

Judicial Education and Training

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JUDICIAL EDUCATION AND TRAINING

Journal of the International Organization for Judicial Training

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:

<http://www.iojt.org/journal/page~journal.html>.

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INTRODUCTION

BY LIVINGSTON ARMYTAGE, EDITOR*

Today, we have an opportunity to establish a vibrant global community of learning in judicial education. Never before in the 50-year history of formalized judicial education has this opportunity for peer-based learning through the exchange of professional experience from around the world been so accessible and feasible as now.

In this third issue of *Judicial Education and Training*, we are pleased to showcase another selection of eleven topical articles. Most build on papers presented to the biennial conference of the International Organization for Judicial Training in Washington D.C., on 3-7 November 2013 to address “judicial excellence through education.”¹ Authors present a panoply of experience from Australia, Bangladesh, Belgium, Canada, Germany, the European Judicial Training Network, Finland, Mexico, New Zealand, Romania, Scotland, the United Kingdom, and the United States. Their articles are ordered to address four themes: leadership and vision, the European journey towards best practice, the need for research, and diversity in national approaches to judicial education.

As a number of our contributors discuss, a landmark study of judicial education in Europe last year has found little basis for what it described as the oft-held assumption that common-law and civil-justice systems are sufficiently different for there to be little to share between one another in the field of training. Rather, its findings suggest the opposite: it found a high level of transferability of training, notably relating to judicial skills, judge-craft (as compared to substantive laws and procedures), and educational methodologies.² This finding on the transferability of experience has potentially fundamental implications for judicial educators practicing around the world: it offers to bridge the gulf that separates different traditions of justice; civil from common law; America from Europe; and developed from developing jurisdictions around the world.

These articles present a rich diversity of authors’ experiences in innovating judicial education around the world. On any reading, this experience has grown vigorously, but also quite separately in one country to another in jurisdictional silos. This has been unavoidable, and may remain so, but it need not continue. For the first time, we now have an opportunity to share, exchange, and adapt these experiences. How we may proceed in the future will, of course, remain a matter for local adaptation in each

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¹ The additional article of J. Hughes and P. Bryden was based on a presentation to the symposium on “Judicial Education and the Art of Judging,” University of Missouri Law School, 9-10 October 2014, while that of Dr. Julio Cesar Vazquez-Mellado Garcia highlights the important role that research plays in judicial schools.

² European Commission 2014, “Study on Best Practices in Training of Judges and Prosecutors,” p. 112; https://e-justice.europa.eu/content_the_european_judicial_training_policy-121-en.do.

jurisdiction. This opportunity enables us to explore and adapt experience without needing to reinvent the wheel. We all may learn from Europe's formative journey towards best practice; Bangladesh may learn from Mexico's approach to research; Belgium may learn from New Zealand's approach to evaluation; and so on.

How we realize and explore this opportunity is in our hands.

CONTRIBUTIONS

The opening three articles in this issue address the theme of leadership and vision. In the first, **Professor Maureen Conner**, who is director of the Judicial Administration Program, Michigan State University, and the Judicial Education Reference Information and Technology Transfer Project (JERITT), writes about the judicial educator as leader of change. Professor Conner sees tremendous promise in judicial education. For education to fulfill its potential, she argues that the educator must assume the role of leader and make transformation the mission of education. This means that the educator must go beyond developing training programs that aim just to expand knowledge, build skill, and improve court administration—however necessary and worthy these goals may be. The educator as leader must make transformation the mission of education. In this stimulating article, Professor Conner presents ten areas for judicial educators to consider in their own leadership development, relating to guiding philosophy, mission, values, voice, thinking, acting, competence, being forward-looking, reflecting, and renewal.

In the second article, this writer takes the role of leadership the next step by proposing where that change should go. **Dr. Livingston Armytage**, who is director of the Centre for Judicial Studies in Sydney, specializes in judicial education and justice reform. He argues that judicial educators have a professional responsibility not only to promote judicial competence—being an aggregate of knowledge, skills, and values—but also to promote improvements to justice. He presents a vision of leadership in which the goal and purpose of judicial education is improving justice and, thereby, human wellbeing. To attain this vision, judicial education should build on the principles of adult and professional education to address the justice needs of citizens whom the courts are constitutionally mandated to serve. Judicial educators have a challenging but inescapable professional responsibility to look beyond competence to actively promote the quality of justice—that is, to guide and support the learning of judges towards improving justice procedurally and substantively, however that may be defined. He challenges the reader to replace existing technocratic concerns for training effectiveness as being necessary but insufficient, with an overarching concern for improving substantive justice outcomes for beneficiaries of the court system.

In the third article, **Magistrate Edith Van Den Broeck**, director of the Judicial Training Institute, presents Belgium's approach to developing a future-oriented vision for the professional education of judges, prosecutors, and court staff operating within the civil model of justice. She conceptualizes judicial training as "a driver for reform,"

in a constant search for improving efficiency and cost-efficiency without compromising the quality of service. She describes the ongoing process of judicial reform as being a fundamental and compelling frame of reference when plotting the Institute's judicial training's strategy: "We don't teach them law, we teach them to judge or to prosecute." For this reason, the institute has developed a judicial competence model that focuses on skills instead of knowledge in all its training initiatives. The institute is additionally addressing a range of challenges that include constant up-skilling, a forecast "brain-drain," social and technological evolution, impending computerisation, and globalisation.

In opening the second theme on the European journey towards best practice, **Professor Jeremy Cooper**, who is director of Training for Tribunals for the Judicial College of the United Kingdom, reports on a landmark study on the training of judges and prosecutors, which was published in 2014. The aim of this study, which he co-authored, was to identify examples of best, good and promising practice in the training of judges and prosecutors across the European Union. The study surveyed European Union member states. Building on an array of experience, which it showcases in extensive annexes, it makes a number of topical findings, the principal of which is that judicial training for judges and prosecutors is generally in a "healthy state." Interestingly, it finds little basis for what it described as the oft-held assumption that common-law and civil-justice systems are sufficiently different for there to be little to share between one another in the field of training. The study offers a number of recommendations to promote interactive judge-led participatory education—observing that "judges generally learn best by doing"—and forecasts that the emergence of a greater interest in training in judicial skills and judge-craft (as compared to substantive laws and procedures) is significant and likely to become of greater importance in future.

This study is also discussed in the next article coauthored by **Professor Otilia Pacurari**, **Director Jorma Hirvonen**, and **Dr. Rainer Hornung**, who are members of the European Judicial Training Network (EJTN) Working Group on Judicial Training Methods. In an encyclopedic survey, they traverse the landscape of judicial training across Europe, searching for good practices in judicial training methodology. In doing so, they lament the stubborn pervasiveness of university-style lecturing after almost a half a century of judicial-training experience. They discuss a range of other challenges that include defining the objectives of judicial training, embracing different learning styles and their relevance for the trainers, developing participatory judicial-training methods, and promoting good judicial training in terms of both technical and behavioural qualities. The authors explore the learning characteristics of judges as adults and, while overlooking the seminal works of Knowles and others, note the influential thinking of Kolb. Of most significance, they endorse the value of exchanging experience across the manifold diverse jurisdictional landscape of Europe, a lesson that is likely to be of equal significance worldwide.

The next article of **Judge Wojciech Postulski** explores sharing experience from practice focusing specifically on training-needs assessment. The author is secretary-

general of the European Judicial Training Network (EJTN). He presents what he describes as a pan-European perspective on different approaches to conducting training-needs assessment and discusses a number of challenges to be addressed. Again, he cites the European study of best practice and identifies from this study the experience that these assessments can be conducted at three levels: organizational, functional, and individual. He highlights examples of best practice, for example, from Estonia where the Supreme Court uses a “court practice analysis” to collect information on judicial performance by studying court decisions as a means to identify problems in the application of the law by courts, and thereby educational needs. He cites other examples of best practices from Romania, Belgium, France, Croatia, and Poland. Significantly, he concludes that while “one size will never fit all,” the EJTN has already proved useful in sharing best judicial practices across Europe.

Returning to the need for more research, which was introduced in issue 2 of this journal, **Professors Jula Hughes** of the University of New Brunswick and **Philip Bryden** of the University of Alberta also discuss the need for judicial education. In the next article, they argue that formalized procedures of judicial education not only provide opportunities for continued judicial education, but also have the potential to promote exchanges among judges and between judges and legal scholars. This potential offers the bonus of reducing isolation, which is a necessary part of maintaining the independence of judicial office. In this article, they reflect on the Canadian experience of opportunities and challenges—notably ethical—associated with using judicial education seminars as a venue for academics and judges to identify research needs. They see a number of mutual benefits flowing from linkages between judicial education and research and advocate working more collaboratively to pursue research that meets those needs.

The next article is a companion piece by **Dr. Julio César Vázquez-Mellado García**, who outlines the Mexican approach to research in judicial schools. The author is the director general of Instituto de la Judicatura Federal, Escuela Judicial. The Mexican Federal Judiciary Training Institute provides formation, training, and updating of those aspiring or belonging to the judiciary. Research is one of the most important elements of these functions because it illuminates important doctrinal and administrative aspects of the law for the judiciary. This article outlines how research is conducted by the institute, which distinguishes it from schools of law or research centers; its methodology; who are the researchers; and their challenges. He concludes with proposals that have been made to the Ibero-American Network of Judicial Schools to develop a research protocol in not only Mexico but all Ibero-American jurisdictions, as well.

Exploring the fourth and final theme of diversity in national approaches to judicial education, **Chief Justice Surendra Kumar Sinha**, formerly chairman of the Judicial Service Commission, provides what he describes as a “glimpse” of the Bangladeshi approach to judicial education in promoting the rule of law, democracy,

and human rights. The author notes the universal experience that regular training and orientation sharpens the adjudicating skills of judicial officers, but emphasizes the importance of local context. Each country has its own local customs and expectations with regard to its judiciary. He reports that the courses and training modules designed by the Judicial Administrative Training Institute have not, however, won appreciation from the participants, owing to urgent needs to equip this institute with dedicated faculty members and necessary tools, including study materials and technologies required for training. In the interest of promoting justice, he calls for international assistance to support and modernize judicial training in Bangladesh. He calls for immediate steps to be taken to reform existing training methodologies and modules so that judges become more confident and committed to the rule of law.

Jessica MacDonald, Sheriff Alistair Duff, and Jackie Carter of the Judicial Institute for Scotland then present an article that explores their experience of technology-enhanced learning interventions. They adopt a constructivist approach to transformative experiential judicial learning that is “*judge-led, judge-devised and judge-delivered.*” In this approach, the role of the educator facilitates the reflective processes that may (or may not) transform the learners’ understanding of a concept, rather than “teaching” anything. To do this, the institute has recognized the need to develop further in the field of distance and blended learning by using learning technologies more effectively. Developing technology-enhanced learning is now a significant long-term project for the institute involving specialist staff and an interactive learning suite, a learning hub, and a virtual learning environment. In exploring the potential of technology-enhanced learning, both the Judicial Institute of Scotland and the judiciary are embracing a period of change and evolution.

Finally, this issue concludes on the subject of evaluation. **Chief Judge Jan-Marie Doogue** and **Judge Colin Doherty** of the District Court of New Zealand assess how well judicial education is delivered through the lens of the International Framework for Court Excellence, which they describe as a novel and truly valuable exercise. They argue that this framework provides a means of assessing how a court is performing; in evaluating many aspects of court business, it also provides an opportunity to evaluate how well judicial education and training are being delivered. This article outlines the practical experience of the New Zealand District Courts with the framework, focusing particularly on what was learned about judicial education and training. It sets out some of the steps that have been taken in response to an assessment of the framework conducted with the Institute of Judicial Studies, which undertakes the delivery of judicial education and training in New Zealand. One consistent message from this assessment, for example, is that judges prefer education activities to be delivered in a discussion-based format, rather than passively sitting through presentations or lectures. Another is that judges appreciate the chance to interact with their colleagues, particularly for new and isolated judges. The court plans to repeat this assessment every three years.

Once again, our thanks to the NCSC, Amy McDowell, Charles Campbell, and Melinda Evans for assuring the timely production of this issue. Happy reading!

JUDICIAL EDUCATOR: CHANGE LEADER

BY MAUREEN E. CONNER*

Leaders have a significant role in creating the state of mind that is the society. They can serve as symbols of the moral unity of the society. They can express the values that hold the society together. Most important, they can conceive and articulate goals that lift people out of their petty preoccupations carry them above the conflicts that tear a society apart, and unite them in pursuit of objectives worthy of their best efforts.

John W. Gardner, *No Easy Victories* (New York: Joanna Cotler Books, 1968).

Leadership development is a personal journey that most often takes place in public. Admired leadership characteristics are surprisingly consistent across organizations, cultures, and professions.¹ Though the characteristics may be the same, how they are expressed will distinguish successful leaders from those who are not. In this paper, I contend that judicial educators are leaders, and what they lead is change through education.

Leadership skills for judicial educators are often overlooked because much of what educators and those who employ them want to focus on is curriculum development and program planning for judges, administrators, and the numerous professional groups that support the programs, systems, and services that have come to define the administration of justice. In this discussion, I focus on ten areas for judicial educators (hereafter referred to as educators) to consider in their own leadership development: guiding philosophy, mission, values, voice, thinking, acting, competence, forward-looking, reflecting, and renewal.

GUIDING PHILOSOPHY

Education serves many purposes. Education in a judicial system is often defined as continuing professional development and training to improve the knowledge, skills, and abilities of judges and court personnel. It is true that education involves the aforementioned. I challenge educators to use education as an impetus for change; thus, leading the courts to the future that the world expects them to assume.

* Maureen E. Conner is Professor and Director, Judicial Administration Program, School of Criminal Justice, Michigan State University.

¹ J. M. Kouzes and B. Z. Posner, *The Leadership Challenge: How to Make Extraordinary Things Happen in Organizations*, 5th ed. (San Francisco: Jossey-Bass, 2012), pp. 34-35, researched factors or attributes that comprised admired leadership characteristics among research respondents from 1987 through 2012. The characteristics they measured over that period were honest, forward-looking, competent, inspiring, intelligent, broad-minded, fair-minded, dependable, supportive, straightforward, cooperative, determined, courageous, ambitious, caring, loyal, imaginative, mature, self-controlled, and independent. The research respondents were from six continents: Africa, North America, South America, Asia, Europe, and Australia. The research respondents represented different cultures, ethnicities, organizational functions and hierarchies, genders, levels of education, and age groups.

If judicial education is a vehicle for change, then educators are the change agents. By extension educators are leaders. They must have a guiding philosophy about the role of education. Casting judicial education as a change movement implies that the educator's philosophy must be larger, more powerful, and more long-range than it would otherwise be. Under this framework, judicial education is *not* creating educational events. It is leading the court organization to greater levels of achievement and judges and court personnel to excellent performance that transforms lives. Such a guiding philosophy will require educators to challenge the typical processes, goals, content, and intent of education. In short, they must challenge themselves and others to take a different path and to seek greater results. "Challenge is the opportunity for greatness. People do their best when there's the chance to change the way things are. . . . Leaders venture out. They test and they take risks with bold ideas."² Educators who see themselves as leaders will not be complacent about the role and opportunity of education to significantly improve the quality of life of those people who depend on the courts to be heard and protected. Adopting a guiding philosophy provides educators with a tool they can use to measure the progress they are making in developing education and training that challenges courts to meet their calling with strength and commitment.

MISSION

Educators can design and develop education and training programs that expand knowledge, build skill, and improve court administration and judicial decision making—all necessary and worthy endeavors. The mission of judicial education is often explained in terms of inputs, outputs, and outcomes using educational terminology. Under this framework, education seems devoid of passion and the ability to inspire. People are not motivated when they are educated to just be ordinary. They will not build their courage and confidence to challenge what must be challenged and enforce what must be enforced under the rule of law. Therefore, the educator as leader must make transformation the mission of education. Jan Phillips, author of *The Art of Original Thinking: The Making of a Thought Leader*, describes the power of transformation: "Transformation originates in people who see a better way or a fairer world, people who reveal themselves, disclose their dreams, and unfold their hopes in the presence of others. And this unfolding, this revelation of raw, unharnessed desire, this deep longing to be a force for good in the world is what inspires others to feel their own longings, to remember their own purpose, and to act, perhaps for the first time, in accordance with their inner spirit."³ Such is the power of an educator with a mission of transformation. Such is the power of a change leader.

² *Ibid.*, p. 156.

³ J. Phillips, *The Art of Original Thinking: The Making of a Thought Leader* (San Diego, CA: 9th Element Press, 2006), p. 11.

VALUES

The very act of educating is an expression of values. Consider this explanation of values by Kouzes and Posner: “Values constitute your personal ‘bottom line’. They serve as guides to action. They inform the priorities you set and the decisions you make. They tell you when to say yes and when to say no. They also help you explain the choices you make and why you made them. . . . All of the most critical decisions a leader makes involve values.”⁴ Judicial systems that offer education to judges and court personnel are making a statement about the importance of knowledge and information in evolving the skills, abilities, and aptitudes of their members. The values that leaders hold become evident by what they say and do. Educators as leaders must know what they value. Their values are articulated through the way they approach education from content selection to delivery format to the defining of learner groups. Each and every education opportunity and challenge is an avenue for educators to express the values they hold about the role of courts in society. The importance of educators discovering and living their values cannot be overstated, and that is certainly true if they want to lead.

VOICE

When leaders develop their voice, they express their guiding philosophy, mission, and values in their own words. In so doing, they are perceived as authentic. The extent to which a person is authentic is the extent to which they will be trusted. If there is any incongruity between what leaders say and do, it will immediately be recognized and their credibility and authority will be compromised. Stephen M. R. Covey, in his book *The Speed of Trust: The One Thing that Changes Everything*, explains the importance of trust this way: “Simply put, trust means confidence. The opposite of trust—distrust—is suspicion. When you trust people, you have confidence in them—in their integrity and in their abilities. When you distrust people, you are suspicious of them—of their integrity, their agenda, their capabilities, or their track record. It’s that simple.”⁵ Educators as leaders must develop ways of communicating that are consistent with what they care about. In short, they must find and use their voice to achieve their goal of advancing the rule of law through the expert preparation of judges and court personnel. A consistent and authentic voice sends the signal that the advancement of the judiciary can safely be placed in the hands of the educator.

THINKING

In a recent study that I conducted in which I asked current court leaders to identify the desirable leadership skills of future court leaders, thinking and perceiving skills and abilities rated the highest out of the three leadership and management characteristics

⁴ Kouzes and Posner 2012, p. 49.

⁵ S. M. R. Covey, *The Speed of Trust: The One Thing that Changes Everything* (New York: Free Press, 2006), p. 5.

and abilities categories.⁶ When I discussed this finding with court leaders, they commented that the ability to lead is dependent on versatility in thinking. Asking the right questions and developing an intellectual framework to assess the veracity of the answers is the core of critical thinking. Asking questions is not foreign to educators as they routinely do so in the form of needs assessment and evaluation. Developing a critical thinking stance is necessary when the educator is a leader. Browne and Keeley, in their book *Asking the Right Questions: A Guide to Critical Thinking*, explain critical thinking this way: “Critical thinking consists of an awareness of a set of interrelated critical questions, plus the ability and willingness to ask and answer them at appropriate times.” They also explain that there are two types of critical thinking—“weak-sense” and “strong-sense”: “Weak-sense critical thinking is the use of critical thinking to defend your current beliefs. Strong-sense critical thinking is the use of the same skills to evaluate all claims and beliefs, especially your own.”⁷

To sustain judicial education as a champion of change, the educator must ask the hard and probing questions that may lead to unpopular answers and issues that the judiciary does not want to acknowledge or address. The very act of educating can produce critical-thinking results if education is a forum for open, honest, and probing discussions expressed from multiple viewpoints. It is very easy for judicial systems to be insular and for weak-sense thinking to flourish. Browne and Keeley list the four values of critical thinking, which are instructive for the development of educators as strong-sense leaders who, in turn, develop educational experiences that promote strong-sense thinking among the learners. The four values are:

1. Autonomy. “Surely, we all want to pick and choose from the widest possible array of possibilities; otherwise, we may miss the one decision or option that we would have chosen if only we had not paid attention to only those who shared our value priorities. Supercharged autonomy requires us to listen to those with value priorities different from our own.”

⁶ The survey research project was conducted in 2011. The respondents were current court leaders (i.e., federal and state judges, clerks of court, and court administrators in the United States). The purpose of the research was to solicit the opinions of current court leaders about what future leaders would need for credentials related to being selected to the top two judicial administration positions in the courts. The survey addressed four areas of credentials: 1) education, 2) experience, 3) leadership characteristics and abilities, and 4) knowledge and skill competencies. The findings referenced here referred to the results of the Leadership Characteristics and Abilities section of the survey. This section comprised three categories: Ways of Communicating and Being, Ways of Thinking and Perceiving, and Ways of Behaving and Taking Action. Ways of Thinking and Perceiving had the highest grand mean at 4.53 with 5.00 being the highest mean score, thus indicating that the respondents viewed thinking and perceiving as the most important leadership category out of the three offered. The Ways of Thinking and Perceiving category comprised the following individual items: intelligent/sharp cognitive abilities, forward-looking/visionary/can see the big picture, consistent, fair-minded, strategic thinker, critical/creative thinker, perceptive, and original/out-of-the box thinker. The leadership categories and individual items were selected using the desirable leadership skills, abilities, and aptitudes emerging from leading leadership and management researchers over the last several decades.

⁷ M. N. Browne and S. M. Keeley, *Asking the Right Questions: A Guide to Critical Thinking*, 9th ed. (Upper Saddle River, NJ: Pearson Education, Inc., 2010), pp. 3, 8.

2. Curiosity. “You need to listen and read, *really* listen and read. Other people have the power to move you forward, to liberate you from your current condition of partial knowledge. To be a critical thinker requires you to then ask questions about what you have encountered. Part of what you gain from other people is their insights and understanding, when *what they have to offer meets the standards of good reasoning.*”
3. Humility. “Certainly some of us have insights that others do not have, but each of us is very limited in what we can do, and at honest moments we echo Socrates when he said that he knew that he did not know. Once we accept this reality, we can better recognize that our experiences with other people can fill in at least a few of the gaps in our present understanding.”
4. Respect for good reasoning wherever you find it. “All conclusions and opinions are not equally worthwhile. When you find strong reasoning, regardless of the race, age, wealth, or citizenship of the speaker or writer, rely on it until a better set of reasoning comes along.”⁸

Browne and Keeley instruct people to become critical thinkers and engage in good reasoning by asking the following questions:

- What are the issues and conclusions?
- What are the reasons?
- What words or phrases are ambiguous?
- What are the value and descriptive assumptions?
- Are there any fallacies in the reasoning?
- How good is the evidence—intuition, personal experience, testimonials, and appeals to authority?
- Are there rival causes?
- Are the statistics deceptive?
- What significant information is omitted?
- What reasonable conclusions are possible?⁹

Edward De Bono encourages leaders to engage in new ways of thinking and he did so through his Six Hats method.¹⁰ DeBono contends that people put themselves in thinking boxes, which reduces their ability to see a different future and also narrows their actions. “From the past we create standard situations. We judge into which ‘standard situation box’ a new situation falls. Once we have made this judgement, our course of action is clear. Such a system works very well in a stable world. In a stable

⁸ *Ibid.*, pp. 13-14.

⁹ *Ibid.*

¹⁰ The Six Hats represent six ways of thinking and are color coded. The White Hat considers facts and figures. The Red Hat explores emotions and feelings. The Black Hat is cautious and careful thinking. The Yellow Hat is speculative-positive thinking. The Green Hat is creative thinking. The Blue Hat focuses on control of thinking. See E. De Bono, *Six Thinking Hats* (New York: Back Bay Books, 1999).

world the standard situations of the past still apply. But in a changing world the standard situations may no longer apply. Instead of judging our way forward, we need to design our way forward.”¹¹ Educators who lead change can develop learning experiences that result in new designs replacing the old situation boxes of reasoning.

ACTING

Acting in the realm of education is often defined as curriculum development and program planning. It is indeed action—purposeful action. As Kouzes and Posner wrote: “Leadership is not about who you are; it’s about what you do.”¹² Ways of Behaving and Taking Action was the second-highest-ranked category in my recent study related to court leadership.¹³ How educators spend their time sends a message about what they value and how they will lead.

The Hedgehog Concept put forward by Jim Collins in his books *Good to Great* and *Good to Great in the Social Sector* is instructive related to the action of organizations and the people who lead them. While the Hedgehog Concept was initially developed for the private sector with a profit motive, Collins adapted it for the public sector because it can be applied to organizations with a social mission. The Hedgehog Concept is portrayed as three overlapping circles that when working at optimal performance transforms the organization from good to great. The circles have resonance for the courts and can be a factor in developing educational experiences that ignite and support change. “Circle 1: Passion—Understanding what your organization stands for (its core values and why it exists, its mission or core purposes). Circle 2: Best at—Understanding what your organization can uniquely contribute to the people it touches, better than any other organization on the planet. Circle 3: Resource engine—Understanding what best drives your resource engine, broken into three parts: time, money, and brand.”¹⁴

Courts are the enforcers of the rule of law. Courts have a mission like no other. It is the place that kings and paupers can come for resolution of disputes and protection under the law. Because courts are the best in the world at what they do,

¹¹ *Ibid.*, p. 3.

¹² Kouzes and Posner 2012, p. 15.

¹³ This category, Ways of Behaving and Taking Action, had a grand mean of 4.41 out of 5.00. The individual items within this category were trustworthy/ethical/honest, problem-solver, dependable/conscientious/diligent, decisive/decision maker, promotes the learning and development of others, organized/disciplined/focused, independent/self-controlled/self-confident, inclusive/cooperative/collaborative, takes strategic action, innovative, seeks and accepts challenges, negotiator/mediator, accepts criticism, engages in continual learning and development of self, diligent/determined/persistent, deadline-oriented, detail-oriented, and persistent. See n. 6 for more detail on the study.

¹⁴ J. Collins, *Good to Great and the Social Sectors: A Monograph to Accompany Good to Great* (New York: HarperBusiness, 2005), p. 19. See also, *Good to Great: Why Some Companies Make the Leap . . . and Others Don't* (New York: HarperBusiness, 2001).

they can lead change and advance the development of civil society like no other sector or branch of government. Educators can lead through igniting the passion of judges and others to be the best at solving disputes and delivering justice. Thus, the Hedgehog Concept is appropriately applied to the courts and can be advanced by educators when they act as leaders of change.

COMPETENCE

“At some level, competence connects with our dreams, with that part of us that yearns for unity with something greater than ourselves. We want to matter.”¹⁵ Educators must create competence in others. Therefore, they must excel in adult-learning theory, instructional design, subject-matter development, teaching methodologies in traditional and electronic formats, needs assessment, and evaluation. Educators as leaders “significantly increase people’s belief in their own ability to make a difference. They move from being in control to giving over control to others, becoming their coach. They help others learn new skills, develop existing talents, and provide the institutional supports required for ongoing growth and change. In the final analysis leaders turn their constituents into leaders.”¹⁶

Educators lead the development of competence and confidence across the judicial branch, which is essential for a fully functioning independent judiciary. In so doing, educators are functioning at peak performance. Peak performance is referred to as flow. “People often refer to being ‘in the flow’ when they feel that they are performing effortlessly and expertly despite the difficulty of the experience. They are confident that their skills match the level of challenge of the experience, even though the challenge might be a bit of a stretch.”¹⁷ In order for educators to develop peak performance in others, they must first do it for themselves.

FORWARD-LOOKING

Effective educators address problems while simultaneously looking over the rim to see what is coming. The research conducted by Kouzes and Posner related to what people most want in a leader: honesty, forward-looking, competence, and inspiration.¹⁸ These elements of leadership remained consistent from 1987 to 2012; it has also remained consistent across countries, cultures, ethnicities, organizational functions and hierarchies, genders, levels of education, and age groups. Leaders who are futuristic seem to command more credibility and, therefore, more respect. “Constituents also must believe that their leader knows where they’re headed and has a vision for the

¹⁵ R. J. Wlodkowski, *Enhancing Adult Motivation to Learn: A Comprehensive Guide for Teaching All Adults*, 3rd ed. (San Francisco: Jossey-Bass, 2008), p. 309.

¹⁶ Kouzes and Posner 2012, p. 243.

¹⁷ *Ibid.*, p. 256.

¹⁸ *Ibid.*, pp. 34-35.

future. An expectation that their leaders be forward-looking is what sets leaders apart from other credible individuals.”¹⁹

Education without vision will not drive excellence and certainly will not create change. John M. Bryson in his book *Strategic Planning for Public and Nonprofit Organizations* explained what is encompassed in the creation of a vision. “The vision should emphasize purposes, behavior, performance criteria, decision rules, and standards that serve the public and create public value . . . the vision should include a promise that the organization will support its members’ pursuit of the vision.”²⁰ When educators lead vision creation, they move from individual action to group action. “When creating with others, all of the aspects of the process are magnified and multiplied due to the additional creators involved . . . the emotion involved in creating is for something that exists in the imagination.”²¹ While leaders must have a vision for the future, vision-making for an organization is a group activity that must ignite the hearts and minds of those involved.

Howard Gardner in *5 Minds for the Future* discussed the kinds of minds that people will need to thrive in the future.

- Disciplined mind: “The disciplined mind has mastered at least one way of thinking—a distinctive mode of cognition that characterizes a specific scholarly discipline, craft, or profession.”
- Synthesizing mind: “The synthesizing mind takes information from disparate sources, understands and evaluates that information objectively, and puts it together in ways that make sense to the synthesizer and also to other persons. Valuable in the past, the capacity to synthesize becomes ever more crucial as information continues to mount at dizzying rates.”
- Creating mind: “The creating mind breaks new ground. It puts forth new ideas, poses unfamiliar questions, conjures up fresh ways of thinking, arrives at unexpected answers.”
- Respectful mind: “The respectful mind notes and welcomes differences between human individuals and between human groups, tries to understand these others, and seeks to work effectively with them.”
- Ethical mind: “The ethical mind ponders the nature of one’s work and the needs and desires of the society in which one lives. This mind conceptualizes

¹⁹ *Ibid.*, p. 37.

²⁰ J. M. Bryson, *Strategic Planning for Public and Nonprofit Organizations*, 4th ed. (San Francisco: Jossey-Bass, 2011), p. 273.

²¹ M. E. Conner (ed.), *The Courts and Judicial Branch Education: Creating Their Future in the New Millennium* (East Lansing: Michigan State University, Judicial Education, Research and Technical Transfer Project, 1999), p. 36.

how workers can serve purposes beyond self-interest and how citizens can work unselfishly to improve the lot of all.”²²

Each of the minds just described may cast the future differently. The educator is perfectly positioned to develop the five minds for the future through the educational process. However, educators must be prepared to develop their own minds because leaders always go first.

REFLECTION

Reflection is essential so that thinking and action remain purposeful. Parker Palmer in *The Active Life: Wisdom for Work, Creativity, and Caring* discussed the need to engage in reflection on the nature of action. “Ultimately, action will help to reveal what the reality is, if we pay attention to its outcomes. These are the crucial links between action and contemplation, for the function of contemplation in all its forms is to penetrate illusion and help us to touch reality.”²³ The work of educating requires a great deal of reflection as educating is leading people to new heights of awareness and action. It is a journey of discovery for both the learner and the educator. Public life and the life of leaders can be full of frenetic activity that offers little time for reflection. Therefore, creating reflection time must be intentional. Education that champions change implies that both the educators and learners have engaged in deep thought. Kouzes and Posner believe that a leader’s ability to excel is dependent on how well the leader knows himself or herself and that knowledge comes from inner guidance that is gained through reflection.²⁴

RENEWAL

Renewal implies regeneration—a period of intellectual and physical rest that results in new levels of commitment and motivation. We often think of leadership in terms of grand displays that are larger than life. The truth is that leadership is mastering everyday events. Renewal works the same way in that it is an everyday event without which we will not thrive. What renews one person may not renew another. Exercise, meditation, yoga, reading, gardening, or just sitting with a cup of coffee or tea can be as renewing as a month in the mountains or a day on the beach. Renewal is personal. Renewal is good for the soul. Renewal is mandatory.

CONCLUDING THOUGHTS

The promise of education is tremendous. The reality of creating change through education is daunting but possible. Education leaders and court leaders—judges and

²² H. Gardner, *5 Minds for the Future* (Boston: Harvard University Press, 2008), p. 3.

²³ P. J. Palmer, *The Active Life: Wisdom for Work, Creativity, and Caring* (San Francisco: HarperCollins, 1991), p. 25.

²⁴ Kouzes and Palmer 2010.

administrators—must commit to the vision of placing education at the center of the administration of justice. Such a commitment will require the selection of educators who are leaders of change, thus aiding the courts in realizing their mission of protecting human rights, ensuring liberty and freedom, offering dispute resolution, and guaranteeing access to justice and due process.

Educators in the judiciary must have two concepts of their role in courts. One concept is that of curriculum planner, program administrator, teacher, technologist, and evaluator. The second concept is that of a mentor, coach, and leader who provides others with the tools and inspiration they need to reach greater heights of professional performance resulting in the courts being the best in the world at creating justice for all.

Educators as change leaders should ask three fundamental questions: What world do we want to live in? What role can the court play in creating and sustaining that world? How do we get there together? The answers likely can be found in original thinking. Jan Phillips posits that original thinking is the only thing that will take us to new places of understanding and doing—“there is a kind of friction as opposing thoughts rub against each other, there is also the potential for creative fire that comes with that friction. And as original thinkers, that’s what we’re after.”²⁵

²⁵ Phillips 2006, p. 92.

LEADERSHIP FOR JUDICIAL EDUCATORS: VISION FOR REFORM

BY LIVINGSTON ARMYTAGE*

In this paper, I argue that judicial educators should assert professional responsibility to lead in ways that address the needs of citizens, who the courts are constitutionally mandated to serve, by improving the quality of justice. This responsibility should replace existing technocratic concerns for training effectiveness with an overarching concern for substantive justice outcomes for beneficiaries of the court system. It requires judicial educators to be visionary in their role to promote justice and human well-being.

My central argument is that judicial educators have a professional responsibility not just to promote judicial competence but also to promote justice. The purpose of judicial competence is to administer justice. Justice is fundamental to human well-being. Hence, the goal of judicial education and development is ultimately to promote justice and human well-being. But to this point, judicial development has understandably been preoccupied in consolidating its internal practice, but circumspect in contemplating its external role in promoting justice. Now is the time to raise our vision.

In 1996 I wrote a book called *Educating Judges*. At that time, when training judges was still seen by some as being an oxymoron, it was necessary to frame the quest of judicial education conservatively, as follows:

There is a need for a distinctive approach to the continuing education of judges. This approach should build on the foundations of adult and professional learning theory. But, more importantly, this approach should accommodate the specific learning needs of judges, and preserve judicial independence.

I ended that book with these words:

How the judiciary and educators collaborate to embrace this challenge (to consolidate an approach to judicial education) . . . remains to be seen.

Well, much has happened over almost two decades. It is pleasing to now observe that courts have collaborated actively with educators to consolidate the foundations for judicial education around the world. This is evident, notably, in the establishment

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of the International Organization for Judicial Training (IOJT), who are sponsoring this conference.

Since the mid-1980s, continuing professional education has increasingly become an established means to improve judicial competence and court performance around the world. Judicial education is now a generally accepted tool of institutional change. Over these years, substantial progress has been taken in professionalising judicial education. Judicial educators now routinely serve as the agents of change in facilitating this institutionalising process. Usually, this role is seen as being programmatic; that is, the judicial educator is responsible for promoting the strategic, managerial, and technocratic effectiveness of educational activities for judges and related justice-sector trainees.

During this period, support for judicial education and training has grown markedly for official development assistance—foreign aid—in contexts where justice systems have failed. In many countries, the courts are degraded, and often operate dysfunctionally, due to elite capture, abuse of power, impunity, corruption, inefficiency, under-resourcing, and incompetence. In these countries, most ordinary people are the poor, who are marginalised and excluded from the rule of law. In these acute situations, the judicial educator frequently confronts an imperative to look beyond technocratic fixes that aim to improve judicial competence to address “bigger-picture” challenges of promoting justice for ordinary people—and how judicial education can facilitate addressing this challenge.

The challenge we must confront is to expand our vision as judicial educators. There are infinite examples of injustices that blight people’s lives. As I argued more recently in another book, *Reforming Justice*, judicial reform efforts, which frequently included judicial education and training, have too often been blind to these injustices. By realigning judicial education to focus on promoting justice, there is a much greater prospect of it contributing measurable improvement across all aspects of civic well-being. This challenge requires the judicial educator to adopt a leadership role in exploring innovative, workable relationships between “judicial education” and the “justice reform” for improving “justice system outcomes” for citizens. While more acute in some developing jurisdictions, this challenge nonetheless exists wherever we may be working.

Given that we have now consolidated the internal foundations for judicial education, in a second edition of *Educating Judges*, I would now reframe the challenge confronting us as judicial educators:

There is a need for a distinctive *leadership* in the continuing education of judges. This leadership should build on the foundations of development effectiveness. But, more importantly, it should *address the justice needs of citizens whom the courts are constitutionally mandated to serve.*

CONTEXT

There are many emerging programs of judicial education and training in both developed and developing jurisdictions throughout our region. Within this context, continuing judicial education is assuming a potentially significant role as an agent of leadership and change, which is relatively new to both common-law and civil systems of justice.

Based on recent research, there are no fewer than 59 current legal-strengthening projects in our region, many of which directly promote the rule of law, the independence of the judiciary, or both through education and training strategies.¹ Some of those countries that are currently developing programs of judicial education, are Bangladesh, Cambodia, China, Fiji, Mongolia, Pakistan, Papua New Guinea, and Vietnam.

This is typical of the position elsewhere. Around the world, international agencies, such as the Asian Development Bank (ADB), the United Nations (for example, UNDP) and the World Bank, together with national agencies, such as the Agency for International Development (US) and AusAID (Australia), are assisting in numerous, sometimes quite substantial, judicial education and development programs.

The reasons for the current spate of judicial development programs are twofold. First is the recent emergence of judicial education as a coherent and distinctive discipline of professional development; second is the institutional recognition of the needs for and benefits of judicial strengthening as a strategy to enhance social governance, promote the rule of law, and advance human rights.

The goal of judicial education is to enhance the quality of justice by raising the professional competence of judges. Judicial competence, in terms of continuing education, is a very new concept to both the common-law and the civil systems of judging. In this sense, continuing judicial education is a novel agent of change.

To be effective educationally, and thereby truly potent as an agent of change, any program of judicial education should address the distinctive learning characteristics of judges as professionals. These characteristics relate to the process of appointment and tenure, their preferred learning styles and practices, doctrinal constraints of independence, and their reasons for participating in continuing education.

Consequently, it is argued that programs of judicial education should exhibit the following characteristics:

Doctrinal imperative for an independent, “judge-led” process

Common to all systems of justice, there is a universally recognized need for an independent education process for judges. Whether described as judge led, or court owned, the credibility of any education process for judges is critically dependent on the ability of any education provider to preserve judicial independence from any risk of indoctrination, whether actual or apparent.

¹ ADB, *Law and Development Bulletin*, April 1997.

Focus on procedural knowledge

Judicial education should promote the development of the distinctive skills of judging and the reflection on attitudes relating to fair trial and equality before the law (knowing “how”), once the challenge of teaching substantive law and procedure (knowing “what”) has been overcome.

Individual v. group learning

Any formalized process of judicial education should facilitate individualized learning that is self-directed and critically reflective and accommodate the distinctive styles in which judges prefer to learn and practice.

The educational adequacy of group learning for judges is limited, generally, to teaching and updating substantive law and procedure. While instructional design and delivery based on group learning offers a valuable opportunity for the exchange of experience and values for judges, who otherwise practice in isolation, it is inadequate and inappropriate as a comprehensive delivery strategy.

If learning rather than teaching is recognized as the critical element in adult education—and if judges are recognized as epitomizing autonomous self-directed learners, as it will be argued—then the concept of facilitated learning acquires particular significance in any model of judicial education.

Accordingly, it is argued that there are two answers to the classic “nature/nurture” debate as it applies to judges: first, good judges can be made, but, second, they make themselves through learning, rather than being taught.

