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MISSION

The journal *Judicial Education and Training* publishes topical articles on the education and training of judges and justice sector professionals around the world.

This journal aims to stimulate a community of learning in judicial education by showcasing selected papers presented to the biennial conferences of the International Organization for Judicial Training (IOJT). Additionally, it solicits original research, practical experience, and critical analysis on issues and trends in judicial education. It also provides a medium for informed discussion, the exchange of professional experience, and the development of knowledge in judicial education for a global readership.

Contributions are invited from chief justices and senior judges, judicial educators and academic researchers with an interest in this field. Earlier issues of this online journal may be found at:

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Organization for Judicial Training

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CONTENTS

INTRODUCTION	1
<i>Livingston Armytage</i>	
THE NATIONAL JUDICIAL COLLEGE APPROACH TO DISTANCE LEARNING: TOWARDS A MODEL OF BEST PRACTICE	9
<i>William J. Brunson and Joseph R. Sawyer</i>	
ONLINE PROGRAMMING AT THE NATIONAL JUDICIAL INSTITUTE	21
<i>Thomas Crabtree, Joseph W. Bovard, and Magdalena Serwin</i>	
JUDICIAL EDUCATION: THE SINGAPORE BRAND	32
<i>Boon Heng Tan</i>	
CONTINUING JUDICIAL EDUCATION IN PAKISTAN	43
<i>Faqir Hussain</i>	
THE NEPALI PERSPECTIVE ON JUDICIAL EDUCATION: A BRIEF REVIEW	56
<i>Shreekrishna Mulmi</i>	
THE CHALLENGES OF CAPACITY BUILDING IN JUDICIAL-TRAINING INSTITUTIONS— THE KOSOVO EXPERIENCE	66
<i>Charles A. Ericksen and Lavdim Krasniqi</i>	
JUDICIAL TRAINING ON ELECTION DISPUTE RESOLUTION	74
<i>Cheselden George V. Carmona</i>	
TEACHING NEW JUDGES WHAT IT MEANS TO “BE” A JUDGE	82
<i>Diane E. Cowdrey</i>	
BENCH BOOKS: KEY PUBLISHING GUIDELINES	91
<i>Livingston Armytage</i>	
CRAFTING JUDGE-LED JUDICIAL EDUCATION: PARTNERING WITH EDUCATORS	107
<i>T. Brettel Dawson</i>	
JOINT INITIAL AND CONTINUOUS TRAINING FOR JUDGES AND LAWYERS IN THE FRAMEWORK OF THE COUNCIL OF EUROPE AND ACCORDING TO THE GREEK LEGAL ORDER	115
<i>Petros Alikakos</i>	
THE TRAINING OF JUDGES IN POLAND: THE RECENT DEVELOPMENTS	122
<i>Piotr Mikuli</i>	

INTRODUCTION

BY LIVINGSTON ARMYTAGE, EDITOR*

Welcome back!

In coming weeks, many readers will be preparing to attend IOJT's 7th International Conference on the Training of the Judiciary in Recife, Brazil. The conference agenda promises many topics of interest in the pursuit of excellence in judicial education. So we trust that the articles published in this issue of *Judicial Education and Training* will excite interest in priming these preparations by raising matters of timely significance from around the world.

In this issue, we are pleased to publish another informative and on occasion provocative collection of articles from Australia, Canada, Greece, Kosovo, Nepal, Pakistan, the Philippines, Poland, Singapore, and the United States. Our contributors address four themes: towards best practice in remote delivery of judicial education, a showcase of the diversity in South Asian approaches, further perspectives on core aspects of pedagogy, and more on the European experience.

To open the issue, we present two leading articles on the increasingly topical theme of developing best practices in the remote delivery of judicial education. In the first, **William Brunson** and **Joseph Sawyer** of the National Judicial College, United States, outline the college's approach to distance learning over the past 15 years. The authors begin by explaining key concepts and methods of remote delivery, sometimes also known as "web-based" or "online" learning, for judges. They emphasize that "the objective of investing time and money in distance learning was *never* to supplant face-to-face education. Rather, the goal was to expand NJC course offerings to reach judges who did not have the opportunity to engage in face-to-face education due to their busy court dockets, court culture, or financial constraints" (emphasis added). They present seven best practices gleaned from experience, which include staying engaged with the learner, punctuating courses by offering "spring breaks," ensuring to provide adequate technical support, selecting the right faculty members and supporting them in adult learning, revamping online courses, and staying focused on content rather than the delivery process. Citing growing recognition of the learning effectiveness of online education, they note that it also offers greater convenience and provides the learner with opportunities to develop projects and deliver presentations to their online classmates that might not be available in traditional courses owing to time constraints. Finally, they report that all of the tried-and-tested practices of sound adult learning apply equally in this new realm of distance learning.

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In a companion piece, **Chief Judge Thomas Crabtree**, **Justice Joseph W. Bovard**, and **Ms. Magdalena Serwin** of the National Judicial Institute (NJI) explain the Canadian experience in designing and developing online courses for judicial learners. The institute pioneered its first online program in 1999 and now offers a number of courses over several weeks. The authors explain how online programming has contributed to the NJI's judicial education plan—complementing in-person programs with online programs to deliver timely materials in a cost-effective manner. They highlight the advantages of online learning, which include timeliness, convenience, and community building. They also document some of challenges, for example, that some topics are better suited to online programming than others, just as some judges are less comfortable than others with technology. On balance, they argue that distance learning “holds enormous promise for accessibility to judicial education when done right,” and for this reason the institute is continuing to work on a number of initiatives, which include a self-study online program and an online faculty development course. In light of the positive feedback received from their judiciary over the years, the authors encourage other jurisdictions to assess their educational needs and contemplate seriously how an online judicial education program can help them to support the steady inflow of ever more computer-literate judges.

The second theme showcases the diversity of emerging experiences of judicial education across Asia. **Judge Boon Heng Tan**, who is executive director of the newly established Judicial College, contributes an article on the Singaporean approach to introducing judicial education. He frames the article with his own sceptical question: “Can a small judiciary of less than 200 judges nationwide ever require a judicial college?” After just six months, he describes himself as being a “complete convert” on the critical role of judicial education and much excited by its vast potential. The college was established in late 2014 to support judges operating in an ever-changing environment to serve court users who are increasingly sophisticated and hold higher expectations of the courts to resolve complex disputes often involving interdisciplinary issues and transborder transactions. The author outlines the experience of establishing the college, installing the governance structure, and starting operations. These operations are divided into a “Local Wing,” which provides induction and continuing education with a curriculum structured in four areas: “Bench Skills,” “Legal Development,” “Judicial Ethics,” and “Social Awareness.” There is also an “International Wing” that will support judges from other jurisdictions from across the region. The college is mandated to conduct research to address local needs on which to develop new programs. At present, the college is grappling with a number of familiar challenges to judicial educators around the world, which include addressing training fatigue, securing judicial “buy-in,” and finding sustainable windows for short-term activities.

Dr. Faqir Hussain, former director general of the Federal Judicial Academy, writes about the Pakistani approach to continuing judicial education. He argues that continuing education is a *sine qua non* for judges. It is essential for the

effective and efficient dispensation of justice, judicial independence, and good governance, which, in turn, enhances public faith and trust in the system of administration of justice. The author reviews the history of the academy, which was established in Islamabad in its present form in 1997 under the direction of the chief justice to provide pre- and in-service training to judges, magistrates, and court officers through seminars, workshops, research, and publications. The academy developed a curriculum in 2002 and operates on a campus that includes a 30-room hostel for trainees. Because judges in Pakistan also exercise administrative responsibilities, this curriculum is not limited to substantive law, procedure, and case management, but extends to administrative law, rules of disciplinary proceedings, and financial management. But the author laments that judicial training has traditionally remained a neglected subject suffering a lack of interest by the superior judiciary, as well as a shortage of funding. This has caused a lack of innovation to improve the curriculum and teaching methodologies and has obstructed establishing a qualified and experienced training faculty or conducting research. The academy was upgraded by presidential decree into a Centre of Excellence for Law and Judicial Education; however, that decree has recently lapsed.

In the fifth article, **Shreekrishna Mulmi**, who is deputy director at the National Judicial Academy, reviews the Nepali experience of judicial education. The academy was established in 2004 with donor assistance from the Asian Development Bank. The author outlines various reasons for judicial education in Nepal, which as a poor, small, fragile, and post-conflict country may vary from other countries. These reasons include supplementing the role of universities, keeping abreast of change and technology, reducing endemic court delay, and introducing much-needed attitudinal change. Significantly, the NJA provides training not only to judges and clerks, but also to prosecutors and private lawyers, through a range of conferences, seminars, and workshops. The author reports on the activities of the academy, which have grown six-fold over the past decade to more than 100 activities each year for almost 2,500 participants. In 2013 the academy also launched the first regional conference attended by judges, judicial educators, and academics from Bangladesh, Bhutan, India, Malaysia, Nepal, Pakistan, and Sri Lanka to share experiences on judicial reform process and access to justice of the poor and marginal groups. The academy also regularly publishes a journal and other publications. The author, however, remarks that the academy has been struggling for financial resources since its establishment, which has been made all the more challenging by the devastating earthquakes of April 2015 that rendered its building unfit. While in the past donors have “come to NJA with their own prioritized areas for work, rather than the NJA’s priorities,” the author concludes with an appeal that the most pressing need for the academy now is to find donor support for alternative facilities to ensure continuity of its operations.

The next article also relates to the challenges of establishing and building the capacity of judicial-training institutions in post-conflict settings using donor

assistance. The authors, **Dr. Charles A. Ericksen**, an international advisor in judicial reform, and **Judge Lavdim Krasniqi**, who is director of the Kosovo Judicial Institute, showcase the Kosovo experience. In a provocative but well-reasoned article, they argue that official development assistance has “despite benevolent intentions” created significant challenges for the institute. In a scathing critique, which should be read beside an earlier article published in this journal on the work of the World Bank,¹ the authors document these challenges. They include a fragmented donor culture that promotes the “short-term” needs of the donor over the “long-term” needs of the institution, limited attention to staff development, a lack of judicial education expertise among implementing partners, ignorance of local culture, lack of coherent strategy, and a narrow approach to the complex task of creating a sustainable training institution. To address these challenges, the authors call for a significantly diminished role for donors in problem identification, design, and implementation of interventions and greater emphasis on facilitation, adaptive strategies, and supporting processes aimed at strengthening individual, organizational, and system-wide capacity. They conclude by counseling that this will require changes in the fundamental assumptions, attitudes, and actions of donors, implementing partners, and their experts.

In completing this theme, **Dr. Cheselden V. George Carmona**, who is a professor and lecturer at the Philippine Judicial Academy, argues that the judiciary plays a crucial role in enhancing the confidence of the public in the integrity of elections and presents the case for judicial education to include training on the resolution of election disputes. He cites scores of countries where electoral outcomes are increasingly routinely challenged in courts of law, whether under special procedure or in special jurisdictions. While perhaps niche, this burgeoning area of judicial review, however, often presents the judiciary with challenges of competence. This is because time constraints often militate against judges acquiring the requisite expertise, and there are generally no formalized requirements to do so. Competency requirements should, however, require special qualifications on appointment and continuing education. The author cites the International Foundation for Electoral Systems (IFES), for example, which specifies that the specialized knowledge of election law requires dispute arbiters to be competent in the specific area of electoral complaint adjudication. He concludes by proposing a number of topics to be included in this specialist training, which include constitutional law governing elections, case management, and a detailed understanding of the different types of electoral disputes.

In the third theme, we return to perennial issues of pedagogy, more specifically, judicial orientation, bench books, and the collaboration between judges and educators. **Dr. Diane Cowdrey**, director of the Center for Judicial Education and Research (CJER), showcases the Californian approach to judicial orientation in supporting

¹ A-M. Leroy, “World Bank Support for Judicial Systems Serving Good Governance,” *Judicial Education and Training: Journal of the International Organization for Judicial Training*, issue 2 (2014): 92-98.

lawyers to transition to become judges in the common-law tradition. She frames this transition using the goals of judicial education endorsed by the National Association of State Judicial Educators of the United States. Each of these goals speaks to the question of how an individual “becomes” a judge. She argues that judicial education “must focus on knowledge and skills, certainly, but it must also help judges to adhere to high standards of personal conduct to ensure fairness, integrity, and impartiality within the judicial system.” To address this challenge through judicial orientation, CJER focuses on a single unifying idea being the “central principle of being a judge.” Instead of providing a potpourri of disparate topics, this orientation focuses on helping new judges to understand their role by reinforcing the precept that ethics and fairness are the underlying principles of what being a judge is all about. The key function of an independent and honorable judiciary is to maintain utmost integrity in decision making. To support this function, the orientation course adopts “Eight Pillars of Being a Judge”: awareness of being a judge, awareness in the courtroom, the rule of law, do not make assumptions, professional distance, honesty and integrity, righteousness and courage, and accountability. These pillars structure activities throughout the course using a variety of teaching tools, such as large- and small-group discussions, videos, hypothetical scenarios, lectures, and self-reflective exercises to promote an effective learning environment.

In the following article, **Dr. Livingston Armytage**, director of the Centre for Judicial Studies, Sydney (this writer), offers guidelines for developing judicial-training institutes interested in publishing their first bench book. For many judges, a well-written and well-produced bench book can be the most appreciated service of any judicial education program. The article is written as a practical resource for developing institutes who may wish to publish in traditional printed media, though reference is made to electronic publication that will become increasingly widespread in the years ahead. To assist new entrants to publish this service, the author traverses the range of planning and publication issues relating to producing a good bench book. These include clarifying the role, purpose, and objectives of bench books; assessing needs, structure, and content; styling; production roles and responsibilities; budget; printing; and last, but not least, updating. Finally, the author offers a model survey of members’ needs, a sample outline of a bench book, and an indicative production schedule.

In closing this theme, **Professor Brettel Dawson**, former director of education, National Judicial Institute of Canada, discusses how the institute has implemented what she describes as a model of judicial education, which is most effective when it is judge led, judging focused, and experiential—in short, skills-based education for judges. In applying the principles of adult learning, she cites the thinking of Malcolm Knowles to remind us that “people learn best—in the sense of grasping, retaining and applying learning—when they are engaged, when they are made to think, and when they can connect what they are learning to their work.” She discusses the oft-quoted mantra that judicial education must be “judge led” and addresses what she sees as a

a tension (or gap) that can arise between leadership of judicial education and implementation of sound principles of course design and teaching. While arguing that judges should lead content and curriculum development to ensure alignment with judicial practice and judicial independence, she proposes that they should cede some space to work in partnership with educators whose role is to translate content into effective learning designs. She reports that this partnership has operated in the NJI experience. She sees the willingness and understanding—“indeed the unwavering commitment”—by the people who plan and teach courses to adopt and apply the principles of adult education design and delivery as being pivotal to success. Challenges for judges in applying these principles include lack of time and expertise—ultimately, judges are foremost judges. For this reason, the institute has supported judge trainers with faculty development and over the years has developed a cadre of experienced judge educators who serve as champions for their peers. The institute also nurtures “senior judicial advisers,” who are lawyers with a love for the law and a passion for education. These advisers are integral to the institute’s model of judicial education that encourages judges and professional staff to develop mutual trust and establish strong collaborative working relationships.

In the fourth segment, we resume the theme of the European journey towards best practices featured in the last issue. **Judge Petros Alikakos** of Greece argues that there is a pressing need in the civil tradition of justice to introduce joint induction and continuing training for judges and lawyers to create more effective collaboration. A joint approach to training will create a common legal culture over time, which is in the interests of justice and society as a whole. He argues that the Council of Europe, through bodies such as the Consultative Council of European Judges (*Conseil Consultatif de Juges Européens*) and the Consultative Council of European Prosecutors, are moving towards a joint training for judges and lawyers. He assesses current initiatives of these councils to survey member states about the prospects for common training for judges, prosecutors, and lawyers on issues of interest where the existence of common legal principles and ethical values can contribute in achieving high-quality justice. Naturally, there are a variety of different approaches operating in member states across Europe. The author considers the Greek situation, where judicial training is administered by the National School of Judges. He calls for both the establishment of a separate but parallel school for lawyers, and the establishment of common training programs for judges and lawyers, which he argues is increasingly imperative to address the ever more complex needs of society. This proposal would build on similar initiatives in France for “schools of legal professionals” (*Écoles des professionnels du droit*) for trainee judges, lawyers, notaries, and clerks. Should this be adopted, he foreshadows that a better integrated approach might also extend to recruitment procedures.

Finally, **Professor Piotr Mikuli** of Jagiellonian University, Kraków, discusses recent reforms affecting judicial training in Poland. In this article, he outlines the formal requirements and qualifications for judicial office and documents the Polish

approach to training, which has generally resembled the French (*École National de la Magistrature*) or Spanish (*Escuela Judicial Española*) models for judges and prosecutors. The Polish National School of Judiciary and Prosecution was established in 2009 and has conducted an initial legal training/apprenticeship (*aplikacja ogólna*) of 12 months for both judicial and prosecutor's posts. Until recently, this was followed with an apprenticeship for judicial candidates (*aplikacja sędziowska*) comprising 30 months of courses combined with practice and an 18-month internship in an administrative role as a court referendary. This has recently been reformed into a 36-month judicial apprenticeship, with a new curriculum, which is still under development but expected to focus more on the development of practical skills. These reforms are occurring as part of a broader ongoing debate around judicial careers and career paths.

We hope to see you in Recife and look forward to receiving your feedback on the journal in November.

THE NATIONAL JUDICIAL COLLEGE APPROACH TO DISTANCE LEARNING: TOWARDS A MODEL OF BEST PRACTICE

BY WILLIAM J. BRUNSON AND JOSEPH R. SAWYER*

AN UNSTEADY BEGINNING FOR DISTANCE LEARNING

When the National Judicial College (the NJC) began considering the use of distance learning in the late 1990s, resistance came from a variety of fronts. Some members of the NJC's board of trustees considered distance learning to be a threat to the successful NJC experience. The NJC experience has at least three significant components. First, the experience is a result of the NJC's location on the campus of the University of Nevada. The university environment serves as a place for meeting and reflection for judges from across the nation and the world. Second, the NJC experience allows for interaction with colleagues that often results in lifelong friendships. The college is a safe and collaborative place where judges can discuss issues they are facing in their role. Third, to ensure the NJC's participants receive an excellent education, the college educates faculty members about adult education principles and practices. After participating in our faculty development workshops, the NJC's faculty is then able to create interactive courses that often feature a "learn-by-doing" model.

NJC's stakeholders worried that the online experience would be inferior to the experience of judges who participated in face-to-face courses, especially at the campus in Reno, Nevada. Judges would miss opportunities to have small-group discussions with their colleagues and interact with other judges on breaks, at meals, and on social outings. Likewise, the NJC's faculty were concerned that their effectiveness would be diminished by the loss of face-to-face interactions.

Most importantly, the NJC's customers were lukewarm to the idea of the expansion of distance learning. They did not want distance learning to supplant face-to-face opportunities, especially in light of the isolation that many judges experience in their profession. They also believed the courses could not provide the same level of instruction. Finally, some NJC staff members expressed concerns about the potential for states to eliminate travel for judges because of new opportunities in distance learning.

This article begins with defining distance learning and methods of delivery and discussing distance learning's efficacy for all learners and specifically for judges. Next, the article highlights best practices that NJC can share with the field, gleaned from the

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lessons of delivering distance learning to thousands of judges. Finally, the article addresses how adult-learning theory applies in an online learning environment to increase retention.

The objective of investing time and money in distance learning was never to supplant face-to-face education. Rather, the goal was to expand NJC course offerings to reach judges who did not have the opportunity to engage in face-to-face education due to their busy court dockets, court culture, or financial constraints. NJC has been proud to lead the efforts in the United States to ensure that all judges have access to high-quality education on the web.

WHAT IS DISTANCE LEARNING?

Before discussing the adaptation of distance learning for judicial education, it is important that we share a common language. Because distance learning is tied closely to technology, the definitions are constantly evolving. For the latest definition and a glossary of terms commonly used in distance learning, please go to www.judges.org/distance_learning. For the purposes of this article, we offer the following key definitions.

Distance Learning—Because the NJC always looks through the lens of the learner, this article defines “distance learning” (as opposed to “distance education,” which is more presenter focused). *Merriam-Webster* defines distance learning as “education that takes place via electronic media linking instructors and students who are not together in a classroom.”¹

Asynchronous—The learners access educational content, such as videos, discussion boards, quizzes, surveys, and blogs, at any time from their computers. While there may be a deadline for completion of assignments, learners decide when to access asynchronous materials.

Blended Learning—Blended learning occurs when a learner participates in any two of the three modalities: 1) a face-to-face classroom; 2) an asynchronous environment such as a course management system; and 3) a synchronous environment, such as a webcast or web conference.

Course Management System—Course management systems (CMSs) are also referred to as learning management systems (LMSs).² A CMS is an online learning environment where learners can access modules, quizzes, learning activities, discussion groups, and other online assignments 24 hours/7 days per week. For judicial education staff and faculty, the course management system allows them to track learner progress and to assess whether both co-presenters and learners are accessing the site.

¹ Located at [http://www.merriam-webster.com/dictionary/distance learning](http://www.merriam-webster.com/dictionary/distance%20learning) (visited May 11, 2015).

² Blackboard Learn and Moodle are examples of course management systems used by court systems. Colleges and universities are the primary market for course management systems, and corporations and government agencies also use them to deliver staff education and development courses. The NJC uses Blackboard for asynchronous education of judges. Likewise, some court systems have collaborated with local colleges and universities to host educational offerings developed specifically for judicial officers and court staff.

Self-Study Web Course—A course that a judicial education entity presents using a course management system. The judicial education entity does not use presenters in the delivery of self-study courses, only during the production phase. The online course generally includes reading assignments, quizzes, videos, web links, and other online resources (compare *Web Course*).

Synchronous—A live event, whether used for technical support or education, where the learners and presenters are together at the same time. For example, a professor presenting to a classroom of students is a synchronous face-to-face learning event. Likewise, a webcast is a synchronous event because all of the learners and presenters are together online at the same time, with the Internet connecting the learners and the presenters even though they are at a variety of locations.

Webcast—A course that a judicial education entity presents using a web-conferencing platform. Presentations may include lectures, panel debates, PowerPoint slides or video, participatory learning activities such as quizzes (also called polling questions), case studies, prompted chat questions and answers, video streaming, and discussion groups. The judicial education entity generally mutes the learners' phones upon entry to the course because of feedback, background noises, and other audio distractions. If a learner wishes to speak (indicated by chat or raising a virtual hand), the producer simply unmutes the learner (compare *Web Conference*).

Web Conference—An educational event that a judicial education entity presents using a web-conferencing platform. Unlike a webcast, a web conference generally educates between 3 and 29 learners. In this environment, presenters may use participatory learning activities such as quizzes (also called polling questions), large-group discussions, case studies, debates, role-plays, learning games, prompted chat questions and answers, cases studies, and video streaming, among others. Because the audience is smaller, the judicial education entity (producer) generally leaves the audio lines open for all learners. A judicial education entity may wish to present web conferences in conjunction with its online, faculty-led web courses and standalone web conferences (compare *Webcast*).

Web Course—A multi-week (usually six weeks in length), faculty-led course that a judicial education entity presents using a course management system. Presenters interact with course learners through a course management system and weekly web conferences via a web-conferencing platform. The asynchronous, online courses generally include reading assignments, quizzes, discussions with other learners and presenters, role-play exercises, research, and writing assignments, among other learning activities. The judicial education entity's staff or faculty member may use synchronous, weekly web conferences or webcasts to present additional information, clear up confusion, and provide an opportunity for real-time interaction between the learners and the instructors (compare *Self-Study Web Course*).

IS DISTANCE LEARNING EFFECTIVE FOR JUDGES?

The United States Department of Education found evidence that blended learning (blending synchronous and asynchronous modalities, or blending the face-to-face classroom with synchronous or asynchronous modalities or both) is more effective than face-to-face or online learning by themselves. The meta-study is “the result of a meta-analysis involving research published from 1996 to July 2008, in which [the U.S. Department of Education] sifted through more than 1,100 empirical studies of online learning, 46 of which provided sufficient data to compute or estimate 51 independent effect sizes,” according to the report.³

Likewise, Babson Survey Research Group reported in February 2015, “[t]he percent of academic leaders rating the learning outcomes in online education as the same or superior to those in the face-to-face instruction grew from 57.2% in 2003 to 77.0% in 2012.”⁴

In the same study, the authors reported the following results⁵:

- The proportion of academic leaders who believe the learning outcomes for online education are inferior to those of face-to-face instruction remained the same as last year at 25.9%.
- The proportion of academic leaders who report that online learning is critical to their institution's long term strategy has grown from 48.8% to 70.8% this year.

The Babson Survey Research Group focuses on higher, graduate, and post-graduate education. The research shows that distance learning is effective in general. Judges as people are not separate from the population of adult professional learners engaged in continuing education. NJC has found that distance learning is effective for judges.

While the NJC never intended to replace its face-to-face courses with distance-learning courses, NJC's management was concerned that judges would view newly developed, faculty-led online courses as lower-quality education when compared to the NJC's face-to-face courses. With this in mind, the NJC's staff purposely designed the first set of online courses to be more time-consuming and rigorous than comparable face-to-face courses. The NJC's online courses demanded participants to do more writing and research and to interact in writing with classmates and faculty. Indeed, many participants complained about the total amount of work and time required to participate in the online courses. The course evaluations revealed some surprising remarks, including “this is the first judicial education class that ever really made me do something academic.”

³ B. Means et al., *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies* (Washington, DC: U.S. Department of Education, Office of Planning, Evaluation, and Policy Development, 2010).

⁴ I. E. Allen and J. Seaman, *Grade Level: Tracking Online Education in the United States* (Babson Park, MA: Babson Survey Research Group, Babson College, 2015), p. 5.

⁵ *Ibid.*

Unlike the pre-tests and self-tests that the NJC's faculty use in face-to-face courses, participants in the online courses would continue to take the online tests and quizzes again and again until they achieved perfect scores.

The NJC's online courses, which last as long as seven weeks, also provide an opportunity for the learners to develop projects and deliver presentations to their online classmates. In the vast majority of the NJC's weeklong, face-to-face courses, sufficient time is not available for this type of exercise. The NJC's blended-model courses (using both Blackboard and weekly web conferences) allow the faculty to "push" the judicial learners to a higher level of learning and to demand more thoughtful answers to discussion questions than they can accomplish in face-to-face classrooms.

When developing online education content for judges, judicial educators will notice not what is different about distance-learning courses, but rather how much of the educational process is the same as developing face-to-face courses. Dr. Robin Smith, coordinator of web-based learning at the Office of Education Development, University of Arkansas for Medical Science in Little Rock, notes how web-based learning is the same as classroom learning. Dr. Smith indicates that the principles for teaching in the undergraduate classroom are the same for the online classroom.⁶

With more than 15 years of experience, the academic staff at the NJC would agree that the seven principles are the same for judges in continuing education. The educational tools that work within the face-to-face classroom are just as effective online.

BEST PRACTICES IN CREATING ASYNCHRONOUS COURSES

The NJC learned many lessons over years of creating and presenting online courses. The seven primary best practices are as follows.

Synchronizing the learners—Maintain regular contact with the learners to keep them engaged. One of the biggest barriers to success is decreasing motivation as an online course progresses. To remedy this barrier, faculty members and the judicial education staff should stay in contact with the participants through e-mail, telephone, and text messages, alerting the participants to assignment deadlines and web-conferencing dates and times. In the NJC's experience, maintaining frequent contact, creating group assignments, and using peer-to-peer interaction have proven to be effective motivators to keep all participants involved throughout the course.

Establishing a "spring break"—Institute a "spring break" to help the learners be in synch. One example is the model where learners participate in three weeks of the course, have one week off, and then complete the final three weeks. The purpose of the break is to give learners who are getting behind in their assignments a chance

⁶ R. M. Smith, *Conquering the Content: A Step-by-Step Guide to Online Course Design* (San Francisco: Jossey-Bass, 2008), p. 6.

to catch up. This innovation increases the synchronicity of the courses. This is imperative when the NJC's faculty requires the learners to interact with one another in role-plays, learner critiques, case studies, and other colleague-to-colleague exercises.

Provide technical support—Judicial educators will soon discover the most obvious barrier to success is the learner's technological literacy. While it is easy to assume that this challenge is generational, judicial educators will discover that the age of the learner is not the problem. The NJC has discovered that older judges may be early adopters of technologies, so judicial educators should avoid stereotyping learners' technological acumen by age. To assist with the technology, judicial educators need to provide help-desk support for online course participants.

Selecting the “right” faculty members—Many face-to-face presenters are not suited to online learning. These are generally the presenters who are excellent in a classroom, but they often do not spend much time in preparing materials. The NJC quickly learned some of its most valuable face-to-face faculty were not effective online. In choosing online presenters, the NJC selected those faculty members who were timely with their materials, who were able to prepare robust supplementary material, and who were otherwise diligent in responding to requests.

Revamping online courses—The NJC hosts a two-day, face-to-face faculty meeting about every five years to revamp online courses. Just as in face-to-face courses, the presenters must ensure the materials and content are current. Because the faculty members are diligent and passionate about their subject matters, they modify their materials after almost every course offering. The impetus for these modifications can come from learner evaluations, changes in legislation, new research, and new case precedent. Nevertheless, these alterations usually only involve editing or replacing materials *within* a module. They do not generally involve restructuring the course. Usually after about five years, the NJC and the faculty members determine they need to overhaul the course for three primary reasons. First, they want to establish new or different learning activities to respond to micro-modifications made over the years. Second, changes in the law may warrant a change in the sequencing of the modules. Third, new research may require a revision of the overall course objectives, the foundation of the course.

The curriculum development meetings also serve as a reward for the faculty members. Because the NJC relies almost exclusively on volunteer faculty members, the NJC is always searching for ways to commemorate the tremendous contributions of effort by its faculty. The NJC recognizes its faculty with certificates, plaques, and small annual gifts. Even though the primary motivation is intrinsic (i.e., the faculty members love to teach and share their expertise), most still enjoy other benefits such as travel. These meetings provide that opportunity. Perhaps more importantly, the meetings also allow the faculty members to form bonds and network beyond the e-mails, web conferences, and teleconferences they have shared.

Focusing faculty members on content, not process—Today, the NJC educates its faculty on creating content in the environment and not on how to build the course

using the software. The NJC's staff members are the individuals who actually build the courses as soon as the faculty members create the content. This modification honours the precious time of both faculty and staff. NJC works with the faculty to avoid "shovelware," a process in which the creators simply take all of the readings (PowerPoint presentations, readings, cases, etc.) from a face-to-face course and shove them into a distance-learning framework without considering the wholly different nature of distance learning. NJC educates its faculty on creating distance-learning courses. Because the NJC relies on the educational model of judges teaching judges, we routinely offer workshops such as our *Distance Learning Faculty Development Workshop* and *Distance Learning Curriculum Development Workshop*. These workshops empower the judicial faculty and other subject-matter experts to transition from teaching in face-to-face classrooms to the online environment.

Educating the online faculty about best practices in adult-learning theory—Presenters often know their subject matters extremely well, but they have never learned anything about adult-learning practices. In other words, they do not know how to present the information in a way that will ensure longer-term retention of the information.

The NJC determined its presenters must master the knowledge, skills, and abilities necessary to provide effective online education. The fact that a course is taking place online is no excuse to give short shrift to the principles of adult-learning theory. Thus, the final section of this article is devoted to this concept: "*Whatever You Can Do in a Classroom, You Can Do Online. And You Should.*"

ADULT-LEARNING THEORY IN ONLINE EDUCATION

Rule 1. Respect Adult-Learning Styles

All adults have learning-style preferences. Most online presenters teach to their own learning-style preferences while being unaware of other preferences. When presenters fail to teach to all adult-learning styles, they frustrate learners by over-challenging or over-supporting their learners. Four types of learners (i.e., divergers, assimilators, convergers, and accommodators) are present in every online environment, so instructors must use a variety of teaching activities to ensure they support the different ways in which their learners assimilate and process information.⁷ Adult-learning styles are more complex than analyzing whether the learners are auditory, visual, tactile, or kinesthetic. Presenters must know how the adult learner makes meaning from the information provided. The National Judicial College, the Federal Judicial Center, and the National Association of State Judicial Educators all have adopted the work of Dr. David Kolb to identify adult-learning styles and employ strategies for reaching the different learning preferences adults bring to their classrooms and workplaces. By

⁷ D. A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Upper Saddle River, NJ: Prentice-Hall, 1984).

teaching to different adult-learning styles, online presenters will challenge their learners without overwhelming, embarrassing, or over-supporting them. Online presenters simply need to use a variety of presentation styles to accommodate the different learning styles of their learners.

Rule 2. Motivate Online Learners with Practical and Engaging Information

According to the work of Dr. Malcolm Knowles, online presenters must motivate adult learners to learn. As a study of adult learning, the term andragogy (compare pedagogy⁸) originated in Europe in the 1950s. In the 1970s, Dr. Malcolm Knowles pioneered the theory and model of adult education, defining andragogy as “the art and science of helping adults learn.”⁹ Online presenters often fail to explain why learners should learn. Adults are not like children who will learn a subject because their teacher asks them to do so. Adults will require that the information have relevance to their current lives or believe it will be useful at some time in the *near* future. Some experts suggest that children are like sponges; they soak up information. Alternatively, adults are like sieves; they filter all new information, determining which information fits with their experiences, which information is important to them, and which information they are not going to process. Online presenters should respect Malcolm Knowles’s six principles of adult learning:

- a) Adults are internally motivated and self-directed
- b) Adults bring life experiences and knowledge to learning experiences
- c) Adults are goal oriented
- d) Adults are relevancy oriented
- e) Adults are practical
- f) Adult learners like to be respected

Rule 3. Create a Safe Learning Environment

Online presenters need to know that some of their learners may be wounded.¹⁰ That is, some learners have had poor learning experiences in which their teachers, professors, or faculty members embarrassed them or ridiculed them in front of their peers. Consequently, they may enter an online learning environment with tremendous trepidation, which makes learning difficult if not impossible.¹¹ For learning to occur, all

⁸ Pedagogy is “[t]he method and practice of teaching, especially as an academic subject or theoretical concept,” located at www.Merriam-Webster.com (visited May 21, 2015). Note that “[t]he British tend to use *paed-* while those in the United States tend to use *ped-*.” Remember that the Greek *ped-* means ‘child’ while the Latin *ped-* means ‘foot,’” located at <http://wordinfo.info/unit/2802> (visited May 21, 2015). Accordingly, the origin reflects the practice of teaching children.

