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Effecting change in the courts: A process of leadership

Current national issues facing the justice system include court delay, treatment of victims and witnesses, jail crowding, and child abuse. Most leaders in the court system must eventually face the challenge of mobilizing their organizations to anticipate or respond to the changing needs such issues create.

In some courts the necessary innovations will progress smoothly, meeting only minor resistance. In others, sharp resistance will translate into failure. Success or failure in many cases depends less on the merits of the proposed change than on how the change is initiated and managed.

This article attempts to provide court administrators, presiding judges, chief probation officers, chief clerks, and other leaders with a basis for understanding the management of change. It predicates a style of leadership that has been defined as requiring the leader not only to turn an idea into reality but to maintain that reality over time.

This kind of leader displays not only an understanding of the problem and the details of the innovation proposed to solve it, but also knowledge of organizational behavior and communications and the ability to manage the politics and conflicts that innovation sets in motion.

Communicate the need

It is not enough for only the chief judge and court administrator to know why a new procedure is introduced. Those who will be involved in effecting the change or who will be affected by its results must know the motivation; otherwise a great deal of resistance is inevitable.

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Success depends on consensus across the organization.

Significant organizational changes in the courts most often result either from external pressures, such as legislation, or from priorities of the organization's leadership.

Federal regulations, for example, impose specific processing elements in child support cases heard in Family Court. This affects not only scheduling timeframes and dispositions but also collecting statistics and archiving records. The people who write the regulations often forget to explain why.

But chief judges and administrators frequently initiate change on their own. To expedite clearance of caseloads, they introduce alternative dispute resolution processes, experimenting with mediation, arbitration, and other alternatives to avoid having every case run through formal litigation. These not only change court procedures but create new positions such as that of special master.

Considerable human and organizational resources will be wasted if they are expended before getting a commitment from those affected by the change. Thus, the leader instituting change must state more than general goals. The objectives must be specific enough to give reasons why others should alter their behavior to support the proposal.

Focus on the impact

Once the force behind the change is established and the reasons for it understood, the leader must consider what impact the change will have both on the system as a whole and the individuals within it. Broadly speaking, there are three types of change:

● Those altering the basic structure of a court system, such as the court deciding to control cases from filing to disposition in all criminal matters rather than leave them to the discretion of the prosecutor's office.

● Those affecting the task structure or rules, such as instituting a mandatory settlement conference 2 weeks prior to trial.

● Those modifying the social structure or traditions of the court community, such as instituting a firm continuance policy to replace the use of informal agreements among attorneys.

While these may overlap, they help us identify the intended target for change and what real issues need to be addressed.

A recent survey of State court administrators, for example, indicates they believe that the tradition of letting attorneys control the docket to be the most serious obstacle to reducing trial-court delay. But it would not be enough for a court to be committed to early and continuous case control or even to have rules establishing a timeframe for disposition. The real targets for change would be the accepted practices among attorneys, which are part of the "local legal culture." These traditions can be addressed only through bench-bar consensus; otherwise, the severe resistance may prove fatal to change.

The proponent of change must consider four important points:

There is a reason for the status quo. Whether through rules (however outmoded), traditions, or informal deals, the way things are has a history, and the person who wants to change must understand that history.

Someone benefits, then, from the current situation, and persons with a vested interest in the status quo must be identified. Defense attorneys, for example, are rarely keen advocates for rules ensuring speedy trials.

Change will upset someone by putting stress on jobs or habits. These stress points must be identified. A chief judge

cannot demand more up-to-date and regular data regarding his active caseload without determining whether the clerk's office has sufficient personnel or other resources to supply it.

The cost of change may exceed the benefit. If practices are entrenched and influential individuals see themselves as losers in a change, the disruption in the organization may be greater than the gains. Both technical feasibility and political acceptability must be reckoned.

Increasing court security, for example, always inconveniences someone. Locks and metal detectors slow travel. Requiring people to check in at a security desk, wear badges, and be challenged before entering restricted areas all create stress and often create conflict. The innovation must measure the security gained against the human cost of change.

One way of weighing costs against benefits is the "forcefield analysis":

○ First, identify the factors supporting change, such as Federal initiatives supporting victim rights or a State supreme court committed to reducing delay.

○ Next, identify the hindering forces—such as lack of political support or an inadequate case-tracking system.

○ Finally, determine which of these issues are themselves subject to change: Can the political backing be built or the tracking system improved? One can hardly expect a chief judge who enacts time standards in civil proceedings also to enact sanctions against colleagues who fail to meet the standards.

The costs and benefits weighed will not always be financial. Political repercussions may be a very real cost, increased public confidence a very real gain. Change must sometimes proceed regardless of cost, but this happens infrequently. Change without respect for costs usually reflects personal agendas rather than legitimate organization needs. Changes initiated as part of an election campaign, for instance, rarely generate broad support in the long term.

Distinctions must be made between technical and social aspects of change. Introducing electronic reporting may be technically feasible, but court reporters' losing their jobs may be a social disaster.

