

Abstracts of the Workshops

ETHICS

Moral games and participatory ethics activities for critical thinking

Professor Darryl Macer

Monday 22 October at 3.00 p.m.

Thursday 25 October at 10.00 a.m.

Moral dilemmas face every one of us. There have been numerous books written to explain moral theories and how these can be applied to dilemmas we face in both daily life and in a range of professions. Critical thinking capacity is essential for judicial decision making, and this workshop will use examples of moral games and methods that have been developed in ethics education that are useful for judicial training. Developing such critical thinking capacity is also important for empowering persons to cope with changing times. Participation can promote the creation of ideas and individuality, which is needed for considering decisions that involve specialised knowledge from many disciplines. After examining the goals of ethics education in training for knowledge, skills and personal moral development, and discussing how these are shaped, there will be a series of exercises that encourage participation of learners demonstrated, with some examples of concrete methods that can be used.

Using critical thinking for determining ethical action

Maureen Conner

Monday 22 October at 3.00 p.m.

and 5.00 p.m.

The first premise that will be explored is that thought proceeds action. The second premise is that through deconstructing how we think, we are less likely to engage in inappropriate and unethical behavior. The goal is to explore how individuals engage in and justify behaviors that are inappropriate, intellectually dishonest, and jeopardize themselves and others. This exploration will be followed by introducing, discussing, and applying elements of critical thinking, thus demonstrating how deconstructing what we know and believe to be true can lead us to different actions that are rational, honest, and ethically defensible.

A UNESCO method of bioethics education

Judge Professor Amnon Carmi

Professor A. Carmi functions as the Head of the UNESCO Chair in Bioethics.

Monday 22 October at 5.00 p.m.

The Chair was authorized by the Director-General of UNESCO to compile a novel syllabus for courses in ethics to be offered to the world's medical schools.

Under the guidance of a Steering Committee, with the assistance of 130 members of the Chair's International Scientific Committee and sponsored by the members of its Network of

(70) Universities, a series of training manuals are compiled for use by the teachers of ethics at the medical schools. Each manual contains actual cases, up to thirty in number, which have presented ethical problems to members of the medical profession all over the world. Groups of cases are preceded by a general description of the type of ethical problems involved and each case is followed by general guidelines for the edification of students who must themselves, under the guidance of their lecturer, study the case, discuss the possible solutions and reject what they consider unsuitable before reaching their own decision. The point of departure of the UNESCO Chair's method is that the solutions of ethical dilemmas are subject to local cultural, social, economic and similar factors.

The method is based on the following three elements.

Firstly, the general sophistical lectures are replaced by the Socratic discussions that are led by the students. Secondly, the syllabus does not offer fictitious examples but is based on real cases. Thirdly, the students are provided with several alternative ethical solutions for each case. The purpose of the method is to use the active involvement of the students in the ethical debate in order to plant the relevant values in their minds.

The judicial institutes are asked to consider the possibility of adopting a similar method for the ethics education.

A short review of the structure and nature of

this method will be followed by a presentation of a few (real) cases that have raised ethical dilemmas. Model instruction books will be distributed, and the attendees will be asked to take active part in the discussion, the aim of which will be to reach a moral solution. Finally, the participants will be consulted about the need or the relevance of adopting the UNESCO's method of ethics education for judicial training

**Ethics education for judges:
An experimental approach
Professor Patricia H. Murrell
Tuesday 23 October at 11.30 a.m.
and at 3.30 p.m**

An underlying premise of this program is that ethics, professionalism, and issues of civility emanate from the internal character and integrity of the person as much or more than they depend on external, rule-based codes of behavior or conduct. They cannot be effectively taught in ways that leave our inner lives untouched. The opportunity for individuals to explore the landscape of their own minds and their habits and values as they craft a personal code that can guide their practice with integrity demands introspection on the part of the learner and only the deepest inwardness allows integrity to take form. Experiential learning provides a model that enables us to teach participants how to use their own experiences, step outside them and reflect on them, explore authoritative sources such as codes, and to

design new approaches for future actions. This process is essential if ethical behavior is to take root.

Use of technology in teaching
judicial ethics

Thomas Hollenhorst

**Tuesday 23 October at 11.30 a.m.
and at 3.30 p.m.**

The discussion will first center on the need to use technology. Because distance learning has become more accepted by judicial officers, I will discuss the creation and marketing of on-line judicial ethics programs. I will also demonstrate a couple of programs that have been created in California to satisfy our ethics training requirement. Secondly, I will describe and demonstrate our use of satellite technology to produce a highly interactive presentation that reached over a 1,000 California judges. This technology produced incredible results compared to the cost of presentation. I will be prepared to lead a discussion on these issues and answer any questions

How to establish a judicial
training institute

Ameurfina A. Melencio Herrera
Chancellor, Philippine Judicial Academy
Retired Justice of the Philippine Supreme Court

Wednesday 24 October at 11.30 a.m.

