

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Court Review: The Journal of the American
Judges Association

American Judges Association

2011

Creating a New Generation of Courts

Brian Ostrom

National Center for State Courts

Roger Hanson

University of Colorado

Kevin Burke

American Judges Association

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

Ostrom, Brian; Hanson, Roger; and Burke, Kevin, "Creating a New Generation of Courts" (2011). *Court Review: The Journal of the American Judges Association*. 365.
<https://digitalcommons.unl.edu/ajacourtreview/365>

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Creating a New Generation of Courts

Brian Ostrom, Roger Hanson, & Kevin Burke

Courts are under ever-increasing pressure to be more transparent and accountable. Regardless of whether this is driven by fiscal crises, policy makers' concerns, or simple public outcry, a common question is, "What are courts doing to be efficient and effective?" If you are not careful, you might think a court is just another public body, like an executive agency, which public-administration experts want to re-engineer.

Some judges understandably are resistant to developing their administrative side because—on the surface—managerial values clash with what judges know well and are trained to do: they make decisions and issue orders in individual cases after purposeful deliberation. The role of effective administration in running a court is a topic absent from any law-school curriculum and is missing from many judicial education and training programs. On-the-job training certainly gives you experience, but there are limitations in any learn-as-you-go approach to training.

In this short article, we seek to draw a closer connection between the administration of the legal process in trial courts and how well the legal process serves individual litigants. The thesis is that the nature of court administration affects procedural due process. Advocacy is advanced in courts that make known to attorneys and parties what is going to happen, when, why, and how at all critical stages of the process. To develop and sustain these connections, court personnel at all levels should strive to enhance three areas of administration.

First, judges and staff members should aim to articulate clearly what kind of court they want to own and offer to their community. Court leaders play a critical role in encouraging this discussion when they point out to every judge and staff member that good courts are not just tidy; they enable opposing parties and their attorneys to argue their respective sides effectively.

Second, a key perspective for improving operations overall is the recognition that the interests, values, and rights of all participants in the legal process are court responsibilities. Courts deliver services, and participants in the legal process are like valued customers. Fairness is desired by everyone, with court customers wanting this result through a process that is predictable, timely, and cost-effective.

Third, organizing and mobilizing judges and court staff members around court improvement is a process requiring attention, patience, and compromise. Developing collegial support and making new approaches a reality inevitably bring into focus problems and possible solutions involving sharp differences of opinion among judges and administrators about what, if anything, needs to be done. Even if a presiding judge champions a course of action, it does not necessarily mean the plan will be fully enacted. And if acceptance is reached, it is not uncommon for objections to be raised again and previ-

ously settled issues scuttled or threatened. In the court world, the idea that the few can consistently command the abiding support of the many is a dubious expectation.

Knowing what courts want to be, focusing on customers, and building support for making changes are ways to uplift every court and, perhaps more important, to form a structure the courts can continue to use in addressing future challenges. The High Performance Court Framework developed by the National Center for State Courts is a key resource for judges and staff members to draw on because it addresses ideas to promote and implement enduring reform in the ordinary administration of justice. The framework suggests a series of flexible steps every court can take to improve its performance. *Achieving High Performance: A Framework for Courts* is available at: www.ncsc.org/hpc.

THREE TARGETS OF OPPORTUNITY

Roscoe Pound noted that one root cause of the popular dissatisfaction with the American justice system is the belief that the administration of justice is simple—anyone can do it. For those of us who are involved in court administration, we know it isn't always easy. Sometimes the difficulty comes from not fully answering some basic questions: What are we trying to do, for whom, and by whom? Below are three strategies court leaders should consider to build and sustain effective administration, and perhaps make the tasks just a little bit easier.

CLARIFY THE VISION

Someone once said the difference between a vision and a hallucination is simply how many people see it. Thus, court leaders need to provide a comprehensive vision for their court that a significant number of judges and other court staff will embrace and buy into. Setting and communicating a leadership vision statement is a critically important and deeply strategic activity that many court leaders fail to do adequately. It may seem like a simple activity for the court executive team to share a strategic vision of where they would like their court to go and of the obstacles that must be overcome to get there, but this is no self-executing task. Time is needed to make a vision explicit to everyone who works in the courthouse. For a statement to be more than words, judges and court staff must see how the statement's provisions direct the daily work they carry out.

There are those who argue that superior achievement is possible if and only if a true visionary charismatically convinces others to change their practices by adopting new and better ways of doing things. Inspirational leadership is surely a helpful ingredient to achieving high performance. But making improvements in a court is not dependent on the single-handed leadership of one person. Even courts with charismatically challenged leadership can be successful. The loosely coupled nature of courts means leadership is a matter of per-

suasion, bringing people together, and setting a tone. A feeling that “the leader cares about us, listens to us, and deeply cares about the court as an institution” is far more important than charisma. Building a culture based on mutual trust, collaboration, and commitment to solid administrative practices can serve to restrain strong egos. Arriving at a culture conducive to high performance is a challenge involving consensus of the entire bench, not something that can be forced on judges even by an inspirational leader.

TREAT COURT ADMINISTRATION AS PUBLIC SERVICE

A high-performance court strives to give attention to the interests and rights of all individuals involved in the legal process. Customer satisfaction is a priority.

The term “customer” is new to many courts, but it captures the basic idea that people entering the courthouse react to both the services delivered and the manner of delivery. A strong public-service ethic is apparent when courts are readily accessible and exhibit fair processes in all court proceedings. People respond well to being treated with courtesy and respect.