A SURVEY OF JUDICIAL EDUCATION

In civil systems of jurisprudence, where the profession of judging is an alternative to practising law, a more careerist, structured approach to judicial development has been traditional. This has usually involved highly formalized, entry-level assessment procedures and extended orientation training.² Notwithstanding, in most civil- or Roman-law-based systems, the notion of formalised *continuing* professional education, as we currently observe it emerging around the world, is a relatively new phenomenon.

Even more so, judicial education is altogether new to the common-law tradition of judging, relying as it has on the appointment of “the gifted amateur” from the ranks of the practising bar and continuing on-the-job learning.³

² In France, for example, candidates for judicial office will usually be graduates of law, aged between about 26-30 years, who undergo 31 months of formalized, class-based, and on-the-job training supervised by LEcole Nationale de Magistrature (ENM); Marcel Lemonde, deputy director of ENM, “Training of Judicial Officers and Attorneys in France,” unpublished ALRC conference paper, Brisbane, July 1997. In Germany, candidates for judicial office undergo preparatory training and a three-to-five-year probationary period after academic selection; Dr J-F Staats, German Ministry of Justice, FRG, unpublished ALRC conference paper, Brisbane, July 1997.

³ G. A. Kennedy, “Training for Judges?” *University of New South Wales Law Journal* 10 (1987): 48, 47-59.

Rationale for Judicial Education

Recognition of the need for judicial education is now firmly established in many jurisdictions around the world. The reasons for the emergence of judicial education are multifold. Prominent among these are the need perceived by the judiciary to professionalise, in large part by improving competence, and the need for the judiciary to provide a visible means of social accountability to address mounting consumer dissatisfaction with judicial services.

Recognition of the former need for continuing education by the judiciary comprises two principal elements. First, there is the need to train and educate new appointees to assume office, to facilitate the transition from advocate to adjudicator, and to bridge the gap between inexperience and experience. Second, there is an acknowledged need to facilitate the ongoing professional development of judicial officers and to keep them abreast of change.⁴

In 1992 the National Association of State Judicial Educators in the United States published some *Principles and Standards of Continuing Judicial Education*. These *Principles and Standards* define the goal of judicial education to be:

to maintain and improve the professional competency of all persons performing judicial functions, thereby enhancing the performance of the judicial system as a whole.⁵

They outline the objectives of judicial education to be:

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.⁶

Recognition of the latter need is encapsulated in the observation of Nicholson, himself a justice of Supreme Court of Western Australia:

Judicial education is now an accepted part of judicial life in many countries. It is an enhancement of the mental qualities necessary to the preservation of judicial independence. . . . Judicial independence requires that the judicial

⁴ See, for example, J. Wood, "The Prospects for a National Judicial Orientation Program in Australia," *Journal of Judicial Administration* 3 (1993): 75-96.

⁵ National Association of State Judicial Educators (NASJE), *Principles and Standards of Continuing Judicial Education* (1991), p. 1. NASJE, Commentary on Preamble, 3 and 6.

⁶ *Id.*

branch is accountable for its competency and the proposition is now accepted as beyond debate.⁷

As is illustrated in the examples of Cambodia, Palestine, and Haiti outlined below, judicial education plays a significant role in social governance through the promotion of rule of law, free and fair trial, the consolidation of judicial identity and independence, and the preservation of human rights.

In effect, the introduction of formalised judicial education addresses the internal need to contribute to improving the professional performance of judges and, equally, the external need for the judiciary to become accountable and to demonstrate its recognition of the need to be concerned with performance enhancement.

History

A study of the history of judicial education illustrates the manner in which the judiciary has addressed these issues over the past 30 years. While this history is short, the rate of development in judicial education has been described, in the words of Sallmann, “without exaggeration as an explosion of activity in the field in the last decade.”⁸

United States. In the United States, continuing judicial education is accepted as an “integral and essential part” of the judicial system.⁹ Indeed, it is increasingly seen as a basic necessity, made so by pressures of workload, the size of courts, the complexity of modern judicial programming, and the invasion of technology.¹⁰

Formalized judicial education commenced in the United States with the establishment of the National Judicial College in 1963 and the call of Chief Justice Warren Burger in the following year for judges nationally to participate in continuing judicial education.¹¹ In 1967 the Federal Judicial Center was established to provide federal judges with a range of services, including continuing education. Subsequently, the provision of judicial education evolved predominantly on a state basis. At the forefront, the California Center for Judicial Education and Research conducted its first orientation program for trial judges in 1976.¹² In the following year, the Michigan Judicial Institute commenced its education program. In relation to the development of judicial education, Catlin has observed:

⁷ R. D. Nicholson, “Judicial Independence and Accountability: Can They Co-Exist?” *Australian Law Journal* 67 (1993): 404-26, 425.

⁸ P. A. Sallmann, “Comparative Judicial Education in a Nutshell,” *Journal of Judicial Administration* 2 (1993): 252, 245-55.

⁹ A. L. Riches, “Judicial Education—a Look at the Overseas Experience,” *Australian Law Journal* 64 (1990): 190, 189-202.

¹⁰ J. K. Hudzik, “The Continuing Education of Judges and Court Personnel,” *Judicial Education Network* (1989): 5.

¹¹ W. E. Burger, “School for Judges,” *Federal Rules Decisions* 33 (1964): 139-50; see also, P. Li, “How Our Judicial Schools Compare to the Rest of the World,” *Judges’ Journal* 34, no. 1 (1995): 17-19, 46-51.

¹² H. H. McCabe, “California’s Approach to Judicial Education,” *Judicature* 51 (1967): 58-63.

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.¹³

By 1986, all states provided some form of education for judges, and judicial education was well established. Most state programs are, in fact, mandatory. The average number of training-leave days allowed for education and training is approximately five per year. Most programs are conducted to designated "principles and standards of continuing judicial education." Formalized postgraduate judicial education programs are also conducted for judges. Most recently, Hudzik observes:

The most striking trend of the last twenty years in continuing judicial education is its virtual spread throughout the United States and its emergence as a big business . . . programming (in 1990) was provided annually to nearly 57,000 participants. . . . (In 1992 these are) now estimated at nearly 72,000 participants annually.¹⁴

Analysis of judicial education activities in the United States reveals that most effort is focused in two areas. These are orientation programs for new appointees and continuing education, which is usually updating on recent developments. The content of these activities is not confined to the law but is, in Hudzik's words, "substantively heterogeneous" in character and tends to focus on substance.¹⁵ Nor is it confined to judges. Judicial education is usually offered to all court and justice system employees, which extends the clientele for judicial education tenfold.¹⁶

A significant factor influencing the character of judicial education in the United States is the process of judicial appointment, which is predominantly by election.

¹³ D. W. Catlin, "Michigan's Magic Touch in Educating Judges," *Judges' Journal* 25, no. 4 (1986): 32, 32-45; Catlin is the founding head of the Michigan Judicial Institute.

¹⁴ Seventy-five percent of these programs are state based, 17 percent are for the federal judiciary, and the remainder are nationally conducted; see J. K. Hudzik, *Issues and Trends in Judicial Education* (East Lansing: Michigan State University, Judicial Education, Reference and Technical Transfer Project, 1993), p. 205.

¹⁵ Hudzik 1993, p. 188; "the majority of programming relates to the fundamental business of courts—the law, sentencing, procedure and so forth. However, about 25% of all topical offerings during the year related to organizational and personnel management . . . topics related to social sciences, humanities, ethics and discipline and domestic relations account for nearly another 18% of topical offerings."

¹⁶ D. W. Catlin, "A Composite Picture of State Judicial Education Programming in the United States," unpublished conference paper, the Commonwealth of Learning, Vancouver, March 1992. Catlin estimates that judicial support staff in the United States totals some 300,000 for purposes of continuing judicial education. In 1986, 46 states reported that they provided some training to non-judges: see F. K. Murray, *Judicial Education: A Guide to State and National Programs* (Washington, DC: Foundation for Women Judges, 1986), p. 7.

Judicial election allows appointees to join the bench with a broad range of backgrounds in the United States, but with less insistence on extensive forensic experience, which is characteristic of systems of merit appointment operating in jurisdictions such as Britain and Australia. It follows that the appointment process affects the threshold of competence for new judges and, as a result, the need for judicial education may vary between different jurisdictions and judicial systems.

Britain. In Britain, the Judicial Studies Board, which found its origins in a one-day sentencing conference organized by Lord Parker in 1963, administers judicial education. In the mid-1970s a working party on judicial studies was formed under the chairmanship of Lord Justice Bridge, which resulted in the establishment of the Board and commenced operations in 1979.¹⁷ The Board was established to provide a range of education services to the judiciary, magistracy, and lay magistracy. The Board confined its role to training in the criminal jurisdiction until 1985, when it was expanded under the direction of Lord Hailsham to cover the provision of training in the civil and family jurisdictions.

The British approach to judicial education is less formalized than is the case in the United States. The Board conducts a range of judicial orientation and updating programs, and has a substantial clientele, which predominantly consists of lay magistrates and tribunal members. Regarding the standing of judicial education in Britain, the Board observed in 1988 that:

judicial studies are no longer a novelty. . . . No competent and conscientious occupant of any post would suggest that his performance is incapable of being improved, and, since there is a limit to what can be done simply by self improvement, almost all judges are able to perceive the need for organized means of enhancing performance.¹⁸

By 1995, this position had dramatically consolidated, when Lord Justice Henry reported what he described as a “sea-change in judicial attitudes to training over the past 25 to 30 years.” He added, “judges have accepted, appreciated, and benefited from training in a way that has confounded the sceptics.”¹⁹ This is confirmed by Partington: “Twenty years ago, a majority of judges would have denied there was any need for training. Today only a minority would share that view.”²⁰ In the same year, the Board

¹⁷ Working Party on Judicial Studies and Information, chaired by Lord Justice Bridge in 1978, known as the Bridge Report: A principal recommendation was for the establishment of the Judicial Studies Board. The terms of reference for this report were “(1) to review the machinery for disseminating information about the penal system and matters relating to the treatment of offenders; and (2) to review the scope and content of training and the methods whereby it is provided.” Judicial Studies Board, Report for 1983-1987 (London: HMSO, 1988), p. 7; and Judicial Studies Board, Report for 1987-1991 (London: HMSO), p. 51.

¹⁸ Judicial Studies Board, Report for 1983-1987, p. 13.

¹⁹ Judicial Studies Board, Report for 1991-1995, p. 4.

²⁰ M. Partington, “Training the Judiciary in England and Wales: The Work of the Judicial Studies Board,” *Civil Justice Quarterly* (1994): 322, 319-36. This is supported by calls outside the judiciary for more education; see, for example, A. Holland, “Training Judges,” *New Law Journal* 143 (1993): 895.

completed a thorough review of its remit and is now developing and extending arrangements for judicial training.

Canada. Numerous other countries have recognized the need for continuing judicial education and some, most notably Canada, have established specialist judicial education bodies. In 1992 a Commonwealth conference on judicial education noted:

While none of the Commonwealth countries could boast as comprehensive a system for the training and the continuing education of judges as could be found in the United States of America, there was, however, a wide variety of programs already in existence, ranging from established institutes to local programs.²¹

In Canada, the Canadian Judicial Council conducted its first educational activities in 1972, followed by the establishment of the Canadian Institute for the Administration of Justice in 1974 and the Canadian Judicial Institute in 1988. Other educational bodies also operate at a state and local level, such as the Canadian Association of Provincial Court Judges and the Western Judicial Education Centre.

Similarly, in New Zealand, an active program of court-based continuing judicial education operates within the district court structure, which commenced with the launching of a judicial induction program in 1988.

At the present time, the judiciaries in both Canada and New Zealand are re-examining the need for continuing education and are exploring the options for its institutionalization.

At a regional level, a number of entities provide judicial education within a framework of developmental projects. Among these is the Commonwealth Magistrates and Judges Association (CMJA), which was established in 1971. Currently operating from Canada, the CMJA formed the Commonwealth Judicial Education Institute in 1994 to coordinate and provide educational activities to judiciaries operating in developing countries.

Australia. Judicial education in Australia is similarly in its formative years.²² It is, however, gathering considerable momentum and, in the words of Sallmann, “heralds the advent of potentially significant changes in the Australian judicial culture.”²³

Traditionally, judicial education was nonexistent in any formalized sense and relied heavily, in the words of one senior judge, on “the gifted amateur.”²⁴ During the 1970s various courts took initiatives to conduct conferences and seminars, usually on a national, biennial, or ad hoc basis.

²¹ “Continuing Judicial Education,” *Commonwealth Law Bulletin* (July 1992): 1037

²² A. L. Riches, “Continuing Judicial Education in New South Wales,” *Journal of Professional Legal Education* 6 (1989): 151, 149-62.

²³ P. A. Sallmann, “Judicial Education: Some Information and Observations,” *Australian Law Journal* 62 (1988): 981, 981-1005.

²⁴ G. A. Kennedy, “Training for Judges?” *University of New South Wales Law Journal* 10 (1987): 48, 47-59.

The history of judicial education in Australia can be traced to the formation of the Australian Institute of Judicial Administration (AIJA) by judges in 1975 and by a call in 1983 from Justice Michael Kirby for the introduction of formalized judicial education to assist new appointees in the transition to the bench and to keep judges abreast of change.²⁵ These calls were met with a mixed response within the judiciary. It was not, however, until the establishment of the Judicial Commission of New South Wales in 1986 and the formation of the AIJA secretariat in 1987 that any permanent infrastructure was dedicated to judicial education. Since 1987, both bodies have conducted an increasing range of judicial conferences and workshops for judges and judicial administrators on a national and state basis, respectively. In 1991 Victoria followed the example set by New South Wales by enacting legislation for the establishment of a judicial studies board. Western Australia is currently investigating the options for establishing a similar body to assist the judiciary of that state.

In recent years, there have been major increases in the provision of judicial education. Government has provided substantial funding, particularly in response to high levels of criticism for alleged “gender bias” and cultural insensitivity.²⁶ Additionally, in 1994, the first judicial orientation course was conducted on a national basis by the AIJA and Judicial Commission of New South Wales. This course was opened by Chief Justice Mason:

[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.²⁷

This course was attended by new appointees from across the spectrum of judicial office and, owing to high levels of support from the courts, will be conducted on a regular basis.²⁸

²⁵ M. D. Kirby, “The Judges,” *Boyer Lectures* (Sydney: ABC, 1983), pp. 24-26.

²⁶ The response in New South Wales has been to develop judicial education on equality, integrating issues of gender as much as race, culture, and wealth; L. Armytage, “Judicial Education on Equality—With Particular Reference to Gender and Ethnicity,” *Modern Law Review* 58 (1995): 160-86. The English response is similar: Judicial Studies Board Report 1991-1995, p. 8. These are contrasted to the approaches taken in the United States and Canada, where specialist programs on gender equality are conducted.

Within the domain of feminist jurisprudence, there is an emerging literature relating specifically to the judiciary and to the need for judicial education. See, for example, K. Mahoney, “Gender Bias in Judicial Decisions,” *Judicial Review* 1 (1993): 197-217; K. Mahoney and S. Martin, *Equality and Judicial Neutrality* (Toronto: Carswell, 1987); R. Graycar and J. Morgan, *The Hidden Gender of Law* (Sydney: Federation, 1990); L. Hecht-Schafran, “Overwhelming Evidence: Reports on Gender Bias in the Courts,” *Trial* 26 (1990): 28; L. Hecht-Schafran, “Issues and Models for Judicial Education about Gender Bias in the Courts,” *Court Review* 26, no. 3 (1989): 32-38; and N. Wikler, “Water on Stone: A Perspective on the Movement to Eliminate Gender Bias in the Courts,” *Court Review* 26, no.3 (1989): 6-13.

²⁷ A. Mason, “The Role of the Judge,” unpublished paper, Inaugural Judicial Orientation Program, Sydney, 1994.

²⁸ This national Judicial Orientation Program was jointly developed by the Australian Institute of Judicial

Cambodia. Up until the coup of July 1997, there were a number of judicial development projects operating to strengthen the rule of law in Cambodia.²⁹ While the ongoing nature of these projects was unresolved at the time of writing, it can be observed that judicial education and training was a significant social-governance strategy to promote the rule of law in the post-genocide period of Khmer history. The challenges of rebuilding, however, remain awesome: only six lawyers, including just one judge, survived the Khmer Rouge period in 1979. The year 1997 marks the graduation of the first cohort of new graduates from the reopened Ecole de Droit in Phnom Penh.

Mongolia. Following its emergence from the Soviet Block in 1992, Mongolia is striving to introduce a market economy, supported by a competent judiciary capable of resolving the range of commercial litigation, which flows from this development. In the past two years, USAID has sponsored the commissioning and publication of the first judges' bench book to assist judicial officers to administer judicial procedures on a practical day-to-day basis.

Pacific Island Nations. The UNDP has recently sponsored the establishment of a comprehensive judicial education and training program for Pacific Island Nations, comprising conferences, update seminars, and skills-development workshops; bench books; bulletins; and orientation and mentor programs for new appointees.

Palestine. Under the Oslo Accords, Palestine is a state under formation. A major project to train and strengthen the Palestinian judiciary, legal profession, and police is ongoing, with funding from AusAID and the World Bank. Judicial education combines with law development and harmonization strategies to unify historically and culturally diverse systems of law (both British-Egyptian common law and a French-Jordanian civil system) operating in the West Bank and Gaza in preparation for the new state of Palestine to emerge from Israel.

Haiti. Following the reestablishment of the present democratically elected regime in 1992, the US government is sponsoring substantial retraining of the judicial corps in this civil-system jurisdiction, at least in part, as a principal means to promote and consolidate the protection of human rights by the judiciary.

There are numerous other examples within our region, including the ongoing initiative of the ADB to support the development of the continuing education and training program of judicial officers in Pakistan.

JUDGES AS LEARNERS

Application of Adult-Learning Theory

In broad terms, judges epitomize adult learners. There is a broadly held consensus

Administration and the Judicial Commission of New South Wales; see J. Wood, "The Prospects for a National Judicial Orientation Programme in Australia," *Journal of Judicial Administration* 3 (1993): 75-95; and L. Armytage, "Judicial Orientation: Six Factors Influencing Program Development," unpublished paper, 25th Biennial Conference of the International Bar Association (IBA), 1994.

²⁹ UNCHR, ADB, USAID, ODA, AusAID, and the French government all funded substantial legal and judicial projects.

among educational theorists, commentators, and practitioners that adults do learn in a manner that is distinctive from how children learn.

Adult learning according to Knowles, is characterized by its autonomy, self-direction, preference to build on personal experience, the need to perceive relevance through immediacy of application, its purposive nature, and its problem orientation.³⁰

Put another way, Brookfield argues that adults learn throughout their lives:

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.³¹

The application of learning theory provides a range of useful insights on the process of judicial learning. For these purposes, the observations of Cross are endorsed:

It does make sense to argue that, generally speaking, humanist theory appears relevant to learning self-understanding; behaviourism seems useful in teaching practical skills; and developmental theory has much to offer to goals of teaching ego, intellectual or moral development.³²

Adults participate in continuing education for a variety of reasons: to become a better-informed person, prepare for a new job, improve present job abilities, spend spare time enjoyably, meet interesting people, carry out everyday tasks, and get away from daily routine:

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.³³

Practice of Professional Learning

Judges are professionals by training, career practice, and self-image.

Houle argues that the way in which professionals learn requires the development of a specific professional education, which involves a separate body of knowledge, inquiry, research, and practice.³⁴ This has been frequently endorsed by subsequent

³⁰ M. S. Knowles, *The Modern Practice of Adult Education: From Pedagogy to Andragogy* (Chicago: Follett, 1980), pp. 43-44, 57-58 (note earlier 1970 ed. titled *Andragogy Versus Pedagogy*, p. 39); see also M. S. Knowles, *The Adult Learner: A Neglected Species*, 2nd ed. (Houston, TX: Gulf, 1973), pp. 55-59.

³¹ S. D. Brookfield, *Understanding and Facilitating Adult Learning* (San Francisco: Jossey-Bass, 1986), p. 91.

³² K. P. Cross, *Adults as Learners* (San Francisco: Jossey-Bass, 1981), pp. 233-34.

³³ J. W. Johnstone and R. J. Rivera, *Volunteers for Learning* (Chicago: Aldine, 1965), p. 3. Cross observes that nothing in the myriad of surveys since has changed that general conclusion (1981, p. 91).

³⁴ C. O. Houle, in *Continuing Learning in the Professions* (San Francisco: Jossey-Bass, 1980), advances two central propositions: first, that there is commonality between the continuing education of many professions (pp. 14-15), and second, that professional education is distinctive to adult education (pp. 49-73, and 121); see also, R. M.

theorists.³⁵ Houle demonstrates that professionals' reasons for participation in continuing education generally tend to be more refined than adults at large and are usually job related. Professionals participate for functional purposes, rather than for the sake of learning per se, and focus more closely on the job relationship and career development; for most professionals, continuing education is seen as a means to assist them with new duties or to prepare them for promotion.³⁶

Cervero agrees that the study of professional learners builds on general adult-learning theory to develop its own distinctive practice:

Members of a specific profession are like all other adults [sic] in that they share basic human processes such as motivation, cognition, and emotions, like some other adults in that they belong to a profession, and like no other adults in that they belong to a particular profession. Each frame of reference implies important dimensions that need to be taken into account in the practice of continuing professional education.³⁷

Schon, in developing a model of professional knowledge, argues that the context of a professional practice is significantly different from other contexts for the purpose of learning and education. Schon identifies the characteristics of professional practice. He argues that professionals

share conventions of action that include distinctive media, languages and tools. They operate within particular kinds of institutional settings—the law court, the school. . . . Their practices are structured in particular kinds of units of activity . . . and [are] made up of chunks of activity, divisible into more or less familiar types, each of which is seen as calling for the exercise of a certain kind of knowledge.³⁸

Cross describes professional people as being among the most active, self-directed learners in society. This is due in part to the patterns of learning developed in attaining and retaining membership to a profession, and in part to the nature of the professional role itself. She argues that professionals have highly focused problems; they usually know what they need to learn, and consequently any general course will probably contain much that is redundant or irrelevant to the problem-orientated learner. Cross observes that:

Cervero, *Effective Continuing Education for Professionals* (San Francisco: Jossey-Bass, 1988), pp. 15-16; and A. D. Grotelueschen, "Assessing Professionals' Reasons for Participating in Continuing Professional Education," in R. M. Cervero and C. L. Scanlon (eds.), *Problems and Prospects in Continuing Professional Education* (San Francisco: Jossey-Bass, 1985), pp. 34-35.

³⁵ See, for example, Cross, 1981, pp. 45-46, 82; S. D. Brookfield, *Understanding and Facilitating Adult Learning* (San Francisco: Jossey-Bass, 1986), p.171; Cervero 1988, p. 77.

³⁶ Houle 1980, p. 121. Grotelueschen (1985) endorses this conclusion (pp. 34-35).

³⁷ Cervero 1988, pp. 15-16.

³⁸ D. A. Schon, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987), pp. 32-33.

A corollary to the assumption that adults are largely problem-orientated learners is that the more sharply the potential learner has managed to define the problem, the less satisfactory traditional classes will be.³⁹

In essence, professionals exhibit certain general, distinctive characteristics as learners: they are more active, career related, and self-directed as learners than adults at large. Each profession, Schon argues, has a systematic knowledge base with four essential properties: "It is specialized, firmly bounded, scientific and standardized."⁴⁰

Cervero argues that continuing professional development should be seen as a self-managed process giving the individual ultimate control over his or her long-term learning and growth. His observations highlight the difference between education based on the delivery of declarative knowledge (knowing what) and procedural knowledge (knowing how) and reveal a contradiction in the practice of judicial education. The application of facilitated learning is specifically applicable to professionals. While recognizing the importance of facilitation in adult education and need for adults to assume self-responsibility for their own learning,

[i]t is evident that professionals require guidance and assistance in structuring their continuing professional education so that it will, in fact, benefit their practice.⁴¹

Self-managed professional development requires both the learner and the educator to rethink their roles and goals and is a logical consequence of the application of adult-learning theory to continuing professional education and, in turn, to judicial education. The precise nature of this application is affected by the characteristics of judges as learners; the assumptions of competence, which can be reasonably inferred from the appointment process; the continuing education needs of judges; the features of judicial tenure in terms of career development; and the environment surrounding the office of judge in society. Each of these factors plays a role in the development of any program of continuing education for judges and has an impact on its character.

Within this understanding of the process of adult and professional learning, it is argued that any paradigm of formalized judicial education should be seen, primarily, as a process of facilitation based on self-directed learning, rather than an authoritarian model of teaching.

Judicial Disposition

Within the framework of adult and professional education outlined above, it is possible to identify characteristics and practices of judges as learners, which give rise to the need to pose a particular model of judicial education. There are significant differences

³⁹ Cross 1981, p. 193.

⁴⁰ D. A. Schon, *The Reflective Practitioner* (San Francisco: Jossey-Bass, 1983), p. 23.

⁴¹ W. D. Smutz and D. S. Queeney, "Professionals as Learners: A Strategy for Maximizing Professional Growth," in R. M. Cervero, J. F. Azzaretto, and D. Tallman (eds.), *Visions for the Future of Continuing Professional Education*, pp. 183-205 (Athens: University of Georgia, 1990), p. 186.

between judges and other professionals in their motivations and perceived needs for continuing education.

Catlin, for example, has found that appointment to judicial office and the environment surrounding judicial tenure created educational needs distinct from other professionals.⁴² These distinctive features related in particular to the motivational factors in continuing learning where personal benefits, professional advancement and job security were ranked significantly lower by judges than by other professionals, such as physicians and veterinarians.⁴³ This is consistent with judges perceiving themselves as public officials behaving differently from professionals in the private sector. Catlin observes that “the difference appears most dramatic when the reward system is examined.”⁴⁴ Judges may participate to develop new skills to become more competent, but not to increase their income; thus, the development of competence, in the case of the judge, must be a reward itself.

The lack of importance of job security, professional advancement, and personal benefits have “serious implications” for planning education programs. Comparisons between groups suggest that for judges the concept of judicial competence is a factor much broader than professional service; in addition, judges operate in an environment where there is a lack of any distinctly identifiable patient or client relationship.⁴⁵

Added to this, the circumstances characterizing the process of appointment on merit to judicial office, in terms of the formal and informal criteria of selection, arguably have an impact on the type of person, and even personality types, selected for appointment; these circumstances may also have an impact on the preferred learning styles of those successful advocates who are likely to be considered for appointment to the bench and, thus, on preferred forms of education. Herrmann, for example, argues that there is empirical evidence that the preferred learning styles of judges and lawyers tend to be “left brained,” that is, logical, analytical, problem-solving, controlled, conservative, and organizational.⁴⁶

⁴² D. W. Catlin, “The Relationship between Selected Characteristics of Judges and their Reasons for Participating in Continuing Professional Education,” unpublished doctoral dissertation, Michigan State University, East Lansing, 1981, p. 125; see also, D. W. Catlin, “An Empiric Study of Judges’ Reasons for Participation in CPE,” *Justice System Journal* 7 (1982): 236-56. Catlin’s research has revealed that judges’ reasons for participation are complex and multidimensional. Three underlying factors emerged from analysis of judges’ reasons for participation, which, in order of importance, were judicial competence, collegial interaction, and professional perspective. Catlin found that significant relationships exist between these participation factors and judges’ characteristics, including their sex, years since qualifying, tenure on current bench, and court level currently served. Thus, Catlin concludes that it is wrong to assume that participation is primarily a function of program content in formulating curricula and designing programs.

⁴³ Compare the empirical findings of Catlin with those of Cervero relating specifically to physicians and veterinarians, specifically, R. Cervero, “A Factor Analytic Study of Physicians’ Reasons for Participation in Continuing Education,” *Journal of Medical Education* 56 (1981): 29-35.

⁴⁴ Catlin 1981, p. 125.

⁴⁵ Catlin 1981, p. 126.

⁴⁶ N. Herrmann, *The Creative Brain* (Lake Lure, NC: Ned Herrmann/Brain Books, 1989). Herrmann argues that

The distinctive elements of continuing judicial learning include judges' motivation to learn and their perception on the need to learn, learning practices predicated on the process of judicial selection, and their preferred learning styles. These elements are important distinguishing features in terms of any program of continuing judicial education and have significant implications on both the content and the process of any program of continuing judicial education.

JUDGES AS DISTINCTIVE LEARNERS

It follows from this discussion that the characteristics of judges as learners are distinctive in a number of ways that are significant for educators. These characteristics arise from four factors relating to selection, learning preferences, doctrinal constraints, and perceived learning needs.

Judicial Appointment and Tenure

The process of selection determines appointment to judicial office and establishes a particular threshold of preexisting competencies in legal knowledge and skills. Consequently, it is generally valid to claim that judges appointed on merit are likely to possess extraordinarily high levels of preexisting professional competence in their knowledge of the law. In addition, Catlin has demonstrated that the distinctive nature of judicial tenure, specifically, its security and lack of promotional opportunity, has implications of systemic influences affecting individual judges' motivation to learn and places them in a different position to many other professionals who operate in working environments lacking these features.

Preferred Learning Styles and Practices

There is emerging evidence of judges as professionals exhibiting preferred learning styles and using preferred learning practices developed over the course of their careers. Judges are generally autonomous, are entirely self-directed, and exhibit an intensely short-term problem orientation in their preferred learning practices. Moreover, clinical experience tends to suggest that Schon's approach to professional learning is

judges tend to learn in a distinctively "left brained" style, characterized for being logical, analytical, problem-solving, controlled, conservative and organizational; additionally, judges tend to be intensely autonomous and self-directed in their preferred learning practices. See also comparison of left-mode and right-mode characteristics in D. Kolb, *Experiential Learning: Experience as a Source of Learning Development* (Englewood Cliffs, NJ: Prentice-Hall, 1984), pp. 49, 141; and application of the "Myers-Briggs Type Indicator" to lawyer types in L. Richards, "How Your Personality Affects Your Practice: The Lawyer Types," *ABA Journal* 79, no. 7 (1993): 74-78. If these various observations of the characteristics of lawyers and judges are valid, this raises the vexed question whether the practice of law creates these characteristics in practitioners or whether persons with these characteristics are attracted to practice in the law. Detailed exploration of this issue, and its full implications for educators, remains a matter for further research. C. S. Claxton and P. H. Murrell, in *Education for Development* (East Lansing: Michigan State University, Judicial Education, Research and Technical Transfer Project, 1992), devote a chapter to the "Learning Styles of Judges"; however, this work is an application of Kolb's (1984) general work on experiential learning and lacks any grounding in empirical data distinctive to judicial learning.

apposite to judges' continuing learning and should, as a result, form an active element in any process of continuing judicial education.

Doctrinal Constraints of Judicial Independence

It is the imperative to preserve judicial independence within any Westminster system of government. The doctrinal significance of this precept has been seen to be highly influential in any judicial approach to the notion of continuing education. It follows that educators should make efforts to ensure that judges recognize the independence and integrity of the process to appease any concerns of possible indoctrination. Equally, the formative nature of the judicial role can create a discomfort for some judges participating in continuing learning under conditions that could possibly be seen to erode the authority of their role. Both these considerations contribute to the need for an independent, discrete process of education.

Reasons for Participating in Continuing Education

Judges' reasons for participating in judicial education have been discussed above.⁴⁷

SIX GUIDING PRINCIPLES OF JUDICIAL EDUCATION

Sustaining the development of judicial competence requires incremental change, constant coordination of related strategies, and ongoing support in the years to come. Taking into account the assessment of needs and the availability of resources, it is useful to distil some guiding principles with which to develop, plan, and implement any program of judicial training and development.

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.
5. *Consolidate Judicial Identity*—All training endeavours should address the needs of judges and court administrators and, wherever appropriate and feasible,

⁴⁷ L. Armytage, "The Need for Continuing Judicial Education," *University of New South Wales Law Journal* 19 (1993): 536.

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 centralised basis, to maximise 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.

PLANNING MATRIX—CONTENT AND STRUCTURE OF EDUCATION PROGRAMS

The content of any program of judicial education will vary according to the needs identified by each judiciary. It follows from this that care should be taken to avoid emulating the structure and content of other programs without, first, assessing their suitability.

In overview, the content of judicial education programs will fall within a number of broad categories: substantive law, court procedure, judicial skills, case management and administration, judicial skills and “court craft,” disposition (attitudes, values, and ethics), and interdisciplinary matters (such as DNA forensic science, financial reporting, and so on).

In addition to content, there are different levels of application required to meet the diverse needs of judicial officers. In summary, these can be classified as orientation/induction, update, exchange of experience, specialist, and refresher.

In planning terms, the identification of these needs, and the selection of educational services to match them, can be usefully undertaken with the matrix planning instrument outlined below:

PLANNING MATRIX

<i>Content/Level</i>	Orientation Induction	Update	Exchange of Experience	Specialist	Refresher
Substantive law					
Court procedure					
Case management & administration					
Judicial skills & court craft					
Disposition Attitudes, values, and ethics					
Interdisciplinary					

FOUNDATIONS FOR A MODEL OF CONTINUING JUDICIAL EDUCATION

It follows from this study that a distinctive model of formalized continuing judicial education should be based on foundations of adult and professional learning, but should also reflect the distinctive characteristics of judges as learners, which have been outlined above.

These insights directly affect how we should go about educating judges in order that judicial education can assume its full potential as an agent of leadership and change.

A REALISTIC AND FUTURE-ORIENTED VISION ON COMPETENCE DEVELOPMENT OF JUDGES, PROSECUTORS, AND COURT STAFF

BY EDITH VAN DEN BROECK*

“The pessimist complains about the wind; the optimist expects it to change; the realist adjusts the sails.”

– William Arthur Ward –

THE JUDICIAL TRAINING INSTITUTE, A DRIVER FOR CHANGE

The Judicial Training Institute (JTI) holds a special position in the Belgian judicial landscape. To a certain extent, the institute can be regarded as a kind of “crossroads bank” of legal or judicial competences. At the same time, the institute has evolved in recent years into a real network and meeting place for all judicial staff (judges, prosecutors, and court staff). This unique position is actually the symbiosis of the intrinsic goals of the legislature¹ when establishing JTI, the internal dynamics, the learning curve and knowledge sharing with similar organisations abroad, and certainly the feedback and appreciation of many judges, prosecutors, and court staff regarding the services offered.

Carried by the Judicial Order

JTI has emerged since 2009 as an independent institute under the auspices of the judicial organisation. The autonomy of the institute is absolutely required for respecting the fundamental principle of the independence of the judiciary. This position within the judiciary also means the JTI knows the culture, habits, and specificities from within the organisation. Its exclusive assignment for the judiciary reinforces this understanding even further.

Focus on Results

Just as it is important for the judge and prosecutor to be able to judge in sovereignty, it is becoming increasingly important for the JTI to ensure at any time the most optimal learn yield. Therefore, integrated and blended learning paths have to be developed on the basis of judicial expertise, experience, and pedagogical insights.

Focus on Added Value

JTI does certainly not want to limit its offerings to a set of repeated standard courses. On the contrary, the institute wants to update its offerings regularly and proactively to

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¹ By the law of 31 January 2007 relating to the judicial education and creation of the Judicial Training Institute, *Belgian Official Journal*, 2 February 2008.

ensure that the judiciary obtains the required competences. It is, however, not realistic to expect the JTI to offer every individual each and any training that could or would be of help. The institute simply does not have the required human or financial resources to make this happen for over 15,600 people at the same moment. JTI needs to focus on the domains where it offers the highest added value through its expertise and knowledge. In particular, this is the development of technical and generic competences linked to jurisdiction, i.e., the judicial competences.

As is apparent from the foregoing, JTI strives to offer an absolute added value for practical or professional training. That is the area JTI mainly (or even exclusively) needs to focus on in the coming years—increasing accessibility and effectiveness thanks to a good mix of teaching methods.

Focus on Efficiency

The constant search for improved efficiency is a must for every administration. Continuous efforts should be made to be more cost-efficient without compromising the quality of service. JTI is expected to deliver continuous, high-quality service. Therefore, it has to invest in an organisational culture, processes, training, support, and quality control with the most optimal cost-efficiency.

At each level, attention and resources need to be focused on the core tasks and objectives with the highest added value, and at any time, the right balance between efficiency and effectiveness should be achieved. It is also important that the political level supports this pursuit of cost-efficiency and effectiveness and sustains the mandate, responsibilities, and decision power of JTI.

Within that context, JTI can play an optimal role in the interest of each individual judge, prosecutor, and staff member, in the interests of the judicial organisation in general, and in support of reforms in particular. The judicial challenges are, one way or another, challenges for the institute.

THE CONTEXT OF THE JUDICIAL CHALLENGES

Developing a realistic and future-proof vision of training for judges, prosecutors, and court staff based on a proactive approach, and a strong focus on organisational readiness, requires an in-depth understanding of actual and future challenges. Judicial challenges and reforms are, undoubtedly, a fundamental and even compelling frame of reference when plotting the institute's judicial-training strategy for the coming years. JTI is fully responsible for the development of professional competences² of judges, prosecutors, and court staff, and the services provided by JTI can be an important driver or lever for the success³ of these reforms.

² As far as the court staff is concerned, this fits with the competence management described in their legal statute, but judges and prosecutors currently lack a general legal base for structured competence management.

³ This interaction will be clarified in the present vision statement, which will also focus on the consequences thereof.

More Autonomy and Management Responsibility

Justice reform in Belgium has been on the agenda of several forums and many working groups for a number of years. Finally, on 1 April 2014, the most important reform in decades of the judicial system in general, and of the judicial organisation in particular, was established. Redrawing judicial districts, empowering the chief justice of the courts, and giving more autonomy regarding (resource) management are important challenges for the organisation, but especially for each and every judge, prosecutor, and staff member. The reduction of the number of districts puts more emphasis than ever before on partnerships between entities, and it requires flexibility, mobility, or both (e.g., because of specializations) on the part of judges, prosecutors, and court staff.

While the number of chief justices of the court is being reduced, their responsibility is increasing. This not only entails the growing number of court staff under their command, but relates to the most efficient utilization of the allocated resources as well. Management agreements give the judicial organisation more management autonomy, but they also set concrete results and goals to be achieved.

It is to be expected that this will raise questions among a number of judges and prosecutors as to whether justice is at risk of evolving into a “production-numbers-oriented” organisation, where quantity will outweigh quality, dedication, and a unique skill set when up for review. It is logical that these changes give rise to questions. The essence of this debate should not be the question of whether this evolution is compatible with the “independence” of the individual judge or prosecutor, but in how to prepare everyone involved (judges, prosecutors, and court staff) for taking their responsibilities in a proper way within this new approach.

Judges, prosecutors (even those not in a managerial position), and court staff will need competences that were not necessarily acquired during basic training. There is a notable need for developing more general and generic competences, without deviating from the judicial context.

The Generation Mix

Just like any other organisation, the Belgian judiciary is confronted with a diverse mix of generations on the work floor, creating even more diverse expectations. The different visions regarding work, working conditions, or working methods are, without doubt, an important challenge for the judicial organisation.

On one hand, we have the baby boomers, people in their 50s and 60s, who are not keen on change and firmly hang on to established procedures and processes. On the other hand, we have so-called generation Y, who represent the future of the organisation and are crucial in controlling the natural outflow. They are critical, have the will to rewrite rules, and are a driving force for technological innovation and creativity. This is not to mention the different generations in between with their specific characteristics.

There are several crucial aspects to give this integration a chance of success, regardless of all the other challenges. We should focus on effective communication, which entails not only speaking skills, but also listening skills. Platforms need to be provided on which ideas can grow and where judges, prosecutors, and court staff can contribute to innovation and receive support regarding cooperation and the sharing of knowledge and information. Executives need support to evolve from task-oriented people management towards results-oriented people management, where there is also room for diversity and the human aspect.

JTI plays a key role in bringing these different generations together around certain topics and within a context of competence development. The network platforms and intervision groups already offer a solid base to start a cross-generational debate on all sorts of topics regarding judicial and organisational challenges.