Foresight, initiative and support of the chief justice and of the highest court of the land are essential for creating and sustaining a judicial education institute. This is the Philippine experience. 12 May, 1996 – Administrative Order No. 35-96 of the supreme court established the Philippine Judicial Academy (PHILJA) and charged it with formulating and implementing a “continuing program of judicial education for justices, judges, court personnel and lawyers.”

Basis for court action: the constitutional repository of judicial power and administrator of all courts.

February 26, 1998 – Republic Act 8557

Legislative enactment institutionalizing PHILJA as a, “separate component unit of the supreme court and under its administration, supervision and control.”

Internal Structure – The Institute must have an efficient organizational structure. PHILJA has its Board of Trustees with the chief justice as its chairman. It is preferable that each of the hierarchy of courts be represented in the board. The Institute must have its own executive officials. It should be staffed by a corps of

professors, with a blend of experienced jurists and academics.

Sourcing and Funding – It must have a sufficient budget to carry out its functions. In the Philippines, the Academy derives its funding from budgetary sources and under the program of the Supreme Court of the Philippines.

Philosophy – Once created, the judicial institute must lay down its philosophy. The philosophy of the Philippine Judicial Academy is that the people are best served when the judiciary is independent and its members are men and women of proven competence, integrity, probity, and independence.

Objectives – It must also pursue its own objectives. For the Philippine Judicial Academy, these are: the training of the judicial person; the acquisition of judicial knowledge and the cultivation of judicial skills.

Programs – It must provide for curricular departments and lay down its core programs, like a pre-judicature program for aspirants to the Bench; an orientation program for newly appointed judges; regional judicial career enhancement programs for incumbent judges; and special focus programs

External Structure – It must also develop and strengthen networking and partnership with other institutions for the development and implementation of programs for continuing judicial education, but avoiding partnerships with advocacy groups most likely to litigate particularly before the Supreme Court.

Program and implementation must always be led by the Academy.

Excellence and Professionalism – Qualitative excellence of programs and high professionalism should be maintained so that training is not considered to undermine independence. Faculty development must be fostered. Needs assessments of clients should be conducted to maintain interest and determine suitability of programs.

Judicial Reforms – A judicial institute must keep abreast with judicial reforms since judicial education is an essential and distinct component of judicial reform.

**Judges teaching judges:
German and Austrian approaches
to creating a dialogue about ethics
Justice Barbara Krix; Justice Lysann
Mardorf; Justice E. Claudia Pronay
Wednesday 24 October at 11.30 a.m.**

Justices Krix and Mardorf will explain how judicial ethics are taught in Germany, the place of comparative law as a teaching tool, how the on-going development of the “right” questions to be asked is itself an important aid not only in heightening interest in the topic, but as a means of judicial education. The gambit of topics will include (i) whether the principle of impartiality can co-exist with the notion of the “political” judge; (ii) how to avoid linking discipline and ethics; (iii) what is the intellectual content of “ethics” for judges.

Justice Pronay will demonstrate the use of adult teaching techniques to address such questions as “how does a judge ensure a fair trial, transparency, and benevolent interpretation.” She will also provide examples of best practices and how to maintain dialogue between colleagues through continuing judicial education and training.

The influence of Canada’s approach to judicial education on the teaching of ethical principles for judges

Justice Adèle Kent; Justice Georgina Jackson

Wednesday 24 October at 3.00 p.m.

Since Canadian judges do not have a Code of Conduct, teaching ethics is not really “teaching” per se, but rather a process of discovery through discussion. In national and regional conferences in Canada, judges work through problems in three areas: ethical issues for judges in the courtroom, outside the courtroom and in judgment writing. Judges also explore the relationship between impartiality and equality. An analytical framework has been developed to help judges work through hypothetical dilemmas. The objective is not only to arrive at the best option to deal with the specific problem presented but also to learn how to use the framework to solve other ethical questions. In short, ethics are taught, as much as possible, as a skill. The presentation of the methodology used will form part of this workshop.

Looking at the judiciary from the academe, France and Japan present observations on teaching ethics beyond the judicial experience

Mr. Harold Epineuse and Professor Yasutomo Morigiwa

Wednesday 24 October at 5.00 p.m.

Mr. Epineuse’s topic will be “Turning the prism to look at judicial ethics from a different perspective: how using philosophy, comparative law, popular culture and human resources experience to improve judges’ knowledge and practice of judicial ethics.”

Professor Morigiwa will present on “Ethics education for judges and training in Japan: the role of the law schools in creating a climate of change.”

