Two Sides of the Gavel, or Court Leaders as Productive Pairs

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In the past, courts have stressed the differences between “legal policy” (judges) and “administration” (court managers)—but can the two be separated? Looking at court executive teams as “productive pairs” may provide the answer and strengthen courts in their mission to provide justice for all.

It seems as though my life has revolved around the concept of “pairs.” I was born under the astrological sign of Gemini, the Twins, my father was an identical twin, and I have twin daughters. It is as though my entire life was preparation for my career in court administration. Over my career, I have been paired with 24 chief justices as part of a court executive team.

The court executive team has been evolving since the 1990s, and organizations such as the American Bar Association and National Association for Court Management, among others, have taken steps to define how this team should work. In the past, these efforts focused on the differences between “legal policy” (which affects judges) and “administration” (which affects personnel, budget, facilities, etc.), and on how to run courts more like a “business” or “executive-branch agency.” But can legal policy and administration really be separated?

It is time to look at courts and court executive teams in a different way—as loosely coupled organizations run via the collaboration of productive pairs.

Courts as Loosely Coupled Organizations

In loosely coupled organizations (LCOs), individuals and groups retain a high level of individual autonomy while being expected to support larger systemic goals (Weick, 1976). Hospitals and universities fit this description of LCOs. The work of LCOs revolves around:

• complex decision making requiring extensive knowledge
• professional autonomy
• tension between accountability and independence
• unpredictable relationships (couplings)

For example, in hospitals, doctors undergo the rigors of medical school and residency to enter their profession in order to make complex decisions regarding treatment of their patients; in universities, professors must earn an advanced degree and via research and analysis become recognized as experts in their chosen fields. When it comes to autonomy, doctors may choose where to offer their services, and professors can achieve
Doctors are accountable through self-regulation and the standards of their profession, while professors must “publish or perish” and generate funds for research. Professors balance commitment to a university’s board of regents, alumnae or even the student body, and there is often tension and conflict between doctors and hospital administrators, who control the institution’s day-to-day operations.

Courts also fit this description. Consider judges, for instance. Like doctors and professors, judges must earn an advanced degree, be licensed and certified in their field, and deal with complex issues (of law) in their day-to-day work. They gain autonomy via judicial selection, whether elected or appointed, and are guaranteed judicial independence in the Constitution. They are accountable through the appeals process. Unpredictable connections arise via the actions of the other two branches of government or the public.

But judges represent only half of the court administration equation. The question is: How do we connect judges, who have responsibility for applying the law and making complex, life-changing decisions in individual cases, with managers, who are accountable for accomplishing the court’s institutional (that is, administrative) mission? When the “robes” and the “suits,” at all levels of the courts, connect effectively, court leaders become a “productive pair.”

What Is a Productive Pair?

What are the characteristics of productive pairs? How do they couple knowledge (for example, culture, beliefs, habits, and attitudes) to the courts’ institutional mission (for example, resources and performance)?

In an LCO, productive pairs are developed from two leaders who embody separate bodies of professional knowledge, embrace an individual vs. a corporate focus, and prefer autonomous over collaborative decision making. As stated by the Center for Applied Research, “In a sense, the pair plays the integrator, the translator, and the multilingual role rather than that being resident in a single individual” (CFAR, 2010: 1). This is the linkage between the “robes” (judges) and the “suits” (managers).

Research has revealed that productive pairs working in hospitals and universities share these characteristics, which can also be extended to courts:

- separate bodies of knowledge
- understanding and valuing of each other’s expertise
- time/history together
- trust of one another that enables direct talk and pushback
- limiting of the shifting of blame to an outside party
- resistance to manipulation by their respective colleagues (extrapolated from CFAR, 2010: 2)

It is essential that the different knowledge set of the presiding judge (law) and court manager (public administration, human resources, or any of a number of other disciplines) be linked and that both understand, trust, and value what the other brings to the table. Together, they set the overall tone for the entire court. “As they build up a history of working through important difficult issues, [productive pairs] see themselves and are seen by others as trustworthy leaders who will step up to make decisions rather than leave conflicts unresolved” (CFAR, 2010: 4).

How does a presiding judge/court manager productive pair work?

Authority. The structure of a productive pair is hierarchical—superior/subordinate with delegated responsibilities for achieving goals, which can lead to tension. For example, you have the chief justice working with the state court administrator or the presiding judge with the court manager, and the administrative office of the courts with the trial courts. The challenge is to link those whose mission is “doing justice” with those who provide essential “support” for justice. They need each other to succeed.