The Need for a Sound Basic Knowledge

The judicial process is subject to strict procedures, which also increase in complexity and are modified at an increasingly faster pace. All actions are strictly laid down when it comes to roles and responsibilities, timing, etc. It goes without saying that every judge, prosecutor, and staff member within the judicial organisation must have an adequate basic knowledge of these strict rules. The basic training (e.g., at universities) has usually taught them sufficient theoretical knowledge of laws, regulations, and decisions. JTI's approach is different, necessary, and effective: "We don't teach them law, we teach them to judge or to prosecute."

The "initial professional training" will become increasingly important over the next few years. The need for a strong influx of new staff members (to counteract the retirement wave), combined with social and legal evolutions and their impact on the judicial process, will necessitate a further broadening and deepening of this training. Traineeships and mentoring are already two important methods to ensure young judges and prosecutors acquire the knowledge they need and that there is a transfer of knowledge between co-workers, at least from a training/competence-development point of view.

The need for training is not unique for young judges and prosecutors. Every judge, prosecutor, and staff member must have a sound and directly applicable knowledge base. The power of the judiciary is in the people that form the judicial organisation.

JTI contributes by ensuring that each and every one of them has the required competences to perform their duties, roles, or functions within the public prosecutor's office or the courts and tribunals according to the rules of the game. In other words, building "prosecutor-craft" and "judge-craft" is, in fact, the outcome of JTI's strategy and services.

The Brain Drain

The high outflow (> 40 percent) over the next years within the judicial organisation in Belgium constitutes a real risk of losing knowledge. The judiciary needs to take the appropriate measures to prevent the loss of knowledge and, by extension, the loss of competences.

A first important aspect is mapping⁴ the currently available knowledge, skills, and attitudes and how those are influenced by the retirement wave. Next, a short-, medium-, and long-term needs analysis needs to be established in such a way as to never lose track of the needs of the organisation.⁵

JTI developed a structured approach to ensure the appropriateness of its offerings to resolve the lack or loss of competences. At the basis of this approach resides a specific judicial competence model (see *infra*). By linking the competence model, the competence gap analysis, and training, JTI is able to work in a structured way to use the available means most efficiently and effectively.

Social and Technological Evolution

The globalisation of our society, in combination with rapid technological evolution, leads not only to additional legislation, but especially to new legal issues. Obviously, the judicial organisation needs to integrate these developments and align its activities with them to ensure the adequate administration of justice.

But at the same time, there is a bigger risk of a significant increase in legal costs due to the rising number of investigations. No one wants to overlook something, and there is no (or at least insufficient) experience or affinity with these new problems; therefore, there is an incorrect assessment of the risks. Another element is an insufficient knowledge of the possibilities and restrictions of newly introduced research methods.

Besides adequate training, it is essential to pursue the exchange of practical experience in order for a judge or prosecutor in the field, assisted by forensic experts, to define the most suitable research scenario. Or to use a simple, but very applicable quote: "If you think education is expensive, try ignorance."

JTI has already started several initiatives within the judiciary, as well as with other actors in justice, to share concrete knowledge and experience based on specific cases. This exchange will become increasingly important over time and will ideally incorporate international experience, as well. JTI's involvement in several international networks is an important cornerstone for this.

⁴ The judicial competence model (see *infra*) is the perfect frame of reference for this. JTI, in collaboration with AGORA Strategy Consultants, has developed this model.

⁵ Even today, we see that some competences are lacking. This deficit will be worsened by the reforms and changes and should be tackled as soon and as efficiently as possible.

The Impending Computerization

The computerization of the judiciary not only provides a promising future, but also necessitates another way of thinking and working for judges, prosecutors, and court staff. Application-related or functional training is one aspect of the equation, and for this, the distributor or developer is best suited. But other aspects, such as dealing with digital instead of paper files, the focussed search for information, the sharing of and contributing to digital documents, the different aspects of information security, electronic information exchange between parties, and legal implications, are equally important.

In these aspects, which are on the crossroads between technology and the domain of the judiciary, JTI can bring added value. Pinpointing insights, knowledge, and experience will provide an important contribution to the acceptance of this new working environment by all generations.

Focus on “Organisational Readiness”

When it comes to competence development within the judiciary, proactivity is a priority within the strategic vision of JTI. The services offered should enable the organisation to take necessary action to facilitate the required competences when needed, regardless of the underlying cause of the competence deficit.

This also means that JTI itself must be sufficiently prepared and ready to capture and process different trends. In a way, the corresponding knowledge training should already be prepared even before a new law has been published in the *Belgian Official Journal*.

The International Context

As more and more lawsuits are of a cross-border nature, this will absolutely require more effort in coming years. Another aspect that will require more attention are the European agreements and guidelines when it comes to European legislation and the laws and legal systems of other member states.

A STRUCTURED APPROACH TO NEEDS ASSESSMENT AND PRIORITIZATION

JTI certainly does not want to limit its offerings to a set of repeated standard courses. Combined learning pathways bring forward innovation in training methods, but at the same time, the contents should also be evaluated in a future-oriented way.

The high outflow of court staff in conjunction with the planned reforms represents a particular challenge for the judicial organisation. To this end, JTI has developed a structured method and instrument to determine the current and future needs for education or training and to prioritize these needs if necessary.

The Judicial Competence Model

JTI deliberately emphasizes skills instead of knowledge in all its training initiatives. Indeed, this practical orientation ensures that participants can immediately and correctly apply the competences they have achieved to daily assignments and tasks. Moreover, this approach ensures optimal balance between theoretical models and the specific, practical situations within the judiciary in general and the judicial organisation in particular.

A number of concepts are at the heart of this approach. It is based on a specific “judicial competence model” whereby the term competence comprises knowledge, skills, and attitudes. JTI explicitly opts for a competence model that focuses on the judicial organisation, even for the so-called generic competences. From the start, this puts the emphasis on integrating these competences within the judiciary and adapting them to specific needs.

The model has been developed with the assistance of field experts and has since then been tested and validated by several reference contacts. The model defines the competences in three distinct domains (see Figure 1):

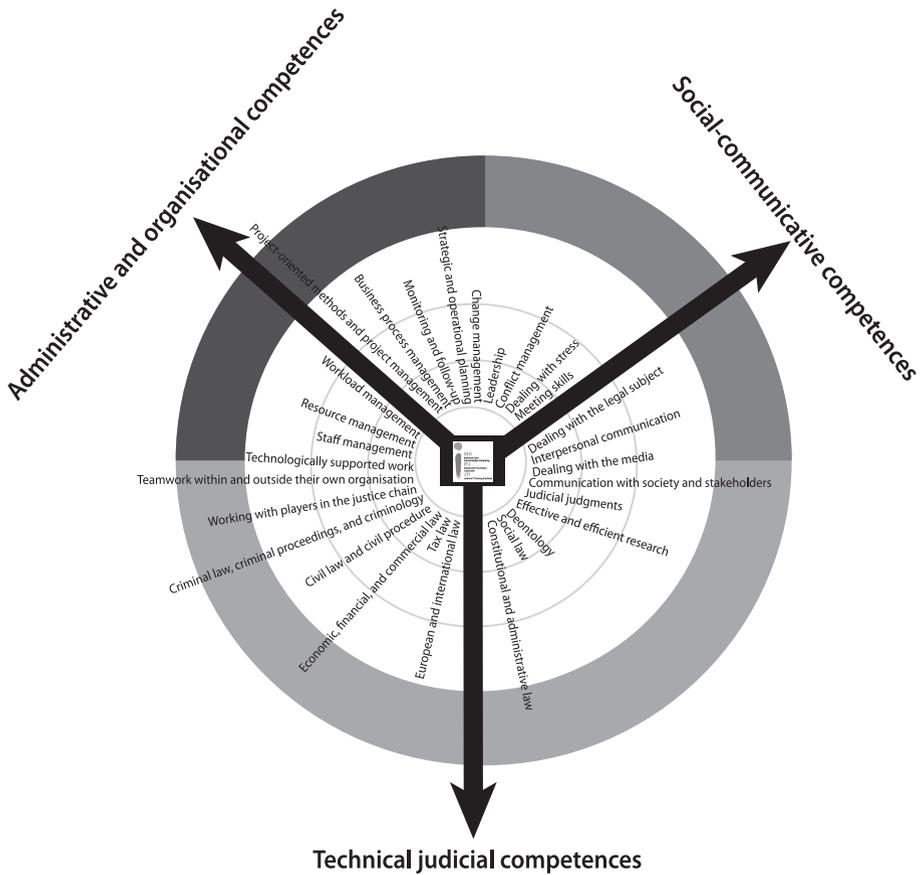
- *Technical judicial competences*
These competences focus on the technical/substantive aspects of the role or function. In other words, they are often linked to rules and procedures in the context of criminal law, social law, private international law, etc.
- *Administrative and organisational competences*
These are mainly aimed at planning, controlling, and directing the organisation, but also deal with skills such as project management or business process management.
- *Social-communicative or psychosocial competences*
These include aspects such as communication skills and stress management, or, for example, analytical skills in the context of legal judgments.

Competences versus Functions and Roles

The competence model described above includes all possible judicial competences and provides the framework in which the competence requirements of each role or function should be placed. Not every competence is equally important or necessary for each role or function and does not have to be present to the same extent. In other words, it is important to correctly assess the expected level of competence for each of the competences in the model. For example, a chief justice of a court needs to understand what project management entails and what his or her role in it is or may be as a sponsor, but does not need the thorough knowledge or skills that are expected of a project leader.

Even though these competence standards are crucial to adequately conduct a needs analysis regarding competence development, it is not up to JTI to make a

Figure 1
Judicial Competence Model



statement about this. That is the responsibility of the High Council of Justice and the Minister of Justice, supported by the Federal Public Service of Justice.⁶ Therefore, cooperation on this matter with both key players is explicitly dealt with in the structured “ABA process” (needs analysis).⁷

JTI relies on both players to establish the required competences and competence levels for every function or job profile. To support them, they receive a structured

⁶ It is imperative that all players use the same competence matrix. This is tailored to the specific context of the judicial organisation and fits with the principle of training programmes with which the judges, prosecutors, and court staff are already familiar.

⁷ ABA is the abbreviation of the Judicial Training Institute project “Analyse des Besoins-BehoefteAnalyse” (needs analysis), describing and establishing the processes for detecting and analysing competence development needs.

template that allows them to standardize every competence for every function (or every function profile). This standardization will be adjusted repeatedly according to the changing circumstances and after the job profiles have been fine-tuned or extended. This will enable an increasingly effective, focused, and transparent competence management.

Mapping the Existing Competences

Starting from the judicial competence model, the existing competences are identified (at the individual, team, or organisational level). The main objective is to work in a sufficiently pragmatic and practical way. Therefore, JTI collaborates with the chief justices of court to perform a basic assessment of the existing competences of the members of their teams. This will not give a completely accurate picture, but does suffice as an initial indication.

Based on this information, the existing competences can be benchmarked (at the individual, team, or organisational level), as communicated by the chief justice of court, against the expected level per function or role, as determined by the High Council or the Minister of Justice, to determine the competence deficit and, thus, the explicit needs. Similarly, a forecast can be made of future needs arising from the expected outflow of court staff.

Process-Based Needs Analysis and Composition of the Training Portfolio

JTI's training portfolio offers a wide variety of educational or training initiatives for which any judge, prosecutor, or staff member, according to his or her personal situation, can enrol. It is crucial to further expand and streamline this training portfolio in the coming years to continuously fulfil the needs of the judicial organisation in an effective and future-oriented way.

The ABA process aims to determine the competence deficit and the priorities based on the GAP analysis (for example, those competences that have the biggest deficit in relation to the needs based on the competence standardization; see above). Within the ABA process, the involvement of each body or player within JTI and within the judiciary is unambiguously laid down in relation to the future course and the expected result. This process will be applied annually, within the same time frame and in line with other policy moments in the annual planning (such as the preparation of the operational plan and the budget).

JTI takes the initiative of polling the High Council of Justice and the Minister of Justice concerning the competence standardization.⁸ This will be done periodically and at a predetermined time to come to a timely conclusion of the process so that the result can be used in the operational-planning process.

⁸ It should be noted that both players can make suggestions beforehand to JTI to modify or fine-tune this unique moment. JTI will also be available to give support when using the competence model.

The chief justices of court are surveyed annually to map the competences within their own team or organisation. In the coming years, by benchmarking against previous years, it will be possible to identify the evolution and achieved competence gain, taking into account the loss due to the natural outflow of court staff. These data will be used as input for the further course of the process at JTI. Initially, based on the information above (the competence standardization and the existing availability), an objective GAP analysis can be carried out.⁹

This analysis will indicate where the largest deficit is (and thus also indicate the competences to which special attention should be paid). It is important that in addition to this analysis, the necessary attention is given not only to spontaneous requests for specific trainings, but also to innovation or established social, technological, or judicial evolutions for which JTI can or should proactively develop training initiatives.

The prioritization is prepared in a special expert group, which also includes representatives of the Scientific Committee next to employees of JTI. This will increase the involvement of the Scientific Committee (see above) and will guarantee a prioritization based on a broad perspective.

The final priorities, validated by JTI management under its responsibility, provide a reference for the various domain managers to propose, within their own specializations, the necessary training initiatives to give an adequate response to the identified needs. The starting point will always be a “blended” approach, in which different learning methods, aligned with each other and with the intended learning objectives, are used. These different proposals are discussed in the internal expert group and evaluated or adjusted if necessary. This step ensures the development of a dynamic and coherent training portfolio. After internal validation, this training portfolio will be submitted to the Scientific Committee and the Board of Directors of JTI.¹⁰

Following the final validation and approval, the training portfolio will be implemented, meaning that every training initiative is launched within the agreed time frame, that all initiatives are introduced and made available in the Learning Management System (INEV¹¹), and that all the necessary agreements with service providers or trainers are made. However, these steps are no longer part of the ABA process, but belong to the continuous business processes of JTI.

A Dynamic Training Portfolio

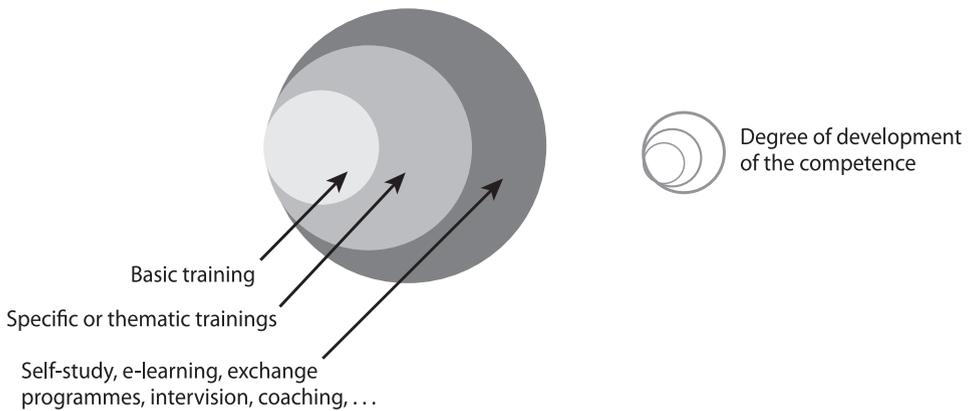
JTI aims to achieve a balanced and dynamic training portfolio that aligns various learning methods based on the extent to which the competence has already been

⁹ We are looking into supporting this GAP analysis with technological means so that the workload and throughput time can be limited as much as possible and the available resources can be used for interpreting the result.

¹⁰ We hope that this validation can take place within a period of maximum four months after the start of the process.

¹¹ INEV: van inschrijving tot evaluatie- de l'inscription à l'évaluation (from registration to evaluation).

Figure 2
Development of a Competence



acquired.¹² In other words, the training portfolio is also built entirely in line with the judicial competence model. Although this means a change from the former programme approach, it will offer better support to all those involved, the chief justice of court and individual staff members, when selecting the necessary or appropriate training initiatives (depending on the competence deficit).

Figure 2 visualizes how a particular competence is developed in an iterative and evolutionary way and to what extent certain forms of learning are more appropriate to enable growth at that level.

As evidenced by the structured ABA process, the domain managers at JTI will develop the most appropriate training initiatives depending on the identified needs and priorities, based on their teaching expertise and familiarity with the subject.

JTI will not (and cannot) realize this training portfolio alone. JTI takes up the coordinating and managing role it was given, but also builds a national and international network of public and private partners who can contribute to the implementation. Each partner works under the responsibility and supervision of JTI so that quality and consistency can be ensured. The content, learning objectives, and quality expectations, as well as the crucial coordination with judicial reality, are laid down and verified by JTI.

¹² This blended learning approach abandons the concept of “isolated training or course” but fully focuses on so-called development pathways that can be spread over several years and that may be individualized depending on the competences already acquired by the person involved.

IN CONCLUSION

The Judicial Training Institute is uniquely positioned to provide a significant added value not only to the proper functioning of the judiciary, but also to the success of the envisaged reforms.

It is impossible to offer each of the nearly 15,600 people every kind of training or education at any time. In other words, it is crucial to focus resources and efforts on those competences that are critical. In this area, JTI offers an important added value as coordinator and director.

JTI focuses on partnerships to ensure its services to the judicial organisation in the most efficient way. These partnerships are formed not only with other players or bodies, such as the High Council of Justice or the Federal Public Service of Justice, but also with external organisations that are hired by JTI to provide instructors or coaches within the training portfolio and, of course, with the 15,600 people who count on JTI and who are empowered to pave their own personal development path.

Based on a structured analysis, JTI, together with the various players and target groups, will guarantee a dynamic interpretation of its training portfolio and will establish a clear list of priorities. The justice reforms are a major challenge in different areas, but they are most certainly feasible. JTI is committed to offer its full cooperation.

EC STUDY OF THE BEST PRACTICES IN THE TRAINING OF JUDGES AND PROSECUTORS IN EU MEMBER STATES

BY JEREMY COOPER*

In 2012 the European Commission opened an invitation to tender for a project designed to investigate best practices in the training of judges and prosecutors across the European Union. The proposal originated in the European Parliament. Following a competitive tendering process, the European Judicial Training Network (EJTN) was awarded the contract in January 2013.¹ As the lead coordinator of the project, I summarise in this article the project methodology, findings, and recommendations, with a view to encouraging IOJT members to carry out similar exercises in other parts of the world beyond the European Union.

This project was one of four projects that were launched simultaneously by the Commission, the other three projects being concerned with training court administrators and EU legal practitioners in EU law and promoting cooperation between judicial stakeholders with a shared interest in European judicial training. This fourth project was intended specifically to promote cooperation between the EJTN and all the other judicial-training providers and European-level judicial organizations, such as the European Network of the Councils for the Judiciary, the Network of the Presidents of the Supreme Judicial Courts, the Association of the Councils of State and Supreme Administrative Jurisdictions, the Network of Public Prosecutors, and the Supreme Judicial Courts of the Member States of the European Union. A Memorandum of Understanding between 12 of these organizations was officially signed and presented at a specially convened Brussels workshop on 27 June 2014. All four projects were officially launched together at this workshop.²

AIM OF THE PROJECT

The broad aim of the best practices project was to identify, by means of an empirical process, examples of best, good, and promising practices in the training of judges and prosecutors across the European Union, thereby promoting a dialogue and further cooperation between judges and prosecutors on issues arising from the project.

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¹ The EJTN gathers together the training institutions for the judiciary (and some prosecutors) of all EU member states. Its aim is promoting training programmes with a genuine European dimension for the benefit of the European judiciary. For more information, see Judge Wojciech Postulski, "Training Needs Assessment: State of Play and Challenges," in this issue.

² The Best Practices Report Fact Sheets ("the Report") and other details of the study can be found at the following link: https://e-justice.europa.eu/content_good_training_practices-311-en.do?clang=en.

For those from common-law countries, the concept of linking the training of judges and prosecutors in one study may seem, at first glance, alarming. In most continental civil-law European countries, however, judges and prosecutors are considered to have functions that, though different in practice, are largely judicial in nature. In contrast, common-law European countries draw a clear distinction between the two roles. The former are deemed to be judicial officers, the latter are not. However, in a recent landmark case, the UK Supreme Court has acknowledged that, in many circumstances, a European prosecutor falls within the common-law definition of a judicial office holder.³

For the purposes of this study, and in acknowledgment of the fact that judges and prosecutors frequently train together in these jurisdictions, the training provided for judges and prosecutors was treated as methodologically synonymous, i.e., it is always “judicial office holders” who are being trained. This maxim also applies in cases where it is “lay members” (i.e., experts who sit on adjudication panels but who are not judges) who are being trained. Excluded from the study, however, was training provided exclusively to prosecutors in common-law Europe for the reasons mentioned above.

The main work of the project was carried out by a group of seven senior experts,⁴ overseen by an external EU Commission Steering Committee composed of members of various European Institutions⁵ and an internal EJTJN Steering Committee.⁶ The experts were appointed by the EJTJN Steering Committee following an “expressions of interest” exercise. They brought a wide range of experience to the project, including many years of involvement in judicial training and research, the design and delivery of adult education, programmes, and high-level judicial activity.⁷ The working language of the experts’ group was English.

The work of the project was time limited and had to be completed over a 12-month period from inception to delivery. The final report of the study was published in July 2014.⁸

³ *Assange (Appellant) v The Swedish Prosecution Authority (Respondent)* [2012] UKSC 22.

⁴ The experts came from Belgium, Bulgaria, Italy, the Netherlands, Romania, Spain, and the United Kingdom.

⁵ The external steering committee included representatives of the European Parliament, different directorate generals of the European Commission, the European Institute of Public Administration (EIPA), and the European Union’s Judicial Cooperation Unit (EUROJUST), as well as a representative from the UCL (University College London) Judicial Institute. The European Commission Steering Committee was set up to monitor the implementation of the project, to propose recommendations regarding its execution, and to help ensure the dissemination of its results.

⁶ The internal project steering committee consisted of the chairs of all EJTJN internal working groups, the project chief executive officer (CEO), and its core administrator.

⁷ To be eligible for consideration, experts had to have at least eight years of judicial-training experience at a senior level, be available to attend regular meetings as required by the project’s steering committee, and be fluent in the English language. The seven senior experts were selected on the basis of CVs from a shortlist of 25 applicants.

⁸ Tender JUST/2012/JUTR/PR/0064/A4-Implementation of the Pilot Project-European Judicial Training Lt 1, “Study on Best Practices in Training of Judges and Prosecutors,” EU-COM; see also link at n. 2.

DETAILED PROJECT OBJECTIVES

The more detailed objectives of the project were outlined by the Commission as follows:

- Producing a comprehensive definition of what constitutes best (good and promising) practices in the training of judges and prosecutors both in national legal systems and traditions, and also in European Union law and judicial co-operation procedures.
- Providing a guidance framework within which best (good and promising) practices in these fields can be developed.
- By empirical investigation, seeking out and identifying examples of best (good and promising) practices in these fields from amongst the Member States of the European Union.
- Based upon the findings above, recommending ways of improving such training, by promoting a dialogue and further cooperation between judges and prosecutors across the European Union.
- Recommending methods for the promotion and exchanges of best (good and promising) practices across the European Union.
- Establishing processes for the dissemination of best (good and promising) practice methodology amongst all judicial training providers in the European Union.

METHODOLOGY OF THE STUDY

The principal methodology adopted by the experts was to draft and circulate a detailed questionnaire inviting all judicial-training institutions across the European Union to identify examples of training practices worthy of consideration as best, good, or promising practices and that were also capable of transfer to other national jurisdictions. Thereafter, the experts analysed the responses to assess the relative merits of each proposal.

As an initial piece of work it was therefore necessary for the experts to define their terms (see above, “Detailed Project Objectives,” bullet one). After extensive debate they agreed the following definitions of what constitutes a best, good, and promising training practice.

A best practice is a training programme or strategy having the highest degree of proven effectiveness supported by objective and comprehensive research and evaluation.

A good practice is a programme or strategy that has worked within one or more organisation and shows promise of becoming a best practice, as it has some objective basis for claiming effectiveness and potential for replication among other organisations.

A *promising (sometimes only experimental) practice* is a practice with at least preliminary evidence of effectiveness or for which there is potential for generating data that will be useful in determining its promise to become a good or best practice for transfer to wider, more diverse judicial training environments.

TRAINING GUIDANCE FRAMEWORK

To assist training institutions in the identification process required to put forward examples of best, good, or promising practices the experts developed a *Training Guidance Framework*, which set out the core themes and substantive content that in their view should be included in any contemporary training programme (see above “Detailed Project Objectives,” bullet two). The *Framework* states that any contemporary judicial-training programme should apply all (or certainly most) of the following aspects and maxims:

- ***Need for Appropriate Methodology.*** The emphasis in judicial training should increasingly be upon the use of case studies, small discussion groups, and where appropriate maximising the potential for e-Learning.
- ***Training in Judgecraft.*** Judicial training should embrace practical judgecraft training in a wide range of subjects, such as case management, judicial conduct and ethics, assessment of credibility, evidence gathering, and decision writing, including an analysis of processes leading to decisions (such as sentencing theories). This reflects the value of “learning by doing.”
- ***The Social Context of Judging.*** Judicial training should be based in the social context of judging. This refers to the use of appropriate training to ensure that judges and prosecutors have a high level of awareness about how the differing backgrounds, capacities, needs, and expectations of those appearing in courts and tribunals should be reflected in the conduct of judicial proceedings.
- ***Technological Skills.*** All modern judges and prosecutors should be skilled in the use and application of information technology. This includes good personal computing skills, the ability to access and use research databases, and an understanding of the range and significance of social media.
- ***Training of Judges to Deliver the Programmes.*** As a general principle, judges and prosecutors are best placed to train judges and prosecutors or at least to plan and supervise their training. Judicial-training programmes should ensure they are adequately trained for this purpose.
- ***Training of Judges in the Perceptions of “Justice Users.”*** Judges and prosecutors should be sensitive to how they are perceived by justice users, without compromising their independence. Training programmes that expose judges to the perceptions of justice users in controlled and sensitive ways are to be encouraged.

- ***Training of Judges in Transnational Law Relevant to Their Jurisdiction.*** Training in applicable transnational law should be incorporated directly into national training programmes.⁹

THE QUESTIONNAIRE

The study divided training practices into five topics:

- training needs assessment;
- innovative curricula or training plans;
- innovative training methodology;
- training tools to favour the correct application of EU law and international judicial cooperation; and
- assessment of participants' performance in training/effect of the training activities.

The questionnaire was sent to the judicial-training institutions of all 28 EU member states and to three European training institutions: the Academy of European Law (ERA), the European Institute of Public Administration (EIPA), and EJTN. Each responding institution was invited to provide a maximum of ten examples of practices they wished the experts to consider as either best, good, or promising practices, grouped in the five categories listed above.

In addition to providing a general description of the identified practice, respondents were encouraged to address a series of issues in relation to the practice. The questions were specifically designed to provide the experts with information on the range of factors that would enable the experts to classify the projected practices as best, good, or promising according to their definitions of these practices. These included questions such as: What issues or problems needed to be solved in developing the practice? What need was addressed by the practice? How was this practice adopted, implemented, and executed? What conditions had to be in place? What resources (people, time, money etc.) had to be acquired before the practice could be introduced? How much time was needed to implement the practice? Was there any resistance to the introduction of the practice, and if so, how was this tackled? What results have been achieved so far by using the practice? How do you assess the effectiveness of this practice? Additional remarks on the economic, geographical, and cultural context that affect the adoption and implementation of the practice were also invited.

Analysis of the responses was reinforced by follow-up questions and some study visits. In total, responses were received from 23 training institutions. The total number of practices put forward for consideration in response to the questionnaire was 157.

⁹ This referred in particular to training in the EU and was a core purpose of this project, reflecting the aspirations of both the Stockholm Programme Resolution on Judicial Training (17 June 2012) and Articles 81.2 h and 82.1 c of the Treaty on the Functioning of the European Union, created by the Lisbon Treaty. The principle also applies to other forms of applicable transnational law, for example, the European Convention of Human Rights.

THE FIVE TOPICS

1. Training-Needs Assessment

Training-needs assessment is perhaps the most critical element of the training cycle that comprises training objectives, plan and design of the training, implementation, and evaluation of the training. Training theory normally defines “need” in a variety of ways, but in general it is described as the gap between existing and desired knowledge, skills, and abilities—a gap that could be reduced or even eliminated through training.

It was the settled view of the experts that there should be a close interrelation between assessment of training needs and evaluation of training activities. In general, the evaluation of training activities demonstrates to what extent training needs have been successfully addressed by the training activities.

Most judicial-training institutions in the European Union carry out regular assessment of the training needs of their target groups. In general terms the expert found that:

- a) Training-needs assessments are conducted regularly, often annually, as part of the preparation for the next year’s training plan or for long- and medium-term planning.
- b) Training-needs assessments follow a structured process in terms of the timing, stages, procedures, and organisations involved. The procedures followed are more or less formal and regulated.
- c) Training-needs assessments are based on a broad range of sources and methods. The most frequently used methods are surveys and questionnaires (both paper and online), focus groups, interviews (telephone or in person), formal and informal meetings and consultations, satisfaction forms, and other feedback information tools from training evaluation.

The Report concluded that training-needs assessments can be conducted at three different levels (parentheses indicate particularly good examples of each model identified by the Report):

- Organisational level—a type of assessment that identifies the knowledge, skills, and competences needed by the organisation, i.e., the judiciary, as a whole (Belgium, Croatia, UK).¹⁰
- Functional level—a type of assessment that identifies the knowledge, skills, and competences needed by the profession, i.e., judge or prosecutor, or by function, i.e., civil judge, criminal judge, court president, etc. (Poland, UK).¹¹
- Individual level—type of assessment that identifies the individual training needs of target group members (ERA, EIPA, France).¹²

¹⁰ Report 4.4.1, 4.4.8, 4.5.2.

¹¹ Report 4.5.1, 4.5.2.

¹² Report 4.6.2.-4.6.8.

2. Innovative Curricula or Training Plans

The Report identified a number of interesting examples of innovative curricula and training plans under the following headings.

Protecting Categories of Training Needs once Identified

There appears to be a widespread consensus on the necessity of training future judges and prosecutors in a way that combines legal training and nonlegal training. One way of achieving this proactively is to generate a greater awareness of the need for a wide diversity of types of training and trainers and of the need to allocate a ring-fenced percentage of training to each type of activity.

A good example of this approach is to be found in Germany.¹³ Since 2002, only 45-50 percent of German judicial-training courses can be legal specialist conferences, and 25-30 percent must adopt a multidisciplinary approach (law and medicine, law and Internet, law and ethics, law and religion, etc.). Another 25 percent of the courses must be geared toward improving the judges' and prosecutors' behavioural abilities (i.e., psychological, social, and methodological capacities, rhetoric, communication, media training, memory training, vocal training, mediation, psychology of testimony, etc.).¹⁴

Combining Different Disciplines in the Delivery of the Training of Judges

This approach to training manifests itself in one of two ways. First, if the adjudicating tribunal contains a mix of judges and other specialists (e.g., doctors or accountants), it is clear that the value added by training judges and specialists together is significant. Second, even where judges do not sit on panels with specialist members, the project team found examples of training events bringing together judges and external professionals in mutual discussions that clearly enriched the training environment. The examples that were of particular interest were to be found in Bulgaria, England and Wales, and Italy.¹⁵

Simulations and Role-Play Programmes

Simulated hearings and role-play exercises are often used as a part of the curricula or training plan for the delivery of training for judges and prosecutors. A range of methods is used to ensure that the "live experience" of simulated adjudication enhances the skills of participant trainees. Particularly original examples of role-play exercises were found in Hungary, France, and England and Wales.¹⁶

¹³ Fact Sheet 10.

¹⁴ A description of both the rationale and the process of the German approach was published in 2011 by the German Judicial Academy Programming Conference as an issue paper, "What Constitutes Good Further Training?" The paper can be found on the International Organization for Judicial Training (IOJT) website: <http://www.iojt.org/library/Thesenpapier%20Gute%20Fortbildung%20Englisch%20Druckfreigabeversion.pdf>.

¹⁵ Fact Sheets 11, 11-i, 12.

¹⁶ Fact Sheets 13, 14, 15.

Leadership and Management Training

Increasingly, judges have to perform leadership and management tasks as part of their daily work, in addition to carrying out their judicial functions. The Report revealed that a number of jurisdictions have grasped the reality that judges are not necessarily good at management. Indeed, some of the skills required of a judge, such as making quick decisions, do not necessarily square with those of a good manager! Because leadership and management training is a relative newcomer to judicial training, most of the examples in the Report fell into the category of promising practices. The one exception was the programme in France delivered by the National School for the Judiciary (ENM), which the Report found to be an exceptional and clear example of a best practice. France has a highly developed leadership and management-training programme, offering a series of modules in such things as budget management, personnel work, change management, and cooperation with other public bodies. Although the modules are voluntary, about 12 percent of judges chose that programme in 2013, because it was seen as essential for those wishing to become a senior judicial officer.¹⁷

Comprehensive Packages for Delivering Large-Scale Training on New Legislative Programmes

When confronted with large-scale legislative changes or significant evolution in case law or when a new, important international treaty starts to apply in a jurisdiction, training institutions have to find a way to train large categories of people quickly and cost-effectively.

One common response to this challenge is to offer a combination of conferences and modern communication tools for disseminating the information, for example, via the Internet. A good example of this approach is to be found in Romania, where it has been necessary over a two-year period to retrain the entire judiciary in four new Codes: the Civil Code, the Civil Procedure Code, the Criminal Code, and the Criminal Procedure Code.¹⁸ This approach began in 2011 with the creation by the Romanian training body, the National Institute for the Magistracy (NIM), of a continuous training programme. This major training challenge had to be organised in such a way as to follow a logical order, via a structured training strategy with clear steps and stages.

Joint Delivery of Training Programmes with External Parties

There are some areas of expertise that are closely connected with practical issues in the daily work of judges and prosecutors and which are not best presented by legal practitioners. Such areas include forensic sciences and communication skills. Forensic professionals may be better placed to teach topics related to their domain. Expanding on this idea, some training institutions presented their experiences of collaboration with external partners, for example, the local Opera House (Portugal)¹⁹ or Institute of Forensic Research (Poland).²⁰

¹⁷ This may well be connected to the fact that the senior courthouse judge in France is also the court's chief executive officer, with all the associated management roles and powers over the court administrators.

¹⁸ Fact Sheet 18.

¹⁹ Fact Sheet 19.

3. Innovative Training Methodologies

Making Use of Modern Technology-based Tools for Training

The use of online training, or e-Learning, is becoming increasingly important to the development of judicial training in Europe. The study identified an increasing number of institutions using e-Learning, blended learning (a combination of distance learning and face-to-face learning), podcasting, video-conferencing, and webinars as a significant enhancement to face-to-face training and, in some cases, as a full alternative.

It is clear that financial constraints are making it more and more difficult in most countries to maintain the customary level of traditional face-to-face training initiatives that involve high travel and accommodation costs. e-Learning is more cost-effective, as it makes it easier for judges to reconcile their professional duties with attendance at training sessions. In addition, the unified design of online training initiatives, if well done, can ensure a high standard of content that repeated local initiatives cannot always ensure. Standardisation also makes it easier to plan e-Learning initiatives.

Bulgaria, the Netherlands, and Spain offer some especially exciting and innovative examples of the use of both full and blended e-Learning.²¹

Among Bulgarian judges and prosecutors, the number of training courses and participants has been growing steadily over the years, and full e-Learning packages now account for about 20 percent of their entire training delivery. Bulgaria's investment in a range of forms of e-Learning was prompted by the country's inaccessible terrain, and by limited resources, but has proved popular in its own right with many judges now preferring this type of training to face-to-face events. For example, one Bulgarian judge who has taken several such e-Learning courses reported as follows:²²

I took part in e-Learning, once on the topic of Waste Management, and the next one was about Environment Impact Assessments. Both were very interesting and helpful. With each of them you can learn everything you need to know about the subject without leaving the office. This kind of learning saves time and efforts, and there is another very special benefit—you can directly ask the teacher questions on which you are especially interested and get the most useful answers which are possible in practice. So, in general it is a great idea. I know that many of my colleagues have used such training on various matters that are of interest to them.

The training institutions of the Netherlands and Spain are both strong exponents of the use of blended e-Learning in which face-to-face and e-Learning are seamlessly interwoven. In the Netherlands, a blended course consists of a self-study component followed after a few weeks by face-to-face meeting of a maximum of one

²⁰ Fact Sheet 20.

²¹ Fact Sheets 21.i, 22, and 23.

²² Report 6.2.1.5.

day.²³ The self-study component of the course is accessible via a digital-learning environment. The digital module is made up of several lessons (e.g., preparatory assignments, self-assessment quizzes, short Web lectures with or without self-test questions, materials to read before the face-to-face meeting, and background information materials), and a forum provides the possibility of raising in advance questions that can be answered at the meeting. It also indicates to learners how much time the self-study component should normally take. The group meeting takes place afterward and can be national, regional, or local, or at a specific court or prosecutor's office.

The Spanish Judicial School has developed blended e-Learning courses, particularly in the area of European law.²⁴ This practice was begun in 2004, and different courses have been developed in the areas of cooperation in civil and criminal matters and in competition law. Some of these courses have benefited from EU action grants, which have provided the funds to conduct the courses not only in Spanish but also in English and French and, thus, open them to judges and prosecutors from other EU member states.

In several other training institutions across the EU (for example, Portugal and Romania), extensive use is made of Extranets and discussion forums based in a distance-learning portal, along with the use of online podcasting, video-conferencing and sometimes webinars. Romania, in particular, has invested in a sophisticated e-Learning system as part of a holistic approach, which includes written materials (sent electronically), lectures streamed live over the Web, and live Internet discussions.

The "live case" method is a hybrid between learning from a guest teacher (e.g., a judge at court) and learning from a case study (via a teacher in a training institution). It involves dealing with a case in "real time" by way of a virtual connection, via video-conference, between a training institution and a court during an oral hearing. The team found a well-developed example of this method, which they consider to be an example of a best practice in Spain.²⁵

Special Methodologies Devised to Facilitate Learning in Different Types of Groups

*The snowball technique (UK).*²⁶ This high-energy training technique allows a large number of participants working in a single plenary room to gather together a consensus of ideas on a common strategic theme. It is highly interactive and, on occasion, slightly anarchic. The methodology was designed to enable large groups to distil complex thinking or to collaborate to identify a common set of options or ideas. It has been adopted as a means of consolidating learning or encouraging collaboration in the development of new ideas, thus encouraging creativity and shared learning.

²³ Fact Sheet 23.

²⁴ Fact Sheet 23-i.

²⁵ Fact Sheet 27.

²⁶ Fact Sheet 33.

For the method to work, it is essential that the topics and the outcomes of the exercise are relevant to the group. This way the participants can feel empowered in their role in making the exercise a success. The time required for the exercise will depend on the size of the group and the complexity of the issues.²⁷

Small team work using shared opinion writing, filming, and other interactive feedback (Estonia and UK). In Estonia, a training methodology has been devised that addresses the need for training on judicial opinion writing with individual feedback to the participants.²⁸ It comprises two stages. First, an introductory seminar is held for a relatively small group of participants, led by an experienced judge focusing on the techniques and legal requirements of writing final judicial decisions. Second, each participant is invited to send one reasoned final (delivered) judgment to two readers—other judges or academics with high-level reasoning skills—for their assessment. The assessment is double-blind—the readers do not know whose opinion they are reading, and the author does not know who the readers were when they receive the feedback. The readers' feedback focuses on the legal reasoning and argumentation found in the judgment, not on whether the reader agrees with the final outcome or not.

In the UK, a highly innovative two-day seminar has been created: *The Business of Judging*.²⁹ The seminar is virtually paperless, with practically nothing to read or prepare. For most of the time, the judges work in small groups of six, supervised by an experienced course tutor. This means that the seminar involves 20 percent listening and 80 percent doing.

