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# TRAINING OF JUDGES: REFLECTIONS ON PRINCIPLE AND INTERNATIONAL PRACTICE

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## Abstract

Over the past 30 years, judicial education has emerged as an important new means to develop judicial competence and improve the quality of justice and the performance of courts around the world.

This article develops a model of judicial education and training which is *court-owned* and *judge-led*. The model is constructed from an assessment of the application of educational theory to the practice of international experience in both developing and developed contexts based on five case studies in Pakistan, the Philippines, Mongolia, Australia and the UK.

Judicial learning is a complex process for a number of educational and doctrinal reasons, including judicial independence. The article offers insights on developing a model of continuing judicial education which builds competence in judicial skills and outlook and facilitates a process of self-directed learning and critical self-reflection. Essential elements in this model include governance structure, strategic and activity planning, involvement of civil society, educationally-sound curriculum, and the establishment of judicial training faculty. The article outlines a judicial training inventory and curriculum-planning matrix, and provides the elements of faculty development and the framework for a trainers' handbook. Finally, it poses some challenges for ongoing endeavour.

## 1 INTRODUCTION

It is timely to survey the experience of judicial education and training around the world.<sup>2</sup> The institutionalisation of judicial education is very recent. It commenced with the establishment of *L'École Nationale de la Magistrature* in France in 1958. In the

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2 This article is an edited version of a keynote paper presented at the 2nd International Conference on the Training of the Judiciary, Ottawa, Canada 1 November 2004. The views expressed in this paper build on earlier researches of the author published in: Armytage, L (1996) *Educating Judges – Towards a New Model of Continuing Judicial Learning*, London/Boston: Kluwer Law Int; Armytage, L, 'Judicial education on equality' (1995) 58 *Modern Law Review* 160; Armytage, L, 'Need for continuing judicial education' (1993) 16 *University of New South Wales Law Journal* 536; Armytage, L, 'Evaluating the impact of judicial education' (1994) 4 *Journal of Judicial Administration* 35; and Armytage, L, 'Pakistan's Law & Justice Sector Reform Experience – Some Lessons' (2003) *Law, Social Justice and Global Development Journal*. The author gratefully acknowledges the generous assistance provided by the Federal Judicial Academy of Pakistan, the Philippines Judicial Academy, Ms Mary-Fran Edwards of the Mongolia Judicial Reform programme, the Australian Institute of Judicial Administration, the Judicial Commission of New South Wales, and the Judicial Studies Board of the UK, the United States Agency for International Development, and the Asian Development Bank in researching this paper.

UK, the first sentencing workshop was conducted in 1963.<sup>3</sup> In the US, the National College of State Trial Judges (which became the National Judicial College), and the Federal Judicial Center were established in 1964 and 1967 respectively, building on earlier seminar initiatives of the Institute of Judicial Administration at New York University.<sup>4</sup> Australia, Canada and other developed jurisdictions established similar bodies in the 1970s. In developing countries, the trend is all the more recent. In Pakistan, the Federal Judicial Academy was established in 1988. The Philippines Judicial Academy was established in 1996. In Mongolia, the National Legal Training Centre commenced judicial training in 2000. In other countries, for example Uzbekistan, the introduction of judicial training is presently under consideration.

To illustrate this growth, there are many more projects of judicial education and training than ever before. The World Bank estimates that it is now financing some 600 projects relating to legal and judicial reform, ranging from Mongolia to Guatemala, Togo, Zambia and Cambodia.<sup>5</sup> Judicial training is increasingly seen as a critical element in promoting sustainable economic development by contributing to the provision of a secure investment environment, and as a means of consolidating judicial independence and improving access to justice. Other international development agencies – on the multilateral level, such as the United Nations Development Programme (UNDP) and Asian Development Bank, and on the bilateral level, such agencies as United States Agency for International Development (USAID), Department of Foreign and International Development (DFID), Japanese International Cooperation (JICA) and German Technical Assistance Service (GTZ) – support innumerable judicial training programmes in developing jurisdictions. Globally, they perhaps treble the World Bank's estimate.

On any measure, this is extraordinary growth, which has been described by one commentator as 'an explosion'.<sup>6</sup> It is now useful to reflect on this experience to distil some lessons learned and guidelines for ongoing endeavour.

## 2 JUDGES AS LEARNERS – THEORETICAL CONSIDERATIONS

Judicial education and training builds on the foundation of educational theory or pedagogy.<sup>7</sup> In broad terms, judges epitomise adult learners and, for this reason, any programme of judicial education should build on the broadly endorsed principles of adult education. These principles recognise the distinctive nature of adult learning, which Knowles has defined as being characterised 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.<sup>8</sup>

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3 The English experience is outlined by Partington, M, 'Training the judiciary in England and Wales: the work of the Judicial Studies Board' (1994) *CJQ* 319; and Judicial Studies Board, Reports for 1979–83, 1983–87, 1987–91, and 1991–95, London: HMSO.

