Standards and Measures of Court Performance

by Ingo Keilitz

ABSTRACT

The Trial Court Performance Standards (TCPS), a comprehensive organizational court performance system, were 10 years in the making. TCPS significantly advanced the scope of inquiry of performance measurement of the courts and other components of the justice system from one of conceptualization and identification of constructs, variables, and operational definition to one of critical review and evaluation of actual implementation. In contrast to numerous model conceptual approaches to performance measurement and exhortations promoting the idea of court performance measurement, TCPS come with specific directions for how it is to be done. Included are the elements of a complete organizational performance measurement system: (1) the abstract concepts or constructs of desired performance, (2) their concrete representations or variables, and (3) the operational definitions and procedures for measuring the variables.

Despite their widespread use by courts throughout the United States, TCPS are not well known outside the community of court practitioners. This essay reviews the constructs, variables, and operational definitions of TCPS; traces the history of their development; and explores their contribution to our knowledge about the performance measurement of courts and other components of the justice system.

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The terminology and logic of performance measurement—that of "inputs," "outputs," and "outcomes"—are then applied to the enterprise of court performance measurement itself, in particular the strategies for the acceptance, adoption, and use of TCPS in light of general resistance to organizational performance measures among court practitioners.

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Courts, like other organizations funded by tax dollars, increasingly are held accountable for their performance. No longer content to prioritize services based on needs and demands, the public wants assurances of effective services at reasonable costs. The application of court performance standards and measures is a way to assess what the public gets for its money (Epstein 1988). The *Trial Court Performance Standards* (TCPS), almost 10 years in the making, were published in four volumes in July 1997 (Commission on Trial Court Performance Standards 1997a, 1997b, 1997c, 1997d). These standards represent a milestone in the development of concepts, techniques, and strategies to examine the performance of courts and the justice system. They are an example of public policy reform launched as an effort to establish measures for the goals of a branch of government.[1]

TCPS provide a conceptual framework and the operational steps for identifying desired results, creating and tracking measurable indicators of progress toward those results, and assessing court system performance. They represent a new understanding—a new paradigm—of the role and responsibilities of courts. The *Trial Court Performance Standards With Commentary*, the first of the two major volumes, describes the standards (i.e., the broad performance goals or major areas of emphasis) toward which courts should strive and the role and responsibilities that these standards impose (Commission on Trial Court Performance Standards 1997d). The second major volume, *Trial Court Performance Standards and Measurement System Implementation Manual*, describes the performance measures and the methods by which courts can gauge their performance according to the standards (Commission on Trial Court Performance Standards 1997b).[2]

Despite their widespread use by courts throughout the United States and in several foreign countries, TCPS are not well known outside the community of court practitioners.[3] The purpose of this essay is to stimulate critical review and experimentation directed not only at the substance of TCPS but also at their application by courts. The essay reviews the constructs, variables, and operational definitions of TCPS; traces the history of their development; and explores their contribution to our knowledge about the performance measurement of courts and other components of the justice system. The terminology and logic of performance measurement—that of "inputs," "outputs," and "outcomes"—are then applied to the enterprise of court performance measurement itself, in particular, the strategies for

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the acceptance, adoption, and use of TCPS and the progress of public policy reform launched by TCPS in light of general resistance to organizational performance measures among court practitioners.

In their influential 1992 book, *Reinventing Government*, David Osborne and Ted Gaebler encouraged public organizations to measure results more than process, effectiveness more than efficiency, and broad policy outcomes more than processes or program outcomes. They cited a preliminary version of TCPS[4] as a good example of appropriate performance measurement focused on results and outcomes (what ends courts actually accomplish with the means at their disposal) rather than on inputs (e.g., structures and processes). By focusing on results that matter to those served by the courts rather than those who run them, TCPS avoid the most common pitfalls of performance measurement in the public sector—a failure to identify important outcomes and a confusion of inputs (e.g., processes, resources, and structures) with outputs.

In contrast to numerous model conceptual approaches to performance measurement and exhortations promoting the *idea* of court performance measurement (see, for example, U.S. Department of Justice 1993), TCPS come with specific directions for how it is to be done. TCPS comprehensively describe issues that seem obvious in retrospect but that public managers have not, in the words of John J. DiIulio, Jr., addressed "with sufficient regularity or seriousness of purpose" (1993, 149). These issues are (1) what court performance ought to be, (2) what factors determine performance "outcomes," (3) what results are desired and by whom, (4) how and by what means court performance should be measured on a day-to-day basis by court practitioners, and (5) what the goals of courts as public organizations are (i.e., the constructs that are the foundation of the variables and measures of performance).

The Conventional Wisdom About Court Performance: 1906–76

Beginning with Roscoe Pound's speech on "the causes of popular dissatisfaction with the administrations of justice" to the American Bar Association in 1906 (Pound 1937) that "kindled the white flame of progress" in judicial administration (Wigmore 1937, 176), the "conventional wisdom" that the problems of courts are best addressed by innovations in their structure and their processes dominated reform for 70 years (Gallas 1976, 35–36). A causal link was simply assumed among structures, resources, and processes (inputs) and their immediate products, such as the number of cases heard and services provided (outputs), and court effectiveness and the well-being of those served by

the courts (outcomes). For example, the belief that court unification—the consolidation and simplification of court structure—has a direct impact on court performance was not seriously questioned until the late 1970s (see Henderson et al. 1984; Rottman and Hewitt 1996). This conventional wisdom, emphasizing structure and process over results and outcomes, is exemplified by the American Bar Association's *Standards Relating to Court Organization* (revised in 1990) and *Standards Relating to Trial Courts* (revised in 1992) (American Bar Association 1990, 1992).

Interest in performance measurement and courts as units of analysis gained momentum from empirical research in the late 1970s and early 1980s, much of it conducted by the National Center for State Courts in the area of the pace of litigation and causes of court delay. This research suggested that there was no one best way to guarantee desired results and that courts with similar formal rules, structures, and procedures can produce dramatically different outputs and outcomes (see Goerdt 1998). Meanwhile, the focus of research in courts expanded beyond relatively narrow topical emphases (e.g., the role of defense counsel, pretrial release, and plea bargaining) to a broader perspective of the courts as public organizations operating in the context of the justice system as a whole.[5] The idea that courts must be managed like other public and private organizations to achieve desired results had gained a foothold in judicial administration.

In 1978, the National Institute of Law Enforcement and Criminal Justice (now the National Institute of Justice) of the U.S. Department of Justice commissioned a series of studies of performance measurement in the criminal justice system, including courts, police, prosecution, defense, adjudication, corrections, and the system as a whole (Cook et al. 1982; Whitaker et al. 1982; Jacoby 1982; Grizzle et al. 1982). This body of work stands as the immediate precursor to TCPS. One of the four volumes describing the results of these studies sought to develop a conceptual framework and methodology to be used in constructing performance measures for metropolitan adult felony courts (Cook et al. 1982, v). The authors surveyed three bodies of literature: research and analysis focusing on improving performance; research and theory defining performance; and applied research focusing on measuring performance. The literature survey was supplemented by interviews of court personnel and observations of court operations. "[W]e have not uncovered," the authors concluded, "a well-articulated consensus concerning such key issues as: what performance is, how performance should be measured, what the proper goals of courts are, what factors determine court outputs, or the meaning of such terms as 'due process,' 'efficiency,' and 'justice'" (Cook et al. 1982, 6). To a large extent, these issues were not resolved but simply framed as research issues that needed further attention.

