COURT ADMINISTRATORS — Their Role in Managing Change

INTRODUCTION

WE live in an age of change. I hope that the triteness of this statement will not obscure its importance or its implications. Every age, of course, has been one of change, otherwise the world would not have evolved from a primitive state to one characterised by advanced civilisations.

However, since, say World War I, which is generally recognised as signalling the end of an age, the world has been marked not only by extensive and far-reaching change but by the rapidity with which it has occured; the latest innovations soon became obsolete. Warren Bennis expressed in this way:

> "Everything nailed down is coming loose and it seems that no exaggeration, no hyperbole can realistically appraise the extent and pace of change. Exaggerations come true in only a year or two. Nothing will remain in the next ten years — or there will be twice as much of it."

In previous ages, societies subject to change had some time to adapt to digest it, even though, in many cases they may not have done so very well. Today, we have less time to adapt. Even as long ago as 1972, Professor Dexter Dunphy pointed out in his Boyer Lectures that whereas the train took about 100 years to develop, the automobile 50 years and aircraft about 25 years, television took only about 10 years and laser beams less than this; that in many areas of life the pace of change was proceeding in the form of exponiential curves. The speed of change has, of course, accelerated greatly since 1972. Examples are in aerospace, weaponry, communications and computers. In many occupations, much of what one learns on entering it has become obsolete ten years later.

This makes the task of managing change a challenge to our society. We do not have the time, in society as a whole or in particular organisations, to allow communal or organisational digestive systems to do the job for us.

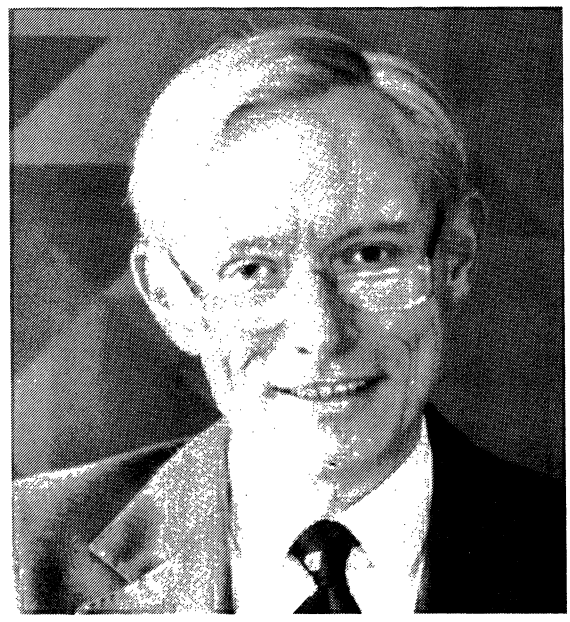
Rapid and far-reaching change is taking place in most areas of modern life; in the development, production and marketing of goods, in political ideolgies and institutions, in standards of living, in communications, in values, attitudes and beliefs, in social relationships. I am here concerned with organisational change; in the strategies or policies of organisations and in the ways in which these strategies or policies are implemented through the management of work, people, finance and technology.

It is part of the conventional wisdom of organisation theory that most organisations are open systems; networks of inter-related parts open to their environments, of which there are four major categories.

- The economic environment; the nature and state of the economy.
- The political environment; the institutions of government and current political ideologies and policies.
- The social environment; the type of society in which the organisation functions, in terms of that society's mores, values, beliefs and attitudes.
- The task environment; the individuals and groups impinging directly on the organisation. These constitute its "publics": customers or clients, suppliers, interest groups, government agencies.

Pressure for change usually arises in the environment. It may be sensed, accepted, modified or resisted by various members of the organisation. As the organisation is a system, change in one area may flow through to and influence others. For example, a change in the organisation's personality distribution through, say, the employment of younger, more ambitious, more highly-educated persons, may effect its strategy, the way work is done, human-resource management or the technology used. Again, technological change may effect strategy, the personality distribution and human-resource management, work methods and financial management.

