LEADERSHIP WITHOUT FEAR

Hon. Kevin S. Burke
Judge, Hennepin County District Court, Minnesota

To achieve excellence, our courts need strong leaders, and authentic leaders do not fear failure, but solve problems by creating initiatives and taking risks. Through leadership without fear, they motivate and engage those around them, create a culture of trust, and build legitimacy for the institution as a whole.

In 1906 Professor Roscoe Pound gave his now infamous speech “The Causes of Popular Dissatisfaction with Justice.” Pound spoke when there was little thought about professional court administration. Curiously, among Pound’s “causes” of the dissatisfaction with our courts was the popular assumption that the administration of justice is an easy task for which virtually anyone is competent. There have been enormous improvements in courts since Pound spoke, but for those of us who are in the field of judicial administration, we know how painfully complex the judiciary as an organization has become.

The malaise that has captured too many court leaders is driven in part by a sense that not enough people care if courts have to do more with less. Courts are no different than the rest of government, and, after all, everyone wants less government anyway. Naturally, those of us who work in the courts interpret tighter funding to really mean that our work is valued less and less. Moreover, there is a lack of trust in our public institutions which, although not focused specifically on courts, is troublesome. Studies of the courts show that the objective quality of the justice system has improved over recent decades. Yet these objective improvements in the delivery of justice have not been matched by significantly higher levels of trust and confidence among Americans (see GfK Roper Public Affairs and Corporate Communications, 2010; Jones, 2011; Sherman, 2001: 1, 5-7). This is especially true of minority group members (Sherman, 2001: 8, 9).

Then there are the political barbs tossed at the “activist judiciary.” The barbs have reached such a decibel level that the legitimacy of judicial decision making is threatened. For example, 75 percent of the public now think judges’ decisions are to a significant or moderate extent influenced by the judge’s political or personal views. Virtually the same percentages of people believe judges make their decisions influenced by a desire to be appointed to a higher court (Annenberg Public Policy Center of the University of Pennsylvania, 2007). As troublesome as underfunding of courts is, erosion of the public’s perception of the legitimacy of decisions that judges make may prove to be far more damaging to the courts than underfunding.

The bright promise of the field of professionally trained court administrators is harder to envision when graduate-degree programs are in decline. Tight budgets and limits on pension portability restrict job options for the next generation of professional court administrators. Membership in professional associations, like the National Association of Court Management and the American Judges Association, has declined. Webinars are great, but no matter how well done, the opportunities for professional exchange and growth are limited for a myriad of reasons.

Not everyone suffers from malaise. There are many vibrant and inspiring court leaders throughout this country, but it is undeniable that some administrators feel that they are in a losing battle with judges for control. Some judges feel that their courts are rapidly becoming bureaucratic cesspools of rules, regulations, and policy

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In your opinion, to what extent do you think a state judge’s ruling is influenced by his or her personal political views— to a great extent, moderate extent, small extent, or not at all?

- Great extent: 30%
- Moderate extent: 45%
- Small extent: 17%
- Not at all: 5%
- Don’t know: 2%
- Refused: 1%

Source: Prepared by Princeton Survey Research Associates International for the Annenberg Foundation Trust at Sunnylands
initiatives that are foreign to what type of institution the judiciary should be. There are a lot of judges, administrators, and court employees who feel a bit under siege and a bit underappreciated.

In a crassly simplistic way, management thinking says, “Find the source of the pain and stop it.” Leadership without fear calls for a deeper understanding of things. While managers will do an effective job of fixing problems, authentic leaders stay in the chaos long enough to discover chronic patterns. Dr. Warren Hoffman, a noted leadership coach, puts it this way:

Management is responsible for managing the manageable, fixing the fixable, securing the securable and protecting resources. That’s not very risky. Authentic leadership, however, is dealing with surprises, describing the unknown, predicting the unpredictable, anticipating the nameless and anonymous, organizing chaos, and stepping in places where angels fear to walk, speaking with authority from a dusty crystal ball, staying positive and hopeful while everyone else is going insane. Now that’s risky.

Courts desperately need risk-taking leaders. Whether they are public or private, organizations that thrive have one common bond: they are spirited and not afraid to take calculated risks. It is not always easy to be a leader of public institutions and take risks. Courts face problems for which there are no simple painless solutions. Not every new court initiative will be a success. However, fear that a failed initiative will generate bad news coverage or, worse yet, public criticism from the other branches of government is chilling. Fear inhibits courts from learning and trying new ways to serve their communities. Limiting initiatives to the sure thing may be the cautious thing to do, but it is not always the right thing to do.

Courts that are, in fact, well run and are perceived to be well run are funded. The rest are told to do more with less. Calculated risk taking is, therefore, an inherent part of being a well-run organization. Court leaders who are skilled at listening, who afford respect, and who can effectively communicate build legitimacy not just for their own work, but for the institution as a whole (Sherman, 2001: 14, 19). To survive in this political environment, court leaders need to create dynamic courts, courts that are open, transparent. To do that, court leaders cannot fear failure. Fear of failure too often paralyzes everyone, and it is our greatest obstacle to judicial independence and excellence.