Given the complexity of the task, it should not be surprising, at least in retrospect, that these early studies did not produce "a complete, intricately detailed blueprint for the construction of a performance measurement system," but rather only a "conceptual framework that will guide future development of such a blueprint." It would take another 5 years to begin, and 15 years to create, this "complete, intricately detailed" blueprint (Cook et al. 1982, 11). One commentator, assessing the status of court performance measurement in 1987 at the eve of the TCPS project, concluded that "[i]f the courts are to improve during the next thirty years everyone associated with them—managers, judges, researchers, and others—must radically increase the attention to evaluation of performance" (Feeney 1993, 477).

Overview of TCPS

TCPS include the elements of a complete organizational performance measurement system: (1) the abstract concepts or constructs of desired performance, (2) their concrete representations or variables, and (3) the operational definitions and procedures for measuring the variables. The elements are grouped in five performance areas that embrace the fundamental purpose or mission of courts:

- Access to Justice.
- Expedition and Timeliness.
- Equality, Fairness, and Integrity.
- Independence and Accountability.
- Public Trust and Confidence.

These areas suggest alternative ways of viewing the fundamental role and responsibilities of courts, such as providing and appearing to provide individual justice in individual cases; resolving disputes; upholding Federal and State constitutions; working independently of, but in cooperation with, other branches of government; promoting the rule of law; protecting individuals from the arbitrary use of government power; making a formal record of legal proceedings; and encouraging behavior that adheres to societal norms as expressed in statutes, ordinances, and regulations. Within each of the five performance areas, three to six standards describe goals (or major areas of emphasis) for court performance. Standards in two of the five performance areas—Expedition and Timeliness and Equality, Fairness, and Integrity—emphasize the courts' fundamental dispute resolution functions. The standards in the three other performance areas focus on the functions of courts as organizations and their relations with other organizations and the public.

Theoretically, the five performance areas are accorded equal weight and importance. If effective participation and access to justice are denied, for example, it is of little consequence to those affected that a court *potentially* performs well in the other four areas. Justice delayed is justice denied, even if barriers to access are overcome. But expedition and timeliness are not everything. If the train is not heading where you want to go, it matters little how fast it is going. A court system that lacks public trust and confidence has diminished power and legitimacy.

In practice, the performance areas are systematically linked, and actions in one will affect another. If a minority group loses its trust and confidence in the court system and believes that it will not be dealt with fairly and equally, its effective participation and access to justice are limited. Court performance in different areas may conflict, requiring balance and choice by court managers and leaders. A public information campaign promoting a court's domestic violence program may increase access afforded women seeking civil protection orders, but it may also increase the court's caseload to a point that timeliness and expedition of cases are threatened.

For each performance area, succinct statements—"black letter" standards—describe the required performances. Each standard is followed by commentary to explain and clarify it. A total of 22 standards cover all 5 areas. Each standard is linked with a set of specific performance measures (i.e., variables, operational definitions, and procedures for measuring the variables) and data collection methods, techniques, and forms—a total of 68 measures for all 22 standards.[6]

TCPS encourage courts to conduct continuous self-assessment and improvement as part of routine court management, planning, and leadership. Each of the 68 measures is presented in easy-to-understand language—including a description of the measure's purpose and how it aligns with the standard and performance area, planning and preparations for taking the measure, data collection procedures and forms, data analysis and reporting, and references to other resources. This allows court practitioners to arrange the specific performance measurement with little or no professional research assistance. Some measures and their specific methods build on others and should be conducted in a particular sequence. Others stand alone and can be taken independently. Some measures, such as Measure 1.1.3, Audibility of Participants During Open Court Proceedings, are relatively easy to

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conduct; others, such as Measure 3.3.3, Equality and Fairness in Sentencing, are more complex and time consuming.

The measurement system employs numerous data-gathering methods and taps diverse data sources. Included are familiar methods, such as court and case record reviews and tallies of case filings and dispositions, as well as other social science techniques less familiar to courts, such as systematic observation, simulations, surveys of various reference groups, and group techniques. Different "evaluators" and data collectors are prescribed depending on the object or subject of the measure. Trained volunteers, for example, are recommended for conducting structured observations of court proceedings and simulations of public access to court information, and court staff are recommended for taking measures involving record reviews. Some measures—such as measure 5.1.3, General Public's Perceptions of Court Performance—suggest the participation of professional consultants or court staff with expertise in data analysis or survey methodology. One of the four TCPS publications, *Planning Guide for Using the Trial Court Performance Standards and Measurement System*, discusses broader issues related to the measurement process framed by three questions: Who should oversee the measurement process? How should the measure or measurement process be adapted for a specific court? How should the results be used? (Commission on Trial Court Performance Standards 1997b.)

Performance, as defined by the TCPS areas of performance, standards, and measures, is oriented toward outcomes or results instead of level of effort or output. An "outcome" is a meaningful result, a condition of well-being, for the individuals, groups, or communities served by the courts, not merely an "output," or efforts of the courts (e.g., number of cases heard) not tied to the needs of citizens and the overarching purposes of government. To state that TCPS are "oriented" toward important outcomes is to suggest a qualification. That is, although the focus of TCPS is clearly on outcomes, the individual standards and measures vary considerably in the extent and breadth of their identification of outcomes versus mere outputs.

Some of this variation is attributable simply to the difficulty of identifying meaningful outcomes and creating useful variables, measures, and operational definitions of those outcomes, especially in performance areas where no performance measures and indicators exist. What are the desired specific outcomes of

access to justice, of equality and fairness, and of independence and accountability? During the development of the measures, the TCPS project was plagued by what staff dubbed "process creep," the tendency to identify standards and measures associated with inputs (the resources that a court uses to produce services) and outputs (the number and types of services delivered) rather than with important results and outcomes.

The following five subsections summarize the major elements of TCPS by court performance area, beginning with Access to Justice.

Access to Justice

The five standards defining the performance area of Access to Justice—presented first because they address the initial entry of litigants and other court users into the judicial system—require that courts be accessible to the individuals they should serve. They require a court, in effect, to eliminate all barriers—physical, geographic, procedural, cognitive, psychological, and attitudinal—to court services. Like all 22 standards, the 5 standards in the area of Access to Justice encourage courts to view their performance from that of the citizens who are served by the courts (outcomes) rather than that of those who run the courts (who are likely to focus on inputs and outputs).

1.1. Public Proceedings: The trial court conducts its proceedings and other court business openly.

1.2. Safety, Accessibility, and Convenience: Trial court facilities are safe, accessible, and convenient to use.

1.3. Effective Participation: The trial court gives all who appear before it the opportunity to participate effectively, without undue hardship or inconvenience.

1.4. Courtesy, Responsiveness, and Respect: Judges and other court personnel are responsive to the public and accord respect to all with whom they come into contact.