I am concerned principally with change in a particular type of organisation, the courts system. Until comparatively recently, the pressures for change developing in the environment seemed to be having little effect on courts systems. The procedures, customs, attitudes of key persons and technology appeared to have changed little over hundreds of years. A person who joined the staff of the Supreme Court of Victoria a few years ago used to say that he felt that he had been plunged into the age of



MR JOHN B. KING

MR John B. King was until recently Secretary to the Attorney-General's Department in Victoria. Before coming to that position in 1986, he had gained vast management experience in many different fields. He is a Bachelor of Laws from Melbourne and a Master of Business Administration from Harvard. He taught in the Graduate School of Business Administration at Melbourne University for 17 years and was Chairman for five of them. Earlier, he had worked for the Volkswagen organisation in Australia, USA and Germany. He has served on the boards of several companies and been a member of the Melbourne and Metropolitan Board of Works. He joined the public service in 1981 as principal consultant to the Public Service Board. He has acted as Acting Director of the Ministry of Consumer Affairs, Deputy Secretary of Courts and Commissioner for Corporate Affairs before coming to his present position.

This background indicates the extent of his qualifications to speak on mattters of business administration. His application of those principles to the requirements of the courts systems make absorbing reading. The Council is extremely grateful to Mr King for his participation in the conference and for his permission to produce here the paper that he then presented.

Dickens. The words of C. J. Dennis describing the "Swanks of Gosh" could have been applied to many of the staff:

"They lurk in every Gov'ment lair,
'Mid docket dull and dusty file,
Solemnly squat in an easy chair,
Penning a minute of rare hot air
In departmental style."

The major technological development over many years had been the introduction of electric lights and the ball-point pen.

The costs of organisational unresponsiveness to a changing environment can be very great. In the case of a business organisation losses will begin to occur and unless corrective action is taken, liquidation is inevitable. In the public sector the results of unresponsiveness are perhaps less dramatic but nevertheless just as inevitable.

In the case of Australian court systems there has been a massive haemorrhaging of jurisdiction to quasi-judicial tribunals which, in Victoria, has reached the point where the Small Claims and Residential Tenancies Tribunals between them hear more civil matters than do the Magistrates' Courts. Personal injury matters, once the sole province of the Courts, are now mainly handled administratively by the Traffic Accidents Commission. The loss of jurisdiction has, of course, affected the legal profession's income. Also diminished is the prestige and authority of the participants in the Court system — they are increasingly unable to sustain any high place in overall Government priorities and as a result increasingly lose power to make changes. The degeneration of the court system is characterised by aged and decaying facilities, poor equipment, low staff morale and productivity, and an ability to attract the best people to work in the system.

The process of system decay is self-perpetuating. Only a very determined and sustained attempt at strategic change is likely to be successful.

In Victoria the Government has embarked on a strategic change programme designed to make the court system significantly more relevant to the community's needs. Key elements of the strategic plan included:

- Changes in jurisdiction, particularly in Magistrate's Courts to improve public access to the system. For example in civil disputes up to $3,000 an arbitration rather than adversarial procedure may be used. In addition Magistrates have been given a wide range of equitable remedies previously confined to the Supreme Court thus enabling them to provide appropriate relief in many types of disputes — e.g. disputes between neighbours.
- New caseflow management procedures have been introduced which ensure that clients waste the minimal amount of time in attending court.
- The incomprehensibility of legal process is being addressed by a combination of process simplification and plain English forms.

In Victoria we have found that generating a strategic change plan is the easy part of the task. Dealing effectively with resistance to change is proving infinitely more difficult.

RESISTANCE TO CHANGE

ORGANISATIONAL theory tells us that change in an organisation may be blocked or retarded for a number of reasons:

- The pressures generated in the environment may not be sufficiently strong; the situation may not "hurt" enough.
- The organisation may lack the resources — human, financial and material — to implement change and not be able to secure them.
- There may be a lack of initiators of change, either in the environment or in the organisation.

Resistance may be expressed through negativism, that is refusal to accept change. However, in large organisations, particularly bureaucracies, negativism is not the most common form of resistance. The three most common forms are uncommitted acceptance, opportunistic acceptance and the use of defence mechanisms.

Uncommitted acceptance entails nominal acceptance of any change accepted and propagated by superiors: "When the boss says 'jump', I say 'how high'?" The acceptor is, however, not persuaded or committed, probably has not even thought the matter through and will change with the next wind that blows from another quarter to be ready to join the opposition if prevailed upon to do so.