⁹ M. S. Knowles, *Self-Directed Learning* (Cambridge: Cambridge Adult Education, 1975). See also, M. Knowles, *The Adult Learner: A Neglected Species*, 3rd ed. (Houston, TX: Gulf Publishing Company, 1984); and M. Knowles, *Andragogy in Action: Applying Modern Principles of Adult Learning* (San Francisco: Jossey-Bass, 1984).

¹⁰ K. Olsen, *Wounded by School: Recapturing the Joy in Learning and Standing Up to Old School Culture* (New York: Teachers College Press, 2009).

learners need to use their prefrontal cortexes. Online learners who are experiencing fear or trepidation are likely using their amygdalae, which allow only for a flight-or-flight response. This manifests itself in the online learner not being able to process any complex information, showing extreme discomfort, and, in rare cases, becoming angry at the online learning process. Consequently, all online presenters should create safe learning environments for their learners early on, so any wounded learners will realize they will not be embarrassed or ridiculed. Presenters can do this by drafting relevant and challenging questions and then supporting the learners when they answer the questions. If the online learners answer correctly, the presenter provides positive reinforcement. If the online learners answer incorrectly, the presenter can ask other learners if they have other points of view. In the latter case, the presenter is separating the incorrect response from the individual learner to the extent possible to avoid embarrassing the learner.

Rule 4. Leverage Learners' Strengths

Adult learners have unique learning characteristics. The subject-matter expert should know how to interact with and teach experienced professionals. Quite often, subject-matter experts may be teaching online learners whose knowledge is as great as theirs. As discussed earlier, the presenter must integrate all of the online learners' contributions in the online learning environment. An online environment provides greater opportunity for analyzing the strengths of each learner because the faculty members can review their assignments, quizzes, and other assessments to determine strengths. Again, the online learning environment creates more opportunities for assessing strengths than does the face-to-face classroom.

Rule 5. Draft Learning Objectives

Just like in the face-to-face classroom, online presenters should write clear, concise, and achievable learning objectives. Online presenters often ask, "With only one or two hours devoted to this module, how can I possibly cover the material?" Learning objectives are the answer. They are the bedrock of well-designed online modules. By writing well-constructed learning objectives, the subject-matter expert creates a foundation for preparing an effective module tailored for the specific audience of learners. Without learning objectives, the subject-matter expert fails to distinguish between content that is critical, useful, or "just nice to know." This failure results in online presenters who attempt to address too much information or have difficulty in retaining focus. Too much detail can derail the learning process. The online learning environment allows time to reflect and connect to prior experiences. The benefit of learning objectives is that the presenters define what the learners will be able to do differently after an online learning module that they were not able to do before. Learning

¹¹ *Ibid.*

objectives compel clarity in online, instructional design. After learning about the purposes of learning objectives and how to write them, online presenters quickly realize they are often too ambitious in what they can expect their learners to achieve.

The learning objectives should be observable and measurable. That is, an online presenter should be able to observe and measure whether the learner has understood the materials. Presenters can do this by drafting and using quiz questions, discussion forums, research assignments, essentially anything requiring the online learner to provide information to the learning environment or to the presenter.

Rule 6. Create an Interactive Learning Environment

While learning objectives define *what* the learner will be able to do after the session, learning activities define *how* the presenter is going to help them achieve those objectives. The vast majority of online presenters simply provide many readings to the exclusion of other learning activities. Dr. Edgar Dale's research indicates that retention and comprehension rates are extremely low for readings alone (retention rates between 5 and 10 percent). With the integration of a variety of learning activities, the rates of retention and comprehension will significantly increase. If this is true, why do so many presenters exclusively provide readings when adult education research clearly shows they are ineffective? The answers are many. Good readings are generally relatively easy to locate and extremely easy to implement in an online environment. Next, readings do not require any creativity or ingenuity. Finally, some presenters learn best by readings, so they assume their learners will be the same way.

While presenters may have participated in online courses where the presenter used a variety of learning activities, most are unaware of how to plan for and design them. They also may believe incorrectly that the learners will not do the assignments. Examples of effective online learning activities include role-playing exercises, learning games, debates, quizzes, small-group discussions, writing exercises, research assignments, etc. The variations are limitless. Effective presenters use a variety of learning activities (in addition to readings and short lectures during web conferences.)

Rule 7. Use Appropriate Communication Techniques and Effective Visual Aids (During Web Conferences)

Presenters often fail to use appropriate communication techniques, including eye contact, purposeful movement, gestures, and body language. From communication research, we know body language comprises up to 93 percent of the message delivered.¹² Most online presenters look at their PowerPoint slides instead of looking at the camera. This creates a distracting environment because the learners do not feel the presenter is looking at them. Consequently, the NJC educates its faculty about

¹² A. Mehrabian, *Silent Messages: Implicit Communication of Emotions and Attitudes* (Belmont, CA: Wadsworth Publishing Company, 1971). Dr. Mehrabian conducted several studies on nonverbal communication. He found 7

using gestures with web cameras and has them practice looking at the camera instead of looking at their own PowerPoint slides. The NJC can also record them during a practice session, so they can objectively view themselves and how they look on camera. This process usually provides enough impetus for them to change.

Adult education researchers found that when words and pictures are presented together, rather than separately, the “contiguity principle” allows learners to process the words and pictures more efficiently. The “individual differences principle” finds those with the least previous knowledge receive the greatest effects from images. The picture facilitates a link to the words. Experienced learners, conversely, can form their own mental images about what the presenter is addressing.

In addition, many online presenters violate the “split attention principle,” which holds that when a presenter uses a text-laden slide, learners’ brains drive them to read first and listen second. Therefore, if a presenter is lecturing while he is showing a text-heavy slide, the learners will read first and then listen. Learners’ brains are attempting to send simultaneous messages from their visual-information and verbal-processing centers. While most learners believe they can multitask well (i.e., listen to the presenter and read PowerPoint text at the same time), research shows that the oral message is almost always lost. All learners have multitasking limits.

Likewise, the “coherence principle” finds that retention rates are improved when presenters do not provide too much information. Details can derail learning because of cognitive overload. In short, presenters must avoid information dumping.

With regard to PowerPoint, a University of Texas study found that students preferred PowerPoint to a presentation without it.¹³ They felt they learned more when the instructor used PowerPoint. Further, they preferred instructors who used PowerPoint with many special effects, assessing that those instructors were more likable and more prepared. Ironically, however, the researchers found that while they preferred those presentations, the students did 10 percent worse on quizzes when the instructor used special effects. Presenters should avoid using interesting but extraneous text, irrelevant sounds and pictures, and humor that is not relevant to their messages.

As stated earlier, all presenters benefit from watching a recording of their online presentations. When watching the recording, presenters should scrutinize whether they are looking at the camera (i.e., making eye contact with the learners), using effective gestures, speaking conversationally, and engaging the audience of learners. Most will find they have some distracting habits that they can improve upon.

percent of any message is conveyed through words, 38 percent through certain vocal elements, and 55 percent through nonverbal elements (e.g., facial expressions, gestures, posture, etc.). The math is easy: 100 percent of the message less 7 percent (via words) equals 93 percent of the message is nonverbal. This statistic is controversial because of the difficulty of conducting social science research. However, most would agree that a majority of the message is nonverbal.

¹³ R. A. Bartsch and K. M. Cobern, “Effectiveness of PowerPoint Presentations in Lectures,” *Computers and Education* 41(2003): 77.

Rule 8. Create a Presentation or Course Plan for Web Conferences

Presentation or course plans, also known as lesson plans, are necessary for a well-planned web conference. Most presenters have never created presentation plans because they do not know why they should. A well-designed presentation plan assists a presenter in delivering an interactive, educational session. A presentation plan contains the following: a presentation title; a description of the audience; learning objectives; a description of the opening; the learning activities (e.g., debates, small-group discussions, exercises, learning games, etc.); the amount of time for each learning activity (in a range); learning material samples and AV aids; and a description of the closing.

An online presenter should use the presentation plan to create a learning experience that the learners will remember. The presenter should identify which of the following learning activities they will use (e.g., mini-lecture, brainstorming, case study, debate, learning game, etc.). Next, the presenter should identify what the learners will do during the chosen learning activity. Finally, the presenter should identify what learning objective the case study will help the learners to achieve and how much time the presenter projects the activity will take.

CONCLUSION

While initially controversial, the NJC's decision to embark upon distance learning has widened the number of judges who are able to participate in the NJC's courses. The learners who participate in the online course offerings find the courses to be of value. With more than 15 years of experience with distance learning, the National Judicial College has learned many lessons that have improved the learners' online experiences. An online presenter who uses adult education practices creates a supportive and engaging learning environment. Using these practices makes learning much more rewarding, interesting, and effective. Most online presenters do not use these practices because they have not been exposed to them. If the opportunity arises, all presenters should participate in a distance-learning faculty-development workshop to practice these techniques. Like judging, these techniques require practice to perfect. Nevertheless, presenters should not be afraid of trying new ways to educate their peers. In all online learning environments, all participants (including the presenter) learn from the experience. Teaching is extremely fulfilling, and these techniques make the process even more rewarding. While barriers to online learning for the current generation of judges will persist into the near future, judicial educators will soon be faced with judicial officers who have grown up with educational technology. Because of this, future judges will expect, perhaps even demand, online delivery of judicial education.

ONLINE PROGRAMMING AT THE NATIONAL JUDICIAL INSTITUTE

BY THOMAS CRABTREE, JOSEPH W. BOVARD, AND MAGDALENA SERWIN*

In Canada it has long been recognized that the preservation of public confidence in the judiciary requires maintaining a standard of excellence in the performance of judicial work. To maintain this standard, ongoing participation in judicial education is required. In 2008 the Canadian Judicial Council (CJC) adopted an aspirational guideline for federally appointed judges. This guideline supports, where possible, the allocation of a certain number of days off the judges' sitting time to be devoted toward judicial education.¹ Provincially and territorially created courts are also committed to ongoing judicial education.

Based in Ottawa, the National Judicial Institute (NJI) is an independent, not-for-profit institution committed to building better justice through leadership in the education of judges in Canada and internationally. As we all learn in different ways, the NJI delivers its education programs and resources in a number of ways to address the educational needs of the Canadian judiciary effectively. These include in-person conferences, online programs, and other resources (e.g., electronic bench books, e-Letters, etc.).

This paper will explain the NJI's experience with designing and developing online programs for judicial learners, as well as discuss upcoming developments. The paper will also demonstrate how online programming can contribute to a judicial education plan—complementing in-person programs with online programs to deliver timely materials in a cost-effective manner.

The NJI pioneered its first online program in 1999. Since then, it has offered a number of diverse online programs each year. These programs are delivered in a password-protected virtual environment and are intended to expand opportunities and access to learning. The programs are free for participants (up to 35 judicial participants are permitted to register per program). The faculty includes law professors and judges.

Online programs take place over a number of weeks. As a result, they are commonly completed on the judges' own time. With an already busy schedule, this can sometimes present challenges to participants' time management skills. A helpful tip is to schedule a time to focus on the program (like a meeting in a calendar), and then to make the most of the time spent.

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¹ Canadian Judicial Council (CJC), "Judicial Education Guidelines for Canadian Superior Courts," available online at <http://www.cjc-ccm.gc.ca/cmslib/general/JEC-edu-guidelines-2008-04-finalE-revised-2009-09-final-E.pdf>.

For those who have never participated in an online program, we hope that you will consider this learning method as a complement to traditional classroom learning. For those who are thinking about breaking ground in judicial online education in similar institutes, we hope that you find this information useful in expanding and elevating the delivery of your programs and to incorporate these methods and technologies into your teachings.

Why Invest in Online Learning?

The NJI chose to invest in online learning for the following reasons:

- It can be done at the judge's convenience.
- It crosses geographic barriers (time zones), bringing together individuals who would not normally be able to attend programs together (judges in different courts, different provinces/states, and other countries).
- It provides information in a more timely way than traditional in-person conferences.
- It is significantly easier to stage than traditional in-person conferences
- It is cost-effective.
- The longer program duration and written form of discussion allow for more thoughtful consideration of subject matter.
- It provides an opportunity for longer access to the expert faculty.
- It builds an online community by facilitating meaningful interchange.
- It permits the exchange of updated materials, including personal and court-developed documents (articles, checklists, directions to litigants, etc.) that the judge can use immediately in court promoting the consistent administration of justice.
- It provides a vast resource of legal materials to the participants, which they can access after the program concludes.
- An online program before an in-person conference can prepare judges for more skills-based education at in-person event.
- It provides a secure forum for judges to express their opinions and concerns to each other.
- It uses technology to maximize learning opportunities.
- It develops judges' awareness, skills, and confidence with technology and computer-based education.

A few challenges the NJI has encountered while creating these programs include:

- Some topics are better suited for online education than others.
- Organizational support and resources need to be put in place for fruitful online education.
- Participation sometimes dwindles towards the end of the program, either due to busy schedules, lack of motivation, or, in some instances, apprehension about committing oneself in writing (even on a password-protected website).

- Some participants feel they lose the socialization aspect in an online environment that is provided in the traditional classroom method.
- Some judges are less familiar and comfortable with technology than others.

It is important to note that the advantages of online programs are not automatic and that some challenges can be addressed through program design, while others are not always certain.²

DESIGN AND DEVELOPMENT

Crafting effective online programs for judicial learners starts with design and development. Design addresses instructional decision making; development is linked to program construction.³

The NJI formed the *Online Programs Working Group* in 2014. It comprises five judges from across the country and NJI staff that are familiar with adult-learning principles and eLearning. Since its inception, the working group has greatly improved our insight into how judges learn online. It has also helped the NJI to select topics that are best suited for this method of education delivery. The working group assists the NJI with setting priorities for the annual online programs curriculum, suggests improvements to online program technology, reviews course evaluations, and makes recommendations to improve its programs.

The Program Structure

Each program has a team composed of an academic, a judge, and an NJI staff member. Typically, through a series of conference calls, the team works together to identify goals and learning objectives for the program and determines how best to accomplish each objective. Everything stems from these objectives—e.g., composing materials and selecting learning activities like quizzes.

The academic and the judge work closely to develop the legal materials for the course. The NJI staff contribute their e-learning expertise to present legal materials effectively for the online environment. Once the materials are ready, the NJI is responsible for building the course website.

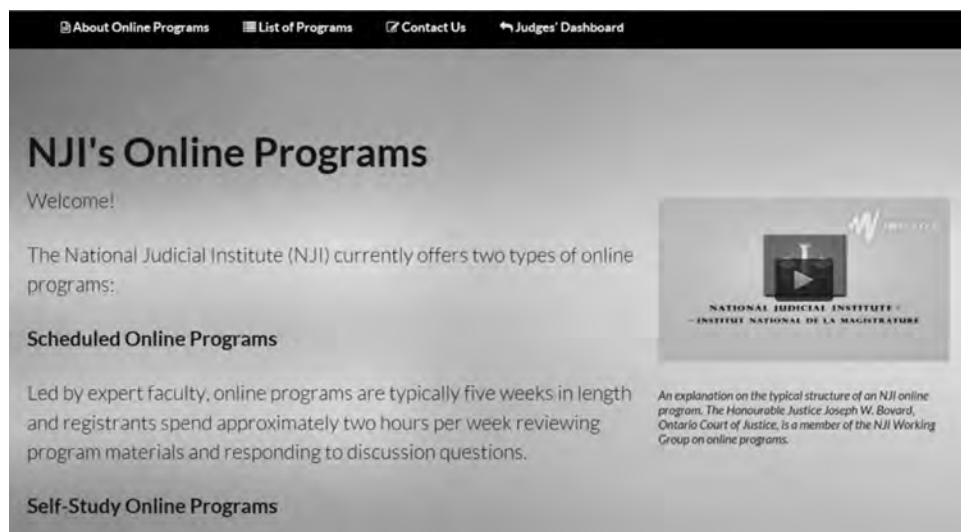
Each program follows a template and is modified according to the program's needs. Typically, a program will last five weeks and consist of five modules.

Each week a new module opens. *Week 1* is an introduction to the program. Participants take the time to familiarize themselves with the online layout and with each other by posting short introductions in a discussion forum (chat room). Participants can also post a photo of themselves to make the program more personal and put a face to a name.

² W. Horton, *E-Learning by Design*, 2nd ed. (San Francisco: Pfeiffer, 2011), p. 66.

³ *Ibid.*, p. 2.

Figure 1
Homepage for Online Programs Learning Portal (MURA)



In weeks 2, 3, and 4, participants must read the prepared materials and share their perspectives on problem-based questions within the discussion forum. During these weeks, the faculty (as program moderators) supply feedback, guide and encourage the discussion among participants, and generally “keep the ball rolling” in the right direction. To accomplish these tasks, the faculty must log on to the website daily to ensure that the program is developing as planned. Other learning activities may be available during these weeks, such as demonstration videos, quizzes, and polls.

Week 5, the program wrap-up, provides participants the opportunity to direct any outstanding questions to the programs faculty, as well as complete a course evaluation.

In February 2014, in order for the NJI to keep up with e-learning technology and to respond to judicial feedback, the NJI successfully launched its new *Online Programs Learning Portal* (see Figure 1).

The NJI chose Mura, an open-source content management system, because it met the NJI’s requirements as determined through a needs analysis. However, other platforms exist that are just as suitable.

The selection of any learning platform is determined by the needs of the learning organization—selection of such a platform is never “one size fits all.” Since the launch of the new portal, feedback has been positive. The participants appreciate the new look and feel, its user-friendly navigation, and added features for learning activities, such as the quiz. The participants also like the profile features that allow them to receive e-mail notifications on their cell phones each time a new discussion post is added online and to post their profile pictures.

As one participant said, “Great job NJI on the new Online Programs Learning Portal! I just finished my test drive of this new Portal by participating in the Judicial

Figure 2
List of Upcoming Online Programs (MURA)



Authorizations to Search program. I was delighted to discover the refreshed new look of the Portal, with bigger and brighter font. And I loved the friendly layout (easy on the eyes), with profile pictures of the participant in each comment window. I already knew a few of the participants but the profile pictures allowed me to connect all the names with faces. That was a good improvement.”

The NJI is committed to responding to participants’ feedback and to improving its program offerings and technology.

TYPE OF ONLINE PROGRAMS OFFERED

All programs are asynchronous, meaning interactions take place outside of time and distance constraints (participants are not online at the same time). Therefore, participants engage with the course materials and discussions when it is convenient to their schedule (see Figure 2). This model allows the NJI to deliver three types of online programs: national, court-requested, and international.

National


A typical national online program is open to all judges in Canada. The NJI tries to select topics that would be of interest to both levels of court—provincial and federal. For example, recently there has been an increase in the number of self-represented litigants (SRLs) in court; therefore, judges must now be proactive in meeting their responsibility to ensure that SRLs are informed of the judicial system process, their rights and obligations, and the available resources at all levels of court.

In response to this need, in September 2014 the NJI offered *The Judge’s Duty to Assist Self-Represented Litigants: Ethics and Practice*. The program was intended to help

Figure 3
Role-Play Video Included in an Online Program Discussion Question

Question 1

Please watch the video entitled *Family Law – Mobility – Duty to Assist*



The merits of this case engage the fundamental principle according to which in all decisions concerning children, their best interests should be the primary consideration. Also, we understand that adjournment may not be desirable given that "the school week starts next week and [the mother] needs to be settled in the school district to get the children registered into school."

1. Generally speaking, how does/should the fact that public policy issues are at stake influence the way in which you handle objections asserting that an SRL has failed to comply with a rule of procedure or evidence?
2. In this particular case, what do you think of the way in which the judge handled the SRL's failure i) to use the correct form and ii) to comply with the hearsay exclusionary rule? And what about his comment to

judges understand what the duty to assist actually required. It did this by exploring hypothetical situations, which raised questions of procedure, courtroom management, and ethics. The program was interactive through various learning activities, including role-play videos demonstrating how the judge should respond to the SRL when the SRL does not abide by a rule or procedure (see Figure 3).

Judges discussed the difficulties that they experienced in cases where one or both of the parties are an SRL. They explained how they handled the situations and sought help. All of the participants were generous and imaginative in their contributions to the program. At the end of the program, the participants had a firmer grasp on the law in this area and a better understanding on how best to handle issues that arise in the context of the SRL.

Court Requested

A significant portion of the education available to judges in Canada is through court-based seminars. The NJI offers support to court-based education for both in-person and online programs, working in a flexible manner with courts upon request.

In February 2013, the NJI piloted its first court-requested online program jointly with the Provincial Court of British Columbia, titled *Essentials of the New B.C. Family Law Act*. The Provincial Court of British Columbia has approximately 150

judges comprising both full-time and senior judges who are assigned to courthouses throughout the province. Given the number and location of the judges, it is both expensive and logistically challenging to organize in-person conferences more than two times each year.

In 2013 new family-law legislation was introduced, which brought a fresh approach to the law on domestic relations in British Columbia. The introduction of new legislation produced requests from judges for education programs focused on the new act. The challenge was to find a means to deliver a timely program in a cost-effective way to acquaint judges with the legislation. The solution was to develop and deliver, with the support of the NJI, the court's first online program focused on the Family Law Act.

When the act came into force, it replaced the legal regime that had been in place (practically unaltered since 1978) with a new conceptual framework, language, and legal tests. The program provided the participants with an overview of the new changes and allowed for analysis and discussion. Discussion did not just take place online. As one participant said on the course evaluation, "I found the discussions to be extremely helpful. Not only did they generate more discussion and thought online, but also in the Chambers and amongst other judges I would see at the meetings and when I sat in other courts (across the province)."

To learn more about this court-requested online program, please access the PowerPoint presented at the 6th International Organization for Judicial Training (IOJT) Conference in Washington at <http://tinyurl.com/qd3pwhd>.

Court-requested online programs offer courts a complement to their scheduled, in-person programming that can deliver time-sensitive subjects, be cost-effective, and are also convenient for everyone's schedules. The program successfully provided an opportunity for judges to engage with complex issues before they arose in the courtroom.

International

At times, the NJI partners with judicial colleges abroad. These international online programs provide participants with the opportunity to analyze scenarios from different angles and take part in a rich exchange of ideas and perspectives on a pertinent subject on the international stage. Typically, three to four jurisdictions are involved in each program, with up to ten participants from each jurisdiction.

The NJI's latest international online program was offered in March 2015. *The Hague Child Abduction Convention: International Perspectives* was created to increase understanding of the types of cases with *Hague* implications and had participants from the Institute of Judicial Studies (New Zealand), the National Judicial College of Australia, and the National Judicial College (United States). Judicial participants from Hong Kong and Singapore also joined the program.

These international online programs are always very well received, and the participation is high. Many judges have commented that they learned a lot and that they welcomed the opportunity to discuss issues of international importance with colleagues in other jurisdictions.

FUTURE DEVELOPMENTS

Distance learning has become an increasingly important part of educational programs in higher academia and also an acceptable mode for other judicial colleges. It holds enormous promise for accessibility to judicial education when done right.

As part of the NJI's mandate to further education both online and in-person, the Institute is committed to improving its online program offerings, tools, and technology. The NJI is currently working on a number of new initiatives.

Self-Study Online Program

In January 2015, the NJI piloted its first self-study online program: *The Law of Impaired Driving* (see Figure 4). This program is completed individually according to the judge's own schedule and no registration is required. This approach makes education continuously available in an area where strong interest in the law has been expressed.

The program materials were adapted from a five-week scheduled online program on the topic. The NJI recycled the materials from the initial offering of the program and crafted a self-study program to determine if this approach would be useful for the judiciary. As one participant said, "I think, it is a fantastic way to offer learning! From the time I spent on the course it looks very interesting and informative. I like the summaries of what other judges who took the course in the other format had to say as I think it offers important perspective." Another participant mentioned, "It allows access whenever time is available."

These programs can accommodate judges who are unable to attend in-person conferences or longer scheduled online programs. They include recent materials on the law, social context, and judicial craft written by faculty, but unlike the scheduled online programs, are not moderated by faculty. Each learning segment is designed around stated learning outcomes. There are also learning activities, such as a private multiple-choice quiz, that provide participants with feedback in the absence of faculty. If a participant selects a false answer, the quiz feature will provide the correct answer with a further explanation (see Figure 5).

Based on judicial feedback, there is clearly potential to continue and develop these programs for popular topics. They also provide a good opportunity to adjust the program structure to a more condensed form as required.

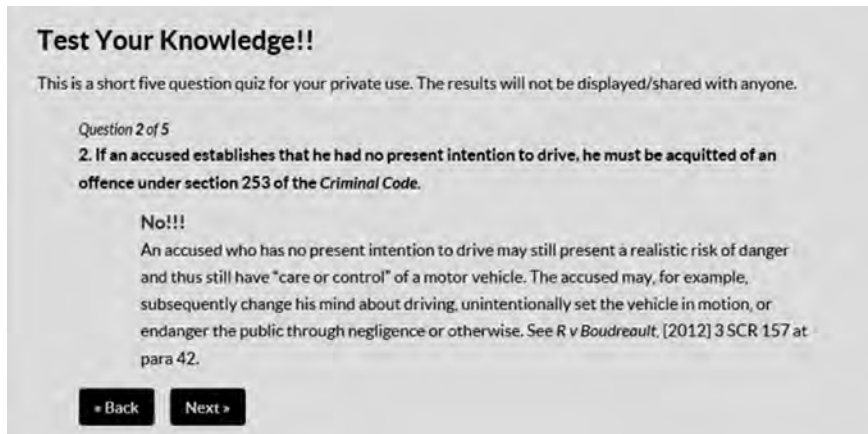
Faculty Development Program: Online Education for Judges

Teaching an online program offers its own set of challenges for judicial educators; for example, moderating online programs is different from traditional in-person teaching. In the online environment, there is no body language that can tell the moderators if

Figure 4

Home Page of NJI's Self-Study Online Program: *The Law of Impaired Driving*

Figure 5

Quiz Feature in NJI's Self-Study Online Tutorial: *The Law of Impaired Driving*

they are capturing the audience's interest or whether the participants are understanding the content.

Effective moderation is critical to turn an online discussion into a collaborative learning community. A beneficial online discussion requires participants to post frequently and have meaningful things to say; necessitates a discussion that meets the participants' needs and that reflects the learning objectives of the program; and includes direct teamwork between participants.⁴

⁴ George Collison et al., *Facilitating Online Learning: Effective Strategies for Moderators* (Madison, WI: Atwood Publishing, 2000), p. 77.

The NJI enlists faculty that are the best experts in the field, but also recognizes that some expert faculty do not have experience in creating online content and moderating online programs.

The NJI now coaches first-time online-program faculty to be efficient online moderators through conference calls because faculty members can be located across the globe. The NJI is now working towards creating an online program specifically for first-time online-program faculty or for faculty that want a refresher in online teaching.

Those undertaking this study will be offered a primer in designing quality online programs and crafting program materials, as well as gain insight into the most effective strategies and methods used to engage judicial participants online. The program will address various topics, including:

- Writing for the web
- e-Learning instructional design principles
- Using appropriate tone and voice
- Including elements of humour and emotion to add personality to discussions
- Providing constructive feedback
- Defusing sensitive comments
- Moving participants to a new conceptual level of deeper thinking

A successful online program not only has great design and development mechanisms, but the dialogue that occurs within a moderated discussion separates the good programs from the average ones.

CONCLUSION

Over the last 15 years, the NJI has greatly improved its online programs. It has reached out to the Canadian and international judiciary with great success. The NJI's online programs, and the delivery of these programs, have evolved as a result of years of feedback from participants, the leadership, and hard work of NJI staff and the dedicated work of volunteers from the judiciary.

By launching its new *Online Programs Learning Portal* last year, the NJI demonstrated that it is keeping up with technological advances to improve the programs that it provides to the judiciary. Based on the feedback received, the participants and moderators in the NJI's online programs have praised the new developments and the way that the NJI is evolving. However, it does not stop here. The NJI is dedicated to continuing to improve these programs.

The NJI's online programs are a valuable tool, amongst others, in its multifaceted approach to judicial education. As our societies become more and more accustomed to, and reliant on, computer technology, online learning is becoming an accepted, viable way of learning. In 1999, when the NJI started its online-learning initiative, a number of judges were unfamiliar with computers (demonstrated when NJI

surveyed judges). Now, newly appointed judges are all intimately acquainted with online technology and do not shy away from online learning as their predecessors did.

The NJI has had great success with its online programs, and it encourages other jurisdictions to assess their judicial educational needs and contemplate seriously how an online judicial education program could help its judiciary. As always, the NJI is more than willing to provide whatever support it can give to any jurisdiction that wishes to develop their own online-learning curriculum.

JUDICIAL EDUCATION: THE SINGAPORE BRAND

BY BOON HENG TAN*

INITIAL APPREHENSIONS OF A NONE-THE-WISER

Can a small judiciary of less than 200 judges nationwide ever require a judicial college? Is it not an overreaction to set up an institute to cater to such a small regular-user base? Will it be underused, thus wasting taxpayers' money? Is a judicial college unnecessary if the judicial system in Singapore does not require its judges to undergo formal judicial training with examinations at the end of the course? Would one be even more sceptical if one knew that the turnover rate is extremely low in the Singapore judiciary?

These questions, and more, came to mind when the Honourable Chief Justice of Singapore, Justice Sundaresh Menon (CJ Menon), shared his plans to establish a judicial college. It was even more daunting when the author was informally alerted to the possibility that he could be appointed as the judicial college's first executive director to assist the dean to establish the college from the ground up. Since that time, the Singapore Judicial College (SJC) has demonstrated the critical role that it has to play and its vast potential.

AIMS OF THIS ARTICLE

In this paper, it is the author's aim to convince readers who hail from the Small Island Developing States that even a small judiciary deserves a judicial college (or equivalent) to oversee the training and development of its judges. There are tremendous benefits to reap from having one. As for readers from the large jurisdictions, it is hoped that the Singapore brand of judicial education, young as we are, will excite you. The Singapore Judicial College may be new, but it has much to offer to not only its own judges, but also other judges from the region and beyond who participate in its programmes.

The SJC was established on 1 November 2014 with the appointment of its first dean and executive director by CJ Menon. The dean is the Honourable Judicial Commissioner Foo Chee Hock. As a judicial commissioner, he has the same powers as a judge of the High Court. The author was seconded from the State Courts as a district judge to the Supreme Court as the executive director of the SJC to assist the dean. Ever since assuming duties at the SJC, it became apparent that the more one is acquainted with the everyday grind of a judicial officer, the better one can assist the SJC to conceptualise, plan, and implement meaningful continuing-judicial-education

* District Judge Boon Heng Tan is Executive Director, Singapore Judicial College. This article was prepared in April 2015.

programmes. To this extent, the author is very grateful that the executive director's Secondment Order makes provisions for the incumbent to continue to perform judicial duties as a district judge in the State Courts. Borrowing the words of CJ Menon, "The assignment of two senior judicial colleagues to drive the initiative to upgrade our judicial training efforts marks a historic step for us."¹

BRIEF FACTS ABOUT SINGAPORE AND THE JUDICIARY

For those who may not be familiar with Singapore, she is a small island state of approximately 718 square kilometres of land with a population of only about 5.4 million people.² Equally small in size is the Singapore legal profession. We have about 5,000 practising advocates and solicitors, and the total number of judges and judicial officers in Singapore does not exceed 200. With a relatively small pool of judges, judicial training and continuing education have been largely decentralised, with each court taking the responsibility of organising programs suited to its own needs. Over the years, the combined efforts of the Supreme Court, the Family Justice Courts, and the State Courts of Singapore have yielded a suite of judicial education programmes, including induction programmes for new judges and judicial officers, regular legal refreshers, topical workshops of judicial interest, and interdisciplinary seminars. Over the last ten years, a substantial number of judicial education events have also been extended to judges in the region through the Singapore Cooperation Programmes, Regional Judicial Symposiums, Asia-Pacific Court Conference, and Judicial Governance Programmes.

WHY ESTABLISH THE SINGAPORE JUDICIAL COLLEGE?

Since CJ Menon assumed the helm of the judiciary a little over two years ago, among the early priorities was a desire to institutionalise and pull together the various judicial education programs that had been developed over time. CJ Menon considered that the time for this had come because judges today are faced with a vastly different operating climate, acknowledging that the people that we serve are more sophisticated and knowledgeable and have higher expectations of the courts. The legal issues that come before the courts have also become increasingly complex and frequently involve interdisciplinary issues and transborder transactions. In addition, there is a steady rising trend of more litigants-in-person.³ Each of these issues increases the challenges that judges face each working day. Judges today must not only be legal technocrats, but also need the skills of a problem solver acclimatised to cross-cultural differences. In this

¹ Response of CJ Menon at the Opening of the Legal Year on 5 January 2015 at the Supreme Court of Singapore.

² Correct as of 2014.

³ Editor's Note: "Litigants-in-person" appear without counsel and are sometimes referred to as "self-represented" or "pro se" litigants in other countries, such as the United States.

environment, the need for ongoing training and education for judges has become an imperative. CJ Menon frames it as,⁴

Our judges have been at the very core of Singapore's legal development and they must continue to lead us forward in changing times. They constitute, as I had described earlier, the essential fibre of our legal system. It is becoming ever more critical that our judges are suitably-qualified men and women of good character and sound temperament. However, our quest does not end with the appointment of the right person for the job. Judges, like all other professionals, require continuing education and development.

