

# JUDICIAL PHILOSOPHY IN INFORMATION TECHNOLOGY STRATEGY

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## Introduction

One may be forgiven for thinking that the title of this paper is a mouthful of words conjured by a “heat-oppressed brain”<sup>1</sup>. So, in practical terms, this paper will discuss the strategy of the Subordinate Courts of Singapore in the application of information technology to improve the administration of justice. I have chosen to concentrate on three strategic components in this paper:

Firstly, the Ends;

Secondly, the Means; and

Thirdly, the People.

In discussing “the Ends” we ask ourselves, “*What do we aim to achieve with technology?*” while the issue in dealing with “the Means” is, “*How do we achieve our aims with technology?*” Dealing with “the People”, we have to assess, “*What is our role in*

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<sup>1</sup> Macbeth, Act 2 Scene 1 (line 39)

Macbeth :

“Art thou not, fatal vision, sensible  
To feeling as to sight? Or art thou but  
a dagger of the mind, a false creation  
Proceeding from the heat-oppressed brain?”

*the use of technology to achieve our aims?”* After all, it is the People who translate the Means to the Ends.

The Ends are the concrete results of our vision. There is nothing unusual about that, but the Means I take to include our vision of how technology is to be applied at various points of the future. I do that for the simple reason that our ride on the information technology super-highway is a never ending journey. And so it is with the road to justice. Therefore whatever vision we have, given the pace of change, will be nothing more than a way-station, if and when we do reach it. Each way-station is then nothing but a launch pad for us to create and prepare to meet our respective futures. This framework gives us the necessary flexibility to adapt and anticipate possible discontinuities in the future.

### **The Ends**

With your leave, I shall do the unconventional and begin our discussion with the Ends, for it is only when we know where we want to go that we increase our chances of making it there. It was Stephen Covey<sup>2</sup> who popularised this principle of “beginning with the End in mind”. A clear direction in the Ends is a necessary counterbalance to the flexibility which is inherent in the way we have defined the Means. The Singapore Subordinate Courts

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<sup>2</sup> Stephen Covey, The Seven Habits of Highly Effective People (Simon & Schuster) pg 96.

Mission Statement on the use of technology<sup>3</sup> makes it clear that we intend:

*“To harness the rapid advances of cutting-edge technology and effectively exploit their application to support the Subordinate Courts in achieving excellence in the administration of justice in an equitable, efficient and expeditious manner in accordance with the Laws of the Republic of Singapore”.*

The important point is that technology must be applied to serve the five timeless values encapsulated in our Justice Statement.<sup>4</sup> These values are :

*Accessibility;*

*Expedition & Timeliness;*

*Equality, Fairness & Integrity;*

*Independence & Accountability; and*

*Public Trust & Confidence.*

The Mission Statement directly answers the question, “What do we aim to achieve with technology?”. The equitable use of technology supports the values of Equality, Fairness and Integrity; the efficient use of technology contributes to Accessibility; and brings to fruition the values of Expedition and Timeliness.

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<sup>3</sup> This can be accessed on the Internet at <http://www.gov.sg/judiciary/subct/index1.html>.

Technology can also increase the transparency of due process, resulting in Public Trust and Confidence being reposed in a Judiciary whose Independence and Accountability are unquestioned.

In the final analysis, technology can never be an end in itself. We must take it upon ourselves to define our relationship with technology and to manage it in such a way that it serves our peculiar needs, goals and values.

### **The Means**

I propose to discuss the Means at a conceptual level, in terms of three meta-concepts. Of course, it would be rare to find Information Technology projects implementing any of the three meta-concepts in their pristine form. Like any mental abstraction, they are however useful in revealing assumptions, modelling reality and in turn influencing the re-engineering of existing processes (as we shall later see). The three meta-concepts are:

- (i) The Virtual/Cyber Court
- (ii) The Paperless Court
- (iii) The Intelligent Court

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<sup>4</sup> The Justice Statement was officially launched by The Honourable the Chief Justice during the Subordinate Courts 6th Workplan Seminar 1997/98. It serves as a constant reference point for our policies and measures.

