Innovative Courts Encourage Dissent

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If everyone is thinking alike, then someone isn’t thinking.

General George S. Patton, Jr.
The Causes of Popular Dissatisfaction with the Administration of Justice

- 1906 speech by Professor Roscoe Pound, one of the founding fathers of judicial administration

One reason that drove dissatisfaction with the justice system was a belief that the administration of justice is an easy task to which anyone is competent.
Courts that are in fact well run and are perceived to be well run are well funded.

The rest are told to do more with less.
Courts are in an era in which the political mantra for many is to question the work ethic and commitment of public employees.
One of the assumptions of public employment has been that there was job security that would be followed by a reasonable pension. The pay that public employees received may not have been as good as what the private sector was offering, but there was safety, security, and the prospect of a decent retirement. To illustrate where we are, this year 75% of the nation’s school districts will lay off teachers. Although state pension benefits are frequently better than those of the private sector, most public employee pensions are not lavish. Now those wages and benefits are being challenged.
Court leaders cannot print their own money, but they can have enormous positive (or negative) impact on the morale of the courthouse workforce. How you deal with voice is part of morale.
Clash of Courthouse Cultures

Much of the current thinking of court leadership is driven by the paradigm of the professional culture which is made up of judges and the organizational culture which is made up of everyone else.

It may be better to consider a troika of cultures: the judges; the court administration such as the people who join the National Association of Court Managers, who are involved in local associations or who may have professional degrees in court administration; and finally line workers who perform tasks that, in many instances, are not even particular to the judiciary.
Court culture, as well as the size of a court, makes a difference as to how dissent is dealt with. Small courts can be plagued by judges who are petty and vindictive in their dealings with each other – like scorpions in a battle. Bigger courts may have just as many scorpions, but there are more places to hide.
According to a recent survey, worker happiness in America is the lowest in history.

- 45% of American workers are satisfied with their work
- 64% of American workers under the age of 25 are unhappy in their jobs
- 43% of American workers feel secure in their jobs
- 51% of American workers are satisfied with their bosses
Public sector employee morale has reached a new level of frustration and discontentment
The most effective court leaders will change their court to face problems for which there are no simple painless solutions.

There is not an option to defend every legacy practice to the end.

Effective court leaders will use the present turbulence to build for the future and bring closure to part of the past.

To survive these times, courts will need to change the key rules of the game, but to do that they need to have a workforce that is prepared to make change.
It is not an easy era to be a leader.

A natural tendency is not to welcome dissent or embrace task conflict.

Dissenters can be obstructionists and a pain to deal with, but dissenters who can provide a different perspective need to be protected from pressure to remain silent.

Leaders need to listen to unfamiliar voices and set a tone for candor and risk taking.
If people conclude that court leaders do not really care what they think if they are not speaking “the company line,” they stop saying what they really think (or, worse yet, they stop thinking), and then the court is doomed. Preventing this dysfunction begins with an honest assessment of the court’s present culture.
Leadership focuses on…

- Relationships
- Motivating
- The ability to engage colleagues and employees around a shared vision
There are times when a leader needs to set a vision and get buy-in, but not every decision requires a leader to influence the decision from the onset. One way for leaders to limit their influence and bias is to ask open-ended questions like: “What do you think we should do? Why? How?”
Today’s court leaders need to ask how they view the courthouse work staff, what biases do they bring to the analysis, and what theory about human behavior in the workplace best suits their courthouse needs.
The happy medium is to balance between individual contribution and group support.
Great Court Leaders

- **Diagnose** – Understand the system you are in; surface what is really driving behavior; name the elephant in the room
- **Mobilize** – Put your ideas into action
- **Reflect** – Know your own “triggers” and tolerances
- **Connect** – Speak from the heart to inspire people
- **Grow** – Exceed your authority through leadership
Organizational Problems are Not Always about Conflict.
Displaced dissent occurs when people express their disagreements about the court to family members, friends, or others who are not affiliated with the court. For the dissenter, this is the lowest-risk type of dissent, but it provides no feedback to leaders and rarely leads to organizational improvement.
Latent dissent occurs when employees perceive that a judge or supervisor is unreceptive to their concerns. The disagreement, however, is communicated not to the judge or supervisors, but to ineffectual audiences, such as fellow coworkers.
Articulated dissent is constructive dissent expressed upward or directly to a supervisor or judicial colleague. It is not “in your face,” and it is respectful.
Risk-Taking and Innovation

- How do you promote a climate of risk-taking, innovation and honesty?
- How do you formalize and support experiments within the court?
- Where have innovations been successful in your court?
- Where have they bombed? Why?
What if a court actually rewarded dissent?
The Dissent Channel was created in the U.S. State Department to ensure leaders hear dissenting views. Everything submitted through the Dissent Channel is distributed to the secretary of state and other senior State Department officials.
Groupthink can occur when a consensus emerges too quickly and any suggestion of an alternative is then summarily rejected. Experiments show that people are quick to adopt the majority position and, crucially, they ignore all the potential alternatives and all the conflicting evidence (see Dean, 2009).
In trying to understand why people conform to majority views, even when they may privately have reservations, two factors stand out: First, people assume that truth lies in numbers and so assume the majority is probably correct. Second, people worry about “sticking out” should they maintain a differing point of view.
Individuals agree in private about the nature of the problem and suitable solutions.