The two halves of a productive pair must have clearly defined, agreed-upon roles, which are accepted by peer groups within the courts. But how to determine who is responsible for what? For example, a presiding judge may have to defend performance measures developed by an administrator, or an administrator may defend assignment decisions made by a presiding judge. They must be translators of policy decisions to their respective peer groups, negotiators, and conflict resolvers, because they represent the overall leadership of the court.
How can these roles be defined and recognized?

One technique is decision charting, which has been effectively used by the Center for Applied Research in studying the management structures of hospitals and universities. Decision charting helps to clarify the roles of each participant in a decision and to reinforce the legitimacy of how decisions are made.

The process for making a specific decision is charted on a matrix based on the parties involved in a decision and the roles they play. Those roles fall into four categories.

R—responsible: person staffs the decision and ensures the best options are considered

A—approves: person approves the decision that commits the court to some course of action (or non-action)

C—consults: person consults with those or have A or R authority as options are considered and a final choice is made

I—informed: person is informed after a decision is made

Decisions that could be charted in this way include the decision whether to establish a specialty court, the decision to shift appropriations from one line item to another, or the decision to make judicial officer calendar assignments. Those with a role to play in the decision (for example, presiding judge and court manager, judges and court employees) determine where they fit in the decision (as an R, A, C, or I). The resulting matrix helps to point out discrepancies and potential conflicts in decision making. (For more information on decision charting, see CFAR, 2008, 2010.)

During a group exercise at the 2014 annual conference of the National Association for Court Management, participants were asked to give examples of controversial decisions in their courts that might benefit from this process. Examples included:

- the decision on how to provide guidance to judges regarding unaccompanied immigrant children in Texas (Who approves the information given? Who puts the information together?)
- the decision to expand the jurisdiction of magistrates to include, for example, family and divorce cases in the District of Columbia

**Accountability.** We are all familiar with the phrase “the buck stops here.” In a productive pair, the superior is still ultimately responsible for the actions of the subordinate and must be prepared to provide backup. However, the “cultural gap” between the career paths of judges and administrators will affect their expectations of the work of the court and how it should be done.
A judge tends to be more structured in his or her outlook, focused on the task at hand (deciding the law in a case), and authoritarian (acting alone). A court manager comes from a more diverse educational background (such as public administration, human resources, etc.), focuses on the workings of the entire court (rather than an individual case), and uses a more deliberative and collaborative style of management.

The diverging career paths and management styles of “robes” and “suits” create conflict, yet it is essential that the two come together as a productive pair. They must move from being an “I” to a “We.” This involves building a relationship based on:

**Interdependence**—emphasizing how their skills and knowledge complement each other and acknowledging that the gain of working together is higher than the pain of going it alone

**Information**—constantly sharing information so that there are no surprises (lack of information sharing results in conflict)

**Investment**—defending the organization and devoting resources to show long-term commitment to its goals (particularly building and using political capital)

**Integration**—working seamlessly and turning individual “stars” into a team

**Institutionalization**—formalizing authority to show exactly how decisions are made and providing support for them

**Integrity**—using political capital properly and being worthy of trust (for more information, see Cohn, 2007)

Above all, members of productive pairs are confidants. Each side must be able to trust the other, and working together should be a “safe zone.” It takes a long time to build respect and trust, and only a second to lose it.

**Dependency.** It’s really all about relationships based on empathy, trust and respect, and common values. This means working together for mutual benefit, not just self-interest. Building empathy requires a commitment to active listening, that is:

- concentrating on the speaker
- avoiding personal attacks
- respecting confidentiality
- sharing ownership

Productive pairs must bury past misconceptions about each other’s roles; for example, judges may feel that court managers are all about “time standards” and “case processing,” while court managers may believe that judges undervalue the role of administration in providing justice. A productive pair will also resolve, not ignore, conflicts.

For example, when John Marshall took office as the chief justice of the U.S. Supreme Court, there was no guidance in the Constitution as to what his duties were or how the court should be run. When deciding cases, each justice wrote a separate opinion. Marshall, through building strong working relationships with his fellow justices, brought about the per curiam opinion (one majority opinion with dissents) and other innovations that changed the culture of the Court. It’s not about position; it’s about relationships.

**The Two Sides of the Gavel**

The gavel is the perfect symbol of a productive pair. The head of the gavel has two sides of equal weight, which are mounted on a single handle, symbolizing common purpose. The gavel represents authority that is passed on to successors and is used to maintain order and dispense justice. So, like a gavel, the productive pair of a judge and court executive work together for a common purpose: to provide justice for all.

**References**