Indeed, since the 1990s, the Singapore judiciary has been pushing to extend the boundaries of its work within the justice system. This effort would not have been possible without a strong judiciary. After a period of study and reflection, CJ Menon decided that a judicial college should be established to develop and manage these efforts. The immediate objective was to bring all judicial training under the auspices of the SJC and to develop and strengthen the curricula. The SJC is expected to leverage and build on the many streams of judicial education that have emerged over the past decade or so. This will not only cover induction and continuing training for judges and judicial officers but will also extend to the technical assistance and educational programs that are offered to judges from other jurisdictions.

THE OFFICIAL LAUNCH OF THE SJC AND ITS CORPORATE PRESENCE

With the above backdrop in mind, the SJC was officially launched by CJ Menon at the Opening of the Legal Year 2015 on 5 January 2015. The SJC, dedicated to the training and development of judges and judicial officers, is established under the auspices of the Supreme Court and comprises a Local and an International Wing. Besides a web presence (www.supremecourt.gov.sg/sjc), the SJC has a physical presence at the ground floor of the Supreme Court building. It boasts a business centre and reception area especially for the foreign participants. Within the business centre is a small but conducive training room for about 15 persons. At the rear of the business centre is the SJC Secretariat.

The SJC's logo features a stylised disc that alludes to the iconic architecture of the Supreme Court building (see Figure 1). The disc is also a distinct feature of the Supreme Court's corporate logo, reinforcing the shared vision of fairness and impartiality in the administration of justice. A book, an icon of knowledge, is positioned below the disc and reinforces the college's vision—built on a strong structure with solid foundations designed to withstand assault and the ravages of time. The solid colours of dark green, black, grey, and white embody growth through judicial training and scholarship in a nurturing and dignified environment. The colour dark green is

⁴ CJ Menon, *supra* n. 1.

Figure 1
The SJC's Corporate Logo



Figure 2
Vision and Mission Statements



also synonymous with “quality” in Singapore’s business excellence as depicted in the corporate colours of the Singapore Quality Award. This logo was conceived, conceptualised, and designed in-house.

To help the SJC stay focused and remain committed to its original cause, in consultation with the Board of Governors, the SJC has also developed a *Vision* and a *Mission* statement (see Figure 2).

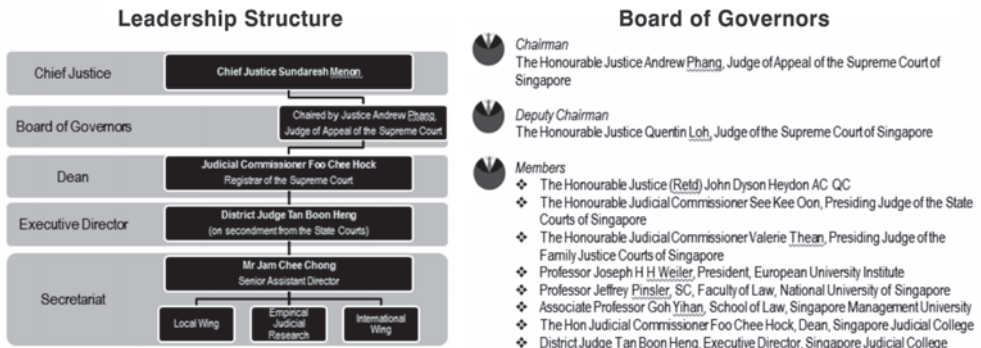
THE LEADERSHIP OF THE SJC

While the chief justice has direct oversight of the SJC, there is a Board of Governors appointed to provide advice and guidance to the SJC (see Figure 3). The chairman of the Board of Governors is Justice Andrew Phang, judge of appeal of the Supreme Court. Before being appointed to the bench, Justice Phang was a highly respected and accomplished academic, whose research included contract law, jurisprudence, and the legal system. Deputising Justice Phang is Justice Quentin Loh, judge of the Supreme Court. Before being elevated to the bench, Justice Quentin Loh was a senior counsel with a very successful legal practice. Justice Loh also writes and publishes in areas of the law including arbitration, civil procedure, and alternative dispute resolution.⁵

The Board of Governors has both local and international legal bigwigs, including Justice Dyson Heydon (ret.) of the High Court of Australia; Professor Joseph

⁵ Justice Quentin Loh co-authored *Confidentiality in Arbitration: How Far Does It Extend?* (Singapore: Academy Publishing, 2007); the Singapore chapter in *International Law and Regulation* (London: Longman Law, Tax and Finance); “The Duty of Counsel Before an Alternative Dispute Resolution Tribunal,” in H. von Reinhold Geimer, *Wege zur Globalisierung de Rechts* (München: C H Beck’sche Verlagsbuchhandlung, 1999); and “Injunctions Restraining Calls in Performance Bonds—Is Fraud the Only Ground in Singapore?” *Lloyd’s Maritime and Commercial Law Quarterly*, part 3 (2000): 289.

Figure 3
The SJC Leadership Structure and Board of Governors



Weiler, who is the president of the European University Institute; and Professor Jeffrey Pinsler SC of the Faculty of Law of the National University of Singapore.

THE SJC'S AREAS OF FOCUS IN JUDICIAL EDUCATION

To give more clarity as to what the SJC should be including in its judicial-training programmes, it was necessary to group and map the critical areas. This provides more synergy in the SJC's offerings. In this regard, the SJC consulted its judges on their training needs and studied the nature of previous judicial-training programmes.

From the findings collated, it was observed that the vast majority of the topics covered generally come within four main heads of classifications. Hence, regardless whether it is the Local or International Wing, the areas of focus of judicial education at the SJC generally cover these four main areas: "Bench Skills," "Legal Development," "Judicial Ethics," and "Social Awareness" (see Figure 4). The SJC is conscious that new categories may have to be included as training needs evolve over time. In its interactions with various judges on the areas of focus, new areas could include "Court Leadership" and "Technology and Sciences."

Judges can perform better in excellent courts, and court excellence is possible only with strong, visionary, and dynamic leadership. Judges with the inclination towards managing courts for excellence will find training in court leadership helpful. Leadership is not just innate. Leadership can be taught. There are also frameworks for court excellence, such as the International Framework for Court Excellence, which the SJC will do its part to publicise and promote to the international judicial community. In today's context, judges are not just judges. There will be judge-leaders, judge-managers, judge-supervisors, judge-administrators, and judge-governors.

There is a saying that the law is always playing catch-up with the advances of technology. Be that as it may, judges should be well-trained and well-equipped to make sense of the scientific advancements and the advent of new technology. The SJC is

Figure 4
Areas of Judicial Education in 2015



well-placed to bring together cutting-edge training programmes featuring experts in various fields of technology and the sciences to prep our judges about what to expect. It would, of course, be ideal for judges to hear about the emergence of new technologies and discoveries in science from the SJC’s training programmes rather than from a trial. Relevant topics under “Technology and Sciences” include 1) whether DNA is the silver bullet; 2) leveraging on new DNA technology to solve crimes; 3) whether familial DNA testing is permissible and if so the legal implications; 4) changes in the controlled-drugs landscape; 5) emergence of new psychoactive substances (NPS); 6) metabolism of drugs; 7) disastrous effects of the unregulated sale of poisons; 8) forensic document examination, e.g., for handwriting examination; 9) crime-scene reconstruction; and 10) plainly philosophical-scientific-legal topics, such as whether we are playing catch-up and why we should bother to do so.

THE LOCAL WING OF THE SJC

The Local Wing of the college oversees the needs of the Singapore judiciary, from induction to continuing education to research and developmental programmes. Besides pulling together the continuing judicial education programmes organised by the Supreme Court, State Courts, and Family Justice Courts, the SJC has its own signature programmes:

A judiciary-wide induction programme for all newly appointed judges and judicial officers within the first year of appointment. The instructors for this four-day programme, the first of its kind in Singapore, include the chief justice, judges of appeals, and senior justices of the Supreme Court. Topics to be covered include transition to the bench, achievement of a judicious work-life harmony, management of

judicial stress, judicial ethics, conduct in and out of court, managing of querulous litigants-in-person, bench skills, developments in procedure, cyber security, contact with the media, judgment writing, and maintaining of judicial authority in the courtroom. This programme is over and above the respective operational induction programmes held at the respective courts that the new judges and judicial officers will undergo upon appointment to get started on the job.

The three main streams of speakers' series for the continuing education of SJC judges. The *Supreme Court Bench Series* will feature the chief justice, judges of appeals, judges, and judicial commissioners from the Supreme Court of Singapore. The *Professorial Series* will feature local law academics from the National University of Singapore and Singapore Management University, including distinguished foreign academics. The *Practitioners' Series* will mostly feature judicial officers with expertise on procedural and practical topics. In addition, established lawyers in private practice and professionals with expertise in relevant specialized skills and knowledge will also be invited as instructors. Under the *Practitioners' Series*, lighthearted sessions will also be included during lunchtime training. An example of such a topic is "Judicial Behaviour: The Dreaded and Desired."

Pulling together the judicial-training efforts of the various courts. As the various courts also have training programmes for their judges and judicial officers in specific areas of need, the SJC reviews these programmes for suitability for the whole judiciary, inviting registration as appropriate. In this way, there is a multiplier effect of the number of training opportunities available for judges; it also avoids duplication.

THE INTERNATIONAL WING OF THE SJC

The International Wing of the SJC positions it as a forum of choice for its foreign counterparts, offering judicial-training programmes driven by demand with a wide menu relevant to judicial work, including induction, courses on core competencies (such as case management, use of court technology, judicial administration, judicial ethics, and bench skills), recent developments on areas of legal interest, and useful interdisciplinary studies. To make available more of the SJC's programmes to foreign judges from the developing jurisdictions, the SJC is in partnership with the Ministry of Foreign Affairs Technical Cooperation Directorate under the Singapore Cooperation Programme (SCP) and the Small Island Developing States Technical Cooperation (SIDSTC). With this collaboration, the SJC's specially designed, five-day training programmes are more accessible to foreign judges. For 2015, the SJC is organising two one-week-long programmes for foreign judges:

- **Strategies of Case Management: Challenges, Solutions and Innovation** (6 to 10 April 2015)
- **End-To-End Court Technology: A Compendious Survey** (6 to 10 July 2015)

The case management programme in April 2015 received an overwhelming response. The intention was to cap the enrolment at 30 to ensure optimal participation. However, the final registration was 33 participants from 23 countries. The participants hailed from Azerbaijan, Bahamas, Bahrain, Brunei, Cambodia, Fiji, Hong Kong, Indonesia, Lithuania, Malaysia, Mauritius, Micronesia, Myanmar, Papua New Guinea, Philippines, Romania, Slovak Republic, Sri Lanka, Tanzania, Thailand, Timor-Leste, Tunisia, and Ukraine. The topics covered in the five-day programme included the Singapore judiciary's experience in clearing case backlogs in the 1990s, today's differentiated tracks of case management, and an introduction to the International Framework for Court Excellence—a healthy court system ensures continuing effective and efficient case management.

To allow the participants to see for themselves the deployment of case management strategies on the ground, learning journeys to the Supreme Court, State Courts, and Family Justice Courts were weaved into the programme. On one of the afternoons, the participants were also treated to roadshows (complete with hands-on opportunities) from IT consultants presenting the eLitigation System,⁶ Integrated Criminal Case Filing and Management System (ICMS), and Regulatory Offences Management System (ROMS). As one key strategy to case management is a diversionary measure, the participants also benefited from a presentation of the work of the Singapore Mediation Centre, an entity under the Singapore Academy of Law.

EMPIRICAL JUDICIAL RESEARCH

Empirical judicial research has thus far taken root in the West. However, much of the published findings may not be entirely relevant to judiciaries in Asia. Be that as it may, we have observed that there are tremendous benefits from empirical judicial research. Hence, an extremely important and unique dimension that the SJC will develop is an empirical judicial research laboratory with the aim of serving as a test bed for innovations in judicial studies, practices, and policies.⁷ Unless the SJC embarks on its own empirical judicial research, it will never know if what it has been practising actually yields benefits and, if so, the areas for improvement.

We are pleased to state that the empirical judicial research initiative of the SJC is probably the first of its kind in Asia. The research findings and recommendations flowing from this initiative will have special significance not only to Singapore but potentially other parts of Asia and the Middle East given Singapore's Asian focus and perspective. The empirical research will allow new or existing practices in the courts to be tested and to have the underlying premises of prevailing policies or practices validated or not (as the case may be). The SJC can experiment with new ideas and

⁶ This is the second-generation system for the mandatory filing of all civil cases in the Singapore courts. The first-generation system was called the Electronic Filing System (EFS), which was officially launched in 2000.

⁷ CJ Menon, *supra* n. 1.

study the findings to identify areas for refinement or implementation.⁸ To move this forward, the SJC has invited the deans of our two law schools to submit research proposals for consideration. The response has been very encouraging. The SJC has received several research proposals, and they have been endorsed by the Board of Governors and approved by CJ Menon for work to commence. It is exciting to report that several more research proposals are on its way.

OVERCOMING INITIAL CHALLENGES

Interestingly, many of the challenges encountered in the initial months of the inception of the SJC were in relation to the programmes under the Local Wing.

Addressing training fatigue. When the publicity mailers for the training programmes were disseminated by the SJC, feedback was received that members of the judiciary were experiencing training fatigue. This was because the number of training programmes available for registration increased nearly fourfold compared to the pre-SJC days. This is a happy problem, as SJC was evidently making its nascent presence felt. Be that as it may, the SJC needed to address the issue of training fatigue.

Before the establishing of the SJC, the internal training programmes available would typically emanate from the courthouse where the judges and judicial officers were sitting. With the SJC's role of pulling together the training programmes offered by each of the courts, including the Supreme Court, State Courts, and Family Justice Courts, and the programmes organised by the SJC, there was a plethora of training opportunities, which was understandably overwhelming. It was necessary to reassure the members of the judiciary that the smorgasbord of training programmes available was meant to provide a wide range of options from which to select discernibly. It was explained to the members of the judiciary that they ought not to feel obliged to register for as many courses as they can spare the time to do. Though this would seem obvious, expressly giving this reassurance alleviated concerns.

Besides the assurance, there was also a need to identify the best programmes from the respective courts to make available judiciary-wide. The SJC discussed this at length with the respective judicial education liaisons from the different courts and agreed that moving forward, the SJC would typically include only one training programme per quarter per court for registration by judges and judicial officers from the other courts. At the SJC's end, instead of one training programme per quarter per series (i.e., from the *Supreme Court Bench Series*, *Professorial Series*, and *Practitioners' Series*), it would be reduced to one every four months per series. With this formula, the routine training programmes were capped to about 21 a year (excluding special one-off courses and any external training opportunities).

Identifying sustainable windows for short training programmes. For longer training programmes, such as those that last half a day or more, the participants know

⁸ *Ibid.*

that they need to free up their hearing schedule to attend the courses. However, considering that the Singapore judiciary is small in number, if the courses are frequently half a day or more, then the available hearing time of the courts will be affected because a high percentage of judges will be having training. To facilitate work-life harmony, the SJC usually tries not to use weekends for training because we want our judges to spend quality time with their families and to rejuvenate. After experimenting with various permutations, the conclusion was reached that the continuing judicial education programmes can be short sessions held either during lunchtime or in the late afternoon. In time to come, the SJC may also explore the feasibility of holding short training programmes over breakfast. This will help to increase the number of windows to carry out short training programmes of one to two hours in duration.

Securing the “buy-in” and coordinating the different courts on matters relating to judicial education. One of the administrative challenges of the SJC was to coordinate, work with, and secure the “buy-in” of the respective courts. Hitherto, the various courts have discharged their judicial-training function in a fairly autonomous way. With the formation of the SJC, there was an immediate need to coordinate the judicial-training activities spearheaded by the respective courts. For this reason, the SJC appointed judicial education liaisons (JELs) from each of the courts, who meet once a month. These monthly meetings provided a ready platform to discuss issues of planning, implementation, and after-action review. The forum of JELs is also a natural platform to brainstorm and serve as a “sounding board” for new initiatives. For instance, out of the forum of JELs, selected training programmes organised by the respective courts, which are of interest to the other courts, are now specially identified and extended to the whole of the judiciary under the auspices of the SJC.

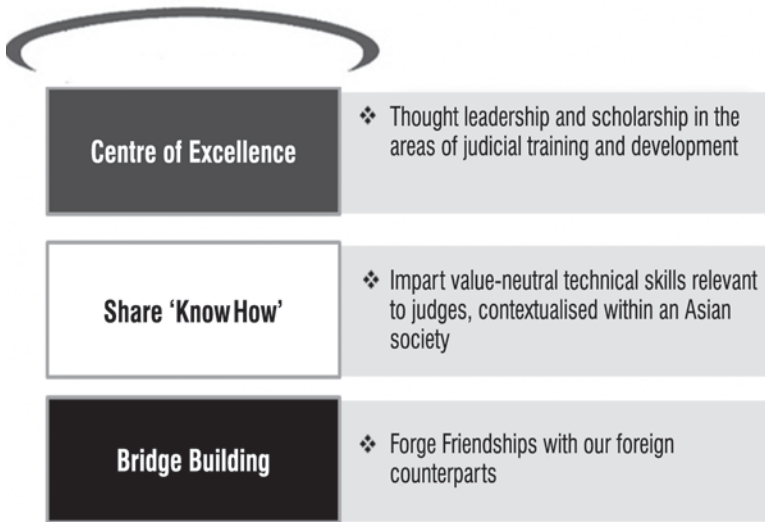
CLOSING THOUGHTS

The establishing of the SJC marks a new milestone for the continuing judicial education of judges and judicial officers both local and foreign. The multiplication of training programmes made available to members of the Singapore judiciary underscores how the existence of a central authority like the SJC can make a difference by pulling together resources for common benefit.

The author was especially heartened when the judges and judicial policymakers landed on the shores of Singapore to attend the five-day case management programme held in April 2015. Every participant, without exception, gave affirmative feedback on the training.

This suggests that the hard work of the SJC has paid off. Yet it is just the beginning. The SJC has a long way ahead and much to learn from its more established counterparts. The SJC is very grateful to the MFA-SCP initiative and all its stakeholders and partners. It is with this strong support that the SJC can work towards realising its aspirations of becoming a centre of excellence for thought leadership and scholar-

Figure 5
The Aspirations of the SJC



ship in the area of judicial education, impart value-neutral technical skills relevant to judges in the Asian context, and forge friendships with our foreign counterparts (see Figure 5).

CJ Menon's point has been proven. There is a need for the SJC. The Singapore judiciary may be small, but the potential of the SJC is not limited to its domestic needs. The SJC can play a valuable role to the continuing judicial education of judges far beyond the shores of Singapore.

CONTINUING JUDICIAL EDUCATION IN PAKISTAN

BY FAQIR HUSSAIN*

Continuing legal education, in its formalized sense, is nonexistent in Pakistan. Regrettably, there is no concern about its omission, or any realization of its need and utility for the profession and practitioners. This is also a disservice to the consumers of the justice sector, who are being deprived of the assistance of qualified, able, and competent legal counsel.

Continuing judicial education has also been a neglected subject. It made a late entry on the judicial horizon. This is because of a false assumption that the basic qualifications and on-the-job experience of a judge-turned-lawyer are sufficient. The myth may have some relevance to Great Britain and a few other common-law countries, where experienced lawyers are appointed as judges; it had no relevance to Pakistan, where judges of the trial courts are inducted at a fairly early stage, i.e., within two or three years of obtaining a law degree. Thus, being raw and inexperienced, they need orientation, tutoring, and preservice training in law, procedure, and case/court management.

The need for such training was expressed at a fairly early stage in Pakistan's national history in the *Report of the Law Reform Commission* (1967-70). The commission deprecated the practice of the judges having to learn their work by the process of trial-and-error, with the errors being very costly in terms of litigants' suffering in having to file appeals/revisions and in consequential delays in disposal. It therefore recommended that the government establish a judicial-training academy for the pre- and in-service training of judges, which, in the opinion of the commission, would contribute to efficient performance and expeditious disposal of cases.¹ The recommendation was not heeded, and no such training institute was established.

As regards the training arrangements for members of the bar, the legal Practitioners and Bar Councils Act 1973 obliges the bar council to prescribe the standards of legal education and hold seminars and conferences for promoting legal knowledge and learning in the legal profession.² There are around 130,000 lawyers practicing at different level of judicial hierarchy.³ Currently, a lawyer may join the

* Dr. Faqir Hussain served as Director General, Federal Judicial Academy, Islamabad.

¹ *The Report of the Law Reform Commission 1967-70* (Karachi: Manager of Publications, Government of Pakistan, 1970), pp. 484-87.

² S 13 (1) (j & lb).

³ The numbers of lawyers currently engaged in practice are:

Advocates, Supreme Court of Pakistan—4,984

Advocates, High Courts—69,085

Advocates, Subordinate Courts—57,494

Source: Dr. Faqir Hussain, *Judicial System of Pakistan*, 4th ed. (Islamabad: Federal Judicial Academy, 2015).

profession, after obtaining the requisite qualification (i.e., LL.B. degree) and after a brief stint (six months) of apprenticeship with a senior lawyer.⁴ Even though mandated to arrange for the continuing legal education and skill-development of lawyers, the governing bodies of the bar, namely, District, High Court, and Supreme Court bar associations and Pakistan/Provincial bar councils, have made no arrangements for training lawyers.

This dismal state of affairs is further compounded by the persistent deterioration in the standard/quality of legal education in the country, where thousands of law graduates are regularly been churned out, thanks to the mushroom growth of law schools, run mainly for commercial consideration. The lack of high-standard law schools and the gradual deterioration in the quality of legal/judicial education in the country was noted by the Supreme Court in the case of *Pakistan Bar Council v. Federation of Pakistan*.⁵ The court bemoaned the absence of quality legal education in the country and observed: "The poor quality of legal education in the country is taking its toll on the Bench, the Bar and ultimately the quality of justice."

THE BEGINNING

A small beginning was made in 1988, when the Federal Judicial Academy (FJA) was established. It was initially set up under a Cabinet Resolution. No proper organizational structure was prescribed nor any curriculum/syllabi designed for the trainee judges. The control of the FJA lay in the hands of the Ministry of Law and Justice. No permanent faculty was appointed, and training was imparted mostly by adjunct faculty comprising serving and retired judges. Located in a residential house, a single classroom could merely accommodate 15 to 20 persons, which was inadequate for the thousands of judicial officers, law officers, and court personnel. There was no systematic programme to call judges for training, with the result that most of the judges never had a chance to come for training, whereas a few had multiple chances. Again, there was no fixed period of training nor any examination and assessment/evaluation of the performance of trainee officers; those who came for training merely complied with the orders of the higher-ups, who nominated them for the course. There was no anxiety or interest for training because training was not prescribed for confirmation in service or promotion in a future career. The training programmes, therefore, continued in a somewhat haphazard manner.

TRANSFER OF CONTROL

Following the operationalisation of the clause in the Constitution providing for the separation of judiciary from the executive,⁶ and the Supreme Court ruling in the

⁴ The Pakistan Bar Council recently entered into an arrangement with a private testing service for conducting tests of those desirous of enrollment as lawyers.

⁵ PLD 2007 SC 394.

⁶ Art. 175(3).

Sharaf Faridi case⁷ directing the federal government to bring the executive magistrates under the control of respective High Courts, the control of the FJA also transferred to the judiciary. This was in line with anxiety of the Supreme Court to secure complete separation of the judiciary from the executive and to consolidate the independence and autonomy of the adjudicators. The judiciary desired and the government enacted the FJA Act 1997 for that purpose. Henceforth, affairs of the FJA had to be managed by a high-statured body, i.e., Board of Governors, headed by the chief justice of Pakistan and comprising the chief justices of all High Courts, minister for Law and Justice, and attorney general for Pakistan as members. The board had wide-ranging powers to supervise the affairs of the FJA. The day-to-day supervision was entrusted to the director general of FJA, who was made the academics and administrative head of the institution. The primary aims/objects of the FJA are:

- Pre- and in-service training of judges, magistrates, court personnel, and law officers; and
- Holding seminars, workshops, and conferences and publishing research papers and reports.

With funding made available by the federal government, the FJA established its own campus in 1993 with residential accommodations for trainee officers in a hostel. It facilitated in arranging for the training course of approximately 30 officers from amongst the judicial officers, court personnel, and law officers. Training curriculum was designed in 2002,⁸ which was revised/updated from time to time. As of the year 2009, an annual calendar of training programmes is prepared for scheduling the various courses for judges and other professionals. This calendar is vigorously followed.

Having been in the field for a quarter of a century, the FJA has the unique distinction of being the sole continuing judicial education institution for professionals in the justice sector. It is one of the oldest institutions in the region—indeed, the Commonwealth—and has remained functional throughout. Notwithstanding a long life span, nothing much has been gained to address the key issues and deficiencies, namely, sound organizational structure, long-duration training programme for orientation/preservice, in-service training and courses in specialized disciplines, permanent faculty, enhancement of research capacity, periodic need-assessment surveys, and performance evaluation mechanisms.

The FJA had initially planned and executed a three-month preservice training course for new judicial officers. One such course was recently held for the civil-judges-cum-judicial-magistrates of Islamabad Capital Territory. Otherwise, maximum one-week refresher courses are being offered to judges and other professionals. Besides

⁷ PLD 1994 SC 105.

⁸ A. Qazi and U. Gilani, "Towards Making the FJA a Centre of Excellence," final report of the research project team, 2011 (unpublished).

judges of the Subordinate Courts, training is also given to the judges of special courts/administrative tribunals in some disciplines, i.e., counter-terrorism, environment, labour, taxation, or banking. Joint/combined courses are also designed for judges, prosecutors, and law officers dealing with militancy/terrorism and accountability.

There are sanctioned posts of faculty members in the budget viz. director general and five directors for teaching and performing various administrative functions. Currently, the posts of director general and three directors are lying vacant. The adjunct faculty comprises scholars and experts in diverse fields, including serving/retired judges, bureaucrats, academics, lawyers, and human-rights activists.

A unique feature of the judicial training in Pakistan is the wide/varied spectrum of curricula/syllabi being taught to judges. This is so because judges in Pakistan, besides judging, have to work as administrators—making appointments, initiating disciplinary proceedings, and handling financial affairs. Quite naturally, the course content is not just limited to teaching substantive/procedural law or case/court management, but also includes the study of administrative law, law/rules pertaining to disciplinary proceedings, and financial management. The training module, therefore, includes the teaching of substantive/procedural law, case/court management, case study, judgment writing, means/methods of alternate dispute resolution, office/financial management, and conduct/etiquette.

Even though entrusted with the task of training various other justice-sector professionals like prosecutors, investigators, law officers, and court personnel, the lack of capacity and funds prevented the FJA from making adequate arrangements for them. Currently, there is only one classroom, with seating capacity of 30, which is inadequate for the total strength of around 4,000 judges of the Subordinate Courts and Special Courts. The number of administrative staff of the Superior Courts/Subordinate Courts runs into the thousands.

The absence of any organized/structured training programmes, coupled with the space and resource constraints, hindered the growth of the FJA in assuming the stature of other sister training institutions in the country, such as the National Institute of Public Administration, Pakistan Administrative Staff College (renamed as National School of Public Policy) for civil servants, and Command and Staff College or National Defence University for the armed forces. This discrepancy is partly due to the fact that preservice and in-service training had not been made mandatory for confirmation or promotion. Thus, those who attend training at the FJA do so casually, without putting their heart and soul in the acquisition of higher learning and professional skills. Again, the FJA had only limited funds and capacity for training, whereas the demand remained high: thousands of justice-sector professionals (judges, law officers, court staff) had to be imparted legal/judicial education.⁹

⁹ To meet the demand, the FJA is set to launch the mobile training programme in which training will be imparted to judges and court personnel at distant locations through the assistance of the provincial judicial academies and other local resource persons.

The administration of justice being a provincial subject, and the lack of interest in training by High Courts and nonavailability of funds by the provincial governments for the purpose, made judicial training a neglected subject. And even though the FJA remained functional, no reforms or innovations were made to improve the training syllabi/courses and teaching methodology, develop a permanent qualified academic faculty, and conduct research.¹⁰ Further, due to capacity constraints, only a limited number of professionals could benefit from the training facility at the FJA.

JUDGES-RESTORATION MOVEMENT

The situation, however, underwent a drastic change in 2007, in the aftermath of the sacking of a large number of independent-minded judges of the Supreme Court and High Courts, including the chief justice of Pakistan. This unwarranted action was taken by the military government, which led to a national outcry and set off a movement for restoration of the Constitution and the independence of the judiciary. The movement, popularly known as Judges-Restoration Movement, stressed independence of the judiciary, adherence to constitutional norms/principles, and rule of law. The movement, led by the members of the bar, but equally participated in by other segments of society, e.g., political parties, students, human-rights activists, and civil society, lasted for two years (9 March 2007-16 March 2009) and ultimately triumphed, thereby restoring all the sacked judges to their original positions.

This was an occasion for the judiciary to repay its debt to the nation, which stood behind it, and bring about necessary reforms in the system. With the Supreme Court in the leading role, the provincial High Courts and Subordinate Courts geared up to improve performance and clear the huge backlog of pending cases. There was an increasing emphasis on integrity, professionalism, and development of skills to perform better and deliver so as to earn public trust and confidence in the administration of justice. And to modernize the legal system and enhance the efficiency of judicial administration, all the stakeholders of the justice sector, including judges, lawyers, and law officers, were brought together through regular dialogue and participation in national judicial conferences to formulate recommendations for reform of the justice sector.

NATIONAL JUDICIAL POLICY

Further, with the active cooperation of the bar, the National Judicial Policy 2009 was formulated and enforced. The policy aimed at attaining four objectives¹¹:

¹⁰ Osama Siddique, *Pakistan's Experience with Formal Law: An Alien Justice* (New York: Cambridge University Press, 2013), pp. 398-409

¹¹ National Judicial Policy 2009 (revised ed., 2012), issued by the National Judicial (Policy Making) Committee, Law and Justice Commission of Pakistan, Islamabad.

1. Securing complete separation of judiciary from the executive;
2. Strengthening judicial independence;
3. Bringing greater transparency and accountability of judges; and
4. Clearing the backlog and expediting trial proceedings.

The policy was reviewed from time to time and further reformed and improved through consultative meetings with stakeholders and discussions at annual judicial conferences. This was the time when the issue of continuing legal/judicial education in the country gained momentum. Such developments had also the effect of provincial governments making legislation for setting up the judicial-training institutes. Thus, the government of the Punjab passed the Punjab Judicial Academy Act 2007, followed by the Baluchistan Judicial Academy Act 2010 and Khyber Pakhtunkhwa Judicial Academy Act 2012. And whereas the Sindh Judicial Academy Act 1993 was already in the field, the academy did not function regularly; it was only after the Judges-Restoration Movement that the Sindh Academy became fully operational, and it has imparted regular training ever since.

The provincial academies are focused on the orientation and preservice training of judicial officers and court personnel. This was initially the ambit and scope of functions of the FJA. There was an overlap,¹² and to avoid duplication/conflict, the Board of Governors of the FJA decided in January 2015 to constitute the “National Judicial Education Coordination Committee.” The committee is headed by the most senior chief justice of High Court and includes the directors-general of federal and provincial judicial academies as members. The committee is tasked with strategic planning for greater coordination and collaboration between the FJA and provincial judicial academies for improving the quality of judicial training and education in the country. The committee is also required to periodically review the curricula/syllabi and teaching methods, resolve the issue of overlapping and duplication in mandate, carry out research on legal and judicial issues, hold seminars and conferences, and formulate judicial-training strategy for improving the quality of judicial training and education in Pakistan.

With operationalisation of provincial judicial academies, the FJA need not replicate the efforts of provincial judicial academies and had to chart out a new course for itself. Quite obviously, it had to concentrate on in-service training and teaching of specialized subjects and disciplines. Further, there was a dire need of the training for other justice-sector professionals, i.e., prosecutors, investigators, and lawyers. Thus, in 2013 the FJA Board of Governors recommended expanding FJA’s role in continuing judicial education and granting it the status of degree-awarding institution in the field of law and judicial education. The government accepted the recommendation and,

¹² S. B. Mirza and S. E. Shah, “Streamlining the Overlapping Mandates of Judicial Academies in Pakistan,” report of the research project (unpublished).

through an amendment to the Federal Judicial Academy Act 1997, converted the FJA into the Centre of Excellence for Law and Judicial Education (CELJE). The aims and objectives have been expanded to cover all justice-sector institutions and their professionals, including judges, court personnel, lawyers, prosecutors, investigators, law officers, prison officers, government officers, and students of law. The scope of activities has also been expanded to offer graduate and higher degrees in law and judicial education. The amendment was made through an ordinance, which lapsed in December 2014, but the bill to this effect is pending before the Senate Standing Committee, and efforts are afoot to make the amendments and operationalise the CELJE.

NEED FOR CL/JE

For an effective and efficient system of dispensation of justice, continuing legal/judicial education is a *sine qua non* for lawyers and judges, the two key stakeholders in the justice sector. Just as gaining knowledge and expertise is crucial for professionals in medicine, engineering, and accounting, so is acquiring knowledge regarding modern laws and new principles of jurisprudence vital for practitioners in the legal profession. Continuing legal and judicial education includes gaining excellence in comprehension of laws and attaining judicial skills and professionalism in dispensing justice to the fuller satisfaction of consumers of the justice sector. Only an effective and efficient system of dispensation of justice can meet public expectations, thereby enhancing public trust and confidence in the judiciary. There is no alternative to gaining knowledge and wisdom for advancing in life. In the words of Lord Denning: “Just as castles provided the source of strength for medieval towns and factories provided prosperity in the industrial age, universities are the source of strength in the knowledge based economy of the 21st century.”