4 Wheeler, R, 'Empirical research and the politics of federal judicial administration: creating the federal judicial center' (1988) 31 *Law & Contemporary Problems*,

5 World Bank, *Initiatives in Legal and Judicial Reform*, 2004.

6 Sallmann, PA, 'Comparative judicial education in a nutshell: A cursory Exposition' (1993) 2 *Journal of Judicial Administration* 245.

7 *Op cit*, Armytage, *Educating Judges*, 127ff.

8 Knowles, MS (1980) *The Modern Practice Of Adult Education: From Pedagogy to Andragogy*, Chicago: Follett, 43–44, and 57–58 (note earlier 1970 edition bi-lined *Andragogy versus Pedagogy*, 39); see, also, Knowles, MS (1973) *The Adult Learner: a Neglected Species* (2nd edn) Houston: Gulf, 55–59.

Judicial education also builds on the practice of continuing professional development for the reason that judges are professionals by training, for career practice, and for self-image.<sup>9</sup> Professionals' reasons for participation in continuing education generally tend to be more refined than those of 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. Professional people are seen 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 in a profession, and in part to the nature of the professional role itself. Professionals have highly focused problems; they usually know what they need to learn, and consequently are likely to look on general courses as being redundant or irrelevant to their problem-orientated needs. In essence, professionals are more active, career-related and self-directed as learners than adults at large.<sup>10</sup>

Within the framework of adult and professional education outlined above, it is possible to identify characteristics and practices of judges as learners that give rise to the need to develop a distinctive model of judicial education. Catlin, for example, has found that appointment to judicial office and the environment surrounding judicial tenure – in the US, at least – create educational needs distinct from other professionals.<sup>11</sup> These distinctive features relate in particular to the motivational factors in continuing learning. These judges ranked personal benefits, professional advancement and job security significantly lower than other professionals, such as physicians and veterinarians.<sup>12</sup> This is consistent with judges perceiving themselves as public officials, now behaving differently from professionals in the private sector. Catlin observes that 'the difference appears most dramatic when the reward system is examined'. Judges may participate to develop new skills in order to be more competent, but not to increase their income; thus, the development of competence, in the case of the judge, must be a reward in itself.<sup>13</sup>

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9 The relative significance of each of these factors may vary depending on the nature of the system within which the judge is appointed – broadly, the common law model of appointing judges from senior advocates, and the civil law model of inducting and promoting young law graduates; the implications of these differences is explored in section (3) below.

10 Houle, CO (1980) *Continuing Learning in the Professions*, San Francisco: Jossey-Bass, 121. See, also, Tyler, RW (1949) *Basic Principles of Curriculum and Instruction*, Chicago: University of Chicago Press; Cross, KP (1981) *Adults as Learners*, San Francisco: Jossey-Bass; Cervero, RM (1988) *Effective Continuing Education for Professionals*, San Francisco: Jossey-Bass, and Brookfield, SD (1986) *Understanding and Facilitating Adult Learning*, San Francisco: Jossey-Bass; Kolb, D (1984) *Experiential Learning: Experience as the Source of Learning and Development*, New York: Prentice Hall; Schon, DA (1987) *Educating the Reflective Practitioner*, San Francisco: Jossey-Bass, 13; and Schon, DA (1983) *The Reflective Practitioner*, New York: Basic Books.

11 Catlin, DW (1981) *The Relationship between Selected Characteristics of Judges and their Reasons for Participating in Continuing Professional Education*, unpublished doctoral dissertation, Michigan: Michigan State University,

12 These observations apply to American judges, most of whom are elected, which is relatively unusual; see section (3) below for a more detailed discussion on the impact of appointment on judicial education.

13 *Op cit*, Catlin, *The Relationship between Selected Characteristics of Judges and their Reasons for Participating in Continuing Professional Education*, 125; see, also, Catlin DW, 'An empiric study of judges' reasons for participation in CPE' (1982) 7 *The Justice System Journal* 236. Compare the

More specifically, it is argued here that judicial learning is a complex process. Judges, as both adults and professionals, exhibit characteristics, styles and practices as learners that are distinctive, significant and have direct important implications for educators. These arise from:

- doctrinal imperative to preserve judicial independence
- process and criteria of judicial selection, and the nature of tenure
- formative nature of the judicial role and the environment surrounding office,
- judges' learning needs and reasons for participating in continuing education.
- preferred learning styles and practices.<sup>14</sup>

These considerations give rise to the need to develop a distinctive model of judicial education. This model should be based on foundations of adult learning and professional development, and should also reflect the distinctive characteristics of judges as learners.

