

Judicial Education

This paper is excerpted from Sandra Oxner's report (June 1999) on judicial education and the state of the Philippine Judiciary. Judge Oxner heads the Commonwealth Judicial Education Institute, a network of Commonwealth judicial education bodies. She can be reached at <Cjei@dal.ca>

Objective

The objective of judicial education is to help produce and support an impartial, competent, efficient and effective judiciary. Judicial education also is the foundation of judicial reform. Successful judicial reform is predicated upon the skills and attitudinal change that judicial education imparts.

Definition

Judicial education is a term used to include collegial judicial meetings to discuss education topics (international, national, regional and local) and all professional information received by the judge, be it print, audio, video, computer disk, online or electronic. It includes self-study, mentoring and feedback programmes. It has two divisions: (1) pre-service or orientation programmes and (2) continuing judicial education and professional growth training throughout the judge's professional life. The targets of judicial education should include both judges and support staff.

Development of Objectives

There are four levels of judicial education. The first level of judicial education is the provision of information and "tools" necessary for the judge to effectively do his/her job. This required information usually includes legislation, practice directions of higher courts, case reports, scholarly articles, bench books or manuals, and judicial journals and bulletins. Such information can be given by printed material, audio tapes, audiovisual tapes, electronic means (diskette or e-mail), local area networks, and by cable and satellite television as well as through collegial meetings. Discussions of issues in substantive and procedural law are the traditional first step in collegial judicial education programmes.

Ensuring judges understand new laws that define a shift of philosophy (as in the modernization of the legal framework of the Philippines to support a vibrant market economy or to promote an efficient court process) is a second phase.

The third step is teaching a judge new intellectual approaches, as in the judicial exercise of discretion. The exercise of discretion is common in areas such as sentencing and assessment of damages. In a country undergoing judicial reform the exercise of judicial discretion takes on new dimensions.

Inspiring attitudinal change required to provide an impartial and accountable bench rising to social expectations is the most sophisticated level of judicial education. In some countries, the dominant attitudinal change required may relate to eliminating gender or racial bias. In others, the dominant attitudinal change required is to encourage the judicial culture of service to the community and the fact and perception of judicial integrity, independence, competence, efficiency and effectiveness. Attitudinal and thinking process change is the most difficult area of education in any field. It requires motivated and inspired teachers who are respected and trusted by the judges, - most often other judges skilled in this area.

How does judicial education support an impartial, competent, efficient and effective judiciary? It does so by analyzing the weaknesses of the judiciary, designing programmes to compensate for these weaknesses and presenting them to judges in a manner that is both effective in imparting knowledge and cost effective.

"Impartiality" stands for both the reality and the perception of impartiality. This includes the concepts of:

- an impartially minded and independent judiciary respected for its integrity;
- transparency - from the appointment process through to the rendering of judgments comprehensible to the public;
- a transparent and accessible judicial complaint process; and
- an articulated and publicized code of judicial ethics and conduct so that the community is aware of the standards they have the right to require of a judiciary.

"Impartiality" and "Independence" are often used interchangeably. "Impartiality" is used here to describe the desired judicial character and state of mind. Judicial independence refers to freedom from improper pressure in the decision making process from any quarter. This concept of judicial independence identifies roles and responsibilities for the judiciary, the executive, the media, the legal profession and the public.

The creation and support of an impartial mind has different focuses. For example, in the newly emerging states of Eastern Europe, the focus is on changing the judiciary from a bureaucracy mechanically applying the law and acting as a conduit for the delivery of political decisions, to an impartial, independent dispute resolution mechanism. In other countries, judicial education places emphasis on attitudinal change to improve judicial integrity and independence and to eliminate open and hidden bias from the judicial mind in fact finding, particularly in relation to gender and ethnic issues.

"Efficiency" includes efficient judicial court room management (placing the judge and not the bar in charge of case management), caseload and process efficiency, reform of rules and procedures to early narrow the issues, encourage timely settlements and respond to contemporary needs, court annexed and free standing mediation and other

ADR practices. Efficiency also relates to appropriate physical structures and adequate equipment and access to such judicial tools as statute books, precedent cases, legal texts and other scholarly writing.

“Competency” relates to knowledge of substantive and procedural laws - no easy task for a generalist judge in the complex modern legal world, and “judicial skills” such as chairpersonship skills and oral and written communication skills.

