

Leadership through Hard Conversations: Scenarios and Hypotheticals

Focus: Presiding Judges and Court Executive Officer
Issue: Team-building; creating a productive pair

Scenario #1A:

Background

It is customary in many state and local trial courts that the tenure of presiding judges is limited; a common term is 2-4 years. These judge-leaders may be elected by their peers or appointed by a state supreme court. Court executives, on the other hand, are employed as professional managers and serve longer tenures. Commonly, they are hired by and serve at the pleasure of a presiding judge, a majority of the judges of the court, or the administrative arm of the supreme court.

Leadership Situation

John is a professional court administrator with 20 years as a successful leader in an urban Midwestern court. He recently applied and obtained a job as the court executive officer for a metropolitan court on the East Coast where the previous CEO served 25 years before retiring. CEOs in this court are appointed by and serve at the pleasure of the presiding judge who serves a 5-year term and are elected by their peers. The PJ who hired John had only one year left in his term when John was hired. Over that year, John and the PJ developed a productive working relationship.

The election of a new PJ was quite contentious. The bench was split into factions, including a block of judges who disliked what the previous PJ had done during her time leading the court. The successful PJ candidate was elected from this group on a close vote of the bench.

Knowing about the dissention in the judicial leadership vote, John wasted little time once the new PJ was selected in setting a face-to-face meeting with him. At the meeting in the new PJ's chambers, John was nervous but confident his reputation as a fair-minded, responsible and professional administrator would carry the day. Judge Wilson, the new PJ, opened the discussion by say, "John, the first thing I need to know from you is... Will you be loyal to me?"

Questions to consider from John's perspective

- What statements or actions should John take at his initial meeting with PJ Wilson to help build a productive working relationship, not just one based on blind personal loyalty?
- How should John deal with the bench and its factions?
- How should John responsibly and truthfully discuss the PJ leadership change with his staff?

Questions to consider from Presiding Judge Wilson's perspective

- Should the PJ define what he means by "loyalty?" What are the needed attributes of a loyal relationship between a PJ and a CEO?
- Through his actions and words, how should PJ Wilson build an enduring, productive working relationship with John?
- What behaviors, actions, or comments by John would jeopardize his employment?

Scenario #2A:

Background

A crucial ingredient in all top-level executive team relationships is trust. Trust is palpable; you can feel its presence or absence in a relationship. In its simplest form it is composed of two qualities. Benevolence, the quality of putting other interests ahead of your own, whether they be the court's, the university's, the public's or someone else's. The second quality is competence; the ability to deliver on what you say or promise. And in the process of working toward those ends, to ensure you are not sacrificing your integrity in doing the right or most appropriate thing to make morally correct decisions, often on the spot, every time.

Leadership Situation

Jane has been lucky as the CEO in a rural jurisdiction composed of only four judges. A good deal of her success comes from the fact that a long-time high school friend has served as presiding judge for nearly all her time as CEO. Her PJ has been fully engaged in the operation of the court, making virtually all the decisions as to how it functions. Jane, in turn, comfortably performs more as a project manager carrying out the decisions of her boss. She never really questions the decisions of her boss or offers advice – even if she has reason to believe the decisions are wrong and will result in problems for the court – since she is fearful her PJ will be upset or feel she is meddling.

Lately, there has been a growing jail overcrowding problem in the jurisdiction. The sheriff and county officials are angry with the court since the judges have refused to review and improve their pretrial processes as suggested in a recent jail study commissioned by the county. Jane privately feels the consultant is right; there is substantial delay in pretrial procedures and the recommended fixes would improve things. The PJ, however, has publicly sided with her judicial colleagues that jail overcrowding is not the court's problem and pretrial adjudication operates well even though statewide caseflow data shows the court is the most delay-ridden jurisdiction in the state.

Questions to consider from the CEO's perspective

- How can Jane create a safe environment with her PJ that fosters an open, honest exchange of ideas and opinions?
- If the PJ takes Jane's advice and suggestions about improving pretrial processes to heart, how can Jane help the PJ reverse her position and avoid alienating the other judges?

