

THE ROLE OF STRATEGIC PLANNING AND STRATEGIC MANAGEMENT IN THE COURTS

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Glossary of Terms

Term	Usage in this Paper
Administrative Judge	Presiding judges, the president judges, chief judges, and chief justices are all referred to under the working title of administrative judge to help obscure identities.
Court Administrator	Trial court administrators, court executives, court managers, and Judicial Branch administrators are all referred to as court administrators to help obscure identities.
Court	Limited jurisdiction trial courts, general jurisdiction trial courts, and state court systems are all referred to as courts to help obscure identities.
Justice System Player	An entity (agency or group) that may have an agenda different from the court's priorities. Often these entities are referred to as stakeholders however; this paper uses the term "player" to depict that the entity may have an agenda that opposes the court.
Normative	Conforming to a standard of correctness through prescribed rules, or recommendations, as opposed to mere description or statement of facts.
PESTEL Analysis	An acronym for analyzing the external Political, Economic, Socio-cultural, Technological, Environmental, and Legal environment.
Strategic Plan	The act of developing a long-range plan for a court, usually five to ten years out. Typically it is a written document intended to be shared with others.
Strategic Thinking	A court leader looking at and working toward a court's long-range goals. Thinking strategically does not necessarily require a court leader to share his or her strategy with others.
Strategic Management	Court leaders involving others in their thinking and working toward their court's long-range goals. Leaders practice strategic management when they gather together a core group, monitor changing events, and develop a campaign that strives toward those goals.
Strategic Planning	The overall planning concept that can involve both strategic thinking and management, and may be memorialized in an actual plan.
SWOT Analysis	An acronym for analyzing Strengths, Weaknesses, Opportunities, and Threats.

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THE ROLE OF STRATEGIC PLANNING AND STRATEGIC MANAGEMENT IN THE COURTS

Peter C. Kiefer

Abstract

The profession of court administration has made significant advances since 1971 when Dr. Ernest Friesen, and Edward and Nesta Gallas published *Managing the Courts*. The academic side of the profession appears to be moving through three phases. Phase one can be described as the identity phase. Numerous books and articles have attempted to answer the question “what is court administration?” Phase two can be described as the normative phase. The 2012 book *Principles of Judicial Administration* might epitomize the answer to the question “what are the principles of good court administration?” The profession needs to move on and embrace the third phase: the empirical and descriptive phase. This phase needs to answer the question “what is really going on out there?” This project explores only one area of phase three – courts and strategic planning. It analyzes why courts use strategic plans, how they use them, why some courts chose not to develop plans, and how courts plan for the future when they do not have a formal plan.

The research involved interviewing 33 court professionals from around the country, including court administrators, assistant administrators, a court consultant, elected clerks of court, a state court administrator, and staff from state administrative offices. Most respondents were interviewed by telephone although several were interviewed face-to-face. This author attended two day-long strategic planning sessions and listened to presentations by a state chief justice and a trial court presiding judge. Finally, 21 strategic plans and budget documents from trial courts and state supreme courts were analyzed.

The project concluded that strategic planning is an effective tool for courts; however it is equally evident that courts do not necessarily have to embrace formal strategic planning in order to

succeed. The profession needs to acknowledge this and develop a more realistic assessment of what strategic planning can and cannot do for courts. More options to allow courts, particularly modestly funded courts, to participate in strategic planning need to be identified and promulgated.

Although court administration has been a recognized profession for almost fifty years, court leadership and governance remains largely personality driven. Administrators need more practical approaches to convince skeptical administrative judges of the benefits of strategic planning. Simply relying on the principle that strategic planning is an essential component of leadership is clearly not an adequately compelling contention to move forward into the future.

There are substantive differences between strategic planning conducted by private business and planning conducted by courts. The profession needs to create a strategic planning model aimed specifically for courts, relying less on conventional strategic planning literature. A court's bench, the state administrative office, court staff, and elected clerks of court are distinct players in the justice system and need to be studied as such, not simply considered as organizational components.

Courts are strategizing about their future even if they do not maintain a formal plan, and the profession needs to acknowledge and study both formal and informal strategic planning styles. Successful strategic planning can be measured in a variety of ways and the profession needs to find different ways to measure that success. Finally, court administration can learn as much from project failures as from successes and it needs to determine a way to do just that. In sum, it is critical for the profession to know what is really going on in courts regarding strategic planning.

Introduction

The determination of courts to engage in strategic planning is well established, it is widespread, and it makes sense. By one estimate, 31 state administrative offices, one U.S. territory, the Federal Courts, and the District of Columbia courts all have some sort of a document that can be referred to as a strategic plan, (Strategic planning state links). Court administration literature discusses strategic planning as a vital component of leadership (Core: Competency strategic planning, 2015) and a hallmark of the high performing court (Ostrom & Hanson, 2010).

This determination however is not universal. Well over half of the courts interviewed in this project were maintaining plans, were working off old plans, were in the midst of developing new plans, or were intending to develop new plans in the near future. On the other hand, well over a third of the courts interviewed did not have plans and had no intention of developing them. Some courts rejected a public strategic plan; some rejected the concept of planning altogether. It is time to take a clear eyed look at why some courts embrace strategic planning, while others do not. The questions this paper looks at include:

- Why do courts develop strategic plans?
- How do courts use them?
- Why do courts choose not to develop plans?
- How do those courts manage their future without a formal plan?

This paper tracks back through the study of strategic planning, starting with the private sector and then how the field of court administration has addressed the topic. By interviewing court leaders from around the country (see Appendix Three), the research creates a snapshot of strategic management components in a variety of courts. Lastly there are a set of conclusions and

recommendations for the next round of research, which can move forward to uncover new empirical and descriptive knowledge about strategic planning and court management.

Literature Review

Strategic Planning: What Is It For?

Students of management have long accepted the dictate, “Failing to plan is planning to fail” (Lakein), but there is a need to dig deeper. How does private industry plan? How do courts plan today? What are the differences? To take strategic planning seriously, court leaders need to understand the opportunities planning provides as well as the limitations it poses.

Figure 1. Excerpt: Annual Report from the Newfoundland and Labrador Law Courts

A court also needs a plan. In the absence of a strategic planning process, management of a court (both judicial and support services) may become too focused on the myriad of tasks involved in the operation of the court each day and on the crises that arise. This leaves little time for leaders to step back and consider where the organization is and where it should be headed. The strategic planning process allows management to reflect upon the current environment and think about where it would like to see the court positioned in the near future as well as over the longer term. The strategic plan enables the court to clearly articulate and communicate its most important priorities to the court’s judges, senior managers, and staff as well as its partners in justice and the general public.

Before asking why courts do or do not engage in strategic planning, there needs to be an understanding of the conventional objectives of planning. Strategic planning is initially defined as the systematic process of determining an organization’s mission (its fundamental purpose); conceiving a vision (its desired future); translating that vision into goals; developing objectives to achieve the goals; and finally restructuring the organization, training employees, allocating

resources, formulating policy, and redesigning technology, in order to reach those objectives (BusinessDictionary.com). Figure 1 is a description of why courts need to plan (Annual report provincial court of Newfoundland and Labrador 2013–2014). To paraphrase the sentiment in Figure 1, planning helps prevent “the urgent from driving out the important.”

On a deeper level, the purpose of planning depends on to whom the plan is directed. Before 1960 (usually viewed as the point when strategic planning became an objective intellectual

curriculum), strategic thinking was personal, only involving an organization's leader. The great titans of industry had business strategies that emanated from their own discrete, personal vision. Henry Ford epitomized this thinking with his imaginative vision for America and the automobile, a vision that far outstripped customers or anyone else of his day. As he once said, "If I had asked the people what they wanted, they would have said faster horses" (Keichel, 2010).

The External Focus

In the sixties, Harvard University gave birth to strategic planning and management as a formal curriculum of study. Bruce Henderson, founder of the Boston Consulting Group, was one of the founders of this curriculum (Keichel, 2010), which was naturally focused on private business. The theory behind strategic planning brought with it a dynamic tension between strategy's external focus (toward competitors) versus an internal focus (toward the organization itself). Henderson's focus was external. By analyzing competitors' strengths and vulnerabilities, a business could identify a market niche, expand customer sales, undercut the competition, and exploit an opportunity. The point was to "find a place to compete at an advantage and then to win" (Martin & Lafley, 2013). The external focus was meant for top management. Sharing the plan with those below the executive level was, at best, superfluous and, at worse, potentially dangerous.

The external focus featured a number of economic and organizational concepts, one of the more interesting being game theory. First discussed by John Von Neumann in 1944, game theory was clearly applicable to business strategy (von Neumann & Morgenstern, 2004). A company analyzes competitors and their potential strategic positions, formulates responses, theorizes competitor reactions, anticipates consequences several moves ahead, and basically "gets inside a competitor's head." The prisoner's dilemma, depicted in Figure 2, is a notable game theory concept. When combined with another organizational model – agency theory – (Thaler, 2015), they

Figure 2. Game Theory and The Prisoner's Dilemma

A notable game theory model is the prisoner's dilemma: two players with partnered interests, but without the ability to communicate with each other are forced to choose between remaining silent or betraying the other. If both remain silent they both receive a modest reward (in the game it is a shorter prison sentence). If one player betrays the other, the betrayer is freed, but the betrayed prisoner receives a long sentence. If one prisoner hesitates, and the other prisoner betrays sooner, the first prisoner receives the long sentence even if he eventually betrays. In essence, the first prisoner ends up being punished, not only for the betrayal, but for simply hesitating (Dixit & Nalebuff, 2010)

describe the dynamic tension between an organization's principle (planning unit) and its field agents in devising and implementing plans. In relating these concepts to courts, one can think of the principle as a state administrative office and the field office agents as trial courts in a strong state court system. A strategic plan might have long-term benefits for the overall court system, but suboptimal results for some individual agent-

trial courts. An agent-trial court's calculated decision whether or not to enlist in a statewide initiative might be further complicated if any previous initiatives had proven unsuccessful. The agent-trial court must determine the likelihood of the new initiative being realized at all. The decision becomes increasingly complicated.

Another strategic organizational concept is strategic flexibility which promotes adapting strategy to the ever-changing environment, while continuing to focus on the organization's ultimate goals. Moltke the Elder said it in the 1800s, "No plan survives first contact with the enemy" (Wikiquotes). Flexibility is the essence of moving conceptually from strategic planning to strategic management (Rumelt, 2011). The story of the Sound of Music stores is a case study of strategic flexibility and seizing a golden opportunity. Sound of Music stores, located in Minnesota, specialized in high fidelity stereos generating about \$1 million in annual revenue. In 1981, its largest and most profitable outlet in Roseville was hit by a tornado. The store held a "tornado sale" of damaged and excess stock in the store's parking lot promising "best buys" on everything. Sound

of Music made more money during the four day "best buy" sale than it did in a typical month. The store renamed itself Best Buy in 1983 and went on to expand into all things electronic. Its strategic flexibility allowed it to survive and thrive with its customer base (Rodin, 2014).

Figure 3. Southwest Airlines and the Blue Ocean Strategy

Southwest Airlines is a case study of a business that successfully created a "blue ocean." Southwest carved out a largely unchallenged market niche for reliable, low cost, convenient air travel. Although JetBlue and AirTran have now entered the "blue ocean" market, Southwest still enjoys a dominant position, at least for now.

Looking for new unexplored opportunities can guide businesses out of the minimally productive struggles of head-to-head competition. Giovanni Gavetti (2011), described the strategic concept of crossing traditional operational boundaries as a way of getting businesses out of direct competition and into an unexplored "blue ocean" market without competitors.

Figure 3 is the case study of Southwest Airlines and its blue ocean strategy. Some have thought that problem-solving courts might be a Judicial Branch example of a "blue ocean."

