learn of the costs of filing suit. Of course most courts do not set filing fees, but they can communicate with the legislature or administrative office of courts regarding the problems caused by high fees and the negative perception it causes for the courts.

Professionalism of court staff – quality hiring decisions and proper staff training are essential elements to ensure public trust and confidence in the courts. Courts can be an intimidating place for many people, so frontline staff with pleasant, professional dispositions and an ability to competently serve court users will do much to support positive public perceptions.

Assistance for court users with limited English proficiency – providing accommodations for court users with Limited English Proficiency (LEP) is a growing issue for court managers at every level of the judiciary. The US Department of Justice has interpreted Title VI of the Civil Rights Act of 1964 in such a way that provision of interpreters in court proceedings must be anticipated. Among many other resources, the Department of Justice provided a language access toolkit for courts in 2012. For specific details, see “A Language Access Planning Tool for Courts,” (2012). When court users have language barriers that inhibit their ability for full participation in any court proceeding, reasonable efforts must be made to enable their participation. Failure to do so may not only violate federal law, but may also jeopardize their confidence in the judicial branch.

For additional information on LEP requirements and services, see, “Limited English Proficiency (LEP),” (2015, para 1, 2). Two LEP.gov frequently asked questions and answers are (quoted from the LEP site listed above):

*1. Q. Who is a Limited English Proficient (LEP) individual?*

*A. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or “LEP.” These individuals may be entitled language assistance with respect to a particular type or service, benefit, or encounter.*

*2. Q. What are the relevant laws concerning language access for LEP individuals?*

*A. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000. Many individual federal programs, states, and localities also have provisions requiring language services for LEP individuals.*

Lawyer referral and self-help resources – many court users seek legal or self-help resources to avoid unnecessary costs. Effective lawyer referral can often be accomplished through state or local bar associations. Since court staff are often familiar with local attorneys, they are also asked for recommendations. To avoid concerns about impropriety or the favoring of particular attorneys, a reasonable practice is to first provide contact information for a lawyer referral system and if none is available, then to recommend a minimum of three licensed attorneys. If litigants choose to proceed without legal representation, local self-help offices may be available to provide direct service. Additional resources are available through the “Self-Represented Litigation Network,” (2015).



### 3.2 Case Processing

Details relating to the actual caseflow and workflow of legal matters addressed by the courts are more fully discussed in the related Core practice module, Caseflow Management. The relationship of case processing to the issue of public trust and confidence in the courts, however, is evidenced in a variety of ways beginning with the availability of clear procedural instructions to assist court users in understanding what to expect and what is expected of them.

There is a traditional legal maxim that suggests “equity abhors a vacuum”. Likewise, many court users abhor a vacuum and either make assumptions about how to proceed (often resulting in costly mistakes) or simply become frustrated with what they feel is a non-responsive judicial system. When a court fails to clearly explain required processes, or fails to provide timely and accurate notice of proceedings, or fails to provide quality service to the public and professional treatment for all, the trust and confidence in its perceived ability to administer justice is eroded.

Court users and case processing – Throughout the active life of cases managed by courts, court users are making constant judgments about the courts’ professionalism based on employee performance, the competence of court appointed counsel, the availability and adequacy of interpreter services, the demeanor of judicial officers, the adequacy and decorum of the physical courtrooms, and more.

***Activity 3 – Case Processing and Public Trust and Confidence*** (see Participant Activities)

The goal of the discussion is for small groups of participants to identify practical areas in case processing that impact public trust and confidence. The questions are organized around logical areas of court operations and case processing.

### 3.3 Timeliness of Case Disposition

Most citizens who approach the courts for assistance with resolving a legal issue are anxious to get a definitive answer as quickly as possible so they can move on with life. The need for timeliness is especially important in criminal cases where a defendant may experience pretrial incarceration and it can be even more poignant in cases where small children are involved, perhaps waiting for a decision on parental visitation or child support that is essential to provide food or shelter. Final judgments or orders are also important for victims of crime. Without timely orders of restitution, collection efforts cannot begin to help compensate crime victims for their losses.

In 1968, when the lack of timely case dispositions became a recognized national problem, the American Bar Association (ABA) adopted time standards for case processing and followed with updates in 1976, 1984 and 1992. The Conference of State Court Administrators (COSCA) also added to this body of work by establishing national time standards for state court cases in 1983. These dispositional time standards have been modified and improved, resulting in the most recent iteration of “Model Time Standards for State Trial Courts” being approved in August 2011 by the Conference of Chief Justices, COSCA, ABA, and NACM. See Section 3, Faculty Resources, for the model time standards summary table.

Timeliness is certainly a critical factor in the appropriate disposition of court cases, but it is not the only factor. As noted in the following section on procedural fairness, to achieve a higher level of public trust and confidence as courts manage and dispose of cases, courts must also ensure the litigants have a voice in the process, experience unbiased decision makers, are treated with respect, and understand court decisions.

## Section 4 –The Emergence and Application of Procedural Fairness

### Learning Objectives

As a result of participating in this section, participants will:

4. Ascertain the level of public misperception about the courts and its causes, based on ten identified issues in Washington State.
5. Identify the inherent connections between public trust and confidence and the principles of procedural fairness.
6. Explore and discuss practical ways to implement the CCJ/COSCA proposed strategies for implementing public trust and confidence in each state and local court.

### 4.1 Basic Expectations of Procedural Fairness

Psychology professor Tom Tyler (Tyler, 2006, n.p.), a leading researcher in this area, suggests that there are four basic expectations of court users that encompass procedural fairness:

- Voice: the ability to participate in the case by expressing their viewpoint;
- Neutrality: consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made;
- Respectful treatment: individuals are treated with dignity and their rights are obviously protected;
- Trustworthy authorities: authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.

See Section 4, Faculty Resources, for more information about Tom Tyler’s research.

*Myths and Misperceptions About the Washington Courts (2014)*. See <https://www.youtube.com/watch?v=vBy43azhWHk>

A video from Washington's judicial branch challenges some mistaken ideas about how courts work by using real person-on-the-street interviews and responses from judges and justices. The video was produced by the Public Trust & Confidence Committee of the Board for Judicial Administration (BJA) in partnership with Washington's public affairs station, TVW, with financial support provided by the Washington State Gender and Justice Commission and Minority and Justice Commission.

**Activity 4 – Case Processing and Public Trust and Confidence** (see Participant Activities)

The discussion questions for this activity are based on the public misperceptions of the courts that are presented in the above video. Invite participants to share similar experiences with related commissions in their home states.

#### 4.2 Procedural Fairness: A Key Ingredient in Public Satisfaction

*All judges face real-world pressures. For many judges, volume creates pressure to move cases in assembly-line fashion—a method that obviously lacks in opportunities for the people involved in that proceeding to feel that they were listened to and treated with respect. The vast majority of cases do not go to trial. Judges cannot rely then on the safeguards attendant to trial to provide litigants and others with a feeling of respect, voice, and inclusion. Their impressions of judges and our justice system—for better or worse—largely will be formed by their participation in mass-docket arraignments, probation revocations, calendar calls, and other settings, not trials.*  
(Burke, Leben, 2007, p.16)

Due process is a legal term, and judges are educated to provide due process. Litigants, jurors, witnesses, and courtroom observers are not educated in due process, but they do form opinions based on their observations. Even if minimum standards of procedural due process are met at all times, damage may be done to the court system in mass docket proceedings that leave large segments of the public feeling that the courts were not fair. This may be reflected in the results of a California survey that found significantly greater dissatisfaction with the courts by respondents who had court experience in traffic or family-law cases, which often are handled in high-volume dockets.

Respect and fairness – Everyone who comes through the court system has a right to be treated with respect throughout the life of their case, and a right to have key rulings in the proceeding explained in terms that they can understand. A sufficient number of judicial officers need to be provided so that every docket in the courthouse can be handled in a manner that respects these rights, and in turn enhances public respect for the judicial system and its judges.

#### Activity

See *WI Supreme Court Justice Prosser on Public Trust* (Wisconsin Reporter, 2011), at <https://www.youtube.com/watch?v=RvSxbF5WpiU>. (Review brief video clip and use as basis for small group discussion re: impact of negative judicial campaigns on public trust and confidence)

Second clip from WI provides context for discussion. See *Court Incident Shakes Public Trust*. (WISN 12 News, 2011), at [https://www.youtube.com/watch?v=RV\\_M0OFxeNI](https://www.youtube.com/watch?v=RV_M0OFxeNI).