1.5. Affordable Cost of Access: The costs of access to trial court proceedings and records—whether measured in terms of money, time, or the procedures that must be followed—are reasonable, fair, and affordable.

Twenty-one specific performance measures are associated with these five standards. Together, the measures provide both breadth and depth of measurement of a court's performance in offering public access to justice. Prescribed methods

of measurement include structured observations, interviews, surveys, record searches, and reviews. Three measures call for administering surveys (forms and instructions are provided) to individuals who are "regular users of the courthouse." The information sought relates to safety and security, the ease of "doing business" with the court, and the courtesy and respect experienced by these court users.

The method prescribed most often for measuring access is observation (sometimes combined with simulation). Observers systematically record what they see and hear. There are 12 measures of this type. Two other measurement methods rely on data collected through interviews and examination of court records and written policy documents. Some of the measures of this type focus on case data. For Measure 1.3.1, focused on effective legal representation of children in abuse and neglect proceedings, for example, court case records are examined and the individuals involved in the cases are surveyed and interviewed to document how the guardian *ad litem* process actually worked for selected cases. Other measures focus on administrative documents. For example, Measure 1.5.1, Inventory of Assistance Alternatives for Financially Disadvantaged, requires examination of forms, brochures, and written policies to evaluate court efforts to facilitate affordable access alternatives for individuals with low incomes. Finally, measures addressing the issues of court security (Measure 1.2.1) and interpreter services (Measure 1.3.2) require evaluation by outside experts in their respective areas.

Expedition and Timeliness

Court reform in the past 20 years has focused on the pace of litigation and reduction of delay in case processing. The three standards in the second performance area expand the requirement of timely case processing to all court activities.

2.1. Case Processing: The trial court establishes and complies with recognized timelines for timely case process while keeping current with its incoming caseload.

2.2. Compliance with Schedules: The trial court disburses funds promptly, provides reports according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.

2.3. Prompt Implementation of Law and Procedure: The trial court promptly implements changes in law and procedure.

The 10 measures for this area's three standards assess how promptly the court processes cases, files required reports, disburses funds, and implements new legal and procedural changes. Because of the diversity of performances required by the three standards, a wide range of measurement techniques are employed—record review, observation and simulation, surveys, interviews, and structured group techniques. Several measures associated with this performance area—length of time to case disposition, ratio of case dispositions to case filings, and the age of the pending caseload—are familiar to most court managers and judges. Four other measures draw on State and local sources of information to determine whether a court is performing non-case-related functions (e.g., distributing funds and providing reports, information, and services) in a timely manner. Satisfactory performance requires not only that provision of reports be timely but also that they be completed in a manner useful to the person or agency requesting the information or report. Finally, Measures 2.3.1, Implementation of Changes in Substantive and Procedural Laws, and 2.3.2, Implementation in Changes in Administrative Procedure, relate to the promptness with which a court implements externally mandated changes.

Equality, Fairness, and Integrity

This requirement is articulated by the following six standards:

3.1. Fair and Reliable Judicial Process: Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies.

3.2. Juries: Jury lists are representative of the jurisdiction from which they are drawn.

3.3. Court Decisions and Actions: Trial courts give individual attention to cases, deciding them without undue disparity among like cases and on legally relevant factors.

3.4. Clarity: The trial court renders decisions that unambiguously address the issues presented to it and clearly indicate how compliance can be achieved.

3.5. Responsibility for Enforcement: The trial court takes appropriate responsibility for the enforcement of its orders.

3.6. Production and Preservation of Records: Records of all relevant court decisions and actions are accurate and properly preserved.

The six standards address the constitutional guarantees of due process and equal protection under the law. The standards emphasize integrity and fidelity to established laws and procedure and require courts not only to be explicit in their

orders but also to ensure their enforcement. The first standard requires that trial courts adhere to laws they are responsible for upholding. The equality and fairness afforded to litigants and disputes are determined not only by judicial officers but also by juries. Standard 3.2 requires that trial courts do their utmost to encourage equality, fairness, and integrity by ensuring that individuals called for jury duty are representative of the population from which the jury was drawn.

Standard 3.3 focuses on what many consider the essence of justice—the requirement that a court's decisions and actions be based on legally relevant factors consistently applied in all cases. Decisions and actions should be the result of individual attention paid to individual cases. Because clarity and understanding are prerequisites of compliance and enforcement, Standard 3.4 requires courts to render decisions that clearly address the issues and specify how compliance with their decisions can be achieved.

Standard 3.5 requires courts to take responsibility for the enforcement of their orders, acknowledging that the responsibility is more often than not shared with its justice partners and other branches of government. Finally, Standard 3.6 requires the proper and accurate preservation of court records. Records of court decisions and court process constitute, in an important sense, the law. Both accuracy and reliable and prompt access to these records are fundamental to the purposes of courts.

A total of 23 performance measures are associated with the six standards in the area of Equality, Fairness, and Integrity. They are intended to provide systematic performance information on the many facets of this complex and important area. For most of the standards, associated measures use similar data elements, data-gathering procedures, and methods of analysis. For example, for five of the six measures of Standard 3.6, a common database is used to assess the integrity of the court's record management systems. The measures prescribe use of some portion of the same pool of cases to examine the extent to which court records are adequately stored. The use of a joint database is suggested for other standards. For example, Measures 3.3.3, Equality and Fairness in Sentencing, and 3.3.4, Equality and Fairness in Bail Decisions, rely on the same set of cases and the same methodological approach in determining whether legally irrelevant factors play a role in sentencing and bail decisions. A court that decides to measure a given standard will find that it can apply all of the measures within that standard in an efficient manner.

The most common approach to the measures in this area is the analysis of case-related information. Case files are used as a basic source of data for 17 of the 23 measures. In some instances, the information in files is gathered and analyzed to assess the fairness of court decisions, such as in bail and sentencing.

Case-related information is also used in Standard 3.1 as a means of determining the extent to which the court adheres to laws and procedures. Here the case-related information is used as a way to verify compliance with laws.

The next most common approach is the use of mail questionnaires to assess the views of key participants in the trial court process. Different measures target different samples of respondents. For example, Measure 3.3.3 seeks to determine how court employees and attorneys assess a court's performance in applying the law. Measure 3.3.1 targets the bar's view toward the fairness of court decisions and actions. Measure 3.3.2 provides a parallel survey of court users. Measure 3.6.6 is directed at the views of attorneys toward the adequacy of the court record when cases are appealed.

Finally, the three measures associated with Standard 3.2 call for an examination of court records pertaining to the selection of jurors. The lists of potential jurors are compared with other sources of information, such as census reports, to determine inclusiveness, randomness, and representativeness.

Independence and Accountability

The five standards in the fourth performance area recognize the importance of the independence of the judiciary, the courts' institutional integrity, and separation of powers. At the same time, however, the standards require courts to maintain effective working relationships (comity) with other branches of government and justice system partners. Focusing on courts as public organizations, these standards require them to balance independence with public accountability, practice good stewardship of resources, ensure that their internal personnel practices meet the highest standards, and be a responsive component of government.

4.1. Independence and Comity: The trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.

4.2. Accountability for Public Resources: The trial court responsibly seeks, uses, and accounts for its public resources.