Each of the above has to do with the dismantling of some of the operative assumptions that we have long taken for granted. This approach is resonant with our national movement called Public Service 21, to position our public institutions to view change as a superior and necessary way of life. As Mr Lim Siong Guan, Permanent Secretary, Prime Minister's Office, put it, "We are changing mindsets. We are changing outlooks. We are changing the way we do things. This is the rationale for Public Service 21, for Scenario-based Planning, for the concerns in Public Sector leadership ..."<sup>5</sup>

(i) *The Virtual Court*

Specifically with the Virtual Court, this has to do with reversing the assumptions that there must be a physical courthouse or courtroom, which is opened at fixed hours, manned by court staff and physically attended by those interested in its proceedings. The predominant idea is revolutionary: a court existing in cyberspace, overcoming the constraints of time and space. Yet with technology, bounded by the necessary safeguards<sup>6</sup>, the Virtual Court can be more accessible and effective while at the same time being no less accountable. The Honourable the Chief Justice is prepared to surf this tsunami of infotech, with advanced virtual

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<sup>5</sup> See the PS21 homepage at <http://www.gov.sg/ps21/ps21.html>.

<sup>6</sup> There is presently at national level an Electronic Commerce Hotbed (ECH) Study Group on Legal, Regulatory and Enforcement Issues which reports to the ECH Policy Committee. See The Singapore Law Society Gazette, February 1998, at pg 18.

reality video-conferencing systems and the use of holograms.<sup>7</sup> One must not assume that The Honourable the Chief Justice was less than serious when he said that “Judges will then be able to be in two places at the same time”.<sup>8</sup>

Already there are promising signs for the realisation of the Virtual Court. The explosion of the Internet<sup>9</sup> with the development of netmeeting software, facilitating internet video-conferencing as well as multimedia teleconferencing “live”, show that the question is no longer “how”, but “when”, this technology will be applied in the justice process.

In Singapore, we have taken a few tentative steps forward by permitting the filing of claims in the Small Claims Tribunals by Internet, the use of video-phones in consultations at these Tribunals, and the admission of claims by telephone.<sup>10</sup> The use of video-conferencing has been operationalised in Court 26 (where bail applications are dealt with from the remote remand site) and

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<sup>7</sup> Keynote Address of The Honourable the Chief Justice delivered at the Technology Renaissance Courts Conference 1996 in Singapore (paragraph 22).

<sup>8</sup> Joint Keynote Address of The Honourable the Chief Justice delivered at the AIJA/Asia Pacific Courts Conference 1997 in Sydney, Australia (paragraph 52).

<sup>9</sup> In 1983, there were only 500 internet hosts. As at 14 January 1998, it was reported on the BBC that there were 82 million PCs connected to the Internet, a figure fast becoming outdated even as I speak.

<sup>10</sup> Legislation enabling the electronic filing of claims was passed on 15 July 1997. Between July to December 1997, a total of 1888 claims have been filed electronically. Legislation on the use of video phone for consultation and the admission of claims by telephone was passed on 14 January 1998 and will be in force with effect from 16 March 1998.

Court 16 where vulnerable witnesses can give evidence from an adjoining room.<sup>11</sup>

At the moment, one prime manifestation of the Virtual Court is the Automated Traffic Offence Management System<sup>12</sup> - a network of self-operated kiosks islandwide, at which accused persons may “plead guilty” to minor traffic offences. (The plea of guilty is in fact “accepted” behind the scenes by a magistrate). Indeed, to take this one step further, even the physical constraint of having to be at a kiosk can be removed by co-locating cyber-kiosks in the webpage of a Virtual Court.

Thinking further ahead, one can imagine a Virtual Court taking evidence from deponents all over the world, communicating by multimedia teleconferencing and issuing orders via secured e-mail. In the same vein, Virtual Conferences are proliferating all over the Internet and it may be a matter of time before the successor to this Conference will take place without participants ever leaving their offices.

(ii) *The Paperless Court*

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<sup>11</sup> See section 364A Criminal Procedure Code, Chapter 68 and paragraph 77 of the Subordinate Courts Practice Directions (1997 Edition) and Registrar’s Circular 1/96.

<sup>12</sup> In Long Beach Municipal Court, there is a similar system which handles payment of composition fines imposed by non-court agencies. In Phoenix Arizona, there is a facility called “QuickCourt”, which allows the filing of divorce and other types of proceedings to be dealt with in push-button kiosks. We have extended the concept to a plea of guilt, before a Virtual Court. The legislative framework is found in section 137A of the Criminal Procedure Code.