INTERNATIONAL OBLIGATION

To seek effective remedy, access to justice from a competent and independent court is guaranteed by international law, especially the Universal Declaration of Human Rights 1948¹³ and the International Covenant on Civil and Political Rights 1966.¹⁴ Several other international and regional human-rights instruments provide for a fair and efficient judicial system to enforce legal claims and seek redress of grievances. In the same way, the Constitution of Pakistan also proclaims the independence of judiciary¹⁵ and its separation from the executive.¹⁶ It further obligates the state to “ensure inexpensive and expeditious justice.”¹⁷ Ensuring inexpensive and expeditious justice from

¹³ Art 8 & 10.

¹⁴ Art 14.

¹⁵ Preamble.

¹⁶ Art 175 (3).

¹⁷ Art 37(d).

a competent court presupposes the possession of requisite qualifications, experience, and professionalism by the practitioners of law. No doubt, such qualities can be acquired through continuing legal/judicial education. As stated by Justice Murray Gleeson, Chief Justice, High Court of Australia¹⁸:

The matter of competence covers not only possession of formal legal qualifications and knowledge of the law, but also an ability to conduct a hearing, to apply the rules of procedure and evidence, to control counsel and witness, to evaluate evidence and arguments, to make a sound decision, and to give adequate reasons for that decision. Nowadays, it also covers demeanour, sensitivity towards parties, witnesses, and even lawyers, awareness of human rights issues, diligence, and efficiency.

Judicial independence is an essential element of democracy.¹⁹ Indeed, Lord Hailsham sees the independence of judiciary as a bastion against the absolutist theory of democracy.²⁰ This is perfectly demonstrated by the example of democratically advanced countries, and a few examples can be quoted from our recent history, when the independent judiciary took a clear stand on the Constitution and supported democratic dispensation against any covert or overt attempt to undermine the same.

GOOD GOVERNANCE

Democracy entails a system of governance based on the doctrine of “separation of powers” between the legislature, executive, and judiciary, linked with the principle of “checks and balances,” so that no branch of government may ingress into the domain of the other. The judiciary acts as a referee to let each branch play its role fully and effectively and watch against any encroachment or intrusion in its functioning. It is mandated to act as an impartial arbiter for settling intergovernmental conflicts and disputes between citizens or citizen and government. In the ultimate analysis, therefore, an independent, impartial, and competent judiciary operates as a bulwark against oppression, injustice, and discrimination and acts as the guardian of fundamental rights and freedoms.

The stress for judicial independence and an effective/efficient judicial system has a purpose: the system of judicial administration has a close nexus with good governance, maintenance of peace in society, and socioeconomic development. George Washington said over two hundred years ago: “The true administration of justice is the firmest pillar of good government.”²¹

¹⁸ Chief Justice Murray Gleeson, High Court of Australia, Keynote Address at Conference on Confidence in the Courts, Canberra, February 2007.

¹⁹ Livingston Armytage, *Educating Judges: Towards a New Model of Continuing Judicial Learning* (Boston: Kluwer Law International, 1996).

²⁰ Lord Hailsham, “Democracy and Judicial Impendence,” *University of New Brunswick Law Journal* 28 (1979): 7-17.

²¹ Letter to Attorney General Edmund Randolph, 1789.

Good governance has become the rallying cry of present-day democratic and other forms of government. It is, indeed, the stated objective of every constitutional dispensation. Nations, having established good governance, made phenomenal advancement and are enjoying today the fruits of their achievement in the form of economic growth, sociopolitical development, high per-capita income, and the enjoyment of essential fundamental rights and freedoms, including the right to life, liberty, property, equality, and freedom of thought, expression, belief, association, and profession.

GENESIS OF JUDICIAL TRAINING

Contrary to the imminent and pressing need of judicial training, progress towards setting up training institutes for judges and court staff has been slow and tardy. Thus, formalized judicial education is a relatively new development in the world. As against the life span of judicial administration, spanning over several centuries, judicial-training programmes have had a short history. The beginning was made in the United States. The earliest example is the establishment of National Judicial College in Reno, Nevada, in 1963. This was followed by the creation of Federal Judicial Center at Washington, D.C., in 1967; the California Center for Judicial Education and Research in 1976; and the Michigan Judicial Institute in 1977.

In Europe, the civil-law countries instituted training programmes quite earlier in time as compared to the common-law states. This was on account of the fact that the civil-law countries inducted judges from amongst fresh graduates, as compared to the practice in the common-law countries, where experienced lawyers were appointed as judges. Indeed, in the common-law jurisdictions, there prevailed a conspicuous distaste for judicial training. The judges mocked the idea of training or educating the learned lawyers-turned-adjudicators. As noted by Justice Mason, chief justice of Australia²²:

[In the past] new judges were expected somehow to acquire almost overnight the requisite knowledge of how to be a judge. Perhaps it was thought that judicial know-how was absorbed by a process of osmosis. . . . One of the myths of our legal culture was that the barrister by dint of his or her long experience as an advocate in the courts was equipped to conduct a trial in any jurisdiction.

The importance of continuing judicial education is also stressed in the following words²³:

It would be easy, but intellectually lazy, to hold that the sole business of judges is judging, that all else is at least distracting and that accordingly a judge should avoid all non-judicial activities that might either be time-consuming or influence his opinion on matters that come before him. . . . A

²² A. Mason, "The Role of the Judge," Inaugural Judicial Orientation Program, Sydney, 1994.

²³ R. McKay "The Judiciary and Nonjudicial Activities," *Law and Contemporary Problems* 25 (1970): 9, 12.

judge is likely to be a better dispenser of justice if he is aware of the currents and passions of the time, the developments of technology, and the sweep of events. To judge in the real world a judge must live, think, and partake of opinions in the real world.

The prejudice against judicial training still lingers on at the level of superior court judges. As a consequence, there are hardly any developed models of judicial education to imitate or programmes to replicate. Speaking of misconceptions about the programme of continuing judicial education, Catlin, the Head of the Michigan Judicial Institute, observed²⁴:

Lawyers don't become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky maneuver. Going from adversary to adjudicator means changing one's attitude, learning and using new skills, and in some cases severing old ties. In many jurisdictions, judges must learn their new roles by the seat of their pants. In Michigan though, both new and veteran judges are trained extensively through a distinctive program of seminars, workshops and publications.

While the American experience set the lead in the field of judicial education, other nations, including common-law countries, followed suit. In a short span of three decades or so, there emerged a sea change in attitudes, as many countries across the globe established judicial-training institutes. In the words of Sallmann²⁵: "[The increase in judicial education] might well be described without exaggeration as an explosion of activity in the field in the last decade." This phenomenon led Nicholson to observe²⁶: "Judicial education is now an accepted part of judicial life in many countries."

OBJECTS OF JUDICIAL TRAINING

The National Association of State Judicial Educators in the United States published the key principles and standards of judicial education in 1993. They defined the goal of judicial education as follows: "To maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole." They also outlined the objectives of judicial education:

To assist judges to acquire the knowledge, skills and attitudes required to perform their judicial responsibilities fairly, correctly and efficiently; to promote judges' adherence to the highest standards of personal and official conduct; to preserve the integrity and impartiality of the judicial system through elimination of bias and prejudice, and the appearance of bias and prejudice; to promote effective court practice and procedures; to improve the administration of justice; to enhance public confidence in the judicial system.

²⁴ D. W. Catlin, "Michigan's Magic Touch in Educating Judges," *Judges' Journal* 25, no. 4 (1986): 32.

²⁵ P. A. Sallmann, "Comparative Judicial Education in a Nutshell," *Journal of Judicial Administration* (1993).

²⁶ R. D. Nicholson, "Judicial Independence and Accountability: Can They Co-exist?" *Australian Law Journal* 67 (1993).

Judge William W Schwarzer, director of the Federal Judicial Center, states that judicial education and training should cover the following three areas:

1. Proficiency/competence
2. Performance/conduct of duties
3. Productivity/workload

He goes on to list the objectives of judicial education as follows:

1. Imparting knowledge
2. Improving skills and techniques
3. Establishing values and standards
4. Developing judges' sense of responsibility

Sandra E. Oxner, head of the Commonwealth Judicial Education Institute, Halifax, Nova Scotia, Canada, states that the objective of judicial education is impartiality, competency, efficiency, and effectiveness, which result in community confidence in the judiciary.²⁷ The overriding objective of judicial training is to attain the highest professional standards for judicial officeholders. Training helps promote their professional competency and capacity building to discharge judicial functions effectively and satisfy the requirements of consumers of the justice sector. This is the surest way to enhance public confidence in the justice system.

To establish and sustain a viable system of judicial education, Livingston Armytage prescribes six guiding principles²⁸:

1. Judicial ownership—There is a doctrinal imperative for judicial education to be judge-led and court-owned, if it is to be successful in strengthening an independent and professional judicial system. This is best attained by securing the endorsement and support of the Chief Justice and Supreme Court from the outset.
2. Faculty development—Training of judges should wherever possible be by judges themselves to ensure authenticity. This will require an ongoing program of faculty development and train-the-trainer.
3. Bench-specific focus—It is educationally most effective that training should be designed and delivered to meet specific needs of each court wherever economically feasible.
4. Bottom-up and top-down strategies—Curricula should be designed to integrate distinct approaches which address the respective training needs of both judges at first instance and superior/appellate judges.

²⁷ S. E Oxner, "Judicial Education Is the Foundation for Judicial Reform: A Framework and Evaluation Analysis," paper, International Judicial Conference at the Supreme Court of Pakistan, 2006.

²⁸ L. Armytage, "Judicial Education as an Agent of Leadership and Change," paper, LAWDERA Conference, Manila.

5. Consolidate judicial identity—All training endeavour should address the needs of judges and court administrators and, wherever appropriate and feasible, consolidate judicial identity by training all participants together, for example in case management.
6. Centralised and regional delivery—Training should be conducted on both a centralized basis to maximize resource-efficiency and to provide opportunities for collegial networking and the exchange of professional experience nationally, and on a regional basis to promote accessibility and convenience for participants.

SCOPE/METHODS OF JUDICIAL TRAINING

The scope of judicial education is fairly wide. The main curriculum generally includes substantive/procedural law, legal skills, judicial ethics, and personal welfare. The judges must develop skills that will enable them to serve effectively. Thus, training programmes cover areas like case management, use of procedures/practices, computer skills, communication skills, judicial ethics, and professional conduct, as well as managing one's personal life including physical and mental health, stress management, and work habits.

Judicial-training programmes are designed to improve judicial performance by updating judges' information and knowledge about laws and helping them to acquire judicial skills to dispense justice expeditiously. Legal skills are also referred as "judge craft" (writing opinions, recording and analyzing evidence and arguments, using ADR, etc.), and judicial skills include managing courts and cases, using technology, and avoiding bias and prejudice. Judicial ethics cover issues of conflict of interest and maintenance of a high standard of character and conduct. The training programmes also focus on managing stress and maintaining good physical and psychological health.

For delivering judicial training, wide ranges of options are practiced. Thus, training may be long-term or short duration, full-time or part-time. It may be through lectures, seminar presentations and attendance, case studies, research and publications, self-study, group and panel discussions, audiovisual teaching materials, distance learning, online learning, etc.

The key elements of a good judicial system are the possession of essential qualities in judges, including knowledge of law/procedure, judicial skills, professionalism, and integrity. These are necessary conditions for an efficient system of dispensing justice.

ADULT LEARNING

While designing courses for continuing legal/judicial education, it may be kept in mind that such education is a lifelong affair and that professionals, i.e., lawyers and judges, are adult learners. Adult learning is characterized by its autonomy, self-direction, and preference to building personal experience; the need to perceive relevance through an

immediacy of application; and its purposive nature and its problem orientation.²⁹ Livingston Armytage elaborates on this point³⁰:

As a rule, however, they like their learning activities to be problem centred and to be meaningful to their life situations, and they want the learning outcomes to have some immediacy of application. The past experiences of adults affect their current learning. . . . Finally, adults exhibit a tendency towards self-directedness in their learning.

Thus, it has been argued³¹: “The major emphasis in adult learning is on the practical rather than on the academic; on the applied rather than the theoretical; and on skills rather than on knowledge or information.” In short, the adults participate in continuing legal/judicial education to become better informed, become qualified for a new job, or improve present job abilities.

To conclude, the primary objective of judicial education is the establishment of a skilled judicial corps, whose personnel are imbued with the spirit of professionalism and possess the requisite qualities of detachment, impartiality, competency, efficiency, and professionalism. Competency and professionalism, in turn, lead to greater confidence in one’s ability to deliver and offer one’s self for accountability. A competent judge, imbued with qualities of professionalism and feeling accountable, has no fear of anyone or anything. This judge performs functions with complete independence of mind. Thus, judicial training and education serve to make judges acquire the necessary knowledge, competence, and independence to take on the challenges, resist inducement and temptations, and thwart extraneous influences. It enables the judges to dispense justice freely, fairly, and expeditiously. This, in turn, enhances public faith and trust in the system of administration of justice.

²⁹ M. S. Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy* (Chicago: Follett, 1980).

³⁰ L. Armytage, “Continuing Legal Education—the Australian Approach,” conference paper.

³¹ J. W. Johnstone and R. J. Rivera, *Volunteers for Learning* (Chicago: Aldine, 1965).

THE NEPALI PERSPECTIVE ON JUDICIAL EDUCATION: A BRIEF REVIEW

BY SHREEKRISHNA MULMI*

Before the establishment of the National Judicial Academy (NJA) of Nepal, there was no organization for the training of judges. Judges gave up participating in the training of the Judicial Service Training Centre (JSTC) because of concerns involving separation of powers and undue influence of the executive upon the judiciary. Hence, there was an urgent need of a separate, autonomous training centre for judges, prosecutors, and judicial officials to fill knowledge and skill gaps.

The NJA was established under an Act of Parliament as an autonomous body in 2004. Primarily, this initiative was undertaken as a project to Improve Legal Enforcement Mechanisms and Judicial Capacity under a project funded by the Asian Development Bank (ADB) titled Corporate Financial Governance.² In this process, UniQuest Pvt. Ltd., an Australian consultant of ADB, worked for the establishment of the NJA. However, the ADB later withdrew its support before the NJA could establish itself.

Today, the NJA is a vehicle for judicial reform that provides knowledge and skills for judges, judicial officers, prosecutors, and officers working in the MoLJ; private law practitioners; and others directly involved in the administration of justice. The NJA also conducts judicial research on the need for judicial reform and training-quality enhancement. In this article, the author discusses the present position of judicial education in Nepal, the achievements of judicial education, and the challenges that confront it.

JUDICIAL EDUCATION IN NEPAL

There are different goals for judicial education. Judicial education in Canada focuses on social-context education;³ England focuses on uniformity in applying sentencing laws; and India focuses on reducing backlogged cases. However, Nepal has multiple areas of focus for judicial education. University courses may be insufficient to deal with

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¹ A. M. Bhattarai, "Nepal Experience," in L Armytage (ed.), *Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience*, Asia Pacific Judicial Reform Forum (Oxford: Oxford University Press, 2009), p. 268.

² Annual Report of the NJA (2004-05).

³ B. W. Lennox and N. Williams, "Social Context and Judicial Education in Canada," *Judicial Education and Training: Journal of International Organization of Judicial Training*, issue 1 (2013): 32.

practices in the field, and sometimes those courses and the knowledge gained from them are obsolete. Society is changing, and science and technology have brought significant change in the area of law and justice. Similarly, there have been noteworthy developments in international law, and hence, the effective role of the judiciary for protection and promotion of the rule of law and human rights has been sought.⁴

One of the complaints about the Nepali judiciary is noticeable delay in service delivery, which has been a hindrance in garnering confidence towards the judiciary. For example, excessive formalities cause judicial processes to mangle, delay the dispensation of justice, and consequently compromise efficient, effective, and speedy justice. In certain fields, such as gender justice, judges might discharge their roles with unconscious social baggage, hampering impartial and equal justice. In this situation, removing such perceptions or personal baggage is a must and can be achieved through in-service trainings.

Discussing emerging legal and judicial thought to tackle problems in dispensing justice, bringing positive attitudinal change among participants, and sharing experiences by veteran judges brings positive change to the judiciary. Moreover, building competency, efficiency, confidence, and responsibility among the judges and justice-sector stakeholders is an important objective of judicial education.⁵ Therefore, there are several delineated areas of focus for judicial education in Nepal.⁶

FUNCTIONS OF THE NATIONAL JUDICIAL ACADEMY

The NJA is meant to promote an equitable, just, and efficient justice system for Nepal through training, professional development, research, and publication programs, which address the respective needs of judges, judicial officers, prosecutors, law officers, private law practitioners, and others who are directly involved in the administration of justice. It has conducted training, conferences, workshops, seminars, symposia, and interaction programs for the purpose of enhancing knowledge and professional skills of judges, judicial officers, prosecutors, private law practitioners, and others who are directly involved in the administration of justice. Further, it undertakes research in the field of law and justice and makes legal literature of scholarly and practical significance. The NJA is also mandated to establish a legal information center. It is an educational hub for the legal and judicial sectors.

ORGANIZATIONAL STRUCTURE OF THE NJA

The chief justice of Nepal heads the Governing Council of the NJA. The minister for Law and Justice, vice-chairperson of the National Planning Commission, two justices

⁴ S. Mulmi, "A Brief Analysis of Establishment of a Decade of National Judicial Academy of Nepal," *NJA Law Journal*, issue 1 (2071): 352 (in Nepali).

⁵ *Supra* n. 1, p. 274.

⁶ *Supra* n. 4, p. 352.

of the Supreme Court, and the attorney general of Nepal, along with former judges, professors, and lawyers, serve as members of the Governing Council by statute. Altogether, there are 17 members including the chief justice. The Governing Council sits once or twice every year to decide policy matters.

Under the Governing Council, the Executive Committee comprises seven members and carries out functional activities. The executive director heads the Executive Committee, which includes the secretary for MoLJ, the secretary for the Judicial Council, the registrar of the Supreme Court, the senior-most deputy attorney general from the Office of the Attorney General, and the general secretary from the Nepal Bar Association as *ex officio* members to the committee, and one senior-most employee of the academy nominated by the Governing Council, who also works as member-secretary to the Executive Committee.

TRAINING NEEDS ANALYSIS AND CURRICULA DEVELOPMENT

The NJA's training begins with training-needs analysis (TNA). Sometimes, TNA is thoroughly conducted before offering training, and sometimes training curricula are prepared and conducted with the feedback of experts, senior judges, and officers. In the initial phase of the establishment of the NJA, curricula for the basic training for judges of the District Court, prosecutors, bench officers, and private law practitioners were designed by groups of judges and experts and finalized with feedback from the respective participants and other experts on law and justice.

The NJA conducted TNA once under the ADB-funded project in 2002-03. Later, a broad TNA was conducted by distributing structured questionnaires to be filled out by all concerned stakeholders, in addition to holding focus-group discussions in different regions of the country. Based on the TNA findings, a training plan was designed to give opportunities to each judge, lawyer, and officer at least once every two years.⁷ However, this training plan was not strictly implemented as the NJA does not nominate judges or other participants for training;⁸ furthermore, the annual training plan for the NJA was not designed accordingly.

A few years ago, tentative courses for induction were designed for the judges of the Court of Appeal and the District Court. Moreover, a number of training curricula have been designed for different groups. Induction courses, in-service courses, and specific theme-focused courses developed according to the separate responsibilities of judges' and officers' groups have also been implemented.

⁷ This training-needs assessment was done in 2006 with the assistance of the USAID Rule of Law Project.

⁸ For the nominations of judges of all tiers and judicial officers in all courts in the country, a request letter is sent to the Supreme Court of Nepal; for the prosecutors' nominations, a request letter is forwarded to the Office of Attorney General; for officers working under the MoLJ, a request letter is dispatched to the Ministry of Law and Justice; and similarly, for the lawyers' nominations, a request letter is sent to the Nepal Bar Association—they nominate particular participants for specific training programs.

Further, the development of resource materials to provide insight on different aspects of the decision-making process for district judges has been initiated. Recently, the NJA developed and compiled resource materials for judicial officers, prosecutors, and support staff, as well. Moreover, NJA created a brief course for commercial-law training for judges on the Court of Appeal as commercial-bench jurisdiction has been designated at the appellate level. The aim of the training course was to equip judges for the commercial bench. This offered an opportunity to build upon the commercial- and contract-law materials designed and compiled by the NJA a few years back to facilitate training activities on this subject.

THE TRAINING ACTIVITIES OF THE NJA

Since NJA's establishment, there has been a positive change in judicial discourse through training, seminars, and workshops. Subsequent to promulgation of the then Constitution of the Kingdom of Nepal, 1990, and ratification of international human-rights instruments by Nepal, judicial skills and knowledge discourse was conducted through civil-society organizations that provided training and workshops; the NJA later took the place of these organizations for purposes of judicial training. Previously, there was no forum for discussion of such issues as they relate to the judicial decision-making process, and therefore, the civil-society organizations filled the gap.⁹

After establishment of the NJA, it has conducted judicial training. The NJA offers training programs through the funds provided by the government of Nepal, in addition to funds and technical support received from various donors. The NJA designs an annual calendar for training and research activities in the beginning of each fiscal year from the fund provided by the government of Nepal; the training calendar is endorsed by the Executive Board and Governing Council of the NJA. The training programs depend on demand by target communities and demands put forward by clientele organizations for the fiscal year. Sometimes, annual planning depends on the immediate needs of the judiciary, such as elevation of judges, judicial officers, and prosecutors or transfers of judges from one place to another. So far as concerns the funds received from donor agencies, the NJA undertakes training and other activities as specified in the agreements reached with each particular donor. However, donors come to NJA with their own prioritized areas for work, rather than NJA's priorities.

Since its establishment, the NJA has conducted 598 trainings for its stakeholders. From those training programs, approximately 13,000 judges, prosecutors, judicial officers, law officers, private law practitioners, support staff from the judiciary, and attorney offices, including officers from quasi-judicial bodies, have benefited (see Table 1). In some programs, police officers and members of civil-society organizations have also taken part.

⁹ There were a few civil-society organizations, such as the Forum for Protection of Public Interest (Pro-Public), the Forum for Justice, and the Forum for Women, Law and Development (FWLD), that have conducted training for judges on, for example, Gender Equality and Justice and Combating Trafficking of Women and Children.

Table 1
Number of NJA Training Programs and Participants (by Fiscal Year)

SN	Fiscal Year	# of Training Programs	# of Participants
1.	2004-05	20	300
2.	2005-06	25	497
3.	2006-07	31	595
4.	2007-08	35	401
5.	2008-09	59	1,833
6.	2009-10	61	1,568
7.	2010-11	82	2,283
8.	2011-12	82	1,565
9.	2012-13	136	2,489
10.	2013-14	67	1,882

Source: Annual Reports of the NJA from Fiscal Year 2004-05 to Fiscal Year 2013-14.

Apart from being participants in the training programs, judges, prosecutors, judicial officers, and experts who lead judicial sessions also benefit as they are required to update their own knowledge and skills as they undertake rigorous study for preparation of training sessions. Training courses range from induction training, in-service training, and refresher training to specific/thematic training.¹⁰ For example, NJA is currently developing a course for new entrant judges and judicial officers as an induction course; the course fills the gap between theory and practice by orienting participants before taking on the responsibilities of judging or judicial-service delivery.

As demonstrated above, there has been demand for training, and NJA's business has increased significantly. The NJA frequently receives requests for legal and judicial training from quasi-judicial bodies,¹¹ and the Supreme Court of Nepal has directed that judicial decision-making training be offered for officers of quasi-judicial bodies, as well.¹² Occasionally, the Supreme Court of Nepal has also directed that a particular training be offered for judges.¹³ In this context, while there are increasing demands for

¹⁰ The thematic area training includes training on commercial law, gender justice and human rights, juvenile justice, land law and cadastral and measurement, and mediation.

¹¹ Training for chief district officers and the training for officers working under the Ministry of Land Reform and Management.

¹² *Advocate Amber Raut v. Ministry of Home Affairs and Others*.

¹³ *J. Grabel Cambel v. Labour Court and Others*, Nepal Law Reporter 2065 BS, Issue 2, p. 226. In this case, the Supreme Court of Nepal directed the Judicial Council Secretariat to coordinate and conduct training on Immunities of Diplomatic agents, the Vienna Convention on Diplomatic Relations, and International law.

judicial training from different sectors, there has been no unanimous opinion regarding who should be included or excluded from the NJA's target community.

OTHER PROGRAMS

From the beginning, the NJA has adopted a practice of organizing short talks to be delivered by eminent jurists and judges from other countries to Nepali judges and judicial personnel. Former chief justices of the Supreme Court of India (PN Bhagawati and AM Ahmadi), justices from South Africa (Pius Langa and Albia Sachs), and Canadian and American judges, as well as jurists and professors from different countries (Catherine MacKinnon, Dr. Livingston Armytage, Professor Suzannah Linton) have delivered talks on a variety of themes to Nepali judges and the legal and judicial communities in Nepal.

Similarly, the NJA is involved in providing technical support to the Nepali judiciary and others. For example, the NJA has been involved with crafting the strategic plans of the Nepali judiciary. Apart from that, NJA has also started to fill gaps between the public and the judiciary by introducing an outreach program of judges to different communities. Its judicial-outreach programs are conducted by undertaking field visits during training programs and independent-outreach programs to interact with communities about the judicial process and judicial initiatives.¹⁴

INTERNATIONAL CONFERENCES AND NETWORK BUILDING

The NJA organizes regional conferences in different areas. Last year, NJA organized a Regional Conference of Judges and Judicial Educators on Judicial Education and Enhancing Access to Justice. Judges, judicial educators, and professors from Bangladesh, Bhutan, India, Malaysia, Nepal, Pakistan, and Sri Lanka exchanged and shared experiences on judicial-reform processes and access to justice for the poor and marginal groups. The conference also adopted the Seven Points Kathmandu Declaration. Similarly, during the inception of the NJA, a conference on strengthening institutional mechanisms to combat trafficking of women and children was conducted. High-level judges from Bangladesh, India, Nepal, and Sri Lanka took part in the conference. Initiatives such as these build up networks and foster learning opportunities from other jurisdictions.

RESEARCH AND PUBLICATIONS

One of the mandates of the NJA is to conduct research concerning the need for judicial reform and quality improvement of training programs. This means that NJA's

¹⁴ NJA conducted judicial-outreach programs on judicial process, along with the cases on combating trafficking of women and children. NJA also developed concept notes on judicial-outreach programs and an information booklet to communicate to the public about the judiciary and judicial process.

research program should be attached to one of these efforts. Since its establishment, the NJA has undertaken around 20 research activities. The following are the main areas in which it has conducted research for judicial reform and training improvement:

- Current Status of the Directives Issued by the Supreme Court of Nepal (2006)
- Execution of Judgments: Problems and Prospects (2007)
- Criminal Justice Administration in Quasi-Judicial Bodies (2009)
- The Review of Nepali Criminal Law in Reference to the Statutes of the International Criminal Court (2009)
- Nepali Laws on Domestic Violence with Particular Reference to International Human Rights Laws
- Gender Equality and Social Inclusion: An Analysis of the Nepali Judiciary
- A Study on Injunctions and Mandamus Issued by the Court of Appeal in Nepal
- A Study on Court Management No. 188 of the National Code and Discretionary Power of Judges
- A Study on Access to Justice with Particular Reference to Victims of Violence
- Research on the Functioning of the Juvenile Bench in Nepal
- A Study on Domestication of Children's Rights Convention: Review of Nepali Laws and Judicial Decisions
- Status of the Directives Issued by the Supreme Court of Nepal (2014)

There are several important publications developed by the NJA with the objective to enhance judges' knowledge, as well as that of judicial and legal personnel, through resource materials on different themes. A few of them are named below:

- *Materials for the Enhancement of the Capacity of Judges*
- *Materials on Human Rights in the Administration of Justice*
- *Resource Material on Environmental Justice*
- *Human Rights and Economic, Social, and Cultural Rights*
- *Gender Discrimination and Gender Justice in Nepal*
- *The Truth and Reconciliation Commission and Its Procedural Fairness*
- *The Concept of Intellectual Property in the Context of Nepal*
- *Transnational Organized Crime: Effective Combating Measures*
- *Social Justice and Human Rights*

Similarly, the NJA brings publication of landmark judgments by the Supreme Court of Nepal to members of the judiciary and the public. On occasion, it publishes landmark judgments on particular themes, such as gender justice, juvenile justice, or transitional justice. Moreover, though the lower courts, including the Court of Appeal, are not courts of record, the NJA has started publishing their most significant judgments, giving an opportunity to other judges to imitate such judgments as best practices and to encourage others to write good judgments. Since 2008, the NJA has started to publish district and appellate court judgments on an annual basis. The NJA

has distributed more than 80 publications, including the *NJA Law Journal*, research reports, resource materials, manuals, and compilations of judgments.

THE *NJA LAW JOURNAL*

As the NJA is an institution established for academic dialogue and to provide feedback to organizations concerned for legal and judicial reform, it began publication of research in the *NJA Law Journal*. To date, articles have been contributed by eminent scholars, jurists, and experts both from within and outside the country. The *NJA Law Journal* was also meant to encourage and strengthen serious legal research in Nepal and to reach out to the larger community in Nepal and abroad. It is the NJA's view that research and judicial education should go hand-in-hand, enriching each other through enhancement of knowledge and skills and developing synergy for bringing about reform.

As the Nepali system of law and justice is an evolving system, it is necessary to encourage academic discussion to internalize and adopt values developed in international law, such as on human-rights issues. A sustained collaboration of academia and practitioners in research and publication is required to continue this discussion. The NJA hopes that the *NJA Law Journal* provides that platform. With this objective in mind, the *NJA Law Journal* has become an annual publication as of fiscal year 2007; so far, eight issues have been published. It provides an opportunity for experts abroad to publish in a Nepali publication and gives Nepali readers the opportunity to understand other countries' experiences, as well. The journal has covered themes on legal and judicial reform, transitional justice, access to justice, human rights, and international law. Recently, a journal published in Nepali script has begun to address Nepali writers and readers.

ACHIEVEMENTS, CHALLENGES, AND OPPORTUNITIES

Within the short span of its establishment, the NJA has undertaken a large number of training programs for judges and other participants and conducted research activities that benefit the judiciary. Those research programs have proven to be an important foundation for interventions to provide legal and judicial advancement in Nepal. So far, the NJA has trained more than 13,000 participants through 598 training activities since its establishment in 2004. In recent years, the training activities have increased significantly. During fiscal year 2013-14, the NJA conducted 67 training programs, which totaled 414 training days. In those training programs, 1,882 individuals participated. These trainings have a significant impact on the professional life of judges and other participants. They provide important knowledge on international human rights and advancement in the delivery of justice, demonstrate how to incorporate human-rights standards in judicial decisions, and sensitize the judiciary to gender-justice and juvenile-justice issues, as well as many others. However, there remains a large number of challenges that confront the NJA.

Building and Physical Infrastructure

The NJA faced space constraints from the beginning. It was housed for some years in a few rooms in the Supreme Court Annex Building in Ramshahpath, Kathmandu. Later, it was moved to Harihar Bhawan, Lalitpur in an old building provided by the Nepal government after giving up hopes for construction of a NJA building and campus due to a controversy regarding the award of a construction contract that occurred in the midst of the ADB project. Recently, the devastating earthquake that occurred on April 25, 2015 destroyed the NJA building, along with a large number of government buildings, and caused thousands of human casualties. The engineers and technicians from the government of Nepal have suggested that the damaged building was not appropriate for use. This natural calamity has brought uncertainty to the NJA's ability to run even its daily activities. Today, there is a pressing need for the NJA to have its own building for office space and training activities. Yet there is still no support available for physical infrastructure that provides the necessary capacity-building activities for the judiciary of Nepal to create a dedicated learning environment, along with necessary educational materials, equipment, and facilities. Filling this gap would be a substantial help to the judiciary of Nepal and its judicial-training program.

Assessment of Judicial-Training Programs

As discussed above, a number of trainings for different groups on various topics have been conducted, ranging in length from three days to three months. With regard to partnership training, donors vary in executing training activities. Training undertaken by the NJA is not based on similar courses. Courses vary according to partner organizations, and some are short courses due to limitations on available financial resources. Training impact assessments need to be undertaken within the judiciary so that improvements can be made to make training more effective. The NJA currently lacks resources and experts to conduct an overall assessment of its programs and make recommendations for the revision of its contents and methods so that training can be more effective and change oriented. It is, therefore, urgent to assess how improvements can be made based on past experience, and what methods and areas can be emphasized for effective judicial training. The NJA should review its programs and create a plan for the improvement of future training courses.

Faculty and Human Resource Development

The NJA has also experienced insufficient human resources from its inception. The institutionalization of the NJA depends on the availability of trained staff. There are a few judges and high-level officers deputed by the Supreme Court and the Office of Attorney General as judicial trainers. However, they are deputed without fixed tenure and serve only one or two years. This creates problems such as lack of knowledge in training management and teamwork culture, as they work only for an interim period and come from a hierarchical working culture. Because the NJA was established as an

independent and autonomous body, it should develop faculty members of its own. This will minimize the ad hoc basis that the current deputation practice creates.

In addition, as core faculty members, working at the NJA should be a model for the judiciary. Faculty should be equipped with knowledge, skills, and global trends in their subjects of expertise. Training for these faculty members and the exposure that accompanies visitation and participation in international programs will help maintain their subject-matter expertise. In addition, academic courses, such as LLM or JD programs or PhD research, may also be worthwhile to further build the NJA as an institution. There is no doubt that the NJA needs highly skilled officers trained in research as faculty members. There should be regular training for the NJA staff to hone their training and research skills. To aid with retention, the NJA should offer a more attractive facilities package than offered by the Nepal judiciary. The NJA Act originally envisaged an academy fund for this purpose, with its operation prescribed by regulations; however, the fund has not come to fruition.

Reorganization of Donor Supports

There has been substantial support from international donor agencies for judicial reform processes in Nepal. Donor agencies have supported judicial reform in a variety of ways, including capacity-building programs, exposure visits, and creation of forums for sharing best practices. This support is significant in reforming Nepal's judiciary through its training opportunities. Changes to enhance access to justice and the knowledge and skills among judges and other judiciary staff should not be taken lightly.