Thus the leader for change must examine it through the eyes of those most affected by the change and hence most likely to resist. Their reason for resistance is likely to be one of these:

1. **Fear of the unknown.** People desire predictability and routine; they often believe things could be worse. Automating a manual information system disturbs those who run the old system—particularly when the organization has already undergone recent changes. People who have not yet adjusted to (for instance) a recent significant court reorganization will be overwhelmed if a delay reduction program comes on top of it. Timing is critical.

2. **Sense of loss.** Each individual measures change in personal terms: Is it good or bad for me? Threats to power, titles, or perquisites (such as having a personal law clerk) will generally create immediate conflict. These concerns must be anticipated and weighed. A master calendar may be technically feasible, but judges accustomed to handling their own caseloads are likely to object.

3. **Threats to competence.** Asking people to serve in areas where they feel uncomfortable creates job stress and resistance. New computer systems may never be fully used if people are afraid they do not know how to use all the machine's potential and no training is offered. Asking judges to rotate between the criminal and civil benches may not sit well, particularly with a judge who has not been in one court or the other for a long time.

4. **Altered relationships.** Even those committed to the goals of the court may find that personal relationships between staff members are the major source of day-to-day job satisfaction. If an attorney believes his relationship with a judge is part of his personal power base, inserting an administrator between them may anger the attorney, convincing him that he is being denied access to the judge. Interacting with a new computer similarly is a poor substitute for valued working relationships among staff members.

5. **Lack of involvement.** Persons who feel slighted by not having been part of the decision-making process may play a decision-breaking role. This pervasive phenomenon deserves the attention of those proposing the change. If you ever are going to need cooperation and support of others in the court to implement change, they should be informed at the outset—if practical, at the planning stage.

The leader for change needs to consider how the change will affect the system and the individuals within it.

Many chief judges make commitments before they check out details with others who will be affected. Then they find themselves in the position of trying to "sell" an idea that is already a reality. Involving the local bar in developing new court-management rules is both good politics and good practice. The question is not the court's authority to make its own rules but to what extent attorneys will support rules on which they had no opportunity to comment.

Plan for implementation

After weighing the supporting factors against the resistance, you will likely have a full grasp of the issues. If resistance is expected to be high, you may consider *not* proceeding. If on the other hand the change is *mandated*, you must control for the anticipated obstacles and plan a strategy for implementation.

Most court personnel are not specifically trained as planners. One very basic technique in starting to plan is called responsibility charting. It involves the following:
- Identify those whose involvement is essential to success of the process.
- Determine which of the primary tasks must be accomplished to give the project momentum.
- Clarify each person's role relative to each major task.
- Establish a reasonable date for completing each task.

These processes require determining first who will be held accountable for specific aspects of the plan and, second, who will accept responsibility for specific tasks. The more one is involved in professional organizations, the more distinguishable these concepts become.

Accountability is an organizational concept that reflects an expectation of certain behaviors and relates to an individual's formal role in the courts. *Responsibility*, however, requires an individual response. Assuming that an individual will naturally accept responsibility for a particular task leads to great disappointment. Willingness needs to be confirmed by a personal decision to respond.

In clarifying how particular persons will be involved with specific tasks, these questions need to be asked:

- Who will initiate each task and accept responsibility for its completion, regardless of whether the activity is delegated?

Only one person can assume ultimate responsibility for accomplishing each task. Groups or committees cannot. A committee can propose and advise, but only individuals *do*. This is especially critical in courts where chief judges rotate frequently and formal authority is very dispersed.

- Who will be affected by the task?

These individuals must be informed so they not only do not learn through rumors of issues that will impact on them, but so they can also be involved in planning. Those who make policy can be far removed from the details of implementation; judges who hear cases may not know precisely what happens before or after they see a defendant. What appears to be a simple change to them may have a profound impact on others.

- Who has jurisdiction over each task and can exercise positive or negative influence?

This can be one person or a group; e.g., a chief judge or a legislative committee. Identifying the individual or group whose support is pivotal is essential. If there is *not* support from this pivot, it is better to know before expending resources. If there *is* support, it can be a major impetus for change.

Failure to negotiate with an elected (thus independent) clerk for access to important records can defeat a case-monitoring program. Early involvement with funding agencies in support of a new victim assistance program can directly ensure success.

- Who has the expertise for each task?

This includes technical expertise such as computer programming skills as well as personal credibility in the organization. Many people in the organization will not understand all the ramifications of a proposal, so the reputation of those advocating the change is critical. The principal advocate for each task must be carefully selected.

Maintain the innovation

The real test of leadership is implementing an innovation and maintaining it over a period of time. If a victim-witness program rides in on grant support, it will not long survive the end of its external funding *unless* it becomes a part of what the court believes to be its fundamental work.

The stabilizing of organizational change is called *institutionalization*. It occurs when behaviors are established that, over time, benefit both the individual and the organization but do not require linkage to any single individual.

Planning for implementation includes determining major tasks and who will accept responsibility for them.