See "*Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity*," (Rottman, Hansen, Mott, Grimes, 2003), at <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf>

The challenge is that the public:

- (a) Evaluates the courts based on fairness (i.e., respect, trust, neutrality, and participation) rather than on the basis of actions that increase speed or reduce costs; and
- (b) Expects courts to take on new roles that move away from that of the dispassionate, disinterested magistrate and toward a community problem-solver.

**Activity 5 – Perceptions of the Courts in your Community** (see Participant Activities)  
The discussion questions for the activity are based on the conclusions about public perceptions of the courts based on race and ethnicity from the above 2003 NCSC study.

### 4.3 CCJ/COSCA – Promotion of Procedural Fairness

The following is an excerpt from “Resolution 12 - In Support of State Supreme Court Leadership to Promote Procedural Fairness.”

*BE IT FURTHER RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to consider implementing the following strategies in their courts to promote procedural fairness:*

- (1) Measure litigant satisfaction based on, among other factors, procedural fairness, using a measurement instrument such as the National Center for State Courts’ CourTools Access and Fairness measure;*
- (2) Encourage the integration of research on procedural fairness and effective decision-making processes into judicial education programs;*
- (3) Identify opportunities for judges to obtain honest feedback and mentoring to build self-awareness and continue to develop as leaders in their courtrooms;*
- (4) Practice procedural fairness in the treatment of court personnel;*
- (5) Champion procedural fairness principles in messages to and interactions with the public, the media, and other branches of government; and*
- (6) Hold judges and court staff accountable for operating courts in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders.*

(“Resolution 12,” 2013 p.2)

See Section 4.3, Faculty Resources, for the full text of Resolution 12.

### **Activity 6 – Implementing Procedural Fairness**

The activity is based on Resolution 12 of the joint Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA) proposed strategies for procedural fairness. The goal of the activity is to propose practical ways to implement each of six strategies.

## Section 5 – A Systemic Court Management Approach

### Learning Objective

As a result of this section, participants will be able to

7. Investigate and share participant experiences and challenges with implementing a systemic court management approach to public trust and confidence.

#### 5.1 Review traditional court manager duties

Integration of public trust and confidence in the regular duties of court leaders assumes an awareness of these duties. The NACM publication, “The Court Administrator – A Guide and Manual” (2011), provides a concise summary of these duties as well as a discussion of how the executive team of chief judge and court administrator may effectively create a systematic court management approach.

In addition to creating an awareness of the full range of court management duties, the NACM manual also discusses the development of essential personal characteristics that will help ensure success in a court leadership role. This clear focus on necessary education and professional development includes the essential elements of excellent communication skills and an understanding of the court leader’s role in serving the public. These elements will assist any court leader as they work to improve public trust and confidence in the courts.

#### 5.2 Develop an organizational culture based on integrity, transparency, and accountability

Reshaping organizational culture is often one of the most challenging undertakings in the professional career of a court leader. Initial efforts are often connected to the personality of a charismatic court leader and derive from that person’s intent on improving the integrity, transparency and accountability of a specific court or court system. While such efforts can often be helpful to begin a cultural change, long term sustainability requires a broad acceptance of new cultural values before any cultural change will be noticeable.

There are many ways to approach organizational and cultural change, including strategic planning (see 5.3). Other options involve a multifaceted approach that includes the following:

- Train existing staff on the ethical aspects of court employment;
- Refocus recruitment, hiring, and orientation practices to emphasize a strong court culture based on integrity, transparency, and accountability;
- Provide opportunities for regular, open communication among court staff; and
- Adoption of the NACM Code of Conduct (or similar code) to provide some tangible guidance for all court employees.

The following is an excerpt from the “NACM Code of Conduct with Commentary.”  
*Service to the judicial branch is a public trust. The foundation of our society rests, in part, on the ability of the citizens to wisely judge the value of our courts and to acknowledge the integrity of the judiciary as a co-equal branch of our government. Court professionals, who*

*work for the judicial branch and are faithful to these values, must be accountable to that trust. This code is therefore a personal and professional pledge to that trust and to those values.*

*("NACM Code of Conduct with Commentary," n.d., n.p.)*

### **5.3 Develop a strategic plan that includes a focus on improving public trust and confidence**

Many courts have embraced long term strategic planning as a helpful process to focus attention on needed improvements and to help allocate limited resources. Often the process begins with the preparation of clear and concise statements of mission, vision, and organizational values. When effectively communicated and internalized by staff, these statements can become more than simply a motto; they can actually help drive efforts that will result in improvements in the public's trust and confidence in the courts. Strategic planning also envisions some type of trends analysis, perhaps to clarify the strengths, weaknesses, opportunities and threats (SWOT analysis) that the court must consider. Based on such an analysis, as well as information gleaned from other sources (e.g., focus groups, stakeholder surveys, etc.), strategic focus areas often emerge and enable the court to develop goals, objectives and strategies to address these focus areas and ultimately improve court operations.

If a jurisdiction is experiencing any significant problems with public trust and confidence it will likely emerge from this type of strategic planning process, thus providing court leaders with an opportunity to identify, prioritize, and deal with the issue. Of course if there are no immediate problems and a court simply desires to improve the organizational culture to include a clearer focus on public trust and confidence, the strategic planning process offers an approach that may be helpful.

### **5.4 Ensure public accountability for court operations and use of public funds**

In recent years, many governmental institutions, including the courts, have experienced increasing scrutiny regarding the appropriate use of public resources. In response to this scrutiny, much work has been done on the development of best practices and performance measures to provide courts with guidance on ways to improve accountability and thereby improve public trust and confidence in court operations.

#### Principles for Judicial Administration

One example of these efforts is the Principles for Judicial Administration, published by the National Center for State Courts. While many aspects of the principles are relevant to the issues of public trust and confidence, Principle 15 is the most applicable to this discussion of accountability.

The following is from the "Principles for Judicial Administration."

*Principle 15: The court system should be transparent and accountable through the use of performance measures and evaluation at all levels of the organization.*

*Commentary: The right to institutional independence and self-governance necessarily entails the obligation to be open and accountable for the use of public resources. This includes not just finances but also the effectiveness with which resources are used. Such accountability requires a constant process of self-assessment and public scrutiny. Courts stand as an important and visible symbol of government. Compliance with the law is dependent to some degree upon public respect for courts. Public trust and confidence in courts stem from public familiarity with and understanding of court proceedings, actions and operations.*

*Courts must use available resources wisely to address multiple and conflicting demands. To do so they must continually monitor performance and be able to know exactly how productive they are, how well they are serving public needs and what parts of the system and services need attention and improvement. Courts must continually evaluate the effectiveness of their policies, practices and new initiatives. This requires the collection and use of relevant, timely and accurate information that must then be used to make decisions on how to best manage court operations to ensure the desired outcomes.*

*Assessments must rely on objective data and be methodologically sound. The evolution of court performance assessment led to the development of CourTools, a set of ten core court performance measures. These and other similar measures provide a means for self-improvement and improved accountability to the funding entities and the public. Ideally courts that meet or exceed performance standards and share this information with the public will be recognized as doing so by the public. Where performance is good and public communications are effective, trust and confidence are likely to be present and support for the courts will increase.*

("Principles for Judicial Administration, 2012, p.11)

### Trial Court Performance Measures

The collection and use of relevant, timely and accurate information...to best manage court operations is a recurring theme, discussed in relation to the Trial Court Performance Measures (see 1.1 and notes below) and dispositional time standards for court cases (see 3.3).

### CourTools

Principle 15 also references CourTools as performance measures specifically designed for use in trial courts. These ten measures can provide accountability information for many aspects of court operations, however, the measure most directly related to public trust and confidence is Measure #1 – Access and Fairness (see 6.3). See Section 5.4, Faculty Resources, for more information about the CourTools.

### High Performance Court Framework

One additional measurement system which participants may find helpful with establishing a comprehensive approach to public accountability is the "High Performance Court Framework (HPCF)," (2010).



# HIGH PERFORMANCE COURT Framework

The High Performance Court Framework suggests a series of flexible steps courts can take to integrate performance improvement into its ongoing operations. The steps include:

- Focusing on key administrative principles that clarify high performance,
- Understanding how a court’s managerial culture can promote common goals and collegial cooperation,
- Developing the capacity to measure performance
- Learning to use the results for procedural refinements and communication with a variety of stakeholders.