So, how does this operate in practice?

### 3 REVIEW OF EXPERIENCE – INTERNATIONAL PRACTICE

Review of experience in Australia, Britain, Pakistan, Philippines and Mongolia identifies a number of significant elements in developing programmes of judicial training, and also some common challenges in relation to which this article offers some guidelines for ongoing endeavour.<sup>15</sup>

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empirical findings of Catlin with those of Cervero relating specifically to physicians and veterinarians specifically: Cervero, R, 'A factor analytic study of physicians' reasons for participation in continuing education' (1981) 56 *Journal of Medical Education* 29.

14 *Op cit*, Armytage, *Educating Judges*, 149.

15 Detailed case-study findings of this review are not annexed owing to space considerations, but are available from the author: <[www.educatingjudges.com](http://www.educatingjudges.com)>. The study upon which some of the findings, observations and conclusions of the article are in part based was conducted by the author for the Supreme Court of Uzbekistan with support of the United States Agency for International Development (USAID) during 2004. The purpose of this study was to review relevant international experience in institutionalising judicial education, with the view to developing a model that built on the lessons of practical experience. The methodology comprised a desk review of 5 case studies, consisting of Australia, Mongolia, Pakistan, Philippines and UK, and based on all available data from web-based, literary and collegial research, to report on:

- how and why the country and/or judiciary decided to reform or build a new or significantly revamped judicial education mechanism;
- history of the establishment and development process to date;
- summary description of the organisation, mission and management infrastructure
- curriculum and curriculum development processes
- description of any obstacles, opportunities, success and failures faced

and to provide a commentary on the strengths and weaknesses of the model and development process, and a presentation of lessons learned.

See, also, Armytage, L, 'Pakistan's law & justice sector reform experience – some lessons' (2003) 2 *Law, Social Justice and Global Development Journal* (LGD) <http://elj.warwick.ac.uk/global/issue/2003-2/armytage.htm>, and (2004) 78 *The Australian Law Journal* 50.

**(a) Juristic framework**

While there is clearly considerable diversity of approach in delivering programmes of judicial education and training, a review of the international experience indicates that there are, in essence, two juristic – or court-based, legal – frameworks within which programmes of training operate. These frameworks, which have fundamental implications for educators, are based on the underpinning systems of justice within which they operate, viz the continental civil system and the British-based common law system.

*Continental or civil framework* This includes many hybrid varieties, but is, in essence, structured around a careerist approach to judicial appointment, that is new judges are appointed from the ranks of law graduates for the term of their careers. Their induction is preceded or supported by an extensive institution-based training period prior to initial appointment as a magistrate or junior judge. As they acquire experience and seniority, they return to the training institution for further training ahead of promotion within the judicial hierarchy. This approach in training is establishment focused, institutionally directed, mandated and prescriptive, tightly structured, based on a comprehensive curriculum, and usually includes examinations and formal assessments. A classic example of this approach is found in France with the establishment of *L'Ecole Nationale de Magistrature* in 1958. Other countries using variations of this approach include Germany, Italy, Japan and Thailand.

The strengths of this approach are that it is highly structured, comprehensive and quality assured. The disadvantages are that it is very expensive in that it requires extensive infrastructure and institutional capacity-building, it may be rigid and non-responsive to changing conditions and needs, and it is classroom-based and theoretically-focused rather than practical and applied in its approach.

*Common law framework* This alternative approach is based on systems of judicial selection from the ranks of experienced lawyers who are either appointed or elected to a judicial office, and are 'terminal' in the sense that they usually remain in that office without promotion until retirement or completion of term. This approach builds on substantial levels of pre-existing professional legal competence as the usual qualification for selection. It focuses on providing usually short transitional orientation or pre-service training for the judicial role, and in-service continuing education, usually in updating on recent developments. Examples of this approach are found in the UK in the programme of the Judicial Studies Board, in Australia in the programme of the Judicial Commission of New South Wales, and in the Judicial Academy of the Philippines. Variations of this approach relate to its prescriptive or elective nature: in the US, most states have *mandated* continuing judicial education as compulsory for purposes of ongoing licensure as a judge, whereas in the UK prescription is seen as anathema.<sup>16</sup>

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16 Phillips, L, 'Trends in state relicensure', in Stern, MR (ed), *Power and Conflict in Continuing Professional Education* (1987) Belmont, California: Wadsworth. By 1982, every state in the US had legislated continuing education requirements for at least one profession; see, *op cit*, Houle, 1980, 283. This is to be contrasted with the British approach which was described by Lord Justice Henry, Chairman of the Judicial Studies Board, as 'a right, not a duty', *The Times*, 12 December 1995.