4.3. Personnel Practices and Decisions: The trial court uses fair employment practices.

4.4. Public Education: The trial court informs the community about its programs.

4.5. Response to Change: The trial court anticipates new conditions and emergent events and adjusts its operations as necessary.

In contrast to the measurement approach in the other four performance areas—which is largely *prescriptive* in its detailing of specific measures and indices—the measurement approach in the area of Independence and Accountability is largely *heuristic*. Rather than defining specific measures of performance, it requires methods by which a court proceeds along empirical lines to identify the people, events, and activities needed to develop valid and feasible performance measures to assess independence and accountability. And rather than initially taking a specific measurement, the court engages in a process that will allow it to make inferences about its performance based on empirical results. Field tests and demonstrations of experimental measurement approaches for the standards and measures (see the section "A Brief History of the TCPS Project") indicated that performance assessment in this area is highly context-driven. Differences in the sizes of courts, the statutory frameworks governing court funding, and the structural arrangements of essential justice system services make it difficult to prescribe a standard set of measurement approaches.

The measures should only be undertaken following the formation of a steering committee of judges and court managers. This group will be involved in planning data collection, considering the significance of the results, and integrating the findings from all the measures into an overall view of court performance in this area. Structured group techniques, such as the Nominal Group Technique and Ideawriting, led by a skilled facilitator, are recommended to save time during steering committee meetings and to maximize objectivity in the committee's work. The use of the steering committee, in conjunction with research efforts that may be undertaken by court staff or consultants, combine fact-gathering, value clarification, decisionmaking, and action.

Public Trust and Confidence

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A judicial system derives its authority and legitimacy from those it serves. The central question posed by the three standards in this area is whether court performance—in accordance with standards in the other four performance areas—actually instills public trust and confidence.

5.1. Accessibility: The public perceives the trial court and the justice it delivers as accessible.

5.2. Expeditious, Fair, and Reliable Court Functions: The public has trust and confidence that basic court functions are conducted expeditiously and fairly and that court decisions have integrity.

5.3. Judicial Independence and Accountability: The public perceives the trial court as independent, not unduly influenced by other components of government, and accountable.

A court must attend to four major constituencies served by the courts. They vary in type and in the extent of contact and experience with the courts. At the most general level is the local community or the "general public"—the vast majority of citizens who seldom experience the courts and may have formed their beliefs by watching TV, reading newspapers, or surfing the Internet. A second constituency is a community's opinion leaders—the newspaper editor, the reporter assigned to courts, the police chief, the mayor, members of the board of supervisors, business leaders, and members of court watch committees. A third constituency includes citizens who appear in court on a regular basis—referred to as "regular court users." These include attorneys, litigants, witnesses, jurors, victims, family, friends, and representatives of those who appear before the court. This group obviously has direct experience and knowledge of the court and its routine functions and activities. The last constituency consists of those individuals employed by the court system—judicial officers, managers, and other staff—who may have an insider's perspective on how well the court is performing.

The three standards in this area are associated with 14 measures, all but three of them drawn from the other performance areas. Because the court's performance with regard to Public Trust and Confidence is dependent in large part on its performance in other performance areas like Access to Justice and Fairness and Equality, several of the measures rely on *informed* opinions (i.e., opinions of individuals who have had contact with the court). For example, in Measure 1.2.6, Evaluation of Accessibility and Convenience by Court Users, the ease and convenience of conducting business with the court is measured through a survey of regular court users—court employees, attorneys, probation officers, and jurors.

Three measures address public trust and confidence squarely: Measure 5.1.1, Court Employees' Perceptions of Court Performance; 5.1.2, Justice System Representatives' Perceptions of Court Performance; and 5.1.3, General Public's Perceptions of Court Performance. The first measure is conducted through a mail survey of court employees, the second through a focus group discussion with representatives of the various components of the justice system, and the third through a telephone survey of the general public.

A Brief History of the TCPS Project

The TCPS project has drawn much of the blueprint for court performance measurement called for by Cook and his colleagues in 1982 and has resolved many of the issues they identified for more attention (p. 11). The 10-year, multimillion-dollar project followed a traditional course of applied social research—research and development; testing, refinement, and demonstration; implementation and institutionalization. The National Center for State Courts (NCSC) and the Bureau of Justice Assistance (BJA) of the U.S. Department of Justice initiated the project in 1987 to develop measurable performance standards for State trial courts. At the time, State court systems saw themselves stretched beyond their capacities. Court personnel were experiencing fatigue and burnout in the face of overwhelming increases in drug-related cases. Pressure on the courts created a sense of urgency. In contrast to the prior research on performance measurement, which emphasized conceptual framework development, the TCPS project was launched as an ambitious applied research effort with implications for major public policy reform. Even in its early stages, the project set lofty goals that reached beyond the identification of concepts. Project representatives asserted that TCPS would "define a philosophy, and a valid and widely shared conception, of what optimum trial court performance entails. [T]hese standards will prove a valuable resource for self-assessment and self-improvement of trial courts and provide better ways of meeting the needs of those served by the courts" (Commission on Trial Court Performance Standards 1997a, vii).

Research, innovation, and development: 1987–90

The initial phase of the TCPS project was a 3-year research, innovation, and development effort that began in August 1987 and ended in mid-1990. The project team consisted of a 14-member policymaking and advisory body, the Commission on Trial Court Performance Standards, that included appeals and trial court judges, trial court administrators, a court clerk, an academic researcher, and NCSC project staff. The project staff, which numbered from 5 to 12 during this time, included social scientists, research attorneys, and program administrators. The critical question, "What *should* courts be accomplishing?" that prior attempts had largely failed to answer (Cook et al. 1982, 184–185), was addressed at the outset.

The project team quickly discovered that there was little specific guidance in the literature of court administration on how to measure trial court performance and no consensus on the broader goals against which to measure performance. The success of this difficult and important initial stage of goal setting, as others have suggested in different contexts (see Danegger et al. 1999, 5, 20), was in

no small part made easier by the political legitimacy and credibility of the 14 members of the Commission on Trial Court Performance Standards. It is doubtful that the project would have progressed as far and as fast without the political standing that the Commission gave the project.

The following objectives and strategies were established for the project within the first year after several months of deliberations about the general contours of the project:

- Development of a manageable number (20–25) of standards of trial court performance through a process that included the preparation of a series of "briefing papers" by project staff, consideration of the issues raised by the briefing papers by the Commission and project staff, and the crafting of standards and commentary in five performance areas. The identification of the five performance areas was the subject of the first several briefing papers and meetings of the Commission.
- Development of a comprehensive measurement system built around the standards, including performance measures or indicators, data collection methods and techniques by which measures would be taken, requirements for data, and a performance evaluation scheme by which the measurement system could be applied by trial courts throughout the country.
- Field testing and application of the performance standards and measurement system in selected "demonstration" courts.
- Dissemination, promulgation, and acceptance (institutionalization) of TCPS by key judicial organizations and several States.