However, needs assessment of target groups to ascertain their needs should be undertaken before offering training. This enables achievement of desired goals by effecting practical realization and attitudinal change among participants. To date, training priorities have been the choice of donors, rather than based upon existing needs or expectations of the judiciary. Therefore, training programs should first address local problems. It would also be worthwhile to establish long-term training programs that fit the needs of the judiciary. In addition, longer-term efforts permit organizational change to be more accurately assessed. The piecemeal basis on which donor-supported training programs often operate may not bring sustainable change in a way that resonates with the public. Therefore, introduction of large-scale and sustainable training projects are required to assess positive changes in the Nepali judiciary.

CONCLUSION

The NJA has struggled for sufficient support from the beginning, despite doing its best with available resources. The recent earthquake added a significant challenge to the NJA's ability to continue its daily functions. Therefore, it is now the most pressing need of the NJA to garner support for judicial education by receiving technical support and materials for construction of an NJA building with modern facilities. Its goal should be provision of resources and technical assistance in areas of local need for judicial education, rather than priorities driven by donors' support.

THE CHALLENGES OF CAPACITY BUILDING IN JUDICIAL-TRAINING INSTITUTIONS—THE KOSOVO EXPERIENCE

BY CHARLES A. ERICKSEN AND LAVDIM KRASNIQI*

Over the last 15 years, donors have invested heavily in Kosovo's judicial training.¹ Still, despite benevolent intentions, the relationship has created significant challenges for the Kosovo Judicial Institute (KJI).² This article describes the firsthand experience of KJI in dealing with donors, implementing partners, and expert consultants over this period and in facing challenges that have impeded capacity building.³ These challenges include a fragmented donor culture that promotes the "short-term" needs of the donor over the "long-term" needs of the institution, a lack of judicial education expertise among implementing partners, and a narrow approach to the complex task of creating a sustainable training institution. Recommendations are given for improving the effectiveness of aid and capacity-building efforts aimed at developing sustainable training institutions.

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¹ KJI was established as an independent entity in 2000. Its origins are with the OSCE. On 24 April 2006, the Special Representative of the (UN) Secretary General, by Regulation No. 2006/23, promulgated the law "On Establishing the Kosovo Judicial Institute" (KJI). The Kosovo Assembly adopted this law on 23 February 2006 (Law No. 02/L-25). As the main institution for training within the judicial system of Kosovo, KJI has the following responsibilities: a) organization and assessment of the preparatory exam; b) training for potential office holders (Initial Training Program); c) training for officeholders in the judiciary (Continuous Training Program); d) special training courses for promotion of judges and prosecutors; e) training courses for lay judges and other professionals in the judiciary; f) development of short-, medium-, and long-term plans for an efficient, effective, and impartial judiciary; and g) service as a research institution for the development of judiciary in Kosovo in line with European standards.

² See A-M. Leroy, "World Bank Support for Judicial Systems Serving Good Governance," *Judicial Education and Training: Journal of the International Organization for Judicial Training*, issue 2 (2014): 92-98. KJI acknowledges and appreciates the generous contributions made by donors. This article challenges the disconnect between what donors espouse, value, and pursue and the effectiveness of support given by implementing partners and their experts towards the establishment of judicial-training institutions. The authors agree with Leroy that the World Bank's initiative to "review of our methods and competencies" to reflect "on how to address the issue of training and support for training institutions as a tool to support reforms, an indispensable tool for ownership" is a welcome and much-needed step forward.

³ In this context, capacity building is a concept that includes an emphasis on the overall system or context within which individuals, training organizations, and judicial systems operate. In the case of development programs, it includes a consideration of all factors that impact upon its ability to be developed and implemented and the results to be sustained.

CHALLENGES

Donor Approach to Judicial Training in Kosovo

On the whole, the donor-oriented system can be characterized as lacking coordination, knowledge sharing, and a shared development concept among relevant partners striving toward common goals.⁴ Several months into a project, development partners discover that another agency is working separately on the same issue, in the same area, with similar objectives. Instead of sharing experiences and coordinating efforts, projects tend to work in isolation from each other, or worse, implement programs that are at cross-purposes. In developing countries like Kosovo, marked by tight budgets and increasing oversight of programs and public resources, it is important for donors to communicate, cooperate, and collaborate to avoid duplication, share lessons learned, focus priorities, and amplify the impact of efforts.

The International Conference on Financing for Development (2002),⁵ the Paris Declaration (2005),⁶ and the Accra Agenda for Action (2008)⁷ all mention aid coordination as one of the key mechanisms to be mobilized to enhance aid effectiveness. Nonetheless, the concern over the lack of donor coordination has become more vociferous over the last several decades.⁸

Anti-corruption and organized crime are two prominent topics in which donors have developed projects in Kosovo without adequate coordination. The emphasis on these two areas is so elevated that projects consider them important starting points and, as such, a primary objective of their fight against corruption and organized crime. However, inadequate coordination neither serves to build KJI capacity nor provides sustainable training for prosecutors and judicial officers.

Coordination is not solely a problem between donors but also between donors and the recipient. All too often, donors sidestep coordinating their programs through the KJI or do so quite late in the development process. Some donors have gone so far as to attempt creating an independent training entity that would bypass KJI and communicate directly with courts and prosecution offices. These actions caused project duplication and hindered KJI's ability to measure training impact.

⁴ See, for example, C. Keene, "Development Projects That Didn't Work: The Perils of Narrow Approaches to Complex Situations," Globalhood Research Paper, October 2007; and K. Samuels, "Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt," Social Development Paper No. 37, Social Development Department, World Bank, Washington, D.C., October 2006.

⁵ Report of the International Conference on Financing for Development, Monterrey, Mexico, United Nations, 2002.

⁶ The Paris Declaration on Aid Effectiveness, downloaded on 22 November 2014 at <http://www.oecd.org/dac/effectiveness/34428351.pdf>.

⁷ The Accra Agenda for Action, downloaded on 22 November 2014 at <http://www.oecd.org/dac/effectiveness/34428351.pdf>.

⁸ M. L. Lawson, "Foreign Aid: International Donor Coordination of Development Assistance," Congressional Research Service, Library of Congress, Washington, D.C., 2013.

A particularly challenging area for KJI is the limited support provided for internship programs, exchange programs, and visits abroad. Currently, few donors support these programs directly through the KJI, rather opting to coordinate them independently. Without trying to criticize this approach, it would be better to set appropriate criteria for participation in these programs and coordinate through the KJI. What has been lacking is an open dialogue between donors and KJI regarding the design and implementation of such programs; in addition, minimal emphasis is given to outcome assessments and analysis.

Another area where donors have been unresponsive to capacity building is in the training of court administrators. Despite a decade of court reform aimed at improving court management practices and performance, no donor has attempted to design a comprehensive program for the training of court managers based upon international best practices.⁹ KJI's records suggest that numerous caseload and other court management courses have been offered over the last ten years in an ad hoc manner. When considering the complexity that characterizes a court system inundated with donor projects aimed at improving court performance, the impact of overlooking, dismissing, and devaluing the foundational need to develop professionally trained court administrators is staggering.

Finally, an interesting criticism KJI frequently receives is that they have not developed enough specialized training programs. However, if you ask the critics, including international donors, about this issue, they do not even have an idea of what criteria can be used for the development and implementation of such specialized training.

Limited Attention to Staff Development

One of the cornerstones of high-performing judicial-training organizations is the capacity of their judicial educators¹⁰ to determine needs and design, deliver, and evaluate quality adult education. Building staff competencies in adult education best practices should be the centerpiece of capacity-building efforts. International development projects, however, favor tangible and more easily quantifiable changes, such as remodeling courts, installing computers, or creating databases and web portals. Building infrastructure, delivering programs and courses, and creating resource libraries are readily identifiable marks of progress and, hence, favored over more difficult, long-term capacity building.

Presumably, donors overlooked staff development because they believe this would occur organically via the various trainings they conducted. All too often, development projects focus narrowly on training judges and prosecutors, who will presumably serve as faculty, without giving adequate attention to the training institute's

⁹ There are two projects that currently support KJI in developing training curricula for administrative staff of courts and prosecutor offices.

¹⁰ The term judicial educator is used here to refer to professionals responsible for developing and delivering education, whether it be judges, prosecutors, or court employees.

organizational issues. Recognizing their need to learn more about adult education fundamentals, KJI participated in its first study tour for staff development in the fall of 2014. The study tour to the United States' National Judicial College (NJC) focused on curriculum planning, needs assessment, program evaluation, research, faculty development, and distance education. Commenting on the value and relevance of the program, KJI senior educators stated that they wished they had experienced this earlier in their careers. They attributed the oversight to the priority donors place on KJI staff supporting the donors' programs. The sheer volume of donor-driven programming makes it extremely difficult to engage in professional development.

Promoting the Donor Rather than the Recipient

To the recipient, aid often appears to have an established priority of promoting the donor rather than the beneficiary. All too often in KJI's history, donors developed curricula, secured experts, and formulated strategies without consulting the institute beforehand. In each instance, not only did the donor create conflicts and confusion for KJI, but also failed to create the necessary conditions to transfer knowledge, build staff capacities, and foster a mutually satisfying partnership.

Another area that fulfills the donors' needs over that of the recipient is measurement and evaluation (M&E).¹¹ A well-functioning M&E system is a critical part of good project management and accountability.¹² Timely and reliable M&E provides information to donors that supports project implementation and upholds accountability and compliance. Additionally, M&E should contribute to organizational learning and knowledge sharing by reflecting upon and sharing experiences and lessons learned so both the donor and counterpart can gain the full benefit from the evaluation. In reality, this last aim seldom occurs.

In KJI's experience, the M&E process has been a one-sided affair, with KJI providing data but receiving little feedback in return. KJI has never been asked to provide input into perceptions about their work, and donors have neither modeled an openness to criticism nor shown a willingness to learn from KJI's experiences to adapt to changing needs or faulty assumptions. An M&E process carried out in a spirit of shared responsibility would go a long way to promote and celebrate the important collaborations between donors and recipients by highlighting accomplishments and achievements, building much needed morale among KJI staff.

¹¹ See L. Armytage, "Introduction," *Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience*, L. Armytage and L. Metzner, eds. (New York: Oxford University Press, 2009). Downloaded on 29 March 2015 at <http://www.centreforjudicialstudies.com/publications/>. Armytage attributes two deficiencies to aid's ineffectiveness and the lack of visible results: "The first deficiency may exist in development practice which relates to the need to refine objectives, development logic and implementation strategies to improve the linkage between purpose and results. The second deficiency may exist in evaluation practice which requires increased investment in improving performance data, monitoring and evaluation" (p. 3).

¹² See J. Z. Kusek and R. C. Rist, *Ten Steps to a Results-Based Monitoring and Evaluation System: A Handbook for Development Professionals* (Washington, DC: World Bank, 2004).

Lack of Donor Expertise

All too often, implementing partners operating in Kosovo brought experts lacking relevant experience in the field of judicial training. Few experts were educated in adult-learning theory, alternative delivery mechanisms, curriculum design and course development needs assessment, experiential learning theory, or program evaluation. Additionally, few had the ability to implement advanced faculty development programs demonstrating experiential teaching methods. From KJI's perspective, experts were steeped in western legal tradition and were confident as trainers.

Recognizing that needs assessment is quite complex, there are few implementing partners who utilized a comprehensive needs assessment for their curriculum development. The simplistic needs assessment process employed by implementing partners all too often ignored KJI's institutional capacity (budget and workload). Consequently, recommendations had a negative impact in certain cases.

Lack of institutional memory is also noted among some donors regarding what was invested in previous projects. This is perhaps either because project staff changed often or the projects' priorities remained the same. Also, a number of implementing partners assign project coordinators who have little or no experience in judicial training. This led to unsupportive KJI proposals and unaddressed needs.

In general, outcomes that demonstrate a high level of capacity building in judicial-training institutes are neither well articulated nor understood by donors and implementing partners. This makes it difficult to meet needs, close gaps, and strengthen capacities, even with a well-established and functional institute like KJI. In this regard, there are donors who believe KJI does not know their own capacity-building needs or what kind of expertise is required. Such a paternalistic attitude leads donors to provide activities or hire inexperienced experts and justify this by suggesting it is satisfactory considering the limited training capacity of the institution.

Sadly, the number of unqualified or perceived unqualified trainers has been an obstacle to KJI's progress. The prevalent use of the "accidental trainer" in international development ensures that effective training and capacity building is accidental.¹³ As KJI's capacities progressed, they came to recognize this shortcoming and lamented the lack of judicial education expertise from which to learn.

Ignorance of Local Culture

The Paris and Accra declarations¹⁴ acknowledge the importance of a donor's willingness and ability to understand and adapt to the country context as key to aid effectiveness.

Ignorance of circumstances, laws, history, and culture of the country, especially not knowing the structure of the justice system in Kosovo, has been an occasional

¹³ K. R. Bartlett, "Accidental Trainers versus HRD Professionals," *Human Resource Development Quarterly* 14 (2003): 231-34.

¹⁴ Paris Declaration, *supra* n. 6; Accra Agenda, *supra* n. 7.

shortcoming of implementing partners. It has led to miscues in fact-finding assessment missions before designing projects that resulted in redundancy, inaccuracy, or irrelevancy. For example, KJI staff noted that while all donors provided support to continuous training in the judiciary, some of them do not have a clear understanding of the importance of initial training and training for promotion in the Kosovo context.¹⁵

Over the past several years, KJI observed that donors copied examples from their home countries. Practitioners, who often started out as lawyers or court administrators with little development background, seem to idealize how the Western legal and court systems operate, thus tending to favor technical and canned approaches rather than process approaches. These canned approaches ignore the maxim “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.” Capacity building requires a thorough analysis of circumstances, laws, history, and court culture to assess how these factors may either constrain or support a process of organizational change and to better determine how international best practices can be adapted for the Kosovo judiciary.

Lack of Coherent Strategy

Development efforts at building sustainable judicial-training institutes suffer from a notable lack of strategy. Given the systemic nature of the changes that are needed and the inherently interconnected nature of the judicial system, it is difficult to achieve sustainable change if the elements are not approached in a coherent fashion. In Kosovo, for instance, projects addressing caseload management training were repeatedly designed without consulting the Administrative Office of the Courts¹⁶ regarding the various projects aimed at backlog reduction and caseload management. Fragmentation is created by the typical organizational structure of implementing partners who divide project activities into functional components (i.e., court management, judicial education, legal reform) without promoting cross-fertilization of information and activities.

A coherent strategy considers the interrelatedness of components and seeks to build connections that strengthen relationships and communication between the various counterparts (i.e., KJI, KJCS, KJC). One of the great frustrations of the KJI is how frequently they have been left out of the dialogue and dismissed from important conversations and decisions that ultimately impact their mandate.

A number of implementing partners have promoted a climate of deepening divisions and diminishing coordination between counterparts. For example, by “advising” decision-making authorities to undertake inconsistent decisions about the recruitment, appointment, discipline, and administration of judicial and prosecution

¹⁵ Due to nonreconciliation of the laws on the judiciary, KJI does not receive adequate support from donors who initially invested money in this program despite its recognized success.

¹⁶ In Kosovo, known as the Kosovo Judicial Council Secretariat, or KJCS.

offices (all of whom will subsequently be trained by KJI through the Initial Training Program), the implementing partners miss an important opportunity to build a bridge between KJI and the Judicial and Prosecutorial Councils. Such “advice” plays a demotivating and destructive role for KJI.

Another indicator of a lack of coherent strategy is the priority given to “events” rather than to capacity-building activities. In contrast to developed courses and curricula, “strategic” capacity building focuses on strengthening board governance, building stronger relationships between the training institution and other counterparts, designing multifaceted faculty development programs, and developing staff capacity to conduct needs assessments, program evaluations, and curriculum development. It should also seek to strengthen the training institutions ability to advocate for adequate funding and build positive relations with the Ministry of Justice, Supreme Court, Constitutional Court, Judicial Council, and Secretariat.

CONCLUSION AND RECOMMENDATIONS

A fundamental problem in building training institutions is that the goals sought to be achieved are extremely complex, and there is little clarity on how to best proceed. Despite two decades of experimenting, little is known about how to bring about sustainable change. This failure of strategy and knowledge is common across rule-of-law projects throughout the world.¹⁷ The lack of knowledge in the rule-of-law-reform field about the fundamentals of building training institutes is reinforced by a focus on short-term outputs, rather than longer-term outcomes, which are more difficult to measure.

There is an urgent need for “a fundamental shift in the mental models, strategic approaches, organizational philosophies, and performance approaches of foreign aid” to more effectively establish sustainable training institutes.¹⁸ This shift for donors will call for a significantly diminished role in problem identification, design, and implementation of interventions, and greater emphasis on facilitation, adaptive strategies, and supporting processes aimed at strengthening individual, organizational, and system-wide capacity.¹⁹ Functionally, this means a move away from “donor projects” and less reliance on expatriate technical assistance in course and program development. The roles of implementing partners and technical experts, in such a context, must be negotiated and driven by the needs of the institute not the needs of the donors.

The principles of the Paris Declaration²⁰ contain assurances aimed at improving the effectiveness of aid that are worthy of consideration. The Declaration focused on

¹⁷ See, for example, Keene, *supra* n. 4.

¹⁸ B. Ramalingam, *Aid on the Edge of Chaos: Rethinking International Cooperation in a Complex World* (Oxford, UK: Oxford University Press, 2013), p. 361.

¹⁹ United Nations Development Programme, “Capacity Assessment and Development in a Systems and Strategic Management Context,” Technical Advisory Paper No. 3, Management Development and Governance Division, Bureau for Policy Development, 1998.

²⁰ Paris Declaration, *supra* n. 6; Accra Agenda, *supra* n. 7.

five principles that can guide the efforts of donors and recipients in establishing sustainable judicial-training institutions:

1. *Ownership*: Judicial-training institutes must lead their own development policies and strategies and manage their own development work on the ground. This is essential if aid is to contribute to building truly sustainable training institutes. Donors must support institutes in building capacity to exercise this kind of leadership by strengthening governance, staff capacity, and management systems.
2. *Alignment*: Donors must align aid firmly behind the priorities outlined in training institutes' development strategies. Donors must help training institutes develop strategic planning skills to align their strategic plans with the needs of their judiciaries.
3. *Harmonization*: Donors must coordinate efforts better among themselves to avoid duplication, contradiction, and competition. Donors should look for opportunities to pool resources for a particular strategy that would subsequently be led by the recipient—a national anti-corruption strategy, for example—rather than fragmented into multiple individual projects.
4. *Managing for results*: All parties must place more focus on results, the tangible difference aid makes in judicial, prosecutorial, and court performance. They must develop better tools and systems to measure impact.
5. *Mutual accountability*: Donors and recipients must account more transparently to each other for their use of aid funds, to their parliaments, and to judicial leadership for the impact of their aid. Donors should include the training institute in the decision-making process early and avoid unilateral planning of programming. Donors must hold implementing partners accountable for experts lacking the necessary knowledge, skills, and abilities in adult education.

How might aid become better aligned with the goal of effectively and efficiently developing sustainable judicial-training institutes? Our argument in this paper points to changes in the fundamental assumptions, attitudes, and actions of donors, implementing partners, and their experts.

JUDICIAL TRAINING ON ELECTION DISPUTE RESOLUTION

BY CHESELDEN GEORGE V. CARMONA*

The judiciary plays a crucial role in enhancing the confidence of the public in the integrity of elections and the electoral process. Through their complaint adjudication system, the courts are able to resolve one or all of the following instances of election disputes pertaining to a) the validity of the result and the right to challenge the outcome of elections; b) the administrative action of election officials to correct a problem, which infers the right to seek redress for violations of suffrage rights; and c) the criminal prosecution of those who have corrupted or attempted to corrupt the election process.¹

Electoral participants seek the assistance of the judiciary because of its vast powers. In some countries, the judiciary can invalidate election results if there is massive and widespread fraud. It can order fresh elections when previous elections fail. Yet it can give legitimacy to candidates whose election is challenged by political opponents and their supporters. In hotly contested elections, timely court decisions can put an end to uncertainties, diffuse political tensions, and prevent social unrest that is usually triggered by allegations of fraud and other forms of irregularities.²

It is probably because of these reasons that court intervention is now regularly sought by political participants to resolve election disputes relating to electoral outcomes, violation of suffrage rights, criminal violation of election laws, and all forms of abuses in the conduct of campaigns. A cursory search in the CNN website readily identifies the countries where electoral outcomes had been challenged: Ghana, Kenya, Zimbabwe, Congo, Serbia, Thailand, Pakistan, Afghanistan, Venezuela, Honduras, United States (federal elections, the states of California and Alaska, and the city of Atlanta), etc.³ Search results also yielded cases involving suffrage rights and challenges to voter-ID laws, election-finance laws, and absentee voting.⁴

This has not always been the case. According to ACE: The Electoral Knowledge Network,⁵ the historical approach for resolving electoral disputes in both Europe and

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¹ D. Petit, "Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System," paper, OSCE Office for Democratic Institutions and Human Rights, Warsaw, 2000, at <http://www.osce.org/odihr/elections/17567?download=true>.

² F. Karimi et al., "Kenya's Top Court Upholds Kenyatta Win in Disputed Election," CNN (31 March 2013), at <http://edition.cnn.com/2013/03/30/world/africa/kenya-election-ruling/>.

³ CNN website, <http://www.cnn.com/search/?text=election+challenged+court> (accessed on 9 April 2015).

⁴ *Ibid.*

⁵ The ACE Electoral Knowledge Network is a web portal that provides information on elections. See ACE: The Electoral Knowledge Network, 3rd ed. (2012), at <http://aceproject.org/ace-en/topics/1f/1fb/1fb12>

America was to refer them to parliamentary electoral colleges.⁶ Today, however, “more and more electoral controversies are sorted out by judicial institutions.”⁷ Even if a variety of approaches and mechanisms are still used by governments for resolving election disputes, the judiciary is always given a role. In the most democratically consolidated countries (e.g., United Kingdom, Germany, France, and Italy), judicial bodies, together with ordinary administrative tribunals, handle election dispute resolution under special procedures; in most developing countries, “jurisdiction over election disputes is shared between ordinary courts and special—permanent or temporary—election commissions mandated by the election law.”⁸ In countries of Central America, parts of South America, Greece, and Eastern Europe, permanent courts have been tasked directly to resolve election-related controversies.⁹

THE NEED FOR SPECIALIZED TRAINING

There is a view that judges being generalists can grasp and deal with any matter, however esoteric, provided it is competently argued.¹⁰ It has been posited that judges, with their fundamental knowledge of election laws, legal principles, and basic procedures, already have the necessary skills and competence to resolve election-related disputes effectively. Thus, it would seem that there is no need for judges to undertake specialized and continuing training on election dispute resolution. International organizations and election experts working on electoral reforms believe otherwise. The International Foundation for Electoral Systems (IFES) argued that time restraints and the required specialized subject knowledge require electoral dispute arbiters to be competent and informed in the specific area of electoral complaint adjudication. Arbiters (or judges) must not only have the requisite qualifications upon appointment, but also undergo continuing education to maintain familiarity with changes in the legal regime.¹¹ Dahl, an election expert, offered the following reasons:

Election cases involve a difficult combination of two important elements. First is the substance itself—fundamental human rights of democratic participation. These rights include seeking political office, supporting political parties and candidates, and voting. The second element is time constraints.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Petit, *supra* n. 1.

⁹ *Ibid.*

¹⁰ “Kriegler and Waki Reports on 2007 Elections,” summarized version, Konrad-Adenauer-Stiftung, Germany, 2009, at http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf.

¹¹ “Guidelines for Understanding, Adjudicating, and Resolving Disputes in Elections (GUARDE),” in C. Vickery (ed.), *International Standards in Electoral Dispute Resolution* (Washington, DC: International Foundation for Electoral Systems, 2013); see also Carter Center, “Guide to Electoral Dispute Resolution,” Atlanta, January 2010, at http://www.cartercenter.org/resources/pdfs/news/peace_publications/conflict_resolution/Election-Dispute-Guide.pdf.

Most election disputes and complaints need to be resolved within the compressed time schedule of various stages of the election process. Candidates must be certified and election results validated. The old saying that “justice delayed is justice denied” is especially true in this area of election complaint adjudication and resolution of disputes. It is difficult to balance the seriousness of election-related grievances with the pressure for election authorities and courts to act quickly. Reasonable deadlines and timetables for adjudicative procedures must be established within the law to allow for a fair but speedy process.¹²

Another good explanation why judges should receive specialized and continuing judicial education is contained in the report of the Kriegler Commission, which investigated the causes of electoral violence in the 2007 presidential election in Kenya.¹³

In the case of electoral disputes this attitude needs to be re-examined. The principles and practice of electoral administration have developed exponentially over the last two decades and a substantial body of international learning has been produced. All of this bears on dispute resolution and ideally requires specialized judicial attention. Because electoral disputes usually demand rapid resolution and do not allow time for extensive legal research by the adjudicating tribunal, familiarity with electoral law and practice is therefore a highly desirable attribute of such a tribunal.

It is thus the argument of this paper that training and other forms of capacity development should be made by the judiciary for judges who are handling, or will be tasked to resolve, electoral disputes. While it is difficult to come up with a general approach for training judges on election disputes because of the varying legal systems of each country, judicial training may consider including the following topics. Below are reasons for conducting training on specific topics and some specific and practical examples to help judges become more effective in performing their election-related adjudicative functions.

Constitutional and legal framework governing the elections. Any judicial training on election conflict resolution should certainly start with the discussion of the pertinent provisions of the constitution, election-related laws, international commitments,¹⁴ rules of procedure, and relevant jurisprudence. Judges can only perform their task credibly if they have a good knowledge of the constitutional legal framework governing electoral disputes in their jurisdiction. Resolving conflicts based on a law

¹² R. Dahl, “Electoral Complaint Adjudication and Dispute Resolution: Key Issues and Guiding Principles,” General Assembly of the Association of Asian Election Authorities, Taipei, Taiwan, 22 July 2008.

¹³ “Kriegler and Waki Reports,” *supra* n. 10.

¹⁴ Some examples are the Universal Declaration of Human Rights (UDHR, Article 21), the International Covenant on Civil and Political Rights (ICCPR, Article 25), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, Article 25), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, Article 7)

that has been repealed or amended would have a negative effect on the credibility of the court system, making enforcement of decision difficult. As noted by members of the Malawi Supreme Court of Appeal and the High Court, the courts would lose credibility in the long run if they continue to “to solve matters that are political in nature” (i.e., intra-party disputes) despite the absence of training or skills to do so.¹⁵

Election-related laws are continuously amended or repealed, with some of these legislative changes made during or very near the election year.¹⁶ Training on these new laws is important since judges may not have the time to study them. In Tunisia, training was provided to judges on campaign finance to prepare them for the 2014 national elections because a new electoral law regulating political finance was passed in May of the same year. The training sought 1) to increase the judges’ knowledge and understanding of the legal framework for controlling campaign finance and 2) to help the judges learn how to implement the framework. Case studies were presented throughout the training, providing judges with examples of campaign finance violations, which they discussed to determine the best approach to resolve them.¹⁷

When the Philippines amended its elections laws and adopted an automated election system (AES), its judicial academy promptly conducted a series of judicial trainings to help judges understand the new voting and counting system and the procedures for resolving disputes. The trainings sought “to augment the working knowledge of the participants with the Automated Election Legal Framework, the processes involved in the Precinct Count Optical Scan (PCOS) and the Automated Election System (AES), the distinction between the spheres of jurisdiction and competence of courts and the Commission on Elections” as well as to provide them with “techniques for the speedy resolution of the cases, including the proper docketing and reporting of election cases.”¹⁸ Training topics included “electronic evidence rules and judicial reporting requirements, employing simulated voting, counting and canvassing of results,” among others.¹⁹

Case management. When dealing with electoral conflicts, judges do not have the luxury of time as delays have far-reaching consequences. While due process is important and must be observed at all times, it must be emphasized that most types of

¹⁵ S. Gloppen and E. Kanyogolo, “The Role of the Judiciary in the 2004 General Elections in Malawi,” CMI Working Papers, Norway, at <http://www.cmi.no/publications/file/1939-the-role-of-the-judiciary-in-the-2004-general.pdf>.

¹⁶ The Elections Act, Political Parties Act, and Independent Electoral and Boundary Commission Act of Kenya were all passed in 2011 for its 2013 general elections; see “Election Observation Mission to Kenya: General Elections 2013,” European Union.

¹⁷ “Regulating Campaign Finance in Tunisia’s Historic Elections,” International Foundation for Electoral Systems, October 2014, at <http://www.ifes.com/news/regulating-campaign-finance-tunisias-historic-elections>.

¹⁸ “Annual Report 2010,” Philippine Judicial Academy, Supreme Court of the Philippines.

¹⁹ “Philippine Judges Trained on Election Automation Laws,” American Bar Association, June 2010, at http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/philippines/news/news_philippines_judges_training_election_automation_laws_0610.html

election-related cases require the courts to act quickly and decide expeditiously. Substantial due-process safeguards should not result in a system that effectively denies the right to an effective remedy. Judges must appreciate that delays could result in the denial of the fundamental right of citizens to choose their representatives or the denial of the right of the winning candidate to represent his or her constituents.²⁰

Some countries recognize and address this problem by including topics on case management when conducting judicial training on election dispute resolution. Depending upon the seriousness of election-related grievances, practical exercises may be incorporated to help judges establish reasonable deadlines and timetables for adjudicative procedures to allow for a fair but speedy adjudication process.²¹ For instance, the Office of the President of the Court of Appeal in Nigeria, which is responsible for appointing election-petitions tribunal judges, has been providing training to tribunal judges on election-petitions case management techniques (for the 2007, 2011, and 2015 general elections), noting that “election matters are *sui generis*.”²² Similar trainings on case management were given to Kenyan and Ugandan judges, with sessions on pretrial techniques to help them hear and determine election petitions within the time frame of six months, which their respective constitutions mandate.²³ Kenyan judges noted that while knowledge of laws and jurisprudence on election disputes is important, case and courtroom management skills enable them to have better control over election cases and make the parties accountable for conducting their cases in a disciplined, time-conscious, and responsible manner.²⁴

Understanding different types of electoral disputes. It is important for judges to fully appreciate the different types of electoral disputes, and the inclusion of this topic in training seminars will have both functional and practical benefits. As a general rule, election-related disputes are classified into pre- and post-election disputes. Pre-election disputes are filed anytime before the declaration of results, which can be in the initial phases of election preparations, during the campaign period, or on polling day. They may arise from voter registration contests and questions regarding the accuracy of the register of votes or the electoral roll; constituency (electoral boundary delimitation) challenges; controversies relating to or arising from qualifications/disqualification and nomination of candidates; violation of election laws, code of conduct, campaign rules and political-financing laws; and intra- and inter-political-parties disputes.²⁵ In most jurisdictions, these types of pre-election disputes are first heard and

²⁰ GUARDE, *supra* n. 11, p. 77.

²¹ GUARDE, *supra* n. 11, p.109.

²² J. Ojo, “Nigerian Judges and 2015 Elections,” *Punch* (25 February 2015; emphasis in original), at <http://www.punchng.com/opinion/nigerian-judges-and-2015-elections/>.

²³ “Pre-Election Report of the Judiciary Working Committee on Election Preparations” (September 2012-February 2013), <http://www.icj-kenya.org/dmdocuments/reports/Judiciary%20Pre-Election%20Report%2027th%20feb.pdf>.

²⁴ *Ibid.*

²⁵ GUARDE, *supra* n. 11, p. 7.

resolved by administrative bodies, particularly the election management body, before they are brought to a judicial body on appeal.²⁶

Post-election disputes, on the other hand, are challenges filed after the declaration of election results. Petitions of this nature seek to contest the outcome of the elections and are typically lodged directly with the court within a specified period of time. The proceedings are essentially judicial in character, and the burden of proof is on the person who lodges the application to demonstrate that there was massive irregularity in the electoral process.²⁷

Judges must not only be knowledgeable of the nature of election complaints and petitions that reach the courts for adjudication. Judges must be able to determine when and how they should arbitrate or whether they should intervene at all. A well-designed training curriculum that provides concrete examples of the different nature of electoral disputes will help judges determine the nature of electoral conflicts and to act appropriately; in this connection, it may be good to invite election officials as resource speakers to discuss and elaborate the various types of election-related disputes. The experience of some countries showed that it would be a good policy and strategy for the courts to allow the election management bodies (EMBs) to make initial determinations to filter out unmeritorious or insignificant matters.²⁸ EMBs are generally in a better position to do this and may have the necessary resources to gather evidence more quickly. They will also be able to prioritize investigations and focus on the more serious cases because most complaints and allegations arising from elections are often unsubstantiated and based on hearsay and rumor.²⁹ This, of course, depends whether the legal system of a given country allows it.

Finally, judicial trainings must enable judges to fully understand the nature and seriousness of the complaint to avoid overreaching. Not all election complaints, even if adequately proven during the hearing, should result to postponement or failure of elections. It is only when the irregularities rise to a level where the credibility and the legitimacy of the election are jeopardized that remedial measures should be provided by courts. Justice Ojwang of the Kenya Supreme Court in the *R. Odinga vs. IEBC* case articulated this in this manner.

[T]he Court should carefully consider the real impact of any alleged irregularity—especially irregularity attributed solely to the public body entrusted with the conduct of elections—upon the voting outcome. If such irregularity has had no—or minimal—effect, then there is, in general, no case for annulling the election result. It must be considered, in this regard, that an

²⁶ GUARDE, *supra* n. 11, p. 154.

²⁷ E. O. Abuya, “The Role of the Judiciary in Promotion of Free and Fair Elections,” at <http://www.juridicas.unam.mx/wcccl/ponencias/1/1.pdf>.

²⁸ GUARDE, *supra* n. 11, p. 114.