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Many changes begin by edict; what looks like acceptance is really only compliance. Other innovations are sustained by the charisma or personal dedication of their major proponent; they survive only so long as that person stays with the organization and has the time and energy to continue as an advocate. Court programs that have been operational for years may collapse in weeks once the primary advocate has left.
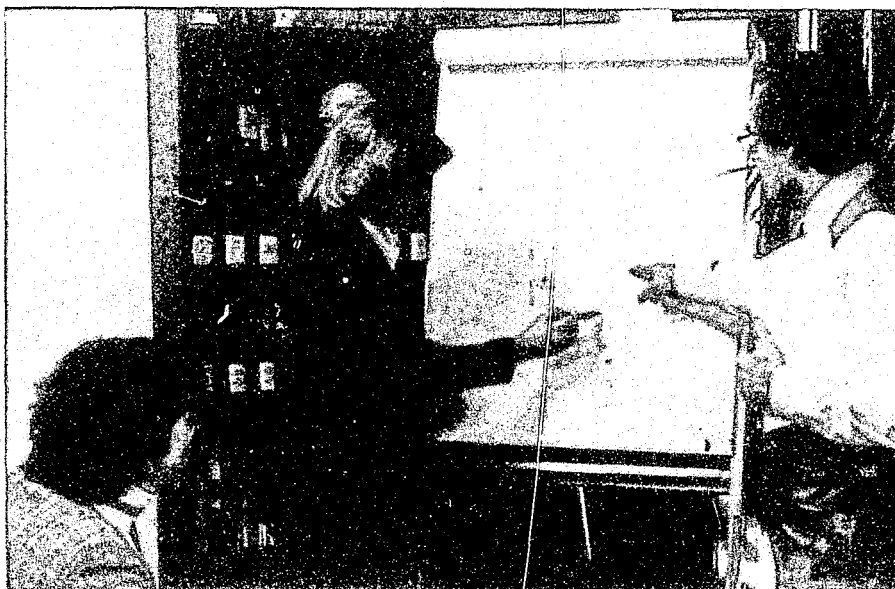
Institutionalization develops a situation where a significant number of people understand and internalize the preferred behaviors. Reaching such a consensus across the organization requires socialization, accountability, organizational support, and feedback mechanisms.

· **Socialization** amounts to continually informing individuals about the requisite behaviors. This can include orientation, training, or both. Whenever there is high personnel turnover, as there is in the judicial system, this process is critical and never ending. Without it, for example, individual attorneys may be unaware that a delay-reduction program is in place.

Accountability involves setting expectations that all individuals will perform as required. If everyone plays by the same rules, people usually can adjust. If unwarranted or unexplained exceptions are made, the project falters and the leader's credibility suffers. When continuances are to be limited, exceptions must be minimized or the program will be meaningless.

Organizational support means allocating the necessary resources. The main challenge is not overcoming resistance to change but maintaining support over time. If new resources are not allocated or current resources not reallocated according to stated priorities, the project is not likely to be institutionalized. Individuals should be very cautious about committing themselves to projects that lack organizational support.

Feedback mechanisms must monitor and measure the degree to which a change is put into effect. A question whether an innovation is working and meeting the need for which it was aimed is a legitimate one and deserves an answer. Quite often statewide delay reduction programs generate great media at-

Orientation and training are important aspects of building the consensus needed to maintain the change.

tention without those at the local trial court being able to see any improvements. Change that is not monitored dwindles quickly to a passing fad.

Increase the chance of success

These principles apply not just to courts but to any organization or institution—a law enforcement or correctional agency, an academic institution, a governing body. The general principles remain valid even if they must be adapted to meet the specific change that is sought within the special characteristics of a specific organization.

Many well-intentioned leaders grow discouraged by frustrations in introducing change and choose not to be involved in future projects. However, adhering to the following points can enhance your chance of success:

Concentrate your efforts. Individuals—particularly new staff—may see so many areas where positive changes are possible that they scatter their efforts. To be successful, do a few things well and on time. Before investing personally in a project, determine how consistent it is with existing priorities. Otherwise you may find that no one else in the court cares about your project.

Know when to fight. Conflict is normal, particularly during times of change and transition. It can often be reduced, however, by knowing when to offer ultimatums and when to compromise. Taking initial resistance personally may lead an advocate to force decisions that lead unnecessarily to the project's failure. Decide what is not negotiable and then compromise on the other elements.

Learn the history. You may find that others have tried to effect changes such as those you propose. Learn how an issue has developed, who has been involved, what previous attempts have been made, and what led to the past results. It is highly unlikely that your proposal is entirely new or that sentiments about it are entirely neutral.

Build coalitions. Most innovations require a broad base of support. While a particular idea is usually the result of an individual's thinking and concern, it must quickly become a group concern if it is to survive.

This article presents no panacea for problems associated with implementing change, but it does offer a map of the pitfalls to be avoided. A good idea in itself will not guarantee a successful change. The vision must be accompanied by a sound management approach if it is to become a reality.