In 1990, a tentative version of the performance standards, measures, and commentaries, published in the form of a 41-page booklet (Commission on Trial Court Performance Standards 1990), and a companion videotape describing the TCPS project, were widely distributed for review. The initial objective of the project—a manageable number of performance standards grouped in five performance areas and a tentative set of associated measures—was largely accomplished by 1990. Comments and suggestions for improvement of the standards were received from judges; elected and appointed court managers at the State and local levels; judicial administration scholars; representatives of various national, State, and local judicial administration organizations; and other interested individuals and groups.

In general, the tentative standards were well received once they were seen in print. Although many observers of the work of the project expressed early skepticism about any attempts to identify what courts *ought* to be doing in any

meaningful way, most agreed with the sentiment of a judge who commented after reviewing a tentative version of the standards, "These things are like Mom, apple pie, and the American way. Who can quibble with them?"

At the same time, in addition to the standards and commentaries, the Standards Project staff developed a tentative measurement system to accompany the standards (Trial Court Performance Standards Project 1990). The development of many of the measures was based on a performance-measurement process with a long history of use in industrial and organizational psychology (Smith and Kendall 1963) that entails identifying critical factors of effective and ineffective behaviors and scaling them along an effectiveness dimension.

In contrast to the standards expressing the broad goals of courts against which performance would be gauged, the tentative measurement system that was summarized in the 1990 booklet of TCPS drew strong negative reactions from the field. The summary included only a brief narrative and tabular description of 75 specific measures associated with the 22 standards, the object or subject of the measurement (e.g., child support orders), the methods of measurement (e.g., case file reviews), and the person or persons responsible for taking the measure (by whom the measure is applied).

A number of judicial groups and individuals raised strong objections to an advance draft of this tentative version of the performance measures, foreshadowing political and attitudinal obstacles that would confront the application of TCPS in later phases of the project. The ready acceptance of the standards (i.e., the performance goals and the principles and ideals on which they were based) would not be extended to the associated measurement system. It seemed as if the articulation of specific measures—a total of 75—signaled a seriousness of purpose of the project that had not been evident to observers before. One group of California judges, for example, persistently voiced its objections to the president of NCSC, the chief justice of California, and representatives of BJA, the agency of the U.S. Department of Justice funding the TCPS project. Despite repeated assurances by the project team that TCPS were intended for self-assessment and improvement, the California group contended that TCPS was in fact a mechanism that NCSC planned to use to build a national system of "accreditation" of courts, a development the group rejected as inappropriate. The group used language lifted from 3-year-old grant applications, obtained from BJA under the authority of the Freedom of Information Act, to bolster its contention. The group also complained that TCPS would be used inappropriately to gauge the performances of individual judges.

Cautioning researchers and policymakers about any efforts to define measures for the goals of justice agencies, John J. DiIulio, Jr., has observed that "it is

often the most dedicated and caring government workers who are anywhere from suspicious to downright dismissive of any attempt to define and apply such measures" (1993, 155). In an attempt to placate the judicial organizations whose endorsement of TCPS was deemed critical to their acceptance and use, project staff wrote the caveat about court performance measurement that appears, emphasized by italics, on the second page of the introduction to the *Trial Court Performance Standards With Commentary*: "The use of the standards as a basis for cross-court comparisons or as part of a national regional accreditation of State Courts is not intended or recommended. . . . The standards and accompanying measurement system also are not intended, nor are they appropriate, for gauging the performance of individual judges" (Commission on Trial Court Performance Standards 1997a, 2). These cautionary words accurately reflect a negative mental model of court performance measurement that was, and probably continues to be, pervasive in the courts. It seemed to be based on tacit assumptions and fears that performance measurement is something done *to* us, not *for* us, by third parties who do not necessarily have the court's best interests in mind; that it is predicated on serious misunderstandings about how courts work; that it is accomplished with methods that are insensitive to the courts' unique working environments and operations; that it results in numbers that bear little relationship to what is purported to be measured; and that it is more likely to be harmful than helpful.

Peter M. Senge, a prominent management theorist, defines mental models as the deeply ingrained assumptions, generalizations, and images that shape how we understand the world and take actions (1990, 174–204; Senge et al. 1994, 235–293). Differences in mental models explain why two people can observe the same phenomenon and describe it quite differently. The classic story, "The Emperor's New Clothes," Senge writes, is less about ignorant people than it is about people bound by powerful images of the emperor's dignity that prevented them from seeing him as naked. The TCPS project team learned early in the project's life that they would ignore this negative model of performance measurement at the risk of jeopardy to the project. It seemed that acceptance and use of TCPS would depend on continued assurances of autonomy of control and use of TCPS by trial courts themselves.

Testing, refinement, and demonstration: 1989–95

As the measurement system developed, 75 tentative measures were tested and refined. Trial courts in Arizona, Michigan, and Ohio contributed to this process by serving as test sites for the tentative measures. Testing consisted largely of informal efforts by project staff to take the various measures with the assistance

of court staff. Although court staff were questioned about the feasibility, utility, and likelihood of use of the measures, no attempts were made at the time to incorporate the measures into the day-to-day operations of the "test" courts.

Beginning in August 1990, work began on the next phase of the project, which involved broader testing and demonstration of the feasibility and utility of the measures. The objectives of this phase were (1) to move the project from innovation to limited implementation in selected States, where the use of the trial court performance standards and their accompanying measurement system could be tested; (2) to continue refining and adapting the measurement system to meet the requirements of trial courts and the State administrative offices of the courts; and (3) to provide the foundation for the acceptance and institutionalization of the standards and measurement system as a useful tool of judicial administration.

The demonstrations were conducted in 13 trial courts of different sizes in New Jersey, Ohio, Virginia, and Washington.[8] In consultation with project staff and the administrative office of the courts in the respective States, trial courts agreed to demonstrate a selected number of performance measures. Because the Conference of State Court Administrators and the Conference of Chief Judges had already endorsed the tentative version of TCPS, and the project had gained a certain notoriety, many trial courts viewed participation with the continuing project as "demonstration sites" as a way to enter the national spotlight. Consequently, recruitment of demonstration courts turned out to be relatively easy.

A number of considerations determined what measures would be taken by what demonstration court, including the interests and needs of the courts and the State court administrative offices, the need of the project to demonstrate all measures in as many different operating environments as possible, and the size and resources of the court. Each of the 75 measures was taken as prescribed by the tentative measurement system by at least one of the demonstration courts, with most measures demonstrated by more than one (Trial Court Performance Standards Project 1990).

The demonstrations led to a revision of the tentative measures—including elimination of some, simplification of others, and confirmation of most in revised form. The 75 measures in the tentative 1990 version of TCPS eventually were reduced to 68 measures in the final version.

In retrospect, it is clear that the project failed to take full advantage of the demonstrations that directly engaged approximately 100 trial court personnel, and indirectly perhaps twice that number, in 13 sites for more than a year. Despite efforts by project staff to fit the demonstrations as much as possible

into the day-to-day operating environments of the courts, the demonstrations of the measures remained, for the most part, artificial. Although the participants claimed benefits of the demonstrations for their own management and planning, the measurements seemed to be demonstrated because of a requirement of the TCPS project, not because the measures necessarily were needed or desirable for purposes of management decisionmaking in the demonstration courts. Most of the participants in the 13 demonstration courts viewed their efforts as contributions to national research and development by NCSC, not as an opportunity to demonstrate real benefits of performance measurement in their courts. Even today, when asked to comment on the technical, administrative, and political obstacles that stood in the way of implementing TCPS in their courts, participants speak more of the difficulties of the demonstration *per se* (e.g., interactions with the TCPS project team) than the merits of the TCPS measurement system from their perspectives.

