

*Session 9.2*

*Institutionalising Judicial Training in a Developing Country Context*

*Mr Livingston Armytage, Director, Independent Centre for Judicial Studies (Australia)*

- 1 I would like to make the most of the body of experience gathered around this room, so I suppose I have the challenge of putting into practice what we judicial educators talk about, a lot, and that is to ensure that we have a participatory learning experience. How I propose to do that is to kick-start the discussion with a short presentation and then ask some questions which hopefully draw on your reservoirs of experience, so that we can actually exchange some real experience about some of the real challenges in judicial training.
- 2 Now, I start with a particular hypothesis, and the hypothesis is that judicial reform is a vast and ever-increasing domain of practice worth literally billions of dollars in which judicial training is an increasingly essential element. This essential element is evaluated very rarely and when those evaluations are undertaken the findings are sobering. The findings are that the training is usually not very effective. In other words, the hypothesis that I am putting is that we are building an ever-increasing bridge to improve the quality of justice through training on, I am suggesting, some shaky foundations. The shaky foundations relate to the pedagogy, the educational effectiveness of the enterprise, and my concern as a judicial reform specialist and a judicial training specialist is always to be looking at trying to increase the educational effectiveness of our endeavour, because those are the foundations on which the entire change model rests.
- 3 What I would like you to be thinking about, through this workshop, is this core challenge of educational effectiveness. As Justice Mullins has said, there is a paper in the materials. That paper is to some extent a synthesis of the research that I did when I was working with Ernie Schmitt at the Judicial Commission fifteen years ago. That research was looking at how to improve the educational effectiveness of this novel important new area of judicial training. It involved me doing a lot of empirical work but also a lot of theoretical analysis. The paper that you have is a reduction of that monograph but it is also one that applies fifteen years of experience of practice in development. It is not really a theoretical paper; it is trying to be practical. What I want to do in this session is go through those practical guidelines.
- 4 Justice Mian Jan from Pakistan, with whom I worked in 2001-2002, will be familiar with this. This is a conference in Quetta, in the north-west frontier province. I put it up there because it is, I think, an interesting photograph. When you think about that being taken four or five months before 9-11, and all of the speculation about Al Qaeda and Bin Laden being based in Balochistan and Quetta, I can assure you that he was not a member of the audience but if he had been perhaps things would have been different.
- 5 This is the core challenge that we face as judicial educators, and that is that there is often an assumption that the learning need relates to law, but in fact the challenge, as Denis Catlin in the US, about twenty years ago now, posed is that even if we are good lawyers we are not necessarily good judges. Those of us involved in judicial training are looking at addressing this challenge.

- 6 How I propose to do that is with ten guidelines of practice. These guidelines of practice are offered to you as practical tools that you can ‘plug and play’, and if you think about it and adapt them in some way to suit your situation it will probably contribute usefully to improving the quality of the judicial training and as a result of that improve the contribution training makes to judicial reform.
- 7 I will go through these in order. I start with this disarmingly simple notion of context, but it in fact has a huge influence on the objectives and the purpose and the role of judicial training. We sort of assume, perhaps, that judicial training is judicial training. What I am suggesting to you is that the context the training exists in has a dramatic and direct impact on the objectives and the purpose and the goals of that training. So, for example, if we look at the careerist system of judging, the objectives of the training will be to bring someone, that may not be at all qualified, right up to the mark of being able to dispense justice in a qualitative and appropriate manner. That is very different in the common-law system, in the appointive system, where selection is usually from the ranks of experienced counsel, who may have twenty, thirty years of experience and may be the leaders in the field as advocates. Here the objectives are very different; they are transitional objectives and, to make the point very stark, generally speaking, in a common-law jurisdiction there is not a significant need to focus on substantive law. Generally speaking, not always but generally speaking, it is reasonable to assume the judges appointed in the appointive system are competent as lawyers and therefore the objectives of the education will be, arguably, significantly, refined to, for example, developing the disposition of judging or the skills of judging.
- 8 I know, looking at the conference program, that there are in this conference quite a number of sessions on skills of judging and how those are developed. That has very much been a challenge that common law judicial training has been embracing, how to improve judicial skills, on the basis that the knowledge did not necessarily need to be looked at in so much detail. That is not the point of departure in the continental or careerist system.
- 9 So, my first point is that the context determines the parameters significantly. In any model of judicial training I would offer two fundamental precepts. The first is that the process does need to be judge-led. It needs to be judge-led for the simple reason that if judges do not lead the process it will probably be resisted, because of many understandable reasons, for example that it is some kind of an incursion into the judicial domain, that it is neither appropriate or useful. What this means is that the commitment of – usually – the Chief Justice, the individual championship of the Chief Justice, in my experience, has been pivotal in making the difference between programs that are vibrant and programs that are not. It sounds like a small thing but leadership from the front by the Chief Justice, visible leadership, is often transformative in the successful programs that I have participated in or witnessed.
- 10 The second point is a little bit more subtle, the ownership point. Why is court ownership so important? Two reasons: first of all, there is always the spectre that particularly donor-funded training will in fact erode judicial independence. There is always this tension, about, is the reform process building independence or eroding it? It is fundamentally important, it is very problematic, it does not go away. We need to think about it all the time, but in every development project that I work in we have to think about effective ways of ensuring that the money coming through the World Bank, or ADB, or the UN, usually goes through the Ministry of Finance, or the