The challenges of teaching judicial ethics: a comparative look at strategies adopted by emerging and established democracies

Professor Iryna Voytyuk (Ukraine); Judge Barbara Rothstein (USA); Justice James O’Reilly (Canada)

Wednesday 24 October at 5.00 p.m.

Developing educational programs in the field of judicial ethics poses a number of challenges. Many emerging democracies are in the early stages of introducing such programs, having only recently implemented codes of judicial ethics. They confront scepticism about the value of ethics education as well as resistance to less traditional training methods. Established judiciaries face a different, though

no less compelling, set of challenges. Those developing educational resources must overcome judicial complaisance, develop strategies for addressing more nuanced ethical problems, and exploit the educational opportunities offered by technology. This moderated discussion will include comments about the experiences of Ukraine, the United States, and Canada and will invite commentary from participants.

Teaching new judges about ethics (some didactic ideas)

Javier Pereda

Thursday 25 October at 10.00 a.m.

When teaching new judges about ethics, international or national conduct code documents can be used directly as study materials. However, indirect materials can also be used either to define the knowledge that we want to teach learners (to gain “wisdom”), to practice skills using role-play and case methodologies (in relation to ethical practices) and, above all, to fix the attitudes we want to imbue -which is also teaching ethics.

With references to the Spanish experience, the workshop will centre on the description of the unique features of teaching ethics to new judges. The teachers of the Spanish Judicial School will aim to define what makes good judges and what qualities they should have, focusing on professional skills and ethical values. When defining “ideal” abilities and skills they associate these to values and ethics (trust, independence, confidence, integrity...).

The workshop will present various ideas on the “didactics” of judicial ethics, with particular reference to the content of “implicit” values rather than “explicit” values in the teaching of new judges and it will deal with the advantages and disadvantages of each teaching method.



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SKILLS-BASED EDUCATION

Credibility Assessment and
Credibility Rulings

**Justice Marc Rosenberg and Justice Lynn
Smith**

**Monday 22 October at 3.00 p.m.
and at 5.00 p.m.**

In this workshop, participants will learn how to design and deliver a program that teaches how to use the findings of social science and the insights of experienced judges in making credibility assessments, and how to state credibility assessment rulings. Faculty will begin with a presentation on what we know from psychological and social science research, and from experienced judges, about detecting lies, and about credibility assessment. Participants will view videotapes (used in several countries) depicting a trial in which credibility assessment is the predominant issue. The participants will then complete an exercise requiring reflection on how they would assess the credibility of the two main witnesses in the trial, and how they would state their rulings. The faculty will lead a discussion on credibility assessment and on stating findings on credibility assessment. The exercise based on the viewing of the videotape together with subsequent analysis and discussion by faculty will serve as a demonstration of one way to teach judges skills in credibility assessment and credibility rulings. Faculty will conclude the workshop with an overview of other possible methods for teaching judges skills in these areas, and their advantages and disadvantages.

Enhancing effectiveness of judicial
education: principles and pedagogy
**Professor Brettel Dawson, National
Judicial Institute, Canada**

**Monday 22 October at 3.00 p.m.
and at 5.00 p.m.**

This workshop will address the shift made by the National Judicial Institute in Canada in how it designed and delivered judicial education commencing with its social context education project in 1996 and continuing with the Canadian Judicial Learning Network process between 2000-2005. The standard "talking head" model focused on "black-letter law" has been progressively replaced by active learning methods focused on the knowledge, skills and contextual awareness relevant to tasks judges perform in court and in their larger role as judicial officers. A core principle has been judicial peer leadership. The principles underlying this model of judicial education will be discussed. How experiential (adult) learning methods have been calibrated for judges will also be demonstrated. Finally, the role of "judicial faculty development" and methods to enhance the skills of judges as educators will be outlined. We will use Canada as a starting example and then work with case studies presented by participants to explore applicability and adaptation in local contexts.

Mediation/settlement skills

Chief Judge Hugh Stansfield, Justice Stephen Kelleher, Justice Suzanne Courteau, Judge Divina Luz P. Aquino-Simbulan from Philippines Judicial Academy, and Judge Colin Doherty from New Zealand District Court

**Tuesday 23 October at 11.30 a.m.
and at 3.30 p.m.**

Judges increasingly are becoming involved in non-adjudicative dispute resolution processes. This workshop will explore the teaching to judges of mediation and related dispute resolution skills, beginning with foundational ethical questions such as whether:

- judges have a role to play as mediators,
- the quality of the settlement should be a concern of the judge,
- a facilitative or directive or evaluative approach is superior,
- to meet separately with each party or keep everyone together,
- to provide non-binding or binding recommendations,
- there is a risk to the integrity of court processes by increasing numbers of disputes being facilitated by judges behind closed doors.

