

IT IS ALL ABOUT THE PEOPLE WHO WORK IN THE COURTHOUSE

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Tough budgetary times mean lower morale at the courthouse. What can judges do to improve staff morale and, thus, the administration of justice?

In 1906 one of the founding fathers of judicial administration, Professor Roscoe Pound, gave a speech: “The Causes of Popular Dissatisfaction with the Administration of Justice.” Although there have been enormous improvements to the administration of courts since then, courts continue to have challenges that cause popular dissatisfaction with the justice system. Pound said one reason that drove dissatisfaction was a belief that the administration of justice is an easy task to which anyone is competent. Nothing has changed since Pound’s speech on that belief, but for those of us who are in the field of judicial administration, we know how painfully complex this system has become.

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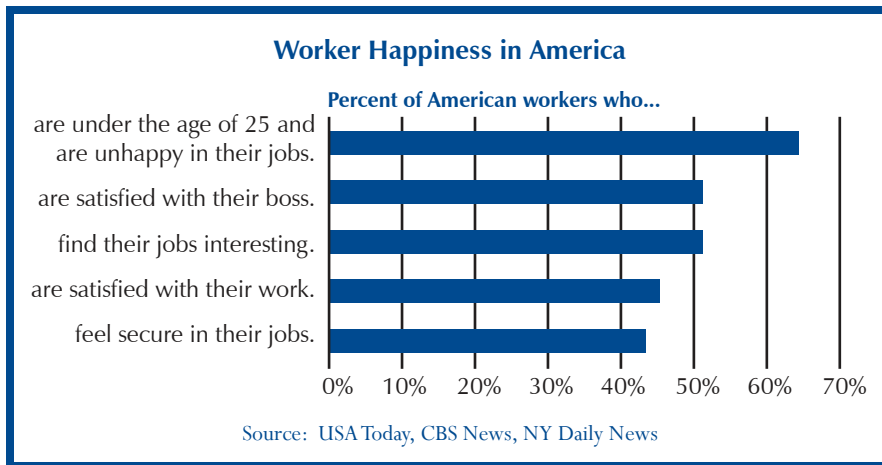
During the last several years there has been a sea change in the funding for courts and in attitudes toward public employees. Regardless of how courts are funded, with rare exception courts are facing budget challenges that dwarf any that they have seen before. Courts have laid off and furloughed employees, frozen hiring and salaries, and complained loudly about the lack of funding. Budgets

are critical, but courts are in an era in which the political mantra for many is to question the work ethic and commitment of public employees in language that can hurt. Vitriolic language about public employees may be good politics, but that language has a negative effect on the morale of those who work in the courthouse. Public-employee bashing compounds the courts’ budget challenges.

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 percent of the nation’s school districts will lay off teachers. That is not great job security. Public-sector workers earn less than their private-sector counterparts with equal educational backgrounds. 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. There is no safety in continued employment or in retirement. Many states are questioning whether they can offer the pensions that were offered in the past, and some are even suggesting rather dramatic steps to change the pension benefits that employees have already accrued. There are proposals, for example, to allow states to go through bankruptcy, which would allow them to dramatically renegotiate public-employee pensions.

The thrust of this article is not to argue what should be done with respect to budget decisions. States have managed to close \$170 billion in budget gaps since 2009, but the next fiscal year is expected to be even worse, with budget shortfalls projected to be in excess of \$140 billion. There is a time and a place for court-funding discussion. Court leaders cannot print their own money, but they can have enormous positive (or negative) impact on the morale of the courthouse workforce. Many of the funding debates and discussions are conducted in forums in which court leaders are not able to unilaterally dictate the ultimate results. Where court leaders can have an influence is courthouse-employee morale.

There has been a suggestion that there is a clash of cultures in a courthouse—the professional culture (judges) and the organizational culture (everyone else). But when it comes to analysis of courthouse morale, there may be a troika of entities to consider: judges; court administration, such people who join national and local associations or may have professional degrees in court administration; and line workers, who perform many tasks not even peculiar to the judiciary. Line workers perform data entry, staff magnetometers at the courthouse entrance, and perform a myriad of other essential tasks. But the role they play is not particularly glamorous, and line workers may not even be aware that what they do contributes to the court’s mission to dispense justice.



There are no reliable statistics on courthouse morale, but if the courthouse workforce reflects the nation as a whole, courts are in trouble. Worker happiness in America is the lowest in history.