Ministry of Justice – organs of the executive – and there is usually some kind of negotiation that has to happen between the judicial arm and the executive arm. Now, it may not be problematic, but sometimes it is. What I am saying is that judicial reform and judicial training in development projects sometimes comes packaged with baggage that has a perverse effect. You know, all the documents talk about consolidating judicial independence but the process erodes it. So, this notion of court ownership is incredibly important from the point of view of independence but likewise from the point of view of authenticity. It is a very simple proposition, but who better to train judges than judges themselves, that have the authenticity. They know what the needs are, they know what the solutions are.

- 11 You may then ask, what is someone like me who is a lawyer, not a judge, doing in this domain? It is a legitimate question, that sometimes causes me to wake up at three o'clock in the morning. Successful judicial education, I would suggest, involves a partnership between two disciplines, the judicial, the judging, discipline and the educational discipline. My hypothesis is that the educational partnership is often light-on, and one of the reasons why I want this workshop to be participatory and to move quickly into a workshop mode is just to try and demonstrate the small practical ways of restoring that balance.
- 12 There are five or six mechanisms that will help you operationalise these notions of leadership and ownership. The first one, I think, is to create a judicial education and training policy that is conceptualised by the judiciary and defines what they want to do, where they want to go and how they want to get there. It is a very important quality assurance tool. I do not know how many of actually have explicit policies. It is maybe a basic exercise but a surprisingly useful one to think through what your goals and objectives and mechanisms are.
- 13 The formation of program committees on which there are not just judges, but representatives of your clients, may be very useful. I talk about judicial leadership; this does not mean to say that you exclude the community. So many judicial committees that I work with I find are exclusively of judges. Now, that is great because that looks after the 'ownership' but it does not hear the voice of your clients, your customers, the community. I would argue that this is a very important balance, ensuring that this process is inclusive, that it is participatory, and the program committee is one of those control points to get that balance right.
- 14 Other points are: doing the needs assessment, developing a faculty of trainers that is judges doing the training of judges, and your monitoring and evaluation.
- 15 I started by talking about policies. Let us just look at what some of the generic objectives or judicial training are. I want to highlight a couple of things about them. The first objective, [refers to visual presentation] to consolidate the identity, capacity and independence of the judiciary: this, ladies and gentlemen, is an institutional objective. This is something to strengthen institutions, the courts, the standing of the court within the polity, within the state. That is all about the institutions.
- 16 The second one [refers to visual presentation] is about the people. This notion of professional or judicial competence is the business we are in. We are not in lots of businesses. We do not repair cars, we do not repair TV sets. What we do is we promote competence. Competence is the capacity to perform a designated role to a

particular standard. That is what competence is. This is what judicial trainers do. This is our concern: to increase the capacity to do designated work to a particular standard.