²⁹ R. Dahl, “Electoral Complaint Adjudication and Dispute Resolution: Key Issues and Guiding Principles,” General Assembly of the Association of Asian Election Authorities, Taipei, Taiwan, 22 July 2008.

election is not a process designed for the benefit of the petitioner, but is a much more broad-based exercise that seeks to serve the public interest in the first place.³⁰

Courts have been criticized for overreaching or for excessive judicial intervention in electoral matters. Some call it the judicialization of electoral politics.³¹ It has been pointed out that the “growing involvement of judges in politics; their willingness to regulate the conduct of political activity . . . by constructing and enforcing standards of acceptable behavior for interest groups, political parties, and both elected and appointed officials”³² and “accelerating reliance on courts and judicial means for addressing . . . political controversies”³³ have become a serious concern in a number of countries. The Thai court, for example, is “increasingly accused of bias and politicized decisions” because of its attitude towards the electoral process. By intervening “repeatedly to curb political participation by nontraditional constituencies,” its critics faulted it for eroding democratic principles and accelerating the political crisis in Thailand.³⁴ A similar study demonstrated that the courts in Malawi and Uganda have been involved at all stages of electoral processes and are used both by the incumbent and opposition parties.³⁵

These issues should be considered during judicial trainings as they impact on the public’s trust and confidence in the judiciary. Although the laws and mechanism for hearing and adjudicating election-related disputes vary across jurisdictions, there are internationally accepted principles that can be taken into account when designing capacity-building activities for judges. These principles, together with the experiences of various countries in dispute resolution and training delivery, can offer valuable insights when formulating a training curriculum for judges on EDR.

CONCLUSION

The judiciary should take cognizance of its increasing and expanding role in election conflict resolution. It should be able to perform this crucial function effectively to enjoy the trust and confidence of the electoral participants and the public. Enhancing the capacity of the judges to perform this crucial function would be an important first

³⁰ J. B. Ojwang, “Election Disputes and the Judicial Process: Emerging Lessons,” paper presented at the Colloquium for the Selected Bench of the Judiciary Working Committee on Election Preparations, 23 April 2013, at <http://www.kenyalaw.org/Forum/?p=2718#sthash.hQKrKUb7.dpuf>

³¹ B. Dressel and M. Mietzner, “A Tale of Two Courts: The Judicialization of Electoral Politics in Asia,” *Governance: An International Journal of Policy, Administration, and Institutions* 25 (2012): 391-414.

³² J. Ferejohn, “Judicializing Politics, Politicizing Law,” *Law and Contemporary Problems* 65 (2002): 41-68, at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1258&context=lcpr>.

³³ Dressel and Mietzner, *supra* n. 31.

³⁴ ACE, *supra* n. 5.

³⁵ S. Gloppen and F. E. Kanyonogolo, “Judicial independence and Judicialization of Electoral Politics in Malawi and Uganda,” paper presented at ISPA-ECPR Joint Conference, Sao Paulo, Brazil, 16-19 February 2011, at <http://saopaulo2011.ipsa.org/sites/saopaulo2011.ipsa.org/files/papers/paper-1570.pdf>.

step because the public expects judges to be knowledgeable, objective, and independent.³⁶ As noted by Justice Katju of the Indian Supreme Court:³⁷

It is of utmost importance for the public to have confidence in the judiciary. The role of the judiciary is to resolve disputes amicably. Without it, people may use violence to resolve differences. To avoid this, the judiciary must be independent. This is an inherent trait. If a judge is *independent* and *knows the law*, the losing party is likely to be pacified. He or she will be content, notwithstanding the fact that he or she has lost the action (emphasis added).

³⁶ A. Sone Ewang et al., "The Judiciary as the Last Hope for the Protection of Democracy and Human Rights in Cameroon," *Cameroon Journal on Democracy and Human Rights* 3, no. 1 (2009): 26-46, at <http://cjdhr.org/2009-06/Andrew-Ewang&Godwin-Bongyu&Juliette-Buhnyuy.pdf>.

³⁷ Justice Markandey Katju cited in E. O. Abuya, *supra* n. 27.

TEACHING NEW JUDGES WHAT IT MEANS TO “BE” A JUDGE

BY DIANE E. COWDREY*

In the United States, the transition to becoming a judge is a significant event. No training courses exist on how to become a judge until an individual is appointed or elected. Very few states have any type of “pre-bench” training for newly appointed or elected judges. Training for new judges typically occurs only after they have left their previous post and officially begun their judicial career. Overnight, these men and women become judges, ruling on cases that can deeply impact the lives of families and children, and that impact public safety and the lives of defendants and victims of crime. They make complex determinations in civil proceedings and rule on business disputes and significant matters of law. Many new judges must shift their perspective from serving as an advocate to serving as a neutral arbiter of all matters in the courtroom. The judicial branch is responsible for the fair administration of justice and is the last remedy for disputes. Ensuring new judges have the knowledge, skills, and ability to perform this work effectively and carry out their new role is a critical responsibility. How, in fact, does one “become” a judge?

To help answer this question, judicial educators can look to the National Association of State Judicial Educators, which published a compilation of standards and principles to guide the emerging field of judicial education in 1991, updating the document in 2001 to include the professional development of all individuals within the judiciary. The overarching goal of judicial branch education, according to the NASJE *Principles and Standards of Judicial Branch Education*, is to “enhance the performance of the judicial system as a whole by continuously improving the personal professional competence of all persons performing judicial branch functions.” Eight specific goals for judicial education were identified:

1. Help judicial branch personnel acquire the knowledge and skills required to perform their judicial responsibilities fairly, correctly, and efficiently
2. Help judicial branch personnel adhere to the highest standards of personal and official conduct
3. Help judicial branch personnel become leaders in service to their communities
4. Preserve the judicial system’s fairness, integrity, and impartiality by eliminating bias and prejudice
5. Promote effective court practices and procedures
6. Improve the administration of justice
7. Ensure access to the justice system
8. Enhance public confidence in the judicial branch (p. 4)

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Delineating goals for judicial education is not merely a theoretical exercise. Goals guide programmatic decisions, the development of curricula, and the use of precious funding and staffing resources. “Educators who are unaware of the purpose of judicial education and who have no standard for making programmatic and resource decisions ultimately fail to provide leadership.”¹ Each of the above eight goals speaks to the question of how an individual “becomes” a judge. Judicial education must focus on knowledge and skills, certainly, but it must also help judges to adhere to high standards of personal conduct to ensure fairness, integrity, and impartiality within the judicial system.

For new judges, learning how to do their job is at the forefront of their concerns. They want to know exactly how to make evidentiary rulings, how to juggle a heavy arraignment calendar, how to effectively manage a jury trial, and so on. Some new judges have courtroom experience, but putting on the judge’s robe and taking their place on the bench completely changes their perspective and requires different skills and knowledge than used in their previous legal role. The former chief justice of the Utah Supreme Court, Christine M. Durham, an early advocate for judicial education in the United States, often lamented that in years past, new judge orientation consisted of handing the new judge a robe and showing them where they should sit. Chief Justice Durham was instrumental in garnering support from the State Justice Institute to fund state and national judicial education projects, beginning in the 1980s. Now nearly all states in the United States provide some type of orientation program, and programs typically cover a wide variety of topics, in an attempt to provide practical, “nuts-and-bolts” information to new judges.

ETHICS: A CRITICAL COMPONENT OF ORIENTATION

Judicial ethics is always included in new judge orientation programs, as all judges in the United States are subject to a specific code of judicial conduct; most states have adopted the American Bar Association Model Code of Judicial Conduct or a variation of that code. Furthermore, each of the states has established a judicial conduct organization charged with investigating and prosecuting complaints against judicial officers, which arise as violations of the code of judicial conduct. Those judicial conduct organizations can then impose various sanctions against a judicial officer. The majority of such sanctions involve misconduct related to a judge’s duties or power, including demeanor, bias, and abuse of authority. In a 2002 study of sanctions across the United States published by the American Judicature Society, 69 out of 110 cases where judges were removed from their post involved misconduct related to the judges’ duties or power. In the *State of California Commission on Judicial Performance 2014 Annual Report*, the types of conduct that resulted in discipline that year were, in order of prevalence,

¹ D. E. Cowdrey, “Educating into the Future: Creating an Effective System of Judicial Education,” *South Texas Law Review* 51 (2010): 889.

1) bias or appearance of bias; 2) demeanor or decorum; and 3) on-bench abuse of authority in performance of judicial duties. Orientation programs for new judges must include a clear delineation of the code of judicial conduct so that judges can stay within the guidelines of the code and avoid any sanctions by their respective judicial conduct organization.

An Approach to New Judge Orientation

In California, the Center for Judicial Education and Research (CJER), the educational arm of the state's judicial system, has taken a unique approach to the orientation of new judges. Instead of providing a wide potpourri of topics that appear disparate and unrelated to one another, the focus of the orientation is to help new judges understand their new role by reinforcing the concept that ethics and fairness are the underlying principles of what being a judge is all about. Instead of isolating ethics and teaching each of the tenants of the code of judicial conduct, a broader approach is taken. The orientation program focuses on a single, unifying idea—the “Central Principle of Being a Judge.” The use of a single, unifying idea that undergirds the entire orientation program was developed by Judge David Rothman, a retired judge who is an expert in judicial ethics, having authored the *California Judicial Conduct Handbook* (now in its third edition), considered the ultimate resource for judicial ethics in California and a model for judicial ethics generally.² He served as a faculty for CJER for over 30 years and, in particular, taught ethics to hundreds of new judges. In his introductory comments to faculty who teach the orientation program, Judge Rothman writes, “The New Judge Orientation course that you are about to teach is based on the idea that ethics, fairness, trials, evidence, selecting a jury, and everything else in this course—indeed every course in judicial education—rests on a *single unified idea* of what being a judge is all about: that what judges fundamentally do is ensure the integrity and honesty of the process of judicial decision-making and of judicial decisions.”³

The “Central Principle of Being a Judge” is the overarching principle from which flows everything that a judge does, whether it is conducting judicial proceedings, off-bench activities in the courthouse, or judicial administration. That principle is expressed as “The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making.”⁴ It applies as well to the ethics

² See D. M. Rothman, *California Judicial Conduct Handbook* (San Francisco: California Judges Association), and “The Central Principle of Being a Judge,” Appendix 3, 2013 *Supplement to the California Judicial Conduct Handbook* (San Francisco: California Judges Association).

³ Center for Judicial Education and Research, 2015 *Instructor's Manual for New Judge Orientation* (San Francisco: Judicial Council of California), p. i.

⁴ D. M. Rothman, *California Judicial Conduct Handbook*, 1st ed. (San Francisco: California Judges Association, 1990), p. xxxi; California Code of Judicial Ethics, canon 1; *Advisory Committee Commentary*, 1995-present. Discussed in sections 1.20 to 1.25 of the Rothman *California Judicial Conduct Handbook*, *supra* n.2, and Appendix 3, 2013 *Supplement to the California Judicial Conduct Handbook*, *supra* n. 2.

obligations of judges in the courthouse and in private life. “All of what a judge does must ensure the integrity of the process of decision making and the decision itself.”⁵

To further illustrate the “Central Principle,” the following “Eight Pillars of Being a Judge” capture some of the qualities and thought processes that will help a judge remain focused on what judging is about and ensure the “utmost integrity of decision making.”⁶ During the *New Judge Orientation* course, these pillars are printed on large paper and posted on the walls, so faculty can refer to them throughout the course, reinforcing and applying them to hypothetical scenarios as well as real-life examples brought up by students or faculty. For purposes of this paper, the “Central Principle of Being a Judge” and the “8 Pillars” will be referred to collectively as “the Principles.”

THE EIGHT PILLARS OF BEING A JUDGE

This section is taken directly from Appendix 3 of the *California Judicial Conduct Handbook*, 2013 Supplement, pp. 1-4 (David M. Rothman) and is part of the participant manual of CJER’s *New Judge Orientation* course. Slight formatting modifications have been made.

PILLAR I—AWARENESS OF BEING A JUDGE

Always be mindful that you are a judge—whether on the bench, at a party, or on Facebook.

As you go about your life, constantly running in the background—like an antivirus program—is the awareness that you are a “judge.” This awareness needs to be developed over time, automatically kicking in when information, events or perceptions reach you. *You are a judge, a public figure*, who is seen as a symbol of the system of justice.

As a member of the judiciary you bear the burden of expectations placed upon all judges, expectations on what one does or says, and how one behaves or reacts.

Judges must commit to upholding the integrity and independence of the judiciary, avoid impropriety and the appearance of impropriety in both the public and non-public aspects of their lives, respect and comply with the law, promote confidence in the integrity and impartiality of the judiciary, assure that bias and prejudice are not countenanced in public and private life, and fairness and diligence are encompassed in judicial proceedings and administration. These fundamental ideas are expressed in the first three canons of the California Code of Judicial Ethics.

PILLAR II—AWARENESS IN THE COURTROOM

Always be mindful that you are a judge and act consistently with your mission as a judge. Always be conscious of what you do and say and be attentive to what others do and say in court proceedings. Never fail to notice your own reactions, feelings and thoughts in regard to what is taking place.

⁵ Rothman, “The Central Principle,” p. 1, *supra* n. 2.

⁶ The “Eight Pillars” were prepared by David Rothman with the assistance of the staff of the Center for Judicial Education and Research and the New Judge Orientation Working Group from 2011 to 2013.

Mindful of the things you are supposed to be doing in regard to the proceeding. Always remain focused on the task before you, including both the particular elements of the task, and the qualities judges must exhibit in judicial proceedings (e.g., patience, dignity, fairness, impartiality, honesty in decision making).

Stay focused. If what you are doing and saying is not serving to accomplish the particular task before you, notice this, and get back on track. People before the court (parties, lawyers, jurors, witnesses, observers) expect a judge to pay attention to the matter before the judge. You are there to accomplish the task before you.

A court proceeding is not supposed to afford you an opportunity to berate the lawyers for wasting your time, entertain an “audience” with your wit and/or wisdom, lead a rally for the 49ers, and so on.

Developing the habit of “noticing” and finding productive responses to events in court. Notice the reactions of people and what is taking place both in the courtroom and within yourself (feelings, emotions, anger, sympathy, impatience or annoyance). Your reactions are signals. If you miss these signals, you increase the probability of unproductive actions based on these emotions (e.g., acting based on anger, prejudice, mistakes, errors, etc.) rather than productive responses based on reflection and thought. Whether in or out of court, a judge needs to develop and use strong self-observation skills.

Finding self-awareness. Remember the times when you saw others who were NOT self-aware, did not see themselves (from the person who dominates the conversation at a dinner party, or the judge who berates people in a courtroom). Try to see the clues that your emotions may be getting in the way of your objectivity by observing yourself, as well as how others are reacting to you in the courtroom (facial expressions, body language, etc.).

PILLAR III—THE RULE OF LAW

Actions and decisions in the court must be within the law.

Judges are not there to make up the rules as they go along, whether it be imposing a sanction or deciding a case. Observing the *rule of law* involves the fair application of the constitution, statutes, case law and rules of court, ensuring the constitutional rights of all before the court, including unrepresented persons, and demonstrating attentiveness to the ethical obligations of a judge.

PILLAR IV—DO NOT MAKE ASSUMPTIONS

Keep an open mind, challenge assumptions and do not prejudge.

It is natural for humans to make assumptions, to take mental shortcuts in order to quickly arrive at conclusions. But it is also a part of our nature that once a conclusion enters our mind (whether based on a bias, assumption or “fact” heard in a trial), it is difficult to either reject or challenge it. A judge is a person who renders honest

decisions, not decisions based on bias or prejudice. “*Keeping an open mind*” may be the most important and most difficult of judicial tasks—do not take this task lightly. Mitigating the impact of assumptions requires constant awareness of what you are thinking and why.

PILLAR V—PROFESSIONAL DISTANCE

Do not take things personally, become embroiled or be an advocate.

You are no longer a lawyer, and your *only* stake in the case is that justice be administered fairly, impartially, honestly, and without fear or favor. If you lose your objectivity, your professional distance, you will have abandoned being a judge. Once a judge becomes embroiled (gets involved *personally*) fairness, impartiality and the integrity of the decision leave the courtroom.

Taking things personally, for whatever reason, is often the cause of judicial misconduct in court proceedings. Loss of self-control, loss of control of the courtroom, frustration that produces anger, acting in a way that favors one side in a matter, assuming the role of a prosecutor or defense attorney, coercing pleas or a settlement, and other conduct are all examples of loss of professional distance.

PILLAR VI—HONESTY AND INTEGRITY

Ensure honesty and integrity in the process of making decisions and in the decision.

Ensuring the honesty and integrity in the process of making decisions and in the decisions encompasses both the *reality* as well as *public perception*. All the rules that govern what you do as a judge, including the Code of Civil Procedure, the Penal Code, the Rules of Court, the Code of Judicial Ethics, and so on, focus on one ultimate objective: ensuring the honesty and integrity of decision making. Not only does a judge do what is right according to law, he or she must also be perceived to be doing so.

PILLAR VII—RIGHTEOUSNESS AND COURAGE

Do what is right according to law and work to have the courage to do so.

Canon 3A(2) provides that

“(a) judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.”

In her book, *Freedom from Fear and Other Writings*, Aung San Suu Kyi said,

“It is not power that corrupts but fear. Fear of losing power corrupts those who wield it and fear of the scourge of power corrupts those who are subject to it.... Fearlessness may be a gift but perhaps more precious is the courage acquired through endeavor, courage that comes from cultivating the habit of refusing to let fear dictate one’s action.”

Judicial Integrity is tested by the challenge of overcoming fear to do what is right. Only the judge knows if the judge’s decisions are honest and true.

PILLAR VIII—ACCOUNTABILITY

Accept and ensure judicial accountability.

Humility. Recognizing that you are accountable involves the humility to accept that you can be wrong. This is also an essential part of keeping an open mind.

Acceptance of accountability. As a judge you are part of the judicial institution in which public confidence in the judiciary is essential. A judge sees that justice is done and accepts the obligations that go with being a judge, including your own accountability and that of others who serve with you.

USE OF EFFECTIVE TEACHING STRATEGIES

In the introduction to *Judicial Education and Training: Journal of the International Organization for Judicial Training*, issue 2 (2014), the editor noted the need to focus on effective means to promote the learning of judges: “the overarching pursuit of pedagogic effectiveness remains core to the quest for professionalization” (p. 2). Moreover, can judicial education demonstrate a connection to improving the quality of justice in its respective jurisdiction? As the field of judicial education has matured, increasing emphasis is placed upon how judicial education is delivered, and the teaching strategies employed in order for the education to be effective and to positively impact the knowledge, skills, and attitudes of the learners. The *New Judge Orientation* program provided to new judges in California is deliberately designed to maximize learning and to help transfer what is learned in the classroom into the lives of new judges in their courtrooms and beyond. Education research has consistently shown that the design of the training itself and a high degree of interaction within the classroom are major factors in the successful transfer of training. Interaction is achieved in *New Judge Orientation* by using multiple teaching tools, such as large- and small-group discussions, videos, hypothetical scenarios, lecture, and self-reflective exercises.

Most new judge orientation programs take advantage of the principles of change theory, in that there are “critical moments” when people are most open and receptive to new learning, most notably when they find themselves in a new role. Judges are typically required to complete their orientation within a specific time frame when they are in that “critical moment” and most receptive to learning. A primary teaching strategy in California’s *New Judge Orientation* is to emphasize interaction throughout the entire weeklong program. As noted, having learners interact with one another and with the content has been demonstrated to be an effective teaching strategy and provides multiple contexts for participants to apply the information learned. Classes are limited in size to twelve participants, with four faculty members present during the entire week. Interaction occurs naturally with such a high student-to-faculty ratio and is also designed into all segments of the program. Throughout the week, participants break into small groups and discuss hypothetical situations that require participants to apply the Principles. Faculty encourage participants to use the resources provided to

develop the appropriate response to hypothetical questions posed. They specifically refrain from giving them the answer; instead, they recognize that new judges will have to wrestle with similar ethical issues in the future and use the guiding principles presented in class to help them address the situation. Higher levels of learning occur when participants analyze and synthesize information, and then explain their thinking to others. The use of case studies is a sound method of reinforcing the Principles and applying them to common situations that judges will encounter in their judicial careers. The Principles are used not only when covering topics such as ethics and fairness, but also when handling evidence issues, holding someone in contempt, deciding whether to disqualify oneself, taking appropriate corrective action with a fellow judge or lawyer appearing before the judge, and deciding whether to accept a gift or attend a charitable or political event.

A great deal of effort is made to establish a sense of trust within the class, so that new judges feel comfortable asking questions and sharing difficult issues and concerns. Once the sense of trust has been achieved, the interaction in the course increases significantly. Role-playing exercises also lend themselves to increasing trust when participants are asked to be the judge and make decisions on hypothetical cases acted out by the faculty. Some of the learning activities during the program are challenging; for example, participants are videotaped during a mock trial and receive feedback from faculty. Judges who attend a particular *New Judge Orientation* course usually stay in contact with each other during the course of their entire judicial careers and often stay in contact with the faculty. Peer-to-peer consultation is a key element of most professions, and this program is designed to establish that practice model early in a new judges' career.

The program uses the Principles throughout the entire week. To ensure that the content of the program is consistently presented throughout the year to each group of new judges, the course is completely scripted so that all exercises and hypothetical cases are taught similarly regardless of the faculty who teach. Instructors must attend an intensive faculty development courses before they are able to teach *New Judge Orientation*, and new faculty are always paired with experienced faculty. By weaving these basic principles throughout the program, new judges have a tool to use in any situation. Learning theory tells us that reinforcement of learning is a key element of effective education.

RESPONSES TO THE NEW JUDGE ORIENTATION PROGRAM

Course evaluations for this program are consistently positive, and participants provide feedback on the method of delivery as well as specific ideas they have retained or steps they plan to take in the future. Transfer of learning is enhanced when participants can identify concepts that they recall or can anticipate what they will do differently as a result of the course. Comments have included:

- The course is immensely helpful in changing the mindset (from lawyer to judge) and providing resources that I will refer to.

- I have a framework to use while evaluating new issues confronting me as a judge.
- I will be more aware of the words I use and my demeanor on the bench.
- This course has an enormous impact on the way each of us will conduct ourselves, especially in difficult courtroom situations.
- The course is excellent in re-emphasizing the “awareness” we need for our everyday duties as judicial officers.
- I am so grateful to have this class at the outset—so many “take aways” to try to internalize from the start. I have a long list of hot topics for follow up, plus so many lists/scripts to use right away.

The approach to training new judges in California has proven to be successful, due to the integrated approach that allows judges to consistently refer back to the Principles as a touch point throughout their early years and beyond. This approach uses adult-education-learning theory to effectively deliver the training and creates an environment where new judges form relationships with one another and with experienced judges who serve as faculty. The program is inspiring to the judges, delivers the message that they must adhere to a new set of judicial ethics in a positive way, and uses consistent messages to help them apply the Principles in multiple ways. The course helps new judges to make the transition to “becoming” a judge, setting a high bar for the profession and focusing new judges on their critical role in ensuring the fair administration of justice. Judge Rothman reminds faculty in his introductory remarks that *New Judge Orientation* is designed to emphasize that everything a judge does should be aimed at ensuring the integrity and honesty of the process of judicial decision making and of judicial decisions. Nothing could be more important than helping ensure a fair and impartial system of justice.

BENCH BOOKS: KEY PUBLISHING GUIDELINES

BY LIVINGSTON ARMYTAGE*

Bench books are a very important tool in building judicial capacity. When well prepared and produced, they often become the most useful element of any court's program of judicial development. This paper outlines some of the key issues to be addressed to produce a good bench book.

WHAT IS A BENCH BOOK?

In simplest terms, a bench book is a practice manual for judicial officers. Its nature and contents will depend on the judges' needs and, to that extent, each bench book may be different. Broadly speaking, bench books possess some common characteristics. Usually they address what judges need to know, understand, and do in court on a day-to-day basis. They usually focus on "what to do" with practical problems, common practices, and procedures, and on "how to do it." Often, bench books provide a means for inducting new judges, but they can also serve as a convenient reminder of the basics for more judges.

So, what is not a bench book? It is important to distinguish bench books from primary resources, such as statutes and cases, or available secondary resources, such as texts or articles. Bench books are not textbooks or legal encyclopedias, nor should they copy these existing resources unless they are not readily available for some reason (for example, remoteness).

The rationale for a bench book is to provide a special resource to supplement the existing general literature and provide targeted assistance for the quite particular needs of judges. For this reason, it should include pithy extracts from key authorities, references to primary resources, and checklists, but avoid lengthy recitals of other materials. In this way, the bench book can become a ready resource, which will provide readily accessible practical guidance on the bench.

ROLE, PURPOSE, AND EDUCATIONAL OBJECTIVES

Planning a bench book falls within the broader task of developing any judicial development program. The goals of judicial development—including bench books and other resources—are to meet the education, training, and development needs of court members.

Within this context, the purpose of a bench book is to help judges to do their jobs better and more easily. Its specific role will depend on the particular development

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needs that have been selected to be addressed: some development needs are better met through publications and others through interactive training or other means.

Competence

The educational purpose of bench books is to supply judges with practical tools to perform their professional roles with improved competence. The notion of “competence” illuminates what makes a good judge. It includes three spheres of knowledge, skills, and attitudes. In sum, competence embodies mastering theoretical knowledge, developing functional performance and problem-solving capacity, and developing ethical practice. Some courts have introduced frameworks of competencies for members relating to law and procedure, equal treatment, communication, conduct of hearing, evidence, and decision making—see, for example, www.judiciary.gov.uk.

As such, the bench book is not concerned only with transmitting information; it is more concerned with how that information is put into practice. In effect, it is focusing on doing rather than just knowing. For this reason, the contents should include information and how it should be used, using tools like examples, checklists, and guides.

ASSESSING NEEDS

In the past, assessing the needs for a bench book has too often been something done by asking judges only. But this is like asking patients to diagnose their own treatment; it is insufficient. Increasingly, it is now accepted that needs assessments should include the users—and indeed nonusers—of the court, that is, members of the practicing bar, the legal academy, media, civil society, and representatives of the community such as women’s and human rights’ groups.

These external consultations are “sensitive” and should be conducted to avoid eroding the authority and credibility of the court. They also have considerable value in informing the court on users’ perceptions of how it can and should improve its competence and level of service.

Methodology and Data Sources

It is generally agreed that the accepted methodologies for assessing needs for bench books—or continuing judicial development activities—include targeted stakeholder interviews, such as with leaders of the court, bar, and specialist community groups; surveys of court members and court users; court observation; and analysis of performance data from the courts’ annual reports and other relevant sources. A sample of a judges’ survey is attached for reference (see Annex 1).

Once these data are collected, it is useful to define these needs clearly in terms of their educational objectives, identifying whether they relate to knowledge, skills, or professional outlook. It may be a combination.

Needs—Who Is the Readership?

It is important to assess not just the content but also the level of needs: are these needs at the induction or orientation level for new appointees, are they at a higher level of experience, or are they for all court members, that is, straddling both levels? Another way of addressing this issue is to ask, who is the readership, in terms not just of their position, but also their role and physical location in the court—for example, is the bench book more for members sitting in remote courts than for those in the central registry? To answer these questions, it is useful to collect data on:

- The *qualifications and levels of prior experience* of court members—this will define the levels of existing competence. Are all judicial officers law-trained (in some courts they are not), and what is the base level of their professional experience? This will affect both the contents and the level of its sophistication.
- The *nature of working roles*—this will specify the required threshold of professional competence, whether general or specialized.
- The *availability of other existing resources*—this will identify the resource gaps that the bench book should fill rather than replicate.

Jointly, this data will clearly identify the “gap” in development needs, which the bench book should be targeted to address. This gap is foundational to defining the specific purpose of the bench book and should be clearly articulated in the introduction. This introduction should then outline the specific educational objectives of the bench book for the guidance of both writers and readers.

STRUCTURE AND CONTENT

The structure and content of any bench book will be determined by the audience and their needs to be addressed.

Generally, there is a consensus that any bench book should explain to members how to do it. The content of a bench book should relate to the law, practice, and procedure needed by judges to perform their duties, including hearings, effectively on a day-to-day basis. That said, the contents should not be too time-specific or require frequent revision, as this is the role of a bulletin or other update service. Importantly, the contents of the bench book should be practice rather than esoteric matters; it is not a legal monograph, text, journal of articles, or encyclopedia. Nor should it perform the role of a members’ handbook dealing with matters relating to terms and conditions of appointment, duties, entitlements, remuneration, or leave.

A review of global practice indicates that there are two major approaches to bench books: a) comprehensive narrative—this version provides the reader with a condensed practical overview of the relevant law and procedure and can be used as a stand-alone how-to-do-it manual, and b) selective reference—this version provides the reader with key issues, references, and checklists for use with primary sources such as legislation and case law. Whichever your choice, there are certain core elements to

most bench books. Within these varying approaches, its content should provide succinct summaries of selected law and procedures, key issues to be addressed, and practical guidance on common problems.

A bench book should start with a short, clear statement of its purpose written by the chief justice, followed by a detailed table of contents. A bench book may have three main sections:

- Opening section—chapters will usually canvas the jurisdiction of the court, and address generic principles of court processes, for example, including chapters such on “role of judicial officers,” “rules of procedural fairness,” and “conduct of hearings.”
- Middle section—chapters will usually focus on exercising the specific jurisdictions of the court, its core areas of business, major laws and key legislative provisions and selective extracts from key cases, and essential procedures relevant to day-to-day proceedings of the court.
- Closing section—specialist jurisdictions, cases, and issues are usually addressed, and personal notes on important topics can also be included.

Ultimately, the selection of content will reflect the institutional training needs of the court, whatever these may be, from time to time. Some bench books are designed as companions to the court’s rules and procedures, while others are more selective in addressing particular aspects. Finally, there should be an index at the end of the bench book for the reader’s ease of reference. A sample outline is attached for reference (see Annex 2).

STYLE

As a practice guide, there is general consensus that the style of bench books should be as readable and as simple as possible. Styles may range widely from narrative passages of text to bullet points, tables, checklists, and flowcharts. Language may be unavoidably technical, but should be as plain as possible.

Three practical guidelines on the style of a bench book are that they should be accessible, brief, and practical.

- *Accessibility*—To be useful, bench books need to be accessible to busy judges while hearing cases in court. To facilitate accessibility, it is helpful to introduce numerous headings and subheadings to punctuate and direct attention to the relevant section and where it is located in the table of contents and index. Busy readers often lack the time, or inclination, to read a whole chapter. For this reason, it is helpful to introduce frequent headings, which mark and direct their attention to the relevant passages. Additionally, the narrative should consist of short sentences and paragraphs, rather than lengthy passages of theoretical substance.

- *Brevity*—To avoid overwhelming the reader with too much information, writers should provide brief extracts or summaries, supported by references to relevant provisions, cases, and texts, and avoid lengthy recitals from statutes or other texts. Generally, the size of the bench book should not exceed 200-300 pages, because excessive length will deter many readers—usually, those who most need it.
- *Practicality*—Because the purpose of the bench book is not just to inform readers what they should know about the law, but what they should do in any particular case, it is useful to include a brief definition or statement of principles, step-by-step guidelines, checklists, and examples.

ROLES AND RESPONSIBILITIES

There are five key participants in the production of any bench book: the chief justice, bench book committee, editors, writers, and trainers.

Chief justice—First and foremost, there is a need for the chief justice or head of jurisdiction to provide leadership in mandating the publication. Depending on the court, this may or may not be a committee-based decision. The chief justice will provide his or her authority to the final publication and would normally contribute a short introduction outlining its purpose.

Publication committee—A publication committee needs to be established with the responsibility to oversee the publication and maintenance of the bench book. These are substantial responsibilities. Normally, this committee will consist of senior judges, but it should include also a new judge (or judges) who can articulate the needs of new members. The roles of this committee will include settling the table of contents; providing editorial oversight and quality assurance or nominating an editor (or editors) to oversee the manuscript; appointing a writer (or writers); managing the budget; overseeing production; training; monitoring use; and providing for ongoing revisions.

Editors—Another important role is editorial and quality assurance. While this is ultimately the responsibility of the publication committee, it may be delegated to an editor. Editing is a specialised and substantial function. This role is responsible for approving and settling written contributions supplied by writers to ensure that they are comprehensive, accurate, up-to-date, and written in an acceptable style and format. The entire publication should be written in a consistent style and format, and contributing writers should be guided to adopt the same approach throughout. In an ideal world, technical experts will write reader-friendly manuals in a timely and quality-assured manner. More often, however, busy experts may have problems managing competing time priorities and very different writing styles. Sometimes, manuscripts for bench books are confused with those for texts and monographs, and substantial editing is required. Oversight of production deadlines is crucial to timely publication. Preparation of the manuscript to “print-ready” format, and dealing with commercial printers, also requires some experience and expertise. These tasks may go beyond the

availability or competence of the publications committee and can be allocated to an editor dedicated to performing those responsibilities.

Writers—It is useful to distinguish the role of the writers in the publication process. They are responsible for drafting the text within the framework provided by the table of contents. This is another major role, requiring many hours of dedicated work. It should not be rushed and cannot be inaccurate. Sitting judges can serve as writers but are usually too busy to assume a major role. For this reason, writers are often selected from the ranks of eminent retired judges, respected academics, or very senior consultants. There are three options for writing the practice manual:

- a) *Commission an expert writer (or writers)*—This expert may be a recently retired judge or respected academic specialising in practice. The advantage of this approach is that it is professional and ensures the job is done in a timely manner to a designated standard; the disadvantage is that it may incur potentially substantial writing fees.
- b) *Appoint judges to contribute sections*—Sitting judges may be designated by the court as part-time writers as a part of their duties. The advantages of this approach is that the contributions are authentic, and the writing costs are subsidized by the court; the disadvantages are that the court may lack the resources to provide judges' time, and there may be a greater editorial role in harmonising contributions to the manuscript.
- c) *Individual volunteers*—In practice, many bench books are written voluntarily or on an honorary basis by members of the publications committee. The advantage of this approach is that it is self-managed, inclusive, and minimises costs. The disadvantage is that it may be very difficult to identify sufficient volunteers and coordinate completion of the manuscript to a designated standard in a timely manner.