It is not enough for a judge to be impartial, efficient and competent. He or she must also be effective in interpreting and shaping the law to achieve a just solution. This may be achieved by the use of judicially developed techniques such as domestic application of international human rights norms, interpretation of constitutions or through the judicial exercise of discretion. Integrity and legal competence are required to bridge the gap between the law and a just solution or to prevent decisions on technicalities that unnecessarily avoid the merits of the case. Knowledge and understanding of the community in which one lives is a prerequisite for an effective judge. Knowledge and understanding of the philosophy behind economic reform is also a prerequisite.

A second aspect of judicial effectiveness is the collective judicial responsibility of listening to the community’s complaints about the justice system and using its influence to shape the justice system to respond to responsible complaints. For example, judges do not generally consider a low rate of judgment recovery their responsibility. In many countries, difficulties in enforcing judgments can make successful litigation a hollow victory and bring the judiciary into disrepute. There are judicial, legislative and administrative ways of improving judgment recovery. The judiciary has an interest and responsibility in supporting this and other necessary reforms in non-political ways.

To be trusted and respected a judiciary must not only be impartial, competent, efficient and effective, but must be perceived to have those qualities. Transparency in procedure and process is required to achieve public faith as is an understanding by the judiciary that they perform a public service and need to respond to community expectations. Judges, like other players in the justice system, often need intellectual leadership to help them to fully understand the importance of this and to encourage them to lend their support to the application of means to achieve it.

Analysis

This report analyzes judicial education through the following framework: structure, function, targets, pedagogy, faculty development, curriculum development and articulated objectives and standards.

Structure/Functions

There are various structures that have been established in Common Law jurisdictions for judicial education. The United States, the pioneer in judicial education, has, *inter alia*, a Federal Judicial Center for federally appointed judges and their support staff. The eight

member Board is chaired by the Chief Justice of the United States and is made up of two Appeal Court judges, three trial court judges, one Subordinate Court judge and a court administrator. The Director of the Center is a seconded Trial Court judge. The Board's function is to provide orientation and continuing judicial education for federally appointed trial and appeal court judges and administrative support staff. The Board is established by Statute.

In Canada, the National Judicial Institute has a seven person Board chaired by the Chief Justice of Canada. On the Board, there are three Appellate Court judges, one Supreme Court Trial judge, two Subordinate Court judges and the Dean of Law School (all judges but one). The Director of the Institute is a seconded Subordinate Court judge. The Board's function is to provide orientation and continuing judicial education for trial and appellate court judges of all levels of courts. The Board is established by Statute.

In Pakistan the Federal Judicial Academy has a nine person Board of Governors chaired by the Chief Justice of Pakistan. The Board includes four State Chief Justices, the Registrar of the High Court (Acting Director General). The Minister for Law, the Secretary of Law and the Attorney General are the non-judicial members (a majority, 6 out of 9 members, are judicial officers). The Board's function is to provide orientation and continuing judicial education for judges and orientation for State law officers. The Board is established by Statute.

The sixteen member English Judicial Studies Board is chaired by an Appellate Court judge and has representatives of all levels of courts as well as academic membership. Eleven of the sixteen members (a majority) are judicial officers. The Director of the Judicial Studies Board is a Subordinate Court judge. The Board's function is to provide orientation and continuing judicial education for judges of all courts.

The United States, Canada, England and many other Commonwealth countries have adopted as a first precept that the overall control and direction of judicial training must be in the hands of the judiciary. There are two reasons for this. First judicial education must be credible to the judges. Judges will more readily accept tuition from other judges. Additionally, "the constitutional imperative of judicial independence also requires that judicial training remains in the apolitical hands of the judges and not in the potentially doctrinaire hands of government". Such control requires at least a majority of judges on the governing body.

In Sri Lanka, the three person governing body of the Sri Lanka Judicial Institute is chaired by the Chief Justice and has two Supreme Court judge members. The Director of the Institute is a retired Supreme Court judge. The Board's function is to provide orientation and continuing judicial education for subordinate court judges. The Board is established by Statute.

The structure of the Philippines Judicial Academy (PHILJA) is established by the 1998 Statute. Its nine member Board is made up of eight judges and the President of the Philippine Association of Law Schools. The Board is chaired by the Chief Justice. The

other judicial members are the Senior Associate Chief Justice of the Supreme Court who acts as Vice Chairman, the Chancellor of the Academy, the presiding Justices of the Court of Appeals and the Sandiganbayan, the Court Administrator, the President of the Philippine Judges' Association and a judge of a first level court who has five years judicial and legal academic experience.

Targets

The targets of judicial training institutes vary from one jurisdiction to another. Some offer training to subordinate Court judges only (Sri Lanka), some offer training to Appeal Court judges, High Court judges, Subordinate Court judges (Canada, UK) and some offer orientation and continuing judicial education training to Appeal Court judges, High Court judges, Subordinate Court judges and judicial support staff (United States).