Public-sector employee morale has reached a new level of discontentment. One study showed a dramatic drop in public-employee morale just in the last six months. There is worry, disorder, alienation, and discouragement. All three parts of the courthouse troika (judges, senior court administration, and line staff) feel like they are being asked to do more for less—not just in terms of salary, but also in terms of the psychic compensation or a positive work environment that is essential for motivating the best in all of us.

The danger in the current economic situation is that court leaders will hunker down. They will try to solve the budget problem with more short-term fixes, such

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as tightening controls or enacting across-the-board cuts, wage freezes, or furloughs. The most effective court leaders will challenge their courts to face problems for which there are no simple, painless solutions. Courts face problems that will require everyone, including lawyers, to learn new ways. There really 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 a workforce that is prepared to effect change. Panic, fear, and low morale are not conducive to creative change. Courts need a workforce that can think creatively.

The economy presents courts with many challenges. There are technical challenges, such as how to deal with fewer dollars or how to introduce technology that is efficient and effective for the court. Those challenges, as complex as they seem, can be answered by technical experts. But the biggest challenge courts face is the ability to adapt, to focus on significant and sometimes painful shifts in people's habits, status, role, identity, and way of thinking. This is true for judges, senior court administrators, and line staff.

In this period of turbulence, the most difficult topics must be discussed. It is not an easy era to be a leader, and 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 provide a different perspective need to be heard. Court leaders need to listen to unfamiliar voices and set a tone for candor and risk taking. Now, more than ever, tone is important in the courthouse.

The subject of motivation or employee morale is not clearly understood and, all too frequently, poorly practiced. To understand motivation, one must understand human nature and therein lies the problem. Many courts have become reasonably good at thinking about how to motivate people who appear before judges, or are eager to understand concepts like procedural fairness in the courtroom. There is interest in how social science can assist judges in decision making. Evidence-based sentencing and procedural fairness are hot topics in judicial education. What courts need is evidence-based court leadership and procedural fairness for those who work in the courthouse. Quite apart from the beneficial and moral imperative of treating

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colleagues and employees with respect and dignity, all the research shows that well-motivated employees are more productive and creative. People need positive reinforcement. People thrive if there are high expectations. The most successful courts are willing to think about how to satisfy employee needs.

Although social scientists can tell us a lot about motivation, fostering great morale is an art, not a science. Within the field there are different schools of thought. With rare exception, many judges and some court administration leaders may not be particularly well grounded in what the social scientists tell us makes a difference and what does not. Court leaders cannot allow themselves to be guided through this turbulent era by their own myths about employee morale. Today's court leaders need to ask how they view the courthouse work staff, what biases they bring to the analysis, and what theory about human behavior in the workplace best suits their courthouse needs.

Because the troika of court employees is quite disparate, different motivational theories may apply to each group. Court leaders need not be able to teach a course in motivational theory, but they need to understand how to apply such thinking in the courthouse. For example, Frederick Herzberg's motivational theory, reduced to its simplest form, is people work first and foremost on their own self-enlightened interest because they are truly happy and mentally happy through work accomplishment. Assuming that theory is true, it is a great theory for judges, but may not explain how best to deal with line staff.

A second example is Abraham Maslow's motivational theory. He argues that there is a ranked order of motivating factors: (a) interesting work, which is likely to be found for judges and senior court administrators and perhaps less likely for line staff; (b) good wages, which is something that court leaders cannot unilaterally

provide; (c) full appreciation for the work done, which can be provided for the whole troika; (d) job security, which is a big issue for line staff and perhaps court administration, but probably less so for judges; (e) good working conditions, which are necessary for the whole troika; (f) promotions and growth in the organization, which are least likely a concern for judges, but more so for court administration and line staff; (g) feeling of being in on things, which is a concern for all of the troika, but a challenge to accomplish; and (h) personal loyalty to fellow employees or camaraderie, which is important for the whole troika but potentially a challenge in trying to get everyone to view themselves as a comrade.

Even if court leaders' knowledge about motivational theory is suspect, at a minimum court leaders need to be disabused about common courthouse-morale myths.

Myth 1. I'm the leader; I can motivate people. Frankly, many court leaders are charismatically challenged. For the most part, people need to motivate themselves, but a good court leader can establish an environment where employees motivate and empower themselves. The more an individual or a group of people understand the nature of a problem, the more effective they will be in solving it. Put another way, the difference between hallucination and vision is how many people see it. Courts cannot be led by people with hallucinations. Effective court leaders must articulate a vision everyone can see and set up that environment where people feel motivated and empowered.