Trainers—Courts should also consider providing some training when launching a new bench book. Courts should not assume that judges will automatically understand the purpose and benefits of a bench book or self-direct their own reading. The success of a new bench book will be promoted through the provision of some training to explain its purpose, contents, major features, and use.

BUDGET

From the outset, the court should forecast and budget for the costs of producing and maintaining the bench book. While it is impossible to provide template estimates of these costs, any budget should include provisions for writing, editing, training, printing, and distribution. Consideration should also be given to the availability of special funding for the bench book and whether any cost recovery, possibly through sales, subscriptions, or sponsorships, is feasible. Depending on the appointment of writers, writing is likely to be one of the largest costs, together with printing and distribution, though electronic publication mitigates some of the latter.

PRODUCTION

Management of production is another important step in the publication process. This involves setting a production schedule with critical dates for the key steps, including a) delivery of draft materials; b) completion of revisions; c) finalisation of a “print-ready” manuscript, including all preliminary portions such as introduction, forward, table of contents, table of authorities, and full index; d) supply of binding (if in hard-copy); and e) delivery and distribution of print run, linked with f) launch and g) supporting training. There are many separate but interdependent steps, which are best overseen with a calendar of critical events.

The time required to produce a bench book depends on the resources available. Generally speaking, it is prudent to allow about a year to get fully organised. From an operational perspective, a bench book can be scoped, written, edited, published, and distributed with training over a period of about nine months. This assumes that the court has made the decisions to produce a specific bench book, established a publications committee, and undertaken a needs assessment. It also assumes that issues of financing and funding have been resolved, and that writers have been identified and appointed. To manage the production process expeditiously, it will help to set a specific target event as the launch for the bench book, for example, the court’s next annual conference. A sample production schedule is attached for reference (see Annex 4).

Hard or Soft Copies?

In the past, courts have traditionally used loose-leaf methods of binding, as this facilitates cost-effective updating of selected portions of the work without the need for issuing a full new edition. These days, courts are increasingly producing bench books electronically, which avoids many of the traditional costs of distribution and updating.

MAINTENANCE AND UPDATING

Once produced, it is imperative for the court to ensure the contents remain up to date, without which it will rapidly become outdated and a danger to users. Changes in law or procedure can render sections obsolete at very short notice. Where these changes are major, these sections must be updated as a matter of priority. The publication committee is responsible for updating and maintaining the service and undertaking regular annual reviews to ensure its continuing relevance.

As a part of this review process, readers should be invited to submit their comments and suggestions for improvement via a “reader’s suggestions” form provided with each edition.

SAMPLES

These days, web-based electronic publishing is increasingly the norm. Samples of bench books can now be readily found, for example:

- Federal Judicial Center (USA) [http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/\\$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf/$file/Benchbook-US-District-Judges-6TH-FJC-MAR-2013-Public.pdf)
- Judicial College (UK) <https://www.judiciary.gov.uk>
- Judicial Commission of NSW (Australia)
<http://www.judcom.nsw.gov.au/bench-books>

A more detailed list of major judicial training institutions around the world, many of whom produce bench books that can be visited online, is attached for reference (see Annex 3).

ANNEX 1
BENCH BOOK: MEMBERS' SURVEY OF NEEDS

Outline of Sample Questions

A Respondent's background

- 1 Name of court/jurisdiction
- 2 Your role
- 3 Experience: judicial/other professional
- 4 Qualifications

B Professional development needs

- 5 Information—specify:
- 6 Skills—specify:
- 7 Attitudes/outlook—specify:

C Priority audience

- 8 Select level of membership experience to benefit most from a bench book:
0-2 years, 3-5 years, 6-10 years, 11+ years (circle one, only)
- 9 Rank in order of priority the ideal level of the bench book: induction,
in-service/continuing/update, specialist/advanced, refresher (circle one, only)

D Specific contents

- 10 Particular topics to be included—specify:

E Other assistance

- 11 Other professional development service needs—specify:

ANNEX 2

BENCH BOOK: SAMPLE OUTLINE

A proposed table of contents for a bench book is outlined below.

Introduction from chief justice/head of jurisdiction
 Reader's guide—purpose statement
 Index
 Glossary
 Table of statutes
 Table of cases

Part A—Principles of Judicial Process

1 Nature of Courts

- Jurisdiction and powers
- Nature and variety of jurisdictions
- Role of judicial members—key competencies
- Appeals and judicial review

2 Legal Framework

- Sources of law
- Legislation and delegated legislation
- Statutory interpretation
- Case law

3 Principles of Court Processes and Procedures

- Procedural fairness
- The hearing rule
- The bias rule
 - conflicts of interest
 - applications for disqualification
- Natural justice in administrative review and civil proceedings

4 Pre-hearing

- Preliminary procedures, telephone conferences, applications, directions
- Alternative dispute resolution processes
 - Mediation, conciliation, arbitration, conferences
- Standards/issues in alternative dispute resolution

5 Hearings

- Preparation and organisation

- Conduct and procedure of hearing
 - Adversarial, inquisitorial
- Non-application of rules of evidence
 - Relevance and reliability
- Witnesses and experts
- Privilege
- Control of proceedings
 - Managing counsel
 - Unrepresented applicants/parties

6 Decision Making

- Decision-making process:
 - Identifying the issues
 - Finding facts, weight of evidence, credit
 - Legal research and applying law
 - Statement of reasons
 - Making orders, and enforcement
 - Costs, damages, compensation
- Burden and standards of proof
- Delivering oral decisions
- Decision writing
- Panel and solo decision making; dissent

7 Post-hearing

- Contact with the parties
- Receipt of additional material or submissions
- Dealing with the media

8 Communications

- Principles of good “two-way” communication
- Plain language
- Questioning and listening skills
- Use of interpreters—when, how
- Diversity—cultural, linguistic, and other issues affecting communication and participation

9 Caseflow Management

- Principles of file, diary, and caseflow management
- Adjournments
- Time standards
- Techniques of delay and backlog reduction

10 Conduct

- Conduct in/outside tribunal
- Ethical standards

11 References

- Links to useful websites
- Relevant texts/materials

Part B—Jurisdiction Guide

- Jurisdiction, powers, and functions of tribunal
- Extracts of key statutes, regulations, rules and procedures, practice directions, policy documents, notices, guidelines, and time standards
- Selected case law, major tribunal decisions, commentaries, references to texts/articles
- “How to” guidelines to common and/or difficult applications
- Hearing procedure checklists
- Template forms, decisions, and orders
- Library resources, tables, bulletins

Part C—Special Jurisdictions/Personal Notes

- Selected precedents, guidelines, updates, notes.

Index

ANNEX 3

MAJOR JUDICIAL TRAINING INSTITUTIONS AROUND THE WORLD

1 International and Regional Judicial Training Networks

- International Organization for Judicial Training (IOJT)
<http://www.iojt.org/iojt2/index.html>
- Lisbon (CoE) Network—<http://www.coe.int/t/dghl/cooperation/lisbonnetwork/>
- European Judicial Training Network (EJTN)—<http://www.ejtn.net/>
- Commonwealth Judicial Education Institute (CJEI)—<http://cjei.org/introduction.html>
- Asia Pacific Judicial Reform Forum (APJRF)
<http://www.apjrf.com/index.html>

2 United States Judicial Training Institutions

- National Center for State Courts (NCSC)—<http://www.ncsc.org/About-us.aspx>
- National Association of State Judicial Educators (NASJE)—
<http://nasje.org/>
- Federal Judicial Center (FJC)—<http://www.fjc.gov/>
- National Judicial College (NJC)—<http://www.judges.org/>

3 European and CIS Judicial Training Institutions

- Austria (Bundesministerium für Justiz)—<http://www.ejtn.net/About/EJTN-Affiliates/Members/Austria/>
- Belgium (L'Institut de formation judiciaire, IFJ)—
<http://www.ejtn.net/About/EJTN-Affiliates/Members/Belgium/>
- Bosnia (Herzegovina)—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/BH_en.asp <http://www.fbih.cest.gov.ba/>
- Bulgaria (National Institute of Justice)—<http://www.ejtn.net/About/EJTN-Affiliates/Members/Bulgaria/>
- Cyprus (Supreme Court of Cyprus)—<http://www.ejtn.net/About/EJTN-Affiliates/Members/Cyprus/>
- Czech Republic (Judicial Academy)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Czech-Republic/>
- Denmark (Domstolsstyrelsen)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Denmark/>
- Estonia (Supreme Court of Estonia, Training)—
http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/estonia_en.asp
- Finland (Oikeusministeriö)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Finland/>

- France (French National School for the Judiciary)—
http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/france_en.asp; or <http://www.enm.justice.fr/>
- Germany (Bundesministerium der Justiz)—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/germany_en.asp; or
<http://www.deutsche-richterakademie.de/dra/index.jsp>; or
<http://www.ejtn.net/About/EJTN-Affiliates/Members/Germany/>
- Georgia—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/georgia_en.asp
- Greece (National School of Judges)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Greece/>
- Hungary (Office of the National Council for the Judiciary and Prosecutor General's Office)—<http://www.ejtn.net/About/EJTN-Affiliates/Members/Hungary/>
- Ireland (Judicial Studies)— <http://www.ejtn.net/About/EJTN-Affiliates/Members/Ireland/>
- Italy (Consiglio Superiore della Magistratura)—
<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Italy/>
- Latvia (Latvian Judicial Training Centre)—
http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/latvia_en.asp; <http://www.ltmc.lv/index.php?lng=2>; or
<http://www.ejtn.net/About/EJTN-Affiliates/Members/Latvia/>
- Lithuania (Ministry of Justice)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Lithuania/>
- Luxembourg (Ministry of Justice)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Luxembourg/>
- Malta (Judicial Studies Committee)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Malta/>
- Moldova—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/moldova_en.asp
- Montenegro—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/montenegro_en.asp; or <http://www.coscg.org/en/>
- Netherlands (Studiecentrum Rechtspleging)—
<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Netherlands/>
- Poland (National School of Judiciary and Public Prosecution)—
<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Poland/>
- Portugal (Centro de Estudos Judiciarios)—
<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Portugal/>
- Romania (National Institute of Magistracy)—
<http://www.ejtn.net/About/EJTN-Affiliates/Members/Romania/>
- Russia—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/russia_en.asp <http://www.raj.ru/en/>

- Slovenia (Judicial Training Centre)—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/slovak_en.asp; or <http://www.ejtn.eu/About/EJTN-Affiliates/Members/Slovenia/> http://www.justice.gov.sk/a/wfn.aspx?pg=ld&htm=ld/ja_bi.htm
- Spain (Escuela Judicial Consejo General del Poder Judicial)—<http://www.ejtn.eu/About/EJTN-Affiliates/Members/Spain/>
- Sweden (Domstolsverket)— <http://www.ejtn.eu/About/EJTN-Affiliates/Members/Sweden/>
- Turkey—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/turkey_en.asp <http://www.taa.gov.tr/>
- United Kingdom (Judicial College)—<https://www.judiciary.gov.uk/about-the-judiciary/training-support/judicial-college/>; or <http://www.ejtn.eu/About/EJTN-Affiliates/Members/UK-England-and-Wales/>
- Ukraine—http://www.coe.int/t/dghl/cooperation/lisbonnetwork/membres/ukraine_en.asp <http://www.court.gov.ua/eng/>

4 Australasia-Pacific

- Australia (NCJA)—<http://www.njca.com.au/index.asp>
- Australia (JCNSW)—<http://www.judcom.nsw.gov.au/bench-books>
- Australia (VJC)—<http://www.judicialcollege.vic.edu.au/>
- Philippines—<http://philja.judiciary.gov.ph/>
- Mongolia—http://www.owc.org.mn/jrc/English/introduction_eng.html

ANNEX 4

DRAFT PRODUCTION SCHEDULE

Function	July	August	September	October	November	December	February	March	April
PUBLICATION COMMITTEE	Establish Committee · Members · Roles	<u>Meeting # 1:</u> · Table of Contents · Production Schedule · Editor · Writer(s) · Budget		<u>Meeting # 2:</u> · Oversee manuscript · QA · Feedback	<u>Meeting # 3:</u> · Oversee manuscript · QA · Feedback	<u>Meeting # 4:</u> · Settle final manuscript · Production options · Budget · Printer	<u>Meeting # 5:</u> · Oversee production · Plan training · Select trainers	<u>Meeting # 6:</u> · Oversee launch, · Distribution	<u>Meeting # 7:</u> · Oversee training · Evaluation
EDITORS		Define role Writers' guidelines Style guide	Appoint, brief, and support writers	Support and follow-up writers; Obtain draft copy	Edit, revise, and settle copy	Edit, revise and settle all copy	Finalise production	Print, publish + distribute	
WRITERS			Work plans Commence writing	Drafting chapters	Drafting chapters	Revise and proof manuscript			
MANUSCRIPT			Draft chapters	Draft + revise chapters	Draft + revise chapters	Finalise manuscript			
PRODUCTION				Research printers		Select printer	Specifications Budget	Print	
FOLDERS						Research folders	Select folders	Bind	
DISTRIBUTION								Launch + distribute to members	
TRAINERS TRAINING							Training plans		Commence training

CRAFTING JUDGE-LED JUDICIAL EDUCATION: PARTNERING WITH EDUCATORS

BY T. BRETTEL DAWSON*

Canadian judges have maintained a steadfast, long-term commitment to judicial education. Through teaching one another, judges renew their vision over time¹ and, more concretely, address their concerns and challenges today. Since its inception in 1985, the National Judicial Institute (NJI) has sought to be a partner and resource to judges and courts in the shared endeavour to create relevant, practical, and effective judicial education at the court level and in national programs.²

This model of education can be summed up as follows: judicial education will be most effective when it is judge led, judging focused, skills based, and experiential. The model is derived from the principles of adult education and research on teaching and learning. In shorthand, it is “skills-based education,” and it has led to the development of courses addressing the craft and context of judging. It has also spurred a rethinking of how substantive law sessions are designed and taught—focusing on the analytical and decision-making processes followed by judges, as well as the content of case law and statutes.

The literature on adult professional education is clear. People learn best—in the sense of grasping, retaining, and applying learning—when they are engaged, when they are made to think, and when they can connect what they are learning to their work.³

We know what these ideas look like “on the ground” in judicial education seminars, whether large or small, whether addressing substantive law or court procedure or social context: the use of a range of interactive and varied formats that addresses the real-life situations and challenges faced by judges. Courses designed in this way provide opportunities for judges to share their views with other judges through discussion; receive knowledge through short and focused lectures or readings; apply the ideas discussed through exercises; and take learning back into practice in court “next Tuesday.”

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¹ Per CJ Duval-Hesler, *caq*.

² The NJI is involved in almost 200 days of education each year, covering a large array of subjects in almost 70 seminars. It works with all superior courts (trial and appellate) in the country and has an important relationship with provincial courts. It has a close working relationship with the Ontario Court of Justice through which 7 to 9 programs are offered each year. These programs are designed and delivered through a committee process led by judges and supported by NJI senior advisors and event managers.

³ See generally, M. S. Knowles, *The Adult Learner: A Neglected Species* (Houston, TX: Gulf Publishing, 1990); D. A. Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Upper Saddle River, NJ: Prentice Hall, 1984); and C. Claxton and P. Murrell, *Education for Development: Principles and Practices in Judicial Education* (East Lansing: Judicial Education Reference, Information and Technical Transfer Project, Michigan State University, 1992).

A range of teaching techniques can be deployed in each part of this learning process, for example, clickers, small groups, videos, role plays, or frameworks (the list is very long).

We also know that Canadian judges enjoy this style of education.⁴ They have accepted, even embraced, the model. And why not? When we do it well, judges leave programs feeling they have learned things that are relevant and that they can use and they feel energized and refreshed.

An oft-stated, indeed central, principle of judicial education is that it must be “judge led.” What this means in practice is worth considering in more depth. In that spirit, this short paper addresses a tension (or gap) that can arise between judicial leadership of judicial education and implementation of sound principles of course design and teaching.⁵ My premise is while judges should lead content and curriculum development to ensure its alignment with judicial practice and judicial independence, they should cede some space to work in partnership with educators whose role is to translate content into effective learning designs. I will use the example of the staff position of senior advisor (Judicial Education Development) at NJI to build my case for such partnership. NJI’s senior advisors are lawyers-educators who have developed specialised expertise in judging and judicial education. My focus will be on the ways that a skilled educator such as a senior advisor can help judges to overcome the various barriers they face when planning judicial education.⁶

CHALLENGES AND BARRIERS TO IMPLEMENTING THE MODEL OF SKILLS-BASED EDUCATION

The abiding challenge in our work as judicial educators is to consistently design and deliver high-quality education reflecting principles of adult education. As I have studied our successes and our failures in achieving this model at NJI, I have come to the firm view that the willingness and understanding, indeed the unwavering commitment, by the people who plan and teach our courses to adopt and apply the principles of adult education design and delivery are pivotal to success. This includes judges. However, judges often face barriers when taking on this task.

Some of the barriers to implementing adult education methods faced by judicial planners (and teachers) include:

⁴ See T. B. Dawson, “Judicial Education—Pedagogy for a Change,” *Missouri Journal of Dispute Resolution* (2014), forthcoming (available from the author).

⁵ I recognize that other tensions may arise in operationalisation of the concept of “judge-led” education, warranting further discussion. Livingstone Armytage, in particular, has argued that judicial leadership of judicial education needs to be paired with judicial leadership in addressing pressing justice issues. See “Global Issues and Challenges in Judicial Education: Leadership and the Educator,” paper delivered at the International Colloquium on Judicial Teaching, Judicial Academy of Chile, Santiago, 25 September 2014.

⁶ The term “senior advisor” is somewhat generic. I am not arguing for the use of this particular title. In smaller organizations, there may be scope for only one person in this role, who may be regarded as an education director or similar.

- Limited time to carefully plan programs and sessions in the immediate term (the next program) and the longer term (future programs).
- Limited expertise or knowledge about principles of teaching and learning. Both limited time and limited knowledge inexorably leads planners to a default to “how they were taught”—generally by long lectures on law.
- Concern about coverage accompanied by a drive to include a wide number of topics in a course. This perceived need for a lot of topics can be driven by wanting a program to offer something for everyone (particularly in general, court-based education settings) or a desire to best use the short number of days available for education. It may also arise from being unable to conceive that it might take longer than half an hour to cover something. Covering too many topics in a course results in irony and “tragedy.” Insufficient time is devoted to each topic, leading to superficial coverage that is not dialed in to important issues.⁷ Too many topics (and many speakers) result in a tidal wave of information washing over participants who are not able to engage with or retain much from this flood, leaving them tired from the effort to keep up. The irony is that having many, distinct topics can mean a great deal more time and effort being required of planners to line people up as faculty, plan with them all, and gather material.
- Unhealed scars from efforts that have not succeeded. The expression “once bitten, twice shy” seems to apply to judicial education. It is important to start small with the newer adult education approaches and to have some early wins from which to build.⁸ The formats used must work. One cautionary tale lies in judicial responses to small discussion groups. The literature tells us that small-group learning is an essential part of adult education. However, if small groups are unfocused and seem to ramble, they will not succeed. Judges will walk out (and grumble on their way out about the small groups being a waste of time). These judges will be correct. Small groups need to be meticulously planned with a topic, task, and output. This takes time and testing. It also requires effective facilitation by judges who have received some skills training to manage the process and dynamics of small groups.
- Anxiety not to fail in front of their judicial colleagues. The downside, if it can be characterized in this way, of peer education is that it is offered among peers. Poorly done (or received), a judge’s reputation may be (or perceived to be) impaired. To avoid this risk, some judicial planners may take what they consider to be a low-risk option—doing it the old way, often with a lecture-based “talking-head” format. The irony here is that doing it in this old way is also a sure-fire

⁷ Of course, it should be noted that too much time can also be given to a single topic if it is not rigorously structured to be engaging and practical.

⁸ See T. Brettel Dawson, “Lessons Learned for Experiential, Skills-Based Judicial Education,” *Judicial Officers Bulletin* (Judicial Commission of New South Wales) 20, no. 6 (2008): 47-49.

way to achieve mediocre ratings and results from judges who have seen and prefer adult-learning approaches.

- An unquestioned assumption that everyone likes to learn in the way that the judicial planners like to learn. The work of David Kolb has introduced the idea of different learning-style preferences, which support the idea of using multiple and varying learning formats.⁹ NJI is also now addressing the influence of teaching philosophy on planning and delivery.¹⁰ As noted by Conti, “As a teacher, you do not randomly select your teaching style, and you do not constantly change your style. Instead, your style is linked to your educational philosophy, which in turn is a subset of your overall life philosophy. Therefore, your ethical, spiritual, and political beliefs will provide clues to possible elements of your educational philosophy.”¹¹ A challenge in planning then is to recognize and work around one’s teaching style. An authority-based teaching style pushes toward a predominantly lecture-based format, which does not support skills-based learning. Thus, to state the obvious, if a program is not planned to be skills based, it will not be skills based.

SUPPORTING JUDGES TO SHAPE SKILLS-BASED LEARNING ENVIRONMENTS

Recognizing these barriers, the NJI has long offered “faculty development” seminars. These seminars focus on developing judicial planners’ understanding of the skills-based model of education.¹² These programs are very useful in deepening the pool of judges with understanding and skills with respect to adult education methods.

The NJI has also had a small cadre of judges who have become very knowledgeable and skilled judicial educators and who understand the principles of teaching and learning for adults. These judges had to learn about adult education, and they did. They teach in this way and they plan in this way. Over time, many became “judicial associates” leading program design initiatives, and others became planning chairs responsible for court and national courses. Their impact has been enormous. These individuals are wonderful, credible champions, who inspire their colleagues. The NJI

⁹ As originated in Kolb, *Experiential Learning*, *supra* n. 3.

¹⁰ On teaching styles generally, see L. M. Zinn, “Identifying Your Philosophical Orientation,” in M. W. Galbraith (ed.), *Adult Learning Methods* (Malabar, FL: Krieger Publishing, 1990), pp. 39-78.

¹¹ G. J. Conti, “Identifying Your Teaching Style,” in Galbraith (ed.), *Adult Learning Methods*, *ibid.* p. 89.

¹² The first faculty development seminars at NJI were offered to judges who were in charge of designing and facilitating social-context seminars. These programs could not be taught by lectures as the content entailed a transformational learning process engaging judges’ heads, hearts, and practices. Frank, open discussion of experiences and challenges in the area of social context required small-group learning. These faculty development seminars explored the nature of social context in judging as a basis from which to craft session content, introduced adult-learning approaches, and trained judges to facilitate small groups. See generally, R. Cairns Way and T. B. Dawson, “Taking a Stand: Bertha Wilson’s Public Commitment to Judicial Education” in K. Brooks (ed.), *Justice Bertha Wilson: One Woman’s Difference* (Vancouver: University of British Columbia Press, 2009), pp. 278-98.

endeavours to make every effort to identify, nurture, and integrate them into judicial education development. But they are very few in number.

Ultimately, however, judges are, foremost, judges. Even judges who are involved in judicial education are primarily interested in the work of judging and in the substance of their cases—both the law and the context. Thus, it is also important for judges to focus the most on judging content and practice, rather than educational philosophy and theory. Others can then work in partnership with them to translate ideas into well-designed, skills-based judicial education courses.

It is here where the NJI senior advisor role comes into play. Initially shaped from the experience of NJI in offering a comprehensive program of social-context education through which it retained academic expertise in the area of adult education, the senior advisor position has grown to be an integral part of our team-based approach to course development.¹³ Having a cadre of professional judicial educators on staff has built NJI's capacity to support judges planning judicial education.

Many of the skills that an experienced educator (senior advisor) can provide to judges in the planning process help judges to resolve the barriers they often face in planning judicial education. These skills and capacities include creating (or expanding) the following.

- **Time:** The senior advisor is a companion to judges in planning, assisting with concept, execution, and the details. The senior advisor can also play other roles, assisting judges with the development of learning resources (videos, scenarios, and facilitator notes).
- **A safety net:** The senior advisor provides a consistent, safe pair of hands upon whom judges can rely. This factor makes the implementation of a new style of skills-based education less risky for judges who need to shine in front of their peers.
- **Memory:** By being in the role over a number of years, the senior advisor can draw on a wide range of experience and examples, bringing this to each new program endeavour.
- **Design:** A creative experienced educator who can take a topic or theme and massage it into an experiential format.
- **Process management:** Planning judicial education requires coordination of an often complex process. Different people need to be working in concert on venue, registration, communication, program development, invitations, confirmations, and planning in relation to faculty members; ensuring materials are organized and produced (on time); booking the AV equipment; and setting up the appropriate learning or classroom environment aligned to the envisaged learning activities.

¹³ Because NJI at the time (1996) did not have the expertise in non-lecture-based methods of education, it reached out to others—those very few—who had thought about adult education learning in legal education. They became part of NJI's network and our faculty. Leaders at NJI learned from these experts and brought the lessons into the organisation itself. They began to be teachers of the material and recognized that this expertise was needed "in house" at NJI.

Connecting judges and faculty members, together with logistical details, must all be synchronized.

Ultimately, as well, a trusted and experienced senior advisor becomes an educator of judge educators: Their enthusiasm and knowledge can help judges understand adult education and get them excited about judicial education and, in particular, the program they are responsible for designing or instructing.

PROFILE AND SKILL SETS OF SKILLED SENIOR ADVISORS AS PARTNER EDUCATORS

Having made the case, I hope, for judges to work in partnership with educators (senior advisors) in the process of designing judicial education courses, I will set out some of the main characteristics required of people in this role. Ideally, senior advisors are:

- Legally trained professionals. NJI likes its senior advisors to “love the law.” We need them to support and believe in the central role of judges in the legal system. We need them to have been excellent law students or lawyers. At the same time, we need them to be generalists, rather than having highly specialized expertise and interest. We prefer people who have postgraduate degrees. But senior advisors are not likely to consider themselves “jurists” or “scholars” first. Somebody who is “hands-on,” practical, and curious about the law in action will be a much better fit for the role.
- Lawyers with an interest, ideally a passion, for education. Some senior advisors like me have come from a background as law professors; others as lawyers. It matters that they have been in a courtroom and know something of the daily life of the courts.¹⁴ Generally, all will have some teaching experience in their resume and thereby understand what it means to organize a course of instruction. We almost always have to teach new senior advisors about adult education, and they have to learn it and embrace it as they settle into their roles. It should be noted that senior advisors do not teach in our judicial education programs, except rarely.¹⁵
- Worthy of collegial respect. The ideal point at which a person becomes a senior advisor is after some other professional experience. They should have a sense of themselves and confidence as legal professionals. A senior advisor is in a unique “peer relationship” with judges in the process of developing and delivering judicial education. In court settings, judges, appropriately, are at the top of a hierarchy—with lawyers and academics not only “at their service” but also expected to accede clear authority to judges. Judicial education, however, is not the same setting as the daily professional practice of courts. This unique, parallel space

¹⁴ The NJI organizes a shadowing brief for those with less experience in court.

¹⁵ Exceptions include the faculty development seminars, which focus on teaching and learning, or where the senior advisor is a recognized expert in the subject area and is the person most available to take on the role. Generally, this will be a last resort rather than a first choice.

creates space for a collaborative professional relationship to be developed over time. Of course, senior advisors must be respectful of judges at all times.

- Curious and creative and open. A senior advisor is not someone who simply implements the plans of others or recycles existing content. They participate actively in creating the design and delivery plan for a judicial education program. They need to be able to think about learning objectives and to have a wide range of knowledge about methods and techniques that might be used to make the education experience come alive.
- Outgoing and relational. The work of a senior advisor involves getting to know a wide range of judges and, through working collaboratively with them, building their trust. The role of a senior advisor is to be someone whom judge planners and faculty can look to for assistance to make their lives easier and their efforts in shaping judicial education more enjoyable and less onerous. By also being an outgoing person, the senior advisor can contribute to ensuring that working on judicial education is an enjoyable experience. This joyous spirit can animate and engage (mainly volunteer) judges to become involved and grow in the role. They also need some other attributes as well (similar to those needed by judges, perhaps): patience, good communication skills, resilience, a sense of humour, grace, and indefatigability.
- Effective managers who pay attention to details. A senior advisor is at the heart of the planning process. She or he has to coordinate the planning process and has to be able to grasp the big picture and doggedly attend to details, details, details (along with the program event leader).

This list of characteristics of senior advisors based on NJI's experience suggests that there is a relatively small pool of people who have this curious combination of virtues. Not everyone blossoms into the role. Not all who do choose to make it a long-term career. The NJI provides a structured training and orientation program to new senior advisors.¹⁶ But the role and our aspiration to support judicial planners and teachers is ongoing.

¹⁶ This training program includes the following elements: learning our systems of work and technology (orientation); attending sessions with various people at NJI—finance, operations, human resources; reviewing a briefing binder on policies and phases of planning; reading core documents on judicial education; shadowing other senior advisors; shadowing in court (or at least court visits); attending judicial education programs as an observer; pairing as a “junior” on one or more programs with a senior advisor; undergoing regular debriefing and “supervision” of their progress on their own programs with the managing senior advisor; and participating in senior advisor team meetings held every two weeks for much of the year.

CONCLUSION

The focus of this note has been on working relationships between judges and educators in the design and delivery of judicial education. In conclusion, let me reiterate my key points.

Judicial education planners and instructors have to believe in and be willing to implement adult education principles in design and delivery of education. Lack of this engagement will create a major barrier to sustaining skills-based, judging-focused judicial education. Achieving this will involve both learning and change on the part of all involved in judicial education.

Judges, except in rare instances, will necessarily have limited time or disposition to develop real expertise in the underlying theory and methods of judicial education.

The NJI's senior advisor role is an integral, essential aspect of the "NJI Model." We retain the principle of judge-led education but ensure that judges have the resources they need to lead and produce engaging, practical, and relevant judicial education for their colleagues.

Judicial education flourishes when judges and professional staff develop trust and establish strong collaborative working relationships. A burden can become an enriching endeavour. Not only do many hands make light work, but many minds (and diverse, complementary skills) generate creative, practical, and intellectually sound judicial education.

JOINT INITIAL AND CONTINUOUS TRAINING FOR JUDGES AND LAWYERS IN THE FRAMEWORK OF THE COUNCIL OF EUROPE AND ACCORDING TO THE GREEK LEGAL ORDER

BY PETROS ALIKAKOS*

There are many practical benefits of joint initial and common continuous training for judges and lawyers. By increasing understanding and respect between those involved in the administration of justice, justice works seamlessly with both accuracy and speed. This article suggests that joint initial and common continuous training for judges and lawyers provides a much-needed opportunity to initiate constructive dialogue and create an effective collaboration for justice. Support for joint training by the Council of Europe and among its member states is briefly reviewed, with illustrative examples from the Greek Legal Order.

THE FRAMEWORK SET BY THE COUNCIL OF EUROPE

Recently, the Committee of Ministers of the Council of Europe adopted the terms of reference of the Consultative Council for European Judges (CCJE).¹ For the year 2013, this framework includes the adoption of an opinion (N. 16) on the organization of relations between judges and lawyers.

During preparation of this opinion, a questionnaire was drafted by a committee set up specifically for this purpose.² The questionnaire was sent to the members of the Consultative Council. In the context of this questionnaire, *inter alia*, issues of joint initial and continuous training for judges and lawyers are examined.

The questionnaire asks the competent bodies of the member states whether there is joint initial and continuous training for judges and lawyers in their legal systems. In the case of an affirmative answer, a further question is asked about the

* Judge Petros Alikakos is a member of the Consultative Board of the Human Rights Education for Legal Professionals (HELP) Program, Council of Europe. This article is based on a presentation at an event that was co-organized on 24 April 2013 by the Court of Thessaloniki and the Thessaloniki Bar Association under the general topic "The Relationship Between Judges and Lawyers: The Organization of a Harmonious Coexistence as a Condition for the Better Administration of Justice." It is noted that about five months after the presentation, the law 4194/2013 was adopted. For the first time, the new law provides the possibility for trainee lawyers to assist judges and prosecutors during their training (article 13 par. 7).

¹ The CCJE (or *Conseil Consultatif de Juges Européens*) is a consultative body of the Committee of Ministers of the Council of Europe, which consists solely of judges and deals with issues of independence, impartiality, and competence of judges. The CCJE was created at the 1,127th meeting of the committee on 24 November 2011.

² The working committee consists of the following members: Gerhard Reissner (Austria), Bart Van Lierop (Netherlands), Orlando Afonso (Portugal), Richard Aikens (United Kingdom), Aneta Arnaudovska (FYROM), Nina Betetto (Slovenia), Bernard Corboz (Switzerland), Nils Engstad (Norway), Johannes Riedel (Germany), Cobo Saenz (Spain), Duro Sessa (Croatia), Virgilijus Valancius (Lithuania), Jean Claude Wiwinius (Luxembourg), and alternate member Raffaele Sabato (Italy), all judges.

duration and the content of training, whether it is mandatory, and the source of funding. In case of a negative answer to the original question, the questionnaire investigates whether there are plans for the introduction of joint training or if there are discussions on the issue.