The second meta-concept is the concept of the “Paperless Court”, which challenges the conventional assumption that paper must be the medium of communication in the courts. Elevating the Paperless Court to a meta-concept is a useful reminder that in going digital, we must avoid the tendency to generate more paper copies of documents than before. More importantly, the advantages of going paperless are at once obvious: immediate, concurrent and 24-hour remote access to court documents. The “portability” of “court files” reduces the high costs of manpower and physical space for the handling and storage of court files respectively.

The more staggering implications of going digital that we have explored have to do with the nature of the electronic medium. The stage is set, once we have sufficient data in electronic form, for the creation of vast data warehouses and the application of Artificial Intelligence for data-mining. Already the Differentiated Case Management System uses algorithms to automatically generate reports, some of which are statistical, for management analysis. When people are comfortable working with the electronic medium, psychologically the scene is ready for computer animation and multimedia presentation in court.<sup>13</sup>

The Electronic Filing System, which was introduced in March 1997, will effect a sea-change in the way litigation is

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<sup>13</sup> Keynote address of The Honourable the Chief Justice delivered at the Opening of New Legal Year 1988 (paragraph 14).

conducted in the courts.<sup>14</sup> This is a proprietary system which provides a secure and efficient mechanism for transmitting and receiving documents in their original format. As indicated earlier, the Subordinate Courts are currently testing a different paradigm with the electronic filing of claims through the Internet, in the Small Claims Tribunals. An open protocol like the Internet is a viable and exciting alternative.

(iii) *The Intelligent Court*

It is necessary to state what we have in mind here, lest I be misunderstood as suggesting that the existing courts are anything but intelligent. The driving vision here is a court with all the available information, knowledge and perhaps, even wisdom at its finger tips.<sup>15</sup> We had considered the more cumbersome labels of “Super-Intelligent Court” or the “Artificial Intelligence Court”, but settled on the present epithet as being more in sync with the other two concepts.

While the previous two meta-concepts had emphasised the process (and its efficiency), the focus of the Intelligent Court is on the substance and quality of the decision. The quality of a decision is largely determined by the material available to the decision-

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<sup>14</sup> See Order 63A of the Rules of Court 1996.

<sup>15</sup> The technologically more advanced jurisdictions are already actively exploring the use of artificial intelligence in the legal field. In Japan, there was a project called “Legal Expert” which was scheduled from 1993 to 1997 and funded by the Japanese government. It had a total of 35 researchers who were trained in the fields of law, information science and “basic disciplines of human thought”.

maker. If all the relevant legislation, caselaw and indeed, arguments and concepts, are put before the judge, we can to a large extent ensure that no decision is *per incuriam*. Similarly, all relevant information about an accused person like his antecedents, outstanding offences, even family history, that are available from other agencies (whether locally or globally) should be hyperlinked and accessed at the appropriate time.<sup>16</sup>

We are already realising this concept in some of its aspects, as seen in our participation in the Integrated Criminal Justice System and the Legal Workbench. The first is a nation-wide data warehouse, linking the databases of, and enabling document exchange electronically amongst, all public agencies concerned in the administration of criminal justice. The Legal Workbench is a comprehensive legal research system consisting of contributions from the Attorney-General's Chambers, Butterworths Asia, Information Technology Institute, Law Society of Singapore, National Computer Board, National Science and Technology Board, Singapore Academy of Law, Singapore Network Services Pte Ltd, Singapore Parliament and the Judiciary. All the databases and research tools are linked and can be accessed at one place,

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<sup>16</sup> Vannevar Bush - the "father of hypertext" - in applying his "memex machine" (the precursor to our hypertext systems) to lawyers had this to say: "The lawyer has at his touch the associated opinions and decisions of his whole experience, and of the experience of friends and authorities. The patent attorney has on call the millions of issued patents, with familiar trails to every point of his client's interest ..." See his classic work, "As We May Think" at <http://www.isg.sfu.ca/~duchier/misc/vbush/vbush-all.html>, pg 15 of 17.

presently a webpage, hosted by the LawNet.<sup>17</sup> Amplify this ten-fold, even hundred-fold, regionalise, then globalise, and the result approximates the Intelligent Court of the future. The sheer “dumb power” of the databases, when networked into a smart web, can be further developed into superior tools, which can even supplant valuable skills.<sup>18</sup>