- 17 The third one, though, is what you guys do with it. It is the performance orientation, it is the service delivery. Training is irrelevant if it cannot be seen as contributing to improving importance. This is the golden goal of the whole endeavour: some visible performance improvement. If that is not apparent through monitoring and evaluation then there is an issue, and that issue is that maybe your training needs to be strengthened somehow or other.
- 18 I highlight these three particular domains of competence. I say we are in the business of improving the way judges do their job, but the way judges do their job has from an educational point of view three core components and they are quite different. There is a knowledge component, a skills component and an attitude component. Just think about that for a moment. Why this distinction is significant is that the educational technology to promote those aspects is profoundly different. We cannot promote these in the same way. I will give you an obvious example: you can learn the law by reading a book. How many of you have learnt to ride a bicycle by reading a book? It is not possible. It is not possible; you cannot learn to write a judgment by reading about it. You cannot learn to do electronic legal research by reading a textbook. You must practise it. You need someone to help you practise and evaluate your performance. There is a completely different learning model, and there is an even more different one with attitudes and values.
- 19 I highlight this distinction. It is not esoteric; it is a fundamental tool of trade for judicial trainers. We have to use different tools to reach different objectives in what we are trying to do.
- 20 This slide [refers to visual presentation] is really all about key control points in institutionalising judicial training. I have talked about having a policy, and a policy is obviously some kind of an artefact of a strategy. A strategy is where you want to go and how you want to get there. Within this notion of managing your education program and having a strategy with objectives there are five key control points for a judicial education committee, for a Chief Justice, for a judge, for a trainer. It is these ideas of needs, services, curriculum, faculty, and evaluation.
- 21 This is what we call a 'project management cycle' [refers to visual presentation]. It is a continuous loop. It does not really matter where you start; you keep on going round it. On this particular model, arguably, you can start with 'needs'. You start by assessing the needs. You go off and do your training needs assessment – what the judges need in Uzbekistan. You talk to the judges, you look at the data, you find out. You assess the needs. Then, what you do is you design a curriculum, a package of services, to meet those needs. They are tightly linked. It is not just, 'oh, we'll do training on such-and-such today, because we've got an expert speaker who's just come in'; it is that you are meeting needs that you have identified in your strategy, that have been arranged in order of priority. Once you have designed that there is the delivery, and the delivery very much depends on having a competent faculty of trainers, whether they are judges or other experts, to deliver that. We spend a lot of time with training the trainers in judicial training, to strengthen this quadrant. Finally, there is the evaluation. This is the great myth of development. I notice there is two or

three sessions on evaluation. It is the big thing no one does any of. The donors do not fund it, they do not want to be embarrassed in front of their stakeholders. It is the big lie of development. No one evaluates rigorously. The reason is, they do not want to have a public document saying they have done a lame job. This is a problem that we all have to deal with because in theory everyone knows you need to evaluate. You need to monitor, you need to evaluate. In practice, usually no money is given to do it. You just muddle along and do that best you can. If you can formalise that, and of course there is some money for evaluation and there is increasing investment, [in evaluation] that then permits you to refine what you have done: 'well, we did 60% fine this year, we've got to refine 40% of the program'. You then go back and complete the cycle again by refining those aspects, and that is what I meant by it being a constant cycle.

- 22 Looking at this notion of 'needs', fundamental as it is, I suppose the first thing I would want to emphasise is that a need is not a want. And yet, so often when I look at reports of training programs I see reports that say there has been these surveys of judges, and you get page after page after list after list of all the things the judges would like, and no validation that those are actually needed. It may well be the judges are entirely right, but what they are probably giving you is the list of what they would want. Those wants may, in 85% of cases, be needs, but they may not be. When surveys are done on these sorts of things, what you find is that your customers tell you things that you did not know you wanted. Lawyers, typically: their customers tell them that their communication skills are appalling. Lawyers will never say that. We will say our communication skills are excellent, but our customers will tell us something different, and so on. I want to make the distinction between a want and a need, and by becoming dependent on only talking with judges in this area it is very difficult to make the distinction. Other sources, our Ministry of Justice data, our NGO data, customers of the justice system or those that are no longer customers, women or the poor who feel the justice system does not deliver anything for them: their voice can often be very useful in identifying needs.
- 23 I am encouraging what in the literature is called a participatory methodology, some kind of process that includes the customers as well as just the service providers. As a result of that you will end up with some kind of a list of training needs. The list of training needs will vary from court to court but it is funny to me how often the list only looks at one part of what the needs are. I have given you a table of needs here [refers to visual presentation] not because any of them are needed but just because they provide some kind of structured way of giving examples of different sorts of needs. Obviously, substantive law and court procedure. I say 'obviously', but it is only a sixth of this list. But it is often the one that the entire training program will focus on and it will leave the other five out. More recently, in Australia, with this emphasis on developing skills, there has been a huge focus on developing skills – not necessarily doing much on substantive law, or anything on interdisciplinary matters. This is not a critique of anything in particular, it is just to say that if we do not have a structure to develop our training program, sometimes we find that we only pitch in one area.
- 24 Once you have got the list of training needs, this may be one way of operationalising it. If you look at these you will see across the top the topics defined by their nature, and down on the left spoke [refers to graphic presentation, in which the elements are