The seminar comprises four parts. Part one is a module on “Judicial Conduct and Ethics.” In small groups, participants consider and discuss a number of “in-court” and “out-of-court” practical scenarios and how they would deal with them. The scenarios, seven in all, are presented on a DVD, filmed using professional actors. Part two, “Assessing Credibility,” deals with making a decision and giving an oral judgment. In small groups, the judges watch a DVD showing the conflicting evidence of the complainant and the defendant in an employment case based on sexual harassment. It is an invented case acted out by professional actors and advocates. It shows the kind of factual dispute that could arise in any jurisdiction—the employment jurisdiction is

²⁷ As an example, for a group of 24 people, one would start with four groups of 6 participants. The four groups would discuss the topic and identify their thoughts on the subject. After 20-40 minutes (depending on the complexity of the subject), the four groups of 6 join together to form two groups of 12, and they collaborate for 15-30 minutes to share their ideas and come up with a collective view. The final stage sees the two groups of 12 joining together for up to 20 minutes to identify the common themes or a collective set of ideas. The final set of ideas is then reviewed in plenary. All stages of the exercise take place in one large room. Initially, groups sit around tables, or gather around flip charts. As the groups expand, the participants find their own ways of gathering together and collecting their ideas. They are facilitated by one or two people who act as timekeepers and manage the various stages of the exercise. A good facilitator will encourage the group to work collaboratively and will direct the three or four stages of the exercise and keep time. The participants will self-facilitate within their groups.

²⁸ Fact Sheet 32.

²⁹ Fact Sheet 33.

merely the vehicle, and the law is simple. The judges are asked to complete questionnaires indicating the factors that affected their assessment of the witnesses' credibility.

Each judge then gives a short oral judgment lasting about five minutes. This judgment is delivered in the small groups, and there is some time for preparation. Each judgment is filmed on micro-disc, and all or part of the film is played back within the group. Each judge then receives feedback from the course tutor and the other members of the group on his or her "performance," and there is a discussion of the learning points that arise.

Part three, "Managing Judicial Life," deals with judicial stress and how to cope with it. This segment includes a video presentation made by an experienced criminal law judge who suffered a nervous breakdown and fully recovered from it.

Part four is "Dealing with Unexpected and High Conflict Situations in Court." In a small group, each judge conducts a live hearing lasting a few minutes. They will have received a brief summary of the case in advance but do not know what is about to happen. In an attempt to simulate the court or tribunal setting, the case is acted out by a professional advocate and a professional actor. The judge's task is to assess, manage, and solve the problems that unfold before him or her.

The hearing is filmed, and all or part of the film is replayed within the group. The judges receive feedback on their "performance" from the course tutor and the members of the group. There are six scenarios, and each member of the group presides as the judge in a different scenario.

*Using stories to discuss ethical problems (Spain).*³⁰ An interesting practice in Spain also reflects the potential of using video-recording to present realistic problems involving ethical questions using stories of real-life cases. In this practice, video presentations are coupled with the idea of writing short stories.

This activity helps participants to identify for themselves answers that are needed to ethical questions. It is also intended to make them aware of the resources they have already used to engage with ethical choices in their own lives and which can be applied to ethical dilemmas in their judicial activity.

After reading selected short stories giving rise to moral dilemmas, participants are encouraged to ask themselves "What would I have done in this situation?" or "How could the problem have been avoided?" The methodology of the activity is cooperative and participatory. A trainer, a practising judge, and trainee judges are involved in drafting the stories. The stories are deliberately short, but they present complex situations in which the relationship between an individual and society at large is at stake. Importantly, the revealed scenarios are not covered by any law. The activity is performed by small groups of six to eight participants supervised by an experienced trainer.

³⁰ Fact Sheet 34.

*Close monitoring of communication skills (Estonia and Germany).*³¹ In Estonia, a training methodology has been developed to train judges in communication and hearing-management skills. The training consists of three stages: an introductory seminar, one-to-one feedback sessions, and a follow-up seminar. The number of participants is usually five, and the trainer group consists of a communication specialist and a specialist on procedural law.

At the introductory seminar, the participants discuss effective communication and the hearing-management strategies that they use. Each participant is then visited by a trainer, who observes and videotapes a court hearing conducted by the participant and gives immediate feedback. Before the follow-up seminar, the video-recordings are made available to the rest of the training group to allow them to learn best practices from their fellow judges. At the follow-up seminar, the participants review the presentations and discuss all the observations and ways of incorporating them into improving their communication skills.

The German Judicial Academy offers several annual training events in communication skills for a maximum of 25 attendees (spokespersons of courts and prosecution offices) per course. Customarily, there are at least two media trainers present (often journalists), and the attendees are put into “rotating” thematic working groups of 8-12 persons at maximum (meaning that at the end of the course, everyone will have actively dealt with each topic). Videotaping and individual feedback ensure that both strong and weaker points are revealed for analysis and discussion within the group. Examples of interactive group topics include giving a TV or radio interview; making a TV statement; profiling a new court leader; informing the public while safeguarding data-protection rights; and learning to cope with aggressive interlocutors. The main advantage of this method is that it is practice oriented and provides multi-layer media training focusing on typical media communication patterns, enriched with objective feedback. This allows the attendees to develop their own communication strategy and to have more confidence in front of the camera or in a press conference. It also gives judges the confidence to directly face media professionals in various settings.

4. Developing Training Tools to Favour the Correct Application of EU Law and International Judicial Cooperation

The Report provides a number of impressive examples of best, good, and promising practices in the application of training in EU law, in particular through international judicial cooperation. The following training models were identified as the most successful in this area.

- Using a comprehensive, multifaceted approach for training in EU law and international judicial cooperation, particularly with the addition of

³¹ Fact Sheets 35 and 36.

- e-Learning/blended learning (Netherlands/EURINFRA, Bulgaria, Latvia, Germany, Croatia, Italy, Romania/EUROQUOD, Poland).³²
- Combining training on EU law/international judicial cooperation with legal-language training (Spain).³³
 - Joint training of judges and prosecutors from neighbouring countries/regions, reflecting the existing “operational cooperation” (Visegrad countries).³⁴
 - “Learning by doing” to increase knowledge and skills on EU law or domestic law of other member states (EJTN).³⁵
 - Developing EU law-training materials at the pan-European level for subsequent incorporation at the national level (Germany, ERA).³⁶
 - Ensuring visibility of EU law content of domestic law (Netherlands).³⁷

5. Assessment of Participants’ Performance in Training/Effect of the Training Activities.

There are several models for measuring the effect of training activities. Perhaps the most popular is the training evaluation model developed by Donald Kirkpatrick.³⁸ He divides training evaluation into four graduated levels that essentially measure:

- **Reaction of trainees**—what they thought and felt about the training.
- **Learning**—the resulting increase in knowledge or capability.
- **Behaviour**—extent of behaviour and capability improvement and implementation/application.
- **Results**—the effects on the business or environment resulting from the trainee’s performance.

The Report identified some interesting approaches to course evaluation.

In Belgium, the Judicial Training Institute (JTI) appoints a rapporteur among the participants at a training event, especially in long (several-day) training sessions with several trainers and a large number of participants.³⁹ The task of the rapporteur is to summarise participants’ opinions on the content and quality of the training session and to prepare a draft report. At the end of the training session, the draft report is submitted to the participants for approval and then sent to JTI. The experts considered this

³² Report 7.3.1.1- 7.3.1.15.

³³ Fact Sheet 39.

³⁴ Fact Sheet 39-i.

³⁵ Fact Sheet 40.

³⁶ Fact Sheets 42 and 43.

³⁷ Fact Sheet 44.

³⁸ James D. Kirkpatrick and Donald L. Kirkpatrick, *Implementing the Four Levels: A Practical Guide for Effective Evaluation of Training Programs* (Oakland, CA: Berrett-Koehler Publishers, 2007).

³⁹ Fact Sheet 45.

to be an example of a best practice on how to receive summarised feedback information from participants about the quality of the training in real time and to enable them to formulate suggestions on how to improve it.

In the Netherlands, the Training Centre for the Judiciary (SSR) requires participants in the two-year judicial leadership programme to make a final presentation, including policy advice, to the Council of the Judiciary that commissioned the training programme.⁴⁰ In this presentation they have to “illustrate and demonstrate” what they have learned during the course. The delivery of certificates of achievement is conducted by the participants themselves, accompanied by a short speech about the performance and the progress of the others. Since this method is relatively recent and is applied only for one particular training programme it was considered by the experts to be, at present, an example of a promising practice.

In their responses to the questionnaire, only a few of the judicial-training institutions referred to evaluation tools and methods that entirely or partially cover Kirkpatrick’s levels 3 and 4 (behaviour and results). In Germany the Judicial Academy and some of the Länder (provinces) have recently used long-term success questionnaires (follow-up questionnaires) to assess the long-term learning success, and possible behaviour changes, of participants toward training, together with any positive results these changes might have for the respective courts and prosecution offices.⁴¹ Some German provinces have developed specific questionnaires that are handed out to participants midway through the training year, and which ask concrete questions on the long-lasting effect of the previous modules held three to six months previously. Similar questionnaires are under development for national training.

The Academy of European Law (ERA) has introduced an evaluation and impact assessment system of training that was developed for the workshops implementing training modules in the area of EU family law for the European Commission.⁴² Before each workshop was designed, an initial needs-assessment questionnaire was sent, together with the registration form, to interested participants who were requested to provide an overview of their professional background, their experience in the training topic, and their motivation for taking part in the training. This approach enables a more precise selection of applicants for the training event and a clearer focus on their real professional needs.

A twofold process is used to assess the workshops efficiently. All participants are asked to complete a detailed evaluation questionnaire immediately after the end of the workshop, focusing on the quality of the workshop itself. Questions on the seminar content and methodology, the training materials provided, and the quality of the trainers’ contributions are also included in these evaluation forms. Besides this immediate

⁴⁰ Fact Sheet 46.

⁴¹ Fact Sheet 47

⁴² Fact Sheet 48

feedback, a midterm evaluation with an assessment of the results and impact of the workshop in the longer term is sent to participants. By using various incentives, an average response rate of 90 percent for the immediate evaluation and 50 percent for the midterm evaluation have been achieved. This combined evaluation method generally covers Kirkpatrick's levels 1, 2, and 3 and is also a good example of the interconnection between a training-needs assessment and subsequent training evaluation. For these reasons the experts considered this as a best practice.

The European Centre for Judges and Lawyers of the European Institute for Public Administration (EIPA) has also introduced a post-training evaluation, in addition to the standard Kirkpatrick levels 1 and 2 evaluation.⁴³ Its objective is threefold: to assess the extent to which participants had the opportunity to use the knowledge acquired during the training event; to assess the extent to which the acquired knowledge thereafter helped participants to perform their work more efficiently; and to assess whether, in hindsight, the training event could be improved.

The post-training evaluation normally takes place two to four months after the training event and is mostly carried out via a Web-based survey tool. Where the number of participants is relatively low, telephone interviews are used instead of questionnaires to achieve a more in-depth exchange.

In addition to its primary reason—to control and improve the quality of training—this method is also used to identify current and potential future training needs and to develop new training services.

Since the described evaluation method generally covers Kirkpatrick's level 3 and is also a good example of the interconnection between training-needs assessment and the evaluation of training, it was considered to be an example of a best practice.

SOME FURTHER MISCELLANEOUS EXAMPLES OF PARTICULAR INNOVATION IN JUDICIAL TRAINING

There were many further examples of innovation in judicial training that emerged via this Report from which we can learn a great deal. Here are but a few.

- In both Italy and France, when judges are first appointed they spend some time in seminars with prison governors and senior police officers and are offered placements in organisations like the national bank and big industries, so that they can better understand how society operates at a high level. In France, judges can volunteer to spend time in a prison.
- A particularly interesting example of role-play training is undertaken jointly by the German and Turkish judiciary (there is a large Turkish population in Germany) to understand cultural differences and develop a more effective approach to domestic violence cases.

⁴³ Fact Sheet 49.

- In Hungary, role-play exercises have been developed lasting five days, where every trainee judge plays every role, from defence to judge to prosecutor, to help them understand every aspect of the courtroom.
- Judges in Portugal are given training on how to improve their voice projection and presence in the courtroom by spending time with the singers and actors of the Opera House in Lisbon.
- In Spain, trainee judges work with a serving judge on a live case, shadowing the judge and studying the papers, the prosecution documents, and so on. When the judge delivers his or her decision, the trainee judge simultaneously delivers his or her own decision in the training college, which is followed by seminar involving all the case professionals (including the trial judge) to dissect the trainee's performance, and give feedback.
- In France, family judges are trained in working with children, including sessions with a senior judge and a psychologist on how to ask questions, how to know when a child has had enough, and so on. Sessions are filmed and reviewed to give the judges a chance to assess their performance and further develop their skills in working with children.

GENERAL CONCLUSIONS AND SPECIFIC RECOMMENDATIONS OF THE STUDY

The general conclusion of the study was that notwithstanding the severe financial crises and budgetary restraints currently affecting all the judicial-training institutions operating in the European Union, training for judges and prosecutors is generally in a healthy state. Although there are pockets of the European Union where (for whatever reason) no particular examples of best practices were offered, best, good, and promising practices are widespread across most of Europe and are almost all capable of transfer, with adaptation across national frontiers to other jurisdictions.

The experts also concluded that their *Training Guidance Framework* provides an effective source of guidance as to the broad range of activities that should be contained in a national judicial-training programme for judges and prosecutors. At the same time, the framework should be subject to regular scrutiny and, where necessary, refined and updated to reflect developments in judicial-training needs and requirements.

The Report's specific conclusions and recommendations are as follows.

1. Mixed Professional Training

The experts concluded that most of the best contemporary judicial-training practices are eclectic in the range of professional inputs they include in their training delivery. This reinforces the fact that judging does not take place in a vacuum within the ivory towers of the court or hearing room. The best judicial-training systems are run by judges who understand the economic, social, and moral complexities of the world in which their adjudications take place. The best training practices provide judges with

the oxygen of engagement with the wider society through trainers, placements, and so forth, to fuel this understanding. The study, therefore, recommended that judicial-training programmes should include sufficient opportunities for common activities to take place between judges and prosecutors and a range of other professionals, both as trainers and participants. At the same time it was accepted that training judges, prosecutors, and lawyers together may be controversial in some countries in relation to some topics.

2. Active Participation of Trainees

The study was clear that the most effective training is that which engages the participants directly in the process. The best training is interactive. Judges generally learn best by doing. The Report highlighted a wide range of inspiring and creative methods that have been devised and constantly refreshed by resourceful training design and delivery, including face-to-face and distance-learning techniques. Judicial training is increasingly oriented to the practicalities of judging by the use of case studies, mock trials, and simulations as a central part of training activities. But there is also an increasing focus on personalised training and learning by doing, including the use of video to film the performance of judges and prosecutors and to provide feedback.

In light of this conclusion, the study recommended that judicial-training programmes should ensure the active participation of judges and prosecutors in the bulk of their training activities. It also stressed that the environment in which participative training for judges and prosecutors takes place should be made sufficiently safe and secure to enable participants to exchange views and experiences through free expression and to learn from one another, without external monitoring or interference.

3. The Increasing Importance of Judicial Skills Training

The emergence across Europe of a greater interest in training in judicial skills and judgecraft (as compared to substantive laws and procedures) is significant and likely to become of greater importance in the coming years. This area of training is particularly well-suited to crossing national boundaries. The study, therefore, recommended that, in recognition of the developing importance of this topic, the European Commission should support transnational training in judicial skills and judgecraft as much as possible in line with its competences.⁴⁴

4. Mixed Media Training

The study found that the use of multifaceted training methods that integrate a wide variety of training tools into one programme is on the increase, and concluded that

⁴⁴ The Commission's competence in relation to judicial training is necessarily limited to providing "support" and does not extend to the provision of actual training (Articles 81 II h, 82 I c TFEU).

this method provides the best long-term framework for training judges in the modern world. In the multifaceted approach, electronic media and information technology play an important role. The Internet, Moodle platforms, and e-Learning are used in a number of best, good, and promising practices. These tools seem to be particularly effective in transnational training activities. By using these tools, it is possible to tap rapidly into a wide range of sources that also provide a cost-effective way of organising and using cross-border contacts to disseminate and provide access to materials and information. The study, therefore, recommended that judicial training institutions should prioritise making optimum use of new technologies, taking particular note of the best-practice examples that emerge from the study. They also urged judicial training institutions to take maximum advantage of the opportunities for cross-border collaboration in developing these new methodologies.

5. Training Needs Assessment and Post-Training Evaluation

The study identified the need for a closer interrelationship between the assessment of training needs and the evaluation of training activities. Most judicial-training institutions use standard feedback forms after each training event to test the satisfaction and new knowledge/know-how of participants. However, very few judicial-training institutions have introduced or are planning to introduce evaluation systems and methods that assess how much of the new knowledge/know-how acquired throughout the training is used by judges in the longer term, or how it impacts upon the performance of the judicial system more generally, using the Kirkpatrick model.⁴⁵ Some good practices were, however, identified. The Report concluded that the process of introducing long-term evaluation by judicial-training institutions should be encouraged and supported, together with mechanisms for the exchange of best, good, and promising practices.

Specifically, the study recommended that the process of introducing long-term evaluation in judicial-training institutions (Kirkpatrick 3 and 4) is to be encouraged and supported, together with mechanisms for cross-border exchange of information on practices.

6. Integrated Training in European Union Law and Procedure

As the joint sponsors of the study, the European Parliament and European Commission were particularly interested in the state of training of judges and prosecutors in European law and procedure. The study revealed that more and more judicial-training institutions are integrating training in EU law into their core national programmes, and noted that judicial training in EU law and procedure is most effective when it is practice oriented. Also, cooperation between judicial-training institutions in this sphere appears to be on the increase.

⁴⁵ See Kirkpatrick and Kirkpatrick, *supra* n. 38

There was clear evidence that training in EU law can be made more effective when embedded in a multifaceted approach consisting of training activities, with access to information and networking opportunities locally (through EU contact points), nationally (using colleagues with expertise in EU law), and at the European level. Training activities on EU law should, wherever possible, be integrated into training activities related to national law, rather than via separate events. EU law-based training activities should ideally be offered as part of comprehensive programmes, not as one-off events, and should be made relevant to the daily work practice of judges and prosecutors. Practice-oriented and active forms of training, using real and fictitious cases, are the most effective. Combining foreign (legal) language training and training on EU law has also proven to be an effective approach to improve the required language skills.

The study duly recommended that, in recognition of the ever-increasing amount and importance of EU law, judicial-training institutions should continue to adapt their training programmes, activities, and methodologies to the European environment. They also urged that exchanges between members of the judiciary and between those involved in the design and delivery of EU law training should be encouraged as an important source of information and inspiration and should be actively facilitated. When judicial training institutions plan their training programmes in EU law, they should take particular account of the need for programmes to be integrated in national law training and practice oriented, and in recognition of its central importance, the European Commission should encourage transnational training in EU law as a core priority.

7. The Use of Training Consortia that Cross National Boundaries

The study found much merit and value in approaching judicial training on some issues via consortia that cross national boundaries. Consequently, the experts recommended that judicial-training institutions should make maximum use of the benefits of structures and mechanisms in place to design and deliver cross-border training programmes and other initiatives.

CONCLUSIONS

The Report was launched by the European Commission in July 2014 at a major two-day workshop held in Brussels.⁴⁶ Since its launch, its publication has provoked considerable interest and is already beginning to shape the future direction of some of the

⁴⁶ *Supra* n. 2.

EJTN programmes.⁴⁷ The Commission has made available up to 5 million euros of action grants to enable European training institutions to build upon these practices.⁴⁸ The Report provides a wide range of examples of imaginative and innovative approaches to judicial training across the European Union. There is much in this Report that will be of interest to judicial training institutions the world over.

⁴⁷ The Annual Meeting of the Directors of EU Judicial Training Institutions organised by EJTN in Brussels on 11 and 12 December 2014 devoted its entire agenda to a discussion of ways of making best use of the findings of the Report.

⁴⁸ See http://ec.europa.eu/justice/grants1/calls/just_2014_jtra_ag_ejtr_en.htm.

CURRENT DEVELOPMENTS IN JUDICIAL TRAINING METHODOLOGY IN EUROPE—LOOKING FOR GOOD PRACTICES

BY OTILIA PACURARI, JORMA HIRVONEN, AND RAINER HORNING*

THE JUDICIAL TRAINING LANDSCAPE IN EUROPE

Historic Background

Due to their multifaceted history, Europe's 50 states¹ have largely diverging judicial systems² with very different traditions and concepts. This finding is also valid for the 28 member states of the European Union, the national judicial-training institutions of which are united under the roof of the European Judicial Training Network (EJTN).³ There are the countries with a common-law tradition where judges are appointed on merit after having had a successful career as a private lawyer.⁴ Then there are the western and northern Continental European countries and Greece (the "former 15" of the European Union), which basically have career-judge systems with post-university initial training phases and, mostly, have a concept of the judiciary which comprises the court system and the prosecution service.⁵ In most of these countries, it is possible, or even wished, to switch from a judge's to a prosecutor's post and vice versa.⁶ A third major group is composed of the Eastern European reformist countries that were once under the influence of the former Soviet Union. Though the developments since 1990 are not uniform, it is nevertheless possible to state that one common feature of the court systems in these countries is the existence of a high judicial council elected by

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¹ This does not include six states that are only partially recognized.

² Without meaning prejudice to common-law traditions, the terms "judicial system" and "judiciary" are used, for the purpose of this article, in their Continental European understanding as comprising the courts of law and the prosecution service.

³ For details, see *infra*, especially n. 13 and 14.

⁴ These are England and Wales, Scotland, Northern Ireland, the Republic of Ireland, Malta, and Cyprus.

⁵ In France and in Italy, the equivalent terms of judiciary are *magistrature* and *magistratura*, which explicitly comprise judges and prosecutors. These are, indeed, all *magistrats/magistrati*.

⁶ This second category can be further subdivided into countries with a Romanic legal tradition, countries with a Germanic legal tradition, and the Scandinavian countries.

peers with important prerogatives concerning the appointment, the promotion, and the disciplinary sanctioning of judges. The prosecution service in these countries has traditionally had a supervisory and inspection role going far beyond the mere prosecution of criminal offences.

Despite all these different institutional and organizational approaches, and despite important divergences in the respective legal concepts that subsist in spite of the unifying tendencies of European Union law, the relevant stakeholders in judicial training throughout Europe share the view that the strategic and methodological challenges in all their countries are very comparable, which makes cross-border networking all the more interesting. Nevertheless, the way to this insight in Europe was long and sometimes erratic.

From National Training Institutions towards Sustainable Networking on the European Level

All by not forgetting the Academy of Plato, the development of Roman law, and the scientific legal work in famous European universities during many centuries, we can say that judicial training in its proper sense began in Europe about 50 or 60 years ago. The first step was the foundation of judicial schools in some countries⁷ and the beginning of in-service training programmes for their judges and prosecutors. Slowly, more and more national training institutions arose in Europe, some in the form of judicial academies.

In the authors' three countries, which might exemplify typical paths, the development towards efficient training structures was as follows.

In Germany, the federal states, which are responsible for the organization of judicial administration,⁸ began to organize training for acting judges and prosecutors in the 1950s. First attempts to organize nationwide judicial training were made in the 1960s with the so-called Flying Judicial Academy with varying seats. In 1973 the federation and the then 11 federal states founded the German Judicial Academy (GJA) with a permanent seat in Trier. The academy would double its size after the German reunification: Wustrau in the east became the academy's second conference site in 1993. It now has 17 stakeholders: the federation and 16 federal states.

In Romania, in communist times until the Revolution in 1989-90, judicial training was organized by the Ministry of Justice. In 1992 the National Institute of Magistracy (NIM) seated in Bucharest was founded as an autonomous public-law institution under the auspices of the Superior Council of Magistracy (SCM). The first main focus was on the initial training of future judges and prosecutors, though initial training became compulsory only in 1997. Today, NIM also organizes a wide range of in-service training for acting judges and prosecutors.

⁷ The oldest one is the French National School for the Judiciary (ENM) in Bordeaux and Paris, which was founded in 1958. The Dutch Training and Study Centre for the Judiciary (SSR), today seated in Utrecht, followed in 1960.

⁸ Except for the last appeal instance at the federal level.

In Finland, judicial training was introduced at the beginning of the 1970s. In-service training was, and still is, organized directly by the Training Unit within the Finnish Ministry of Justice in Helsinki, as far as acting judges are concerned, and by the Office of the Prosecutor General in cooperation with the Ministry of Justice, as far as acting prosecutors are concerned.

Once the initial organizational issues were settled, the European countries⁹ slowly began developing training in its more functional form, at the beginning each one on its specific domestic paths.¹⁰ Then, in view of the rapid development of European law, the 1980s and 1990s saw the emergence of transnational “commercial”—i.e., pay for training—institutions, such as the European Institute of Public Administration (EIPA) seated in Maastricht (1981)¹¹ and the European Law Academy (ERA) seated in Trier (1992).

However, this development still did not provide yet for proper cross-border networking in the field of judicial training. At the same time, the diversity of Europe’s judicial systems, on the one hand, and a more and more conscious aim at unity and cooperation, on the other, made the naissance of networks of judicial-training institutions in Europe a logical next step: The oldest regional cooperation within the Training Network for Judges in Scandinavian countries (SEND) was soon followed by the creation of Council of Europe’s Lisbon Network for the Exchange of Information between Persons and Entities Responsible for the Training of Judges and Public Prosecutors in 1995,¹² and by the foundation of the already mentioned European Judicial Training Network (EJTN) in 2000.¹³ The EJTN, in particular, has turned out to be a rapidly

⁹ This only relates to Europe outside the Warsaw Pact.

¹⁰ In Finland, for example, at the beginning of the 1970s, the Ministry of Justice’s strategy was just to maintain and to develop the existing level of knowledge and skills of the judges. The challenge was also to make the judges have a positive attitude towards training. Later, the training organisers proceeded more towards in-depth trainings and more specific topics. At the same time, they implemented a discussion culture they are understandably proud of and which has been an important cornerstone on the path towards interactive training (see also *infra* n. 19, 21, and 41). To give another example, the training policies of the German Judicial Academy began to change considerably at the beginning of the 1990s: A shift away from mere legal conferences towards multidisciplinary, behavioural, and leadership and management trainings became more and more noticeable.

¹¹ EIPA has an antenna in Luxembourg: the European Centre for Judges and Lawyers.

¹² The fall of the Soviet Union brought the new, western-oriented democracies in eastern and southeastern Europe under the beneficial influence of the Council of Europe, which helped to implement new rule-of-law structures. The Lisbon Network was created to support the development of judicial training in all member states of the Council of Europe. It defines its duty as follows: “The Lisbon Network aims to promote the European cooperation in the field of training judges and prosecutors.” It also supports the exchange of information between the persons and bodies in charge of the training of judges and prosecutors. The main activities of the Network are plenary meetings for all its members, meetings of the directors of the domestic judicial-training institutions, cooperation with European organizations, activation of joint activities between member states and judicial-training institutions, and implementation of a training website. The activities of the Lisbon Network were integrated into Council of Europe’s Commission for the Efficiency of Justice (CEPEJ) activities in January 2011.

¹³ The EJTN seated in Brussels became a legal entity—a not-for-profit association under Belgian law—in 2003. According to the official website, www.ejtn.eu, EJTN “represents the interests of over 160,000 European judges, prosecutors and judicial trainers across Europe.” It currently has 34 members—the Academy of European Law

growing central platform for common judicial training in the European Union, fostering the promotion of training and the exchange of knowledge among the judiciaries in Europe, creating a common legal and judicial European culture. Thus, it contributes to the building of a European area of freedom and justice by enhancing the understanding, confidence, mutual trust, and willingness to cooperate between judges and prosecutors within EU countries.¹⁴

The importance of the training of judges has been highlighted in a series of conventions, charters, and statutes about judicial independence and the role of judges, e.g., the UN Basic Principles on the Independence of the Judiciary, the Universal Charter of the Judge, the European Charter on the Statute for Judges, and Recommendation R(94) 12 on the Independence, Efficiency and Role of Judges adopted by the Council of Europe's Committee of Ministers. Many other such instruments have been created by sub-organisations of the Council of Europe.

Based on the named networks and instruments, judicial training in Europe has gone through an important development in the last years. The cornerstone has been the Lisbon Treaty from 2009 as a new basic agreement for the European Union. Articles 81 and 82 of the Treaty on the Functioning of the European Union now explicitly mention "support for the training of the judiciary and of judicial staff" in civil and criminal matters as a task of the European Union. So, there is for the first time a legal basis for carrying out judicial training in the European Union.

The European Council's 2010 Stockholm Programme,¹⁵ the European Commission's 2011 *Communication on the Action Plan implementing the Stockholm*

(ERA) in Trier as a transnational partner, and in principle one national training institution per member state, but two from Spain (which has different schools for judges and for prosecutors) and three from the United Kingdom (the Judicial College for England and Wales, the Judicial Institute for Scotland, and the Judicial Studies Board for Northern Ireland). In addition, there are several observers from member states (e.g., training institutions for prosecutors from Estonia and Lithuania), as well as from potential future member states (Bosnia and Hercegovina, Macedonia, Montenegro, Norway, Serbia, Switzerland, and Turkey), and from other European institutions (e.g., Council of Europe's Lisbon Network of the heads of the national judicial-training institutions from the 47 member states; see above n. 12). The main organs of the EJTN are the General Assembly, which convenes once per year; the Steering Committee, composed of nine members who meet several times a year to implement the strategic decisions taken by the General Assembly, and a Secretary General who is in charge of the day-to-day administration. The EJTN is nearly exclusively funded by the European Union. Three Working Groups have been created to plan and to implement concrete projects and programmes within their respective fields: Programmes (which develops specific training curricula geared towards judges and prosecutors from all the member states), Exchanges (which concerns individual or group visits by judges, prosecutors, young and trainee judges and prosecutors, and trainers in other member states), and Judicial Training Methods.

¹⁴ The EJTN has recently entered into formal cooperation with a variety of other European networks, which can only be touched upon in this article: the Network of the High Councils of the Judiciary, the European Network of Supreme Courts, the European Network of Supreme Administrative Courts and State Councils, the European Judicial Network in Civil and Commercial Matters, and the Consultative Council of European Judges for criminal matters, just to name a few.

¹⁵ European Council, *The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens* (Brussels: European Council, 2010).

Programme,¹⁶ and the European Parliament's 2011 *Opinion on Judicial Training in the European Union Member States*¹⁷ all share the very ambitious objective to develop a genuine European judicial culture and to train half of Europe's about 1.4 million judges, prosecutors, judicial staff, and other legal practitioners in various fields of European law by 2020. But the relevant question is, of course, whether these goals match with the realities, i.e., with the actual "state of play" of judicial training in Europe. It is also to be noted that high participation numbers alone are not a goal; consideration must be given to the quality of judicial training.

Topical Challenges for Judicial Training in Europe

Fifty or 60 years of judicial training in Europe, and some 20 years of more and more intense cross-border networking, still have not eradicated university-style lectures without interaction, with the training's participants being reduced to mere listeners. However, it is universally acknowledged that, first, the objective of judicial training is much more than just the enhancement of legal knowledge (which can be also acquired by self-reading) and that, second, just listening to lectures does not trigger changes in a judge's or a prosecutor's professional behaviour.

It is also self-evident that a common European judicial culture will not emerge from the mere transfer of knowledge on European law, be it at the domestic or at the transnational level. A prerequisite for mutual trust building is that one country's judge or prosecutor believes that his or her colleagues in other member states have the same capacities and skills and share the same values and beliefs. And this has to be triggered, among other ways, by effective and efficient judicial training.

This is, of course, not about making the domestic training institutions carry out identical training formats. The practices adopted in different countries are naturally dependent on the history and on particular developments in those specific countries and their judiciaries. Furthermore, each training institution has developed suitable practices based on its financial resources and on its experience in training. Nevertheless, it is not only possible, but even desirable, to learn from the good, promising, and best practices of other countries, all by keeping in mind that these practices have to be adapted to the operational environment of one's own institution and to the specific judicial setting.

Consequently, the major challenges for European training organizers seem to be:

- to define the main objectives of proper judicial training and to have a common understanding of what they are;
- to take into account the various learning styles of adults and their relevance for the trainers, i.e., for the way training is carried out;

¹⁶ European Commission, *Communication for the Commission to the Council and the European Parliament on "Building Trust in EU-wide Justice: A New Dimension to European Judicial Training"* (Brussels: European Commission, 2011).

¹⁷ European Parliament, Directorate-General for Internal Affairs, *Opinion on Judicial Training in the European Union Member States* (Brussels: European Parliament, 2011).

- to ensure a coherent training process from the needs assessment and the fixing of training objectives, to the actual planning phase and the carrying out of the training event, through to proper post-event evaluation and assessment;
- to identify suitable, i.e., participatory judicial training methods, for different types of training events; and
- to identify the technical as well as behavioural qualities and capacities a good judicial trainer should have and to ensure that these requirements are met.¹⁸

WHAT IS GOOD JUDICIAL TRAINING ABOUT?

Carrying out judicial training is not a goal in itself. An increasing workload; numerous legal reforms with an ever-shorter half-life period; the naissance of technically and socially complex new phenomena, such as the Internet and social media; the shift away from judges and prosecutors as mere law appliers towards judges and prosecutors as managers within their organizations;¹⁹ and, last but not least, increasing expectations of civil society towards a performing judiciary, make a comprehensive concept of “life-long learning” indispensable for judges and prosecutors.

Capacities and Skills in Focus

These challenges show that judicial training must go way beyond the procurement of (legal) knowledge. Rather, it should be focused on sustainably improving the attendees’ professional capacities and skills, and thus enhancing personal as well as institutional changes. That means that learning objectives should be targeted to each judge’s and each prosecutor’s personal and professional development needs and, consequently, that judicial training should be integrated, from a human-resources-management perspective, into an overall strategy of personnel planning.²⁰ Good training is, indeed, an important facilitator in the field of talent management: A judge’s or a prosecutor’s willingness to actively deliver training and to be trained has been identified in many

¹⁸ The current European practical answers to these five challenges will be comprehensively illustrated. As it is about commonly shared concepts and values, references to specific national solutions in the main text will be the exception. But good domestic practices in the various fields—mostly from the three authors’ countries—will be exemplified in footnotes, where appropriate.

¹⁹ In Finland, for example, particularly important societal changes triggered comprehensive judicial-training programmes (i.e., properly timed training for a huge number of people) in the 1990s when a) Finland became a member of the European Union, b) important legislative reforms in the IT sector came into force, and c) major organizational reforms in the courts were to take place (for the latter see also *infra* on participatory training methods, and especially n. 41). In the course of Romania’s accession to the EU on 1 January 2007, the National Institute of Magistracy (NIM) carried out a very important series of training events on the newly applicable law and on professional requirements related to the new situation (including many e-learning tools). European law still plays a major role in NIM’s training concepts. NIM is, for example, a regular partner in cooperation projects of domestic training institutions striving for an EU grant to organize a series of training events, particularly on topical subjects of EU law.

²⁰ That is why EJTN’s Judicial Training Methods Working Group is explicitly dealing with the relations between career development and judicial training.

European countries as an important factor for promotion or advancement in the judiciary.²¹

Tailor-made Training Formats

Needs-oriented judicial training is also tailor-made to meet the specific level of knowledge, capacities, and skills of the individual judge or prosecutor. A prerequisite of “life-long learning” is offering various training formats from induction training for beginners, to training geared to the various specializations within the judiciary, through to leadership and management training for senior court or prosecution service officials. At the same time, from the perspective of court or prosecution service competence management, tailor-made training should also be geared towards the institutional needs of courts or prosecution offices. In other words, good judicial training focuses, indeed, both on individual and on institutional needs.

In addition, the named technical and societal developments make a multidisciplinary and interdisciplinary approach indispensable. Judges and prosecutors should be made familiar—in a hands-on, comprehensible, and sustainable way—with other disciplines that are important for their decision making and decision taking.²²

Training formats matching widespread expectations inside the judiciary should also vary as to the learning settings. Residential training events, such as conferences, symposia, seminars, and workshops, seem to be the most well-known and the most common format, but learning and training forms using exclusively or partially electronic tools (e-Learning, blended learning, webinars, etc.),²³ as well as more informal learning at the workplace through tutors, mentors, supervision, or intervision,²⁴ have recently become more and more popular in Europe.

²¹ In many of the 16 German federal states, for example, the ministries of justice do explicitly mention, in their strategic personnel management and development plans for the courts and for the prosecution service, the willingness to actively deliver training and to be trained as an important criterion for decisions on promotion or advancement in open-competition procedures. In addition to this, in some federal states strategic personnel management and development plans call for regular personal and career development talks between the court or prosecution office leader (or delegate) and each individual judge or prosecutor. One important aspect of these talks should always be to develop a tailor-made, individual training concept for the concerned judge or prosecutor (and to check if the training plan developed in the last talk has been followed). The Finnish judiciary has also implemented a comparable system of regular institutionalized personal development talks about goal setting, competence, and career development between court leaders and “their” judges as part of a strategic personnel management plan.

²² For example, in 2002 the Managing Board of the German Judicial Academy (the so-called Programming Conference) adopted a resolution that 30 percent of the training events should be multidisciplinary/interdisciplinary. Such training courses deal with the interfaces between the law and the judiciary, on the one hand, and foreign disciplines and areas such as medicine, psychiatry, psychology, forensic science, philosophy, sports, art, Internet, religion, ethics, bookkeeping, political extremism, or project management, on the other.

²³ The Romanian National Institute for Magistracy (NIM), for example, systematically videotapes training activities. Sometimes, there are live broadcasts on NIM’s website www.inm-lex.ro, but mostly the recording is made available on the named website after the training event. Oral presentations are also transcribed and put into electronic handbooks. All this allows NIM to reach out to as many judges and prosecutors as possible.

²⁴ In 2014 the then EJTJN Training the Trainers Sub-Working Group implemented a series of seminars for trainers and training organizers from all member states on the different forms of informal learning at the workplace. It

Promoting Interaction as Part of a Comprehensive Training Process

Finally, if good judicial training should be—independent of the concrete format—focused on sustainably improving the attendees' professional capacities and skills, and thus enhancing personal as well as institutional changes, it necessarily has to have an entirely interactive and thus participatory approach, which forbids participants' groups from becoming too large. This preeminence of interactivity is not only a prerequisite because of the particular, and very heterogeneous, ways adults learn according to findings of educational scientists. It is also a consequence of the specific learning and training needs expressed by judges and prosecutors themselves, when asked properly.

So the true “training art” is to assess the needs properly, to set the learning goals accordingly, to plan a corresponding training event, and to assess sustainability if the expectations have been met. The quality of trainers, speakers, and lecturers is vital for the success of truly interactive learning. It is, metaphorically speaking, the other side of the coin, or the mirror to the attendees' learning objectives and expectations. Good judicial trainers know the wide range of participatory methods they can effectively and efficiently use in training. At the same time, good judicial trainers will have specific technical and behavioural capacities, which enable them to activate the participants of a training event effortlessly and without artificial—i.e., well-meant, but unwelcomed—incentives. To do so, good judicial trainers must know the different learning styles adults have adopted.

HOW DOES AN ADULT LEARN AND WHAT ARE THE CONSEQUENCES FOR CARRYING OUT JUDICIAL TRAINING?

Judges and prosecutors are, as a rule, rather high-profile individuals with rather high expectations towards in-service training. However, since the 1960s the findings of the educational science of andragogy, as opposed to child-learning-focused pedagogy, have found that the ways adults learn are as valid for judges and prosecutors as for any other adult learner.

These findings lead to double challenges for training organizers and the trainers themselves: First, all adult learners present particular features, which make them genuinely different from child learners and which must be taken into consideration when training is planned and carried out.

Second, independently of these common features, the concrete ways and styles adults learn vary considerably from adult to adult. So, almost necessarily, there will be quite different types of learners even in small training groups, and it is the task of the trainers to activate each and every participant in the best possible way.

was detected that tutoring and mentoring are particularly helpful at an early professional stage, whereas intervention—i.e., peer-to-peer sharing of experiences in a homogeneous group without an external supervisor—is a suitable tool for senior court or prosecution service officials, who might object to the idea that they also need training in the classical sense of the term.

Assumptions on Adult Learning (Adult-Learning Theory)

Based on the scientific and empiric findings of various adult-learning experts, the following assumptions on adult learners can be taken to be widely accepted as common features:²⁵

- adults need to know the reason for learning;
- adults draw upon their experiences to support their learning, and they will reflect on new knowledge on the basis of already acquired values and attitudes;
- adults need to be responsible for their decisions concerning training and to be involved in the planning and in the evaluation;
- the learning readiness of adults is closely related to the assumption of their social roles;
- adults want to apply new knowledge and newly acquired capacities immediately in problem solving on the job;
- adults are motivated for training based on internal reasons;
- adults need refresher training to sustainably internalize newly acquired knowledge; and
- adults only learn properly in a safe and confidential training environment.