By tightly controlling the measures taken and prescribing the steps by which they were to be taken, the project probably limited the information gleaned about the application of TCPS in actual operating court environments. As a result, although the demonstrations served the purpose of acquiring information for refinement of the technical aspects of the measurement system (e.g., the ability of courts to take certain measures without outside assistance, the difficulties of obtaining samples, and the ease of use of data collection instruments), they contributed little to knowledge of how and under what circumstances TCPS would be used by courts with no obligation to use them. Although project staff consulted with and visited demonstration sites frequently and diligently recorded comments and suggestions for improvement of the measures and the measurement process, their focus was almost exclusively the revision of the individual measures, their operational definitions, and the description of the methods by which the measures were to be taken. Whatever information that may have been obtained that would address the most frequently asked question today, "How are TCPS being used and with what results?" was not retained. Notwithstanding the "artificiality" of the demonstrations, this question could have been addressed at relatively little cost by a systematic effort to inquire about, record, and catalog the input, output, and outcomes produced by the performance measurement efforts of demonstration courts. It seems likely that a similar effort would need to be made in the future with courts using TCPS today (see the section "The Inputs, Outputs, and Outcomes of Performance Measurement").

Institutionalization of TCPS: 1995–2000

In June 1995, the Commission, meeting for the last time in Baltimore, expressed the vision that by 2000, all State courts would be using TCPS in a systematic or organized way. Late in 1994, the first intensive 3-day training course on the use

Between 1990 and 1999, five major judicial and court management organizations, representing most State courts, endorsed TCPS by formal resolutions, proclamations, or publications: the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management, the College of Probate Judges, and the American Judges Association.

of TCPS, "Organizing Your Court: How to Use the *Trial Court Performance Standards*," was conducted in Tucson, Arizona, with 27 court managers and judges from throughout the country. Sponsored by NCSC's Institute for Court Management, the course focused on the use of TCPS as: (1) a common language for the description, classification, and communication of court activities; (2) a means for self-assessment, self-improvement, and accountability; (3) a conceptual framework for understanding and improving court performance; and (4) a guide for court planning, management, and leadership.

Although the Commission's vision that all State courts would be using TCPS by 2000 is unlikely to be realized, the extent of the institutionalization of TCPS in court management and judicial administration is broad.

Endorsements

Between 1990 and 1999, five major judicial and court management organizations, representing most State courts, endorsed TCPS by formal resolutions, proclamations, or publications: the Conference of Chief Justices, the Conference of State Court Administrators, the National Association for Court Management, the College of Probate Judges,[9] and the American Judges Association.

State-level efforts

Administrative offices of State courts or supreme courts in at least 20 States adopted TCPS as a basis for their long-term or strategic planning. California, for example, codified TCPS as a California Judicial Council Rule and is using them as the framework of its ambitious strategic plan (Commission on the Future of the California Courts 1993).

General jurisdiction courts

An estimated 1,200 trial courts (approximately 40 percent) are using TCPS in some way. For example, the 19th Circuit Court in Illinois and the 26th Judicial District Court in North Carolina currently are using TCPS to guide their strategic planning efforts.

This and subsequent estimates of adoption or use of TCPS are based on the direct experiences and informed judgments of the TCPS project, NCSC's Institute for Court Management, and their associates actively engaged in the promulgation of TCPS. A precise definition of "use" of TCPS remains to be made. For the purpose of these estimates, however, use was loosely defined as any effort by courts, beyond simple exposure to TCPS by training and education, to apply TCPS to their management, planning, or leadership.

Limited jurisdiction courts

An estimated 7,000 (40 percent) municipal, family, and other limited jurisdiction courts are using TCPS. For example, in 1996, the Los Angeles Municipal Court, with funding from the State Justice Institute, attempted to conduct all 68 performance measures as part of its strategic planning process (Anabis-Straub n.d.). The North County (San Diego) Municipal Court's project using TCPS to improve customer service (Lane 1998) was nominated for the Ralph N. Kleps Award for improvement in the administration of justice in California courts. With funding from the State Justice Institute, the Family Court of Delaware is adapting TCPS for family courts.

Other court efforts

Other State and Federal courts, court organizations, and foreign courts (including those in Austria, Australia, Canada, Hong Kong, and the Philippines) are using TCPS (see, for example, Gryphon Consulting Services 1998).

Publications and dissemination

Since 1990, an estimated 20,000 copies of various publications featuring TCPS have been distributed by NCSC, BJA, and the State Justice Institute.

Education and training

About 1,500 court managers, judges, and other public officials have been exposed to TCPS in national, State, and local courses conducted by the Institute for Court Management of NCSC and its associates since the end of 1994. Numerous presentations of TCPS have been made at meetings of national judicial organizations. With funding from BJA, NCSC recently established a TCPS resource center that maintains an Internet listserv and a database of individuals interested in TCPS. The center is producing an educational video, a CD–ROM version of the *Trial Court Performance Standards and Measurement System*, and other resource materials.

Advancing the Inquiry Beyond Goals

TCPS make it possible to advance the inquiry into performance measurement of the courts—and other components of the justice system[10] —from one of conceptualization and identification of constructs, variables, and operational definition to one of critical review and evaluation of a comprehensive measurement system currently in use in the courts. This is a significant and potentially rewarding advance for justice system researchers, policymakers, and practitioners. Questions of what the goals of court performance *ought* to be can give way, at least somewhat, to questions about whether the performance goals, principles, and ideals expressed by TCPS are the appropriate ones. Do TCPS concentrate on significant measures of court performance? Are the measures relevant to other components of the justice system? Do the measures together constitute a "balanced scorecard" of important outputs and outcomes (Kaplan and Norton 1992, 1993)? Does the measurement system produce data that are accurate, consistent over time, and valuable to both practitioners and policymakers? These questions can be addressed empirically by evaluations in courts using TCPS.

In their 1982 synthesis of the extant literature, Cook and his colleagues lamented: "One looks in vain for a well-articulated formal hierarchy of goals for criminal justice agencies against which the performance of these agencies could be measured. . . . [P]rior attempts to identify an agreed upon set of goals for the court system were unsuccessful; apparent consensus broke down on the particulars of what courts *ought* to be doing" (Cook et al. 1982, 184–185). Clearly, the overall value of a performance measurement system is dependent on the quality of the individual measures. However, without minimizing the importance of TCPS' greatly detailed procedures for measuring performance, the most significant contribution of TCPS to the literature of performance measurement may be their "formal hierarchy of goals"—the theoretical concepts, abstractions, and new categories of thinking about the fundamental responsibilities of courts—on which TCPS are built. Goal formulation is recognized as perhaps the most critical step in the strategic planning process. The effort is as much political as it is rational (see Bryson 1995, 10–13). Researchers and policymakers may have underestimated the difficulty of identifying and formulating the broad goals of courts as they looked to the more technical challenge of creating measures and indicators of the work performed and results achieved by courts.