It should be noted that the Council of Europe and the bodies for which they are appointed for purposes of promoting issues of justice, i.e., the Consultative Council of European Judges and the Consultative Council of European Prosecutors, clearly began moving, long ago, towards joint training for judges and lawyers.³

THE SITUATION IN THE MEMBER STATES

In response to the above questionnaire, the competent bodies of several members of the Council have already answered.⁴ Based on those answers, traversing the geographical map of the member states of the Council of Europe, we find that in the vast majority there is no common training.⁵ The truth is that in most of these countries there are not even plans for institutionalizing joint training. What does exist is only seminar-type meetings, which are mostly organized by regional bodies—local courts, local bar associations, and universities—and more rarely from mainstream institutes, such as schools of judges.⁶

In most European countries, there is an institution, usually called a “School of Judges” or “Academy of Judges,” that provides training for the judiciary. In some countries, the training concerns future judges (trainees in the judiciary),⁷ while in others the training concerns already appointed judges,⁸ who take particular seminar-type courses useful for the first period of their careers. As for the training of lawyers in several member states of the Council of Europe, there are schools for lawyers, run by bar associations.⁹ Another common practice, which applies to Greece, is for a future

³ By 2009 in paragraph 10 of the statement of Bordeaux, which was the common-ground of opinion N. 12 of the Consultative Council of European Judges and N. 4 of the Consultative Council of European Prosecutors, it is stated that “the existence of common legal principles and ethical values for all professionals involved in the legal process is essential to the proper administration of justice. . . . Where necessary common training for judges, prosecutors and lawyers on issues of common interest, can contribute in achieving high quality justice.” In paragraphs 45-47 of the same opinion it is stated that “this joint training can make it possible to create the basis for a common legal culture.” And even earlier, in 2003, in opinion N. 4 (par. 29) of the Consultative Council of European Judges, joint training among judges, prosecutors, and lawyers is recommended for better mutual understanding among these professionals. In the same opinion, paragraph 30 refers to the essential educational period of judicial candidates in professional environments, such as law firms, companies, etc.

⁴ Overall 32 member states answered, among them Greece.

⁵ For example, in Luxembourg, Iceland, Hungary, Belgium, Norway, Turkey, and Croatia.

⁶ Bulgaria, Denmark, Netherlands, Sweden, and Greece.

⁷ For example, this applies to Greece, France, and Italy.

⁸ This is the character of the institution in countries like Great Britain and Germany. In the United States, the Administrative Office of Justice (A.O.) undertakes the training of already appointed judges for a period of about two weeks. The training is conducted on all critical issues of law and procedure and extends to e-Justice exclusively by senior judges.

⁹ Such schools exist in Turkey, Bulgaria, Denmark, Norway, and the Netherlands.

lawyer to be exercised at a law firm for a certain period of time. The recruitment process is quite different from country to country: exams with some form of preparation by the bar associations or universities or exams without any relevant preparation are two common examples.

Contrary to the above, there are member states that have different traditions on the issue of training for judges and lawyers. In such states, common training for judges and lawyers is something obvious.¹⁰ For example, in Great Britain and Germany, a common training is given for all legal professionals, up to the appointment of a judge or the inauguration of a lawyer.¹¹ In these two countries, as mentioned above, their schools of judges offer training programs and continuing education for judges who are already appointed.¹² The standards of these two countries are followed by other countries such as Switzerland and Slovenia.

There are, however, member states of the Council of Europe that have a similar system to the Greek system, such as France, where joint training is provided to lawyers for specific open programs of the National School of Judges (*École Nationale de la Magistrature*). Indeed, on 31 January 2011, the National School of Judges and the National Bar Council (*Conseil National des Barreaux*) jointly signed a cooperation agreement, which launched shared education open to both functions.

In France the students of the National School of Judges perform a mandatory six-month stage at a law office during their education.¹³ In this way, prospective judges are informed about the office of the lawyer and its difficulties.¹⁴ Correspondingly, trainee lawyers are able to perform, at their request, a stage lasting up to six months in a court. Moreover, future attorneys can attend a semester course taught in the National School of Judges by choosing a specific educational direction.¹⁵

¹⁰ In Finland, there are annual programs of joint training for judges and lawyers.

¹¹ In Great Britain, practicing as a lawyer is a condition for entering the judiciary; specifically, at least ten years of practicing law are required. Germany provides the “first legal exam” (Erste Juristische [Staats-] Prüfung), during which the candidate must demonstrate general knowledge of law, basically without specialisation, and then the “second legal exam” (Zweite Juristische Staatsprüfung), after the conclusion of which it is possible to obtain capacity for appointment to the judiciary (Befähigung zum Richteramt) and the acquisition of capacity for higher administrative services (Befähigung zum höheren allgemeinen Verwaltungsdienst), which is the condition for the licensed profession, for appointment to the College of Prosecutors, for high positions in the public administration, and other legal professions. However, it is worth mentioning at this point that in the United States, the Constitution and laws do not provide for any requirements for hiring a judge. Any conditions for judge recruitment have been “de facto” institutionalised at the base of social and scientific needs.

¹² See the websites www.judiciary.gov.uk and www.deutsche-richterakademie.de.

¹³ This is according to an amendment of the founding decree of the French National School of Judges, in particular article 19 of the Decree of 22.12.1958 reached by the law of 03.05.2007.

¹⁴ Note that the requirement of the Greek legislature for a biennial practice of law as a condition for participation in the introductory contest for the Greek School of Judges (art. 10 § 1a of the Law N. 3689/2008, as currently in force) is often a moot point because lawyers aged 26-28 years (see minimum-age requirement for participation) are challenged to carry substantial law practices by themselves; only the effective cooperation with older lawyers can provide the necessary information on issues of everyday law practice.

¹⁵ According to the latest amendments to the Rules of the Italian School of Judges, the model of the French school has been adopted, i.e., the realization of a stage educating future judges in lawyers’ chambers and corresponding participation of lawyers in future training programs of the School of Judges.

THE STRUCTURE OF THE JOINT INITIAL TRAINING IN THE GREEK LEGAL ORDER

Under the current regulation of the National School of Judges (in Greece), which is the national organization for judicial training for all jurisdictions, the involvement of lawyers in the design and implementation of teaching future judges is a given.

First, under article 4, paragraph 1 of law N. 3689/2008, the presidents of the Bar Associations of Athens and Thessaloniki, having as their deputies the chairpersons of the Piraeus Bar Association and Komotini Bar Association, respectively, participate on the board of the school. The board, in accordance with the organizational structure of the school, is the school's governing body. It maps the general initial and continuous training and supervises its implementation.

Also, as required by article 8 § 1 of the same law, the school operates two boards of studies, one for the civil-criminal direction and one for the administrative direction. The board of education for the civil-criminal direction involved a lawyer with at least 20 years of practicing law, defined, along with his deputy named by the Assembly of Presidents of the Greek Bar Associations, for a term of three years. Further, according to article 10 § 1a of the law N. 3689/2008, the right for enrolling in the Greek National School of Judges is granted to lawyers who have been practicing law for at least two years. The previous practice of law is limited to one year in the case of a nominee holding a doctoral degree.

Because there is provision for participation of lawyers in shaping the training of future judges, and given that the trainees are overwhelmingly former lawyers, the author believes that it would be possible, *de lege ferenda*, to provide joint initial training sessions in the following ways. First of all, with the cooperation of representatives of the National School of Judges and the Assembly of the Presidents of the Greek Bar Associations, judges and lawyers should be prepared for opportunities created for future joint cooperation.¹⁶ These judges and lawyers, as they are themselves informed about these issues, will be able to participate in joint training seminars for judges and lawyers (discussed below).

More specifically, a judge and a lawyer can present the problems of both offices and the best practices to resolve them in the form of repeated seminars for prospective judges and trainee lawyers. The joint training of judges and lawyers, especially in matters of ethics and morality, can provide the framework necessary for future compatibility between the two institutional actors of justice. In this way, we can further develop cooperation and trust between judges and lawyers.

Also of excellent effect would be to set up mock trials between future judges and future lawyers. The group of lawyers would undertake the drafting of pleadings and motions of a case, and the verbal support of the hearing of the case. The group of

¹⁶ A meeting was already held at the School of Judges on 14 March 2013, with the participation of judges and lawyers, on the relationship of lawyers with judges and prosecutors.

judges would undertake the preparation of the decision and the management process of the hearings. The same could happen for the criminal process and for the investigation stage of a criminal case.

On the other hand, the Solicitors' Code, in particular article 6 paragraph 5 of the Decree 3026/1954,¹⁷ provides that part of the exercise of a future lawyer, lasting up to six months,¹⁸ may be realised in the Council of State, in the civil or administrative court, in a district court, or in the corresponding prosecutor of the seat of the bar association at which the trainee lawyer is registered.¹⁹

The presence of trainee lawyers in the services of the court could be used not only in the field of logistics, i.e., the secretariat of courts, as generally happens for the moment. In addition, trainee lawyers could be guided by judges in matters of the elaboration of judgments and case management. Thus, when lawyers begins their ministry, they will be aware of the project and the difficulties faced by judges in the performance of their duties.

Further, the author believes that a school for lawyers could be institutionalized in Greece. This school, in the style of the School of Judges, would be the competent body for the training of lawyers.²⁰ In line with the School of Judges, and by involving judges on the governing board and in the curriculum of the school, lawyers could be trained on ethics, drafting of pleadings, and oral support of cases. In the context of school events, trainee magistrates may be invited to conduct mock trials with future lawyers, as mentioned above, or to conduct joint seminars.

The issue of joint training for judges and lawyers should take into consideration the Darrois Committee's work in France. This committee was set up in March 2009 to propose reform of the legal profession; it proposed the "school of legal professionals" (*Écoles des professionnels du droit*).²¹ At these schools, trainee judges, lawyers, notaries, and clerks will be enrolled. Exams will be nationwide. During the school's annual curriculum, students will follow the direction they wish, based on specific selection criteria. Indeed, if the model of the "school of legal professionals" is adopted, the conduct of joint recruitment procedures for judges and lawyers cannot be precluded. Such procedures are not unknown in Europe, as in the example of Germany, cited above.

¹⁷ As paragraph 5 is added to article 32 N.3910/2011, supplemented by article 68 N.3994/2011 and recently amended by paragraph 1 of Article 9 N.4022/2011.

¹⁸ According to article 111 paragraph 2 of N.4055/2012 with the amendment taking effect, in accordance with article 28 paragraph 2 of the law N.4058/2012, by the date of publication of this law, namely the 22nd (and not 12th, as erroneously stated) March 2012, the minister of Justice, Transparency, and Human Rights, may extend the time for the exercise of a trainee lawyer for one semester, once for each trainee and only for those positions not covered by this semester.

¹⁹ The total number of trainees, the distribution of trainees in courts and prosecutors' offices, the process, the selection mode, the setting for the opening, the exact time of exercise, the specialization of tasks interns perform, the amount and method of remuneration and any question of the exercise are determined by joint decision of the minister of Finance and Justice, Transparency, and Human Rights.

²⁰ See the countries—members of the Council of Europe—where a school for lawyers exists, *supra* n. 9.

²¹ See the site: <http://www.justice.gouv.fr/publications-10047/rapports-thematiques-10049/commission-darrois-vers-une-grande-profession-du-droit-15799.html>.

THE NECESSITY OF THE COMMON CONTINUOUS TRAINING IN GENERAL AND MORE PARTICULAR IN THE GREEK LEGAL ORDER

The existence of common training programs for judges and lawyers is imperative for today's society with its complex structures and scientific advances. Training should not only aim to provide complete and detailed knowledge of substantive and procedural law, but must also provide specific guidelines to respond to the social demand for more specialized judges and lawyers.²²

In the context of common continuous training, it is emphasized to judges and lawyers that they serve opposing sides. However, the common goal remains to find the truth in any case. Judges should be guided to their decisions by their conscience, by fairness, and by the law. Lawyers should prepare their submissions in light of the law, by their conscience, and by the duty for truth. They should guide their mandates, even to a "painful" settlement, as they objectively perceive the law under the general task of seeking truth. In any case, the common purpose is to serve justice.

Regarding the ethics of judicial practice, which is based on common principles (discussion, speed, and confidence), seminars organized by local bar associations and district courts are best able to respond to particular problems of relations between judges and lawyers concerning particular judicial districts and taking into account the peculiarities of each region.

Specifically, judges and lawyers trained on joint cooperation, as discussed above,²³ would participate in joint training sessions on the general question of the effectiveness of compatibility between judges and lawyers. This will emerge from the cooperation of representatives of the National School of Judges and the Assembly of Bar Associations. These trainers will undertake to promote the idea both in theory and in practice so as to preserve the experience acquired.

It would be useful at this level to enjoy the institutionalized cooperation of the presidents of the courts of first instance and of the courts of appeal, along with their respective bar associations. At regular meetings during the judicial year, under a specific agenda and with appropriate publicity, a host of issues relating to the organization of the courts and its proceedings, such as transparency, emergency response and crisis management, security, and the improvement of courthouses, could be addressed.

Finally, joint training seminars obviously must be arranged for subjects of the entire spectrum of law. Especially for newer developments (bioethics, medical law, environmental law, energy law, Internet law, new business forms, etc.) it is better for judges and lawyers to consider these developments together so that each side develops its position and concerns and any difficulties can be solved with joint proposals for further legislative intervention.

²² Beyond the opinion to structure relations between judges and lawyers, the Consultative Council of European Judges adopted N.15 opinion (2013), which aims to promote the specialization of judges.

²³ See above, under the "Structure of the Joint Initial Training in the Greek Legal Order."

CONCLUSION

The practical importance of joint initial training and the need for common continuous training for judges and lawyers reflects society itself. When the operators involved in the administration of justice²⁴ act by understanding each other and with respect for each other, then justice can work seamlessly with accuracy and speed. The creation of a common legal culture over time can yield significant results in this direction, harnessing any other artificial necessity imposed by the markets.²⁵ Both the common initial training and the joint continuous training for judges and lawyers are a pressing social need to defeat each other's suspicions, to initiate constructive dialogue, and to create an effective collaboration for the sake of justice and, ultimately, for the good of the society as a whole.

²⁴ Beyond the judges and lawyers, we should also integrate court officials, including the legal staff of the judiciary, such as in the judicial system of the United States.

²⁵ Neither the necessity of the legal profession for financial independence, because of the nature of lawyers as freelancers, nor the economic difficulty associated with establishing new schools for legal professionals should distract or discourage us from achieving this goal. Especially as to the financial resources necessary to establish schools for legal professionals, it must be said that there is an already functioning National School of Judges, which can be supported by funding from the justice system.

THE TRAINING OF JUDGES IN POLAND: THE RECENT DEVELOPMENTS

BY PIOTR MIKULI*

This article addresses recent reforms concerning judicial training, as well as reintroducing the institution of “court assessors.” Poland, as a rule, has professional and skilled judges who are trained separately from the members of other regulated legal professions,¹ but the law provides for other competitive routes to being appointed as a judge.

The dispensation of justice in Poland is a power conferred only on judges, whereas certain activities involving protection of the law can be performed by court referendaries (*referendarze sądowi*).²

GENERAL REQUIREMENTS AND QUALIFICATIONS FOR JUDICIAL OFFICES

The requirements for candidates for judicial offices depend, first of all, on whether the court to which the candidate applies is a court of first or higher instance. Pursuant to Article 61 of the Act of 27 July 2001, the Law on the Common Courts Organisation (LCCO),³ a district court judge must be a person who:

- is a Polish citizen and enjoys full civil and full public rights;
- is a person of integrity (i.e., is of spotless character);
- has completed higher legal education in the Republic of Poland and has obtained a master’s (graduate) degree, or has completed higher legal education abroad that is recognised in the Republic of Poland;
- has the ability to perform the duties of a judge, as regards his or her health;
- has attained 29 years of age;
- has passed a judicial or prosecutor’s exam; and
- has completed judicial training (apprenticeship) in the Polish National School of Judiciary and Prosecution and has worked as a court referendary or assistant to a judge for at least two years or has worked as an assistant prosecutor for at least three years before applying to be appointed as a judge.

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¹ Thus differing from countries such as Germany; see J. Riedel, “Training and Recruitment of Judges in Germany,” *International Journal for Court Administration* 5, no. 2 (2013): 43.

² Court referendaries, as well as senior court referendaries, may perform certain tasks in courts in the field of legal protection, as provided for by law. They are counterparts of the *Rechtspfleger* in German legal culture.

³ Journal of Laws of 2001, No. 98, Item 1070, with amendments. In writing this paper, I mainly used the English translation of this act, available on the website of the National Council of the Judiciary.

According to the statute, requirements concerning exams and judicial training do not apply to a person who, before the appointment, fulfilled other criteria—i.e., held the office of administrative or military court judge, held the position of public prosecutor, or worked in a Polish university, Polish Academy of Sciences, or a research-and-science institute or other science facility—and held the academic title of professor or a degree of habilitated doctor (i.e., a postdoctoral degree) of legal sciences.

Higher requirements are, in principle, applied for courts of appeal (courts of the third grade) in the hierarchy of common courts in Poland. Under Article 64, paragraph 1 of the LCCO, in principle, a common court or military court judge who has held a post as judge or public prosecutor for at least six years (including at least three years as a regional court judge, military judge in a regional court, or regional public prosecutor), may be appointed as a court-of-appeal judge. To become a judge in the military courts, one must fulfil requirements similar to those for the common courts, but one must at the same time be an officer serving in professional military service.⁴

To be appointed as a Supreme Court judge, a person must, apart from his or her legal education, simultaneously be “distinguished by a high level of juridical knowledge”⁵ and have served for at least ten years as a judge, public prosecutor, president, vice-president, or senior counsel or counsel to the General Public Prosecutor of the State Treasury, or have worked for the same period in Poland as a barrister, legal adviser, or notary public. Long service is not necessary in the case of professors or those holding a degree of habilitated doctor in the field of legal sciences.⁶

The Act of 25 July 2002—the Law on Administrative Courts Organisation—introduces requirements similar to those of the LCCO for judges of the administrative courts.⁷

JUDICIAL APPRENTICESHIP AND ITS RECENT REFORM

As has been described, the basic path to the profession of judge consists of completing the required judicial training (apprenticeship). It must be noted that finishing one’s legal studies and holding a master’s degree does not authorise one to work in any of the regulated legal professions. The main reason for this is that legal studies in Poland remain mainly theoretical, although there have been some substantial changes to the curriculum in recent years. Thus, the system of training (apprenticeships) and final professional exams constitutes the core system for legal training in Poland.

⁴ Article 22 of the Act of 21 August 1997—the Law on the Military Courts Organisation.

⁵ See Article 22, paragraph 1, point 4 of the Act on the Supreme Court of 23 November 2012. The English translation of this act is available at the Supreme Court website: http://www.sn.pl/en/about/SiteAssets/Lists/Status_prawny_EN/EditForm/consolidated_text_of_the_Act_on_the_Supreme_Court.pdf (24.04.215).

⁶ See Article 22 of the Act of 22 November 2002 on the Supreme Court, Journal of Laws of 2002, No. 240, Item 2052, with amendments.

⁷ Journal of Laws of 2002, No. 153, Item 1269, with amendments.

The current judicial training in Poland resembles the procedures and experiences of European judicial and prosecutorial schools, such as the French National School for the Judiciary (*École Nationale de la Magistrature*) or the Spanish Judicial School (*Escuela Judicial Española*).⁸ The Polish National School of Judiciary and Prosecution began to operate in March 2009. Previously, a diffused model was applied: candidates for judicial posts were trained in 21 local centres. A consistent quality of judicial training was difficult to ensure when as many as 1,000 teachers were engaged in the initial education process. The establishment of the centralised system was perceived as a tool for unification of various training approaches.

The school has a Programme Board and a director. The Programme Board is appointed by the Minister of Justice and is made up of 18 members who serve four-year terms. The Minister of Justice, the Prosecutor General, the National Council of the Judiciary, and the National Council of the Prosecution propose three members each. Each of the following officials proposes one member: the First President of the Supreme Court, the President of the Supreme Administrative Court, the President of the Supreme Bar Council, the President of the National Council of Legal Advisers, and the President of the National Council of Notaries. One member is appointed by the basic organisational units of the universities conducting courses in law. The members of the Programme Board may recruit only from amongst judges, prosecutors, and persons who hold the academic title of professor or a degree of habilitated doctor in the field of legal sciences. The director of the school is appointed for a five-year term of office by the Minister of Justice, under advice from the National Judicial Council and the National Council of the Prosecution.

The National School of Judiciary and Prosecution was created as an agenda of the Ministry of Justice. Although the Programme Board is composed of members proposed by representatives of the legal professions, the links between the ministry and the school remain significant. Greater autonomy of the school would strengthen the principle of judiciary independence. The Spanish approach, in which the training institution for judges is subordinated to the General Council of the Judiciary (*Consejo General del Poder Judicial*), could serve as a good example here. Unfortunately, the supervision of the school by the Minister of Justice has recently been reinforced; the minister *inter alia* may raise objections about a lecturer candidate already accepted by the Programme Board.

From 2009 until recently, the system of training provided by the National School of Judiciary and Prosecution was composed of two stages.⁹ The first stage consisted of completing the “general initial legal training/apprenticeship” (*aplikacja ogólna*), which

⁸ See F. V. Azon Vilas, “Judiciary School—Spanish Approach,” *Judicial Education and Training: Journal of the International Organization for Judicial Training*, no. 2 (2014): 69-78.

⁹ For more on the previous system, see S. Waltoś, “Condition of Access to the Profession of Judge and Public Prosecutor (Procurator) in Poland—Selection Criteria and Recruiting Procedures,” in *The Training of Judges and Prosecutors in Europe* (Strasbourg: Council of Europe Publishing, 1996), pp. 35 ff.

lasted 12 months and was common for candidates for judicial and prosecutor's posts. The second stage required candidates for judges to complete a 48-month judicial training/apprenticeship (*aplikacja sędziowska*). As part of their judicial apprenticeship, trainees participated for 30 months in lectures and tuitions at the school (combined with practice); they were then required to do an 18-month internship as a court referendary.

In 2014, the institution of a court referendary as part of the judicial apprenticeship was abolished¹⁰; in 2015, the general initial legal training was abolished.¹¹ As it turned out, the state authorities were not able to guarantee a position as court referendary for every person who completed training at the school. The new judicial apprenticeship will last 36 months. Candidates will be accepted after passing an entry exam. As is currently the case, the number of available places will be settled by the Minister of Justice. The form of the examination at the end of the judicial apprenticeship has not yet been changed. It consists of two parts: a written part and an oral part. The written part includes drawing up a draft court ruling with a justification in a civil and a criminal case. In the oral exam, candidates are requested to solve a case study based on various branches of law.

According to the 2015 statute, judicial trainees will be employed in provincial courts (in the sense of a job contract) for a determined period—i.e., for the time of training. The president of the respective provincial court will assign individual mentors to each trainee. Their task is to serve with substantive help, advise the trainee about the activities within their scope of responsibilities, and provide the respective president of the court with a written opinion, along with an assessment of the internship. In the last month of new judicial training, a judicial exam will be held. It should be noted that passing the judicial exam, even with the highest mark, in no way guarantees that a trainee will be appointed as a judge. The nomination depends on the appointment process in which the National Council of the Judiciary plays the most important role,¹² “selecting the excellent candidates from amongst good and very good ones.”¹³

A person interested in a judicial post applies for a vacancy by replying to an announcement published in the *Official Gazette of the Republic of Poland (Monitor Polski)* by the Minister of Justice (in the case of a vacancy in the common courts or the

¹⁰ The Act of 11 July 2014 on the amendment to the Act on the National School of Judiciary and Prosecution and the Law on the Common Courts Organisation (Journal of Laws, 2014, Item 1071).

¹¹ As of this writing, the Act of 9 April 2015 on the amendment to the Act on the National School of Judiciary and Prosecution and some other statutes has not yet been published.

¹² Judges in Poland in the common, administrative, and military courts, as well as in the Supreme Court, are appointed for an indefinite period of time by the President of the Republic on a motion submitted by the National Council of the Judiciary. This procedure does not apply to the judges of the Constitutional Tribunal (*Trybunał Konstytucyjny*) and the Tribunal of the States (*Trybunał Stanu*). The judges of these tribunals are elected by the Sejm (the first chamber of the Polish Parliament).

¹³ The quotation comes from official justifications of decisions on the selection of judges issued by the National Council of the Judiciary in the appointment procedure.

military courts) or by the President of the Supreme Administrative Court (in the case of a vacancy in the administrative courts).¹⁴ An applicant must, within one month of the announcement, complete an application form,¹⁵ which in the case of vacancies in the common courts must be submitted via the teleinformatic system available on the National Council of the Judiciary website.¹⁶

The curriculum for the reformed judicial training had not yet been determined at the time of this writing. It appears that greater emphasis will be put on practical duties carried out within the employment relationships with a respective court. In the current two-layer judicial-training system, both at the initial level and in the judicial part of the training, the classes held in the school are divided into several categories: case studies, tuitions, classical lectures, multimedia presentations, moot courts, seminars during which trainees share their experience as far as the practical application of the knowledge gained during lectures, and discussions concerning test results. Classes in the school's headquarters are organized in cycles of several-day courses held jointly with consecutive several-day internships. At the end of each cycle, trainees are tested on their knowledge of the issues covered and the practical skills they have gained.

It should be noted that the school is also responsible for organisation of continuing education for persons who already hold judicial posts. Judges are formally bound by law to improve their professional qualifications and participate in trainings and other forms of professional improvement *inter alia* by taking such courses in the school. The Centre for Continuous Training and International Cooperation of the National School, a special unit located in Lublin, is responsible for these tasks. There are one-day and two- or three-day training courses, which address various aspects of the law (e.g., new or problematic legal regulations) as well as other issues, such as interpersonal communication, public presentations, stress and professional burnout, professional ethics, and issues in the fields of medicine, economics, and sociology. The centre also organises specialist post-graduate studies in cooperation with universities and scientific and research institutions.

The decision to abolish the existing initial legal general training was supported by the National Council of the Judiciary and certain representatives of academia. Arguments for this reform were as follows:

- a) the initial general legal training constituted additional, unnecessary costs, which could be designated for creating a wider choice of courses within continuing training for judges;¹⁷

¹⁴ Article 57 of the LCCO; Article 70 sec 1 of the LMCO; Article 29 of the LACO.

¹⁵ The scope of the data required in an application form is determined by the Regulation of the Minister of Justice, issued on 16 September 2014. It is worth noting that, among data related to education and previous careers, a candidate should also include a note about his or her command of foreign languages. Proficiency in foreign languages is increasingly important in the context of applying international and EU law.

¹⁶ The teleinformatic system is maintained by the Minister of Justice, and the administrators of personal data in the system are the Minister of Justice, the presidents of the relevant courts, and the National Council of the Judiciary (see Article 57 sec. 4 of the LCCO).

¹⁷ See the Opinion of the National Council of the Judiciary of 8 November 2013.

- b) completion of the initial general legal training has ceased to be a prerequisite for taking a post of “assistant to judge,” as currently this post can be taken by alumni of law departments after successful assistant internships;
- c) professions such as judge, assistant to judge, and prosecutor are not very similar, and the predispositions necessary for their fulfilment are not identical, so training methods should be different;¹⁸ and
- d) priority in choosing judicial training constituted the privilege of the best alumni of the initial general legal training — as a result, prosecution training was selected either by inferior candidates or by those who did not have any other option due to the lack of available positions.¹⁹

THE PUBLIC DEBATE ABOUT JUDICIAL CAREERS

In the current public debate, a desired model of judicial careers is often discussed. Many scholars and judges argue that the best path to judicial office is through extensive experience in another legal profession. The system of apprenticeship introduced in the 1990s was supposed to be temporary. However, as it turned out, despite there being other possible routes to becoming a judge, the flow to judicial posts from other legal professions was quite small. One of the reasons for this is the relatively modest remuneration for judges. Obviously, there are also some practical dangers as far as the openness to other legal professions is concerned.²⁰ They include, *inter alia*, the possibility of making pathological connections between future judges and members of legal corporations. It may also be that judicial posts are financially attractive to those who, due to a lack of qualifications, were not able to function in the free market of legal services. Nevertheless, such potential problems should be eliminated by a proper selection process so that only the most qualified and ethical representatives of other legal professions will be considered as future judges.²¹

At the moment, there are many discussions concerning judicial careers, and strictly speaking, these are connected with the judicial-training reforms described above. Some judges argue that the current system has certain drawbacks because the appointment as judge is not preceded by real, practical experience. This situation is connected with the abolition of the institution of court assessors in the common courts. Court assessors were appointed by the Minister of Justice and, within certain limits, performed typical judicial tasks. The Constitutional Tribunal on 24 October

¹⁸ D. Dudek, “Jak najlepiej uczyć sztuki sądownictwa?” [“What Is the Best Method to Teach the Art of Judging?”], *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*, no. 1 (2013): 14.

¹⁹ *Ibid.*

²⁰ S. Polański, “Projekty reformy systemu powoływania sędziów” [“Drafts of the System of Judicial Appointments Reform”], in A. Szmyt (ed.), *Trzecia władza. Sądy i trybunały w Polsce [The Third Power: Courts and Tribunals in Poland]* (Gdańsk: Wydawnictwo Uniwersytetu Gdańskiego, 2008), p. 428.

²¹ The standpoint presented *inter alia* by a representative of the National Council of the Judiciary on the sitting of the Legislative Committee of the Senate (10.04.2018), quoted by S. Polański, *ibid.*

2008 ruled that the model of court assessors that was in use did not conform with Article 45, paragraph 2 of the Constitution,²² which provides that “everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.” The tribunal expressed the view that court assessors did not fulfil the constitutional criteria essential for judges because, being subordinated to the Minister of Justice, they did not possess sufficient guarantees of their independence. According to the tribunal, Article 45, paragraph 1 of the Constitution also provides for the right to have a court system and adjudicatory bodies that are constituted in the proper way. Court assessors were dismissed from office not by the court, but by the minister. As the Constitutional Tribunal only assessed the relevant provision of the LCCO, court assessors remain in the administrative courts. The main advantage of the institution of court assessors as “trial judges” is that it is possible to check that they have the practical skills essential for proceeding further in judicial adjudication.²³ With this in mind, the National Council of the Judiciary proposed restoring the position of court assessor but simultaneously shaping this measure in such a way that it could be reconciled with the Constitution (the tribunal in its ruling did not question the institution of court assessors as such). These proposals were included in a bill proposed by the President of the Republic that was accepted by the Sejm (the first chamber of the Parliament) in July 2015. According to its provisions, a court assessor will be appointed by the President of the Republic for five years.²⁴ Revival of the court assessor system in the common courts seemed to be worth considering, but there is still a question about whether such a regulation can be introduced without relevant constitutional amendments. It seems that in the decision mentioned above, the Constitutional Tribunal suggested that the status of court assessors should not diverge far from the status of judges.²⁵ However, the decision to appoint a court assessor would, in practice, have to be countersigned by the Prime Minister, as all the official acts of the Polish head of state must be countersigned, except for those directly enumerated in Article 144 of the Constitution. In

²² The Constitution of 1997, Journal of Laws of 1997, No. 78, Item 483, with amendments, from here on referred to as “the Constitution.” A full English-language text is available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (28.03.2015).

²³ Abolishment of assessorship was one of the arguments supporting the introduction of a centralised model of judicial training.

²⁴ As part of the council’s proposals, a court assessor would be appointed by the National Council of the Judiciary for a definite period of time and, after holding his or her post for at least two years, would be able to apply for posts in district courts and provincial administrative courts. At the same time, the proposal provided that court assessors could not be dismissed from their offices during the period of their appointment (except as a result of disciplinary and criminal proceedings).

²⁵ See D. Dudek, “Ekspertyza prawna w sprawie zgodności z Konstytucją Rzeczypospolitej Polskiej założeń ustawy przywracającej instytucję asesora sądowego” [“Legal Expert Opinion on the Conformity of Assumptions for the Bill Restoring the Position of Court Assessors to the Polish Constitution”], *Krajowa Rada Sądownictwa—Kwartalnik*, no. 2 (2013), pp. 19-20.

consequence, the consent of the Prime Minister, who to a large extent represents the political segment of the executive power, would make court assessors subject to the will of the executive power.

Another matter connected with the institution of the “trial judge” is that the ladder-like model of the judicial career can be petrified. It may resemble, to some extent, the training of civil servants, who are, by definition, trained to be subordinate to their superiors.²⁶ The specificity of judges’ work is peculiar, as they have to be very sensitive to any possible attempt to prejudice their independence. Without completely challenging the idea of the restitution of court assessors, it seems that a stronger incentive for experienced, well-qualified lawyers to apply for judicial office should be desired at the same time.

CONCLUDING REMARKS

The concentration of judicial training is sometimes assessed as ambiguous. As I mentioned above, the unification of various local tuition approaches constituted an important achievement, but it came at a cost: a reduced emphasis on developing the practical skills. This flaw was supposed to be remedied by means of an 18-month internship as a court referendary, but as it turned out, for economic and practical reasons, internships could not be secured for all school alumni.

Observing the current and proposed measures in the field of judicial training in Poland, one may argue that certain regulations are on the right track. Abolishment of the general initial legal training seems to be a desired reform in this respect. Public expenditures for this part of the training cannot be considered an appropriate investment in the judicial system. It must be noted that these costs also comprised special stipends for participants who would never actually work for the judiciary, as inherently only some of them could continue their education within the judicial or prosecutorial apprenticeship. This use of public funds is especially inappropriate at a time when continuing education for incumbent judges is still underfinanced. The offer of the school in this field, while relatively broad, still does not correspond with the current needs. The limited number of places available prevents judges from participation in numerous courses essential for their professional development. One positive trend in the school’s recent activity consists of the expansion of various course offerings not only in Lublin but also in many local areas more convenient for trainees.

Regarding the forthcoming reform concerning restoration of the assessorship, apart from the previously cited constitutional reservations and a call for increasing the share of experienced lawyers on judicial posts, shortening the path to the profession of judge for assistants to judges and court referendaries is worthy of serious consideration.

²⁶ The danger connected with such a model was noted by, for instance, Justice Jerzy Stępień, the former president of the Constitutional Tribunal (in his contribution at the conference concerning the supervision of the administrative activity of the courts, the Senate of the Republic of Poland, Warsaw, 8 January 2014).

Naturally, certain doubts may be raised in the public debate. Some judges argue, for instance, that assistants to judges and court referendaries may not prove themselves when it comes to making independent decisions.²⁷ Nevertheless, I would argue that many years' experience at these posts, together with passing the judicial exam, might exempt them from the obligation of being an assessor before applying for a judicial office. This would strengthen the concept of promoting competitive routes to being appointed as a judge.

²⁷ See the opinion of "Iustitia," Association of Polish Judges, available at <http://www.iustitia.pl/opinie/925-opinia-iustitii-dotyczaca-przywrocenia-asesury> (1.05.2015).

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