The strengths of this approach are that it is accessible, practical and court-focused, structured around supporting relatively experienced in-service judges performing their duties in court. It requires considerably less infrastructure and resources and as a result is much cheaper to supply. The disadvantages are that it provides a much less comprehensive framework of structured training and may appear relatively unsystematic in supporting the development of judicial competence.

The selection of training framework is determined by the structure of the judicial system and the process for judicial appointment and promotion (if any) within which it operates. The mission and objectives of judicial education vary according to the framework within which it operates. In the careerist approach, it is the mission of judicial training to develop and maintain the candidate at the required level of competence prior to appointment or promotion; in the common law approach, it is the mission of judicial education to facilitate transition to the judicial role from a base of pre-existing professional competence as a lawyer, and to support in-service continuing professional development. It is interesting to observe that many of the educational issues and challenges of practice are relatively universal, and can be observed in both operating frameworks, despite the differences in their features.<sup>17</sup>

#### **(b) Leadership and governance**

Analysis of the international experience reveals that the extent of judicial leadership is critical to the overall success of any programme of judicial education and training. It is perhaps unsurprising to observe that levels of participation and satisfaction are likely to be higher in those jurisdictions where the chief justice displays a visible championship and commitment to this development. Moreover, the success and sustainability of the programme is likely to be affected by the extent of the support and endorsement of the Ministry of Justice, though it is noted that this raises quite complex and sensitive considerations in balancing notions of partnership with the executive and judicial independence. Analysis of apparatus for judicial training around the world discloses that this leadership is generally established in the governance structure of the judicial training institution, through the chairmanship of its peak decision-making body. This body will also comprise other respected members of the judiciary representing various interests within the judiciary, together with representatives of government, educational experts and the community, or civil society, that the judiciary serves.

Representation of both the court and community should be included in the governance structure of the institution in order to ensure that the curriculum of training focuses on developing competence and practical aspects of judicial service delivery. Experience demonstrates that while judges are insightful in their perceptions of their own training needs, this presents only half of the assessment of needs. Valuable insights of need can be provided by representatives of the legal profession, business community, and civil society, though it is noted in practice that this occurs only occasionally. Judges in Australia, for example, did not recognise that

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<sup>17</sup> *Op cit*, Armytage, *Educating Judges*, 156 onward.



they used technical jargon, which is impossible for lay people to understand, and needed to use plainer language. This gave rise to valuable training in communication skills. Similarly, judges in England did not know that they are regarded as being slow, arrogant and out of touch with community values. This in turn gave rise to extensive training in case management skills, communication skills, and taking steps to get back in touch with prevailing social values.

**(c) Ownership**

Many courts take special measures to promote judicial ownership of their training programmes, recognising that this is important both to promote authenticity and consolidate judicial independence. Universally, any suggestion that training is being imposed from the outside is seen as jeopardising voluntary participation and eroding the motivation to learn. As already discussed, this affects the issue of whether judicial training should be mandated, which is an issue of some debate throughout the judiciary internationally. A review of international experience indicates that there are a number of mechanisms, structures and procedures which can promote and consolidate judicial ownership, including:

- leadership of and representation in the governance body
- establishment of judicial policy and quality oversight committees
- formation of education programme committees in each court
- participation in training needs assessment consultations
- conducting training as part of the judicial faculty
- provision of feedback on services as part of monitoring and evaluation.

**(d) Mission and objectives**

Review of international practice demonstrates that the rationales for investing in judicial education and training are universally three-fold: (i) to consolidate the identity, institutional capacity and independence of the judiciary, (ii) to develop the professional competence of the judiciary to perform its duties and, thereby (iii) to improve judicial service delivery.<sup>18</sup> It is notable that these rationales are not humanistic or developmental in the sense of addressing the personal as distinct from the professional needs of judges, and only sparingly encroach into such domains on occasion with training on stress management or the like.

The mission of judicial education is most commonly to improve the quality of judicial performance by helping judges to acquire and maintain the tools for

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<sup>18</sup> See, eg, the education policy of the Judicial Commission of New South Wales; Judicial Commission of New South Wales, Annual Reports, 1991–92, 1992–93, 1993–94, and 1994–95, Sydney, and at [www.judcom.nsw.gov.au](http://www.judcom.nsw.gov.au); and the education policy of the Philippines' Judicial Academy (PHILJA) <http://philja.supremecourt.gov>.

professional competence. Judicial competence is variously defined, but, for practical purposes, involves three distinct components (i) mastery of legal *knowledge*, (ii) development of professional *skills*, and (iii) acquisition of judicial *disposition*.

This 'competency-based' approach to training and development has as its ultimate objective the improvement of institutional performance of the courts as a whole. Improvements in court performance require the support of training programmes that do more than just give judges information about the law. These programmes need to develop the skills and attitudes of good judging that equip judges to do their jobs effectively. In practice, there are commonly more needs than resources available to address them and, in these cases, it is usual practice to set priorities to guide the focus of the training response. Determination of these priorities is a policy-based task that should be made by the appropriate decision-makers responsible to the judicial leadership.