There are multiple reasons why courts find it hard to take calculated risks. Debate within courts about alternatives is not always as vibrant as it should be. Power relationships between judges over the rest of the courthouse staff can inhibit creativity. The training for lawyers, which is steeped in a commitment to precedent, does not help. For a judge, looking to the past for guidance on the present legal issue is almost always wise; looking to the past for guidance in how to deliver judicial services is a far more debatable strategy. Logical debate based upon the best evidence available within the courthouse is imperative. Al Gore asked in another context:

Why has America’s public discourse become less focused and clear, less reasoned? Faith in the power of reason—the belief that free citizens can govern themselves wisely and fairly by resorting to logical debate on the basis of the best evidence available, instead of raw power—was and remains the essential premise of our democracy. This premise is now under assault. We often tend to romanticize the past, of course, and there was never a golden age when reason reigned supreme, banishing falsehood and demagoguery from the deliberations of American self-government (Gore, 2007: 2).

Fear is the most powerful enemy of reason. Both fear and reason are essential to human survival, but the relationship between them is unbalanced. Reason may sometimes dissipate fear, but fear frequently shuts down reason. As Edmund Burke wrote in England 20 years before the American Revolution, “No passion so effectually robs the mind of all its powers of acting and reasoning as fear.” Our Founders had a healthy respect for the threat fear poses to reason. They knew that, under the right circumstance, fear can trigger the temptation to surrender freedom.
to a demagogue promising strength and security in return. They worried that when fear displaces reason, the result is often irrational hatred and division. As Justice Louis D. Brandeis later wrote, “Men feared witches and burnt women” (Whitney v. California, 1927: 376).

Just as people have personality, organizations have a culture. For a court to achieve excellence, the court culture must be steeped in mutual trust, support, and the absence of fear. It has almost become trite to talk of the inherent conflict in professional organizations as a clash of cultures—the organizational culture, which captures the commitment of managers, and the profession culture, which motivates professionals. Judges identify with their profession, and the rest of the court staff identify with their organization. What is needed now is less clash and more blended court leadership drawing upon the strengths (and minimizing the weaknesses) of judges and professional administrators.

If there is a flaw in the clash-of-cultures paradigm, it is that there may well be a troika that is potentially clashing. The troika of entities to consider is judges, court administration (people who join national and legal associations or may have professional degrees in court administration), and line workers who perform many tasks not even peculiar to the judiciary. Line workers enter data, staff magnetometers at the courthouse entrance, and perform a myriad of other essential tasks. The role they play may not be particularly glamorous, but it is essential. Line workers may not even be aware that what they do contributes to the court’s mission to dispense justice. Too often they are not consulted and too often the communication to them is an effort.

The goal of court leaders must be to create a healthy, open, and honest court where everyone can be candid about their views and experiences and take greater responsibility for their own actions. It is not easy because no court starts from scratch. There is a history in every courthouse. It is not an easy task because, in part, court leadership is about sharing power. But just because something is not easy does not mean it is not the right thing to do.

Power is not a term many are comfortable using, but it is real and it drives decision making in a positive or negative way. Giving thought to the terms we use helps.

A colleague is a fellow worker in the same profession. It is important, but not as important, as collegiality, the sharing of authority and power among colleagues. Sharing power is often not easy and for some uncomfortable. Court leaders need to ask, is our goal to be an effective branch of government or are we satisfied with being an office-sharing arrangement of lawyers who happen to be judges? To be an effective branch of government court leaders need to see the value and efficacy of sharing power. They then need to convince everyone else of the value and efficacy of sharing power.

Courts are in an era of rapid change. Some of the change is good. There is more equality and diversity in courts today than at the time of Pound’s speech. Technology enables us to do things that in Pound’s era were fantasies. The typewriter was first patented in 1868. Even by the time of Pound’s speech, more court docket entries were handwritten. Today, with e-mail, every court employee can be in the loop. Computers can provide access to legal research and management analysis that the people of Pound’s era could not imagine. Twitter can remind people they have a court appearance, and Facebook can inform the community of what the court is doing to enhance justice. Yet technology for some is threatening. It means you may lose your job, or you are afraid you will lose your job. The process of change in any organization is not easy. Courts are no different. People frequently prefer a bad known to a good unknown. Changing courts can at times be a monumental task. Leadership without fear focuses on relationships, motivation, and the ability to engage colleagues and employees around a shared vision. Leadership without fear eases the trauma of change.

Values are part of any organization. Discussion about the values that are present in a court frustrates some, but every organization has values.
Everyone subscribes to lofty values and that, in part, explains the impatience with the "values discussion." Court leaders need to foster discussion about whether the actions of the court reflect the stated values or something else. Building a strong set of healthy values in the courthouse may be the most important legacy any leader can have. Loyalty is an important value. Trust is an essential value for a courthouse. Author Stephen Covey says, "Simply put, trust means confidence. The opposite of trust—distrust—is suspicion" (Covey and Merrill, 2006: 5). Judges need to trust colleagues, managers need to trust staff, line staff needs to understand the direction of the court and have a sense of participation in it and trust that court leaders care about their welfare too. Trust allows us to share power and information. Trust is a prerequisite for those who are asked to follow.