So, as opposed to children, adult learners are more self-directed, have a need for direct applicability to their work, and are able to contribute more to collaborative learning through their experience. The practical consequences for training planning are that adults learn by doing in groups of peers (cooperative learning), that hands-on problem-solving should be an important part of training (problem-based learning), and that the training subjects should be of immediate use (situated learning).²⁶

Different Adult-Learning Styles and Their Consequences for Training

Even though all adult learners have, in principle, the aforementioned features in common, their individual learning ways and styles vary. It is a matter of course that all kinds of characters can be found in the judiciary, and that their approaches to learning are quite different. Adult-learning experts have made multiple tries to categorize these learning styles. Three to four main learners' types have been identified, but up to 16 subcategories can be found. This is generally done by the use of distinctive attributes, nouns, or question words.²⁷

²⁵ See for a summary of the findings of adult-learning experts (such as Knowles, Merriam, Caffarella, Garvin, and Yi), Otilia Pacurari, "Adult Learning Styles," European Judicial Training Network, 2014, at http://www.ejtn.eu/PageFiles/6343/Learning_Styles_Adult_Education.pdf. Otilia Pacurari is one of the coauthors of this article and teaches the prerequisites of good judicial training from an educational science standpoint in numerous training-of-trainers seminars, both for the Romanian Institute of Magistracy (NIM) and for the EJTN.

²⁶ See Pacurari, *ibid.*, p. 2. For in-depth explanations on cooperative learning, problem-based learning, and situated learning see J. Yi, "Effective Ways to Foster Learning," *Performance Improvement* 44, no. 1 (2005): 34-38.

²⁷ In an article on current good training practices, there is no room for in-depth and comprehensive explanations on the different theories. It must suffice here to give some chosen examples of particular importance from the

Particularly widespread recognition is being given in Europe to the findings of P. Honey and A. Mumford from the University of Leicester:²⁸ They have identified four main types of adult learners:

- “Activists,” who like to immerse themselves fully and without prejudice in new experiences and challenges, and who can be easily bored by non-advancing, long-term projects. They learn best by experiential group exercises, such as role plays, when given the opportunity to lead once in a while.
- “Reflectors,” who like to stand back from and to give thought to their own experiences, thus considering them from multiple perspectives. Cautious, thoughtful, never anticipating, they are very good listeners and learn best from observation of and reflection on activities, as well as from exchanging views in a very well-structured setting.
- “Theorists,” who like to organize disparate observations and facts into logical and coherent theories. Being keen on fundamental principles, models and systems, their approach to tasks is rational, objective, and disciplined, which might result in intolerance to uncertainty and ambiguity. They learn best through a methodical and structured approach in analytical situations.
- “Pragmatists,” who like to try out ideas, theories, and techniques to see if they work in practice. They strive for proper decision making and problem solving and tend to reject anything without practical implications. They learn best from models they can take immediately away and use, e.g., action plans with definite outcomes.

These four, in part, radically different learning types illustrate quite well how very difficult it is to conceive good and coherent training for even a small group of trainees.

But there are paths towards solutions. Most of the learning style models and theories, also the one by Honey and Mumford illustrated here, are a reaction to D. A. Kolb’s and R. Fry’s Experiential Learning Model.²⁹ This learning model is based on a continuous spiral process, which consists of four basic elements that activate all the named four learning styles: concrete experience—observation and reflection—forming abstract concepts—testing them in new situations. In principle, any adult learner

beginnings of andragogy: The Learning Modalities theory from Barbe, Swassing, and Milone, who distinguish between the “visualizing style,” the “auditory style,” and the “tactile (kinesthetic) style,” was, for example, well-received; see W.B. Barbe, R.H. Swassing, and M.N. Milone, Jr., *Teaching Through Modality Strengths: Concepts and Practices* (Columbus, OH: Zaner-Blosner, 1979). Widespread recognition was also given to B. McCarthy’s “4MAT Model.” She distinguished between four learners’ types: the “What-Type” (analytic thinker), the “How-Type” (commonsense thinker), the “Why-Type” (imaginative thinker), and the “If-Type” (dynamic thinker); see B. McCarthy, *The 4MAT System: Teaching to Learning Styles with Right/Left Mode Techniques* (Barrington, IL: Excel, Inc., 1981, 1987).

²⁸ P. Honey and A. Mumford, *The Manual of Learning Styles* (Berkshire: Maidenhead, 1992).

²⁹ D. A. Kolb, *Experiential Learning* (Englewood Cliffs, NJ: Prentice Hall, 1984). See also, for the roots, D. A. Kolb and R. Fry, “Towards an Applied Theory of Experiential Learning,” in C. Cooper (ed.), *Theories of Group Process* (London: John Wiley, 1975).

can enter the process at any of these elements, and he or she can move a step forward once he or she has processed his or her experience in the previous step.

However, all these findings on andragogy in general and on different learners' types show how challenging it is to carry out proper and effective in-service training for judges or prosecutors. This makes a coherent and well-reflected training-planning process all the more important.

WHAT CONSTITUTES AN EFFICIENT TRAINING-PLANNING PROCESS FROM NEEDS ASSESSMENT TO POST-EVENT EVALUATION?

Most national judicial-training institutions in Europe have a chart model, which illustrates the various steps of the typical cycle of in-service training.³⁰ Even though some of these models are more detailed than others, what they all have in common is that good training planning begins with the proper assessment of learning and training needs within the target group, and that it ends with a thorough and sustainable post-event evaluation and assessment of what has been achieved. The evaluation of the results gives, again, valuable hints on the real training needs of the involved judges or prosecutors.³¹

Needs Assessment

Recurrent methods for the assessment of judges' and prosecutors' training needs are handing-out questionnaires in the framework of a training event and carrying out regular surveys in the courts or in the prosecution service. To the knowledge of the authors, these kinds of targeted questioning are elements of needs assessment in all 28 EJTN member states.³² However, the results can be rather generic and unspecific.

A fine-tuned analysis of learning and training needs, which change considerably when important legislative and societal developments take place, demands more complex and reliable instruments involving judicial administration and senior officials in the courts and in the prosecution service. It can be very fruitful to establish thorough competence profiles for the whole range of jurisdictional and managerial tasks within the judiciary, which elucidate the knowledge, capacities and skills, and experience

³⁰ The Dutch Training and Study Centre for the Judiciary (SSR), for example, uses a 12-step model, which has also served EJTN's former Training the Trainers Sub-Working Group as an illustration for the purposes of its 108-page *Handbook on Judicial Training Methodology in Europe*, which was electronically published in April 2014 (www.ejtn.eu/en/About/Training-the-Trainers/).

³¹ See, in-depth, chapters 2 (needs assessment and its role for curriculum building) and 5 (evaluation landmarks) of EJTN's *Handbook on Judicial Training Methodology in Europe*.

³² Romania has, for example, implemented a well-structured, multilayered needs-assessment system, which combines the information of multiple sources (trainers, courts, prosecution offices, professional judicial associations, other legal professionals, evaluations of former training events, etc.). The cornerstone of the structure is a new online system, which allows the judges and prosecutors to mark topical preferences for the upcoming year, as well as to make entirely new proposals.

required for the respective task.³³ Combined with the numbers of potential trainees in each category, these competence profiles allow a national judicial-training institution to plan training programmes, which should meet the training needs in the given domestic setting.³⁴

The question remains how each individual judge or prosecutor is made aware, if there is a lack of awareness, of his or her specific learning and training needs and the means to satisfy them. In other words, there must be someone who compares the professional's current state of competencies, capacities, and skills with the requirements in the applicable (or potentially applicable) profile. It is essentially the task of the judge's or prosecutor's superior³⁵ to detect and promote the learning and training needs in regular, confidential personal-and-career-development talks.³⁶

The Actual Training Planning

Once the needs are identified, and the learning objectives identified accordingly, the actual planning phase begins. It is the task of the training planner and organizers to identify, together with the actual trainers, the specific training format best adapted to a specific learning goal.

The most important step for the success of the future training event is then the concrete course design. The target group must be defined properly, and the suitable maximum number of participants must be fixed. This has to be done independently of carrying out the event as a residential seminar, as a webinar, or as modular blended learning with residential training phases. Experience shows that making all the attendees actively participate in the training process grows exponentially more difficult when the group size exceeds 25 persons and virtually impossible when it exceeds 40 persons.

³³ The Polish National School for Judiciary and Public Prosecution (KSSiP) has, for example, defined, based on an ample survey carried out in the courts and in the prosecution service, the competence profiles for 25 different affectations of judges and prosecutors from basic to leadership levels. During IOJT's 6th International Conference on the Training of the Judiciary, 3 to 7 November 2013, in Washington, D.C., the then head of KSSiP's International Department, the Honourable Judge Wojciech Postuński, today secretary general of the EJTN, presented the Polish approach in Session 1.7 dedicated to "Curriculum Design and Development." His PowerPoint presentation is accessible via the link <http://www.iojt-dc2013.org/~media/Microsites/Files/IOJT/11042013-Development-Profiles-Competences-Judges.ashx>.

³⁴ This is, of course, the ideal scenario. Presumably, all judicial-training stakeholders throughout the world strive for qualitatively good training for all judges and prosecutors in need. However, there are additional problems, which make planning needs-oriented training a challenge: The needs might be bigger than what can actually be carried out in one operating year. So, the needs will have to be prioritized. In addition, practical difficulties to meet training needs are created by phenomena well-known to all organizers of in-service-training, such as the obligation to guarantee equal treatment and a fair selection process (bigger and smaller courts or prosecution offices, geographical location, age, gender, etc.). It might be difficult, in given cases, to find sufficient well-qualified trainers. This makes the use of judicial-training methods that facilitate the distribution of learning outcomes—in the sense that courts and prosecution offices benefit from an individual judge's or prosecutor's training—all the more important.

³⁵ The superior can be in given cases the court or prosecution office leader and in others the head of a unit, a department, a panel, or a bench.

³⁶ See *supra* n. 21.

As adult learners only feel comfortable and only open themselves for interaction in a welcoming and confidential learning environment, due consideration should be given to the choice of the training venue, which should provide the necessary technical equipment, and to proper accommodations.

However, the most important part of the planning process seems to be the concrete arrangement of the course's content implementing the best possible alternation of participatory methods.

Post-Event Evaluation and Assessment

During the planning process, ample consideration should also be given to effective means and tools for the post-event evaluation and assessment of its success, i.e., if the learning objectives have been attained. In Europe, as in other parts of the world, evaluation and assessment of in-service training is still mostly carried out by questionnaires handed out to the participants during the event and by reports from and interviews with the trainers and the course chairpersons. This, however, corresponds only with Level 1 (Reaction) of Kirkpatrick's Evaluation Model.³⁷ A new Portfolio Group within EJTN's Judicial Training Methods Working Group is currently striving to develop practicably implementable and financeable proposals for the long-term assessment of a training event's success, i.e., of Levels 2 to 4 (Learning; Behaviour Change; Results in the Organization) of Kirkpatrick's model. Ideas go from long-term questionnaires addressed to the former attendees, to the creation of Internet forums for suitable participants' groups, through to the involvement of court and prosecution service senior officials in the assessment of long-term learning and changes in behaviour.

However, the questions raised by this are numerous and complex: Which learning results (from the attendee's perspective) and which training effects (from the institutional perspective) are objectively measurable? Is it, in principle, desirable to assess all measurable training effects? Where are the limits posed by judicial independence or prosecutorial autonomy?

One scenario where long-term assessment seems to be particularly important is a series of trainings dedicated to the implementation of an ample judicial reform: It should be evaluated as to whether new practices have truly been implemented in the courts and prosecution offices and in the daily work of judges and prosecutors. Another issue is whether the reform as a whole has reached its objectives.

Obviously, there is a vast new field to be ploughed here. One thing can nevertheless already be taken for granted: The results of the long-term learning and training assessment will be quite sobering if the training providers do not take into account the findings of andragogy by using the huge variety of modern participatory training methods at their disposal when implementing a specific training course.

³⁷ The model was first published in a series of articles in 1959 in the *Journal of American Society of Training Directors*. An integral publication of Kirkpatrick's decades-long researches was carried out for the first time in 1994 under the title *Evaluating Training Programs: The Four Levels* (San Francisco: Berrett-Koehler).

WHICH KINDS OF PARTICIPATORY METHODS CAN BE EFFICIENTLY USED IN JUDICIAL TRAINING?

Tackling Lectures as the Predominant Method of In-Service Training

As mentioned earlier, the paradigm shift away from “talking heads” could be one of the most important and everlasting challenges for the European judiciaries. The (erroneous) rationale behind this preponderance of lectures has certainly been, and still is, to ensure good-quality training just by the presence of renowned, high-level experts bringing with them lengthy and supportive papers and notes.³⁸ However, it has already been demonstrated that adults do not sustainably learn by just passively listening to another one’s knowledgeable talks.

Consequently, the EJTN detected that judicial-training methodology is a particularly fruitful topic for exchange, cooperation, and development and created in 2008 the Training the Trainers Sub-Working Group,³⁹ which has recently been upgraded in June 2014 to an independent Judicial Training Methods Working Group. In 2008 the then stakeholders decided to start a crusade against the “exclusively training (teaching) form of lecturing,” adopting the leading slogan, “Towards more participatory methods and more activation of participants in the training.”

Pathways towards More Interactivity in Judicial Training Detected by the EJTN and Other European Stakeholders

From 2008 to 2014, the Training the Trainers Sub-Working Group has organized an important number of methodological and highly interactive seminars, with several dozens of workshops specifically geared towards trainers and training organizers, all of them having the purpose to disseminate modern participatory training methods in Europe’s judiciaries from the planning process through to the evaluation and assessment phase. The most important topics were:⁴⁰

- reflecting on modern methods in planning and carrying out training;
- defining competencies of judicial trainers;
- detecting training needs and assessing learning results and training effects;
- planning and carrying out specialized training modules, e.g., in the field of leadership and management training;⁴¹
- planning and carrying out initial training; and

³⁸ Initial training for future judges and prosecutors, which is by nature longer than the habitual in-service training, seems to have been, for a long time, less one-sided concerning methodological choices. In other words, learning-by-doing methods, such as role plays, have a long-standing tradition.

³⁹ Inside the Programmes Working Group.

⁴⁰ For the programme details, see the Sub-Working Group’s 2014 *Handbook on Judicial Training Methodology in Europe* (*supra* n. 30), annexes 1 to 8 (pp. 84-99).

⁴¹ Finland can look back on a 25-year fruitful history of leadership and management training with very good experiences: Based on a comprehensive training programme for the chief judges, which gave them the basic competencies in management and leadership, the Finnish Ministry of Justice decided to implement organizational changes inside the courts by using the chief judges, instead of external trainers, as change agents to prepare,

- learning and training at the workplace: supervision, intervision,⁴² tutors, and mentors in practice.

In addition to this, the EJTN won the so-called LOT 1 of a pilot-project bid launched by the Commission of the European Union on best practices in the training of judges and prosecutors. Based on a thorough survey with answers from nearly all EJTN members, a project group identified 65 promising, good, and best practices, and summarized them in a 246-page report.⁴³ To further disseminate the results of the survey, the European Commission organized a “Workshop on Building upon Good Practices in European Judicial Training,” with nearly 200 judicial and legal training stakeholders from all over Europe, on 26 and 27 June 2014 in Brussels.⁴⁴

Examples of Suitable Participatory Methods in Judicial-Training Settings

As comprehensively summarized in chapter 3 of the *Handbook on Judicial Training Methodology in Europe* published by the EJTN’s Training the Trainers Sub-Working Group in April 2014,⁴⁵ the instruments for a properly interactive approach to judicial training are manifold: Lectures will always be part of residential judicial training. However, they should be short and to the point, held freely, and visually supported.⁴⁶ Lectures should necessarily alternate with other training forms that involve the attendees, such as buzz groups, discussions, facilitated debates, or Q&A sessions.

But the legal and judicial world is also rich with training methods particularly suitable for judges and prosecutors. Group work on case studies allows the attendees to tackle daily legal challenges in a hands-on and close-to-reality way, all by enhancing collegial experience sharing. Videotaped role-play exercises, simulated hearings, and mock trials put judges and prosecutors—who might also switch roles, e.g., being all of a sudden a witness—in unexpected settings and trigger self-reflection on the way the “crisis situation” was handled.⁴⁷

organize, manage, and lead the changes in a hands-on way. This called for an important personal commitment by the chief judges. It also required meetings of the chiefs to coordinate the phases of change, i.e., the future measures to take. The specific train-the-trainers way the training was carried out (also in other reform scenarios, see *supra* n. 19) favoured a reform-long discussion throughout the whole judiciary. The Training Unit in the Ministry of Justice took the responsibility for the training of trainers, led the process, and decided on the two-level training timing. Guided by the experts of the Training Unit, the trainers themselves planned the content and the methodology of the trainings. This allowed for maximum participation in planning and carrying out the training. It also laid the foundation for constructive discussion in the Finnish courts favouring common work during the reforms. Understandably, the Finnish Ministry of Justice is quite proud of its long-standing achievements in management and leadership training in cooperation with the courts, which also includes successful competence management.

⁴² See *supra* n. 24.

⁴³ The report can be found at <http://www.ejtn.eu/en/Resources/Good-judicial-training-practices>, at the bottom of the page. It is also possible to click on each individual promising, good, and best practice.

⁴⁴ The Agenda of the Workshop, as well as nearly all the contributions, can be found at http://ec.europa.eu/justice/events/judicial-training-2014/index_en.htm.

⁴⁵ See *supra* n. 30 and 31.

⁴⁶ It is to be noted that “visual support” does not mean that virtually the whole text of a presentation should be put in small print on dozens of PowerPoint slides and then be read out word by word.

⁴⁷ A good example of the use of simulations is the Second Joint Seminar of the Justice Academy of Turkey and the German Judicial Academy in November 2012 in Ankara. The whole event (for family judges, criminal judges,

Finally, more informal training methods, such as brainstorming and facilitated snowballing, will help to “break the ice,” as they allow the attendees to give short input and to make short comments without formal immediate feedback. At the same time, these methods help, especially at the beginning of a training event, to detect the true learning and training needs of the participants.

However, for all these various training methods to work at their best, the trainers must not only understand their rationale “on paper,” but also be able to implement them efficiently due to their particular technical and behavioural qualities and capacities.

WHAT TECHNICAL AND BEHAVIOURAL QUALITIES AND CAPACITIES SHOULD A GOOD JUDICIAL TRAINER POSSESS?

In all EJTJ member states, important parts of judicial training will see judicial practitioners—judges and prosecutors—as trainers. However, they are seldom naturally born trainers. As already illustrated, the mere fact that someone is a good and renowned legal specialist does not make that person a good trainer,⁴⁸ neither does the fact that he or she is a good orator.

In view of what has been illustrated earlier about adult-learning styles, good training-planning processes, and the proper use of participatory methods, the requirements for the technical and behavioural qualities and capacities of a good trainer are manifold. The former EJTJ Training the Trainers Sub-Working Group, of which all three coauthors were members, has summarized them as follows:

[He or she] must have the methodological, social and psychological competences:

- To interact with judges and prosecutors as capable and self-directed persons;
- To create a pleasant and positive learning environment in which the trainees feel that they are the protagonists;
- To actively involve trainees as much as possible, including the subtle activation of particularly noncommittal or secluded participants;
- To conceive individualized teaching and learning strategies which allow tailor-made training for each and every judge;
- To use an important variety of interactive, practice-oriented and experiential methods and techniques (discussions, buzz groups, simulations, problem-solving activities, or case methods, etc.);

and prosecutors) was focused on two fictitious German-Turkish cross-border cases of domestic violence. Before the actual event, the participants were involved in shaping the cases: They wrote the bills of indictment, the victim’s briefs in the criminal proceedings, and the plaintiff’s and the defendant’s briefs in the divorce and parental custody proceedings. Short topical presentations (of a maximum of 20 minutes) during the seminar were exclusively made by the participants themselves, and the fourth and last day of the seminar was entirely dedicated to four mock trials (Turkish Family Court, German Family Court, Turkish Criminal Court, German Criminal Court), all the actors being participants. One Turkish participant said in the feedback session that he had “learned more on German family and criminal proceedings than would have been possible in three weeks of theoretical lectures.” Another good practice for the use of simulations is mediation training in Finland: It is entirely behavioural and focuses on role-play exercises, discussions, etc.

⁴⁸ See above concerning the use of participatory methods in judicial training.

- To foster and enhance teamwork;
- To enable the trainees to cope effectively with real-life situations;
- To wake the full potential of each and every attendee;
- To give well-focused and constructive feedback allowing an immediate reaction; and
- To boost trainees' motivation by way of internal stimuli (for example desire for increased job satisfaction, self-esteem).⁴⁹

To meet these important requirements, good judicial trainers should fulfil a specific profile:⁵⁰ Concerning knowledge, they must be aware of the concrete competency domain they are functional in. In other words, even (or especially) when trainers are not a judges or prosecutors, they must be aware of the particular judicial setting in which they interact. Solution proposals perceived as improper for such a setting would be rejected by the attendees, and trainers would lose respect accordingly.

Beyond the necessary professional qualifications in their fields of specialization, good trainers must have a minimum level of work experience. Judges and prosecutors tend to be, independently of their individual learning styles, rather critical people, and they easily detect a trainer's "artificial" approach, i.e., the proposal of solutions the trainer has not tested in the working environment. A rather good safeguard against this phenomenon for training organizers is to ask others for references. This is widely done in Europe's national training institutions, and supposedly anywhere else in the world.

However, this does not totally eradicate the "trial-and-error" principle, especially as there is still the widespread misunderstanding in the judicial world that a legally sound judge or prosecutor is also a good trainer. In reality, knowledge of the judicial setting, good qualifications and references, and work experience combined still do not guarantee that someone is a good trainer.

In addition to these requirements, trainers should have personal skills and capacities and centres of interest that foster interaction in a training group effortlessly and naturally: It is a huge advantage, for example, if they are creative and analytical at the same time (a combination that cannot really be acquired *ex post*). And they should be genuinely and personally interested in interacting with people and in making important efforts to get even the most resistant training attendee to make an effort towards active participation in the problem-solving process.⁵¹

⁴⁹ See EJTJN's *Handbook on Judicial Training Methodology in Europe* (*supra* n. 30), p. 16. One entire training-the-trainers seminar organized by EJTJN, held on 6 and 7 December 2011 on the premises of NIM in Bucharest, was specifically dedicated to the overall topic "Competencies of the Trainers." Workshops dealt with trainers' competencies in the field of e-Learning and blended learning, with trainers' competencies in alternative settings of workplace training, and with skills and capacities judicial trainers should have in particular (for the programme see the *Handbook*, annex 2, pp. 86 and 87).

⁵⁰ See, as an illustration, O. Pacurari's Prezi presentation "The Trainer's Profile" (<https://prezi.com/68uy-2wiat2u/the-trainer-s-profile/>).

⁵¹ A particularly thorough and structured recruitment and evaluation procedure for trainers has been adopted by the Romanian National Institute of Magistracy (NIM). Within an open competition procedure, a three-member Scientific Council designated by NIM first shortlists apparently suitable applicants. Then a structured interview

CONCLUSION

As illustrated throughout this article, the methodological challenges in planning and carrying out judicial training are manifold. Most of the issues raised seem to be more or less comparable, with only slight nuances, throughout the world. However, history has made the judicial landscape particularly diverse in “Old Continent” Europe. But her diversity is at the same time a chance: It has taken a rather long time of domestic solo attempts in the field of judicial training, but now the European countries, and more specifically the EU member states, definitely understand that even though well-conceived national concepts will always be the basis for the bulk of judicial training, concerted networking on the European level adds value to training activities. So, the best principle seems to be to learn from each other, all by respecting domestic particularities and the equilibrium between national and genuinely European training approaches.

The naissance of EJTN’s Training the Trainers Sub-Working Group in 2008 and its upgrade to a fully fledged Judicial Training Methods Working Group in June 2014 prove the increasing importance the 28 EJTN member states attribute to the methodological modernization of their training. Many good and promising practices could thus be illustrated in this article. The authors hope that they have achieved, by these illustrations, their objective to elucidate European judicial training’s current movement towards more interaction and diversity of methods, and thus towards more productive training, which moves Europe’s judiciaries forward.

Nevertheless, it might be realistic to say that the network has not even gone half-way towards a sustainable anchoring of the principles of modern judicial training in the member states. It is, indeed, an enthralling exercise to implement the aforementioned paradigm shifts in such a vibrant environment as the national judicial-training institutions all over Europe. And Europe is confident enough to say that other parts of the world can learn from her experiences in this field. She is, however, also perfectly willing to learn from other continents’ know-how in the framework of the IOJT.

on an applying trainer’s adult-teaching capacities and skills takes place. Based on this interview, the applicant is rated, and only the best go through to the third phase, which is to perform in a demonstration seminar, which again is rated. On the basis of the results, the Scientific Council recommends trainers to the Superior Council of Magistracy (SCM). Appointed trainers are then annually reassessed (the system is even more demanding for trainers who want to become long-term NIM staff members and for initial training).

TRAINING NEEDS ASSESSMENT: STATE OF PLAY AND CHALLENGES

BY WOJCIECH POSTULSKI*

Training needs assessment (TNA) is the initial stage of the training cycle, which is becoming increasingly crucial in times of financial constraints. This crucial role was emphasized during the IOJT's 2013 conference, where TNA was a subject of one of the conference sessions. This paper originates from the presentation the author gave at that conference; however, it presents a broader, pan-European perspective on different innovative approaches towards the process in question. By doing so, it highlights how and to what extent the international cooperation of training entities, and their networking, may assist with exchanging experience effectively. This paper focuses on how we can best benefit from sharing our practices in this area, starting with a brief recap of the concept and role of training needs assessment.

TRAINING NEEDS ASSESSMENT—CONCEPT AND ROLE

Training needs assessment is a systematic process of gathering data from different sources using a variety of methods to identify improvements that can be achieved through training. Training theory generally defines “need” as the gap between existing and desired knowledge, skills, and attitudes, which could be reduced or even eliminated by training. Consequently, the results of the needs assessment are particularly important for the efficient and effective management of training in terms of:

- identifying gaps in knowledge, skills, and attitudes;
- setting priorities for learning outcomes, topics, and audience;
- choosing the most appropriate forms, methods, trainers, time, and place for delivery of training;
- managing (limited) resources; and
- facilitating organisational development and planning.

Needs assessment is the first step. When properly done, an analysis of needs is a wise investment for a training institution or organisation because it saves time, money, and effort. Common methods to gather data about judges' performance, needs, or specific training interests include observations, interviews, questionnaires, job descriptions, and appraisals. However, the extent to which these methods are applied vary by institution and country.

Bear in mind that judicial educators still tend to make hypotheses about judges' training needs based on their own experiences and, therefore, feel that broader needs

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assessment is unnecessary. However, only a systematic approach to needs assessment ensures that the training design and content responds to the learner's needs. The systematic approach identifies¹:

- problems or deficits that training may resolve;
- impending change;
- opportunities to gain a competitive edge by taking advantage of new technologies, training programs, etc.;
- organizational strengths;
- new levels of aspirational performance; and
- demands by management for training, organizational development, or both.

There is no shortcut to the systematic approach; each situation requires its own observation, probing, analysis, and interpretation.

Best practices for TNA within the European Union (EU) are presented below to illustrate the variety of approaches available.

EUROPEAN EXPERIENCES

Based on a European judicial-training pilot project, proposed by the European Parliament in 2012 and executed by the European Commission during the 2013-2014 period, the European Judicial Training Network (EJTN) conducted a study to locate and document judicial-training practices for TNA across Europe. Training practices were collected from 23 judicial-training organisations across the EU, including national judicial-training institutions, the Academy of European Law (ERA), the European Institute of Public Administration (EIPA), and EJTN. Each of the resulting 65 practices, arranged under five themes, presents key features, highlights contact information, and provides comments and further analysis about the practice. TNA is one of the five themes. The full study² may be found on EJTN's website in the resources section,³ as well as on the European Commission's e-Justice Portal.⁴

Sharing Best Practices

A significant number of training practices were identified as worthy of dissemination from a wide range of EU countries. The majority of these practices are fully transferable. The EJTN study presents the practices in such a way as to highlight the elements that make their transfer possible, including requirements to implement the practice.

Training needs assessment can be conducted at three different levels. Thus, the TNA practices identified have been divided into the following three categories:

¹ O. Pacurari, paper for EJTN meeting, September 2012.

² The next chapter is to a large extent an excerpt from the study on best practices prepared for the project by EJTN.

³ <http://www.ejtn.eu/Resources/Good-judicial-training-practices/>.

⁴ https://e-justice.europa.eu/content_good_training_practices-311-en.do.

Organisational level—an assessment that identifies the knowledge, skills, and competences needed by the organisation (i.e., the judiciary) as a whole.

Functional level—an assessment that identifies the knowledge, skills, and competences needed by the profession (i.e., judge or prosecutor) or by function (civil judge, criminal judge, court president, etc.). As part of this approach, some judicial training institutions consider not only what judges and prosecutors want for themselves but also what kind of justice (and judges/prosecutors) the society needs/wants.

Individual level—an assessment that identifies the individual-training needs of target-group members. TNA at the individual level assesses the individual-training needs of judges and prosecutors. Some judicial-training institutions consider individual-training needs in light of systemic needs. Methods are used to distinguish the objective “training needs” from their “training wishes.”

The EJTN project establishes that most judicial-training institutions carry out regular TNA for their target audiences. In general, they follow common approaches and methods as a standard practice:

- TNA is conducted regularly, usually on an annual basis, as part of the preparation for the next year’s training plan or for purposes of long- and medium-term planning.
- TNA is a formal, structured, regulated process in terms of the timing, stages, procedures, and organisations involved.
- TNA is based on a broad range of sources and methods.

Judicial-training institutions generally collect information about training needs from a broad range of sources. These include:

- judges and prosecutors;
- other legal professionals, such as lawyers, academics, and court staff;
- court presidents and chief prosecutors;
- members of organisations responsible for the elaboration or approval of training programmes, such as programme councils, academic committees, and other experts;
- institutional stakeholders, such as ministries of justice, councils of the judiciaries, professional associations of judges and prosecutors, NGOs, universities, etc.;
- the legislature, ministry of justice, or both as a specific source of information on forthcoming legislative initiatives that might affect the judiciary; and
- analysis of policy and strategic documents at both national and international levels.

The project demonstrates that TNA is a well-appreciated component of the judicial-training process and that there is support for its continuous development by learning from others’ experiences.

Examples of EU Best Practices

Following are brief examples of best practices reported in the EU, highlighting different approaches.

Processes

In **Estonia**, the Supreme Court uses the Court Practice Analysis (CPA) to collect information on judicial performance. CPA is a process of studying court decisions (and other relevant court-related documents) to identify problems in the uniform application of the law by courts. For TNA purposes, CPA is used as an additional source of information to supplement standard procedures (such as surveys, focus groups, and formal and informal consultations with judges and stakeholders) and for cross-checking them. Based on the results, it is decided whether any identified problems could be addressed through training. The topics and training activities selected are subsequently included in the annual training plan. CPA is also used to assess feedback from judges about their training needs. On average, between 10 to 20 percent of the training topics emerge via the CPA.

In **Romania**, the National Institute of Magistracy (NIM) uses a combination of sources and methods as part of a well-structured and regulated procedure, involving the NIM Scientific Council and the High Council of the Judiciary. Information about the training needs of judges and prosecutors is collected from judicial trainers, courts and prosecutors' offices, professional associations of magistrates, other legal professionals, training evaluations from previous years, etc. The range of topics included in the training catalogue is cross-checked with the number of participants' applications. An online system containing all current courses has recently been adopted. Judges and prosecutors are invited to mark requested topics or to formulate new proposals. The level of demand for every course is recorded. This process allows NIM to identify the most requested courses and facilitates financial planning.

Organisational Focus

There are several innovative best practices that showcase TNA at the organisational level. In **Belgium**, the Judicial Training Institute (JTI) developed a "competences matrix" to conduct TNA at an operational level using gap analysis. Initially, the views of court presidents and chief prosecutors were gathered in relation to current and future competences of judges, prosecutors, and court staff. Subsequently, the Belgian Ministry of Justice and the High Council of Justice assessed those expected competency levels. On the basis of these competence standards, JTI compared current competences with required competences. The result of this analysis reveals gaps to determine particular fields on which training should focus. The plan envisages that such analysis should be carried out during the next four-to-five years.

Another interesting approach to TNA at the organisational level is found in the **English** Mental Health Tribunal in the Judicial College. In 2012 the Tribunal

organised an evaluation of its entire training programme (the jurisdiction includes over 1,000 judicial officeholders). An online questionnaire and data analysis were designed to review existing training and to enhance the content and quality of future training. The project required a partnership approach between the mental-health-training judge, internal Judicial College training and evaluation experts, and IT experts in the Ministry of Justice. A draft questionnaire was devised to focus on the most important areas of training. Issues explored included pace, method, and level of training; quality of training materials; preferred duration of training; topics; and relevance to the range and experience level of members. Preferences for post-course evaluation methods were also explored. To make data collection and analysis as easy as possible, the questionnaire was composed primarily of multiple-choice questions; a small number of questions allowed free-text responses.

Regional Focus

Some judicial-training institutions are successful in assessing regional training needs as part of a nationwide training-planning process. In **Croatia**, the Judicial Academy has established a TNA mechanism, balancing centralised and decentralised approaches. Because of the specific geographic context of the country, there are differences in the training needs of judges and prosecutors from different regions (e.g., maritime law is specific to the coastal region). For the same reason, five regional training centres have been created under the Judicial Academy. This practice was adopted two years ago and allows the academy to respond centrally to regional diversity. As a result, training is brought to the users, and most of the training takes place at the regional level.

Functional Focus

Interesting examples of TNA at the functional level have been identified in **England and Wales**. The training of coroners was reassigned from the Ministry of Justice to the Judicial College in 2012. The Judicial College used a comprehensive functional TNA to assist the newly appointed management and training bodies. An online questionnaire was developed, and all 1,300 coroners and coroners' officers were invited to comment on their training needs. Members of previous coroners' training groups developed a list of coroners' skills and responsibilities based on the job descriptions for coroner roles around the country. A final report on coroners' training needs was delivered to the chief coroner and the training committee that served as a basis for the development of training plans.

Individual Focus

Finally, there are some examples of best practices at the individual level. Several judicial-training institutions have successfully designed and implemented tools that consider not only the individual need of judges and prosecutors but also the degree of the need by assessing previous knowledge and skills.

The **Academy of European Law (ERA)** implemented an Evaluation and Impact Assessment system of training developed for the workshops implementing training modules in the area of EU family law for the European Commission. Two to three months before the implementation of each workshop, an initial needs-assessment questionnaire and a registration form were sent to interested participants. By means of this questionnaire, applicants provided an overview of their professional background, their experience in the area of EU law, and, more concretely, in the area of EU family law. The questionnaire also included questions on why judges registered for the workshop and their expectation from participation in the workshop. By evaluating this information, the training organisers were able to assess which applicants' training priorities best matched the objectives of the programme. This preliminary TNA assessment has a dual effect on the efficiency of training. On the one hand, it leads to more precise selection of future applicants for training, while at the same time providing a stronger focus on individual professional-training needs. It also represents a good example of the interconnection between TNA and training evaluation, since it is coupled with a twofold process of immediate and midterm evaluation of the impact of the training.

The **European Institute for Public Administration (EIPA)** has introduced an Individual Learning Needs Analysis system. Once a topic is identified as a general training need, a training programme is designed, and the programme is opened for registration. Two to four weeks before the training, registered participants are asked to complete a tailor-made questionnaire with a two-fold objective: to assess the participants' current level of knowledge and experience on the topic, and to inquire about specific issues of interest or concern. The practice increases the efficiency of training in many ways: it is fine-tuned to the audience; practical information and knowledge of immediate interest to the participants is provided; answers to pre-posed questions are given; and, if necessary, the programme is adapted to meet specific or unforeseen individual needs.

An interesting hybrid form of participatory assessment takes place at the **Ecole National de la Magistrature (ENM)** in France. Trainee judges continuously assess the quality of their initial training and make suggestions and proposals aimed at improving the training system. The challenge has been to develop a dynamic system allowing trainees to continuously monitor implementation of programmes, assess their impact, and share suggestions for improvements to the system under development, as well as to forthcoming programmes.

During the evaluation process, all pre-service trainees are asked to fill out a detailed questionnaire about the study period of their training at **ENM**. This questionnaire is available online on ENM's website at the end of the eight-month study period in Bordeaux. The questionnaire asks trainees to assess their own improvement and determine whether they have acquired the skills taught. Each class of trainees is divided into small groups of approximately 20 people for workshop activities. In each small

group, a delegate is elected. Delegates meet with the director of studies, without trainers, once a month to assess and discuss the training and improve it in real time. The director of studies then drafts and disseminates a report among the trainers. Thus, the content or form of the training can be amended in light of the delegates' remarks.

Every year, three or four of the delegates engage in a long-term assessment process in cooperation with the director of studies. The task of those delegates is to brainstorm the content of courses, the organisation of the curricula, and its pedagogy, and then make proposals to improve the study period at ENM. This work is continued during the ten-month court internship, which immediately follows the study period. This allows delegates to assess the content of the study period and its pedagogy once immersed in the courts and using what they learned during the study period. While carrying out their court internships, the delegates also work with delegates of the next class who are studying at the same time. This process enables the director of studies to obtain detailed feedback on the study period. This assessment process has proven to be very efficient. Trainees generally bring very interesting ideas, which are often integrated in curricula. For instance, self-study periods were added to the curriculum last year.

The above overview shows how vibrant the process of judicial TNA is within the EU. It suggests that a variety of different, innovative, and efficient methods might be employed according to the desired objectives and situation to be addressed.

APPROACH OF THE POLISH NATIONAL SCHOOL OF JUDICIARY AND PUBLIC PROSECUTION

The final practice highlighted is the one presented by the author at the 2013 IOJT conference held in Washington, D.C. The Polish National School of Judiciary and Public Prosecution (KSSIP) is implementing a comprehensive TNA approach based on the creation of competency profiles for judges and prosecutors. These profiles are created separately for judges of different jurisdictions and responsibilities (criminal-law judges, civil-law judges, commercial-law judges, family-law judges, prosecutors dealing with commercial cases, judges/prosecutors as trainers, and judges/prosecutors as mentors of trainees). These competency profiles will serve as a basis for a 360° assessment of individual judges and prosecutors using the assessment tool developed by the project. The expected outcome is to define the gap between competence profiles and actual competences as the area for training.

The competence profiles comprise both broad, nonlegal key competences and professional roles/duties and law competences (knowledge in the field of law, of the social and economic environment, etc.). The profiles contain guidelines on expectations of ethical behavior and attitudes of judges and prosecutors resulting from current legal provisions and practice.

Each profile contains the following elements:

- knowledge of current law and procedures and their proper application;
- knowledge of consequences of judicial decisions in particular areas (economic, social, psychological, etc.); and
- “soft” competences.

Additionally, there are some competences specific to the roles performed, like the roles of educator (patronage, mentoring, coaching), managerial roles (presidents, heads of units/departments at different levels in the hierarchy of the organization), and administrative roles outside judiciary and prosecution (e.g., secondment to Ministry of Justice).

In the Polish judiciary system, we encounter a high variety of professional posts and roles. Thus, the project aims to develop and implement competence profiles according to professional roles in the judiciary. Competence profiles are created by a group of experts composed of judges and prosecutors from courts of different levels and jurisdictions and university teachers. As each judge and prosecutor is individually assessed by a supervisor—a judge or prosecutor with higher seniority, normally working in a higher-instance court—the system enables effective comparison of each judge’s or prosecutor’s actual competences with the competence profiles, thus indicating areas where training should focus.

