

## MEMORANDUM

TO: Chief Justice  
FROM: Deputy  
SUBJECT: Two Key OJD Leadership Issues  
DATE: July 3, 2020

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### **Introduction and Background**

Throughout the literature on management of public organizations, the courts are referenced as an external influence that exerts significant effect on the operation of other agencies (Rainey, 2014, pp. 128-129). The courts are seen as a crucial element in separation of powers and in keeping administrative agencies in check (pp. 128-129). While these views of the courts have validity, they miss the fact that the courts themselves are public organizations facing all the same challenges faced other public organizations (pp. 79-82).

To understand these challenges, this memo provides a review of two key leadership issues facing the courts of Oregon, formally known as the Oregon Judicial Department (OJD). Those two key leadership issues are (i) building public trust and confidence; and (ii) obtaining needed infrastructure. While both of these issues, or goals, are fairly vague, there are smaller more concrete, measurable tasks that can be undertaken that will allow for improvement and goal attainment (Rainey, 2014, p. 150).

To start the discussions of the current key leadership issues, an understanding of OJD and its structure is needed. OJD oversees a unified state court system consisting of 27 judicial districts with 36 circuit courts of general jurisdiction, the Tax Court, Oregon Court of Appeals, and the Oregon Supreme Court. Depending on population, some judicial districts contain more than one county and, therefore, more than one circuit court. OJD's chief executive officer is the Chief Justice of the Oregon Supreme Court (Oregon Revised Statute (ORS) 1.002(1)). Further, within each judicial district, the Chief Justice appoints a presiding judge (PJ) that exercises administrative authority over the courts in that district (ORS 1.003). The PJ, in turn, appoints a trial court administrator to assist with the administration and management for the court(s) within the district (ORS 1.171).

While the current structure of OJD has been relatively stable for some time, OJD underwent two large-scale planned transformations to achieve and maintain this stability. Similar to other public organizations undergoing such transformations, both of OJD's changes included technology changes, changes to services, administrative changes, as well as personnel changes (Rainey, 2014, pp. 424-425). Additionally, both of the planned changes, like those of other public organizations, were the result of external pressures to improve performance and service delivery (pp. 104-106).

The first transformation started 1981, when the Oregon legislature passed sweeping reforms to the state's court system (Or Laws 1981, Spec Sess, ch 3, § 1). Prior to the legislation, each individual county in the state was solely responsible for administering and managing its own courts. The legislation ended the existence of county administered courts of general jurisdiction through the creation of a new state-wide court system with centralized control and funding (Oregon Judicial Department, 1995, p. 2).

Additional structural changes to the court system included the incorporation of professional management at the trial court level (p. 2). The centralized structure with professional managers is the structure that still exists today.

Building on the now centralized structure, OJD undertook another large scale planned change between 2012 through 2016 (Oregon Judicial Department, 2020). Starting in 2012, OJD adopted a state-wide electronic case management, e-filing, and e-pay system called Oregon eCourt (Oregon Judicial Department, 2020). Prior to this change, the records of the court, in hard copy form, were retained by each individual court throughout the state (Oregon Judicial Department, 2020). The adoption of the central management system allowed for more efficient processes as well as better reporting and transparency (Oregon Judicial Department, 2020).

Both transformations provide examples of how a public organization is subject to constant changes, including the ultimate change of extinction, to cope with both internal and external pressures to survive and increase its efficiency and productivity (Rainey, 2014, pp. 409-413). Additionally, both of these transformational changes have led to or are crucial part of the two of the significant leadership issues referenced above that OJD faces today.

### **Public Trust and Confidence**

The public generally expects government to provide protection through the numerous, varied services it provides (Rainey, 2014, p. 4). Within this view of protection, courts are frequently seen as the part of the government one turns to when the other parts of government can't or won't fix the issue (Oregon Judicial Department, 1995, p. 4). This view of the role of courts ultimately leads to unsatisfied expectations by the public (p. 4). This view also contributes to the ambivalence the public has toward government in general (Rainey, 2014, pp. 115-116). Further exacerbating public trust issues in the justice system are current events of the last couple of years. Even before these events, a key leadership issue faced by OJD was the need to increase public trust and confidence (Oregon Judicial Department, 2019). In light of recent events, this issue is of now of paramount importance.