Constantly changing business conditions are just part of the "new normal," and can lead to another organizational concept: the turbulent environment. New products, new technologies, new competitors, new demographics all shape possible industry-wide sea changes (Hedlöf & Ulrika, 2000). PESTEL analysis, (an acronym for understanding the Political, Economic, Socio-cultural, Technological, Environmental, and Legal milieu) is an environmental scanning tool for businesses to analyze the turbulent environment (Carpenter & Sanders, 2009).

The case study of Blockbuster Video portrays a company's inability to see a changing customer base, and the need to understand the turbulent environment. In 2009 Blockbuster refused to see the signs that customers were shifting away from DVDs to "on demand" movies as signaled by pay-per-view and Netflix. Blockbuster doubled down on its brick and mortar stores, and a mere five years later, it was forced to close its last store location (Rayburn, 2009).

The Internal Focus

The external focus was criticized for lacking internal organizational awareness and even generating a new term, neo-Taylorism, which implied an executive-level mind-set that a company's resources, including its employees, were universally fungible. Workers were just chess pieces to be moved to wherever a competitive advantage could be had (Keichel, 2010).

Robert Kaplan and David Norton offered a contrasting model focusing on the internal organization (1996). After studying more than 100 organizations, they developed the balanced scorecard. A business's mission and vision are translated into usable goals, refined into actionable objectives for each division, communicated throughout the organization, codified into a business plan, and linked to a feedback loop. The strategy is conveyed down to the lowest organizational

Figure 4. The Balanced Scorecard in Mecklenburg, North Carolina

Mecklenburg County (Charlotte) is the largest and most urban county in North Carolina. It experienced changing priorities after every election and had no consistent model for making funding decisions based on priorities. The County needed to develop a sustainable decision-making structure regardless of economic conditions or political ideology. Several county board members asked the County Manager to explore the balanced scorecard methodology. In 2001 the County Manager and Board committed to the concept. The methodology uses nine steps:

- Step 1: Conduct a SWOT (strengths, weaknesses, opportunities, and threats) analysis.
- Step 2: Identify broad elements and reduce them to strategic themes.
- Step 3: Create strategic objectives.
- Step 4: Map actions to desired effects.
- Step 5: Create performance measures.
- Step 6: Create strategic initiatives linking performance to the balanced scorecard results, and then prioritize the functions in relation to the scorecard.
- Step 7: Analyze performance.
- Step 8: Align the performance to the scorecard.
- Step 9: Evaluate the strategic process (Balanced Scorecard Institute).

levels and feedback is carried back up to decision-makers. This internal focus signifies a shift in strategic planning making it now the business of everyone in the organization. Figure 4 explains the applicability of the balanced scorecard concept in a county government environment. Gartner

Group suggests that over half of large U.S. firms use the balanced scorecard (Norton & Kaplan, 1996).

The internal focus also had its critics. Without more adequate grounding from outside market forces, a plan could easily end up being nothing more than a prioritized “to do” list. Unit managers competing for control within an organization could advocate for suboptimal goals. In large widespread organizations (e.g., centralized state court systems) the plan could become a mere “wish list,” depicting goals without an actual strategy on how to achieve them. Agent–trial courts might be left to provide substance to the central office’s aspirational goals without any actual discussion of supporting staff, training, equipment, resources, new technology, policy changes, or the unique needs of local trial courts.

The Combined Approach

Many credit the Stanford Research Institute’s Albert Humphrey (How to use swot analysis), with merging the external and internal perspectives to produce the concept of the SWOT Analysis (Strengths, Weaknesses, Opportunities, and Threats). If comprehensively conducted, SWOT can assess the status of an organization regarding its personnel, equipment, and resources, as well as competitors’ strengths and weaknesses. It can look at the overall environment now and into the future. Many strategic planning processes advocate conducting a SWOT analysis.

Courts and Strategic Planning

The court administration profession whole–heartedly embraced strategic planning. It freely used its terms and tenets without reservation. The literature discussing planning in courts can be seen as early as the 1990s. Geoff Gallas, Bill Hewitt, and Barry Mahoney (1990) discussed the need for formal strategic management in *Courts That Succeed*. They particularly praised the

Wayne County, Michigan Circuit Courts for both short and long-term planning, actively involving other players (primarily the Bar) and using rewards (mostly praise) in addition to sanctions.

Craig Boersema (1993) in the *State Court Journal* brought the external versus internal debate to the judicial setting with the concept of courts looking outward at the environment to

Figure 5. The Milieu in which the Court and the Strategic Plan Lives

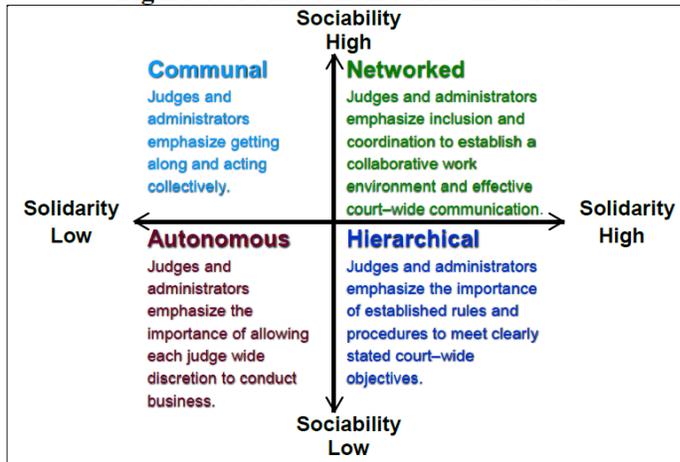


understand where society, the economy, technology, and the law were in relation to the Judicial Branch and where they would likely be going into the future. Courts could then craft plans taking advantage of that future vision. Boersema opened up the possibility of using the PESTEL analytical tool for courts. Figure 5 is this author’s depiction of the milieu that courts must take into account in drafting their plans. First, court-related social trends need to be forecast and their implications defined. Then, alternative scenarios of

the future must be created that are “compilations of trends which present differing images of the future.” Once major trends are identified and alternatives for the future are postulated, the next step is to envision an ideal future institution. This is a concept that was solidified by John Martin and Brenda Wagenknecht-Ivey (2000) in their article, *Courts 2010: Critical Trends Shaping Courts in the Next Decade*.

Brian Ostrom and Roger Hanson (2010) framed the discussion both internally and externally in *Achieving High Performance: A Framework for Courts*. Figure 6 shows the four major categories of court culture: Networked, Communal, Hierarchy, and Autonomous.

Figure 6. Court Culture Classifications



The framework stresses the court leader’s role in guiding a court to high performance and acknowledging the external theme by asserting that the modern economic environment asks courts to do “more with less.” The internal theme that discussed strategic planning as a tool to drive a court toward

high performance was reinforced by Tom Clarke (2010). He asserted that courts need to have a genuine desire to improve their performance adjudicating cases, delivering court services, and being accountable to the public, based on fundamental principles, a sense of urgency, and a focus on dramatically reengineering the overall system.

The external theme was advanced with the admonition: “To kindle trust and confidence and adequate funding, a high performing court engages in a vigorous campaign to organize and mobilize its partners in the justice system. Attention to improved performance by a court has tangible benefits for partners who use the courts. High performing courts remind the Bar as well as the external supporters and advocates of new calendars and practices, of how a well-managed court facilitates and enables them to present and enforce their clients’ interests and rights—and to enjoy substantial remuneration in retained cases. Partners in the justice system are in a position to amplify and corroborate the leadership role required when a court makes a serious commitment to high performance” (Ostrom & Hanson, 2010).

This framework naturally leads to the question of how to measure a court’s strategic drive to become a high performing court. The profession has almost universally accepted the ten CourTools

measures (National Center for State Courts, 2005), as the definitive gauge in determining progress and improvement.

- Access and Fairness
- Clearance Rates (filings and transfers in versus case dispositions)
- Time to Case Disposition
- Age of Active Pending Cases
- Trial Date Certainty (times a case was set for trial by the time the trial was held)
- Reliability and Integrity of Case Files
- Collection of Monetary Penalties
- Effective Use of Jurors
- Court Employee Satisfaction
- Cost per Case

These measures are undeniably valuable in pursuing high performance, although unlike much of the original planning literature they have not been robustly validated by the public who use the courts or have an opinion about courts. As a point of comparison, four of the CourTools measures deal with the pace of litigation (clearance rates, time to disposition, age of active pending cases, and trial date certainty). A recent survey by GBA Strategies (2015) of registered voters' opinion of the court system noted deep-seated concerns that the courts apply unequal justice based on race, income, and other socio-economic factors. These concerns appeared to be of equal importance with the pace of litigation, yet only one measure (access to justice) appears to deal with what the public is currently telling courts. The profession has to be continually on guard to avoid falling too far out of step with public sentiment.

Tom Clarke and Victor Flango (2015) go so far as to contemplate possible realignment of courts' vision and goals. In their book *Reimagining Courts* they suggested the possibility that as the social and economic environment changes, courts might need to divest themselves of activities that take them away from their core functions. Minor traffic, uncontested civil matters, default divorces, and even drug courts, are among matters that might be considered a better fit in other agencies.

Pamela Ryder-Lahey (2001) discussed the theme of the turbulent environment as it relates to courts that are facing competition unheard of in the past. As an example, private, for-profit dispute resolution services have increased in prominence and the public's trust and confidence in courts has ebbed. Courts may have to "compete" on service delivery.

The U.S. Postal Service is a cautionary tale of a public entity that was largely oblivious to the turbulent environment, and unaware of the sea change it faced (Wieczner, 2012). Confident in its position as *the* delivery system for the nation's mail and packages, the Postal Service failed to see and adapt to the growth of other carriers such as United Parcel Service and Federal Express. It also failed to see the explosion of the Internet, or that email and social media would come to replace a substantial portion of envelope mail. Over a fairly short time period the Postal Service was hollowed out and now mainly serves bulk mailers.

Could courts face a sea change? Justice Elena Kagan confessed recently that the Supreme Court Justices "haven't really gotten to email yet." The Justices write memos printed on ivory paper that are walked to each office by "chambers aides" (Oremus, 2013). How long can an institution so wedded to the past continue ignoring the environment around it and still remain relevant to today's society?

Some could argue that it is meaningless for courts to focus on the external environment. If the other justice system players are collaborating, crafting a court's plan is easy. If other players are

not partnering (e.g., the Sheriff, or local prosecutor have an independent agenda), then no plan will be effective. Kim and Mauborgne (2005) countered this perspective with the case study of New York City Police Commissioner Bill Bratton, shown in Figure 7, who faced what appeared to be insurmountable odds taking over as head of the city's Police Department. Crime was out of control, the city was financially strapped, and Department morale was at a low point.

Figure 7. New York Police Commissioner Bill Bratton's Use of Strategy

Within a record two year time span, Bratton used a series of strategies to turn the department around and reduce crime in the city. Instead of relying on statistical reports, he had decision-makers experience the city's problems first hand. He made high-level officials ride the subways for themselves to experience the fear everyday citizens felt on the subway. He also:

- Held town halls to meet with disgruntled citizens and hear complaints.
- Leveraged resources by moving officers and equipment to "hot spots," and out of low crime areas.
- Traded resources with other city agencies for resources law enforcement needed.
- Created a core group of supporters.
- Created transparency by holding open team meetings and not playing favorites.
- Created realistic, attainable goals for each organizational leader down to the unit level.
- Sponsored innovative solutions such as mobile booking centers to reduce the time officers are off the street processing booking paperwork.
- Partnered with other players to gain support for police initiatives and isolate opponents.
- Employed a political strategist to help guide him through the political minefield of New York City politics.

Besides the strategies employed by Bill Bratton, courts have used a variety of other strategies such as those discussed in Figure 8. Many court strategic plans have been far-reaching. The 2009 report on the King County Strategic Management Program (Straub, Erickson, Mays-Coleman, & Hall, 2009) included the court's mission statement, its values, a series of issues and long-term goals that contained detailed interim objectives, and action steps. The report included a

description of roles and responsibilities and how strategic management would be introduced to the court. Finally, it included an extensive environmental scan of the societal, demographic, economic, technological, and political trends.