Taken together the steps form a functional system or quality cycle that courts can follow in enhancing the quality of the administration of justice.

One of the practical benefits of the HPCF is the inclusion of a balanced score card that uses various performance measures to give courts and the public a clear understanding of court performance as measured by well-defined benchmarks.

## HPC Measurement: A Balanced Scorecard



Additional Notes from “Trial Court Performance Standards” related to public accountability.

### *Standard 5.1 Accessibility*

*The public perceives the trial court and the justice it delivers as accessible.*

*Commentary*

*The five standards grouped in the area of Access to Justice require the removal of barriers that interfere with access to trial court services. Standard 5.1 focuses on the perceptions of different constituencies about court accessibility. A trial court should not only be accessible to those who need its services but also be perceived as accessible by those who may need its services in the future.*

*Standard 5.2 Expeditious, 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.*

*Commentary*

*As part of effective court performance, Standard 5.2 requires a trial court to instill in the public trust and confidence that basic court functions are conducted in accordance with the standards in the areas of Expedition and Timeliness and Equality, Fairness, and Integrity.*

*Standard 5.3 Judicial Independence and Accountability*

*The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable.*

*Commentary*

*The policies and procedures of the trial court, and the nature and consequences of interactions of the trial court with other branches of government, affect the perception of the court as an independent and distinct branch of government. A trial court that establishes and respects its role as part of an independent branch of government and diligently works to define its relationships with the other branches presents a favorable public image. Obviously, the opinions of community leaders and representatives of other branches of government are important to perceptions of the court's institutional independence and integrity. Perceptions of other constituencies (e.g., those of court employees) about court relationships with other government agencies, its accountability, and its role within the community also should not be overlooked as important contributions to a view of the court as both independent and accountable.*

(TCPS, 1997, pp. 21, 22)

**Activity 7 – A Systemic Court Management Approach – Participant Feedback** (see Participant Activities). This group discussion activity asks participants to share experiences and challenges with the three foundations of systemic integration of public trust and confidence in their courts:

- Develop an organizational culture
- Develop a strategic plan
- Ensure public accountability

## Section 6 – A Jurisdictional Assessment

### Learning Objective

As a result of this section, participants will be able to:

8. Demonstrate the ways that local courts assess public trust and confidence.
9. Assess the level of public trust and confidence in your local jurisdiction.

### 6.1 Become familiar with existing research on public trust and confidence in courts

For example, a study published in American Politics Research suggests the attitudes toward local courts are based primarily on four factors:

The following is from “The Sources of Public Confidence in State Courts - Experience and Institutions.”

- a. *The actual experiences people have with these courts,*
- b. *The methods by which local judges are selected,*
- c. *The role of the mass media, and*
- d. *Various demographic factors.*

(Wenzel, Bowler, Lanoue, 2003, n.p.)

#### **Activity 8 – Local Assessment Options and Resources** (see Participant Activities)

The goal of this activity is to discuss the types of methods used in local courts to assess public trust and confidence.

See Section 6, Faculty Resources, for examples of research on public trust and confidence in the courts.

### 6.3 Plan and implement a local assessment

An easy “first step” for many trial courts is to implement “CourTools,” (2015) –Measure #1 Access and Fairness. This is one of 10 performance measures specifically designed for use in trial courts. The survey is a complete template, yet it can be modified to meet local needs. Survey could be administered electronically through a court website or social media link. Alternatively, it may be conducted in person as court users visit court facilities. If staffing is an issue, many courts have successfully used student volunteers to assist with survey implementation.

#### **Activity 9 – An Assessment of Public Trust and Confidence** (see Participant Activities)

The following activity asks participants to assess the level of public trust and confidence in their court or state from the perspective of access and fairness, using questions adapted from Measure 1 of the National Center for State Courts’ (NCSC) “CourTools.”

Many assume that “winning” or “losing” is what matters most to citizens when dealing with the courts. However, research consistently shows that positive perceptions of court experience are shaped more by court users’ perceptions of how they are treated in court, and whether the court’s process of making decisions seems fair. This measure provides a tool for surveying all court users about their experience in the courthouse. Comparison of results by location,

division, type of customer, and across courts can inform and improve court management practices.

#### 6.4 Informal Assessment Opportunities

Be aware of informal feedback that may come from external court stakeholders as they interact within their independent spheres of influence, yet still represent court programs, activities, functions, staff, and resources. Examples include:

- Lawyers describing the efficiency of courts or decision-making abilities of judges to clients;
- Law enforcement personnel sharing comments about waiting time for court hearings;
- School teachers discussing the responsiveness of courts when assistance is needed to address truancy or delinquency matters; and
- Civic organization members discussing the willingness or availability of court leaders to meet and discuss issues related to court operations and community safety.

Conversations like these take place in our communities on a daily basis. Whether the outcomes are positive or negative; whether they bolster public trust and confidence in the courts or not, is largely up to court leaders. Participating in community conversations and being transparent about court operations, as well as the efficient use of public resources will often help improve public perceptions.

## Section 7 – A Commitment to Excellence

### Learning Objective

As a result of this section, participants will be able to:

10. Connect national research on the role of the media related to the courts with the experiences of local courts and local media.
11. Discuss and propose ideas and specific resources needed for community collaboration events to foster a greater understanding of the court process, services available, and methods for accessing them.

#### 7.1 Balance Sources of Information

The findings noted below are excerpts from research conducted by Rottman, et al, published by the NCSC.

*IV. One consequence of the lack of public attentiveness is that national media—not local media—effects are strong in shaping the image of courts.*

*Media coverage of the courts is sporadic and unrepresentative ("There is evidence that people's opinions about crime and punishment often are based on the unusual,*

*dramatic and unrepresentative cases that they learn about from the mass media") (Tonry, 1998:24) and also inaccurate ("the public is regularly exposed to misrepresentation of the judicial process [by the media]") (Zemans, 1991:727). Indeed, it is reasonable to conclude that the media misrepresent what the public wants of the criminal justice system (Roberts and Stalans, 1998:55).*

*The relevant media appears to be national, not local. The Utah experiment in using the media to increase awareness of the state courts suggests that the public's point of reference is national and, arguably, stereotypical. The kind of local coverage courts receive centers on issues like crime and family dysfunction. However, "issues involving chronic problems like crime show little correlation between media coverage and public attention" (Neuman, 1990 as quoted in Franklin and Kosaki, 1995:354).*

*Media-driven images are not challenged because of low public attentiveness and interest in the courts. The considerable power of the media is suggested in a survey designed to predict future litigative intent. "Persons reporting greater contact with media sources about lawyers and the legal system . . . were more likely than their counterparts to reject legal solutions to their future problems" (Miethe, 1995:578). Exposure to the media was the only influence that created personal barriers to use of the law.*

*More generally, Sherman (2000:17) notes, "for the majority of Americans who have little if any personal contact with the criminal justice system, the level of trust in criminal justice may depend on how legal agencies are portrayed in entertainment and news media." About one-half (53 percent) of American adults have had some direct contact with the courts (National Center for State Courts, 1999). The entertainment industry fills the information gap for the other half of the population. A 1983 survey (Hearst Corporation, 1983:21) asked a random sample of adults who were not employed by law enforcement or criminal justice, "Where do you most frequently get information about courts." The fourth most common source (out of 11 possible ones) was "television drama" (after television news, newspapers, and radio news).*

(Rottman, Hansen, Mott, 2003, p.9-10)

### **Activity 10 –Media and Local Perceptions** (see Participant Activities)

The goal of the activity is to review and discuss research findings about the role of the media and media coverage of local courts.

## **7.2 Collaborate with the Community**

There are many options available to court managers to help them in communicating with the public. Some of these are inexpensive while others may be more resource intensive. These examples are intended to be "discussion starters", so participants are encouraged to share notable collaboration efforts from their home jurisdictions. For example:

- Invite local school groups for a tour of the courthouse and interactive discussion of court operations;

- Sponsor public “Law Day” or “Law Week” events each year on or about May 1<sup>st</sup>, perhaps including, mock trials, public workshops on various legal topics, courthouse tours, high school essay contests, art contests related to Law Day theme;
- Invite the public to a celebration of National Adoption Day (November) and highlight the positive aspects of adoption and permanency planning for children;
- Co-sponsor Bench/Bar gatherings ;
- Highlight problem solving court graduations in the local media:
- Establish regular meetings with external court stakeholders to discuss issues of common concern:
- Provide online or other opportunities for the public to ask questions or raise concerns about court operations: and
- If courts are funded locally, provide an annual report to local funders to highlight effective operations and how the courts help provide community stability and public safety, while improving the overall quality of life.