To illustrate, consider the competence profile for a commercial court judge. This profile combines soft skills, competence-related roles, and knowledge. The former includes professional ethos, conceptual thinking, communication, organization of work, decisiveness, resistance to stress, the use of knowledge and self-development, and objectivism. Competences related to roles performed include management, ability to develop others, and administrative abilities. Finally, the knowledge of economic law and economic consequences required by application of the law, economics (macroeconomics and microeconomics), the structure of Polish economics, issues related to corporate finance and financial management, basic accounting and reporting, the tax system, issues related to the nonfinancial aspects of business management, tracing of economic developments, information technology used to record business transactions and store business information, and the interface between law and economics are all required competences for this position.

CONCLUSION

This article demonstrates that awareness of the crucial role that training needs assessment plays is well reflected in judiciary training. This is a very optimistic conclusion. However, it does not and should not suggest that there is nothing more to be done, or that there is no room for further progress. The EJTN Pilot Project on Judicial Training shows that there is benefit from sharing our practices. International cooperation among training entities may well deliver effective and efficient performance of TNA on the national level.

We might have different needs, concepts, legal orders, and judicial cultures. However, we should continue to discuss these differences. There are no easy solutions; one size will never fit all. But by exchanging and sharing our experiences, we can become aware of alternative solutions and models. To that aim, let us use all existing and potential platforms. EJTN has proven to be an efficient platform to share and exchange best judicial practices in Europe; IOJT offers a similar platform from the worldwide perspective.

JUDICIAL EDUCATION AS A FORUM FOR IDENTIFYING AND MEETING RESEARCH NEEDS

BY JULA HUGHES AND PHILIP BRYDEN*

Judicial independence and impartiality are core values of all justice systems in liberal democracies. The need to maintain independence and, importantly, an appearance of independence can, however, lead to judicial isolation. A feeling of isolation is widely reported by judges in Canada and the United States and has been identified as a source of profound personal and professional difficulties.¹ On a more minor scale, but still with significant impacts on judicial performance, judicial isolation sometimes makes it difficult for both judges and scholars to identify areas of research where the judiciary could benefit from academic investigation.² Formalized venues of judicial education not only provide opportunities for continued judicial education, but also have the potential to promote exchanges among judges and between judges and legal scholars. Given appropriate framework conditions of confidentiality and open discourse, these exchanges can lead to the articulation of research needs and suggested avenues of meeting these needs.

For more than a decade, we have participated as faculty in Canadian judicial education events organized by a variety of organizations, including the National Judicial Institute,³ the Canadian Association of Provincial Court Judges, the Federal Court of Canada and the courts of six Canadian provinces, the Ontario Masters'

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¹ Kirk Makin, "New Judges School," *Globe and Mail*, January 5, 2002, available online at: <http://www.cba.org/cba/Awards/justicia/judges.aspx>; Isaiah M. Zimmerman, "Isolation in the Judicial Career," *Court Review* 36, no. 4 (2000): 4; Harry T. Edwards, "The Role of a Judge in Modern Society: Some Reflections on Current Practice in Federal Appellate Adjudication," *Cleveland State Law Review* 32 (1983): 385.

² Justice Edwards suggests that to understand the work of judging, academics require judicial input for the inside view. Harry T. Edwards, "The Effects of Collegiality on Judicial Decision Making," *University of Pennsylvania Law Review* 151 (2003): 1639, 1643. On the flipside, Justice Sharlow of the Federal Court of Canada has spoken about the usefulness of academic writing to judges. Karen Sharlow, "Why Judges Need Academics," *Windsor Review of Legal and Social Issues* 32 (2012): 13.

³ The National Judicial Institute is an independent, nonprofit organisation based in Ottawa that provides judicial education in both English and French to judges across Canada. Founded in 1988, it is governed by a board chaired by the chief justice of Canada and is funded by the federal government. It often provides programs in collaboration with Canadian courts and with other Canadian judicial education organisations. It also engages in international judicial education and reform work through its International Cooperation Group. See <https://www.nji-inm.ca/nji/inm/accueil-home.cfm>.

Association, and the Canadian Institute for the Administration of Justice.⁴ A particular focus of our judicial education work has been judicial disqualification. In the course of this work, we have come to understand, with much greater precision, the substantive and procedural difficulties judges face in recusal situations and have refined our own ideas about how these difficulties can best be addressed. We were also able to build relationships that gave us the rare opportunity to engage judges in empirical research about the work of judging.⁵ This, in turn, led us to explore how Canadian law's long-standing test for reasonable apprehension of bias could be improved to better explain current jurisprudence and to provide a refined analytical framework that would make it easier for both judges and litigants to identify when disqualification is and is not warranted⁶ and how rules could be used to supplement the common-law framework in some areas.⁷

In this paper, we reflect on both the opportunities and the challenges associated with judicial education seminars as a venue for academics and judges to identify research needs and work collaboratively to pursue research that meets those needs. We will begin by describing our own experience with participation in judicial education seminars on the topic of judicial disqualification, and how that work led us to conduct the research described above. We will then discuss the ethical and practical considerations we had to take into account in doing this work. Finally, we will suggest why we believe that, with some important limitations, participation in judicial education can provide mutually beneficial opportunities for scholars and judges to identify useful research projects and collaborate in the conduct of that research.

OUR EXPERIENCE LINKING JUDICIAL EDUCATION AND RESEARCH INTO JUDICIAL DISQUALIFICATION

Each of us has had experience with judicial and administrative tribunal education outside of our work on judicial disqualification, but judicial disqualification has been the subject of our joint research agenda, so we will focus our observations on this experience. This work began in 2002 when Professor Bryden was approached by Justice

⁴ The Canadian Institute for the Administration of Justice is a nonprofit voluntary organisation founded in 1974. Currently located at the Faculty of Law of the University of Montreal, it is governed by a volunteer board drawn from different parts of the legal community, including the judiciary, members of administrative tribunals, the legal profession, court services and police, and the legal academy. It provides continuing education for members of the Canadian legal community, broadly conceived, but with a particular focus on education for judges and members of administrative tribunals. See <http://www.ciaj-icaj.ca/>.

⁵ Philip Bryden and Julia Hughes, "The Tip of the Iceberg: A Survey of the Philosophy and Practice of Canadian Provincial and Territorial Judges Concerning Judicial Disqualification," *Alberta Law Review* 48 (2011): 569.

⁶ Julia Hughes and Philip Bryden, "Refining the Reasonable Apprehension of Bias Test: Providing Judges Better Tools for Addressing Judicial Disqualification," *Dalhousie Law Journal* 36 (2013): 176.

⁷ Julia Hughes and Philip Bryden, "Empirical and Comparative Approaches to Judicial Disqualification: The Case for Limited-Scope Statutory Frameworks," presented at International Legal Ethics Conference VI, London, 2014.

Joseph Robertson of the New Brunswick Court of Appeal to prepare a paper, "Legal Principles Governing Judicial Disqualification," for a seminar for Canadian appellate judges organized under the auspices of the National Judicial Institute and held in Vancouver. Justice Robertson and a number of the participants in the seminar made a variety of helpful comments on the paper, and a revised version of it was eventually published in the *Canadian Bar Review*.⁸ This work might be considered to represent the most conventional type of relationship between legal research and judicial education, which occurs when an academic produces a piece of research specifically for a judicial audience, receives the benefit of comments from members of the judiciary, and subsequently publishes the paper to make it available to a wider academic, professional, and public audience.

After Professor Bryden became dean of law at the University of New Brunswick, he discovered that Professor Hughes, who had recently been appointed to the faculty, shared his interest in the law governing judicial disqualification. We began our collaborative work on this subject as a result of an invitation that Professor Bryden received in 2006 to take part in a seminar for Canadian provincial and territorial judges organized jointly by the National Judicial Institute and the Canadian Association of Provincial Court Judges (CAPCJ).

The Canadian court system is divided into three basic categories: federal courts, provincial superior courts, and provincial courts. Federal courts are created by the federal Parliament under authority conferred by s. 101 of the *Constitution Act, 1867*, and the judges of these courts are federally appointed. Provincial superior courts are created by the provincial legislatures pursuant to authority found in s. 92(14) of the *Constitution Act, 1867*, but the judges of these courts are appointed federally and their salaries are paid by the federal Parliament pursuant to ss. 96 and 99 of the *Constitution Act, 1867*. Provincial courts are created by the provincial legislatures pursuant to authority found in s. 92(14) of the *Constitution Act, 1867*, and the judges are appointed and paid provincially. Canada has three territories, and the governments of these territories have delegated legislative and administrative authority conferred upon them by the federal Parliament. This includes the authority to create courts analogous to provincial superior courts and provincial courts, and the territories have all created both superior courts whose judges are federally appointed and paid, and territorial courts whose judges are appointed and paid by the territorial government. CAPCJ is a national organization whose membership comprises provincial and territorial judges from across Canada, and its objectives include the development of policy in relation to judicial education, the consideration of matters concerning judicial education and ethics, and the discussion and making of recommendations in relation to law reform.⁹

⁸ Philip Bryden, "Legal Principles Governing Judicial Disqualification," *Canadian Bar Review* 82 (2003): 555.

⁹ See <http://www.judges-juges.ca/about>.

At the 2006 CAPCJ conference in Moncton, New Brunswick, Professor Bryden was approached by a number of judges after his presentation on the law governing judicial disqualification. These judges observed that, while they were confident that the presentation accurately portrayed the jurisprudence concerning judicial disqualification, it was of limited assistance in helping them to decide how to address a number of relatively common situations that were troubling them and their judicial colleagues. This indicated to Professor Bryden that the reported case law, which is fairly extensive, was not capturing the full range of potential disqualification situations that judges themselves encounter. In most jurisdictions, Canadian judges can recuse themselves without providing written reasons for doing so,¹⁰ but it was unclear how often this happens or in what circumstances. Professor Bryden suggested that it might be instructive to conduct a survey of members of the judiciary to gather information about the experiences judges had with recusal and to explore how they would address the types of questions that seemed to be troubling the judges who had approached him. He discussed this idea with Professor Hughes, and she agreed to partner with him in conducting an empirical study of this nature, as well as in participating in judicial education seminars on judicial disqualification.

The possibility of surveying provincial and territorial judges on their experience with and attitudes toward recusal and disqualification would likely have remained one of those interesting research ideas that never come to fruition had we not engaged the interest of Judge David Orr of the Provincial Court of Newfoundland and Labrador, who was the chair of CAPCJ's Committee on the Law. With Judge Orr's enthusiastic support, we approached CAPCJ's president at the time, Judge Irwin Lampert of the Provincial Court of New Brunswick, who secured the approval of the organisation's executive to cooperate with a survey that we proposed to conduct to explore these issues. Judge Orr assembled a group of interested judges from across the country to assist us with the design of the survey, and other judges helped at various points to distribute the questionnaire.¹¹

¹⁰ Section 236 of the Quebec *Code of Civil Procedure*, CQLR c. C-25, obliges judges in that province who become aware of a ground of disqualification to which they are liable to declare that ground in writing, and the basis for their recusal is placed on the record. The Quebec National Assembly has passed a new *Code of Civil Procedure*, S.Q. 2014, c. 1, which received Royal Assent on February 20, 2014. Section 201 of the new *Code*, which is expected to be brought into force sometime in the fall of 2015, states, "A judge who considers that one of the parties may have serious reasons to question the judge's impartiality is required to declare as much to the chief justice or chief judge without delay. In such a case, the chief justice or chief judge designates another judge to continue or try the case and informs the parties." It is not clear whether the information provided to the parties will include a publicly available statement of the reasons for the judge's recusal.

¹¹ The committee of judges who assisted with the design of the survey included Judge Colin Flynn of the Provincial Court of Newfoundland and Labrador; Judge Barbara Beach of the Provincial Court of Nova Scotia; Judge Ronald LeBlanc of the Provincial Court of New Brunswick; Judge Richard LaFlamme of the Court of Québec; Judge Judith Elliott of the Provincial Court of Manitoba; Chief Judge Carol Snell of the Provincial Court of Saskatchewan; and Judge Gurmail Gill of the Provincial Court of British Columbia. Other judges who gave us valuable assistance included Judge Jean Paul Decoste of the Court of Québec; Justices Sharman Bondy, Russell Otter, and David Stone of the Ontario Court of Justice; and Judge Lampert's successor as CAPCJ's president, Judge Thérèse Alexander of the Provincial Court of British Columbia.

The questionnaire itself was in two parts. The first part consisted of a series of 15 introductory questions. They sought background information on the participating judge's level of judicial experience, the size of community where the judge typically heard cases, and the type of jurisdiction the judge exercised. In addition, we asked respondents about their personal experience with recusal, and in particular how often the judge recused in a typical year and how those recusals came about. Finally, we asked respondents about general expectations in their jurisdiction concerning particular grounds on which judges might disqualify themselves. The second, and larger, part of the survey sought the views of the respondents on 32 brief scenarios grouped into three categories: professional relationships, social relationships, and knowledge derived from other judicial proceedings. In response to each scenario, the judge participating in the survey was asked three questions: 1) whether the judge would consult a colleague before making a decision on whether or not to recuse; 2) whether the judge would consult the parties before making a recusal decision; and 3) whether in this particular situation the judge a) would definitely recuse, b) would recuse if a party objected, c) would definitely **not** recuse, or d) was uncertain.¹² The scenarios, identified with the assistance of our advisory committee of judges from across the country, were designed to present reasonably common situations that were "analytically marginal" in the sense that, based on the jurisprudence, or policy, or both, a plausible argument could be advanced for suggesting both that the judge should and should not recuse in that particular situation.¹³

CAPCJ provided three forms of support that were critical to the success of our survey. First, CAPCJ undertook to distribute the questionnaire at its 2007 annual conference in Vancouver and to encourage judges who attended the conference to take part in the survey. In addition, CAPCJ encouraged a number of individual judges in Nova Scotia, Québec, and Ontario to distribute copies of the questionnaire to their colleagues to broaden the base of participation, in terms of both overall number of participants and distribution across the country. As a result of this cooperation, 137 judges participated in the survey. The survey participants included judges from all 10 Canadian provinces and one of Canada's three territories, and represented approximately 13 percent of all Canadian provincial and territorial judges. Second, the members of the advisory committee, who assisted us in designing the survey, gave us extraordinarily valuable insights into the types of issues related to recusal and disqualification that were troubling judges. These insights gave us confidence that the problem areas we identified in the scenarios were the right place to focus our attention. Some advisory committee members also tested a draft of the questionnaire and gave us feedback that helped us to improve the quality of the final questionnaire. Finally, CAPCJ provided us with French language translation services for both the

¹² Bryden and Hughes, "Tip of the Iceberg," *supra* note 5, at 573.

¹³ *Ibid.* at 571.

questionnaire and the report, enabling us to conduct a survey that was national in scope and to prepare a report that was available to judges in both of Canada's official languages.

Our understanding with CAPCJ was that they would assist us in conducting the survey and would receive a draft copy of our report for commentary, as well as a final copy that could be distributed to their members, but we owned the data collected and were responsible for the analysis of the data, the preparation of the report, and any further dissemination of our findings we might wish to make. As we will explain in more detail below, this understanding was the subject of some discussion between us and CAPCJ. It was important for us to have the academic freedom to analyze the data in the manner that we thought was most appropriate and to be free to publish our findings in whatever setting or settings that seemed most appropriate to us. The CAPCJ executive wanted to have a report that would be useful to their members and that could be distributed to them, and at various times described our report as one that had been commissioned by them.¹⁴ On the other hand, they accepted our desire to have control of the content of the report itself and the right to disseminate our findings to an audience that was broader than CAPCJ's membership. As agreed, we gave a presentation of our preliminary findings to CAPCJ's Executive Committee at the organization's 2008 annual conference in Québec City. We benefited from many useful comments as a result of that presentation, and we presented our final report to the executive at the 2009 annual conference in Calgary.

We believe that two factors played a particularly important role in securing CAPCJ's cooperation with the conduct of a survey on this basis. The first was the trust we had developed with members of the judiciary through our judicial education work. This work enabled judges to see us as people who had gone to some trouble to try to understand the challenges they were facing and who were motivated to assist them in their judicial roles. The second was that the research project we proposed responded to a need identified by the judges themselves through engaging with the topic of disqualification in a judicial education context.

As indicated above, we attempted to reinforce the bonds of mutual respect and trust in the manner that we proposed to conduct our work. While we felt it was important for us to assert responsibility for and control over the project, we made it clear that we were eager to have active input from the advisory committee into the design of the survey and into the report itself. In particular, we believe that giving the CAPCJ executive an opportunity to receive a copy of the draft report, to have it presented to them and to make comments on it, helped them to be reconciled to the fact that we had final control over the content of the report itself.

¹⁴ See, for example, Judge Thérèse Alexander, "Past President's Report," *Provincial Judges Journal* 31, no. 1 (2008): 7.

ETHICAL AND PRACTICAL CHALLENGES FOR LINKAGES BETWEEN JUDICIAL EDUCATION AND RESEARCH

In the early days of judicial education in Canada, concerns were raised that any form of judicial education could be seen as interfering with judicial independence.¹⁵ And while these concerns have given way to nearly universal acceptance of at least some voluntary, initial, and continuing education for judges, questions remain about the scope, appropriate institutional setting, methodologies,¹⁶ funding sources, and suitable subject matter of judicial education programs.¹⁷ The concern over independence has sometimes been thought to be heightened in areas of judicial education that stray beyond developments in black-letter law into context,¹⁸ theory,¹⁹ or judicial ethics.²⁰

A number of jurisdictions have chosen institutional settings that are sponsored by judicial associations. In Canada, organisations like the National Judicial Institute, CAPCJ, and the Canadian Institute for the Administration of Justice play a role in providing judicial education, often in collaboration with education committees established by courts. It is common for these organizations to adopt peer-learning approaches, including using judges as faculty and group discussion of problems or scenarios. At the same time, it is common for academic faculty to be invited to participate in these venues, either as presenters or as facilitators of group discussions, or in a combination of roles. These measures are welcome because they provide much-needed education opportunities and they mitigate judicial isolation.

Beyond these functions, judicial education organizations may also facilitate research by endorsing certain types of research endeavours. Academics might be concerned that the venue of judicial education could result in restrictions on the dissemination of research results. In our experience, it is very unusual for organizations that conduct judicial education seminars to insist on ownership of the educational materials prepared for these purposes. By way of example, the National Judicial Institute has arranged to obtain from us, on a number of occasions, nonexclusive licences to distribute the materials we prepare for judicial education seminars on the subject of judicial disqualification, but we retain the ownership of those materials and are able to

¹⁵ For similar observations in the Australian context, see John McGinness, "Judicial Education in Australia," *Australian Law Librarian* 17 (2009): 150.

¹⁶ Richard Devlin, C. Adele Kent, and Susan Lightstone, "The Past, Present . . . and Future(?) of Judicial Ethics Education in Canada," *Legal Ethics* 16 (2013): 1.

¹⁷ Peter Chickris and Jack Turano III, "Integrity Is Their Portion and Proper Virtue: The Ethics of Funding Judicial Education," *South Texas Law Review* 51 (2009-10): 876.

¹⁸ Rosemary Cairns-Way, "Contradictory or Complementary: Reconciling Judicial Independence with Social Context Education," in Lorne Sossin and Adam Dodek (eds.), *Judicial Independence in Context* (Toronto: Irwin Law, 2010), p. 220.

¹⁹ Richard Devlin, "Jurisprudence for Judges: Why Legal Theory Matters for Social Context Education," *Queen's Law Journal* 27 (2001): 161.

²⁰ Devlin, Kent, and Lightstone, *supra* note 16.

disseminate them in other settings. As a result, the preparation of a traditional academic paper offering commentary on a particular area of the law for a judicial audience appears to us to raise relatively few ethical or practical dilemmas.²¹

It is nevertheless important to recognize that the comments an academic receives from judges on these subjects must be treated with caution. In recent years, we have observed that the National Judicial Institute has reinforced the understanding that a free flow of information at judicial education seminars may necessitate treating the nature of the discussion as confidential, by requiring presenters in its seminars to sign a letter of agreement that includes a requirement that all information disclosed in the course of the program will be treated as confidential. The confidentiality agreement does not prevent judges outside the context of the seminar from offering comments or suggestions on the work produced, but it does constrain our use of the information we obtain in the course of discussion during the seminar itself. While there are undoubtedly occasions when it would be useful to be able to illustrate a particular point by recounting an observation that was made by a judge during an education seminar, we believe that it is appropriate to forgo such opportunities in the interest of encouraging full and frank discussion among participants in the seminars. Further, it is appropriate to maintain clear distinctions between teaching and research settings and to assure participants of these distinctions. Judges should not be left in any doubt about the parameters of confidentiality in a teaching setting and should be assured that academics are not treating the judicial education seminar as a research venue.

Finally, difficulties can arise when judges identify areas of research they would like to see pursued and the researcher is not in a position, for whatever reason, to accede to the request. It is particularly important, in our view, to distinguish between requests for academic research and requests for legal advice or opinions on subjects of significance to members of the judiciary. While it is not inherently improper for academic lawyers to provide legal advice or for academics to do contract research, the nature of the ethical obligations undertaken by individuals who carry on this type of research are different than the obligations of academic researchers. For example, academic lawyers who give legal advice are bound by obligations of solicitor-client confidentiality that may constrain the type of dissemination of research results that one would normally expect from academic researchers. In addition, it is not unusual for those who commission contract research to obtain ownership of the research, which

²¹ In Canada, there are two potential exceptions to this: the preparation of bench books that are only accessible through judicial libraries, be they electronic or print, and the preparation of updated materials for judges based on previously published works. In the former case, there is the potential for information being available to judges that is hidden from parties. In the latter case, the problem arises from a preference of legal publishers for previously unpublished works, resulting in differential distribution to judges. We have attempted to overcome the latter problem through publication of updates through Social Science Research Network (SSRN).

²² Available online at http://www.pre.ethics.gc.ca/archives/tcps-eptc/docs/TCPS%20October%202005_E.pdf.

may constrain the ability of the researcher to disseminate the research results. These constraints may be acceptable to some researchers, whereas other researchers may prefer not to pursue research opportunities if constrained in this manner.

Once one moves into research involving judges as subjects, as we did with our judicial disqualification survey, the ethical and practical considerations become considerably more complex. All Canadian universities subscribe to the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*²² published by the three federal granting councils: the Medical Research Council (MRC), the Natural Sciences and Engineering Research Council (NSERC), and the Social Sciences and Humanities Research Council (SSHRC). The rules established by Canadian universities in response to the policy statement address ethical issues covering a wide range of research involving human subjects, and some of the principles contained in the policy statement were of limited relevance to the type of survey research we were proposing to do. The animating concern for university research ethics is the vulnerability of the research subject to the actions of the researcher. It has been noted that the paradigm of research harm was developed in a medical context and has not always translated smoothly into the social sciences.²³ Empirical inquiry into judges and judging falls broadly into what some researchers have described as “researching up.”²⁴ In researching up, the researcher has less institutional and other forms of power than the research subject. Thus, the foundational assumptions of the academic research ethics regime are not entirely apt. That said, the mere fact that research subjects hold power does not mean that they are entirely without vulnerability to research processes and outcomes. Judges tend to be keenly aware that empirical research could be prejudicial to particular adjudications, as well as detrimental to the reputation of particular judges or the justice system.

The key issues we had to face were the requirement to obtain Research Ethics Board approval before conducting the survey, the obligation to ensure that the judges who were participating in the survey voluntarily gave their informed consent, the obligation we undertook to protect the privacy and the confidentiality of individual respondents, and our obligation to uphold the principles of academic freedom in the conduct and dissemination of our research.

On the whole, the challenges we experienced in adhering to the ethical strictures found in the *Tri-Council Policy Statement* were more practical than principled. The judges who were assisting us with the design and administration of the survey were supportive of the general principles of voluntariness and confidentiality, but they were largely unfamiliar with the formalities associated with the ethics review process and

²³ See Will C. van den Hoonaard and Martin Tolich, “The New Brunswick Declaration of Research Ethics: A Simple and Radical Perspective,” *Canadian Journal of Sociology* 39 (2014): 88, for a useful summary of the critical literature assessing the biomedical model of research ethics in the social sciences.

²⁴ Sarah Neal and Eugene McLaughlin, “Researching Up? Interviews, Emotionality and Policy-Making Elites,” *Journal of Social Policy* 38 (2009): 689.

the details of the steps we took to protect these interests. Sometimes this meant that the judges were frustrated by the amount of time it would take to obtain approvals or by the need to revise parts of the research proposal, such as the consent form, to address issues raised by the Research Ethics Board. In other instances it was difficult for us to impress upon judges the importance of following our instructions. For example, judges were asked to sign the consent form and then separate it from the questionnaire to preserve the anonymity of the respondent. Some judges sent in their consent form along with their questionnaire, which could have allowed us to compromise the anonymity of those responses. It was relatively easy for us to take administrative steps to ensure that the consent forms and the questionnaires were separated before we began the data-entry process so no actual harm was done, but we had to recognize that the different ways we ended up administering the survey would be regarded as less than ideal by most social scientists.

As we indicated above, the issue that generated the greatest amount of discussion was ownership and control of the findings and the report. CAPCJ's leadership wanted a report that would provide guidance to its members on how to address recusal and disqualification issues that were proving difficult for judges. While we shared this goal, we could only go as far as the data would take us in providing advice about what appeared to be the practice of judges across the country. The survey was designed to discover the views of judges about how to deal with reasonably common but analytically marginal situations. As we developed the questionnaire we had anticipated that there would be some disagreement among the judges who responded concerning the best way to address the scenarios we posed to them, but we hypothesized that there would be a much greater degree of consensus than we eventually discovered.

In fact, the responses we received to the 32 scenarios we posed in the questionnaire were extremely varied. In only *one* of the 32 scenarios was there near universal agreement (more than 90 percent) on one of the four possible answers we offered to the question of whether or not the participating judge would recuse in the situation posed in the scenario. In another 5 scenarios, there was clearly a dominant view, with 65 to 89 percent of the respondents agreeing on a single answer. In another 9 scenarios, between 50 percent and 64 percent of the participants selected the most popular answer. On the other hand, in 17 of the 32 scenarios, no single answer attracted the support of 50 percent of the respondents. In 11 scenarios, the most popular answer attracted the support of between 40 percent and 49 percent of the participants, and in the case of 6 scenarios, no single answer received the support of as many as 40 percent of the respondents.²⁵

Another way we explored the degree of variability in the responses we received was by tracking the number of times each judge gave one of the four answers—a) definitely recuse, b) recuse if a party objected, c) definitely **not** recuse, or

²⁵ Bryden and Hughes, "Tip of the Iceberg," *supra* note 5 at 579-80.

d) uncertain—in response to the 32 scenarios. If we take the “definitely recuse” response as an example, 11 percent of our respondents indicated that they would definitely recuse themselves in 3 or fewer of the 32 scenarios. At the other end of the scale, 8 percent of the respondents indicated that they would definitely recuse themselves in between 17 and 22 of the 32 scenarios. There was a similarly broad range in the “definitely **not** recuse” category. Roughly a third of the respondents (34 percent) indicated that they would definitely **not** recuse in fewer than 5 of the 32 scenarios. On the other hand, 20 percent indicated that they would definitely **not** recuse in between 11 and 15 of the 32 scenarios, and 10 percent gave this answer between 16 and 22 times.²⁶ While we were able to suggest explanations that offered some potential guidance on why judges would adopt different views in respect of the scenarios we posed,²⁷ it was evident to us that the personal philosophies of our respondents played an important role in determining whether a judge would recuse in many marginal situations.

This degree of variability was somewhat awkward with respect to CAPCJ’s desire to have a report that would offer clear guidance to its members on how to address difficult disqualification situations, since it was evident that in many instances there was no consensus among judges on these questions. It was important to us to emphasize that the disparity in results was not necessarily an indication of the level of disagreement that could be expected in actual judicial decision making, as the response to survey questions would have taken place without the benefit of consultation, submissions, or independent research, but since our research also demonstrated that judges rarely consult or seek submissions, there was some cause for concern. We did not experience the sense that CAPCJ was embarrassed by the report or would have sought to suppress the information contained in it, but it was evident that the picture presented by the report was not one that the executive anticipated, and that it was less useful for their purposes than they had hoped. From our perspective as researchers, on the other hand, the project was a success both because it helped us to identify the extent of agreement and disagreement in a number of areas and because it opened up avenues of further research that could offer suggestions on how some of these difficulties might be resolved. While we did not anticipate this particular result at the time we began

²⁶ *Ibid.* at 605-08.

²⁷ For example, it was evident that judges who sat primarily in smaller centres were much more reluctant to recuse themselves because of professional relationships they had with other lawyers while they were in practice, than judges who sat mainly in larger urban centres. We hypothesized that this was probably because judges in smaller communities were likely to know every lawyer in town, and if they disqualified themselves because of their relationship with particular lawyers, this could cause significant inconvenience for members of the public who wished to be represented by those lawyers. In larger urban centres, this was much less likely to be the case because it would be easier to shift a case to a different judge to avoid hearing a case involving a lawyer where there was even the potential of a conflict of interest. The distinction between the views of judges who sit predominantly in small centres as opposed to major urban centres was much less pronounced in respect of recusal scenarios based on personal as opposed to professional relationships, and largely disappeared with respect to recusal scenarios involving prior judicial knowledge of the parties to a proceeding. See *ibid.* at 597-600.

discussions with CAPCJ about their involvement with the survey, it is evident that it was wise for us to insist on maintaining ownership over the data and control over both the content of the report and the dissemination of our findings in other venues.

THE BENEFITS AND LIMITATIONS OF LINKAGES BETWEEN JUDICIAL EDUCATION AND RESEARCH

In our view, a number of benefits flow from linkages between judicial education and research. These benefits are particularly noticeable in the area of empirical research about how judges do their work, but they are also present in respect of doctrinal research and empirical research about subjects other than the functioning of the justice system. In making these observations, we take into account the ethical and practical challenges we identified in the previous section of this paper. We recognize that in some instances these challenges are sufficiently serious that it will not be feasible to link judicial education and research. Moreover, we acknowledge that the judiciary may not be a primary audience for some legal scholars, and that there are valuable areas of academic research on judges and judging that are of limited interest to judges.²⁸ What we attempt to do below is identify some of the key areas of mutual benefit that can flow from a linkage between judicial education and academic research.

The first of these is the expansion of thinking that comes from the interaction with people who have common interests but who bring a different set of experiences and perspectives to bear on a subject. In this respect, judicial education presents academics with similar challenges and opportunities as other forms of professional or executive education. When a scholar presents a piece of research to a sophisticated audience that has a different set of experiences to bring to bear on the issue under discussion, it seems to us that a significant opportunity is opened up to enrich the understanding of both the scholar and the audience. For this opportunity to reach its full potential, it requires openness by both parties to engage in a full and frank discussion, but when this occurs it can improve both the quality of subsequent research and the value of the scholar's presentations to the audience.

²⁸ To take one example, we believe that James Stribopoulos and Moin Yahya's article "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario," *Osgoode Hall Law Journal* 45 (2007): 315, is both an interesting and an important use of empirical analysis to explore whether there is any statistical evidence to support the claim that the gender of judges or the party that appointed them to the bench has an influence on the way they decide cases. Nevertheless, we suspect that most judges would consider it inappropriate to participate in interview or survey research that was designed to explore the same questions. While our research produced results about the diversity of judge's views on how to address a number of marginal recusal scenarios that may have been surprising to some judges, it does not constitute a threat to the perception of judges as individuals who make their best efforts to decide cases impartially. We do not suggest that it is inappropriate for scholars to pursue research that will identify ways in which judges, both consciously and unconsciously, fail to live up to their obligation to be impartial, but we do recognize that there are likely to be limits to the willingness of judges to be active participants in these types of studies.

In our own case, our understanding of two aspects of the Canadian law governing judicial disqualification has been enriched significantly by our interactions with judges through engaging in judicial education. The first is the extent to which areas that trouble judges are rendered invisible by the practice of judges recusing of their own motion without publishing their reasons for doing so. The second is the extent to which Canadian judges differ in their assessment of how to reconcile a concern for preserving an appearance of scrupulous impartiality with the practical demands of administering our system of justice. We like to think that this growth in understanding has sharpened our thinking about the law governing judicial disqualification, as well as presented us with an opportunity to do interesting empirical research, and that, in turn, this has made our presentations on judicial disqualification more useful to our judicial audiences.

The second key benefit that we see for linkages between judicial education and research is the opportunity these links present to redefine the scholarly research agenda. We began our work on the area of judicial disqualification with an effort to make sense of the legal doctrines that govern judicial disqualification in Canada and, to a limited extent, in other common-law jurisdictions. Our experience in judicial education encouraged us to expand our research into the area of empirical study of the experience Canadian provincial and territorial judges have with recusal and disqualification and their attitudes to disqualification in situations where the law is ambiguous. This led us to pursue research into how the common law could be refined to give judges better tools for making recusal decisions and to do comparative law research into how statutory regimes might be used to supplement the common law. Much of this work was done with an academic, professional, and public audience in mind, as well as a judicial audience, but we believe that it has evolved in a manner that is useful to judges, even if it was not entirely shaped by them.

The third benefit we have experienced is the opportunity to do empirical research involving judges. There are many reasons why judges have traditionally been cautious about taking part in empirical research concerning how they do their work. First of all, judges are busy people, and they are unlikely to want to devote time to doing an interview or filling in a survey unless they can be persuaded that the researcher is doing work that has value to someone other than an academic audience. Second, judges are cautious about the possibility that their participation in research could result in the portrayal of the legal system or the judiciary in a negative light. Our participation in judicial education gave us an opportunity not only to build a relationship of trust with judges whom we wanted to participate in our survey, but also to take a collaborative approach to the research project itself. CAPCJ's sponsorship of the survey meant that judges had reasons for trusting us as researchers and for believing that participation in the survey was a worthwhile use of their time. In addition, our advisory committee's active involvement in developing the survey instrument improved the survey's quality and helped us to be confident that we were focusing our attention on the right issues.

As we indicated above, the fact that our survey research came out of our judicial education experience was important for helping us not only to build trust with judges, but also to make the case that the research we wanted to do would be useful for judges. We recognize that scholars have good reasons for pursuing research that will be of limited interest to judges or in which judges will be reluctant to participate. Nevertheless, we believe that there is plenty of scope for mutual interest between scholars and judges in the pursuit of empirical research, but it is not easy to find venues in which this mutual interest can emerge. Our experience suggests that judicial education can serve both as an important point of contact between scholars and judges, and as a venue for exchanging ideas about how judges could take part in empirical research that would be of benefit to them.

Finally, we believe that creating linkages between judicial education and research can enhance the likelihood that research will both come to the attention of members of the judiciary and be used by them. There are many reasons why counsel may find it unhelpful to bring relevant pieces of academic research to the attention of judges deciding particular cases. Giving judges an opportunity to become exposed to and, in some instances, take part in research that is one step removed from their day-to-day obligations to decide cases creates an opportunity for them to reflect on issues without the pressure of immediately needing to make a decision. It also gives them an opportunity to discuss and explore the implications of ideas with academics and judicial colleagues in a safe and confidential environment.

CONCLUSION

In a recent white paper, Judges Kevin Burke and Steve Leben urged cooperation between courts and academic researchers, particularly in the area of procedural fairness and public perception of procedural fairness:

For more than thirty years, the social-science academic community has learned a great deal about fairness in our courts. The knowledge that they have gained, however, has too often remained within the confines of academia. The truth is that most judges don't know about the journals the research appears in and often don't easily understand the jargon. The National Science Foundation and others who fund social-justice research need to reach out to judges to develop strategies to ensure that sound academic social-science research is shared in forms that are likely to produce change within the courts—journals like *Court Review*, the quarterly journal of the American Judges Association, and *judicial-education conferences* are key venues for the dissemination of this information (emphasis added).²⁹

²⁹ Kevin Burke and Steve Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction," *Court Review* 44 (2007-08): 10.

Judicial education is crucially concerned with promoting a credible justice system. Legitimacy research demonstrates that procedural fairness might maybe the most critical component of such a justice system. Thus, research informing how courts can improve their practices with regard to the fairness perceptions of the public should be a central piece of justice research and of judicial education. Going beyond Burke and Leben, we propose a dialogical model of research where judges provide information about the constraints and challenges of the work of judging to researchers, articulate conceptual and pragmatic hurdles to implementing researcher reform proposals, and where the research is responsive to judicial input.

Programs of judicial education not only give judges an opportunity to combat isolation by engaging in discussions with their judicial colleagues on matters of mutual interest, but also provide a venue in which judges and academics can interact. The discussions between judges and academics that take place in a judicial education setting have the potential to lead to the identification of productive research opportunities. Different types of research can present a variety of ethical and practical challenges, but our experience suggests that it is possible for scholars and judges to work together to conduct both doctrinal and empirical research that enhances academic understanding of the work of the judiciary and that provides benefits to members of the judiciary. These, in turn, inform the kinds of innovations that can usefully be suggested by researchers. The relationships that are forged in a judicial education setting can give both academics and judges an opportunity to overcome the barriers that would otherwise exist to the conduct of some forms of research. At the same time, it is important for both judges and scholars to be aware of the practical and ethical constraints that surround the conduct of research and to adopt research approaches that respect these constraints.

RESEARCH IN JUDICIAL SCHOOLS: THE MEXICAN EXPERIENCE

BY JULIO CÉSAR VÁZQUEZ-MELLADO GARCÍA*

Oliver Wendell Holmes Jr., in his legendary speech “The Path of Law,” stated: “The remoter and more general aspects of the law are those which give it universal interest. It is through them that you not only become a great master in your calling, but connect your subject with the universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the universal law.”¹

Over one hundred years later, we still hear an echo of this distinguished American jurist among judges who, as in old times, face multiple challenges. Among these challenges, those that stand out include globalization—affecting the development of new technologies, which change both the way people litigate and communicate—and new political, social, economic, and cultural relations.²

We must also consider strengthening of the rule of law, which is a challenge to judicial powers since their performance must provide society with legal certainty as well as knowledge and trust that constitutional rights are warranted and vouchsafed. This is where the balance between the principle of separation of powers and the principle of judicial independence plays a major part because:

Judicial power appears as the privileged guardian of those fundamental principles or transcendental values (human rights or constitutional principles), fundamentally and among other reasons because it is isolated from politics. Independence allows judicial power to have a wider perspective.³

Following the same lead, we must acknowledge that to enhance judicial independence and legitimacy of the judicial power against other powers and the governed, it is necessary to add two principles to the formula, transparency and accountability, so that judicial acts are materially and administratively effective, thus underpinning the rule of law.⁴

The Nuremberg Declaration on Peace and Justice signed in 2008 puts forward a new concept for justice based on the principles mentioned above, conveying “accountability and fairness in the protection and vindication of rights, and the prevention and

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¹ O. W. Holmes, Jr., “The Path of Law,” *Harvard Law Review* 10 (1897): 457.

² I. Archie, “Judicial Training and the Rule of Law,” *Judicial Education and Training*, no. 1 (2013): 15-21.

³ O. Fiss, *Los mandatos de la justicia. Ensayos sobre Derecho y derechos humanos*, trans. Roberto Saba (Spain: Marcial Pons, 2011), pp. 45-46. (Article translator’s translation of quote.)

⁴ Z. Fleck, “A Comparative Analysis of Judicial Power, Organisational Issues in Judicature and the Administration of Courts,” in *Fair Trial and Judicial Independence*, ed. Badó Attila (Switzerland: Springer, 2014), p. 4.

redress of wrongs”—to be administered by “institutions and mechanisms that enjoy legitimacy, comply with the rule of law and are consistent with international human rights standards”—particularly regarding “local, national and international actors.” According to this definition, “Justice combines elements of criminal justice, truth-seeking, reparations and institutional reform as well as the fair distribution of, and access to, public goods, and equity within society at large” since it is aimed at those involved in transforming conflicts, transitional justice, and rule according to higher law.⁵

Therefore, the essential duty of the judicial power is to do justice, understood as both content and form as it relates to judges’ understanding of disputes under their jurisdiction.⁶ Thus, judicial schools acquire a reputation of their own as entities devoted to preparing judges to face the challenge of providing a fully dynamic society with legal certainty in an evolving rule of law, as well as supranational entities that have an impact on internal policies, and above all on the individual, as the main goal of law.

The Mexican Federal Judiciary Training Institute has taken on this challenge through different functions: formation, training, and updating current and aspiring members of the judiciary. However, research is one of the most important activities conducted by this institution, because through research, we can delve into important issues that encourage innovation in doctrinal and administrative aspects of the law.