As noted above, the goal of increased public trust and confidence, without more, is too vague and needs clarification (Rainey, 2014, pp. 150-151). A more concrete, measurable goal is to increase public trust and confidence by increasing the transparency of how courts serve the public. Specifically, this increased transparency needs to focus on the data of the courts. Through examination of the data of courts, one can learn to what extent OJD is meeting its key performance measures such as access and fairness, length of time to disposition, and clearance rates (Oregon Judicial Department, 2020). The pressure for this type of transparency continues to grow from external sources including the media, public, and the legislature.

In order to achieve the transparency, however, the data collected must be managed, organized and validated (Porumbescu, 2018). While the adoption of Oregon eCourt system outlined above provided a centralized database for data storage, the adoption of the system is only the beginning (Oregon Judicial Department, 2020). The eCourt

system provides a central storage location for the data, but it does not ensure the consistency of the data input into the system. The consistency and integrity of the data rests with each individual court which, by law and culture, is the custodian and controller of the court's records (ORS 7.110).

In providing leadership and management on the issue of data integrity to support OJD transparency initiatives, it is important to understand that while OJD is a unified court system, the judges, who are the administrators of their respective courts, are independently elected public officials, not employees of OJD (ORS 3.030). The courts of OJD, therefore, are best viewed as a decentralized, professional bureaucracy (Mintzberg, 1980, pp. 333-334).

Under this view, rather than trying to enforce hierarchical top-down bureaucratic rules on the management of data, OJD leadership should ensure the participation of the individual courts in the creation of the data integrity rules (Rainey & Thompson, 2006, pp. 600-601). Additionally, leadership should utilize both solidary and purposive incentives (Rainey, 2014, pp. 305-306). While purposive incentives may be difficult to sustain, they can be used to help leverage intrinsic incentives such as the public service motivation of the managers of the individual courts (p. 313). Further, the use of such intrinsic incentives will help ensure the transparency goals of OJD are internalized by those managers (Ouch, 1979, p. 842). Through this internalization, the data management rules become institutionalized (Rainey, 2014, pp. 96-97).

### **Infrastructure**

The other key a key leadership issue faced by OJD is failing physical infrastructure. The unification of the courts outlined above created an additional complexity beyond the rigid budget constraints many public organizations face regarding their physical facilities. Specifically, while the unification resulted in the State taking control of the courts themselves, the individual counties remained responsible for the physical buildings and facilities housing the courts (ORS 1.185). The exact language provides, "[t]he county shall . . . provide suitable and sufficient" court facilities (ORS 1.185). However, what is "suitable and sufficient" has been and continues to be the subject to extensive debate.

This debate has been greatly exacerbated by counties, on already tight budgets, deferring maintenance on courthouses causing this issue to reach a crisis level (Court Facilities Task Force, 2006, p. 1). As part of mitigating this crisis, further legislation was passed to allow partial state funding to counties that undertake courthouse improvements (Or. Laws 2013, ch. 705; Or. Laws 2013, ch. 723). While the legislation helps address the failing physical infrastructure, it does little to address the day-to-day issues related to court facilities under county control.

To address the day-to-day operational issues requires collaboration (Ansell & Gash, 2008, pp. 544-545). Resolution of this issue is well suited to collaboration in that it is an on-going issue, the parties are interdependent on each other, and there is not a practical alternative venue for resolving the issues (pp. 553 & 560). Some courts and counties have little difficulty in collaborating with each other to navigate the vague mandates of suitable and sufficient. For other courts and counties, this required collaboration has not

gone as well. A good analogy is seeing some court-county facility collaborations as “green zone” environments and other collaborations as “red zone” environments (TEDxSanta Cruz, 2015).

The key leadership issue for OJD is how to change the red zone collaborations into productive partnerships. There are two approaches, one internal and one external that should be taken. Internally, OJD leadership needs to implement a training program for courts, including staff and judges, teaching productive collaboration techniques (TEDxSanta Cruz, 2015). Externally, OJD leadership should seek to bring in a professional mediator to serve as an “honest broker” leader for those court-county collaborations with a history of conflict, antagonism and distrust (Ansell & Gash, 2008, p. 555). The external leader will also be able to provide clear rules and ensure process transparency, both of which are essential for the collaboration to be viewed as legitimate (p. 556).

Lastly, in addition to focusing on improved collaborations, leadership should move beyond “satisficing” by considering alternatives to the view that justice is conditioned on the existence of a physical courthouse (Rainey, 2014, p. 187). With the current pandemic, courts have been pushed to very quickly adopt technological alternatives to the requirement that all parties must convene together in one physical location to seek justice. Current events have created a “window of opportunity” making it politically feasible and realistic for OJD to embark on another transformative change in the way justice is administered (pp.136-137).

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