But let us not discount the emergence of Artificial Intelligence in making the actual decisions. This has been noted by our Chief Justice as well as Justice Michael Kirby of the Australian High Court Bench, who presaged that “the new millennium beckons in which primary decisions are likely to be increasingly made by the application of artificial legal intelligence”<sup>19</sup>. Indeed the legal process, it has been said, lends itself appropriately to the decision-making processes of artificial intelligence.<sup>20</sup> The issue then becomes an emotive one: will computers one day replace a human judge as the decision-maker?<sup>21</sup>

The three meta-concepts offer a simple yet powerful framework for kick-starting any re-engineering of existing

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<sup>17</sup> At <http://lawnet.com.sg>. The Legal Workbench was launched on 28 February 1998 by The Honourable the Chief Justice and has been described as the law library of the future (see also Sunday Times report of 1 March 1998).

<sup>18</sup> Notably, manual research skills as an example.

<sup>19</sup> Preface to Pamela Gray’s Book, “Artificial Legal Intelligence”.

<sup>20</sup> Indeed, futurist James Dator expressed this view at the Scenarios to Justice Seminar held in Singapore in May 1997. At the 1996 Technology Renaissance Conference in Singapore, Professor Hajime Yoshino, a researcher in the Japanese “Legal Expert” project, demonstrated a legal decision-making model.

<sup>21</sup> An interesting discussion of some of the possibilities, including a “justice computer” deciding mundane and routine cases, took place at an Information Technology Forum held in conjunction with the Scenarios to Justice Seminar (see Straits Times report of 29 May 1997).

structures and processes. The Ends must be firmly at the front of any innovative step. Then by asking ourselves, after getting into the heart of a process and understanding its rationale and effect, how do we make it more “virtual”, and imbue the participants with more “intelligence”, without generating a mountain of paper records, we can reveal and question the underlying assumptions. Using technology as an enabler, a resource multiplier and information provider, we can next change the steps in the process, the roles, expectations and mindsets of the participants and then overhaul the process. Again, with the assistance of technology to monitor the new process, we ensure that we reap the expected benefits.

On a more specific level, the Subordinate Courts of Singapore have established a working Technology Policy Task Force. This small group of people is part of the Justice Policy Group, a think-tank for conceiving and formulating judicial policies. One of the specific methodologies adopted by the Task Force is that of environmental scanning. This involves an ongoing process of researching and identifying key emerging issues, as well as searching for new tools that will directly impact the way we work. Given the faster life-cycles of each round of technological change, it is not sufficient just to work hard and think harder. Scenario planning enables us to work smarter and to think in the future tense.<sup>22</sup>

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<sup>22</sup> In Singapore, scenario planning is driven at the national level by the Scenario Planning Office (SPO) under the Prime Minister’s Office. The Subordinate Courts have a close

As we launch into this vast ocean of information, we are guided by a comprehensive set of criteria enunciated by The Honourable the Chief Justice and announced at the Technology Renaissance Courts Conference 1996.<sup>23</sup> These criteria are:

- 1) Technology should foster greater access to the courts; there should be easy access to justice via consumer-friendly technology that is comprehensible and requires little or no training, for example, telephone and television;
- 2) Technology should enhance the role of the court as a service institution;
- 3) Technology should improve the quality of service;
- 4) Technology should enhance the management of the justice system by increasing efficiency;

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working relationship with the SPO and the Justice Policy Group uses a similar scenario planning methodology. For an updated account of the process, see "Learning From the Future" edited by Liam Fahey and Robert Randell (Wiley).

<sup>23</sup> Keynote Address of The Honourable the Chief Justice delivered at the Technology Renaissance Courts Conference 1996 in Singapore (paragraph 9).

- 5) Technology should not be used as a substitute for the knowledge, skills and judgment of individuals. Rather, it should assist them in the exercise of their knowledge, skills and judgment;
- 6) Technology should enhance productivity, reduce delay, or otherwise be cost effective;
- 7) Technology should improve the decision-making process by providing complete and accurate information;
- 8) Technology should be acceptable and convenient to end users;
- 9) Technology should accommodate the need for data integrity, confidentiality and protection of privacy; and
- 10) Technology should have a useful life.