The aim of this article is to outline how research is carried out at the Federal Judiciary Training Institute and to distinguish it from research conducted in other institutions, such as law schools or research centers. Specifically, the article addresses the methodology followed; who conducts the research; challenges encountered; and proposals that have been made to the Ibero-American Network of Judicial Schools (RIAEJ) about issues and the development of a research protocol to be applied not only in Mexico but also in all Ibero-American countries.

OBJECTIVE OF RESEARCH IN JUDICIAL SCHOOLS

Education in judicial schools must necessarily teach judges the competences needed to right the wrongs in justice by putting forth study and research models that vigorously bestow the democratic constitutional rule according to higher law.

As far as research is concerned, in the context previously described, it must be defined as “the original and systematic study of normative phenomena aiming at the building of concepts, principles and institutions that can be the grounds for the solving of legal issues that have not yet been solved desirably.”⁷ Even if this definition can

⁵ United Nations General Assembly, *Nuremberg Declaration on Peace and Justice* (2008), A/62/885. <http://www.peace-justice-conference.info/download/Nuremberg%20Declaration%20A-62-885%20eng.pdf> (consulted on May 14, 2014. 18:55).

⁶ Archie 2013, p. 19.

⁷ H. Fix Zamudio, “Investigación Jurídica,” *Nuevo Diccionario Jurídico Mexicano*, vol. 3 (Mexico: UNAM, Porrúa, 2001), p. 2152.

be held as a truth in general terms, it is also true that when speaking of legal research related to the judiciary, it becomes necessary to acknowledge its features regarding both form and content in a way that recognizes that the production of knowledge to resolve legal issues is derived from a specific case, involving real subjects who seek the decisions of a judge in expectation of a satisfactory response to their claims.

Therefore, unlike what is taught to obtain a bachelor's in law—the first step in higher education aiming at the acquisition of knowledge, skills, and work methods, as well as appropriate attitudes and expertise related to exercising a profession⁸—in judicial schools it is desirable to give the student additional education to reach a higher capacity for professional development in which essential knowledge and skills for judicial performance are widened and deepened. Thus, socialisation in the working environment of the judiciary permits familiarization with the ethics and values of a judicial organisation, as well as transmission of specialized knowledge that gives the judiciary its essence.⁹

Thus, research conducted in law schools and research centres within universities must be different from that performed in judicial schools, since judicial schools are, in general terms, institutions in charge of choosing and preparing judges and magistrates.

- *Judicial School.* The main task of the judicial school is the study and analysis of the syllabus taught within such institutions, which has to be the most suitable to enhance the technical and legal knowledge of judges, thus fostering internalization of judicial regulations and ethical standards. This task must develop skills and techniques in complementary areas of knowledge linked to the management and administration of judicial offices. It must also teach students techniques such as information management, which are needed for efficiency. Teaching methods and strategies applied in judicial schools must be pedagogically appropriate; they should be cutting edge and take adult-learning styles into account.
- *Judiciary.* Research performed in judicial schools must be carried out from the judicial perspective to gain support by the professional assembly or the institution, thus underpinning certain features, which are necessary to elaborate on and to disseminate throughout the judicial power as a whole. Research can also be carried out from the perspective of students who are at the same time members of the magistracy that conduct research as part of their learning and everyday work. It is important to be aware that empirical research plays a major role in this case, since it is aimed at finding solutions to specific problems faced by the judiciary on subjects related to technical training for

⁸ Cf. Reglamento General de Estudios Universitarios de la Universidad Nacional Autónoma de México (Mexico: UNAM, 2013), p. 3. <https://consejo.unam.mx/legislacion-universitaria/reglamento-general-de-estudios-universitarios> (as consulted on March 24, 2014, 12:30).

⁹ Cf. H. Fix Fierro, "La educación judicial," in *Escuela judicial: su papel estratégico en la administración de justicia*, Supreme Court of Justice (Federal District), Justicia y derecho 7 (2012): 51.

lawyers, the impact of legal decisions on society, ethical behavior, court management, and use of tools to enhance efficiency.

Research conducted by these institutes should convey elements that help establish and define measures aimed at achieving the proper balance between transparency and reliability, both of which enhance accountability. For example, adopting mechanisms to enhance communication with citizens when there is the need to file a complaint and including legal ethics in the syllabus when training judges are both important activities.¹⁰

RIAEJ synthesizes this concept by stating that research shall be “part of the training of judges and other civil servants that belong to the Judicial Power. This is essentially a matter of acknowledging that judicial action is, in this case, a source of new social truths, and therefore a source of new knowledge which makes it an object of interest and great concern to researchers.”¹¹

METHODOLOGY, DESIGN CRITERIA, AND DATA-COLLECTION TECHNIQUES FOR LEGAL RESEARCH WITHIN JUDICIAL SCHOOLS

To put forward a research model based on judicial schools aligned with RIAEJ, one must first be clear on the objectives of judicial training, which will necessarily differ from those sought in college training. Experts, like Héctor Fix Zamudio, state that legal science cannot be entirely theoretical or completely practical; therefore, research must find its foundation in theory before experience because “legal ordinance must be examined only after having previously examined fundamental principles in order to collect empirical data under a critical and selective scrutiny.”¹² Consequently, when confronted with research conducted by judicial schools, one must choose proper methodology to approach issues from the judicial perspective.

Having said that, which methodology is the best to study in judicial schools? For educational purposes, we adjust the classification system arranged by Lorraine Blaxter, Christina Hugues, and Malcolm Tight and apply it to research within judicial schools.¹³ The authors point out the presence of “families”—common research strategies—such as design criteria and data-collection techniques that represent different aspects of the research process, which when combined provide a better approach to the problem.

Qualitative analysis takes priority in research conducted by judicial schools, since it describes facts and individuals without a numerical approach. The research

¹⁰ Cf. G. Di Federico, “Judicial Accountability and Conduct: An Overview,” in *Judicial Independence in Transition*, ed. Anna Seibert-Fohr (Switzerland: Springer, 2012), p. 90.

¹¹ *Nuevo paradigma curricular para la formación de jueces y juezas en Iberoamérica*, The Ibero-American Network of Judicial Schools (Colombia: RIAEJ, 2011), p. 68.

¹² H. Fix Zamudio, *Metodología, docencia e investigación jurídica*, 5th ed. (Mexico: Porrúa, 1996), p. 71.

¹³ L. Blaxter, C. Hugues, and M. Tight, *Cómo se hace una investigación*, trans. Gabriela Ventureira (Spain: Gedisa, 2000), p. 90 (and following pages).

work takes place in the library, using electronic resources, and in the institution where the researcher does his or her internship.¹⁴ It is either focused on action research, inasmuch as the goal is to produce a change within judicial law, or on case studies, when a sole example is taken from a universe of cases.¹⁵ The main data-collection technique is the gathering and analysis of documents.¹⁶

It is important to mention that professor Héctor Fix Zamudio states that in legal issues, especially within the field of judicial research, interdisciplinary studies have an auxiliary and, therefore, supplementary nature, since the jurist only uses them to elaborate upon documentary research. This develops not into the forming of new concepts (the judge cannot form the concept of medicine or economy), but into a better understanding of law, which “does not wear out on the normative aspect.”¹⁷

Therefore, we conclude that the information resulting from research in judicial schools offers judges the legal content, which, in turn, provides the greatest

¹⁴ The concept of families, understood as tactics, has two aspects: quantitative and qualitative research, as well as field research and office work. It is important to clarify that quantitative research refers to “the studies containing data which can be analyzed in terms of numbers . . . is based upon original plans and its data is studied with greater promptness.” On the other hand, qualitative research describes people and events scientifically without using numerical data . . . it is more open and sensitive towards the subject.” J. W. Best, and J. V. Kahn, *Research in Education*, 6th ed. (Upper Saddle River, NJ: Prentice Hall, 1989), pp. 89-90. (Article translator’s translation of quote.) The field research and office work aspect has to do with the researcher’s preferences and opportunities regarding the use of library space, the institution facilities in which he or she works (which are common circumstances to judicial researchers), and laboratory work; it also has to do with the occasion of going out to collect original or empirical data. See Blaxter, Hugues, and Tight 2000, pp. 91-94.

¹⁵ With regard to design criteria, four basic approaches that may be combined during the research process stand out in the social sciences:

1. *Action Research*. This kind of research might be defined “as ‘the study of a social situation with a view to improving the quality of action within it.’ It aims to feed practical judgment in concrete situations, and the validity of the ‘theories’ or hypotheses it generates depends not so much on ‘scientific’ tests of truth, as on their usefulness in helping people to act more intelligently and skillfully.” See J. Elliott, *Action Research for Educational Change* (England: Open University Press, 1991), p. 69.
2. *Case Study*. Robert K. Yin states this method researches contemporary phenomena in its real context, especially when the links between each other are hardly distinguishable. Regarding the case study, see R. K. Yin, *Case Study Research. Design and Methods*, 5th ed. (Thousand Oaks, CA: Sage, 2014), p. 3.
3. *Experiments*. Albeit regarded as a typical procedure of physical sciences, the experimental method is also present in legal research processes by reason of its aiming to achieve an outcome through formulation and demonstration of hypotheses using designed and controlled tests. See Blaxter, Hugues, and Tight 2000, p. 97.
4. *Surveys*. Generally speaking, a survey is “a data collection method by means of the formulation of a series of previously established and organized questions, in a questionnaire designed for a sample of representative individuals within a particular population.” P. Hutton, *Survey Research for Managers: How to Use Surveys in Management Decision-Making*, 2nd ed. (England: Palgrave Macmillan, 1990), p. 8. (Article translator’s translation of quote).

¹⁶ The following are data-collection techniques: documentary research (critical analysis of other people’s work, see Blaxter, Hugues, and Tight 2000, p. 205); interviews (see J. Bell, *Cómo hacer tu primer trabajo de investigación. Guía para investigadores en educación y ciencias sociales*, trans. Roc Filellá Escolá [Spain: Gedisa, 2002], p. 173); observations (see M. Galton, “Structured Observation Techniques,” in *Educational Research, Methodology and Measurement: An International Handbook*, comp. John Keeves [England: Pergamon, 1988], p. 474); and questionnaires (see Blaxter, Hugues, and Tight 2000, p. 216).

¹⁷ See Fix Zamudio 1996, p. 81.

contribution to judicial responses by presenting scientific elements. In addition, interdisciplinary contents supply judges with clarifying elements when resorting to economical, psychological, sociological, medical, political, or moral criteria becomes necessary.

LEGAL RESEARCH SUBJECTS IN JUDICIAL SCHOOLS

It is necessary that judicial schools have the proper human and material resources to carry out legal research directed towards judges. Regarding material resources, it is essential to have suitable facilities to conduct the research process. In the case of research centered on documentary sources, researchers must have a proper space for writing, permission to access the library and archives, and computers to access electronic resources. On this point, the RIAEJ emphasizes the need to publish on its website any research products that schools decide to disseminate, which contributes to the development and distribution of the research conducted by the judicial schools integrated within this network.¹⁸ Regarding human resources, it is important to point out that the RIAEJ has highlighted the role of magistrates as producers of knowledge while working on their own training process in judicial schools, starting from the legal perspective—linked to judicial work and the evolution of the legal system—and securing analysis and evaluation of the process and its outcomes.¹⁹ Furthermore, the researcher must decide, taking into consideration the nature of research and his or her own personality and work style, whether the research project will be carried out as independent or group work.

Moreover, it is essential to have a professional team, including judges, magistrates, professors, and researchers, to establish the research lines that will drive the production and development of knowledge towards improving the professional practice of magistrates. This starts from a legal perspective, but also uses an interdisciplinary perspective for the purpose of expanding the researcher's view, approaching issues with a comprehensive viewpoint, and, above all, achieving a practical purpose.²⁰

This is why it is necessary to introduce and reinforce the idea of a mentor as a research supervisor within judicial schools,²¹ as well as to encourage, aid, and support the researcher. A mentor must share his or her own knowledge and facilitate access to material resources, as well as allow admittance to his or her own network of contacts for researchers to improve their abilities. The mentor should also help to clarify the researcher's goals and offer feedback. He or she should be a professional and personal

¹⁸ "Acta de la VII Reunión Ordinaria." *VII Asamblea General de la Red Iberoamericana de Escuelas Judiciales*, Paraguay (2013): 16.

¹⁹ *Nuevo paradigma* 2011, p. 68.

²⁰ Cf. "Acta de la VII Reunión Ordinaria" 2013, p. 14.

²¹ Cf. J. Saldaña Serrano, "Aproximaciones al tema del perfil del juzgador mexicano," unpublished manuscript (2013), p. 16.

role model and help to improve the researcher's social and professional status by providing instruction in social protocol, an integral part of judicial practice.²²

THE LEGAL RESEARCH CHALLENGE WITHIN JUDICIAL SCHOOLS

During the 7th Ibero-American Network of Judicial Schools General Assembly, which took place in 2013, RIAEJ members stated that “research in the judicial schools field represents a deficit, a necessity and a challenge. It is a deficit inasmuch as research has reduced its scope to extremely particular experiences due to its focus on internal training processes. It is a necessity because regarding training, research and a succeeding transformation are needed in order to achieve application, use and management of the research object.”²³ Nevertheless, this situation is not exclusive of Ibero-American countries. As an example, the United States is the pioneer of developing aspects such as judicial governance and ethics,²⁴ although its judicial schools are more focused on teaching.²⁵

Having acknowledged this, the RIAEJ members' affirmation is accurate, and it could work as a starting point to support the need to conduct research in our countries. Additionally, regardless of the different systems of law enforcement, it is possible to outline a legal research model common to every judicial school in our region. Since one of the definitions of legal methodology is “the development of the different meanings of law,”²⁶ then it follows that “the scientific character is not rooted in the use of a particular method considered as the rigorous one . . . but in the right use of our intelligence with the purpose of duly perceiving the characteristics of the object of knowledge.”²⁷

Furthermore, the importance of research in judicial schools lies not only in the accuracy and the level of knowledge generated within them, but, above all, in the intellectual training the judge obtains from the attitudes, abilities, and skills the process brings about. Hence, research projects are themselves objective criteria that allow evaluation of certain characteristics of the individual who wants to become a judge, such as quality of knowledge, technique, and attitude.

RESEARCH LINES PROPOSAL FOR THE RIAEJ

Research lines deal with the main scientific areas upon which scientific-legal work in the judicial schools must focus. The following lines are the result of the reflections

²² M. E. Conner and W. A. Anderson, *Mentoring in the Judiciary*, 2nd ed., Judicial Education, Research and Technical Transfer Project, Monograph Two. (East Lansing: Michigan State University Press, 1999), pp. 5-7.

²³ “Eje temático 8. La investigación en las escuelas judiciales,” *VII Asamblea General de la Red Iberoamericana de Escuelas Judiciales* (Paraguay, 2013), p. 4.

²⁴ Cf. Di Federico 2012, p. 90.

²⁵ Cf. National Association of State Judicial Educators (NASJE), “Principles and Standards of Judicial Branch Education” (2001), p. 13.

²⁶ NASJE 2001, p. 60. (Article translator's translation of quote).

²⁷ *Ibid.*

embodied in this article. For classification purposes, we arrange them under three titles.

Reinforcement of Jurisdictional Activities. The following items influence the formulation of methods and techniques to resolve particular cases within the jurisdictional field:

- judicial interpretation based on jurisprudence
- judicial argumentation
- legal logic and the judicial process
- judicial language and writing
- judicial ethics
- governance and judicial power

Current Legal Issues for Judicial Civil Servants. The production of specialized knowledge related to various legal subjects that have bearing on the activities of members of the judicial power:

- application of constitutional principles on sentences
- judicial administration
- knowledge and judicial function management
- migration-related issues
- issues regarding access to information, freedom of speech, freedom of belief, and freedom of the press
- procedural and administrative issues regarding gender, discrimination, and equality.
- the role of the judge facing alternative means to settle controversies.
- the role of the judge facing controversies involving International Human Rights Law

Judicial Schools: Challenges and Perspectives. Analysis of the challenges and development of judicial schools within the Ibero-American area, with the purpose of achieving a stronger role in their internal and external judicial fields:

- judicial schools as strengthening agents of judicial independence and the democratic and constitutional state of law
- the suitability of judicial schools' curriculum and the challenges of judges facing a transitional democracy

PROPOSAL FOR A PROJECT ON RESEARCH PROTOCOL FOR THE RIAEJ

Research protocol is an instrument that allows us to lay out how relevant a research project is to establish its viability. There is general information that identifies the proposer, along with basic elements from which the researcher begins his or her work, such as subject, line of research, hypothesis, elucidation of general research strategies,

design criteria, and data-collection techniques. It is suggested that a basic bibliography be included, as well as a statement that acknowledges the aims of the research and the desired outcomes, together with necessary authorizations from the research centre.

Flexibility is one of this document's key features, since its components may change with the researcher's progress during the research process in such a way that the initial protocol turns out to be very different from the end product. Malleability is, therefore, an essential quality for the configuration of a judicial research protocol, in conjunction with the following material, methodological, and ethical requirements:

- *Human and Material Elements.* Persons in charge of research, the institution, mentors, funding, time to complete the work, as well as desired outcomes from the research.
- *Methodological and Formal Elements.* Title, subject and type of research, line of research, description, objectives, problem statement, justification, theoretical framework, methodology, standpoint, work hypothesis, data sources, and schedule, among others.
- *Ethical Elements.* The authorization given by the institution has ethical implications since a mentor must directly supervise a series of actions for which the judicial school is responsible.

CONCLUSION

Research in judicial schools is different from research in colleges by reason of the professional training they offer, and thus it must have a more empirical orientation. Methodology, focus, and research techniques provide various instruments that can be arranged according to the judicial research project.

The success of a judicial research project depends on both material and human resources. It is important to highlight the role of the students of judicial schools as a source of knowledge, as well as the involvement of teachers and mentors. Research in judicial schools is best presented as a process embedded in the training of magistrates that contributes to the development of the necessary attitudes, abilities, and skills for the daily practice of the profession.

JUDICIAL EDUCATION IN PROMOTING THE RULE OF LAW

BY SURENDRA KUMAR SINHA*

This article provides a glimpse of judicial education from the Bangladesh perspective. The striking feature of the Bangladesh Constitution is that all citizens are equal before law and entitled to enjoy the protection of law.¹ Within this context, the concepts of democracy, human rights, rule of law, dispensation of justice, and independence of the judiciary all play a central role. For instance, democracy represents the institutionalization of freedom. Fundamentally, constitutional limits on power, a key feature of democracy, require adherence to the rule of law. For this reason, it is possible to identify the time-tested fundamentals of any constitutional government, such as human rights and equality before the law, which any society must possess to be properly called democratic.

The Supreme Court of Bangladesh, over a period of 41 years, is growing into an institution wielding enormous power in every sphere of human activity. There is no grievance too insignificant to attract the palliative and curative jurisdiction of the Appellate Division of the Supreme Court, which plays a pivotal role and gives directions to follow the rule of law. Such protection and implementation depends on the proper administration of justice, which in turn depends on the existence and availability of an independent judiciary. Judicial independence is used to describe the judicial character and state of mind. It means freedom from improper pressure in the decision-making process from any quarter, and it is an essential attribute of the rule of law. Following is a discussion of the judicial-training experience in Bangladesh, which reinforces these important concepts.

IMPORTANCE OF JUDICIAL TRAINING

Judicial training is a subject in several international documents concerning the status and independence of judges. For example, the Basic Principles on the Independence of the Judiciary stipulates that: "Persons selected for judicial offices shall be individuals of integrity and ability with appropriate training or qualifications in law."² Similarly, the European Charter on the Statute for Judges³ stipulates, *inter alia*, that "the statute ensures by means of appropriate training at the expense of the state, the preparation of the chosen candidates for the effective exercise of judicial duties"⁴ and that "an

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¹ Article 27 of the Constitution of the People's Republic of Bangladesh.

² See Article 10 of the Basic Principles on the Independence of the Judiciary endorsed by General Assembly resolution no.40/32 and 40/146 of 1985.

³ Approved by the Council of Europe in 1998.

⁴ See principle 2.3 of the European Charter on the Statute for Judges, 1998.

authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary ensure the appropriateness of training programmes and of the organisation which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties.”⁵

The recommendations of the Committee of Ministers of the Council of Europe Regarding Judges: Independence, Efficiency and Responsibilities also stipulate that “Judges should be provided with theoretical and practical initial and in service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.” In addition to this, “an independent authority shall ensure, in full compliance with educational autonomy, that initial and in service training programs meet the requirements of openness, competence and impartiality inherent in judicial office.”⁷ The European Bank for Reconstruction and Development developed core principles for effective judicial capacity. Regarding judicial training, these principles stipulate:

5. The judiciary must receive appropriate training.

New judges should receive comprehensive initial training. Appropriate ongoing training should be strongly encouraged, mandatory in appropriate cases, and a factor in judicial promotion. The training curriculum should be shaped by superior courts or independent supervisory bodies. It should cover all relevant substantive areas and vocational subjects such as decision-writing and ethics. Court management staff should receive managerial and financial training.⁸

The need for institutional training of judges had long been felt in Bangladesh because litigants were confronting inordinate delays, exorbitant costs, and uncertainty in the disposal of court proceedings, and there was a need to facilitate easy access to justice. This feeling accelerated with the passage of time as the judicial system came to be seen as an instrument for strengthening democracy and establishing the rule of law. Moreover, to keep pace with socioeconomic developments in the national and international spheres, the judiciary needed to be dynamic, sound, and capable of meeting the requirements of the time. To achieve these objectives, it was necessary to train

⁵ *Ibid.*, principles 1.3 and 2.3

⁶ See recommendation no. 56, chapter 6, of the Recommendation CM/Rec (2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

⁷ *Ibid.*, recommendation no. 57

⁸ See principle 5 of the EBRD Principles of Effective Judicial Capacity, developed by the European Bank for Reconstruction and Development.

judges and others involved in the administration of justice, an activity that was given topmost priority in the reform initiatives.

It is clear that judges have many qualities, most obviously independence, which make them attractive as chairs of prominent inquiries; a separate and, perhaps more important, question is whether they have the appropriate skills. It is true that judges possess special expertise in analyzing evidence, assessing the credibility of witnesses, and resolving complex questions of fact. However, this skill is largely confined to the context of a particular set of circumstances, namely, those which surround the issues of guilt and liability. Did “A” kill “B”? Was “X” liable for damage to “Y”? These “yes-no” or “either-or” questions are grist for the judicial mill. And they are determined not in a vacuum, but with the guidance of principles derived from similar previous cases.⁹ This sort of typical question-solving adjudication can erode the judges’ intellectual aptitude. Therefore, diversified judicial education is needed.

Regular training and orientation sharpens the adjudicating skills of judicial officers. Although both case management and mediation have been universally effective for courts worldwide, their applications differ from country to country depending on local legal cultures. Each country has its own local customs and expectations with regard to its judiciary. The training needs to include court administration and case management besides methods to improve their skills in hearing cases, taking decisions, and writing judgments. It is also necessary to train them about new legislation and expanding fields of trade, commerce, and technology to keep them up-to-date and enable them to handle contemporary and complicated legal issues efficiently. Still, we are crawling compared to the progress made by developing countries, not to speak of developed countries. Most of our procedural laws were promulgated in the eighteenth and nineteenth centuries. We have made some amendments, but those amendments are not commensurate with the needs of the day. With the advancement of science and technology, this is the right time to promulgate laws on information technology and to amend obsolete laws about the use of digital evidence. The modern scientific techniques of investigation and advancement in information technology have brought about sea changes in this field. It requires reexamination and revision of a number of fundamental doctrines. The old doctrines are no longer fundamental to the subject. The new techniques for transmission of information remain interwoven to the improvements in information technology. We cannot use software for reconstructing the images of suspects and aiding investigation with the result that many offenders of sensational cases are yet to be detected. The traditional concept of a document has been transformed by computer records and tapes, which can be retrieved on the screen or on paper. The rigid rule of hearsay evidence has had to make concessions in light of more important considerations than the earlier rigid doctrines. Countries like

⁹ M. Elliott, J. Beatson, and M. Matthews, *Beatson, Matthews, and Elliott’s Administrative Law: Text and Materials*, 4th ed. (Oxford: Oxford University Press, 2010), pp. 671-72.

Australia, New Zealand, Malaysia, India, Hong Kong, England, Canada, Nigeria, and South Africa, as well as European countries, have made corresponding amendments in the law of evidence.

Professor Gregory N. Mandel discusses two approaches for dealing with the effects of new technologies on courts. The first approach is to evaluate how technological developments are transforming the functioning of the legal system. The most prominent aspect in this regard is to determine the impact information and communication technologies are having on the administration of courts, changes in procedure, approaches to research and in the functioning of lawyers' offices, law firms, and legal education.

The second approach is to examine how laws try to keep pace with technological changes. With the emergence of newer technologies, uncertainties arise with regard to the application of existing laws, and occasionally there is a need to create new laws to regulate their use. The need for regulating new technologies is usually prompted by social and cultural perceptions about the advantages of a particular technology or, alternatively, the scope for its misuse. Such regulation could be in the form of encouragement, restrictions, or even prohibition on particular technologies. On the one hand, laws and policies can be structured to encourage innovation in particular fields of technology, through means such as government subsidies, tax concessions, protection of intellectual-property rights, and provision of funds and research facilities, among others. On the other hand, the growth and use of certain technologies can be curtailed in different ways through means like safety and health regulations, criminal sanctions for misuse, higher taxation rates, or even outright prohibitions. It is evident that decision-making institutions such as legislatures, courts, and regulatory agencies are required to examine the constant interaction between the forces of technological change and social attitudes.¹⁰

David H. Kaye, David E. Bernstein, and Jennifer L. Mnookin noted that the dramatic impact of technology is also unfolding in the domain of procedure—for instance, investigating agencies have increasingly come to rely on forensic techniques such as analysis of fingerprints, voice, handwriting, blood samples, DNA, and other bodily substances for evidence gathering.¹¹ Software is also used for reconstructing the images of suspects and aiding investigation. As newer technologies are introduced to assist investigating agencies, it is important not to be blindly enthusiastic about the reality of their use. Scientific techniques hold immense promise in the criminal justice system; but before accepting such techniques, we must examine them critically in the light of the constitutional rights guaranteed to the citizens and the requisite evidentiary standards.

¹⁰ G. N. Mandel, "History Lessons for a General Theory of Law and Technology," *Minnesota Journal of Law, Science and Technology* 8 (2007): 551-70

¹¹ D. H. Kaye, D. E. Bernstein, and J. L. Mnookin, *Expert Evidence*, vol. 3 of *The New Wigmore: A Treatise on Evidence*, 2nd ed. (New York: Aspen Publishers, 2010).

JUDICIAL TRAINING IN BANGLADESH

The Bangladeshi system of judicial training was long unequipped to meet the challenges faced by the country.¹² For example, apart from attending a limited number of ad hoc external and donor-sponsored internal seminars, the judges of the Supreme Court had never had an opportunity to participate in any formal, collegial education program. District court judges underwent a training program when first appointed as assistant judges, but this program varied in length and content, depending on available resources. Although the program was part of a two-year probationary period during which judges were supposed to learn their jobs, it was greatly curtailed in practice due to work pressure.¹³

Establishment of the Judicial Administration Training Institute (JATI)

This training situation prevailed until about 1985, when a five-year pilot project, sponsored by the Asia Foundation, was initiated by the Bangladesh Institute of Law and International Affairs. Under that pilot project, a number of judges attended a series of short-term training courses aimed at developing competency in substantive and procedural law, as well as imparting some knowledge of management and general administration. It was soon realized, however, that a more permanent arrangement was needed. Accordingly, in 1989, a proposal was prepared, again with help from the Asia Foundation, for a judicial education institute. However, the idea remained in abeyance until 1995, when the Judicial Administration Training Institute (JATI) was finally established as a statutory public authority.¹⁴ JATI commenced operations in 1996.

Management, Operation, and Governance of JATI

In accordance with Section 6 of the JATI Act, a management board has been established, which comprises the following persons:

- A. *The Chief Justice of Bangladesh, ex-officio, who shall also be its Chairman;*
- B. *Two judges of the Supreme Court either sitting or retired to be nominated by the Chief Justice and the senior of them shall be its Vice Chairman;*
- C. *Attorney General of Bangladesh, ex-officio;*
- D. *Director General, Judicial Administration Training Institute, ex-officio;*
- E. *Secretary, Ministry of Establishment, ex-officio;*
- F. *Secretary, Ministry of Finance (Finance Division), ex-officio;*
- G. *Secretary, Ministry of Law, Justice and Parliamentary Affairs, ex-officio;*

¹² For a brief discussion, see S. Hafizur, R. Karzon, and Md. Zahurul Haq, "Legal Education System in Bangladesh," *Daily Star (Bangladesh)*, August 22, 2004.

¹³ See World Bank, "Legal and Judicial Capacity Building, Bangladesh" (2004).

¹⁴ Act No. XV of 1995 (July 8, 1995). See "Extraordinary Issue Published by the Authority," *Bangladesh Gazette (Bangladesh Parliament, Dhaka)*, July 9, 1995. See also the JATI website, www.minlaw.gov.bd/jati.

- H. Rector, Bangladesh Public Administration Training Centre, ex-officio;
- I. Registrar, Bangladesh Supreme Court, ex-officio;
- J. District and Session Judge, Dhaka , ex-officio;
- K. Dean, Faculty of Law, Dhaka University, ex-officio;
- L. Vice Chairman, Bangladesh Bar Council, ex-officio;
- M. President, Supreme Court Bar Association, ex-officio;
- N. Director (Administration) of the Institute, who shall also be its Secretary (emphasis in original).

A person who is qualified to be a judge of the Supreme Court can be its director general.¹⁵ The director general is its full-time chief executive officer and responsible for implementing the decisions of a management board. The director general is also required to discharge other functions of JATI, as per the instructions of the management board. JATI's main objective is to arrange for the training of judicial service appointees, lawyers, and other professionals associated with the judicial system to enhance their professional efficiency.

Functions of JATI

The JATI is generally responsible for a number of functions, including:

- a) providing training to judicial service appointees, law officers entrusted with government cases, advocates enlisted with the Bangladesh Bar Council, and officers and staff of all courts and tribunals subordinate to the High Court Division of the Supreme Court;
- b) arranging and providing training in legislative drafting and drafting of other legal documents to nationals, as well as trainees from abroad, in cooperation with international donor agencies;
- c) conducting and publishing research on court management;
- d) arranging and conducting national and international conferences, workshops, and symposia to improve the judicial system and the quality of judicial work;
- e) publishing periodicals, reports, etc., on the judicial system and court management;
- f) advising the government on any matter relating to the judicial system and court management;
- g) determining the subjects of study, curriculum, and all other matters relating to training programs under the JATI Act;

¹⁵ Section 11 of the Judicial Administration Training Institute Act, 1995.

- h) awarding certificates to those trained by JATI;
- i) establishing and managing the libraries and reading rooms;
- j) carrying out any work, as determined by rules, to activate the judicial administration system; and
- k) taking all necessary actions for fulfilling the above responsibilities.

Training Programs conducted by JATI:

Different types of training are given according to the needs of various groups of trainees, such as judicial officers of different tiers, public prosecutors, government pleaders, and court support staff. In view of the decision taken by the government for separation of the judiciary from the executive in the light of the judgment of the Appellate Division of the Supreme Court in Civil Appeal no. 79 of 1999 (*Secretary, Ministry of Finance and Others vs. Mr. Md. Masdar Hossain and Others*),¹⁶ special training programs have been developed for training assistant judges, senior assistant judges, and judicial magistrates in trying civil and criminal cases.

a) Foundation Training for Newly Appointed Assistant Judges (Judicial Education General)

The duration of such training is normally two months, but sometimes longer. Such programs cover all basic substantive and procedural laws for the assistant judges and judicial magistrates. Since its inception, JATI has arranged 30 foundation trainings for newly appointed assistant judges and judicial magistrates. The Appellate Division in the *Masder Hossain* case advised JATI to impart six months' intensive foundation training to newly appointed officers of the judicial service. This training includes field trips to the Supreme Court; Ministry of Law, Justice and Parliamentary Affairs; and other government organizations related with the functions of the judiciary. These tours help the trainee judges to understand the functions of those organizations and how they connect with the judiciary.

b) Continuing Education Programs for Judges of All Tiers Already in Service

This is the mainstream training program for judges of all tiers run by JATI. There are several types of training programs under the heading of continuing education programs. Some courses are short in terms of time, and some are refresher courses. This training program is also meant for judges who receive a promotion in new tiers.

c) Special Training Courses for Judicial Magistrates

There are often special training courses to meet immediate special needs. Recently, special training programs have been organized for judicial magistrates of all tiers after the creation of judicial magistracy.

¹⁶ 52 DLR (AD) 82.

d) Training Programs for Judges/Lawyers on Alternative Dispute Resolution (ADR) and Recent Acts and Amendments

These types of courses are designed for a new law or an important amendment of a law. Such training programs for judges were held after the enactment and amendment of the Code of Civil Procedure 1908.

e) Training Courses and In-Service Training Programs for Government Pleaders/Public Prosecutors and Court Support Staff

Besides training programs for judges, there are other training programs for government pleaders/public prosecutors and for court support staff. These courses are specially designed based on their respective needs. Court support staff includes bench assistants, sheresta assistants, recordkeepers, stenographers, sheristadars, and nazirs.

f) Seminar/Workshops/Orientation Programs

Many judicial officers and judicial magistrates have attended seminars, workshops, and orientation programs held at different times. Sometimes, workshops and seminars are held and study tours are taken for training programs on environmental laws, gender issues, or juvenile justice.

g) Development of Judicial Skill (to Improve Efficiency and Skill)

There are several sessions on judicial skill in the general training curriculum to improve the quality of judgments. Trainee judges are required to bring photocopies of their judgments and orders. These judgments are taken up for scrutiny and discussion by the judges of Supreme Court, where defects, if any, are pointed out and suggestions are given to improve the quality of the judgments.

Training Methodology Applied by JATI

JATI has adopted all the standard training techniques. All the training courses are needs based and results oriented. The language of instruction in the training classes is mainly English.

a) Classroom Lectures

Classroom lectures are delivered by resource persons, such as the judges of both the divisions of the Supreme Court, director general, senior judges of the sub-ordinate judiciary and officers of this institute, eminent lawyers, academicians, and persons having expertise in the particular subjects. The classroom lectures are interactive in nature.

b) Case Studies (to Improve Competency and Efficiency)

A practical, problem-based case (civil or criminal) is given to the trainee judges. Sometimes, a mock trial is held, and after hearing arguments, the trainee judges write judgments, which are evaluated by the director general with the assistance of JATI

officers. The loopholes in the judgments are pointed out to each trainee, and guidelines are given for writing judgments correctly in accordance with law.

c) Oral Presentations on Specific Problems (to Improve Competence and Efficiency)

Problems are selected from cases reported in various law journals and are given to the trainees for solution according to their roll numbers, but all the trainees are required to participate in discussions for solving the problems. The director general plays a vital role by covering factual and legal aspects connected with the problems. This training method equips the trainees to find out answers to critical and complicated legal problems.

d) Group Discussions (to Enhance Knowledge)

The trainees are given problems selected from law journals involving various issues/points for discussion in small groups. Each group discusses the issue/point for determination assigned to them. The director general summarizes the discussion session and gives the correct decisions for the assigned problems. This sort of discussion is designed to help trainees perform the exercise themselves and enhance their skills and knowledge.

e) Ethics and Impartiality

Each course includes a discussion class where the chief justice of Bangladesh enlightens the trainees on the ethical standards a judge is expected to maintain. Emphasis is also given as to the impartial role of judges so that they can discharge their duties without fear and favor.

f) Mock Trials

Mock trials are held on civil and criminal cases for newly appointed trainee assistant judges and judicial magistrates. The trainee judges are required to record depositions and hear arguments in the presence of the director general. The trainee judges write judgments, and in discussion sessions the director general evaluates the judgments with assistance from JATI officers. If any defects are found, the trainees are instructed to correct those defects in the future. Mock trials acquaint the new assistant judges and judicial magistrates with the correct procedures for holding both civil and criminal trials, which may help them to perform their duties of trying cases more efficiently.

Shortcomings and Suggestions

The statute creating JATI has officially vested powers of management and administration of the institute upon the management board. But, in fact, except for a few administrative matters, most of the important decisions and functions, such as preparation of academic calendar, selection of subjects and topics, training methodology, and nomination of mentors, are done by the director general, who is an ex-officio member of

the management board. As other board members have *ex-officio* status and no full-time involvement with JATI, they cannot contribute and participate in policy decisions for preparation of the training curriculum and other related activities.

It seems proper, under section 18 of the original JATI statute, to establish an expert committee or academic council comprising members having judicial backgrounds and sufficient pedagogical skill and ability. This type of council or technical body may be given the responsibility of making well-thought-out decisions on preparing training modules and selecting the methods for judicial training. The age-old method of classroom lectures and some case-study programs have apparently failed to create much interest in both young and senior judges. The very process of adult learning is a technical matter. So, carrying out intensive research and developing suitable methodology for training persons who have already spent a considerable period as a judge are now of paramount importance for JATI. It is thus clear that JATI should take immediate steps, including making rules for establishing a permanent body or council responsible for the above functions, which may be headed by the director general of JATI and composed of some experienced people from both the judiciary and related academic fields. The said institutional change and reform of JATI will certainly improve the quality of the training programs. The proposed council may also be given the duty of conducting pre-training surveys or needs assessments of judges intending to participate in the training. Similarly, a post-training performance evaluation of the judges is also required. Establishment of such a technical body or council and introduction of a system of making needs assessments and taking feedback would certainly build JATI's intellectual and institutional capacity in preparing the more pragmatic and effective training modules for trainee judges, lawyers, and support staff.

A grey area of judicial education in Bangladesh is the absence of any arrangement and facility for the judges of the Supreme Court. Unlike other jurisdictions, we do not have any institutional or infrastructural facilities for the Supreme Court judges who may participate in some orientation courses and training programs to renew their legal knowledge and wisdom and share their experiences with internationally reputed jurists and scholars at home and abroad. In India, a National Judicial College in Bhopal has a mandate to facilitate training programs or orientation courses for the judges of the Supreme Court and high courts under the supervision of a high-powered academic committee headed by the chief justice. So, the concerned authority may ponder the matter and take steps for introducing such training facilities for the Supreme Court judges of Bangladesh.

The courses and training modules designed by JATI in Bangladesh have not won appreciation from the participants. There is an urgent need to equip this institute with dedicated faculty members and necessary tools, including study materials and technologies required for imparting training on forensic science and other advanced technologies. The opinion of a forensic expert could be essential for the judge in a criminal case to determine the truth of an allegation. If the training institute does not have a forensic lab, then trained judges cannot be blamed for fallible verdicts.

JATI's judicial education programs need to be modernized and more diversified by incorporating the following facilities:

- judiciary-based research and policy development centre;
- introduction of modern teaching methodology and use of ICT-based teaching technology and tools;
- an evaluation system for the trainee judges so that judges who secured outstanding results in the training programs may get proper reward and appreciation during their careers;
- introduction of a system of taking feedback, including utility of the knowledge acquired by the judges during the training programs;
- dissemination and management of judicially relevant information;
- capacity building, including both infrastructure and human resource development, is very much essential for JATI, or it will not be possible for the institute to conduct long-term training programs, including basic courses for the probationary judges and magistrates; and
- a centre of excellence in judicial education and administration.

The project should also include:

- attendance of the employees of the court-recording system;
- a bar-coding-based file-tracking system in all sections and courtrooms;
- video-conferencing facility;
- electronic self-operative facility providing easy access to the litigant public; and
- digitally signed, certified copies—parallel to the signing of the daily orders on hard copies.

To bring excellence in the judiciary, we may declare and continue the efforts upholding the following values:

- initiative—judges shall have to do something more than what they usually do in their duties and do it better than their predecessors;
- intelligence—no judge shall feel satisfied by just being average;
- industry—each judge shall exert to put in his or her competence and capability to their maximum utilization;
- integrity—under any circumstances, judges must have zero tolerance for corruption, including anyone in the court support staff;
- personality, modesty, and humility—the basic requirements of the personality of a judge; and
- judicial governance—access to justice, alternative dispute resolution, incorporation of international norms, legal aid, and accountability of judges.