This point of view has a long history, with Alexander Hamilton’s observation on the importance of providing effective administration of civil and criminal justice being a classic statement:

There is one transcendent advantage belonging to the province of the State governments, . . . [by which] I mean the ordinary administration of criminal and civil justice. This, of all others, is the most powerful, most universal, and most attractive source of popular obedience and attachment. It is that which . . . contributes, more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence towards the government.¹

State courts are certainly one of the institutions Hamilton had in mind in making this claim. And the concern is clear: the images people have of the administration of justice in general and courts in particular affect their support of and trust in government.

Creating a positive image for state courts requires care because virtually all individual court customers have some degree of uncertainty about the legal process. This is particularly true of self-represented parties. As a result, a high-performance court tries to reduce confusion by making itself accessible, providing clear information, and adhering to predictable, orderly, and timely proceedings.

Hamilton’s insight is supported by modern research findings. Positive perceptions of a court are shaped more by how people feel they were treated than by the outcomes of their cases. Satisfaction with the process is mostly shaped by whether customers believe their rights and interests are taken into account in the resolution of disputes. If a court can

increase the sense of procedural fairness, social-science research suggests that compliance with court orders will increase as a byproduct.² Court leaders should give explicit attention to the concept of procedural fairness, the mantra being, “Every litigant has a right to be listened to, to be treated with respect, and to understand why the decision was made.” Ensuring that each individual receives his or her day in court connects administration with due process.

GET EVERYONE INVOLVED

The ability to adapt successfully to new ways of doing business is strengthened when everyone understands the court’s vision and is properly aligned to achieve it. A sign of a healthy court is that court staff members are viewed as active partners with judges and senior managers.

Each part of the court troika—judges, professional administrators, and line staff—works more effectively when it understands and appreciates the role of the other two. In her book, *Team of Rivals*, Doris Kearns Goodwin described Abraham Lincoln as a man with an extraordinary ability to put himself in the place of other men to experience what they were feeling and to understand their motives and desires.³ The ability of court leaders to marshal everyone’s talent is a key ingredient to high-performance success, although leadership qualities like Lincoln’s understandably are rare. Employees can help find ways to sustain areas of high performance (e.g., documenting successful approaches for managing case files) and ways to improve areas of less-than-successful performance (e.g., spending more time improving customer service at the counter). Because staff members often have regular contact with the public, many have a refined sense of what aspects of current service delivery lead to dissatisfaction.

Active listening reveals competing ideas on how best to solve particular problems. As difficult as it may be, court leaders need to recognize that there are alternative paths to a desired goal. Good court leaders are careful when there is a close vote among judges. A close vote may indicate it is time to go back to the drawing board and refine the alternatives. The best court leaders willingly accept a collective choice that will bring about the desired outcome better or more easily than their most preferred options—even if it does not appear on paper to be the best.

Acceptance of alternatives builds trust and enables cooperative communication. Judges and staff members need not fear that administrative discussions are merely forums used to foist practices upon them.

MOVING FORWARD

Systematic feedback evaluates the implementation of the three strategies. And establishing measures of performance is a way to organize the categories of feedback. Performance results, in turn, are an interpretable basis for everyone to judge

Footnotes

1. Alexander Hamilton, *THE FEDERALIST*, No. 17, at 88 (Clinton Rossiter ed., 1999).
2. See generally Tom R. Tyler, *Procedural Justice and the Courts*, 44 *CT. REV.* 26 (2007-08); Kevin Burke & Steve Leben, *The Evolution of*

the Trial Judge from Counting Case Dispositions to a Commitment to Fairness, 18 *WIDENER L.J.* 397, 404-08 (2009).

3. DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* (2005).

how well a court is doing. By circulating results that revolve around customer satisfaction, court leaders demonstrate the sort of respect and rectitude Hamilton believed attracted public support.

Court leaders and a cadre of judges and senior managers can facilitate sharing results by first having the conversation internally. Because results are subject to interpretation, an opportunity to review and comment provides a forum for fair debate, to reconcile divergent points of view, and to develop presentation methods able to withstand scrutiny. Openness shapes a court's accountability environment, and it can both set the terms of discussion with funding sources and promote a more healthy review by everyone of court progress and resources.



Brian Ostrom is a principal court research consultant with the National Center for State Courts. He has extensive training and experience in performance evaluation and in using a wide range of qualitative and quantitative analysis techniques to understand and overcome problems in the courts. His main research interests since joining the National Center for State Courts in 1989 have included the study of felony sentencing and the development of structured sentencing systems, civil justice reform, the methodology of judge and staff workload assessment, and court organizational development and performance assessment. Ostrom has a Ph.D. in economics from the University of Washington.



Roger Hanson is engaged in legal research for the purpose of legal reform. Hanson has previously been a senior researcher at the National Center for State Courts and more recently has served as a courts consultant. His past work includes assisting the Right Honourable the Lord Woolf in his report of civil justice in England and Wales; Hanson has also worked in Afghanistan and the Phillipines as well as in American state and federal courts. Hanson has a Ph.D. in political science from the University of Minnesota, and he serves as an adjunct professor in law and political science at the University of Colorado.



Kevin Burke has been a state trial judge in Minneapolis since 1984 and presently serves as president of the American Judges Association. He coauthored the AJA's 2007 white paper on procedural fairness, and he regularly lectures judges throughout the United States and Canada on procedural fairness, court leadership, and other topics. Burke has served four terms as chief judge of the 62-judge Hennepin County District Court, and he received the William H. Rehnquist Award from the National Center for State Courts in 2003, an award presented annually to the state judge who most exemplifies the highest level of judicial excellence, integrity, fairness, and professional ethics. Burke received his law degree from the University of Minnesota.