Through an interactive approach, faculty will discuss the nature of interest-based negotiations, and present a model structure for conducting judicial dispute resolution.

High Conflict Custody and Access Cases
Justice R. James Williams, Supreme Court of Nova Scotia, Canada

Justice Bruce Thomas, Ontario Court of Justice, Canada
Professor Janet Walker, Newcastle Center for Family Studies, United Kingdom

**Tuesday 23 October at 11.30 a.m.
Wednesday 24 October at 11.30 a.m.**

In this workshop, participants will learn how to design and deliver a program which teaches how to identify “high conflict custody and access” cases and how to effectively manage those family cases and the people involved in them. Participants will begin by viewing elements of the videos prepared for high conflict module of education developed by Canada’s National Judicial Institute. Participants will be asked to identify the key themes they would address in any program they might design and deliver on the topic. Faculty will then provide an overview of the process they went through in developing the NJI high conflict program.

Faculty will provide a short overview of the basic legal and social science concepts that the NJI high conflict program is designed to teach. Faculty will then review the tools (including videos and paper-based problems), resources and teaching methods used to deliver this information. Faculty will conclude by canvassing the participants about the issues they would be interested in teaching to judges in their jurisdictions and pro-

vide suggestions on how to effectively and efficiently deliver skills-based education to address those issues.

Skills-based education for longer-serving judges

Justice James Spence and Justice Brian Lennox (Canada)

Tuesday 23 October at 3.00 p.m.

This session will provide participants with valuable information on judicial learning across the career life-cycle, and what contributes to the job satisfaction of longer-serving judges, with emphasis on what keeps them energized, committed and fulfilled as judges. The session will specifically focus on an examination of the decision-making process, using as a framework of analysis the familiar concept of the "Reasonable Person." The session will examine how decision-making is shaped by individual perspectives, personal experiences and cultural contexts. Participants will analyze how different perspectives affect the way in which cases are approached and decisions rendered.

Using on-line technologies to deliver skills-based training

Judge Jean Lytwyn, Provincial Court of British Columbia, Canada

Mr. John Meeks, National Center for State Courts, United States of America

Wednesday 24 October at 11.30 a.m.

A session for countries wondering how to get started

Wednesday 24 October at 3.00 p.m.

Best practices session for countries continuing to develop on-line technologies

These two workshops will focus on the variety of technologies that can be utilized to deliver skills-based training to the judiciary. Both will be of particular interest to those interested in educating judges where face-to-face programming is challenging in light of cost, timing or geographic considerations. One workshop is designed for those from countries which do not use on-line technologies yet are interested in getting started. The second is intended for those whose countries already utilize on-line technologies and are interested in learning about best practices in the field.

Pre-trial proceedings

Justice Marc Rosenberg, Ontario Court of Appeal, Canada

Justice Judith Beaman, Ontario Court of Justice

Mr. George Thomson, National Judicial Institute, Canada

Ms. Susan Doyle, National Judicial Institute, Canada

Wednesday 24 October at 3.00 p.m.

Thursday 25 October at 10.00 a.m.

An important judicial function involves deciding whether accused persons should remain in detention or should be released while awaiting trial. The judicial officer faces both difficult legal issues and questions about his or her role in managing a process where there can be serious delay and massive overcrowding in pre-trial facilities.

This workshop will demonstrate the design and delivery of skills-based courses to help judicial officers (including justices of the peace who are not legally trained) manage these pre-trial proceedings effectively and efficiently. It will review the planning process and the use of innovative teaching methods to ensure the education program is successful. It will also include a consideration of difficult cases, such as those dealing with domestic violence and those that raise challenging issues of context, such as poverty and alleged systemic racism.

Using skills-based education to support major judicial reform

Professor Brettel Dawson, National Judicial Institute, Canada

Mr. Mauricio Duce, Judicial Studies Center of the Americas, Chile

Wednesday 24 October at 5.00 p.m.

Judicial education is integral to achievement of larger judicial and legal reform initiatives. As noted, by Mr. Justice George Kingsley Acquah, Chief Justice of Ghana, in 2006, “When we perceive clearly the importance of a judge’s role in nation building, it becomes apparent the need to relentlessly pursue judicial training and education, as part of a judicial reform program.” How to ensure that judicial education can best support implementation of judicial reform is the subject of this workshop. Topics may address:

- Using experiential learning methods to foster judicial understanding and implementation of reforms,
- Judges as leaders in judicial reform efforts and judicial education,
- Building local judicial capacity to design and deliver judicial education, and
- Cost effective options to use technology to manage and deliver judicial education, and make accessible judicial learning resources supportive of judicial reform.

The workshop will use a case study approach drawing on experiences in a variety of countries, including the Philippines, Chile and Canada. It will aim to develop a checklist that can be shared with organizations and funding agencies active in judicial reform.