The above ten criteria act as a sort of conceptual filter, allowing us to converge on the most relevant, cost-effective and stable technologies for implementation. It is well to remember His Honour's admonition that, "Justice should never be at the cutting-

edge of technology for dignity and due process are too important to jeopardise through potential systems failure or malfunction.”<sup>24</sup>

One promising area we have identified is that of voice-recognition technology. We have in mind the technology that allows the instantaneous conversion of speech into text in a multi-speaker environment like the courtroom. The maturity of such a facility will free judges from the task of manually copying, sometimes verbatim, the evidence of the witnesses and arguments of counsel. Instead, the subjective evaluation of testimony and argument can take place contemporaneously. This development is also in tandem with voice-activated command and control of the computer. Another facet is that such technology has the potential to re-engineer the way we work, even by the standards of high-tech methods like digital recording of evidence. Instead of having to record voice into digital sound files and have the latter transcribed by another group of people, voice-recognition technology collapses these separate processes into one, with tremendous cost savings. This is not to forget that it solves the perennial problem of archival and storage of paper records.

### **The People**

Our philosophy regarding People vis-a-vis our Information Technology Strategy must be seen against the backdrop of The

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<sup>24</sup> Keynote Address of The Honourable the Chief Justice delivered at the Technology Renaissance Courts Conference 1996 in Singapore (paragraph 23).

Honourable the Chief Justice's exhortation to all judges to exercise leadership in managing change. His Honour said that, **"In taking the lead, we must create an environment that embraces change as an opportunity and not a threat ...** The environment must be one which includes continuous change which will improve the organisation and the system as whole. This working environment must not only allow, it must encourage and even demand change when the status quo is clearly unsatisfactory. All these involve the creation of a pro-change organisational culture. **Every one from the Chief of the Judiciary right down to the officer manning the service counters must be an activist for change."**<sup>25</sup>

This attitudinal dimension of managing change becomes imperative when one is dealing with the impact of technological change. To be sure, change and paradigm shifts are nothing new to man, but the notable aspect of technological change is that it is exponential and accelerated. Using Professor James Dator's metaphor of the tsunamis of change, what we will experience are bigger and stronger waves, coming at us at more frequent intervals.<sup>26</sup>

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<sup>25</sup> Keynote Address of the Honourable the Chief Justice delivered at the AIJA/Asia-Pacific Courts Conference 1997 in Sydney, Australia (paragraph 36).

<sup>26</sup> A historical example neatly illustrates this :

The first microprocessor of the "XT" series was discovered in the early 1970s. It took almost fifteen years before the next 286 and 386 processors of the "AT" series were launched in the 1980s. This lead time was cut down to ten years when the pentium chip replaced the 486 processor, the last of the "AT" series. Today, barely six years after the discovery of the pentium chip, we are talking about MMX technology. (MMX technology has been used to improve game multimedia performance, and will be added to both Pentium and Pentium pro

The other characteristic of this technological driver of change is that it is not “unilinear”, i.e., the shifts are discontinuous, making speedy adaptation and response critical for survival. Competitive advantages or niche markets which appeared almost invulnerable were wiped out overnight. Businesses are now questioning whether it still makes sense to talk about a *sustainable*<sup>27</sup> competitive advantage.

If the Judiciary is to stay relevant and responsive to the needs of our stakeholders in such a technological future, then the people side of management, the organisational culture<sup>28</sup> must be adequately addressed. The Honourable the Chief Justice has made the point that “technology alone does not improve the system. It is people, assisted by technology, who make the justice system work.”<sup>29</sup>

In this context, management guru Tom Peters makes a germane observation when he says “that every organisation from six to sixty thousand people” needs a Brahma (the creator), a Vishnu (the preserver) and a Shiva (the destroyer). “And you need

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designs). And that was during a period of relative calm, when compared with the potential of the Internet in effecting a global Network Economy.

<sup>27</sup> See “The Changing Art of Becoming Unbeatable”, *Fortune Magazine*, November 24, 1997 at pg 159.

<sup>28</sup> At a recent Europe Asia Forum, Senior Minister Lee Kuan Yew said, “My greatest concern is the inability of the emotional and cultural makeup of a man to catch up with the technological changes that have been brought upon us, and are coming. There is a time lag and this creates a dangerous gap.” (Sunday Times report of 22 February 1998).