Questions to consider from the PJ's perspective

- Assuming the PJ realizes the added value of having Jane more as a trusted strategic partner than a project manager, how should the PJ nurture that expanded role?
- Empowerment means others have the freedom to act within boundaries. It also means those empowered are held accountable for those actions. How do PJs create such a court culture?

Scenario #1B:

Background

Presiding judges are frequently referred to as “first among equals” since their formal power over colleagues is limited along with their tenure in the top leadership position. Yet, they are ultimately responsible to ensure the judges and staff operate efficiently, collaboratively, and responsibly. In regard to other judges, there is also a tense undercurrent between a PJ and trial judges given the fact that judges generally are accustomed to operating autonomously as self-regulated professionals and adjudicators. Most problems occur in the intersection between the PJs institutional, courtwide management duties and the personal, independent, professional responsibilities vested in each trial judge.

Leadership Situation

The Supreme Court has advised PJ Smith and CEO Webber that things have reached a critical point concerning the untimely disposition of criminal cases in their court. Statistics show it is the slowest of the states 10 judicial districts and has been for three years. The Chief Justice has given the PJ and CEO 6 months to demonstrate a visible improvement in the pace of criminal litigation in the court.

Smith and Webber have decided to use a technique advocated by Professor Ernie Friesen, one of the early founders of caseflow management, that “what you count affects behavior.” Statistics on clearance rates, time to disposition, age of active pending caseload, and trial date certainty (all NCSC’s CourTool measures) will be recorded for each judge and circulated monthly among all criminal department judges. Since judges often have a need to excel in comparison to one another, value their reputations, and generally are averse to being at the bottom of a performance list, the PJ and CEO feel it’s the quickest way to show progress. Also, performance data, they reason, can help struggling judges improve their case management skills. PJ Smith announced the program at a bench meeting, the reasons for it, and arranged for efficient judges to mentor those needing help.

The criminal judges went apoplectic. Initially, the validity of the stats was questioned, then blame for delay was directed at backlogged forensics lab reports, unprepared public lawyers, and court staff shortages, and finally, a move was launched by some to hold a special election to select a new presiding judge. As things heated up, the PJ and CEO huddled to strategize ways to calm the troops and restructure the initiative.

Questions to consider from the PJ and CEO’s perspective

- What did they do wrong? What did they do right?
- Should the initiative be restructured?
- What hard conversations are necessary and how could they turn the tide?

Questions to consider from the criminal department judges’ perspective

- What part of the delay problem should the criminal department judges’ own?
- What positive suggestions to reduce criminal case delay should be offered by the trial judges?
- Should the few judges in agreement with the proposed changes speak up? How can they do so and be most effective? How should the PJ and CEO utilize the judges who are supportive?

Scenario #2B:

Background

Many state court systems periodically conduct a weighed caseload (WCL) study to determine the need for judges, court staff, and sometimes prosecutors, public defenders and probation officers. The National Center performs many of these studies. Data from case filing statistics and detailed time reports from judges is used to estimate the number of judicial officers needed statewide or in a jurisdiction. WCL studies recognize that complex cases take more time than less complex cases. Based on the average time judges spend on a particular case type, researchers assign heavier weights to the cases that are more time consuming. Average times are also calculated for non-case related activity such as meetings, judicial education, all-purpose leave, and travel time in rural areas where judges may “ride circuit.”

Leadership Situation

Lincoln County Circuit Court filings have dropped by 25% since 2010. This downward trend is consistent with studies that show drops among all courts nationwide in most case types. Although there is widespread speculation on reasons for the decline, there is no empirical data that conclusively indicates the causes of the decline or how long the trend may last.

Lincoln County utilizes a WCL to determine how many judicial positions are needed. No one ever thought that case filings would drop since the county’s population has increased rather steadily over the last 8 years.

The state legislature bases its decisions on the number of judgeships to allocate and fund on the WCL. Recently, the appropriations committee has asked the state court administrator’s office to identify those counties that are “over-judged” and make plans to sunset judgeships when they become vacant. The state would like the money for those judgeships returned to the general fund.