CONCLUSION

Formal education for judicial officers is essential for upholding public trust and confidence in the judicial system. Each individual in the judiciary bears a professional responsibility to attain, maintain, and advance competency. For justice to be restored, international assistance should support judicial training, whose curriculum includes transnational criminal law; international and regional human-rights law; international humanitarian law and international refugee law; international criminal law; political arrangements and agreements; transitional justice mechanisms; and the constitutional relationship between international and domestic law.

In Bangladesh, as it appears, a change of the conventional mindset and pessimistic attitude of judges and magistrates is an important precondition for building a strong judiciary with the ability to uphold the rule of law. In many parts of the world, the key actors of the judiciary, particularly judges and lawyers, are being shaped through various judicial education programs. It is high time for JATI to take immediate steps, both legislative and administrative, to reform the existing training methodologies and modules so that judges become more confident and committed to the rule of law after training. A society having the culture of rule of law demands that its members remain aware of their rights and that its government acts in a legal and transparent way. Besides educating judges and legal professionals, Bangladesh must try to foster a more robust rule-of-law culture, where citizens will be aware of their rights and obligations under both domestic and international laws. In that way, a society may continue its empowerment system for all its members, where the rights of every citizen will be respected and, if necessary, duly enforced and protected.

TOWARDS A TECHNOLOGY-ENHANCED LEARNING MODEL

BY JESSICA MACDONALD, ALISTAIR DUFF, AND JACKIE CARTER*

The Judicial Institute for Scotland was formed on 1 January 2013 and implements the training objectives agreed on by the governing body under the overall supervision of the lord president. The Right Honourable Lord Malcolm is the chairman of the governing body of the Judicial Institute, and the Honourable Lord Woolman is vice-chairman. Operational responsibility for the delivery of training rests with the director of the Judicial Institute, Sheriff Duff, and the deputy director, Sheriff Cubie, in line with the guiding philosophy of the Judicial Institute that judicial training is judge led, judge devised, and judge delivered.

In 2011 the Judicial Studies Committee (JSC) appointed a head of education, Jessica MacDonald, and, subsequently, a learning technology manager, Jackie Carter, to work alongside the director and deputy director to drive the educational strategy forward. By January 2013 the JSC had been renamed and rebranded as the Judicial Institute for Scotland and had moved to new premises within Parliament House, where the High Courts are accommodated. The new Judicial Institute houses a bespoke Learning Suite designed expressly for judicial education, taking on board the unique educational philosophy required for the professional development of judges. The Learning Suite has enabled the Judicial Institute to move away from a hotel-based training venue, which was wholly inadequate as a learning space. The format of the training is largely one-day and two-day courses on specific subjects, covering a wide range of topics, including sentencing, criminal law, family law, European law, and private law. Emphasis is also placed on bench-specific skills, including court and case management. The existence of the Learning Suite allows us to consider future blended-learning activities in earnest where previously we were restrained and limited by hotel facilities.

THE EDUCATIONAL PHILOSOPHY

The Judicial Institute's guiding philosophy is explicit; judicial education will be judge led, judge devised, and judge delivered. However, accompanying this is the Judicial Institute's educational philosophy, which follows a social-constructivist approach to learning with transformative and experiential learning underpinning our pedagogic model.

Social constructivism is fundamental to our educational goals, and while there are multiple schools of thought on constructivism and social constructivism,¹ certain

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¹ S. M. M. Loyens and D. Gijbels, "Understanding the Effects of Constructivist Learning Environments: Introducing a Multi-Directional Approach," *Instructional Science* 36 (2008): 351-57

principles are accepted widely among scholars, and two specifically inform our practice. The first principle being that learners “interpret new information using knowledge that they have already acquired [and] activate prior knowledge and try to relate new information to knowledge they already possess.”² Lovens and Gijbels argue that this embeds deeper learning as learners are actively creating and reshaping knowledge rather than passively acquiring information. The second principle is that sharing knowledge, experiences, and understanding among learners and teachers constructs a broader shared-knowledge base from which learners are able to synthesise information, negotiate realities, and critically analyse theories and assumptions. We recognise that our learners bring their own experiences and understandings to the table, and it is our duty as the educational provider to harness this; the breadth and richness of knowledge and experience among judicial learners cannot be underestimated.

Two pedagogic models complement our educational philosophy. Mezirow’s “rational approach” to transformative learning plays a key role in our course and programme design. An in-depth explanation of Mezirow’s pedagogy can be found in his seminal book *Transformative Dimensions of Adult Learning*,³ or a brief summary of the main ideas can be found in Illeris’s anthology *Contemporary Theories of Learning*.⁴ In brief the theory of transformative learning can be explained thus:

Transformative learning is defined as the process by which we transform problematic frames of reference (mindsets, habits of mind, meaning perspectives)—sets of assumption and expectation—to make them more inclusive, discriminating, open, reflective and emotionally able to change. Such frames are better because they are more likely to generate beliefs and opinions that will prove more true or justified to guide action.⁵

When combined with the principles of social constructivism, learners take the lead in the transformation. At the Judicial Institute it is neither intended nor practiced that “teachers” generate changes in beliefs or opinions; their role is to facilitate the reflective processes that may or may not transform the learners’ understanding of a concept. This is an important distinction to make when considering judicial education and judicial independence. Transformative learning combines instrumental (task oriented) and communicative (dialogical) learning, which means the education can use practical and theoretical frameworks at once. This is particularly appropriate for judicial learners, who demand both real-world application and intellectual rigour in their curriculum.

² *Ibid.*, p. 352

³ J. Mezirow, *Transformative Dimensions of Adult Learning* (San Francisco: Jossey-Bass Inc., 1991).

⁴ J. Mezirow, “An Overview on Transformative Learning,” in K. Illeris (ed.), *Contemporary Theories of Learning Learning Theorists . . . in Their Own Words*, pp. 90-105 (Oxon: Routledge, 2008).

⁵ *Ibid.*, p. 92.

The second pedagogic model that informs our course design is Kolb's theory of experiential learning.⁶ The experiential learning theory, like the transformative learning theory, is complex and multifaceted, but for our purposes we focus on two key aspects. First, that learning is a process not an outcome and, second, that learning is a continuous process grounded in experience.⁷ The two concepts are interlinked and, put simply, they propose that knowledge and learning do not occur at a single point in time or in isolation. Rather, knowledge develops over time, with experience and through continuous associations and reflections made by the learner. Learners interact with their surroundings, and their ideas are "formed and reformed through experience."⁸ Learning occurs when experiences or perceived knowledge are tested and challenged by new experiences. Experiential learning manifests in our curriculum by introducing new or known concepts to the learner, providing learners with the opportunity to test their understanding of the new or known concept through group and problem-based activities, creating opportunities to reflect and ensuring that the concepts are relevant to their professional life with the view that they are able to translate their learning into their work and continue to "form and reform" ideas and understanding.

The head of education is responsible for ensuring that the educational philosophy is upheld throughout the curriculum from our approach to course design and delivery to our evaluation and quality-assurance processes.

THE JUDICIAL INSTITUTE VISION FOR TECHNOLOGY-ENHANCED LEARNING

The face-to-face education programme is now well established at the Judicial Institute and underpinned by a well-defined educational philosophy, but to pursue a path of excellence, we recognise the need to develop further in the field of distance and blended learning by cultivating our online profile and using learning technologies effectively and meaningfully. This recognition has led to investment in a number of resources and the creation of a number of technology-enhanced learning (TEL) projects. Alongside that recognition is the acknowledgement that technology should be used purposefully, not just for the sake of using technology, and that our use of technology supports the established educational philosophy. We are mindful of the warning permeating the scholarship of TEL:

Scholars have noted that technology-enhanced curricula may be particularly susceptible to focusing on the proxies rather than the principles of constructivism. . . . A deterministic view of technology can lead one to put the

⁶ D. Kolb, *Experiential Learning Experience as the Source of Learning and Development* (Upper Saddle River, NJ: Prentice Hall, 1984).

⁷ *Ibid.*, pp. 26 - 29

⁸ *Ibid.*, p. 26

technology first and to develop curriculum [sic] around it. In turn, by making superficial connections between features of the specific technology and principles of learning, the curriculum designer can view successful technology implementation as a proxy for learning (citations omitted).⁹

The driving force behind our technology-enhanced learning strategy is improving the learning experience for judicial officeholders across Scotland, as well as streamlining our own administrative and operational processes. We want the judiciary to have greater access to the Judicial Institute and to the wider Judicial Office. In addition, we want a more cost-effective model that increases flexibility and sustainability, helps to develop digital skills, and future-proofs our institution. Where previously we were lagging behind, we believe Scotland is now leading the way in the field of TEL. The Judicial Institute is committed to using technology only when it has been clearly identified as a means of enhancing the learning experience or enhancing the operational and administrative processes of the Judicial Institute. When designing our curriculum we look at learning outcomes and learning processes first, and then we establish whether technology can help us to achieve this more effectively.

Developing TEL has been, and continues to be, a significant and long-term project that has required investment in both people and products. In 2012 the Judicial Institute recruited a learning technology manager and subsequently a learning technology technician in 2013. Together they form the learning technology team (LTT) and manage all aspects of learning technologies, including the Learning Suite. Acquiring the LTT has been an essential investment as they possess specific and unique skills that were not available among the existing staff. They provide support for the judicial users, as well as the Judicial Institute staff, and work tirelessly to ensure that our products are performing to the highest standards. The LTT are also committed to using technology purposefully and in line with the educational philosophy.

THE JUDICIAL INSTITUTE LEARNING SUITE

A small-scale highly equipped space can act as a catalyst for wider change and become a test-bed for new pedagogic approaches.¹⁰

Another key investment for the Judicial Institute was the acquisition of the Learning Suite. Delivering training in hotel conference facilities was a limiting factor for growth and progress. Technologies were outdated and inadequate; spaces were variable in quality and suitability, but ultimately were not fit for the purpose. It was clear that an

⁹ S. Gerber and L. Scott, "Designing a Learning Curriculum and Technology's Role in It," *Educational Technology Research and Development* 55, no. 5 (2007): 461-78.

¹⁰ JISC, *Designing Spaces for Effective Learning: A Guide to 21st Century Learning Space Design* (UK: Joint Information Systems Committee Development Group, 2006), www.jisc.ac.uk/media/documents/publications/learningspaces.pdf (accessed 04/11/14).

alternative solution had to be found, and in January 2013 this alternative became a reality with the opening of the Learning Suite, which has been designed specifically for our purposes. It contains two mock courtrooms, mirroring the bench and bench technologies, which allow practice-based and experiential learning to take place. It also contains six plectrum-shaped learning pods, each equipped with learning technologies, designed to maximise the potential for the small-group learning structure that is so integral to the Judicial Institute's educational philosophy. The suite can be divided into four separate learning spaces, allowing synchronistic and multifarious break-out sessions, or it can be kept open and used as one space for larger plenary sessions or small-group activities interspersed with plenary sessions. It was designed to provide a modern, flexible, and stimulating learning environment and, according to Moreno and Mayer, can be considered a multimodal learning environment.¹¹

Multimodal learning environments have the potential to increase interactivity and thereby increase opportunities for constructive learning, although the level of interactivity is dependent on how the environment is used not just on the environment's existence. Table 1 has been taken from Moreno and Mayer and demonstrates how multimodal learning environments, such as our Learning Suite, have the potential to enhance interactivity and thereby the learning experience.

The examples set out in column three of Table 1 are very simple and, in reality, we use more-complex actions. We use the Learning Suite to great effect and are able to enhance the learning experience through all the highlighted levels of interactivity. Dialoguing is achieved through live presentation accompanied by visuals. These presentations can be delivered in person or through a live video-conference feed. Plasma screens at each learning pod, which can connect to the Internet via laptops, PCs, or tablets, ensure that learners are able to engage in the remaining four types of interactivity, and the courses are mapped to provide opportunities to do so.

In addition, we use Turning Point technology, which consists of interactive response systems allowing learners to actively engage, "control," and "manipulate" presentations. They are able to steer the direction of discussion through their responses, and the feedback is dynamic (teacher to learner, learner to teacher, learner to learner) and instantaneous. The Learning Suite also houses two interactive whiteboards, which allow users to interact and provide feedback on presentations and are a useful means of capturing the discussion around presentations. At present we do not use the whiteboards to their full effect, partly due to a lack of staff knowledge; however, we are mindful of their potential and view them as an opportunity for further development.

The two mock courts at either end of the Learning Suite provide learners with the opportunity to achieve all levels of interactivity stated in Table 1. Learners are required to manage the bench technology in courtroom simulations, as well as practise

¹¹ R. Moreno and R. Mayer, "Interactive Multimodal Learning Environments: Special Issue on Environments: Contemporary Issues and Trends," *Educational Psychology Review* 19 (2007): 309-26.

Table 1
Five Types of Interactivity in Multimodal Learning Environments*

Type of Interactivity	Description	Example
Dialoguing	Learner receives questions and answers or feedback to his/her input	Seek help from an on-screen agent, click on a hyperlink to get additional information
Controlling	Learner determines pace and/or order of presentation	Use pause/play key or forward (continue) button while watching a narrated animation
Manipulating	Learner sets parameters for a simulation, or zooms in or out, or moves objects around the screen	Set parameters in a simulation game and run the simulation to see what happens
Searching	Learner finds new content material by entering a query, receiving options, and selecting an option	Seek information in an internet search
Navigating	Learner moves to different content areas by selecting from various available information sources	Click on a menu to move from one internet page top another

* R. Moreno and R. Mayer, "Interactive Multimodal Learning Environments: Special Issue on Environments: Contemporary Issues and Trends," *Educational Psychology Review* 19 (2007): 311.

judgcraft and other judicial skills. Learners interact with technology, peers, and facilitators simultaneously, creating a challenging but rewarding learning experience.

The learning environment was designed with significant attention to detail. The head of education worked with the architect to ensure that the location of the learning pods optimised visibility in all directions while maintaining the opportunity for open-plan group-based work (maintaining privacy levels of the pods). The plectrum shape of the tables was a decision based on educational research into group dynamics in the learning environment. Research suggests that groups working on plectrum-shaped tables work more effectively for three main reasons. First, it enforces a learning democracy in that there is no "head" of the table. This encourages learners to participate on an equal level, reducing notions of hierarchies. This is particularly important for judicial learners given the nature of judicial hierarchies. Although it

cannot eradicate them, nor does it mean to, it does help to limit them for the sake of learning. Second, the physical position of learners on the tables means there is no viewing obstruction between learners, each having an equally good view of the other which enhances both visual and auditory communication, or between the learners and the screens; no learners will need to crane their necks or move positions to follow a presentation, or to jump back and forth between group work and plenary. Finally, the position of the learners means the groups can further subdivide into smaller groups of twos or threes, thereby increasing the flexibility of the group dynamic and the intensity of the discussion. Plectrum-shaped tables are becoming increasingly popular in higher-education institutes across the UK for all these reasons.

Investing in the Learning Suite has transformed the way in which we can deliver our education. It has provided us with the opportunity to be creative in our curriculum, and it has increased the flexibility of the course design and delivery process. It is a dynamic and innovative learning space, which fosters dynamic and innovative practice.

THE JUDICIAL HUB AND THE VIRTUAL LEARNING ENVIRONMENT

Alongside our physical learning space is the Virtual Learning Environment (VLE), which sits on the Judicial Hub. The Judicial Hub was launched at the end of March 2014 and acts a single point of access for all judicial office business, including judicial communications and the means by which the lord president communicates with the judiciary. It has been designed to meet the learning and communications needs of the judiciary and provides the interface between the Judicial Institute and the judiciary and, critically, it is also where the VLE and the integrated course-booking system sit.

The Judicial Hub can be accessed by the judiciary anywhere at any time using any device with access to the Internet, making the Judicial Institute increasingly accessible to all judicial officeholders. Investing in the Judicial Hub and the associated VLE has been a critical step toward modernising and professionalising the Judicial Institute. Judicial officeholders can find everything related to the Judicial Institute and everything related to courses on the Hub. It is a far more streamlined approach, whereby the Judicial Institute prospectus is accessed via the Hub and links directly to the course-booking system, which means judges can browse, select, and apply for courses in three connected steps. Once a judge has applied for a course, an automated system informs Judicial Institute programme managers and the relevant judicial managers of the application, thereby allowing them to approve the application, or otherwise. The booking system has in-built filters, which allow us to set various parameters such as participant numbers and judicial tier, thereby refining the administrative processes involved in course planning and management.

The existence of the Hub brings us one step closer to becoming a paperless education provider. All course materials are accessed via the Hub, and the Hub can be accessed from any device that has access to the Internet. It would not be inconsistent

with our current rate of development to suggest that within five years participants will no longer be offered hard copies of anything produced by or for the Judicial Institute and any materials accessed before, during, or after courses will be done so using electronic devices, primarily via the Hub. This transition already started when we stopped providing hard copies of course materials to participants in advance of the courses. Instead, we provided access to materials initially via a shared drive, and now via the course profiles on the Hub. Further, we anticipate a change in the nature of our course materials. At present all pre-course materials are in written format, either papers or presentations. In the future, we can expect these to take various forms, from e-lectures or flipped lectures to quizzes, hyperlinks, video or audio clips, or even participant-generated materials in keeping with our educational philosophy. We anticipate a similar diversity in our all our course materials. These developments are consistent with our move toward a blended-learning curriculum. The Judicial Institute is committed to sustaining the face-to-face programme, and any online developments are made with a view to developing blended learning, defined by Hubbard as a “complementary mix of teaching methods delivered using an appropriate selection of related resources, often technology-based resources.”¹² We use technology in various ways, and it is intended to enhance the face-to-face courses. The reasons for this are manifold but certainly one of the key drivers is the judicial appetite for face-to-face learning.

Stephen Brookfield, in *Understanding and Facilitating Adult Learning*, argues that while on the one hand it is the educator’s responsibility to “assist adults to speculate creatively on possible alternative ways of organizing their personal worlds,”¹³ it is also paramount that they take into account the learners’ needs, values, and behaviours and to create an educational model that is “reflective of a certain intellectual era and orientation.”¹⁴ Our engagement with TEL is an example of how we carefully balance these diverging concerns. Our participant demographic values the face-to-face contact with colleagues that is often lacking in their daily work. To remove the opportunities for networking, especially the informal contact time, would be remiss and would not add value to the training programme. The Judicial Institute is unusual in that the development of our online profile and TEL projects are not learner driven, like it is in higher education, for example. In fact, in many ways we are moving too fast for our learner base and by introducing TEL we are creating an additional training and development need. IT literacy among the judiciary in Scotland is varied, and at the bottom end of the scale there are those who simply do not use computers and struggle with the changes being made. In contrast, at the other end of the scale, are those who are very adept and confident in using a wide range of technologies who welcome the

¹² R. Hubbard, *The Really Useful eLearning Instruction Manual* (Chichester: Wiley, 2013), p. 94

¹³ S. Brookfield, *Understanding and Facilitating Adult Learning* (Milton-Keynes: Open University Press, 2010), p. 233.

¹⁴ *Ibid.*, p. 236

advances in TEL. The Judicial Institute is trying to meet the needs of all the judiciary by providing IT training when and where it is needed and similarly providing opportunities for learners to engage with the modern educational methodologies and new technologies. Critically, we understand that if we do not engage with TEL and blended learning, it could simply pass us by and leave us behind.

SUMMARY

The Judicial Institute continues to embrace a period of change and evolution. The Judicial Hub is up and running, but its full potential has yet to be reached as we slowly introduce blended learning into the curriculum. The Learning Suite is being used for virtually all our courses and continues to be a source of inspiration for developing new and innovative teaching practices. Just around the corner is the next TEL project, which involves identifying and embedding a document management system to house our collection of judicial publications and learning and teaching materials, as well as to provide a searchable digital repository and archive for the ever-increasing collection of electronic and multimedia resources. The scoping part of the project is underway, and we expect to have a product up and running and supporting all our operations and administration by the end of 2015. We have travelled a long distance in a short time since becoming the Judicial Institute for Scotland and, yet, our journey has only just begun.

THE INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE: GAUGING HOW WELL EDUCATION AND TRAINING ARE DELIVERED TO THE JUDICIARY

BY JAN-MARIE DOOGUE AND COLIN DOHERTY*

For any court, ongoing education and training of judges are among the most important requirements for ensuring the delivery of a high quality of justice. However, the time spent in education and training must be balanced against the need to discharge the court's business. Given the trend of rising workloads and decreasing court resources, it is vital that the time spent on judicial education and training is spent productively.

The International Framework for Court Excellence (the Framework) is a means of assessing how a court is performing. It provides an evaluation of all areas of court business. The Framework, therefore, provides an opportunity to evaluate how well judicial education and training are being delivered and to respond to any areas where performance can be improved.

This article outlines the practical experience of the New Zealand District Courts with the Framework, focusing particularly on what was learned about judicial education and training. It sets out some of the steps taken in response to the Framework in concert with the Institute of Judicial Studies, which undertakes the delivery of judicial education and training in New Zealand. These initiatives include more discussion-based and regional approaches to education and institutionalised peer review. The Institute of Judicial Studies is to be commended for the positive way in which it has responded to the Framework's findings.

OVERVIEW OF THE FRAMEWORK

The Framework is a tool by which courts can assess and improve the quality of justice and administration that they deliver.¹ It is predicated on the core values that a court should adhere to if it is to achieve excellence:

- equality before the law
- fairness

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¹ This section is based on the International Consortium for Court Excellence's publication *The International Framework for Court Excellence*, 2nd ed. (Williamsburg, VA: National Center for State Courts, 2013), available at <http://www.courtexcellence.com/>.

- impartiality
- independence of decision making
- competence
- integrity
- transparency
- accessibility
- timeliness
- certainty

An excellent court incorporates these values into its normal business processes and takes actual steps to realise them. The Framework provides a means for assessing just how well these values are incorporated across seven areas of court activity:

- court leadership and management
- court planning and policies
- court resources—human, material, and financial
- court proceedings and processes
- client needs and satisfaction
- affordable and accessible court services
- public trust and confidence

The Framework is intended to provide a holistic assessment of court performance. Court participants—ideally, judges, managers, and court staff—complete a questionnaire covering these areas of court activity. They assess how well the core values are reflected in each area of court activity using a six-point scale, giving an overall numerical result.

This self-assessment questionnaire provides a health check on the operation of the court. It identifies those areas in which the court is performing well and those in which performance can be improved. This allows the court to develop plans and initiatives to target those areas requiring improvement.

The first self-assessment provides a benchmark for performance. Subsequent assessments will be compared against this benchmark to see if the initiatives have improved performance in those areas. It also reveals if there have been any unintended consequences affecting other areas of court activity.

The Framework is, therefore, envisioned as an ongoing developmental process characterised by a repeated cycle of assessment, analysis, planning, and review. Over time, the Framework should become a normal part of court business as a culture of innovation, collaboration, and performance measurement emerges.

A key feature of the Framework is that it provides a qualitative assessment of court performance. An excellent court should not rely on quantitative measurement of performance alone. Statistics on the age of cases, the number of cases disposed, and the time taken to do so do not give the full picture of how well a court is functioning. They do not reveal how well all of the different core values are reflected in court processes. They may show competence and timeliness, but not necessarily fairness or

transparency. Qualitative data is necessary not only to establish just how well a court is performing, but also to assess whether any new initiatives to improve performance have been effective.

The Framework encourages transparency of performance and of the steps courts take to improve performance on their path to excellence. This applies even to areas where performance may not be as strong. Transparency can reveal the underlying challenges that inhibit performance. The Framework analysis also provides weighty support to requests for resources to address these underlying factors.

IMPLEMENTATION OF THE FRAMEWORK WITHIN THE DISTRICT COURTS OF NEW ZEALAND

The Framework was fully implemented into the District Courts Judiciary's operational management and strategic planning in 2012. This followed 18 months of investigation, preparation, and planning. The initial goal was to comprehensively gauge how the judiciary was operating nationally.

In New Zealand the judiciary has relatively little administrative control over the courts and no independent financial or budgetary control. The judiciary relies entirely on the executive to provide an adequate level of administrative support, facilities, and infrastructure within which to conduct its public function. The Ministry of Justice has responsibility for court registry functions, counter services, upkeep of courthouses, scheduling of cases of judges, staffing structures, and the supply of support services to the judiciary.² The judiciary is responsible for certain administrative functions discussed above, though it relies on the Ministry of Justice for the resources to perform these. Of necessity there is a close working and operational relationship between the judges and the Ministry of Justice staff.

Judicial education and training is largely coordinated by the Institute of Judicial Studies.³ The Institute is a non-legislative body established by a Memorandum of Understanding between the judiciary and the Ministry of Justice. It is governed by a board consisting of judges from all courts, as well as representatives from the legal profession, Ministry of Justice, and academia. The day-to-day operations of the Institute are undertaken by permanent staff, funded by the Ministry of Justice but in a manner cognisant of judicial independence.

Each court in New Zealand has its own judicial education committee, which informs the particular programmes the Institute delivers. The Institute provides a range of education programmes and seminars for judges. These range from regular updates on core areas of law, such as evidence, criminal procedure, and family law, to more specialised programmes, such as training to deal with self-represented litigants, judicial settlement conference workshops, and courses on eliminating unconscious

² See <http://www.justice.govt.nz/about-the-ministry/what-we-do>.

³ See <http://www.ijs.govt.nz/>.

bias. The Institute works in conjunction with the chief judge of the relevant courts to deliver an induction and orientation programme for new judges, and is also heavily involved with efforts to increase judges' understanding and confidence with te reo Māori and tikanga principles. In addition, the Institute is responsible for maintaining written resources, such as judges' bench books.

A major part of the Chief District Court Judge's role is advocating for adequate administrative support for judges. This requires clear and open lines of communication between the Chief District Court Judge and every other judge about the challenges that they face in their role. While this is easily achieved in a small court where judges are located in a single common room, it is far more difficult in a court of 142 judges,⁴ spread across 20 courthouses, who regularly travel to a further 42 courthouses on circuit across a country consisting of two main islands, over which our scant population of 4.5 million is thinly spread.

With judges in so many different locations, consistent communication can be difficult to achieve. This had led to each region operating in isolation from the others. Before the Framework, there was not a comprehensive or accurate national picture of where the judiciary's strengths and weaknesses lay or how each region was performing in comparison to others.

Every District Court Judge completed the self-assessment questionnaire in May 2012. Considerable time was spent adapting the standard Framework questionnaire to the New Zealand constitutional and cultural context, including adjusting terminology to that commonly used in New Zealand and removing questions that were not applicable given the division of responsibility between the judiciary and Ministry of Justice.

Explanatory material and examples were provided for each question. This was intended to prompt judges' thinking and guide them to the area of court activity the question was asking them to assess. As judges had not previously engaged in this type of court assessment, they would not have considered these questions before.

Given the constitutional arrangements in New Zealand, the standard Framework required additional refinement. Two further sets of questions were created to elicit a judicial view on matters relevant to the judicial administration, but which were not specifically covered in the standard Framework questionnaire. These questions covered issues unique to the judicial role:

- a. "Court Performance" was added to the existing seven areas of court activity. These questions were designed to assess the degree of administrative support judges received when making judicial decisions.
- b. A standalone "judicial" assessment was created consisting of 15 questions divided into five areas. These questions covered processes such as judicial ethics and standards, judicial training, health and pastoral support,

⁴This number excludes District Court Judges, who sit solely as Environment Court Judges or in the coronial jurisdiction, and retired judges, who are appointed for finite terms on a part-time basis.

workloads, and other matters that enable judges to, or prevent judges from, performing their role to the best of their ability.

Matters of judicial education and training are not specifically addressed in the standard Framework questionnaire, as this is designed to be completed by court staff and managers as well as judicial officers. While some of the questions around processes to maintain the judicial function in alignment with core values were interpreted to include matters of judicial education, the following specific questions were included within the judicial assessment:

- a. Does the court ensure there are good quality continuing education programmes for judges?
- b. Is there a process to enable judges to be adequately supported to maintain their levels of competence?
- c. Is the induction process for new judges appropriate, fair, and supportive of them and their families?

In the interests of promoting communication, regional moderation sessions were conducted after the results of the self-assessment were analysed and available. These enabled a two-way conversation between judges where there had been divergent responses to questions. The sharing of information and views was educative for all judges, but most useful to those conducting the assessment. The discussions at these sessions provided a richness of qualitative information that the written assessments alone could not.

Judicial education was widely discussed at these forums. Evaluating judicial education within a wider, structured assessment of court operations may have prompted judges to think more deeply about how judicial education was being delivered. The opportunity to discuss these matters with colleagues led to ideas being generated, which had not previously been suggested, where discrete feedback had been sought on individual education programmes. This information directly informed the various initiatives that were implemented based on the results of the assessment.

INITIATIVES FOLLOWING THE ASSESSMENT

Discussion-Based Education

Completing a self-assessment of court performance was a novel exercise for judges in New Zealand. Although unfamiliar at first, judges subsequently spoke positively of the process. Feedback was that the moderation sessions were the most beneficial component, as these gave an opportunity for extended discussion with judicial colleagues. The chance to learn from one another was considered highly valuable.

The consistent message was that judges preferred education programmes to be delivered in this discussion-based format, rather than passively sitting through presentations or lectures. Judges are often widely dispersed throughout the country. Judges based in the same common room may not have the opportunity to confer with their colleagues given how often judges can be sitting at other locations on circuit.

Opportunities to come together, discuss common issues, and learn from peers were, therefore, few and far between.

The programmes and materials for existing education seminars have been adjusted to create more opportunities for discussion. These have been supplemented by rostered, common-room education sessions, where materials prepared by judges' legal research assistants are used to facilitate discussion. These have been positively received.

Where possible, education seminars have been run on a regional or court-specific basis. Judges felt there would be more benefit in discussing matters with the judges from their court or region, given that they would face common issues, challenges, and difficulties and could share ideas on how to work through these. While this approach may limit the opportunity to learn from how other courts operate, the presenter leading the discussion can provide this information for judges to consider.

There have been two benefits of this education format beyond judges' being more engaged in the education programme. First, many of the difficulties and concerns faced by judges are of an operational and resourcing nature, which need to be addressed by the Chief District Court Judge in consultation with the Ministry of Justice. Discussion-based education tends to expose these difficulties more than other forms of education delivery. These can be conveyed back to the Chief District Court Judge to be appropriately addressed.

Second, the opportunity to discuss matters with peers is beneficial for judicial collegiality. Judges, particularly new judges and those based at courts with only a few resident judges, appreciate the chance to interact with their colleagues.

Peer Review

One matter raised at all of the moderation sessions was a desire by judges for feedback on their work in court. As a first-instance trial court, judges in the District Courts sit on their own. Feedback on matters of court craft—that is, how judges manage a court to ensure matters are dealt with effectively and efficiently—is rarely provided. Where it is received, it is usually from the legal profession in an informal, ad hoc fashion.

Many judges were in favour of a formalised peer-review process. Peer review has for several years been provided as part of the initial training process for new judges. After that initial period, judges very rarely had the opportunity to be observed by their peers or to observe other judges in action. Work pressures meant that judges always had to prioritise their own work over observing others. Many judges, who were a number of years into their judicial careers, thought they would benefit from having such opportunities provided in a formal fashion, with dedicated time to ensure the process was meaningful.

The Framework provided both the opportunity for judges to express this need and the foundation to pursue development of a peer-review process further. Subsequent consultation with the bench was carried out in a face-to-face format to explore the detail of how judges envisioned peer review to work. Points of discussion

included what activities would be reviewed, who would conduct the review, how frequently it would be carried out, and whether the results would be kept confidential. A final proposal is currently being developed based on this consultation.

Judges were almost unanimous that reviews be conducted by either a current or former District Court Judge. There was little eagerness, at least at this initial stage, for using external professional reviewers, such as a specialist communication expert. Use of judges has operational implications. If current judges are used, they will have to forgo their usual sitting and court activities to conduct peer review. If recently retired judges are used, they will need to be remunerated appropriately. There may also be travel costs involved.

The value of the Framework in pursuing this initiative is that it provides weighty support in negotiations with the Ministry of Justice over funding and resources. The combined view of the bench is not easily dismissed. It provides tangible evidence that such use of funds and resources will assist judges in their role, thereby being a worthwhile investment.

Mentoring

One of the questions developed for the judicial assessment asked judges to evaluate the induction process for new judges. While the self-assessment results were positive, several judges who had recently been appointed gave constructive feedback about the mentoring component.

Each new appointment is paired up with a mentor who assists the judge during the first few months in the role. Mentor judges take an active role in new judges' training, including observing new judges in court and providing informal feedback. The mentor judges also take on a pastoral role, being available as sounding boards for when the new judges have queries about managing difficult situations that arise in court, balancing their workload, and adjusting to the demands of their new role.

In the moderation sessions, several judges reported situations where they and their mentors were based in different courts. The new judges had been unable to contact their mentors when a matter had arisen in court over which they sought guidance. They reiterated the importance of having mentors assigned who not only were from the same common room, but also rostered in such a way that the new judges could easily access them.

This feedback has been taken onboard in selecting mentors for new judges. A comprehensive review of the mentoring programme is planned once peer review has been implemented.

Ethics and Standards Training

One of the questions created for the judicial assessment asked judges to evaluate processes to formulate to judges the ethics and standards expected of them. While judges indicated in the self-assessment that good processes were in place, discussion in the moderation sessions revealed that ethics and standards were not always easily

accessible or promoted consistently. In particular, it was suggested that ethics and standards were not reiterated beyond judges' initial induction and training programme when first appointed.

Based on judges' feedback, the final report from the 2012 assessment recommended that the Institute of Judicial Studies be requested to prepare a proposal on how a judicial-ethics-and-standards programme could be incorporated into ongoing judicial education. The Institute has since had a stronger focus on ethics and standards in its core curriculum, both at judges' initial induction course and in subsequent programmes.

Compulsory Training

One of the noteworthy points of feedback from the moderation sessions was a growing view that compulsory requirements should be introduced for judicial education and training. It was suggested that judges be required to participate in a minimum number of training programmes annually, in the same vein as continuing education requirements for the legal and other professions. It was also suggested that peer review become compulsory once implemented.

Introducing compulsory training would be a notable change for the District Courts' bench. At present, judges are rostered to attend several regular training sessions each year. Other programmes are offered, which judges may elect to attend, but there is no requirement that judges do so.

While the view that there should be a compulsory element to education and peer review is a growing one, there is not yet sufficient consensus for it to be implemented. It is preferable to gradually introduce peer review and other education initiatives on a voluntary basis. We expect that uptake will increase if and when the benefits of these programmes become tangible. Mandatory requirements may be introduced at a later date once these initiatives are sufficiently bedded in. If that happens, the views expressed through the Framework will form the basis of that policy change.

Wider Knowledge of Court Operations

One of the educative aspects of the Framework assessment was the opportunity it gave judges to learn more about the operational and administrative aspects of the court. The Framework assesses all areas of court activity. Judges were required to evaluate areas they may not have a great deal of contact with in the course of their role, given the division of responsibility between the judiciary and Ministry of Justice. Examples included:

- a. collection of information from staff and external stakeholders about court performance;
- b. goal setting and strategic planning;
- c. promulgation of court performance information to the public;
- d. audits of expenditure;
- e. management of financial resources and budgeting; and
- f. training programmes and directives for court staff.

There is an emerging view that public confidence in the courts requires judges to take a greater interest in the operational aspects of the courts' business.⁵ The Framework served as a means to introduce judges to these areas of activity and provide them with information. The moderation sessions were used to present information to judges where they expressed a lack of knowledge. In anticipation of the next iteration of the self-assessment in 2015, judges are being informed of what information is available on the operational aspects of the courts and where this can be accessed.

THE 2015 ASSESSMENT

The Framework process is a cyclical one of assessment, response, and review. The District Courts have planned to repeat the assessment every three years. This provides sufficient time to review and implement initiatives, while not overburdening the participants or those conducting the assessment.

The next assessment is scheduled for May 2015. Several improvements have been made as a result of the experience in 2012:

- a. The questionnaire has been considerably simplified, based on the updated model assessment released by the International Consortium for Court Excellence in March 2013.⁶
- b. The wording of many questions has been altered to remove ambiguity. For example, many participants were unclear whether a question referring to "the court" was directed at the District Courts as a whole or the particular court at which that judge was based. These terms are now more clearly defined.
- c. The assessment has been created in an online format using Survey Monkey. The 2012 assessment was paper based, which required significant time and effort after the assessment for data entry and analysis. With the online format, this time is greatly reduced as these processes are automated.
- d. Consistent with a whole-of-court approach, the range of participants has been expanded beyond judges. Senior managers and community magistrates⁷ will undertake the assessment, though the separate judicial assessment will only be for judicial officers. This will give a wider view of how the court is performing. Any divergence in responses between the judicial and Ministry of Justice participants will be of interest.

⁵ For a more robust analysis of public confidence, see our discussion in "Accountability for the Administration and Organisation of the Judiciary: How Should the Judiciary be Accountable for Their Work beyond the Courtroom?," paper presented to the Asia Pacific Courts Conference, Auckland, March 2013; and "Applying the Principles of the International Framework for Court Excellence to Enhance Public Confidence in Courts: A Practical Perspective," paper presented to the 7th International Conference of the International Association for Court Administration, Sydney, September 2014.

⁶ *Supra* n. 1.

⁷ A lay judicial officer with slightly wider jurisdiction than a justice of the peace.

One of the consequences of altering and amending each edition of the assessment is that it makes comparisons between assessments more difficult. While the 2015 assessment contains refinements, we have endeavoured to ensure sufficient consistency so as to enable meaningful comparison and, in particular, an indication of whether our performance has improved as a result of our initiatives. Results are expected to be available in the second half of 2015.

CONCLUSION

The Framework was a novel exercise for New Zealand courts. It has proved to be a truly valuable exercise. It resulted in a richness of information, which ad hoc feedback and specific education reviews have not been able to provide thus far. Conducting a review of the totality of court activity allows for each area, including judicial education, to be assessed as part of the wider delivery of justice, rather than in an isolated fashion.

The Framework enabled judges to assess their experience with judicial education directly and provide information, in a structured fashion, on what would assist them to best perform their role. Some results were unexpected, such as the appetite for peer review and regional education. However, the enthusiasm that judges' expressed for new education and training opportunities was welcomed.

It is fair to say there was some trepidation by judges when first engaging with the assessment, some of whom approached it with degree of scepticism. Such critics have come to see the value of the Framework in hindsight, when they see initiatives taken in response to their feedback. The feedback on education has been directly incorporated into programmes, which the Institute of Judicial Studies provides. The Institute is to be commended for the way it has readily embraced the results of the Framework and given credibility to the self-assessment exercise.

MANUSCRIPT SUBMISSION GUIDELINES

The journal welcomes original manuscript submissions written in English that are between 3,000-5,000 words in length, including references. Manuscripts should be double-spaced using Times New Roman font, 12-point font size. A concise, informative title along with the names and institutional/court affiliations of each author should be included. Abbreviations should be clearly defined. All tables, figures, and appendices should be noted in the manuscript and submitted as a separate document with sufficient detail to recreate the graphic or appendix. Manuscripts should use a reference-list style of citations to books, articles, and reports. Sample citations are provided below. A style sheet is available upon request by contacting the editors at amcdowell@ncsc.org. Manuscripts should be submitted via e-mail to the attention of the editors at larmytag@yahoo.com, with the submission attached as a Microsoft Word document. Manuscripts will be sent to one or more experts for review at the discretion of the editors. Decisions by the editors regarding manuscript acceptance and publication shall be regarded as final. The journal reserves the right to edit articles as appropriate.

Reference List Examples

Book

Canon, B. C., and C. A. Johnson. 1999. *Judicial Policies: Implementation and Impact*, 2nd ed. Washington, DC: Congressional Quarterly Press.

Journal Article

Lochner, T. 2002. "Strategic Behavior and Prosecutorial Agenda Setting in United States Attorneys' Offices." *Justice System Journal* 23: 271-94.

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National Center for State Courts. 2008. "Access and Fairness Resource Center." <http://www.ncsconline.org/WC/CourTopics/ResourceCenter.asp?id=1> (last accessed January 11, 2008)