<sup>29</sup> Keynote Address of the Honourable the Chief Justice delivered at the Technology Renaissance Courts Conference 1996 (paragraph 23).

these tensions simultaneously.” He warns that “the problem with the average-size corporation is that the preservers take over and stagnation sets in.”<sup>30</sup>

An old paradigm worth repeating views change as a three-act play. Act One is the process of “unfreezing” - designing the vision. The second act is to “start the changing”, to implement the changes and overhaul the system. The final act is to “refreeze”, to consolidate and stabilise. This cycle of change goes on continually - unfreeze, change, and refreeze.

The organisational culture<sup>31</sup> must therefore be sufficiently open to protect, nurture and reward the creative destroyers, for unless the present paradigms are constantly questioned and unfrozen, most strategies will be obsolete by the time they are ready for implementation. After unfreezing the paradigms, the creators must then take over, identify the issues and paint the vision.

Having said that, “it is not what the vision is but what it does”<sup>32</sup>. It is not enough that the people are *willing*; they must be *able* i.e., properly equipped, whether with the tools, technical skills or the administrative structures or support, to put flesh to the vision. The preservers now have a role to play. That leads me to

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<sup>30</sup> Sunday Times report of 11 January 1998, also at <http://web3.asia1.com.sg/archive/st/0/pages/stfea10.html>.

<sup>31</sup> i.e., “what people do when no one is telling them what to do”. See footnote 27. Ibid at pg 160.

the aptitudinal dimension, which is really a huge area. In the context of Information Technology and an environment of frenetic change, I propose to dwell on the training philosophy: a central pillar of this dimension.

Even as we lay the building blocks for the Learning Organisation, we are mindful that Tom Peters is already talking about the “forgetting organisation”<sup>33</sup> in his recent book, *The Circle of Innovation*. The nub of our training philosophy in Information Technology therefore emphasises the process, the meta-skills of learning how to learn, adapt to new environments and innovate, rather than the content.<sup>34</sup> While consistency is the watchword for success in the recent past, curiosity and creativity must be nurtured to meet the future.

The strategic consideration in our training philosophy is beautifully captured by an imagery sketched by a learned author.<sup>35</sup> He posits that information is flowing through society like a river of increasing swiftness. As such, it is not as important to master its complete content at any given point, as it is to quickly master the ability to interact with this river of information and knowledge, based on one’s current situation.<sup>36</sup>

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<sup>32</sup> A quotation by Alan Kay.

<sup>33</sup> Tom Peters, *The Circle of Innovation* (Hodder & Stoughton ) at pages 76 to 120.

<sup>34</sup> Eric Hoffer admonishes that “In a time of rapid change, it is the learners who inherit the future. The learned find themselves equipped to live in a world that no longer exists”.

<sup>35</sup> Patrick Magee, “*Brain Dancing*”, pg 24.

It is therefore a daunting task, even for a small country like Singapore, to equip every member of the Judiciary from Judicial Officer to clerical staff, with the requisite aptitudinal apparatus. But we take seriously the challenge of adding value to our people - our most precious resource. Under the framework of Public Service 21, each public employee can work towards a target of 100 hours of training time per year. We believe that the tax dollars spent, in particular in training people to work with the personal computer and other tools of their trade in the next century, will reap increased productivity and effectiveness. In the Subordinate Courts, Judicial Officers work out individualised training roadmaps with their mentors, meant to achieve specific goals which may span across the annual Workplans.

## **Conclusion**

The trinity of the Ends, the Means and the People is a flexible framework, a window if you wish, for us to view the future. The meta-concepts have been developed from the numerous empirical Information Technology and related projects. They form intermediate destination points, as well as starting points, from which we navigate forward when a clearer assessment is possible. The brief excursus into organisational theory and culture has been necessary to underline the point that the organisation must create and reinforce the People's willingness,

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<sup>36</sup> If I may add, given the swiftness of the flow, one is unlikely to step into the same river twice, making it impossible to "copy" any formulae tested out somewhere else.

indeed eagerness, to move forward. The proper training philosophy then builds the People's confidence to meet the challenges ahead. In this way, we hope to ensure the long-term survivability, "response-ability" and effectiveness of our institution.