represented as components of a wheel] it is more about the level at which this training is offered. If you add those thirty boxes, [refers to visual presentation] theoretically you can carve up the design of a training program into a minimum of thirty different sorts of training activity. That is an interesting bit of information, when you think that very often a training program in fact only focuses on one or two cells [refers to visual presentation]. Very often, training programs focus on only doing induction or very often it may be only on substantive law, or procedure.

- 25 The reason why I offer this diagram is so that those of you that have the responsibility to think about programs and planning can make purposeful decisions about what is adequate. It may well be entirely adequate, but your focusing just on induction, or it may be entirely appropriate that you are focusing only on substantive law, at lots of different levels, but when you realise that there are twenty-eight other boxes with nothing happening, that may raise the question, is our program balanced in meeting the needs that we have identified in our assessment? I will not attempt to answer that. This device may help you answer that.
- 26 Moving through the spoke to this issue of delivery, and judge ownership of the delivery process, the notion of faculty development is in practise a crucial control point because this is where the rubber hits the road. This is how you improve the quality of the delivery of training, by judges training judges, through faculty development. I am suggesting that judges are particular learners. I mean, this is a reasoned, researched observation: judges learn in a particular way, I suggest. They do not learn in the same way as schoolchildren. They do not learn in the same way as interior decorators. They do not learn in the same way as trainee auto mechanics.
- 27 There is some theory behind these outrageous propositions. What I am suggesting is that when we think about improving the educational effectiveness of training of judges we want to think about three layers. First of all, judges are adults and there is a body of theory and knowledge, a vast body, of adult learning, that can kick in and help us in how we are promoting the development of the faculty. Secondly, judges are not just adults, they are highly successful, highly refined professionals, and there is a substantial but more refined discourse on professional education and learning, which shows that professionals learn in a particular way that is different to other adults. Finally, I am suggesting to you that judges as a profession acquire particular learning habits and preferences.
- 28 Let us look at those ideas. Judges as adult learners – there has been a lot of work. Malcolm Knowles was the person who innovated this, about twenty years ago. He came up with what was then a revolutionary theory, that adults learn differently to children. It is not really revolutionary. I mean, the thought of us sitting in a classroom with a teacher the way our kids go to school – we obviously do not learn like them, but unless you think about it you may go to, for instance, a lecture model because that is what teachers do. The important thing about this is that the particular thing about adults is that they are self-directed learners, so you have immediately got a conundrum: how do you organise self-directed learning? I mean, those two ideas collide. If judges, as adults, prefer to be self-directed, how can you organise that? I mean, this does not go away; it is a genuine challenge and the answer, I would suggest, is in a model of facilitated learning, but it is very different to the way that children learn.