A recent example of training objectives and priorities decision-making is provided by Pakistan's Federal Judicial Academy expanding its education programme from conducting lectures on legal information into developing a workshop programme on judicial skills development. This policy-based decision has resulted in the expansion of the training programme with the following curriculum of new training packages:

- legal research skills
- computer research skills
- decision-making skills
- judgment writing skills
- communication skills
- assessing evidence skills
- case management skills
- backlog reduction skills
- alternative dispute resolution (ADR) skills.<sup>19</sup>

#### (e) Needs

The determining element in the content of judicial training programmes is the training needs they are intended to address. Though often not explicitly articulated, these needs are defined in terms of key competencies – the *knowledge*, *skills* and *disposition* required for judges to perform their duties effectively. In practice, the assessment of these needs is often only partially inclusive and participatory, rarely involving the three principal constituents: (i) members of the superior and subordinate judiciary, (ii) relevant educationalists and other respected academics,

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<sup>19</sup> Armytage, L 'Policy development in continuing judicial education: an assessment of some approaches taken in New South Wales, United States, United Kingdom and Canada' (1993) 11 *Journal of Professional Legal Education* 51.

and (iii) community representatives and civil society, representing both 'clients' and 'non-clients' of the courts, business, alienated poor as represented through NGO's and other interest groups. While judicial sensitivity to the prospect of external criticism is understandable, the limited actual experience of consultations around the world, notably in the writer's experience in Australia, including the bar and civil society demonstrates that it enriches rather than erodes the quality of the needs assessment process.<sup>20</sup>

The methodologies of these assessments usually combine some of the following elements:

- face-to-face interviews of key stakeholders
- standardised surveying on all/sample judicial officers
- clinical observations of judicial performance in courts
- analysis of court performance data
- expert consultations and appraisal.

However it may be observed that greater investment in more methodical need assessments should continue to be encouraged to lay more sound educational foundations for the building of judicial training programmes in practice, most notably in transitional and developing jurisdictions.

#### **(f) Judicial training inventory**

A survey of curricula around the world indicates that most programmes of continuing judicial education comprise services that are aimed in some measure or another at addressing the following topical needs:

- *substantive law and court procedure*  
(to be assessed depending on the prior training, experience and duties of each individual judge)
  - criminal law and procedure
  - civil law and procedure
  - evidence law, documentary evidence and expert evidence
- *judicial skills*
  - how to conduct a hearing or trial
  - control of courtroom
  - note-taking
  - legal research
  - admitting evidence

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<sup>20</sup> Armytage, L, 'Need for continuing judicial education' *University of New South Wales Law Journal*, 1993, 16, 536-84.

- statutory interpretation
- judgment writing and giving reasons
- principled and uniform sentencing
- administering natural justice, due process and fair trial
- protecting human rights and civil liberties
- resolving disputes and alternative dispute resolution (ADR)
- *judicial management and administration skills*
  - case management
  - administering courts: filings, fixtures, hearing lists and queuing
  - record management
  - registry management and practice
  - team leadership between judicial and court officers
  - judicial information technology and computer skills
  - managing complex litigation and commercial disputes
- *judicial disposition – social context – outlook, attitude and values*
  - judicial role, powers and responsibilities
  - judicial independence, impartiality, integrity and outlook
  - judicial review
  - judicial conduct and ethics
  - gender/race equality
- *generic management and administrative skills*
  - communication skills – written and oral
  - time management
  - computer skills
  - coaching and mentoring
- *interdisciplinary*
  - (to be assessed depending on the prior training, experience and duties of each individual judge)
  - forensic scientific evidence: psychiatry and pathology – in criminal prosecutions
  - financial accounting – in complex commercial disputes
  - medico-legal fundamentals – in injury cases.<sup>21</sup>

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<sup>21</sup> Armytage, L, 'Judging: an occupation and skills analysis – implications for educators' (1996) 11 *NASJE News* 4.

In practice, it is observed that programmes are often focused to address certain priorities, frequently, for example, the transfer of information on substantive law. This is potentially problematic where it indicates a confusion between legitimately prioritised training needs and a limited vision of the mandate for continuing education; particularly where, in some transitional contexts, for example Mongolia, major systemic reforms of the law and jurisprudence have occurred since the appointment of most judges. In other countries, for example Pakistan, it may reveal that continuing education is being overburdened with attempting to redress underpinning deficits in the programme of professional legal education – a responsibility for which it should never be charged. In other jurisdictions, a focus on substantive training may simply reveal profound limitations of educational vision that fail to contemplate the domains of skills and attitudinal development.