Opportunistic acceptance is similar. The person or group concerned appears to accept change because there seems to be something in it for them. However, they will change tack if they scent advantage for them in another line of action:

"Whatsoever king shall reign, I'll still be the Vicar of Bray, sir."

The person who uses defence mechanism resists change without actually saying "no" or "I will not". There are many defence mechanisms, some of the more common being:

Aggression or "fight".
Flight: "I don't want anything to do with it".
Denial: "I didn't understand you to mean that".
"You never told me that."
Rationalisation: The invention of acceptable excuses for non-performance.
Vacillation: Continually changing sides or positions.
Procrastination: Putting off until tomorrow what should be done today.

Resistance to change, is then, a fact of organisational life. So is organisation inertia, the disinclination on the part of members of an organisation to seek or recognise opportunities for change, to initiate it. Resistance and inertia are characteristics of most organisations but, in a particular type of organisation, there may be elements of its environment and culture which strengthens these tendencies. In courts system we may identify resistance arising in:

The political environment
The economic environment
The legal culture
The judicial culture
The public service culture.

THE POLITICAL ENVIROMENT

The judicial system is one of four* arms or branches of government, the others being the legislative, the executive and the administrative. Accordingly, most decisions affecting courts are "political" ones. In the words of the American comic character Mr Dooley:

"The Supreme Court follows the election results."

Judicial independence is prized in western societies but, no matter how free from political interference a judiciary may be, its matters are appointed by politicians, their conditions, financial and non-financial, are fixed by them and they can usually be removed by them.

It has been said that there are no votes in courts. A government is unlikely to gain much additional electoral support by improving the courts system but it may lose some as a result of criticisms of the administration of justice. This creates a climate of caution which may affect governments and responsible ministers.

The calibre of the ministers of any government will vary. Change in a courts system will be facilitated where there is a strong influential and innovative Attorney-General. It will be hindered if the occupant of the position lacks these attributes. In any case, the Attorney-General will most usually have been drawn from the legal profession and may share the "occupational psychoses" of that profession.

Irrespective of the calibre of the ministers, the managers of courts, both judicial and non-judicial, must, in their management if not in their judicial duties, pay attention to the

* Some writers list three, combining the executive and the administrative.

demands of their political masters. As Secretary to the Victorian Attorney-General's Department, I find, like the king in *The Gondoliers,* some truth in the comment that the "privilege and pleasure that I treasure beyond measure is to run on little errands for a Minister of State".

THE ECONOMIC ENVIRONMENT

Courts systems are spenders rather than earners and usually are not permitted to use for their own purposes any revenue which they **do** generate. Accordingly, they are likely to suffer from the effects of cutback management. On the one hand, it is unfortunate that the current drive in Australia for improvement in the operation of courts has coincided with the move for smaller government and the attacks on "swollen bureaucracies" which appear to have been accepted by all political parties. On the other hand, there are advantages in that the move for better management of courts is proceeding in an atmosphere marked by acceptance of the need to manage with less. Accordingly, the reformers are forced to be more discerning and selective in their reforms and to apply cost-benefit tests to proposed innovations.

Responsibility for finiancial management, through such techniques as programme budgeting, is being placed on the judiciary, senior administrators and even people quite low in the hierarchy. The days when financial management could be left to accountants have gone.

THE LEGAL CULTURE

In today's climate of frenetic media and pressure-group activity, the members of many professions and occupations — medicos, nurses, teachers, trade-union officials, used car salesmen — are acutely conscious of how their images are perceived. So is the legal profession. If comments made by members of the professions and others at the cease-flow management seminars held in Melbourne earlier this year are valid, there is good reason for this concern.

The Lord Chancellor in *Iolanthe* could sing blithely:

"The law is the true embodiment
Of everything that's excellent.
It has no kind of fault or flaw,
And I, my lords, embody the law."

However, laypersons are more inclined to the echo that "the law is an ass" and agree with Shakespeare's character in *Henry VI:*

"The first thing we do, let's kill all the lawyers."

Lawyers place great store on precedents and tend to look to the past. The most innovative lawyers, those who have attempted to decide legal questions in terms of current social needs and conditions, have not always been the most highly regarded.

Lawyers focus within a narrow framework, on particular cases. If they can close the system within which the case is being considered, that is keep out as many extraneous issues as possible, so much the better. They are not encouraged to think conceptually, strategically or systemically. They are change-resistant.