**Activity 11 –Community Collaboration** (see Participant Activities)

The goal of the activity is to share and evaluate the types and methods that state and local courts use to reach out to the local community.

### 7.3 Ensure Procedural Fairness

Reiterate the principles of procedural fairness, noted in Section 4, and emphasize the importance of judges and judicial officers performing their duties in a fair and transparent manner. Also, note the importance of litigants leaving any court proceeding with a clear understanding of what transpired and what, if anything, is expected of them once they leave the courthouse. Discuss how this connects with Section 3.3, Timeliness of Case Disposition and the need for clarity in court orders.

Participants may find it instructive to review a variety of Codes of Etiquette or Codes of Conduct for Courtrooms to determine if developing such a code may help ensure procedural fairness and further support public trust and confidence in the courts. Several state court and federal court examples may be reviewed at “Courthouse Design and Finance,” (2015).

See Section 7, Faculty Resources, for an example from “Courtroom Etiquette, Ninth Judicial Circuit Court” in Kalamazoo, Michigan referenced in the NCSC database.

### 7.4 Highlight Courts as Problem-Solvers

The concept of courts as problem solvers originated in 1899, Cook County, IL, with the development of juvenile courts. This original problem solving court sought to address a variety of therapeutic and other needs that were ignored in the traditional criminal justice system. Nearly a century later, in 1989, the drug treatment court phenomenon began in Dade County, FL and quickly became a model for a new way of “doing justice”. As problem-solving court techniques were evaluated and shown to be effective, the process was quickly adapted and applied to numerous societal issues, such as homelessness, domestic violence, veteran reintegration, drunk driving, and more. In the wake of numerous unresolved community problems, citizens naturally turn to the public institutions in which there is high confidence, i.e.,

the courts. Many communities have expectations that courts will intervene in helpful ways to resolve community problems, yet some judges and court staff see this problem-solving movement as an inappropriate and unwarranted expansion of judicial authority in matters more appropriately addressed by the executive or legislative branches. However this is viewed, local courts must actively help the community understand court process and available services.

### 7.5 Use Surveys as Guides to Policy

In addition to using local assessments or surveys (see Section 6.3) as a guide to policy development and service improvements, staying abreast of relevant literature and larger scale public opinion surveys (see Smith, Son, 2013; "Public Trust in Government," 2014; Rottman, Hansen, Mott, Grimes, (2003) may provide insights for operational improvements.

### 7.6 Focus on Judicial Administration as a "High Calling"

Conclude on a positive note, emphasizing the need for court leaders to motivate others; to bring pride to everyday routines and responsibilities; to demand integrity and ethical conduct; and to perform in a manner that inspires public trust and confidence in the judicial branch.

By making this personal commitment to our profession, we will inspire others to do likewise and ultimately improve our collective ability to inspire public trust and confidence in the courts.

***"Courts exist to serve the public, not to serve judges, court managers, or lawyers. Everything that managers do is but a means to an end, and that end is service to the public."***

("The Court Administrator," 2011, p.7, quote attributed to Edward B. McConnell, President Emeritus, National Center for State Courts)



## Faculty Resources

Faculty Resources are intended to be used as references and illustrations of content, methodology, and purpose for each topic. Some of the Faculty Resources are annotated in the content outline in places where their use may be most effective. Faculty for a course based on this curriculum design may have supplemental resources that would be useful to court managers. These faculty resources are not intended to be the only participant materials; they are intended to provide some materials that are considered vital to the content.

### Section 1 – An Overview

Table 1.1 See – “Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity,” (Rottman, Hansen, Mott, Grimes, 2003), at <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf> .

NATIONAL AND STATE RANDOM POLLS OF PUBLIC OPINION ON THE COURTS  
This Table could be used as an effective handout to highlight the variety of surveys conducted regarding public perception of courts. (See Table 1.1 on the following page.)

### Section 2 – An Historical Perspective

2.6 See “Homegrown Institutional Legitimacy - Assessing Citizens' Diffuse Support for State Courts,” (Cann, Yates, 2008), at <http://apr.sagepub.com/content/36/2/297.abstract>.

#### **Abstract**

Since the United States Supreme Court's decision in *Bush v. Gore*, the public's support for the judicial system looms as an especially important concern. Although studies have confirmed that the Supreme Court's reservoir of public goodwill has remained largely intact following the politically divisive decision, the status of public support for other American courts has received little attention. This reflects a broader trend in judicial politics scholarship toward placing inordinate attention on explaining public support for the U.S. Supreme Court while largely ignoring the courts where most of the policymaking in the nation occurs—state courts. We use a national survey to assess the factors influencing diffuse support for state courts. We find that although many considerations affecting diffuse support for state courts parallel the determinants of such support for the nation's high Court, important differences exist between explanations of citizen support for state courts and the Supreme Court. *Most notably, judicial elections and concerns over judicial campaign contributions work to undermine citizens' support for their state courts.*

*Table 1.1*  
**NATIONAL AND STATE RANDOM POLLS OF PUBLIC OPINION ON THE COURTS**

| Year | State or National | Sample Size | Survey Type   | Pollster Type | Name of National Survey   |
|------|-------------------|-------------|---------------|---------------|---|
| 1977 | National*         | 1931        | In Person     | Commercial    | <i>Public Image of the Courts</i>   |
| 1978 | Utah              | 600         | Telephone     | Commercial    |   |
| 1983 | National          | 1004        | Telephone     | Commercial    | <i>The American Public, The Media and the Judicial System: A Hearst Report</i>                    |
| 1984 | New Jersey        | 800         | Telephone     | University    |   |
| 1986 | Michigan          | 789         | Telephone     | University    |   |
| 1988 | Washington        | 800         | Telephone     | Commercial    |   |
| 1989 | Alabama           | 422         | Questionnaire | University    |   |
| 1989 | Rhode Island      | 404         | Telephone     | Commercial    |   |
| 1990 | Utah              | 600         | Telephone     | Commercial    |   |
| 1991 | Massachusetts     | 400         | Telephone     | Commercial    |   |
| 1991 | Utah*             | 600         | Telephone     | Commercial    |   |
| 1992 | California*       | 1488        | Telephone     | Commercial    |   |
| 1992 | New Jersey        | 800         | Telephone     | University    |   |
| 1992 | Virginia*         | 1600        | Telephone     | Commercial    |   |
| 1995 | Iowa              | 803         | Telephone     | University    |   |
| 1995 | Mississippi       | 670         | Telephone     | University    |   |
| 1995 | North Carolina    | 800         | Telephone     | Commercial    |   |
| 1995 | Wisconsin         | 522         | Telephone     | University    |   |
| 1996 | National          | 1085        | Telephone     | University    | <i>National Opinion Survey on Crime and Justice</i>   |
| 1996 | Florida           | 1042        | Telephone     | Commercial    |   |
| 1997 | Arizona           | 511         | Telephone     | Commercial    |   |
| 1997 | New Mexico        | 403         | Telephone     | Commercial    |   |
| 1998 | National          | 1000        | Telephone     | Commercial    | <i>Perceptions of the US Justice System</i>   |
| 1998 | Connecticut       | 1200        | Telephone     | University    |   |
| 1998 | Kansas            | 1226        | Telephone     | University    |   |
| 1998 | Louisiana*        | 1200        | Telephone     | University    |   |
| 1998 | Maryland          | 600         | Telephone     | Commercial    |   |
| 1998 | Texas*            | 1215        | Telephone     | University    |   |
| 1999 | National*         | 1200        | Telephone     | University    | <i>How the Public Views the State Courts</i> , a national survey funded by The Hearst Corporation |
| 1999 | Minnesota         | 1,100       | Telephone     | Commercial    |   |
| 1999 | New Mexico        | 601         | Telephone     | Commercial    |   |
| 1999 | Washington        | 1825        | Telephone     | Commercial    |   |
| 2000 | National*         | 1574        | Telephone     | University    | <i>Public Opinion on the Courts: A National Portrait and Interpretation</i>                       |
| 2000 | Virginia          | 600         | Telephone     | Commercial    |   |
| 2002 | Nebraska          | 1,473       | Telephone     | University    |   |

\* The random sample was supplemented through oversampling of members of minority groups, opinion leaders, judges, lawyers, persons with recent court experience, or residents in states with and without particular court reforms.