Once in a group, they fail to communicate their concerns, opinions and reservations.

Members experience frustration, anger and irritation with each other.

Fear creates action anxiety.
Groupthink pioneer psychologist Irving Janis analyzed how groupthink works. First, the group does not sufficiently discuss the objectives and the values implicated by a decision about to be made. Second, discussions are then limited without full discussion of the range of alternatives. Third, the group fails to periodically reexamine the course of action initially preferred. Finally, warnings are ignored.
Organizational Curiosity is Important
Building Curiosity

- Do something to create urgency.
- Set aside formal times for play.
- Flex your risk muscles.
- Use measures to learn.
  - Put as much emphasis on learning why you did or did not reach the measurable goal as you do on achieving the goal itself.
“The hope of leadership lies in the capacity to deliver disturbing news and raise difficult questions in a way that people can absorb, prodding them to take up the message rather than ignore it or kill the messenger.”

-Ronald Heifetz
-Marty Linsky
Dale Lefever says, “[I]n the business of trust, the leader needs to ante up first. It is a lot easier for a subordinate to speak freely, if the model for speaking freely has been demonstrated and encouraged by the court leader.”
Working with those who are uncommitted, but wary…

- Accept responsibility for your piece of the mess
- Acknowledge their loss
- Model the behavior
- Accept casualties
Show Them the Future

- Emphasize the positive vision of a better future—make it real, highlight the values they are fighting for.

- Answering the “Why” question increases people’s willingness to endure hardships that come with improvement.
NOTICE

THIS DEPARTMENT REQUIRES NO PHYSICAL FITNESS PROGRAM.

EVERYONE GETS ENOUGH EXERCISE JUMPING TO CONCLUSIONS, FLYING OFF THE HANDLE, RUNNING DOWN THE BOSS, KNIFING FRIENDS IN THE BACK, DODGING RESPONSIBILITY, AND PUSHING THEIR LUCK.
Sometimes you need to 
Raise the Heat 
to Move your Court.
How to Raise the Heat

1. Draw attention to tough questions and keep it focused there.
2. Give people more responsibility than they are comfortable with.
3. Bring conflicts to the surface.
4. Challenge the argument that the needed change is not worth the upset it will cause (i.e. addressing the problem is imperative in order to move forward)
Sometimes you need to cool things down.
How to Lower the Heat

1. Address the technical aspects of the problem.
2. Structure the problem by breaking it into parts.
3. Temporarily reclaim responsibility for tough issues (*i.e.* I’ll deal with him/her. I’ll get the money.)
4. Employ work avoidance mechanisms (*i.e.* find an excuse for a party, use humor, etc.)
5. Slow down the process of challenging norms and expectations (*i.e.* push a target date out further, ask for more data/analysis on an issue)
I'm a little stressed right now...
(just turn around and leave quietly and no one gets hurt.)
Create a Court Culture of Courageous Conversations

- In a period of sustained uncertainty, the most difficult topics must be discussed.
- Dissenters who can provide actual insights need to be protected from organizational pressure to remain silent.
- Leaders need to listen to unfamiliar voices and set the tone for candor and risk-taking.
Observations about the new Courthouse Workplace

Communicate excessively

- Discourage “parking lot meetings”
- Share news as it breaks
- Share concerns as well as hopes and expectations
- Forget about having fire drills
Myth: Fear is a good motivator.

At best, fear is a good motivator for a very short period of time.

It is hard for line staff to feel like a colleague if they are afraid of the person.

The power imbalance between the troika explains why fear occurs, but it does not justify permitting that fear to exist or continue.
• Every human transaction rests either explicitly or implicitly as a foundation of trust – or lack thereof.

• To be an effective branch of government, we need to trust colleagues and staff
In today’s environment, no courthouse can survive if there is rampant suspicion.

- Trust means willingness to be vulnerable to the actions of others.
- Trust means confidence and faith that positive expectations will be met.
- Fundamentally, trust is a belief in the goodwill of the people with whom you work.
Steps to creating a fun and vibrant court workplace.

1. Understand yourself.
2. Ask questions and then take first steps. Are you satisfied with the level of motivation that exists in your court? If not, what could be changed? Can you identify barriers to motivating people within your court? What motivational activity could be done that has not been thought of before?
3. Consider writing a list of three to five things that motivate the judges, court administration, and the line staff.
Steps to creating a fun and vibrant court workplace.

1. Give up the notion that professionalism and the nature of the mission of the courthouse means being serious all of the time.
2. Encourage employees to leave work behind them at the end of the day.
3. Recognize the necessity of balance between individual contribution and group support. The goal is an open, honest, and healthy courthouse where judges and staff can be candid about their views and experiences and take greater responsibility for their own actions.
4. “TGIM” – Thank Got It’s Monday. Do what it takes to insure that judges, court administration, and line staff look forward to coming to work.
Steps to Encourage Dissent

1. Share All the Information; Build Trust.
2. Listen First; Talk Second.
3. Don’t Shoot the Messenger.
4. The Devil’s Advocate.
There are four kinds of people:

- Cop-outs
- Hold-outs
- Drop-outs
- All-outs

To be committed, you must be “all in.” You can’t just do the best you can. You have to do everything you can.
Tony Judt, the British historian, put it this way (see Moyn, 2015): “When the facts change, I change my mind. What do you do?”
“Very good. Now go out there and convince others.”