However, the picture is not entirely black. Lawyers **are** accustomed to operating under conditions of uncertainty. Laws are subject to different interpretations. We see the most eminent jurists in the land, the Justices of the High Court, divided over the meaning of a statute or section of it or even a word or words in it. The former Prime Minister, Gough Whitlam himself a Queen's Counsel, once remarked, referring to divisions in the High Court over a particular issue:

"Two think this and two think that and Barwick and Murphy are paired."

THE JUDICIAL CULTURE

Traditionally, the judiciary has not been involved in management. The notion of judical independence has resulted in a "them and us" — the judiciary and the administrators — attitude. Judges have tended to demand or expect administrative resources rather than negotiate for them, which is what most managers have to do. Australian judges may not, like Gilbert's Lord Chancellor, "sit in my court all day, giving agreeable girls away" but they enjoy great power and prestige.

The court administators constitute the meat in the sandwich between the judiciary and their departmental superiors. This tends to frustrate any inclinations they have to effect change, to strengthen tendencies towards caution.

In Victoria, the separation of the three benches — Supreme, County and Magistrates, and you may like to throw in the tribunals for good measure — and their independence from each other, has meant that the judiciary and magistracy do not have a system-wide view. This situation has had the unfortunate consequence of limiting effective judical input into the making of system-wide priority decisions.

Change is usually facilitated if effective leadership is given. However, the achievement of leadership in courts is difficult. In Victoria, the Chief Justice, Chief Judge and Chief Stipendiary Magistrate is each *primus inter pares.* Each must attempt to lead collegially and by means of consensus and this can be both frustrating and time consuming.

In Victoria, there has been fairly general acceptance of the recommendation of the Civil Justice Committee:

"The management and administration of the Courts in Victoria should be a function of the executive branch of government and the judicial branch of government working together."

The Attorney-General, the judiciary and the administrators are all working actively to make this partnership a reality. Some success has been achieved but the problems are many and the challenges to management great.

And there are dangers. If judges take additional management responsibilities, the pressures for greater accountability to the public will inevitably grow. There are signs of increased awareness in the judiciary of the principle of accountability. Perhaps the most significant is the trend towards the production of more detailed information in the annual reports, informing the public of the work done, of the problems faced and of delays experienced. The First Annual Report of the New South Wales Court of Appeal goes further than any other. But courts elsewhere in Australia are becoming more open about their operations.

Whatever system of accountability is developed, it must not be such as to put at risk judicial independence. But that independence is surely independence in relation to the decision-making reached in a case and in relation to the reasons for it. Judicial independence should not be re-interpreted to cover independence from scrutiny in relation to the managemet of the Court's business. The courts are resourced by public funds and those who manage the funds are accountable for their stewardship.

THE PUBLIC SERVICE CULTURE

The public service culture is one which, traditionally, has been change-resistant. G. D. H. Cole described senior British civil servants as "clever, cautious people". Most would apply the second adjective, at least, to Australian public servants.

Public servants tend not to be risk-takers. The may be called to account publicly for their actions and public-service careers are facilitated more by the avoidance of failures than by the achievement of success:

"The evil that men do lives after them,
The good is oft interred with their bones."

(Mark Antony in *Julius Caesar)*

It is, however, fair to say that the Australian public service culture has changed over recent years. Appointment and promotion based primarily on merit, lateral recruitment and contract employment are more common than they once were. Management techniques developed in the private sector — management by objectives, strategic planning, classification according to merit, job rotation — have all, to some extent, been "give a run" in the public sector.

These developments have provoked some backlash.

Academics and public servants have both criticised what they term "managerialism", the attempt to impose private managerial methods on public services. The "we're different" syndrome is strong. Courts **are** different but they are similar. Some will say that the differences are greater than the similarities, others that the reverse is the case. The main thing is to recognise that there are both differences and similarities.

There **are** particular problems in courts systems. In Victoria, there have been some changes in organisation structure evidenced by area management, devolution of authority and responsibility and the appointment of more managerially-oriented administrators. However, "the dead hand of history" still lies heavy. The Clerk of Courts category, from which Area Managers must be apppointed, remains something of a closed shop. Administrative staff in courts serve two masters — judicial and executive — who may place conflicting pressures on them.