States in italics indicate that the survey replicated some or all of the questions in the 1999 "How the Public Views the State Courts" survey.

- 2.6 See "Challenges to the Impartiality of State Supreme Courts: Legitimacy Theory and "New-Style" Judicial Campaigns," (Gibson, 2008, n.p.) at <http://journals.cambridge.org/action/displayJournal?jid=PSR>.

**Abstract**

Institutional legitimacy is perhaps the most important political capital courts possess. Many believe, however, that the legitimacy of elected state courts is being threatened by the rise of politicized judicial election campaigns and the breakdown of judicial impartiality. Three features of such campaigns, the argument goes, are dangerous to the perceived impartiality of courts: campaign contributions, attack ads, and policy pronouncements by candidates for judicial office. By means of an experimental vignette embedded in a representative survey, I investigate whether these factors in fact compromise the legitimacy of courts. The survey data indicate that campaign contributions and attack ads do indeed lead to a diminution of legitimacy, in courts just as in legislatures. However, policy pronouncements, even those promising to make decisions in certain ways, have no impact whatsoever on the legitimacy of courts and judges. These results are strongly reinforced by the experiment's ability to compare the effects of these campaign factors across institutions (a state Supreme Court and a state legislature). Thus, this analysis demonstrates that legitimacy is not obdurate and that campaign activity can indeed deplete the reservoir of goodwill courts typically enjoy, even if the culprit is not the free-speech rights the U.S. Supreme Court announced in 2002.

### Section 3 – The Impact of Effective Court Process

- 3.3 See "ABA Model Time Standards for State Courts," (2012), at [http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/112\\_-\\_adopted\\_asrev.html](http://www.americanbar.org/news/abanews/aba-news-archives/2013/08/112_-_adopted_asrev.html)

See a summary table of the model time standards on the following page.

### Section 4 –The Emergence and Application of Procedural Fairness

- 4.1 The following is an excerpt from Tyler's book, *Why People Obey the Law*.

People obey the law if they believe it's legitimate, not because they fear punishment-- this is the startling conclusion of Tom Tyler's classic study. Tyler suggests that lawmakers and law enforcers would do much better to make legal systems worthy of respect than to try to instill fear of punishment. He finds that people obey law primarily because they believe in respecting legitimate authority. (Tyler, 2006, n.p.)

**MODEL TIME STANDARDS FOR STATE COURTS**

**(February 2012)**

| Case Category | Case Type                               | Standard  |
|---------------|---|---|
| CRIMINAL      |   |   |
|               | <u>Traffic and Local Ordinance</u>      | 75% within 30 days<br><b>90% within 60 days</b><br><b>98% within 180 90 days</b>  |
| FAMILY        |   |   |
|               | Domestic Violence/<br>Protection Orders | 90% within 10 days 98%<br>within <u>3</u> 10 days<br><b>90% within 10 days</b> 98%<br>within <u>3</u> 10 days   |
| JUVENILE      |   |   |
|               | Neglect and Abuse                       | <u>Adjudicatory</u><br><br><b>Hearing/Disposition:</b> 98%<br>within 90 days of removal<br><br>Permanency Plan <b>Hearing:</b><br>75% within <b>270 120 (270</b><br><b>120)</b> days of removal;<br>98% within 360 days of<br>removal |

4.3 CCJ/COSCA – Promotion of Procedural Fairness

See “Resolution 12 - In Support of State Supreme Court Leadership to Promote Procedural Fairness” (2013), at

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07312013-Support-State-Supreme-Court-Leadership-Promote-Procedural-Fairness-CCJ-COSCA.ashx>

Copies of Resolution 12 may be shared with participants as a handout. It may also be used as the beginning of an action plan to improve Public Trust and Confidence.

CONFERENCE OF CHIEF JUSTICES  
CONFERENCE OF STATE COURT ADMINISTRATORS  
**Resolution 12**

In Support of State Supreme Court Leadership to Promote Procedural Fairness

WHEREAS, a fundamental role of courts is to ensure fair processes and just outcomes for litigants; and

WHEREAS, the constitutional guarantee of due process is designed to ensure that court decisions are made through legally fair procedures; and

WHEREAS, extensive research demonstrates that in addition to providing legal due process, it is important also to meet the public's expectations regarding the process in order to increase positive public perceptions of the court system, reduce recidivism, and increase compliance with court orders; and

WHEREAS, a number of state courts have incorporated the key components of procedural fairness—voice (allowing litigants to be heard), neutrality (making decisions based on neutral, transparent principles), respectful treatment, and trust (the perception that the judge is sincere and caring)—into their judicial education programs, court performance measures, and public outreach information to focus attention on the importance of fair procedures as defined by the public; and

WHEREAS, resources have been developed to help the courts in addressing procedural fairness and incorporating such concepts into better decision-making, including two Policy Papers, "Procedural Fairness: A Key Ingredient In Public Satisfaction" and "Minding The Court: Enhancing the Decision-Making Process," produced by the American Judges Association (AJA), and the website "Proceduralfairness.org", created by AJA, the National Center for State Courts, and procedural fairness scholars; and

WHEREAS, embracing procedural fairness principles furthers judicial accountability associated with litigants' perceptions of fair treatment, without reference to the merits of individual cases;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to take a leadership role in promoting the use of procedural fairness principles in their court systems; and

BE IT FURTHER RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to consider implementing the following strategies in their courts to promote procedural fairness:

- (1) Measure litigant satisfaction based on, among other factors, procedural fairness, using a measurement instrument such as the National Center for State Courts' CourTools Access and Fairness measure;
- (2) Encourage the integration of research on procedural fairness and effective decision-making processes into judicial education programs;

- (3) Identify opportunities for judges to obtain honest feedback and mentoring to build self-awareness and continue to develop as leaders in their courtrooms;
- (4) Practice procedural fairness in the treatment of court personnel;
- (5) Champion procedural fairness principles in messages to and interactions with the public, the media, and other branches of government; and
- (6) Hold judges and court staff accountable for operating courts in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders.

## Section 5 – A Systemic Court Management Approach

- 5.4 See NCSC “CourTools” (2015) brochure at <http://www.courtools.org/~media/Microsites/Files/CourTools/CourToolsOnline-Final.ashx>

This brochure is a good resource to share with court staff and judges who may be unfamiliar with the concepts underlying this performance measurement system.

## Section 6 – A Jurisdictional Assessment

- 6.1 See “The Sources Of Public Confidence In State Courts - Experience and Institutions,” at <http://apr.sagepub.com/content/31/2/191>.

### Abstract

Although much is known about public attitudes toward the U.S. Supreme Court, there is very little information about how citizens feel about courts in their own communities. This article hypothesizes that attitudes toward local courts are based primarily on four factors: (a) the actual experiences people have with these courts, (b) the methods by which local judges are selected, (c) the role of the mass media, and (d) various demographic factors. The authors find strong evidence that personal experience matters: Criminal jurors are more supportive of local courts, whereas defendants and those who have participated on either side of a civil case are not. Judicial selection methods, on the other hand, have no effect on citizens’ attitudes, except among some educated citizens. Finally, no media effects are apparent. (Wenzel, Bowler, Lanoue, 2003, n.p.)

- 6.1 “Explaining Public Confidence in the Branches of State Government,” at <http://prq.sagepub.com/content/60/4/707.abstract>.

### Abstract

What explains public confidence in the leadership of government institutions at the state level? The authors explore how political processes, the nature of representation, and economic and policy performance in the states translate into citizen confidence in state institutions. Using a multilevel modeling approach, the authors consider the sources of

public confidence in the people who lead state legislatures, offices of the governor, and state courts. While the explanations for government confidence at the state level resemble, in part, those of the national government, the authors also observe notable differences, with each branch of state government drawing on distinct sources of public satisfaction. (Kelleher, Wolak, 2007, n.p.)

## Section 7 – A Commitment to Excellence

- 7.3 The following is an example of codes of etiquette or codes of conduct for courtrooms that can be shared with the participants as part of this section of the course.