Figure 8. Other Strategic Options Courts Have Used Over the Years

- Two interview respondents commented that for years it was fashionable for courts to sue funding bodies in order to secure more stable funding. This strategy yielded mixed results. Courts did not always prevail in their law suits. Occasionally higher courts required lower courts to return to the bargaining table leaving the lower courts no better off than if they had accepted the original funding allocation.
- Some courts have used national recognition as a device to assist in budget requests. A court that had received some recognition could parlay that into an argument that it was bringing prestige to the jurisdiction and therefore needed funding in order to maintain that reputation.
- Some courts have used cooptation by creating a committee (e.g., strategic planning or implementation), then inviting decision-makers to join the committee in order to rally them to the importance of the court's initiatives.
- Some courts have used a mixture of reverence and intimidation. In budget presentations, a state court administrator has been known to bring along the Chief Justice to introduce the budget and remind legislators that the courts are a separate branch of government. The Chief Justice would then leave before the Chief got entangled in detailed discussions that would diminish the importance of his or her appearance in the presentation.
- Some courts have had success bringing in an outside agency for analysis. For example, the U.S. Marshal's Office has conducted court security audits that are then used as leverage to request additional security funding.

Ultimately a plan is a strategic thinking and management tool and can be as extensive as a court wishes to make it. As the findings section will show, courts use their strategic plans in a variety of ways. Plans can: (a) create a prioritized inventory of needs and projects, (b) inspire a collection of loosely coupled entities and allow an entire court system to essentially “speak with one voice” (Friesen, 2015), (c) project a sense of direction to other justice system players, (d) enhance employee engagement, (e) comply with externally imposed rules or policies, and (f) educate and sway a funding body with an organized long-term approach to judicial operations. This variety of

intentions implies that achieving the objectives listed in a plan may not even be the primary reason for a court to develop a plan.

The following is a menu of components contained in a comprehensive strategic plan.

- **Mission Statement**

Pankey, Skove, and Sheldon (2002) discussed the importance of a clear court mission. “By clarifying its mission early, an organization can provide its often disparate elements with a common purpose, as well as perspective on what is truly important. The mission is a necessary reference point for all other stages of the strategic planning process and for ensuing organizational activity; it helps promote organizational effectiveness.”

- **Vision Statement**

Brenda Wagenknecht–Ivey, in her consulting work with courts on strategic planning, has discussed the impact of a court’s vision. Both the Mohave County, Arizona Courts 2008 – 2012 and the San Luis Obispo, California Superior Court 2010 – 2015 strategic plans describe vision. “A vision statement . . . defines a preferred future of an organization.” It describes what courts desire to become or do in the future: what they should be at their best. Often such statements begin with the phrase, “We strive to become...” A.G. Lafley and Roger Martin (2013) in their book, *Playing to Win*, say that leaders must define what is necessary for an organization to win in the future. A vision statement should be compelling, bold, inspirational, and convey a sense of urgency to all organizational members. It also should be believable and achievable, (Mohave county courts strategic plan 2008 – 2012).

- **Internal Organizational Condition and Culture of the Court**

The strengths and weaknesses portion of SWOT analyzes the court organization, its culture, existing and projected personnel, staff morale, judicial temperament, facilities, equipment,

finances, material, communications, and information technology (Webster, 2014). Examining each element can include assessing it as either a strength or weakness, recounting its history (e.g., if it is a weakness, how did it get that way and what has been done in the past to correct it), estimating how essential it is to the overall success of the strategic plan, and analyzing its effect on other divisions within the court, as well as other players within the justice community.

- **Other Justice System Players**

The threats and opportunities portion of SWOT analyzes other justice system players including the prosecutor and indigent defense, the local Bar (civil, family, tax, and probate), law enforcement, the elected Clerk of Court (if the jurisdiction has one), state corrections, other agencies competing for funds, other courts, the funding body (e.g., the Board of Supervisors, Board of Commission, City Council, state legislature, etc.), the mental health community, the local media, Child Protective Services, and the state administrative office. Examining each player can include estimating their political agenda, their ability to influence, their potential for support, their history of relations with the court, and their importance to the overall success of the strategic plan.

- **Environmental Scan**

A scan of the environment can include political, economic, societal, demographic, technological, legal, and environmental long-term trends, usually five to ten years out. The scan can also include a discussion of the turbulent environment the Judicial Branch may be facing in the years to come. The plan can then be assessed (and modified) based on where the rest of the justice system appears to be going.

- **The Plan**

This is the description of how the court plans to redirect its funds, staff, technology, time, policies, and priorities toward achieving each objective in the plan. It can include staff assignments, long-term goals, short-term objectives, and measurable milestones leading to success.

- **History**

If the plan has been updated, it can include a discussion of previous efforts to achieve goals and objectives, an evaluation of successes achieved, an honest analysis of the efforts, and a description of modifications to the plan, based on the knowledge gained from previous campaigns.

The curriculum of strategic planning has continued to evolve since the 1960s and the profession of court administration has continued to embrace it as a desired goal. This paper now takes a look at how courts actually use strategic planning and management.

Methods

Data Collection

This project analyzed a small, but diverse, number of courts. The sample included courts that developed and used strategic plans as well as courts that chose not to use them. Some courts were from strong state court systems, and others were from administratively decentralized states. For the most part, the project conducted telephone interviews as they seemed the most effective way to gather data from court leaders. Although calling slowed the project due to frequent rescheduling challenges, this author believes that respondents were more forthcoming with their information, stories, and anecdotes when chatting over the phone. Many respondents requested anonymity in return for speaking candidly rather than simply “parroting the party line.” Consequently, the project assured all respondents that no story or quote would be directly attributable to a specific court or individual. As a result, this paper happily reflects the openness and significant insights gleaned from those interviews.

Appendix Three contains the telephone interview format. Occasionally, email follow-ups provided additional background information and answers to specific questions. Many of the interviews revealed so much fascinating information that it was difficult limiting the scope of the paper. The information obtained from the interviews can be a potential starting point for new research projects.

The Universe of Courts

The National Center for State Courts estimated that there are about 15,679 state trial courts at various levels within the United States (Comparing state courts, state court organization, trial courts, table 34c: Number of courts). The project successfully contacted 33 court professionals: 20 court administrators, 6 assistant administrators or senior staff members, 2 elected clerks of court, 1

state court administrator, 3 staff members of a state administrative office, and 1 consultant. In addition, this author observed two all-day strategic planning sessions (one of which included over 150 participants from trial courts, the state administrative office, funding bodies, law enforcement, and tribal courts), and presentations from a state chief justice, and a trial court presiding judge. The court professionals interviewed worked in trial courts or state administrative offices from the states of Arizona, California, Georgia, Louisiana, Minnesota, Mississippi, North Dakota, Pennsylvania, South Dakota, Washington, The Province of Newfoundland and Labrador in Canada, and the District of Columbia. Respondents worked in trial courts that ranged in size from 5 to over 1,200 employees. Only 6 court professionals failed to respond to interview requests.

The project interviewed an extensive cross-section of respondents with a wide variety of perceptions. The wisdom imparted by the respondents, successes achieved and failures suffered, the relationships with presiding judges, the dealings with state offices (or with trial courts if a respondent was with a state office), and the “lessons learned” are the principal “take-aways” of this paper.

Pretests

Telephone interviews began on June 25, 2015. Based on the initial interviews with several sympathetic respondents, existing questions were refined and some intriguing new questions were added. For example, the pretest was the spark for asking respondents to assess other justice system players as to their potential for being strategic allies, neutrals, or opponents regarding their court’s strategic initiatives. Another example was adding the question if another agency or group had ever forced the court to modify its strategic direction due to that other agency’s agenda.

Characteristics of the Sample

Table 1 shows the years of experience trial court and state administrative office respondents had in the justice system. Their résumés were impressive with 10 having been in court administration for between 11 and 20 years and 9 having been in the business for over 20 years.

Table 1: Respondents' Experience in the Justice System

Years of Experience	Number of Respondents
1 to 10 Years	12
11 to 20 Years	10
Over 20 Years	9

Table 2 shows the lengths of judicial terms of office in different respondents' courts. Judges in all of the courts except five stood for competitive election. In one court, the judges stood for merit election. In two courts, the governor appointed the judges and they did not stand for election. In one court, the U.S. President appointed the judges and the Senate confirmed them. In one court, the judge was hired by the City Council.

Table 2: Length of Judges' Terms of Office

Length of Term of Office	Number of Courts
4 Year Term	9
6 Year Term	13
8 Year Term	2
10 Year Term	2
15 Year Term	1
Indefinite	3

One way to measure the size of a representative court is by the number of judicial officers within the court. Table 3 shows the array of courts by their number of judicial officers. Judicial

officers were defined as judges, commissioners, magistrates, senior judges, and justices of the peace. State administrative office respondents were not included in this table.

Table 3: Number of Judicial Officers in Respondent Courts

Number of Judicial Officers	Number of Courts
1 to 25 Judicial Officers	17
26 to 50 Judicial Officers	7
51 to 75 Judicial Officers	2
76 to 100 Judicial Officers	2
Over 100 Judicial Officers	1

Table 4 shows how the administrative judge came to that post in different respondents' courts. Most administrative judges in the sample courts were elected to the post by their bench. A smaller but still considerable number were appointed by the state's Chief Justice.

Table 4: How the Administrative Judge Comes to the Post

Elected By the Bench	Appointed By the Chief Justice	Appointed By the Executive	Other
13	7	4	4

In two courts, the governor appointed the administrative judge; in one court, the U.S. President appointed the judge; and in one court, the City Council did the hiring. Those courts designated as "Other" were one, two, or three judge courts that either did not have a functional administrative judge, the duty was informally traded off on an irregular basis, or the duty fell to the most senior judge.

Table 5 shows the lengths of the administrative judge's term of office in different respondents' courts. The results are bimodal. A large number of administrative judges serve only two-year terms, with an equally large number that serve indefinite terms. A smaller but still sizable number serve three-year terms.

Table 5: Length of the Administrative Judge's Term

Length of the Term	Number of Courts
1 Year Term	1
2 Year Term	9
3 Year Term	5
4 Year Term	2
5 Year Term	1
6 Year Term	1
10 Year Term	1
Indefinite Tenure	9

Of those courts where the administrative judge serves an indefinite term, several serve at the pleasure of the state Chief Justice, others serve indefinitely at the pleasure of the Governor or City Council, and two had no formal election or rotation process.

Findings

Table 6 shows the distribution of courts having strategic plans in various stages and courts that do not have plans. Courts often refer to documents as plans that may or may not comport with the more conventional definition of a strategy discussed in the literature review, still this paper refers to those documents as strategic plans. It is also important to reiterate that just because a court does not have a formal strategic plan does not mean that the court is not engaging in strategic thinking or strategic management. It does mean that the court has chosen not to memorialize that thinking in a public document.

Table 6: Courts and Strategic Plans (includes State Administrative Offices)

Courts that have a plan	11
Courts that are using an old (out of date) plan	2
Courts without a current plan, but are in the process of developing one	4
Courts that do not have a strategic plan	14

Finding Number 1: Courts Have a Variety of Reasons Why They Do and Do Not Develop a Strategic Plan.

The interviews and observations revealed several themes regarding why courts chose to develop or update their plans. Several courts commented that their plans were a practical and persuasive tool in dealing with their funding body. Other courts mentioned that the plans projected the image of a forward-looking organization. Still others said that the plans provided an opportunity to recount achievements over the last several years. These themes contrast with the conventional planning literature that discusses identifying competitor weaknesses in order to create a market advantage with customers. This also contrasts with the court management literature which emphasizes strategic planning as a component of leadership (Core: Competency strategic planning, 2015), or a commitment to becoming a high performing court.

Figure 9 lists the themes respondents offered as to why their courts developed a plan.