THE MANAGEMENT OF CHANGE

TODAY, the need of change in court systems is widely accepted; by politicians, many of the judiciary, administrators and members of the legal profession.

This change must be managed. A good deal of change in organisations **does** "just happen" but reliance on its happening can result in opportunities being missed or the effects of changes which do occur proving to be dysfunctional resulting in recriminations and resistance. The concept of the management of change raises two major issues: partnership and planning.

PARTNERSHIP

Because of the primacy of judicial independence, change in courts must be judge-driven, but driven by means of a partnership between the judiciary and the administrators. Let me say, at this point, that I prefer the term management to administration and manager to administrator. In many areas, the word management is replacing administration. For example, in Victoria, the Courts Administration Division has been renamed the Courts Management Division.

However, the terms administration and administrator are still with us, particularly in the public sector. Administrator is a convenient designation for non-judicial managers of courts. It is preferable to bureaucrat, even to public servants.

The partnership between the judiciary and the court administrators is an implied one, there is no contract or statement of responsibilities, authority of duties. The judiciary is, of course, the senior partner and the functioning of the partnership requires that there be goodwill between the parties and mutual respect based on function rather than on status.

The parties are responsible collectively for the operation of the courts and each must accept its responsibility and recognise that of the other party.

A number of conditions need to be met if the partnership is to operate efficiently and effectively as the manager of change, change being implemented smoothly without the "big bang" of crisis which may rock the organisation to its foundations:

- Members of the judiciary and administrators should be persons who can face up to change and welcome it where it is desirable, accepting the roles of agents of change.
- Each party needs to develop a positive role, neither attempting to relegate the other to a menial role or to engage in scapegoating, attributing any failure to the inadequacies of the other.
- It must be recognised that the court adminstrator works in a matrix type of organisation with two superiors, one judicial and one functional, with all the problems that this implies.
- The efficient organisation of work through the provision of clear objectives and adequate work processes, procedures and resources will free both judiciary and administrators from having to pay too much attention to "fire-fighting" and permit them to give time to planning and implementing change.
- The culture of the organisation needs to be "unfrozen" through being questioned.
- Mechanisms and processes which focus on managing change should be established.

PLANNING

The management of change requires organisational commitment to a strategic corporate plan. Planning involves looking ahead, seeing problems and opportunities through a telescope rather than a microscope. Planning is a dangerous businesss, planners "stick our their necks" and take the risk that they may be wrong. It requires courage and confidence and an ability to admit and face up to one's mistakes. In the past, the legal, public service and courts cultures have not been favourable to planning so that cultural changes, "unfreezing" are necessary to facilitate it.

Planning is based on data, on information and, even now, the management of Australian courts systems is hindered by a lack of data and the ability to collate and analyse it readily. This problem is being attacked particularly through computerisation. It is not, however, sufficient to have data and the capacity to anyalyse it. It is also necessary to have managers, judicial and non-judicial, who can interpret it and are willing to act on their interpretations.

Planning involves looking **out** into the environment and **in,** into the organisation. Outside are opportunities to be grasped, resources to be used, threats to be countered and constraints to be taken into account. Lawyers tend to be happier operating in closed than in open systems; some members of the judiciary may feel that they should be insulated against outside influences. However, if change is to be planned, managers of courts, judicial and non-judicial, need to establish and maintain relationships with key persons operating in their task environments: politicians, members of the legal profession, public servants, community groups, suppliers of technology.

Inside the organisation are resources: human, financial, organisational and material. Managers need to assess the adequacy of these to facilitate change; to what extent should they be changed, adapted, supplemented or complemented?

Strategic planning is based on the answers to the three questions; in the long-term:

What are we trying to do?
Why are we trying to do it?
How are we trying to do it?

The plans of most organisations constitute a hierarchy. At the top is the corporate or master plan then, proceeding downwards are:

Long Term Programmes
Short Term Programmes
Budgets.

One of the early management theorists, Peter Drucker, warned against divorcing planning from doing. An organisation should not be:

> ". . . divided into classes of people; a few who decide what is to be done . . . and the many who do what and as they are being told. Planning and doing are separate parts of the same jobs."