#### (g) Curriculum

Obviously, programmes of judicial education vary around the world according to the specific learning needs, educational objectives and the curriculum of each judiciary. Curriculum design provides the framework to help courts to address training needs by planning what is to be taught, to whom and why. It implies that decisions have been made about the subject matter, the relationship between segments of knowledge, skills and abilities, and their organisation and sequence. In essence, it offers a plan of the proposed learning outcomes and the means of reaching them.

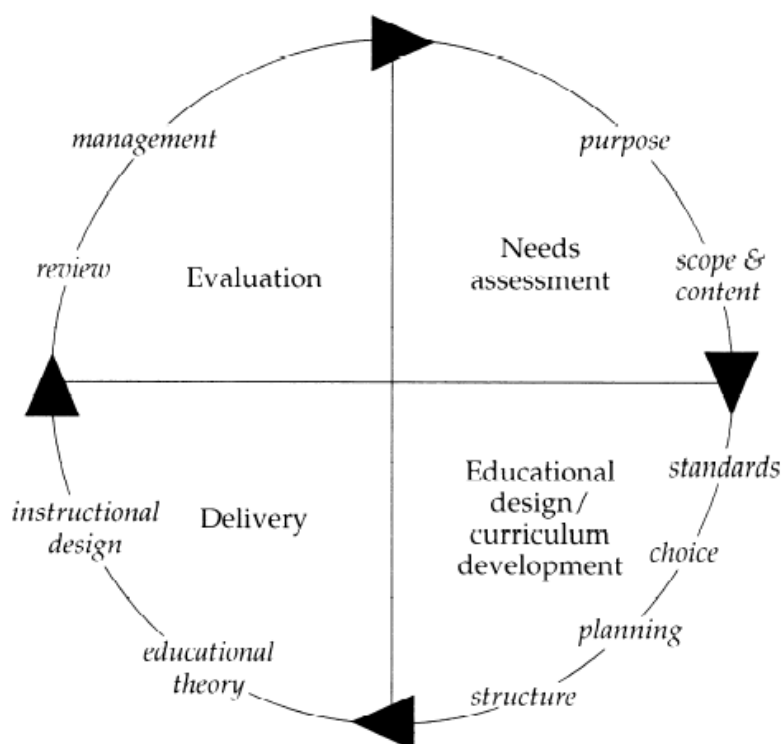
The survey of curricula reveals that programmes of continuing judicial education generally comprise two major components: first, *pre-service* or *induction training* is designed to address the need to train and educate new judges to assume office, to facilitate the transition from advocate to adjudicator, and to bridge the gap between inexperience and experience. Secondly, *in-service* or *continuing education* is designed to meet the further need to facilitate the ongoing professional development of more experienced judges to keep abreast of change and to acquire specialised competences.

In practice, it is observed that the development of judicial training curricula is extremely uneven and usually unsystematic. Some jurisdictions do operate balanced, methodical and comprehensive programmes, but most are highly intuitive and even *ad hoc*. Over all, curriculum design in programmes of judicial development remains significantly under-developed, doubtless reflecting the relative newness of the discipline.

To assist in the development of effective practice, a cycle of model practice for judicial education is proposed below. This cycle builds on principles of adult learning, professional development, and judicial education to integrate managing the education process. This cycle is perpetual, and consists of four quadrants, each comprising additional spokes: (i) *needs assessment* – identification of purpose, scope and content of training required; (ii) *curriculum* – setting of strategies and priorities, application of resources, and design of curriculum approach; (iii) *delivery* – development of capacity through training of trainers, presentation of courses, publication of materials; and (iv) *evaluation* – ongoing monitoring, refining and updating in light of feedback and change. Reference to this cycle of practice management should assist judicial policy-makers and educators alike in addressing

the planning issues associated with judicial education in a methodical and systematic fashion.

*Cycle of Practice<sup>22</sup>*



Additionally, there is evidently a need to strengthen the curriculum planning of many programmes in order to more systematically address educational need in a methodical way.

Matrix planning provides a straightforward, and thereby sustainable, process to assess and formulate the provision of educational services to address diagnosed training needs. This matrix is defined by *content* (subject matter) and *pitch* (level of application). This approach defines content as consisting of six categories: substantive law, court procedure, judicial skills, conduct and ethics, management and administration, and interdisciplinary. Pitch is categorised as induction, update, experience-exchange, specialisation and refresher. By combining both axes, a matrix of 30 service options is created which facilitates the identification and characterisation of services being provided by the institution within an overall framework.

<sup>22</sup> *Op cit*, Armytage, *Educating Judges*, 222.

