

*Session 6.1*

*The Journey Towards Court Excellence: Integrating Quality Management into Judicial Training*

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- 1 I have been sitting here musing on an irony, that may have occurred to some of you. We gather in this international forum to talk about ‘best practices’ in judicial education and yet we have managed to design, objectively speaking, a series of presentations that perhaps do not build on the best practices of judicial education. While I am talking, and finishing up, and getting ready for your questions and an opportunity for a little ‘interactive learning’, let me put a question to you as to how you might re-assess the international process of considering judicial education, with a view to implementing more of the ‘best practices’ that we all study and know and believe in and come here to learn about.
- 2 I was fascinated that Judge Tan talked about Peter Senge’s Learning Organisations, and he gave you the significant part of the definition of a learning organisation, which I think makes manifest why it is appropriate to think of courts as learning organisations. The definition he offered was of an organisation with individuals having a shared vision, and seeing the organisation as a whole instead of comprised of individual discrete parts. I would suggest one additional dimension to Senge’s definition of a learning organisation, and that is an organisation that is dependent on knowledge and information, and rapid change, for its progress and growth.
- 3 It is no accident that the conversations at this conference and even on our panel discussion this afternoon have moved in and out of the dimension of court leadership, or leadership for court excellence and judicial education. I think that the two are inextricably intertwined and I believe this because I believe in a definition of good leadership in the courts as ‘the capacity to marshall resources, either material or human, in the service of positive change’. I believe that good leadership begins with who we are and moves to what we do in our institutions, and I believe that learning and teaching are the most powerful tools in the leader’s repertoire. I am not talking about learning and teaching solely in the context of opportunities like this, or of so-called ‘judicial training’ or ‘judicial branch training’ that we do at home with our judiciaries. I am talking about it in the context of the development of the international framework for corporate excellence in the context of understanding that there are better ways to do what we do, in the context of the capacity to occasionally ask the questions about what we are doing to start with and whether we should be doing it, let alone doing it in the way that we do it.
- 4 Achieving court excellence is of course, as Judge Tan observed, a journey. It requires constant change and the capacity to adapt to that change. He also alluded, I think, in his remarks, to the fact that there are two separate kinds of change that we, as judicial educators, have to be concerned about. The first set of changes that we need to be aware of in our systems are what we call ‘technical’ changes. Those are the kinds of changes – I forget the example Judge Tan used – where you already know what the question is and you know what the answer is and all you need to do is to develop the

technical capacity to bring the answer to bear on the question, for example writing a new program to get your data solved.

5 Let me just say a word about adaptive change. Adaptive change is where you are moving from what you are doing now to you do not know what. You know what you are doing now is not working, but you do not know what the answers are. There is no ready technical fix and it is going to take a change in people's hearts and minds and behaviours before you can accomplish it. In my jurisdiction we have been experiencing, as is the case with most judicial branches in the United States right now, tremendous economic pressures. We have seen budget cuts across the United States of from between ten, twelve percent to twenty to thirty percent in existing court budgets, just an astonishing impact on our resources. In my jurisdiction one of the things that we have been looking at for years was the preparation of transcripts from the trial court proceedings for use in the appellate courts for review purposes. We had been dependent for a great many years on live, in-court court reporters. How many of you have live, in-court court reporters in your systems? A few. Those of you who have them will be aware of the political questions associated with replacing them with machines, digital audio recording machines. The technology has gotten fabulous. You can put microphones all over the room. They automatically pick up the voices. The recordings can be transcribed in central locations. They are an enormous technological advance. The politics of moving live court reporters out of individual trial courts where they are often actually associated with individual trial judges, and so on, has been very difficult. However, in our State it turned out that we could save two million dollars by moving completely to digital audio recording. We were, as a consequence of the economic crisis, able to make that move. I can tell you that six months into that technical change, which we were able to accomplish by simply ignoring the adaptive work because nobody had any choice in the matter, we have reduced our transcript preparation time for the appellate courts from four to six months to fifteen days, a dramatic change, a dramatic shift, a technical change.