Lincoln County must sunset 2 of their 11 judicial positions. Two judges in the county will be retiring on December 31. The PJ and CEO of the court have asked the state court administrator to designate a senior court manager to assist the court in determining how to reallocate work among the 9 remaining judges.

The majority of judges want to challenge the WCL data for the county. They feel there may be flaws in the formula that may not effectively account for time spent on problem-solving and therapeutic courts even though those courts have been in existence for 10 years and are factored into the formula. They also conclude the uniqueness of the court’s hybrid calendar system has not been adequately considered by the WCL.

Questions to consider from the PJ and CEO’s perspective

- How should court leadership deal with judicial reluctance to accept the new WCL?
- What are the goals the court should embrace in redistributing judicial workload? How should the PJ and CEO convey the results to the judges and obtain their buy-in?

Questions to consider from the trial judges’ perspective

- How can the judges convince their leadership to challenge the WCL results?
- How do judges protect themselves from getting stuck with more work than their colleagues?

Focus: Presiding Judges and Court Executive Officers
Issue: Resolving Conflicts

Scenario #1C:

Background

State and local courts are funded primarily by legislatures, counties and cities, or a combination of them. Occasionally, funding authorities run into budget shortfalls and direct the entities they support to reduce their current budgets or request 5-10% less in an upcoming budget year. In doing so, funding authorities often overlook the fact that the court exists as a branch of government mandated to perform its functions by the constitution, numerous statutes, and case law. It is not a division of state or local government. True, courts are obligated to collaboratively work with their funders and reasonably substantiate the need for appropriation requests, but frequently states, counties and cities arbitrarily cut, sweep or reduce funds unilaterally among all the organizations funded by them. In the process, the court can be treated in the same fashion as the transportation department, parks and rec agency, or the city clerk.

Leadership Situation

The Middleton District Court is a large urban court funded by Middleton County, except for judges' salaries and benefits which are provided through the state. The county recently failed to obtain voter approval of a new sales tax and has been confronted with serious revenue shortfalls. County budgeteers decided to abolish all county funded positions vacant for 3 months or more on the basis that they were not likely needed. Overnight, 125 vacant court positions were eliminated. After repeated attempts to have the positions reinstated along with substantial information to justify them, the presiding judge reluctantly filed an inherent powers lawsuit against the county board. (The supreme court in the state traditionally does not directly accept disputes involving county funding for courts. The case has been referred to a state district court in another county. The state supreme court will be involved if there is an appeal).

Questions to consider from the PJ and CEO's perspective

- How should the PJ and CEO keep the court's judges and staff apprised of the lawsuit?
- What measures should the CEO take to operate with 125 fewer staff?
- How should the PJ and CEO prepare for a return to normalcy and better communications with county leaders?

Questions to consider from the County Board perspective

- Should the Board treat the district court differently in budget matters than county departments?
- Once the lawsuit is settled, how should county officials reestablish more effective interaction with court leaders?

Scenario #2C:

Background

Timely, efficient case processing within trial courts requires the serious engagement by the PJ and CEO, or their delegates, with justice system partners such as the prosecuting attorney, public defender, clerk of court (if there is one), law enforcement agencies, probation, private attorneys, and the bar association. Although courts are the natural conveners of justice planning efforts, many court leaders can be reluctant to engage these stakeholders to address caseflow management improvements.

Leadership Situation

Vincent Superior Court obtained a State Justice Institute grant to bring a National Center consultant team, a judicial caseflow expert and a NCSC project director, to study the court, and interview judges, staff and justice system partners on how to revamp an inefficient calendaring and judicial assignment system. The goal is to move to a much more streamlined system.

NCSC consultants made two site visits to the court, gathered substantial statistical data, and arranged for the local court administrator and her staff to randomly select 300 closed case files to record the pace of litigation from filing to disposition, regardless of the type of disposition. Over 95% of the cases, whether criminal or civil, are either plead or settled without a trial which is typical for most general or limited jurisdiction state courts nationwide. Yet, a vast majority of them reach settlement around 4 weeks prior to the trial date or on the trial date itself, meaning they've languished more than nine months in the system.