*Matrix planning*<sup>23</sup>

Content/level	Orientation induction	Update	Exchange of experience	Specialist	Refresher
Substantive law					
Court procedure					
Case management & administration					
Judicial skills & court craft					
Disposition Attitudes, values and ethics					
Inter-disciplinary					

23 *Op cit*, Armytage, *Educating Judges*, 222.

**(h) Training of trainers**

Another foundational feature of judicial training around the world is the need to balance judicial ownership and authenticity with educational effectiveness. The challenge of ensuring educational effectiveness applies at all levels in the planning, design and delivery of training services, and requires a notion of partnership to be developed between judicial and educational authorities.

It is pleasing to observe that training of trainers (ToT) is an increasingly commonly recognised element in many programmes of judicial education and training around the world, though there is often significant underinvestment. ToT provides an important means for sustainability by enabling the judiciary to train its own members.<sup>24</sup> A good judge may be a fine role-model, but clearly they are not automatically a good trainer of other judges. Just as judges are not usually experienced trainers, so educators are not usually familiar with the distinctive training needs of the judiciary. This means that the judiciary, as an institution, should consider how, and in whom, it wishes to invest its training programme, and it additionally requires the provision of a comprehensive ToT programme to establish the expertise to deliver the training required.

The purpose of ToT is to provide a faculty of judicial trainers with the capacity – the knowledge, skills and understanding – to train other judges effectively. This capacity is required at two levels: (i) directing and managing the education programme, and (ii) delivering training activities using active learning and related participatory presentation skills. It is unfortunate that in practice that such ToT programmes as do exist, often focus only on the presentation skills component, somehow implying that the manifold educational programme-management aspects will resolve themselves satisfactorily.

**(i) Trainers' handbook**

A feasible and sustainable way of consolidating the benefits and quality assurance of the ToT is through investing in the publication of a judicial trainers' handbook. In practice, this is rarely done. A handbook can provide a custom-designed, comprehensive and culturally-appropriate resource for judicial training faculty members – the judges who will train their peers.

The content of the handbook should include the following sections:

- learning objectives
- learning and training theory
- characteristics of adult learners
- learning styles
- learning by doing
- four steps of learning

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24 See, eg, Federal Judicial Academy, Pakistan, Annual Report 2002–03.



- planning of sessions
- presentations techniques
- traditional techniques
- techniques in facilitating workshops
- large group methods
- small group instructional methods
- papers, handouts and materials
- some golden rules
- questions
- hearing and listening
- non-verbal communication
- presentation aids
- common problems for presenters.

**(j) Distance learning – publications, bench books and web-based support**

In international practice, curricula and ToT often overlook the relative value of developing a distinctive strategy of 'distance learning' that can overcome the many constraints and challenges of centralised service delivery of group-based learning activities. Distance strategies obviously build on quite conventional notions of educational publishing, and may comprise the production of bench books, or practice manuals for judges, which focus on court practice and procedures to provide practical assistance in performing the day-to-day tasks of judging. Additionally, providers can publish regular newsletters or digests on important current issues on law and practice, for example, extracts of selected conference papers for those judges in distant regions who are unable to attend training sessions. More sophisticated consideration can then be given to extending this distance-learning programme to other training media, including audio-tapes, video-tapes, computer-based packages and possibly satellite broadcasting.

**(k) Resources**

The availability of resources affects the dimension of training programmes, particularly in developing countries. To some extent, these resources vary according to which juristic model exists. In careerist systems, substantially more resources are required in terms of infrastructure and training establishment. France operates a fully residential facility, *L'Ecole Nationale de la Magistrature*. Interestingly, the Federal Judicial Academy in Pakistan, operating within an appointive system, boasts a hostel with a capacity for 52 participants who undergo 3-months courses. Similarly, the Philippines Judicial Academy also offers hostel facilities. However many common law countries, for example Britain and Australia, have not made such investments.

In some transitional jurisdictions, for example Mongolia, judges and lawyers are trained together in order to rationalise resource utilisation, though this would be seen, in many other countries, as encroaching on judicial independence and potentially eroding the standing of the judiciary.

### (l) Monitoring and evaluation

Finally, it may be trite to observe that it is in the interests of all stakeholders that a system for monitoring the performance and results of judicial training is introduced in order to (i) provide a means for feedback to refine operations, and (ii) demonstrate an effective contribution to improving judicial service delivery. Yet, this analysis reveals that the systematic monitoring and evaluation of programmes of judicial education and training is most frequently honoured in the breach and, at best, are characterised by the intuitive and anecdotal. In many programmes, there is no monitoring and evaluation of outcomes and benefit whatsoever. Doubtless, this is because of the costs and practical difficulties involved. It is nonetheless a quite remarkable deficit in light of the continuing growth and increasingly substantial investments being made in judicial training around the world.