Figure 9. Court Comments on the Benefits of Having a Strategic Plan

- The plan is helpful in setting priorities and showing the court where it needs to focus its time, resources, and management.
- A plan is both a sword and a shield. It can shield the administrator from rogue ideas some judges might have concerning what the court ought to pursue. It can also serve as a sword to show the funding body and the public that the court is organized and thoughtful in its direction.
- Developing a plan is an excellent tool for getting feedback from stakeholders, surveying staff internally on priorities, then having an executive group categorize them as to internal, external, and environmental scanning that leads to a direct connection to the budget request.
- The best run courts have strategic plans.
- Development of a strategic plan can be an excellent basis to enhance employee engagement.
- The court has a strong desire to practice what it preaches by using the strategic plan as a communications tool and a framework for developing unity within the court. The court wants to speak as one using the strategic plan as a “kick-off” point for discussing questions such as “what does it mean to be accountable to the public?”
- The statewide rules of court require that each court in the state have a strategic plan.

Interviews also revealed several themes as to why courts chose not to develop a strategic plan. A challenging component of plan development is instilling a sense of urgency within the bench and staff to accomplish a set of goals. Tom Clarke (2010) points out the importance of a sense of urgency in undertaking court reengineering projects. Without a sense of urgency, devoting the extra time and effort required to develop and implement a plan is more difficult. Organizational development experts actually have guidelines for creating urgency (Llewellyn, 2014). In private business, urgency can be very clear, “we do this to win at what we do, or we go out of business.” Urgency is a less effective motivator for courts. Rarely are courts actually shuttered and too often staff might be laid off for economic reasons, regardless of the degree of commitment they might

have to a plan. In fact, attempting to “gin up” urgency can possibly be counterproductive if it is only the court administrator imploring staff, and even the bench appears complacent.

Figure 10. Comments on Why Courts Do Not Have a Strategic Plan

- Some administrative judges just did not think strategic planning was worth pursuing. They have described planning as “a bunch of nonsense, a bunch of fuddle duddle, and a bunch of hooey.” One judge’s philosophy was “if it ain’t broke, don’t fix it.” One judge said the court was a reactive forum; others bring issues to the court and the court deals with those issues. One judge saw the court as progressive, but also very organic. The bench collaborated with the other justice system players so they did not need a formal planning process. Two administrators said their judges were not actively opposed, but did not really understand the point. One administrator confessed concern that at some point the judge would ask why the administrator was spending so much time on planning rather than doing “real work.”
- Developing and implementing a plan can be daunting. (In her strategic planning development sessions, Dr. Wagenknecht–Ivey specifically identified this as a significant barrier.)
- Developing a plan can be expensive. One court organized a full day development session, another conducted multiple full day sessions inviting staff to one session and the bench to another in order to identify and refine an agenda. Many courts have hired outside consultants to facilitate the planning which can be costly.
- Two administrators said the question of developing a plan had just never come up.
- Many courts just do not want to open up their operation to the kind of scrutiny and overall reengineering implied in the strategic planning literature. One administrator said that his was a small court and that his judges were tired of meetings and reports. One administrator said his staff members were demoralized from the global financial crisis so developing a plan was not advisable.

Finding Number 2: There Are Preliminary Indications that the Administrative Judge’s Background Plays a Significant Role in Accepting the Concept of Planning.

The responses, though limited, indicated that the administrative judge’s background might be a significant component in whether or not a court chooses to pursue a formal strategic plan. It seems that administrative judges who came from a business, or sometimes a political background (e.g., possibly involved in helping run a large organization), were more amenable to planning than

judges who came from law firms. Figure 11 lists the perceptions many administrative judges in respondents' courts had regarding planning.

Figure 11. The Administrative Judge's Background and Strategic Planning

- One court administrator said that the current administrative judge (who had an MBA), came to the administrator and worked closely to develop a plan; the previous administrative judge, (who came from a large corporate law firm) did not immediately understand why a plan was important.
- One administrator reported that a single judge on the bench (with a business background) continues to champion the plan; without that one judge (who is not the administrative judge) the plan would probably die.
- The administrative judge in one court came from a large law firm and needed considerable convincing by the court administrator before she agreed that a plan would be of benefit. The previous administrative judge was not supportive and was possibly even threatened by the concept of formal planning.
- The current administrative judge used to be a public defense attorney. The judge thought planning took too much time, was too theoretical, and not useful. The judge thought the plan would just be left on the shelf. The previous administrative judge was a former mayor, and was very supportive of planning.
- The current administrative judge came from the space program and was very supportive of planning. The previous administrative judge thought planning was pointless.
- One administrator commented that judges are law trained, so particularly those without a business or administrative background just do not have strategic planning on their radar.

Several respondents also mentioned that many administrative judges have relatively short terms. As Table 5 shows, in about half of the respondents' courts, the administrative judge's tenure is three years or less. Respondents conjectured that with terms that short, judges are just not interested in long-range planning, regardless of their background.

The Administrative Judge – Court Administrator Relationship

A court's view of strategic planning can bear directly on the court administrator's working relationship with the administrative judge, and this relationship is very often personality driven. Several administrators interviewed commented that their current judge was supportive but their

previous judge was not. Administrators must calculate how fervently to advocate for planning and part of that calculation must include how the two will work together on other issues. That relationship can range from the perception of being professional co-equals to being clearly in a superior-subordinate relationship. Table 7 shows the responses from administrators describing their perceptions of the relationship between them and their administrative judge. The table also includes recollections of previous administrative judges, so in some instances single administrators gave multiple responses.

Table 7: Relationship Between the Administrator and the Administrative Judge

Description of Relationship (Includes Recollections of Previous Administrative Judges)	Number of Responses
The Court Administrator and the Administrative Judge are Professional Co-Equals	6
Co-Equals Most of the Time – the Judge Occasionally Directs the Administrator	11
Co-Equals about Half the Time – Other Times the Judge Supervises the Administrator	6
Judge Supervises the Administrator Most of the Time; Occasionally Allowing the Administrator to Give Advice as a Co-Equal	6
Clear Supervisor-Subordinate Relationship	3

Of the responses portraying the judge and administrator as professional co-equals most or all of the time, seven courts had plans, seven did not have plans, two were working off old plans that had not yet been updated, and one was intending to develop a plan in the near future. One court used subject specific task forces to address individual strategies but shunned an overall approach.

One court administrator offered a telling comment regarding the administrator-administrative judge relationship. No matter how an administrator describes the relationship, final

policy decisions rest with the judge; really the court administrator can only advise. The specter of the supervisor–subordinate relationship exists whenever the administrator is dealing with the judge.

Finding Number 3: Courts Are Reluctant to Include the “How the Court Plans to Get There” Component in Their Published Plans.

Courts’ strategic plans are organized in ways that suit their jurisdictions. All strategic plans have goals and objectives. Most of them are lofty, but lacking in specifics on how the court intends to achieve them. It is remarkable to compare these plans with the conventional literature, which discusses allocating money, facilities, personnel, training, equipment, policies, and technology to company priorities. Pankey and Skove (2002) in *Strategic Thought and Action* state that “. . . [Organizations] should have written plans effectively communicating operating details, resource needs that relate to the budget, and relationships among various activities. Lastly, there must be mechanisms in place to monitor and evaluate ongoing implementation activities so as to measure progress and adjust efforts to address unexpected events and incorporate emergent strategies.”

Only one of the published plans reviewed laid out detailed action steps; two others contained responsible contact personnel, due dates, and internal working documents. The remaining plans did not discuss milestones, deadlines, responsible staff, budget allocation, technology modifications, or policy changes.

So why do courts write plans with lofty yet undefined objectives? One answer may be the split between formal strategic plans meant for the public and internal project plans and status reports. One respondent observed that courts often maintain three sets of planning documents. The first set is the official published strategic plan; it is often well edited and professionally printed. The second set (sometimes known as “the companion set”), reflects regular updates to the published plan. The companion set often contains milestones and responsible contact individuals. This set is usually made public once or twice a year to update decision–makers on progress made. The last set

(sometimes known as “project reports”), often contains staffing, organization charts, budgets, policy changes, equipment needs, training programs, etc. This set is usually private and sometimes even court staff may be unaware of them.

A second answer could be that courts prefer maximum planning flexibility. One respondent commented that if one project in the court hits a snag, it could always quietly move its emphasis to another objective and demonstrate progress without forsaking the overall goal.

A third answer could be that strategic planning for courts is just different from private sector planning. This third answer comes full circle back to the question: what *is* the purpose of a court’s plan? Figure 12 shows examples of three different published court plans on the theme: *Access to Justice* including goals, and objectives.

Figure 12. Samples of Strategic Plans: Access to Justice Goals and Objectives

First Court’s Plan	
Goal:	Courts will be accessible to all.
Objectives:	<ul style="list-style-type: none">• Upgrade and expand technology and the website to increase electronic access and enable court users to do business with the courts remotely.• Expand the services provided and cases heard at court locations.• Enhance physical access to court facilities.

The plan includes focus areas, goals, and objectives, which discuss the court’s commitment to accessibility and names some specific ways the court can become more accessible (e.g., improve technology and the website to allow users to do business remotely). Other objectives are vague (e.g., expand services provided). The plan contains no milestones, contact points, or budget.

Second Court's Plan

Goal: Courts will be easily accessible and understandable to all people.

- Objectives:
- Enhance electronic access to court and appropriate case information.
 - Expand opportunities for court users to conduct court business using existing and emerging technologies (e.g., e-filing, e-pay, jury check-in kiosks, video-conferencing, email, etc.).
 - Enhance services for self-represented litigants.
 - Expand language and disability (ADA) assistance for court users.
 - Improve the juror experience.
 - Reduce access barriers such as transportation, cost, hours of operation, lack of legal representation, etc.

The plan starts with focus areas, goals, and objectives. Some objectives are more detailed (e.g., specifically e-filing, e-pay, jury check-in kiosks, video-conferencing). Other objectives are vague (e.g., improve juror experience). There are no milestones, contact points, or budget.

Third Court's Plan: Elected Clerk's Office

- E-Filing for Civil Cases – Continue to develop an electronic filing system that will allow parties to file civil cases and documents online.
- E-Ticket – Continue expanding the citation program with the Sheriff and Highway Patrol.
- Web-Based Garnishment Management System – Continue the development of a web-based garnishment management system that will allow debtors, employers and attorneys the ability to manage garnishments online.
- Day Forward Imaging – Continue the creation of an imaging workflow process which incorporates an electronic imaging station. As part of the e-filing process, the Court Clerk's Office will convert all paper documents to electronic images as documents are filed.
- Expansion of Time-Payment Program – Continue the development of a web-based time payment system to allow individuals to establish, maintain and monitor their time payments.
- Minor Misdemeanor Folders – Eliminate the necessity to create several thousand case folders by utilizing electronic signature technology.

This plan is the most detailed of the three examples. Objectives name very specific projects (e.g., e-filings, e-tickets, day forward imaging, etc.). Most of the objectives appear to be ongoing projects already, but there are no milestones, contact points, or budgets provided.

Finding Number 4: Few Courts Discuss Other Justice System Players in Their Strategic Plans.

Analyzing other justice system players is probably the most delicate part of a strategic plan and that is probably why so few court plans contain such an analysis. This widespread reluctance contrasts with the conventional planning literature and with Ostrom and Hanson (2010), who stressed the need for high performing courts to establish partnerships.

The interviews asked administrators their views on a range of justice system players including the prosecutor, defense attorneys, law enforcement, local civil and family law attorneys, state corrections, child protective services, the mental health community, local governments, the state administrative office, other courts, local newspapers, television stations, and media bloggers.

Of the plans reviewed, they discussed other justice system players only when the other players were already on board with a court's planning effort. One all-day planning development session had an impressive 150 plus participants representing law enforcement, the justice and municipal courts, the superior court, the local bar, information technology, county and city governments, social service agencies, tribal courts, and the state administrative office. By day's end, coalitions had already formed to work on several initiatives.