Part of the study plan required that a draft report be submitted first to the PJ and CEO for review and edits regarding clerical and substantive errors or shortcomings. Then returned to the consultants for corrections and distribution as a final draft to the bench. As a final step in the process, the consultant contract called for a one-day retreat of all judges and key administrative staff at a location outside the courthouse where the study results would be reviewed, discussed, prioritized, and the participants would spend time in break-out groups to develop initial action plans to implement system changes.

The consultants urged that selected key stakeholders be invited to help plan any new calendaring and assignment structure. The PJ and CEO took a straw poll of the judges regarding the suggestion and very few wanted outsiders at the retreat. Court leaders concluded that justice system stakeholders were more appropriately brought into the process after the court decided what changes it wanted to implement.

Questions to consider from the court leaders' perspective

- How should the PJ and CEO ensure key justice system partners do not feel rebuffed and excluded from important planning input in such a major change?
- Should some, but not all, justice system stakeholders be consulted? Why? Why not?

Questions to consider from the justice system stakeholders' perspective

- Should the justice system stakeholders meet on their own and file their comments about the court's plan with the PJ and CEO
- Should the justice system stakeholders suggest ways to mediate differences or objections to the plan?

Scenario #3C

Background:

As state supreme courts and their administrative offices have grown more responsible for overseeing and coordinating trial courts during the last 100 years or so, trial courts have frequently been seen to resist many forms of coordination and centralization. As you would suspect, inherent conflicts of interest sometimes exist between “locals” and the state.¹

The goals of a central state administrative office of the courts are coherence and uniformity. Trial courts, on the other hand, are concerned about unique programs to address specific geographic, political, demographic, and procedural issues in their specific localities which may range widely from rural to urban environments. The goals for local court leaders, as a result, are commonly autonomy and flexibility.

Leadership Situation:

Memo from Presiding Judge to Court Executive Officer:

“As you’re aware, our Supreme Court will soon be embarking on a new, ten-year judicial branch strategic plan. The Chief Justice spoke with me briefly about the planning effort at the judicial conference, inviting our input. She seems to understand that our large metropolitan court has model programs and forward thinking that should be incorporated in the new plan.

That said, I know that our court’s management team has been concerned about the Supreme Court’s recent push towards total statewide centralization and standardization of case management systems, court security and probation administration. There will likely be an effort to include these initiatives in the new strategic plan, making it difficult for our court to maintain self-governance and local program management in these critical areas.

Also, as we’ve discussed, it would clearly make sense for the Supreme Court to expand our court’s access to justice program to other counties on a statewide basis. While there seems to be some interest in this approach, it never seems to be a high priority and we’re still in the concept stage on this front.

Please convene a workgroup with our department presiding judges and key managers to outline the best approach for our court to take in this next round of strategic planning. I am especially interested in any “win-win” solutions the group might suggest to diplomatically address the centralization issue, as well as ideas to expand our court access program to other courts.

Given current budget constraints, I would appreciate the workgroup’s best thinking on solutions which reduce or at least contain costs.”

Questions to consider from the perspective of trial court leaders:

- In this scenario, how best could trial court leaders promote their agenda in a “win-win” way?
- Some researchers (i.e. Lipscher; Conti) feel “coordinated decentralization” promotes innovation and initiative at the local level and uniformity and consistency at the state level similar to federalism in the relationships between the states and the nation.² In the context of state courts, what functions are best left to the trial courts and what’s best left to the state administrative office of the courts?
- In a “coordinated decentralization” model, are there differences in the positions of urban and rural courts regarding statewide uniformity and consistency? If so, please explain? If not, why not?

¹ Greacen, John (2002). *Chapter 5, The Role of the State Court Administrator: Ensuring a Statewide Judicial Branch of Government, The Improvement of the Administration of Justice*, Seventh Edition, Gordon Griller and E. Keith Scott, Jr. editors. Judicial Division, ABA: Chicago, IL.

² Lipscher and Conti, “A Post-Unification Approach to Court Organization Design and Leadership,” *The Justice System Journal*, Volume 15, Number 2 (1991).