Trust is not a given in a courthouse. Trust is earned, there can be a reservoir of it, and it can be dashed. Trust in part is a willingness to be vulnerable to the actions of others. Trust requires some degree of faith that positive expectations will be met, and trust is a belief in the goodwill of the people with whom you work. For court leaders to achieve courthouse trust, they need to perform competently. They need to communicate honestly and openly. They need to share and delegate control. Above all, they need to show genuine concern for others. Trust enhances loyalty.

Leadership without fear requires an understanding of the continuum of trust to accountability. As trust declines, the demand for accountability increases. There is absolutely nothing wrong with accountability. Accountability is essential. But the absence of trust can feed on itself. If the demand for accountability is warped, it becomes stifling oversight. People who function under stifling oversight perform sluggishly, so trust continues to stagnate. Evidence of monitoring or the stagnation of trust can be as simple as "when we are apart, I ask this person what he or she has been doing." There is nothing wrong with a call to the office so long as the call is not implicitly accompanied by the suggestion that "I need to check up on you." Accountability taken to an extreme results in ineffective court leaders leading by a plethora of formal controls, court policies, professional standards, or written agreements to govern everyone's behavior. Leadership by fear does not work.

Leaders without fear honestly ask questions. How do we promote a climate of risk taking, innovation, and honesty? How do we formalize and support experiments within the court?

Law firm management is an art that in many respects is easier than court leadership. At least the law firm gets to pick their partners. Courts do not have that luxury. The metaphor "court leadership is like herding cats" arguably may understake the challenge. Some of these cats are not cute kittens, but feral cats that bite. Mark Twain once said "the inability to forget is infinitely more devastating than the inability to remember." Dealing with colleagues and staff that disappoint you is a challenge for any court leader. Court leaders whose lives are paralyzed with fear frequently suffer from Irish Alzheimer's Disease, which is that you forget everything else but the grudge. Learning from experience is good. Naïveté is not desirable, but carrying grudges is impossible if the goal is leadership without fear.

There are court leaders who fear virtually any conflict. A leader who unnecessarily stirs up conflict is doomed to failure, but court leadership is not always about managing conflict. In group situations sometimes people suppress their real desires and feelings for a variety of personal reasons. Fear of "what happens if I speak up" being a classical reason. The result is that the groups appear to agree when they really do not, and bad decisions are made and actions are taken that are contrary to everyone's desires. Some refer to this as the Abilene Paradox. Theories of social conformity and social influence suggest that human beings are often very averse to acting contrary to the trend of the group. The crux of the Abilene Paradox is
that groups have just as many problems managing their agreements as they do their disagreements.

Group think is minimized by trust. As Robert Shaw said,

A high level of trust allows people to say what is on their minds and not feel that it will come back to hurt them. A sufficient level of trust ensures that lines of communication are open and that no one is hiding information or wasting time trying to decide the political implications of his or her views (Shaw, 1997).

No matter what part of the courthouse troika they are in, people who work in our courts want a chance to be involved and they expect to have their talents and skills utilized effectively. The questions are: How do we achieve that for judges? How do we achieve that for staff? Ideas start the discussion: stay involved. If you find yourself pulling away, ask yourself why. If you sense a colleague pulling away, ask the same questions. Apply the Golden Rule. Show commitment to helping others in their time of need. Hopefully, others will reciprocate when you get bogged down and could use some help. Be open. By challenging the "that's-the-way-we've-always-done-it" mindset, leaders can encourage calculated risk taking.

Communication is key to being a leader without fear. Messages being sent are sometimes not the same as those being received, which can result in conflict and mistrust, ambiguity, confusion, and inconsistency—exacerbated by today’s environment with e-mail, voice mail, virtual meetings via conference calls and video, and cell phones. The list goes on and on. Leaders without fear have a common message based on the vision and priorities of the court, and they are great at communicating that vision.

Leaders without fear show people the future. They emphasize the positive vision of a better future. They make it real. They highlight the values they are fighting for. Answering the why question increases people’s willingness to endure hardships that come with improvement. It is not always easy to work with those who are uncommitted but wary. Leaders without fear accept responsibility for their piece of the mess. They model behavior and, yes, at times, accept casualties. The best leaders have the capacity to deliver disturbing news in a way that people can absorb and prod them to take up the message rather than ignore or kill the messenger. They build curiosity. They do things to create urgency.

We live in times far more complex than the era that Roscoe Pound spoke of. In the words of Robert F. Kennedy, “There is a Chinese curse which says, ‘May he live in interesting times.’ Like it or not, we live in interesting times.” To be a part of the judiciary during these times gives each of us, regardless of our role, a unique opportunity to serve the community and to leave a personal legacy. The question is: What kind of legacy do you want? A court leader without fear seizes the opportunity to leave the courts better for future generations and leaves a legacy well worth remembering.

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RESOURCES