Myth 2. Fear is a good motivator. At best, fear is a good motivator for a very short period. Fear of judges plagues many courthouses and contributes to low morale in court administration and line staff. It is hard for line staff to feel like a judge is 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. Jody Urquart says there are three ways to motivate people to work harder, faster, and smarter: threaten them, pay them a lot of money, or make their work fun. The first two are ineffective. But making work fun has a track record of effecting real change. Creativity, intuition, and flexibility are keys to successful court operations today.

Myth 3. *I'm okay; it is them I need to worry about.* Motivating court employees starts with court leaders motivating themselves. If court leaders hate their job, it is likely everyone else will hate their jobs, too. If court leaders are stressed out, everyone else is also. Enthusiasm is contagious. It can start at the top with the attitude of court leaders; regrettably, it can end there too.

Myth 4. *Increased pay is all we need to keep the courthouse happy.* Money is important, but human motivation is more complex than a lack of salary. What motivates one person does not necessarily motivate another. Recently, the *New York Times* had a story about the salary situation for judges. The article described some of the anger and rage many New York judges feel about their predicament. For over a decade the New York judges have had neither raises nor cost-of-living adjustments. Situations like frozen pay can initially be an irritant, but if it happens for a decade there are real consequences economically for the employee. With rare exception, a lot of judges have historically had a difficult time with salary issues. Now the judges' misery has been visited upon the rest of the courthouse employees. Situations like the judges in New York face can create anger and resentment. The economy will someday get better, and courts then will face pent-up demand for wages. In the meantime, the wage issue is a present problem of morale. Court leaders need to continue to advocate for fair wages for everyone in the courthouse, but until that day they cannot in frustration say, "There is nothing we can do about the morale around here."

Myth 5. *People are good, honest, and will always perform to the best of their ability.* For the most part, that is true, but there are times in which people are human, fallible, and prone to mistakes. The effective court leader is not delusional. A demoralized judge, court manager, or line worker can infect the atmosphere. Effective court leaders need to know how best to change the behavior of those whose actions threaten to infect the institution.

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Supporting employee motivation is a process, not a task. It can be enjoyable, rewarding, and integral to the effectiveness of an organization. Leadership on the issue of morale is, however, not just about good intentions. Court leaders need to work with employees to ensure that their motivational concerns are considered.

A court is a dynamic organization. Problems, issues, and concerns will arise. Being an effective colleague is one way to enhance the performance of a court. For the troika within the courthouse, however, collegiality among all three is a challenge. An effective court leader can learn from Booker T. Washington, who said few things can help an individual more than to place responsibility on him and let him know that you trust him. Sustaining court collegiality means investing in trust, developing a mutual understanding, and building commitment and joint ownership. Trust is the ability to have honest communication no matter what. Communication between the troika is not always premised on the perception that judges want honest communication from court administration and line staff. Even between judges, there are court leaders who do not embrace honest communication.

Steven Covey in *The Speed of Trust* says, "Simply put, trust means confidence. The opposite of trust, distrust, is suspicion." In today's environment, no courthouse can survive if there is rampant suspicion. Trust means that there is a 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.

One of the most difficult problems facing organizations is what some commentators have termed "auditmania" (the urge to have some independent inspection, which in the extreme is a virus infecting our society). Auditmania exists, they argue, because we no longer trust people to act for anything but their own short-term interests. As trust tends to decline, the demand for accountability (auditmania) increases. The absence of trust can feed on itself, simply breeding more and more suspicion. Employees who function under stifling oversight perform sluggishly so trust continues to stagnate. Robert Shaw said that a high level of trust allows people to say what is on their mind and not feel that it will come back to hurt them. Trust in the workplace 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.

Integrity is an important element of effective court leadership. Honoring your word is important. You either keep your word, or as soon as you know you cannot, say that you cannot keep your word to those who are counting on it and clean up any mess you have caused. That is what integrity is about. Actions must clearly match your expectations. Good court leaders ask, Do my behaviors model my beliefs?

Courthouse morale is not easy to change. Some courthouses have great morale, and others have room for improvement. There are 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 judges, court administration, and line staff.
4. Give up the notion that professionalism and the nature of the mission of the courthouse means being serious all of the time.
5. Encourage employees to leave work behind them at the end of the day.
6. 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 actions.
7. “TGIM”—Thank God It’s Monday. Do what it takes to ensure that judges, court administration, and line staff look forward to coming to work.

RESOURCES

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