A system to monitor and evaluate judicial training is required to ensure that it delivers what is intended, and provides mechanisms to review and refine activities in the light of feedback and experience. The design of this system hinges on the specific goals and objectives of the programme that, if only for this reason, need to be explicitly defined.

Because no single indicator can comprehensively measure professional development with validity and reliability, a range of indicators are required to measure the impact of the programme. These indicators measure specific outputs and then 'triangulate' an assessment of their outcomes on the performance of the judiciary. Because qualitative measurements are variable, preference will be given to the selection of quantitative indicators wherever possible, in a two-tiered approach to assess the performance of the programme in terms of its process and impacts.

- (i) *Process indicators* – These measure the implementation of the programme 'outputs' in terms of efficiency and effort. These indicators are 'internal' to the programme and evaluate whether it is doing what it set out to do. Typically, these indicators should include activity and efficiency, for example, the number of training courses conducted on time and within budget. It is common to find inferential indicators relating to participants' reaction to the training, specifically, (a) *participation*, (b) *satisfaction* and (c) *intentions* to make improvements in service delivery as a result.
- (ii) *Impact indicators* – These measure the effectiveness of programme results or outcomes. They are 'external' to the programme, and describe objectively-visible measurables and how they contribute to enhancing judicial service delivery. Assessment of improvements in the levels of knowledge, understanding, skills and attitudes of individual judges is undoubtedly difficult and expensive, certainly in appointive models, though in careerist systems formal examinations are seen countries as being an orthodox part of the training experience. Ultimately, the lead impact indicator may be the performance of the courts to

dispose of disputes in a timely and cost-efficient manner. It is not, however, easy to select any single indicator of measurement. Official statistics abound, but they do not necessarily describe all relevant considerations or causal drivers. While invariably anecdotal and qualitative, client satisfaction of service may ultimately synthesise all other indicators.<sup>25</sup>

Over all, it is observed that considerably more intellectual and financial resources are required to supplement existing deficiencies in the practice of monitoring and evaluating judicial education and training.

#### 4 UNIVERSAL CHALLENGES

Synthesis of these factors, which are visible in training programmes around the world, highlights a commonality of thematic challenges that confront the introduction and development of judicial training around the world, which, it is now argued, needs to be addressed, and which should include:

- (i) developing more effective partnerships with the executive, to preserve judicial independence, but securing adequate and sustainable resourcing
- (ii) instilling more strategic judicial leadership and ownership which integrates judicial training with broader sector-wide law and justice development strategies
- (iii) collaborating with educators to develop technically sound curricula and programmes
- (iv) investing in considerably more rigorous monitoring and evaluation mechanisms.

#### 5 CONCLUSION – MODEL GUIDELINES OF PRACTICE

From this review of international experience, it is possible to offer some practical guidelines for the consideration of courts which are introducing and developing programmes of continuing education. These include the following guidelines:

- (a) develop and standardise programmes of induction training and continuing judicial education which are *court-owned* and *judge-led*, and provide a range of conferences, seminars, workshops and paper-based and electronic publications that are practical, address the needs of judges for competency and skills-based development, and improve judicial performance
- (b) develop strategic and activity plans to define the goals and objectives of the programme of judicial education, and the priorities, structure and content of the curriculum and services.
- (c) establish a governance structure, or council, for the judicial training body to be chaired by the Chief Justice, and which includes representatives of the judiciary, educational experts and community interests

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<sup>25</sup> Armytage, L, 'Evaluating the impact of judicial education, (1994) 4 *Journal of Judicial Administration* 35; and, Armytage, L, 'Performance indicators – evaluating judicial education, *International Bar Association Newsletter* (May 1998); (1998) *IBA Judges' Forum Newsletter* 6 and (1998) 13 *NASJE News* 3.

- (d) involve members of the judiciary in the planning, establishment, management and evaluation of the judicial training programme
- (e) conduct a comprehensive training needs analysis, which includes active consultation with representatives of the legal profession, business community and representatives of civil society
- (f) undertake an assessment of the resources available and needed to establish and implement the programme of continuing judicial education, including fixed infrastructure, human resources and recurrent budget requirements
- (g) use existing resources wherever relevant and appropriate
- (h) apply the principles of adult and professional learning in the design and delivery of training services
- (i) develop a ToT programme for judges
- (j) design and implement a system for monitoring and evaluating the effectiveness of judicial training and its contribution to judicial performance.

It is observed that the development of judicial education and training has come a long way over the past 30 years, and now extends around the world. Much has been learned over these years, but much remains to be done. In particular, there is an imperative for judiciaries to develop systematic processes to collect, analyse and critically reflect on experience gained in judicial development around world and, importantly, to exchange experience between different juristic and appointive systems; and establish robust partnerships with adult and professional educators to enhance pedagogic effectiveness.