Often however, respondents also mentioned players who were not partners, and sometimes had their own agendas. Typically those court plans did not include certain players, or they simply did not discuss other players at all. Figure 13 lists examples of the positive and negative strategic implications other players have had on courts.

Figure 13. Justice System Players that Effected Court Strategy

- One administrator commented that the court does not develop plans partially because the prosecutor has his own agenda and is persuasive with the other players. Whenever the court develops a new project that does not fit his agenda, the prosecutor rallies other players to lambast the court for wasting taxpayer money.
- During the height of the global financial crisis, the state court system had to cut funding, so trial courts had to reduce services. One court was forced to shutter a regional site that served a suburban city. That city became so concerned over the lack of court services that it raised the money itself and kept the site open at least a few days a week.
- A limited jurisdiction court had been out of favor with the city council for a number of years partially due to a long running feud between the current and previous judge. In 2011, the council removed the court's probation supervision, giving the function to a private vendor.
- An administrator told the story of a public defender with an agenda that conflicted with the court and with close ties to the county manager. The court endured the situation until the county manager was forced to resign and the public defender left soon after.
- Facing budget cuts, a court's administrative oversight agency decided to lay off a number of court security staff. Without court involvement, attorneys and members of the public started a successful grassroots campaign to halt the court security lay-offs. Courthouse security actually ended up in better shape than before the threatened layoffs.

There are a couple of reasons for not discussing other players. Courts' strategic planning documents, even working papers, are public. A written analysis of another player's partisan position could possibly violate the court's fundamental principle of neutrality, not to mention prove politically embarrassing if leaked. No court wants to defend a written assessment depicting the local prosecutor as having a proclivity to rally other players against the court and therefore should not be trusted.

Conversely, the figure also reveals a somewhat typical court response to someone with an agenda, which is to ignore the player. It is worth pointing out that this strategy runs counter to the reaction of some seasoned political strategists. Figure 7 depicts Bill Bratton's strategy toward other

players that even included hiring a “consigliere” to provide insight into the thorny world of New York City politics.

It is beyond the scope of this paper to answer the question what would the best justice system strategists do when faced with players working at cross purposes. On the other hand, as Tom Clarke (2010) alludes, it would seem that the optimum time for an effective strategy is exactly when a court faces this sort of adversity, rather than when all players are cooperating.

Before leaving this finding, it is worth mentioning four specific relationships: the bench, court staff, state administrative offices, and elected clerks of court. It is intriguing to ask if the four should be defined as justice system players, rather than simply organizational components loyal to the court’s plan. All four need to be more extensively researched as they directly touch on court leadership, court management, and planning.

Strategic Plans and the Bench

Apart from the administrative judge, how the rest of the bench views itself regarding strategic planning is an area deserving more scrutiny. Individually, judges often see themselves as authorities in areas such as caseload management, which is an area where administrators also see themselves as experts. As a group they might think of themselves as executive directors, court employees, or consumers of court staff services separated from court administration. They might think of themselves as all of these simultaneously.

An example of the bench appearing to be another player or stakeholder vying for advantage can be seen in the years during the global financial crisis when occasionally both judges and court staff were desirous of pay raises. Funding bodies with limited reserves were unable to fund both. Judge associations would sometimes advocate for their own raises often at the expense of staff raises.

Figure 9 recounts the administrator who said that a strategic plan could be a shield against judges who had their own ideas about how to run the court. Of course this implies that judges are a group from which the administrator needs shielding. What is the true role of the bench in planning, or when faced with organizational adversity? How do judges view themselves in relation to the court organization? How do administrators effectively deal with judges' differing perspectives?

Trial Courts and the State Administrative Office

State administrative offices also often have their own strategic plans and perspectives that can directly impinge on local courts. Fully exploring the relationship between local courts and the

Figure 14. Statewide Efforts and Local Courts

- One statewide automated case management effort a number of years ago was cancelled after spending millions of dollars when elected clerks of court complained that the financial component of the new system was far too cumbersome and did not produce the needed financial management reports.
- One statewide automated case management system was successfully implemented when the state office offered local courts the new system, at no local expense and with the ability to recover the costs the courts had been paying to their counties for locally run computer systems.
- A moderate sized trial court in a state with a strong state administrative office had launched a campaign for a new judicial position, which included lobbying several local state legislators. The state office told the court to suspend its campaign because the state office was launching its own campaign to procure a new judicial position for the largest court in the state. The legislature would not approve two positions during the legislative cycle and competing requests could possibly scuttle both.
- An administrator commented that locally funded courts used to compete for funds with the sheriff, the assessor, and county roads. Now courts compete with their fellow courts.
- As one statewide automated case management system was being rolled out, the state's two largest trial courts reviewed the new system and simply told the administrative office that they would not participate, but rather chose to procure case management systems on their own that would produce the needed state level statistical data. This case study calls to mind variations of the game theories discussed in the literature review: the prisoner's dilemma and agency theory. The courts were faced with a decision whether to pursue their individual agendas or submit to the greater long-term (statewide) plan, plus they weighed the likelihood of the statewide plan ever coming to fruition, and they chose to pursue their local court priorities.

state office is another area ripe for further research.

Often supreme courts, assisted by their administrative office, publish strategic plans with the same lofty but imprecise objectives seen in local plans. The difference seems to be that frequently the objectives in the Supreme Court plans are largely dependent on local courts for implementation. Although frequently successful in persuading local courts to join in a statewide effort, there are also many stories of efforts that failed, often due to local court politics.

The second example in Figure 14 depicts a state administrative office that used rewards (allowing courts to keep the funds paid for local computer charges) as an inducement; other state offices appear to rely more heavily on educating courts about the benefits of a statewide plan or on following Supreme Court orders. This somewhat more heavy-handed approach seems reminiscent of the criticisms leveled against the original planning theorists of fostering neo-Taylorism, but this time treating local courts as largely undifferentiated units. This perception of trial court homogeneity is reinforced when state administrative offices usually allocate funds through a formula that suppresses individuality, local circumstances, and innovation. Instead it concentrates on a limited set of factors (e.g., weighted caseload, population, previous funding allocations, etc.). This approach exposes the potential for pitting local courts against each other for funds. The interviews revealed that several administrators gave only passing notice of their Supreme Court's strategic plan. One court administrator did not honestly know whether or not the administrative office had a plan.

How can state administrative offices inspire trial courts to rally behind their plan? What rewards and sanctions are available to state offices in this effort? What sort of PESTEL analysis do state offices perform when embarking on a statewide campaign?

Strategic Plans and Court Staff

In the interviews, several courts saw their staff as an integral part of the planning process; others limited planning to either the judges or judges and executive staff. Court staff are not usually considered a separate player, although staff often do have some political power that frequently goes unacknowledged.

Experience demonstrates that vague generalized strategic plans might be adequate for busy funding bodies more interested in the bottom line, however those types of plans may not suffice for staff, which often desires more detail on precisely where the court is going and how it plans to get there. Vague, lofty, ill-defined objectives without milestones can frustrate employees, become a roadblock to full engagement, and stall planning efforts, particularly ones designed with a team building objective.

This dilemma over staff's role leads to a question asked in the interviews of courts that had integrated staff in the development process: what do you do when staff comes up with an agenda item that court leadership does not support? Pay raises, flex-time, more liberal leave and dress code policies are all items that staff might feel strongly about yet leadership might oppose. One court conducted surveys, but court leadership reserved the option of determining the top strategic agenda items. One respondent advised that court leadership needs to spend time determining how to respond to such situations before the survey goes out. (e.g., Such an explanation might include "We know pay raises are really important, but we aren't going to be able to make that happen this year. What *else* would you make a priority?")

Poorly handled staff management can look like gimmicks and lead to staff feeling manipulated if their concerns are routinely ignored. Do plans need to be more explicit when discussed with staff? How does staff react if they do not think that they are truly being heard?

Trial Courts and the Elected Clerk of Court

In the array of justice system players, the elected clerk of court may stand out as significant because of the uniqueness of the office. The clerk is fundamental to court operations because the office handles the court's documents and money. When advocates for Judicial Branch unity promote "speaking with one voice" (Friesen, 2015), the elected clerk adds a dynamic that seems to be rarely taken into account.

Twenty-seven of the 50 states have clerks that are independently elected; five more states have clerks elected in multiple counties although not statewide. In some jurisdictions the clerk's office oversees pretrial services. There is no real uniformity in how elected clerk offices view themselves. Three respondents said their office viewed itself as aligned with the court, three said their office saw themselves more associated with the executive (county executive or city council), while five others saw themselves as independent of both the court and the executive.

One elected clerk reported constant tension between her office and the judges. The clerk's office considered itself an independent political entity collaborating with another political body: the judges. The judges, however, saw the clerk's office as simply an operation within the court organization working for them. Services rendered were expected as with any subordinate employee unit. In an example cited in Figure 14, a court administrator remarked on how fervently the elected clerks in the state maintained their "sui generis" posture in their opposition to a state administrative office's initiative to roll out a case management system. Since clerks are independently elected, they often hold considerable political sway, a fact courts sometimes fail to recognize.

Finding Number 5: External Trends Analyses Appear to Be Only Occasionally Present in Court Strategic Plans.

The literature review noted examples where the turbulent environment affected organizations in the private sector, included the case study of the U.S. Postal Service losing

customers to private delivery services and the Internet, and discussed the example of the growing private dispute resolution industry competing with courts. Courts however do not seem to view

Figure 15. Trends Contained in Various Courts' Strategic Plans

Social and Community Demographic Trends

- Population (e.g., increasing population, shifts to the suburbs)
- Ethnic Make Up (e.g., more language needs, immigration)
- Age (e.g., increased needs of the elderly, generational cohorts still in the workforce)

Economic Trends

- Income, Wealth, and Poverty (e.g., earnings, education, families below the poverty level, unemployment, median housing values, median gross rent)
- Increasing Community Expectations of Courts
- Declining Budgets (e.g., shrinking court funding, need for a stable funding base)

Policy and Political Trends

- Lack of Confidence in Government (e.g., confidence in the courts, charges of judicial activism)
- Current Issues (e.g., marijuana, immigration, globalization, same sex marriage, health care, human trafficking, environmental concerns, privacy concerns, human genetics)

Technological Trends

- Improving Case Management Systems (e.g., paper-on-demand, e-filing, information exchange standards)
- Mobile Communications (e.g., wireless)
- The "Digital Divide" (e.g., digital natives versus others, distance learning)
- Need to Improve Collections (e.g., centralized collections, e-pay)
- Cyber Threats

Regional and National Trends

- Changing Court User Demographics (e.g., faster service, regional services, remote access, solving more societal problems, after hours service, demands for mental health therapy)
- Increasing Emphasis in Procedural Justice and Fairness
- Demand for Transparency (e.g., more accountability in spending)
- State Involvement in Federal Policy versus Unfunded Mandates

Internal & Court Trends

- Changing Caseloads (e.g., changing trial rates, probation caseloads, restitution rates)
- Demographics of Court Staff (e.g., aging workforce, losing institutional knowledge)
- Alternative Dispute Resolution
- Evidence-Based Practices
- Concern over Court Governance Structures (e.g., court decentralization and fragmentation)

analyzing the environment as a priority, even for those courts engaged in formal strategic planning. Of the courts with strategic plans, three had a trends analysis section in their plans and eight did not. Courts that included trends in their plans displayed an impressive array of analytical factors. Figure 15 shows the variety of trends that were included in the analyses. Even so, the plans sometimes failed to connect trends to the strategic objectives. For example, one plan presented the analysis at the end of the plan making it appear almost as an afterthought.