Curriculum

How does a jurisdiction determine the judicial curriculum to study? In most countries, judicial education began with judges electing to spend their study time considering the law of evidence and procedure. However, community criticism of the justice system never seems to find fault with judicial application of the law of evidence and procedure. Criticisms dwell on other weaknesses that are perceived.

A broad based court users and community assessment analysis should be undertaken to identify areas where the community is of the view that judicial studies would strengthen the justice system. It is interesting to note that an additional benefit of such a needs analysis is that it often produces a prioritized list of needed judicial reforms. It also tends to enhance public confidence in the judiciary as soliciting court users' opinions assures the public of judicial sensitivity to the community it serves.

Common Topics Studied

Many judicial education programs have begun with the judges studying evidence and procedure. This rarely, if ever, responds to the community's perception of weaknesses in the judiciary. Considerable promotion has to be done in all countries to convince the judiciary to undertake programs designed for attitudinal change. An international analysis of the role and function of the judge indicates a need for judicial education in the following areas:

- judicial independence;
- judicial accountability;
- judicial ethics and conduct;
- sensitivity training in contemporary social issues;
- gender, ethnic and other disadvantaged groups sensitivity training;
- media-bench relations;
- judgment writing and delivery;
- assessment of damages;

- the science of fact-finding;
- judicial skills (chairmanship, sensitivity to the needs of witnesses, litigants and the public);
- judicial reasoning;
- computer training;
- alternative dispute resolution;
- case-flow management;
- time management;
- working to goals training;
- modern business law including corporate law;
- banking law;
- bankruptcy law;
- court management skills;
- stress management and adapting to change;
- judicially exercised discretion;
- intellectual property law;
- contract law;
- new developments in statutory and case laws; and
- economic and social impact of judicial decisions - judicial activism and effectiveness.

Faculty Development

The development of faculty is a priority function for a judicial education body. The first step is training trainers. They will then train others and develop a network of trained judicial educators.

Judicial education bodies have traditionally favoured judges as faculty in response to judicial reluctance to receive or be perceived to be receiving instruction outside the Bench. This, however, has of necessity changed. The Law has become more and more complex in a world of dominantly generalist judges. To maintain the knowledge of the judges at the high level required, a judicial education faculty requires specialists.

It is a rare judge or lawyer who is a good teacher. Even judges or lawyers who have been law professors are not necessarily good teachers. Adult students have different needs, - studies establish they have a short attention span and require many visual teaching aids for effective learning. Many judicial education bodies engage a full-time or part-time skilled professional adult educator to improve the teaching skills of the faculty and ensure cost-effective presentation of programmes.

Pedagogy

Judicial educators should work with professional educators to ensure effective programming. Lectures should be kept to a minimum and interactive teaching methods used. These should include case studies, syndicate and small group discussions, individual and joint presentations, individual and joint preparation of papers on assigned

topics, panels responding to issues raised by participants, and videos with workbooks to raise discussion issues.

Teaching tools should include audio and video tapes, hypothetical, workbooks, overhead transparencies, interactive tapes and self evaluated tests. Resources include background textbooks, background materials, kits for newly appointed judges and other self educating material, bench books, manuals, video and audio tapes and scripts for educational dramas for community based and moot court scenarios.

Regional and Local Delivery

Evaluation

Judicial education is expensive and must be cost effective. Consistent evaluation of the programmes is required to achieve the high quality necessary to effectively transfer information and attract the judges to repeat programmes

To enable effective participant evaluation, precisely defined session objectives should be included in course programmes.

Careful evaluation of programmes by participants, supervising judges/court managers and court users should take place. A summation of these evaluations should be made available to the public. Copies should also be filed with the Chief Justice and Minister of Justice. The anonymity of those polled should be ensured.

Participant evaluation forms linked to precisely defined session objectives and focus groups of court users are cost effective evaluation techniques and should be used. In attitudinal and behavioural change programmes, papers, participants' presentations on assigned topics or other interactive activities can be used and would be a richer adult learning experience.

Evaluation requires measurement of the objectives of the programme against its achievements - the learning achieved and the impact of attitudinal and behavioural change. This should be done by measuring its efficiency and effectiveness. To measure the former will require a report of how many of the designated physically determinable goals were achieved within their assigned time frame.

The effectiveness of the programme in learning gain, attitudinal and behavioural change and improved professional conduct and performance should be measured by a combination of:

- pre, post and year end focus groups/survey of internationally accepted standards;
- participant satisfaction and self evaluation interviews;
- assessment of court data and records;
- personal interviews with designated officials; and
- independence expert appraisal.