6 However, it is the adaptive changes that I want to talk a little bit about today. It is very difficult. Again, as I said, it is when you are asking people to change their minds, to change their hearts, to change their attitudes and to change the way they act, the way they behave on the ground, that you can be in real trouble as a leader. It is difficult in part because you are asking people to give things up. I did go to a leadership course at the Kennedy School at Harvard a number of years ago and one of the things I learned there was quite profound because it gave voice and a dimension to a phenomenon that I had been experiencing all of my judicial life but did not have the vocabulary to describe, and that is this notion that change requires loss. When you are doing adaptive change and asking people to move into a future the contours of which are not well-defined and are unfamiliar, and in fact may not be known, you are creating pain and potential loss. One of the things I have learned is that as a leader and a fomenter of change – and if you are a judicial educator that is what you are – you have got to account for how painful and difficult the process is, and for what you are asking people to give up. At the very least, you are usually asking them to give up their familiar ways of doing things. Frequently, you are asking them to give up their sense of control and mastery over a system that they bought into with a certain set of expectations, which they now find changing underneath their feet. Sometimes you are even asking them to give up some part of their identity, some part of who they see

themselves to be, how they define themselves in the world of their work, and this is very difficult.

- 7 One of the things we know about that kind of change and those kinds of requests is that when you ask people to engage in that kind of work you have to give them two things. The first is a challenge that has meaning, so you have to be prepared to be inspirational and persuasive about the need for the change. Then, you have to give them the support to take the change on. It is my belief that developmental education, which focuses on real change in people's hearts, minds and behaviours, is the way you persuade people that the challenge is worth the risk, and then give them the support that they require to make the changes.
- 8 I want to talk to you very briefly today about a change that we undertook in my jurisdiction, in my State, that was very closely tied to the International Courts Excellence Framework but was predicated on a group of measurement tools developed by the National Centre for State Courts, known as Courtools. As I have indicated, I believe that improved judicial performance requires changes in behaviour and culture but I think that one of the ways we teach people to make these cultural changes is to model transparency and model accessibility, to sort of put things out there so that people can look at them and examine them as they are going forward.
- 9 This is a slide [refers to visual presentation] which describes Utah's courts performance measures. At the beginning of the slide is contained the mission for our courts in our State. The mission of our courts is to provide the people an open, fair, efficient and independent system for the advancement of justice under the law, not different, I think, from the mission of any court system in the world, including the ones from which you come. Five years ago, in 2004, our judicial council, which is the constitutional governing body for our State court system, began to implement a court performance measurement system that was developed in part, as I mentioned, by the National Centre for State Courts. Our governing body is comprised of judges who come from every court level in our system so bringing the Courtools measurement project, that the National Centre had developed, into the Judicial Council, gave people an opportunity to work through each of the different sets of measurements and to tweak them. We adjusted them and discussed them at length, and talked about them and the way in which they would or would not be appropriate in our jurisdiction.
- 10 Our State adopted a list of primary measurements as appropriate standards to measure the performance of our courts. We looked to measure access to and fairness in the courts. You can see the overlap with the International Framework. We looked to measure the public's trust and confidence in the court system. We looked to measure judicial performance evaluation, namely the evaluation of individual judges as measured by the judgments of the attorneys who appear before them. We looked at the effective use of jurors. Then, we developed a number of case management measures, the first being the clearance rate. The clearance rate for a trial court, or for an appellate court for that matter, is the number of cases being completed or disposed of as a percentage of the court cases that are being filed. We also looked at 'time to disposition', which Judge Tan talked about, that is, the time being taken to complete or dispose of types of court cases. We looked at the age of active pending cases, so that you could get an idea not just of how long it was taking for cases to be disposed of but of how old cases were getting on the docket. We also developed a specialised report-card for our juvenile courts. In our jurisdiction they handle all child

delinquency and child welfare cases. There were some special concerns around those courts that we decided to measure. We looked at our ability to collect restitution fines and fees. I talked a minute ago about how one of the ways you help people change their attitudes and behaviour is by elevating the visibility of your standards. When we started measuring court employee satisfaction I think we accomplished two things. First of all, we gave our employees the idea that they mattered to the system and that their attitudes about how the system worked were important to management and to leadership. Second, we gave them feedback on how they were doing in the eyes of the public. Those two measures, I think, contributed to their sense of their importance to the institution.