Of the courts without a trends sections, three of the plans were more akin to budget documents (the plans that had a one year time horizon), and as such a trends analysis might not have been appropriate; one court chose instead to focus on an extensive stakeholder survey; one decided to dedicate more resources to implementation; one thought the trends analysis in the plan developed seven years previous was still sufficient; and two courts wanted to streamline their plans for easier reading and determined the trends analysis could be dropped. One respondent cautioned however, that just because the trends analysis was not included in the final published plan, it did not mean the development group did not spend a considerable amount of time studying trends.

Finding Number 6: There Are Preliminary Indications of Confusion over Who Is the Intended Audience for a Court’s Mission and Vision Statements.

Mission Statements

As noted in the literature review, the mission statement is the corner–stone of a strategic plan. It conveys the court’s fundamental purpose; articulates its mandates; establishes priorities; reflects customer and stakeholder expectations; and allows a court to focus on what is truly important. In most courts the mission statement is in the strategic plan and, if a court does not have a plan, it is on the website.

Dr. Friesen (2010) encapsulated eight principles that give courts their purpose:

- Provide Individual Justice in Individual Cases
- Appear to Provide Individual Justice in Individual Cases
- Provide Final Resolution in Resolving Disputes
- Protect Individuals against Arbitrary Government Power
- Make a Formal Record of Legal Status
- Deter Criminal Behavior
- Rehabilitate People Convicted of Crimes
- Separate Some Criminals from Society.

Considering that courts perform basically the same functions, the considerable variety of mission statements is quite fascinating. Figure 16 lists seven different statements out of an assortment of twenty-five reviewed.

The range of statements leads to the questions, who is the intended audience and what is the desired effect? A court's own employees (including employee unions); a court's funding body (county, district, or state); the state legislature; other justice system players; the general public—all could be interested in the statement and each group possesses a slightly different perspective.

Developing a mission statement for “everyone” can lead to suboptimal presentations to each group. Employees, for example, might be more motivated by short, inspiring statements (e.g., “Open to All, Trusted by All, Justice for All”). A local funding body however, might be more attracted to a court's role in the community. An area for further research is how courts determine if a mission statement is actually getting to its intended audience and having the desired effect.

Figure 16. Various Court Mission Statements

- Justice for All
- Equal Justice Under Law
- We provide fair, impartial and timely justice in all matters brought before the Courts
- Delivering timely justice in an impartial, innovative, and professional manner
- The mission of the Court is to provide fair, efficient, and effective judicial and probation services to defendants, attorneys, and law enforcement officers so they can move through the judicial process and have legal resolution in a timely manner.
- The mission of the Court is to fairly and impartially apply the law to each case before it so that justice is administered equally, as well as advocate and support services to children, families, and the community to ensure the community functions in the best interest of children so that all the children [in the community] may reach their full potential.
- The Judicial Branch is dedicated to providing a safe, fair, and impartial forum for resolving disputes, enhancing access to our services, and providing innovative, evidence– based programs that improve the safety of our community and ensure the public’s trust and confidence in the Judicial Branch.

Vision Statements

Fewer courts have vision statements: they are usually found in the strategic plan. Figure 17 presents a sampling of six vision statements. Recounting the literature review, vision statements describe what winning would look like to the organization in the future. It should be bold, compelling, inspirational, believable, achievable, and convey that sense of urgency (Mohave county courts strategic plan 2008 – 2012). The first example is inspiring and could be easily embraced by staff. The second and third examples describe what a court wants to be at some point in the future. The fourth and fifth seem very involved and hint of negotiations that might have taken place to arrive at the end statement.

Figure 17. A Sampling of Court Vision Statements

- Access to all, Justice for all, Service for all, with integrity, excellence and innovation (Three courts have close variations of this vision.)
- To become the premier juvenile court in America
- The general public and those who use the court system will refer to it as accessible, fair, consistent, responsive, free of discrimination, independent, and well managed.
- As a high performing court, we are committed to providing the highest quality of justice services and achieving excellence by: Being fair, accessible, and responsive to the needs of the community. Providing innovative, collaborative, and technologically advanced service to our community and judicial partners. Recruiting and maintaining motivated, competent, and professional judges and staff. Acquiring safe, functional, and quality facilities and work environments.
- To recognize the value of staff and judiciary in achieving our mission. To operate the Court with highly qualified personnel and judiciary. To provide access to justice to everyone and be sensitive to social and cultural diversity. To encourage the use of dispute resolution alternatives that respond to the changing needs of society. To emphasize the effective use of technology and decentralized administrative decision making.
- Provide professional and courteous service to all; Provide effective communication to all; Provide an unbiased means to settle legal issues; Provide accurate, timely, and compliant reporting of information.

Finding Number 7: Implementation Does Not Always Appear to Be the Point of a Court's Strategic Plan.

Was the court's plan successful? This is a surprisingly difficult question to answer. A simple criterion could be, "Did the court accomplish the objectives listed in the plan?" The interviews privately revealed a more subtle aspect of this analysis. Obtaining additional needed funding, accomplishing everything on a court's budget "to do" list, bringing staff together as a team, complying with a state rule, focusing on a specific direction: all these could be used as criteria for determining a plan's success.

Figure 18. Results of Strategic Planning

- Several courts acknowledged that their plans were successful in impressing funding bodies by demonstrating how organized the court was; funding bodies rewarded the courts with increased funding for many of the initiatives. One court said that their budget had increased by 30 percent over the years. Another court said that their funding body had been so generous that other justice system players had become resentful and were less inclined to collaborate.
- One court said that the plan was an effective tool for bringing together a disparate bench toward a more unified set of goals (it was not perfect but the plan was very helpful).
- An administrator confessed that, though not the main purpose of the plan, it was an effective tool to thwart rogue initiatives by some judges who had their own ideas about the court's direction.
- Several courts used their plan as a team building tool to inspire staff toward a more unified purpose and goal set.

Finding Number 8: Just Because a Court Does Not Have a Strategic Plan Does Not Mean that It Is Not Engaged in Strategic Thinking and Strategic Management.

By no means does the absence of a plan mean that a court is not planning. Regardless of whether courts formally tried to read the environment, look out to the future, and chart a course of action, there are examples of where the turbulent environment has affected courts. The interviews revealed examples recounted in Figure 19 of specific external trends that had a profound effect on courts' futures regardless of whether or not the court had a strategic plan. The first example is a case study of courts working together to craft a strategic response to a crisis and opportunity. The second example shows courts that individually had to deal with a change in the political environment. The third example is a court's valiant yet unsuccessful strategy responding to a demographic trend and another justice system player thought to be an ally on the issue, but that ended up as an adversary.

Figure 19. Examples of the Turbulent Environment

- In a state with a strong administrative office that allocated funding to all trial courts, the office suffered a humiliating series of events because of long-term but questionable technology initiatives. Eventually the office had to be completely reorganized. The governor issued a requirement that unless the courts developed a defensible funding strategy, new funding from the recovering economy would not be allocated to the Judicial Branch. Trial courts strategized how to deal with the governor's challenge. A group of courts banded together and developed a funding allocation formula on their own. Although not perfect (some courts were disadvantaged by the formula) it sufficed for enough trial courts in the state that the governor allocated the additional funding and all courts benefited. The presiding state judicial body eventually recognized the advantage of the formula the trial courts initiated and assigned an analyst to assist in the formula's refinement.
- One state experienced two dramatic legal changes, which combined, had the effect of shifting defendants housed in state prisons to local jails, and making many non-violent felonies eligible for probation. These two changes flooded the courts with petitions for review and have had long lasting effects on local communities.
- A jurisdiction had lost almost a third of its population over a twenty year period. The state judicial body decided to take action and advocated to the state legislature that the jurisdiction lose one of its judicial positions using another jurisdiction of similar size as a comparison. Despite lobbying to retain the position, and arguing that the other jurisdiction (although being similar in size), had an entirely different case type configuration, the legislature passed a bill eliminating the position. The population decline was certainly a trend that could be forecasted, but having the state's judicial body advocate for the elimination of the judicial position was a "bolt from the blue."
- A court system in an oil rich jurisdiction had developed a strategy for constructing an innovative new courthouse with a significant price tag. When oil prices fell dramatically and revenues plummeted, the court system had no other strategy than to shelve the plans for the new courthouse and wait for revenues to stabilize at some point in the future.

This informal strategizing is an exciting aspect of strategic thinking and management, and is an area of inquiry that invites even more descriptive analyses in how courts unofficially deal with other justice system players, the turbulent environment, and the future.

Conclusions and Recommendations

Conclusion 1: Though It Is an Effective Tool, Courts Do Not Have to Embrace Strategic Planning to Succeed.

Businesses naturally and constantly strive toward ultimate goals, (e.g., growing market share, increasing profits, expanding the company, etc.). They do this with a sense of urgency because, as Forbes Magazine has recounted, about eight out of ten businesses fail and not having a good plan (aka, a business model) is a leading reason (Wagner, 2013). In contrast, as the interviews confirmed, courts do not have to strategically manage toward a new operating state in order to carry on operations, and they do not universally subscribe to the private industry mantra: “failing to plan is planning to fail.”

- Some courts are satisfied with how they currently operate.
- Some courts adhere to the position that courts are a reactive forum and planning conflicts with a basic tenet of the court system.
- Some courts are intimidated by the cost of strategic planning and implementation.
- Some courts are intimidated by the emotional expense planning requires, since it assumes a fundamental re-examination of all aspects of court operations.

Recommendation 1–A: Develop a More Realistic Assessment of What Strategic Planning Can Do for Courts and What Are the Limitations.

Because strategic management is the fashion in private industry does not make it a sufficiently attractive reason for many courts to travel down what appears to be a daunting path. Saying “all the best courts have plans,” or that planning is an “essential component of leadership,” are not adequate reasons. The interviews revealed that planning has value and that there are some good reasons for planning. One significant reason was that funding bodies appreciate organizations

that have thought about where they want to go into the future, and the funders frequently (though not always), reward such thoughtfulness.

Recommendation 1–B: Identify and Promulgate More Options for Courts to Engage in Strategic Planning.

Not all courts have the resources to bring in an outside consultant, hold day–long symposiums, and print sophisticated planning documents. Not all courts have the emotional reserves within their staff and bench to go through an intensive and thorough operational analysis. The profession needs to develop more affordable options to allow modestly–funded courts to participate. Many courts already conduct more modest planning projects, although the literature seems reluctant to discuss these approaches, choosing instead to concentrate more on a “one size fits all” approach.

One respondent suggested asking representatives of companion government agencies for volunteers to help facilitate planning meetings. Some administrators who could not obtain support for an overall strategic planning effort have settled for an information technology strategic plan, which seems a good initial approach. The National Association for Court Management (NACM) might be able to present seminars on facilitating strategic planning efforts. Documenting a variety of approaches tailored toward differing court sizes and capacities, along with celebrating courts that pursue differing planning paths, could serve as an open invitation for more courts to engage in planning.

Conclusion 2: Court Leadership Is Still Personality Driven.

For over thirty years the profession of court administration has advocated for standardized governance structures that emphasize consistency, predictability, collaboration, consensus building, and a professional partnership between the administrative judge and the court administrator (Core:

Competency strategic planning, 2015). After all this time the fact is that many courts are still significantly dependent on the personality of the administrative judge for direction. The interviews repeatedly describe administrators who admitted that a major factor in determining whether or not their court had developed a strategic plan was if their bench, and particularly their administrative judge, saw planning as a valuable tool.

The reality is that personality is still a huge factor in court governance and it is not going to change in the near future. Not all judges have the knowledge, skill, or ability to take on the administrative role, but that is not going to stop other judges from electing them or supreme courts from appointing them as administrative judges. This reality does not seem to be something that we who analyze court organizations have come to completely accept. The literature still gives the impression that with just a little more collaboration and partnership, good governance is just around the corner.

Recommendation 2–A: We Need to Move from Normative Principles to Descriptive Analysis.