- 29 I will not go through all of this list [refers to visual presentation]. I mean, there is a body of research here that comes particularly from the work of Schön and Hull and a whole lot of others like Kolb and Dennis Catlin. There has been a lot of work on this. This is not just something that has been pulled out of the air.
- 30 Judges and adults have a preference to learn about specific things. We do not like to learn about abstract things. We want to have something that has a problem focus. It is something that will help us do our job tomorrow. If it does not do that we probably will lose interest, lose attention. It is a particular form of learning. The way professionals tend to learn is that there is not just a very refined body of learning and practice but professionals know what they want to learn. This comes back to the self-directed aspect, but it tends to be very career-related, so this is not all about, you know, how to do something recreational. This is all about how you do your job. It is very specific and job-related.
- 31 This last slide about judges as distinctive learners: I am suggesting that there are five key points. The first is the independence of the process that I have touched on; it is critical. The second is that you as judges, you have a leadership role in society and because of that leadership role it is very important how the learning is delivered. So, judicial education should normally not be done with community education, or with education of the bar, because that will erode the societal position of the judges. It will do something that is actually damaging. Learning preferences and practices: this remark is based on research mainly in common-law systems, but obviously judges that have been appointed, they are senior, they already have habits that they have developed that have been very successful across a career. Do not try to change that. Build on it. It depends very heavily on self-experience and self-reliance. There is some research here from Catlin on why judges participate, that is, to promote their competence, to interact, and to develop a professional perspective, and to meet the functional needs of judging. This is one of the last tools that I will offer you; this is the trainers handbook. It is something usually is part and parcel of the TOT, the training-of-trainers that is part of the reform process. There is a list of ideas and steps and issues that I hope over the years you will find helpful. It has been something that I continue to develop and evolve with experience as the years roll by.
- 32 I will end with this slide because, as Ernie Schmatt will remember, this was a slide that appeared in the Australian newspapers when we were working together in 1994, when judicial education was very controversial, and the notion of a judge getting on a school bus with the schoolkids was something that really irritated the judiciary, because that was what they thought it was all about. What I hope I have said in the last ten, fifteen minutes is that it is fundamentally something quite different to that.
- 33 Let me now just go to this slide that I started on. This is the beginning of the workshop session. I have given you my session; I need to stop now. All of this is hard data. The first proposition is that judicial reform is substantial. The World Bank alone, four or five years ago – Sandra would know – said they were running fourteen-hundred projects. Now, they are not necessarily *just* legal and judicial reform, but they are real, live projects that have a legal or judicial reform component, valued at an unbelievable sum, of 5.9 billion US dollars, including public administration. I could not pull the figures separately, just on legal and judicial, that includes public administration, but legal and judicial reform is a significant component of that. Danino was Chief Counsel of the bank at that time.

- 34 To give you an example of just one project: as Mian Jan Saab will know, in Pakistan, a single project that we worked on for the Asian Development Bank, a single project, three hundred and fifty million US dollars. Ausaid, which is the Australian aid agency, it is a small bilateral compared to the world bank or ADB or the UN, they put a hundred million on the table in Papua New Guinea, as Daniel Roland, who is our advisor and here today, will confirm. A hundred million US dollars for three, four years.
- 35 So, the proposition is that the business we are in is big business, in volume and in worth. The second proposition is that training is the cement between the bricks, happens in almost all of them. There are some projects that do not have training but most of them have training, whether it is for computers, whether it is for judicial judgment writing, whether it is for case management, who knows. There is usually a training component. Now, as I say, there has been surprisingly little rigorous formalised evaluation of this endeavour, but of that information that is readily available approximately a quarter of the money spent in the massive ODA (overseas assistance development) budget goes into technical assistance, which usually involves significant components of training. So, we are talking about hundreds of millions of dollars a year.
- 36 The World Bank spends, it says, \$720,000 a year, according to their independent evaluation group. Ninety percent of that is spent in projects. So, it is in the developing-country context. It is not in seminars in Washington DC. And, they observe that there is usually no monitoring and evaluation. So, they just spend all this money. Most participants learned, they find, but only fifty percent resulted in performance change. This is a very general measure but it is a pretty shocking measure. If we say that the objective of training is performance improvement, we have already wasted half the money. It is a major measure. It is imprecise because there has not been tighter evaluation on judicial training. It is a general observation about training, across the development in the World Bank but, I mean, the World Bank is a very serious institution and I am sure that we can say that that figure probably carries with ADB and Ausaid, and UNDP and so on. And their rather bland observation was that it was 'less effective than expected'.
- 37 When we take this course to judicial reform and judicial training in particular, we find much more critical self-appraisal. The performance has been disappointing, limited, qualified. When you talk to these writers, whether they are Carothers, or Hammergren or Jensen, Trubek, very often over the coffee they will say, 'it's a bloody disaster'.
- 38 Now, what I want to do is try to improve these odds with you. We do a lot of training. We do not do it very well. Conferences like this are very useful to help improve the quality. What I would like to do now is to turn to the final slide, and I would like to invite you all to think about not something theoretical but something practical and actual from your own experience. There is huge experience gathered round this room, huge experience. What I would like you to do, with your permission, is to spend the rest of the time sharing this experience amongst ourselves. If I can just suggest a couple of guidelines: it would be good if we could talk in first-person voice about specific things in our own experience, not just someone else's good idea but 'something that worked for me'. If we can talk about something that has a solution focus, not a challenge- or a problem focus. We can be overwhelmed with problems

and challenges. That is what we grapple with all the time, and I have sort of skated over some of them, but let us now draw this forum together and create a space where we can exchange some practical seasoned know-how on what has worked for each of us, that we can exchange with a view that that might help the rest of us.