Organizational performance standards for courts and other public organizations are largely meaningless if they are detached from constructs they are intended to represent. At best, they are grounded in historical understanding, democratic vision, and civic ideals (see DiIulio 1993b). Traditionally, government performance measurements are developed from the perspectives of

government managers, not of citizens, and the two may differ greatly. TCPS clarify what citizens want from their courts and what results are desired. Citizens want ready access to the justice delivered by the courts; they want that access to be safe, relatively convenient, and affordable. Once they have gained access, they want their business with the courts dealt with expeditiously and fairly, according to the facts and according to established rules. They want their disputes to get individual attention and to be dealt with fairly. They want their courts to be independent of other branches of government and other agencies to assure that decisions and actions are based solely on legally relevant factors. Ultimately, they seek trust and confidence in the courts. These civic ideals are identified by TCPS' five performance areas: Access to Justice; Expedition and Timeliness; Equality, Fairness, and Integrity; Independence and Accountability; and Public Trust and Confidence in the courts.

TCPS represent a shift from thinking about courts as individual judges making individual decisions to thinking about courts as public organizations—as a system of structures, people, methods, and practices brought together to achieve specific ends.

The underlying principles of TCPS support these constructs: (1) a focus on outcomes (results and performance) rather than inputs, (2) courts as organizations (i.e., the organization as the unit of analysis), (3) the public as definers of desired results (i.e., service orientation), and (4) responsiveness to community needs. By focusing on results that matter to those served by the courts, rather than those who run them, TCPS avoid the most common pitfalls of performance measurement in the public sector—a failure to identify important outcomes and a confusion of inputs (e.g., processes, resources, and structures) with outputs and outcomes. TCPS represent a shift from thinking about courts as individual judges making individual decisions (one judge, one court) to thinking about courts as public organizations—as a system of structures, people, methods, and practices brought together to achieve specific ends. Viewing the courts as organizations makes Standard 3.5, Responsibility for Enforcement, and Standard 4.5, Response to Change, for example (see previous section, "Overview of TCPS"), more acceptable to judges who might otherwise consider these standards as threats to the separation of powers and an endorsement of judicial activism. TCPS' emphasis on performance changes the focus from the perspective of insiders (those who run the courts) to those who are served by the courts. TCPS represent a change of thinking about the courts' role in society from isolation and independence to interdependence and community responsibility. The welfare and quality of life of the community and its citizens should matter to courts as organizations.

They define not only courts' guiding ideas—their direction, values, and purpose—but also their structures and processes. The emergence of specialized courts, such as drug courts, community courts, teen courts, and domestic violence courts, reflect the importance of community to how we structure and run our courts.[11]

The Inputs, Outputs, and Outcomes of Performance Measurement

What are the benefits or desired results of the adoption and deployment of court performance measurement? Although there appears to be widespread recognition that organizational performance measurement is only a tool, not an end in itself, the desired results or ends of court performance measurement have yet to be specified with any precision. Court researchers and practitioners engaged in court performance measurement have not examined their own efforts with any regularity or rigor. They need to examine not only what they really *do* but, more important, what they and their performance measurement processes really get *done* in terms of their impact on the functioning and effectiveness of the courts.[12] Meritorious outcomes resulting from performance measurement, like those of management and strategic planning in the courts, are simply assumed (see Keilitz, Davis, and Benedict in press).

The logic and language of performance measurement can be put to use as a framework for reviewing and evaluating court performance measurement as a strategy to achieve desired results. Using this framework, court performance measurement, like anything the courts do, entails resources and strategies (inputs) that act on the operating environment of the justice system and community to produce services (outputs) that, in turn, produce demonstrable changes in the well-being of the public and the community served by the courts (outcomes). What are the *inputs* of performance measurement in the courts—the human, financial, facility, and material resources expended? What are the *outputs*—the activities, procedures, and services produced by performance measurement? Finally, what are the *outcomes* of performance measurement—the results or impacts of the inputs and outputs on the court and the community? The language and logic of performance measurement can be, and arguably should be, productively applied to efforts of performance measurement themselves. TCPS' comprehensive measurement system, a system that has actually been used by courts, makes this inquiry feasible.

The input-output-outcome framework also may be useful for addressing the question of what constitutes "adoption" and "use" of a performance measurement

system, a question that has plagued the TCPS project since its demonstration phase. The adoption of TCPS by a court or a State administrative office of the courts, absent a showing of sufficient inputs of human, financial, and material resources, for example, would raise questions of the legitimacy of the "adoption" of the measurement system. "Use" could be construed at the level of output or outcome. The publication of performance measurement results would constitute a legitimate output but would not be considered an outcome of performance measurement.

The actual inputs of court performance measurement can be framed in accordance with the efforts of planning, preparation, data collection, data analysis, and reporting prescribed for the various performance measures of TCPS: number of court staff and others employed to prepare for the measurement effort and to take the measures; amount of time and money expended; the scope and amount of data taken; the number and size of samples drawn; and equipment, materials, and facilities required. (As noted earlier, although it would have been feasible to catalog the inputs of performance measurement in this fashion during the demonstration phase of the TCPS project, it was not done.) Outputs of performance measurement may include, for example, the type and number of measures taken, amount of information acquired, reports and presentations made, and the form that these reports and presentations take (e.g., a publication or a real-time guidance system that includes several indices joining multiple measures). Finally, the broad categories of outcomes may include decisions made, actions taken, and results achieved as a result of performance measurement in the management, planning, and leadership of the courts in the performance areas identified by TCPS (i.e., Access to Justice, Expedition and Timeliness, and so forth).

Although an input-output-outcome framework of inquiry may facilitate the evaluation of performance measurement using TCPS and improvements in individual measures and the measurement system as a whole, its immediate value may lie in promoting and overcoming resistance to the use of performance measurement. It is common but not sufficient simply to proclaim the advantages of performance measurement—focus, attention, understanding, control, accountability, prediction, influence, and strategy development—and to expect its effective implementation. We must first acknowledge and address the negative mental models that impede its successful use. The "discipline" of mental models is an essential program of study and practice of learning organizations (Senge 1990; Senge et al. 1994). When it applied to court performance measurement, it requires continually clarifying and improving the picture of court performance measurement and seeing how it shapes important decisions and actions.

Being rigorously explicit about the inputs, outputs, and expected outcomes of court performance measurement undoubtedly will help in creating a more accurate—albeit not necessarily a more favorable—picture of court performance measurement as an enterprise. The experience of the TCPS project suggests that proponents of performance measurement may have been at the same time too sanguine and too imprecise about the benefits of performance assessment (exhortations such as "What gets measured gets attention" and "What gets counted, counts" remain largely unsupported) and too reticent to explore the limitations of performance measurement.

The fear that measures of case disposition times or disposition (clearance) rates, for example, would put a court, or even an individual judge, in an unfavorable light is not necessarily unfounded. Indeed, the negative mental model that gives birth to the fear merely acknowledges the law of unintended consequences. By recognizing that cross-court comparisons unfavorable to a particular court and evaluations of individual judges based on organizational performance measures *can* occur but that careful attention to the outputs and outcomes of performance measurement may control unintended consequences, if not eliminate them, proponents of performance measurement can do much to advance their cause. Restrictions imposed on the output of performance measurement (such as restricting access to individual judges' contribution to aggregate data) and explicit methods limiting the intended outcomes of performance measurement may do much to blunt the negative mental model of performance measurement and advance the value of performance measurement for court administration, planning, and leadership.