"COURTROOM ETIQUETTE," Ninth Judicial Circuit Court, at <http://www.kalcounty.com/courts/etiquette.htm>

### **Silence**

Court proceedings must be electronically recorded. Therefore, silence is a necessity, unless you are a party to the proceeding that is in progress. Disruptive behavior such as talking, laughing, shouting or creating other loud disturbances will not be tolerated. The security staff may remove offenders from the building and the judges may hold violators in contempt of court. Mild-toned conversations may be conducted in the lobbies, hallways and conference rooms. We strongly discourage bringing young children to court.

### **Addressing the Court**

Address the judge as "Your Honor" or "Judge." Address the referee as Mr. or Ms.

Stand when addressing the court. Please advise the judge or hearing official if you have a disability that would make this difficult.

Only one person at a time may speak during a court proceeding. This ensures greater accuracy in making a record by audio and video recording equipment.

Speak clearly and loudly. The large courtrooms absorb sound, making it difficult to hear mumbling and soft spoken voices. Speaking clearly and loudly ensures the judge and the court recorder/recording equipment are hearing what is being said.

Address the court either from a counsel table or from a podium. These areas are equipped with microphones. Stepping away from these areas reduces the accuracy of the record.

### **Respect**

Be respectful of the judge or hearing official, the court staff, attorneys and litigants. Maintain a respectful attitude at all times in the court building and in the courtrooms.

### **Customer Feedback:**

We want our staff to treat you with respect also. We have customer feedback surveys available at our service counters. Please take a moment to let us know how we may serve you better.



## References

Michigan Rules of Professional Conduct (MRPC)  
Michigan Code of Judicial Conduct - Canon 3A2  
("Courtroom Etiquette," 2015)

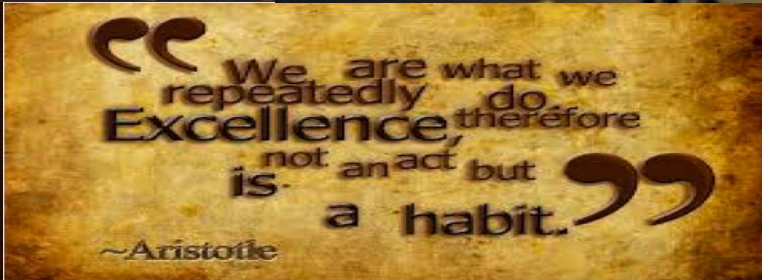
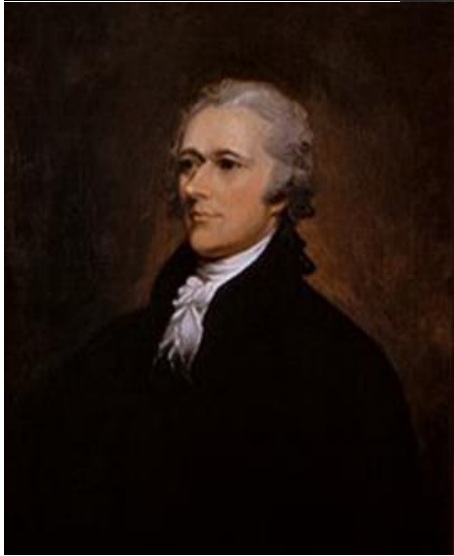
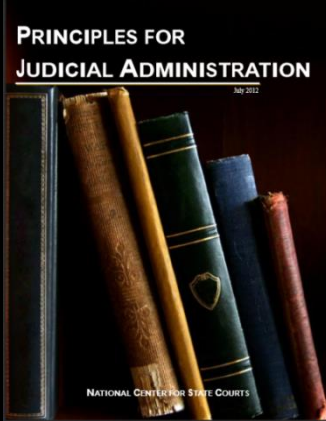
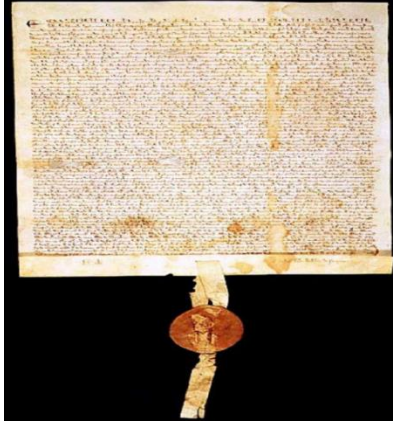
## Images for PowerPoint Slides

Possible images to incorporate in PPT slides:





Roscoe Pound



Thomas Jefferson



## Participant Activities

The participant activities are one of the most important parts of the curriculum design as they are the tools faculty members are able to use to determine if participants have achieved the outcomes defined in the learning objectives. Also, participant activities provide tools to faculty to ensure that the training, course, or session is not only informative, but also interactive.

Participant activities are annotated in the content outline in places they may be effectively used. Each activity has a cover page explaining its purpose, the specific learning objective being measured, and how to use the activity. The activities themselves are on a separate page(s) for ease of duplication.

The following activities are to measure achievement of stated learning objectives. Faculty are encouraged to incorporate additional strategies to engage court managers and keep them active during their educational experience, for example, asking questions about content before presenting it, having learners discuss content and provide feedback to faculty on their perspectives, and more.

### **Pre-Session Activity**

Prior to teaching Public Trust and Confidence, consider surveying the participants to determine their experience with the subject matter, e.g., has public trust and confidence ever been an issue in your jurisdiction; have you ever measured the level of trust and confidence in your local courts (e.g., focus groups, opinion surveys, bench/bar meetings, etc.); has any state or local training been provided to judges or court staff regarding the importance of Public Trust and Confidence in the courts; and does your court have a strategic plan that recognizes the importance of public trust and confidence?

### **Activity 1 – The Importance of Public Trust and Confidence in Your Court**

#### *Learning Objective 1*

Describe the importance of public trust and confidence to the credibility of the judicial branch.

### **Activity 2 – History and Research on Public Trust and Confidence**

#### *Learning Objective 2*

Compare and contrast historical writings and research to current discussions of public trust and confidence.

### **Activity 3 – Case Processing and Public Trust and Confidence**

#### *Learning Objective 3*

Document the ways that transparent and consistent application of court procedures, as well as the timely resolution of cases, enhances public trust and confidence.

### **Activity 4 – Public Misperceptions of the Courts**

*Learning Objective 4*

Ascertain the level of public misperception about the courts and its causes, based on ten identified issues in Washington State.

**Activity 5 – Perceptions of the Courts in your Community**

*Learning Objective 5*

Identify the inherent connections between public trust and confidence and the principles of procedural fairness.

**Activity 6 – Implementing Procedural Fairness**

*Learning Objective 6*

Explore and discuss practical ways to implement the CCJ/COSCA proposed strategies for implementing public trust and confidence in each state and local court.

**Activity 7 – A Systemic Court Management Approach – Participant Feedback**

*Learning Objective 7*

Investigate and share participant experiences and challenges with implementing a systemic court management approach to public trust and confidence.

**Activity 8 – Local Assessment Options and Resources**

*Learning Objective 8*

Demonstrate the ways that local courts assess public trust and confidence.

**Activity 9 – An Assessment of Public Trust and Confidence**

*Learning Objective 9*

Assess the level of public trust and confidence in your local jurisdiction.

**Activity 10 – Media and Local Perceptions**

*Learning Objective 10*

Connect national research on the role of the media related to the courts with the experiences of local courts and local media.

**Activity 11 – Community Collaboration**

*Learning Objective 11*

Discuss and propose ideas and specific resources needed for community collaboration events to foster a greater understanding of the court process, services available, and methods for accessing them.



## Activity 1 – The Importance of Public Trust and Confidence in Your Court

To encourage immediate involvement of participants, ask them to think about the meaning/importance of public trust and confidence in their own court context and briefly share their thoughts with another participant. After a few minutes of discussion, faculty may ask for some volunteers to share highlights of their discussion with the full class.

### Notes about Using the Activity

If the time allotted for the course does not permit a group activity, faculty may choose to use the activity as a group brainstorming exercise.

#### Learning Objective 1

Describe the importance of public trust and confidence to the credibility of judicial branch.

1. Does your court use the phrase public trust and confidence in planning or other initiatives that involve the public or the bar association? If so, in what context?

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2. Does your court have a strategic plan? If so, is public trust and confidence a goal or objective?

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3. Has your court ever conducted a public or litigant survey designed to elicit feedback about public perceptions of the court? If so, when, or how often?

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4. Without public surveys, how do you think the public feels about your court in the community? For criminal matters? Family matters? Civil matters?

