

PANEL 6

Empirical Information on

State-Court Trial-Level Judges'

Attitudes toward Court Records Transparency (CRT)

Introduction

Court records transparency (CRT) was defined for this study as the ability of a person to inspect and copy information inside a court record (Indiana Supreme Court, 2010). The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) for purposes of the *CCJ/COSCA Guidelines* provide “court records” include:

- (1) Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
- (2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and
- (3) The following information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case. [Include a list of court administrative records and information to be considered part of the court record for purposes of this policy.]

Traditionally, the public access system to court records has been a premises- and paper-based system. The current status of the nation’s state courts’ public access processes includes individual and paralleled systems of (1) premises and paper and (2) electronic and remote access to court records.

Individually, judges may view citizen access to court records transparency narrowly (e.g., sealed juvenile versus open adult records), whereas other judges can hold a panoramic view of access to court records, and open almost all information within records filed with the court or clerk of court. With over a decade (11th year anniversary) behind the nation's state-court chief justices (CCJ) and chief state-court administrators (COSCA) adoption of Resolution 33, ratified August, 2002 in favor of key state CRT improvement measures, along with reengineering some essential CRT functions brings an opportunity to reflect on the implementation of the embraced *Guidelines*.

Moreover, "the *Guidelines* are important because many of the recent state court rules and policies on access to court records—especially access to electronic case files—are based on the model policy." (R. Deyling, personal communication, September 10, 2013, Administrative Office of the U.S. Courts). Additionally, empirical assessment of the impact of the *Guidelines* may provide a useful way of assessing whether the notions about public access are standing the test of time.

For these reasons, an aspect of this survey study¹ undertook to measure, from the judges' perspective, their awareness, beliefs, and experiences as to the following:

- Judges' knowledge as to whether their state adopted the model policies—the *Guidelines*?
- Whether judges agree with the *Guidelines*?
- Do judges' level of agreement with the CCJ/COSCA Premises Differ?

¹ The survey consisted of two parts. Part A started November 30, 2012, and ended on an undefined date because all surveys were added until they stopped coming. Part B collection started April 9, 2013 and ended August 12, 2013. The national randomly generated sample of 3000 state-court trial-level judges, stratified by 50 states, was obtained voluntarily from the *American Bench* book (2012). Despite prescreening, 189 judges were found to be out of frame, duplicates, or deceased, leaving $N = 2811$ targeted judges. Post survey examination of responses to Survey Question 46 Other established another 54 judges were out of frame, leaving 715 out of 768 respondents for the analysis. The survey is available upon request at the presenter's email address: drjohns1@loyno.edu.

- What percentage of judges has experience with cases seeking access to court records?
- Should press access to court records be greater than citizen access?
- Do judges prefer premises access over remote access to court records?
- Do judges favor delayed access to court records over immediate access?
- Do judges think Americans . . . to court records?
 - have too much
 - just about the right, or
 - too little access.
- Does your court permit remote public access to court records?

Today, is a particularly relevant time to undertake an appraisal of state-court trial judges' attitudes toward CRT, namely because trial judges often resolve CRT litigation issues, and continuously they examine, develop, adjust, and implement access to court records rules and policies. Moreover, judges are complicated subjects, so variation in their attitudes should reflect such complications when they debate, deliberate, and modify CRT policies.

Findings²

Judges' Knowledge as to Adoption of the CCJ/COSCA Guidelines

- Overall, 8 out of 10 judges (82.4%, $n = 675$) did not know whether the model *CCJ/COSCA Guidelines*' were adopted by their state. An almost equal percentage (8.7% answered "Yes" and 8.9% said "No") of judges answered the *Guidelines* were either adopted or were not adopted.

² Survey response rate was 27.3% (769), which is lower than preferred. Post survey examination produced 715 targeted respondents.

Do Judges' Agree with CCJ/COSCA's Premises?