- 11 Those were the performance measures. As I said, we tweaked them. We devised methodology for measuring each of them. You will see we did court-user surveys. We did telephone surveys of the general public. We still do all of that on a periodic basis. Our performance-of-evaluation system is quite involved and quite extensive. I could talk with you afterwards if you are interested in that. We did questionnaires for jurors and then we developed data tracking systems that enabled us to get good numbers on our clearance rates, our time to disposition, and age of cases.
- 12 I will confess that although I have been teaching and doing judicial education for twenty-five or thirty years, this is the first time I have ever used slides. That will give you some idea of how old I am. This is a slide [refers to visual presentation] taken directly from our court website. Any citizen, any legislator, any member of the executive branch, any litigant, any lawyer, can go to the Utah State Courts website [<http://www.utcourts.gov/> as at 29 April 2010] and pull up these statistics. This is a slide [refers to visual presentation] that shows data state-wide for all categories of case but on the website you can actually go into each of the separate districts. You can look at criminal cases, and you can break that down into either felony, misdemeanour, misdemeanour/driving under the influence, domestic cases, general civil, probate and so on. So, this will give you the age of active pending cases by quarter, state-wide, for any particular type of case, and also broken down by the quarter. Those within the courts, as well as those outside the courts, can see how well we are doing. Along the bottom you have got cases that are less than ninety days as of the time the snapshot was taken, all the way over to a very small percentage of cases, around five percent, that are more than twenty-four months old. We can only hope that when we go in to find out why those are on there at all we discover that they are extremely complex cases that have legitimate reasons for being so old, but at least it is possible for us to know that they are there and to go and find them.
- 13 This [refers to visual presentation] is concerned with an individual district, the largest urban district in the State. Once again, you can go through the categories of case and you can compare across districts. Now, this does not permit you to get at individual judges and their information, although that is published elsewhere in our system, but it does allow judges from one district to the next, managers across the State, and the public if they are interested, to discover how one district is doing compared to the next. This has been fully in place now for almost five years in the State of Utah. It required us to do a couple of things in order to get it off the ground. I talked with our IT person when we were putting these slides together. I thought, if you were to strip it down to the basics what does a court need in order to create transparent and accessible information? Together we came up with these three essentials: first, support for and

agreement on what is measured. This goes back to your vision, and to what you accept as the core values of your court system. Second, an emphasis on information quality. If you do not have decent quality, in terms of filings, dispositions, case types et cetera, your statistics and your graph will mean nothing. And then the third thing relates to the adaptive change aspect.

- 14 You need some courage. You need some courage not just on the part of the managers who are making the choices to go public with this kind of data, but from the judges and the court staff in the court system themselves. I would like to tell you that the system was universally acclaimed as the most brilliant idea when we first rolled it out in my State, but it was not. Judges were nervous about the invidious comparisons that might be drawn, they feared, district to district. They were concerned about public criticism, should it turn out that the numbers were not particularly good at any given time in any given place.
- 15 To some extent we asked for their indulgence. We said, let's try a pilot. So, we tried a pilot. The world did not end. We tried another pilot. The world still did not end. We gradually rolled it out. It required, on the one hand, technical changes. We had to identify and collect the data. We had to do the IT work to organise it and display it. But the adaptive change that was required in our system was for us, judges and court staff. It is a harder sell, sometimes, with the judges than with the court staff. Maybe that is not your experience. Are your jurisdictions peopled by judges who are eager to do things differently? I thought not. It required us to come to see ourselves as an institution that should probably account for how we are doing in our work. It was both a governance issue for us and an educational challenge for us.
- 16 There is an irony, however. Judges' initial fears about this program of transparency and objectivity in measuring performance have proved, I think, to be completely groundless and, ironically, we have acquired and enjoyed great credit and credibility, in terms of our surveys of public trust and confidence but perhaps even more significantly from our co-equal branches of government. The legislative branch and the executive branch in Utah have both in their fiscal processes suggested that State agencies across the executive branch, and the legislature itself, adopt some of the same principles of accountability, transparency and public accountability. Our reputation not just for being fair but for being willing to talk about how we were doing, in terms of efficiency in the management of public resources, has enhanced our independence. I believe that the institutional independence of courts is directly related to the decisional independence of courts, that the degree to which we can accomplish greater institutional transparency in turn leads to the enhancement of our capacity for institutional independence, which in turn enhances decisional independence.