Brian Ostrom and Roger Hanson’s (2013) work, *High Performance Court Framework*, describes the four types of court cultures: communal, hierarchy, networked, and autonomy. The next logical research step would be to determine nationally how many courts fall into each of the four categories. It may be surprising how many are in the autonomous quadrant. Ostrom and Hanson (2013) are candid in their description of autonomous courts: “Limited discussion and agreement exist on courtwide performance criteria and goals.”

As desirable as it may be for the administrative judge and the court administrator to form a well-functioning strategic partnership, the findings show that this does not always occur. Administrators who advocate for collegiality and consensus building will probably be successful in

a networked court; they might be successful in either communal or hierarchal courts; they will have an intimidating time in an autonomous court.

There is a real need to explore the full variety of relationship types that exist today between administrative judges and court administrators. Prescriptive strategies then need to be developed for administrators who face relationships that do not fall into the definition of a conventional professional partnership. As an example, a preliminary analysis of over two thousand courts across the country by number of judges in each court reveals that well over half are one-judge courts (Kitchell, 2014). There is a particular need to more fully explore the one judge – one administrator relationship and develop such prescriptive strategies for those administrators.

On the state level, a strong state court system headed by an effective central judicial council is the governance ideal (Friesen, 2015), but there is also a need to analyze state court system governance structures in more loosely organized state court organizations. The literature needs to explore the political and organizational implications of state systems with independently elected clerks of court, local funding sources, trial courts that lobby their local state legislators, and states with one or two extremely large jurisdictions while the rest are moderate to small courts.

Prescriptive strategies for these different types of state systems need to be identified. For example, the behavioral economists Steven Levitt and Stephen Dubner (2005) in their book *Freakonomics*, Richard Thaler (2015) in his book *Misbehaving*, and David Rock (2009) in his book *Your Brain at Work*, discuss a variety of available organizational motivators to encourage commitment to statewide initiatives. For example, David Rock discusses the acronym SCARF, which stands for a set of motivators.

- Status – typical application: using the statewide newsletter to praise early adopter courts for their courage in volunteering for a statewide initiative.

- Future Certainty – typical application: assuring trial courts that if they enlist in the statewide initiative, their court will be assured of getting the funds they need for something they want such as future facility renovations.
- Autonomy – typical application: assuring trial courts that if they volunteer for the initiative, their court might be able to move unspent money from personnel to equipment and supplies without unspent funds being “swept.”
- Relatedness – typical application: reiterating to courts that the initiative directly relates to enhancing access to the courts.
- Fundamental Fairness – typical application: explaining to all courts that smaller courts need to be placed on an equal footing with larger courts because it is the fair thing to do.

Initiatives invoking a number of these concepts may stand a better chance of succeeding.

Recommendation 2–B: Develop Some Practical Approaches Administrators Can Use to Convince Skeptical Administrative Judges.

Court administration literature is superb at discussing project management. What is not studied enough is political management (note “political” here is with a small “p”). Administrators need to acquire the skills to glean the inclinations of incoming court leaders, and possess strategy options to prepare for what might be coming next.

One idea on how to start would be for NACM to host small support group sessions of administrators from around the country to share strategies that have worked along with some to avoid. One respondent said she incorporated into discussions with her administrative judge two issues very near to the judge’s heart, and then relayed how much their funding body appreciated well-planned presentations in the past. The administrative judge became very supportive (well at least until the two issues the judge was interested in were resolved). Another idea was to involve

the administrative judge in national organizations, thereby exposing the judge to other perspectives. A third idea, adapted from Bill Bratton's approach, might be to have the judge tour first-hand various court operations, then bring up the need for more innovation and employee engagement. All these approaches are not without risk, but they are concepts to consider. By applying these approaches, administrators can avoid the "Boy, I never saw that coming" reaction when an incoming administrative judge closes down a long standing program.

Conclusion 3: There Are Substantial Differences Between Private Sector Strategic Planning and Court Strategic Planning.

Several articles in the literature review on customer and competitor analysis demonstrated the stark contrast between how courts plan and how Ford Motor Company, Southwest Airlines, or Best Buy plan. Strategic plans for courts contain considerable value; however they do not look like the plans described in the conventional literature which uses private industry examples.

It may be a shortcoming of this author, but it was not until well into this project that these fundamental differences became clear, and it also became clear that continuing to draw analogies between courts and private business planning was not very productive. While reading conventional planning literature, it was easy to forget that for business it is a blood sport. Although business planning can be both internal and external it is ultimately grounded in pleasing customers, gaining market share, and increasing profits. Court plans can refer to customers but they are more often grounded in professional measures such as CourTools.

Michael Porter (2008) points out that planning is a limiting tool, "The essence of strategy is in choosing to perform activities differently or choosing to perform different activities, otherwise a strategy is nothing more than a marketing slogan." Though there might be court plans that do this, this author did not discover any strategic plans that expressly stated something a court was choosing

not to pursue in favor of some opposing action. The objectives were almost always vague enough to accommodate any action the court chose.

Recommendation 3: Stop Referencing Private Business – Create a Strategic Planning Model Aimed Just for Courts.

There needs to be a sharp contrast drawn between strategic planning in the courts and in private business. There needs to be an honest conversation about the “sense of urgency,” which is inherent in business, but is more challenging to acquire in the courts. Possibly even different terminologies need to be developed, referring to court strategic plans simply as “agendas.” The literature needs to identify comparisons where they exist, but then the differences where the two perspectives diverge.

One specific example is defining our competitors. Private businesses usually have no problem defining their competition. If they do not, some other company often steps in to do it for them and then carves out a market niche such as what Southwest Airlines did with low-cost reliable air travel. Court administrators seem to have difficulty naming competitors. Some might mention private alternative dispute resolution operations, but when courts are competing for scarce county resources, are not the Sheriff’s Office, the Elections Department, the Health Department, and Parks and Recreation stakeholders competing for those same dollars? When trial courts are contending on the state level for funding, are they not competing with their fellow trial courts in what amounts to a zero sum game?

Would it be reasonable to spend more time studying how courts need to analyze their competitive position in order to identify a strategic advantage? This could be all the more important since the Judicial Branch is an institution that seems always to lament that it has no natural constituency except for the Bar.

Conclusion 4: The Bench, the State Administrative Office, Court Staff, and Elected Clerks of Court Could Be Viewed as Justice System Players.

There is still confusion regarding how to treat a court's bench, the state administrative office, court staff, and the elected clerks (for those courts that have them). The profession often thinks of the judges as the court's executive policy directorate, ignoring the fact that they occasionally advocate for their self-interest akin to any other justice system player. The fact that state offices have their own agendas that can sometimes demand suppression of local interests in favor of a greater statewide good needs to be acknowledged. Court staff can also have their own agenda. We sometimes do not recognize that elected clerks of court are a unique relative in the court family.

Recommendation 4: Study These Groups as Distinct Justice System Players.

Moving away from normative principles to descriptive analysis, these groups need to be analyzed as distinct justice system players. They deserve the respect of being identified as specific groups with their own agenda and their own degree of political power. Each group might respond to an array of positive and negative motivations such as those previously mentioned in the acronym SCARF, but it is perilous to assume that their perspectives naturally align with court leadership.

To use just one example, being enigmatic about a court's operational strategies may be politically advantageous when dealing with a court's funding body (which probably does not want to hear about all the gritty details concerning how a court plans to "drive staff to employee excellence"), but more than likely the employees want to hear about it. Court staff often demand that leadership be much more forthcoming with the "how we are going to get there" portion of the plan. Treating all players the same (using tactics such as withholding details of management decisions), often results in staff withholding their engagement with a new strategy, thus resulting in "another fine program."

Conclusion 5: Courts Appear Reluctant to Devote Significant Analysis to External Trends and the Turbulent Environment.

A review of the strategic plans indicated that many courts were reluctant to devote a significant amount of effort to analyzing trends and the environment. Several analyzed the environment in their first planning round, but chose to dedicate their current planning efforts to identifying issues and projects of immediate concern. This is understandable in that, by their definition, long-term trends can often be less important to a court. Although the development process may have included extensive discussion of future trends, one respondent noted that over the years, the time horizon for plans appears to have shrunk from ten years out, down to an average of three years.

Though the turbulent environment may not be of immediate concern to some courts, we can see some trends even today that could profoundly affect courts and are worth watching. Information technology including paper-on-demand, e-filing, and electronic content management; the changing concept of the family; the decline of the civil jury trial and rise of corporate arbitration (often including the ubiquitous “terms of service” agreements that bar access to courts); the widening societal split along income, age, and racial lines. All these are trends we see now and all could have a dramatic effect on courts in the next decade.

Recommendation 5: Develop Different Approaches to Analyzing External Trends and the Turbulent Environment.

Although important, conducting an extensive environmental scan can be time consuming and esoteric. There may be different ways to gauge the future. Assembling a statewide or even national group to identify and analyze trends, then to disseminate the implications the trends might have on courts could be a more efficient way to conduct trends analyses. Local courts could either

incorporate the national analysis into their plan, or treat the analysis as a starting point in their own more in-depth discussion.

Scanning the environment is important to determine a court's direction for more than just the next budget cycle. It helps position a court for what is likely coming over the horizon five to ten years out, but even more importantly it creates the basis for strategic flexibility.

The start of the next big change may not be immediately evident today, but it is important to recall that the impact of Facebook and social media was not readily apparent to courts in 2004. Possibly, environmental scanning will allow the profession to be a little bit more prepared to take advantage of the next golden opportunity wrapped in a crisis.

Conclusion 6: There Are Multiple Measures of Strategic Management Success.

The findings showed the variety of reasons why courts engage in strategic management, ranging from refining and focusing on tasks, to developing a budget presentation tool, to improving employee commitment, and rallying staff around a set of objectives. A court might have all of these ambitions in mind when setting out on a development planning process. Each one of these reasons fosters a different possible measure.

Recommendation 6: Acknowledge and Study the Different Ways to Measure the Success of Planning.

There needs to be a menu of strategic management measurement options. Just a few examples include: (a) did the court receive all of its requested funding, (b) in an independent survey, did staff feel part of a team, (c) how many items on the strategic plan were addressed and how many were accomplished, (d) to outside justice system players, did the objectives achieved profoundly affect the court, (e) did the bench support the plan more as the plan was implemented,

and (f) are there operational streamlines that were identified and attributed to the planning process? One or all of these could be effective measures a court might consider.

Conclusion 7: Courts Engage in Strategic Management Even if They Do Not Engage in Formal Strategic Planning.

Every court interviewed was strategizing about the future. For some, that strategy was only in the administrator's head; for some it was shared between the administrative judge and the court administrator; for some, it was a development session resulting in a formal document. Even courts claiming to be reactive forums that rejected planning were thinking about the next budget cycle, reflecting on ways to refurbish their courthouse, or contemplating how to campaign for a new judicial position.

Recommendation 7–A: Acknowledge and Study Informal Planning Efforts.

The next research step is to look at the full variety of how courts strategize. It does not necessarily have to be an all embracing effort to improve performance and public accountability. It can be targeted, measured, and precise.

Recommendation 7–B: We Can Learn As Much from Failures as from Successes.

In the development of measures to gauge the success of strategic planning efforts, it cannot be forgotten that failure is also a valuable teacher. To understand how much the focus is on success, just look at the number of court management “best practices” articles written. Rarely are postmortems conducted and published on unsuccessful information processing projects, though it is likely most court professionals can name at least one without too much difficulty.

This is no easy recommendation to implement; the subject would involve fellow professional coworkers and friends. Still this could be an extremely valuable exercise. As Richard Thaler (2015) points out, people have the opportunity to learn from routine decisions that do not

turn out well, since those decisions are often repeated and can be improved on the next time. Think of buying academic gowns for new judges at too high a price. The next time the gowns are purchased, a different vendor will sell at a more reasonable price. Major projects involving hundreds of thousands of dollars (e.g., a new automated case management system) might come along once in a decade. The opportunity to learn from that kind of decision is more limited, yet so much more important.