The *CCJ/COSCA Guidelines* were endorsed by the memberships of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) in August, 2002. The purpose was to catalyze development of a model written policy governing access to court records. In Resolution 33, CCJ/COSCA resolved to:

1. Endorse the *Guidelines* as a valuable tool for use in crafting court policy to address individual privacy concerns and public access requirements; and
2. Commend the *Guidelines* to each state as a starting point and means to assist local officials as they develop policies and procedures for their own jurisdictions. (p. xi)

In order to provide guidance to state jurisdictions and local courts and to provide consistency of access across a state, the *Guidelines* were based on the following five premises³:

1. Retain the traditional policy that court records are presumptively open to public access;
2. As a general rule access should not change depending upon whether the court record is in paper or electronic form. Whether access should be the same regardless of the form of the record, although the manner of access may vary. The *CCJ/COSCA Guidelines* apply to all court records;
3. The nature of certain information in some court records, however, is such that remote public access to the information in electronic form may be inappropriate, even though public access at the courthouse is maintained;
4. The nature of the information in some records is such that all public access to the

³ Steketee, M. W. & Carlson, A. (2002). *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*. The National Center for State Courts and The Justice Management Institute. P. 1

information should be precluded, unless authorized by a judge;

5. Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

Overall, judges indicated strong support for the *Guidelines*' premises. Questions were coded so a higher mean indicates greater support for the premises. Judges' average level of support for the premises was 5.98 ($SD = 1.46$) out of a scale from 1 to 7, with 7 indicating the strongest support.

Do Judges' Level of Agreement with the CCJ/COSCA Premises Differ?

Prior to the study, it was unknown whether judges supported the premises, and whether they were favored a particular premise more than another. Findings show premises #1 and #5 are the most supported ($M = 6.4$), while premise #3 is the least supported principle ($M = 5.1$). Descriptive statistics were calculated for each of the premises questions and the results are reported in Table 1.

Table 1

Mean Statistics of Judges' Support Attitudes toward CCJ/COSCA's Principles

Premise	<i>N</i>	<i>M</i>	<i>SD</i>
Premise 1: Retain the traditional policy that court records are presumptively open to public access	708	6.42	1.108
Premise 2: As a general rule access should not change depending upon whether the court record is in paper or electronic form...	709	5.90	1.506
Premise 3: The nature of certain information in some court records, however, is such that remote public access to the information in electronic form may be inappropriate...	709	5.08	1.887
Premise 4: The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge	709	6.07	1.589
Premise 5: Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel	709	6.43	1.192

Note. The higher the mean score, the greater judges support the premise. The theoretical range of scores was between 1 and 7.

Judges Experience with Access to Public Records Litigation

- A little more than two-thirds (68.6%; $n = 469$) of the judges ($n = 684$) indicated they had never decided any case where a party sued to gain access to information filed inside a court record.

Should Press Access to Court Records be Greater than Citizen Access?

- Eighty-three percent (82.9%)*⁴ did not believe press access to court records should be greater than citizen access; while a very small number of judges (5.6%) believed the press should have more access than ordinary citizens ($n = 708$).

Should Premises Access to Court Records be Greater than Remote Access?

- Thirty-six percent (35.9%)* believed citizen access to court records should be greater at the courthouse than for remote citizen access, while forty-four percent (43.7%) did not believe citizen access should be greater at the court facility ($n = 705$).

Do Judges Favor Delayed Access to Court Records Over Immediate Access?

- Thirty-two percent (31.8%)* favored some delay over immediate citizen access to court records, while forty-five percent (45.2%) disagreed ($n = 705$).

Do Judges Think Americans to Court Records?

- have too much
- just about the right, or
- too little access

Seventy-eight percent (78.8%) think Americans have “just about the right” access; fifteen percent (15.3%) think “too little”, and six percent (5.8%) think “too much.”

⁴ * Asterisk represents SPSS valid percents for all categories of responses to the question.

Does Your Court Permit Remote Public Access to Court Records?

- Yes (60%)*
- No (31.5%)
- Don't know (8.4%)