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## Activity 2 – History and Research on Public Trust and Confidence

This exercise is designed to compare and contrast current discussions related to public trust and confidence, and historical writings and research. The experiences and perceptions of class participants are an important component of that comparison.

### Notes about Using the Activity

This is intended to be used as a brainstorming activity and discussion. If time permits, faculty can have participants spend some time thinking about the questions before a group discussion.

#### Learning Objective 2

Compare and contrast historical writings and research to current discussions of public trust and confidence.

1. The Magna Carta was intended to be a check on the power of the King. Is the King equivalent to our executive branch today, or our entire government? What are the perceptions of government in popular media today, related to central power and the role of the justice system?

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2. Do you think Hamilton and the founding fathers made a mistake when they made funding of the judicial branch subject to the legislative branch? How has that played out in government today? In public perceptions?

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3. Is Pound still relevant today? What are your experiences with litigants and other court participants that align with what he said regarding the following issues?

Complexity of the process:

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Concurrent jurisdictions:

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Judges as referees:

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### Activity 3 – Case Processing and Public Trust and Confidence

The goal of the discussion is for small groups of participants to identify practical areas in case processing that impact public trust and confidence. The questions are organized around logical areas of court operations and case processing.

#### Notes about Using the Activity

Participants should work in small groups, and appoint a spokesperson and a scribe. 15-20 minutes should be allotted for group work, followed by an equal amount of time for debriefing. Generally, the best approach to do this, if time is a challenge, is to have each table present their responses to one question or category and invite other tables to provide input to supplement their response. This approach enables every table to participate.

#### Learning Objective 3

List the ways that transparent and consistent application of court procedures, as well as the timely resolution of cases, enhances public trust and confidence.

1. Identify practical ways that each area of case processing impacts public trust and confidence, including perceptions of fairness and access?

Case initiation:

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Fees/costs:

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Discovery process and motions:

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Hearing and trial procedures:

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Enforcement:

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2. Identify practical ways that other areas of court processes impact public trust and confidence, including perceptions of fairness and access?

Jury participation:

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Retrieving information about cases and judgments:

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Appearing as a witness:

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## Activity 4 – Public Misperceptions of the Courts

The discussion questions for the activity are based on the public misperceptions of the courts that are presented in the video. Invite participants to share similar experiences with related commissions in their home states.

*Myths and Misperceptions About the Washington Courts, at*  
<https://www.youtube.com/watch?v=vBy43azhWHk>

A video from Washington's judicial branch challenges some mistaken ideas about how courts work by using real person-on-the-street interviews and responses from judges and justices. The video was produced by the Public Trust & Confidence Committee of the Board for Judicial Administration (BJA) in partnership with Washington's public affairs station, TVW, with financial support provided by the Washington State Gender and Justice Commission and Minority and Justice Commission. (Washington Courts [Video file], 2014)

### Notes about Using the Activity

The activity should begin with a viewing of the approximately 9 minute video clip. Discussion questions can be reviewed as a group, or in small groups with feedback. Please discuss the following ten misperceptions of the courts presented in the video and respond to the questions for each.

#### Learning Objective 4

Ascertain the level of public misperception about the courts and its causes, based on ten identified issues in Washington State.

1. *Perception that judges work for the police.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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2. *Perception that courts are biased against fathers in family cases.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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3. *Perception that courts are not concerned about women's safety.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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4. *Perception that judges have unlimited authority, or that they can "just dismiss a case."*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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5. *Perception that everyone has an unconditional right to a lawyer in every case (civil and criminal).*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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6. *Perception that the court has an obligation and duty to provide legal advice.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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7. *Perception that the court assesses bail and fines to generate revenue for themselves or the government.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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8. *Perception that courts work for the legislature.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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9. *Perception that judges can and do create or change law (note that this should provoke a discussion about the purpose of case law precedent).*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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10. *Perception that judges are not human when they put on the robe.*

Is this a problem in your court or jurisdiction?

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If so, why is this perception "out there?"

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## Activity 5 – Perceptions of the Courts in your Community

The discussion questions for the activity are based on the conclusions about public perceptions of the courts based on race and ethnicity from the following 2003 NCSC study.

See “Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity,” at <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf>

The challenge is that the public:

- (a) Evaluates the courts based on fairness (i.e., respect, trust, neutrality, and participation) rather than on the basis of actions that increase speed or reduce costs; and
- (b) Expects courts to take on new roles that move away from that of the dispassionate, disinterested magistrate and toward a community problem-solver.

(Rottman, Hansen, Mott, Grimes, 2003)

### Notes about Using the Activity

The study is too long to read during the time allotted for education. Alternative approaches include having participants read the concluding chapter and discussing its findings, or simply basing the discussion on the following questions.

#### Learning Objective 5

Identify the inherent connections between public trust and confidence and the principles of procedural fairness.

1. The study expanded the range of problems that are often quoted from surveys. The most common quoted problems are that courts take too long and cost too much. Do you still think that these are the biggest problems with courts?

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2. The focus of the study is on issues of fairness, and especially the public expectations of the courts to be a community problem solver. Do you think that this is true? Does it correlate with your experience?

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3. Do you think the perception of the role of the courts as community problem solver is greater among racial and ethnic minorities than among Caucasians?

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## Activity 6 – Implementing Procedural Fairness

The activity is based on Resolution 12 of the joint Conference of Chief Justices and Conference of State Court Administrators (CCJ/COSCA) proposed strategies for procedural fairness. The goal of the activity is to propose practical ways to implement each of six strategies.

See "Resolution 12 - In Support of State Supreme Court Leadership to Promote Procedural Fairness," at <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/07312013-Support-State-Supreme-Court-Leadership-Promote-Procedural-Fairness-CCJ-COSCA.ashx>

BE IT FURTHER RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators encourage their members to consider implementing the following strategies in their courts to promote procedural fairness. ("Resolution 12," 2013, p.1)

### Notes about Using the Activity

The questions below each activity are designed to foster discussion in small groups about practical approaches to implementation, with follow-up feedback to the large group. Each small group should appoint a scribe and a spokesperson. If materials are available, writing responses with magic marker on flip chart sheets is an effective way to present. If time is limited, the activity can be conducted as a large group discussion.

### Learning Objective 6

Explore and discuss practical ways to implement the CCJ/COSCA proposed strategies for implementing public trust and confidence in each state and local court.

*(1) Measure litigant satisfaction based on, among other factors, procedural fairness, using a measurement instrument such as the National Center for State Courts' CourTools Access and Fairness measure;*

Do any participant jurisdictions measure litigant satisfaction now?

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Which instrument do/would they use?

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How often do/would they measure?

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*(2) Encourage the integration of research on procedural fairness and effective decision-making processes into judicial education programs;*

Have any participant jurisdictions conducted or participated in education on these issues?

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If so, where, or which courses or institutions?

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If not, what do participants know is available in the field?

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(3) *Identify opportunities for judges to obtain honest feedback and mentoring to build self-awareness and continue to develop as leaders in their courtrooms;*

Have any participant jurisdictions conducted or participated in education on these issues?

---

If so, where, or which courses or institutions?

---

If not, what do participants know is available in the field?

---

(4) *Practice procedural fairness in the treatment of court personnel;*

What do participants think this means, practically?

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How would you go about building a program like this?

---

(5) *Champion procedural fairness principles in messages to and interactions with the public, the media, and other branches of government; and*

What do participants think this means, practically?

---

How would you go about building a program like this?

---

(6) *Hold judges and court staff accountable for operating courts in which everyone is treated with respect, has the opportunity to be heard, and receives an adequate explanation of court orders.*

What do participants think this means, practically?

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How would you go about building a program like this? What would you measure?

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### Activity 7 – A Systemic Court Management Approach – Participant Feedback

This group discussion activity asks participants to share experiences and challenges with the three foundations of systemic integration of public trust and confidence in their courts:

- Develop an organizational culture
- Develop a strategic plan
- Ensure public accountability

#### Notes about Using the Activity

The questions below are designed to enable participants to share their experiences and challenges with integrating public trust and confidence into the culture, planning, and accountability mechanisms in their court. Faculty may simply ask the questions of the group, or they may ask participants to spend 10 minutes reading and thinking about the questions, before responding in a group discussion.

#### Learning Objective 7

Investigate and share participant experiences and challenges with implementing a systemic court management approach to public trust and confidence.