Conclusion

TCPS have achieved the "well-articulated consensus" about basic issues of court performance that has eluded prior research and policy development (Cook et al. 1982, 6). TCPS deserve serious consideration by justice system researchers and policymakers, first, because they represent a comprehensive, outcome-oriented organizational performance system for courts—including a hierarchy of goals and principles, variables, and operational definitions of methods—and, second, because they are in use today in about a third of State courts. They provide researchers and policymakers the opportunities to advance the inquiry into justice system performance beyond identification of issues to evaluation and further development of elements of an accepted paradigm in use today.

A logical line of advanced inquiry is research and evaluation of the elements of TCPS as conceived and implemented in the State courts. How are TCPS being used and with what results? Do TCPS concentrate on significant measures of

court performance? Are the measures relevant to other components of the justice system? Do the measures together constitute a "balanced scorecard" of important outputs and outcomes? Does the measurement system produce data that are accurate, consistent over time, and valuable to both practitioners and policymakers? The logic and language of performance measurement may be put to use as a framework for reviewing and evaluating court performance measurement as a strategy to achieve desired results. What are the inputs of performance measurement in the courts—the human, financial, facility, and material resources expended? What are the outputs—the activities, procedures, and services produced by performance measurement? What are the outcomes of performance measurement—the results or impacts of the inputs and outputs on the court and the community? TCPS' comprehensive measurement system, a system that has been used by courts, makes this line of inquiry feasible.

In addition to this obvious line of inquiry, several other avenues of research and development are opened up by TCPS. TCPS provide a framework that can facilitate the development of new and improved measures of performance of courts and other components of the justice system. By framing meaningful performance outcomes, such as access to justice, TCPS serve to highlight new avenues of research and development. The performance area of Access to Justice is fertile ground for the development of new meaningful outcome measures. This is particularly true for Standard 1.3, Effective Participation. Access and accommodation for *pro se* litigants—individuals appearing in court without representation by lawyers—has become a major problem for State courts in the past 10 years. In some jurisdictions, at least one of the parties is not represented in the majority of domestic relations cases, for example. This issue is not highlighted by Standard 3.1; indeed, it had not been an identified problem at the time of the development of TCPS. Effective participation for litigants without lawyers and access to justice, however, may well be, at least at the conceptual level, a more powerful outcome measure than those currently associated with Standard 1.3. In what proportion of cases, and what case types, do litigants appear without lawyers? How do the proportion and types of cases with *pro se* litigants compare with other courts in jurisdictions of similar socioeconomic profiles? Are courts effectively closing their doors and denying effective participation to *pro se* litigants if the percentage of those served by the courts slips below a certain standard? These are questions relevant to research and development of new performance outcomes and measures in the area of Access to Justice.

Another fruitful area of research and development opened up by TCPS is the creation and development of various indices that combine several measures in a discrete area of performance. "The key to having a successful set of metrics is paring down your database to the vital few key metrics that are linked to your success," advises Mark Graham Brown in *Keeping Score: Using the Right*

Metrics to Drive World-Class Performance (1996, 4). Multiple measures in a "family of metrics" can be assigned weights according to their importance and combined in an aggregate statistical index. An example of such an index might join the four measures associated with Standard 2.1, Case Processing: time to case disposition (cycle time), disposition or clearance ratio, case backlog, and certainty of trial date. These four measures of case processing, expressed as proportions, would be reduced to one number. The resulting index would require calculating the measures as prescribed in TCPS with some deviations to accommodate the aggregation of the measures into an index.

Justice policymakers, researchers, and practitioners can learn something about how to fashion and implement performance measurement, not only for courts but for other components of the justice system, from the history of the development of TCPS and the experiences of courts actually using TCPS. The State courts and court organizations—general and limited jurisdiction courts and State administrative offices of the courts—that have adopted and used TCPS can serve as laboratories for innovation and development of justice system performance measurement.

Notes

1. Another example is welfare reform (see Nathan 1988).

2. The other two volumes of the four-volume set, the *Planning Guide* and the *Program Brief*, provide direction for using TCPS as a planning and evaluation tool and address questions and issues that policymakers and court officials are likely to encounter in implementing TCPS.

3. Professor George F. Cole has published perhaps the only academic article describing TCPS in any detail (see Cole 1993). In contrast, over the past several years, most issues of *The Court Manager*, the publication of the National Association for Court Management, have mentioned TCPS.

4. Approximately 10,000 copies of this tentative version of TCPS were distributed between 1989 and 1996 (Commission on Trial Court Performance Standards 1990).

5. The interest in alternative dispute resolution, which inspired a burst of innovation and research peaking in the mid-1980s, also drew attention to issues of measurement of the quality of justice. See Tyler 1989 (this article is one of several in a special symposium issue focused on the quality of dispute resolution) and Hensler 1988.

6. These elements are described in detail in two of the four volumes of TCPS (see Commission on Trial Court Performance Standards 1997b, 1997d).

7. At a conceptual level, outcomes are matters of common sense. They are what is important to those who are served by the courts and not necessarily to who run the courts—those who in their day-to-day work might attend primarily to outputs produced by the court without reference to what difference those outputs make to individuals, groups, and communities. For an interesting discussion of outcomes and results-based decisionmaking, see Danegger et al. 1999.

8. In New Jersey, the five demonstration courts were the Superior Courts of Atlantic County, Burlington County, Morris County, Ocean County, and Somerset County. In Ohio, the Common Pleas Courts of Meigs County, Stark County, and Wayne County participated. The Fairfax County Circuit Court was the single demonstration court of TCPS in Virginia. In Washington, the three demonstration courts were the Superior Courts of Spokane County, Thurston County, and Whatcom County (see Saari 1995).

9. All 22 standards with commentary appear with no substantive changes in "Probate Court Performance," *National Probate Court Standards* (Commission on National Probate Court Standards 1993, sect. 1, 11–26).

10. Justice agencies other than courts have examined TCPS. In May 1997, for example, the Allen County (Indiana) Juvenile Probation Department used TCPS as the basis of a program entitled "Strategic Thinking, Planning, and Strengthening Your Executive Team." Many of the participants in the "core" course of NCSC's Court Executive Development Program, "Trial Court Performance Standards," offered twice a year since 1994, represent justice agencies other than courts.

11. Rottman, Efkeman, and Casey suggest a new role for courts: that of becoming more responsive to the needs of the community. This role follows a similar one taken by other components of the justice system growing out of a strategy of policing—community policing—focused on establishing a problem-solving partnership with communities (see Rottman and Efkeman 1998; Rottman and Casey 1999).

12. Of course, court researchers and practitioners have been exposed to the purported benefits of performance measurement—focus, attention, understanding, better decision-making, control, enhanced accountability, prediction, influence, and strategy development—but the description of these benefits to court systems has remained at a broad conceptual level (see also Alpert and Moore 1993).

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