There may be ways to depersonalize projects by turning them into anonymous case studies. In that manner we can learn from the strategic decisions, rather than trying to assign blame. By truly looking at both successes and failures, we can strategize for courts and for the future with both eyes open.

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Appendices

Appendix One: List of Interviews

Kim Allison, Court Administrator, First Judicial District, Yankton, South Dakota,
October 30, 2015

Jeff Amram, Court Administrator, Clark County Superior Court, Vancouver, Washington,
July 8, 2015

Kip Anderson, Court Administrator, Mohave County Superior Court, Kingman, Arizona,
September 2, 2015

Hon. Scott Bales, Chief Justice, Arizona Supreme Court, (Presentation given at the *Justice 2035
Retreat: Court–Community Strategic Planning Conference*, High Country Conference Center,
Flagstaff, Arizona, November 5, 2015)

Hon. Janet Barton, Presiding Judge, Maricopa Superior Court, Arizona, (Presentation given at the
OutFront Meeting, East Valley Institute for Technology, Mesa, Arizona, October 23, 2015)

Raymond L. Billotte, Court Administrator, Maricopa Superior Court, Phoenix, Arizona, (face-to-
face interview), November 6, 2015

Sarah Brown–Clark, Clerk of the Court, Municipal Court, Youngstown, Ohio, November 3, 2015

Renee Danser, Deputy Court Administrator, 43rd Judicial District, Stroudsburg, Pennsylvania,
July 7, 2015

Mark Dalton, District Court Administrator, Lancaster County Court of Common Pleas, Lancaster,
Pennsylvania, July 2, 2015

Timothy Gee, Court Operations Supervisor, San Mateo Superior Court, Redwood City, California,
September 11, 2015

Jeff Hall, Trial Court Administrator, Deschutes County Circuit Court, Bend, Oregon,
July 29, 2015

Kevin Harrigan, Court Executive Officer, Colusa County Superior Court, Colusa, California,
October 13, 2015

Scott Johnson, Assistant State Court Administrator, Administrative Office of the Courts, Bismarck,
North Dakota, June 24, 2015

Shakeba Johnson, Court Administrator, Seventh Chancery Court, Greenwood, Mississippi,
December 2, 2015

Michael J. Kelly, Deputy District Court Administrator, Fourth Judicial District, Minneapolis, Minnesota, July 28, 2015

Gary Krcmarik, Court Administrator, Coconino Superior Court, Flagstaff, Arizona, (face-to-face interview), July 14, 2015 and November 5, 2015

Frank Maiocco, Court Administrator, Kitsap County Superior Court, Port Orchard, Washington, June 25, 2015

Mary Majich Davis and Nancy CS Eberhardt, Chief Deputy Executive Officer and Deputy Executive Officer, San Bernardino Superior Court, San Bernardino, California, July 24, 2015

Andra Motyka, Court Administrator, Pierce County Superior Court, Tacoma, Washington, (face-to-face interview), July 14, 2015

Shelley Organ, Director of Corporate Services, Provincial Court of Newfoundland and Labrador, St. John's, Canada, November 18, 2015

Dawn Palermo, Court Administrator, Juvenile Court, Jefferson Parish, Harvey, Louisiana, November 12, 2015

Othniel D. Palomino, Court Administrator, District Court, King County, Seattle, Washington, September 25, 2015

Marcus Reinkensmeyer, Director of Court Services, Arizona Administrator Office of the Courts, (face-to-face interview), Phoenix, Arizona, November 23, 2015

Linda Ridge, Deputy Chief Administrative Office, King County Superior Court, Seattle, Washington, September 17, 2015

Linda Romero-Soles, Court Executive, Merced County Superior Court, Merced, California, July 7, 2015

Pamela Ryder-Lahey, Court Executive Officer, Supreme Court, Province of Newfoundland and Labrador, St. John's, Canada, October 27, 2015

Angela Sackett, Court Administrator, Municipal Court, City of Dalton, Georgia, November 4, 2015

Robert Sherman, Assistant Court Executive Officer, Ventura County Superior Court, Ventura, California, September 15, 2015

Eric Silverberg, Cochise County Superior Court, Bisbee, Arizona, July 27, 2015

David Slayton, State Court Administrator, Texas Office of Court Administration,

Austin, Texas, October 15, 2015

Karl Thoennes, Court Administrator, Second Judicial Circuit, Sioux Falls, South Dakota,
June 25, 2015

Lori Tyack, Clerk of Court, Franklin County Municipal Court, Columbus, Ohio, July 15, 2015

Lisa R. VanDeVeer, Director of Strategic Management, District of Columbia Courts, Washington,
D.C., October 2, 2015

Christina M. Volkers, Court Executive Officer, San Bernardino Superior Court, San Bernardino,
California, October 14, 2015 (interview only concerning state court funding)

Brenda Wagenknecht-Ivey, CEO PRAXIS Consulting, Inc. (Brenda facilitated the *OutFront Meeting*, East Valley Institute for Technology, Mesa, Arizona, October 23, 2015, and facilitated the *Justice 2035 Retreat: Court-Community Strategic Planning Conference*, High Country Conference Center, Flagstaff, Arizona, (face-to-face interview), November 5, 2015)

Appendix Two: List of Strategic Plans Reviewed

Arizona	Justice 2020: A Vision for the Future of the Arizona Judicial Branch 2010 – 2015
	Advancing Justice Together: Court and Communities 2014 – 2019
Cochise County Superior Court, Arizona	2013 –2016 Strategic Plan: Our Way Forward: Committed to Serving the People of Cochise County
Coconino County Courts, Arizona	Justice 2025 Strategic Plan Justice 2030 Strategic Plan
City of Dalton, Georgia	Strategic Business Plan for Dalton Municipal Court, 2009
City of Columbus, Ohio	2014 Budget
Hennepin County, Minnesota	Fiscal Years 2014 – 2016 Fourth Judicial District Court Strategic Goals and Action Steps
King County, Washington	King County Superior Court Strategic Management Program Final Report March 2009
	2014 – 2018 Strategic Agenda King County Superior Court Department of Judicial Administration
Maricopa County, Arizona	Maricopa County Superior Court Strategic Plan March 7, 2006
Merced County, California	Merced County Community Action Board, Strategic Plan 2013 – 2018
Mohave County, Arizona	Mohave County Courts Strategic Plan 2008 – 2012
	Mohave County Courts, Arizona Strategic Plan: 2014 – 2018 Achieving Excellence Through Innovation and Teamwork
Newfoundland and Labrador, Canada	Provincial Court of Newfoundland and Labrador Strategic Plan 2012 – 2014: Building on Our Success Progress Report
	Supreme Court of Newfoundland and Labrador IT Strategic November 29, 2013 (PowerPoint Presentation)

Pierce County, Washington	Strategic Plan (circa 2013) 2015 Court Priorities December 12, 2014
San Mateo County, California	Superior Court of California, County of San Mateo, Strategic Plan 2007 – 2013
South Dakota	Unified Judicial System of South Dakota Strategic Plan Summary October 2009
Texas	Strategic Plan Fiscal Years 2015 – 2019 Submitted to the Governor’s Office of Budget, Planning and Policy and the Legislative Budget Board
Washington, D.C.	Strategic Plan 2013 – 2017 of the District of Columbia Courts

Appendix Three: Telephone Survey Questionnaire

Court, Location, Respondent, Interview Date
<ul style="list-style-type: none"> • Does your court have a strategic plan? Why or why not?
<ul style="list-style-type: none"> • How long is your administrative judge's tenure? How does the administrative judge assume the position? (e.g., elected by the rest of the bench; appointed by the Chief Justice, etc.)
<ul style="list-style-type: none"> • What is your current and previous administrative judge's opinion of strategic management?
<ul style="list-style-type: none"> • What is the background of your current administrative judge? (i.e., law, politics, business, or something else?)
<ul style="list-style-type: none"> • Does your state office have a strategic plan? Does your court actively participate in the statewide plan? If so how?
<ul style="list-style-type: none"> • What is the tenure of your bench? How many judges does your court have? Do they stand for competitive or merit election?
<ul style="list-style-type: none"> • What is the size of your court's staff?
<ul style="list-style-type: none"> • How long have you been with the court?
<ul style="list-style-type: none"> • If your court does not have a strategic plan, do your judges and you engage in any kind of formalized activity that you might depict as strategic management?
<ul style="list-style-type: none"> • Does your court have a mission statement? Does it have a vision statement?
<ul style="list-style-type: none"> • Below are types of projects that court administrators see as lending themselves to strategic management. In the last several years has your court been involved in any of these projects and did you use strategic management?¹ <ul style="list-style-type: none"> ○ Constructing a new courthouse (or substantially renovating an existing one) ○ Campaigning for a new judicial position ○ Implementing a new case management system ○ Managing the jail population ○ Developing new problem-solving courts ○ Long-term campaign to increase or stabilize your court's funding stream ○ Reengineering court workflow ○ Presenting concept to the local oversight board (e.g., county board of commission, county board of supervisors, city council, etc.)

¹ Strategic management would involve: 1) knowing your court's fundamental mission, 2) surveying the other players in the justice community for potential allies and opponents, 3) making an environmental scan to determine the overall direction of courts 10 years out, 4) identifying problems specific to your court, 5) creating a vision of where you and your judges want the court to be in the next 10 years relative to the problems, and the environmental scan, 6) developing a plan focusing the court's resources and expertise, partnering with allies, figuring out ways to neutralize opponents, along with milestones toward achieving the vision, and 7) creating buy-in to the vision from the bench, staff, and stakeholders.

<ul style="list-style-type: none"> ○ Thwarting rogue initiatives from other judges on the bench 		
<ul style="list-style-type: none"> ● Here is a list of justice system players. How would you depict your court's relationship vis a vis strategic management with them? (i.e., are they potential allies, neutral, not a factor, potential opponents that have to be managed etc.)? <ul style="list-style-type: none"> ○ The local Sheriff ○ Local law enforcement (city police, state police) ○ The Prosecutor ○ The Defense bar ○ The local bar ○ The State Court Administrative Office ○ Child Protective Services ○ The local mental health community ○ County Board of Commissioner or City Council ○ Municipal (or Superior depending on respondent) court ○ State corrections 		
<ul style="list-style-type: none"> ● How would you describe your relationship with the elected Clerk of Court?² 		
<ul style="list-style-type: none"> ● How does the Clerk's Office see itself?² 		
Aligned with the Executive	Sui Generis (Their own entity reporting to the people)	Aligned with the Court working with the Administrative Judge
<ul style="list-style-type: none"> ● If your court has a strategic plan? ● Is there a set of goals? ● Are there objectives, milestones, or a timeline? ● Is there any discussion of redirecting resources, staff, priorities, or policies? ● Is there any discussion of the other justice players? ● Is there any discussion of the political, technological, economical demographic, environment? 		
<ul style="list-style-type: none"> ● Do you share your plans or management strategy with staff? 		
<ul style="list-style-type: none"> ● Do you ask for staff input in developing the plan? 		
<ul style="list-style-type: none"> ● Has there been a time when a strategic move by another entity (e.g., the Sheriff or prosecutor) affected your budget and resources? What happened? 		
<ul style="list-style-type: none"> ● How do you monitor and assess progress on your court's plans in the upcoming years? 		
<ul style="list-style-type: none"> ● Can you describe your relationship with the bench and particularly the administrative judge? On a scale of 1 to 5 with 1 being a completely judicial-superior staff-subordinate relationship and 5 being two co-equal professionals where would you put your relationship with your administrative judge? 		

² Questions would be only for jurisdictions with an elected Clerk of Court

<p>The AJ is my Superior; I work for her/him</p>	<p>Most of the time the AJ acts like I work for her/him; although I can advise</p>	<p>Sometimes the AJ acts like I work for her/him; sometimes we interact as co-equals.</p>	<p>Most of the time AJ and I act as co-equals, she/he has an agenda that is to be carried through.</p>	<p>The AJ and I are co-equal professionals.</p>
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