1. What are the practical ways that you as a court manager have integrated public trust and confidence into your court culture? How do you measure the impact of these changes?

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2. Typically, public trust and confidence is included in a court vision and mission statement. In strategic planning efforts in your court, how has this translated into concrete goals, objectives, and initiatives in your court?

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3. Many tools and resources have been identified in the curriculum to ensure public accountability. Which resources has your court used and implemented in a practical way? Please describe these efforts.

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## **Activity 8 – Local Assessment Options and Resources**

The goal of this activity is to discuss the types of methods used in local courts to assess public trust and confidence.

### **Notes about Using this Activity**

Ask participants to share local methods and tools used to assess public trust and confidence in their court or state. Suggested examples might include surveys, focus groups, community forums, and town hall meetings. Invite participants who contribute to share or demonstrate how these tools were implemented in their jurisdiction.

### **Learning Objective 8**

Explore and demonstrate the ways that local courts assess public trust and confidence.

## Activity 9 – An Assessment of Public Trust and Confidence

The following activity asks participants to assess the level of public trust and confidence in their court or state from the perspective of access and fairness, using questions adapted from Measure 1 of the National Center for State Courts (NCSC) CourTools. (“CourTools,” 2015)

### Notes about Using this Activity

Ask participants to share local methods and tools used to assess public trust and confidence in their court or state. Suggested examples might include surveys, focus groups, community forums, and town hall meetings. Invite participants who contribute to share or demonstrate how these tools were implemented in their jurisdiction.

### Learning Objective 9

Assess the level of public trust and confidence in your local jurisdiction.

Circle the number most applicable to your court, or courts in your state or jurisdiction.

#### ACCESS

1. Finding *and getting to* the courthouse is easy.

|                      |          |                               |       |                   |                   |
|----------------------|----------|-------------------------------|-------|-------------------|-------------------|
| 1                    | 2        | 3                             | 4     | 5                 | Not<br>Applicable |
| Strongly<br>Disagree | Disagree | Neither Agree<br>nor Disagree | Agree | Strongly<br>Agree |                   |

2. The forms that litigants need are clear and easy to understand.

|                      |          |                               |       |                   |                   |
|----------------------|----------|-------------------------------|-------|-------------------|-------------------|
| 1                    | 2        | 3                             | 4     | 5                 | Not<br>Applicable |
| Strongly<br>Disagree | Disagree | Neither Agree<br>nor Disagree | Agree | Strongly<br>Agree |                   |

3. I felt safe in the courthouse.

|                      |          |                               |       |                   |                   |
|----------------------|----------|-------------------------------|-------|-------------------|-------------------|
| 1                    | 2        | 3                             | 4     | 5                 | Not<br>Applicable |
| Strongly<br>Disagree | Disagree | Neither Agree<br>nor Disagree | Agree | Strongly<br>Agree |                   |

4. The court makes reasonable efforts to remove physical and language barriers to service.

|                      |          |                               |       |                   |                   |
|----------------------|----------|-------------------------------|-------|-------------------|-------------------|
| 1                    | 2        | 3                             | 4     | 5                 | Not<br>Applicable |
| Strongly<br>Disagree | Disagree | Neither Agree<br>nor Disagree | Agree | Strongly<br>Agree |                   |

5. Litigants are able to their court business done in a reasonable amount of time.

|                      |          |                               |       |                   |                   |
|----------------------|----------|-------------------------------|-------|-------------------|-------------------|
| 1                    | 2        | 3                             | 4     | 5                 | Not<br>Applicable |
| Strongly<br>Disagree | Disagree | Neither Agree<br>nor Disagree | Agree | Strongly<br>Agree |                   |

6. Court staff pay attention to the needs of the public and litigants.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

7. The public and litigants are treated with courtesy and respect.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

8. The public or litigants can easily find the courtroom or office they need.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

9. The court's Web site is useful and kept up to date, including information about cases and court hearings.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

10. The court's hours of operation make it easy for the public and litigants to do their business.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

## FAIRNESS

11. The way that all cases are handled is fair.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

12. The judge listens to both sides of the story before he or she makes a decision.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

13. The judge has the information necessary to make good decisions about all cases.

| 1                 | 2        | 3                          | 4     | 5              |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

14. All litigants are treated the same as everyone else. Think especially about the way that daily dockets accommodate attorney and litigant schedules.

|                   |          |                            |       |                |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| 1                 | 2        | 3                          | 4     | 5              |                |
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

15. As litigants leave the court, they know what to do next about their case.

|                   |          |                            |       |                |                |
|-------------------|----------|----------------------------|-------|----------------|----------------|
| 1                 | 2        | 3                          | 4     | 5              |                |
| Strongly Disagree | Disagree | Neither Agree nor Disagree | Agree | Strongly Agree | Not Applicable |

**Total Score =** \_\_\_\_\_ (add all the scores from the 15 questions above)

**Average Score /15 =** \_\_\_\_\_

## Activity 10 – Media and Local Perceptions

The goal of the activity is to review and discuss research findings about the role of the media and media coverage of local courts.

### Notes about Using this Activity

Ask participants to first read the excerpts below. This should take 5-10 minutes. Then, have participants to review and discuss the research findings, and to share actual experiences with the media in their courts or local jurisdictions.

#### Learning Objective 10

Connect national research on the role of the media related to the courts with the experiences of local courts and local media.

See “Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity,” (2003), at <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf>. The findings noted below are excerpts from research conducted by Rottman, et al, published by the NCSC

*IV. One consequence of the lack of public attentiveness is that national media—not local media—effects are strong in shaping the image of courts.*

*Media coverage of the courts is sporadic and unrepresentative (“There is evidence that people’s opinions about crime and punishment often are based on the unusual, dramatic and unrepresentative cases that they learn about from the mass media”) (Tonry, 1998:24) and also inaccurate (“the public is regularly exposed to misrepresentation of the judicial process [by the media]”) (Zemans, 1991:727). Indeed, it is reasonable to conclude that the media misrepresent what the public wants of the criminal justice system (Roberts and Stalans, 1998:55).*

*The relevant media appears to be national, not local. The Utah experiment in using the media to increase awareness of the state courts suggests that the public’s point of reference is national and, arguably, stereotypical. The kind of local coverage courts receive centers on issues like crime and family dysfunction. However, “issues involving chronic problems like crime show little correlation between media coverage and public attention” (Neuman, 1990 as quoted in Franklin and Kosaki, 1995:354).*

*Media-driven images are not challenged because of low public attentiveness and interest in the courts. The considerable power of the media is suggested in a survey designed to predict future litigative intent. “Persons reporting greater contact with media sources about lawyers and the legal system . . . were more likely than their counterparts to reject legal solutions to their future problems” (Mieth, 1995:578). Exposure to the media was the only influence that created personal barriers to use of the law.*

*More generally, Sherman (2000:17) notes, “for the majority of Americans who have little if any personal contact with the criminal justice system, the level of trust in*



*criminal justice may depend on how legal agencies are portrayed in entertainment and news media." About one-half (53 percent) of American adults have had some direct contact with the courts (National Center for State Courts, 1999). The entertainment industry fills the information gap for the other half of the population. A 1983 survey (Hearst Corporation, 1983:21) asked a random sample of adults who were not employed by law enforcement or criminal justice, "Where do you most frequently get information about courts." The fourth most common source (out of 11 possible ones) was "television drama" (after television news, newspapers, and radio news).*

(Rottman, Hansen, Mott, Grimes, 2003)

## Activity 11 – Community Collaboration

The goal of the activity is to share and evaluate the types and methods that state and local courts use to reach out to the local community.

### Notes about Using this Activity

The activity can be used as a group discussion. If time permits, faculty may ask participants to work in small groups and appoint a scribe and spokesperson to present their findings to the large group in a follow-up feedback session. The small group discussions should take 20-30 minutes, with up to 30-45 minutes for large group presentations.

### Learning Objective 11

Discuss and propose ideas and specific resources needed for community collaboration events in order to foster a greater understanding of the court process, services available, and methods for accessing them.

*(1) What types of collaboration events does your state or local court use to reach out to the community?*

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*(2) How often do these events occur, and how are they advertised? Who attends? Are these for stakeholder groups, or simply open to all members of the public, or both?*

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*(3) What types of resources are required to make these events successful? Where and when do you meet?*

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*(4) How do you measure the impact of community collaboration events? How do you know if you have made a difference? If they work well, do you ever celebrate?*

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