Planning, then does not stop with the design of the grand plan. Plans do not implement themselves and implementation is a part of planning. Plans need to be monitored, again information and the ability to analyse and interpret it are vital:

Is performance according to plan?
If not, what are the causes of variances?
What action should be taken?

Planning entails setting up a control or feedback system so that departures from plan can be noted and decisions made as to whether any remedial action should be taken, such as:

Revision of environmental analysis
Revision of organisational analysis
Revision of plans.
Action involving:
People
Finance
Technology.

To repeat, change needs to be planned. But no plan is made once and for all; it is usually necessary to keep it under constant scrutiny. Also, planning should not be a centralised function. Its formulation, implementation and review should permeate the whole organisation. Each member of the organisation should be a planner. The corporate planner's role is a specialised one, it does not comprise the whole of planning.

CONCLUSION

THE major themes which I have been attempting to develop come under four headings:

1. The rapidity at which change is occurring today makes its management more difficult than has been the case in previous eras.
2. Change develops in the environment — economic, political, social and task — and should be seen first through a telescope not a microscope.
3. Resistance to change by members of an organisation and by its "publics" is not necessarily pathological but is one of the facts of organisational life. It may be countered through:
   Communication
   Participation
   Motivation
4. Change may, indeed must, be managed. In courts systems management involves a judicial-adminstrative partnership.

What is the specific role of the administrator, the "lay" member of the partnership? Primarily, it is that of the expert but an expert who is "on tap not on top". The status of the judiciary tends to be higher than that of the admistrators and the former has ultimate responsibility for the management of the courts and must "drive" change.

However, administrators are not merely the servants of the judiciary. They work full-time at management, whereas management is only one part of the job of the judiciary. A judge or magistrate is most unlikely to have been appointed because he or she possesses managerial skills. Also, administrators may have skills in such areas as corporate planning and human resource, financial and technological management which are not possessed by most members of the judiciary.

Despite the advocacy of bodies such as Australian Institute of Management, management is not a profession — at least in the sense that medicine, law, dentistry, engineering and school teaching are considered to be professions. It does not have the hallmarks of a profession; legally-stipulated conditions of entry, mandatory requirements in terms of education and training, accepted codes of behaviour and ethics. There are no formal barriers to any person who is able to do the job being a manager. Ability and skill in management may be acquired and developed through one's innate characteristics, experience and any one of a whole host of educational and training courses — even so-called "sensitivity training" which aims at developing one's sensitivity and self-awareness and making one a nicer person — qualities which some cynics would say are the antithesis of those shown by many top managers.

Judges and magistrates are perforce managers and should take every opportunity to develop their skills in management. I am not, however, here to say how they should do so.

The full-time administrators, if capable, will possess power, potential at least. They have been immersed in management — in their past experience, their education and training and their current activities — to a far greater extent than have most members of the judiciary. I am reminded of the experience of a friend bargaining with a car salesman. After some time, the saleman, apparently tiring of the game, asked:

"How often would you buy a car?"

"Oh!" was the reply, "about once every three years".

"Well," said the salesman, "I have sold, on average, about half-a-dozen per week for the last twenty years. What makes you think you can out-bargain me?"

Administrators **do** possess power. It is a question of whether and how they use it. Do they fail to use it all or only in their own interests, not those of the organisation? You have probably tired of my use of the word "partnership" to describe the desirable relationship between judiciary and administrators. Without using the term again, I would stress that courts management required a close relationship between judiciary and administrators in which each party respects the other, perceives the other's role realistically and interprets its own role in the interests of effective and efficient management.

Management is a difficult task. It is usually carried out under conditions of uncertainty and its results may be contingent upon a variety of factors, some outside the control of the manager. Contingency — "it all depends" — has replaced classical theory — based on so-called "principles" — as the most widely accepted theory of management.

Earlier this year, a Supreme Court Justice was heard to say that he found his work on the bench easier than the adminstrative tasks which he had to perform when off the bench. Management requires not only skills and abilities but appropriate attitudes, of which courage is, perhaps, the most important — to be prepared to manage rather than to let things happen, to take risks and to be ready to make the unpopular decision when necessary.

My final advice to court adminstrators may be couched in Lady Macbeth's words to her husband:

"We fail!
But screw your courage to the sticking place,
And we'll not fail."